



New South Wales

Civil Liability Amendment (Mental Illness) Bill 2003

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 *Civil Liability Act 2002* to provide that section 54 (Criminals not to be awarded damages) of that Act:

- (a) extends to criminal conduct of a person who because of mental illness is not guilty of an offence in respect of that criminal conduct (or unfit to be tried for the offence), and
- (b) is backdated to cover civil proceedings commenced before the commencement of the section, but limited (in the case of proceedings commenced before 3 September 2002) to decisions in proceedings (including appeal proceedings) made after notice of motion for this Bill was given.

Currently section 54 is limited to proceedings commenced on or after 3 September 2002.

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 to be backdated to when notice of motion for this Bill was given.

Clause 3 is a formal provision that gives effect to the amendments to the *Civil Liability Act 2002* set out in Schedule 1.

Schedule 1 contains the amendments described in the overview above.

Introduced by Mr A A Tink, MP

First print



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Civil Liability Amendment (Mental Illness) Bill 2003

No. , 2003

A Bill for

An Act to amend the *Civil Liability Act 2002* to apply the prohibition on the recovery of damages by criminals to criminal conduct by mentally ill persons.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Civil Liability Amendment (Mental Illness) Act 2003</i> .	3
2 Commencement	4
This Act is taken to have commenced on 3 September 2003, being the date notice of motion for leave to introduce the Bill for this Act was given in the Legislative Assembly.	5 6 7
3 Amendment of Civil Liability Act 2002 No 22	8
The <i>Civil Liability Act 2002</i> is amended as set out in Schedule 1.	9

Schedule 1 Amendment of Civil Liability Act 2002

(Section 3)

[1] Section 54 Criminals not to be awarded damages

Insert after section 54 (5):

- (6) Without limiting subsection (5), this section operates even if the person whose conduct is alleged to constitute an offence was at the time of engaging in that conduct mentally ill, so as not to be responsible according to law for that conduct, and whether or not the person is determined to be unfit to be tried for the offence or found not guilty of the offence by reason of mental illness.

[2] Schedule 1 Savings and transitional provisions

Insert after clause 11:

Part 4 Provisions consequent on enactment of Civil Liability Amendment (Mental Illness) Act 2003

12 Operation of section 54 and amendments

- (1) Section 54 (as amended by the *Civil Liability Amendment (Mental Illness) Act 2003*) extends to civil liability arising before the commencement of that section even if proceedings in respect of that liability were commenced in a court before the commencement of that section.
- (2) However, in the application of section 54 in respect of proceedings commenced in a court before 3 September 2002, that section applies only for the purposes of:
- (a) any decision of the court in the proceedings that is made after the commencement of this clause, and
- (b) any decision of a court on an appeal in connection with those proceedings that is made after the commencement of this clause (even if the appeal was instituted before the commencement of this clause) and only if the decision appealed against was made after the commencement of section 54.

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Schedule 1 Amendment of Civil Liability Act 2002

- (3) When section 54 applies under this clause for the purposes of the decision of a court, the decision is to be made as if section 54 (as amended by the *Civil Liability Amendment (Mental Illness) Act 2003*) had always applied to the civil liability with which the decision is concerned. 1
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- (4) This clause supersedes clause 6 in its application to section 54. 6
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