

The Mental Health Court

What is the Mental Health Court?

The Mental Health Court was established by the *Mental Health Act 2000* to decide, among other things, the state of mind of persons charged with criminal offences.

If there is reasonable cause to believe that an alleged offender is or was mentally ill or has an intellectual disability of a degree that the person's mental condition should be considered by the Mental Health Court then a criminal case may be referred to that court.

What issues does the Mental Health Court decide?

A case would be referred to the Mental Health Court to have the following questions answered:

- Was the alleged offender of unsound mind at the time of the offence?
- Is the alleged offender unfit for trial?
- Is the unfitness for trial permanent?
- If the charge is murder, was the alleged offender suffering from diminished responsibility at the time of the offence?

How is a criminal case referred to the Mental Health Court?

A criminal case can be referred to the Mental Health Court by:

- the alleged offender or their legal representatives
- the Director of Public Prosecutions
- the Director of Mental Health, if the person is receiving treatment for a mental illness
- the Attorney-General
- the District Court or Supreme Court.

What does 'of unsound mind' mean?

The Criminal Code says that a person is not criminally responsible for an offence if at the time of the offence the person was in such a state of mental disease or natural mental infirmity that they were deprived of the capacity to:

- understand what they were doing
- control their actions
- know that they should not do the act or make the omission.

What does 'unfit for trial' mean?

A person is unfit for trial if they are unable to understand the nature of the trial proceedings, to understand the meaning of entering a plea of guilty or not guilty or are incapable of instructing their legal representatives. It may also mean that a person is unable to endure his or her trial without a serious deterioration of their mental state. A person may be temporarily or permanently unfit for trial.

What does 'diminished responsibility' mean?

If the charge is murder, the Mental Health Court may find that even though a person was not of unsound mind they did have a substantially impaired capacity to:

- understand what they were doing
- control their actions
- know that they should not do the act or make the omission.

The Criminal Code says that where there is a finding of diminished responsibility a murder charge is replaced with a charge of manslaughter. This is because a person whose capacities are substantially impaired bears less criminal responsibility for their actions.

How is the Mental Health Court constituted?

The Mental Health Court is constituted by a Supreme Court judge. The judge is assisted by two experienced psychiatrists who advise the court on medical or psychiatric matters.

Who are the parties to the proceedings?

For hearings of criminal cases referred to the Mental Health Court the parties are the alleged offender (represented by their legal representatives), the Director of Public Prosecutions and the Director of Mental Health.

Victims of crime and their families or associates are not parties to the proceedings. However the Mental Health Act provides an avenue for victims or 'concerned persons' to make written submissions to the court through a party to the proceedings. There is more information about this process following.

The role of the Office of the Director of Public Prosecutions is to represent the community of Queensland in criminal proceedings that come before the Mental Health Court.

The Mental Health Court also has other functions such as hearing appeals from decisions of the Mental Health Review Tribunal. In those cases the parties to the proceedings are the patient, the Director of Mental Health and for forensic patients, the Attorney-General.

What powers does the Mental Health Court have and what material does it consider?

The Mental Health Court has powers that enable it to fully investigate the relationship between a person's mental illness and alleged offences.

The Mental Health Court is not bound by the rules of evidence that govern other types of court proceedings. This means that in making its decision the court can consider a wide variety of material including police reports, expert reports, submissions from the Director of Public Prosecutions, the Director of Mental Health and the legal representatives of the alleged offender and advice from the assisting psychiatrists.

Importantly, the advice that the assisting psychiatrists give to the court must be given in a way that it is heard by all the parties.

The Mental Health Court also has the power to make an examination order. This means that the alleged offender would be examined by a psychiatrist or health practitioner. This could happen, for example, when the existing reports do not adequately address certain matters.

Can a person who is not a party make submissions to the Mental Health Court?

Yes, because the Mental Health Court is not bound by the rules of evidence it is able to accept material that may otherwise be inadmissible in general court proceedings. For example, people such as victims of crime can make what is called a concerned person's statement for the Mental Health Court. Statements from non-parties must be submitted to the court through a party. For victims of crime this means the Office of the Director of Public Prosecutions. A separate factsheet is available on making a statement for the Mental Health Court.

Are hearings open to the public?

Yes, any member of the public may attend the hearing of a criminal case that has been referred to the Mental Health Court. However, the court may order the hearing or parts of it to be closed to the public if it is in the interests of justice.

Hearings related to young persons (a person under 17) are not open to the public. The Mental Health Court may, however, permit another person to be present if it is in the interests of justice.

When the Mental Health Court is hearing an appeal from the decision of the Mental Health Review Tribunal the court is not open to the public unless the court makes an order allowing them to be present.

How will I know about hearing dates in the Mental Health Court and decisions of the court?

If you are a victim of violent crime the victim liaison officers in the Office of the Director of Public Prosecutions will keep you informed about important hearing dates and decisions. If you would like to be kept informed it is important that the Office of the Director of Public Prosecutions has your current contact details.

What happens if the Mental Health Court decides that the person was of unsound mind at the time of the offence or is permanently unfit for trial?

In these circumstances the court may make a forensic order.

A forensic order gives authority for the person to be detained in an authorised mental health service for involuntary treatment or care. There is a separate factsheet on forensic orders and how they are reviewed.

In deciding whether to make a forensic order the court must consider:

- the seriousness of the offence
- the person's treatment needs
- the protection of the community.

If the court decides not to make a forensic order it can make a non-contact order but only if the alleged offender has been charged with an offence of violence. There is more information about non-contact orders below.

A finding of unsoundness of mind means that the person is not criminally responsible for their actions. The criminal proceedings against them are discontinued and the person can never be prosecuted in the criminal courts for this particular offence.

If the court decides that the person is permanently unfit for trial then the criminal proceedings against them are discontinued.

What happens if the court decides that the unfitness for trial is temporary?

If the court decides that the unfitness for trial is temporary then the court must make a forensic order.

There are regular reviews of the person's fitness for trial by the Mental Health Review Tribunal and the criminal proceedings will continue if the person becomes fit for trial.

Criminal proceedings are discontinued if the person remains unfit for trial for three years. However, this period is extended to seven years where the person is charged with an offence carrying a maximum sentence of life imprisonment.

What happens if the person is found to be of sound mind?

Provided the person is fit for trial the case will be returned to a criminal court to proceed in the usual way.

What happens if there is a dispute about the facts of a case?

If there is a dispute about the facts and the person is considered fit for trial, the case will be returned to a criminal court to proceed in the usual way.

What other orders can the Mental Health Court make?

Non-contact orders—means that a person must not have contact with a stated person. The Mental Health Court can only make a non-contact order when it decides not to make a forensic order and where the person was charged with an offence of violence.

Once the order is made a copy is lodged with the Magistrates Court closest to the person stated on the order. In addition the order is sent to the Commissioner of Police who forwards it to the appropriate operational area.

Breaches of non-contact orders should be reported to the police for investigation and, where appropriate, prosecution.

If a person intentionally breaches a non-contact order, a Magistrates Court can impose a penalty or vary the order.

Confidentiality orders—means that the alleged offender would not have access to information given to the Mental Health Court including documents filed or received.

The Mental Health Court can only make a confidentiality order if it is satisfied that disclosure of the information would cause serious harm to the health of the alleged offender or would put the safety of someone else at serious risk. If you are a victim of crime and think that a confidentiality order should be made you should inform the victim liaison officer at the Office of the Director of Public Prosecutions.

If the Mental Health Court makes a confidentiality order the material must still be given to the alleged offender's legal representatives. A fine can be imposed upon a person who contravenes a confidentiality order without a reasonable excuse.

Where can I find more information about the Mental Health Court and the *Mental Health Act 2000*?

Other factsheets available from the Office of the Director of Public Prosecutions are:

- Making a statement for the Mental Health Court, and
- Forensic orders.

Queensland Health's website also has information about the *Mental Health Act 2000* <www.health.qld.gov.au/mha2000>.

Find information on the Mental Health Review Tribunal website <www.mhrt.qld.gov.au>.

Contact details for victims

The Office of the Director of Public Prosecutions

Brisbane

Freecall 1800 673 428

Ph 07 3239 6840

Fax 07 3220 0035

Beenleigh

Ph 07 3884 7070

Fax 07 3884 7077

Cairns

Ph 07 4039 8444 Fax 07 4039 8888

Ipswich

Ph 07 3280 1719 Fax 07 3812 0559

Maroochydore

Ph 07 5470 8199 Fax 07 5470 8193

Rockhampton

Ph 07 4938 4555 Fax 07 4938 4922

Southport

Ph 07 5583 6155 Fax 07 5532 2026

Toowoomba

Ph 07 4615 3438 Fax: 07 4639 1759

Townsville

Ph 07 4799 7328 Fax 07 4799 7330

Victims may also elect to utilise the services of Queensland Health Victim Support Service 1800 208 005.

For information on how to refer a matter to the Mental Health Court, contact the Mental Health Court Registry:
Ph 07 3234 0703 Fax 07 3221 7535

Glossary of terms

Authorised Mental Health Service (AMHS)

Comprise both community-based and in-patient mental health facilities declared by the DMH to be an authorised mental health service. An AMHS is the only place where force can be used to give involuntary treatment.

Confidentiality order

Prohibits or restricts the disclosure of information to the alleged offender or patient where the disclosure would cause serious harm to the health of the person or patient or would put the safety of someone else at risk. Can be made by the MHC or the MHRT.

Director of Mental Health (DMH)

Statutory officer appointed by the Governor-in-Council, responsible on a statewide basis for ensuring that the assessment and treatment of involuntary patients complies with the *Mental Health Act 2000*.

Forensic order

Authorises the patient's involuntary treatment and detention in an authorised mental health service. Can be made by the Mental Health Court, or after a jury finding of unsoundness of mind or unfitness for trial. In some circumstances the Minister for Health can also make a forensic order.

Limited community treatment

Can have various levels such as escorted on the grounds of the hospital, escorted off the hospital grounds, day leave, overnight leave, etc. During the treatment or rehabilitation in the community the person remains an inpatient.

Mental Health Court (MHC)

Established by the *Mental Health Act 2000* to decide issues relating to the mental condition of those persons charged with criminal offences. The court is constituted by a Supreme Court judge who has the assistance of two experienced psychiatrists on medical or psychiatric issues.

Mental Health Review Tribunal (MHRT)

The independent body which conducts regular reviews of involuntary patients.

Non-contact order

Prevents a person (the patient) from contacting a stated person e.g. a victim or an associate of a victim or from going to a stated place for a specified time.

Forensic Patient Information Order (FPIO)

Can be made by the MHRT so that victims of crime can be kept informed about certain hearings and decision which are made about the patient who committed the offence. For example, decisions to discharge the patient, authorise limited community treatment, transfer the patient to another mental health service, or to move a patient out of Queensland.

Party to a proceeding

For proceedings in the Mental Health Court on a reference the parties are:

- the alleged offender
- the Director of Mental Health
- the Director of Public Prosecutions.

For proceedings in the MHRT the parties are:

- the patient
- the Director of Mental Health
- the Attorney-General for reviews of forensic patients

Victims or Concerned Persons

A person who is not a party to the hearing. For example, a victim of the offence or a patient's carer. The *Mental Health Act 2000* provides for such individuals to make written submissions to the MHC or the MHRT.