



New South Wales

Mental Health (Criminal Procedure) Amendment Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Mental Health (Criminal Procedure) Act 1990* (*the Principal Act*):

- (a) to remove the role of the Attorney General in relation to an inquiry held by the District Court or Supreme Court as to the fitness of a person to be tried for an offence and in relation to directing the holding of a special hearing in respect of a person who is not fit to be tried for an offence, and
- (b) to give the Court, the Mental Health Review Tribunal (*the Tribunal*) and the Director of Public Prosecutions certain functions in relation to the matters referred to in paragraph (a), and
- (c) to provide that a Judge alone rather than a jury is to determine the question of a person's fitness to be tried for an offence, and
- (d) to provide that a Judge alone is to determine a special hearing unless the defendant, the defendant's representative or the prosecutor elects to have the matter determined by a jury, and
- (e) to extend the options available to a Magistrate when dealing with a person who was developmentally disabled or suffering from a mental illness or other

- mental condition at the time he or she committed an offence but was not a “mentally ill” person within the meaning of the Act, and
- (f) to require a Magistrate and certain authorised officers to state reasons for certain decisions made in proceedings where it is alleged that the defendant is a person referred to in paragraph (e) or a mentally ill person, and
 - (g) to enable a person who, in accordance with an order of a Magistrate, assesses the mental condition of or provides treatment to a defendant who is a person referred to in paragraph (e) to report breaches of the order to certain officers of the Probation and Parole Service or the Department of Juvenile Justice (or another person or body prescribed by the regulations), and
 - (h) to remove a provision requiring a Magistrate, on application of the defendant in proceedings, to disqualify himself or herself from continuing to hear the proceedings in certain circumstances, and
 - (i) for the purposes of statute law revision.

The Bill also amends the *Mental Health Act 1990*:

- (a) in connection with the amendments made to the Principal Act, and
- (b) to prevent the Tribunal from recommending the release of a person who is a forensic patient if the person has been transferred to hospital while serving a sentence of imprisonment and has not finished serving the sentence (or non-parole period for the sentence, if applicable), and
- (c) to enable the Minister for Health (as the prescribed authority under the *Mental Health Act 1990*) to take action when a person breaches a condition of an order of a court under section 39 of the Principal Act releasing a person from custody after a finding of not guilty by reason of mental illness, and
- (d) for the purposes of statute law revision.

Outline of provisions

Clause 1 sets out the name (also called the short title) of 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 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendments to the *Mental Health Act 1990* set out in Schedule 3.

Schedule 1 Principal amendments to Mental Health (Criminal Procedure) Act 1990

Amendments relating to functions of Attorney General and Director of Public Prosecutions

Schedule 1 [1] amends section 8 of the Principal Act to require the Court (rather than, as at present, the Attorney General) to determine whether an inquiry should be conducted as to a person's fitness to be tried for an offence where this question is raised before arraignment. The Court already has this power under section 9 of the Principal Act in circumstances where the question of a person's fitness is raised after arraignment. **Schedule 1 [2] and [3]** make consequential amendments.

Schedule 1 [8] omits section 18 of the Principal Act which requires the Attorney General, after receiving notification from the Tribunal that a person is unlikely to become fit to be tried for an offence within 12 months, to direct the Court to hold a special hearing in respect of the offence or to notify the Court and the Minister for Police that no further proceedings will be taken. **Schedule 1 [9]** substitutes section 19 of the Principal Act to require the Court to hold a special hearing after receiving such a notification unless the Director of Public Prosecutions advises that no further proceedings will be taken. **Schedule 1 [6] and [10]** make consequential amendments.

Schedule 1 [15] substitutes section 29 of the Principal Act to require the Court to hold a further inquiry into the fitness of a person to be tried for an offence if the Tribunal has notified that a person who was previously found to be unfit to be tried has become fit. However, the Court is not to hold a further inquiry if the Director of Public Prosecutions advises that no further proceedings will be taken. Currently, the Court holds such further inquiries at the request of the Attorney General.

Determination of questions of fitness and conduct of special hearings

Schedule 1 [4] substitutes section 11 of the Principal Act and omits section 11A to provide that the question of a person's unfitness to be tried for an offence is to be determined by the Judge alone. At present, that question is determined by a jury unless the person, with the consent of the prosecutor, elects otherwise. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [7] amends section 17 of the Principal Act to require that orders of the Court to grant bail or detain a person in a hospital or other place after an inquiry as to a person's fitness to be tried for an offence are to be notified to the Tribunal.

Schedule 1 [12] substitutes section 21A of the Principal Act to provide that a special hearing is to be determined by the Judge alone unless an election to have the special hearing determined by a jury is made in accordance with the section by the accused person, his or her legal representative or the prosecutor. At present, a special hearing is determined by a jury unless the accused person, with the consent of the prosecutor, elects otherwise. **Schedule 1 [11]** makes a consequential amendment.

Schedule 1 [13] inserts proposed section 22A into the Principal Act to enable the Director of Public Prosecutions to amend an indictment to which a special hearing relates (subject to specified restrictions) in a similar manner to the amendment of an indictment in ordinary criminal proceedings.

Schedule 1 [14] amends section 23 of the Principal Act to enable the Court when imposing a limiting term with respect to a person in a special hearing to impose the term so as to be served consecutively with, or partly concurrently and partly consecutively with, another limiting term applying to the person or a sentence of imprisonment imposed on the person.

Summary proceedings before Magistrate relating to persons affected by mental disorders

Schedule 1 [17] amends section 32 of the Principal Act to extend its operation. Currently, section 32 enables a Magistrate in proceedings to apply provisions of that section to a defendant who, at the time of the proceedings, was not a mentally ill person (as defined by the Principal Act) but developmentally disabled or suffering from a mental illness or a mental condition for which treatment is available in a hospital. The amendment extends section 32 to a defendant who was such a person at the time of the alleged commission of the relevant offence. The provisions concerned give the Magistrate options to adjourn the proceedings, grant the defendant bail or make any other appropriate order. They also enable the Magistrate to dismiss the charges and to release the defendant unconditionally or into the care of a responsible person or subject to the condition that the defendant undertake specified treatment. **Schedule 1 [16]** makes a consequential amendment.

Schedule 1 [18] amends section 32 of the Principal Act to require a Magistrate to state reasons for the Magistrate's decision as to whether or not a defendant should be dealt with under the provisions referred to in the preceding paragraph.

Schedule 1 [19] inserts section 32A into the Principal Act to permit a person who, in accordance with an order releasing a defendant under section 32, assesses the mental condition of or provides treatment to the defendant to report failures to comply with the order and other associated information despite any law (for example, any duty of confidentiality).

Schedule 1 [20] amends section 33 of the Principal Act to require a Magistrate or an authorised officer to state reasons for the Magistrate's or authorised officer's decision as to whether or not to deal with the defendant under certain provisions of the section. The provisions concerned enable orders to be made for the detention of a defendant who appears to be mentally ill in a hospital for assessment and give a Magistrate the power to discharge the defendant, unconditionally or subject to conditions, into the care of a responsible person.

Schedule 1 [21] omits section 34 of the Principal Act which requires a Magistrate to disqualify himself or herself, on the application of the defendant in proceedings before the Magistrate, from hearing the proceedings if the Magistrate has refused to deal with the defendant concerned under section 32 or 33 of the Principal Act and

another Magistrate has not previously determined whether the defendant should be dealt with under those sections.

Defence of mental illness

Schedule 1 [22] amends section 38 of the Principal Act to enable a Court, in proceedings for the trial of a person where a special verdict of not guilty by reason of mental illness is returned, to remand the person in custody pending an order being made by the Court under section 39 of the Principal Act as to whether the person is to be detained or released unconditionally or subject to conditions.

Schedule 1 [23] amends section 39 of the Principal Act to prevent the Court from making an order releasing a person unless the Court is satisfied, on the balance of probabilities, that the safety of the person or any member of the public will not be seriously endangered by the person's release. Section 39 is also amended to require the Registrar of the Court to notify the Minister for Health and the Tribunal of the terms of any order made under the section.

Savings and transitional provisions

Schedule 1 [24] enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [25] contains savings and transitional provisions consequent on the enactment of the proposed Act that specify which amendments made by Schedule 1 to the proposed Act will apply to existing as well as future proceedings and which amendments will apply only to future proceedings.

Schedule 2 Amendments to Mental Health (Criminal Procedure) Act 1990 by way of statute law revision

Schedule 2 makes amendments to the Principal Act by way of statute law revision. The amendments change out of date references to prisoners, the Prison Medical Service, solicitors and counsel and include references to detention centres for juveniles. The amendments also include references in certain provisions to the Director-General of the Department of Juvenile Justice and juvenile justice officers so as to involve them in certain matters relating to accused persons who are juveniles.

Schedule 3 Amendment of Mental Health Act 1990

Schedule 3 [1] amends section 80 of the *Mental Health Act 1990 (the Act)* to require the Tribunal to review the case of a person, who has been found unfit to be tried for an offence by a court and has been granted bail, so as to determine whether the person has become fit to be tried and whether the safety of the person or any member of the public will be seriously endangered by the person's release.

Schedule 3 [2]–[5] amend sections 80 and 82 of the Act as a consequence of the amendments made to the Principal Act by Schedule 1 [8], namely to remove the role of the Attorney General from provisions relating to the holding of special hearings.

Schedule 3 [6] amends section 82 of the Act to prevent the Tribunal recommending the release of a forensic patient who has been transferred to a hospital while serving a sentence of imprisonment and has not served the term of the sentence or, if a non-parole period has been set in relation to the sentence, the non-parole period.

Schedule 3 [9]–[11] make consequential amendments.

Schedule 3 [7] amends section 93 of the Act to enable the prescribed authority, if it appears that a person has committed a breach of a condition of an order releasing the person from custody under section 39 of the Principal Act, to make an order for the person's apprehension and detention, care or treatment.

Schedule 3 [8] substitutes section 104 of the Act as a consequence of the amendments made to the Principal Act by Schedule 1 [8], namely to remove the role of the Attorney General from provisions relating to the holding of special hearings.

Schedule 3 [12] amends section 108 of the Act to provide that the Minister for Health may release certain forensic patients following advice from the Director of Public Prosecutions (rather than from the Attorney General, as is currently the case) that further proceedings will not be taken.

Schedule 3 [13] amends the definition of *forensic patient* in the Act to include a person who is granted bail pursuant to section 14 (b) (ii) or 17 (2) of the Principal Act.

Schedule 3 [14] enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 3 [15] contains savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 3 [16] amends the Explanatory note to the Act to reflect the amendments outlined above.



New South Wales

Mental Health (Criminal Procedure) Amendment Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Mental Health (Criminal Procedure) Act 1990 No 10	2
4 Amendment of Mental Health Act 1990 No 9	2
Schedule 1 Principal amendments to Mental Health (Criminal Procedure) Act 1990	3
Schedule 2 Amendments to Mental Health (Criminal Procedure) Act 1990 by way of statute law revision	11
Schedule 3 Amendment of Mental Health Act 1990	13

Mental Health (Criminal Procedure) Amendment Bill 2005

Contents

Page

Contents page 2



New South Wales

Mental Health (Criminal Procedure) Amendment Bill 2005

No. , 2005

A Bill for

An Act to amend the *Mental Health (Criminal Procedure) Act 1990* with respect to inquiries to determine a person's fitness to be tried for an offence and special hearings and to amend the *Mental Health Act 1990* in connection with those matters; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Mental Health (Criminal Procedure) Amendment Act 2005</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Mental Health (Criminal Procedure) Act 1990 No 10	7
The <i>Mental Health (Criminal Procedure) Act 1990</i> is amended as set out in Schedules 1 and 2.	8 9
4 Amendment of Mental Health Act 1990 No 9	10
The <i>Mental Health Act 1990</i> is amended as set out in Schedule 3.	11

Schedule 1	Principal amendments to Mental Health (Criminal Procedure) Act 1990	1
		2
	(Section 3)	3
[1]	Section 8 Procedure where question of unfitness raised before arraignment	4
	Omit “Attorney General” wherever occurring. Insert instead “Court”.	5
		6
[2]	Section 10 Procedure on raising question of unfitness	7
	Omit “Attorney General” from section 10 (1) (a). Insert instead “Court”.	8
[3]	Section 10 (1)	9
	Omit “Attorney General’s”.	10
[4]	Section 11	11
	Omit sections 11 and 11A. Insert instead:	12
	11 Determination of question of unfitness	13
	(1) The question of a person’s unfitness to be tried for an offence is to be determined by the Judge alone.	14
		15
	(2) Any determination by the Judge under this section must include the principles of law applied by the Judge and the findings of fact on which the Judge relied.	16
		17
		18
[5]	Section 12 Conduct of inquiry	19
	Omit section 12 (4).	20
[6]	Section 16 Functions of Mental Health Review Tribunal on referral after inquiry	21
	Omit “Attorney General of the determination and furnish the Director of Public Prosecutions with a copy of the notification” from section 16 (4).	22
		23
	Insert instead “Director of Public Prosecutions of the determination”.	24
		25
[7]	Section 17 Orders Court may make following determination of Mental Health Review Tribunal that person will be fit to plead within 12 months	26
	Insert after section 17 (3):	27
		28
	(4) As soon as practicable after the grant of bail under subsection (2) or the making of an order under subsection (3), the Registrar of the Court is to notify the Mental Health Review Tribunal of the grant of bail or the terms of the order.	29
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		31
		32

[8] Section 18 Attorney General's functions following determination of Mental Health Review Tribunal that person will not be fit to plead within 12 months	1 2 3
Omit the section.	4
[9] Section 19	5
Omit the section. Insert instead:	6
19 Court to hold special hearing after advice received from Director of Public Prosecutions	7 8
(1) If the Court receives a notification of a determination from the Mental Health Review Tribunal under section 16 (3) of this Act or under section 80 (5) or 82 (3A) of the <i>Mental Health Act 1990</i> that a person will not, during the period of 12 months after the finding of unfitness, become fit to be tried for an offence, the Court:	9 10 11 12 13 14
(a) is to obtain the advice of the Director of Public Prosecutions as to whether further proceedings will be taken by the Director of Public Prosecutions in respect of the offence, and	15 16 17 18
(b) is to conduct a special hearing as soon as practicable unless the Director of Public Prosecutions advises that no further proceedings will be taken.	19 20 21
(2) A special hearing is a hearing for the purpose of ensuring, despite the unfitness of the person to be tried in accordance with the normal procedures, that the person is acquitted unless it can be proved to the requisite criminal standard of proof that, on the limited evidence available, the person committed the offence charged or any other offence available as an alternative to the offence charged.	22 23 24 25 26 27 28
(3) If the Director of Public Prosecutions advises the Court under subsection (1) (a) that no further proceedings will be taken in respect of the offence, the Director of Public Prosecutions is also to give that advice to the Minister for Police.	29 30 31 32
(4) Subsection (1) does not apply if the Court has already held a special hearing in relation to the offence concerned.	33 34

[10]	Section 20 Release of certain persons	1
	Omit “section 18, the Attorney General”.	2
	Insert instead “section 19, the Director of Public Prosecutions”.	3
[11]	Section 21 Nature and conduct of special hearing	4
	Insert “for which a jury has been constituted” after “a special hearing” in section 21 (4).	5 6
[12]	Section 21A	7
	Omit the section. Insert instead:	8
	21A Judge to try special hearing unless election for jury made	9
	(1) At a special hearing, the question whether an accused person has committed an offence charged or any other offence available as an alternative to an offence charged is to be determined by the Judge alone unless an election to have a special hearing determined by a jury is made by:	10 11 12 13 14
	(a) the accused person and the Court is satisfied that the person sought and received advice in relation to the election from an Australian legal practitioner and understood the advice, or	15 16 17 18
	(b) an Australian legal practitioner representing the accused person, or	19 20
	(c) the prosecutor.	21
	(2) An election to have a special hearing determined by a jury must be made:	22 23
	(a) in the case of an election by the accused person or the Australian legal practitioner representing the accused person—on any day before the day fixed for the special hearing in the Supreme Court or the District Court, or	24 25 26 27
	(b) in the case of an election by the prosecutor—at least 7 days before the day fixed for the special hearing in the Supreme Court or the District Court.	28 29 30
	(3) An accused person or an Australian legal practitioner representing an accused person who elects to have a special hearing determined by a jury may, at any time before the day fixed for the special hearing, subsequently elect to have the matter determined by the Judge alone.	31 32 33 34 35

(4)	The <i>Jury Act 1977</i> applies to and in respect of the constitution of a jury, and a jury constituted, for the purpose of a special hearing in the same way as it applies to and in respect of the constitution of a jury, and a jury constituted, for the trial of any criminal proceedings.	1 2 3 4 5
(5)	A member of a jury otherwise constituted for the purpose of any proceedings relating to the same accused person and the same offence is disqualified from being a member of a jury constituted as referred to in subsection (4).	6 7 8 9
(6)	Rules of court may be made with respect to elections under this section.	10 11
[13]	Section 22A	12
	Insert after section 22:	13
22A	Amendment of indictment	14
(1)	The provisions of the <i>Criminal Procedure Act 1986</i> apply to the amendment of an indictment under this section in the same way as they apply to the amendment of an indictment in ordinary criminal proceedings, subject to any modifications that the Court considers appropriate in the circumstances.	15 16 17 18 19
(2)	Without limiting subsection (1), the Director of Public Prosecutions may, with the leave of the Court or the consent of an Australian legal practitioner representing the accused person, amend an indictment to which a special hearing relates.	20 21 22 23
[14]	Section 23 Procedure after completion of special hearing	24
	Omit section 23 (5). Insert instead:	25
(5)	A limiting term nominated in respect of a person takes effect from the time when it is nominated unless the Court:	26 27
(a)	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, or	28 29 30 31
(b)	directs that the term commence at a later time so as to be served consecutively with (or partly concurrently and partly consecutively with) some other limiting term nominated in respect of the person or a sentence of imprisonment imposed on the person.	32 33 34 35 36

(6)	When making a direction under subsection (5) (b), the Court is to take into account that:	1
		2
(a)	a sentence of imprisonment imposed in a normal trial of criminal proceedings may be subject to a non-parole period whereas a limiting term is not, and	3
		4
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(b)	in a normal trial of criminal proceedings, consecutive sentences of imprisonment are to be imposed with regard to non-parole periods (as referred to in section 47 (4) and (5) of the <i>Crimes (Sentencing Procedure) Act 1999</i>).	6
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		9
[15] Section 29		10
	Omit the section. Insert instead:	11
29 Action to be taken on notification that a person is fit to be tried		12
(1)	If the Mental Health Review Tribunal has notified the Court that it is of the opinion that a person who has been found to be unfit to be tried for an offence has become fit to be tried for the offence (whether or not a special hearing has been conducted in respect of the offence), the Court:	13
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		17
(a)	is to obtain the advice of the Director of Public Prosecutions as to whether further proceedings will be taken by the Director of Public Prosecutions in respect of the offence, and	18
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		21
(b)	is to hold a further inquiry as to the person's fitness as soon as practicable unless the Director of Public Prosecutions advises that the person will not be further proceeded against in respect of the offence.	22
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(2)	The Director of Public Prosecutions must advise the Minister for Health and the Mental Health Review Tribunal if the Director has determined that no further proceedings will be taken in respect of the offence.	26
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(3)	If the Director of Public Prosecutions advises the Minister for Health that a person will not be further proceeded against, the Minister for Health must, after having informed the Minister for Police of the date of the person's release, do all such things within the power of the Minister for Health to order the person's release from detention or to otherwise ensure the person's release from detention.	30
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(4)	Sections 11 and 12 apply to and in respect of a further inquiry under this section in the same way as those sections apply to and in respect of an inquiry.	37
		38
		39

[16] Section 31 Application	1
Omit section 31 (2).	2
[17] Section 32 Persons suffering from mental illness or condition	3
Insert “(or was at the time of the alleged commission of the offence to which the proceedings relate)” after “defendant is” in section 32 (1) (a).	4 5
[18] Section 32 (4A) and (4B)	6
Insert after section 32 (4):	7
(4A) A Magistrate is to state the reasons for making a decision as to whether or not a defendant should be dealt with under subsection (2) or (3).	8 9 10
(4B) A failure to comply with subsection (4A) does not invalidate any decision of a Magistrate under this section.	11 12
[19] Section 32A	13
Insert after section 32:	14
32A Reports from treatment providers	15
(1) Despite any law, a person who is to assess another person’s mental condition or provide treatment to another person in accordance with an order under section 32 (3) (a <i>treatment provider</i>) may report a failure to comply with a condition of the order by the other person to any of the following:	16 17 18 19 20
(a) an officer of Community Offender Services, Probation and Parole Service,	21 22
(b) an officer of the Department of Juvenile Justice,	23
(c) any other person or body prescribed by the regulations.	24
(2) A treatment provider may include in a report under this section any information that the treatment provider considers is relevant to the making of a decision in relation to the failure to comply concerned.	25 26 27 28
(3) A report provided under this section is to be in the form approved for the time being by the Director-General of the Attorney General’s Department.	29 30 31

[20] Section 33 Mentally ill persons	1
Insert after section 33 (4):	2
(4A) A Magistrate is to state the reasons for making a decision as to whether or not a defendant should be dealt with by an order under subsection (1) or (1A).	3 4 5
(4B) An authorised officer is to state the reasons for making a decision as to whether or not a defendant should be dealt with by an order under subsection (1D).	6 7 8
(4C) A failure to comply with subsection (4A) or (4B) does not invalidate any decision of a Magistrate or authorised officer under this section.	9 10 11
[21] Section 34 Disqualification of Magistrate	12
Omit the section.	13
[22] Section 38 Special verdict	14
Insert at the end of the section:	15
(2) If a special verdict of not guilty by reason of mental illness is returned at the trial of a person for an offence, the Court may remand the person in custody until the making of an order under section 39 in respect of the person.	16 17 18 19
[23] Section 39 Effect of finding and declaration of mental illness	20
Insert at the end of the section:	21
(2) The Court is not to make an order under this section for the release of a person from custody unless it is satisfied, on the balance of probabilities, that the safety of the person or any member of the public will not be seriously endangered by the person's release.	22 23 24 25 26
(3) As soon as practicable after the making of an order under this section, the Registrar of the Court is to notify the Minister for Health and the Mental Health Review Tribunal of the terms of the order.	27 28 29 30
[24] Schedule 1 Savings and transitional provisions	31
Insert at the end of clause 1A (1):	32
<i>Mental Health (Criminal Procedure) Amendment Act 2005</i>	33 34

[25] Schedule 1, clause 3	1
Insert after clause 2:	2
3 Amendments made by Mental Health (Criminal Procedure) Amendment Act 2005	3
	4
(1) Except as provided by subclause (2), an amendment made to this Act by Schedule 1 to the <i>Mental Health (Criminal Procedure) Amendment Act 2005</i> applies to proceedings whether commenced before, on or after the commencement of the amendment.	5
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(2) An amendment made to this Act by Schedule 1 [4] or [12] to the <i>Mental Health (Criminal Procedure) Amendment Act 2005</i> applies to proceedings for offences, whether or not the offences were committed before, on or after the commencement of the amendment, but does not apply to proceedings commenced before the commencement of the amendment.	10
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Schedule 2	Amendments to Mental Health (Criminal Procedure) Act 1990 by way of statute law revision	1
		2
		3
	(Section 3)	4
[1] Section 3 Definitions		5
	Insert in alphabetical order in section 3 (1):	6
	<i>correctional centre</i> has the same meaning as in the <i>Crimes (Administration of Sentences) Act 1999</i> .	7
	<i>detention centre</i> has the same meaning as in the <i>Children (Detention Centres) Act 1987</i> .	8
		9
		10
[2] Sections 12 (1) and 21 (2)		11
	Omit “counsel or a solicitor” wherever occurring.	12
	Insert instead “an Australian legal practitioner”.	13
[3] Section 21 Nature and conduct of special hearing		14
	Omit “the counsel or solicitor” from section 21 (3) (b).	15
	Insert instead “the Australian legal practitioner”.	16
[4] Section 28 Effect on other proceedings of finding on special hearing		17
	Omit “as a prisoner” from section 28 (2).	18
	Insert instead “as an inmate (within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i>)”.	19
		20
[5] Section 30 Procedure after completion of further inquiry		21
	Omit “as a prisoner” from section 30 (2) (a).	22
	Insert instead “as an inmate (within the meaning of the <i>Crimes (Administration of Sentences) Act 1999</i>)”.	23
		24
[6] Section 33 Mentally ill persons		25
	Insert after section 33 (5):	26
	(5A) An order under this section may provide that, in the case of a defendant who is a juvenile, the defendant is to be taken to or from a place by a juvenile justice officer employed in the Department of Juvenile Justice rather than by a police officer.	27
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Mental Health (Criminal Procedure) Amendment Bill 2005

Schedule 2 Amendments to Mental Health (Criminal Procedure) Act 1990 by way of statute law revision

[7] Section 35 Transfer from correctional centre or detention centre	1
Omit “prison” from section 35 (2).	2
Insert instead “a correctional centre or detention centre”.	3
[8] Section 35 (2) (c)	4
Omit “Director of the Prison Medical Service”.	5
Insert instead “Chief Executive Officer, Justice Health or, in the case of a juvenile, the Director-General of the Department of Juvenile Justice”.	6
	7

Schedule 3	Amendment of Mental Health Act 1990	1
	(Section 4)	2
[1]	Section 80 Tribunal to review cases of persons found unfit to be tried	3
	Omit section 80 (1) (a). Insert instead:	4
	(a) to an accused person who has been found, after an inquiry by a court, to be unfit to be tried for an offence and is ordered to be detained in a hospital or other place, or is granted bail, under section 17 of the <i>Mental Health (Criminal Procedure) Act 1990</i> , and	5 6 7 8 9
[2]	Section 80 (3)	10
	Omit the subsection. Insert instead:	11
	(3) If the Tribunal is of the opinion that a person has become fit to be tried for an offence, it must notify the court that made the finding of unfitness and the Director of Public Prosecutions accordingly.	12 13 14
[3]	Section 80 (5)	15
	Insert after section 80 (4):	16
	(5) If the Tribunal is of the opinion that a person referred to in subsection (1) (a) has not become fit to be tried for an offence and will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence, the Tribunal must notify the court that made the finding of unfitness and the Director of Public Prosecutions accordingly.	17 18 19 20 21 22
[4]	Section 82 Tribunal to review cases of forensic patients	23
	Omit “Attorney General accordingly” from section 82 (3).	24
	Insert instead “Director of Public Prosecutions and the court that made the finding of unfitness”.	25 26
[5]	Section 82 (3A)	27
	Insert after section 82 (3):	28
	(3A) The Tribunal must notify the Court and the Director of Public Prosecutions if, for the purpose of making a recommendation under this section in relation to a forensic patient subject to a determination that the patient is unfit to be tried for an offence, the Tribunal forms the opinion that the patient:	29 30 31 32 33

(a)	has not become fit to be tried for an offence, and	1
(b)	will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence.	2 3 4
[6]	Section 82 (5)	5
	Omit the subsection. Insert instead:	6
(5)	The Tribunal may not recommend the release of a forensic patient who:	7
		8
(a)	is remanded in custody under section 10 (3) (c) of the <i>Mental Health (Criminal Procedure) Act 1990</i> pending an inquiry into the question of the person's unfitness to be tried for an offence, or	9 10 11 12
(b)	has been transferred to a hospital while serving a sentence of imprisonment and has not served the term of the sentence or, if a non-parole period has been set in relation to the sentence, the non-parole period.	13 14 15 16
[7]	Section 93 Breach of condition of order for release	17
	Insert after section 93 (1) (a):	18
(a1)	has committed a breach of a condition of an order releasing the person from custody under section 39 of the <i>Mental Health (Criminal Procedure) Act 1990</i> , or	19 20 21
[8]	Section 104	22
	Omit the section. Insert instead:	23
104	Termination of classification as forensic patient of person who becomes fit to be tried for an offence	24 25
	A person in respect of whom, after a finding that the person is unfit to be tried for an offence, the Tribunal has notified the court that made the finding and the Director of Public Prosecutions that it is of the opinion that the person has become fit to be tried for an offence (whether or not a special hearing has been conducted under section 19 of the <i>Mental Health (Criminal Procedure) Act 1990</i> in respect of the offence) ceases to be a forensic patient:	26 27 28 29 30 31 32
(a)	on a finding, at a further inquiry by a court as to the person's unfitness, that the person is fit to be tried for the offence, or	33 34 35
(b)	if the Director of Public Prosecutions advises the Minister that the person will not be further proceeded against in respect of the offence—on the person's release from	36 37 38

	detention pursuant to section 29 of the <i>Mental Health (Criminal Procedure) Act 1990</i> ,	1
	whichever first occurs.	2
		3
[9]	Section 105	4
	Omit the section. Insert instead:	5
105	Termination of classification as forensic patient of person serving term of imprisonment for which no non-parole period set	6
	A person who, while serving a term of imprisonment for which no non-parole period has been set, has been transferred to a hospital from a prison ceases to be a forensic patient:	7
	(a) on the expiry of the term, or	8
	(b) on being classified by the Tribunal as a continued treatment patient, or	9
	(c) on being transferred to a prison,	10
	whichever first occurs.	11
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[10]	Section 106	16
	Omit the section. Insert instead:	17
106	Termination of classification as forensic patient of person serving sentence of imprisonment for life	18
	A person who, while serving a sentence of imprisonment for life, being a sentence imposed otherwise than pursuant to a special hearing under section 19 of the <i>Mental Health (Criminal Procedure) Act 1990</i> , has been transferred to a hospital from a prison ceases to be a forensic patient on being transferred to a prison.	19
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[11]	Section 107	26
	Omit the section. Insert instead:	27
107	Termination of classification as forensic patient of person serving term of imprisonment for which non-parole period set	28
	A person who, while serving a term of imprisonment for which a non-parole period has been set, has been transferred to a hospital from a prison ceases to be a forensic patient:	29
	(a) on the expiry of the term of imprisonment, or	30
	(b) if the non-parole period has expired—on unconditional release by order of the prescribed authority following a recommendation of the Tribunal, or	31
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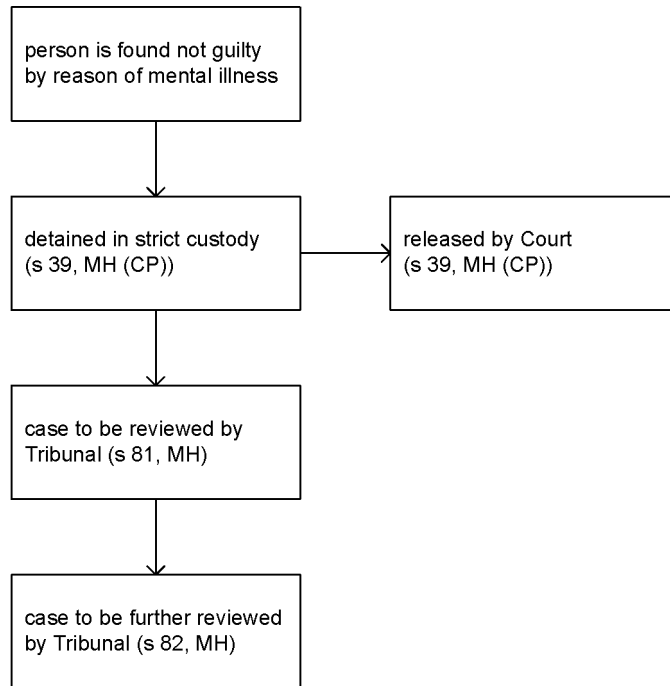
(c)	if the non-parole period has expired and the person has been released by order of the prescribed authority subject to conditions—on the expiry of any time specified in the conditions as being a time during which those conditions, or any of them, are to be complied with, or	1 2 3 4 5
(d)	on being classified by the Tribunal as a continued treatment patient, or	6 7
(e)	on being transferred to a prison, whichever first occurs.	8 9
[12]	Section 108 Termination of classification as forensic patient of person on remand	10 11
	Omit “Attorney General to the Minister that the person will not be further proceeded against by the Attorney General or the Director of Public Prosecutions” from section 108 (a).	12 13 14
	Insert instead “Director of Public Prosecutions to the Minister that the person will not be further proceeded against”.	15 16
[13]	Schedule 1 Dictionary of terms used in the Act	17
	Insert at the end of paragraph (c) of the definition of <i>forensic patient</i> :	18
	, or	19
	(d) a person who is granted bail pursuant to section 14 (b) (ii) or 17 (2) of the <i>Mental Health (Criminal Procedure) Act 1990</i> .	20 21 22
[14]	Schedule 7 Savings, transitional and other provisions	23
	Insert at the end of clause 2 (1A):	24
	<i>Mental Health (Criminal Procedure) Amendment Act 2005</i>	25 26

[15] Schedule 7, Part 9	1
Insert after Part 8:	2
Part 9 Provisions consequent on enactment of Mental Health (Criminal Procedure) Amendment Act 2005	3 4 5
45 Application of amendments	6
(1) In this clause, <i>amending Act</i> means the <i>Mental Health (Criminal Procedure) Amendment Act 2005</i> .	7 8
(2) An amendment made by Schedule 3 [1], [2], [3], [4] or [5] to the amending Act applies to a finding by a court that a person is unfit to be tried for an offence whether or not the finding is made in proceedings commenced before, on or after the commencement of the amendment.	9 10 11 12 13
(3) Section 82 (5) (b) (as inserted by the amending Act) applies to a forensic patient whether or not the relevant transfer to a hospital occurred before, on or after the commencement of the paragraph.	14 15 16
(4) An amendment made to this Act by Schedule 3 [7] to the amending Act applies to orders whether made before, on or after the commencement of the amendment.	17 18 19
(5) An amendment made to this Act by Schedule 3 [9], [10] or [11] to the amending Act extends to a person who was a forensic patient immediately before the commencement of the amendment.	20 21 22 23
(6) An amendment made to this Act by Schedule 3 [13] to the amending Act applies to a person whether or not the relevant grant of bail was made before, on or after the commencement of the amendment.	24 25 26 27

[16] Explanatory note

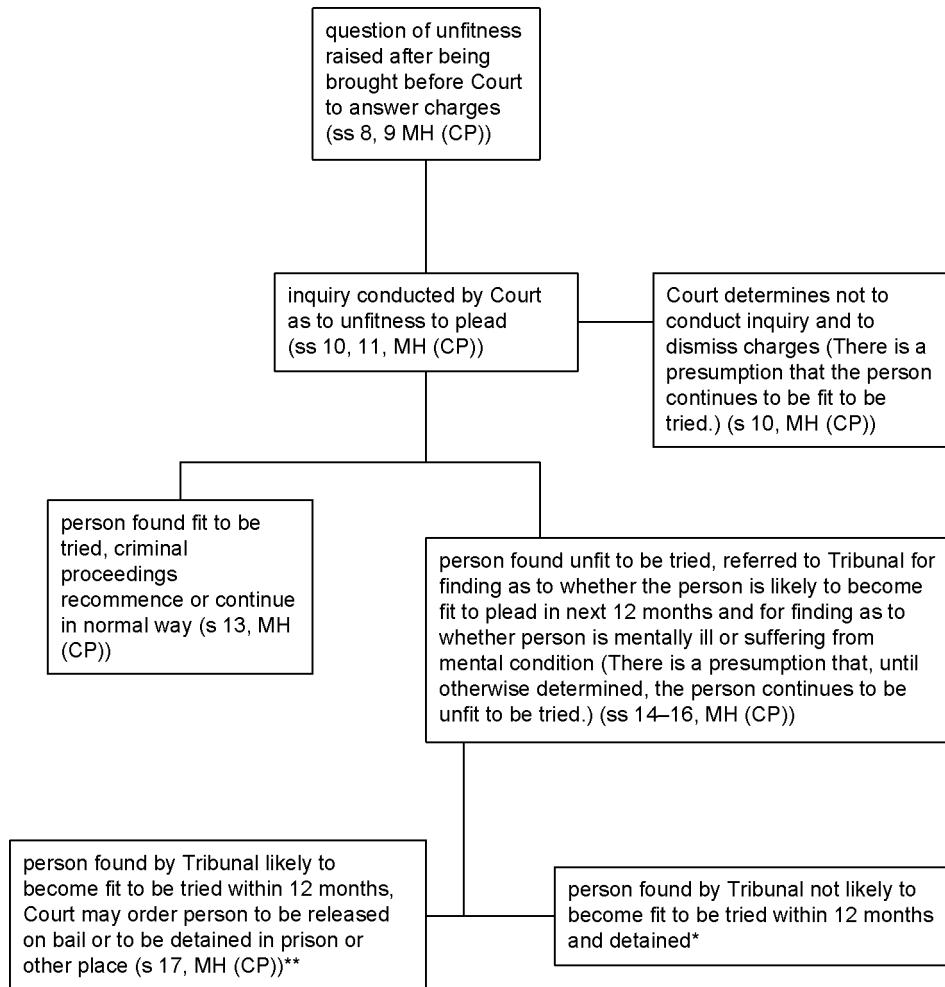
Omit the Tables to the explanatory note. Insert instead:

Table 1—Persons found not guilty by reason of mental illness



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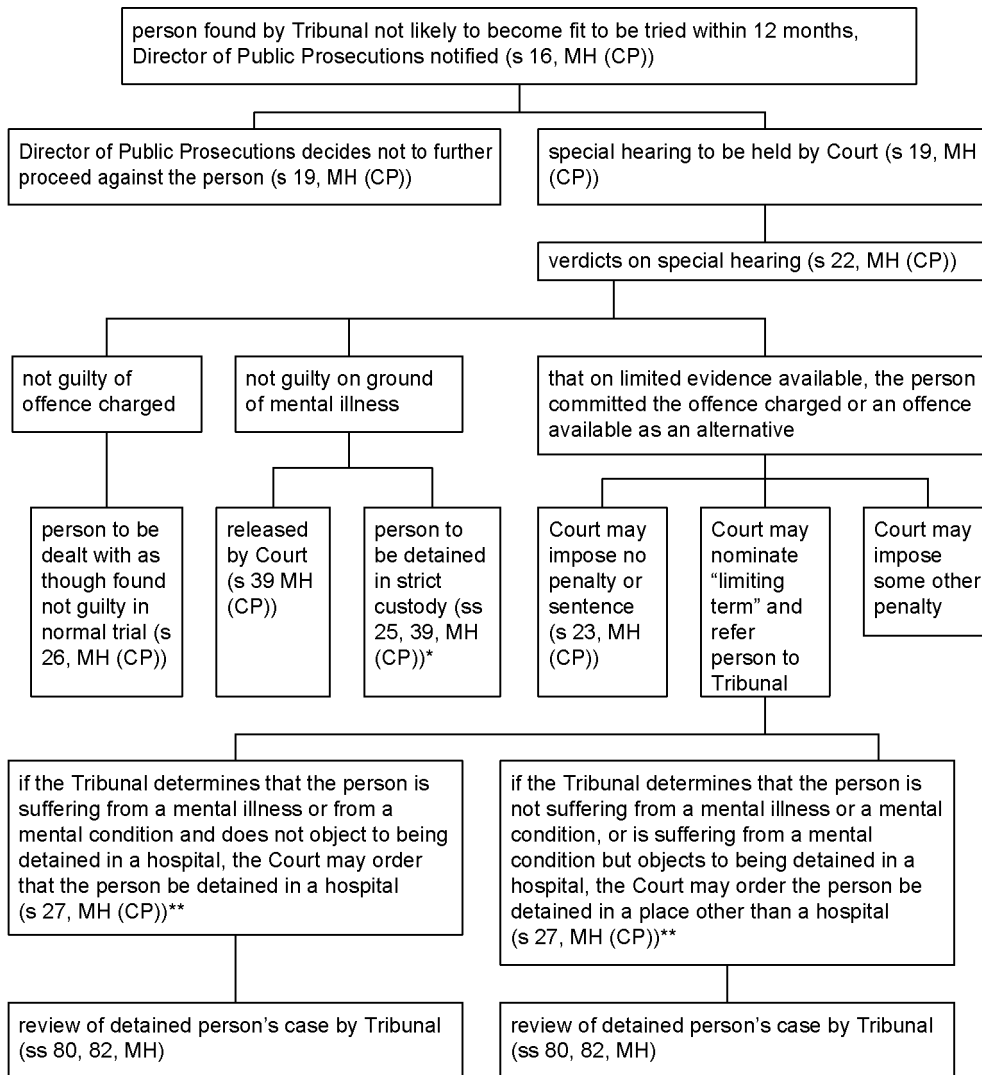
Table 2—Persons who may be unfit to plead



* Note: See Table 3 for consequences of such a finding.

** Note: See Table 4 for effects of the review of such a person's case. The person is a forensic patient. See section 102 for circumstances when the person ceases to be a forensic patient.

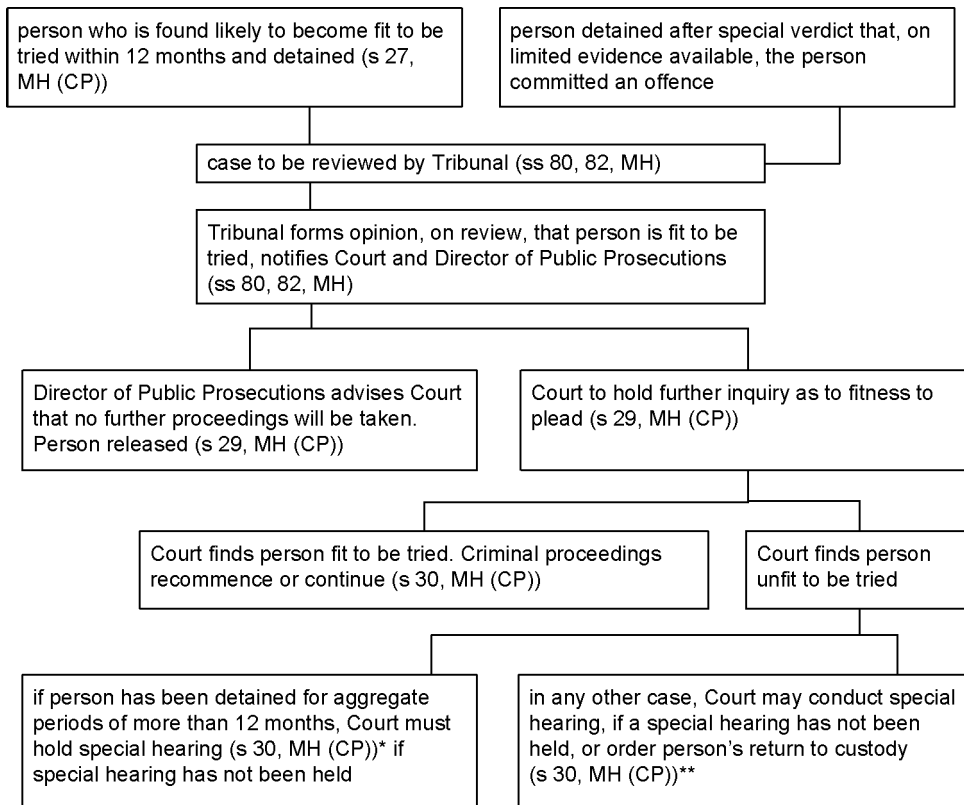
Table 3—Persons found by Tribunal not likely to be fit to be tried within 12 months



* Note: The person is a forensic patient. See section 101 for circumstances when the person ceases to be a forensic patient.

**Note: The person is a forensic patient. See section 103 for circumstances when the person ceases to be a forensic patient.

Table 4—Effects of review of cases and determination by Tribunal that a person is fit to be tried



* Note: See Table 3 for results of special hearing.

**Note: The person is a forensic patient. For circumstances when the person ceases to be a forensic patient, see section 102 (where there has not been a special hearing) or section 103 (where there has been a special hearing).