

Mental Health Court

Annual Report 2019 – 20

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Governance

The Mental Health Court is constituted under the *Mental Health Act 2016*. It is comprised of a Supreme Court Judge who is assisted by one or two clinicians.

The primary functions of the Court are to determine:

- references concerning questions of unsoundness of mind and fitness for trial in relation to persons charged with criminal offences;
- whether or not a person charged with murder ought only stand charged with manslaughter by reason of diminished responsibility; and
- appeals from the Mental Health Review Tribunal.

Composition of the Court

During the year in review, the Honourable Justice Flanagan was appointed President of the Mental Health Court on 14 February 2020, replacing the Honourable Justice Dalton. The Honourable Justice Wilson also became a member of the Court upon appointment by Governor in Council.

The Court is assisted by clinicians who provide advice to the Mental Health Court on the meaning and significance of clinical evidence and clinical issues relating to treatment, care and detention needs of a person under the *Mental Health Act 2016* and the *Forensic Disability Act 2011*.

The panel of assisting clinicians consisted of psychiatrists: Dr E McVie, Dr J Sundin, Dr J Reddan, Dr S Harden, Dr R Phillipson, Dr A Simpson and psychologist Dr G Palk.

Caseload

References of persons' mental state

The reference of a person's mental state to the Mental Health Court may be made by the person or an authority as defined under *Mental Health Act 2016*.

During 2019-20, 213 references were filed (compared with 194 references the previous year). In addition, there were 19 amended references filed, referring additional offences on an existing reference (compared with 14 amended references in the previous year).

Table 1: References filed in the Mental Health Court during 2019-20

| Reference filed by: | Reference | Amended Reference |
|---------------------------------|-----------|-------------------|
| Chief Psychiatrist | 115 | 8 |
| Director of Public Prosecutions | 1 | 0 |
| Legal Representatives | 84 | 11 |
| Defendant | 1 | 0 |
| Office of the Public Guardian | 1 | 0 |
| Court of Law | 4 | 0 |
| Registrar of Magistrates Court | 7 | 0 |
| Total | 213 | 19 |

Appeals against decisions of Mental Health Review Tribunal

The *Mental Health Act 2016* provides that patients, or their representatives, have 60 days after receipt of the decision of the Mental Health Review Tribunal in which to file an appeal. The Chief Psychiatrist and the Attorney-General, and other persons defined in the Act, also have 60 days from the date of the decision in which to lodge an appeal. The subject matter of appeals is whether or not a person should remain on a forensic order, a treatment support order or a treatment authority.

In 2019-20, 24 appeals from a decision of the Mental Health Review Tribunal were filed in the Court (compared with 35 appeals the previous year).

Table 2: Appeals filed in the Mental Health Court during 2019-20

| Filed by: | Appeal |
|-------------------|---------------|
| Patient | 20 |
| Interested person | 3 |
| Attorney-General | 1 |
| Total | 24 |

Court examination orders

A Court Examination Order requires the person, the subject of the proceeding, to be assessed by a qualified practitioner. By a Court Examination Order, the Court in effect commissions a report from a qualified practitioner to provide the Court with medical information on the defendant or patient.

In 2019-20, 250 Court Examinations Orders were recommended (compared to 207 recommendations the previous year).

Given the complexity of some matters which the Court must determine, especially when the offence is murder, the Court may order more than one examination. Where possible, video-link facilities may be used in place of travel arrangements to regional or remote areas. However, this practice is not always suitable.

There is a relatively small pool of qualified practitioners available to write reports. The number of reports which must be completed each year, and the complexity of the matters to be dealt with, means that good management of this process is crucial to the efficient progress of matters through the Mental Health Court.

During the COVID-19 pandemic, clinical assessments continued to be provided to the Mental Health Court.

As a result of travel restrictions and border closures introduced for the COVID-19 response and in consultation with clinicians, alternative arrangements for assessing patients were implemented specifically by video conference. Interviews which required face-to-face observations and assessments by clinical psychologists or psychiatrists were deferred. Re-commencement of these interviews began as

soon as restrictions eased in June 2020. It is expected the rescheduling of these assessments will be completed and return to pre COVID-19 targets.

Performance

During 2019-20, the Court sat on 54 days (compared with 56 days the previous year). The Court determined a total of 242 matters (compared with 279 matters for the previous year), consisting of 207 references, 23 appeals and 12 applications.

At each sitting, video-links with regional health facilities and correctional centres are used in hearing matters. This practice continues to provide a cost effective and highly efficient means of hearing matters; contributes to the safety of those involved in the hearing and reduces stress for patients and defendants. Patients and defendants have the right to legal representation, with legal representatives appearing in the Court.

From 30 March 2020 as a result of the COVID-19 pandemic and the public health directions issued, the Mental Health Court's standard practices of conducting hearings in the Court room were altered and a Practice Direction alerting all parties to these changes was issued. The Mental Health Court was the first jurisdiction in Queensland to implement and successfully facilitate hearings via video link and telephone link. Initially this also included the Assisting Clinicians providing their advice to the Court remotely.

Overall, there have been minimal delays affecting the Court's proceedings and five adjourned matters were re-listed and finalised within two months. The Court is now operating at full capacity.

Ordinarily, decisions are delivered orally at the conclusion of the hearing of a matter. Decisions in matters where an important point of law is raised, or which are factually complex, are reserved, and delivered in writing after the Judge has had time to consider the issues raised.

A Callover of matters is held once every month. This is fundamental to the management of matters progressing through the Court. The Court continued to use a Practice Direction to manage complex cases and strove to ensure complex cases were progressed as efficiently as possible without unnecessary delays.

Disposal of references

During 2019-20, the Court heard 207 references (compared with 227 references in the previous year). Appendix 1 summarises the findings and orders of the Court for this reporting year.

The Court disposed of 8 references where the defendants were charged with the offence of murder. In respect of these matters, the Court made the following orders:

Two references: the Court found the defendant was not of unsound mind but was of diminished responsibility. The Court found the defendant fit for trial and ordered the charges should proceed according to law.

Two references: the Court found the defendant was not of unsound mind and not of diminished responsibility. The Court found the defendant fit for trial and ordered the charges should proceed according to law.

Two references: the Court found that there was a substantial dispute of fact preventing the Court making a decision on soundness and that the defendant was fit for trial. The Court ordered that the defendant's charges should proceed according to law.

One reference: the Court granted leave to withdraw the reference, with the result that the charges should proceed according to law.

One reference: the Court dismissed the reference, with the result that the charges should proceed according to law.

Disposal of appeals

During 2019-20, the Court dealt with 23 appeals (compared with 39 appeals the previous year). The Court allowed 3 appeals, dismissed 16 appeals and 4 were withdrawn prior to the hearing.

Matters pending as at 30 June 2019

There were 219 matters pending as at 30 June 2020 (compared with 204 matters pending as at 30 June 2019), consisting of 216 references, 3 appeals.

As at 30 June 2020, 21.55 per cent of matters pending were greater than 12 months old, but less than 24 months old. Only 1.83 per cent of matters pending were over 24 months old.

Education

In an effort to increase the pool of Mental Health Court reporting clinicians, Justice Dalton and Justice Flanagan, assisted by Drs McVie, Reddan, Sundin, Harden and Phillipson conducted a report writing seminar in June 2019. The seminar was conducted to assist clinicians in writing helpful reports for the Court.

Due to COVID -19 the Court was unable to conduct a report writing seminar earlier in the 2019-20 financial year. However, the aim is to conduct one session via video link towards the end of 2020 and two sessions in early 2021.

Registry

The Registry is a unit within the Department of Health comprising of four full time employees and one part time employee. Its role is to provide administrative support to the Court.

During the year the Registry implemented a new, more efficient electronic means of filing material in the Court and subsequently collating that material for Court hearings.

A new fit-for-purpose case management system is scheduled to 'go live' in September 2020. The system will improve data and security linkages between the Mental Health Review Tribunal, the Office of the Chief Psychiatrist and the Registry, with the aim of increased relevant information-sharing, a reduction in duplication, increased data accuracy and risk mitigation.

The Registry staff are thanked for their ongoing dedication and assistance to the Court.

Website

Information about the Mental Health Court (including a description of its work, contact details, forms and practice notes) is available on the Queensland Courts website (<http://www.courts.qld.gov.au/>).

A selection of the Court's judgments are published on the internet, subject to relevant restrictions contained in the *Mental Health Act 2016* (Qld) (<https://www.sclqld.org.au/caselaw/QMHC>). As well, important judgments from other jurisdictions are accessible from the website.

Appendix 1: Findings and orders made by the Mental Health Court

| Findings and orders on reference of person's mental state | 2019-20 |
|--|---------|
| Unsound mind - Forensic Order | 66 |
| Unsound mind - Forensic Order (Disability) | 7 |
| Unsound mind - no Forensic Order | 9 |
| Unsound mind – Treatment Support Order | 9 |
| Not of unsound mind and fit for trial | 51 |
| Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order | 5 |
| Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order (Disability) | 16 |
| Not of unsound mind and unfit for trial (unfitness permanent) - no Forensic Order or Treatment Support Order | 4 |
| Not of unsound mind and unfit for trial (unfitness permanent) - Treatment Support Order | 2 |
| Not of unsound mind and unfit for trial (unfitness not permanent) - Forensic Order | 1 |
| Not of unsound mind and unfit for trial (unfitness not permanent) - Treatment Support Order | 1 |
| Substantial dispute as to facts and fit for trial | 15 |
| Substantial dispute as to facts and unfit for trial (unfitness permanent) - Forensic Order (Mental Health) | 4 |
| Substantial dispute as to facts and unfit for trial (unfitness permanent) - Forensic Order (Disability) | 4 |
| Substantial dispute as to facts and unfit for trial – no Forensic Order or Treatment Support Order | 3 |
| Substantial dispute as to facts and unfit for trial (unfitness not permanent) - Forensic Order | 1 |
| Substantial dispute as to facts and unfit for trial (unfitness not permanent) - Forensic Order (Disability) | 1 |
| Appeal Dismissed | 16 |
| Appeal Withdrawn | 4 |
| Appeal Allowed | 3 |
| Reference Dismissed | 1 |
| Reference Withdrawn | 17 |
| Application Granted | 7 |
| Application Dismissed | 3 |
| Application Withdrawn | 2 |

* On some references more than one decision was made