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Defence of Insanity laws under review

Tasmania's laws surrounding the fitness of an accused to stand trial and the defence of insanity are under review and public input is being sought.

The Tasmania Law Reform Institute (TLRI) today released its latest Issues Paper for public feedback, 'Review of the Defence of Insanity in s16 of the Criminal Code and Fitness to Plead'.

While many people who come into contact with the State's criminal justice system have mental and/or cognitive impairments, only a small number rely on unfitness to stand trial or the defence of insanity.

Instead they often simply plead guilty. If a person with a mental illness or a cognitive impairment relies on unfitness to stand trial or the defence of insanity, this can have long-term consequences, particularly if he or she is placed on a forensic order.

"The institute wishes to learn whether current laws strike the right balance between the need to ensure community safety, equal access to the criminal justice system, and the needs of people with disabilities," TLRI researcher Dr Rebecca Bradfield said.

"The Issues Paper asks for community comment on whether our laws should be reformed to ensure that they operate justly, effectively and consistently."

The Issues Paper will examine a number of key questions including:

- whether the insanity defence reflects contemporary understanding of mental illness and impairment;
- whether the processes for determining fitness to stand trial and establishing the defence of insanity can be improved;
- how well forensic orders work for those found not guilty by reason of insanity, or who are found not fit to stand trial but who cannot be acquitted.

There are two types of forensic orders, restriction orders and a supervision order and both are indefinite. These can be reviewed by the Mental Health Tribunal with the Supreme Court having the power to remove or change these orders.

Dr Bradfield said that her research shows that people who are placed on forensic orders are generally subject to much longer restrictions on their liberty than they would have been if they had been found guilty and sentenced in the usual way by the court.

The review of the laws was referred to the TLRI by former State Attorney-General, the late Dr Vanessa Goodwin.

The development of the Issues Paper was guided by a reference group including the Honourable Justice Helen Wood, Daryl Coates SC, Marita O'Connell, Yvonne Chaperon, Aaron Groves, Georgina O'Donnell and Associate Professor Jeremy Prichard. The research was funded by a grant from the Solicitors' Guarantee Fund.

The Issues Paper, including an easy-read version, can be found here:
<http://www.utas.edu.au/law-reform/publications/ongoing-law-reform-projects2>

Community feedback is open until 24 May 2019.

For more information or questions contact Kira White, TLRI, on 6226 2069.

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