



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.

What does it mean if a person is found unfit for trial?

The MHC considers that the person is not mentally or intellectually competent to understand and participate in the court proceedings relating to the criminal charges.

Permanent

- Charges discontinued
- No further reviews of fitness for trial
- Court may make an FO or TSO

Not permanent

- Charges paused
- MHRT reviews person's fitness
- Court must make an FO or TSO

The MHC may decide that the person's unfitness for trial is **permanent**. In that case, the criminal proceedings will be discontinued and the person will not face criminal trial for the offences. The MHC may order a forensic order or treatment support order if appropriate.

Alternatively, the MHC may decide that the person's unfitness for trial is **not** of a permanent nature. The criminal charges are put on hold and the MHC will make a forensic order or treatment support order. In addition, the matter will be referred to the MHRT who will regularly review the person to decide whether they remain unfit for trial.

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 matters for the same person at the same time. Sometimes, however, this will not be possible.



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



Periodic

- During the first year: each 3 months
- After the first year: each 6 months



Application

- When an application for review is received
- From: the patient, an interested person for the patient, the Chief Psychiatrist / Director of Forensic Disability



Tribunal-initiated

- The Tribunal itself can decide to schedule a review

What is the MHRT deciding at a FFT hearing?

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



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

An up to date clinical report.

As with reviews of forensic orders and treatment support orders, the treating practitioner for the person must prepare a clinical report using the template provided by the MHRT.

NOTE: There is a different clinical report template for fitness for trial reviews.

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

The treating team can apply for a confidentiality order ahead of a fitness for trial review in the same way as other reviews.



How does the MHRT decide if someone is fit for trial?

The *Mental Health Act 2016* does not set out criteria. The MHC has confirmed that the criteria are those taken from a Court 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 **all** 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.**

In the clinical report:

Address every one of the Presser criteria

For each of the Presser criteria: give an opinion on whether the person can meet it or not

Give reasons for your opinion on each of the Presser criteria

Provide information about how you tested the person's understanding

Provide an overall opinion on whether the person is fit for trial

After 1st year: if your opinion is the person is not fit, give an opinion on whether the person will be fit within a reasonable time



The following text provides examples of how to address Presser criteria in the clinical report. They are intended to provide guidance only and do not represent a complete clinical report.

The person is not fit for trial

Mr X was able to understand the meaning of a plea of guilty and not guilty, 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, and the decision making powers and role of the MHRT and MHC. This is despite these matters having been 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. She has great difficulty in understanding and retaining information. She would be unable to sustain attention and concentration in court and would not be able to provide evidence as she is not able to provide a coherent account.

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

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 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 about to talk about the possible sentences for anyone convicted of such offences.

Mrs X was able to sit for an interview and speak coherently and at length about the charges. She was able to describe court proceedings in detail, from presenting the evidence to the potential ramifications of pleading either guilty or not guilty. She knew who would represent her and the role they played. She understood the consequences of being found guilty.



Mr X understands each charge and what is meant by a plea. 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. She is aware of the court proceedings and what would constitute a trial. She has the ability to decide on her defence.

Mrs X's comprehension of the nature and consequences of court proceedings and fitness for trial has been assessed. Her mental state has improved considerably. She has responded well to medication changes and her depressive symptoms have resolved. When reviewed on [date], Mrs X understood the following concepts...

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.

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

Fit for trial

- Criminal court lists hearing for the person
- FO/TSO ends when the person appears at Court

Not fit for trial

- MHRT continues to review fitness
- DPP may decide to discontinue charges – if so, MHRT reviews cease
- FO/TSO continues

What happens if the person was charged with multiple offences?

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 forensic order.
- 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 forensic order.

If the MHRT finds the person is subsequently fit for trial, the forensic order will end in relation to Charge 2 but will continue in relation to Charge 1.



When will the MHRT's review of fitness for trial end?

If the MHRT do not find the person fit for trial within a set period (known as the prescribed period), the proceedings for the criminal charge will automatically be discontinued and the person will not face trial. However, reviews of the person's forensic order or treatment support order will continue.

The prescribed period depends on the maximum possible punishment for the criminal charge.

Life imprisonment: 7 years from the day the MHC decided the person was unfit for trial

Any other: 3 years from the day the MHC decided the person was unfit for trial

NOTE: Any period that the person was a patient required to return will not be counted towards the prescribed period.

Where can I go for more information?

Staff of the MHRT are available to assist through the provision of general training about fitness for trial matters. Please contact MHRT.Enquiry@mhrt.qld.gov.au if you would like to arrange an education session.