



Western Australia

Criminal Law (Mentally Impaired Accused) Act 1996

Compare between:

[03 Mar 2015, 03-f0-00] and [17 Jun 2015, 03-g0-01]

Western Australia

Criminal Law (Mentally Impaired Accused) Act 1996

An Act relating to criminal proceedings involving mentally impaired people who are charged with offences.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Criminal Law (Mentally Impaired Accused) Act 1996*¹.

[Section 1 amended by No. 84 of 2004 s. 82.]

2. Commencement

This Act comes into operation on the same day as the *Mental Health Act 1996* comes into operation¹.

3. Terms used

In this Act, unless the contrary intention appears —

accused means a person charged with an offence, whether a simple offence or an indictable offence;

Board means the Mentally Impaired Accused Review Board established under Part 6;

custody order means an order that an accused be kept in custody in accordance with Part 5;

involuntary patient has the same definition as in the *Mental Health Act 1996*;

psychiatrist has the same definition as in the *Mental Health Act 1996*;

psychologist has the same definition as in the *Mental Health Act 1996*;

Schedule 1 offence means an offence that is committed against an enactment referred to in column 1 of Schedule 1;

statutory penalty, in relation to an offence, means the penalty specified by a written law for the offence.

[Section 3 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 82 and 84.]

[Section 3. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

4. Application to all courts exercising criminal jurisdiction

This Act applies in respect of any accused before any court exercising criminal jurisdiction.

[Section 4 amended by No. 84 of 2004 s. 82.]

5AA. Courts and Tribunals (Electronic Processes Facilitation) Act 2013 Part 2 applies

The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013 Part 2* applies to this Act.

[Section 5AA inserted by No. 20 of 2013 s. 45.]

[5A.]^{1M} *Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.]*

Part 2 — General provisions about mentally ill accused

[Heading amended by No. 84 of 2004 s. 82.]

5. Accused refused bail may be detained in authorised hospital

- (1) This section applies if under the *Bail Act 1982* a judicial officer refuses to grant bail to an accused.
- (2) If the judicial officer suspects on reasonable grounds that —
 - (a) the accused has a mental illness (as defined in the *Mental Health Act 1996*) requiring treatment;
 - (b) the treatment is required in order —
 - (i) to protect the health or safety of the accused or any other person; or
 - (ii) to prevent the accused doing serious damage to any property;and
 - (c) the accused has refused or, due to the nature of the mental illness, is unable to consent to the treatment,the officer may make a hospital order.
- (3) A hospital order is an order that the accused is to be taken to and detained in an authorised hospital and examined by a psychiatrist and —
 - (a) if he or she is made an involuntary patient, detained in an authorised hospital; or
 - (b) in any other case kept in custody,until a date set by the judicial officer that is not more than 7 days after the date on which the order was made at which time the accused is to be brought before the court stated in the order.
- (4) Subject to this section, a hospital order has effect as if, under section 29 of the *Mental Health Act 1996*, the accused had been referred for examination by a psychiatrist and that Act applies accordingly.

- (5) A hospital order is not to be made if the accused is an involuntary patient.

[Section 5 amended by No. 84 of 2004 s. 82.]

[Section 5. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

6. Relationship to *Mental Health Act 1996*

- (1) Unless the contrary intention appears, the fact that under the *Mental Health Act 1996* a person is made an involuntary patient or is detained as an involuntary patient does not affect the operation of this Act or the operation of the criminal law in respect of the person.
- (2) If at any time while an accused is remanded in custody the accused under the *Mental Health Act 1996* —
- (a) becomes an involuntary patient; and
 - (b) is detained in an authorised hospital,

the accused is to be detained in the hospital subject to that Act; but if the accused is released from that detention while remanded in custody under this Act, the person is to be kept in custody in accordance with the remand warrant.

[Section 6 amended by No. 84 of 2004 s. 82.]

[Section 6. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

7. Reports to include report of treatment given

Whenever under this Act a person is required to make an assessment of or report on the mental state of an accused the person is to include a report of —

- (a) the nature of any treatment given to the person;
- (b) the reasons for the treatment; and

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(c) the person's response to it.

[Section 7 amended by No. 84 of 2004 s. 82.]

Part 3 — Mental unfitness to stand trial

Division 1 — General

8. Terms used

In this Part, unless the contrary intention appears —

mental illness means an underlying pathological infirmity of the mind, whether of short or long duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli;

mental impairment means intellectual disability, mental illness, brain damage or senility;

trial means all court proceedings for an offence other than —

- (a) proceedings in relation to bail; and
- (b) sentencing proceedings.

9. Mental unfitness to stand trial, definition

An accused is not mentally fit to stand trial for an offence if the accused, because of mental impairment, is —

- (a) unable to understand the nature of the charge;
- (b) unable to understand the requirement to plead to the charge or the effect of a plea;
- (c) unable to understand the purpose of a trial;
- (d) unable to understand or exercise the right to challenge jurors;
- (e) unable to follow the course of the trial;
- (f) unable to understand the substantial effect of evidence presented by the prosecution in the trial; or
- (g) unable to properly defend the charge.

[Section 9 amended by No. 84 of 2004 s. 82.]

10. Presumptions as to mental fitness to stand trial

- (1) An accused is presumed to be mentally fit to stand trial until the contrary is found under this Part.
- (2) An accused found under this Part to be not mentally fit to stand trial is presumed to remain not mentally fit until the contrary is found under this Part.

[Section 10 amended by No. 84 of 2004 s. 82.]

11. When the question of mental fitness may be raised

- (1) The question of whether an accused is not mentally fit to stand trial may be raised —
 - (a) in a court of summary jurisdiction, at any time before or during the trial of the accused;
 - (b) in the Supreme Court or the District Court, at any time —
 - (i) before an indictment is presented to the court against an accused committed to the court for trial;
 - (ii) after an indictment is presented to the court against an accused and before a jury is sworn; or
 - (iii) at any time after a jury is sworn and during the trial of the accused.
- (2) The question of whether an accused is not mentally fit to stand trial may be raised by the prosecution or the defence or the presiding judicial officer on his or her own initiative.
- (3) This Part does not prevent the question of whether an accused is not mentally fit to stand trial being raised more than once in a trial.

[Section 11 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 82; No. 2 of 2008 s. 60(2).]

12. Deciding the question of mental fitness

- (1) The question of whether an accused is not mentally fit to stand trial is to be decided by the presiding judicial officer on the balance of probabilities after inquiring into the question and informing himself or herself in any way the judicial officer thinks fit.
- (2) For the purpose of the inquiry the judicial officer may —
 - (a) order the accused to be examined by a psychiatrist or other appropriate expert;
 - (b) order a report by a psychiatrist or other appropriate expert about the accused to be submitted to the court;
 - (c) adjourn the proceedings and, if there is a jury, discharge it;
 - (d) make any other order the judicial officer thinks fit.
- (3) The judicial officer may make a report about the accused available to the prosecutor and to the accused, on such conditions as the officer thinks fit.
- (4) The prosecution or an accused may appeal against a judicial officer's decision that the accused is not mentally fit to stand trial.

[Section 12 amended by No. 84 of 2004 s. 82.]

13. Raising and deciding the question whether an accused has become mentally fit

Sections 11 and 12, with any necessary changes, apply to the question of whether an accused found to be not mentally fit to stand trial has become mentally fit to stand trial.

[Section 13 amended by No. 84 of 2004 s. 82.]

14. Adjournments, courts' powers on

If any proceedings are adjourned under this Part, the judicial officer may grant the accused bail, or remand the accused in custody, or make a hospital order under section 5.

[Section 14 amended by No. 84 of 2004 s. 82.]

Division 2 — Proceedings in courts of summary jurisdiction

15. Application

This Division applies if an accused before a court of summary jurisdiction is found to be not mentally fit to stand trial.

[Section 15 amended by No. 84 of 2004 s. 82.]

16. Procedure for offences triable summarily

- (1) This section applies if the accused —
 - (a) is charged with a simple offence; or
 - (b) is charged with an indictable offence that can be tried summarily and that is to be tried by the court of summary jurisdiction.
- (2) If the court that decides that the accused is not mentally fit to stand trial —
 - (a) is satisfied that the accused will not become mentally fit to stand trial within 6 months after the finding that the accused is not mentally fit, the court must make an order under subsection (5); or
 - (b) is not so satisfied, the court must adjourn the proceedings in order to see whether the accused will become mentally fit to stand trial.
- (3) Proceedings may be adjourned under subsection (2)(b) for any period or periods the court thinks fit but the proceedings must not be adjourned for longer than a total period of 6 months after the finding that the accused is not mentally fit to stand trial.

- (4) If proceedings are adjourned under subsection (2)(b), the court must make an order under subsection (5) —
- (a) if at any time the court is satisfied that the accused will not become mentally fit to stand trial within 6 months after the finding that the accused is not mentally fit; or
 - (b) if at the end of 6 months after the finding that the accused is not mentally fit to stand trial the accused has not become mentally fit.
- (5) An order under this subsection is an order dismissing the charge without deciding the guilt or otherwise of the accused and either —
- (a) releasing the accused; or
 - (b) subject to subsection (6), making a custody order in respect of the accused.
- (6) A custody order must not be made in respect of an accused unless the statutory penalty for the alleged offence is or includes imprisonment and the court is satisfied that a custody order is appropriate having regard to —
- (a) the strength of the evidence against the accused;
 - (b) the nature of the alleged offence and the alleged circumstances of its commission;
 - (c) the accused's character, antecedents, age, health and mental condition; and
 - (d) the public interest.
- (7) The court may require a prosecutor to provide copies of documents relevant to the factors to be considered under subsection (6).
- (8) If an order is made under subsection (5), the accused cannot again be charged with or tried for the offence.

[Section 16 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 80 and 82.]

17. Procedure for indictable offences

- (1) This section applies if the accused is charged with an indictable offence —
 - (a) that must be dealt with on indictment; or
 - (b) that, under section 5 of *The Criminal Code* or under another written law, the magistrate decides is to be dealt with on indictment.
- (1a) This section also applies if the accused is charged before the Children’s Court with an indictable offence and has elected to be tried by a judge of the Supreme Court or of the District Court (as the case may be) and a jury.
- (2) Despite the fact that the accused is mentally unfit to stand trial, the procedure in Part 3 Division 4 of the *Criminal Procedure Act 2004* is to be followed and the accused, while not mentally fit, is presumed to plead not guilty to the charge.

[Section 17 inserted by No. 4 of 2004 s. 58; amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 78 and 82.]

Division 3 — Proceedings in the Supreme Court and District Court

[Heading amended by No. 59 of 2004 s. 141.]

18. Application

This Division applies if an accused before the Supreme Court or the District Court is found to be not mentally fit to stand trial.

[Section 18 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

19. Procedure

- (1) If the judge who decides that the accused is not mentally fit to stand trial —
 - (a) is satisfied that the accused will not become mentally fit to stand trial within 6 months after the finding that the

- accused is not mentally fit, the judge must make an order under subsection (4); or
- (b) is not so satisfied, the judge must adjourn the proceedings in order to see whether the accused will become mentally fit to stand trial.
- (2) Proceedings may be adjourned under subsection (1)(b) for any period or periods a judge thinks fit but the proceedings must not be adjourned for longer than a total period of 6 months after the finding that the accused is not mentally fit to stand trial.
- (3) If proceedings are adjourned under subsection (1)(b), a judge must make an order under subsection (4) —
- (a) if at any time the judge is satisfied that the accused will not become mentally fit to stand trial within 6 months after the finding that the accused is not mentally fit; or
- (b) if at the end of 6 months after the finding that the accused is not mentally fit to stand trial the accused has not become mentally fit.
- (4) An order under this subsection is an order quashing the indictment or, if there is no indictment, dismissing the charge and quashing the committal, without deciding the guilt or otherwise of the accused and either —
- (a) releasing the accused; or
- (b) subject to subsection (5), making a custody order in respect of the accused.
- (5) A custody order must not be made in respect of an accused unless the statutory penalty for the alleged offence is or includes imprisonment and the judge is satisfied that a custody order is appropriate having regard to —
- (a) the strength of the evidence against the accused;
- (b) the nature of the alleged offence and the alleged circumstances of its commission;
- (c) the accused's character, antecedents, age, health and mental condition; and

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(d) the public interest.

- (6) A judge may require a prosecutor to provide copies of documents relevant to the factors to be considered under subsection (5).
- (7) If an order is made under subsection (4), the accused may be indicted or again indicted and tried for the offence.

[Section 19 amended by No. 84 of 2004 s. 80 and 82.]

Part 4 — Accused acquitted on account of unsoundness of mind

[Heading amended by No. 84 of 2004 s. 82.]

20. Powers of courts of summary jurisdiction

If a court of summary jurisdiction finds an accused not guilty of an offence on account of unsoundness of mind the court may make an order under section 22 in respect of the accused.

[Section 20 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 78 and 82.]

21. Powers of superior courts

If an accused is acquitted by a superior court or on appeal of an offence on account of unsoundness of mind, the court —

- (a) if the offence is a Schedule 1 offence — must make a custody order in respect of the accused;
- (b) if the offence is not a Schedule 1 offence — may make an order under section 22 in respect of the accused.

[Section 21 amended by No. 84 of 2004 s. 78; No. 2 of 2008 s. 60(3).]

22. Orders that may be made by courts

- (1) If a court may make an order under this section in respect of an accused, it may —
 - (a) release the accused unconditionally if it considers that it is just to do so having regard to —
 - (i) the nature of the offence and the circumstances of its commission;
 - (ii) the accused's character, antecedents, age, health and mental condition; and
 - (iii) the public interest;

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- (b) despite the fact that the accused is not an offender under the *Sentencing Act 1995*, make a conditional release order (CRO), a community based order (CBO), or an intensive supervision order (ISO) under that Act in respect of the accused; or
 - (c) make a custody order in respect of the accused.
- (2) If an accused is found not guilty of an offence on account of unsoundness of mind, a court must not make a CRO, CBO or ISO in respect of the accused unless, under the *Sentencing Act 1995*, such an order could have been made in respect of the accused had he or she been found guilty of the offence.
- (3) If a court makes a CRO, CBO or ISO in respect of an accused —
 - (a) Part 7, 9 or 10 of the *Sentencing Act 1995*, as the case requires, applies in respect of the order; and
 - (b) Part 18 of the *Sentencing Act 1995* applies in respect of the order, but for the purposes of —
 - (i) sections 127(2)(b) of that Act;
 - (ii) section 130(1)(a)(iii) and (b) of that Act; and
 - (iii) section 133(1)(a)(iii) and (b) of that Act,if the court cancels the CRO, CBO or ISO the court must make a custody order in respect of the accused.

[Section 22 amended by No. 84 of 2004 s. 82.]

Part 5 — Mentally impaired accused

[Heading amended by No. 84 of 2004 s. 82.]

Division 1 — Preliminary

23. Terms used

In this Part, unless the contrary intention appears —

authorised hospital has the same definition as in the *Mental Health Act 1996*;

declared place means a place declared to be a place for the detention of mentally impaired accused by the Governor by an order published in the *Gazette*;

detention centre has the same definition as in the *Young Offenders Act 1994*;

mental illness has the same definition as in the *Mental Health Act 1996*;

mentally impaired accused means an accused in respect of whom a custody order has been made and who has not been discharged from the order;

prison has the same definition as in the *Prisons Act 1981*.

[Section 23 amended by No. 84 of 2004 s. 82.]

[Section 23. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

Division 2 — Place of custody

24. General effect of custody order

- (1) A mentally impaired accused is to be detained in an authorised hospital, a declared place, a detention centre or a prison, as determined by the Board, until released by an order of the Governor.

- (2) A mentally impaired accused is not to be detained in an authorised hospital unless the accused has a mental illness that is capable of being treated.
- (3) A mentally impaired accused should be detained in an authorised hospital only if the Board is satisfied —
- (a) the accused has a mental illness requiring treatment;
 - (b) the treatment is required in order —
 - (i) to protect the health or safety of the accused or any other person; or
 - (ii) to prevent the accused doing serious damage to any property;
 - (c) the accused has refused or, due to the nature of the mental illness, is unable to consent to the treatment; and
 - (d) the treatment can only be provided satisfactorily in an authorised hospital.
- (4) Subsection (3) is a directory provision.

(5A) A mentally impaired accused is not to be detained in a declared place that is established by the Disability Services Commission under the *Disability Services Act 1993* (a **DSC declared place**) unless the Board —

- (a) is satisfied that the accused is a person with disability as defined in the *Disability Services Act 1993* section 3 and the predominant reason for the disability is not mental illness; and
- (b) is satisfied that the accused has reached 16 years of age; and
- (c) has regard to the degree of risk that the accused's detention in the declared place appears to present to the personal safety of people in the community or of any individual in the community.

(5B) The Board may determine that a mentally impaired accused be detained in a DSC declared place only if the member referred to

in section 42(1)(bb) is present at the meeting at which the custody order is made.

(5C) Despite subsection (1), even if the Board determines that a mentally impaired accused should be detained in a DSC declared place, the accused is not to be detained in a DSC declared place without the consent of the Minister to whom the Disability Services Act 1993 is for the time being committed.

- (5) A mentally impaired accused is not to be detained in a detention centre unless the accused is under 18.

[Section 24 amended by No. 84 of 2004 s. ~~82~~82; No. 4 of 2015 s. 66.]

25. Place of custody to be determined within 5 days of order

- (1) Within 5 working days after the custody order in respect of a mentally impaired accused is made, the Board is to —
- (a) review the case of the accused; and
 - (b) subject to section 24, determine the place where the accused is to be detained.
- (2) Until the Board determines the place where the accused is to be detained, the accused is to be detained —
- (a) if when the custody order is made the accused is in an authorised hospital having been admitted, whether as an involuntary patient or otherwise — in an authorised hospital;
 - (b) in any other case — in a prison or a detention centre.
- (3) Where subsection (2)(a) applies the accused —
- (a) if admitted to the authorised hospital as an involuntary patient — is not entitled to be released from the hospital or granted leave of absence under Part 3 of the *Mental Health Act 1996*;

- (b) if admitted to the authorised hospital in any other circumstances — is not entitled to be released from the hospital.

[Section 25 amended by No. 84 of 2004 s. 82.]

[Section 25. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

26. Place of custody may be changed

The Board may at any time amend its determination as to the place where a mentally impaired accused is to be detained.

[Section 26 amended by No. 84 of 2004 s. 82.]

[Section 26. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

Division 3 — Leave of absence

27. Governor may permit Board to allow leave of absence

- (1) The Board may at any time recommend to the Minister that the Governor be advised to make an order allowing the Board to grant leave of absence to a mentally impaired accused.
- (2) The Governor may at any time —
- (a) make an order allowing the Board to grant leave of absence to a mentally impaired accused;
 - (b) cancel an order made under paragraph (a).

[Section 27 amended by No. 84 of 2004 s. 82.]

28. If allowed, Board may grant leave of absence

- (1) If an order under section 27(2) is in effect, the Board may at any time make a leave of absence order in respect of a mentally impaired accused.

- (2) A leave of absence order is an order that the accused be given leave of absence for a period, not exceeding 14 days at any one time, determined by the Board —
- (a) unconditionally; or
 - (b) on conditions determined by the Board.
- (3) Before making a leave of absence order, the Board is to have regard to —
- (a) the degree of risk that the release of the accused appears to present to the personal safety of people in the community or of any individual in the community; and
 - (b) the likelihood that, if given leave of absence on conditions, the accused would comply with the conditions.
- (4) Without limiting the kinds of conditions that may be included in a leave of absence order, the order may include a condition that the mentally impaired accused —
- (a) undergoes specified treatment or training or other measures that alleviate or prevent the deterioration of the accused's condition;
 - (b) resides at a specified place;
 - (c) complies with the lawful directions of a supervising officer designated under section 45.

[Section 28 amended by No. 84 of 2004 s. 82.]

[Section 28. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

29. Board may cancel leave of absence

The Board may at any time cancel a leave of absence order.

30. Status of mentally impaired accused on leave of absence

A mentally impaired accused who is away from a place of detention on leave of absence is considered to continue to be detained at the place during the time while on leave, but this

section does not limit the freedom of movement given by the leave of absence.

[Section 30 amended by No. 84 of 2004 s. 82.]

31. Absence without leave

- (1) A mentally impaired accused is absent without leave if the accused —
 - (a) is away from a place of detention without having been given leave of absence; or
 - (b) having been away from a place of detention on leave of absence, fails to return to the place, or another place to which the person has been transferred, when the leave expires or is cancelled.
- (2) A mentally impaired accused who is absent without leave commits an offence.
Penalty: 12 months imprisonment or a fine of \$12 000.
- (3) A mentally impaired accused who is absent without leave may be apprehended by —
 - (a) a person qualified as prescribed by the regulations who is employed at the place from which the person is absent;
 - (b) a person qualified as prescribed by the regulations who, although not employed at the place, is authorised by a person qualified as prescribed who is employed at the place; or
 - (c) a police officer.
- (4) A person apprehending a mentally impaired accused under subsection (3) shall as soon as practicable take the accused to the place from which the accused is absent.

[Section 31 amended by No. 84 of 2004 s. 82.]

32. Other Acts do not apply

- (1) Part 3 of the *Mental Health Act 1996* does not apply in relation to lawful or unlawful absences from an authorised hospital of a mentally impaired accused.
- (2) Part VIII of the *Prisons Act 1981* does not apply in relation to absence from a prison of a mentally impaired accused unless the reason for the absence is —
 - (a) the facilitation of the provision of medical or health services to the accused; or
 - (b) the furthering of the interests of justice.

[Section 32 amended by No. 84 of 2004 s. 82; No. 65 of 2006 s. 60.]

[Section 32. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section replaced 1 Nov 2009. See endnote 1M.]

Division 4 — Reports about mentally impaired accused

[Heading amended by No. 84 of 2004 s. 82.]

33. Reports to Minister

- (1) At any time the Minister, in writing, may request the Board to report about a mentally impaired accused.
- (2) The Board must give the Minister a written report about a mentally impaired accused —
 - (a) within 8 weeks after the custody order was made in respect of the accused;
 - (b) whenever it gets a written request to do so from the Minister;
 - (c) whenever it thinks there are special circumstances which justify doing so; and
 - (d) in any event at least once in every year.

- (3) A report made under subsection (2) must recommend whether or not the Governor should be advised to release the mentally impaired accused.
- (4) If the release of a mentally impaired accused is recommended, the report must —
- (a) report on the factors in subsection (5); and
 - (b) recommend any conditions that should apply to the accused's release.
- (5) In deciding whether to recommend the release of a mentally impaired accused, the Board is to have regard to these factors —
- (a) the degree of risk that the release of the accused appears to present to the personal safety of people in the community or of any individual in the community;
 - (b) the likelihood that, if released on conditions, the accused would comply with the conditions;
 - (c) the extent to which the accused's mental impairment, if any, might benefit from treatment, training or any other measure;
 - (d) the likelihood that, if released, the accused would be able to take care of his or her day to day needs, obtain any appropriate treatment and resist serious exploitation;
 - (e) the objective of imposing the least restriction of the freedom of choice and movement of the accused that is consistent with the need to protect the health or safety of the accused or any other person;
 - (f) any statement received from a victim of the alleged offence in respect of which the accused is in custody.
- (6) In this section —
- victim** of an alleged offence, means —
- (a) a person who has suffered injury, loss or damage as a direct result of the alleged offence, whether or not that injury, loss or damage was reasonably foreseeable by the alleged offender; or

- (b) where the alleged offence results in a death, any member of the immediate family of the deceased.

[Section 33 amended by No. 84 of 2004 s. 82; No. 41 of 2006 s. 81.]

34. Reports to be given to accused, Police and DPP

- (1) As soon as practicable the Board is to give a copy of any report made under section 33 to the mentally impaired accused concerned and on request to the accused's lawyer or guardian.
- (2) If in a report made under section 33 the Board recommends that the Governor should be advised to release a mentally impaired accused, the Board, as soon as practicable, is to give a copy of the report to —
 - (a) the Commissioner of Police; and
 - (b) the Director of Public Prosecutions.

[Section 34 amended by No. 84 of 2004 s. 82.]

Division 5 — Releasing mentally impaired accused

[Heading amended by No. 84 of 2004 s. 82.]

35. Governor may release mentally impaired accused

- (1) The Governor may at any time order that a mentally impaired accused be released by making a release order.
- (2) A release order is an order that on a release date specified in the order the accused is to be released —
 - (a) unconditionally; or
 - (b) on conditions determined by the Governor.
- (3) If a mentally impaired accused is released on conditions —
 - (a) the conditions may be ordered to apply indefinitely or for a set period determined by the Governor; and
 - (b) the Governor may by a subsequent order amend or cancel any or all of the conditions.

- (4) Without limiting the kinds of conditions that may be included in a release order, the order may include a condition that the mentally impaired accused —
- (a) undergoes specified treatment or training or other measures that alleviate or prevent the deterioration of the accused's condition;
 - (b) resides at a specified place;
 - (c) complies with the lawful directions of a supervising officer designated under section 45.
- (5) An accused is to be released in accordance with a release order unless at the release date he or she is by law required to be kept in custody in respect of another matter.

[Section 35 amended by No. 84 of 2004 s. 82.]

[Section 35. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

36. Order to be given to accused, Police and DPP

As soon as practicable, the Board is to give a copy of a release order to —

- (a) the accused and on request the accused's lawyer or guardian;
- (b) the Commissioner of Police; and
- (c) the Director of Public Prosecutions.

[Section 36 amended by No. 84 of 2004 s. 82.]

37. Breach of conditions of release

- (1) If a mentally impaired accused breaches a condition in the release order made in respect of the accused, the Board may cancel the order.

- (2) If a release order is cancelled —
 - (a) the custody order that applied to the accused when the accused was released is again in force and the accused may be arrested and detained under the custody order; and
 - (b) despite paragraph (a) the Board may issue a warrant for the arrest of the accused.
- (3) On the arrest of a mentally impaired accused who has breached a condition of the accused's release, this Part has effect as if the custody order in respect of the accused had been made at the time of the arrest.

[Section 37 amended by No. 84 of 2004 s. 82.]

Division 6 — Miscellaneous

38. When discharge occurs

- (1) A mentally impaired accused remains subject to the custody order until discharged from it.
- (2) A mentally impaired accused is discharged from the custody order —
 - (a) if released unconditionally under a release order — when released;
 - (b) if released on conditions under a release order — when the conditions cease to apply if they cease to apply.

[Section 38 amended by No. 84 of 2004 s. 82.]

39. Released mentally impaired accused may be made involuntary patient

This Part does not prevent a mentally impaired accused who has been released on conditions from being made an involuntary patient at any time or being detained as an involuntary patient at any time.

[Section 39 amended by No. 84 of 2004 s. 82.]

40. Board may require examination etc.

- (1) For the purpose of performing its functions the Board may —
 - (a) require a mentally impaired accused to be examined by a psychiatrist or other appropriate expert;
 - (b) require a psychiatrist or other appropriate expert to prepare and submit a report to the Board;
 - (c) require a mentally impaired accused to appear before the Board.
- (2) For the purposes of subsection (1)(c), the Board may issue a warrant to have the accused arrested and brought before the Board.

[Section 40 amended by No. 84 of 2004 s. 82.]

Part 6 — Mentally Impaired Accused Review Board

[Heading amended by No. 84 of 2004 s. 82.]

41. Board established

A board called the Mentally Impaired Accused Review Board is established.

[Section 41 amended by No. 84 of 2004 s. 82.]

42. Members

(1) The members of the Board are ~~—~~ as follows —

(a) the person who is the chairperson of the Prisoners Review Board appointed under section 103(1)(a) of the *Sentence Administration Act 2003*;

(ba) a deputy chairperson, to be nominated by the Minister and appointed by the Governor;

(bb) a person who, under the *Disability Services Act 1993* section 9 or 10, works for the Disability Services Commission, appointed by the Commission;

(b) the persons who are community members of the Prisoners Review Board appointed under section 103(1)(c) of the *Sentence Administration Act 2003*;

(c) a psychiatrist appointed by the Governor; ~~and~~

(d) a psychologist appointed by the Governor.

(2) The Governor may appoint a psychiatrist to be the deputy of the psychiatrist appointed to the Board and a psychologist to be the deputy of the psychologist.

(3) The person referred to in subsection (1)(a) is the chairperson of the Board.

(4A) The Minister must not nominate a person as a deputy chairperson unless the person has, in the Minister's opinion, extensive or special knowledge of matters involved in the performance of the Board's functions.

s. 42A

(4B) The deputy chairperson must perform the functions of the chairperson —

(a) when the chairperson is unable to act because of illness, absence or other cause; or

(b) during any vacancy in the office of chairperson.

(4C) The member of the Board referred to in subsection (1)(bb) is a member only while the person works for the Disability Services Commission under the *Disability Services Act 1993* section 9 or 10.

- (4) Those members of the Board who are also members of the Prisoners Review Board are members of the Board only while they are members of the Prisoners Review Board.
- (5) Schedule 1 to the *Sentence Administration Act 2003* (other than clause 5) applies in respect of the deputy chairperson, the psychiatrist and the psychologist appointed as members of the Board as if they were members of the Prisoners Review Board appointed by the Governor.

[Section 42 inserted by No. 41 of 2006 s. 8282; amended by No. 4 of 2015 s. 67.]

42A. Meetings

At a meeting of the Board —

- (a) the chairperson and 2 other members of the Board constitute a quorum; and
- (b) clause 5 (other than subclause (2)) of Schedule 1 to the *Sentence Administration Act 2003* otherwise applies.

[Section 42A inserted by No. 41 of 2006 s. 82.]

43. Registrar and staff

- (1) The registrar of the Prisoners Review Board appointed under section 104A of the *Sentence Administration Act 2003* is also the registrar of the Board.

- (2) Any other Prisoners Review Board staff referred to in section 104A of the *Sentence Administration Act 2003* are also the staff of the Board.

[Section 43 inserted by No. 41 of 2006 s. 83.]

44. Functions

- (1) The functions of the Board are set out in Part 5 and this Part.
- (2) The Board may do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.

45. Supervising officers

- (1) The Board may designate a person to be a supervising officer.
- (2) The functions of a supervising officer are —
- (a) at the direction of the Board to supervise mentally impaired accused —
 - (i) who are given leave of absence on conditions; or
 - (ii) who are released on conditions;
 - and
 - (b) to report to the Board about such accused in accordance with the Board's directions.
- (3) The Board may make arrangements with any person or a department of the Public Service or any statutory authority for the purpose of or in connection with designating a person to be a supervising officer.
- (4) A person may be designated to be a supervising officer for a fixed or indefinite period.
- (5) The Board may at any time cancel the designation of a person as a supervising officer.

[Section 45 amended by No. 84 of 2004 s. 82.]

s. 46

[Section 45. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

46. Decisions, orders and warrants

- (1) A decision by the Board to —
 - (a) cancel a leave of absence order or a release order; or
 - (b) issue a warrant under this Act,may be made —
 - (c) by the chairperson and —
 - (i) the psychiatrist; or
 - (ii) if the psychiatrist is absent, the psychiatrist's deputy;
 - or
 - (d) by the chairperson, the psychiatrist or the psychiatrist's deputy and another member.
- (2) An order giving effect to a decision of the Board is to be signed by 2 members of the Board.
- (3) A warrant issued by the Board to have a person arrested must be signed by —
 - (a) 2 members of the Board; or
 - (b) the chairperson of the Board if he or she is a judge of the Supreme Court or the District Court.

[Section 46 amended by No. 10 of 1998 s. 26; No. 41 of 2006 s. 84.]

47. Judicial notice of appointment and signature

- (1) Judicial notice must be taken of —
 - (a) the fact that a person is or was a member or the secretary of the Board; and
 - (b) the official signature of such a person.

- (2) Evidence of a decision or order of the Board may be given by producing a copy of the decision or order certified by the secretary of the Board as a true copy.

48. Annual report to Minister

Before 1 October in each year, the Board is to give a written report to the Minister on —

- (a) the performance of the Board's functions during the previous financial year;
- (b) statistics and matters relating to mentally impaired accused; and
- (c) the operation of this Act so far as it relates to mentally impaired accused.

[Section 48 amended by No. 84 of 2004 s. 82.]

Part 7 — Miscellaneous

49. Issue and execution of warrants

- (1) If this Act empowers a person to issue a warrant to have a person arrested, the warrant must be in the prescribed form and such a warrant has effect according to its wording.
- (2) In the absence of evidence to the contrary, it is to be presumed that —
 - (a) the person who issued the warrant is empowered to do so; and
 - (b) the signature on the warrant is that of the person who issued it.
- (3) A person to whom the warrant is directed must give effect to it as soon as practicable.
- (4) The warrant itself is sufficient authority to the person to whom it is directed to arrest the person concerned and to hold the person in custody for the purposes of taking him or her, as soon as practicable, to the place specified in the warrant.
- (5) For the purposes of arresting a person under the warrant, the person to whom it is directed —
 - (a) may stop any aircraft, train, vehicle or vessel in which the person is or is reasonably suspected to be by the person to whom the warrant is directed; and
 - (b) may enter any place where the person is or is reasonably suspected to be by the person to whom the warrant is directed.

[Section 49. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

50A. Protection from personal liability

(1) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

(2) An action in tort does not lie against a person for anything that the person has done, in good faith —

(a) when performing or purporting to perform a function under this Act; or

(b) in assisting a person to perform or purportedly perform a function under this Act.

(3) The protection given by subsection (2) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

(4) Despite subsection (2), the State is not relieved of any liability that it might have for another person having done something as described in that subsection.

[Section 50A inserted by No. 4 of 2015 s. 68.]

50. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to this Act.

**Schedule 1 — Offences for which a custody order
must be made**

[Section 3]

Enactment	Description of offence
1. <i>The Criminal Code</i>	
s. 279	Murder
s. 280	Manslaughter
s. 281	Unlawful assault causing death
s. 283	Attempt to murder
s. 292	Disabling in order to commit indictable offence etc.
s. 294	Acts intended to cause grievous bodily harm or to resist or prevent arrest
s. 297	Grievous bodily harm
s. 301	Wounding and similar acts
s. 304(2)	Acts or omissions, with intent to harm, causing bodily harm or danger
s. 317	Assaults occasioning bodily harm
s. 317A	Assaults with intent
s. 318	Serious assaults
s. 323	Indecent assault
s. 324	Aggravated indecent assault
s. 325	Sexual penetration without consent
s. 326	Aggravated sexual penetration without consent
s. 327	Sexual coercion
s. 328	Aggravated sexual coercion
s. 330	Incapable person: sexual offences against
s. 331B	Sexual servitude

Enactment	Description of offence
s. 331C	Conducting business involving sexual servitude
s. 331D	Deceptive recruiting for commercial sexual services
s. 332	Kidnapping
s. 333	Deprivation of liberty
s. 388E(1)(a)	Stalking committed in circumstances of aggravation
s. 378(2)	Stealing a motor vehicle, aggravated by reckless or dangerous driving
s. 392	Robbery
s. 393	Assault with intent to rob
s. 444	Criminal damage
2. Bush Fires Act 1954	
s. 32	Wilfully lighting a fire or causing a fire to be lit under such circumstances as to be likely to injure or damage a person or property
3. Road Traffic Act 1974	
s. 59	Dangerous driving causing death, injury etc.

[Schedule 1 amended by No. 38 of 1998 s. 4(3); No. 23 of 2001 s. 10(2); No. 4 of 2004 s. 24 and 26; No. 29 of 2008 s. 29.]

Notes

¹ This is a compilation of the *Criminal Law (Mentally Impaired Accused) Act 1996* and includes the amendments made by the other written laws referred to in the following table^{1M 1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Law (Mentally Impaired Defendants) Act 1996</i> ²	70 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 26	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Criminal Law Amendment Act (No. 1) 1998</i> s. 4(3)	38 of 1998	25 Sep 1998	23 Oct 1998
<i>Criminal Law Amendment Act 2001</i> s. 10(2)	23 of 2001	26 Nov 2001	24 Dec 2001
Reprint of the <i>Criminal Law (Mentally Impaired Defendants) Act 1996</i> as at 21 Jun 2002 (includes amendments listed above)			
<i>Criminal Law (Procedure) Amendment Act 2002</i> Pt. 4 Div. 3	27 of 2002	25 Sep 2002	27 Sep 2002 (see s. 2 and <i>Gazette</i> 27 Sep 2002 p. 4875)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 29(3)	50 of 2003	9 Jul 2003	31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833)
<i>Criminal Code Amendment Act 2004</i> s. 24, 26 and 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78, 80, 82 and 84	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 2: The <i>Criminal Law (Mentally Impaired Accused) Act 1996</i> as at 12 Aug 2005 (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<i>Parole and Sentencing Legislation Amendment Act 2006 Pt. 4</i>	41 of 2006	22 Sep 2006	28 Jan 2007 (see s. 2(1) and <i>Gazette</i> 29 Dec 2006 p. 5867)
<i>Prisons and Sentencing Legislation Amendment Act 2006 Pt. 7</i>	65 of 2006	8 Dec 2006	4 Apr 2007 (see s. 2 and <i>Gazette</i> 3 Apr 2007 p. 1491)
<i>Criminal Law and Evidence Amendment Act 2008 s. 60</i>	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559)
<i>Criminal Law Amendment (Homicide) Act 2008 s. 29</i>	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
Reprint 3: The Criminal Law (Mentally Impaired Accused) Act 1996 as at 17 Apr 2009 (includes amendments listed above)			
<i>Courts and Tribunals (Electronic Processes Facilitation) Act 2013 Pt. 3 Div. 7</i>	20 of 2013	4 Nov 2013	25 Nov 2013 (see s. 2(b) and <i>Gazette</i> 22 Nov 2013 p. 5391)
<i>Declared Places (Mentally Impaired Accused) Act 2015 Pt. 12 Div. 1</i>	4 of 2015	3 Mar 2015	17 Jun 2015 (see s. 2(b) and <i>Gazette</i> 16 Jun 2015 p. 2071)

^{1M} Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 9 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Mental Health Legislation Amendment Act 2014 Pt. 4 Div. 1</i> ³	25 of 2014	3 Nov 2014	To be proclaimed (see s. 2(b))
<i>Declared Places (Mentally Impaired Accused) Act 2015 Pt. 12 Div. 1</i>	4 of 2015	3 Mar 2015	To be proclaimed (see s. 2(b))

~~*Impaired Accused*
*Act 2015 Pt. 12 Div. 1*⁴~~

² Now known as the *Criminal Law (Mentally Impaired Accused) Act 1996*; short title changed (see note under s. 1).

³ On the date as at which this compilation was prepared, the *Mental Health Legislation Amendment Act 2014* Pt. 4 Div. 1 had not come into operation. It reads as follows:

Part 4 — Amendments to other Acts

Division 1 — *Criminal Law (Mentally Impaired Accused) Act 1996* amended

10. Act amended

This Division amends the *Criminal Law (Mentally Impaired Accused) Act 1996*.

11. Section 3 amended

(1) In section 3 delete the definitions of:

involuntary patient

psychiatrist

psychologist

(2) In section 3 insert in alphabetical order:

authorised hospital has the meaning given in the *Mental Health Act 2014* section 4;

involuntary inpatient has the meaning given in the *Mental Health Act 2014* section 4;

involuntary patient has the meaning given in the *Mental Health Act 2014* section 4;

mental illness has the meaning given in the *Mental Health Act 2014* section 4;

psychiatrist has the meaning given in the *Mental Health Act 2014* section 4;

psychologist has the meaning given in the *Mental Health Act 2014* section 4;

12. Section 5 amended

(1) Delete section 5(2) and insert:

- (2) The judicial officer may make a hospital order in respect of the accused if the officer reasonably suspects —
- (a) that the accused has a mental illness for which the accused is in need of treatment; and
 - (b) that, because of the mental illness, there is —
 - (i) a significant risk to the health or safety of the accused or to the safety of another person; or
 - (ii) a significant risk of serious harm to the accused or to another person;
- and
- (c) that the accused does not have the capacity to consent to treatment.

- (2) In section 5(3)(a) delete “involuntary patient,” and insert:

involuntary inpatient,

- (3) Delete section 5(4) and insert:

- (4) Subject to this section, a hospital order has effect as if the accused had been referred under the *Mental Health Act 2014* section 26(2) for an examination by a psychiatrist at an authorised hospital and that Act applies accordingly.

- (4) In section 5(5) delete “involuntary patient.” and insert:

involuntary inpatient.

13. Section 6 amended

- (1) In section 6(1) delete “*Mental Health Act 1996*” and insert:

Mental Health Act 2014

- (2) In section 6(2) delete “*Mental Health Act 1996* —” and insert:

Mental Health Act 2014 —

Note: The heading to amended section 6 is to read:

Relationship to *Mental Health Act 2014*

14. Section 23 amended

In section 23 delete the definitions of:

authorised hospital

mental illness

15. Section 24 amended

Delete section 24(3)(b) and (c) and insert:

- (b) that, because of the mental illness, there is —
 - (i) a significant risk to the health or safety of the accused or to the safety of another person; or
 - (ii) a significant risk of serious harm to the accused or to another person;
- and
- (c) the accused does not have the capacity to consent to treatment; and

16. Section 25 amended

- (1) In section 25(2)(a) delete “involuntary patient” and insert:

involuntary inpatient

- (2) Delete section 25(3)(a) and insert:

- (a) if admitted to the authorised hospital as an involuntary inpatient — is not entitled to be released from the hospital under the *Mental Health Act 2014* Part 7 Division 4 or to be granted leave of absence under Part 7 Division 6 of that Act; or

17. Section 31 amended

In section 31(1)(a) delete “having being given” and insert:

having been given

18. Section 32 amended

Delete section 32(1) and insert:

- (1) The *Mental Health Act 2014* Part 7 Divisions 5 and 6 do not apply in relation to the absence from an authorised hospital of a mentally impaired accused.

⁴ ~~On the date as at which this compilation was prepared, the *Declared Places (Mentally Impaired Accused) Act 2015* Pt. 12 Div. 1 had not come into operation. It reads as follows:~~

~~**Part 12 — Consequential amendments to other Acts**~~

~~**Division 1 — *Criminal Law (Mentally Impaired Accused) Act 1996* amended**~~

~~**65. — Act amended**~~

~~— This Division amends the *Criminal Law (Mentally Impaired Accused) Act 1996*.~~

~~**66. — Section 24 amended**~~

~~— After section 24(4) insert:~~

~~— (5A) — A mentally impaired accused is not to be detained in a declared place that is established by the Disability Services Commission under the *Disability Services Act 1993* (a ***DSC declared place***) unless the Board —~~

~~— (a) — is satisfied that the accused is a person with disability as defined in the *Disability Services Act 1993* section 3 and the predominant reason for the disability is not mental illness; and~~

~~— (b) — is satisfied that the accused has reached 16 years of age; and~~

~~— (c) — has regard to the degree of risk that the accused's detention in the declared place appears to present to the personal safety of people in the community or of any individual in the community.~~

- ~~—(5B)— The Board may determine that a mentally impaired accused be detained in a DSC declared place only if the member referred to in section 42(1)(bb) is present at the meeting at which the custody order is made.~~
- ~~—(5C)— Despite subsection (1), even if the Board determines that a mentally impaired accused should be detained in a DSC declared place, the accused is not to be detained in a DSC declared place without the consent of the Minister to whom the *Disability Services Act 1993* is for the time being committed.~~

67. Section 42 amended

- ~~—(1)— In section 42(1):~~
 - ~~—(a)— delete “are ” and insert:~~
 - ~~— are as follows—~~
 - ~~—(b)— after paragraph (a) insert:~~
 - ~~—(ba)— a deputy chairperson, to be nominated by the Minister and appointed by the Governor;~~
 - ~~—(bb)— a person who, under the *Disability Services Act 1993* section 9 or 10, works for the Disability Services Commission, appointed by the Commission;~~
 - ~~—(c)— in paragraph (c) delete “Governor; and” and insert:~~
 - ~~— Governor;~~
- ~~—(2)— After section 42(3) insert:~~
- ~~—(4A)— The Minister must not nominate a person as a deputy chairperson unless the person has, in the Minister’s opinion, extensive or special knowledge of matters involved in the performance of the Board’s functions.~~
- ~~—(4B)— The deputy chairperson must perform the functions of the chairperson—~~
 - ~~—(a)— when the chairperson is unable to act because of illness, absence or other cause; or~~
 - ~~—(b)— during any vacancy in the office of chairperson.~~

~~—(4C)— The member of the Board referred to in subsection (1)(bb) is a member only while the person works for the Disability Services Commission under the *Disability Services Act 1993* section 9 or 10.~~

~~—(3)— In section 42(5) delete “psychiatrist” and insert:~~

~~— deputy chairperson, the psychiatrist~~

~~68. — Section 50A inserted~~

~~— After section 49 insert:~~

~~50A. — Protection from personal liability~~

~~—(1)— In this section, a reference to the doing of anything includes a reference to the omission to do anything.~~

~~—(2)— An action in tort does not lie against a person for anything that the person has done, in good faith—~~

~~—(a)— when performing or purporting to perform a function under this Act; or~~

~~—(b)— in assisting a person to perform or purportedly perform a function under this Act.~~

~~—(3)— The protection given by subsection (2) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.~~

~~—(4)— Despite subsection (2), the State is not relieved of any liability that it might have for another person having done something as described in that subsection.~~