

INFORMATION SHEET 4

Mental impairment and fitness to stand trial

Australian States and Territories define mental impairment in their criminal legislation as being a “mental illness”, an “intellectual disability”, or a “specific neurological condition” (e.g., a disability or impairment of the mind resulting from senility). Psychologists, with the aid of psychometric tools, can provide opinions to the court about a person’s mental impairment and the impact of that impairment on the fitness criteria defined in the relevant Act. It is the province of the court to accept or not accept these opinions.

In the Australian legal system, a person should be mentally fit in order to be tried in a court of law. A person is deemed to be fit to stand trial if he or she has the ability to achieve a lay person’s understanding of: court process, the charges that have been made, and how s/he will instruct legal advisors to proceed in relation to the charges. A person is considered to be mentally unfit to stand trial if he or she is significantly compromised by a mental impairment.

How is fitness to stand trial assessed?

Expert witnesses evaluate clients’ fitness to stand trial using interviews, empirical tools, psychometrics, behavioural indicators and legal standards. In making a determination of mental impairment and its relationship to fitness, the complexity of the evidence and the likely nature of proceedings are taken into account. Specialised fitness measures are frequently used by psychologists.

Fitness assessment instruments are often considered to be more reliable than professional judgment alone when assessing baseline competencies. However, fitness criteria are usually defined in terms of abilities and therefore psychologists evaluate the person’s demonstration of relevant competencies using observations and behavioural measures (e.g., ratings based on the person’s behaviour during police interviews and other analogous settings to what will be required of the person throughout the legal process or in court). It is important for the assessor to demonstrate how the specifics of the defendant’s mental impairment relate to specific deficits defined in the relevant legislation.

How do I find out more?

For more information contact the Australian Psychological Society’s College of Forensic Psychologists

Each Australia State and Territory has its own distinct criteria in relation to how fitness to stand trial and mental impairment are defined. For example, in the Territories, New South Wales, Tasmania, Victoria and Western Australia criteria for unfitness to stand trial include:

- a. being unable to understand, the nature of the charge; or
- b. being unable to exercise a plea in relation to the charge; or
- c. unable to understand the nature of the proceedings; or
- d. to follow the evidence or the course of proceedings.

South Australia does not incorporate an ability to plead the charge as an element of fitness to stand trial, and Queensland does not include elements a), c) and d) listed above as elements in its legislation.

Further reading

Akinkunmi, A.A. (2002). The MacArthur Competence Assessment Tool– Fitness to Plead: A Preliminary Evaluation of a Research Instrument for Assessing Fitness to Plead in England and Wales. *Journal of the American Academy of Psychiatry and the Law*, 30, 476–482.

Everington, C., & Luckasson, R.A. (1992). *Competency Assessment Screening Test for Mentally Retarded Clients*. IDS Publishing, USA.

Roesch, R., Zapf, P., & Eaves, D. (2006). *Fitness Interview Test – Revised Edition (FIT-R)*. Professional Resources Exchange, Inc USA.

Rogers, R., Tillbrook, C.E., & Sewell K.W. (2004). *Evaluation of Competency to Stand Trial – Revised*. Psychology Assessment Resources, Inc.