

# Childrens Court (Magistrates Court)

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## Practice Direction No. 7 of 2017

### Mental Health Act 2016 proceedings in the Childrens Court when constituted by a Magistrate

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1. The purpose of this Practice Direction is to assist with the case management and timely disposition of matters under Chapter 6, Part 2 of the *Mental Health Act 2016* (“the Act”) by outlining timeframes and procedures applicable.
2. It applies to all matters where an originating step for the proceeding is started after the commencement of the Act, whether or not the offence is alleged to have been committed before, or after the commencement of the Act.
3. Nothing in this Practice Direction is to be taken as removing or limiting the discretion of the Court.
4. The following definitions apply in this Practice Direction unless otherwise stated:
  - (a) *Charge* includes a reference to charges.
  - (b) *Health Department* see the Act section 174(3).
  - (c) *Mental Health Assessment* means a report prepared by a Senior Mental Health Clinician with the support of a Consultant Psychiatrist and includes:
    - (i) A Mental Health Assessment Court Liaison Service Feedback;  
or
    - (ii) Mental Health and Fitness for Trial Assessment Court Liaison Service Feedback; or
    - (iii) Mental Health, Fitness and Soundness Assessment Court Liaison Service Feedback.
  - (d) *Party* means the Prosecution. Defence or Youth Justice.
  - (e) *Relevant agency* see the Act section 174(3).
  - (f) *Simple offence* means any offence (indictable or not) punishable on summary conviction before a Magistrates Court, by fine, imprisonment, or otherwise.
5. If a Mental Health Assessment has been completed before the 1<sup>st</sup> Appearance, the Registrar will provide a copy of that Assessment to the Defendant or the Defendant’s legal representative, the Prosecutor, Youth Justice, and the Court,

as soon as possible but no later than 8:30 am of the morning of the 1<sup>st</sup> Appearance.

6. If a Mental Health Assessment is not available at the 1<sup>st</sup> Appearance, the Court may adjourn the matter for a period of no more than four (4) weeks to allow for the preparation of the Assessment.
7. As soon as possible before, but no later than 8:30 am on the morning of the 2<sup>nd</sup> Appearance, the Registrar will provide a copy of the Mental Health Assessment to the Defendant or the Defendant's legal representative, the Prosecutor, Youth Justice, and the Court.
8. If the charge is for a simple offence and there is no objection by a party to the Mental Health Assessment, the charge may be disposed of as appropriate under paragraphs 9(a) - (e) below.
9. If following receipt of the Mental Health Assessment, the Assessment is not disputed, the charge may be:
  - (a) Dismissed, if the Court is reasonably satisfied on the balance of probabilities that the Defendant was, or appears to have been, of unsound mind when the offence was allegedly committed or unfit for trial [s 172]; or
  - (b) Dismissed and the Defendant referred to a relevant agency for appropriate care; or the health department or another entity the court considers appropriate for care and treatment - if the Court is reasonably satisfied on the balance of probabilities that the Defendant was, or appears to have been, of unsound mind when the offence was allegedly committed or is unfit for trial; and does not appear to have a mental illness [s 172 and s 174]; or
  - (c) Dismissed and an examination order made - if the Court is reasonably satisfied on the balance of probabilities that the Defendant was, or appears to have been, of unsound mind when the offence was allegedly committed, or was unfit for trial; and the court (i) is reasonably satisfied the person has a mental illness; or (ii) is unable to decide whether the person has a mental illness or another condition [s 172(1)(b)(ii) and s 177(1) and (2)].
  - (d) Adjourned and the Defendant referred to a relevant agency for appropriate care; or the health department or another entity the court considers appropriate for care and treatment - if the Court is reasonably satisfied on the balance of probabilities that the Defendant was unfit for trial; but is likely to become fit for trial within 6 months; and is reasonably satisfied the person does not appear to have a mental illness [s 173 and s 174(1) and (2)].
  - (e) Adjourned and an examination order made – if the Court is reasonably satisfied on the balance of probabilities that the Defendant was unfit for trial; but is likely to become fit for trial within 6 months; and the court (i) is reasonably satisfied the person has a mental illness; or (ii) is unable

to decide whether the person has a mental illness or another condition [s 173(2) and (3) and s 177(3)].

- (f) Adjourned and examination order made – if a complaint has not been dismissed or the hearing adjourned due to temporary unfitness for trial, the court may adjourn the hearing of the complaint; and the court (i) is reasonably satisfied the person has a mental illness; or (ii) is unable to decide whether the person has a mental illness or another condition [s 177(3)].

### **Fitness for Trial – simple offences**

10. If the charge is for a simple offence and a party disputes the whole or part of the Mental Health Assessment, the Court will list the matter for hearing of the issue of fitness for trial and make any necessary directions.
11. If, at the conclusion of the hearing of the issue of fitness for trial, the Defendant is found fit for trial, the Court will list the charge for trial and make any necessary directions.
12. If, at the conclusion of the hearing of the issue of fitness for trial, the Defendant is found unfit for trial, the Court may dispose of the charge in accordance with paragraphs 9(a); or 9(c); or 9(d); or 9(e).

### **Unsoundness of Mind – simple offences**

13. If the charge is for a simple offence and a party disputes the whole or part of the Mental Health Assessment, the Court will list the matter for hearing of (i) the issue of unsoundness of mind; and (ii) the substantive charge; and may make any necessary directions.
14. If, at the conclusion of the hearing, the Defendant is found to be of unsound mind the Court may dispose of the charge in accordance with paragraphs 9(a); or 9(b); or 9(c).
15. If, at the conclusion of the hearing, the Defendant is found to be of sound mind the Court may dispose of the charge as appropriate according to law.

### **Indictable offences**

16. If the matter involves a charge for an indictable offence not being a simple offence and the Court is reasonably satisfied on the balance of probabilities that the person was, or appears to have been of unsound mind when the offence was allegedly committed; or is unfit for trial; and that the nature of and circumstances of the offence create an exceptional circumstance in relation to the protection of the community and the making of a forensic order or treatment support order for the person may be justified – the Court may refer the charge to the Mental Health Court [s 175].



Judge Orazio Rinaudo AM  
Chief Magistrate  
11 August 2017