

Mental illness and serious crime

When someone with a mental illness has been charged with a criminal offence, the legal and emotional consequences can be distressing and confusing for the victim. Families and individuals affected by serious acts of violence will have a range of experiences and feelings towards the person who committed the offence.

This information sheet explains how a person who has committed an act of violence can be found not guilty by reason of mental illness, within the criminal justice system in NSW.

What happens when a person with a mental illness has been arrested?

There are a range of mental illnesses that can affect a person's thinking and behaviour in different ways. Most people who have a mental illness live with their symptoms all their life without ever harming anyone. In cases of serious acts resulting in criminal charges where the person has a mental illness the law recognises that the person may not be legally responsible for their actions.

If a person has been arrested and charged with a serious offence the case will usually be heard in the District or Supreme Court. In certain circumstances the matter may be dealt with by a magistrate in a local court. If mental illness is a factor in the case the person charged may raise a defence of mental illness. This means that they are not responsible for their actions because of their mental illness. If this defence is successful the person can be found not guilty of the charges by reason of mental illness. If the defence is unsuccessful then the court may convict the person of the crime. Alternatively, if the court finds the person did not commit the act, then the person may be acquitted.

What does not guilty by reason of mental illness mean?

Persons with a mental illness may be so unwell that they have committed the act without the motive or intention that allows them to be found guilty of a crime. Not guilty by reason of mental illness means that the court has accepted that the person committed the act but because of their mental illness, they are not legally responsible for their actions. Subsequently, no conviction is recorded against the person's name.

Often, victims of serious crime can feel betrayed and angry by the criminal justice system and feel that they will receive little recognition for what happened to

them. For victims, the term not guilty can imply that the crime isn't acknowledged or recognised. However there are serious consequences for persons found not guilty by reason of mental illness, and it is important that victims understand what happens next.

What happens after a finding of not guilty by reason of mental illness is made?

The court may order that the person be detained in a place and in a manner as the court thinks appropriate. The court may also order that the person be released from custody. The court may elect to attach conditions of care and treatment to this release. However, before the person is released, the court must assess public endangerment and in the majority of cases a period of care and treatment is required (either while the person is detained, or while the person is in the community).

Order for detention

- Most commonly, the court orders the person to be detained in a secure psychiatric unit in a hospital. In NSW some of these secure units are situated within the correctional centres.

Conditional release

- Where the person is released to the community on conditions. There are a range of conditions available which may include compulsory treatment, abstinence from alcohol or other substances and restrictions on travel and movements. The court must consider the safety of the community and the patient when ordering release.

Unconditional release

- Where the person is released to the community without any care or treatment conditions. This kind of order is only made when the court is satisfied that the patient poses no significant risk of harm to themselves or the community.

The court must assess public endangerment and in the majority of cases a period of care and treatment of the mental illness is required.

What is a forensic patient?

A person who has been found not guilty by reason of mental illness and is under a court ordered detention or conditional release is a forensic patient. A person stops being a forensic patient when they are released unconditionally.

The Mental Health Review Tribunal must review the person as soon as practicable following the finding of not guilty by reason of mental illness, and then at least once every six months thereafter.

What is the Mental Health Review Tribunal?

The Mental Health Review Tribunal is a quasi-judicial body made up of a three member expert panel, which includes a lawyer, a psychiatrist and another member with appropriate qualifications. In the case of forensic patients the lawyer member of the panel must always be either the President or a Deputy President of the Tribunal.

The Tribunal's main function is to review and make orders concerning the forensic patient's continued detention, care and treatment, or release (either subject to conditions or unconditionally). These orders may stipulate where the patient is to be detained, under what kind of security, the range and kinds of leave (if any), and, if the patient is on conditional release, the range and kinds of conditions which apply to allow the patient's continuing presence in the community.

When considering an application for release (either conditionally or unconditionally) the presiding member of the Tribunal must be the current or former holder of a judicial office. Before ordering the release of a forensic patient the Tribunal must consider the risk of serious endangerment to the person or to the community as well as whether or not other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient.

The *Mental Health (Forensic Provisions) Act 1990* recognises the concerns registered victims may hold in relation to the grant of leave or conditional release of forensic patients. The legislation therefore provides that registered victims may seek the following conditions be placed on leave or conditional release:

- Non-association condition; or
- Place restriction condition.

Once these conditions are attached, registered victims can request to have them varied as their circumstances change.

Registered victims, if they so choose, will be notified prior to each review whether leave or release is being sought so that they are able to make the application at the same time as the leave or release application is being considered by the Tribunal.

What is the Forensic Patient Victims Register?

The Forensic Patient Victims Register is administered by the Forensic Division of the Mental Health Review Tribunal. The services offered to victims of an offence committed by a forensic patient are:

- Victims can request one or more of the following:
 - i. Notification of all Tribunal hearings
 - ii. Notification of Tribunal hearings only where leave or release is being applied for
 - iii. Notification of all Tribunal determinations
 - iv. Notification of Tribunal determinations only where leave or release was applied for
 - v. Notification of Tribunal determination only where leave or release was granted
 - vi. Notification if the forensic patient absconds or breaches their conditions of leave or release
 - vii. Notification of Administrative Orders.
- Receiving submissions for the Tribunal hearings.
- Information and explanation about the types of leave and release orders.

Following a serious crime an officer for the Director of Public Prosecutions provides survivor victims and relatives and loved ones of victims of crime with information about agencies that support victims of crime. Information about the Forensic Patient Victims Register is also provided. On receipt of the completed application the Tribunal will enter the victim's details into the Forensic Database and notifications will be made in accordance with the wishes of the registered victim. Details relating to the registered victim are confidential with the exception of the name of the registered victim.

Is there any information that I cannot get?

Yes, information relating to the care and treatment of the forensic patient remains confidential and cannot be released.

Do I have to attend the hearing every six months?

No, the Tribunal will notify registered victims of what application will be made before each Tribunal review. Registered Victims will therefore know in advance whether an application for leave or release is being made, for which they might wish to apply for a non-association or place restriction condition to be included. If a registered victim does want to make a submission to the Tribunal, they do not have to attend the hearings to do so.

The Tribunal accepts written submissions from anyone who is registered as a victim in the case of a forensic patient. Once the Tribunal has received a written submission, the contents will be provided to the patient's legal representative. The Tribunal will consider any victim submissions and weigh these up along with the other evidence presented, before making its determination.

Further information and contacts

To obtain further information about mental health and serious crime, you can contact the following organisations:

Forensic Division, Mental Health Review Tribunal

The Forensic Division, Mental Health Review Tribunal can offer information about the Forensic Patient Victims Register and further information about the legal process.

Phone (02) 9816 5955
Freecall 1800 815 511
Website www.mhrt.nsw.gov.au

Witness Assistance Service, Office of the DPP

The Office of the Director of Public Prosecutions have Witness Assistance Officers that can support you through the court process and criminal justice system.

Phone (02) 9285 2502
Outside Sydney 1800 814 534
Website www.odpp.nsw.gov.au

For toll free callers wanting to speak to a regional WAS officer please ask the Head Office switchboard operator to put you through to the regional office where the WAS officer is located.

Victims Access Line

You can call the Victims Access Line for information about your rights as a victim of crime, and how to access counselling and financial assistance.

Victims Access Line 1800 633 063
Aboriginal Contact Line 1800 019 123
Hours 8am to 6pm, Mon to Fri
Fax (02) 8688 9632
Email vs@justice.nsw.gov.au
Website www.victimsservices.justice.nsw.gov.au
Street address Level 1, Justice Precinct Offices
160 Marsden Street, Parramatta

Victims support groups

Community Health Centres

Community Health Centres in your local area can offer counselling. You can find your local community health centre by phoning the hospital in your local area.

Enough is Enough Anti Violence Movement Inc

Enough is Enough Anti-Violence Movement Inc. has qualified counsellors who provide counselling and support for victims of crime and their families.

Phone (02) 9542 4029
Website www.enoughisenough.org.au

Homicide Victims Support Group (Aust) Inc

Homicide Victims Support Group (Aust) Inc. provides support, counselling, information and referrals for victims of crime.

Phone (02) 8833 8400
Freecall 1800 191 777
Website www.hvsg.com.au

Victims of Crime Assistance League Inc NSW (VOCAL)

Victims of Crime Assistance League Inc NSW (VOCAL) provides information, referral and support to people affected by serious crime.

Phone (02) 4926 2711
Website www.vocal.org.au

Charter of Victims Rights (Victims Rights and Support Act 2013)

If you are a victim of crime, you have the following rights under the Charter of Victims Rights.

1 **Courtesy, compassion and respect**
You will be treated with courtesy, compassion, cultural sensitivity and respect for your rights and dignity.

2 **Information about services and remedies**
You will be told as soon as possible about the different services that can help you, including counselling and legal services.

3 **Access to services**
If you need medical, counselling, and legal help you will be able to get it if it is available.

4 **Information about investigation of the crime**
If you ask, you will be told about how the police investigation is going. But in some cases there may be some things the police can't tell you.

5 **Information about prosecution of accused**
Prosecution is about taking the accused to court for the crime. This is done by the police or, in serious cases, the Director of Public Prosecutions.

- As a victim, you will be told:
 - what the charges are or why the accused has not been charged;
 - any decision of the prosecution to change or drop charges;
 - the date and place of the court hearing;
 - the final court result, including any appeal or gaol sentence given.
- If the prosecution is thinking about changing or dropping the charges they will have a talk to you about this if the crime:
 - was a serious sex crime, or
 - caused you physical harm, psychological or psychiatric harm.

But the prosecution don't have to talk to you if:

- you don't want to talk about it, or
- they can't find you.

6 **Information about trial process and role as witness**
If you have to give evidence as a witness in a trial you will be told about how the trial works and what you have to do.

7 **Protection from contact with accused**
While your case is in court you will be protected from contact with the accused and the defence witnesses.

8 **Protection of identity of victim**
You can keep your address and phone numbers private unless the court says different.

9 **Attendance at preliminary hearings**
You do not have to go to any committal hearing (like a mini trial) or other court business before the trial unless the court says you must.

10 **Return of property held by State**
If the police or prosecution took any of your goods as evidence you have the right to get it back as soon as possible.

11 **Protection from accused**
If you need protection tell the police or prosecution when the accused applies for bail.

12 **Information about special bail conditions**
You will be told about any special bail conditions the accused is given, which are meant to protect you or your family, like a condition which says the accused must not contact you.

13 **Information about outcome of bail application**
If you were the victim of sexual assault or other serious assault you will be told if the accused gets bail or not.

14 **Victim impact statement**
In some cases you may be able to tell the court about how the crime has affected you and you will be given help and support to do this. This is called giving a 'victim impact statement.'

15 **Information about impending release, escape or eligibility for absence from custody**
If the offender is in gaol you can be told if the offender is going to be released from gaol soon, has escaped gaol or is on day release.

16 **Submissions on parole and eligibility for absence from custody of serious offenders**
You can have a say if the offender applies for parole.

17 **Financial assistance for victims of personal violence**
If you have been injured as a result of serious personal violence, you may be eligible for financial assistance under the Victims Support Scheme.

18 **Information about complaint procedure where Charter is breached**
You can make a complaint if you think your rights under the Charter have not been met. You can ask for information about how to do this.