



**Mental Health Court**  
Report 1 July 2006 – 30 June 2007



QUEENSLAND  
COURTS

CHAMBERS OF JUSTICE PHILIPPIDES  
SUPREME COURT  
BRISBANE

23 November 2007

The Honourable Stephen Robertson 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 2006 - 30 June 2007.

Yours faithfully

**The Hon Justice A Philippides**

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## Introduction

The Mental Health Court is constituted by a Judge of the Supreme Court assisted by two psychiatrists appointed under the *Mental Health Act 2000*. The Honourable Justice Philippides was the Judge constituting the Court. During the year under review, the panel of assisting psychiatrists consisted of Dr J F Wood and Dr J M Lawrence AM, following the resignation of Dr D A Grant. Upon Dr Wood's retirement on 12 October 2007, Dr F T Varghese and Dr E N McVie will fill the positions vacated by Dr Grant and Dr Wood in an acting capacity.

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 2006/2007 year, the Mental Health Court sat on 62 days. At least one day of each sitting was allocated to video links with regional hospitals and correctional centres. The Court continued to find this practice cost effective, efficient 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.

Details of the matters heard by the Court for the year comprise:

**Table 1: Matters heard by the Mental Health Court 2006/2007**

### Mental Health Court 2006-07

	Number of Cases			Clearance
	Lodged	Finalised	Active **	Rate
References				
Director of Mental Health		123	126	
Director of Public Prosecutions		2	1	
Defendant or Legal Representative		120	98	
Court of Law		2	2	
Attorney-General		4	0	
<b>Total References</b>	<b>253</b>	<b>251</b>	<b>227</b>	<b>99.2%</b>
Appeals				
Director of Mental Health		3	0	
Attorney-General		7	5	
Patient or Legal Representative		31	9	
<b>Total Appeals</b>	<b>54</b>	<b>41</b>	<b>14</b>	<b>75.9%</b>
Applications to enquire into detention				
Patient		1	1	
<b>Total Patient</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>50.0%</b>
<b>Total</b>	<b>309</b>	<b>293</b>	<b>242</b>	<b>94.8%</b>

\*\* Includes seven adjourned and one reserved decision

The number of matters that the Court heard and disposed of during the period under review increased by approximately 10% from the year 2005/2006. The Court heard a total of 293 matters in the year under review compared with 266 for the previous year. The Court heard 251 references in respect of 1,383 charges compared with 217 references concerning 1,254 charges for the previous year.

With additional sittings proposed in 2008 and additional funding of the Registry, there will be further significant increases in the matters that the Court will be able to hear. In addition, the Registry has been implementing e-court measures which will also promote greater efficiencies.

<b>References</b>
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**Table 2: Matters\* disposed of by the Mental Health Court 2006/2007 – references**

<b>Findings and orders of the Mental Health Court</b>	<b>2006-07</b>
References:	
• Of unsound mind (forensic order)	96
• Of unsound mind (no forensic order)	35
• Not of unsound mind and fit for trial	56
• Not of unsound mind and fit for trial – custody order made	7
• Not of unsound mind, not of diminished responsibility and fit for trial	2
• Not of unsound mind and unfit for trial (unfitness not permanent)	10
• Not of unsound mind and unfit for trial (unfitness permanent and forensic order made)	1
• Not of unsound mind and unfit for trial (unfitness permanent and no forensic order made)	4
• Reasonable doubt and fit for trial	30
• Reasonable doubt and fit for trial – custody order made	4
• Reasonable doubt and unfit for trial (unfitness not permanent)	5
• Reasonable doubt and unfit for trial (unfitness permanent and forensic order made)	1
• 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
• Reference struck out	2
• Reference withdrawn	27
<b>Total</b>	<b>285</b>

\* includes twenty six matters where two decisions were made and four matters where three decisions were made

The Court heard references in respect of seven persons charged with murder. In respect of four of these references, the Court found the defendants to be of unsound mind and made forensic orders that the defendants be detained in a high security authorised mental health service. In another two references, the defendants were found not of unsound mind or diminished responsibility and fit for trial so that the proceedings for the charges of murder were ordered to continue according to law. In respect of a further reference, the Court determined that there was a reasonable doubt as to the commission of the alleged murder and consequently made no finding as to unsoundness of mind or diminished responsibility and the proceedings on the charge of murder were ordered to continue according to law.

In 125 referred cases, the primary diagnosis was of a disorder in the schizophrenia group. In 39 references, the primary diagnosis was of a substance related disorder, while in 24 references the primary diagnosis was affective disorders.

In 29 references, the primary diagnosis was one of intellectual disability. The question of what order should be made where a finding of unsoundness of mind or unfitness for trial is made in respect of an individual who suffers from intellectual impairment, but no psychiatric disorder, continues to be particularly problematic for the Court. The report of The Hon Bill Carter QC, appointed in April 2006 to make recommendations as to options for the support and care for adults, with an intellectual/ cognitive disability, who exhibit severely challenging behaviour, is yet to be released.

**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 2006/2007, 164 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 of the Mental Health Review Tribunal in which to file an appeal. 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 2006/2007 - appeals**

<b>Findings of the Mental Health Court</b>	<b>2006-07</b>
<b>Appeals:</b>	
• withdrawn	10
• dismissed	23
• upheld	7
<b>Total</b>	<b>40</b>



The Office of Legal Aid Queensland continues to fulfil an important role in making 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 refused by the Court.

**Table 4: Matters disposed of by the Mental Health Court as at 30 June 2007 – applications to inquire into detention**

<b>Type of Matter</b>	<b>2006-07</b>
<b>Applications:</b>	
• refused	1
<b>Total</b>	<b>1</b>

### **Matters pending as at 30 June 2007**

**Table 5: Matters pending in the Mental Health Court as at 30 June 2007**

<b>Type of Matter</b>	<b>2006-07</b>
<b>References by:</b>	
• Director of Mental Health	126
• Director of Public Prosecutions	1
• Defendant or Legal Representative	98
• Court of Law	2
<b>Appeals against the Mental Health Review Tribunal by:</b>	
• Attorney-General	5
• Patient or Legal Representative	8
<b>Applications to inquire into detention:</b>	
• Patient	1
<b>Total</b>	<b>241</b>

The increase in the matters pending before the Court continues to reflect a significant rise in the number of matters brought before the Court.

## Matters adjourned as at 30 June 2007

**Table 6: Matters adjourned by the Mental Health Court as at 30 June 2007**

Type of Matter	2006-07
<b>References:</b> <ul style="list-style-type: none"><li>• Adjourned to a date to be fixed</li></ul>	7
<b>Total</b>	<b>7</b>

As at 30 June 2007 there was one reserved decision.

## Decisions reserved as at 30 June 2007

**Table 7: Decisions reserved by the Mental Health Court as at 30 June 2007**

Type of Matter	2006-07
<b>Appeals</b>	1
<b>Total</b>	<b>1</b>

## Registry

The Registrar, Mr Barry Weychardt, Deputy Registrar, Mrs Lisa Blackmore, and administrative assistant, Ms Deborah Hinchcliffe, have continued to provide dedicated and effective assistance to the Court. The increasing demands on the Registry staff and the need to provide greater funding and resources has been recognised by Mr Brendan Butler AM SC in his report *Promoting Balance in the Forensic Mental Health Services* compiled after an independent review of the *Mental Health Act 2000*. The recommendations have been taken up in the Queensland Government Response.

## 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

In its previous Annual Reports, the Court has highlighted the need to consider whether the *Mental Health Act 2000* requires amendment to provide for a form of order specific to the needs of individuals, suffering from an intellectual disability but not suffering from any psychiatric disorder, who are found to be of unsound mind or unfit for trial.

The Court reiterates the recommendation made in its previous report that consideration be given to the matter, which continues to be problematic for the Court, as does the question of the appropriateness of a forensic order in respect of individuals who suffer from an intellectual impairment, but no psychiatric disorder.