

TASMANIA
LAW REFORM
INSTITUTE

Taking part in the criminal justice system

**For people with mental illness
or cognitive impairment**

Easy Read version



How to use this document



The Tasmania Law Reform Institute (TLRI) wrote this document. When you see the word 'we', it means TLRI.



We have written this information in an easy to read way.

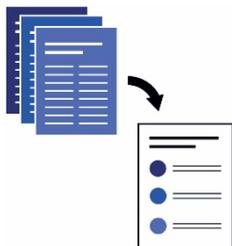
We use pictures to explain some ideas.



We have written some words in **bold**.

We explain what these words mean.

There is a list of these words on page 25.



This Easy Read document is a summary of another document.



You can find the other document on our website at www.utas.edu.au/law-reform/publications/completed-law-reform-projects



You can ask for help to read this document. A friend, family member or support person may be able to help you.

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What is this report about?



This report is about 2 groups of people who use the **criminal justice system**.



The criminal justice system includes:

- the police
- prisons
- services that help keep people out of prison
- **trials** – formal meetings in a **court**.



A court is a place where legal problems are solved.



Sometimes a **judge** solves the problems.

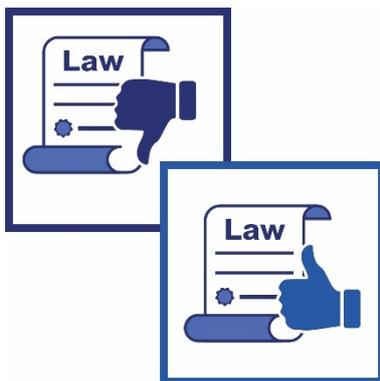


A judge is a person who is in charge of a trial in a court.



The judge tells the **jury** what they:

- need to do
- should not do.

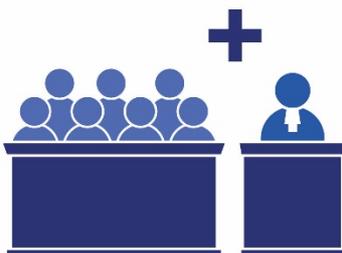


A jury is a group of people who decides if someone:

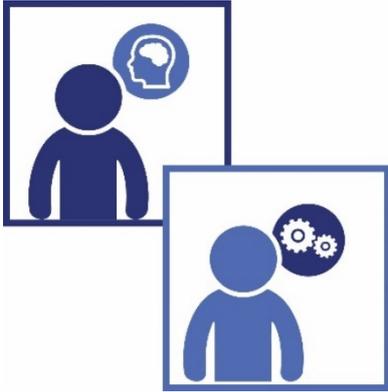
- did break the law

or

- did not break the law.



Sometimes a judge and a jury solve the problems.



The 2 groups of people we looked at were:

- people with **mental illness** – a condition that changes the way a person thinks or acts
- people with **cognitive impairment**.



A person with cognitive impairment can find it hard to:

- remember new things
- learn new things
- concentrate
- make decisions that affect their everyday life.



If a person with mental illness or cognitive impairment commits a crime, they can ask for:

- a **fitness to stand trial** assessment
- the **defence of insanity**.

We explain these in more detail on the following pages.

A fitness to stand trial assessment

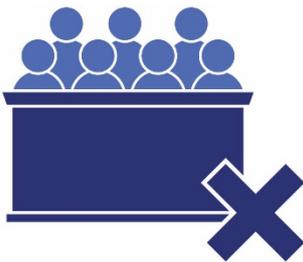


A fitness to stand trial assessment helps the court work out if someone can go to court.



They can find out if the person:

- understands what the police say they did wrong
- understands what will happen in court
- can tell their lawyer what they want.



The court can decide if the person doesn't have the **capacity** for a regular trial.

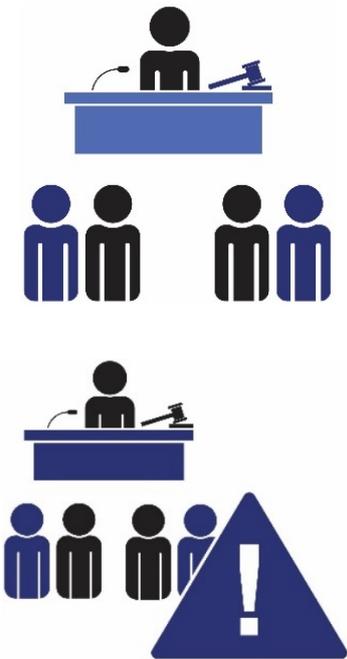
Your capacity is:



- your ability to do something
- the skills you have
- knowing the right people who can help you.



If the person can't have a regular trial, they can have a **special hearing**.



A special hearing is a lot like a regular trial.

But there are some important differences.



For example, in a regular trial, the person can be found **'guilty'**.



If you are found guilty, then there was proof to say that you committed a crime.



But in a special hearing, the person can't be found **'guilty'**.



In a special hearing, the court will say that a finding cannot be made that the person is **'not guilty'**.

The defence of insanity



A defence of insanity looks at whether someone is **criminally responsible** for what they did wrong.

If someone is criminally responsible, it means that they:



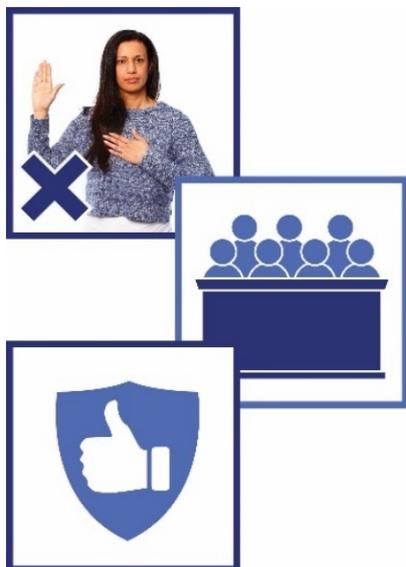
- are to blame for a crime
- understand what they did wrong.

A person is not criminally responsible if they:



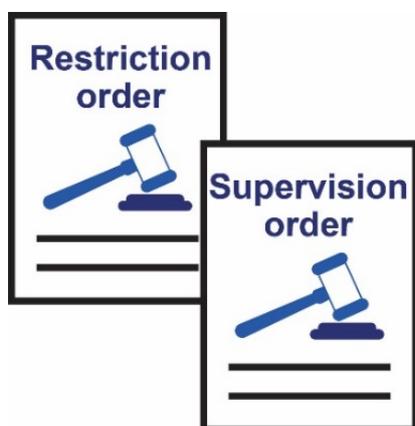
- didn't understand what they were doing
- didn't know that it was the wrong thing to do
- couldn't stop themselves from doing the wrong thing because they have a mental illness.

Forensic orders



A judge can make a **forensic order** if:

- someone is not criminally responsible for a crime
- there is a special hearing and the jury thinks that the person did what the police say they did
- they think that it will help keep the community safe.



There are 2 types of forensic orders:

- a **restriction order**
- a **supervision order**.

We explain these orders in more detail on the following pages.

Restriction order



If a judge gives a restriction order, the person must stay in a **Secure Mental Health Unit**.



A Secure Mental Health Unit is a special part of a hospital where:

- people get care for their mental illness
- aren't allowed to leave.



In Tasmania, this is the Wilfred Lopes Centre.

Supervision order

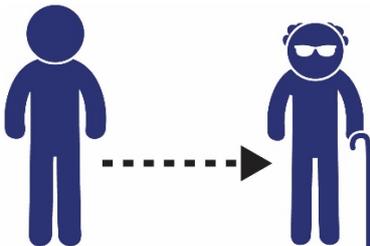


If a judge gives a supervision order, the person can stay in the community as long as they are being watched by someone.

The person may also need to:



- take medicine
- go to a doctor
- go to a counsellor to talk about how they are feeling.



A forensic order can be for the rest of a person's life.



Or a judge can decide to take it away.

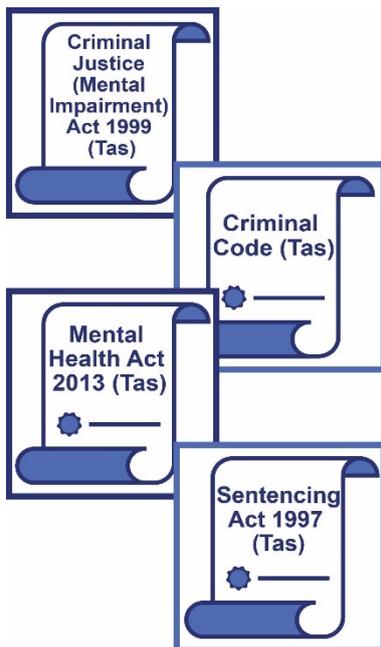
What did we do?



We talked to people and asked them questions about their experiences.



We looked at what issues there are with the laws we have now.



We looked at the:

- *Criminal Justice (Mental Impairment) Act 1999 (Tas)*
- *Criminal Code (Tas)*
- *Mental Health Act 2013 (Tas)*
- *Sentencing Act 1997 (Tas).*



We also looked at what happens in other places around Australia.

What did we find out?



We found out that there are lots of people in the criminal justice system who have:

- a mental illness
- cognitive impairment.



But there aren't many people who ask for:

- a fitness to stand trial assessment
- the defence of insanity.



We know there are barriers that stop people from asking for these things.



We also know that the laws don't use the right language.



The language they use now doesn't show respect for people with mental illness or cognitive impairment.



We think the laws need to change.



We need to make sure the laws are in line with the **United Nations Convention on the Rights of Persons with Disabilities** (UN Convention).



The UN Convention is an international agreement. It applies all around the world.



The UN Convention sets out the rights of people with disability.



It explains how people with disability should be treated fairly.



We also need to make sure the laws:

- protect the rights of people with mental illness and cognitive impairment
- are fair
- make sure people with mental illness and cognitive impairment are treated fairly
- protect the community.

What needs to change?



We think there are better ways to make sure people with mental illness or cognitive impairment can take part in the criminal justice system.



Changes to fitness to stand trial assessment

We need to make changes to the fitness to stand trial assessment.



At the moment, the assessment focuses on the person's mental illness or cognitive impairment.



Instead, the assessment needs to focus on whether someone has:

- the capacity to make decisions about key parts of their trial
- support to make their own decisions.

The assessment needs to look at whether the person:



- understands what happens if they say they 'committed the offence'



- understands what happens if they say they 'did not commit the offence'



- understands what the police say they did



- understands that they may be punished if they are found guilty



- can tell the court what they say happened, if they want to



- can tell their lawyers what they want them to do



- understands the way the court works.



More support to take part in a special hearing and a trial

There needs to be more support for people to take part in a special hearing and a trial.



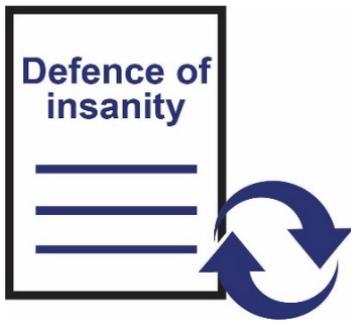
This could include:

- a communication assistant
- an **intermediary**.

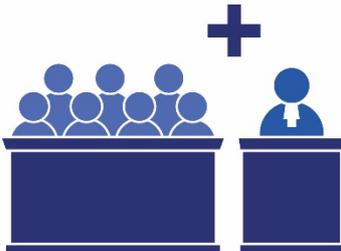


An intermediary is someone who can:

- find out the best way to communicate to a person
- find out what communication support a person needs
- tell people in the criminal justice system how to communicate with that person
- support the person to communicate.



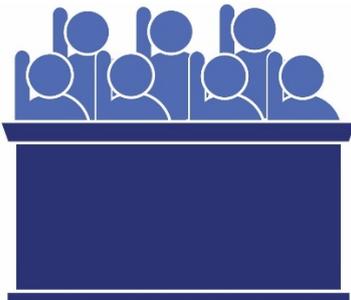
Changes to the defence of insanity



Even if the court says its ok, a jury still needs to decide if a person can use the defence of insanity.



This can be hard for the person, the victim and their family.



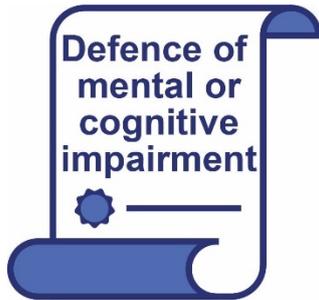
The court should agree about when it is ok to use a defence of insanity.



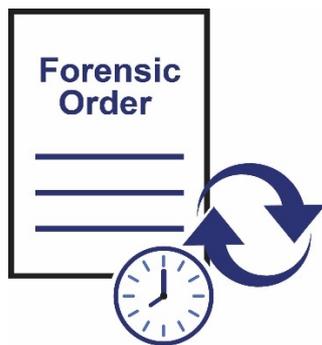
The defence of insanity law also doesn't use the right language.



The law should use language that is more respectful.



It could be changed to the defence of mental or cognitive impairment.



Changes to the time on a forensic order in treatment



If the judge makes a forensic order, there is no limit on how long it lasts.



It can be really hard to get a forensic order taken away.



It can only be taken away if the judge says so.



There should be a time limit on how long someone's forensic order lasts.



There also needs to be better support for people on forensic orders.



They should be able to show that they can live:

- away from the Secure Mental Health Unit
- in the community without someone watching them.

Word list



Capacity

Your capacity is your ability, skills and experience to reach a goal or do a task.

Cognitive impairment

A person with cognitive impairment can find it hard to:



- remember new things
- learn new things
- concentrate
- make decisions that affect their everyday life.



Court

A court is a place where legal problems are solved.

Criminal justice system



The criminal justice system includes:

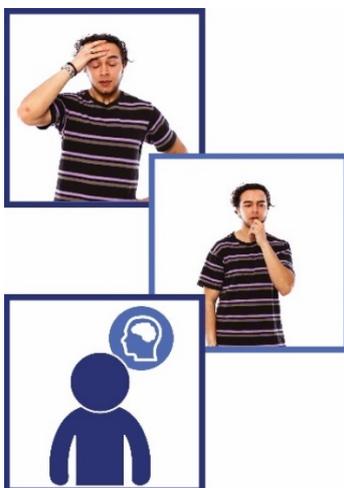
- the police
- prisons
- services that help keep people out of prison
- trials.

Criminally responsible



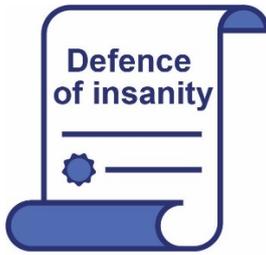
If someone is criminally responsible, it means that they:

- are to blame for a crime
- understand what they did wrong.



A person is not criminally responsible if they:

- didn't understand what they were doing
- didn't know that it was the wrong thing to do
- couldn't stop themselves from doing the wrong thing because of a mental illness.



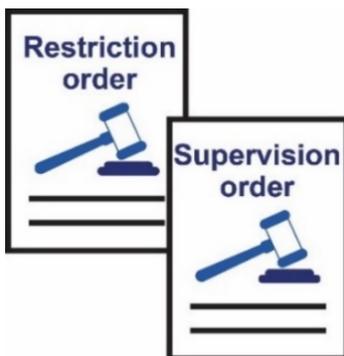
Defence of insanity

A defence of insanity looks at whether someone is criminally responsible for what they did wrong.



Fitness to stand trial assessment

A fitness to stand trial assessment helps the court work out if someone can go to court.



Forensic order

There are 2 types of forensic orders:

- a restriction order
- a supervision order.



Guilty

If you are found guilty, then there was proof to say that you committed a crime.

Intermediary

An intermediary:



- finds out the best way to communicate to a person
- finds out what communication support a person needs
- tells people in the criminal justice system how to communicate with that person
- supports the person to communicate.



Judge

A judge is a person who is in charge of a trial in a court.

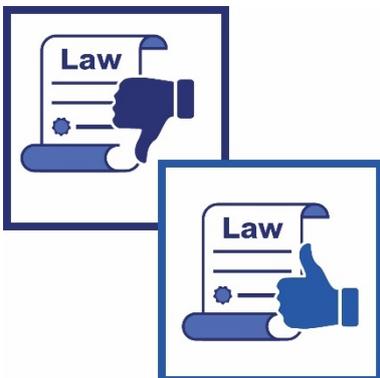
Jury

A jury is a group of people who decides if someone:

- did break the law

or

- did not break the law.





Mental illness

A condition that changes the way a person thinks or acts.



Restriction order

When a person must stay in a Secure Mental Health Unit.



Secure Mental Health Unit

A special part of a hospital where people get care for their mental illness and aren't allowed to leave.



Special hearing

A special hearing is a lot like a regular trial.

But there are some important differences.

For example, in a regular trial, the person can be found 'guilty'.

But in a special hearing, the person can't be found 'guilty'.



Supervision order

When a person can stay in the community as long as they are being watched by someone.



Trials

Formal meetings in a court.



United Nations Convention on the Rights of Persons with Disabilities

The UN Convention is an international agreement. It applies all around the world.

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