



Mental Health Court
Report 1 July 2003 – 30 June 2004

The Mental Health Court

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CHAMBERS OF JUSTICE MARGARET WILSON
SUPREME COURT OF QUEENSLAND

12 November 2004

The Honourable Gordon Nuttall, 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 2003 – 30 June 2004.

Yours sincerely

The Hon. Justice Margaret Wilson

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Introduction

In the year 1 July 2003 - 30 June 2004 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 60 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.

Most sittings were held in Brisbane, although the Court travelled twice to north Queensland, each time sitting one day in Townsville and one day in Cairns.

Video links between the Supreme Court in Brisbane and Townsville Hospital, Cairns Hospital, Rockhampton Hospital, Mackay Hospital, Mt Isa Hospital, Cunnamulla Hospital, Biloela Hospital, Lotus Glen Correctional Centre and Capricornia Correctional Centre allowed persons in those places to participate in the hearing of references without travelling to Brisbane. They were all represented by counsel in Brisbane.

Matters heard comprised:-

Table 1: Matters heard by the Mental Health Court 1 July 2003 – 30 June 2004

Type of Matter	Number
References by:	
• Director of Mental Health	120
• Director of Public Prosecutions	5
• Defendant or Legal Representative	100
• Court of Law	3
• Attorney-General	8
Appeals against the Mental Health Review Tribunal by:	
• Director of Mental Health	1
• Legal Representative	1
• Patient	31
Applications to inquire into detention:	
• Patient	1
TOTAL	270

References

The determination of references into criminal responsibility and fitness for trial continue to comprise the largest part of the Court's work. The results of the references heard were as follows:-

Table 2: Matters disposed of by the Mental Health Court 1 July 2003 – 30 June 2004 – references

Findings and orders of the Mental Health Court	Number
References*:	
• of unsound mind (forensic order)	84
• of unsound mind (no forensic order)	26
• not of unsound mind and fit for trial	55
• not of unsound mind, and fit for trial (custody order)	1
• 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, unfit for trial (unfitness not permanent)	8
• not of unsound mind and unfit for trial (unfitness permanent and forensic order made)	3
• not of unsound mind and unfit for trial (unfitness permanent and no forensic order made)	3
• reasonable doubt and fit for trial	22
• reasonable doubt and unfit for trial (unfitness not permanent)	1
• reasonable doubt and unfit for trial (unfitness permanent and forensic order made)	1
• reasonable doubt and unfit for trial (unfitness permanent and no forensic order made)	1
• dispute relating to substantially material fact and fit for trial	3
• reference withdrawn	17
• struck out	8
Total	237

*includes 22 matters where two decisions were made and 3 matters where 3 decisions were made.

Of the crimes of violence, the Court heard references in relation to the mental condition of 12 persons charged with murder. In 3 cases the person was found to have been of unsound mind at the time of the alleged offence and ordered to be detained as a forensic patient in a high security hospital. In 1 case the person was found of unsound mind and detained in hospital with limited community treatment being approved. In 1 case the person was found not to have been of unsound mind but of diminished responsibility and fit for trial, and so sent to trial on a charge of manslaughter. Of the other cases, 6 were sent to trial on charges of murder, 3 because the persons were found not to have been of unsound mind and to be fit for trial and 3 because the facts were in dispute and the persons were fit for trial, and there was 1 decision reserved as at 30 June 2004.

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 26 such references awaiting determination by the Attorney-General, and during the year a further 142 references were made. The Attorney-General referred 1 of these cases to the Mental Health Court, and at the end of the year there were 34 references awaiting his determination.

Court Examination Orders

In most references and appeals from the Mental Health Review Tribunal the Court appoints one or more medical or other health practitioners to report on relevant issues. In the year under review 219 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 - appeals

Findings and orders of the Mental Health Court	Number
Appeals:	
• withdrawn	17
• dismissed	15
Total	32

In the last annual report attention was drawn to the plight of patients who commence and prosecute appeals without legal representation. It is pleasing to acknowledge that Legal Aid Queensland took up the cudgels on behalf of a number of appellants before the Court in the first half of 2004.

The Director of Mental Health may elect to become a party to an appeal, but otherwise does not have an automatic right of appearance except where she is the appellant in an appeal against a review decision or the appeal is against a decision on an application for approval that a patient move out of Queensland. In appeals against reviews for forensic patients and reviews of fitness for trial, the Attorney-General has a right of appearance.

In recent times the Director of Mental Health has elected to become a party in order to assist the Court, but, of course, may not always do so.

It is important that there be an effective contradictor in every appeal so that the issues may be fully ventilated before the Court. This is especially so in appeals against decisions on reviews of involuntary treatment applications and against decisions on treatment applications (electroconvulsive therapy and psychosurgery). In such cases the doctor who made the involuntary treatment order or who applied for approval to administer ECT or psychosurgery may appear on the appeal, but in practice does not do so. Consideration needs to be given to effective means of securing their appearance (and representation).

Inquiry into Detention

The application for inquiry into a patient's detention in an authorised mental health service referred to in last year's report was withdrawn.

No further applications were filed in the year under review.

Matters pending as at 30 June 2004

As at 30 June 2004 there were 158 matters pending. Most of those ready for hearing had been assigned dates in July, and the balance were proceeding through the preparation phase.

Otherwise 22 references and 1 appeal from the Mental Health Review Tribunal which had been listed for hearing had been adjourned to dates to be fixed. There were 3 references on the abeyance list.

As at 30 June 2004 there were two decisions reserved.

New Practice Notes

The Court issued 2 new Practice Notes for the guidance of persons appearing before it. They are reproduced in the appendix to this report.

Registry

The registry has continued to occupy premises in the Queensland Health Building in Charlotte Street, Brisbane. The facilities are less than optimal. They are situated within the Office of the Chief Health Officer: this is intended to provide a degree of separation from the Mental Health Review Tribunal for which the Mental Health Court is the court of appeal and from the Office of the Director of Mental Health which is a principal litigant before the Court. This separation is a necessary affirmation of the independence of the Court and its processes. However, the work

areas for the registrar and his staff are cramped and do not meet the needs of what has become a very busy registry. The storage area for active files is inadequate and not physically secure. There are no counter facilities for use by members of the public and the legal profession.

It is regrettable that the need for a court management computer program to facilitate routine administrative tasks and the keeping and analysis of data, which was highlighted in last year's annual report, has not been addressed.

The registrar Mr Barry Weyhardt (an officer of the Public Service at classification level AO6) and the senior administration officer Mrs Lisa Blackmore (classification level AO5) have not wavered in their dedication, loyalty and efficiency. The administrative assistant Ms Tanya Nosworthy (classification level AO2) left the registry during the year to assume another position at a higher classification. The Court records its appreciation of her service to it and its predecessor the Mental Health Tribunal over almost 4 years, and wishes her well.

Assistance of Supreme Court and State Reporting Bureau

The ongoing assistance and courtesy rendered by the Court Administrator, the Principal Registrar, the Sheriff and their officers in the Supreme Court have facilitated the sittings of the Court. Justice Wilson's associates and secretary have assisted greatly with research and administrative tasks.

The court acknowledges with gratitude the contribution of the State Reporting Bureau, which records all proceedings and provides prompt and accurate transcription services 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). 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>).

Vale Dr Gordon Urquhart

The establishment of the Mental Health Tribunal in 1985 was the realisation of a vision of Dr Gordon Urquhart (1925 - 2004), who was the Director of Psychiatric Services in this State from 1966 to 1985. He subsequently served as an assisting psychiatrist to the Mental Health Tribunal from 1985 to 1996. His death in June 2004 is recorded with sadness and respect.

This Court is the successor to the Mental Health Tribunal. It stands as a significant part of Dr Urquhart's legacy to the people of Queensland.

Outreach

On 2 July 2003 Justice Wilson, the assisting psychiatrists, the registrar and his staff, and the judge's associate visited The Park - Centre for Mental Health, where they had an opportunity to see facilities for the treatment of mentally ill patients

and to have discussions about the centre and the Court with a number of health practitioners. From the Court's perspective, it was an extremely valuable experience.

Justice Wilson presented a paper entitled "Queensland's Mental Health Court" at the Australian Institute of Judicial Administration's conference in Fremantle on 20 September 2003. She also opened the Australian and New Zealand Association of Psychiatry, Psychology and the Law's conference at The Park - Centre for Mental Health on 15 August 2003.

Dr Lawrence presented a paper on the Court at the 28th International Conference on Law and Mental Health in Sydney on 1 October 2003. It was subsequently published in the journal *Health Law in Canada* Vol 24 No 3 April 2004 under the title "Queensland's Mental Health Court: The First 12 Months". Dr Lawrence presented another paper entitled "Expert Witnesses and Assisting Psychiatrists: The Queensland Mental Health Court Experience" at the Royal Australian and New Zealand College of Psychiatrists Section of Forensic Psychiatry annual conference at Geelong in November 2003.

Summary of Recommendations

It is recommended -

- (1) that consideration be given to effective means of securing the appearance (and representation) of respondents to appeals from the Mental Health Review Tribunal;
- (2) that funds be allocated for the upgrading of Registry facilities;
- (3) that the installation of a court management computer program in the Registry be accorded very high priority.

Practice Note No 1 of 2003 – Applications to Withdraw References

1. Chapter 7 part 5 of the *Mental Health Act 2000* provides for the withdrawal of references to the Mental Health Court.
2. An application made by filing a notice with the registrar pursuant to s 261(2)(a) should be accompanied by evidence whether the person the subject of the reference is subject to an involuntary treatment order or a forensic order.
3. The Mental Health Court may decide an application to withdraw a reference on the papers without an oral hearing.
4. Within 7 days after the notice is filed, the registrar will write to the parties to the proceeding -
 - (a) enclosing copies of the application and the said evidence;
 - (b) advising the parties of their rights to produce evidence and to make submissions on the application;
 - (c) inquiring whether any party opposes the application;
 - (d) inquiring whether the parties consent to the application being decided on the papers without an oral hearing;
 - (e) advising the parties they should write to the registrar informing the Court of their consent to the application being decided without an oral hearing and enclosing any evidence and submissions on which they rely within 7 days of receiving the registrar's letter;
 - (f) advising the parties that if any of them objects to the application being decided on the papers it will be set down for oral argument before the Court on a date to be fixed and notified to the parties.
5. Upon receiving the parties' responses to the registrar's letter, the Court will determine whether to decide the application on the papers.
6. The registrar will notify the parties of the Court's decision.

JUSTICE MARGARET WILSON

Date: 30 July 2003

Practice Note No 2 of 2003 – Amendment of References, Notices of Appeal, Applications

1. A reference, notice of appeal or application filed in the Mental Health Court registry may be amended by the party who commenced the proceeding prior to the hearing.
2. A reference, notice of appeal or application may be amended at the hearing with the leave of the Court.
3. If the Court gives leave to amend a document, it may order the Registrar to make the amendment.
4. An amendment must be made –
 - (a) by striking through text to be removed; and
 - (b) underlining in red or otherwise distinguishing text to be added.
5. Unless making alterations on the document is inconvenient or would make the document difficult to read, an amendment may be made by writing alterations on the document on the Court file.
6. Otherwise an amendment must be made by filing a fresh document incorporating and distinguishing the alterations.
7. The amended document must have a notation on it showing -
 - (a) the date of the amendment; and
 - (b) if the amendment was made by leave of the Court, the date of the order giving leave.
8. If the document is amended under paragraph 5, the Registrar must stamp the document near the alteration or alterations with the seal of the Court.
9. If the document is amended under paragraph 6, the Registrar must stamp the fresh document with the seal of the Court.
10. The party making the amendment must forthwith serve on the parties on whom the document was served -
 - (a) if the amendment is made under paragraph 5 - notice of the amendment; or
 - (b) if the amendment is made under paragraph 6 - the fresh document.

JUSTICE MARGARET WILSON

Date: 16 October 2003