

CRIMES (MENTAL DISORDER) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Mental Health (Mental Disorder) Amendment Bill 1989 and the Criminal Appeal (Mental Disorder) Amendment Bill 1989 are cognate with this Bill.

The objects of this Bill are to amend the Crimes Act 1900—

- (a) to enable a Court to impose a penalty (in addition to imprisonment or penal servitude) on a person who is unfit to be tried but has been found, after a special hearing has been held under that Act, to have committed an offence; and
- (b) to make it clear that a magistrate determining whether to apply provisions of that Act dealing with defendants affected by mental disorders must consider a defendant's mental condition as at the time the defendant is before the magistrate; and
- (c) to make it clear that the dismissal of charges against a defendant under any such provision does not constitute a finding that the charges are proven or otherwise and does not therefore provide any basis for a conviction; and
- (d) to enable mentally ill defendants in summary proceedings to be examined on an order being made by the magistrate for the purpose of possible transfer from prison to a hospital under the Mental Health Act 1983; and
- (e) to impose on magistrates an obligation to disqualify themselves from continuing to hear certain proceedings relating to defendants who may be affected by mental disorders,

and to make other amendments, including amendments pending the full commencement of the Mental Health Act 1983.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that amendments made by the proposed Act are to commence on a day or days to be appointed by proclamation.

Clauses 3 and 4 are formal provisions that give effect to the Schedule of amendments and the Schedule of transitional provisions.

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SCHEDULE 1—AMENDMENTS

Procedure after completion of special hearing

Schedule 1 (2) amends section 428P (Procedure after completion of special hearing)—

- to enable a Court, after holding a special hearing and finding that an accused person who is unfit to be tried committed an offence, to impose any penalty or make any order it might have made if the person had been convicted of the offence in a normal trial; and
- to give a right of appeal against such a penalty or order; and
- to make it clear, in a case where the Court imposes a limiting term, that in calculating such a term the Court may take into account periods already spent in custody or detention and may backdate the commencement of such a term.

Summary disposal of offences where defendant affected by mental disorder

Schedule 1 (4) amends section 428U (Application) to make it clear that in applying provisions relating to the summary disposition of matters involving a defendant who may be affected by a mental disorder, a magistrate must consider the defendant's condition as at the time the defendant is before the magistrate.

Schedule 1 (5) (a) and (c) and Schedule 1 (6) (a) and (e) make it clear that—

- provisions relating to the summary disposition by a magistrate of matters involving a defendant affected by a mental disorder may be applied at the commencement of or during the course of a hearing; and
- the dismissal of charges against a defendant under any such provision does not constitute a finding that the charges are proven or otherwise.

Schedule 1 (5) (b) and (6) (b), (c) and (d) cure anomalies which have arisen because section 5, and Part 5, of the Mental Health Act 1983 have not yet commenced.

Schedule 1 (7) inserts proposed section 428xA (Disqualification of magistrate) which provides that a magistrate who has considered whether a defendant should be dealt with under the provisions relating to defendants affected by mental disorders, and who has declined to apply any of those provisions, shall, on the application of the defendant, disqualify himself or herself from further hearing the proceedings concerned.

Additional powers of magistrates

Schedule 1 (8) inserts proposed Chapter 3 (Other powers of magistrates) in Part 11A. The Chapter contains the following provisions:

- Proposed section 428YA (Definition) defines “magistrate”.
- Proposed section 428YB (Transfer of prisoners) enables a magistrate to order that a person to whom the proposed section applies be examined by 2 medical practitioners for the purpose of determining whether to transfer that person from prison to a hospital under the relevant provisions of the Mental Health Act 1983 (being provisions which have commenced).

Consequential amendments

Schedule 1 (1) and (3) make consequential amendments.

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SCHEDULE 2—TRANSITIONAL PROVISIONS

Schedule 2 contains transitional provisions stating whether or not certain of the proposed amendments affect existing proceedings.
