

Requests for a Psychiatrist Report for a Serious Offence

When can a psychiatrist report be requested?

Under the *Mental Health Act 2016*, a psychiatrist report can be requested for a person who:

- is charged with a serious offence and
- was on a treatment authority, forensic order or treatment support order at the time of the offence or any later time.

A ‘serious offence’ is an indictable offence but does not include an indictable offence that must be heard by a Magistrate.

Who can request a psychiatrist report?

A psychiatrist report can be requested by:

- the person
- the person’s nominated support person if the nominated support person believes the request is in the person’s best interests
- a guardian or attorney who is authorised to make the decision
- a parent of the person if the person is a minor, or
- a lawyer who is acting on the person’s instructions.

How is a request made?

A request is made with a *Request for Psychiatrist Report* form. The request is sent to the Chief Psychiatrist.

On receiving the request, the Chief Psychiatrist will direct a psychiatrist report to be prepared. If the Chief Psychiatrist does not direct a psychiatrist report, the person who made the request will be advised of the reasons.

Is there a cost for the report?

If the Chief Psychiatrist directs a psychiatrist report, the report will be prepared at no cost to the person who is charged with the offence or the person who makes the request.

What information is given in a psychiatrist report?

The report will give the authorised psychiatrist's opinion about:

- the person's mental state at the time of the offence/s including whether the person was of 'unsound mind' (i.e. not criminally responsible) at the time of the offence, and
- the person's current mental state; in particular, whether the person is 'fit for trial' (e.g. able to understand the charge and court processes, represent their interests, instruct their legal representative, etc).

The report will give the psychiatrist's opinion about the serious offence/s and any associated offence/s. An 'associated offence' is an offence that occurred at or around the same time as the serious offence.

How can a psychiatrist report be used?

The psychiatrist report can help the person (and others assisting or representing the person's interests) to make decisions about what action to take in relation to the charge/s. For example, the report may help make a decision about whether to refer the matter to the Mental Health Court (see Factsheet on Mental Health Court) or to use the report in a Magistrates Court hearing for matters that can be decided by a Magistrate.

The psychiatrist report is also used by the Chief Psychiatrist to decide if the matter should be referred to the Mental Health Court. To make a reference to the Mental Health Court, the Chief Psychiatrist must be satisfied:

- the person may have been of unsound mind or may be unfit for trial., and
- there is a compelling reason in the public interest (i.e. to protect the interests of the person or the community) to refer the matter to the Mental Health Court.

What happens when the Chief Psychiatrist directs a psychiatrist report?

The Chief Psychiatrist's direction is given to the Administrator of the Authorised Mental Health Service.

The Administrator will get information about the offence/s from the 'prosecuting authority'. This is usually the police and may include, for example, information about the charge/s, any statements made by a victim or witnesses, and any record of interview with the person charged. This information is used by the authorised psychiatrist to inform their report.

Arrangements will be made for the person to see an authorised psychiatrist. A support person (e.g. nominated support person, guardian or lawyer) can attend the appointment/s with the person but cannot interfere in the interview.

The psychiatrist may also get information from others (e.g. a relative or other support person) or from the person's clinical file to better understand the person's mental condition at the time of the offence and the time of making the report.

When the Chief Psychiatrist directs a report, the proceedings for the charge/s are suspended. The court cannot decide the charge/s but can make other decisions such as granting bail or change existing bail arrangements.

What is the time frame for the psychiatrist report?

The psychiatrist report must be given to the Chief Psychiatrist within 60 days of the Chief Psychiatrist's direction.

The Chief Psychiatrist can extend the time frame to 90 days.

Can the Chief Psychiatrist's direction be revoked?

The Chief Psychiatrist can revoke (or cancel) the direction e.g. if the Chief Psychiatrist is advised that the charge/s have been discontinued.

The Chief Psychiatrist's direction can also be revoked by the Administrator of the Authorised Mental Health Service. The Administrator can revoke the direction if the person or their support person is not participating in good faith. For example:

- if the person does not attend appointments with the psychiatrist, and
- the support person does not allow the person to answer questions asked by the psychiatrist.

Before revoking the direction, the Administrator must tell the person that the Administrator intends to revoke the direction, and must consider any response made by the person.

Who is the report given to?

The authorised psychiatrist must give the report to the Chief Psychiatrist. The Chief Psychiatrist's office checks that the report includes all of the required information and may ask the authorised psychiatrist for more information.

A copy of the report is given to:

- the person
- the person who requested the report, and
- the Administrator of the Authorised Mental Health Service (AMHS) .

The Chief Psychiatrist will not give the person a copy of the report if the report may have a negative effect the person's wellbeing. The Chief Psychiatrist will get advice from the authorised psychiatrist to make this decision. If the report is not given to the person, it can be given to another person who has an interest in the person's wellbeing e.g. the person's guardian or lawyer.

The Chief Psychiatrist cannot give the report to anyone else without the consent of the person, or a guardian or attorney who is authorised to make the decision for the person.

What happens once the report is made?

As discussed above, the person can use the report to make a reference to the Mental Health Court or may use the report in any other way they choose.

The Chief Psychiatrist will also consider if a reference should be made to the Mental Health Court. If the Chief Psychiatrist decides to make a reference, it must be made within 28 days of giving a copy of the report to the person who made the request. The Chief Psychiatrist can extend this period for up to 4 months if the person is not fit for trial but may become fit for trial in the extended period. If this occurs, the Chief

Psychiatrist will ask for another psychiatrist report about the person's fitness for trial within the extended period.

If a reference is made to the Mental Health Court (by the person, Chief Psychiatrist or anyone else), the proceedings remain suspended until the Mental Health Court makes a decision about the charge/s.

If no reference is made to the Mental Health Court, the court proceedings will no longer be suspended, and the charge/s will continue to be heard in the Magistrates or other court. However, if the person is a classified patient the court proceedings will remain suspended while the person is a classified patient.

The person may choose to use the psychiatrist report in the Magistrates court. In this circumstance, it is particularly important for the person to seek legal advice to ensure the person understands how the information in the report may be used.

What happens if a report is not requested?

If a report is not requested, the charges will continue to be dealt with in the relevant court.

However, a psychiatrist report can also be directed on the Chief Psychiatrist's own initiative i.e. even if no request is made. The Chief Psychiatrist can only direct a report in this way if it is in the public interest.

Are there any other options to get advice about the person's mental condition?

A psychiatrist report can be obtained from a private sector psychiatrist at the person's own cost. This option is available regardless of whether a request is made to the Chief Psychiatrist.

Also, it is important to be aware that some serious offences can be dealt with by a Magistrate. A lawyer will be able to advise if a Magistrate can decide a particular serious offence.

If a matter can be decided by a Magistrate, the person or their lawyer may request a report from the Court Liaison Service. See [Frequently Asked Questions on the Role of the Court Liaison Service](#).

What if the person is charged with other offences?

A psychiatrist report requested from the Chief Psychiatrist can only address serious offences and associated offences.

If the person has other offences, the Court Liaison Service may be able to assist. See [Frequently Asked Questions on the Role of the Court Liaison Service in the Magistrates Court](#).

Where can I get more information?

- Legal representative – Talking with a lawyer about whether to request a psychiatrist report is encouraged. If the person does not have a lawyer, Legal Aid Queensland can be contacted on 1300 65 11 88
- *Mental Health Act 2016* website – This website provides the Act (see Chapter 4), Chief Psychiatrist policies and practice guidelines, fact sheets, forms and other helpful resources.
(www.health.qld.gov.au/mental-health-act)
- Authorised Mental Health Service – You can ask for more information from a member of the person's treating team or the Independent Patient Rights Adviser.