

COMMUNITY PROTECTION ACT 1994 No. 77

NEW SOUTH WALES



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COMMUNITY PROTECTION ACT 1994 No. 77

NEW SOUTH WALES



Act No. 77, 1994

An Act to protect the community by providing for the preventive detention of persons who are, in the opinion of the Supreme Court, more likely than not to commit serious acts of violence. [Assented to 6 December 1994]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Community Protection Act 1994.

Commencement

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

Objects and application of Act

3. (1) The object of this Act is to protect the community by providing for the preventive detention (by order of the Supreme Court made on the application of the Director of Public Prosecutions) of Gregory Wayne Kable.

(2) In the construction of this Act, the need to protect the community is to be given paramount consideration.

(3) This Act authorises the making of a detention order against Gregory Wayne Kable and does not authorise the making of a detention order against any other person.

(4) For the purposes of this section, Gregory Wayne Kable is the person of that name who was convicted in New South Wales on 1 August 1990 of the manslaughter of his wife, Hilary Kable.

Definitions

4. In this Act:

“**assessor**” means an assessor appointed by the Court under section 11;

“**Court**” means the Supreme Court of New South Wales;

“**defendant**” means a person against whom proceedings under this Act are being taken;

“**detainee**” means a person who is subject to a detention order;

“**detention order**” means a preventive detention order or an interim detention order;

“**interim detention order**” means an order referred to in section 7;

“**preventive detention order**” means an order referred to in section 5;

“**prison**” means a prison within the meaning of the Prisons Act 1952;

“serious act of violence” means an act of violence, committed by one person against another, that has a real likelihood of causing death or serious injury to the other person or that involves sexual assault in the nature of an offence referred to in section 61I, 61J, 61K, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K, 78L or 80A of the Crimes Act 1900.

PART 2—DETENTION ORDERS

Division 1—Detention orders

Preventive detention orders

5. (1) On an application made in accordance with this Act, the Court may order that a specified person be detained in prison for a specified period if it is satisfied, on reasonable grounds:

- (a) that the person is more likely than not to commit a serious act of violence; and
- (b) that it is appropriate, for the protection of a particular person or persons or the community generally, that the person be held in custody.

(2) The maximum period to be specified in an order under this section is 6 months.

(3) An order under this section may be made against a person:

- (a) whether or not the person is in lawful custody, as a detainee or otherwise; and
- (b) whether or not there are grounds on which the person may be held in lawful custody otherwise than as a detainee.

(4) More than one application under this section may be made in relation to the same person.

Arrest warrants

6. (1) On an application made in accordance with this Act, the Court may issue a warrant for the arrest of the person against whom proceedings on an application for a preventive detention order are pending if it is satisfied, on the basis of the information given to the Court in connection with the application, that there are reasonable grounds on which a preventive detention order may be made.

(2) A warrant may be transmitted to the person to whom it is addressed by facsimile transmission, in which case the copy produced by the transmission is taken to be the original document.

(3) A person who is arrested under the authority conferred by a warrant under this section must be brought before the Court as soon as practicable and, in any case, within 72 hours of arrest.

Interim detention orders

7. (1) On an application made in accordance with this Act, the Court may order that the defendant in any proceedings on an application for a preventive detention order be detained in prison for such period (not exceeding 3 months) as the Court determines.

(2) In particular, such an order (an “**interim detention order**”) may be made so as to enable:

- (a) the defendant to be examined as referred to in section 17 (1) (c); or
- (b) reports on the defendant to be prepared as referred to in section 17 (1) (d); or
- (c) other proceedings to be brought for the purpose of committing the defendant to custody or other involuntary detention,

before the Court determines the application.

(3) On an application made in accordance with this Act or on its own motion, the Court may extend the period of an interim detention order for such further period (not exceeding 3 months) as the Court determines if it appears that the proceedings on the application for a preventive detention order will not be determined during the period currently specified in the interim detention order.

(4) An interim detention order ceases to have effect, regardless of its terms, when the proceedings on the application for a preventive detention order are determined.

(5) An interim detention order may be made, and its period extended, in the absence of the defendant.

Director of Public Prosecutions to make certain applications

8. Only the Director of Public Prosecutions may make an application referred to in section 5, 6 or 7.

Detention orders generally

9. (1) A detention order may be made subject to such conditions (including a condition specifying the particular prison in which the detainee is to be detained) as the Court may determine.

(2) A detention order takes effect on the date on which it is made or such later date as is specified in the order.

Detention orders may not be made against persons under 16

10. A detention order may not be made against a person who is under the age of 16 years.

Orders appointing assessors

11. On or as soon as practicable after making a preventive detention order, the Court must make a further order appointing one or more duly qualified medical practitioners, psychiatrists or psychologists as assessors to observe and report on the detainee during the period for which the order is in force.

Orders for medical, psychiatric or psychological treatment

12. On making a detention order, or at any time while a detention order is in force, the Court may make a further order directing the Commissioner of Corrective Services to make specified medical, psychiatric or psychological treatment available to the detainee.

Amendment and revocation of preventive detention orders

13. (1) On the application of the Director of Public Prosecutions or a detainee, the Court:

- (a) may amend a preventive detention order by reducing the period for which it is in force; or
- (b) may revoke a preventive detention order.

(2) In determining an application under this section, the Court must have regard to the most recent reports prepared under section 21.

(3) More than one application under this section may be made in relation to the same preventive detention order.

Division 2—Procedure before the Court

Nature of proceedings

14. Proceedings under this Act are civil proceedings and, to the extent to which this Act does not provide for their conduct, they are to be conducted in accordance with the law (including the rules of evidence) relating to civil proceedings.

Standard of proof

15. The Court must not make a detention order against a person unless it is satisfied that the Director of Public Prosecutions' case has been proved on the balance of probabilities.

Conduct of proceedings generally

16. (1) Proceedings on an application for a preventive detention order are to be commenced by summons in accordance with rules of court.

(2) The Court may hear and determine an application for a preventive detention order in the absence of the defendant if it is satisfied:

- (a) that the summons has been duly served on the defendant; or
- (b) that the summons has not been duly served on the defendant but that all reasonable steps to do so have been taken.

Hearings

17. (1) In any proceedings under this Act, the Court:

- (a) is bound by the rules of evidence; and
- (b) may order the production of documents of the following kind in relation to the defendant:
 - (i) medical records and reports;
 - (ii) records and reports of any psychiatric in-patient service or prison;
 - (iii) reports made to, or by, the Offenders Review Board;
 - (iv) reports, records or other documents prepared or kept by any police officer;
 - (v) the transcript of any proceedings before, and any evidence tendered to, the Mental Health Review Tribunal; and
- (c) may order an examination of the defendant to be carried out by one or more duly qualified medical practitioners, psychiatrists or psychologists; and
- (d) may require the preparation of reports as to the defendant's condition and progress by such persons as it considers appropriate; and
- (e) must have regard to any report made available to it under paragraph (d); and
- (f) may, if the interests of justice so demand, exclude any person (other than a party to the proceedings or the party's legal representative) from the whole or any part of the proceedings.

(2) This Act does not affect the right of any party to proceedings under this Act:

- (a) to appear, either personally or by the party's legal representative; or
- (b) to call witnesses and give evidence; or
- (c) to cross-examine witnesses; or
- (d) to make submissions to the Court on any matter connected with the proceedings.

(3) Despite any Act or law to the contrary, the Court must receive in evidence any document or report of a kind referred to in subsection (1), or any copy of any such document or report, that is tendered to it in proceedings under this Act.

Orders prohibiting publication of material that may identify persons

18. (1) The Court may, in or in connection with any proceedings under this Act, make an order prohibiting persons generally, or any named person or persons, from publishing or broadcasting the name of any person:

- (a) who is a defendant or witness in the proceedings; or
- (b) to whom the proceedings relate; or
- (c) who is mentioned or otherwise involved in the proceedings.

(2) Such an order has effect both during the proceedings and after the proceedings are disposed of.

(3) For the purposes of this section, a reference to the name of a person includes a reference to any information, photograph, drawing or other material that identifies the person or is likely to lead to the identification of the person.

Division 3—Administration of preventive detention orders

Detention orders sufficient authority for detainees to be held in custody

19. A detention order is sufficient authority for the person against whom it is made to be held in custody in accordance with the terms of the order.

Detention orders ineffective while detainees are otherwise in custody

20. A detention order does not have effect while the person against whom it is made is lawfully in custody otherwise than under the order.

Reports to be prepared

21. (1) While a preventive detention order is in force:

- (a) the assessor or assessors appointed for the detainee; and
- (b) the Commissioner of Corrective Services,

are to make reports to the Director of Public Prosecutions on the detainee's condition and progress.

(2) Reports under this section must be prepared:

- (a) at least once during the period for which the preventive detention order is in force; and
- (b) whenever else the Director of Public Prosecutions so requires.

(3) A report prepared by an assessor or by the Commissioner of Corrective Services must contain particulars with respect to the following matters:

- (a) a description of the general behaviour of the detainee during the period to which the report relates;
- (b) an opinion as to whether or not the detainee is still more likely than not to commit a serious act of violence;
- (c) an opinion as to whether or not it is still appropriate, for the protection of a particular person or persons or the community generally, that the person be held in custody;
- (d) an opinion as to whether the detainee should remain in the prison in which the detainee is currently detained or be transferred to another prison.

(4) A report prepared by an assessor must also contain particulars with respect to the following matters:

- (a) a description of the current state of the detainee's medical, psychiatric and psychological condition;
- (b) a description of any medical, psychiatric or psychological treatment made available to the detainee during the period to which the report relates;

- (c) a description of any medical, psychiatric or psychological treatment undergone by the detainee during the period to which the report relates;
 - (d) an opinion as to whether any medical, psychiatric or psychological treatment (whether of the same kind as that made available during the period to which the report relates or of another kind) should be made available to the detainee during the remainder of the period for which the detention order is in force.
- (5) Particulars of an opinion must include particulars of the grounds on which the opinion is formed.

Detainees taken to be prisoners for certain purposes

22. (1) A detainee is taken to be a prisoner within the meaning of the Prisons Act 1952.

(2) A detainee is taken to be required by law to be in custody in prison for the purposes of section 352AA of the Crimes Act 1900.

(3) In any other Act (other than the Sentencing Act 1989) or any instrument under any such Act:

- (a) a reference to a sentence of imprisonment includes a reference to a detention order; and
- (b) a reference to a term of imprisonment includes a reference to the period for which a detention order is in force.

(4) The Sentencing Act 1989 does not apply to or in respect of a detention order or a detainee.

Discharge of detainees from prison

23. (1) A detainee must be discharged from prison at the expiry of the detention order to which the detainee is subject unless there is lawful reason for continuing to hold the detainee in custody.

(2) A detainee must not be discharged from prison, or allowed leave of absence from prison, otherwise than:

- (a) at the expiry of the detention order to which the detainee is subject; or
- (b) in accordance with an order made by the Court.

(3) This section applies despite any other Act or law to the contrary.

Division 4—General**Exercise of jurisdiction by single Judge**

24. The jurisdiction of the Court under this Act is exercisable by a single Judge.

Right of appeal

25. (1) An appeal to the Court of Appeal lies from any determination of the Court to make, or to refuse to make, a preventive detention order.

(2) An appeal may be on a question of law, a question of fact or a question of mixed law and fact.

(3) The making of an appeal does not stay the operation of a detention order.

Jurisdiction of Court apart from Act not limited

26. Nothing in this Act limits the jurisdiction of the Court apart from this Act.

PART 3—MISCELLANEOUS**Costs**

27. (1) A person is entitled to legal aid within the meaning of the Legal Aid Commission Act 1979 for the costs incurred by or on behalf of the person for or in connection with:

- (a) proceedings brought against the person under this Act; or
- (b) proceedings by way of appeal from any decision of the Court in proceedings brought against the person under this Act.

(2) The nature and extent of legal aid to which a person is entitled under this section, and the terms and conditions on which it is to be provided, are to be determined by the Legal Aid Commission in accordance with the Legal Aid Commission Act 1979.

Protection of certain persons from liability

28. No action lies against any person (including the State) for or in respect of any act or omission done or omitted by the person so long as it was done or omitted in good faith for the purposes of, or in connection with the administration or execution of, this Act.

Bail Act 1978 not to apply

29. The Bail Act 1978 does not apply to or in respect of a person who is a defendant in proceedings under this Act.

Rules of court

30. (1) Rules of court may be made under the Supreme Court Act 1970 for regulating the practice and procedure of the Court in respect of proceedings under this Act.

(2) This section does not limit the rule-making powers conferred by the Supreme Court Act 1970.

Functions of Director of Public Prosecutions

31. (1) The Director of Public Prosecutions has the powers, authorities duties and functions conferred or imposed on the Director of Public Prosecutions by this Act.

(2) This section does not limit the powers, authorities duties and functions conferred or imposed on the Director of Public prosecutions by or under any other Act.

*[Minister's second reading speech made in—
Legislative Council on 27 October 1994
Legislative Assembly on 23 November 1994]*