

Psychiatrist reports

The *Mental Health Act 2016* gives involuntary patients charged with a serious offence a right to request a psychiatrist report, at no cost, should the person wish to pursue a mental health defence.

What is the purpose of a psychiatrist report for a person charged with a serious offence?

Psychiatrist reports express an opinion on whether a person was:

- of unsound mind when an alleged offence occurred, or
- is unfit for trial.

A report may be used to inform a decision about referring a matter to the Mental Health Court, and to assist the court in its deliberations.

What is a serious offence?

A serious offence is any indictable offence, other than an offence that must be dealt with by a Magistrate under the Criminal Code.

This includes 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.

A psychiatrist report may also be prepared for associated offences that happened at or about the same time as a serious offence.

How is a request made?

A request is made to the Chief Psychiatrist via the *Request for Psychiatrist Report* form.

Who may request a psychiatrist report?

A person, or someone on the person's behalf, may request a psychiatrist report if:

- the person is subject to a Treatment Authority, Forensic Order or Treatment Support Order, and
- the person is charged with a serious offence, other than an offence against a Commonwealth law.

A request may be made at any time before the court makes a final decision on the matter.

A request may be made by:

- the person
- the person's nominated support person, if it is in the person's best interests
- a personal guardian who has the authority to make this decision for the person
- an attorney who has the authority to make this decision for the person
- a parent of a minor, or
- the person's lawyer, acting on instructions of the person.

What if a report is not requested?

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

Can the Chief Psychiatrist direct the preparation of a report if the person does not request it?

The Chief Psychiatrist has the discretion to direct a psychiatrist report for a person if a person is charged with a serious offence and the Chief Psychiatrist believes it is in the public interest that a report be completed. This applies whether or not the person is on an order or authority under the Act.

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 responsibilities do administrators have in facilitating a report?

An administrator of an authorised mental health service (AMHS) is required to inform a person that they may request a psychiatrist report. An administrator is also required to advise support persons of this right.

What responsibilities does the Chief Psychiatrist have in facilitating a report?

Upon receiving a request for a report by the person or someone on the person's behalf, the Chief Psychiatrist has 7 days to confirm that the person is eligible for a report and, if so, issue a direction for an authorised psychiatrist to complete a report.

Generally, when a request is made the Chief Psychiatrist will issue a direction for a psychiatrist report. However, the Chief Psychiatrist may refuse the request in some circumstances. For example, if the charges are withdrawn or a direction to complete a report has been previously withdrawn on the grounds that the person did not participate in the reporting process in good faith.

What happens after a direction is given?

When the Chief Psychiatrist directs a report, 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.

The direction is given to the administrator of the AMHS. The administrator will get information about the offence(s) from the 'prosecuting authority'. This is usually the police and may include e.g. 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.

The reporting psychiatrist is to examine the person, obtain and consider the person's health records and may also get information from others (e.g. a relative or other support person) to understand the person's mental condition at the time of the offence and the time of making the report.

Will the person requesting the report be obliged to participate in an assessment?

If a person requests the preparation of a report, the person must participate in the assessment in good faith, for example, by attending scheduled appointments.

Failure to participate in good faith may result in the person being asked to show cause as to why the direction to complete the report should not be withdrawn.

What supports are available to a person undergoing an examination?

The person may be accompanied at the examination by a support person, including for example, a nominated support person, lawyer or personal guardian. The support person must not interfere with the examination.

Can the Chief Psychiatrist's direction be revoked?

The Chief Psychiatrist can revoke (cancel) the direction e.g. if the Chief Psychiatrist is advised that the charge(s) have been discontinued or if the person who requested the report withdraws the request.

If the Chief Psychiatrist directed the report on their own initiative, they may revoke the request if they no longer believe it is in the public interest for a report to be completed.

The Chief Psychiatrist's direction can also be revoked by the administrator of the AMHS 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, or
- 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 they intend to revoke the direction and must consider any response made by the person.

How long does an authorised psychiatrist have to complete a report?

An authorised psychiatrist has 60 days after the direction has been issued by the Chief Psychiatrist to complete the report. The Chief Psychiatrist may extend this timeframe for a further 30 days if required. Only 1 extension may be granted.

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).

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 charges. For example, the report may be used 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.

See Factsheets: *Mental Health Court and Magistrates 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.

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 or request a second report if further examination is required.

A copy of the report(s) is given to:

- the person
- the person who requested the report, and
- the AMHS administrator.

The Chief Psychiatrist will not give the person a copy of the report if the report may have a negative effect on 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.

How are referrals made to the Mental Health Court?

On receiving a report, the person or the person's lawyer may refer the matter to the Mental Health Court or may use the report in any other way they choose.

The Chief Psychiatrist also has discretion to refer the matter to the Mental Health Court if they believe it is in the public interest to make the reference.

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 an updated 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.

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 Factsheet: *Magistrates Court*

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

What legal supports are available?

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.

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/help-lines/services

Resources

Factsheet: [Magistrates Court](#)

Factsheet: [Mental Health Court](#)

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

Form: [Request for Psychiatrist Report](#)