

Mental Health Court

The primary function of the Mental Health Court is to consider matters related to serious offences to decide whether a person was of unsound mind at the time an alleged offence occurred and whether they are fit for trial. The Court also hears appeals from decisions made by the Mental Health Review Tribunal.

What type of offences can be referred to the Mental Health Court?

The Mental Health Court's jurisdiction primarily relates to 'serious offences'. A serious offence is an indictable offence other than offences that must be heard by a magistrate.

Serious offences include offences such as arson, grievous bodily harm, indecent treatment, robbery, rape, serious assault and manslaughter, but does not include offences such as common assault and most forms of wilful damage.

However, a magistrate may refer any indictable offence to the Mental Health Court if the magistrate believes that exceptional circumstances apply, and a Forensic Order or Treatment Support Order may be warranted.

A reference may also include 'associated offences', which are offences that happened at or about the same time as a serious offence.

Who can make a reference to the Mental Health Court?

A reference to the Court may be made by the person alleged to have committed the offence, the person's lawyer, or the Director of Public Prosecutions.

A reference may be made if the person has been charged with a serious offence and there is a reasonable belief that the person was of unsound mind at the time of the offence or is unfit for trial.

The Chief Psychiatrist may also refer a matter to the Court if:

- a psychiatrist report has been prepared in relation to a serious offence, and
- the Chief Psychiatrist believes there is a compelling reason in the public interest to make the referral, having regard to the content of the report and protection of the community.

Who can be a party to a proceeding in the Mental Health Court?

For references to the Mental Health Court, the parties to a proceeding are:

- the person subject to the reference,
- the Director of Public Prosecutions, and
- the Chief Psychiatrist.

If the person subject to the reference has an intellectual disability, the Director of Forensic Disability (under the *Forensic Disability Act 2011*) may also elect to be a party.



Who makes decisions in the Mental Health Court?

The Court is constituted by a Supreme Court Judge assisted by one or two assisting clinicians.

If the matter being heard relates to a person with an intellectual disability, the Court may be assisted by a person with expertise in the care of people with an intellectual disability.

What types of decisions can the Mental Health Court make?

The Court may decide whether a person:

- was of unsound of mind when the alleged offence occurred, or
- is unfit for trial and, if so, whether the unfitness is permanent or temporary.

In relation to a charge of murder, the Court may decide whether the person was of diminished responsibility. A person found of diminished responsibility may have the charge downgraded.

What types of orders can the Mental Health Court make?

If the Court finds a person was of unsound mind or is permanently unfit for trial, the Court may make a Forensic Order, Treatment Support Order or no order.

Greater oversight and review is required for people on a Forensic Order than a Treatment Support Order.

If the Court finds a person is temporarily unfit for trial, the Court must make a Forensic Order or Treatment Support Order. The matter of the person's fitness for trial is then referred to the Mental Health Review Tribunal for review over time.

See Factsheets: *Forensic Orders and Treatment Support Orders and Mental Health Review Tribunal*

Decisions regarding Forensic Orders

If the Court makes a Forensic Order for an offence that is a 'prescribed offence', the court may set a non-revocation period on the order of up to 10 years. Prescribed offences are murder (and attempted murder), manslaughter, grievous bodily harm, rape and attempted rape.

In making a Forensic Order, the Court must consider the person's treatment needs and community safety. The Court may make recommendations regarding intervention programs relevant to the person's treatment and care such as substance use programs.

Other decisions

If the Court decides to make a Forensic Order or Treatment Support Order, the court must also decide the category of the order – inpatient or community.

If the Court decides that the category of the order is inpatient, the court may approve limited community treatment for the patient. Limited community treatment allows a person to leave an inpatient unit for periods of up to seven days.

The Court may also impose any conditions it considers appropriate, including a condition that the person not contact a stated person such as a victim of the alleged offence.

Can the Mental Health Court return matters to the Magistrates Court?

If a person is not found of unsound mind when the alleged offence occurred and is fit for trial, the matter is returned to the criminal courts.

The matter may also be returned to the criminal courts if the person is fit for trial and the court is satisfied that there is:

- a substantial dispute about whether the person committed the offence, or
- a substantial dispute about a fact relied on in an expert report (to formulate their clinical opinion about the person's unsoundness of mind).

Admissibility of expert reports

An expert report used in evidence by the Mental Health Court is admissible in proceedings before a Magistrates Court for the purpose of deciding whether to:

- **Dismiss a complaint** regarding the offence if the person was or appears to have been of unsound mind when the offence was allegedly committed or is unfit for trial.
- **Adjourn the hearing** of a complaint regarding the offence if the court is reasonably satisfied that the person charged with the offence is unfit for trial but is likely to become fit for trial within six months.

Other Mental Health Court functions

The Court also hears appeals from decisions made by the Mental Health

Review Tribunal, such as decisions to revoke or not revoke a Forensic Order.

The Court can also hear an application to review the detention of a person in an authorised mental health service or the forensic disability service to decide whether the detention is lawful.

More information

Mental Health Act 2016

www.health.qld.gov.au/mental-health-act

Forensic Disability Act 2011

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2011-013>

Mental Health Court

www.courts.qld.gov.au/courts/mental-health-court

Mental Health Review Tribunal

www.mhrt.qld.gov.au

Contact your local mental health service

1300 MH CALL (1300 642255)

www.qld.gov.au/health/mental-health/helplines/services

Resources

Factsheet: [Treatment Support Orders](#)

Factsheet: [Forensic Orders](#)

Factsheet: [Mental Health Review Tribunal](#)