

ANNUAL REPORT 2023–2024

Mental Health Court



2 September 2024

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 2023-2024, 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 2023 to 30 June 2024.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'E' followed by a long horizontal stroke that tapers off to the right.

Justice Elizabeth Wilson
President
Mental Health Court

CC: The Hon H Bowskill
Chief Justice of Queensland

Table of Contents

Governance	2
Composition of the Court	2
Caseload	2
References of a person's mental state	2
Appeals against decisions of Mental Health Review Tribunal	3
Court examination orders	3
Performance	4
Disposal of references	4
Disposal of appeals	5
Matters pending as at 30 June 2024	5
Education	5
Liaison with institutional stakeholders	5
Registry	6
Website	6
Appendix 1: Findings and Orders	7

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 2023-2024 were psychiatrists Dr Elizabeth McVie, Dr Josephine Sundin, Dr Scott Harden, Dr Alexandra Simpson, Dr Furhan Iqbal, Dr Jane Phillips and Dr Evelyn Timmins and psychologist and Dr Hadyn Till.

In December 2023, Dr Sundin retired from the position after serving for 10 years. The Court is thankful for Dr Sundin's contributions throughout her tenure.

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 2023-2024, 197 references were filed (compared with 200 references the previous year). In addition, there were three amended references filed, referring additional offences on an existing reference (compared with six amended references in the previous year).

Table 1: References filed in the Mental Health Court during 2023-2024

Reference filed by:	Reference	Amended Reference
Chief Psychiatrist	116	2
Director of Public Prosecutions	3	0
Legal Representatives	63	1
Defendant	0	0
Registrar of Magistrates Court	12	0

Registrar of District Court	1	0
Other interested person	2	0
Total	197	3

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 2023-2024, 52 appeals from a decision of the Mental Health Review Tribunal were filed in the Court (compared with 42 appeals the previous year).

Table 2: Appeals filed in the Mental Health Court during 2023-2024

Filed by:	Appeal
Patient	47
Interested person	1
Attorney-General	2
Legal Representatives	2
Total	52

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 2023-2024, 229 CEOs were recommended (compared to 219 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 2023-2024, the Court sat on 82 days. The Court determined a total of 286 matters, consisting of 216 references, 48 appeals and 22 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.

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 2023-2024, the Court heard 216 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:

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.

Four 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.

Two references: the Court found the defendant was of unsound mind and a forensic order was made.

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 the defendant was not of unsound mind. 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.

Disposal of appeals

During 2023-2024, the Court dealt with 48 appeals. The Court allowed eight appeals, dismissed 25 appeals and 15 were withdrawn prior to the hearing.

Matters pending as at 30 June 2024

There were 306 matters pending as at 30 June 2024, consisting of 292 references, 11 appeals and three applications; which is a concerning number of active matters.

As at 30 June 2024, 37.25 per cent of matters pending were greater than 12 months old, but less than 24 months old and 19.28 per cent of matters pending were over 24 months old.

The Court is striving to reduce the number of active matters and in 2023-2024 the Court listed extra sittings in an effort to reduce the backlog. Extra sittings have also been scheduled for 2024–25.

Education

During this reporting period four events were hosted by the judges of the Mental Health Court in relation to work undertaken by the court. A webinar on report writing with Justice Wilson, Justice Ryan, Dr Sundin and Dr McVie was held on 1 September 2023. On 6 September 2023, a seminar on advocacy in the Mental Health Court was conducted by Justice Wilson and Justice Ryan for the legal profession. On 9 May 2024, Dr Phillips gave a presentation on understanding the content of psychiatrist reports. On 27 May 2024, Justice Wilson conducted a session for the Director of Public Prosecutions, the Office of the Chief Psychiatrist and Legal Aid Queensland on utilising concurrent evidence in the Mental Health Court.

The Court will continue to host 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.

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.

In addition, the Court held quarterly meetings with department leaders from the Office of the Chief Psychiatrist, Office of the Director of Public Prosecution and Legal Aid Queensland. The Court gains much from the regular meetings with the stakeholders.

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).

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 made by the Mental Health Court		2023-2024
References		
Unsound mind - Forensic Order		89
Unsound mind - No Order		9
Unsound mind – Treatment Support Order		19
Not of unsound mind and fit for trial		26
Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order		10
Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order (Disability)		12
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		3
Not of unsound mind and unfit for trial (unfitness not permanent) – Forensic Order		1
Substantial dispute as to facts and fit for trial		12
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)		7
Substantial dispute as to facts and unfit for trial (unfitness permanent) - No Order		1
Substantial dispute as to facts and unfit for trial (unfitness permanent) – Treatment Support Order		3
Substantial dispute as to facts and unfit for trial (unfitness not permanent) – Forensic Order		2
Diminished responsibility and not of unsound mind and fit for trial		3
Not of diminished responsibility and fit for trial		1
Reference Dismissed		1
Reference Withdrawn/ struck out		13
Appeals		
Appeal Dismissed		25
Appeal Withdrawn		15
Appeal Allowed		8
Applications		
Application Granted		13
Application Withdrawn		3
Application Dismissed		6

* There were 39 references where more than one decision was made

* 14 Forensic Orders were amended

* 1 Treatment Support Order was amended

