

Act 1994 No. 77

COMMUNITY PROTECTION BILL 1994*

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to enable the Supreme Court to make preventive detention orders against persons who threaten the safety of others; and
- (b) to make provision for the detention of persons in respect of whom such orders are made.

PART I—PRELIMINARY

Clause 1 specifies the short title to the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 declares that the object of the proposed Act is to protect the community by providing for the preventive detention (by order of the Supreme Court made on the application of the Attorney General) of persons who are, in the opinion of the Supreme Court, more likely than not to commit serious acts of violence, and provides that, in the construction of the proposed Act, the need to protect the community from such persons is to be given paramount consideration.

Clause 4 defines various expressions used in the proposed Act.

* Amended in committee—see table at end of volume.

PART 2—DETENTION ORDERS**Division 1—Detention orders**

Clause 5 empowers the Supreme Court to make preventive detention orders. Such an order may not be made against a person unless the Court is satisfied:

- (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.

An order will have effect for between 6 months and 24 months, as specified in the order. An order will be able to be made under the proposed clause even if the person against whom it is made is in lawful custody, whether under the proposed Act or otherwise and even if there are grounds on which the person may be held in lawful custody otherwise than under the proposed Act.

Clause 6 empowers the Supreme Court to 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 for the warrant, that there are reasonable grounds on which a preventive detention order may be made. A person arrested under such a warrant will have to be brought before the Court as soon as practicable and, in any case, within 72 hours of arrest.

Clause 7 empowers the Supreme Court to make interim detention orders pending its determination of proceedings on an application for a preventive detention order.

Clause 8 provides that only the Attorney General may make applications referred to in clauses 5, 6 and 7.

Clause 9 provides that a detention order may be made subject to such conditions as the Court may determine and takes effect on the date on which it is made or such later date as is specified in the order.

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

Clause 11 requires the Supreme Court to appoint assessors to observe and report to the Attorney General on a person against whom the Court has made a preventive detention order (“a detainee”). An assessor will be a duly qualified medical practitioner, psychiatrist or psychologist.

Clause 12 empowers the Supreme Court to direct the Commissioner of Corrective Services to make specified medical, psychiatric or psychological treatment available to a detainee.

Clause 13 provides for the amendment and revocation of preventive detention orders.

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Division 2—Procedure before the Court

Clause 14 provides that proceedings under the proposed Act are civil proceedings and are to be conducted accordingly.

Clause 15 provides that a detention order may not be made unless the Attorney General's case is proved on the balance of probabilities.

Clause 16 provides for proceedings on an application under the proposed Act to be commenced by summons, and allows the Supreme Court to hear and determine such an application in the absence of the defendant on proof of service or attempted service of the summons.

Clause 17 regulates the procedure to be adopted by the Supreme Court in hearing proceedings under the proposed Act.

Clause 18 empowers the Supreme Court to prohibit the publication or broadcasting of material that would tend to identify persons connected with proceedings under the proposed Act.

Division 3—Administration of preventive detention orders

Clause 19 provides that 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.

Clause 20 provides that a detention order does not have effect while the person against whom it is made is in lawful custody otherwise than under the order.

Clause 21 requires reports on a detainee's condition and progress to be prepared by the Commissioner of Corrective Services and by the assessors appointed for the detainee.

Clause 22 is a declaratory provision that removes any doubt as to the status of a detainee, as a prisoner, and the effect of a detention order for the purposes of the Prisons Act 1952, the Crimes Act 1900 and the Sentencing Act 1989.

Clause 23 requires a detainee to be discharged from custody at the expiry of the detention order to which the detainee is subject and provides that a detainee must not be discharged from prison, or allowed leave of absence from prison, otherwise than at the expiry of the detention order or in accordance with an order made by the Supreme court.

Division 4—General

Clause 24 provides for the jurisdiction of the Supreme Court under the proposed Act to be exercised by a single Judge.

Clause 25 provides for a right of appeal against decisions of the Supreme Court under the proposed Act to make, or to refuse to make, preventive detention orders.

Clause 26 preserves the jurisdiction that may be exercised by the Supreme Court apart from the proposed Act.

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PART 3—MISCELLANEOUS

Clause 27 provides for the payment, out of the Legal Aid Fund, of the costs incurred by or on behalf of a person against whom proceedings are brought under the proposed Act.

Clause 28 protects certain persons, including the State, from liability for acts and omissions done or omitted for the purposes of, or in connection with the administration of, the proposed Act.

Clause 29 provides that the Bail Act 1978 does not apply to defendants in proceedings under the proposed Act.

Clause 30 provides for the making of rules of court for the purposes of the proposed Act.
