



## FACT SHEET

### The Victorian Law Reform Commission review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

- The Victorian Law Reform Commission has been asked by the Attorney General of Victoria, the Hon. Robert Clark to conduct a review of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) (CMIA).
- The CMIA governs what happens when a person is charged with a crime and had a mental impairment at the time of the offence, or has disordered or impaired mental processes at the time of the trial.
- **A person may be 'unfit' to stand trial** if their mental processes are disordered or impaired *at the time of the trial*. A jury decides whether on certain criteria a person is unfit. For example, a person's mental processes may be so disordered during an acute psychotic phase of a mental illness, such as paranoid schizophrenia, that they are unable to give their lawyer instructions or follow what is happening during a criminal trial. A person who is 'unfit' doesn't go to a usual criminal trial. Instead, there is a special hearing of the evidence in court and a jury decides whether they committed the offence.
- During a criminal trial or a special hearing, a person can raise **the defence of mental impairment** if they were mentally impaired *at the time of the offence*.
  - The fundamental test is that the person did not know what they were doing, or did not know that what they were doing was wrong. An example of a case involving the defence of mental impairment is a person who committed an offence and who, because of a life-long intellectual disability, suffers from significant frontal lobe dysfunction that affects his capacity to control his behaviour and regulate his impulses.
  - If a person is found 'not guilty because of mental impairment', this is a finding that they are not criminally responsible for the offence.
  - A jury usually decides if someone is not guilty because of mental impairment. In some circumstances a judge can decide.
- **'Mental impairment' is not defined in the Act**, but is defined in case law as a 'disease of the mind'. This may include mental illness, intellectual disability and other cognitive impairments, such as brain injuries. (NOT alcohol/drug induced states)
- The CMIA aims to **balance the safety of the community and the rights of victims with the rights of people who are subject to the CMIA**. It was introduced to replace the previous 'Governor's pleasure' regime under which people were detained on indefinite orders with little review of their cases.

Besides unfitness to stand trial and the mental impairment defence, the CMIA also applies to **supervision and review** of people who are subject to the Act. This can mean indefinite supervision orders, in custody or in the community, with review and leave of absence orders to help people transition back into the community once they no longer pose a risk.

### **What the VLRC is reviewing**

- The VLRC is reviewing the CMIA after 15 years of operation, to assess how well it is working, whether it is doing what it is supposed to do and whether there need to be changes to improve it.
- Our recommendations will balance the interests and safety of the community, including victims and their families, and the interests and rights of people who are unfit to stand trial or are mentally impaired and subject to the CMIA.

### **What the VLRC is not reviewing**

- This review is NOT considering whether to get rid of the CMIA.

### **Specific issues in the terms of reference**

The review will focus on specific issues set out in our terms of reference.

- **The defence of mental impairment**
  - Should mental impairment be defined by the CMIA, and if so how? (Currently, the common law definition is 'disease of the mind')
  - How can the law clarify mental impairment, to make it easier for juries to make decisions about the defence of mental impairment?
- **Unfitness to stand trial**
  - Can the process for determining unfitness to stand trial be improved?
- **Extending the powers of the Magistrates' Court**
  - Should the Magistrates' Court be able to decide that someone is unfit to stand trial? (At present a jury is required – there are no juries in the Magistrates' Court).
  - Should the Magistrates' Court have the power to place people on supervision orders? (Currently the Magistrates' Court has to discharge those found not guilty because of mental impairment).
  - Should any extension of the powers of the Magistrates' Court apply to all offences or be limited to indictable offences triable summarily?
- **Supervision and review**
  - What happens to people under the CMIA who receive custodial and non-custodial supervision orders and how does the system work?
  - Who is involved in supervision and review, and how can people with an interest be represented?

**View the consultation paper at [www.lawreform.vic.gov.au](http://www.lawreform.vic.gov.au)**

**Deadline for submissions: 23 August 2013**