

Mental Health Court

Annual Report 2018 – 19

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Governance

The Mental Health 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;
- appeals from the Mental Health Review Tribunal.

Composition of the Court

During the year in review, the Honourable Justice Dalton was President of the Mental Health Court and the Honourable Justice Flanagan 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 panel of assisting clinicians consisted of psychiatrists: Dr E N McVie, Dr J Sundin, Dr J Reddan, Dr S Harden, Dr R Phillipson, Dr A Simpson, Dr A Davison and psychologists: Dr G Senior, Dr G Palk and Dr J Mason.

Caseload

References of persons' 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 *Mental Health Act 2016*.

During 2018-19, 194 references were filed (compared with 190 references the previous year). In addition, there were 14 amended references filed, referring additional offences on an existing reference (compared with 12 amended references in the previous year).

Table 1: References filed in the Mental Health Court during 2018-19

Reference filed by:	Reference	Amended Reference
Chief Psychiatrist	89	4
Director of Public Prosecutions	3	0
Director of Forensic Disability	0	0
Legal Representatives	92	9
Defendant	0	0
Court of Law	0	0
Registrar of Magistrates Court	10	1
Total	194	14

Appeals against decisions of Mental Health Review Tribunal

The *Mental Health Act 2016* 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 2018-19, 35 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 2018-19

Filed by:	Appeal
Chief Psychiatrist	0
Legal Representatives	5
Patient	27
Interested person	2
Attorney-General	1
Total	35

Court examination orders

A court examination order requires the person, the subject of the proceeding, to be assessed by a qualified practitioner. By a court examination order, the Court in effect commissions a report from a qualified practitioner to provide the Court with medical information on the defendant or patient.

In 2018-19, 207 court examinations orders were recommended (compared to 145 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 2018-19, the Court sat on 56 days (compared with 57 days the previous year). The Court determined a total of 279 matters (compared with 312 matters for the previous year), consisting of 227 references, 39 appeals and 13 applications

At each sittings, 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, 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 2018-19, the Court heard 227 references (compared with 270 references in the previous year). Appendix 1 summarises the findings and orders of the Court for this reporting year.

The Court disposed of 6 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 but was of diminished responsibility. The Court found the defendant fit for trial and ordered the charges should proceed according to law.

One reference: the Court found the defendant was of unsound mind and a forensic order (Mental Health – inpatient category) was made for the defendant’s detention to an authorised mental health service.

One reference: the Court found that there was a substantial dispute of fact preventing the Court making a decision on soundness and that the defendant was fit for trial. The Court ordered that the defendant’s charges should proceed according to law.

One reference: the Court found that there was a substantial dispute of fact preventing the Court making a decision on soundness and that the defendant was not fit for trial. The Court found that unfitness was not of a permanent nature and a forensic order (Mental Health – inpatient category) was made for the defendant’s detention in an authorised mental health service.

One reference: the Court found the defendant was not of unsound mind but was of diminished responsibility. The defendant was found permanently unfit for trial and a forensic order (Mental Health – inpatient category) was made for the defendant’s detention in an authorised mental health service.

One reference: the Court granted leave to withdraw the reference, with the result that the charges should proceed according to law.

Disposal of appeals

During 2018-19, the Court dealt with 39 appeals (compared with 42 appeals in the 2017-18 year). The Court allowed 6 appeals, dismissed 25 appeals, 1 appeal was struck out and 8 were withdrawn prior to the hearing.

Matters pending as at 30 June 2019

There were 204 matters pending as at 30 June 2019 (compared with 248 matters pending as at 30 June 2018), consisting of 199 references, 4 appeals and 1 application.

There was 1 matter reserved as at 30 June 2019.

As at 30 June 2019, 22.55 per cent of matters pending were greater than 12 months old, but less than 24 months old. Only 2.45 per cent of matters pending were over 24 months old.

Education

In an effort to increase the pool of Mental Health Court reporting psychiatrists, Justice Dalton and Justice Flanagan, assisted by Drs McVie, Reddan, Sundin, Harden and Phillipson conducted a report writing seminar in June. The Seminar was conducted to assist forensic psychiatrists in writing useful reports for the Court. The Court is planning a second session in 2019-20.

Justices Dalton and Flanagan continued the practice of attending at The Park to talk to the psychiatrists and registrars on medico-legal issues concerning the Mental Health Court.

Registry

The Registry is a unit within the Department of Health comprising of four full time employees and one part time employee. Its role is to provide administrative support to the Court.

During the year the Registry implemented a new, more efficient electronic means of filing material in the Court and subsequently collating that material for Court hearings.

The lack of an effective electronic case management system remains an ongoing issue for the Registry. The case management system is scheduled to ‘go live’ in 2020. The system will improve data and security linkages between the Mental Health Review Tribunal, the Office of the Chief Psychiatrist and the Registry, with the aim of increased relevant information-sharing, a reduction in duplication, increased data accuracy and risk mitigation.

The members of the Registry 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 notes) is available on the Queensland Courts website (<http://www.courts.qld.gov.au/>).

A selection of the Court's judgments are published on the internet, subject to relevant restrictions contained in the *Mental Health Act 2016* (Qld) (<https://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 on reference of person's mental state	2018-19
Unsound mind - Forensic Order	73
Unsound mind - no Forensic Order	10
Unsound mind – Treatment Support Order	13
Not of unsound mind and fit for trial	52
Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order	8
Not of unsound mind and unfit for trial (unfitness not permanent) - Forensic Order	1
Not of unsound mind and unfit for trial (unfitness permanent) - Forensic Order (Disability)	11
Not of unsound mind and unfit for trial (unfitness permanent) - no Forensic Order	8
Not of unsound mind and unfit for trial (unfitness permanent) - Treatment Support Order	1
Not of unsound mind and unfit for trial (unfitness not permanent) - Treatment Support Order	1
Reasonable doubt (or substantial dispute) as to facts and fit for trial	31
Substantial dispute as to facts and unfit for trial (unfitness not permanent) - Forensic Order	1
Substantial dispute as to facts and unfit for trial – no Forensic Order or Treatment Support Order	3
Substantial dispute as to facts and unfit for trial (unfitness permanent) - Forensic Order (Mental Health)	1
Substantial dispute as to facts and unfit for trial (unfitness permanent) - Forensic Order (Disability)	2
Appeal Dismissed	24
Appeal Withdrawn	8
Appeal Allowed	6
Appeal Struck out	1
Reference Dismissed	9
Reference Withdrawn	18
Application Granted	10
Application Refused	3

* On some references more than one decision was made