

Criminal Law (Mentally Impaired Accused) Amendment Bill 2014

Explanatory Memorandum

Clause 4

Amends the definition section of the Act to include a definition for a limiting term for a custodial order and introduces the definition of a Release Order, giving it the same meaning as in Section 35 of the Act dealing with the Police Orders.

Clause 5

Deletes from Section 16(6) subsections (6) and (7) which dealt with what a court has to be satisfied to make a custodial order, as these same provisions are re-introduced by clause 7 to a new division 4, Sections 20 in proposed clause (A).

Significantly the proposed Section 20(b) set out in clause 7 of this Bill limits the term for which a custodial order can be made to a term equivalent to the period of imprisonment that would, in the Court's opinion, had the accused been fit to plead and found guilty of the offence.

Clause 6

This is re-legislated in Clause 7 covering both Courts of summary jurisdiction and superior courts.

Clause 7

Section 16(6) and 19(5) of the Act set out the conditions or criteria upon which a summary Court (Section 16(6)) or a superior Court (Section 19(5)) must have regard to before making a Custodial Order.

As Section 16(6) is deleted by Clause 5 and Section 19(5) is deleted by Clause 6, Clause 7 of this Bill re-inserts the same criteria in the proposed Section 20A but adds proposed Section 20B requiring the Court (summary or superior) as the case may be, to set a limit to the term of the Custodial Order, being no longer in time than the accused would have been sentenced to had he been mentally fit and pleaded guilty.

Clause 8

Amends Section 21 of the Act dealing with the situation where a person is acquitted by a superior court on appeal, the Court can make a Custody Order but subject to Section 23A. That is, an Order of not greater length or duration than the acquitted person would have been sentenced to had he been of sound mind and convicted.

Clause 9

Amends Section 22 providing that where a Court of summary jurisdiction is exercised its power under Section 20 to make a Custody Order in respect of the person who has been found not guilty because of unsoundness of mind in the Magistrate's Court, then a Custody Order can be made but

subject to Section 23A, that is, that it is limited to the period of time that the person would have been sentenced to had they been of sound mind and convicted.

Clause 10

Inserts a new Section 23A which provides that upon making a custodial order the Court must limit the term to the equivalent period of imprisonment that the accused would have received had they been fit to plead or of sound mind and had been convicted.

This clause provides that at the end of such a period the Custody Order lapses.

Clause 12

Amends the wording of Section 35(1) and most importantly in Section 35(3)(a) amends the Act to provide that the conditions made in the release order expire at the end of the limiting term or any shorter period specified in the release order.

Clause 13

Amends Section 37 by deleting subsection (3), which is inconsistent with the notion of a custody order which has a finite term and is limited by Section 23A of the Act.

Clause 14

Amends Section 38 of the Act by deleting the existing 38(2)(a) and (b) and inserting in their place provisions that the accused is subject to the Custody Order until it lapses or when the conditions attached to a Custody Order still apply.

Clause 15

Amends Section 63 by deleting the words “released on condition” and replaces that with released upon either the lapsing of a custody order or under release order the mentally impaired person can still be detained as an involuntary patient under the Mental Health Act.

Clause 16

Introduces transitional provisions to cover those persons who have been made the subject of a custody order prior to the commencement of this amending Bill.

A new proposed Section 23 would require the Attorney General to apply to the Court who made the Custody Order to hear and determine a proceeding limiting the term of the Custody Order in terms of the proposed Section 23A of the Act as introduced by Clause 10 of the Amending Bill.

Clause 16 also requires that a Registrar fix a date for the proceedings to fix a limiting order on an existing Custodial Order and requires service of the Notice of the Hearing on the prosecutor and to the mentally impaired person.

Clause 16 introduces those provisions which would place a person who is in custody and the subject of a Custodial Order on the same footing as someone against who a Custodial Order is sought and made after the commencement of this amending legislation so that both classes of people will be treated equally.

