

## CRIMES (MENTAL DISORDER) AMENDMENT BILL, 1982

### EXPLANATORY NOTE

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

This Bill is cognate with the Mental Health Bill, 1982.

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;
- (b) to specify the circumstances in which a person charged with an offence is unfit to be tried for the offence and to specify the procedures for dealing with such a person;
- (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 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 31B); and
  - (iii) 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 XI<sup>A</sup> into the Act which contains the following provisions:—

Proposed section 428<sup>A</sup> is an interpretation provision. It contains a definition of "disability" which includes mental illness, intellectual handicap, developmental disability of mind, speech impairment and hearing impairment, and any combination of them.

Proposed section 428B provides that a person is unfit to be tried for an offence if, because of disability—

- (i) he is incapable of understanding the nature or purpose of the proceedings brought against him; or
- (ii) he is incapable of communicating adequately with a person for the purpose of conducting a defence to those proceedings.

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 investigation in order to determine whether the accused person is unfit and, if so, 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.

Proposed section 428G provides that, where the question of unfitness is raised in a jury trial, that question 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 investigation.

Proposed section 428I provides that where, following an investigation, an accused person is found fit to be tried, the proceedings brought against him shall continue, but that where he is found unfit, the proceedings brought against him shall not be continued and the Court may, according to the circumstances of the case—

- (i) dismiss the charge;
- (ii) make arrangements for the person's admission to and treatment in a mental hospital;
- (iii) where it is not found that the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence, conduct a special inquiry in order to determine whether the person committed the offence or whether the person is not guilty of the offence; or
- (iv) make any other appropriate order.

Proposed section 428J provides that, where a special inquiry arises from a jury trial, the questions to be determined at the special inquiry shall be determined by a jury constituted for the purpose.

Proposed section 428K provides for the nature and conduct of a special inquiry.

Proposed section 428L provides that where, following a special inquiry, an accused person is found not guilty, he shall be discharged, but that where he is found to have committed the offence alleged, the Court shall state the sentence or disposition it would have considered appropriate had the special inquiry been a trial of criminal proceedings and had the person been found guilty of the offence and the Court may, according to the circumstances of the case, do any one or more of the following:—

- (i) order the person's detention;
- (ii) make arrangements for the person's admission to and treatment in a mental hospital;
- (iii) discharge the person;
- (iv) make any other appropriate order.

Proposed section 428M specifies the effect of a finding made at a special inquiry on other proceedings brought against the accused person for the same offence.

Proposed section 428N enables a further investigation to be held into the question of the fitness of a person to be tried for an offence where, following a finding of unfitness, the person is detained in a mental hospital or in other custody.

Proposed section 428O specifies the procedures that apply following the completion of a further investigation.

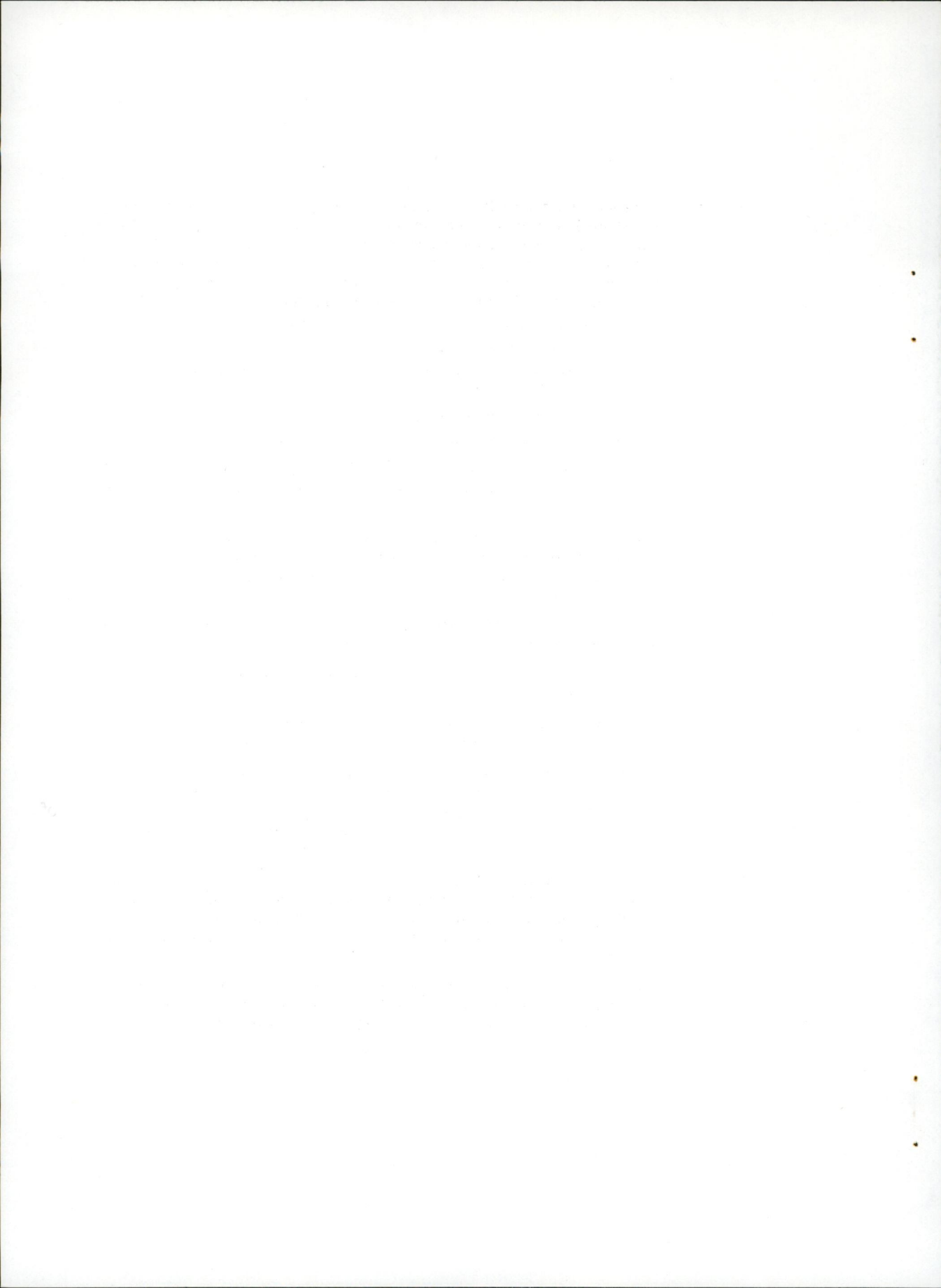
- (c) in relation to the defence of insanity, inserts a new Part XIb into the Act which contains the following provisions:—

Proposed section 428P reproduces the definition of "mentally ill" previously contained in section 23 (2) of the Mental Health Act, 1958.

Proposed section 428Q 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 428R provides that where, upon a trial referred to in proposed section 428Q, a person is acquitted, the jury shall be required to find specially whether the person was, at the time of commission of the offence, mentally ill and to declare whether the person was acquitted on that finding.

Proposed section 428S provides that, in the case of a person acquitted on a finding of mental illness, the Court shall order that the person be detained in strict custody until the Governor's pleasure is known.



*PROOF*

**CRIMES (MENTAL DISORDER) AMENDMENT BILL, 1982**

No. , 1982.

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**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—24 *November*, 1982.]

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*Crimes (Mental Disorder) Amendment.*

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**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, 1982".

**Commencement.**

**2. (1)** Sections 1 and 2 shall commence on the date of assent to this Act.

**10 (2)** Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Mental Health Act, 1982.

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

**3.** The Crimes Act, 1900, is amended in the manner set forth in **15** Schedule 1.

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**SCHEDULE 1.**

(Sec. 3.)

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

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

**20** After "s. 31.", insert:—

(4A) *Suicide.*—ss. 31A, 31B.

*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:—

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PART XIA.—UNFITNESS TO BE TRIED FOR AN OFFENCE.—  
ss. 428A–428O.

PART XIB.—DEFENCE OF INSANITY.—ss. 428P–428S.

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

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

10 (2) Sections 31A, 31B—

After section 31, insert:—

*Suicide.*

**Suicide and attempt to commit suicide.**

15

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

**Aiding, etc., suicide.**

31B. (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—

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(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.

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*Crimes (Mental Disorder) Amendment.*

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SCHEDULE 1—*continued.*

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

(3) Parts XI<sub>A</sub>, XI<sub>B</sub>—

After Part XI, insert:—

PART XI<sub>A</sub>.

UNFITNESS TO BE TRIED FOR AN OFFENCE.

**Interpretation: Pt. XI<sub>A</sub>.**

428A. (1) In this Part—

“disability” includes mental illness, intellectual handicap, developmental disability of mind, speech impairment and hearing impairment, and any combination of them;

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

“special inquiry” means a special inquiry under section 428I (2) (c).

(2) In this Part, 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 unfit to be tried for offence.**

428B. A person is unfit to be tried for an offence if, because of disability—

(a) he is incapable of understanding the nature or purpose of the proceedings brought against him in respect of the offence; or

(b) he is incapable of communicating adequately with a person for the purpose of conducting a defence to the proceedings brought against him in respect of the offence.



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*Crimes (Mental Disorder) Amendment.*

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SCHEDULE 1—*continued.*

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

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

5 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.**

10 428D. A Court or jury, as the case may require, shall make a determination that a person is unfit to be tried for an offence if, in its opinion, the person is so incapable of understanding, as referred to in section 428B, or so incapable of communicating, as referred to in that section, that in all the circumstances it would be likely to result in unfairness to the person if the hearing of the proceedings brought against him in respect of the offence were to commence or  
15 continue.

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

20 428E. (1) The question of a person's unfitness to be tried for an offence shall, so far as practicable, be raised before or at the commencement of the hearing of the proceedings in respect of the offence but may be raised at any time during the course of the hearing.

(2) 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.**

25 428F. (1) When the question of a person's unfitness to be tried for an offence is raised, the Court shall, except as provided by subsection (2), as soon as practicable after the question is raised, conduct an investigation in order to determine—

(a) whether the person is unfit to be tried for the offence; and

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*Crimes (Mental Disorder) Amendment.*

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SCHEDULE 1—*continued.*

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

5 (b) where it is found that the person is unfit to be tried for the offence, 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.

10 (2) Where, in any proceedings, the question of a person's unfitness to be tried for an offence is raised on a second or subsequent occasion, the Court shall not conduct an investigation unless it is satisfied that there is a prima facie case that the person is unfit to be tried.

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

(a) adjourn the proceedings;

15 (b) grant the accused person bail under 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;

20 (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.

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*Crimes (Mental Disorder) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.***Determination of question of unfitness.**

5 428G. (1) The question of a person's unfitness to be tried for an offence and the question whether, on the balance of probabilities, a person will, during the period of 12 months after a finding of unfitness, become fit to be tried for an offence shall be determined—

10 (a) where the question of unfitness is raised in proceedings in the Supreme Court (not being proceedings within the summary jurisdiction of that Court) or the District Court, by a jury constituted for that purpose; and

(b) where the question of unfitness is raised in proceedings other than proceedings to which paragraph (a) applies, by the Court before which those proceedings are conducted.

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

25 (4) A member of a jury constituted as referred to in subsection (1) (a) 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 investigation.**

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

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*Crimes (Mental Disorder) Amendment.*

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

5 (2) At the commencement of an investigation in the Supreme Court (other than an investigation conducted in respect of proceedings within the summary jurisdiction of that Court) or the District Court, the Court shall explain to the jury the reason for the investigation, the findings which may be made on the investigation and the consequences, both at law and otherwise, of those findings.

**Procedure after completion of investigation.**

10 428i. (1) Where, following an investigation, an accused person is found fit to be tried for an offence, the proceedings brought against the person in respect of the offence shall continue.

15 (2) Where, following an investigation, 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 be continued and the Court may—

20 (a) where (whether or not it is found that the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence) having regard to the trivial nature of the offence, the nature of the person's disability and any other matter which the Court thinks proper to consider, it is inappropriate, in the opinion of the Court, to inflict any punishment, do any one or more of the following:—

25 (i) order that the charge be dismissed;

(ii) order that the person be released upon an undertaking that he will attend a hospital within the meaning of the Mental Health Act, 1982, for informal admission under that Act to the hospital;

30 (iii) order that the person be taken to a hospital within the meaning of the Mental Health Act, 1982, by a member of the police force or a welfare officer

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*Crimes (Mental Disorder) Amendment.*

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

- 5 within the meaning of that Act for examination as if he had been admitted to and detained in such a hospital under section 77 or 78 of that Act;
- (iv) make any other order that the Court considers appropriate;
- 10 (b) where it is found that the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence—order that the person be admitted to and detained in a hospital within the meaning of the Mental Health Act, 1982; or
- 15 (c) where it is not found that the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence—conduct a special inquiry, so far as is practicable within 30 days of the finding of unfitness, in order to determine—
- (i) whether the person committed the offence; or
- (ii) whether the person is not guilty of the offence.
- 20 (3) An order shall not be made under subsection (2) (a) (i) or (ii) in respect of an accused person if the Court is of the opinion that the person is a mentally ill person within the meaning of the Mental Health Act, 1982.
- 25 (4) An order shall not be made under subsection (2) (a) (iii) in respect of an accused person unless the Court is of the opinion that the person is a mentally ill person within the meaning of the Mental Health Act, 1982.
- Determination at special inquiry.**
- 30 428J. (1) The matters, referred to in section 428I (2) (c) (i) and (ii), to be determined at a special inquiry shall be determined—
- (a) where the matters are raised in proceedings in the Supreme Court (not being proceedings within the summary jurisdiction of that Court) or the District Court, by a jury constituted for that purpose; or

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*Crimes (Mental Disorder) Amendment.*

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

5 (b) where the matters are raised in proceedings other than proceedings to which paragraph (a) applies, by the Court before which those proceedings are conducted.

(2) Subsections (2), (3) and (4) of section 428G apply to and in respect of a jury constituted as referred to in subsection (1) (a) in the same way as those subsections apply to and in respect of a jury constituted as referred to in section 428G (1).

**10 Nature and conduct of special inquiry.**

428K. (1) Except as provided by this Part, a special inquiry shall be conducted as if it were a trial of criminal proceedings.

(2) At a special inquiry, the accused person shall, unless the Court otherwise allows, be represented by counsel or a solicitor.

15 (3) At a special inquiry, the accused person shall be deemed to have pleaded not guilty in respect of the offence charged.

20 (4) At the commencement of a special inquiry in the Supreme Court (other than a special inquiry conducted in respect of proceedings within the summary jurisdiction of that Court) or the District Court, the Court shall explain to the jury the reason for the special inquiry, the findings which may be made at the special inquiry and the orders which may be made on those findings.

**Procedure after completion of special inquiry.**

25 428L. (1) Where, following a special inquiry, it is found that an accused person committed the offence alleged, the Court—

(a) shall state the sentence or disposition it would have considered appropriate had the special inquiry been a trial of criminal proceedings and had the person been found guilty of the offence; and

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*Crimes (Mental Disorder) Amendment.*

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

(b) may do any one or more of the following:—

- 5 (i) order that the person be detained in strict custody until an order in relation to the person is made under the Mental Health Act, 1982;
- 10 (ii) order that the person be released upon an undertaking that he will attend a hospital within the meaning of the Mental Health Act, 1982, for informal admission under that Act to the hospital;
- 15 (iii) order that the person be taken to a hospital within the meaning of the Mental Health Act, 1982, by a member of the police force or a welfare officer within the meaning of that Act for examination as if he had been admitted to and detained in such a hospital under section 77 or 78 of that Act;
- (iv) order that the person be discharged;
- (v) make any other order that the Court considers appropriate.

20 (2) An order shall not be made under subsection (1) (b) (i) or (iii) in respect of an accused person unless the Court is of the opinion that the person is a mentally ill person within the meaning of the Mental Health Act, 1982.

25 (3) An order shall not be made under subsection (1) (b) (ii) or (iv) in respect of an accused person if the Court is of the opinion that the person is a mentally ill person within the meaning of the Mental Health Act, 1982.

(4) Where following a special inquiry, an accused person is found not guilty, the person shall be discharged.

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*Crimes (Mental Disorder) Amendment.*

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SCHEDULE 1—*continued.*

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

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

5 428M. (1) Where, following a special inquiry, an accused person is found to have committed the offence alleged, the finding shall, except as provided by subsection (2), constitute a bar to any other proceedings brought against the person for the same offence.

10 (2) Nothing in subsection (1) prevents other proceedings referred to in that subsection from being commenced at any time prior to the expiration of any period of any sentence or disposition stated for the purposes of section 428L (1) (a).

15 (3) Where, pursuant to other proceedings referred to in subsection (1), an accused person is convicted of an offence, the periods, if any, of his custody before, during and after the special inquiry at which he was found to have committed the offence shall be fully taken into account in determining any period of any sentence or disposition imposed as a consequence of the conviction.

20 (4) Where, following a special inquiry, an accused person is found not guilty, the finding shall have the same effect as a finding of not guilty in a trial of criminal proceedings.

**Further investigation.**

25 428N. (1) Where an accused person is detained in a hospital within the meaning of the Mental Health Act, 1982, or in custody, pursuant to an order referred to in section 428I (2) (a) (iii) or (b) or section 428L (1) (b) (i) or (iii), the Attorney-General may, at any time, and, except as provided by subsection (2), shall, where the person or another person on his behalf so requests, order that a further investigation be conducted to determine whether the person is unfit to be tried for the offence in relation to which the order was  
30 made.



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*Crimes (Mental Disorder) Amendment.*

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

5 (2) Where a request is made under subsection (1) by or on behalf of a person on a second or subsequent occasion, the Attorney-General shall not order that a further investigation be conducted unless he is satisfied that there is a prima facie case that the person is fit to be tried.

10 (3) Where the Attorney-General makes an order under subsection (1) in relation to a person, the Court which conducted the original investigation into the question of the person's unfitness to be tried for the offence shall, as soon as practicable after the order is made, conduct a further investigation into the question.

15 (4) Sections 428F (subsections (1) and (2) excepted), 428G and 428H apply to and in respect of a further investigation under subsection (3) in the same way as those sections apply to and in respect of an investigation.

**Procedure after completion of further investigation.**

20 428O. (1) Where, following a further investigation under section 428N (3), an accused person is found fit to be tried for an offence, the person shall be tried for the offence.

25 (2) Where, following a further investigation under section 428N (3), an accused person is found unfit to be tried for an offence, whether or not it is found that the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence—

- 30 (a) in the case of an accused person who has been detained in a hospital or custody for a period of not less than 12 months—the Court shall conduct a special inquiry; or
- (b) in the case of any other accused person—the Court may—
- (i) conduct a special inquiry; or
  - (ii) order that the person be returned to the hospital or custody from which he was taken.
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*Crimes (Mental Disorder) Amendment.*

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SCHEDULE 1—*continued.*

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

PART XIb.

DEFENCE OF INSANITY.

5 **Interpretation: Pt. XIb.**

428P. (1) In this Part, “mentally ill”, in relation to a person charged with an offence, means so insane as not to be responsible, according to law, for the act alleged to have been done and which gives rise to the offence.

10 (2) In this Part, 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.

**Explanation to jury.**

15 428Q. 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 and shall include in its  
20 explanation a reference to the existence and composition of the Mental Health Review Tribunal constituted under the Mental Health Act, 1982, and the relevant functions of that Tribunal with respect to forensic patients within the meaning of that Act.

**Finding and declaration as to mental illness.**

25 428R. 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, and the person is acquitted, the jury shall be required to find specially whether the person was, at that time, mentally ill and to declare whether the person was acquitted  
30 on the ground that he was, at that time, mentally ill.

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*Crimes (Mental Disorder) Amendment.*

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

5 428s. Where, upon the trial of a person charged with an offence, the jury finds that the person was, at the time of commission of the offence, mentally ill, and acquits the person on that ground, 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 the Governor's pleasure is known.

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(4) (a) Section 439, short heading—

Omit the short heading.

(b) Section 439—

Omit the section.

15 (5) Section 574B—

After section 574A, insert:—

**Prevention of suicide.**

20 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 he believes on reasonable grounds would, if committed, result in that suicide.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

