

Magistrates Court

Magistrates are given specific powers under the *Mental Health Act 2016* for individuals who have a mental illness, intellectual disability, or other mental condition. Magistrates can dismiss charges against the person if the person was, or appears to have been, of unsound mind at the time of the alleged offence or is not fit for trial. Magistrates can also refer a person to an authorised mental health service (AMHS) for an examination under an Examination Order. Magistrates also have the authority to refer any indictable offence to the Mental Health Court.

What specific powers do Magistrates have under the Act?

A Magistrate's powers can be exercised for persons with a mental illness, an intellectual disability or another mental condition.

A Magistrate may discharge a person if the Magistrate is satisfied, on the balance of probabilities, that the person:

- was, or appears to have been, of unsound mind when the offence was allegedly committed, or
- is unfit for trial.

This power applies to a 'simple offence', which is an offence that may be decided by a Magistrate.

A Magistrate may also adjourn proceedings for up to six months if the person is unfit for trial but is likely to become fit for trial within six months.

In deciding whether to dismiss or adjourn a matter, a Magistrate may consider information in an expert report received in evidence by the Mental Health Court.

What treatment pathways are available for a person appearing before a Magistrate?

A Magistrate can refer a person who has, or may have, a mental illness to undergo an involuntary examination under an Examination Order. This applies if charges have been dismissed, proceedings adjourned, or the Magistrate otherwise believes the person would benefit from an examination.

The Examination Order enables an authorised person to transport the person immediately to an AMHS or, in non-urgent circumstances, require the person to attend an AMHS or a public sector health service facility within 28 days.

The order cannot enforce treatment, but an examination may result in:

- a Treatment Authority being made for the person,
- the development of a treatment plan for the voluntary treatment of the person, or
- if the person is already on an authority or order under the Act, a change in the person's treatment.

See Factsheet: *Treatment Authorities*

How are the outcomes of examinations under an Examination Order recorded?

The authorised doctor conducting the examination must prepare an examination report.

The purpose of the report is to document the clinical outcome of the examination. It is not a medico-legal report related to whether the person was of unsound mind when the offence was allegedly committed or is unfit for trial.

How do Examination Orders interact with other provisions relating to persons in custody?

If an Examination Order is made for a person in custody, the person may be transported to, and detained in, an AMHS for the examination. Should the outcome of the examination be that the person requires admission as an inpatient for the treatment and care of a mental illness, the person may remain in the AMHS to receive treatment and care under the classified patient provisions.

Can Magistrates refer matters to the Mental Health Court?

A Magistrate may refer an indictable offence (and any associated offences) to the Mental Health Court if the person appears to have been of unsound mind or is unfit for trial and:

- the nature and circumstances of the offence create an exceptional circumstance in relation to the protection of the community, and
- the making of a Forensic Order or Treatment Support Order may be justified.

This may occur, for example, if repeat offending is evident and previous diversionary strategies have not been successful.

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

If a person is not found to be 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).

What referral options do Magistrates have for individuals who do not have a mental illness?

Where the person does not have a mental illness, a Magistrate may refer the person to an agency who may be able to provide treatment or care for the person. For example, for individuals with an intellectual disability, the Magistrate may refer the person to the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships or

the National Disability Insurance Agency, to see if suitable care is available for the person.

A referral does not mandate the provision of any care for the person.

How are Magistrates supported in their decision making?

Magistrates are supported by the Court Liaison Service within Queensland Health.

This service provides clinical assessments for the purposes of identifying the need for further mental health assessments or treatment.

In addition, the Court Liaison Service provides advice to Magistrates on whether a person was unsound of mind at the time of an alleged offence or is unfit for trial.

See Factsheet: *Role of the Court Liaison Service in the Magistrates Court*

More information:

Mental Health Act 2016

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

Contact your local mental health service
1300 MH CALL (1300 642255)

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

Resources:

Queensland Government website:

See [Examinations and Assessment](#) page

See [Treatment and Care](#) page

Factsheet: [Treatment Authorities](#)

Factsheet: [Role of the Court Liaison Service in the Magistrates Court](#)