



New South Wales

Crimes Amendment (Diminished Responsibility) Act 1997 No 106

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New South Wales

Crimes Amendment (Diminished Responsibility) Act 1997 No 106

Act No 106, 1997

An Act to amend the *Crimes Act 1900* to replace the defence of diminished responsibility; and for related purposes. [Assented to 1 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Diminished Responsibility) Act 1997*.

2 Commencement

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

3 Amendment of Crimes Act 1900 No 40

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

Schedule 1 Amendments

(Section 3)

[1] Section 23A

Omit the section. Insert instead:

23A Substantial impairment by abnormality of mind

- (1) A person who would otherwise be guilty of murder is not to be convicted of murder if:
 - (a) at the time of the acts or omissions causing the death concerned, the person's capacity to understand events, or to judge whether the person's actions were right or wrong, or to control himself or herself, was substantially impaired by an abnormality of mind arising from an underlying condition, and
 - (b) the impairment was so substantial as to warrant liability for murder being reduced to manslaughter.
- (2) For the purposes of subsection (1) (b), evidence of an opinion that an impairment was so substantial as to warrant liability for murder being reduced to manslaughter is not admissible.
- (3) If a person was intoxicated at the time of the acts or omissions causing the death concerned, and the intoxication was self-induced intoxication (within the meaning of section 428A), the effects of that self-induced intoxication are to be disregarded for the purpose of determining whether the person is not liable to be convicted of murder by virtue of this section.
- (4) The onus is on the person accused to prove that he or she is not liable to be convicted of murder by virtue of this section.
- (5) A person who but for this section would be liable, whether as principal or accessory, to be convicted of murder is to be convicted of manslaughter instead.

- (6) The fact that a person is not liable to be convicted of murder in respect of a death by virtue of this section does not affect the question of whether any other person is liable to be convicted of murder in respect of that death.
- (7) If, on the trial of a person for murder, the person contends:
- (a) that the person is entitled to be acquitted on the ground that the person was mentally ill at the time of the acts or omissions causing the death concerned, or
 - (b) that the person is not liable to be convicted of murder by virtue of this section,
- evidence may be offered by the prosecution tending to prove the other of those contentions, and the Court may give directions as to the stage of the proceedings at which that evidence may be offered.
- (8) In this section:
- underlying condition* means a pre-existing mental or physiological condition, other than a condition of a transitory kind.

[2] Section 405AB

Insert after section 405A:

405AB Notice of intention to adduce evidence of substantial impairment

- (1) On a trial for murder, the defendant must not, without the leave of the Court, adduce evidence tending to prove a contention by the defendant that the defendant is not liable to be convicted of murder by virtue of section 23A, unless the defendant gives notice, as prescribed by the regulations, of his or her intention to raise that contention.

- (2) Without limiting subsection (1), the defendant must not, without the leave of the Court, call any other person to give evidence tending to prove a contention by the defendant that the defendant is not liable to be convicted of murder by virtue of section 23A unless the notice under this section includes:
 - (a) the name and address of the other person, and
 - (b) particulars of the evidence to be given by the other person.
- (3) Any evidence tendered to disprove a contention that the defendant is not liable to be convicted of murder by virtue of section 23A may, subject to any direction of the Court, be given before or after evidence is given to prove that contention.
- (4) Any notice purporting to be given under this section on behalf of the defendant by his or her legal practitioner is taken, unless the contrary is proved, to have been given with the authority of the defendant.
- (5) A notice under this section is to be given in writing to the Director of Public Prosecutions, and may be given by delivering it to the Director, or by leaving it at the office of the Director or by sending it in a registered letter or certified mail addressed to the Director at the office of the Director.

[3] Eleventh Schedule Savings and transitional provisions

Insert at the end of the Eleventh Schedule (inserting the appropriate Part and clause numbers):

Part Crimes Amendment (Diminished Responsibility) Act 1997

**Replacement of defence of diminished responsibility—
application of new defence**

Section 23A, as substituted by the *Crimes Amendment (Diminished Responsibility) Act 1997*, does not apply to or in respect of a murder that is alleged to have been

committed before that substitution. This Act continues to apply to and in respect of such an alleged murder as if the *Crimes Amendment (Diminished Responsibility) Act 1997* had not been enacted.

Application of requirement to give notice of defence

Section 405AB, as inserted by the *Crimes Amendment (Diminished Responsibility) Act 1997*, does not apply to or in respect of a trial for murder if the murder is alleged to have been committed before the commencement of that section.

[Minister's second reading speech made in—
Legislative Council on 12 November 1997
Legislative Assembly on 20 November 1997]