

ANNUAL REPORT

2021–2022



26/08/2022

The Honourable Yvette D'Ath MP
Minster for Health and Ambulance Services
GPO Box48
BRISBANE QLD 4001

Dear Minister

Annual Report

Please find enclosed my report, under s 701 of the *Mental Health Act 2016* (Qld), detailing the operation of the Mental Health Court and its Registry for the period 1 July 2021 to 30 June 2022.

Yours sincerely



Justice Elizabeth Wilson
President
Mental Health Comt

CC: The Hon H Bowskill
Chief Justice of Queensland

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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, however, on 24 June 2022 retired from the role. 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 2021-2022 were psychiatrists: Dr Elizabeth McVie, Dr Josephine Sundin, Dr Jill Reddan, Dr Scott Harden, 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 2021-2022, 191 references were filed (compared with 201 references the previous year). In addition, there were 14 amended references filed, referring additional offences on an existing reference (compared with 16 amended references in the previous year).

Table 1: References filed in the Mental Health Court during 2021-2022

Reference filed by:	Reference	Amended Reference
Chief Psychiatrist	75	6
Director of Public Prosecutions	2	0
Legal Representatives	99	8
Defendant	1	0
Registrar of Magistrates Court	14	0
Registrar of District Court	0	0
Total	191	14

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 2021-2022, 53 appeals from a decision of the Mental Health Review Tribunal were filed in the Court (compared with 53 appeals the previous year).

Table 2: Appeals filed in the Mental Health Court during 2021-2022

Filed by:	Appeal
Patient	44
Interested person	3
Attorney-General	1
Legal Representatives	5
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 2021-2022, 235 Court Examinations Orders were recommended (compared to 216 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.

Performance

During 2021-2022, the Court sat on 61 days. The Court determined a total of 278 matters, consisting of 191 references, 52 appeals and 26 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.

Overall, during the last financial year there have been minimal delays affecting the Court's proceedings. In addition to the COVID-19 pandemic, the Court experienced flooding events in February 2022. The Court overcame these adversities with few adjournments occurring. Adjourned matters were re-listed and finalised within three 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 2021-2022, the Court heard 191 references. Appendix 1 summarises the findings and orders of the Court for this reporting year.

The Court disposed of 10 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 was fit for trial and ordered the charge should proceed according to law.

Three 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 was fit for trial and ordered the charge should proceed according to law.

Three references: 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.

The Court disposed of four 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 of unsound mind and a forensic order was made.

One reference: there were two accounts of attempted murder, the Court made a mixed finding on these charges. The defendant was not of unsound mind and fit for trial and the defendant was of unsound mind and a forensic order was made.

Disposal of appeals

During 2021-2022, the Court dealt with 52 appeals. The Court allowed three appeals, dismissed 29 appeals and 20 were withdrawn prior to the hearing.

Matters pending as at 30 June 2022

There were 287 matters pending as at 30 June 2022, consisting of 273 references and 14 appeals.

As at 30 June 2022, 26.74 per cent of matters pending were greater than 12 months old, but less than 24 months old. Only 15.75 per cent of matters pending were over 24 months old.

Education

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 December 2021, a webinar on Future Management and Deprivation of Capacity was delivered by Justice Flanagan to assist clinicians in preparing reports that aid the Court in its deliberations.

In addition to webinars and educational sessions, the Court supports and encourages clinicians in training to attend complex case hearings by observing the Court and its functions during these proceedings.

The Mental Health Court Registry presented at the state-wide Independent Patients' Rights Adviser (IPRA) forum in April 2022. The topics discussed at the forum entailed the appeal and application processes to the Mental Health Court.

Liaison with institutional stakeholders

The Registrar has implemented regular engagements with the lawyers who represent the 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 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. The Registry continues to provide a high level of support to the President of the Court and the Court's other stakeholders.

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 (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) (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	2021-2022
Unsound mind - Forensic Order	61
Unsound mind - Forensic Order (Disability)	1
Unsound mind - No Order	4
Unsound mind – Treatment Support Order	20
Not of unsound mind and fit for trial	33
Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order	6
Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order (Disability)	9
Not of unsound mind and unfit for trial (unfitness permanent) – No Order	3
Not of unsound mind and unfit for trial (unfitness not permanent) - Forensic Order	2
Substantial dispute as to facts and fit for trial	13
Substantial dispute as to facts and unfit for trial (unfitness permanent) - Forensic Order	2
Substantial dispute as to facts and unfit for trial (unfitness permanent) - Forensic Order (Disability)	2
Substantial dispute as to facts and unfit for trial (unfitness permanent) - No Order	1
Substantial dispute as to facts and unfit for trial (unfitness not permanent) – Treatment Support Order	1
Diminished responsibility and not of unsound mind and fit for trial	1
Not of diminished responsibility	3
Appeal Dismissed	29
Appeal Withdrawn	20
Appeal Allowed	3
Reference Dismissed	4
Reference Withdrawn	10
Application Granted	14
Application Withdrawn	1
Application Dismissed	9

**There were 31 references where more than one decision was made*

** 13 Forensic Orders were amended*

