



MAGISTRATES COURT

TASMANIA

Mental Health Diversion List

Procedural Manual

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Version 1

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1. Project Background

Discussions concerning the efficacy of establishing a separate list for criminal justice defendants who are suffering some form of mental illness or associated disability have been occurring over a period of time in Hobart. The discussions centred on the desirability of establishing a separate list with a single Magistrate for eligible adult offenders in the Hobart registry. These discussions resulted in the preparation of a discussion paper and a formal project proposal by the Deputy Chief Magistrate, Mr Michael Hill. The Project Proposal was later approved by the Magistrates Court of Tasmania's *Court Management Group* for the implementation of a trial for a twelve-month period.

These defendants offend usually in a nuisance type way i.e. shoplifting, disorderly conduct and the like and they have always been dealt with in the general lists where there is little time to consider the reasons for their offending. They are usually repeat offenders. They present some problems in sentencing as they often have no money with which to pay a fine, and their offences are not serious enough for gaol or community service orders.

The intent of the Mental Health Diversion List (MHDL) is to establish a specialised mental health list in the Hobart registry of the Tasmanian Magistrates Court where mentally disordered defendants can be dealt with in appropriate ways to reduce re-offending.

There are currently in Hobart on average approximately 500 defendants who are referred by the Court to Forensic Mental Health Court Liaison Officers each year for assessment.

2. General Program Description

The Mental Health Diversion List Program is a twelve-month pilot program that will operate with a dedicated Magistrate in the Hobart registry of the Tasmanian Magistrates Court.

2.1 Program Objectives

The main project objective is to provide an opportunity for eligible individuals to voluntarily address their mental health and/or disability needs associated with offending behaviour.

2.2 Intended Program Outcomes

The program aims to achieve the following objectives and will be evaluated to this extent.

- **Achieve efficiencies in court processes:**

Defendants with mental health issues present 'challenges' to the court process due to their complex needs. They often present as unreliable and have difficulty attending and remembering appointments. Streamlining the process through a separate list and a dedicated Magistrate reduces the uncertainty in this process for defendants and for the support staff that provide expert advice to the Court. This has the potential of reducing the number of listings that have to be rescheduled in general court lists, thereby improving listing potential for all Magistrates.

- **Achieve long-term efficiencies for the Court and the community by reducing reoffending:**

By utilising therapeutic jurisprudence techniques the potential exists to address the offender's mental illness, improve the general health of defendants and improve the criminal justice response to mental illness. Repeat appearances in the court over the longer term are therefore reduced.

2.3 Target Population

The Mental Health Diversion List Program targets adult offenders in the catchment area of the Hobart Magistrates Court, who have access to the services provided through the Forensic Mental Health Court Liaison Service.

To be eligible for the program, participants must have impaired intellectual or mental functioning arising from a "mental illness" as defined in the *Mental Health Act 1996*.

2.3.1 Definition of Mental Illness

For the purposes of the MHDL program the definition of mental illness will be as defined in section 4 of the *Mental Health Act 1996* :

Meaning of "mental illness"

- (1) A mental illness is a mental condition resulting in –
 - (a) serious distortion of perception or thought; or
 - (b) serious impairment or disturbance of the capacity for rational thought; or
 - (c) serious mood disorder; or
 - (d) involuntary behaviour or serious impairment of the capacity to control behaviour.
- (2) A diagnosis of mental illness may not be based solely on –
 - (a) antisocial behaviour; or
 - (b) intellectual or behavioural nonconformity; or
 - (c) intellectual disability; or
 - (d) intoxication by reason of alcohol or a drug.

2.3.2 Exclusionary Issues

The Mental Health Diversion List will only be available where the defendant is charged with an offence that can be heard summarily, and excludes: -

- Sexual offences;
- Offences involving the infliction of actual bodily harm that, in the Court's opinion, was not minor harm

2.3.3 Existing Orders

The existence of any current community-based sentencing orders would not disqualify a defendant for consideration for referral to the MHDL Program

3. Mental Health Diversion List Referral Processes

3.1 *Referrals from the General List*

Early referrals to the MHDL program are encouraged in order to maximise the opportunity for therapeutic interventions. It is therefore anticipated that applications for referral to the MHD List will be made where possible at first appearances before a Magistrate. This does not preclude applications being made at any point of the criminal justice process prior to finalisation.

3.1.1 Applications for referral

Applications for referral can be made to a Magistrate by: -

- Defendants
- Tasmania Police (including Southern Regional Prosecution Services)
- Solicitors
- Mental Health Case Managers
- Other Service Providers
- Anyone with a genuine interest in the welfare of the defendant

Applications

- may be made verbally; and
- must provide the Magistrate with sufficient detail to justify referral to the diversion list, based on the eligibility criteria.

3.1.2 Matters considered in referral

When considering an application to refer a person to the program, a Magistrate may take into account:

- The opinion of court-based service providers,
- The nature of the charges,
- The wishes of the complainant,
- Any other matter the court considers to be relevant

For an individual to be accepted onto the program there is no formal requirement to plead guilty to any offence. However, the Court needs to know that the matter is not under dispute nor likely to be contested.

Notwithstanding the above, where a defendant has other charges pending before the Court, the referring Magistrate may decide, in consultation with counsel and the prosecutor, whether all matters should be transferred to the MHD List.

3.1.3 Explanation of process to defendant

Before referral to the MHD List, a defendant is to be asked if the court and treatment processes have been fully explained and whether they understand and accept those processes. The court may be adjourned in order for the defendant to be referred to Forensic Mental Health Court Liaison Officer for this purpose. The defendant's legal representative can be present if requested.

3.1.4 Consent

The defendant, or defendant's guardian, is required to consent to assessment for the program. If consent is not given, the defendant will remain in the normal court process. Consent is to be provided in writing on the approved Form.

3.1.5 Referral to the Diversion List

Following consent, the Magistrate may either

- 1) Bail the defendant to attend the next scheduled listing of the MHD List Magistrate or
- 2) If the period between the date of the current appearance and the next scheduled Diversion List is two weeks or more bail the person to the next listing of the MHD List Magistrate with the following bail conditions: -
 - That the defendant report to the Forensic Mental Health Court Liaison Officer for the purpose of assessment for suitability for participation in the MHD List Program; and
 - That the defendant comply with the reasonable directions of the Mental Health Court Liaison Officer; and

- Any other conditions which the Magistrate deems necessary e.g. residence

4. The Diversion List

The Deputy Chief Magistrate, Mr Michael Hill, will preside over the mental health diversion list once per month commencing Thursday 24 May 2007 and thereafter on the last Thursday afternoon of each month. This frequency may be altered depending on demand. The MHD List is conducted in open Court.

4.1 Preliminary Assessment

If the defendant has been referred from the general list without assessment, the MHD List (DL) Magistrate may adjourn the proceedings for a short preliminary assessment to be provided to the same court session that day.

The purpose of a preliminary assessment is to enable the Forensic Mental Health Court Liaison Officer to provide a verbal report concerning a person's eligibility for the program and mental health or disability needs.

4.1.1 Options following preliminary assessment

Following preliminary assessment the Magistrate may: -

- a) Immediately refer the person to the Mental Health Court Diversion Program in which case the court proceedings are adjourned to allow the participant to obtain treatment in accordance with the Treatment Plan. The bail conditions will reflect this agreed program, or
- b) Adjourn any court proceedings to allow an assessment of the person's suitability to be referred to the program.

If the preliminary assessment does not indicate a current mental impairment, or the Magistrate deems that the person should not be dealt with through the Program, the person will be returned to the normal court process. The person retains the option of pursuing a defence through section

16 of the *Criminal Code*, or making an application that he or she is unfit to stand trial pursuant to the *Criminal Justice (Mental Impairment) Act 1999*.

4.2 Full Assessment

The purpose of a full assessment is to determine the defendant's suitability for the program and for the preparation of a proposed Treatment Plan.

A full assessment will require a written report to be provided by the Forensic Mental Health Court Liaison Officer to the next scheduled MHD List. The Report must indicate the relevant details of the proposed treatment plan and anticipated length of treatment.

4.2.1 Options following full assessment

Following full assessment the Magistrate may: -

- a) Refer the person to the Mental Health Court Diversion Program in which case the court proceedings are adjourned to allow the participant to obtain treatment in accordance with the Treatment Plan. The bail conditions will reflect this agreed program. The Magistrate may include bail conditions, which require the defendant to attend scheduled MHD List days during treatment; or;
- b) If the full assessment does not indicate a current mental impairment, or the Magistrate deems that the person should not be dealt with through the Program, the person will be returned to the normal court process. The person retains the option of pursuing a defence through section 16 of the *Criminal Code*, or making an application that he or she is unfit to stand trial pursuant to the *Criminal Justice (Mental Impairment) Act 1999*.

The ultimate discretion to admit a person to the program lies with the Magistrate

4.3 Consent to participation

The person, or person's guardian, is required to provide written consent to participation in the Mental Health Court Diversion Program, in accordance with the approved Form. This consent also includes the participant's consent to sharing of information between service providers and consent to participate in the actual program.

If consent is not given, the person will be referred back to the normal court process.

5. The Mental Health Diversion List Program

5.1 *The Treatment Plan*

The Forensic Mental Health Court Liaison Officer will provide the Magistrate with details of a treatment plan after consultation with the participant and service providers.

During the program, participants will be supported by the Forensic Mental Health Court Liaison Officer, who will provide advice to participants and service providers; and liaise with them in regard to service provision and the participant's progress.

5.2 *Court Review*

A MHD List will be scheduled for a Thursday in each month. Participant's bail conditions will include the need to attend the scheduled Court listings as required.

5.2.1 Participants

Attendees at the MHD List will include: -

- The Magistrate
- Police Prosecution
- Defence Lawyers (including Legal Aid)
- Forensic Mental Health Court Liaison Officers
- The defendant and
- Any other person the Magistrate deems relevant to proceedings.

At these reviews the Forensic Mental Health Court Liaison Officer will provide a short verbal report on the participant's progress in treatment. The Magistrate, Police and defence lawyers may use this information in determining matters relating to further participation.

5.2.2 Participant Attendance

The Magistrate may excuse the defendant from appearing in court for their reviews. However, all participants will be required to appear for a final determination at the end of the adjournment period.

Non-appearance at a MHD List hearing may prevent further participation in that process.

5.2.3 Program Compliance

Interim Court Reviews

Program compliance at interim MHDL reviews may result in any one or combination of the following options: -

- verbal encouragement being provided to the participant; or
- adjustments to the treatment plan and/or supervision requirements, if recommended by the mhcl officer; or
- finalisation of the Mental Health Diversion Program.

Final Court Review

Where the participant is fully compliant with the treatment plan, the Forensic Mental Health Court Liaison Officer will provide a verbal report to the Court, which describes the participant's involvement and progress throughout their time with the Program.

In finalising the matter the Magistrate may take into account the participant's involvement in the program but in any case. This may include a discussion in open Court involving Defence Counsel and Police Prosecution to consider withdrawing criminal charges in the event that the participant has successfully completed the Program. However, the Magistrate also retains the full option of sentencing orders available under the *Sentencing Act, 1997*.

5.2.4 Program Non-compliance

Program non-compliance at interim Court reviews may result in any one or combination of the following options: -

- verbal sanctions being provided to the participant; or
- adjustments to the treatment plan and/or supervision requirements, if recommended by the Forensic Mental Health Court Liaison Officer; or
- exclusion from further participation in the Mental Health Diversion Program.

Warrant of Arrest

Where a warrant of arrest has been issued for non-attendance the participant will reappear through the general list. Any decision on whether to allow an arrested defendant to resume participation on the Mental Health Diversion List will be made by the relevant Magistrate.

Further Exclusion from the Program

Where the participant is further excluded from participation in the program:-

- their charges are returned to the normal court process;
- non-compliance would not adversely affect the continuation or determination of that matter through the court.
- the individual also retains the option of pursuing a defence through section 16 of the *Criminal Code* .