

Psychiatrist reports for persons charged with a serious offence

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General

A criminal case can be referred to the Mental Health Court if it is believed that the alleged offender was of unsound mind or there is a **question relating to the alleged offender's** fitness for trial. The Mental Health Court is responsible for deciding the state of mind of persons charged with criminal offences.

Under Chapter 4 of the *Mental Health Act 2016* (the Act), the Chief Psychiatrist may direct that a psychiatrist report for a person charged with a serious offence be prepared by an authorised psychiatrist:

- at the request of the person charged or other specified persons (Part 2), or
- **on the Chief Psychiatrist's own initiative (Part 3).**

Psychiatrist reports for persons charged with a serious offence are used to inform decisions about further action in relation to a charge. This includes decisions by the person or the Chief Psychiatrist about whether a reference should be made to the Mental Health Court to determine matters of unsoundness of mind and fitness for trial.

Once a direction for a psychiatrist report has been given by the Chief Psychiatrist, proceedings against the person in relation to the serious offence in the criminal courts are suspended.

The suspension ends generally if a reference to the Mental Health Court is not made within twenty-eight (28) days of the report being received or when the Mental Health Court makes a decision on the reference.

Psychiatrist reports under Chapter 4 of the Act do not impact on the person's right to seek a psychiatrist report from a private sector psychiatrist. A private sector psychiatrist report will be at the person's own cost and initiative.

Scope

This policy is mandatory for all authorised mental health services (AMHSs). An authorised doctor, authorised mental health practitioner, AMHS administrator, or other person performing a function or exercising a power under the Act must comply with this policy.

This policy must be read in conjunction with the relevant provisions of the Act (Chapter 4).

Staff should work collaboratively with and in partnership with individuals in their care to ensure their unique age-related, cultural and spiritual, gender-related, religious and communication needs are recognised, respected and followed to the greatest extent practicable. This should include the timely involvement of appropriate local supports and a recovery-oriented focus.

This policy must be implemented in a way that is consistent with the objects and principles of the Act.

This policy is issued under section 305 of the *Mental Health Act 2016*.

Dr John Reilly
Chief Psychiatrist, Queensland Health
15 October 2021

Policy

1 Psychiatrist report on request

For an overview of processes that apply for a psychiatrist report made on request, refer to

- Flowchart – *Psychiatrist reports 2(a): Report on request*, and
- Flowchart – *Psychiatrist reports 2(b): Direction for report (Report on request)*.

1.1 Identifying persons eligible to make request

A psychiatrist report may be requested if all of the following apply:

- a person is charged with serious offence¹,
- the person was subject to a Treatment Authority, Forensic Order or Treatment Support Order at the time of the offence, or any subsequent time, regardless of whether the authority or order remains in place, and
- a court has not yet made a final decision on the offence.

Under the Act, any of the following persons may make a request to the Chief Psychiatrist for a psychiatrist report:

- the person,
- their appointed nominated support person,
- an appropriately authorised guardian or attorney,
- a parent of the person, if the person is a minor, or
- **the person's legal representatives (if instructed by the person).**

Once an AMHS administrator becomes aware that a person is eligible for a psychiatrist report, they have an obligation under the Act to advise that person, and other relevant persons, of this entitlement.

A clinician who becomes aware that a person may be entitled to request a psychiatrist report must, notify the relevant AMHS administrator as soon as practicable.

The relevant AMHS administrator is:

- the administrator of the AMHS currently providing clinical services to the person, or
- if the person is not currently receiving mental health services (i.e. no open service episode), the administrator of the AMHS for the location where the person resides.

¹ Serious offence means an indictable offence, other than an offence that is a relevant offence under the Criminal Code, section 552BA(4).

If the AMHS administrator considers the person may be eligible to request a psychiatrist report, the administrator must notify the Office of the Chief Psychiatrist.

Within seven (7) days of receiving the request the Chief Psychiatrist will confirm whether **the person's criminal charges are eligible for a psychiatrist report and notify the AMHS administrator** of the outcome.

The AMHS administrator must inform the notifying clinician of the outcome as soon as practicable.

1.2 Information to be provided when a person is eligible

1.2.1 Administrator responsibilities

Key points

- On receiving confirmation that a person is eligible to request a psychiatrist report, the administrator must as soon as practicable, prepare information to be provided to the person including:
 - a letter advising the person of their entitlement to request a report (A template letter is available in the Consumer Integrated Mental Health and Addiction (CIMHA) application),
 - Factsheet – *Psychiatrist reports*, and
 - Form – *Request for psychiatrist report*.

The administrator must determine the clinician responsible for providing the information to the person. For example:

- the health practitioner in charge of the inpatient unit if the person is an inpatient
- the case manager if the person is not an inpatient, or
- the Forensic Liaison Officer.

If the person does not have an open service episode, the administrator will determine if the person is to be provided the information by mail or in person.

Example: it may be appropriate for the information to be provided in person if the person is well known to the service or has had a recent service episode. If the information is given by mail, contact details for a clinician are to be provided in the letter.

The administrator will also advise the person's treating authorised psychiatrist of their eligibility to request a psychiatrist report. This enables the psychiatrist to consider whether there are public interest considerations in relation to preparing a report (see [Section 2.1 Chief Psychiatrist's consideration of public interest issues](#)).

1.2.2 Clinician responsibilities

The nominated clinician is responsible for providing and explaining the information to the person and their support person/s (see definitions).

The information is to be provided as soon as practicable, within fourteen (14) days of the administrator's letter.

If the person is a minor the clinician must also provide and explain the information to one or more of the person's parents.

However, the information is not required to be given to a parent if the clinician determines that giving the information is not in the minor's best interests.

The clinician's role is limited to helping the person understand the information provided. The clinician should be mindful to not influence the person's decision about whether to request a report.

If the person requires assistance to make the decision, they should be encouraged to discuss the matter with their support person/s or a lawyer. If the person does not have a lawyer, contact details for legal advice are provided in the *Factsheet - Psychiatrist reports*.

If the person is unable to understand the explanation due to their mental state at the time, the clinician may provide the information at a later time. Timely provision of information to the support person/s and any personal guardian or attorney is vital.

The clinician may seek assistance from an Independent Patient Rights Adviser (IPRA) if they consider the person or their support person may benefit from further explanation.

The clinician must make a record of the information in a CIMHA clinical note, including:

- who the information was provided to, or
- if information was not provided, the reasons the information was not provided, and
- any other relevant actions including referral to the IPRA.

All clinicians have a responsibility to ensure the person understands their entitlement to request a psychiatrist report. Further information/explanation can be provided by any member of the person's treating team or any other clinician who has contact with the person e.g. Court Liaison Service or Prison Mental Health Service clinician.

This is also one of the functions of IPRAs under the Act. For more information, refer to the *Chief Psychiatrist Policy Independent Patient Rights Advisers*.

1.2.3 Provision of information before eligibility to request a report confirmed

In certain circumstances, it may be necessary for a clinician to provide information to the person, prior to confirmation of their eligibility to request a report, to ensure the person receives timely advice about their possible entitlement.

For example, it may be appropriate for a Court Liaison Officer to inform a person who is to appear in the Magistrates Court in relation to a charge.

The clinician should explain the entitlement and the process that may apply (e.g. confirmation and letter of entitlement from administrator).

Where appropriate, the *Psychiatrist reports factsheet* may be provided to explain the entitlement.

The clinician must advise the relevant administrator without delay. A record of the information provided, and actions taken, should be recorded in a CIMHA clinical note.

1.3 Chief Psychiatrist decision if request for report is made

Key points

- The Chief Psychiatrist **must** decide any request for a psychiatrist report within **seven (7) days**.
- A direction for a psychiatrist report will be issued in the vast majority of circumstances. However, the Chief Psychiatrist will not issue a direction for a psychiatrist report if:
 - the charges have been withdrawn by the prosecution,
 - the charges have already been determined by a court,
 - a direction for a psychiatrist report has already been issued by the Chief Psychiatrist following a request from another person or on the Chief Psychiatrist's own initiative,
 - the person who made the request is not eligible to make the request e.g. the person makes the request as a nominated support person, or guardian or attorney for the person and the person's standing cannot be verified, or
 - a direction for a psychiatrist report in relation to the offence has been previously revoked by the AMHS administrator and the Chief Psychiatrist is not satisfied that the circumstances have changed.

The Chief Psychiatrist may seek further information from the administrator, authorised psychiatrist or other relevant clinician to determine the standing of the person who made the request or to understand the current circumstances if a direction for a psychiatrist report has previously been revoked by the administrator.

If the Chief Psychiatrist does not make a direction for a report, the Chief Psychiatrist will give written advice to the person who made the request and will provide the reasons for not making the direction.

2 Psychiatrist reports on the Chief Psychiatrist's own initiative

Key points

- A direction for a psychiatrist report on the Chief Psychiatrist's own initiative is intended to apply in **exceptional circumstances**. The Chief Psychiatrist **must** be satisfied:
 - the person may have a mental illness, and
 - the person may have been of unsound mind at the time of the offence or may be unfit for trial, and
 - the preparation of a psychiatrist report is in the public interest.

2.1 Chief Psychiatrist's consideration of public interest issues

Consideration of public interest is relevant to the Chief Psychiatrist's decision to:

- direct a psychiatrist report on the Chief Psychiatrist's own initiative, and
- refer the matter of the person's mental condition to the Mental Health Court.

Determination of public interest requires consideration of the individual circumstances of the case and a balanced assessment of competing interests.

The decision will take account of the policy intent for individuals to, as far as possible, make their own decisions about how their legal matters are dealt with.

A decision to **direct a report on the Chief Psychiatrist's own initiative or make a reference to the Mental Health Court** will only be made in exceptional circumstances where necessary for the protection of the individual or the community.

The Chief Psychiatrist will take account of available expert clinical advice from an authorised psychiatrist to inform matters relating to protection of individual or community interests.

An authorised psychiatrist may make an *Advice to Chief Psychiatrist – Public Interest Consideration* if they consider the individual circumstances require the Chief **Psychiatrist's attention**. Prior to providing this advice, the service should ensure all avenues for the individual to progress an application on request have been exhausted.

- The authorised psychiatrist should contact the Mental Health Act Administration Team by phone on 07 3328 9899 to discuss the circumstances before giving written advice for a Chief Psychiatrist public interest consideration.
 - For example, information about **whether the person's** nominated support person, legal representative, or public guardian has been engaged to ensure the person is aware of the importance of this process.
- Advice may be given by the person's treating authorised psychiatrist or another authorised psychiatrist who has assessed the person e.g. authorised psychiatrist for the Court Liaison Service.
- In exceptional circumstances, the advice may be given by a senior clinician who is not a psychiatrist (where circumstances prevent referral to a psychiatrist).
 - For example, where a Court Liaison Officer identifies a public interest concern and considers that immediate advice needs to be provided to ensure timely consideration by the Chief Psychiatrist (e.g. there is a risk that the matter will be determined by a court).

The advice may be provided in relation to a person who is eligible to make a request for a psychiatrist report or another patient of an AMHS who is charged with a serious offence i.e. a patient who was not, and has not been, subject to a Treatment Authority, Forensic Order or Treatment Support Order at the time of, or following, the date of the offence.

Written advice of the Chief Psychiatrist's decision will be provided to the authorised psychiatrist.

2.1.1 Individual interests

Key points

- All members of the community are entitled to a fair legal process and ensuring this occurs is in the public interest.
- Protection of the individual's interests will usually arise where the person's current mental condition significantly impacts their capacity to represent their own interests in relation to the offence (i.e. where it appears the person is not currently fit for trial).

In making the determination, the Chief Psychiatrist will consider whether the person's interests can be adequately protected through other mechanisms, such as the person's appointed nominated support person, guardian or attorney (who may seek a psychiatrist report on the person's behalf).

The decision-making will take account of any likely improvement in the person's mental condition. The Chief Psychiatrist's decision to direct a report may be delayed if early improvement to the person's mental condition and their capacity to represent their own interests is anticipated.

2.1.2 Community interests

Appropriate treatment of a person's mental illness, particularly where there is a strong association between offending and the illness, is an effective means of reducing the risk of further offending.

Minimising risk of recidivism is fundamental to protecting the interests of the community, as well as being in the best interests of the individual. Management of this risk needs to take account of community interests and individual rights.

Key points

- The Chief Psychiatrist will, taking account of the individual circumstances, determine whether a report is required to inform the circumstances of offending behaviour. The following considerations apply:
 - the nature and, if known, the circumstances of the offence
 - evidence to indicate that the person may have been mentally ill at the time of the offence
 - history of offending behaviour including any previous findings that the person was of unsound mind in relation to an offence, and
 - treatment history, including engagement in treatment and whether potential risks can be appropriately ameliorated through existing treatment arrangements.

3 Chief Psychiatrist direction for a psychiatrist report

For an overview of processes that apply when the Chief Psychiatrist has given a direction for a psychiatrist report, refer to *Flowchart – Psychiatrist reports 3: Direction for Report (Chief Psychiatrist Initiative)*.

3.1 Chief Psychiatrist direction

The Chief Psychiatrist's direction is given by way of a *Chief Psychiatrist direction for psychiatrist report* form. This form identifies whether the direction is given on:

- a request for a psychiatrist report, or
- the Chief Psychiatrist's own initiative.

The Chief Psychiatrist's direction is provided to the relevant AMHS administrator. If the person is a prisoner, the Chief Psychiatrist will determine the most appropriate AMHS on a case by case basis.

A direction for a psychiatrist report on the Chief Psychiatrist's own initiative may specify the authorised psychiatrist required to provide the report and, in some instances, will provide appointment details for the person to be examined by the specified authorised psychiatrist.

The Chief Psychiatrist's direction will identify the serious offence and, where relevant, any associated offences.

If a direction for a psychiatrist report is made, the proceedings against the person in relation to the serious offence and any associated offences are suspended. The Chief Psychiatrist will provide notice of the suspension to the Chief Executive for Justice.

3.2 Giving effect to the Chief Psychiatrist's direction and providing information about the direction

3.2.1 Administrator responsibilities

The administrator must request relevant information about the charges from the prosecuting authority. The administrator may seek assistance from the Office of the Chief Psychiatrist to facilitate timely access to relevant information about the charges.

Key points

The Administrator **must**:

- for a direction made on a **request**:
 - determine the authorised psychiatrist to make the report and provide the authorised psychiatrist with a copy of the direction,
 - make arrangements for the person to be examined by the authorised psychiatrist as soon as practicable.
- for a direction made on the **Chief Psychiatrist's own initiative** that does not specify an authorised psychiatrist:
 - determine the authorised psychiatrist to make the report and provide the authorised psychiatrist with a copy of the direction,
 - ensure an appointment is made for the person to be examined by the authorised psychiatrist **within twenty-eight (28) days** of the direction.

Note: If the direction is on the Chief Psychiatrist's own initiative and the person is not an inpatient, the person **must** attend the appointment as arranged. Failure to attend the appointment may result in the person being transported to the authorised mental health service (see [Section 3.5.2 Direction made on the Chief Psychiatrist's own initiative](#)). The potential consequences of non-attendance are stated in the direction.

In all circumstances, the administrator must determine the clinician responsible for informing the person of the direction and provide the nominated clinician with:

- a copy of the direction to give to the person, and
- the details of the psychiatrist appointment to be provided with the direction.

3.2.2 Clinician responsibilities

The nominated clinician is responsible for providing and explaining the Chief Psychiatrist's direction to the person and their support persons.

The information is to be provided as soon as practicable and must be provided within fourteen (14) days of the Chief Psychiatrist's direction. Earlier communication may be required depending on the date of appointment with the authorised psychiatrist.

The person is to be provided with a copy of the direction and details of their appointment with the authorised psychiatrist.

The extent of explanation required will depend on the circumstances.

For example: Minimal explanation will be required if the person made the request or is aware that the request was made on their behalf. A more comprehensive explanation will be required if the person is unaware of a request on their behalf or if the direction is on the Chief Psychiatrist's own initiative.

In all circumstances, the clinician should explain the potential consequences of the person not participating in the psychiatrist's examination or not attending the appointment as arranged; in particular:

- for a direction made on a request, the administrator may revoke the Chief Psychiatrist's direction, or
- for a direction made on the Chief Psychiatrist's own initiative, the administrator may make arrangements for the person to be taken to the AMHS (by health practitioners or police) for the psychiatrist's examination (see section [3.5.2 Direction made on the Chief Psychiatrist's own initiative](#)).

In all circumstances, the clinician should advise the person of their entitlement to have a support person present at the appointment with the authorised psychiatrist.

3.3 Requirements for preparing psychiatrist report

Key points

- Psychiatrist reports must be prepared in accordance with the *Chief Psychiatrist Guidelines for preparing psychiatrist reports*.
- The template for psychiatrist reports is available in CIMHA clinical notes.
- The administrator is to provide the authorised psychiatrist with information received from the prosecuting authority as soon as possible.
 - If the authorised psychiatrist is based at another AMHS, the administrator is also required to facilitate access to relevant clinical information e.g. hard copy records.

The Office of the Chief Psychiatrist will review all psychiatrist reports received to ensure the report meets the requirements set out in this policy and the Guidelines for preparing psychiatrist reports.

- Further information may be requested from the authorised psychiatrist if the requirements are not met.
- The time frame for receipt of psychiatrist reports will be the date the Chief Psychiatrist determines the report is finalised.

3.4 Timeframe for psychiatrist reports

Key points

- The psychiatrist report **must** be provided within **sixty (60) days** of the Chief Psychiatrist's direction. The due date is specified in the Chief Psychiatrist's direction.
- If the psychiatrist report cannot be provided within the **sixty (60) day** time frame, a request to the Chief Psychiatrist to extend the time frame by **thirty (30) days** must be made:
 - for a direction on the Chief Psychiatrist's own initiative that specifies the authorised psychiatrist – by the authorised psychiatrist specified, or
 - in any other circumstance – by the administrator of the AMHS.
- A request for extension may be made via the *Request to extend timeframe for psychiatrist report* and must be made as close to and no less than **seven (7) days** prior to the expiry of the **sixty (60) day** time frame.
- Only **one (1)** extension may be given.
- The administrator **must** ensure that any extension to the time frame, and the reasons for the extension, are explained to the person and their support persons.

If the administrator has determined the authorised psychiatrist to prepare the report, the administrator is responsible for ensuring the timeliness of the psychiatrist report.

3.5 Person not participating in psychiatrist examination or non-attendance at appointment

The administrator is responsible for ensuring reasonable efforts to engage the person (and where relevant, their support person) in the process.

Consideration should be given to the extent to which the person's non-attendance or non-participation is impacted by their mental illness. In this circumstance, all reasonable efforts must be made to facilitate attendance and engagement prior to instituting the actions set out below.

Actions that may be taken will depend on whether the Chief Psychiatrist's direction was made on a request for a psychiatrist report or on the Chief Psychiatrist's own initiative.

3.5.1 Direction made on request for psychiatrist report

Key points

- The authorised psychiatrist is responsible for advising the administrator of non-attendance or non-participation in the interview process, via a *Notice to administrator - Person Not Participating in Good Faith*.
- If satisfied that all reasonable efforts have been made to engage the person, the administrator **must** inform the person in writing of their intention to revoke the Chief Psychiatrist's direction. A template letter is available for this purpose.
- Consideration should be given to whether the letter needs to be provided and explained by a clinician.
- The person **must** be given a reasonable opportunity to respond to the administrator's letter. If the person indicates intention or willingness to attend and participate, they are to be given further opportunity to do so.

If the person does not respond to the administrator's letter or further attempts to examine the person are unsuccessful, the administrator may advise the person in writing that the Chief Psychiatrist's direction for a report is revoked. A template is available in CIMHA for this purpose.

- Consideration should be given to whether the letter needs to be provided and explained to the person by a clinician.

The administrator must also provide a copy of the letter to the Chief Psychiatrist and the person who made the request.

3.5.2 Direction made on the Chief Psychiatrist's own initiative

The Administrator of the AMHS is responsible for ensuring the person is provided with a copy of the direction and given notice of the requirement to attend the arranged psychiatrist appointment. The appointment must be within 28 days of giving the direction to the person.

Key points

- If notice has been provided and the person fails to attend the appointment and the administrator is satisfied that all reasonable efforts have been made to encourage/facilitate attendance, the administrator may require the person to be taken to the AMHS to be examined by the authorised psychiatrist (see *Chief Psychiatrist Policy Managing Involuntary Patient Absences*).
 - **Note:** If the person is taken to the AMHS, there is no authority to detain the person. Detention should only occur on the basis of clinical need.
 - The administrator's authorisation to require the person to be taken to the AMHS does not apply to a person in prison/custody.

3.6 Transfer of responsibility for report

If the Chief Psychiatrist has directed that a specific authorised psychiatrist provide a report, and the AMHS providing treatment and care changes, or the authorised psychiatrist is no longer able to complete the report, the Office of the Chief Psychiatrist should be advised without delay.

In any other circumstance, transfer of responsibility for the preparation of the psychiatrist report is to be by agreement between the relevant AMHS administrators.

- The Office of the Chief Psychiatrist should be advised of the transfer of responsibility.

In the event that responsibility for the preparation of the report cannot be resolved between the relevant administrators, the matter is to be escalated to the Chief Psychiatrist.

4 Actions after psychiatrist report is made to the Chief Psychiatrist

4.1 Chief Psychiatrist direction for a second report

In certain circumstances, if the Chief Psychiatrist believes that the matters in the first psychiatrist report require further examination, the Chief Psychiatrist may:

- **Direct the Administrator of the person's treating health service to arrange for an authorised psychiatrist to prepare another psychiatrist report on the matters (the second report), or**
- Direct an authorised psychiatrist to prepare the second psychiatrist report on the matters, including someone from outside the treating health service if considered more appropriate.

The direction must be given within seven (7) days of the Chief Psychiatrist receiving the first report.

The Chief Psychiatrist will consult with the relevant administrator prior to issuing a direction for a second psychiatrist report.

The requirements for the first psychiatrist report apply in the same way for a direction for a second psychiatrist report, including the relevant statutory timeframes, including:

- preparation of the second report is required within sixty (60) days from the date that the direction for the second report is made
- a request for extension for the second report is made by a *Request to extend timeframe for psychiatrist report* and must be made no less than seven (7) days prior to the expiry of the sixty (60) day time frame. Only one (1) extension may be given.

4.2 Distribution of psychiatrist report

Key points

- The Chief Psychiatrist will provide a copy of the report(s) to the person subject to the report, unless the Chief Psychiatrist considers this may adversely affect the person's health and wellbeing.
 - If a second report is directed, both reports are to be distributed at the same time.
- In this instance, the report may instead be provided to another person who has sufficient interest in the person's health and wellbeing.
- The psychiatrist's report is to provide advice on these matters to assist the Chief Psychiatrist's decision.
- If the report was prepared due to a request, the Chief Psychiatrist will also provide the report to the person who made the request.
- The administrator will be informed of the individuals who have been provided with a copy of the psychiatrist report.

The psychiatrist report is available to clinicians in CIMHA clinical notes. The report must not be given to any person without appropriate authority:

- If the Chief Psychiatrist has already provided a copy of the report to a person (i.e. the subject of the report or another person on their behalf, or the person who requested the report) and the person requests a copy at a later time, the clinician may provide the person with a copy of the report.
- If the person who is the subject of the report has capacity to make the decision and consents to the report being provided to another person, the clinician may provide the report to the other person.
- If a personal guardian or attorney with the required decision-making authority consents to the report being given to another person, the clinician may provide the report to the other person.
- In all other circumstances, the clinician should contact the Office of the Chief Psychiatrist to discuss provision of a report.

The clinician must record actions taken in a CIMHA clinical note identifying the authority relied upon.

4.3 Chief Psychiatrist decision about reference to Mental Health Court

The psychiatrist's report may be used by the person or their lawyer to make a reference to the Mental Health Court.

The Chief Psychiatrist will consider whether the matter should be referred, regardless of whether the report was obtained on request or on the Chief Psychiatrist's own initiative.

Key points

- The Chief Psychiatrist can only make a reference to the Mental Health Court if satisfied:
 - the person may have been of unsound mind at the time of the offence or the person may be unfit for trial, and
 - having regard to the report and the protection of the community, there is a compelling reason in the public interest to refer the matter. (see [Section 2.1 Chief Psychiatrist's consideration of public interest issues](#)).
- If the report is prepared on request, the Chief Psychiatrist **must** make the reference **within twenty-eight (28) days** of providing a copy of the report to person who made the request.
- The Chief Psychiatrist will not make a decision about the reference **until fourteen (14) days after** giving the report to the person who made the request. This will allow the person or their representative to determine whether they wish to refer the matter.
- If a report is prepared on direction of the Chief Psychiatrist, at their own initiative, and the Chief Psychiatrist is satisfied that a reference to the Mental Health Court should be made, the Chief Psychiatrist **must** refer the matter **within twenty-eight (28) days** of receiving the report.

If the person is unfit for trial but may become fit for trial, the Chief Psychiatrist may defer making a decision for a period of up to four (4) months. In this instance a further psychiatrist report to address fitness for trial will be requested within that period.

The administrator will be advised if the Chief Psychiatrist makes a reference to the Mental Health Court or defers the decision.

The administrator must ensure the information is provided to relevant clinicians (e.g. treating psychiatrist and case manager) and communicated to the person and their support person/s.

This communication is of particular importance if the Chief Psychiatrist defers the decision.

The clinician providing the information is to record the information provided in a CIMHA clinical note.

4.4 Impact on suspension of proceedings

If the matter is referred to the Mental Health Court (by the Chief Psychiatrist or someone else), the criminal court proceedings will continue to be suspended until the Mental Health Court determines the matter.

If no reference is made to the Mental Health Court, proceedings will usually be recommenced within twenty-eight (28) days of the Chief Psychiatrist receiving the psychiatrist report or providing a copy of the report to person and relevant others.

- The Chief Psychiatrist provides notice to the Chief Executive for Justice in this instance.

However, if the person is a classified patient, the proceedings will continue to be suspended while the person is a classified patient (see *Chief Psychiatrist Policy Classified Patients*).

The proceedings will also continue to be suspended in circumstances where the Chief Psychiatrist has deferred a decision regarding reference to the Mental Health Court because the person is unfit for trial or in circumstances where a second psychiatrist report is requested.

5 Chief Psychiatrist may revoke direction

The Chief Psychiatrist may revoke a direction to prepare a psychiatrist report, if satisfied that it is appropriate to do so.

For example:

- if a request for psychiatrist report has been made, the Chief Psychiatrist may revoke the direction for a report, where the person who requested the report withdraws their request
- if the direction **for the report was given on the Chief Psychiatrist's own initiative**, the Chief Psychiatrist may revoke the direction if for example, the Chief Psychiatrist considers it is no longer in the public interest.

6 Update reports

Update reports are required by the Chief Psychiatrist for the Mental Health Court in relation to consumers with matters before the court. These are typically due one (1) week prior to the court hearing and are an update on current circumstances, mental state and treatment as well as fitness for trial and recommendations in relation to future management.

For information on Fitness for Trial and Future Management in psychiatrist reports see sections 5.4 and 5.5 of the *Chief Psychiatrist Guidelines for preparing psychiatrist reports* .

Further information

Definitions and abbreviations

Term	Definition
AMHS	Authorised mental health service – a health service, or part of a health service, declared by the Chief Psychiatrist to be an authorised mental health service. AMHSs include both public and private sector health services. While treatment and care is provided to both voluntary and involuntary patients, additional regulation applies under the Act for persons subject to involuntary treatment and care.
Associated Offence	An offence that occurred around the same time as the serious offence.
CIMHA	Consumer Integrated Mental Health and Addiction (CIMHA) application – the statewide mental health database which is the designated patient record for the purposes of the Act.
Clinician	Court Liaison Service clinician, case manager or treating doctor.
HHS	Hospital and Health Service
Nominated support person	A family member, carer or other support person formally appointed by a patient to be their nominated support person. NSP rights include: <ul style="list-style-type: none">• must be given all notices about the patient that are required under the Act• may discuss confidential information about the patient’s treatment and care• may represent, or support the person, in any hearings of the Mental Health Review Tribunal, and• may request a psychiatrist report if the person is charged with a serious offence.
Patient	<ul style="list-style-type: none">• An involuntary patient, or• A person receiving treatment and care for a mental illness in an AMHS, other than as an involuntary patient, including a person receiving treatment and care under and Advance Health Directive or with the consent of a personal guardian or attorney.
Relevant AMHS administrator	The relevant AMHS administrator is: <ul style="list-style-type: none">• the administrator of the AMHS currently providing clinical services to the person, or• if the person is not currently receiving mental health services (i.e. no open service episode), the administrator of the AMHS for the location where the person resides.
Serious Offence	An indictable offence other than an indictable offence that must be heard by a magistrate.
Support person/s	Includes, an appointed nominated support person or, if the person does not have a nominated support person, a family member, carer or other support person.

Referenced policies and resources

Chief Psychiatrist policies and guidelines

- [Chief Psychiatrist Policy – Classified patients](#)
- [Chief Psychiatrist Policy – Involuntary patient absence](#)
- [Chief Psychiatrist Policy – Independent Patient Rights Advisers](#)
- [Chief Psychiatrist Guidelines for preparing psychiatrist reports](#)

Mental Health Act 2016 forms and other resources

- [Form – Request for psychiatrist report](#)
- [Form – Advice to Chief Psychiatrist - Public interest consideration](#)
- [Form – Request to extend timeframe for psychiatrist report](#)
- [Form – Notice to administrator - Person not participating in good faith](#)
- [Flowchart 1: Overview](#)
- [Flowcharts 2\(a\)–\(b\): Report on request and direction for report](#)
- [Flowchart 3: Direction for report \(Chief Psychiatrist initiative\)](#)
- [Flowchart 4: Determining referral to Mental Health Court](#)
- [Guide to patient rights under the Mental Health Act 2016](#)

Legislation

- [The Hospital and Health Boards Act 2011](#)
- [Public Guardian Act 2014](#)
- [Guardian and Administration Act 2000](#)
- [Powers of Attorney Act 1998](#)

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