

## Legislation update for prosecuting agencies

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### *The new Mental Health Act and its impact on summary prosecutions*

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March 2017

*The way in which the Magistrates Court processes defendants with mental health issues has been overhauled, with the long-awaited Mental Health Act 2016 having finally commenced on 5 March 2017.*

This bulletin provides a snapshot of the key changes to the Magistrates Court's mental health practices, and summarises the various matters that government lawyers will need to be familiar with in summary proceedings involving defendants with mental health issues.

#### **Previous state of the law**

Previously, Magistrates were unable to determine that a defendant charged with summary offences was of unsound mind at the time of the offending, or unfit to stand trial. Such powers were limited to the Mental Health Court (where only indictable offences could be dealt with).

#### **The new Act**

The most notable amendments to the legislative scheme under the new Act are those with respect to simple offences:<sup>1</sup>

##### Dismissal of complaint

There are two key provisions in the Act that give a Magistrate power to dismiss a complaint on mental health grounds:

1. Section 22; and
2. Section 172.

Both of these provisions allow for dismissal if the court is reasonably satisfied, on the balance of probabilities, that the defendant was, or appears to have been of 'unsound mind'<sup>2</sup> when the offence was allegedly committed, or is unfit for trial.

If a complaint is dismissed under s172, the Magistrate can refer the defendant for future treatment or care.

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<sup>1</sup> Defined in s4 of the *Justices Act 1886* to include summary or indictable offences punishable before a Magistrate.

<sup>2</sup> Section 109 of the Act defines the meaning of unsound mind.

Furthermore, pursuant to s173, a Magistrate can adjourn the hearing of a complaint in circumstances where they believe that the person is unfit for trial, but may become fit for trial within six months.

### Mental health assessments

Mental health assessments can be conducted by the Queensland Health Court Liaison Service to assist the Magistrates Court to determine a person's soundness of mind and/or fitness to stand trial. Such assessments are intended to be brief in nature, and subsequent to the assessment, a representative from the service can provide advice on those issues to a Magistrate (for example, in the form of a report).

### Examination orders and further treatment

A new power for Magistrates to order the medical examination of a person charged with a simple offence is provided for under s177. The examination is intended to '*...inform clinical decision making about the person's mental health care and treatment.*'<sup>3</sup> It is not intended to inform the Magistrates Court's decision about a person's criminal responsibility or fitness to stand trial.

If that power is exercised, the medical practitioner who performed the examination must provide the court with a written report setting out their recommendations/decisions and, if desirable, recommendations for the person's further treatment and care.<sup>4</sup>

### **Implementation of the Act**

Relevantly, a new Practice Direction (PD 2017/1) has been released. That direction outlines the procedure with respect to 'Mental Health Assessments',<sup>5</sup> as well as the powers of magistrates upon receipt of a Mental Health Assessment.<sup>6</sup>

Importantly though, that direction only applies to matters where an originating step for the proceeding is started *after* the Act's commencement (but regardless of when the offence is alleged to have occurred).

***For further inquiries or assistance, please contact Glen Cranny, Principal, Gilshenan & Luton Legal Practice on 3361 0240 or gcranny@gnl.com.au***

<sup>3</sup> Explanatory notes to the *Mental Health Amendment Bill* 2016 at page 3.

<sup>4</sup> See sections 178 and 179.

<sup>5</sup> See paragraph 4 of the practice direction for the definition of this term,

<sup>6</sup> Including: Listing the matter for hearing of the issues of fitness for trial and/or unsoundness of mind, adjourning the complaint and ordering an examination of the defendant or a referral for treatment, and dismissal of the complaint.