

2016

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**Criminal Code Amendment (Mental Impairment and
Unfitness to be Tried) Bill 2016**

SERIAL NO. 11

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Criminal Code Amendment (Mental Impairment and Unfitness to be Tried) Bill 2016 amends Part IIA of the Criminal Code to permit a court to forego the need for a special hearing, removing the need for a jury to determine mental impairment, where mental impairment is not in dispute.

NOTES ON CLAUSES

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill when passed, maybe cited as the *Criminal Code Amendment (Mental Impairment and Unfitness to be Tried) Act 2016*.

Clause 2. Commencement

This is a formal clause which provides when the Act will commence. The Act will commence on a day fixed by the Administrator by Gazette notice.

Clause 3. Act Amended

This clause provides which Act is amended by the Bill, namely the Criminal Code.

Clause 4. Section 43E amended

This clause amends section 43E of the Criminal Code so that the need for mental impairment to be determined by a jury, on the balance of probabilities, is subject to the court accepting a plea, and recording a finding of not guilty because of mental impairment, in accordance with sections 43H or 43XA of the Criminal Code. This amendment is consequential to the amendment effected by Clause 6 of the Bill. The amendment is necessary to clarify how section 43E operates with regard to sections 43H and 43XA of the Criminal Code.

Clause 5. Section 43R amended

This clause amends subsections (3) and (9) of section 43R of the Criminal Code. The amendments remove the requirement for a special hearing to be held, under section 43R, where the court has accepted a plea and recorded a finding of not guilty because of mental impairment under section 43XA. These amendments are consequential to the amendment effected by clause 6 and are necessary to clarify how section 43R operates with regards to section 43XA of the Criminal Code.

Clause 6. Sections 43XA and 43XB inserted

This clause inserts sections 43XA and 43XB into Part IIA of the Criminal Code.

New section 43XA permits a court to dispense with a special hearing. Under new section 43XA, where the prosecution and defence agree that mental impairment has been established before or during a special hearing, the court may accept a plea and record a finding of not guilty of the offence because of mental impairment.

New section 43XA is phrased as a discretionary provision. This has been done so that the court may still require the matter to progress by special hearing, where the judge elects not to accept a plea under section 43XA. For example, the court may consider that the evidence does not make out the offence or that it provides the accused with another viable defence, or there is an issue as to whether the accused was mentally impaired.

New section 43XB requires the court, where it records a finding under section 43XA, to either declare that the accused person is liable to supervision under Division 5, of Part IIA of the Criminal Code, or order that the accused is released unconditionally. New section 43XB is a non-discretionary provision that is triggered when the court uses section 43XA. It empowers the court to deal with an accused in the same way that it currently can under section 43X(2), where an accused has been found not guilty because of mental impairment by a jury at a special hearing. Consequently, new section 43XB is phrased in the same way as section 43X(2).

Clause 7. Section 43Y amended

Clause 7 of the Bill amends section 43Y(1) of the Criminal Code. This amendment allows the court to make interim orders where it has dispensed with a special hearing, found the accused not guilty because of mental impairment under section 43XA, and declared an accused liable to supervision under section 43XB(a). The amendment provides the court with an identical power to make interim orders on declaring an accused liable for supervision under section 43XB(a) as it does when it declares that an accused is liable to supervision under section 43X(2)(a).

Clause 8. Section 43Z amended

Clause 8 of the Bill amends section 43Z(a) of the Criminal Code to require the court to make a supervision order where an accused is declared liable for supervision under section 43XB(a). Currently, section 43Z(a) requires the court to make a supervision order in prescribed circumstances, including where, under section 43X(2)(a), the court has declared an accused liable for supervision after having been found not guilty because of mental impairment, by a jury, at a special hearing. This amendment ensures that the court has an identical requirement to make a supervision order, where it has dispensed with the need for a special hearing under section 43XA, and has declared the accused liable for supervision under section 43XB(a).

Clause 9. Expiry of Act

This Act expires on the day after it commences. This is a standard clause which provides that the *Criminal Code Amendment (Mental Impairment and Unfitness to be Tried) Act 2016* expires the day after it commences. As this is an amending Act, there is no need to retain the Act on the statute book, once all the amendments to the Criminal Code have been effected.