

First print



New South Wales

Crimes Amendment (Diminished Responsibility) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* to replace the defence of diminished responsibility to a charge of murder.

Diminished responsibility is a partial defence that operates to reduce a person's liability for murder to manslaughter. Under section 23A of the *Crimes Act 1900*, if a person charged with murder proves that he or she was suffering from an abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) that substantially impaired his or her mental responsibility for the acts or omissions that caused the death concerned, the person is not liable to be convicted of murder. Instead, the person is liable to be convicted of manslaughter.

This Bill replaces that defence with a new defence of substantial impairment by abnormality of mind. The defence is still a partial defence (that is, it reduces the accused's liability for murder to manslaughter) and still must be proved by the accused.

The principal differences between the current defence of diminished responsibility and the new defence are as follows:

- (a) The concept of "mental responsibility" is removed. The new defence requires the accused to show that his or her capacity to understand events, to judge whether his or her actions were right or wrong or to control himself or herself, was substantially impaired by an abnormality of mind.
- (b) The new defence is satisfied only if the impairment suffered by the defendant was so substantial as to warrant liability for murder being reduced to manslaughter.
- (c) The current defence refers to an abnormality of mind that arises from a condition of arrested or retarded development of mind or any inherent causes or that is induced by disease or injury. The new defence instead requires the accused to prove that his or her abnormality of mind arises from an underlying condition. This will require the accused to prove that the abnormality of mind arose from a pre-existing mental or physiological condition, other than a condition of a transitory kind.
- (d) The new defence makes it clear that the effects of any self-induced intoxication on the accused at the time of the acts or omissions causing death are to be disregarded by the jury.
- (e) The accused is required to give the prosecution notice of his or her intention to raise the new defence before his or her trial.

The Bill also contains transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of 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 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Schedule 1 [1] replaces section 23A of the *Crimes Act 1900*, which provides for the defence of diminished responsibility. The principal elements of the new defence (called substantial impairment by abnormality of mind) are contained in new section 23A (1), which provides as follows:

A person who would otherwise be guilty of murder is not to be convicted of murder if:

- (a) at the time of the acts or omissions causing the death concerned, the person's capacity to understand events, or to judge whether the person's actions were right or wrong, or to control himself or herself, was substantially impaired by an abnormality of mind arising from an underlying condition, and
- (b) the impairment was so substantial as to warrant liability for murder being reduced to manslaughter.

New section 23A (2) provides that evidence of an opinion that an impairment was so substantial as to warrant liability for murder being reduced to manslaughter is not admissible.

New section 23A (3) makes it clear that the effects of any self-induced intoxication on the accused at the time of the acts or omissions that caused the death concerned are to be disregarded by the jury.

New section 23A (4)–(7) are substantially the same as current section 23A (2)–(5). They provide that:

- (a) the onus of establishing the defence is on the accused, and
- (b) the defence results in the accused's liability being reduced from murder to manslaughter, and
- (c) proof of the defence does not affect the liability of any other persons for the death concerned, and
- (d) if the accused raises a defence of mental illness or a defence under section 23A, the prosecution may offer evidence tending to prove the other of those contentions and the Court may give directions as to the stage of proceedings at which the evidence may be offered.

New section 23A (8) defines *underlying condition* to mean a pre-existing mental or physiological condition, other than a condition of a transitory kind.

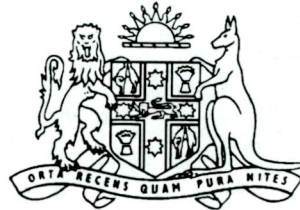
Schedule 1 [2] inserts new section 405AB in the Act. This requires the accused to give the Director of Public Prosecutions notice of an intention to raise the new defence. The notice is to include the names and addresses of any other persons the defendant intends to call to give evidence of the defence and particulars of the evidence to be given by them.

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Explanatory note

Schedule 1 [3] inserts transitional provisions in the Act. These make it clear that the defence of diminished responsibility will continue to apply in respect of murders alleged to have been committed before the commencement of the new defence and that the notice requirement does not apply in respect of a trial for such an alleged murder.

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New South Wales

Crimes Amendment (Diminished Responsibility) Bill 1997

No. , 1997

A Bill for

An Act to amend the *Crimes Act 1900* to replace the defence of diminished responsibility; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Diminished Responsibility) Act 1997*.

2 Commencement

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

3 Amendment of Crimes Act 1900 No 40

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

Schedule 1 Amendments

(Section 3)

[1] Section 23A

Omit the section. Insert instead:

- 23A Substantial impairment by abnormality of mind** 5
- (1) A person who would otherwise be guilty of murder is not to be convicted of murder if:
 - (a) at the time of the acts or omissions causing the death concerned, the person's capacity to understand events, or to judge whether the person's actions were right or wrong, or to control himself or herself, was substantially impaired by an abnormality of mind arising from an underlying condition, and 10
 - (b) the impairment was so substantial as to warrant liability for murder being reduced to manslaughter. 15
 - (2) For the purposes of subsection (1) (b), evidence of an opinion that an impairment was so substantial as to warrant liability for murder being reduced to manslaughter is not admissible. 20
 - (3) If a person was intoxicated at the time of the acts or omissions causing the death concerned, and the intoxication was self-induced intoxication (within the meaning of section 428A), the effects of that self-induced intoxication are to be disregarded for the purpose of determining whether the person is not liable to be convicted of murder by virtue of this section. 25
 - (4) The onus is on the person accused to prove that he or she is not liable to be convicted of murder by virtue of this section. 30
 - (5) A person who but for this section would be liable, whether as principal or accessory, to be convicted of murder is to be convicted of manslaughter instead.

- (6) The fact that a person is not liable to be convicted of murder in respect of a death by virtue of this section does not affect the question of whether any other person is liable to be convicted of murder in respect of that death.
- (7) If, on the trial of a person for murder, the person contends: 5
- (a) that the person is entitled to be acquitted on the ground that the person was mentally ill at the time of the acts or omissions causing the death concerned, or 10
- (b) that the person is not liable to be convicted of murder by virtue of this section,
- evidence may be offered by the prosecution tending to prove the other of those contentions, and the Court may give directions as to the stage of the proceedings at which that evidence may be offered. 15
- (8) In this section:
- underlying condition* means a pre-existing mental or physiological condition, other than a condition of a transitory kind. 20

[2] Section 405AB

Insert after section 405A:

405AB Notice of intention to adduce evidence of substantial impairment

- (1) On a trial for murder, the defendant must not, without the leave of the Court, adduce evidence tending to prove a contention by the defendant that the defendant is not liable to be convicted of murder by virtue of section 23A, unless the defendant gives notice, as prescribed by the regulations, of his or her intention to raise that contention. 25 30

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- (2) Without limiting subsection (1), the defendant must not, without the leave of the Court, call any other person to give evidence tending to prove a contention by the defendant that the defendant is not liable to be convicted of murder by virtue of section 23A unless the notice under this section includes: 5
- (a) the name and address of the other person, and
 - (b) particulars of the evidence to be given by the other person.
- (3) Any evidence tendered to disprove a contention that the defendant is not liable to be convicted of murder by virtue of section 23A may, subject to any direction of the Court, be given before or after evidence is given to prove that contention. 10
- (4) Any notice purporting to be given under this section on behalf of the defendant by his or her legal practitioner is taken, unless the contrary is proved, to have been given with the authority of the defendant. 15
- (5) A notice under this section is to be given in writing to the Director of Public Prosecutions, and may be given by delivering it to the Director, or by leaving it at the office of the Director or by sending it in a registered letter or certified mail addressed to the Director at the office of the Director. 20
- [3] Eleventh Schedule Savings and transitional provisions 25**
- Insert at the end of the Eleventh Schedule (inserting the appropriate Part and clause numbers):
- Part Crimes Amendment (Diminished Responsibility) Act 1997**
- Replacement of defence of diminished responsibility— application of new defence 30**
- Section 23A, as substituted by the *Crimes Amendment (Diminished Responsibility) Act 1997*, does not apply to or in respect of a murder that is alleged to have been

committed before that substitution. This Act continues to apply to and in respect of such an alleged murder as if the *Crimes Amendment (Diminished Responsibility) Act 1997* had not been enacted.

Application of requirement to give notice of defence 5

Section 405AB, as inserted by the *Crimes Amendment (Diminished Responsibility) Act 1997*, does not apply to or in respect of a trial for murder if the murder is alleged to have been committed before the commencement of that section.

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New South Wales

Crimes Amendment (Diminished Responsibility) Act 1997 No 106

Act No 106, 1997

An Act to amend the *Crimes Act 1900* to replace the defence of diminished responsibility; and for related purposes. [Assented to 1 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Diminished Responsibility) Act 1997*.

2 Commencement

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

3 Amendment of Crimes Act 1900 No 40

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

Schedule 1 Amendments

(Section 3)

[1] Section 23A

Omit the section. Insert instead:

23A Substantial impairment by abnormality of mind

- (1) A person who would otherwise be guilty of murder is not to be convicted of murder if:
 - (a) at the time of the acts or omissions causing the death concerned, the person's capacity to understand events, or to judge whether the person's actions were right or wrong, or to control himself or herself, was substantially impaired by an abnormality of mind arising from an underlying condition, and
 - (b) the impairment was so substantial as to warrant liability for murder being reduced to manslaughter.
- (2) For the purposes of subsection (1) (b), evidence of an opinion that an impairment was so substantial as to warrant liability for murder being reduced to manslaughter is not admissible.
- (3) If a person was intoxicated at the time of the acts or omissions causing the death concerned, and the intoxication was self-induced intoxication (within the meaning of section 428A), the effects of that self-induced intoxication are to be disregarded for the purpose of determining whether the person is not liable to be convicted of murder by virtue of this section.
- (4) The onus is on the person accused to prove that he or she is not liable to be convicted of murder by virtue of this section.
- (5) A person who but for this section would be liable, whether as principal or accessory, to be convicted of murder is to be convicted of manslaughter instead.

- (6) The fact that a person is not liable to be convicted of murder in respect of a death by virtue of this section does not affect the question of whether any other person is liable to be convicted of murder in respect of that death.
- (7) If, on the trial of a person for murder, the person contends:
- (a) that the person is entitled to be acquitted on the ground that the person was mentally ill at the time of the acts or omissions causing the death concerned, or
 - (b) that the person is not liable to be convicted of murder by virtue of this section,

evidence may be offered by the prosecution tending to prove the other of those contentions, and the Court may give directions as to the stage of the proceedings at which that evidence may be offered.

- (8) In this section:

underlying condition means a pre-existing mental or physiological condition, other than a condition of a transitory kind.

[2] Section 405AB

Insert after section 405A:

405AB Notice of intention to adduce evidence of substantial impairment

- (1) On a trial for murder, the defendant must not, without the leave of the Court, adduce evidence tending to prove a contention by the defendant that the defendant is not liable to be convicted of murder by virtue of section 23A, unless the defendant gives notice, as prescribed by the regulations, of his or her intention to raise that contention.

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- (2) Without limiting subsection (1), the defendant must not, without the leave of the Court, call any other person to give evidence tending to prove a contention by the defendant that the defendant is not liable to be convicted of murder by virtue of section 23A unless the notice under this section includes:
 - (a) the name and address of the other person, and
 - (b) particulars of the evidence to be given by the other person.
 - (3) Any evidence tendered to disprove a contention that the defendant is not liable to be convicted of murder by virtue of section 23A may, subject to any direction of the Court, be given before or after evidence is given to prove that contention.
 - (4) Any notice purporting to be given under this section on behalf of the defendant by his or her legal practitioner is taken, unless the contrary is proved, to have been given with the authority of the defendant.
 - (5) A notice under this section is to be given in writing to the Director of Public Prosecutions, and may be given by delivering it to the Director, or by leaving it at the office of the Director or by sending it in a registered letter or certified mail addressed to the Director at the office of the Director.

[3] Eleventh Schedule Savings and transitional provisions

Insert at the end of the Eleventh Schedule (inserting the appropriate Part and clause numbers):

Part Crimes Amendment (Diminished Responsibility) Act 1997

**Replacement of defence of diminished responsibility—
application of new defence**

Section 23A, as substituted by the *Crimes Amendment (Diminished Responsibility) Act 1997*, does not apply to or in respect of a murder that is alleged to have been

committed before that substitution. This Act continues to apply to and in respect of such an alleged murder as if the *Crimes Amendment (Diminished Responsibility) Act 1997* had not been enacted.

Application of requirement to give notice of defence

Section 405AB, as inserted by the *Crimes Amendment (Diminished Responsibility) Act 1997*, does not apply to or in respect of a trial for murder if the murder is alleged to have been committed before the commencement of that section.

[Minister's second reading speech made in—
Legislative Council on 12 November 1997
Legislative Assembly on 20 November 1997]

BY AUTHORITY