



# **Mental Health Court**

## **Report 1 July 2002 – 30 June 2003**

### **The Mental Health Court**

*Registry:*

*147-163 Charlotte Street  
Brisbane*

*GPO Box 48  
Brisbane 4001*

*Telephone: (07) 3234 0703  
Facsimile: (07) 3221 7535*

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CHAMBERS OF JUSTICE MARGARET WILSON  
SUPREME COURT OF QUEENSLAND

15 October 2003

The Honourable Wendy Edmond, MP  
Minister for Health  
Queensland Health Building  
147-163 Charlotte Street  
BRISBANE QLD 4000

Dear Minister

I enclose my report, under s 435 of the *Mental Health Act 2000*, on the operation of the Mental Health Court and its registry for the period 1 July 2002 – 30 June 2003.

Yours sincerely

**The Hon. Justice Margaret Wilson**

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## Introduction

In the year 1 July 2002 - 30 June 2003 the Mental Health Court continued to perform its functions under the *Mental Health Act 2000* of deciding references into the mental condition of persons at the times of alleged offences and their fitness for trial, hearing appeals from the Mental Health Review Tribunal, and investigating the detention of patients in authorised mental health services. It was constituted by the Honourable Justice Margaret Wilson, a Judge of the Supreme Court of Queensland, who was assisted by Dr DA Grant, Dr JM Lawrence AM and Dr JF Wood, psychiatrists.

## Sittings

The Court sat on 40 days in the year under review. It usually sits on 4 days out of every 5 allocated to it in the Supreme Court Trial Division calendar, the remaining time being used for preparation, judgment writing, administrative tasks, travel, etc. Most sittings were held in Brisbane, although there were one-day sittings in each of Townsville, Cairns and Toowoomba.

Matters heard comprised:-

**Table 1: Matters heard by the Mental Health Court 1 July 2002 – 30 June 2003**

Type of Matter	Number
<b>References by:</b>	
• Director of Mental Health	131
• Director of Public Prosecutions	5
• Defendant or Legal Representative	72
• Court of Law	4
• Attorney-General	5
<b>Appeals against the Mental Health Review Tribunal by:</b>	
• Director of Mental Health	1
• Patient	15
Applications to inquire into detention:	-
<b>TOTAL</b>	<b>233</b>

## References

By far the greatest part of the Court's work was in determining questions of criminal responsibility - ie questions of sanity at the time of an offence and fitness for trial. The results of the references heard were as follows:-

**Table 2: Matters disposed of by the Mental Health Court 1 July 2002 – 30 June 2003 – references**

Findings and orders of the Mental Health Court	Number
References*:	
• of unsound mind (forensic order)	87
• of unsound mind (no forensic order)	22
• not of unsound mind and fit for trial	49
• not of unsound mind, of diminished responsibility and fit for trial	1
• not of unsound mind, not of diminished responsibility and fit for trial	3
• not of unsound mind and unfit for trial (unfitness not permanent)	3
• not of unsound mind and unfit for trial (unfitness permanent and forensic order made)	6
• not of unsound mind and unfit for trial (unfitness permanent and no forensic order made)	1
• reasonable doubt and fit for trial	23
• reasonable doubt and unfit for trial (unfitness not permanent)	2
• reasonable doubt and unfit for trial (unfitness permanent and forensic order made)	2
• reasonable doubt and unfit for trial (unfitness permanent and no forensic order made)	2
• disputed offence (alternative offence) and fit for trial	1
• dispute relating to substantially material fact and fit for trial	2
• dispute relating to substantially material fact and unfit for trial (unfitness not permanent)	1
• reference withdrawn	23
• struck out	3
<b>Total</b>	<b>231</b>

\*includes 24 matters where two decisions were made & 2 matters where 3 decisions were made.

A reference to the Court must be in relation to the commission of an indictable offence, although it may include a reference in relation to the commission of a simple offence. In practice most references relate to multiple alleged offences, often on different dates. This may result in multiple findings - for example, that a person was of unsound mind at the time of one alleged offence but not of unsound mind at the time of another.

Of the crimes of violence, there were 8 charges of murder. In 2 cases the person charged was found of unsound mind and ordered to be detained as a forensic patient in a high security hospital. In 1 case the person was found not of unsound mind but of diminished responsibility and fit for trial, and so sent to trial on a charge of manslaughter. The remaining 5 cases were all sent to trial on charges of murder, 3 because the persons were found not of unsound mind and fit for trial, and 2 because the facts were in dispute and the persons were fit for trial.

Analysis of primary diagnoses at the times of alleged offences revealed schizophrenia to be the mental illness most commonly suffered by persons found of unsound mind. The approximate incidences of various mental conditions suffered were -

50%	schizophrenia
13%	affective disorder
16%	substance related disorder
6%	intellectual disability
15%	other.

There is a critical need for the Court to acquire a computer program to facilitate thorough recording and analysis of data relating types of offences and outcomes from both the legal and the clinical perspectives. At present it is much indebted to the Assisting Psychiatrists, led by Dr Wood, whose assiduous scoring at the conclusion of each sitting day has allowed some preliminary analysis to be undertaken.

### **Video Links**

A person whose mental condition has been referred to the Mental Health Court is required to attend the hearing unless the Court decides to proceed in his or her absence. An appearance in court can be distressing for the person, and is often costly in terms of human resources and travelling expenses. During the sittings in November 2002 video links between the Supreme Court in Brisbane and Rockhampton Hospital, Capricornia Correctional Centre, Townsville Hospital and Townsville Correctional Centre allowed such persons to participate in the hearing of references without travelling to Brisbane. They were all represented by counsel in Brisbane.

### **Appeal to Court of Appeal**

There was an appeal to the Court of Appeal against the decision of the Mental Health Court that a defendant was fit for trial. It was dismissed.

## **Forensic Orders, Limited Community Treatment**

A finding of unsoundness of mind or of unfitness for trial can lead to the making of a forensic order - that is, an order for the person's detention in an authorised mental health service for involuntary treatment and care. If there is a finding of unfitness for trial, but the Court is not satisfied that the unfitness is permanent, a forensic order must follow.

A forensic order may be accompanied by an order for limited community treatment or the approval of such treatment. In this context limited community treatment is somewhat of a misnomer. It may range from escorted leave on the grounds of a hospital to leave to live in the community with follow-up appointments at a community mental health clinic. About 98% of the forensic orders made were accompanied by provision for some form of limited community treatment.

## **Persons with Intellectual Disability**

About 5% of the references to the Mental Health Court relate to the mental condition of persons suffering from intellectual disability rather than or in addition to mental illness. They are usually in need of some form of care, and there may be a risk of their reoffending. Detention in an authorised mental health service is often inappropriate for an intellectually disabled person, but suitable alternative placements are scarce. Justice Wilson attended two meetings (on 24 February and 4 June 2003) with the Acting Director of Mental Health, the Director of the High Security Program at The Park - Centre for Mental Health, counsel for the Director of Mental Health, and representatives of the Director of Public Prosecutions, Legal Aid Queensland, Disability Services Queensland, the Office of the Adult Guardian, and the Mental Health Unit of Queensland Health to discuss issues relating to intellectually disabled persons who come before the Mental Health Court.

## **References to the Attorney-General**

If someone has been charged with an indictable offence and an involuntary treatment order or forensic order has been made, the Director of Mental Health may refer the matter of his or her mental condition to the Attorney-General, provided the Director is satisfied that the offence is not of a serious nature.

At the commencement of the year under review there were 4 such references awaiting determination by the Attorney-General, and during the year a further 93 references were made. The Attorney-General referred 11 of these cases to the Mental Health Court, and at the end of the year there were 26 references awaiting his determination.

## **Court Examination Orders**

A reference to the Mental Health Court must be accompanied by an expert report, and the parties are bound to disclose all reports, even those detrimental to their cases. In most references and appeals from the Mental Health Review Tribunal the Court appoints one or more experts to report on pertinent issues. The Assisting Psychiatrists review the files and recommend examiners with appropriate expertise

and experience. The examiners are selected from a large panel of experienced psychiatrists, all of whom are able and willing to prepare reports to a very high standard and to appear in court for very modest fees, which are met by the Court. In the year under review 160 Court examination orders were made.

### **Appeals from Mental Health Review Tribunal**

The appeals from the Mental Health Review Tribunal were disposed of as follows:-

**Table 3: Matters disposed of by the Mental Health Court 1 July 2002 – 30 June 2003 - appeals**

<b>Findings of the Mental Health Court</b>	<b>Number</b>
Appeals:	
• withdrawn	12
• dismissed	3
• upheld	1
<b>Total</b>	<b>16</b>

An appeal to the Mental Health Court from the Mental Health Review Tribunal may be commenced by a party to the Tribunal proceeding, someone on behalf of the patient for whom the Tribunal decision was made or the Director of Mental Health. In practice most appeals are commenced by patients without legal representation, who do not meet the means and merits tests applied by Legal Aid Queensland to applications for legal assistance. The effective prosecution of their appeals is often precluded by a combination of mental illness and lack of legal skills. This is a particularly acute problem in appeals against treatment decisions. Serious consideration should be given to the publicly funded retainer of a legal practitioner to represent such appellants.

### **Decisions reserved by the Mental Health Court as at 30 June 2003**

As at 30 June 2003 there was 1 decision reserved by the Mental Health Court.

### **Matters adjourned**

Occasionally contact between persons who have been charged with indictable offences and whose mental condition has been referred to the Mental Health Court and their legal representatives and mental health care providers is lost before the hearing date. In such cases the reference is adjourned to an abeyance list, so that it may be relisted for hearing when contact is re-established. As at 30 June 2003 there were 7 references on the abeyance list.

Otherwise 6 references which had been listed for hearing had been adjourned to dates to be fixed.



## **Inquiry into Detention**

One application for inquiry into a patient's detention in an authorised mental health service was filed during the year. It was still in the preparation phase at the end of the year.

## **Matters pending**

As at 30 June 2003 there were 161 matters pending. Most of those ready for hearing had been assigned dates in July, and the balance were proceeding through the preparation phase.

**Table 4: Matters pending in the Mental Health Court as at 30 June 2003**

<b>Type of Matter</b>	<b>Number</b>
References by: <ul style="list-style-type: none"><li>• Director of Mental Health</li><li>• Director of Public Prosecutions</li><li>• Defendant or Legal Representative</li><li>• Court of Law</li><li>• Attorney-General</li></ul>	76 4 63 1 4
Appeals against the Mental Health Review Tribunal by: <ul style="list-style-type: none"><li>• Patient</li></ul>	12
Applications to inquire into detention by: <ul style="list-style-type: none"><li>• Patient</li></ul>	1
<b>TOTAL</b>	<b>161</b>

## **Registry**

The registry has continued to occupy premises in the Queensland Health Building in Charlotte Street, Brisbane. The registrar Mr Barry Weychardt (an officer of the Public Service at classification level AO6) and his administrative assistant Ms Tanya Nosworthy (classification level AO2) have continued to provide loyal, dedicated and efficient service. During the year the staffing level was increased by the appointment of a senior administration officer - Mrs Lisa Blackmore (classification level AO5).

The inquisitorial nature of the Court's work and the procedures for the making of Court examination orders impose heavy demands on the registrar and his staff. They have been unstinting in their efforts to perform to optimal standards and to ensure that those coming before the Court, as well as medical practitioners, legal

practitioners and the public are treated courteously and efficiently. However, they are hindered by the lack of a modern, customised court management computer program to facilitate routine administrative functions and the keeping and analysis of data. The installation of such a program should be accorded very high priority.

### **Assistance of Supreme Court and State Reporting Bureau**

The work of the Mental Health Court has been facilitated by the ongoing support and encouragement of the Chief Justice of Queensland, the Hon Paul de Jersey AC. He was appointed to constitute the Court during Justice Wilson's absence on leave in June 2003.

The assistance and courtesy rendered by the Court Administrator, the Principal Registrar, the Sheriff and their officers are gratefully acknowledged.

The Court could not have functioned as smoothly as it has without the help of Justice Wilson's associates, who have cheerfully and diligently undertaken various research and administrative tasks.

All proceedings of the Court are recorded by the State Reporting Bureau, which provides high quality transcripts on direction by the Court.

### **Website**

Information about the Mental Health Court (including a description of its work, contact details, forms and practice notes) has been made available on the Queensland Courts website ([http://www.courts.qld.gov.au/about/role\\_mhc.asp](http://www.courts.qld.gov.au/about/role_mhc.asp)). Its judgments are published on the internet, subject to relevant restrictions contained in the *Mental Health Act* (<http://www.courts.qld.gov.au/qjudgment/mhc.asp>).

### **Decisions of Mental Health Tribunal**

The Supreme Court Library was retained to catalogue a large collection of decisions of the former Mental Health Tribunal held by Legal Aid Queensland. Those decisions, together with a bound index, comprise a valuable research tool now readily accessible by the Court and legal practitioners.

### **Outreach**

Justice Wilson and the Assisting Psychiatrists have resolved to visit mental health facilities when practicable. While in Townsville they visited the Medium Secure and High Secure Units at the Townsville Hospital, and while in Toowoomba, they visited the Baillie Henderson Hospital. Visits to other facilities are planned.

Dr Lawrence presented a paper on "Queensland's Mental Health Court – The First Twelve Months" at the Royal Australian and New Zealand College of Psychiatrists' Annual conference in Hobart on 13 May 2003, and again at a conference on "Partnerships in Recovery" staged by Queensland Health in Brisbane on 5 June 2003. Justice Wilson and Dr Wood joined Dr Lawrence and Dr Cassandra Griffin (the Deputy Director of the High Security Program at The Park -

Centre for Mental Health) on a panel to answer questions from the floor at the latter conference.

***Summary of Recommendations***

It is recommended –

- (1) that serious consideration be given to the publicly funded retainer of a legal practitioner to represent patients who appeal to the Mental Health Court from decisions of the Mental Health Review Tribunal in relation to their treatment;
- (2) that very high priority be accorded to the installation of a modern, customized court management computer program in the Mental Health Court Registry.