



How does the Mental Health Court in Queensland work?

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The Mental Health Court considers the state of mind of those who are alleged to have committed a criminal offence. It determines whether an alleged offender was of unsound mind at the time they are said to have committed an offence and whether they are now fit for trial. The relevant legislative framework is the *Mental Health Act 2016* (Qld).

How are matters referred to the Mental Health Court?

A matter is referred to the Mental Health Court by a party completing a reference form, supported by a psychiatrist report. References can be made by your lawyer, the prosecution, the chief psychiatrist or the Courts.

A reference may be made if a person is charged with a serious offence and a 'relevant person' has reasonable cause to believe the person was of unsound mind when the offence was allegedly committed or is unfit for trial. A 'relevant person' includes the person's lawyer.

After a reference is made, the criminal proceedings are suspended until the Mental Health Court has made a decision. A reference does not prevent a court granting or refusing bail. Nor does it prevent the prosecution being discontinued by the Director of Public Prosecutions.

It is important to note that the Mental Health Court may not make a decision about unsoundness of mind or unfitness to go to trial if the court thinks you might not have committed the offence.

How do hearings work in the Mental Health Court?

The Mental Health Court is constituted by a judge of the Supreme Court of Queensland, sitting with and taking advice from two assisting psychiatrists.

What is a court examination order?

After receiving a referral, the Court may make a court examination order which requires the alleged offender to be examined by one or more Court-appointed experts.

An examination order by the court requires the defendant to submit to an examination by a court-nominated psychiatrist or health practitioner. This would occur when existing reports do not adequately address certain matters.

The Court may make this order on its own initiative, at the recommendation of an assisting psychiatrist, or following a request by the Director of Public Prosecutions. Often it is done on the recommendation of the assisting psychiatrists, who review the references and accompanying information to determine whether further evidence is needed by the Court.

The Mental Health Court then decides whether the person was of unsound mind when the offence was allegedly committed.

What decisions can the court make?

The Mental Health Court can decide that a person:

1. was of unsound mind at the time of the offending and/or is permanently unfit for trial;
2. was of sound mind at the time of the offending but is temporarily unfit for trial; or
3. was of sound mind at the time of the offending and is fit for trial.

If the Mental Health Court decides that a person was not of unsound mind (and fit for trial) and refers the matter back to the trial court, the defence of insanity can still be relied upon by the defendant at trial. The question of whether the person was of unsound mind then becomes an issue for the jury to consider.

What happens if the court finds the defendant of unsound mind?

If the Mental Health Court decides that the person was of unsound mind when the offence was allegedly committed, the proceeding against the person for the offence is discontinued.

Despite the Court's decision, the person may elect to be tried for the offence. If the person is subsequently found not guilty, any forensic orders (see below) made by the Mental Health Court are set aside.

In cases where the medical evidence about the unsoundness or unfitness of the person is unequivocal, the matter can be resolved relatively easily. If there is a hearing, ordinarily the only witnesses who are called are experts, which streamlines the proceedings.

Many references to the Mental Health Court are determined without any oral evidence being heard because there is unanimous opinion as to the finding. Individuals who are the subject of a reference do not give evidence.

What happens if the court finds the defendant of sound mind but temporarily unfit for trial?

If the Court finds that the defendant was of sound mind at the time of offending but is temporarily unfit for trial, the offence is stayed until the person is fit for trial. Their mental state is reviewed every six months by the Mental Health Review Tribunal.

What happens if the court finds the defendant of sound mind and fit for trial?

If the Court finds the defendant was of sound mind at the time of offending and fit for trial the charges are sent back to the original Court to be dealt with in the criminal system.

Orders that can be made after a decision

If the Mental Health Court decides the person was of unsound mind when the offence was allegedly committed, the Court may order a forensic order or treatment support order.

Forensic orders (mental health)

A forensic order (mental health) operates in a way that is more restrictive of a person's rights and liberties than a treatment support order. Forensic orders (mental health) can be inpatient orders or community-based orders. If an inpatient order is made, there can be an order for limited community treatment, which allows the defendant to leave the inpatient facility for periods up to 7 days.

In making a decision in relation to an order for a person, the Mental Health Court must have regard to:

1. a) the relevant circumstances of the person;
2. b) the nature of the offence to which the reference relates and the period of time that has passed since the offence was allegedly committed; and
3. c) any victim impact statement.

The Court may also impose any conditions it considers appropriate, including a condition that the person not contact a stated person, such as a victim.

Forensic orders are reviewed every 6 months by the Mental Health Review Tribunal.

Treatment support order

A treatment support order is less restrictive than a forensic order. It is usually a community-based order and the Court can impose the conditions it considers appropriate but cannot impose a condition requiring the person to take a particular medication or a particular dosage of a medication.

Get help from a criminal lawyer

This area of law is particularly difficult and requires a collaborative approach between clients, families, doctors and lawyers.

[Gilshenan &Luton have experience representing clients in the Mental Health Court and are able to assist guiding you and your loved one through the process.](#) Getting advice and assistance early is critical.

Contacting Gilshenan &Luton

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