

Mental Health Court

Annual Report 2020-21

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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 President of the Mental Health Court and the Honourable Justice Wilson was the additional member of the Court.

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 clinicians who assisted the Court during 2020-21 were: psychiatrists Dr Elizabeth McVie, Dr Josephine Sundin, Dr Jill Reddan, Dr Scott Harden, Dr Ross Phillipson, Dr Alexandra Simpson, Dr Furhan Iqbal, and psychologist Dr Gavan 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 the *Mental Health Act 2016*.

During 2020-21, 201 references were filed (compared with 213 references the previous year). In addition, there were 16 amended references filed, referring additional offences on an existing reference (compared with 19 amended references in the previous year).

Table 1: References filed in the Mental Health Court during 2020-21

| Reference filed by: | Reference | Amended Reference |
|---------------------------------|-----------|-------------------|
| Chief Psychiatrist | 91 | 8 |
| Director of Public Prosecutions | 3 | 1 |
| Legal Representatives | 93 | 5 |
| Defendant | 1 | 0 |
| Registrar of Magistrates Court | 12 | 2 |
| Registrar of District Court | 1 | 0 |
| Total | 201 | 16 |

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 2020-21, 53 appeals from a decision of the Mental Health Review Tribunal were filed in the Court (compared with 25 appeals the previous year).

Table 2: Appeals filed in the Mental Health Court during 2020-21

| Filed by: | Appeal |
|-----------------------|--------|
| Patient | 44 |
| Interested person | 2 |
| Attorney-General | 5 |
| Legal Representatives | 2 |
| Total | 53 |

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 2020-21, 216 Court Examinations Orders were recommended (compared to 250 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. Twenty-one of the interstate and regional 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 and it is expected that the deferred assessments will be conducted by the end of 2021.

Performance

During 2020-21, the Court sat on 49 days. The Court determined a total of 191 matters, consisting of 144 references, 45 appeals and 2 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.

Since the onset 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.

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

Ordinarily, all Mental Health Court 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 2020-21, the Court heard 144 references. Appendix 1 summarises the findings and orders of the Court for this reporting year.

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

Three 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 the defendant was of unsound mind and a forensic order was made for the defendant's detention to an authorised mental health service.

One reference: 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 charge should proceed according to law.

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

One reference: the Court found that the facts were so in dispute it was unsafe for the Court to make a decision; the defendant was fit for trial and ordered the charge should proceed according to law.

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

Disposal of appeals

During 2020-21, the Court dealt with 45 appeals. The Court allowed three appeals, dismissed 28 appeals and 14 were withdrawn prior to the hearing.

Matters pending as at 30 June 2021

There were 260 matters pending as at 30 June 2021, consisting of 247 references and 13 appeals.

As at 30 June 2021, 28.85 per cent of matters pending were greater than 12 months old, but less than 24 months old. Only 1.15 per cent of matters pending were over 24 months old.

Education

In an effort to improve the knowledge base of clinicians and lawyers working in the Mental Health Court, the Judges attended The Park Centre for Mental Health Service on two occasions to give presentations and briefings. In March 2021, a webinar was conducted by Justice Wilson to assist clinicians in preparing reports that aid the Court in its deliberations.

Liaison with institutional stakeholders

The President of the Mental Health Court has introduced annual meetings between the Judges and the assisting clinicians and, separately, between the Judges and the Director of Public Prosecutions; the Director of Legal Aid; the Chief Psychiatrist, and a representative from Crown Law on behalf of the Attorney General.

The Registrar has also implemented regular engagement with the lawyers who represent these institutional parties, with the aim of building a working relationship that achieves quality outcomes in the Mental Health Court jurisdiction.

Registry

The Mental Health Court Registry (the Registry) is a unit within Queensland 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 continued its move to efficient electronic means of filing material in the Court and subsequently collating that material for Court hearings. In 2020-21 the Registry implemented a case management solution to reduce processing time of matters within the Registry and provide a high level of support to the President of the Court and the Court's other stakeholders. The system went live in December 2020.

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 directions) is available on the Queensland Courts website (<http://www.courts.qld.gov.au/>).

A selection of the Court's judgments is 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 | 2020-21 |
|--|---------|
| Unsound mind - Forensic Order | 42 |
| Unsound mind - No Forensic Order | 3 |
| Unsound mind – Treatment Support Order | 17 |
| Not of unsound mind and fit for trial | 29 |
| Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order | 1 |
| Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order (Disability) | 11 |
| Not of unsound mind and unfit for trial (unfitness permanent) - no Forensic Order or Treatment Support Order | 2 |
| Not of unsound mind and unfit for trial (unfitness permanent) - Treatment Support Order | 1 |
| 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) – Forensic Order (Disability) | 1 |
| Substantial dispute as to facts and fit for trial | 19 |
| Substantial dispute as to facts and unfit for trial (unfitness permanent) - Forensic Order | 7 |
| Substantial dispute as to facts and unfit for trial (unfitness not permanent) – Treatment Support Order | 1 |
| Substantial dispute as to facts and unfit for trial (unfitness not permanent) - Forensic Order (Disability) | 1 |
| Appeal Dismissed | 28 |
| Appeal Withdrawn | 14 |
| Appeal Allowed | 3 |
| Reference Dismissed | 7 |
| Reference Withdrawn | 10 |
| Application Granted | 1 |
| Application Withdrawn | 1 |