



Australian Capital Territory

Criminal Code (Mental Impairment) Amendment Act 2006

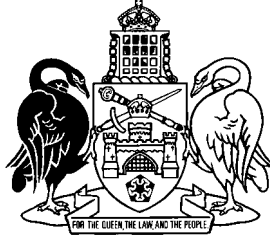
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Australian Capital Territory

Criminal Code (Mental Impairment) Amendment Act 2006

A2006-14

An Act to amend the *Criminal Code 2002* in relation to mentally impaired offenders, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Criminal Code (Mental Impairment) Amendment Act 2006*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Criminal Code 2002*.

Note This Act also amends other legislation (see sch 1).

**4 Delayed application of div 2.3.2 etc
Section 9**

omit

**5 Definitions—*applied provisions* and *default application date*
Section 10 (1), definition of *applied provisions***

insert

- division 2.3.2 (Lack of capacity—mental impairment)

6 Section 10 (1), definition of *applied provisions*

omit

other than section 66 (2) (d)

7 Section 10 (1), definition of *applied provisions*, note

substitute

Note Div 2.3.2 and s 66 (2) (d) became applied provisions on the commencement of the *Criminal Code (Mental Impairment) Amendment Act 2006*. Pt 2.5 became an applied provision on 9 April 2004. The other applied provisions have been applied provisions since the commencement of the Code on 1 January 2003.

**8 Mental impairment and criminal responsibility
Section 28 (7)**

substitute

- (7) If the trier of fact is satisfied that a person is not criminally responsible for an offence only because of mental impairment, it must—
- (a) for an offence dealt with before the Supreme Court—return or enter a special verdict that the person is not guilty of the offence because of mental impairment; or
 - (b) for any other offence—find the person not guilty of the offence because of mental impairment.

**9 Geographical application—procedure
Section 66 (2), note**

omit

Schedule 1 Other amendments

(see s 3)

Part 1.1 Children and Young People Act 1999

[1.1] Section 81 (3) (i)

omit

mental dysfunction or mental illness

substitute

mental impairment

[1.2] Section 95 (1) (a)

substitute

(a) the young person has a mental impairment; and

[1.3] Section 95 (6)

omit

is mentally dysfunctional or mentally ill

substitute

has a mental impairment

[1.4] Section 118

omit

is mentally dysfunctional or mentally ill

substitute

has a mental impairment

[1.5] Section 246 (3) (e) (i) and (ii)

omit

is mentally dysfunctional or mentally ill

substitute

has a mental impairment

[1.6] Section 255 (4) (d) (i) and (ii)

omit

is mentally dysfunctional or mentally ill

substitute

has a mental impairment

[1.7] Dictionary, definition of *mental dysfunction*

omit

[1.8] Dictionary, definition of *mental illness*

omit

[1.9] Dictionary, new definition of *mental impairment*

insert

mental impairment—see the Criminal Code, section 27.

Part 1.2 Crimes Act 1900

[1.10] Part 13 heading

substitute

Part 13 Unfitness to plead and mental impairment

[1.11] Section 300, definitions of *mental dysfunction* and *mental illness*

omit

[1.12] Section 308 (a)

omit

mental dysfunction or mental illness

substitute

mental impairment

[1.13] Section 309 (1)

omit everything before paragraph (b), substitute

- (1) If, in a proceeding in the Magistrates Court, the court has reasonable grounds for believing that an accused needs immediate treatment or care because of mental impairment, the court may, without requiring the accused to submit to the jurisdiction of the tribunal, order that—
 - (a) the accused be taken by a police officer or custodial escort to an approved health facility for clinical examination for the purpose of deciding whether the accused needs immediate treatment or care because of mental impairment; and

[1.14] Section 309 (1) (b) (ii)

substitute

- (ii) if the accused is found to need detention and care because of mental impairment—by the person who is in charge of an approved health facility or approved mental health facility where the accused is detained for care; and

[1.15] Section 315 (4)

omit

disability

substitute

mental impairment

[1.16] Division 13.3 heading

substitute

Division 13.3 Supreme Court—special verdict of not guilty because of mental impairment

[1.17] Section 320

omit

[1.18] Section 321

substitute

321 Supreme Court—plea of not guilty because of mental impairment

- (1) This section applies if an accused pleads not guilty because of mental impairment to an indictable offence before the Supreme Court.
- (2) The Supreme Court must enter a special verdict that the person is not guilty of the offence because of mental impairment if—

- (a) the court considers the verdict appropriate; and
- (b) the prosecution agrees to the entering of the verdict.

[1.19] Section 322

omit

be acquitted on the grounds of mental impairment

substitute

a special verdict of not guilty because of mental impairment

[1.20] Section 323 heading

substitute

323 Supreme Court orders following special verdict of not guilty because of mental impairment—non-serious offence

[1.21] Section 323 (1)

omit

is acquitted on the grounds of mental impairment

substitute

a special verdict of not guilty because of mental impairment is returned or entered

[1.22] Section 324 heading

substitute

324 Supreme Court orders following special verdict of not guilty because of mental impairment—serious offence

[1.23] Section 324 (1)

omit

is acquitted on the grounds of mental impairment

substitute

a special verdict of not guilty because of mental impairment is returned or entered

[1.24] Division 13.4 heading

substitute

Division 13.4 Magistrates Court—finding of not guilty because of mental impairment

[1.25] Section 326

omit

[1.26] Section 327

substitute

327 Magistrates Court—plea of not guilty because of mental impairment

- (1) This section applies if an accused pleads not guilty because of mental impairment to a charge before the Magistrates Court.
- (2) The Magistrates Court must find that the person is not guilty because of mental impairment if—
 - (a) the court considers the finding appropriate; and
 - (b) the prosecution agrees to the finding.

[1.27] Section 328 heading

substitute

**328 Magistrates Court orders following finding of not guilty
because of mental impairment—non-serious offence**

[1.28] Section 328 (1)

omit

the charges are dismissed on the ground of mental impairment

substitute

is found not guilty because of mental impairment

[1.29] Section 329 heading

substitute

**329 Magistrates Court orders following finding of not guilty
because of mental impairment—serious offence**

[1.30] Section 329 (1)

omit

the charges against him or her are dismissed on the ground of
mental impairment

substitute

is found not guilty because of mental impairment

[1.31] Division 13.5 heading

substitute

**Division 13.5 Referral of mentally impaired people
to tribunal after conviction**

[1.32] Section 330 (b)

omit

is mentally dysfunctional or mentally ill

substitute

has a mental impairment

[1.33] Section 331 (1) and (2)

omit

is mentally dysfunctional or mentally ill

substitute

has a mental impairment

[1.34] Section 331 (4)

omit

be mentally dysfunctional or mentally ill

substitute

have a mental impairment

[1.35] Division 13.6 heading

substitute

**Division 13.6 Summary proceedings against
mentally impaired people**

[1.36] Section 333 (a)

omit

by reason of mental dysfunction or mental illness

substitute

because of mental impairment

[1.37] Section 334 (1) (a)

substitute

(a) the accused is mentally impaired; and

[1.38] Section 334 (3) (a), (b), (c) and (g) (i)

omit

mental dysfunction or mental illness

substitute

mental impairment

[1.39] Section 334 (8)

omit

is mentally dysfunctional or mentally ill

substitute

has a mental impairment

[1.40] Dictionary, new definition of *mental impairment*

insert

mental impairment—see the Criminal Code, section 27.

Part 1.3 Mental Health (Treatment and Care) Act 1994

[1.41] Section 11 (g)

omit

on the ground of mental illness

substitute

because of mental impairment

[1.42] Section 15 (1) (a)

omit

because of mental dysfunction or mental illness

substitute

because of mental impairment

[1.43] Section 16 (1) (d)

omit

(Unfitness to plead, mental illness and mental dysfunction)

substitute

(Unfitness to plead and mental impairment)

[1.44] Section 26 (n) and (o)

omit

a mentally ill or mentally dysfunctional offender

substitute

an offender with a mental impairment

[1.45] Section 26 (o)

omit

mental illness or mental dysfunction

substitute

mental impairment

[1.46] Section 26 (p)

omit

a mentally ill or mentally dysfunctional offender

substitute

an offender with a mental impairment

[1.47] Section 36J (2)

substitute

- (2) This section does not apply to an order made in relation to an offender with a mental impairment.

[1.48] Section 52 (3) and (4)

omit

a mentally dysfunctional or mentally ill offender

substitute

an offender with a mental impairment

[1.49] Section 68 (1) (a)

omit

section 315A (2)

substitute

section 315A (3)

[1.50] Section 68 (1) (c)

after

section 319 (2)

insert

or (3)

[1.51] Section 70 heading

substitute

70 Recommendations about people with mental impairment

[1.52] Section 70

omit

is mentally dysfunctional or mentally ill

substitute

has a mental impairment

[1.53] Section 83A (2) (f)

substitute

- (f) making a recommendation under section 70 about a person who has a mental impairment;

[1.54] New part 15

insert

Part 15 Transitional

150 Application of amendments made by Crimes Amendment Act 2005

- (1) This section sets out provisions that apply if, before the commencement of the *Crimes Amendment Act 2005* (the ***relevant commencement day***), the Supreme Court or the Magistrates Court had made an order under the Crimes Act, part 13 requiring a person to submit to the jurisdiction of the tribunal to enable the tribunal to determine whether or not the person was fit to plead to a charge.
- (2) If, before the relevant commencement day, the tribunal had made a final determination about the person's fitness to plead, the Crimes Act, part 13 and this Act, section 68 apply in relation to the matter as if the question of the person's fitness to plead had been decided by the court.
- (3) If, before the relevant commencement day, the tribunal had not made a final determination about the person's fitness to plead—
 - (a) former part 8 applies in relation to the matter if the tribunal has not made a final determination about the person's fitness to plead; and
 - (b) if the tribunal has made its final determination, the Crimes Act, part 13 and this Act, section 68 apply in relation to the matter as if the question of the person's fitness to plead had been decided by the court.
- (4) On the commencement of this section, part 15 (Transitional) as inserted by the *Crimes Amendment Act 2005* ceases to have effect.
- (5) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

(6) In this section:

final determination about a person's fitness to plead means—

- (a) a determination under former section 68 that the person is unfit to plead and is unlikely to become fit within 12 months; or
- (b) a determination under former section 68, or on a review under former section 69, that the person is fit to plead; or
- (c) if the tribunal first determines under former section 68 that the person is unfit to plead but is likely to become fit within 12 months after the determination is made—a determination under former section 69 after the end of the 12-month period that the person is unfit to plead.

former part 8 means that part as in force immediately before the commencement of the *Crimes Amendment Act 2005*.

former section 68 means that section as in force immediately before the commencement of the *Crimes Amendment Act 2005*.

former section 69 means that section as in force immediately before the commencement of the *Crimes Amendment Act 2005*.

151 Expiry of pt 15

This part expires 5 years after the day it commences.

[1.55] Dictionary, new definition of *mental impairment*

insert

mental impairment—see the Criminal Code, section 27.

[1.56] Dictionary, definition of *mentally dysfunctional or mentally ill offender*

omit

[1.57] Dictionary, definition of *offender with a mental impairment*

insert

offender with a mental impairment means a person who has been ordered by a court, under the Crimes Act, part 13 (Unfitness to plead and mental impairment) or the C&YP Act, part 6.2 (which is about dealing with young offenders), to submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order in relation to the person.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 16 February 2006.

2 Notification

Notified under the Legislation Act on 6 April 2006.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Criminal Code (Mental Impairment) Amendment Bill 2006, which was passed by the Legislative Assembly on 30 March 2006.

Clerk of the Legislative Assembly

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