



Kerri Eagle


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To Emma_Hoiberg@agd.nsw.gov.au

cc Jonathon Adams

bcc

Subject Submission for Criminal Appeals Review

History:  This message has been forwarded.

Dear Ms Hoiberg,

Dr Jonathon Adams and I have recently published an article on appealing a mental illness verdict in New South Wales. We believe it is of relevance to your reference on Criminal Appeals and I have attached it to this email.

In particular, there is a concern that those found not guilty by reason of mental illness in New South Wales (despite being mentally ill and possibly unfit for trial at the time) have limited avenues for appeal. The verdict carries onerous repercussions and almost invariably the loss of liberty of the accused, despite being an acquittal.

It is submitted that a review of the current appeal process for those found not guilty by reason of mental illness is warranted, with reforms directed at:

- 1) Improved transparency of processes and improved access to appeals for those mentally ill persons found not guilty by reason of mental illness; and
- 2) Appeals as of right (without leave requirements and without the need to show the defence of mental illness was not raised by the accused) particularly in circumstances where a ground of appeal is that the elements of the offence were not made out (see *R v Minani* (2005) NSWCCA 226). It may be appropriate that new evidence (not just fresh evidence) be allowed in the appeal in circumstances where the mentally ill person was incapable of identifying the evidence at the time of the original hearing.

This issue would be relevant to questions 3, 4 and 10.

Regards

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