

2004

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## Crimes Amendment Bill 2004 (No 4)

### Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
<b>Part 2</b>	<b>Community Advocate Act 1991</b>
3	Legislation amended—pt 2 3
4	Definitions for Act Section 3, definition of forensic patient, paragraph (b) 3
<b>Part 3</b>	<b>Crimes Act 1900</b>
5	Legislation amended—pt 3 4
6	Definitions for pt 13 Section 300, definition of special hearing 4
7	Sections 310 to 315 4

---

2004 071B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Contents

---

		Page
8	Section 316 heading	10
9	Section 316 (3)	10
10	Section 316 (7)	10
11	Action if accused becomes fit to plead after special hearing Section 319A (1), note	10
12	Fitness to plead—Magistrates Court Section 335 (2) (a)	11
13	Section 335 (4) (a)	11
14	Action if accused becomes fit to plead after hearing Section 335A (1), note	11
<b>Part 4</b>	<b>Magistrates Court Act 1930</b>	
15	Legislation amended—pt 4	12
16	Appeals to which div 11.2 applies New section 208 (1) (aa)	12
17	Section 208 (1)	12
18	Institution of appeal Section 209 (2)	12
19	Appeals in cases other than civil cases Section 214 (1)	13
20	Stay of execution pending appeal in certain cases Section 216 (1)	13
<b>Part 5</b>	<b>Mental Health (Treatment and Care) Act 1994</b>	
21	Legislation amended—pt 5	14
22	Functions Section 11 (e)	14
23	Section 11	14
24	Sections 68, 69 and 69A	14
25	Section 71	16
26	Constitution for exercise of powers Section 83 (2) (d) and (e)	17
27	Section 83 (2)	17

2004

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## **Crimes Amendment Bill 2004 (No 4)**

---

### **A Bill for**

An Act to amend the *Crimes Act 1900*, and for other purposes

---

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes Amendment Act 2004 (No 4)*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

1 **Part 2** **Community Advocate Act 1991**

2 **3** **Legislation amended—pt 2**

3 This part amends the *Community Advocate Act 1991*.

4 **4** **Definitions for Act**  
5 **Section 3, definition of *forensic patient*, paragraph (b)**

6 *substitute*

7 (b) found by a court or the mental health tribunal to be unfit to  
8 plead; or

1 **Part 3 Crimes Act 1900**

2 **5 Legislation amended—pt 3**

3 This part amends the *Crimes Act 1900*.

4 **6 Definitions for pt 13**  
5 **Section 300, definition of *special hearing***

6 *omit*

7 section 315

8 *substitute*

9 section 316

10 **7 Sections 310 to 315**

11 *substitute*

12 **310 Application of div 13.2**

13 This division applies to a criminal proceeding in the Supreme Court  
14 or the Magistrates Court.

15 **311 When a person is unfit to plead**

16 (1) A person is unfit to plead to a charge if the person's mental  
17 processes are disordered or impaired to the extent that the person  
18 cannot—

19 (a) understand the nature of the charge; or

20 (b) enter a plea to the charge and exercise the right to challenge  
21 jurors or the jury; or

22 (c) understand that the proceeding is an inquiry about whether the  
23 person committed the offence; or

- 
- 1 (d) follow the course of the proceeding; or  
2 (e) understand the substantial effect of any evidence that may be  
3 given in support of the prosecution; or  
4 (f) give instructions to the person's lawyer.  
5 (2) A person is not unfit to plead only because the person is suffering  
6 from memory loss.

7 **312 Presumption of fitness to plead, standard of proof etc**

- 8 (1) A person is presumed to be fit to plead.  
9 (2) The presumption is rebutted only if it is established, on an  
10 investigation under this division, that the person is unfit to plead.  
11 (3) The question of a person's fitness to plead—  
12 (a) is a question of fact; and  
13 (b) is to be decided on the balance of probabilities.  
14 (4) No party bears a burden of proof in relation to the question.

15 **313 Who can raise question of unfitness to plead**

16 The question of a defendant's fitness to plead to a charge may be  
17 raised by a party to a proceeding in relation to the charge or by the  
18 court.

19 **314 Procedure if question raised**

- 20 (1) If the question is raised in the Magistrates Court (other than at a  
21 committal hearing) and the court is satisfied that there is a real and  
22 substantial question about the defendant's fitness to plead, the court  
23 must reserve the question for investigation under this division.  
24 (2) If the question is raised at a committal hearing—  
25 (a) the committal hearing must be completed; and

- 1 (b) the defendant must not be discharged only because the  
2 question has been raised; and
- 3 (c) if the person is committed for trial—the question must be  
4 reserved for consideration by the Supreme Court.
- 5 (3) If the question has been reserved under subsection (2) (c) or is  
6 otherwise raised in the Supreme Court and the court is satisfied that  
7 there is a real and substantial question about the defendant's fitness  
8 to plead, the court must reserve the question for investigation under  
9 this division.

10 **315 Procedure if question reserved for investigation**

- 11 (1) If a court reserves the question for investigation, the court must  
12 adjourn the hearing or trial in which the question was raised and  
13 proceed with an investigation under this division.
- 14 (2) The court may make 1 or more of the following orders:
- 15 (a) an order granting bail;
- 16 (b) an order remanding the defendant in custody in an appropriate  
17 place for a stated period;
- 18 (c) an order requiring the defendant to be examined by a  
19 psychiatrist or other health professional;
- 20 (d) if the question arose in a trial for which a jury had been  
21 empanelled—an order discharging the jury;
- 22 (e) any other order the court considers appropriate.
- 23 (3) The court must not make an order under subsection (2) (b)  
24 remanding the defendant in custody at a place other than a prison or  
25 remand centre unless satisfied that the facilities or services  
26 necessary for the order are available at the place.

- 1 (4) If the court considers that, because of the trivial nature of the charge  
2 or the nature of the defendant's disability, it would be inappropriate  
3 to inflict any punishment on the defendant in relation to the offence,  
4 the court may decide not to carry out or continue the investigation  
5 and may dismiss the charge and order that the person be released.

6 **315A Investigation into fitness to plead**

- 7 (1) On an investigation into a defendant's fitness to plead—  
8 (a) the court must hear any relevant evidence and submissions put  
9 to the court by the prosecution or the defence; and  
10 (b) if the court considers that it is in the interests of justice to do  
11 so, the court may—  
12 (i) call evidence on its own initiative; or  
13 (ii) require the defendant to be examined by a psychiatrist or  
14 other health professional; or  
15 (iii) require the results of the examination to be put before the  
16 court.  
17 (2) The court must decide whether the defendant is unfit to plead.  
18 (3) If the court finds that the defendant is unfit to plead, the court must  
19 also decide whether the defendant is likely to become fit to plead  
20 within the next 12 months.

21 **315B Person found fit to plead**

22 If the court decides that the defendant is fit to plead, the proceeding  
23 brought against the defendant must be continued in accordance with  
24 ordinary criminal procedure.

- 1     **315C     Person found unfit to plead and unlikely to become fit to**  
2     **plead**
- 3     If the court decides that the defendant is unfit to plead and is  
4     unlikely to become fit to plead within the next 12 months, the court  
5     must—
- 6     (a) for a proceeding in the Supreme Court—
- 7         (i) discharge any jury empanelled for the proceeding; and
- 8         (ii) hold a special hearing under section 316; and
- 9     (b) for a proceeding in the Magistrates Court—conduct a hearing  
10     under section 335.
- 11    **315D     Person found temporarily unfit to plead**
- 12       (1) If the court decides that the defendant is unfit to plead but is likely  
13       to become fit to plead within the next 12 months, the court must  
14       adjourn the proceeding and—
- 15       (a) if the defendant is charged with a serious offence—remand the  
16       defendant in custody or release the defendant on bail; and
- 17       (b) if the defendant is charged with an offence other than a serious  
18       offence—make the orders it considers appropriate.
- 19       (2) The orders the court may make under subsection (1) (b) include—
- 20       (a) an order remanding the defendant in custody; and
- 21       (b) an order requiring the defendant to submit to the jurisdiction of  
22       the tribunal to enable the tribunal to make a mental health  
23       order.
- 24       (3) The court may (on application or its own initiative) reinvestigate the  
25       defendant's fitness to plead at any time before the end of the  
26       12-month period.

- 
- 1 (4) However, if the court has not reinvestigated the defendant's fitness  
2 to plead within 6 months after the day the initial decision was made,  
3 the court must reinvestigate it as soon as practicable (but within  
4 30 days) after the end of that period.
- 5 (5) If, before the end of the 12-month period, the defendant has not  
6 been found fit to plead, the court must reinvestigate the defendant's  
7 fitness to plead as soon as practicable (but within 3 months) after the  
8 end of that period.
- 9 (6) On a reinvestigation—
- 10 (a) the court must hear any relevant evidence and submissions put  
11 to the court by the prosecution or the defence; and
- 12 (b) if the court considers that it is in the interests of justice to do  
13 so, the court may—
- 14 (i) call evidence on its own initiative; or
- 15 (ii) require the defendant to be examined by a psychiatrist or  
16 other health professional; or
- 17 (iii) require the results of the examination to be put before the  
18 court.
- 19 (7) The court must decide whether the defendant is unfit to plead.
- 20 (8) If the court decides that the defendant is fit to plead, the proceeding  
21 brought against the defendant must be continued in accordance with  
22 ordinary criminal procedure.
- 23 (9) If, on a reinvestigation mentioned in subsection (5), the court  
24 decides that the defendant is unfit to plead, the court must—
- 25 (a) for a proceeding in the Supreme Court—
- 26 (i) discharge any jury empanelled for the proceeding; and
- 27 (ii) hold a special hearing under section 316; and

1 (b) for a proceeding in the Magistrates Court—conduct a hearing  
2 under section 335.

3 **8 Section 316 heading**

4 *substitute*

5 **316 Special hearing**

6 **9 Section 316 (3)**

7 *omit*

8 If section 315 (1) applies, the

9 *substitute*

10 The

11 **10 Section 316 (7)**

12 *omit*

13 A determination by the tribunal

14 *substitute*

15 A decision

16 **11 Action if accused becomes fit to plead after special**  
17 **hearing**  
18 **Section 319A (1), note**

19 *substitute*

20 *Note* For the relevant review of fitness to plead provisions, see the *Mental*  
21 *Health (Treatment and Care) Act 1994*, s 68.

---

1 **12 Fitness to plead—Magistrates Court**  
2 **Section 335 (2) (a)**

3 *omit*

4 tribunal determines

5 *substitute*

6 Magistrates Court decides as mentioned in section 315C or  
7 section 315D (9)

8 **13 Section 335 (4) (a)**

9 *omit*

10 tribunal determines

11 *substitute*

12 Magistrates Court decides as mentioned in section 315C or  
13 section 315D (9)

14 **14 Action if accused becomes fit to plead after hearing**  
15 **Section 335A (1), note**

16 *substitute*

17 *Note* For the relevant review of fitness to plead provisions, see the *Mental*  
18 *Health (Treatment and Care) Act 1994*, s 68.

1 **Part 4** **Magistrates Court Act 1930**

2 **15** **Legislation amended—pt 4**

3 This part amends the *Magistrates Court Act 1930*.

4 **16** **Appeals to which div 11.2 applies**  
5 **New section 208 (1) (aa)**

6 *before paragraph (a), insert*

7 (aa) an appeal by any of the following from a decision of the  
8 Magistrates Court under the Crimes Act, section 315A (2) or  
9 (3) (Investigation into fitness to plead) or section 315D (7)  
10 (Person found temporarily unfit to plead):

11 (i) the person whose fitness to plead was decided;

12 (ii) anyone who appeared at the proceeding in which the  
13 decision was made;

14 (iii) anyone else with the leave of the court;

15 **17** **Section 208 (1)**

16 *renumber paragraphs when Act next republished under Legislation*  
17 *Act*

18 **18** **Institution of appeal**  
19 **Section 209 (2)**

20 *substitute*

21 (2) As soon as practicable after instituting the appeal, the appellant  
22 must—

23 (a) file a copy of the notice of appeal with the Magistrates Court;  
24 and

25 (b) serve a copy of the notice of appeal on—

- 1 (i) for an appeal mentioned in section 208 (1) (aa)—each  
2 other person mentioned in that paragraph; and  
3 (ii) for any other appeal—the informant.

4 **19 Appeals in cases other than civil cases**  
5 **Section 214 (1)**

- 6 *before*  
7 (a)  
8 *insert*  
9 (aa),

10 **20 Stay of execution pending appeal in certain cases**  
11 **Section 216 (1)**

- 12 *before*  
13 conviction  
14 *insert*  
15 decision,

1 **Part 5** **Mental Health (Treatment and**  
2 **Care) Act 1994**

3 **21** **Legislation amended—pt 5**

4 This part amends the *Mental Health (Treatment and Care) Act 1994*.

5 **22** **Functions**  
6 **Section 11 (e)**

7 *substitute*

8 (e) to make orders for the treatment, care, control, rehabilitation  
9 and protection of people found unfit to plead, to review their  
10 welfare and to make any appropriate order for their release  
11 (subject to conditions or unconditionally);

12 (ea) to review the fitness to plead of certain people under  
13 section 68;

14 **23** **Section 11**

15 *renumber paragraphs when Act next republished under Legislation*  
16 *Act*

17 **24** **Sections 68, 69 and 69A**

18 *substitute*

19 **68** **Review of certain people found unfit to plead**

20 (1) This section applies if—

21 (a) the Supreme Court or the Magistrates Court makes a decision  
22 under the *Crimes Act 1900*, section 315A (2) or  
23 section 315D (7) that a person is unfit to plead to a charge; and

- 
- 1 (b) the charge is for an offence punishable by imprisonment for  
2 5 years or longer; and
- 3 (c) an order is made in relation to the charge under any of the  
4 following provisions of the *Crimes Act 1900*:
- 5 • section 318 (2) (Non-acquittal at special hearing—non-  
6 serious offence);
  - 7 • section 319 (2) (Non-acquittal at special hearing—serious  
8 offence);
  - 9 • section 335 (2), (3) or (4) (Fitness to plead—Magistrates  
10 Court).
- 11 (2) The tribunal may (on application or on its own initiative) review the  
12 person's fitness to plead at any time.
- 13 (3) However, the tribunal must review the person's fitness to plead—
- 14 (a) as soon as practicable (but within 3 months) after the end of  
15 12 months after the day the order is made; and
  - 16 (b) at least once every 12 months after each review.
- 17 (4) Subsection (3) does not apply if—
- 18 (a) the person has already been found fit to plead; or
  - 19 (b) the director of public prosecutions has told the tribunal, in  
20 writing, of the director's intention not to take further  
21 proceedings against the person in relation to the offence.
- 22 (5) On a review, the tribunal must decide on the balance of probabilities  
23 whether the person is unfit to plead.
- 24 (6) The tribunal must decide that the person is unfit to plead if satisfied  
25 that the person's mental processes are disordered or impaired to the  
26 extent that the person cannot—
- 27 (a) understand the nature of the charge; or
  - 28 (b) enter a plea to the charge and exercise the right to challenge  
29 jurors or the jury; or
-

- 1 (c) understand that the proceeding is an inquiry about whether the  
2 person committed the offence; or
- 3 (d) follow the course of the proceeding; or
- 4 (e) understand the substantial effect of any evidence that may be  
5 given in support of the prosecution; or
- 6 (f) give instructions to the person's lawyer.
- 7 (7) The person is not unfit to plead only because the person is suffering  
8 from memory loss.
- 9 (8) To remove any doubt, this section applies even if the person is no  
10 longer in custody or under a mental health order.
- 11 *Note* A person the subject of a proceeding may be summoned to appear at the  
12 proceeding (see s 90).

13 **25 Section 71**

14 *substitute*

15 **71 Service of decisions etc**

16 The registrar must serve a copy of a decision, determination or  
17 recommendation made under section 68 or section 70 on—

- 18 (a) the person about whom the decision, determination or  
19 recommendation is made; and
- 20 (b) the representative of that person (if any); and
- 21 (c) the community advocate; and
- 22 (d) the director of public prosecutions; and
- 23 (e) if the person about whom the decision, determination or  
24 recommendation is made is a child—the C&YP chief  
25 executive.

---

1 **26 Constitution for exercise of powers**  
2 **Section 83 (2) (d) and (e)**

3 *substitute*

4 (d) reviewing a person's fitness to plead under section 68; or

5 **27 Section 83 (2)**

6 *renumber paragraphs when Act next republished under Legislation*  
7 *Act*

---

### Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2004.

**2 Notification**

Notified under the Legislation Act on 2004.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---