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# •Mental Impairment Matters Explained•

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November 2017

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## **Mental Impairment and the criminal justice system**

Offences committed by people of diminished responsibility due to mental impairment place special demands on the criminal justice system. People of diminished mental capacity resulting from mental illness, intellectual disability or cognitive impairments such as acquired brain injury, are greatly overrepresented within the system.

In a very small number of cases offenders may be unfit to stand trial, or at trial they may be found to be not guilty by reason of mental impairment. Because of the often violent nature of offending, such outcomes can result in victims and their families feeling let down, as though the offending has been excused somehow, or its significance diminished.

The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* directs how Victoria's legal system responds to the challenge of providing justice for offenders and victims alike where mental impairment is a factor.

## **Mental Impairment and the Courts**

A person is deemed unfit to stand trial if they cannot understand either the charges against them, or the evidence, or court proceedings, or if they are unable to plead guilty or not guilty, or instruct their lawyer.

Where an accused is found unfit to stand trial the case proceeds to a Special Hearing. This may result in the accused being found by a jury to have committed the crime but to be not guilty because of their mental impairment. Instead of normal sentencing, the judge will generally place the person on a Supervision Order

Supervision Orders are also employed where an offender is found to be not guilty because of a mental impairment they were experiencing at the time of the offence. This means they either did not understand what they were doing, or did not understand what they were doing was wrong.

When prosecution and defence lawyers agree the accused was delusional because of mental illness at the time of the offence a judge hearing expert evidence decides whether the accused is not guilty due to their mental impairment, or whether they should be tried in the same way as other criminal matters.

If the prosecution and defence do not agree that the accused was suffering a mental impairment then a jury hears expert evidence about the accused's mental state. The jury is able to find the accused guilty or not guilty of the offence, or it can find that the accused committed the offence but is not guilty because of their mental state at the time.

Again, if found not guilty because of their mental state the judge will generally place the person on a Supervision Order.



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### **How Supervision Orders work**

Supervision Orders are intended to provide treatment and supervision of a person in a manner consistent with the safety of the community. They enable the court to monitor and manage the person, to ensure they obtain treatment and appropriate care. Supervision Orders can be custodial or non-custodial, and of indefinite length.

A Custodial Supervision Order generally commits the person to specialist treatment at the Thomas Embling Hospital. Non-custodial Supervision Orders allow the person to live in the community subject to conditions such as restrictions where they can live or travel, that they obtain medical, psychiatric or psychological treatment and attend appointments as required. Thomas Embling Hospital's community outreach unit supervises people on Non-custodial Orders.

Once subject to an Order the individual undergoes monitoring and treatment. Mental illness is not necessarily a permanent condition. Supervised people may be assessed for temporary leave of absence as they progress towards recovery and possible release.

The orders can be long-lasting depending on the person's response to treatment and may be reviewed many times. In murder cases Supervision Orders may last 25 years before review. Some offenders remain under supervision all their lives, however, in other cases if the person responds well to treatment the case may return to the Court earlier.

### **A say for Victims and Families**

Victims, their families, and the families of the supervised person may submit reports to the Court, which it will consider when deciding on the terms of the Supervision Order. This enables victims to explain the impact of the crime on them and how they would feel about conditions imposed on the Supervised Person. Victim and family reports are voluntary, but the judge must take them into account when making the Order.

### **More information**

Access the [Prosecuting Mental Impairment Matters guide](#) for more information on the court process where a person who is mentally ill or cognitively impaired is prosecuted for a serious offence.

Alternatively, more information, including a form for making a Victim or Family Member Report, can be accessed on the OPP's dedicated website for victims and witnesses:

<https://victimsandwitnesses.opp.vic.gov.au/court-process/prosecuting-mental-impairment-cases>