

CRIMES (MENTAL DISORDER) AMENDMENT ACT 1989
No. 100

NEW SOUTH WALES



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CRIMES (MENTAL DISORDER) AMENDMENT ACT 1989
No. 100

NEW SOUTH WALES



Act No. 100, 1989

An Act to amend the Crimes Act 1900 in relation to accused persons and defendants affected by mental disorders; and for other purposes.
[Assented to 15 August 1989]

See also Mental Health (Mental Disorder) Amendment Act 1989 and Criminal Appeal (Mental Disorder) Amendment Act 1989.

Crimes (Mental Disorder) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Mental Disorder) Amendment Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Transitional provisions

4. Schedule 2 has effect.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

- (1) Section 1 (**Short title and contents of Act**):
From the matter relating to Part 11A, omit "CHAPTER II - *Other proceedings*", insert instead:
CHAPTER 2 - *Summary proceedings before a magistrate*
CHAPTER 3 - *Other powers of magistrates*
- (2) Section 428P (**Procedure after completion of special hearing**):
 - (a) Section 428P (1) (b):
Omit "head sentence", insert instead "sentence".
 - (b) Section 428P (1A) - (1D):
After section 428P (1), insert:
(1A) Where a Court indicates that it would not have imposed a sentence of imprisonment or penal servitude in respect of a person, the Court may impose any other

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SCHEDULE 1 - AMENDMENTS - *continued*

penalty or make any other order it might have made on conviction of the person for the relevant offence in a normal trial of criminal proceedings.

(1B) Any such other penalty imposed or order made, under subsection (1A), shall be subject to appeal in the same manner as a penalty or order in a normal trial of criminal proceedings.

(1c) In nominating a limiting term in respect of a person or imposing any other penalty or making any other order, the Court may, if it thinks fit, take into account the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods related to the offence).

(1D) A limiting term nominated in respect of a person takes effect from the time when it is nominated unless the Court, after taking into account the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods related to the offence), directs that the term be taken to have commenced at an earlier time.

- (3) Part 11A, Chapter 2:

Omit the heading, insert instead:

CHAPTER 2 - *Summary proceedings before a magistrate*

- (4) Section 428U (**Application**):

At the end of section 428U, insert:

(2) Sections 428w and 428x apply to the condition of a defendant as at the time when a magistrate considers whether to apply the relevant section to the defendant.

- (5) Section 428w (**Persons suffering from mental illness or condition**):

- (a) Section 428w:

Omit "in proceedings", insert instead "at the commencement or at any time during the course of the hearing of proceedings".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Section 428w (a):
Omit "Mental Health Act 1983", insert instead "Mental Health Act 1958".
- (c) At the end of section 428w, insert:
 - (2) A decision under subsection (1) (c) to dismiss charges against a defendant does not constitute a finding that the charges against the defendant are proven or otherwise.
- (6) Section 428x (**Mentally ill persons**):
 - (a) Section 428x (1), (2):
Omit "in proceedings" wherever occurring, insert instead "at the commencement or at any time during the course of the hearing of proceedings".
 - (b) Section 428x (1):
Omit "Mental Health Act 1983" where firstly occurring, insert instead "Mental Health Act 1958".
 - (c) Section 428x (1) (a):
Omit the paragraph, insert instead:
 - (a) may order that the person be taken by a member of the Police Force to, and be detained in, an admission centre within the meaning of the Mental Health Act 1958 to be examined and dealt with under that Act as if the person were a person admitted to and detained in an admission centre under section 12 (1) of that Act; or
 - (d) Section 428x (3):
Omit "hospital", insert instead "an admission centre, a mental hospital or an authorised hospital within the meaning of the Mental Health Act 1958".
 - (e) Section 428x (4):
After section 428x (3), insert:
 - (4) A deemed dismissal of charges under subsection (2) does not constitute a finding that the charges against the defendant are proven or otherwise.

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SCHEDULE 1 - AMENDMENTS - *continued*

(7) Section 428xA:

After section 428x, insert:

Disqualification of magistrate

428xA (1) If:

- (a) a magistrate has inquired into whether a defendant should be dealt with under section 428w or 428x; and
- (b) the magistrate has decided not to so deal with the defendant,

the magistrate shall, on the application of the defendant, disqualify herself or himself from further hearing the proceedings concerned.

(2) An application may only be made by a defendant under this section if:

- (a) except as provided by paragraph (b), the question whether the defendant should be dealt with under section 428w or 428x has not been previously inquired into by another magistrate in the same proceedings; or
- (b) in the case of proceedings in which another magistrate has previously inquired into whether the defendant should be dealt with under section 428w or 428x, the magistrate before whom the proceedings are being heard considers that it should, because of the circumstances of the case, be permitted to be made.

(8) Part 11A, Chapter 3:

At the end of Part 11A, insert:

CHAPTER 3 - *Other powers of magistrates*

Definition

428YA In this Chapter:

"magistrate" means:

- (a) a justice or justices; or

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) a Magistrate; or
- (c) a Children's Magistrate.

Transfer of prisoners

428YB. (1) This section applies to a person who is awaiting committal for trial or trial for an offence or summary disposal of the person's case.

(2) Where it appears to a magistrate that it may be appropriate to transfer a person to whom this section applies from prison to a hospital under section 123 or 124 of the Mental Health Act 1983, the magistrate may make an order directing:

- (a) that the defendant be examined by 2 medical practitioners, one of whom is a psychiatrist; and
- (b) that, if appropriate, the relevant certificates be furnished to the Chief Health Officer under section 123 or 124 of the Mental Health Act 1983; and
- (c) that the Director of the Prison Medical Service notify the magistrate of the action, if any, taken under section 123 or 124 of the Mental Health Act 1983.

SCHEDULE 2 - TRANSITIONAL PROVISIONS

(Sec. 4)

Procedures after completion of special hearing

1. Section 428P of the Crimes Act 1900, as amended by this Act, applies to proceedings commenced before that amendment in which the Court is required to, but has not, indicated whether a sentence of imprisonment or penal servitude would have been imposed on a person.

Mentally ill persons etc.

2. (1) Section 428w of the Crimes Act 1900, as amended by this Act, applies to proceedings commenced but not completed before the commencement of Schedule 1 (5).

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SCHEDULE 2 - TRANSITIONAL PROVISIONS - *continued*

(2) Section 428x of the Crimes Act 1900, as amended by this Act, applies to proceedings commenced but not completed before the commencement of Schedule 1 (6).

Disqualification of magistrate

3. Section 428xA of the Crimes Act 1900 does not apply to proceedings commenced before the commencement of that section.

*[Minister's second reading speech made in -
Legislative Assembly on 3 May 1989
Legislative Council on 1 May 1989]*