



Media Release

07 June 2013

LAW REFORM COMMISSION REPORT ON PEOPLE WITH COGNITIVE AND MENTAL HEALTH IMPAIRMENTS IN THE CRIMINAL JUSTICE SYSTEM: CRIMINAL RESPONSIBILITY AND CONSEQUENCES

The Attorney General today tabled a Law Reform Commission report on the criminal responsibility of people with cognitive and mental health impairments in the criminal justice system. The comprehensive report makes 59 recommendations.

The report deals with people who are found “not guilty by reason of mental illness”, and people who are unfit to be tried because they cannot understand proceedings due to a mental illness or a cognitive impairment. It recommends:

- Adopting a new verdict of “not criminally responsible by reason of mental health or cognitive impairment”, based on an updated version of the test for people currently found “not guilty by reason of mental illness”
- Adopting a statutory test for fitness to be tried, based on the current common law test but in a simpler and clearer form.

These two groups currently generally become “forensic patients”. They are subject to detention, and questions of their continuing detention or release (including release on conditions) are decided by the Mental Health Review Tribunal. The report recommends:

- Simplifying the way forensic patients are managed, including introducing a common regime for people found “not criminally responsible” and “unfit to be tried”.
- Extending the requirement for the court to set a limiting term for all forensic patients (not just those found unfit), while at the same time allowing the Supreme Court to order an extension of the term in limited circumstances.
- Extending the forensic patient regime to people dealt with in the Local and Children’s Court.
- Updating the language of cognitive impairment and mental illness in the law.

The report also recommends the formation of a Forensic Working Group of senior officers from key government agencies to deal with major deficiencies in the criminal justice and forensic systems regarding people with cognitive impairments.

The Report “People with Cognitive and Mental Health Impairments in the Criminal Justice System: Criminal Responsibility and Consequences” and Executive Summary are available online at www.lawreform.lawlink.nsw.gov.au.

The NSW Law Reform Commission has been proposing changes to the State’s laws since 1966 as the first permanent law reform agency established in Australia. The Chairperson is The Hon James Wood AO QC.

Media Contact: Executive Director, Paul McKnight— (02) 8061 9277