



**Mental Health Court**  
Report 1 July 2005 – 30 June 2006

**The Mental Health Court**

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21 November 2006

The Honourable Stephen Roberstson MP  
Minister for Health  
Queensland Health Building  
147-163 Charlotte Street  
Brisbane Qld 4000

Dear Minister,

Please find enclosed my report, under s 435 of the *Mental Health Act* 2000, detailing the operation of the Mental Health Court and its registry for the period 1 July 2005 - 30 June 2006.

Yours faithfully

**The Hon Justice A Philippides**

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## TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	<b>1</b>
<b>SITTINGS</b> .....	<b>1</b>
<b>REFERENCES</b> .....	<b>2</b>
<b>COURT EXAMINATION ORDERS</b> .....	<b>3</b>
<b>APPEALS FROM MENTAL HEALTH REVIEW TRIBUNAL</b> .....	<b>3</b>
<b>APPLICATIONS FOR INQUIRIES INTO DETENTION</b> .....	<b>4</b>
<b>MATTERS PENDING AS AT 30 JUNE 2006</b> .....	<b>4</b>
<b>MATTERS ADJOURNED AS AT 30 JUNE 2006</b> .....	<b>5</b>
<b>REGISTRY</b> .....	<b>5</b>
<b>WEBSITE</b> .....	<b>5</b>
<b>SUMMARY OF RECOMMENDATIONS</b> .....	<b>5</b>

## INDEX TO TABLES

TABLE 1: MATTERS HEARD BY THE MENTAL HEALTH COURT 2005/2006.....	1
TABLE 2: MATTERS DISPOSED OF BY THE MENTAL HEALTH COURT 2005/2006 – REFERENCES.....	2
TABLE 3: MATTERS DISPOSED OF BY THE MENTAL HEALTH COURT 2005/2006 – APPEALS.....	4
TABLE 4: MATTERS PENDING IN THE MENTAL HEALTH COURT AS AT 30 JUNE 2006.....	4
TABLE 5: MATTERS ADJOURNED BY THE MENTAL HEALTH COURT AS AT 30 JUNE 2006.....	5

## Introduction

The Mental Health Court is constituted by a Judge of the Supreme Court assisted by two psychiatrists from a panel of three appointed under the *Mental Health Act 2000*. The Honourable Justice Holmes was the Judge constituting the Court until her appointment to the Court of Appeal on 26 May 2006; the Honourable Justice Philippides now presides. The panel of assisting psychiatrists continues to consist of Dr J F Wood, Dr J M Lawrence AM and Dr D A Grant.

The functions of the Court are to determine references concerning questions of unsoundness of mind and fitness for trial in relation to persons charged with offences on indictment; to determine appeals from the Mental Health Review Tribunal; and to inquire into the lawfulness of patients' detention in authorised mental health services.

## Sittings

During the 2005/2006 year, the Mental Health Court sat on 58 days.

One day of each week of each sittings was allocated to video links with regional hospitals and correctional centres. The Court continued to find this practice both cost effective and one which eliminates much additional stress for mentally ill patients and defendants. Patients and defendants retain the right to legal representation, with legal representatives commonly appearing in the Court in Brisbane.

Matters heard comprised: -

**Table 1: Matters heard by the Mental Health Court 2005/2006**

Type of Matter	2005-06
<b>References by:</b>	
• Director of Mental Health	93
• Director of Public Prosecutions	6
• Defendant or Legal Representative	109
• Court of Law	5
• Attorney-General	4
<b>Appeals against the Mental Health Review Tribunal by:</b>	
• Director of Mental Health	1
• Attorney-General	3
• Patient	44
<b>Applications to inquire into detention:</b>	
• Patient	1
<b>Total</b>	<b>266</b>

## References

**Table 2: Matters\* disposed of by the Mental Health Court 2005/2006 – references**

<b>Findings and orders of the Mental Health Court</b>	<b>2005-06</b>
References:	
• Of unsound mind (forensic order)	98
• Of unsound mind (no forensic order)	14
• Of unsound mind (no forensic order) – non contact order made	1
• Not of unsound mind and fit for trial	51
• Not of unsound mind and fit for trial – custody order made	1
• Fit for trial – fitness only referred to MHC	1
• Not of unsound mind, of diminished responsibility and fit for trial	1
• Not of unsound mind, of diminished responsibility and unfit for trial (unfitness permanent and no forensic order made)	1
• Not of unsound mind, not of diminished responsibility and fit for trial	1
• Not of unsound mind, material dispute of facts re diminished responsibility and fit for trial	1
• Not of unsound mind and unfit for trial (unfitness not permanent)	8
• Not of unsound mind and unfit for trial (unfitness permanent and forensic order made)	8
• Not of unsound mind and unfit for trial (unfitness not permanent and no forensic order made)	10
• Reasonable doubt and fit for trial	33
• Reasonable doubt and fit for trial – custody order made	1
• Reasonable doubt and unfit for trial (unfitness not permanent)	6
• Reasonable doubt and unfit for trial (unfitness permanent and no forensic order made)	4
• Reasonable doubt and unfit for trial (unfitness permanent and no forensic order made) – non contact order made	1
• Material dispute of facts and fit for trial	1
• Reference struck out	3
• Reference withdrawn	17
<b>Total</b>	<b>262</b>

\* includes 27 matters where two decisions were made and 9 matters where three decisions were made

The Court heard references in respect of seven persons charged with murder. In respect of two of these references, the Court found the defendant to be of unsound mind and made forensic orders that the defendant be detained in a high security authorised mental health service.

In another reference, the defendant was found not of unsound mind or diminished responsibility and fit for trial so that the proceedings for the charge of murder were ordered to continue according to law.

In respect of a further two references, the Court found the defendant not to be of unsound mind, but to be of diminished responsibility. In one of these matters the defendant was found fit for trial and the proceedings for manslaughter were ordered to continue according to law, while in the other a finding of unfitness for trial was made.

In one instance the Court determined that there was a reasonable doubt as to the commission of the alleged murder and in another the Court determined that there was a dispute as to facts material to the expert opinion. In those matters the Court made no finding as to unsoundness of mind or diminished responsibility and the proceedings on the charges of murder were ordered to continue according to law.

Appeals are pending in respect of two decisions of the Court.

In 96 referred cases the primary diagnosis was of a disorder in the schizophrenia group. In 32 references the primary diagnosis was of a substance related disorder, while in 22 references the primary diagnosis was affective disorders. In 24 cases the primary diagnosis was one of intellectual disability.

The question of what order should be made where a finding of unsoundness or unfitness for trial is made in respect of an individual who suffers from intellectual impairment, but no psychiatric disorder, continues to be problematic for the Court and as stated in the Court's previous report may reflect a hiatus in the *Mental Health Act 2000*. As to that issue, it is noted that the Hon Bill Carter QC was appointed in April 2006 to report on options for the support and care for adults with an intellectual / cognitive disability who exhibit severely challenging behaviour and to provide recommendations for appropriate solutions.

### **Court examination orders**

Court examination orders are an important function of the Mental Health Court in its deliberations on a reference or appeal from the Mental Health Review Tribunal. Such orders are generally made on the recommendation of an Assisting Psychiatrist to the Court. In the year 2005/2006 174 such orders were made.

### **Appeals from Mental Health Review Tribunal**

The *Mental Health Act 2000* provides that patients or their representatives have 60 days after receipt of the decision in which to file an appeal from the Mental Health Review Tribunal. The Director of Mental Health has 60 days from the date of the decision in which to lodge an appeal.

Appeals from the Mental Health Review Tribunal were disposed of as follows:

**Table 3: Matters disposed of by the Mental Health Court 2005/2006 - appeals**

<b>Findings of the Mental Health Court</b>	<b>2005-06</b>
<b>Appeals:</b>	
• withdrawn	13
• dismissed	31
• upheld	4
<b>Total</b>	<b>48</b>

The Office of Legal Aid Queensland continues to make representation available to patients on appeals. In addition, the practice of the Director of Mental Health in electing to become a party on appeals also assists the Court.

#### **Applications for Inquiries into Detention**

In the year under review there was one application filed by a patient for inquiry into detention, which was withdrawn.

#### **Matters pending as at 30 June 2006**

**Table 4: Matters pending in the Mental Health Court as at 30 June 2006**

<b>Type of Matter</b>	<b>2005-06</b>
<b>References by:</b>	
• Director of Mental Health	101
• Director of Public Prosecutions	2
• Defendant of Legal Representative	110
• Court of Law	1
• Attorney-General	4
<b>Appeals against the Mental Health Review Tribunal by:</b>	
• Attorney-General	3
<b>Total</b>	<b>221</b>

There has been an increase in the matters pending before the Court, reflecting a significant increase in the number of matters brought before the Court.



## Matters adjourned as at 30 June 2006

**Table 5: Matters adjourned by the Mental Health Court as at 30 June 2006**

Type of Matter	2005-06
<b>References:</b> <ul style="list-style-type: none"><li>• Adjourned to a date to be fixed</li></ul>	5
<b>Total</b>	<b>5</b>

As at 30 June 2006 there were no reserved decisions.

## Registry

The Registrar, Mr Barry Weyhardt, Deputy Registrar, Mrs Lisa Blackmore, and administrative assistant, Ms Deborah Hinchcliffe, have continued to provide dedicated and effective assistance to the Court.

## Website

Information about the Mental Health Court (including a description of its work, contact details, forms and practice notes) is available on the Queensland Courts website ([http://www.courts.qld.gov.au/about/role\\_mhc.asp](http://www.courts.qld.gov.au/about/role_mhc.asp)). The Court's judgments are published on the internet, subject to relevant restrictions contained in the *Mental Health Act 2000* (<http://www.courts.qld.gov.au/qjudgment/mhc.asp>).

## Summary of Recommendations

The Court reiterates the recommendation made in its previous report that consideration be given to whether the *Mental Health Act 2000* requires amendment to provide for a form of order specific to the needs of individuals, not suffering from any psychiatric disorder, who are found to be of unsound mind or unfit for trial.