

## LUNACY (AMENDMENT) ACT.

Act No. 38, 1946.

George VI.  
No. 38, 1946. An Act to amend the Lunacy Act, 1898-1945,  
and certain other Acts: and for purposes  
connected therewith. [Assented to, 21st  
May, 1946.]

BE

**B**E it enacted by the King's Most Excellent Majesty, No. 38, 1946.  
by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Lunacy (Amendment) Act, 1946." Short title and citation.

(2) The Lunacy Act of 1898, as amended by subsequent Acts and by this Act, may be cited as the Lunacy Act, 1898-1946.

**2.** The Lunacy Act, 1898-1945, is amended by inserting Amendment of Act No. 45, 1898. at the end of section sixty-seven the following proviso:—

Provided that in any case in which a person has been removed to and is kept in a hospital for the criminal insane in pursuance of a direction given by the Colonial Secretary under the provisions of this section, the Colonial Secretary may at any time, if in his opinion the circumstances so warrant, issue his order to the superintendent of such hospital directing that such person be removed to and kept in such hospital for the insane (not being a hospital for the criminal insane) as he may appoint. Sec. 67. (Procedure in reference to certain persons under detention appearing insane.)

**3.** The Lunacy Act, 1898-1945, is further amended by inserting next after section sixty-seven the following new section:— Further amendment of Act No. 45, 1898. New sec. 67A.

**67A.** (1) In any case in which a person charged with an offence for which he has not been tried (hereinafter called "the patient") is detained in a hospital for the insane or in a hospital for the criminal insane the Attorney-General, if he is of opinion that the question whether the patient is fit to plead if put upon his trial should be determined by a jury, may by order under his hand direct that the patient be removed from the hospital in which he is detained to some gaol appointed by the Attorney-General and specified in the order. Order by Attorney-General for trial of issue whether patient fit to plead if placed upon trial.

(2) Such order shall be a sufficient warrant for the removal of the patient from the hospital in which he is detained and for his detention in the gaol appointed by the Attorney-General and specified in the order.

(3)

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(3) The Attorney-General may further order that a jury of twelve persons be empanelled for trial of an issue whether the patient is fit to plead if placed upon his trial.

(4) The said issue shall be tried at a time and place appointed by the Attorney-General before a judge of the Supreme Court or a chairman of Quarter Sessions.

(5) The governor of the gaol in which the patient is detained shall procure the attendance of the patient at the time and place appointed for the trial of the said issue.

(6) At the request of the Clerk of the Peace the Sheriff shall summon thirty-six persons chosen by him from the list of jurors in the Sydney juror's list to attend at the time and place appointed by the Attorney-General for the trial of the said issue.

(7) A jury of twelve persons shall be empanelled from the jurors in attendance at the court and the said issue shall be tried in accordance with the procedure adopted at a criminal trial where upon the trial of an indictment a question is raised whether the accused is fit to plead. The judge presiding at the trial shall have power to make any order including a power of postponement and give any directions which in his opinion are necessary for the trial of the issue. The jurors empanelled to try the issue shall be sworn in such manner as the court shall direct.

(8) If the jury find that the patient is not fit to plead he shall be returned to the hospital from which he was removed.

(9) If the jury find that the patient is fit to plead he shall be returned to the gaol.

(10) If a bill is found against him he shall be placed upon his trial.

(11) If a bill is not found against him a certificate shall be issued by the Attorney-General to the judges of the Supreme Court in accordance with the provisions of section three hundred and fifty-eight of the Crimes Act, 1900, and any of the said judges may thereupon direct the gaoler in whose custody the patient may be to discharge him from custody. (12)

(12) At the trial of the said issue the patient shall be entitled to give evidence on oath or to make an unsworn statement. **No. 38, 1946.**

(13) If the jury find that the patient is fit to plead and he is placed upon his trial he shall be entitled to set up the defence that he was insane at the time when the offence with which he is charged was committed.

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