

# House of Representatives

# Supplementary Order Paper

Wednesday, 30 June 2021

## Rights for Victims of Insane Offenders Bill

### *Proposed amendments to SOP No 52*

Golriz Ghahraman, in Committee, to move the following amendments:

#### *Clause 3A: definition of proven but insane*

In *clause 3A, definition of proven but insane*, replace “**proven but insane**” (page 1) with “**not criminally responsible on account of insanity**”.

#### *Clause 5: new section 20*

In *clause 5, new section 20(1)*, replace “proven but insane” (page 1) with “not criminally responsible on account of insanity”.

In *clause 5, new section 20(1)(a)*, replace “proven but insane” (page 1) with “not criminally responsible on account of insanity”.

In *clause 5, new section 20(2)(b)*, replace “proven but insane” (page 2) with “not criminally responsible on account of insanity”.

#### *Clause 14A*

After the amendments to *clause 5: new section 20* (page 2), insert:

##### *Clause 14A*

In *clause 14A(1), new paragraph (c)(ii)* of the definition of **offence**, replace “proven but insane” (page 22) with “not criminally responsible on account of insanity”.

In *clause 14A(2), new paragraph (a)(ii)* of the definition of **offender**, replace “proven but insane” (page 22) with “not criminally responsible on account of insanity”.

In *clause 14A(3)*, replace “**proven but insane**” (page 23) with “**not criminally responsible on account of insanity**”.

### **Explanatory note**

This Supplementary Order Paper (SOP) amends SOP No 52, which amends SOP No 40 amending the Rights for Victims of Insane Offenders Bill. It would change the wording of the verdict that is passed down to a defendant when they plead the defence of insanity. Instead of receiving the verdict “proven but insane”, as currently in the Bill, they would receive the verdict of “not criminally responsible on account of insanity”. This gives effect to the advice and recommendations made by the Chief Justice to change the wording of the verdict so that the word “proven” is not included.

If a defendant is pleading the defence of insanity, they are stating that they were incapable of having the *mens rea*, or mental awareness, of doing the act, even if they did the physical act. If the mental element is not present, under the criminal law they don’t have all the necessary elements to be guilty. Using the word “proven” in the verdict would be a significant departure from criminal law and is not correct because the full offence cannot be proved.

The verdict of “not criminally responsible on account of insanity” balances the advice of the Chief Justice against the intent of the Bill to acknowledge victims alongside the other changes made in SOP No 40.