



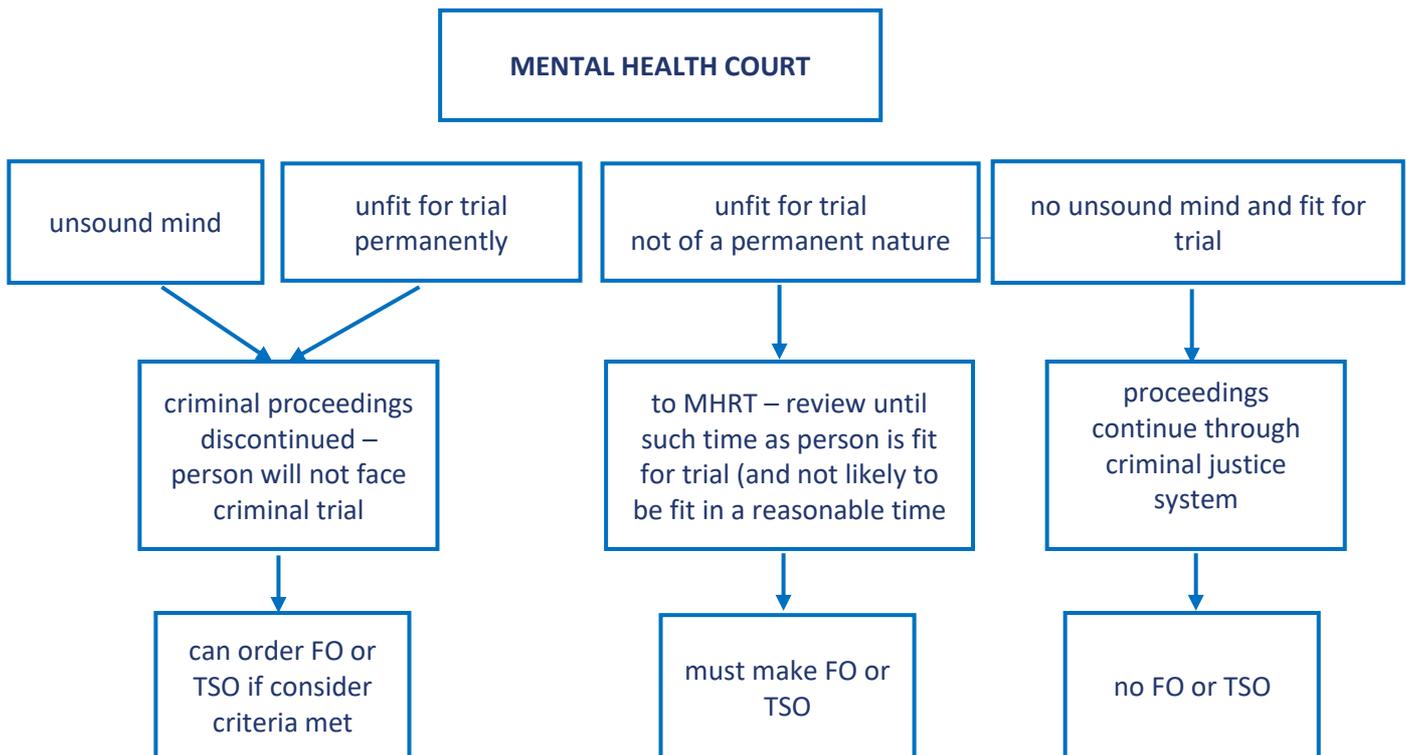
Preparing for an MHRT Hearing

Fitness for Trial

BACKGROUND - MENTAL HEALTH COURT DECISIONS

If a person is charged with a serious offence, a relevant person (e.g. the person themselves, their lawyer or the Director of Public Prosecutions) may refer the matter to the Mental Health Court (**MHC**) if they believe the person:

1. was of unsound mind at the time of the offence; or
2. unfit for trial.



MENTAL HEALTH REVIEW TRIBUNAL

When does the MHRT review a person's fitness for trial?

Periodically - during first year: each 3 months, then each 6 months

On application by the patient, an interested person for the patient or the Chief Psychiatrist/Director of Forensic Disability.

On initiation by the MHRT



Will the MHRT review the person's fitness for trial and other order at the same time?

Maybe.

Hearings Coordinators will try to schedule multiple reviews for the same person at the same time. Sometimes, however, this will not be possible.

For example, fitness for trial is reviewed every 3 months in the first year and forensic orders and treatment support orders are reviewed every 6 months. Also, if a review of a person's fitness for trial is due to an application or is tribunal-initiated, the person may not be due for a review of their forensic order or treatment support order and so the fitness for trial review will occur in isolation.

What is the MHRT deciding at a FFT hearing?

The MHRT must consider the person's mental state and decide...

fit for trial

unfit for trial

From 1 year onwards:
whether likely to be
fit for trial in a
reasonable time

What are the criteria for someone to be fit for trial?

The Act does not set out criteria for fitness for trial. In recent decisions, the MHC has confirmed that the criteria for deciding fitness for trial are those taken from a Supreme Court of Victoria case by the name of *R v Presser* [1958] VR 45 - the criteria may be referred to as the "*Presser criteria*".

To be fit for trial, the person must be able to do every one of the following:

1. Have an understanding of the charges against them and be able to enter a plea at their trial.
2. Have the capacity to understand, if informed, their right to challenge a prospective juror and has the ability to do so.
3. Understand that the proceedings are an inquiry into the offences allegedly committed by them and to determine guilt or otherwise. (It is not necessary for the patient to understand the purpose of the various court formalities.)
4. Have a general understanding of what will occur in the court proceedings.
5. Have the capacity to understand the effect of the Crown allegations against him/her including the evidence given by the Crown witnesses.
6. Make a decision as to whether to give evidence and be able to relate his/her own version of the facts of the alleged offences to both the Court and to legal representatives.
7. Have the capacity to be able to make a decision as to their defence



What does the treating team need to prepare for a fitness for trial hearing?

An up to date clinical report.

As with reviews of FOs and TSOs, the treating practitioner for the person must prepare a clinical report using the template provided by the MHRT.

The same rules regarding provision of the clinical report to the MHRT and the patient at least 7 clear days before the hearing apply to FFT reviews.

The treating team can apply for a confidentiality order ahead of a FFT review in the same way as any other review.

Tips for completing the clinical report

1. Address every one of the Presser criteria listed above in the clinical report.
2. Give your opinion for every one of the Presser criteria regarding whether they are satisfied or not.
3. Give reasons for your opinion on each of the Presser criteria.
4. Provide an overall opinion on whether the person is fit for trial.
5. For the fourth and subsequent reviews, if your opinion is that the person is not fit for trial, also provide an opinion on whether the person is likely to be fit within a reasonable time.

Examples: Clinical report content

When you consider the person **is not fit** for trial:

“Mr X was able to understand the meaning of a plea of guilty and not guilty, and that his lawyer was there to assist him and the judge gave the sentence. However, his understanding of court proceedings appeared very basic. I would consider his capacity to follow court proceedings and understand the substantive effect of any evidence against him to be impaired.”

“Mrs X’s ongoing persecutory delusions and disorganisation would be likely to impact on her capacity to instruct her lawyer.”

“Mr X’s judgment is impaired and he demonstrated poor insight into his mental illness, his current legal circumstances, or the decision-making powers and role of the MHRT and MHC despite these matters having being discussed with him on multiple occasions.”

“It is my opinion that Mrs X is currently unfit for trial due to her ongoing severe psychotic symptoms and associated disorganisation and difficulty understanding and retaining information. She would be unable to sustain attention and concentration in court, and she would not be able to provide evidence as she is not able to provide a coherent account. She would likely display disorganised behaviours that would disrupt the conduct of the court.”



“This is the fifth review of Mrs X’s fitness for trial. There has been little change in her presentation. Given her ongoing presentation and inability to proceed with a trial of ECT or Clozapine due to her poor cardiac function, and limited range of different psychotropics over many years, her prognosis is very guarded. In my opinion, Mrs X is not fit for trial and is unlikely to be fit within a reasonable time.”

When you consider the person **is fit** for trial:

“Mr X was able to talk about the charges. He knew the nature of the charges against him and was able to talk about the details of the alleged offences. In Mr X’s understanding, the court has a judge, jury and lawyers. He said that his lawyer will talk for him. Mr X was also able to talk about the possible sentences for anyone convicted of the offences.”

“Mrs X is showing improvement in her mental state after starting Clozapine. She is not experiencing psychotic or mood symptoms at present. Mrs X is able to talk about the alleged offences without distress, while denying that she did not do them. Mrs X is able to understand about the court system and identifies her rights. Mrs X also understands the possible sentence if she is proven guilty. In my opinion, Mrs X has the capacity to plead to the court and is fit for trial.”

“Mr X was able to sit for an interview and speak coherently and at length on the subject of his charges. He was able to name the charges and describe the circumstances in which they were brought. He was able to differentiate between these charges before the court and previous matters that lead to being placed on a forensic order. He was able to describe in detail the expected court proceedings from presenting the evidence to the potential ramifications of his pleading either guilty or not guilty. He knew who would represent him in court, his rights within the court system and the other members of the court he expected to be present and the roles they played. He understood the potential consequences of being found guilty and he was able to explain how he planned to plead with a sound rationale behind his decision.”

“Mr X has had a period of stability during which time his mental state has improved and barring a relapse of drugs or alcohol, I believe that he would remain fit for trial within the short term. The court process is unlikely to cause a significant deterioration in his mental state.”

“Mrs X was interviewed by Dr P for the purpose of a fitness for trial assessment. Mrs X understands each charge brought against her. She understands what is meant by a plea (i.e pleading guilty or not guilty). She has her own version of the events surrounding each charge, and knows how to express her views in the courtroom and instruct her lawyer appropriately. She is aware of the court proceedings and what would constitute a trial. She has the ability to decide on her defence. During the interview, Dr P went through each charge and assessed each of the criteria for fitness for trial. In my opinion, she is fit for trial.”

“Mr X’s comprehension of the nature and consequences of court proceedings and fitness for trial has been assessed. Mr X’s mental state has improved considerably. He has responded well to medication changes and his depressive symptoms have resolved and his psychotic symptoms have greatly attenuated. When reviewed on [date], Mr X’s understanding of the nature and consequences of court proceedings was much improved and delusions of persecution were no longer apparent in relation to his understanding of these matters. He stated that he is worried about going to jail, however, this appeared to be due to reality based concerns. In relation to criminal charges, he stated that he is worried about the potential outcomes of a trial. He recognised that his charges are serious in nature and said “I am frightened, I don’t know what is going to happen to me.”

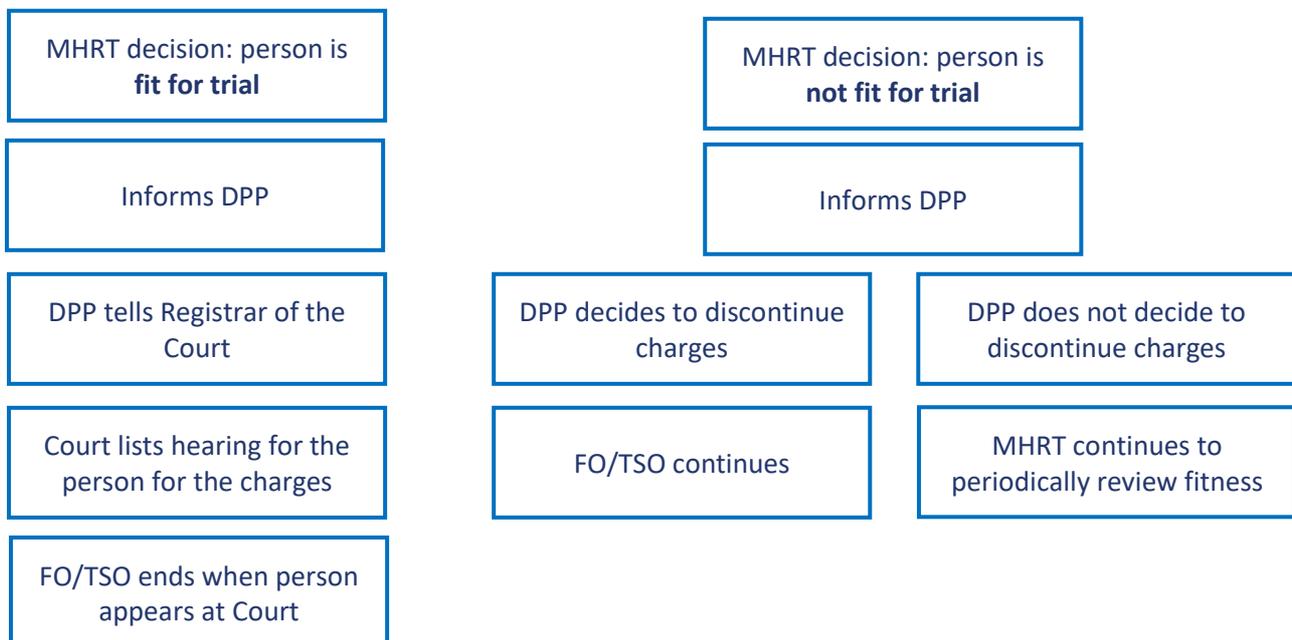


Mr X said that the judge “might turn on me”, however, when this was explored further, his concern did not appear to be a reflection of delusional beliefs but rather a worry based on past experiences. He was receptive to education about the impartiality of the judge.

He was aware of the meaning of making a plea, “saying whether I am guilty or not guilty” and he had an understanding of the meaning of guilt or innocence. He expressed a willingness to work with his lawyer and while he was worried about what he would say to his lawyer due to his poor memory, he accepted that he could be open with them about what he can and cannot recall. He was interested in discussing measures to maintain his wellbeing in prison while awaiting trial, including continuing to see a psychiatrist and taking his medications.”

“In my opinion, Mrs X is fit for trial. Her burden of psychotic and mood symptoms have ameliorated and her thought disorder has resolved. She is currently able to meaningfully participate in a discussion of matters related to a trial and her beliefs about the roles and circumstances involved in a trial are no longer clouded by delusional thought processes. Although her understanding of court processes is basic at times, and she requires education about the specifics of certain processes, such as jury selection, she is able to give meaningful responses when these issues are discussed and she would be capable of giving instructions to a lawyer.”

What happens after the MHRT’s decision regarding fitness for trial?



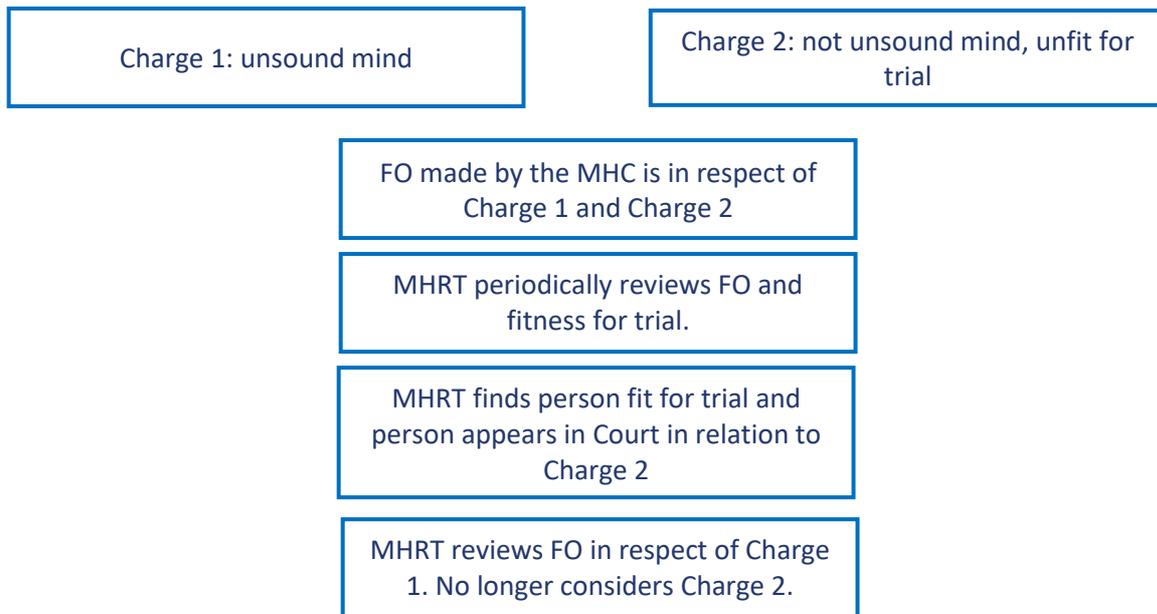
What happens if the person was charged with multiple offences that were considered by the MHC?

If the MHC made different decisions in respect of a person’s charges, there may be different consequences for the person’s forensic order or treatment support order.



For example, say a person appeared before the MHC in relation to 2 charges:

- Charge 1: the MHC found the person to be of unsound mind at the time of the alleged offence and made a FO.
- Charge 2: the MHC found the person to be of sound mind in relation to the alleged offence but found the person to be unfit for trial, not of a permanent nature and made an FO.



Prescribed period – discontinuing of charges

If the MHRT do not find the person fit for trial within a set period and the DPP have not already discontinued the proceedings, the proceedings for the relevant charge will automatically be discontinued.

The set period depends on the maximum punishment for which the person would be liable if they were found guilty of the offence:

