

# CONCURRENCE COPY

## CRIMES (MENTAL DISORDER) AMENDMENT BILL, 1983

---

### EXPLANATORY NOTE

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

This Bill is cognate with the Mental Health Bill, 1983.

The objects of this Bill are—

- (a) to abrogate the rule of law that it is a crime for a person to commit, or to attempt to commit, suicide and to make other provisions relating to the law of suicide;
- (b) to specify the procedures for dealing with a person who is charged with an offence but who is unfit to be tried for the offence;
- (c) to enact, with certain modifications, as provisions of the Crimes Act, 1900, the provisions of the Mental Health Act, 1958, relating to the defence of insanity; and
- (d) to make other provisions of a minor, consequential or ancillary character.

The Bill amends the Crimes Act, 1900 ("the Act"), and in particular—

- (a) in relation to suicide—
  - (i) abrogates the rule of law that it is a crime for a person to commit, or to attempt to commit, suicide (Schedule 1 (2)—proposed section 31A);
  - (ii) provides that the survivor of a suicide pact shall not be guilty of murder or manslaughter but may be guilty of an offence referred to in subparagraph (iii) (Schedule 1 (2)—proposed section 31B);
  - (iii) provides for the circumstances in which it is an offence to aid or abet the suicide or attempted suicide of a person or to incite or counsel a person to commit suicide (Schedule 1 (2)—proposed section 31C); and
  - (iv) provides for the circumstances in which it is lawful to use force to prevent the suicide or apprehended suicide of a person (Schedule 1 (5)—proposed section 574B);
- (b) in relation to unfitness to be tried for an offence, inserts a new Part XIA into the Act which contains the following provisions:—

Chapter I of the proposed new Part XIA contains proposed sections 428A–428T and relates to proceedings in the Supreme Court or District Court.

Proposed section 428A provides that Chapter I applies to criminal proceedings in the Supreme Court (including summary proceedings) and criminal proceedings in the District Court.

Proposed section 428B is an interpretation provision.

Proposed section 428C specifies the persons by whom the question of unfitness may be raised.

Proposed section 428D specifies the standard of proof to be satisfied in determining the question of unfitness.

Proposed section 428E specifies the time at which the question of unfitness may be raised.

Proposed section 428F provides that when the question of unfitness is raised, the Court shall conduct an inquiry in order to determine whether the accused person is unfit to be tried for the offence unless the Court is of the opinion that it is inappropriate to do so.

Proposed section 428G provides that the question of unfitness shall be determined by a jury constituted for the purpose.

Proposed section 428H provides for the representation of an accused person at, and the conduct of, an inquiry.

Proposed section 428I provides that where, following an inquiry, an accused person is found fit to be tried, the proceedings brought against the person shall recommence or continue, but that where the person is found unfit, the proceedings brought against the person shall not be recommenced or continued and the Court shall refer the person to the Mental Health Review Tribunal ("the Tribunal") to determine whether, on the balance of probabilities, the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence and the Court may make such other orders as may be appropriate pending the Tribunal's determination.

Proposed section 428J specifies certain presumptions to be made as to findings concerning fitness.

Proposed section 428K requires the Tribunal to make a determination in respect of a person referred to it under proposed section 428I as to whether, on the balance of probabilities, the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence, to make a determination as to the person's mental condition and to notify the court of its determinations. Where the Tribunal determines that a person will not, within the relevant period, become fit, it is also required to notify the Attorney General of its determination.

Proposed section 428L provides for the making of appropriate orders by the Court on receipt of the Tribunal's determination under proposed section 428K.

Proposed section 428M provides that, on receipt of the Tribunal's determination under proposed section 428K, the Attorney General may direct that a special hearing be conducted or decide not to further prosecute the offence. Where the Attorney General directs that a special hearing be conducted, the Court shall conduct the hearing for the purpose of ensuring, notwithstanding 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.

Proposed section 428N provides that the question of the commission of an offence shall be determined at a special hearing by a jury constituted for the purpose.

Proposed section 428O provides that, with certain exceptions, a special hearing shall be conducted as nearly as possible as if it were a trial of criminal proceedings. It specifies the procedures that are to be followed, the verdicts that are available and the effect of those verdicts.

Proposed sections 428P and 428Q specify the procedures to be followed on the completion of a special hearing, including the assessment of the person's mental condition by the Tribunal and the making and effect of orders of the Court.

Proposed section 428R states the effect on other proceedings of a finding at a special hearing.

Proposed section 428S specifies the procedure to be followed where the Tribunal notifies the Attorney General that it is of the opinion that a person who has been found to be unfit to be tried for an offence is fit to be tried for the offence, including the directing by the Attorney General of a further inquiry into the question of unfitness.

Proposed section 428T specifies the procedures to be followed on the completion of a further inquiry.

Chapter II of the proposed new Part XIA contains proposed sections 428U–428Y and relates to proceedings before magistrates, not being committal proceedings.

Proposed section 428U specifies the proceedings to which Chapter II applies.

Proposed section 428V is an interpretation provision.

Proposed section 428W provides for the procedures which may be followed in relation to persons who appear to be developmentally disabled or mentally disordered but not to be mentally ill persons within the meaning of the proposed Mental Health Act, 1983.

Proposed section 428X provides for the procedures which may be followed in relation to mentally ill persons within the meaning of the proposed Mental Health Act, 1983.

Proposed section 428Y provides for the means by which a magistrate may be informed on a question of a person's mental condition.

- (c) in relation to the defence of mental illness, inserts a new Part XIB into the Act which contains the following provisions:—

Proposed section 428Z provides that where, upon the trial of a person charged with an offence, a question is raised as to whether the person was, at the time of commission of the offence, mentally ill, the Court shall explain to the jury the findings which may be made upon the trial and the legal and practical consequences of those findings.

Proposed section 428ZA provides that where, upon a trial referred to in proposed section 428Z, it appears to the jury that the accused person did the act or made the omission charged but was mentally ill at the time, the jury shall return a special verdict that the accused person is not guilty by reason of mental illness.

Proposed section 428ZB provides that, in the case of a person acquitted by reason of mental illness, the Court shall order that the person be detained in strict custody until released by due process of law.

---

**CRIMES (MENTAL DISORDER) AMENDMENT BILL, 1983**

No.       , 1983.

---

---

**A BILL FOR**

An Act to amend the Crimes Act, 1900, with respect to the suicide of persons, the procedures for dealing with persons who may be unfit to be tried for an offence and the defence of insanity.

[MR BRERETON—22 *November*, 1983.]

---

---

---

*Crimes (Mental Disorder) Amendment.*

---

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**5 Short title.**

**1.** This Act may be cited as the "Crimes (Mental Disorder) Amendment Act, 1983".

**Commencement.**

**2. (1)** Except as provided by subsections (2) and (3), this Act shall **10** commence on the date of assent to this Act.

**(2)** Section 3 shall, in its application to a provision of Schedule 1, commence on the day on which that provision commences.

**(3)** The several provisions of Schedule 1 shall commence on such day or days as may be appointed by the Governor in respect thereof and as **15** may be notified by proclamation published in the Gazette.

**Amendment of Act No. 40, 1900.**

**3.** The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

---

SCHEDULE 1.

**20**

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

(1) (a) Section 1, matter relating to Part III—

After "s. 31.", insert:—

(4A) *Suicide*—ss. 31A–31C.

---

*Crimes (Mental Disorder) Amendment.*


---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

## (b) Section 1—

After the matter relating to Part XI, insert:—

5           PART XIA.—UNFITNESS TO BE TRIED FOR AN OFFENCE.—  
                  *ss. 428A–428Y.*

                  CHAPTER I.—*Proceedings in the Supreme Court or  
  District Court.*

                  CHAPTER II.—*Other proceedings.*

10           PART XIB.—DEFENCE OF MENTAL ILLNESS.—*ss. 428Z–  
  428ZB.*

## (c) Section 1, matter relating to Part XII—

Omit “(7) *Disposal of insane persons.—s. 439.*”

## (2) Sections 31A–31C—

15           After section 31, insert:—

*Suicide.***Suicide and attempt to commit suicide.**

31A. The rule of law that it is a crime for a person to commit,  
or to attempt to commit, suicide is abrogated.

20           **Survivor of suicide pact.**

31B. (1) The survivor of a suicide pact shall not be guilty of  
murder or manslaughter but may be guilty of an offence under  
section 31C.

25           (2) In this section, “suicide pact” means a common  
agreement between 2 or more persons having for its object the  
death of all of them, whether or not each is to take his or her own  
life, but nothing done by a person who enters into a suicide pact

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 shall be treated as being done by the person in pursuance of the pact unless it is done while the person has the settled intention of dying in pursuance of the pact.

(3) The onus of proving the existence of a suicide pact shall lie with the accused person on the balance of probabilities.

**Aiding, etc., suicide.**

10 31c. (1) A person who aids or abets the suicide or attempted suicide of another person shall be liable to imprisonment for 10 years.

(2) Where—

(a) a person incites or counsels another person to commit suicide; and

15 (b) that other person commits, or attempts to commit, suicide as a consequence of that incitement or counsel, the firstmentioned person shall be liable to imprisonment for 5 years.

(3) Parts XIA, XIB—

After Part XI, insert:—

20

PART XIA.

UNFITNESS TO BE TRIED FOR AN OFFENCE.

CHAPTER I.—*Proceedings in the Supreme Court or District Court.*

**Application.**

25 428A. This Chapter applies to criminal proceedings in the Supreme Court (including criminal proceedings within the summary jurisdiction of the Supreme Court) and criminal proceedings in the District Court.



---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Interpretation.**

- 428B. (1) In this Chapter—
- 5 “forensic patient” means a forensic patient as defined in section 4  
(1) of the Mental Health Act, 1983;
- “hospital” means a hospital as defined in section 4 (1) of the  
Mental Health Act, 1983;
- “inquiry” means an inquiry under section 428F (1);
- 10 “Mental Health Review Tribunal” means the Mental Health  
Review Tribunal constituted under the Mental Health Act,  
1983;
- “special hearing” means a special hearing under section 428M  
(2).
- 15 (2) In this Chapter, a reference to a person having done  
an act alleged to have been done is a reference to a person having  
done or having omitted to do an act, matter or thing alleged to have  
been done or alleged to have been omitted to be done.

**Person by whom question of unfitness may be raised.**

- 20 428C. The question of a person’s unfitness to be tried for an  
offence may be raised by any party to the proceedings in respect of  
the offence or by the Court.

**Basis of determination of question of unfitness.**

- 25 428D. The question of a person’s unfitness to be tried for an  
offence shall be determined on the balance of probabilities.

**Time at which question of unfitness may be raised.**

- 30 428E. (1) The question of a person’s unfitness to be tried for an  
offence shall, so far as practicable, be raised before the person is  
arraigned upon a charge in respect of the offence but may be raised  
at any time during the course of the hearing of the proceedings in  
respect of the offence.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 (2) Where the question of a person's unfitness to be tried for an offence is raised at any time before the person is arraigned upon a charge in respect of the offence, the Attorney General shall determine whether an inquiry should be conducted before the hearing of the proceedings in respect of the offence.

10 (3) Nothing in subsection (1) prevents the question of a person's unfitness to be tried for an offence from being raised on more than one occasion in respect of the same proceedings.

**Procedure on raising question of unfitness.**

428F. (1) Where, in respect of an offence—

(a) the Attorney General determines under section 428E (2) that an inquiry should be conducted; or

15 (b) the question of a person's unfitness to be tried for the offence is raised after the person is arraigned upon a charge in respect of the offence,

20 the Court shall, except as provided by subsections (2), (4) and (5), as soon as practicable after the Attorney General's determination is made or the question is raised, as the case may be, conduct an inquiry in order to determine whether the person is unfit to be tried for the offence.

25 (2) The Court shall not conduct an inquiry into the question of a person's unfitness to be tried for an offence unless it appears to the Court that the question has been raised *bona fide*.

30 (3) Where the question of a person's unfitness to be tried for an offence is raised after the person is arraigned upon a charge in respect of the offence, the Court shall hear any submissions relating to the conducting of an inquiry in the absence of any jury which has been constituted for the purposes of the proceedings relating to the offence.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(4) Before conducting an inquiry, the Court may do **any** one or more of the following:—

- 5           (a) adjourn the proceedings;
- (b) grant the accused person bail in accordance with the **Bail Act, 1978**;
- (c) remand the accused person in custody for a period **not** exceeding 28 days;
- 10           (d) request the accused person to undergo a psychiatric examination or other examination;
- (e) request that a psychiatric report or other report relating to the accused person be obtained;
- (f) discharge any jury constituted for the purpose of those proceedings;
- 15           (g) make any other order that the Court considers appropriate.

(5) Where, in respect of a person charged with an offence, the Court is of the opinion that it is inappropriate, having regard to the trivial nature of the charge or offence, the nature of the person's disability or any other matter which the Court thinks proper to consider, to inflict any punishment, the Court may determine not to conduct an inquiry and may dismiss the charge and order that **the** person be released.

20

**Determination of question of unfitness.**

25           428G. (1) The question of a person's unfitness to be tried for an offence shall be determined by a jury constituted for that purpose.

(2) The Jury Act, 1977, applies to and in respect of **the** constitution of a jury and a jury constituted as referred to in subsection (1) 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.

30

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 (3) Where, in relation to the hearing of any proceedings against an accused person in respect of an offence, a jury has been constituted and, after the jury has been constituted—

(a) the prosecutor's opening address has commenced; or

(b) in the event that there is no such opening address, evidence has been called,

10 a member of the jury is disqualified from being a member of a jury constituted as referred to in subsection (1) for the purpose of an inquiry conducted in relation to the same accused person and the same offence.

15 (4) A member of a jury constituted as referred to in subsection (1) is disqualified from being a member of a jury otherwise constituted for the purpose of any proceedings relating to the same accused person and the same offence.

**Conduct of inquiry.**

20 428H. (1) At an inquiry, the accused person shall, unless the Court otherwise allows, be represented by counsel or a solicitor.

(2) An inquiry shall not be conducted in an adversary manner.

(3) The onus of proof of the question of a person's unfitness to be tried for an offence shall not rest on any particular party to the proceedings in respect of the offence.

25 (4) At the commencement of an inquiry the Court shall explain to the jury the reason for the inquiry, the findings which may be made on the inquiry and the consequences, both at law and otherwise, of those findings.

**Procedure after completion of inquiry.**

30 428I. (1) Where, following an inquiry, an accused person is found fit to be tried for an offence, the proceedings brought against the person in respect of the offence shall recommence or continue in accordance with the appropriate criminal procedures.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Where, following an inquiry, an accused person is found unfit to be tried for an offence, the proceedings brought against the person in respect of the offence shall not, except for the purpose of doing any of the things referred to in paragraph (b), be recommenced or continued and the Court—

- 5
- (a) shall refer the person to the Mental Health Review Tribunal; and
- 10 (b) may discharge any jury constituted for the purpose of those proceedings and may, pending the determination of the Tribunal under section 428K, do any one or more of the following:—
- (i) adjourn the proceedings;
- 15 (ii) grant the person bail in accordance with the Bail Act, 1978;
- (iii) remand the person in custody until the determination of the Tribunal has been given effect to;
- (iv) make any other order that the Court considers
- 20 appropriate.

**Presumptions as to findings concerning unfitness.**

428J. It shall be presumed—

- (a) that a person who has, in accordance with this Chapter, been found to be unfit to be tried for an offence shall continue to be unfit to be tried for the offence until the contrary is, on the balance of probabilities, determined to be the case; and
- 25 (b) that a person who has, in accordance with this Chapter, been found fit to be tried for an offence shall continue to be fit to be tried for the offence until the contrary is, on the balance of probabilities, determined to be the case.
- 30

**Functions of Mental Health Review Tribunal.**

428K. (1) Where a person has been referred to the Mental Health Review Tribunal under section 428I (2), the Tribunal shall, as soon as practicable after the person is so referred, determine whether, on

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 the balance of probabilities, the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence.

(2) Where, under subsection (1), the Tribunal determines that a person will, during the period referred to in that subsection, become fit to be tried for an offence, the Tribunal shall also determine whether or not—

10 (a) the person is suffering from a mental illness; or

(b) the person is suffering from a mental condition for which treatment is available in a hospital and, where the person is not in a hospital, whether or not the person objects to being detained in a hospital.

15 (3) After determining in respect of a person the matters referred to in subsections (1) and (2), the Tribunal shall notify the Court which referred the person to it of its determination.

20 (4) Where, under subsection (1), the Tribunal determines that a person will not, during the period referred to in that subsection, become fit to be tried for an offence, the Tribunal shall notify the Attorney General of the determination.

**Order of Court following determination of Mental Health Review Tribunal as to unfitness.**

25 428L. Where, under section 428K (3), a Court is notified by the Mental Health Review Tribunal of its determination in respect of a person, the Court may—

(a) grant the person bail in accordance with the Bail Act, 1978, for a period not exceeding 12 months; or

(b) where the Tribunal has determined—

30 (i) that the person is suffering from a mental illness or that the person is suffering from a mental condition for which treatment is available in a hospital and that

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- 5 the person, not being in a hospital, does not object to being detained in a hospital—order that the person be taken to and detained in a hospital; or
- 10 (ii) that the person is not suffering from a mental illness or from a mental condition referred to in subparagraph (i) or that the person is suffering from such a mental condition but that the person objects to being detained in a hospital—order that the person be detained in a place other than a hospital,
- for a period not exceeding 12 months.

**Functions of Attorney General following determination of Mental Health Review Tribunal.**

- 15 428M. (1) Where, under section 428K (4), the Attorney General is notified by the Mental Health Review Tribunal of its determination in respect of a person, the Attorney General may—
- (a) direct that a special hearing be conducted in respect of the offence with which the person is charged; or
- 20 (b) advise—
- (i) the Minister for Police; and
- (ii) the Court which referred the person to the Tribunal, that the person will not be further proceeded against by the Attorney General in respect of the offence.
- 25 (2) Where, under subsection (1) (a), the Attorney General directs that a special hearing be conducted in respect of an offence with which a person is charged, the appropriate Court shall, as soon as practicable after the Attorney General so directs, conduct a special hearing for the purpose of ensuring, notwithstanding the
- 30 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.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 (3) Where, under subsection (1) (b), the Attorney General advises a Court that a person will not be further proceeded against in respect of an offence, the Court shall thereupon order the release of the person.

**Determination at special hearing.**

10 428N. (1) The question whether a person has committed an offence charged or any other offence available as an alternative to an offence charged shall be determined at a special hearing by a jury constituted for that purpose.

15 (2) The Jury Act, 1977, applies to and in respect of the constitution of a jury and a jury constituted as referred to in subsection (1) in the same way as it applies to and in respect of the constitution of a jury and a jury for the trial of any criminal proceedings.

20 (3) 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 (1).

**Nature and conduct of special hearing.**

25 428O. (1) Except as provided by this Chapter, a special hearing shall be conducted as nearly as possible as if it were a trial of criminal proceedings.

(2) At a special hearing, the accused person shall, unless the Court otherwise allows, be represented by counsel or a solicitor and the fact that the person has been found unfit to be tried for an offence shall be presumed not to be an impediment to the person's representation.

30 (3) At a special hearing—  
(a) the accused person shall be deemed to have pleaded not guilty in respect of the offence charged;



---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- 5 (b) the counsel or solicitor, if any, who represents the accused person may exercise the rights of the person to challenge jurors or the jury;
- (c) without limiting the generality of subsection (1), the accused person may raise any defence that could be properly raised if the special hearing were an ordinary trial of criminal proceedings; and
- 10 (d) without limiting the generality of subsection (1), the accused person shall be entitled to give evidence or to make an unsworn statement.

15 (4) At the commencement of a special hearing, the Court shall explain to the jury the fact that the accused person is unfit to be tried in accordance with the normal procedures, the meaning of unfitness to be tried, the purpose of the special hearing, the verdicts which are available and the legal and practical consequences of those verdicts.

- 20 (5) The verdicts available to the jury or the Court at a special hearing include the following, namely:—
- (a) not guilty of the offence charged;
- (b) not guilty on the ground of mental illness;
- (c) that on the limited evidence available, the accused person committed the offence charged;
- 25 (d) that on the limited evidence available, the accused person committed an offence available as an alternative to the offence charged.

30 (6) A verdict in accordance with subsection (5) (b) shall be deemed to be equivalent for all purposes to a special verdict that an accused person is not guilty by reason of mental illness under section 428ZA.

- (7) A verdict in accordance with subsection (5) (c) or (d)—
- 35 (a) shall constitute a qualified finding of guilt and shall not constitute a basis in law for any conviction for the offence to which the finding relates;

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- (b) shall, subject to section 428R, constitute a bar to further prosecution in respect of the same circumstances;
- 5 (c) shall be subject to appeal in the same manner as a verdict in an ordinary trial of criminal proceedings; and
- (d) shall be deemed to be a conviction for the purpose of enabling a victim of the offence in respect of which the verdict is given to make a claim for criminal injuries compensation.

10 **Procedure after completion of special hearing.**

428P. (1) Where, following a special hearing, it is found on the limited evidence available that an accused person committed the offence charged or some other offence available as an alternative, the Court—

- 15 (a) shall indicate whether, if the special hearing had been a normal trial of criminal proceedings against a person who was fit to be tried for the offence which the person is found to have committed, it would have imposed a sentence of imprisonment or penal servitude; and
- 20 (b) where the Court would have imposed such a sentence, shall nominate a term, in this section referred to as “a limiting term”, in respect of that offence, being the best estimate of the head sentence the Court would have considered appropriate if the special hearing had been a normal trial of
- 25 criminal proceedings against a person who was fit to be tried for that offence and the person had been found guilty of that offence.

(2) Where in respect of a person a Court has nominated a limiting term, the Court—

- 30 (a) shall refer the person to the Mental Health Review Tribunal; and
- (b) may make such order with respect to the custody of the person as the Court considers appropriate.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(3) Where, under subsection (2), a Court refers a person to the Tribunal, the Tribunal shall determine whether or not—

- 5 (a) the person is suffering from a mental illness; or  
(b) the person is suffering from a mental condition for which treatment is available in a hospital and, where the person is not in a hospital, whether or not the person objects to being detained in a hospital.

10 (4) The Tribunal shall notify the Court which referred the person to it under subsection (2) of its determination with respect to the person.

15 (5) Where at a special hearing the defence of mental illness is raised and the jury returns a special verdict that the accused person is not guilty by reason of mental illness, the person shall thereafter be dealt with and an order may be made under this subsection in respect of the person as if the jury had returned such a special verdict at a normal trial of criminal proceedings.

20 (6) Where, at a special hearing, it is found that an accused person is not guilty of an offence charged, the person shall thereafter be dealt with as if the person had been found not guilty at a normal trial of criminal proceedings.

**Order of Court following determination of Mental Health Review Tribunal as to mental condition.**

25 428Q. Where, under section 428P (4), a Court is notified by the Mental Health Review Tribunal of its determination in respect of a person, the Court may—

- 30 (a) where the Tribunal has determined that the person is suffering from a mental illness or that the person is suffering from a mental condition for which treatment is available in

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

5 a hospital and that the person, not being in a hospital, does not object to being detained in a hospital—order that the person be taken to and detained in a hospital; or

10 (b) where the Tribunal has determined that the person is not suffering from a mental illness or from a mental condition referred to in paragraph (a) or that the person is suffering from such a mental condition but that the person objects to being detained in a hospital—order that the person be detained in a place other than a hospital.

**Effect on other proceedings of finding on special hearing.**

15 428R. (1) Where, following a special hearing, an accused person is found on the limited evidence available to have committed the offence charged or some other offence available as an alternative, the finding shall, except as provided by subsection (2), constitute a bar to any other criminal proceedings brought against the person for the same offence or substantially the same offence.

20 (2) Nothing in subsection (1) prevents other criminal proceedings referred to in that subsection from being commenced at any time prior to the expiration of any limiting term within the meaning of section 428P in respect of a person unless, before the expiration of the limiting term, the person has been released from custody as a prisoner or discharged from detention as a forensic patient.

25 (3) Where, pursuant to other criminal proceedings referred to in subsection (1), an accused person is convicted of the offence or substantially the same offence as that which, at a special hearing, the person was found to have committed, the periods, if any, of the person's custody or detention before, during and after the special hearing, being periods relating to the offence, shall be fully taken into account in determining any period of any sentence or the terms of any disposition consequent upon the conviction.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Recommendation for further inquiry.**

5 428s. (1) Where the Mental Health Review Tribunal has notified the Attorney General 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 Attorney General—

10 (a) shall request the Court before which the person was found to be unfit to be tried for the offence to hold a further inquiry as to the person's unfitness; or

(b) shall—

15 (i) determine that the person will not be further proceeded against by the Attorney General in respect of the offence; and

(ii) notify the Minister for Health of the determination.

20 (2) Where, under subsection (1) (a), the Attorney General requests that a further inquiry be held, the appropriate Court shall, as soon as practicable after the Attorney General so requests, hold a further inquiry.

25 (3) Where, under subsection (1) (b), the Attorney General notifies the Minister for Health of a determination not to further proceed against a person, the Minister for Health shall, 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 (4) Sections 428G (subsection (3) excepted) and 428H apply to and in respect of a further inquiry under subsection (2) in the same way as those sections apply to and in respect of an inquiry.

**Procedure after completion of further inquiry.**

35 428t. (1) Where, following a further inquiry under section 428s (2), an accused person is found fit to be tried for an offence, the proceedings brought against the person in respect of the offence shall recommence or continue in accordance with the appropriate criminal procedures.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Where, following a further inquiry under section 428s (2), an accused person is found unfit to be tried for an offence—

5 (a) in the case of an accused person who has been detained in custody as a prisoner or in a hospital as a forensic patient for a period or continuous periods in the aggregate of not less than 12 months—the Court shall conduct a special hearing;  
or

10 (b) in the case of any other accused person—the Court may—  
(i) conduct a special hearing; or  
(ii) order that the person be returned to the custody or hospital from which the person was taken.

CHAPTER II.—*Other proceedings.*15 **Application.**

428U. This Chapter applies to criminal proceedings in respect of summary offences or indictable offences triable summarily, being proceedings before a magistrate, but does not apply to committal proceedings.

20 **Interpretation.**

428v. (1) In this Chapter, “magistrate” means a justice or justices, a stipendiary magistrate and, on and from the date of commencement of Part IX of the Community Welfare Act, 1982, a member of the Children’s Court of New South Wales.

25 (2) In this Chapter, a reference to a person having done an act alleged to have been done is a reference to a person having done or having omitted to do an act, matter or thing alleged to have been done or alleged to have been omitted to be done.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Mentally disordered persons.**

5 428w. Where, in proceedings before a magistrate, it appears to the magistrate—

- (a) that the defendant is developmentally disabled or mentally disordered but is not a mentally ill person within the meaning of the Mental Health Act, 1983; and
- 10 (b) that, on an outline of the facts alleged in the proceedings or such other evidence as the magistrate may consider relevant, it would be more appropriate to deal with the defendant in accordance with the provisions of this Chapter than otherwise in accordance with law,

the magistrate—

- 15 (c) may dismiss the charge and discharge the defendant—
  - (i) into the care of a responsible person, unconditionally or subject to conditions;
  - (ii) upon the condition that the defendant attend upon a person or at a place specified by the magistrate for  
20 assessment of the defendant's mental condition or treatment, or both; or
  - (iii) unconditionally; or
- (d) may do any one or more of the following:—
  - (i) adjourn the proceedings;
  - 25 (ii) grant the defendant bail in accordance with the Bail Act, 1978;
  - (iii) make any other order that the magistrate considers appropriate.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Mentally ill persons.**

5 428x. (1) Where, in proceedings before a magistrate, it appears to the magistrate that the defendant is a mentally ill person within the meaning of the Mental Health Act, 1983, the magistrate—

(a) may order that the defendant be taken to a hospital as defined in section 4 (1) of the Mental Health Act, 1983, for assessment; or

10 (b) may discharge the defendant, unconditionally or subject to conditions, into the care of a responsible person.

(2) Where a defendant is dealt with in proceedings before a magistrate in accordance with subsection (1), the charge which gave rise to the proceedings shall, on the expiration of the period of 6 months after the date on which the defendant is so dealt with, be deemed to have been dismissed unless, within that period, the defendant is brought before a magistrate to be further dealt with in relation to the charge.

15

(3) Where a defendant is brought before a magistrate to be further dealt with in relation to a charge as referred to in subsection (2), the magistrate shall, in dealing with the charge, take account of any period during which the defendant was in a hospital as a consequence of an order made under subsection (1) (a).

20

**Means by which magistrate may be informed.**

25 428y. For the purposes of this Chapter, a magistrate may inform himself or herself as the magistrate thinks fit, but not so as to require a defendant to incriminate himself or herself.



---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

## PART XIb.

## DEFENCE OF MENTAL ILLNESS.

5 **Explanation to jury.**

428Z. Where, upon the trial of a person charged with an offence, a question is raised as to whether the person was, at the time of commission of the offence, mentally ill as referred to in section 428ZA, the Court shall explain to the jury the findings which may be made upon the trial and the legal and practical consequences of those findings and shall include in its explanation a reference to the existence and composition of the Mental Health Review Tribunal constituted under the Mental Health Act, 1983, and the relevant functions of that Tribunal with respect to forensic patients within the meaning of that Act, including a reference to the requirements under sections 118 (1) (b) (ii) and 119 of that Act, that the Tribunal may only make a recommendation for release of a person detained in accordance with section 428ZB where the Tribunal is satisfied, on the evidence available to it, that the safety of the person or any member of the public will not be seriously endangered by the person's release.

**Special verdict.**

428ZA. Where, in an indictment or information, an act or omission is charged against a person as an offence and it is given in evidence on the trial of the person for the offence that the person was mentally ill, so as not to be responsible, according to law, for his or her action at the time when the act was done or omission made, then, if it appears to the jury before which the person is tried that the person did the act or made the omission charged, but was mentally ill as aforesaid at the time when the person did or made the same, the jury shall return a special verdict that the accused person is not guilty by reason of mental illness.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Effect of finding and declaration as to mental illness.**

5 428ZB. Where, upon the trial of a person charged with an offence, the jury returns a special verdict that the accused person is not guilty by reason of mental illness, the Court shall order that the person be detained in strict custody in such place and in such manner as the Court thinks fit until released by due process of law.

(4) (a) Section 439, short heading—

10 Omit the short heading.

(b) Section 439—

Omit the section.

(5) Section 574B—

After section 574A, insert:—

15 **Prevention of suicide.**

574B. It shall be lawful for a person to use such force as may reasonably be necessary to prevent the suicide of another person or any act which the person believes on reasonable grounds would, if committed, result in that suicide.

---

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983





**CRIMES (MENTAL DISORDER) AMENDMENT ACT, 1983,  
No. 180**

**New South Wales**



ANNO TRICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

\*\*\*\*\*

**Act No. 180, 1983.**

An Act to amend the Crimes Act, 1900, with respect to the suicide of persons, the procedures for dealing with persons who may be unfit to be tried for an offence and the defence of insanity. [Assented to, 31st December, 1983.]

---

*Crimes (Mental Disorder) Amendment.*

---

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the "Crimes (Mental Disorder) Amendment Act, 1983".

**Commencement.**

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Section 3 shall, in its application to a provision of Schedule 1, commence on the day on which that provision commences.

(3) The several provisions of Schedule 1 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Amendment of Act No. 40, 1900.**

3. The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

---

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

(1) (a) Section 1, matter relating to Part III—

After "s. 31.", insert:—

(4A) *Suicide*—ss. 31A–31C.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

## (b) Section 1—

After the matter relating to Part XI, insert:—

PART XIA.—UNFITNESS TO BE TRIED FOR AN OFFENCE.—  
ss. 428A–428Y.CHAPTER I.—*Proceedings in the Supreme Court or  
District Court.*CHAPTER II.—*Other proceedings.*PART XIB.—DEFENCE OF MENTAL ILLNESS.—ss. 428Z–  
428ZB.

## (c) Section 1, matter relating to Part XII—

Omit “(7) *Disposal of insane persons.*—s. 439.”

## (2) Sections 31A–31C—

After section 31, insert:—

*Suicide.***Suicide and attempt to commit suicide.**

31A. The rule of law that it is a crime for a person to commit, or to attempt to commit, suicide is abrogated.

**Survivor of suicide pact.**

31B. (1) The survivor of a suicide pact shall not be guilty of murder or manslaughter but may be guilty of an offence under section 31C.

(2) In this section, “suicide pact” means a common agreement between 2 or more persons having for its object the death of all of them, whether or not each is to take his or her own life, but nothing done by a person who enters into a suicide pact

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

shall be treated as being done by the person in pursuance of the pact unless it is done while the person has the settled intention of dying in pursuance of the pact.

(3) The onus of proving the existence of a suicide pact shall lie with the accused person on the balance of probabilities.

**Aiding, etc., suicide.**

31C. (1) A person who aids or abets the suicide or attempted suicide of another person shall be liable to imprisonment for 10 years.

(2) Where—

- (a) a person incites or counsels another person to commit suicide; and
- (b) that other person commits, or attempts to commit, suicide as a consequence of that incitement or counsel,

the firstmentioned person shall be liable to imprisonment for 5 years.

(3) Parts XIA, XIB—

After Part XI, insert:—

## PART XIA.

## UNFITNESS TO BE TRIED FOR AN OFFENCE.

CHAPTER I.—*Proceedings in the Supreme Court or District Court.***Application.**

428A. This Chapter applies to criminal proceedings in the Supreme Court (including criminal proceedings within the summary jurisdiction of the Supreme Court) and criminal proceedings in the District Court.



---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Interpretation.**

428B. (1) In this Chapter—

“forensic patient” means a forensic patient as defined in section 4 (1) of the Mental Health Act, 1983;

“hospital” means a hospital as defined in section 4 (1) of the Mental Health Act, 1983;

“inquiry” means an inquiry under section 428F (1);

“Mental Health Review Tribunal” means the Mental Health Review Tribunal constituted under the Mental Health Act, 1983;

“special hearing” means a special hearing under section 428M (2).

(2) In this Chapter, a reference to a person having done an act alleged to have been done is a reference to a person having done or having omitted to do an act, matter or thing alleged to have been done or alleged to have been omitted to be done.

**Person by whom question of unfitness may be raised.**

428C. The question of a person’s unfitness to be tried for an offence may be raised by any party to the proceedings in respect of the offence or by the Court.

**Basis of determination of question of unfitness.**

428D. The question of a person’s unfitness to be tried for an offence shall be determined on the balance of probabilities.

**Time at which question of unfitness may be raised.**

428E. (1) The question of a person’s unfitness to be tried for an offence shall, so far as practicable, be raised before the person is arraigned upon a charge in respect of the offence but may be raised at any time during the course of the hearing of the proceedings in respect of the offence.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Where the question of a person's unfitness to be tried for an offence is raised at any time before the person is arraigned upon a charge in respect of the offence, the Attorney General shall determine whether an inquiry should be conducted before the hearing of the proceedings in respect of the offence.

(3) Nothing in subsection (1) prevents the question of a person's unfitness to be tried for an offence from being raised on more than one occasion in respect of the same proceedings.

**Procedure on raising question of unfitness.**

428F. (1) Where, in respect of an offence—

- (a) the Attorney General determines under section 428E (2) that an inquiry should be conducted; or
- (b) the question of a person's unfitness to be tried for the offence is raised after the person is arraigned upon a charge in respect of the offence,

the Court shall, except as provided by subsections (2), (4) and (5), as soon as practicable after the Attorney General's determination is made or the question is raised, as the case may be, conduct an inquiry in order to determine whether the person is unfit to be tried for the offence.

(2) The Court shall not conduct an inquiry into the question of a person's unfitness to be tried for an offence unless it appears to the Court that the question has been raised bona fide.

(3) Where the question of a person's unfitness to be tried for an offence is raised after the person is arraigned upon a charge in respect of the offence, the Court shall hear any submissions relating to the conducting of an inquiry in the absence of any jury which has been constituted for the purposes of the proceedings relating to the offence.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(4) Before conducting an inquiry, the Court may do any one or more of the following:—

- (a) adjourn the proceedings;
- (b) grant the accused person bail in accordance with the Bail Act, 1978;
- (c) remand the accused person in custody for a period not exceeding 28 days;
- (d) request the accused person to undergo a psychiatric examination or other examination;
- (e) request that a psychiatric report or other report relating to the accused person be obtained;
- (f) discharge any jury constituted for the purpose of those proceedings;
- (g) make any other order that the Court considers appropriate.

(5) Where, in respect of a person charged with an offence, the Court is of the opinion that it is inappropriate, having regard to the trivial nature of the charge or offence, the nature of the person's disability or any other matter which the Court thinks proper to consider, to inflict any punishment, the Court may determine not to conduct an inquiry and may dismiss the charge and order that the person be released.

**Determination of question of unfitness.**

428G. (1) The question of a person's unfitness to be tried for an offence shall be determined by a jury constituted for that purpose.

(2) The Jury Act, 1977, applies to and in respect of the constitution of a jury and a jury constituted as referred to in subsection (1) 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.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(3) Where, in relation to the hearing of any proceedings against an accused person in respect of an offence, a jury has been constituted and, after the jury has been constituted—

- (a) the prosecutor's opening address has commenced; or
- (b) in the event that there is no such opening address, evidence has been called,

a member of the jury is disqualified from being a member of a jury constituted as referred to in subsection (1) for the purpose of an inquiry conducted in relation to the same accused person and the same offence.

(4) A member of a jury constituted as referred to in subsection (1) is disqualified from being a member of a jury otherwise constituted for the purpose of any proceedings relating to the same accused person and the same offence.

**Conduct of inquiry.**

428H. (1) At an inquiry, the accused person shall, unless the Court otherwise allows, be represented by counsel or a solicitor.

(2) An inquiry shall not be conducted in an adversary manner.

(3) The onus of proof of the question of a person's unfitness to be tried for an offence shall not rest on any particular party to the proceedings in respect of the offence.

(4) At the commencement of an inquiry the Court shall explain to the jury the reason for the inquiry, the findings which may be made on the inquiry and the consequences, both at law and otherwise, of those findings.

**Procedure after completion of inquiry.**

428I. (1) Where, following an inquiry, an accused person is found fit to be tried for an offence, the proceedings brought against the person in respect of the offence shall recommence or continue in accordance with the appropriate criminal procedures.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Where, following an inquiry, an accused person is found unfit to be tried for an offence, the proceedings brought against the person in respect of the offence shall not, except for the purpose of doing any of the things referred to in paragraph (b), be recommenced or continued and the Court—

- (a) shall refer the person to the Mental Health Review Tribunal; and
- (b) may discharge any jury constituted for the purpose of those proceedings and may, pending the determination of the Tribunal under section 428k, do any one or more of the following:—
  - (i) adjourn the proceedings;
  - (ii) grant the person bail in accordance with the Bail Act, 1978;
  - (iii) remand the person in custody until the determination of the Tribunal has been given effect to;
  - (iv) make any other order that the Court considers appropriate.

**Presumptions as to findings concerning unfitness.**

428j. It shall be presumed—

- (a) that a person who has, in accordance with this Chapter, been found to be unfit to be tried for an offence shall continue to be unfit to be tried for the offence until the contrary is, on the balance of probabilities, determined to be the case; and
- (b) that a person who has, in accordance with this Chapter, been found fit to be tried for an offence shall continue to be fit to be tried for the offence until the contrary is, on the balance of probabilities, determined to be the case.

**Functions of Mental Health Review Tribunal.**

428k. (1) Where a person has been referred to the Mental Health Review Tribunal under section 428i (2), the Tribunal shall, as soon as practicable after the person is so referred, determine whether, on

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

the balance of probabilities, the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence.

(2) Where, under subsection (1), the Tribunal determines that a person will, during the period referred to in that subsection, become fit to be tried for an offence, the Tribunal shall also determine whether or not—

- (a) the person is suffering from a mental illness; or
- (b) the person is suffering from a mental condition for which treatment is available in a hospital and, where the person is not in a hospital, whether or not the person objects to being detained in a hospital.

(3) After determining in respect of a person the matters referred to in subsections (1) and (2), the Tribunal shall notify the Court which referred the person to it of its determination.

(4) Where, under subsection (1), the Tribunal determines that a person will not, during the period referred to in that subsection, become fit to be tried for an offence, the Tribunal shall notify the Attorney General of the determination.

**Order of Court following determination of Mental Health Review Tribunal as to unfitness.**

428L. Where, under section 428K (3), a Court is notified by the Mental Health Review Tribunal of its determination in respect of a person, the Court may—

- (a) grant the person bail in accordance with the Bail Act, 1978, for a period not exceeding 12 months; or
- (b) where the Tribunal has determined—
  - (i) that the person is suffering from a mental illness or that the person is suffering from a mental condition for which treatment is available in a hospital and that

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

the person, not being in a hospital, does not object to being detained in a hospital—order that the person be taken to and detained in a hospital; or

- (ii) that the person is not suffering from a mental illness or from a mental condition referred to in subparagraph (i) or that the person is suffering from such a mental condition but that the person objects to being detained in a hospital—order that the person be detained in a place other than a hospital,

for a period not exceeding 12 months.

**Functions of Attorney General following determination of Mental Health Review Tribunal.**

428M. (1) Where, under section 428K (4), the Attorney General is notified by the Mental Health Review Tribunal of its determination in respect of a person, the Attorney General may—

- (a) direct that a special hearing be conducted in respect of the offence with which the person is charged; or  
(b) advise—

- (i) the Minister for Police; and  
(ii) the Court which referred the person to the Tribunal, that the person will not be further proceeded against by the Attorney General in respect of the offence.

(2) Where, under subsection (1) (a), the Attorney General directs that a special hearing be conducted in respect of an offence with which a person is charged, the appropriate Court shall, as soon as practicable after the Attorney General so directs, conduct a special hearing for the purpose of ensuring, notwithstanding 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.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(3) Where, under subsection (1) (b), the Attorney General advises a Court that a person will not be further proceeded against in respect of an offence, the Court shall thereupon order the release of the person.

**Determination at special hearing.**

428N. (1) The question whether a person has committed an offence charged or any other offence available as an alternative to an offence charged shall be determined at a special hearing by a jury constituted for that purpose.

(2) The Jury Act, 1977, applies to and in respect of the constitution of a jury and a jury constituted as referred to in subsection (1) in the same way as it applies to and in respect of the constitution of a jury and a jury for the trial of any criminal proceedings.

(3) 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 (1).

**Nature and conduct of special hearing.**

428o. (1) Except as provided by this Chapter, a special hearing shall be conducted as nearly as possible as if it were a trial of criminal proceedings.

(2) At a special hearing, the accused person shall, unless the Court otherwise allows, be represented by counsel or a solicitor and the fact that the person has been found unfit to be tried for an offence shall be presumed not to be an impediment to the person's representation.

(3) At a special hearing—

- (a) the accused person shall be deemed to have pleaded not guilty in respect of the offence charged;



---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- (b) the counsel or solicitor, if any, who represents the accused person may exercise the rights of the person to challenge jurors or the jury;
- (c) without limiting the generality of subsection (1), the accused person may raise any defence that could be properly raised if the special hearing were an ordinary trial of criminal proceedings; and
- (d) without limiting the generality of subsection (1), the accused person shall be entitled to give evidence or to make an unsworn statement.

(4) At the commencement of a special hearing, the Court shall explain to the jury the fact that the accused person is unfit to be tried in accordance with the normal procedures, the meaning of unfitness to be tried, the purpose of the special hearing, the verdicts which are available and the legal and practical consequences of those verdicts.

(5) The verdicts available to the jury or the Court at a special hearing include the following, namely:—

- (a) not guilty of the offence charged;
- (b) not guilty on the ground of mental illness;
- (c) that on the limited evidence available, the accused person committed the offence charged;
- (d) that on the limited evidence available, the accused person committed an offence available as an alternative to the offence charged.

(6) A verdict in accordance with subsection (5) (b) shall be deemed to be equivalent for all purposes to a special verdict that an accused person is not guilty by reason of mental illness under section 428ZA.

(7) A verdict in accordance with subsection (5) (c) or (d)—

- (a) shall constitute a qualified finding of guilt and shall not constitute a basis in law for any conviction for the offence to which the finding relates;

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- (b) shall, subject to section 428R, constitute a bar to further prosecution in respect of the same circumstances;
- (c) shall be subject to appeal in the same manner as a verdict in an ordinary trial of criminal proceedings; and
- (d) shall be deemed to be a conviction for the purpose of enabling a victim of the offence in respect of which the verdict is given to make a claim for criminal injuries compensation.

**Procedure after completion of special hearing.**

428P. (1) Where, following a special hearing, it is found on the limited evidence available that an accused person committed the offence charged or some other offence available as an alternative, the Court—

- (a) shall indicate whether, if the special hearing had been a normal trial of criminal proceedings against a person who was fit to be tried for the offence which the person is found to have committed, it would have imposed a sentence of imprisonment or penal servitude; and
- (b) where the Court would have imposed such a sentence, shall nominate a term, in this section referred to as “a limiting term”, in respect of that offence, being the best estimate of the head sentence the Court would have considered appropriate if the special hearing had been a normal trial of criminal proceedings against a person who was fit to be tried for that offence and the person had been found guilty of that offence.

(2) Where in respect of a person a Court has nominated a limiting term, the Court—

- (a) shall refer the person to the Mental Health Review Tribunal; and
- (b) may make such order with respect to the custody of the person as the Court considers appropriate.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(3) Where, under subsection (2), a Court refers a person to the Tribunal, the Tribunal shall determine whether or not—

- (a) the person is suffering from a mental illness; or
- (b) the person is suffering from a mental condition for which treatment is available in a hospital and, where the person is not in a hospital, whether or not the person objects to being detained in a hospital.

(4) The Tribunal shall notify the Court which referred the person to it under subsection (2) of its determination with respect to the person.

(5) Where at a special hearing the defence of mental illness is raised and the jury returns a special verdict that the accused person is not guilty by reason of mental illness, the person shall thereafter be dealt with and an order may be made under this subsection in respect of the person as if the jury had returned such a special verdict at a normal trial of criminal proceedings.

(6) Where, at a special hearing, it is found that an accused person is not guilty of an offence charged, the person shall thereafter be dealt with as if the person had been found not guilty at a normal trial of criminal proceedings.

**Order of Court following determination of Mental Health Review Tribunal as to mental condition.**

428Q. Where, under section 428P (4), a Court is notified by the Mental Health Review Tribunal of its determination in respect of a person, the Court may—

- (a) where the Tribunal has determined that the person is suffering from a mental illness or that the person is suffering from a mental condition for which treatment is available in

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

a hospital and that the person, not being in a hospital, does not object to being detained in a hospital—order that the person be taken to and detained in a hospital; or

- (b) where the Tribunal has determined that the person is not suffering from a mental illness or from a mental condition referred to in paragraph (a) or that the person is suffering from such a mental condition but that the person objects to being detained in a hospital—order that the person be detained in a place other than a hospital.

**Effect on other proceedings of finding on special hearing.**

428R. (1) Where, following a special hearing, an accused person is found on the limited evidence available to have committed the offence charged or some other offence available as an alternative, the finding shall, except as provided by subsection (2), constitute a bar to any other criminal proceedings brought against the person for the same offence or substantially the same offence.

(2) Nothing in subsection (1) prevents other criminal proceedings referred to in that subsection from being commenced at any time prior to the expiration of any limiting term within the meaning of section 428P in respect of a person unless, before the expiration of the limiting term, the person has been released from custody as a prisoner or discharged from detention as a forensic patient.

(3) Where, pursuant to other criminal proceedings referred to in subsection (1), an accused person is convicted of the offence or substantially the same offence as that which, at a special hearing, the person was found to have committed, the periods, if any, of the person's custody or detention before, during and after the special hearing, being periods relating to the offence, shall be fully taken into account in determining any period of any sentence or the terms of any disposition consequent upon the conviction.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Recommendation for further inquiry.**

428s. (1) Where the Mental Health Review Tribunal has notified the Attorney General 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 Attorney General—

(a) shall request the Court before which the person was found to be unfit to be tried for the offence to hold a further inquiry as to the person's unfitness; or

(b) shall—

(i) determine that the person will not be further proceeded against by the Attorney General in respect of the offence; and

(ii) notify the Minister for Health of the determination.

(2) Where, under subsection (1) (a), the Attorney General requests that a further inquiry be held, the appropriate Court shall, as soon as practicable after the Attorney General so requests, hold a further inquiry.

(3) Where, under subsection (1) (b), the Attorney General notifies the Minister for Health of a determination not to further proceed against a person, the Minister for Health shall, 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.

(4) Sections 428G (subsection (3) excepted) and 428H apply to and in respect of a further inquiry under subsection (2) in the same way as those sections apply to and in respect of an inquiry.

**Procedure after completion of further inquiry.**

428t. (1) Where, following a further inquiry under section 428s (2), an accused person is found fit to be tried for an offence, the proceedings brought against the person in respect of the offence shall recommence or continue in accordance with the appropriate criminal procedures.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- (2) Where, following a further inquiry under section 428s (2), an accused person is found unfit to be tried for an offence—
- (a) in the case of an accused person who has been detained in custody as a prisoner or in a hospital as a forensic patient for a period or continuous periods in the aggregate of not less than 12 months—the Court shall conduct a special hearing;  
or
  - (b) in the case of any other accused person—the Court may—
    - (i) conduct a special hearing; or
    - (ii) order that the person be returned to the custody or hospital from which the person was taken.

CHAPTER II.—*Other proceedings.***Application.**

428u. This Chapter applies to criminal proceedings in respect of summary offences or indictable offences triable summarily, being proceedings before a magistrate, but does not apply to committal proceedings.

**Interpretation.**

428v. (1) In this Chapter, “magistrate” means a justice or justices, a stipendiary magistrate and, on and from the date of commencement of Part IX of the Community Welfare Act, 1982, a member of the Children’s Court of New South Wales.

(2) In this Chapter, a reference to a person having done an act alleged to have been done is a reference to a person having done or having omitted to do an act, matter or thing alleged to have been done or alleged to have been omitted to be done.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Mentally disordered persons.**

428w. Where, in proceedings before a magistrate, it appears to the magistrate—

- (a) that the defendant is developmentally disabled or mentally disordered but is not a mentally ill person within the meaning of the Mental Health Act, 1983; and
- (b) that, on an outline of the facts alleged in the proceedings or such other evidence as the magistrate may consider relevant, it would be more appropriate to deal with the defendant in accordance with the provisions of this Chapter than otherwise in accordance with law,

the magistrate—

- (c) may dismiss the charge and discharge the defendant—
  - (i) into the care of a responsible person, unconditionally or subject to conditions;
  - (ii) upon the condition that the defendant attend upon a person or at a place specified by the magistrate for assessment of the defendant's mental condition or treatment, or both; or
  - (iii) unconditionally; or
- (d) may do any one or more of the following:—
  - (i) adjourn the proceedings;
  - (ii) grant the defendant bail in accordance with the Bail Act, 1978;
  - (iii) make any other order that the magistrate considers appropriate.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Mentally ill persons.**

428x. (1) Where, in proceedings before a magistrate, it appears to the magistrate that the defendant is a mentally ill person within the meaning of the Mental Health Act, 1983, the magistrate—

- (a) may order that the defendant be taken to a hospital as defined in section 4 (1) of the Mental Health Act, 1983, for assessment; or
- (b) may discharge the defendant, unconditionally or subject to conditions, into the care of a responsible person.

(2) Where a defendant is dealt with in proceedings before a magistrate in accordance with subsection (1), the charge which gave rise to the proceedings shall, on the expiration of the period of 6 months after the date on which the defendant is so dealt with, be deemed to have been dismissed unless, within that period, the defendant is brought before a magistrate to be further dealt with in relation to the charge.

(3) Where a defendant is brought before a magistrate to be further dealt with in relation to a charge as referred to in subsection (2), the magistrate shall, in dealing with the charge, take account of any period during which the defendant was in a hospital as a consequence of an order made under subsection (1) (a).

**Means by which magistrate may be informed.**

428y. For the purposes of this Chapter, a magistrate may inform himself or herself as the magistrate thinks fit, but not so as to require a defendant to incriminate himself or herself.



---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

## PART XIb.

## DEFENCE OF MENTAL ILLNESS.

**Explanation to jury.**

428z. Where, upon the trial of a person charged with an offence, a question is raised as to whether the person was, at the time of commission of the offence, mentally ill as referred to in section 428ZA, the Court shall explain to the jury the findings which may be made upon the trial and the legal and practical consequences of those findings and shall include in its explanation a reference to the existence and composition of the Mental Health Review Tribunal constituted under the Mental Health Act, 1983, and the relevant functions of that Tribunal with respect to forensic patients within the meaning of that Act, including a reference to the requirements under sections 118 (1) (b) (ii) and 119 of that Act, that the Tribunal may only make a recommendation for release of a person detained in accordance with section 428zB where the Tribunal is satisfied, on the evidence available to it, that the safety of the person or any member of the public will not be seriously endangered by the person's release.

**Special verdict.**

428ZA. Where, in an indictment or information, an act or omission is charged against a person as an offence and it is given in evidence on the trial of the person for the offence that the person was mentally ill, so as not to be responsible, according to law, for his or her action at the time when the act was done or omission made, then, if it appears to the jury before which the person is tried that the person did the act or made the omission charged, but was mentally ill as aforesaid at the time when the person did or made the same, the jury shall return a special verdict that the accused person is not guilty by reason of mental illness.

---

*Crimes (Mental Disorder) Amendment.*

---

SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Effect of finding and declaration as to mental illness.**

428ZB. Where, upon the trial of a person charged with an offence, the jury returns a special verdict that the accused person is not guilty by reason of mental illness, the Court shall order that the person be detained in strict custody in such place and in such manner as the Court thinks fit until released by due process of law.

## (4) (a) Section 439, short heading—

Omit the short heading.

## (b) Section 439—

Omit the section.

## (5) Section 574B—

After section 574A, insert:—

**Prevention of suicide.**

574B. It shall be lawful for a person to use such force as may reasonably be necessary to prevent the suicide of another person or any act which the person believes on reasonable grounds would, if committed, result in that suicide.

*In the name and on behalf of Her Majesty I assent to this Act.*

L. W. STREET,  
*By Deputation from  
His Excellency the Governor.*

*Government House,  
Sydney, 31st December, 1983.*



