

CRIMES (MENTAL DISORDER) AMENDMENT ACT 1989
No. 100

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Transitional provisions

SCHEDULE 1 - AMENDMENTS

SCHEDULE 2 - TRANSITIONAL PROVISIONS

THE UNIVERSITY OF CHICAGO

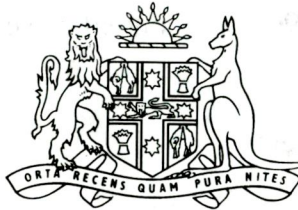
PHYSICS DEPARTMENT

PHYSICS 309

LECTURE 10
SPECIAL RELATIVITY
CONTINUITY EQUATION
AND ENERGY-MOMENTUM TENSOR

CRIMES (MENTAL DISORDER) AMENDMENT ACT 1989
No. 100

NEW SOUTH WALES



Act No. 100, 1989

An Act to amend the Crimes Act 1900 in relation to accused persons and defendants affected by mental disorders; and for other purposes.
[Assented to 15 August 1989]

See also Mental Health (Mental Disorder) Amendment Act 1989 and Criminal Appeal (Mental Disorder) Amendment Act 1989.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Mental Disorder) Amendment Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Transitional provisions

4. Schedule 2 has effect.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**):

From the matter relating to Part 11A, omit "CHAPTER II - *Other proceedings*", insert instead:

CHAPTER 2 - *Summary proceedings before a magistrate*

CHAPTER 3 - *Other powers of magistrates*

(2) Section 428P (**Procedure after completion of special hearing**):

(a) Section 428P (1) (b):

Omit "head sentence", insert instead "sentence".

(b) Section 428P (1A) - (1D):

After section 428P (1), insert:

(1A) Where a Court indicates that it would not have imposed a sentence of imprisonment or penal servitude in respect of a person, the Court may impose any other

SCHEDULE 1 - AMENDMENTS - *continued*

penalty or make any other order it might have made on conviction of the person for the relevant offence in a normal trial of criminal proceedings.

(1B) Any such other penalty imposed or order made, under subsection (1A), shall be subject to appeal in the same manner as a penalty or order in a normal trial of criminal proceedings.

(1C) In nominating a limiting term in respect of a person or imposing any other penalty or making any other order, the Court may, if it thinks fit, take into account the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods related to the offence).

(1D) A limiting term nominated in respect of a person takes effect from the time when it is nominated unless the Court, after taking into account the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods related to the offence), directs that the term be taken to have commenced at an earlier time.

(3) Part 11A, Chapter 2:

Omit the heading, insert instead:

CHAPTER 2 - Summary proceedings before a magistrate

(4) Section 428U (**Application**):

At the end of section 428U, insert:

(2) Sections 428w and 428x apply to the condition of a defendant as at the time when a magistrate considers whether to apply the relevant section to the defendant.

(5) Section 428w (**Persons suffering from mental illness or condition**):

(a) Section 428w:

Omit "in proceedings", insert instead "at the commencement or at any time during the course of the hearing of proceedings".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Section 428w (a):
Omit "Mental Health Act 1983", insert instead "Mental Health Act 1958".
- (c) At the end of section 428w, insert:
 - (2) A decision under subsection (1) (c) to dismiss charges against a defendant does not constitute a finding that the charges against the defendant are proven or otherwise.
- (6) Section 428x (**Mentally ill persons**):
 - (a) Section 428x (1), (2):
Omit "in proceedings" wherever occurring, insert instead "at the commencement or at any time during the course of the hearing of proceedings".
 - (b) Section 428x (1):
Omit "Mental Health Act 1983" where firstly occurring, insert instead "Mental Health Act 1958".
 - (c) Section 428x (1) (a):
Omit the paragraph, insert instead:
 - (a) may order that the person be taken by a member of the Police Force to, and be detained in, an admission centre within the meaning of the Mental Health Act 1958 to be examined and dealt with under that Act as if the person were a person admitted to and detained in an admission centre under section 12 (1) of that Act; or
 - (d) Section 428x (3):
Omit "hospital", insert instead "an admission centre, a mental hospital or an authorised hospital within the meaning of the Mental Health Act 1958".
 - (e) Section 428x (4):
After section 428x (3), insert:
 - (4) A deemed dismissal of charges under subsection (2) does not constitute a finding that the charges against the defendant are proven or otherwise.

SCHEDULE 1 - AMENDMENTS - *continued*

(7) Section 428XA:

After section 428X, insert:

Disqualification of magistrate

428XA (1) If:

- (a) a magistrate has inquired into whether a defendant should be dealt with under section 428w or 428x; and
- (b) the magistrate has decided not to so deal with the defendant,

the magistrate shall, on the application of the defendant, disqualify herself or himself from further hearing the proceedings concerned.

(2) An application may only be made by a defendant under this section if:

- (a) except as provided by paragraph (b), the question whether the defendant should be dealt with under section 428w or 428x has not been previously inquired into by another magistrate in the same proceedings; or
- (b) in the case of proceedings in which another magistrate has previously inquired into whether the defendant should be dealt with under section 428w or 428x, the magistrate before whom the proceedings are being heard considers that it should, because of the circumstances of the case, be permitted to be made.

(8) Part 11A, Chapter 3:

At the end of Part 11A, insert:

CHAPTER 3 - *Other powers of magistrates*

Definition

428YA. In this Chapter:

"magistrate" means:

- (a) a justice or justices; or

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) a Magistrate; or
- (c) a Children's Magistrate.

Transfer of prisoners

428YB. (1) This section applies to a person who is awaiting committal for trial or trial for an offence or summary disposal of the person's case.

(2) Where it appears to a magistrate that it may be appropriate to transfer a person to whom this section applies from prison to a hospital under section 123 or 124 of the Mental Health Act 1983, the magistrate may make an order directing:

- (a) that the defendant be examined by 2 medical practitioners, one of whom is a psychiatrist; and
- (b) that, if appropriate, the relevant certificates be furnished to the Chief Health Officer under section 123 or 124 of the Mental Health Act 1983; and
- (c) that the Director of the Prison Medical Service notify the magistrate of the action, if any, taken under section 123 or 124 of the Mental Health Act 1983.

SCHEDULE 2 - TRANSITIONAL PROVISIONS

(Sec. 4)

Procedures after completion of special hearing

1. Section 428P of the Crimes Act 1900, as amended by this Act, applies to proceedings commenced before that amendment in which the Court is required to, but has not, indicated whether a sentence of imprisonment or penal servitude would have been imposed on a person.

Mentally ill persons etc.

2. (1) Section 428w of the Crimes Act 1900, as amended by this Act, applies to proceedings commenced but not completed before the commencement of Schedule 1 (5).

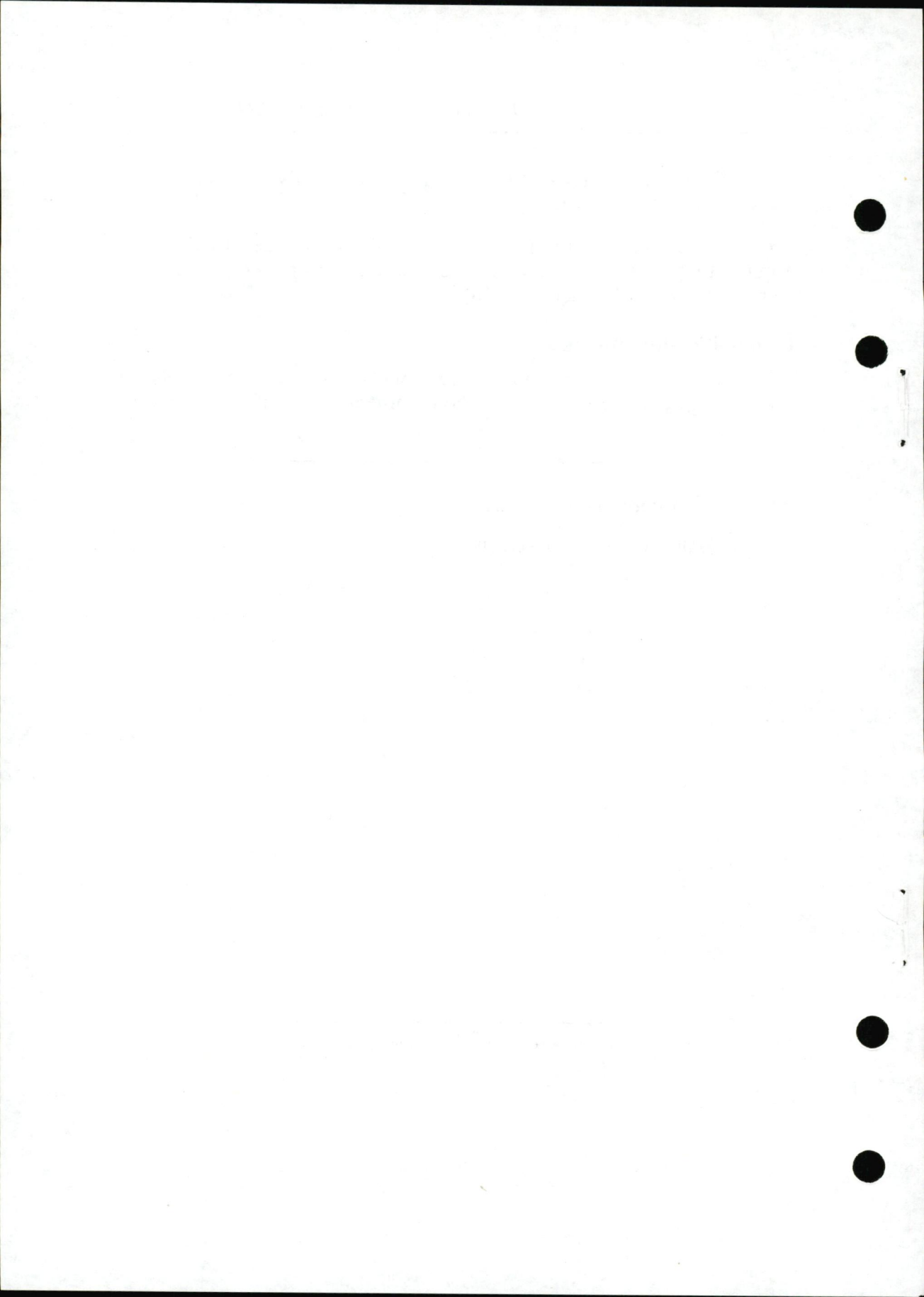
SCHEDULE 2 - TRANSITIONAL PROVISIONS - *continued*

(2) Section 428x of the Crimes Act 1900, as amended by this Act, applies to proceedings commenced but not completed before the commencement of Schedule 1 (6).

Disqualification of magistrate

3. Section 428xA of the Crimes Act 1900 does not apply to proceedings commenced before the commencement of that section.

[*Minister's second reading speech made in -
Legislative Assembly on 3 May 1989
Legislative Council on 1 May 1989*]



CRIMES (MENTAL DISORDER) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Mental Health (Mental Disorder) Amendment Bill 1989 and the Criminal Appeal (Mental Disorder) Amendment Bill 1989 are cognate with this Bill.

The objects of this Bill are to amend the Crimes Act 1900—

- (a) to enable a Court to impose a penalty (in addition to imprisonment or penal servitude) on a person who is unfit to be tried but has been found, after a special hearing has been held under that Act, to have committed an offence; and
- (b) to make it clear that a magistrate determining whether to apply provisions of that Act dealing with defendants affected by mental disorders must consider a defendant's mental condition as at the time the defendant is before the magistrate; and
- (c) to make it clear that the dismissal of charges against a defendant under any such provision does not constitute a finding that the charges are proven or otherwise and does not therefore provide any basis for a conviction; and
- (d) to enable mentally ill defendants in summary proceedings to be examined on an order being made by the magistrate for the purpose of possible transfer from prison to a hospital under the Mental Health Act 1983; and
- (e) to impose on magistrates an obligation to disqualify themselves from continuing to hear certain proceedings relating to defendants who may be affected by mental disorders,

and to make other amendments, including amendments pending the full commencement of the Mental Health Act 1983.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that amendments made by the proposed Act are to commence on a day or days to be appointed by proclamation.

Clauses 3 and 4 are formal provisions that give effect to the Schedule of amendments and the Schedule of transitional provisions.

Crimes (Mental Disorder) Amendment 1989

SCHEDULE 1—AMENDMENTS

Procedure after completion of special hearing

Schedule 1 (2) amends section 428P (Procedure after completion of special hearing)—

- to enable a Court, after holding a special hearing and finding that an accused person who is unfit to be tried committed an offence, to impose any penalty or make any order it might have made if the person had been convicted of the offence in a normal trial; and
- to give a right of appeal against such a penalty or order; and
- to make it clear, in a case where the Court imposes a limiting term, that in calculating such a term the Court may take into account periods already spent in custody or detention and may backdate the commencement of such a term.

Summary disposal of offences where defendant affected by mental disorder

Schedule 1 (4) amends section 428U (Application) to make it clear that in applying provisions relating to the summary disposition of matters involving a defendant who may be affected by a mental disorder, a magistrate must consider the defendant's condition as at the time the defendant is before the magistrate.

Schedule 1 (5) (a) and (c) and Schedule 1 (6) (a) and (e) make it clear that—

- provisions relating to the summary disposition by a magistrate of matters involving a defendant affected by a mental disorder may be applied at the commencement of or during the course of a hearing; and
- the dismissal of charges against a defendant under any such provision does not constitute a finding that the charges are proven or otherwise.

Schedule 1 (5) (b) and (6) (b), (c) and (d) cure anomalies which have arisen because section 5, and Part 5, of the Mental Health Act 1983 have not yet commenced.

Schedule 1 (7) inserts proposed section 428XA (Disqualification of magistrate) which provides that a magistrate who has considered whether a defendant should be dealt with under the provisions relating to defendants affected by mental disorders, and who has declined to apply any of those provisions, shall, on the application of the defendant, disqualify himself or herself from further hearing the proceedings concerned.

Additional powers of magistrates

Schedule 1 (8) inserts proposed Chapter 3 (Other powers of magistrates) in Part 11A. The Chapter contains the following provisions:

- Proposed section 428YA (Definition) defines "magistrate".
- Proposed section 428YB (Transfer of prisoners) enables a magistrate to order that a person to whom the proposed section applies be examined by 2 medical practitioners for the purpose of determining whether to transfer that person from prison to a hospital under the relevant provisions of the Mental Health Act 1983 (being provisions which have commenced).

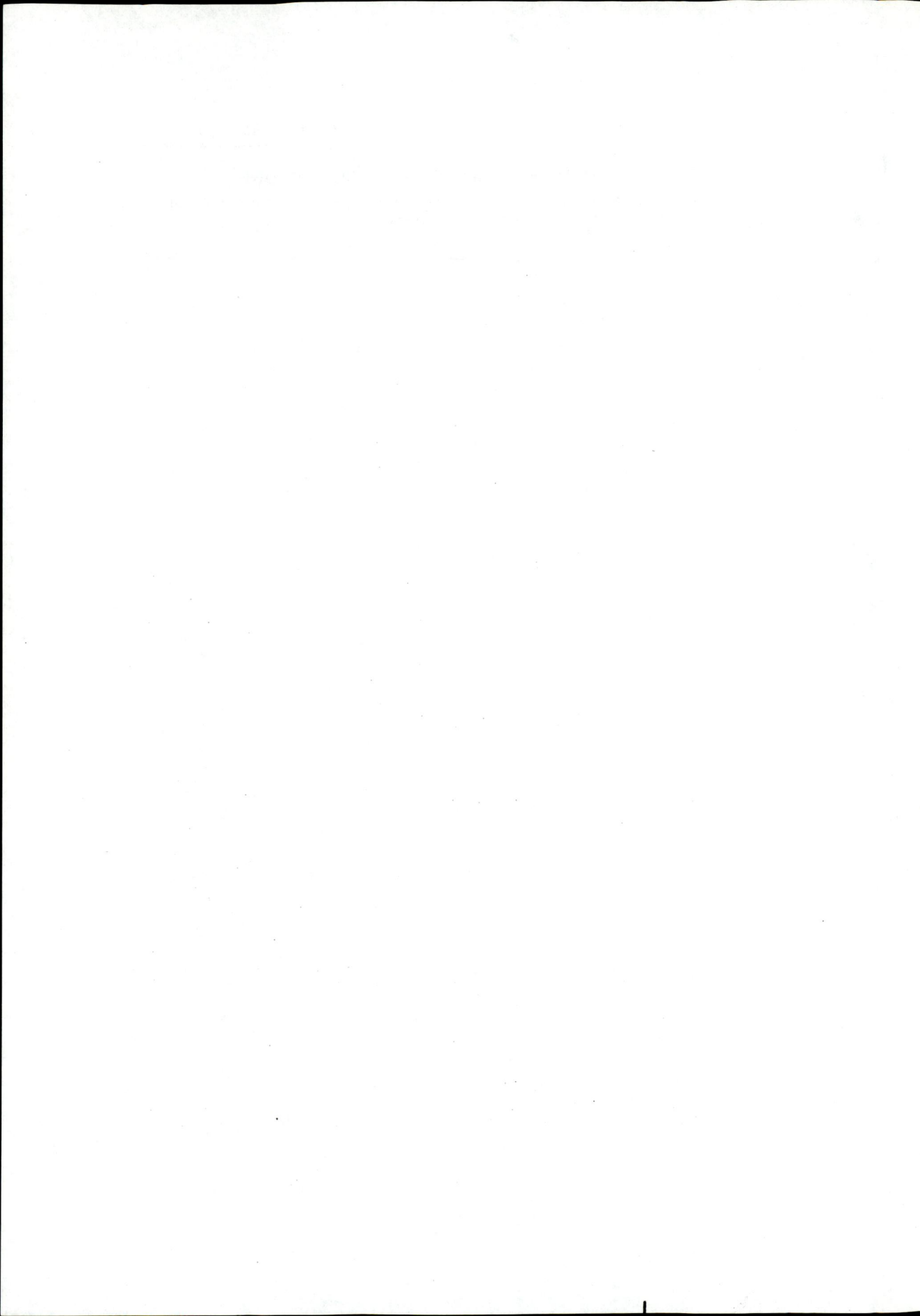
Consequential amendments

Schedule 1 (1) and (3) make consequential amendments.

Crimes (Mental Disorder) Amendment 1989

SCHEDULE 2—TRANSITIONAL PROVISIONS

Schedule 2 contains transitional provisions stating whether or not certain of the proposed amendments affect existing proceedings.



CRIMES (MENTAL DISORDER) AMENDMENT BILL 1989

NEW SOUTH WALES

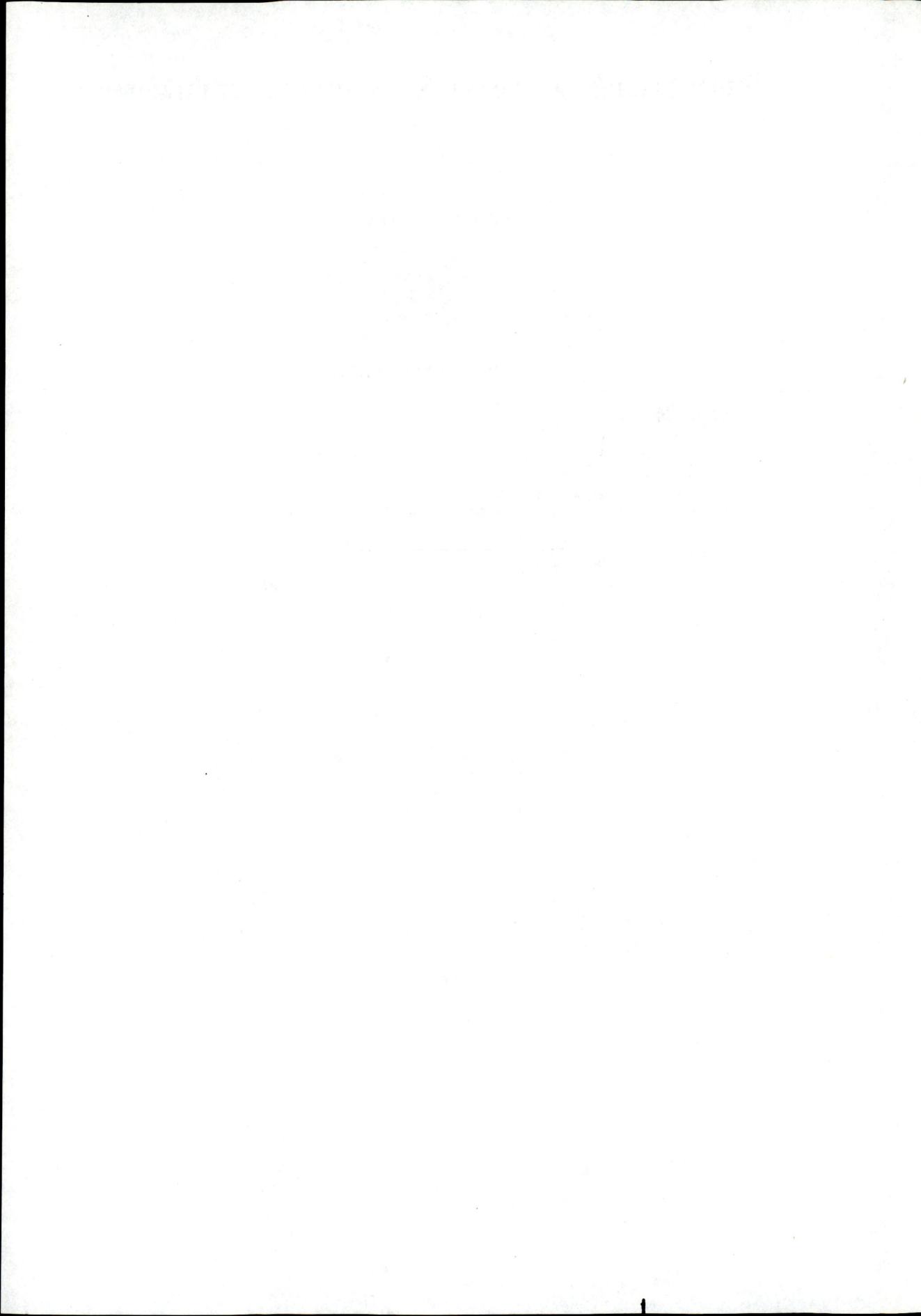


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2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Transitional provisions

SCHEDULE 1—AMENDMENTS

SCHEDULE 2—TRANSITIONAL PROVISIONS



CRIMES (MENTAL DISORDER) AMENDMENT BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Crimes Act 1900 in relation to accused persons and defendants affected by mental disorders; and for other purposes.

See also Mental Health (Mental Disorder) Amendment Bill 1989 and Criminal Appeal (Mental Disorder) Amendment Bill 1989.

Crimes (Mental Disorder) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Mental Disorder) Amendment Act 1989.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

10 Transitional provisions

4. Schedule 2 has effect.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**)—

15 From the matter relating to Part 11A, omit “CHAPTER II—*Other proceedings*”, insert instead:

CHAPTER 2—*Summary proceedings before a magistrate*

CHAPTER 3—*Other powers of magistrates*

(2) Section 428P (**Procedure after completion of special hearing**)—

20 (a) Section 428P (1) (b)—

Omit “head sentence”, insert instead “sentence”.

(b) Section 428P (1A)–(1D)—

After section 428P (1), insert:

25 (1A) Where a Court indicates that it would not have imposed a sentence of imprisonment or penal servitude in respect of a person, the Court may impose any other penalty or make any other order it might have made on conviction of the person for the relevant offence in a normal trial of criminal proceedings.

30 (1B) Any such other penalty imposed or order made, under subsection (1A), shall be subject to appeal in the same manner as a penalty or order in a normal trial of criminal proceedings.

35 (1C) In nominating a limiting term in respect of a person or imposing any other penalty or making any other order, the Court may, if it thinks fit, take into account the periods, if any, of the person’s custody or detention before, during and after the special hearing (being periods related to the offence).

*Crimes (Mental Disorder) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (1D) A limiting term nominated in respect of a person takes effect from the time when it is nominated unless the Court, after taking into account the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods related to the offence), directs that the term be taken to have commenced at an earlier time.
- (3) Part 11A, Chapter 2—
Omit the heading, insert instead:
CHAPTER 2—*Summary proceedings before a magistrate*
- 10 (4) Section 428U (**Application**)—
At the end of section 428U, insert:
(2) Sections 428w and 428x apply to the condition of a defendant as at the time when a magistrate considers whether to apply the relevant section to the defendant.
- 15 (5) Section 428w (**Persons suffering from mental illness or condition**)—
(a) Section 428w—
Omit "in proceedings", insert instead "at the commencement or at any time during the course of the hearing of proceedings".
(b) Section 428w (a)—
20 Omit "Mental Health Act 1983", insert instead "Mental Health Act 1958".
(c) At the end of section 428w, insert:
(2) A decision under subsection (1) (c) to dismiss charges
25 against a defendant does not constitute a finding that the charges against the defendant are proven or otherwise.
- (6) Section 428x (**Mentally ill persons**)—
(a) Section 428x (1), (2)—
Omit "in proceedings" wherever occurring, insert instead "at the
30 commencement or at any time during the course of the hearing of proceedings".
(b) Section 428x (1)—
Omit "Mental Health Act 1983" where firstly occurring, insert instead "Mental Health Act 1958".

*Crimes (Mental Disorder) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

(c) Section 428x (1) (a)—

Omit the paragraph, insert instead:

- (a) may order that the person be taken by a member of the Police Force to, and be detained in, an admission centre within the meaning of the Mental Health Act 1958 to be examined and dealt with under that Act as if the person were a person admitted to and detained in an admission centre under section 12 (1) of that Act; or

(d) Section 428x (3)—

Omit “hospital”, insert instead “an admission centre, a mental hospital or an authorised hospital within the meaning of the Mental Health Act 1958”.

(e) Section 428x (4)—

After section 428x (3), insert:

- (4) A deemed dismissal of charges under subsection (2) does not constitute a finding that the charges against the defendant are proven or otherwise.

(7) Section 428xA—

After section 428x, insert:

Disqualification of magistrate

428xA. (1) If—

- (a) a magistrate has inquired into whether a defendant should be dealt with under section 428w or 428x; and
 (b) the magistrate has decided not to so deal with the defendant,

the magistrate shall, on the application of the defendant, disqualify herself or himself from further hearing the proceedings concerned.

(2) An application may only be made by a defendant under this section if—

- (a) except as provided by paragraph (b), the question whether the defendant should be dealt with under section 428w or 428x has not been previously inquired into by another magistrate in the same proceedings; or
 (b) in the case of proceedings in which another magistrate has previously inquired into whether the defendant should be dealt with under section 428w or 428x, the magistrate before whom the proceedings are being heard considers that it should, because of the circumstances of the case, be permitted to be made.

*Crimes (Mental Disorder) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

(8) Part 11A, Chapter 3—

At the end of Part 11A, insert:

CHAPTER 3—*Other powers of magistrates***Definition**

5 428YA. In this Chapter—

“magistrate” means—

- (a) a justice or justices; or
- (b) a Magistrate; or
- (c) a Children’s Magistrate.

10 **Transfer of prisoners**

428YB. (1) This section applies to a person who is awaiting committal for trial or trial for an offence or summary disposal of the person’s case.

15 (2) Where it appears to a magistrate that it may be appropriate to transfer a person to whom this section applies from prison to a hospital under section 123 or 124 of the Mental Health Act 1983, the magistrate may make an order directing—

- 20 (a) that the defendant be examined by 2 medical practitioners, one of whom is a psychiatrist; and
- (b) that, if appropriate, the relevant certificates be furnished to the Chief Health Officer under section 123 or 124 of the Mental Health Act 1983; and
- 25 (c) that the Director of the Prison Medical Service notify the magistrate of the action, if any, taken under section 123 or 124 of the Mental Health Act 1983.

SCHEDULE 2—TRANSITIONAL PROVISIONS

(Sec. 4)

Procedures after completion of special hearing

30 1. Section 428P of the Crimes Act 1900, as amended by this Act, applies to proceedings commenced before that amendment in which the Court is required to, but has not, indicated whether a sentence of imprisonment or penal servitude would have been imposed on a person.

Mentally ill persons etc.

35 2. (1) Section 428W of the Crimes Act 1900, as amended by this Act, applies to proceedings commenced but not completed before the commencement of Schedule 1 (5).

(2) Section 428X of the Crimes Act 1900, as amended by this Act, applies to proceedings commenced but not completed before the commencement of Schedule 1 (6).

Crimes (Mental Disorder) Amendment 1989

SCHEDULE 2—TRANSITIONAL PROVISIONS—*continued*

Disqualification of magistrate

3. Section 428XA of the Crimes Act 1900 does not apply to proceedings commenced before the commencement of that section.
