

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 fact 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 or 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. There may also be conditions of care and treatment that may be attached to this release:

- 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 from detention and can live in the community. This kind of order is only made where it is considered that the person does not present a risk 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.

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 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 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, it will be provided to the patient or their 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:

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

Phone02) 9816 5955
 Freecall..... 1800 815 511

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

Phone02) 9285 8949
 Freecall..... 1800 814 534
 TTY02) 9285 8646

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.

The **Victims of Crime Bureau** can provide support and referral information to victims of crime in New South Wales 24 hours a day, 7 days a week.

Phone02) 8688 5511
 Freecall (except from mobiles) 1800 633 063
 TTY02) 8688 5575

Victim support groups

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. has qualified counsellors who provide counselling and support for victims of crime and their families.

Phone02) 9542 4029
 Website www.enoughisenough.org.au

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

Phone02) 8833 8400
 Freecall..... 1800 191 777
 Website www.hvsgnsw.org.au

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

Phone02) 4926 5826
 Website www.vocal.org.au

Charter of Victims Rights (*Victims Rights Act 1996*)

- 1 **Courtesy, compassion and respect**
A victim should be treated with courtesy, compassion, cultural sensitivity and respect for the victim's rights and dignity.
- 2 **Information about services and remedies**
A victim should be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.
- 3 **Access to services**
A victim should have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.
- 4 **Information about investigation of the crime**
A victim should, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim should be informed accordingly.
- 5 **Information about prosecution of accused**
 1. A victim should be informed in a timely manner of the following:
 - a) the charges laid against the accused or the reasons for not laying charges,
 - b) any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges,
 - c) the date and place of hearing of any charge laid against the accused,
 - d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.
 2. A victim should be consulted before a decision referred to in paragraph (b) above is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm or psychological or psychiatric harm to the victim, unless:
 - a) the victim has indicated that he or she does not wish to be so consulted, or
 - b) the whereabouts of the victim cannot be ascertained after reasonable inquiry.
- 6 **Information about trial process and role as witness**
A victim who is a witness in the trial for the crime should be informed about the trial process and the role of the victim as a witness in the prosecution of the accused.
- 7 **Protection from contact with accused**
A victim should be protected from unnecessary contact with the accused and defence witnesses during the course of court proceedings.
- 8 **Protection of identity of victim**
A victim's residential address and telephone number should not be disclosed unless a court otherwise directs.
- 9 **Attendance at preliminary hearings**
A victim should be relieved from appearing at preliminary hearings or committal hearings unless the court otherwise directs.
- 10 **Return of property of victim held by State**
If any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim should be minimised and the property returned promptly.
- 11 **Protection from accused**
A victim's need or perceived need for protection should be put before a bail authority by the prosecutor in any bail application by the accused.
- 12 **Information about special bail conditions**
A victim should be informed about any special bail conditions imposed on the accused that are designed to protect the victim or the victim's family.
- 13 **Information about outcome of bail application**
A victim should be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence.
- 14 **Victim impact statement**
A relevant victim should have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court.
- 15 **Information about impending release, escape or eligibility for absence from custody**
A victim should, on request, be kept informed of the offender's impending release, or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.
- 16 **Submissions on parole and eligibility for absence from custody of serious offenders**
A victim should, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.
- 17 **Compensation for victims of personal violence**
A victim of a crime involving sexual or other serious personal violence should be entitled to make a claim under a statutory scheme for victims compensation.