

Strengthening the Norfolk Island Justice System

Consultation closed Sunday 30 June 2019.

One submission was received, which the Department has published anonymously at the request of the author.

The submission was received on 21 May 2019 and generally supports the proposed changes, and proposes a number of other issues to consider in relation to mental health assessments for people appearing in court.

Strengthening the justice system

Proposed changes as detailed in the consultation paper dated May 2019

In respect of the proposed changes the following is provided —

- Prosecution right of appeal. It is agreed that the prosecution should have the right of appeal under the Supreme Court Act 1960 and this should not be limited to convicted persons. There are times when the sentencing judge does not provide an adequate or appropriate sentence to community expectations for the crimes committed by offenders and this right of appeal should be available to the prosecution
- Bail amendments. It is agreed that there should be "show cause" provisions available so that when there are instances of persons being charged with additional offences that their bail conditions can be reviewed and that they need to convince the court as to why they should be granted bail.
- Forensic procedures legislation. It is agreed that these laws should be amended to reflect what the current law is in other jurisdictions
- Ordering mental health assessments. It is agreed that there should be provision for the Court to order a person appearing before it to be examined by a psychiatrist in relation to their assessment of a person in relation to their fitness to plead to a charge at any time of the proceedings and if need be for this to be done at more than one point. In reviewing the Mental Health Act it should also include provision for the inclusion of administrative functions such as the provision of a clerk and deputy and for the proceedings to be recorded and for the use of video links to other jurisdictions as required. It should also be clarified concerning the ability of the Mental Health Tribunal to refer those persons before it to another jurisdiction and whether the arrangements with that jurisdiction are appropriate and if they require review and updating. There is also a need for the provision of Community Treatment Orders to be included to negate or reduce the need for the patient to go offshore for treatment. It is also agreed that there should be greater provision for the Court of Petty Sessions and the Supreme Court to be able to make an order for mental health assessment in a greater range of circumstances during court proceedings.
- Publication of judgments in sexual offence matters. It is agreed that there should be provision for the prohibition of the publication of names or information that might identify the complainants and victims in sexual offence cases without the need of the consent of the victim/complainant. It should also include the offence for the publication of information about the complainant's identity (or information which is likely to identify the complainant) without their consent, or authority from the Judge as provided in NSW law.
- Sexual intercourse with a person with cognitive impairment. It is agreed that there should be laws to make it an offence for a person to engage in sexual intercourse with a person with cognitive impairment where they are responsible for their care of that person, or take advantage of that person's impairment. This defence should be limited to married or de facto couples.

- Marriage defence: sexual intercourse with a young person where the defendant in a position of trust or authority. It is agreed that the restriction to a defence should be limited to where there is a genuine and valid marriage with the young person and that the young person was at least 16 years old when the marriage was entered into.
- Serious drug offences. There should be regulations made concerning trafficking and other acts in relation to drugs and that there should be severe penalties for this. It is agreed that the definitions should be in the Criminal Code and not in the regulations.

20 May 2019