

# ANNUAL REPORT 2022–23



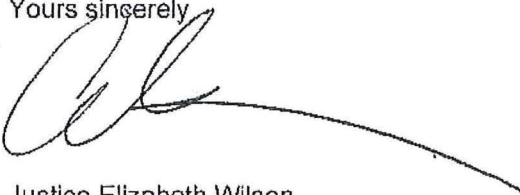
31 August 2023

The Honourable Shannon Fentiman MP  
Minister for Health, Mental Health and Ambulance Services and Minister for Women  
GPO Box 48  
BRISBANE QLD 4001

Dear Minister

I am pleased to submit for presentation to the Parliament the Annual Report 2022-2023, under s701 of the *Mental Health Act 2016* (Qld), detailing the operation of the Mental Health Court and its Registry for the period 1 July 2022 to 30 June 2023.

Yours sincerely

A handwritten signature in black ink, appearing to be 'E. Wilson', with a long horizontal flourish extending to the right.

Justice Elizabeth Wilson  
President  
Mental Health Court

CC: The Hon H Bowskill  
Chief Justice of Queensland

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## Governance

The Mental Health Court (the 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 Wilson was President of the Mental Health Court. The Honourable Justice Ryan 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 2022-2023 were psychiatrists Dr Elizabeth McVie, Dr Josephine Sundin, Dr Jill Reddan, Dr Scott Harden, Dr Alexandra Simpson and Dr Furhan Iqbal, and psychologists Dr Gavan Palk and Dr Haydyn Till.

In February 2023, Dr Reddan retired from the position after serving for nine years. The Court is thankful for Dr Reddan's contributions throughout her tenure. Dr Palk finished his term in March 2023 after being appointed in February 2018. Dr Till was appointed assisting clinician psychologist from 1 March 2023.

## Caseload

### References of a person's 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 2022-2023, 200 references were filed (compared with 191 references the previous year). In addition, there were six 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 2022-2023**

Reference filed by:	Reference	Amended Reference
Chief Psychiatrist	127	4
Director of Public Prosecutions	2	1

Legal Representatives	50	1
Defendant	4	0
Registrar of Magistrates Court	17	0
Registrar of District Court	0	0
Total	200	6

### Appeals against decisions of Mental Health Review Tribunal

The *Mental Health Act 2016* (the Act) 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 2022-2023, 42 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 2022-2023**

Filed by:	Appeal
Patient	37
Interested person	0
Attorney-General	1
Legal Representatives	4
Total	42

### Court Examination Orders

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

In 2022-2023, 213 CEOs were recommended (compared to 235 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.

The demand for CEOs has been steadily increasing over the last five years, creating a backlog. In January 2023, the Mental Health Court Registry secured additional funding to clear the backlog, with a recurring annual budget to meet the growing demand. In the six months to 30 June 2023, the Mental Health Court Registry has been able to arrange 155 additional assessments, which has resulted in 90 per cent of this backlog being scheduled with CEO clinician appointments.

### **Performance**

During 2022-2023, the Court sat on 54 days. The Court determined a total of 227 matters, consisting of 163 references, 49 appeals and 15 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.

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 2022-2023, the Court heard 163 references. Appendix 1 summarises the findings and orders of the Court for this reporting year.

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

**One reference:** 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 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.

**Two 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.

**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 permanently unfit for trial and a forensic order was made.

**Two references:** were withdrawn.

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 permanently unfit for trial and a forensic order was made.

**One reference:** the Court found the defendant was of unsound mind and a forensic order was made.

**One reference:** was withdrawn.

### **Disposal of appeals**

During 2022-2023, the Court dealt with 49 appeals. The Court allowed eight appeals, dismissed 24 appeals and 17 were withdrawn prior to the hearing.

### **Matters pending as at 30 June 2023**

There were 333 matters pending as at 30 June 2023, consisting of 326 references and seven appeals. This is the highest number of matters pending since 2016-2017 financial year which is due to an inability to keep up with the demands of scheduling CEO appointments because of funding constraints. The Court has now received additional funding which has allowed CEO appointments to be made for 90 per cent of the backlog. Once the CEO reports are received the Mental Health Court will have to sit additional hearing days to work through this backlog.

As at 30 June 2023, 34.66 per cent of matters pending were greater than 12 months old, but less than 24 months old and 6.75 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, a webinar on intoxication was delivered by Justice Wilson in April 2023. The Court will host regular information sessions 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 statewide Authorised Mental Health Service - Delegate's Forum in May 2023. The topics discussed at the forum included the reference, appeal and hearing processes in the Mental Health Court.

### **Liaison with institutional stakeholders**

The Registrar continues 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 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](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) ([www.sclqld.org.au/caselaw/QMHC](http://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 made by the Mental Health Court	2022-2023
Unsound mind - Forensic Order	48
Unsound mind - Forensic Order (Disability)	1
Unsound mind - No Order	5
Unsound mind – Treatment Support Order	14
Not of unsound mind and fit for trial	21
Not of unsound mind, substantial dispute and fit for trial	3
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)	17
Not of unsound mind and unfit for trial (unfitness permanent) – No Order	2
Not of unsound mind and unfit for trial (unfitness permanent) – Treatment Support Order	2
Substantial dispute as to facts and fit for trial	14
Substantial dispute as to facts and unfit for trial (unfitness permanent) - Forensic Order	3
Substantial dispute as to facts and unfit for trial (unfitness permanent) - Forensic Order (Disability)	7
Substantial dispute as to facts and unfit for trial (unfitness permanent) - No Order	2
Substantial dispute as to facts and unfit for trial (unfitness permanent) – Treatment Support Order	2
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)	2
Diminished responsibility and not of unsound mind and fit for trial	3
Appeal Dismissed	24
Appeal Withdrawn	17
Appeal Allowed	8
Reference Dismissed	1
Reference Withdrawn/ struck out	10
Application Granted	6
Application Withdrawn	3
Application Dismissed	6

\* *There were 24 references where more than one decision was made*

\* *14 Forensic Orders were amended*

\* *1 Treatment Support Order was amended*

