

FIRST PRINT

**CRIMINAL APPEAL (MENTAL ILLNESS) AMENDMENT
BILL 1986**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Mental Health (Amendment) Bill 1986.

The object of this Bill is to make amendments to the Criminal Appeal Act 1912 with respect to appeals under that Act as a consequence of the enactment of the Crimes (Mental Disorder) Amendment Act 1983.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with certain exceptions, commence on the day on which proposed Part XIb (Defence of Mental Illness) of the Crimes Act 1900, as to be inserted by the Crimes (Mental Disorder) Amendment Act 1983, commences.

Clause 3 is a formal provision which gives effect to the Schedule of amendments.

Clause 4 provides for the repeal of the amendments to the Principal Act contained in the Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1983.

Schedule 1 (1) inserts a definition of "Conviction" into the Principal Act and extends the definition of "Sentence" in that Act so as to confer appeal rights in respect of certain findings, verdicts and orders under the Crimes Act 1900 relating to mentally ill persons.

Schedule 1 (2) substitutes a reference in section 5 of the Principal Act to insanity with a reference to mental illness.

Schedule 1 (3) enables the Court of Criminal Appeal, on an appeal against a conviction or sentence referred to in Schedule 1 (1), to make any determination that could have been made by the trial court.

Schedule 1 (4) amends certain provisions of section 7 of the Principal Act to bring them into conformity with the terminology used in proposed Part XI^B (Defence of Mental Illness) of the Crimes Act 1900, as to be inserted by the Crimes (Mental Disorder) Amendment Act 1983.

CRIMINAL APPEAL (MENTAL ILLNESS) AMENDMENT BILL 1986

NEW SOUTH WALES



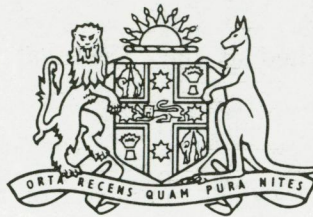
TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 16, 1912
4. Amendment of Act No. 181, 1983, Sch. 2 (Amendments)

SCHEDULE 1—AMENDMENTS TO THE CRIMINAL APPEAL ACT 1912

**CRIMINAL APPEAL (MENTAL ILLNESS) AMENDMENT
BILL 1986**

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Criminal Appeal Act 1912 with respect to appeals under that Act as a consequence of the enactment of the Crimes (Mental Disorder) Amendment Act 1983.

Criminal Appeal (Mental Illness) Amendment 1986

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 "Criminal Appeal (Mental Illness) Amendment Act 1986".

Commencement

2. (1) Sections 1, 2 and 4 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (3) of the Crimes (Mental Disorder) Amendment Act 1983 in respect of Schedule 1 (3) to that Act.

Amendment of Act No. 16, 1912

15 3. The Criminal Appeal Act 1912 is amended in the manner set forth in Schedule 1.

Amendment of Act No. 181, 1983, Sch. 2 (Amendments)

4. The Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1983 is amended by omitting from Schedule 2 the matter relating to the
20 Criminal Appeal Act 1912.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE CRIMINAL APPEAL ACT 1912

(1) Section 2 (**Interpretation**)—

25 (a) Section 2 (1), definition of "Conviction"—

Before the definition of "Court", insert:

"Conviction" includes a finding or verdict under or in accordance with section 428i (2), 428o (5) (c) or (d) or 428t (2) of the Crimes Act 1900 in respect of a person;

*Criminal Appeal (Mental Illness) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE CRIMINAL APPEAL ACT 1912 —*continued*

(b) Section 2 (1), definition of “Sentence”—

After “property,”, insert “a limiting term within the meaning of section 428P of the Crimes Act 1900 and an order under section 428ZB of the Crimes Act 1900,”.

5 (2) Section 5 (**Right of appeal in criminal cases**)—

Section 5 (2)—

Omit “insanity, where such insanity”, insert instead “mental illness, where mental illness”.

(3) Section 6A—

10 After section 6, insert:

Powers of court in relation to certain convictions and sentences concerning mentally ill persons

6A. On an appeal under section 5 (1) against a conviction or sentence, being—

15 (a) a finding or verdict under or in accordance with section 428I (2), 428O (5) (c) or (d) or 428T (2) of the Crimes Act 1900 in respect of a person; or

20 (b) a limiting term within the meaning of section 428P of the Crimes Act 1900 or an order under section 428ZB of that Act in respect of a person,

the court may make any finding, verdict, order or determination which could have been made in relation to the proceedings before the court of trial.

Criminal Appeal (Mental Illness) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE CRIMINAL APPEAL ACT 1912 —*continued*

(4) Section 7 (**Powers of court in special cases**)—

Section 7 (4)—

Omit the subsection, insert instead:

- 5 (4) If, on any appeal, it appears to the court that, although the
appellant committed the act or made the omission charged
against the appellant, the appellant 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, the court may quash
10 the conviction and sentence passed at the trial and order that the
appellant be detained in strict custody in such place and in such
manner as the court thinks fit until released by due process of
law.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986

**CRIMINAL APPEAL (MENTAL ILLNESS) AMENDMENT
ACT 1986 No. 94**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 16, 1912
4. Amendment of Act No. 181, 1983, Sch. 2 (Amendments)

SCHEDULE 1—AMENDMENTS TO THE CRIMINAL APPEAL ACT 1912

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DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY
5708 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

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CRIMINAL APPEAL (MENTAL ILLNESS) AMENDMENT ACT 1986
No. 94

NEW SOUTH WALES



Act No. 94, 1986

An Act to amend the Criminal Appeal Act 1912 with respect to appeals under that Act as a consequence of the enactment of the Crimes (Mental Disorder) Amendment Act 1983. [Assented to, 29 May 1986]

Criminal Appeal (Mental Illness) Amendment 1986

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 "Criminal Appeal (Mental Illness) Amendment Act 1986".

Commencement

2. (1) Sections 1, 2 and 4 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (3) of the Crimes (Mental Disorder) Amendment Act 1983 in respect of Schedule 1 (3) to that Act.

Amendment of Act No. 16, 1912

3. The Criminal Appeal Act 1912 is amended in the manner set forth in Schedule 1.

Amendment of Act No. 181, 1983, Sch. 2 (Amendments)

4. The Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1983 is amended by omitting from Schedule 2 the matter relating to the Criminal Appeal Act 1912.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE CRIMINAL APPEAL ACT 1912

(1) Section 2 (**Interpretation**)—

(a) Section 2 (1), definition of "Conviction"—

Before the definition of "Court", insert:

"Conviction" includes a finding or verdict under or in accordance with section 428i (2), 428o (5) (c) or (d) or 428t (2) of the Crimes Act 1900 in respect of a person;

Criminal Appeal (Mental Illness) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE CRIMINAL APPEAL ACT 1912 —*continued*

(b) Section 2 (1), definition of “Sentence”—

After “property,”, insert “a limiting term within the meaning of section 428P of the Crimes Act 1900 and an order under section 428ZB of the Crimes Act 1900,”.

(2) Section 5 (**Right of appeal in criminal cases**)—

Section 5 (2)—

Omit “insanity, where such insanity”, insert instead “mental illness, where mental illness”.

(3) Section 6A—

After section 6, insert:

Powers of court in relation to certain convictions and sentences concerning mentally ill persons

6A. On an appeal under section 5 (1) against a conviction or sentence, being—

- (a) a finding or verdict under or in accordance with section 428I (2), 428O (5) (c) or (d) or 428T (2) of the Crimes Act 1900 in respect of a person; or
- (b) a limiting term within the meaning of section 428P of the Crimes Act 1900 or an order under section 428ZB of that Act in respect of a person,

the court may make any finding, verdict, order or determination which could have been made in relation to the proceedings before the court of trial.

Criminal Appeal (Mental Illness) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE CRIMINAL APPEAL ACT 1912 —*continued*

(4) Section 7 (**Powers of court in special cases**)—

Section 7 (4)—

Omit the subsection, insert instead:

(4) If, on any appeal, it appears to the court that, although the appellant committed the act or made the omission charged against the appellant, the appellant 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, the court may quash the conviction and sentence passed at the trial and order that the appellant be detained in strict custody in such place and in such manner as the court thinks fit until released by due process of law.

BY AUTHORITY

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