



New South Wales

Mental Health (Forensic Provisions) Amendment Bill 2013

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 (Forensic Provisions) Act 1990* (*the principal Act*) to provide for a scheme for the extension of the status of certain persons as forensic patients and to facilitate the review by the Mental Health Review Tribunal (*the Tribunal*) of those forensic patients' care, treatment, detention and release from custody.

The amendments made by the Bill apply to persons who:

- (a) are found unfit to be tried for an offence but are not acquitted at a special hearing and on whom a limiting term is imposed, and
- (b) pose an unacceptable risk of causing serious harm to others (being a risk that cannot be adequately managed by less restrictive means than extending the person's status as a forensic patient).

The Bill implements recommendations of the NSW Law Reform Commission in its *Report 138 People with cognitive and mental health impairments in the criminal justice system: criminal responsibility and consequences* of May 2013.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Mental Health (Forensic Provisions) Act 1990 No 10

The principal Act provides for the conduct of special hearings in respect of persons who are found unfit to be tried for an offence (whether by reason of mental illness, mental condition or developmental disability of mind). If the court finds at a special hearing that a person committed an offence, the court may nominate a term (*a limiting term*) to represent the sentence that the court would have imposed had the person been found guilty of the offence at a normal trial of criminal proceedings. The nomination of a limiting term enables the court to order that the person be detained in a mental health facility or other place. A person who has been detained following the nomination of a limiting term is a *forensic patient*, being a person whose care, treatment, detention and release from custody is subject to the review of the Tribunal.

The proposed amendments to the principal Act provide for the extension of the status of certain persons as forensic patients whose limiting terms expire to facilitate the review by the Tribunal of their care, treatment, detention and release from custody.

Schedule 1 [8] provides for the extension of a person's status as a forensic patient in accordance with the provisions set out in proposed Schedule 1. **Schedule 1 [3]** gives a person whose status as a forensic patient has been extended in accordance with that proposed Schedule the status of a forensic patient for the purposes of the principal Act. This has the effect of extending to those persons the application of the provisions of Part 5 of the principal Act that relate to the review of the care, treatment, detention and release from custody of forensic patients.

Schedule 1 [13] inserts proposed Schedule 1 into the principal Act. The new Schedule contains the following provisions:

Proposed clause 1 enables the Supreme Court to make an order for the extension of a person's status as a forensic patient (*an extension order*). Proposed clause 2 provides that the Court may make an extension order only if the Supreme Court is satisfied to a high degree of probability that the forensic patient poses an unacceptable risk of causing serious harm to others if he or she ceases being a forensic patient, and that the risk cannot be adequately managed by other less restrictive means.

Proposed clause 3 enables any Minister administering the principal Act to apply for an extension order against a forensic patient.

Proposed clause 4 provides that an application for an extension order may only be made if the forensic patient is subject to a limiting term or existing extension order and may not be made more than 6 months before the expiry of the limiting term or existing extension order.

Proposed clause 5 requires that the application be supported by certain documentation relevant to the application, including a report prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner that assesses the risk of the forensic patient causing serious harm to others and the need for ongoing management of the patient as a forensic patient.

Proposed clause 6 requires an application to be served on the forensic patient within 2 days after it is filed in the Supreme Court. Within 28 days after the application is filed, the Court is to conduct a preliminary hearing. The Court may appoint qualified psychiatrists, registered psychologists and registered medical practitioners to examine the forensic patient if it is satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extension order. If the Court is not so satisfied, it must dismiss the application.

Proposed clause 7 provides for the matters to which the Supreme Court must have regard in determining whether or not to make an extension order (including the safety of the community, reports prepared by qualified psychiatrists, psychologists and medical practitioners and orders or decisions made by the Tribunal with respect to the forensic patient).

Proposed clause 8 provides that the term of an extension order cannot exceed 5 years, but a subsequent order may be made against the same forensic patient.

Proposed clause 9 continues the effect of any order made in respect of a forensic patient, relating to the patient's care, detention, treatment or release from custody, that was in force immediately before the making of an extension order or interim extension order.

Proposed clauses 10 and 11 provide for the making of interim extension orders in circumstances where the limiting term or existing extension order will expire before the determination of proceedings on an application for an extension order. The term of an interim extension order may not exceed 28 days, but the order may be renewed for periods totalling not more than 3 months.

Proposed clause 12 provides for the variation or revocation of an extension order or interim extension order on the application of a Minister administering the principal Act or on the recommendation of the Tribunal.

Proposed clauses 13–22 provide for miscellaneous matters, including appeal rights, the right of a party to appear in the proceedings, call witnesses and make submissions and the power to make rules of court.

Schedule 1 [4] provides that the period within which the Tribunal must review the case of a forensic patient who is subject to an extension order cannot be extended beyond the period of 6 months.

Schedule 1 [5] provides that the Tribunal must not make an order for the unconditional release of a forensic patient who is subject to an extension order but may make a recommendation to the Supreme Court as to the variation or revocation of the order.

Schedule 1 [6] and [7] provide that a person ceases to be a forensic patient if an extension order or interim extension order made against the person expires or is revoked without a subsequent extension order being made.

Schedule 1 [9] allows the Minister for Health and the Attorney General to appear before, or make submissions to, the Tribunal in relation to the possible recommendation to revoke an extension order in respect of a forensic patient.

Schedule 1 [10] requires the Tribunal to notify each Minister administering the principal Act of the upcoming expiry of a forensic patient's limiting term or extension order at least 6 months before that expiry.

Schedule 1 [13] provides for the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [1], [2], [11] and [12] make consequential amendments.