



Mental Impairment as a Criminal Defence in the Magistrates' Court

The law says mental illness and some other conditions may be **mental impairments** giving you a defence to criminal charges at court. If you think your charges might be affected by a mental impairment, see a lawyer and get some advice.

'Not guilty because of mental impairment' for a criminal offence in the Magistrates' Court

There must be a strong connection between the criminal charge and your mental illness.

The test in the Victorian *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* says you have a defence of mental impairment if at the time the police say you committed an offence you were mentally ill and;

did not understand the nature or quality of your behaviour; or

did not understand that your behaviour was wrong;

In order to use the defence of mental impairment the court has to have before it evidence from a psychiatrist that in their opinion at the time the police said that you committed the crime, you satisfied the above test.

Mental Illness and other Mental Impairments

Mental Impairments can be “mental illness”, intellectual disability or acquired brain injury. The *Mental Health Act 1986* defines mental illness as a medical condition that leads to significant disturbance of thought, mood, perception or memory. Common mental illnesses include schizophrenia, bi polar disorder, clinical depression and psychosis. However, some conditions such as personality disorder are not usually defined as mental illness by the courts and a mental impairment defence may be unlikely. Discuss this with your lawyer.

Advantages of using mental illness as a criminal defence in the Magistrates' Court

If the Magistrates' Court finds you not guilty because of mental impairment you do not have to serve a sentence or be restricted by any conditions to receive any medical treatment (unless you are an involuntary patient under the Mental Health Act). The Magistrates' Court must discharge you.

Being found not guilty due to mental impairment may show that you were not legally responsible or culpable. This finding is not a prior conviction.

Disadvantages of using mental illness as a defence in the Magistrates' Court

There is a risk that the prosecutors may ask the Court to transfer the case to a higher court where there are tougher sanctions and the process may be more stressful. If the matter goes to the County Court or Supreme Court and you are found not guilty because of mental impairment the court can order either a custodial or non custodial supervision order with conditions, including compulsory medical treatment. This may last for many years.

If you are found not guilty because of mental impairment in the Magistrates' Court it will state this on the record. A police records check may identify this and any future employer might find out about this finding.

Making a decision

Always speak to your lawyer about the defence of mental impairment and whether it is the right defence for your criminal case. See contacts below.

Useful Contacts

Mental Health Legal Centre

Ph: 96294422 or 1800 555 887

www.communitylaw.org.au/mentalhealth

Victoria Legal Aid

Ph: 92690234 or 1800 677 402

www.legalaid.vic.gov.au

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