



Getting a case dismissed due to mental health (in the Queensland Magistrates Court)

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Managing mental health issues is a difficult and complex task. Often people come to the attention of the police and they may end up being charged with offences such as public nuisance, assaulting police, failing to comply with directions or other charges.

If you, or a loved one, has a mental illness and are charged with a criminal offence, it is important to obtain legal advice from an experienced criminal lawyer, as there are means of having charges dismissed under the *Mental Health Act 2016* ('MHA').

Different courts work in different ways

More serious offences generally need to be heard in the District or Supreme Court and where there are mental health issues involved, they are referred to [the Mental Health Court](#).

Simple offences can be dismissed by a Magistrate. In general terms, simple offences are charges that are resolved in the Magistrates Court.

Under the MHA, a Magistrate may dismiss a simple offence if reasonably satisfied on the balance of probabilities that the defendant:

- was, or appears to have been, of unsound mind at the time the alleged offence was committed; or
- is unfit for trial.

See below under '[Powers of the court upon dismissal](#)' for further court powers if a Magistrate dismisses the charges based on mental health.

How is 'unsoundness of mind' assessed?

'Unsoundness of mind' is defined as a state of mental illness such that the person charged was completely deprived of the capacity to:

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

In practical terms, this means that the person charged will have to obtain a psychiatric report – either privately or through the 'Court Liaison Service' – stating that they were of unsound mind at the time they committed the offence. On the basis of such a report, the person's lawyer then submits to the Magistrate that the charge should be dismissed.

Fitness for trial

Fitness for trial is not defined by the MHA or the Criminal Code, however, the case law indicates that to be fit for trial, a person must be capable of understanding the proceedings at their trial so as to be able to make a proper defence.

The decision involves consideration of whether the person:

- understands the nature of the charges and is able to enter a plea;
- understands the general nature of court proceedings;
- has the ability to follow the course of proceedings in a general sense;
- has the ability to understand and make sense of the evidence given against them and appreciate whether there are any facts which qualify or explain the evidence against them; and
- has the ability to decide what defence to offer and to explain their version of the facts to counsel and legal representatives and, if necessary, to the court.

Once again, in order to submit for the discontinuation of a simple offence on this basis, an expert report will be necessary. Anyone charged with an offence can discuss with their lawyer how best to obtain a report.

Powers of the court upon dismissal – examination orders

If a Magistrate dismisses a charge under the MHA, the person is discharged and the criminal process ends.

The court does, however, have the power to make an 'examination order' which authorises a doctor to examine the person, without the person's consent, to decide whether to:

1. make a treatment authority for the person; or
2. make a recommendation for the person's treatment and care; or

3. if the person is already subject to a treatment authority, treatment support order or forensic order—change the nature and extent of the treatment and care to be provided to the person under the authority or order.

The examination order may also direct a person to attend an inpatient health unit. This is because the purpose of the MHA is to divert people with mental illness from the criminal justice system while at the same time, protecting the public.

If you, or a loved one, are charged with a criminal offence and there are mental health issues, you should consult an [experienced criminal practitioner as soon as possible](#).

Contacting Gilshenan &Luton criminal lawyer

[07 3361 0222](tel:0733610222) (24/7)

gnl@gnl.com.au

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