

FIRST PRINT

COMMUNITY PROTECTION BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to enable the Supreme Court to make preventive detention orders against persons who threaten the safety of others; and
- (b) to make provision for the detention of persons in respect of whom such orders are made.

PART 1—PRELIMINARY

Clause 1 specifies the short title to the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 declares that the object of the proposed Act is to protect the community by providing for the preventive detention (by order of the Supreme Court made on the application of the Attorney General) of persons who are, in the opinion of the Supreme Court, more likely than not to commit serious acts of violence, and provides that, in the construction of the proposed Act, the need to protect the community from such persons is to be given paramount consideration.

Clause 4 defines various expressions used in the proposed Act.

PART 2—DETENTION ORDERS

Division 1—Detention orders

Clause 5 empowers the Supreme Court to make preventive detention orders. Such an order may not be made against a person unless the Court is satisfied:

- (a) that the person is more likely than not to commit a serious act of violence; and

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- (b) that it is appropriate, for the protection of a particular person or persons or the community generally, that the person be held in custody.

An order will have effect for between 6 months and 24 months, as specified in the order. An order will be able to be made under the proposed clause even if the person against whom it is made is in lawful custody, whether under the proposed Act or otherwise and even if there are grounds on which the person may be held in lawful custody otherwise than under the proposed Act.

Clause 6 empowers the Supreme Court to issue a warrant for the arrest of the person against whom proceedings on an application for a preventive detention order are pending if it is satisfied, on the basis of the information given to the Court in connection with the application for the warrant, that there are reasonable grounds on which a preventive detention order may be made. A person arrested under such a warrant will have to be brought before the Court as soon as practicable and, in any case, within 72 hours of arrest.

Clause 7 empowers the Supreme Court to make interim detention orders pending its determination of proceedings on an application for a preventive detention order.

Clause 8 provides that only the Attorney General may make applications referred to in clauses 5, 6 and 7.

Clause 9 provides that a detention order may be made subject to such conditions as the Court may determine and takes effect on the date on which it is made or such later date as is specified in the order.

Clause 10 provides that a detention order may not be made against a person who is under the age of 16 years.

Clause 11 requires the Supreme Court to appoint assessors to observe and report to the Attorney General on a person against whom the Court has made a preventive detention order ("a detainee"). An assessor will be a duly qualified medical practitioner, psychiatrist or psychologist.

Clause 12 empowers the Supreme Court to direct the Commissioner of Corrective Services to make specified medical, psychiatric or psychological treatment available to a detainee.

Clause 13 provides for the amendment and revocation of preventive detention orders.

Division 2—Procedure before the Court

Clause 14 provides that proceedings under the proposed Act are civil proceedings and are to be conducted accordingly.

Clause 15 provides that a detention order may not be made unless the Attorney General's case is proved on the balance of probabilities.

Clause 16 provides for proceedings on an application under the proposed Act to be commenced by summons, and allows the Supreme Court to hear and determine such an application in the absence of the defendant on proof of service or attempted service of the summons.

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Clause 17 regulates the procedure to be adopted by the Supreme Court in hearing proceedings under the proposed Act.

Clause 18 empowers the Supreme Court to prohibit the publication or broadcasting of material that would tend to identify persons connected with proceedings under the proposed Act.

Division 3—Administration of preventive detention orders

Clause 19 provides that a detention order is sufficient authority for the person against whom it is made to be held in custody in accordance with the terms of the order.

Clause 20 provides that a detention order does not have effect while the person against whom it is made is in lawful custody otherwise than under the order.

Clause 21 requires reports on a detainee's condition and progress to be prepared by the Commissioner of Corrective Services and by the assessors appointed for the detainee.

Clause 22 is a declaratory provision that removes any doubt as to the status of a detainee, as a prisoner, and the effect of a detention order for the purposes of the Prisons Act 1952, the Crimes Act 1900 and the Sentencing Act 1989.

Clause 23 requires a detainee to be discharged from custody at the expiry of the detention order to which the detainee is subject and provides that a detainee must not be discharged from prison, or allowed leave of absence from prison, otherwise than at the expiry of the detention order or in accordance with an order made by the Supreme Court.

Division 4—General

Clause 24 provides for the jurisdiction of the Supreme Court under the proposed Act to be exercised by a single Judge.

Clause 25 provides for a right of appeal against decisions of the Supreme Court under the proposed Act to make, or to refuse to make, preventive detention orders.

Clause 26 preserves the jurisdiction that may be exercised by the Supreme Court apart from the proposed Act.

PART 3—MISCELLANEOUS

Clause 27 provides for the payment, out of the Legal Aid Fund, of the costs incurred by or on behalf of a person against whom proceedings are brought under the proposed Act.

Clause 28 protects certain persons, including the State, from liability for acts and omissions done or omitted for the purposes of, or in connection with the administration of, the proposed Act.

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Clause 29 provides that the Bail Act 1978 does not apply to defendants in proceedings under the proposed Act.

Clause 30 provides for the making of rules of court for the purposes of the proposed Act.

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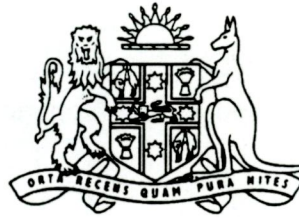
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COMMUNITY PROTECTION BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to protect the community by providing for the preventive detention of persons who are, in the opinion of the Supreme Court, more likely than not to commit serious acts of violence.

Community Protection 1994

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY**Short title**

1. This Act may be cited as the Community Protection Act 1994.

5 Commencement

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

Object of Act

10 3. (1) The object of this Act is to protect the community by providing for the preventive detention (by order of the Supreme Court made on the application of the Attorney General) of persons who are, in the opinion of the Supreme Court, more likely than not to commit serious acts of violence.

15 (2) In the construction of this Act, the need to protect the community from such persons is to be given paramount consideration.

Definitions

4. In this Act:

“**assessor**” means an assessor appointed by the Court under section 11;

20 “**Attorney General**” includes any other person who exercises the functions of the Attorney General in accordance with law;

“**Court**” means the Supreme Court of New South Wales;

“**defendant**” means a person against whom proceedings under this Act are being taken;

25 “**detainee**” means a person who is subject to a detention order;

“**detention order**” means a preventive detention order or an interim detention order;

“**interim detention order**” means an order referred to in section 7;

“**preventive detention order**” means an order referred to in section 5;

30 “**prison**” means a prison within the meaning of the Prisons Act 1952;

“serious act of violence” means an act of violence, committed by one person against another, that has a real likelihood of causing death or serious injury to the other person or that involves sexual assault in the nature of an offence referred to in section 61I, 61J, 61K, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K, 78L or 80A of the Crimes Act 1900.

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PART 2—DETENTION ORDERS

Division 1—Detention orders

Preventive detention orders

5. (1) On an application made in accordance with this Act, the Court may order that a specified person be detained in prison for a specified period if it is satisfied, on reasonable grounds: 10

(a) that the person is more likely than not to commit a serious act of violence; and

(b) that it is appropriate, for the protection of a particular person or persons or the community generally, that the person be held in custody. 15

(2) The minimum period to be specified in an order under this section is 6 months and the maximum period is 24 months.

(3) An order under this section may be made against a person: 20

(a) whether or not the person is in lawful custody, as a detainee or otherwise; and

(b) whether or not there are grounds on which the person may be held in lawful custody otherwise than as a detainee.

(4) More than one application under this section may be made in relation to the same person. 25

Arrest warrants

6. (1) On an application made in accordance with this Act, the Court may issue a warrant for the arrest of the person against whom proceedings on an application for a preventive detention order are pending if it is satisfied, on the basis of the information given to the Court in connection with the application, that there are reasonable grounds on which a preventive detention order may be made. 30

(2) A warrant may be transmitted to the person to whom it is addressed by facsimile transmission, in which case the copy produced by the transmission is taken to be the original document. 35

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(3) A person who is arrested under the authority conferred by a warrant under this section must be brought before the Court as soon as practicable and, in any case, within 72 hours of arrest.

Interim detention orders

5 7. (1) On an application made in accordance with this Act, the Court may order that the defendant in any proceedings on an application for a preventive detention order be detained in prison for such period (not exceeding 3 months) as the Court determines.

10 (2) In particular, such an order (an “interim detention order”) may be made so as to enable:

(a) the defendant to be examined as referred to in section 17 (1) (c);
or

(b) reports on the defendant to be prepared as referred to in section 17 (1) (d); or

15 (c) other proceedings to be brought for the purpose of committing the defendant to custody or other involuntary detention,

before the Court determines the application.

20 (3) On an application made in accordance with this Act or on its own motion, the Court may extend the period of an interim detention order for such further period (not exceeding 3 months) as the Court determines if it appears that the proceedings on the application for a preventive detention order will not be determined during the period currently specified in the interim detention order.

25 (4) An interim detention order ceases to have effect, regardless of its terms, when the proceedings on the application for a preventive detention order are determined.

(5) An interim detention order may be made, and its period extended, in the absence of the defendant.

Attorney General to make certain applications

30 8. Only the Attorney General may make an application referred to in section 5, 6 or 7.

Detention orders generally

35 9. (1) A detention order may be made subject to such conditions (including a condition specifying the particular prison in which the detainee is to be detained) as the Court may determine.

(2) A detention order takes effect on the date on which it is made or such later date as is specified in the order.

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Detention orders may not be made against persons under 16

10. A detention order may not be made against a person who is under the age of 16 years.

Orders appointing assessors

11. On or as soon as practicable after making a preventive detention order, the Court must make a further order appointing one or more duly qualified medical practitioners, psychiatrists or psychologists as assessors to observe and report on the detainee during the period for which the order is in force.

Orders for medical, psychiatric or psychological treatment

12. On making a detention order, or at any time while a detention order is in force, the Court may make a further order directing the Commissioner of Corrective Services to make specified medical, psychiatric or psychological treatment available to the detainee.

Amendment and revocation of preventive detention orders

13. (1) On the application of the Attorney General or a detainee, the Court:

- (a) may amend a preventive detention order by reducing the period for which it is in force; or
- (b) may revoke a preventive detention order.

(2) In determining an application under this section, the Court must have regard to the most recent reports prepared under section 21.

(3) More than one application under this section may be made in relation to the same preventive detention order.

Division 2—Procedure before the Court

Nature of proceedings

14. Proceedings under this Act are civil proceedings and, to the extent to which this Act does not provide for their conduct, they are to be conducted in accordance with the law (including the rules of evidence) relating to civil proceedings.

Standard of proof

15. The Court must not make a detention order against a person unless it is satisfied that the Attorney General's case has been proved on the balance of probabilities.

Conduct of proceedings generally

16. (1) Proceedings on an application for a preventive detention order are to be commenced by summons in accordance with rules of court.

5 (2) The Court may hear and determine an application for a preventive detention order in the absence of the defendant if it is satisfied:

- (a) that the summons has been duly served on the defendant; or
- (b) that the summons has not been duly served on the defendant but that all reasonable steps to do so have been taken.

Hearings

10 17. (1) In any proceedings under this Act, the Court:

- (a) is bound by the rules of evidence; and
- (b) may order the production of such documents or other things (such as medical reports and medical records) as it considers appropriate; and
- 15 (c) may order an examination of the defendant to be carried out by one or more duly qualified medical practitioners, psychiatrists or psychologists; and
- (d) may require the preparation of reports as to the defendant's condition and progress by such persons as it considers
- 20 appropriate; and
- (e) must have regard to any report made available to it under paragraph (d); and
- (f) may, if the interests of justice so demand, exclude any person
- 25 (other than a party to the proceedings or the party's legal representative) from the whole or any part of the proceedings.

(2) This Act does not affect the right of any party to proceedings under this Act:

- (a) to appear, either personally or by the party's legal representative; or
- 30 (b) to call witnesses and give evidence; or
- (c) to cross-examine witnesses; or
- (d) to make submissions to the Court on any matter connected with the proceedings.

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Orders prohibiting publication of material that may identify persons

18. (1) The Court may, in or in connection with any proceedings under this Act, make an order prohibiting persons generally, or any named person or persons, from publishing or broadcasting the name of any person:

- (a) who is a defendant or witness in the proceedings; or
- (b) to whom the proceedings relate; or
- (c) who is mentioned or otherwise involved in the proceedings.

(2) Such an order has effect both during the proceedings and after the proceedings are disposed of.

(3) For the purposes of this section, a reference to the name of a person includes a reference to any information, photograph, drawing or other material that identifies the person or is likely to lead to the identification of the person.

Division 3—Administration of preventive detention orders

Detention orders sufficient authority for detainees to be held in custody

19. A detention order is sufficient authority for the person against whom it is made to be held in custody in accordance with the terms of the order.

Detention orders ineffective while detainees are otherwise in custody

20. A detention order does not have effect while the person against whom it is made is lawfully in custody otherwise than under the order.

Reports to be prepared

21. (1) While a preventive detention order is in force:

- (a) the assessor or assessors appointed for the detainee; and
- (b) the Commissioner of Corrective Services,

are to make reports to the Attorney General on the detainee's condition and progress.

(2) Reports under this section must be prepared:

- (a) at least once during the period for which the preventive detention order is in force; and
- (b) whenever else the Attorney General so requires.

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(3) A report prepared by an assessor or by the Commissioner of Corrective Services must contain particulars with respect to the following matters:

- 5 (a) a description of the general behaviour of the detainee during the period to which the report relates;
- (b) an opinion as to whether or not the detainee is still more likely than not to commit a serious act of violence;
- 10 (c) an opinion as to whether or not it is still appropriate, for the protection of a particular person or persons or the community generally, that the person be held in custody;
- (d) an opinion as to whether the detainee should remain in the prison in which the detainee is currently detained or be transferred to another prison.

15 (4) A report prepared by an assessor must also contain particulars with respect to the following matters:

- (a) a description of the current state of the detainee's medical, psychiatric and psychological condition;
- 20 (b) a description of any medical, psychiatric or psychological treatment made available to the detainee during the period to which the report relates;
- (c) a description of any medical, psychiatric or psychological treatment undergone by the detainee during the period to which the report relates;
- 25 (d) an opinion as to whether any medical, psychiatric or psychological treatment (whether of the same kind as that made available during the period to which the report relates or of another kind) should be made available to the detainee during the remainder of the period for which the detention order is in force.

30 (5) Particulars of an opinion must include particulars of the grounds on which the opinion is formed.

Detainees taken to be prisoners for certain purposes

22. (1) A detainee is taken to be a prisoner within the meaning of the Prisons Act 1952.

35 (2) A detainee is taken to be required by law to be in custody in prison for the purposes of section 352AA of the Crimes Act 1900.

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(3) In any other Act (other than the Sentencing Act 1989) or any instrument under any such Act:

- (a) a reference to a sentence of imprisonment includes a reference to a detention order; and
- (b) a reference to a term of imprisonment includes a reference to the period for which a detention order is in force. 5

(4) The Sentencing Act 1989 does not apply to or in respect of a detention order or a detainee.

Discharge of detainees from prison

23. (1) A detainee must be discharged from prison at the expiry of the detention order to which the detainee is subject unless there is lawful reason for continuing to hold the detainee in custody. 10

(2) A detainee must not be discharged from prison, or allowed leave of absence from prison, otherwise than:

- (a) at the expiry of the detention order to which the detainee is subject; or 15
- (b) in accordance with an order made by the Court.

(3) This section applies despite any other Act or law to the contrary.

Division 4—General

Exercise of jurisdiction by single Judge 20

24. The jurisdiction of the Court under this Act is exercisable by a single Judge.

Right of appeal

25. (1) An appeal to the Court of Appeal lies from any determination of the Court to make, or to refuse to make, a preventive detention order. 25

(2) An appeal may be on a question of law, a question of fact or a question of mixed law and fact.

(3) The making of an appeal does not stay the operation of a detention order.

Jurisdiction of Court apart from Act not limited 30

26. Nothing in this Act limits the jurisdiction of the Court apart from this Act.

PART 3—MISCELLANEOUS**Costs**

5 27. (1) A person is entitled to legal aid within the meaning of the Legal Aid Commission Act 1979 for the costs incurred by or on behalf of the person for or in connection with:

- (a) proceedings brought against the person under this Act; or
- (b) proceedings by way of appeal from any decision of the Court in proceedings brought against the person under this Act.

10 (2) The nature and extent of legal aid to which a person is entitled under this section, and the terms and conditions on which it is to be provided, are to be determined by the Legal Aid Commission in accordance with the Legal Aid Commission Act 1979.

Protection of certain persons from liability

15 28. No action lies against any person (including the State) for or in respect of any act or omission done or omitted by the person so long as it was done or omitted in good faith for the purposes of, or in connection with the administration or execution of, this Act.

Bail Act 1978 not to apply

20 29. The Bail Act 1978 does not apply to or in respect of a person who is a defendant in proceedings under this Act.

Rules of court

25 30. (1) Rules of court may be made under the Supreme Court Act 1970 for regulating the practice and procedure of the Court in respect of proceedings under this Act.

(2) This section does not limit the rule-making powers conferred by the Supreme Court Act 1970.

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COMMUNITY PROTECTION BILL 1994

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LEGISLATIVE COUNCIL

Community Protection Bill 1994

Second Print

Amendments to be moved in Committee

- No. 1 Page 2, clause 3, line 11. Omit "Attorney General", insert instead "Director of Public Prosecutions".
- No. 2 Page 11. After line 9, insert:

Functions of Director of Public Prosecutions

31. (1) The Director of Public Prosecutions has the powers, authorities duties and functions conferred or imposed on the Director of Public Prosecutions by this Act.

(2) This section does not limit the powers, authorities duties and functions conferred or imposed on the Director of Public Prosecutions by, or under any other Act.

COMMUNITY PROTECTION BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to protect the community by providing for the preventive detention of persons who are, in the opinion of the Supreme Court, more likely than not to commit serious acts of violence.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Community Protection Act 1994.

5 Commencement

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

Objects and application of Act

10 3. (1) The object of this Act is to protect the community by providing for the preventive detention (by order of the Supreme Court made on the application of the Attorney General) of Gregory Wayne Kable.

(2) In the construction of this Act, the need to protect the community is to be given paramount consideration.

15 (3) This Act authorises the making of a detention order against Gregory Wayne Kable and does not authorise the making of a detention order against any other person.

(4) For the purposes of this section, Gregory Wayne Kable is the person of that name who was convicted in New South Wales on 1 August 1990 of the manslaughter of his wife, Hilary Kable.

20 Definitions

4. In this Act:

“**assessor**” means an assessor appointed by the Court under section 11;

“**Court**” means the Supreme Court of New South Wales;

25 “**defendant**” means a person against whom proceedings under this Act are being taken;

“**detainee**” means a person who is subject to a detention order;

“**detention order**” means a preventive detention order or an interim detention order;

30 “**interim detention order**” means an order referred to in section 7;

“**preventive detention order**” means an order referred to in section 5;

“**prison**” means a prison within the meaning of the Prisons Act 1952;

“serious act of violence” means an act of violence, committed by one person against another, that has a real likelihood of causing death or serious injury to the other person or that involves sexual assault in the nature of an offence referred to in section 61I, 61J, 61K, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K, 78L or 80A of the Crimes Act 1900. 5

PART 2—DETENTION ORDERS

Division 1—Detention orders

Preventive detention orders

5. (1) On an application made in accordance with this Act, the Court may order that a specified person be detained in prison for a specified period if it is satisfied, on reasonable grounds: 10

(a) that the person is more likely than not to commit a serious act of violence; and

(b) that it is appropriate, for the protection of a particular person or persons or the community generally, that the person be held in custody. 15

(2) The maximum period to be specified in an order under this section is 6 months.

(3) An order under this section may be made against a person: 20

(a) whether or not the person is in lawful custody, as a detainee or otherwise; and

(b) whether or not there are grounds on which the person may be held in lawful custody otherwise than as a detainee.

(4) More than one application under this section may be made in relation to the same person. 25

Arrest warrants

6. (1) On an application made in accordance with this Act, the Court may issue a warrant for the arrest of the person against whom proceedings on an application for a preventive detention order are pending if it is satisfied, on the basis of the information given to the Court in connection with the application, that there are reasonable grounds on which a preventive detention order may be made. 30

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(2) A warrant may be transmitted to the person to whom it is addressed by facsimile transmission, in which case the copy produced by the transmission is taken to be the original document.

5 (3) A person who is arrested under the authority conferred by a warrant under this section must be brought before the Court as soon as practicable and, in any case, within 72 hours of arrest.

Interim detention orders

10 7. (1) On an application made in accordance with this Act, the Court may order that the defendant in any proceedings on an application for a preventive detention order be detained in prison for such period (not exceeding 3 months) as the Court determines.

(2) In particular, such an order (an “interim detention order”) may be made so as to enable:

- 15 (a) the defendant to be examined as referred to in section 17 (1) (c);
or
(b) reports on the defendant to be prepared as referred to in section 17 (1) (d); or
(c) other proceedings to be brought for the purpose of committing the
20 defendant to custody or other involuntary detention,
before the Court determines the application.

(3) On an application made in accordance with this Act or on its own motion, the Court may extend the period of an interim detention order for such further period (not exceeding 3 months) as the Court determines if it appears that the proceedings on the application for a preventive detention
25 order will not be determined during the period currently specified in the interim detention order.

(4) An interim detention order ceases to have effect, regardless of its terms, when the proceedings on the application for a preventive detention order are determined.

30 (5) An interim detention order may be made, and its period extended, in the absence of the defendant.

Director of Public Prosecutions to make certain applications

8. Only the Director of Public Prosecutions may make an application referred to in section 5, 6 or 7.

35 Detention orders generally

9. (1) A detention order may be made subject to such conditions (including a condition specifying the particular prison in which the detainee is to be detained) as the Court may determine.

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(2) A detention order takes effect on the date on which it is made or such later date as is specified in the order.

Detention orders may not be made against persons under 16

10. A detention order may not be made against a person who is under the age of 16 years. 5

Orders appointing assessors

11. On or as soon as practicable after making a preventive detention order, the Court must make a further order appointing one or more duly qualified medical practitioners, psychiatrists or psychologists as assessors to observe and report on the detainee during the period for which the order is in force. 10

Orders for medical, psychiatric or psychological treatment

12. On making a detention order, or at any time while a detention order is in force, the Court may make a further order directing the Commissioner of Corrective Services to make specified medical, psychiatric or psychological treatment available to the detainee. 15

Amendment and revocation of preventive detention orders

13. (1) On the application of the Director of Public Prosecutions or a detainee, the Court:

- (a) may amend a preventive detention order by reducing the period for which it is in force; or 20
- (b) may revoke a preventive detention order.

(2) In determining an application under this section, the Court must have regard to the most recent reports prepared under section 21.

(3) More than one application under this section may be made in relation to the same preventive detention order. 25

Division 2—Procedure before the Court

Nature of proceedings

14. Proceedings under this Act are civil proceedings and, to the extent to which this Act does not provide for their conduct, they are to be conducted in accordance with the law (including the rules of evidence) relating to civil proceedings. 30

Standard of proof

15. The Court must not make a detention order against a person unless it is satisfied that the Director of Public Prosecutions' case has been proved on the balance of probabilities.

5 **Conduct of proceedings generally**

16. (1) Proceedings on an application for a preventive detention order are to be commenced by summons in accordance with rules of court.

(2) The Court may hear and determine an application for a preventive detention order in the absence of the defendant if it is satisfied:

- 10 (a) that the summons has been duly served on the defendant; or
(b) that the summons has not been duly served on the defendant but that all reasonable steps to do so have been taken.

Hearings

17. (1) In any proceedings under this Act, the Court:

- 15 (a) is bound by the rules of evidence; and
(b) may order the production of documents of the following kind in relation to the defendant:
20 (i) medical records and reports;
(ii) records and reports of any psychiatric in-patient service or prison;
(iii) reports made to, or by, the Offenders Review Board;
(iv) reports, records or other documents prepared or kept by any police officer;
25 (v) the transcript of any proceedings before, and any evidence tendered to, the Mental Health Review Tribunal; and
(c) may order an examination of the defendant to be carried out by one or more duly qualified medical practitioners, psychiatrists or psychologists; and
30 (d) may require the preparation of reports as to the defendant's condition and progress by such persons as it considers appropriate; and
(e) must have regard to any report made available to it under paragraph (d); and
35 (f) may, if the interests of justice so demand, exclude any person (other than a party to the proceedings or the party's legal representative) from the whole or any part of the proceedings.

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(2) This Act does not affect the right of any party to proceedings under this Act:

- (a) to appear, either personally or by the party's legal representative; or
- (b) to call witnesses and give evidence; or
- (c) to cross-examine witnesses; or
- (d) to make submissions to the Court on any matter connected with the proceedings.

5

(3) Despite any Act or law to the contrary, the Court must receive in evidence any document or report of a kind referred to in subsection (1), or any copy of any such document or report, that is tendered to it in proceedings under this Act.

10

Orders prohibiting publication of material that may identify persons

18. (1) The Court may, in or in connection with any proceedings under this Act, make an order prohibiting persons generally, or any named person or persons, from publishing or broadcasting the name of any person:

15

- (a) who is a defendant or witness in the proceedings; or
- (b) to whom the proceedings relate; or
- (c) who is mentioned or otherwise involved in the proceedings.

20

(2) Such an order has effect both during the proceedings and after the proceedings are disposed of.

(3) For the purposes of this section, a reference to the name of a person includes a reference to any information, photograph, drawing or other material that identifies the person or is likely to lead to the identification of the person.

25

Division 3—Administration of preventive detention orders

Detention orders sufficient authority for detainees to be held in custody

19. A detention order is sufficient authority for the person against whom it is made to be held in custody in accordance with the terms of the order.

30

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Detention orders ineffective while detainees are otherwise in custody

20. A detention order does not have effect while the person against whom it is made is lawfully in custody otherwise than under the order.

Reports to be prepared

5 **21. (1)** While a preventive detention order is in force:

- (a) the assessor or assessors appointed for the detainee; and
- (b) the Commissioner of Corrective Services,

are to make reports to the Director of Public Prosecutions on the detainee's condition and progress.

10 **(2)** Reports under this section must be prepared:

- (a) at least once during the period for which the preventive detention order is in force; and
- (b) whenever else the Director of Public Prosecutions so requires.

15 **(3)** A report prepared by an assessor or by the Commissioner of Corrective Services must contain particulars with respect to the following matters:

- (a) a description of the general behaviour of the detainee during the period to which the report relates;
- 20 (b) an opinion as to whether or not the detainee is still more likely than not to commit a serious act of violence;
- (c) an opinion as to whether or not it is still appropriate, for the protection of a particular person or persons or the community generally, that the person be held in custody;
- 25 (d) an opinion as to whether the detainee should remain in the prison in which the detainee is currently detained or be transferred to another prison.

(4) A report prepared by an assessor must also contain particulars with respect to the following matters:

- 30 (a) a description of the current state of the detainee's medical, psychiatric and psychological condition;
- (b) a description of any medical, psychiatric or psychological treatment made available to the detainee during the period to which the report relates;

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- (c) a description of any medical, psychiatric or psychological treatment undergone by the detainee during the period to which the report relates;
 - (d) an opinion as to whether any medical, psychiatric or psychological treatment (whether of the same kind as that made available during the period to which the report relates or of another kind) should be made available to the detainee during the remainder of the period for which the detention order is in force. 5
- (5) Particulars of an opinion must include particulars of the grounds on which the opinion is formed. 10

Detainees taken to be prisoners for certain purposes

22. (1) A detainee is taken to be a prisoner within the meaning of the Prisons Act 1952.

(2) A detainee is taken to be required by law to be in custody in prison for the purposes of section 352AA of the Crimes Act 1900. 15

(3) In any other Act (other than the Sentencing Act 1989) or any instrument under any such Act:

(a) a reference to a sentence of imprisonment includes a reference to a detention order; and

(b) a reference to a term of imprisonment includes a reference to the period for which a detention order is in force. 20

(4) The Sentencing Act 1989 does not apply to or in respect of a detention order or a detainee.

Discharge of detainees from prison

23. (1) A detainee must be discharged from prison at the expiry of the detention order to which the detainee is subject unless there is lawful reason for continuing to hold the detainee in custody. 25

(2) A detainee must not be discharged from prison, or allowed leave of absence from prison, otherwise than:

(a) at the expiry of the detention order to which the detainee is subject; or 30

(b) in accordance with an order made by the Court.

(3) This section applies despite any other Act or law to the contrary.

Division 4—General**Exercise of jurisdiction by single Judge**

24. The jurisdiction of the Court under this Act is exercisable by a single Judge.

5 **Right of appeal**

25. (1) An appeal to the Court of Appeal lies from any determination of the Court to make, or to refuse to make, a preventive detention order.

(2) An appeal may be on a question of law, a question of fact or a question of mixed law and fact.

10 (3) The making of an appeal does not stay the operation of a detention order.

Jurisdiction of Court apart from Act not limited

26. Nothing in this Act limits the jurisdiction of the Court apart from this Act.

15 **PART 3—MISCELLANEOUS****Costs**

27. (1) A person is entitled to legal aid within the meaning of the Legal Aid Commission Act 1979 for the costs incurred by or on behalf of the person for or in connection with:

- 20 (a) proceedings brought against the person under this Act; or
(b) proceedings by way of appeal from any decision of the Court in proceedings brought against the person under this Act.

25 (2) The nature and extent of legal aid to which a person is entitled under this section, and the terms and conditions on which it is to be provided, are to be determined by the Legal Aid Commission in accordance with the Legal Aid Commission Act 1979.

Protection of certain persons from liability

30 28. No action lies against any person (including the State) for or in respect of any act or omission done or omitted by the person so long as it was done or omitted in good faith for the purposes of, or in connection with the administration or execution of, this Act.

Bail Act 1978 not to apply

29. The Bail Act 1978 does not apply to or in respect of a person who is a defendant in proceedings under this Act.

Rules of court

30. (1) Rules of court may be made under the Supreme Court Act 1970 for regulating the practice and procedure of the Court in respect of proceedings under this Act.

5

(2) This section does not limit the rule-making powers conferred by the Supreme Court Act 1970.

THIRD PRINT

COMMUNITY PROTECTION BILL 1994

NEW SOUTH WALES



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This PUBLIC BILL originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Clerk of the Parliaments

Legislative Council

NEW SOUTH WALES



Act No. , 1994

An Act to protect the community by providing for the preventive detention of persons who are, in the opinion of the Supreme Court, more likely than not to commit serious acts of violence.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Community Protection Act 1994.

5 Commencement

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

Objects and application of Act

10 3. (1) The object of this Act is to protect the community by providing for the preventive detention (by order of the Supreme Court made on the application of the Director of Public Prosecutions) of Gregory Wayne Kable.

(2) In the construction of this Act, the need to protect the community is to be given paramount consideration.

15 (3) This Act authorises the making of a detention order against Gregory Wayne Kable and does not authorise the making of a detention order against any other person.

20 (4) For the purposes of this section, Gregory Wayne Kable is the person of that name who was convicted in New South Wales on 1 August 1990 of the manslaughter of his wife, Hilary Kable.

Definitions

4. In this Act:

25 “**assessor**” means an assessor appointed by the Court under section 11;

“**Court**” means the Supreme Court of New South Wales;

“**defendant**” means a person against whom proceedings under this Act are being taken;

“**detainee**” means a person who is subject to a detention order;

30 “**detention order**” means a preventive detention order or an interim detention order;

“**interim detention order**” means an order referred to in section 7;

“**preventive detention order**” means an order referred to in section 5;

“**prison**” means a prison within the meaning of the Prisons Act 1952;

“serious act of violence” means an act of violence, committed by one person against another, that has a real likelihood of causing death or serious injury to the other person or that involves sexual assault in the nature of an offence referred to in section 61I, 61J, 61K, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K, 78L or 80A of the Crimes Act 1900.

5

PART 2—DETENTION ORDERS

Division 1—Detention orders

Preventive detention orders

5. (1) On an application made in accordance with this Act, the Court may order that a specified person be detained in prison for a specified period if it is satisfied, on reasonable grounds:

10

- (a) that the person is more likely than not to commit a serious act of violence; and
- (b) that it is appropriate, for the protection of a particular person or persons or the community generally, that the person be held in custody.

15

(2) The maximum period to be specified in an order under this section is 6 months.

(3) An order under this section may be made against a person:

20

- (a) whether or not the person is in lawful custody, as a detainee or otherwise; and
- (b) whether or not there are grounds on which the person may be held in lawful custody otherwise than as a detainee.

(4) More than one application under this section may be made in relation to the same person.

25

Arrest warrants

6. (1) On an application made in accordance with this Act, the Court may issue a warrant for the arrest of the person against whom proceedings on an application for a preventive detention order are pending if it is satisfied, on the basis of the information given to the Court in connection with the application, that there are reasonable grounds on which a preventive detention order may be made.

30

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(2) A warrant may be transmitted to the person to whom it is addressed by facsimile transmission, in which case the copy produced by the transmission is taken to be the original document.

5 (3) A person who is arrested under the authority conferred by a warrant under this section must be brought before the Court as soon as practicable and, in any case, within 72 hours of arrest.

Interim detention orders

10 7. (1) On an application made in accordance with this Act, the Court may order that the defendant in any proceedings on an application for a preventive detention order be detained in prison for such period (not exceeding 3 months) as the Court determines.

(2) In particular, such an order (an "interim detention order") may be made so as to enable:

- 15 (a) the defendant to be examined as referred to in section 17 (1) (c);
or
(b) reports on the defendant to be prepared as referred to in section 17 (1) (d); or
(c) other proceedings to be brought for the purpose of committing the defendant to custody or other involuntary detention,
20 before the Court determines the application.

25 (3) On an application made in accordance with this Act or on its own motion, the Court may extend the period of an interim detention order for such further period (not exceeding 3 months) as the Court determines if it appears that the proceedings on the application for a preventive detention order will not be determined during the period currently specified in the interim detention order.

(4) An interim detention order ceases to have effect, regardless of its terms, when the proceedings on the application for a preventive detention order are determined.

30 (5) An interim detention order may be made, and its period extended, in the absence of the defendant.

Director of Public Prosecutions to make certain applications

8. Only the Director of Public Prosecutions may make an application referred to in section 5, 6 or 7.

35 **Detention orders generally**

9. (1) A detention order may be made subject to such conditions (including a condition specifying the particular prison in which the detainee is to be detained) as the Court may determine.

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(2) A detention order takes effect on the date on which it is made or such later date as is specified in the order.

Detention orders may not be made against persons under 16

10. A detention order may not be made against a person who is under the age of 16 years. 5

Orders appointing assessors

11. On or as soon as practicable after making a preventive detention order, the Court must make a further order appointing one or more duly qualified medical practitioners, psychiatrists or psychologists as assessors to observe and report on the detainee during the period for which the order is in force. 10

Orders for medical, psychiatric or psychological treatment

12. On making a detention order, or at any time while a detention order is in force, the Court may make a further order directing the Commissioner of Corrective Services to make specified medical, psychiatric or psychological treatment available to the detainee. 15

Amendment and revocation of preventive detention orders

13. (1) On the application of the Director of Public Prosecutions or a detainee, the Court:

- (a) may amend a preventive detention order by reducing the period for which it is in force; or 20
- (b) may revoke a preventive detention order.

(2) In determining an application under this section, the Court must have regard to the most recent reports prepared under section 21.

(3) More than one application under this section may be made in relation to the same preventive detention order. 25

Division 2—Procedure before the Court

Nature of proceedings

14. Proceedings under this Act are civil proceedings and, to the extent to which this Act does not provide for their conduct, they are to be conducted in accordance with the law (including the rules of evidence) relating to civil proceedings. 30

Standard of proof

15. The Court must not make a detention order against a person unless it is satisfied that the Director of Public Prosecutions' case has been proved on the balance of probabilities.

5 **Conduct of proceedings generally**

16. (1) Proceedings on an application for a preventive detention order are to be commenced by summons in accordance with rules of court.

(2) The Court may hear and determine an application for a preventive detention order in the absence of the defendant if it is satisfied:

- 10
- (a) that the summons has been duly served on the defendant; or
 - (b) that the summons has not been duly served on the defendant but that all reasonable steps to do so have been taken.

Hearings

17. (1) In any proceedings under this Act, the Court:

- 15
- (a) is bound by the rules of evidence; and
 - (b) may order the production of documents of the following kind in relation to the defendant:
 - 20 (i) medical records and reports;
 - (ii) records and reports of any psychiatric in-patient service or prison;
 - (iii) reports made to, or by, the Offenders Review Board;
 - (iv) reports, records or other documents prepared or kept by any police officer;
 - 25 (v) the transcript of any proceedings before, and any evidence tendered to, the Mental Health Review Tribunal; and
 - (c) may order an examination of the defendant to be carried out by one or more duly qualified medical practitioners, psychiatrists or psychologists; and
 - 30 (d) may require the preparation of reports as to the defendant's condition and progress by such persons as it considers appropriate; and
 - (e) must have regard to any report made available to it under paragraph (d); and
 - 35 (f) may, if the interests of justice so demand, exclude any person (other than a party to the proceedings or the party's legal representative) from the whole or any part of the proceedings.

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(2) This Act does not affect the right of any party to proceedings under this Act:

- (a) to appear, either personally or by the party's legal representative;
or
- (b) to call witnesses and give evidence; or
- (c) to cross-examine witnesses; or
- (d) to make submissions to the Court on any matter connected with the proceedings.

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(3) Despite any Act or law to the contrary, the Court must receive in evidence any document or report of a kind referred to in subsection (1), or any copy of any such document or report, that is tendered to it in proceedings under this Act.

10

Orders prohibiting publication of material that may identify persons

18. (1) The Court may, in or in connection with any proceedings under this Act, make an order prohibiting persons generally, or any named person or persons, from publishing or broadcasting the name of any person:

15

- (a) who is a defendant or witness in the proceedings; or
- (b) to whom the proceedings relate; or
- (c) who is mentioned or otherwise involved in the proceedings.

20

(2) Such an order has effect both during the proceedings and after the proceedings are disposed of.

(3) For the purposes of this section, a reference to the name of a person includes a reference to any information, photograph, drawing or other material that identifies the person or is likely to lead to the identification of the person.

25

Division 3—Administration of preventive detention orders

Detention orders sufficient authority for detainees to be held in custody

19. A detention order is sufficient authority for the person against whom it is made to be held in custody in accordance with the terms of the order.

30

Detention orders ineffective while detainees are otherwise in custody

20. A detention order does not have effect while the person against whom it is made is lawfully in custody otherwise than under the order.

Reports to be prepared

5 21. (1) While a preventive detention order is in force:

- (a) the assessor or assessors appointed for the detainee; and
- (b) the Commissioner of Corrective Services,

are to make reports to the Director of Public Prosecutions on the detainee's condition and progress.

10 (2) Reports under this section must be prepared:

- (a) at least once during the period for which the preventive detention order is in force; and
- (b) whenever else the Director of Public Prosecutions so requires.

15 (3) A report prepared by an assessor or by the Commissioner of Corrective Services must contain particulars with respect to the following matters:

- (a) a description of the general behaviour of the detainee during the period to which the report relates;
- 20 (b) an opinion as to whether or not the detainee is still more likely than not to commit a serious act of violence;
- (c) an opinion as to whether or not it is still appropriate, for the protection of a particular person or persons or the community generally, that the person be held in custody;
- 25 (d) an opinion as to whether the detainee should remain in the prison in which the detainee is currently detained or be transferred to another prison.

(4) A report prepared by an assessor must also contain particulars with respect to the following matters:

- 30 (a) a description of the current state of the detainee's medical, psychiatric and psychological condition;
- (b) a description of any medical, psychiatric or psychological treatment made available to the detainee during the period to which the report relates;

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(c) a description of any medical, psychiatric or psychological treatment undergone by the detainee during the period to which the report relates;

(d) an opinion as to whether any medical, psychiatric or psychological treatment (whether of the same kind as that made available during the period to which the report relates or of another kind) should be made available to the detainee during the remainder of the period for which the detention order is in force. 5

(5) Particulars of an opinion must include particulars of the grounds on which the opinion is formed. 10

Detainees taken to be prisoners for certain purposes

22. (1) A detainee is taken to be a prisoner within the meaning of the Prisons Act 1952.

(2) A detainee is taken to be required by law to be in custody in prison for the purposes of section 352AA of the Crimes Act 1900. 15

(3) In any other Act (other than the Sentencing Act 1989) or any instrument under any such Act:

(a) a reference to a sentence of imprisonment includes a reference to a detention order; and

(b) a reference to a term of imprisonment includes a reference to the period for which a detention order is in force. 20

(4) The Sentencing Act 1989 does not apply to or in respect of a detention order or a detainee.

Discharge of detainees from prison

23. (1) A detainee must be discharged from prison at the expiry of the detention order to which the detainee is subject unless there is lawful reason for continuing to hold the detainee in custody. 25

(2) A detainee must not be discharged from prison, or allowed leave of absence from prison, otherwise than:

(a) at the expiry of the detention order to which the detainee is subject; or 30

(b) in accordance with an order made by the Court.

(3) This section applies despite any other Act or law to the contrary.

Division 4—General**Exercise of jurisdiction by single Judge**

24. The jurisdiction of the Court under this Act is exercisable by a single Judge.

5 **Right of appeal**

25. (1) An appeal to the Court of Appeal lies from any determination of the Court to make, or to refuse to make, a preventive detention order.

(2) An appeal may be on a question of law, a question of fact or a question of mixed law and fact.

10 (3) The making of an appeal does not stay the operation of a detention order.

Jurisdiction of Court apart from Act not limited

26. Nothing in this Act limits the jurisdiction of the Court apart from this Act.

15

PART 3—MISCELLANEOUS**Costs**

27. (1) A person is entitled to legal aid within the meaning of the Legal Aid Commission Act 1979 for the costs incurred by or on behalf of the person for or in connection with:

- 20 (a) proceedings brought against the person under this Act; or
 (b) proceedings by way of appeal from any decision of the Court in proceedings brought against the person under this Act.

25 (2) The nature and extent of legal aid to which a person is entitled under this section, and the terms and conditions on which it is to be provided, are to be determined by the Legal Aid Commission in accordance with the Legal Aid Commission Act 1979.

Protection of certain persons from liability

30 28. No action lies against any person (including the State) for or in respect of any act or omission done or omitted by the person so long as it was done or omitted in good faith for the purposes of, or in connection with the administration or execution of, this Act.

Bail Act 1978 not to apply

29. The Bail Act 1978 does not apply to or in respect of a person who is a defendant in proceedings under this Act.

Rules of court

30. (1) Rules of court may be made under the Supreme Court Act 1970 for regulating the practice and procedure of the Court in respect of proceedings under this Act. 5

(2) This section does not limit the rule-making powers conferred by the Supreme Court Act 1970.

Functions of Director of Public Prosecutions 10

31. (1) The Director of Public Prosecutions has the powers, authorities duties and functions conferred or imposed on the Director of Public Prosecutions by this Act.

(2) This section does not limit the powers, authorities duties and functions conferred or imposed on the Director of Public prosecutions by or under any other Act. 15
