

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Criminal Code (Mental Impairment) Amendment Bill 2006

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2005 817

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Criminal Code (Mental Impairment) Amendment Bill 2006

A Bill for

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 **1 Name of Act**

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

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)).

8 **3 Legislation amended**

9 This Act amends the *Criminal Code 2002*.

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

11 **4 Delayed application of div 2.3.2 etc**
12 **Section 9**

13 *omit*

14 **5 Definitions—*applied provisions* and *default application***
15 ***date***
16 **Section 10 (1), definition of *applied provisions***

17 *insert*

- 18 • division 2.3.2 (Lack of capacity—mental impairment)

19 **6 Section 10 (1), definition of *applied provisions***

20 *omit*

21 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

1 **Schedule 1 Other amendments**

2 (see s 3)

3 **Part 1.1 Children and Young People Act**
4 **1999**

5 **[1.1] Section 81 (3) (i)**

6 *omit*

7 mental dysfunction or mental illness

8 *substitute*

9 mental impairment

10 **[1.2] Section 95 (1) (a)**

11 *substitute*

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

13 **[1.3] Section 95 (6)**

14 *omit*

15 is mentally dysfunctional or mentally ill

16 *substitute*

17 has a mental impairment

18 **[1.4] Section 118**

19 *omit*

20 is mentally dysfunctional or mentally ill

21 *substitute*

22 has a mental impairment

-
- 1 **[1.5] Section 246 (3) (e) (i) and (ii)**
- 2 *omit*
- 3 is mentally dysfunctional or mentally ill
- 4 *substitute*
- 5 has a mental impairment
- 6 **[1.6] Section 255 (4) (d) (i) and (ii)**
- 7 *omit*
- 8 is mentally dysfunctional or mentally ill
- 9 *substitute*
- 10 has a mental impairment
- 11 **[1.7] Dictionary, definition of *mental dysfunction***
- 12 *omit*
- 13 **[1.8] Dictionary, definition of *mental illness***
- 14 *omit*
- 15 **[1.9] Dictionary, new definition of *mental impairment***
- 16 *insert*
- 17 ***mental impairment***—see the Criminal Code, section 27.

1 **Part 1.2 Crimes Act 1900**

2 **[1.10] Part 13 heading**

3 *substitute*

4 **Part 13 Unfitness to plead and mental**
5 **impairment**

6 **[1.11] Section 300, definitions of *mental dysfunction* and *mental***
7 ***illness***

8 *omit*

9 **[1.12] Section 308 (a)**

10 *omit*

11 mental dysfunction or mental illness

12 *substitute*

13 mental impairment

14 **[1.13] Section 309 (1)**

15 *omit everything before paragraph (b), substitute*

16 (1) If, in a proceeding in the Magistrates Court, the court has reasonable
17 grounds for believing that an accused needs immediate treatment or
18 care because of mental impairment, the court may, without requiring
19 the accused to submit to the jurisdiction of the tribunal, order that—

20 (a) the accused be taken by a police officer or custodial escort to
21 an approved health facility for clinical examination for the
22 purpose of deciding whether the accused needs immediate
23 treatment or care because of mental impairment; and

- 1 **[1.14] Section 309 (1) (b) (ii)**
2 *substitute*
3 (ii) if the accused is found to need detention and care because
4 of mental impairment—by the person who is in charge of
5 an approved health facility or approved mental health
6 facility where the accused is detained for care; and

- 7 **[1.15] Section 315 (4)**
8 *omit*
9 disability
10 *substitute*
11 mental impairment

- 12 **[1.16] Division 13.3 heading**
13 *substitute*

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

- 16 **[1.17] Section 320**
17 *omit*

- 18 **[1.18] Section 321**
19 *substitute*

- 20 **321 Supreme Court—plea of not guilty because of mental**
21 **impairment**
22 (1) This section applies if an accused pleads not guilty because of
23 mental impairment to an indictable offence before the Supreme
24 Court.
25 (2) The Supreme Court must enter a special verdict that the person is
26 not guilty of the offence because of mental impairment if—

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

3 **[1.19] Section 322**

4 *omit*

5 be acquitted on the grounds of mental impairment

6 *substitute*

7 a special verdict of not guilty because of mental impairment

8 **[1.20] Section 323 heading**

9 *substitute*

10 **323 Supreme Court orders following special verdict of not**
11 **guilty because of mental impairment—non-serious**
12 **offence**

13 **[1.21] Section 323 (1)**

14 *omit*

15 is acquitted on the grounds of mental impairment

16 *substitute*

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

19 **[1.22] Section 324 heading**

20 *substitute*

21 **324 Supreme Court orders following special verdict of not**
22 **guilty because of mental impairment—serious offence**

1 **[1.23] Section 324 (1)**

2 *omit*

3 is acquitted on the grounds of mental impairment

4 *substitute*

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

7 **[1.24] Division 13.4 heading**

8 *substitute*

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

11 **[1.25] Section 326**

12 *omit*

13 **[1.26] Section 327**

14 *substitute*

15 **327 Magistrates Court—plea of not guilty because of mental**
16 **impairment**

17 (1) This section applies if an accused pleads not guilty because of
18 mental impairment to a charge before the Magistrates Court.

19 (2) The Magistrates Court must find that the person is not guilty
20 because of mental impairment if—

21 (a) the court considers the finding appropriate; and

22 (b) the prosecution agrees to the finding.

- 1 **[1.27] Section 328 heading**
- 2 *substitute*
- 3 **328 Magistrates Court orders following finding of not guilty**
- 4 **because of mental impairment—non-serious offence**
- 5 **[1.28] Section 328 (1)**
- 6 *omit*
- 7 the charges are dismissed on the ground of mental impairment
- 8 *substitute*
- 9 is found not guilty because of mental impairment
- 10 **[1.29] Section 329 heading**
- 11 *substitute*
- 12 **329 Magistrates Court orders following finding of not guilty**
- 13 **because of mental impairment—serious offence**
- 14 **[1.30] Section 329 (1)**
- 15 *omit*
- 16 the charges against him or her are dismissed on the ground of
- 17 mental impairment
- 18 *substitute*
- 19 is found not guilty because of mental impairment
- 20 **[1.31] Division 13.5 heading**
- 21 *substitute*
- 22 **Division 13.5 Referral of mentally impaired people**
- 23 **to tribunal after conviction**
-

1 **[1.32] Section 330 (b)**
2 *omit*
3 is mentally dysfunctional or mentally ill
4 *substitute*
5 has a mental impairment

6 **[1.33] Section 331 (1) and (2)**
7 *omit*
8 is mentally dysfunctional or mentally ill
9 *substitute*
10 has a mental impairment

11 **[1.34] Section 331 (4)**
12 *omit*
13 be mentally dysfunctional or mentally ill
14 *substitute*
15 have a mental impairment

16 **[1.35] Division 13.6 heading**
17 *substitute*

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

- 1 **[1.36] Section 333 (a)**
- 2 *omit*
- 3 by reason of mental dysfunction or mental illness
- 4 *substitute*
- 5 because of mental impairment
- 6 **[1.37] Section 334 (1) (a)**
- 7 *substitute*
- 8 (a) the accused is mentally impaired; and
- 9 **[1.38] Section 334 (3) (a), (b), (c) and (g) (i)**
- 10 *omit*
- 11 mental dysfunction or mental illness
- 12 *substitute*
- 13 mental impairment
- 14 **[1.39] Section 334 (8)**
- 15 *omit*
- 16 is mentally dysfunctional or mentally ill
- 17 *substitute*
- 18 has a mental impairment
- 19 **[1.40] Dictionary, new definition of *mental impairment***
- 20 *insert*
- 21 ***mental impairment***—see the Criminal Code, section 27.

1 **Part 1.3** **Mental Health (Treatment and**
2 **Care) Act 1994**

3 **[1.41] Section 11 (g)**

4 *omit*

5 on the ground of mental illness

6 *substitute*

7 because of mental impairment

8 **[1.42] Section 15 (1) (a)**

9 *omit*

10 because of mental dysfunction or mental illness

11 *substitute*

12 because of mental impairment

13 **[1.43] Section 16 (1) (d)**

14 *omit*

15 (Unfitness to plead, mental illness and mental dysfunction)

16 *substitute*

17 (Unfitness to plead and mental impairment)

18 **[1.44] Section 26 (n) and (o)**

19 *omit*

20 a mentally ill or mentally dysfunctional offender

21 *substitute*

22 an offender with a mental impairment

1 **[1.45] Section 26 (o)**
2 *omit*
3 mental illness or mental dysfunction
4 *substitute*
5 mental impairment

6 **[1.46] Section 26 (p)**
7 *omit*
8 a mentally ill or mentally dysfunctional offender
9 *substitute*
10 an offender with a mental impairment

11 **[1.47] Section 36J (2)**
12 *substitute*
13 (2) This section does not apply to an order made in relation to an
14 offender with a mental impairment.

15 **[1.48] Section 52 (3) and (4)**
16 *omit*
17 a mentally dysfunctional or mentally ill offender
18 *substitute*
19 an offender with a mental impairment

20 **[1.49] Section 68 (1) (a)**
21 *omit*
22 section 315A (2)
23 *substitute*
24 section 315A (3)

1 **[1.50] Section 68 (1) (c)**

2 *after*

3 section 319 (2)

4 *insert*

5 or (3)

6 **[1.51] Section 70 heading**

7 *substitute*

8 **70 Recommendations about people with mental impairment**

9 **[1.52] Section 70**

10 *omit*

11 is mentally dysfunctional or mentally ill

12 *substitute*

13 has a mental impairment

14 **[1.53] Section 83A (2) (f)**

15 *substitute*

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

1 **[1.54] New part 15**

2 *insert*

3 **Part 15 Transitional**

4 **150 Application of amendments made by Crimes Amendment**
5 **Act 2005**

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

- 1 (6) In this section:
2 *final determination* about a person's fitness to plead means—
3 (a) a determination under former section 68 that the person is unfit
4 to plead and is unlikely to become fit within 12 months; or
5 (b) a determination under former section 68, or on a review under
6 former section 69, that the person is fit to plead; or
7 (c) if the tribunal first determines under former section 68 that
8 the person is unfit to plead but is likely to become fit within
9 12 months after the determination is made—a determination
10 under former section 69 after the end of the 12-month period
11 that the person is unfit to plead.

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

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

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

18 **151 Expiry of pt 15**

19 This part expires 5 years after the day it commences.

20 **[1.55] Dictionary, new definition of *mental impairment***

21 *insert*

22 *mental impairment*—see the Criminal Code, section 27.

23 **[1.56] Dictionary, definition of *mentally dysfunctional or***
24 ***mentally ill offender***

25 *omit*

1 **[1.57] Dictionary, definition of *offender with a mental***
2 ***impairment***

3 *insert*

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

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 2006.

2 **Notification**

Notified under the Legislation Act on 2006.

3 **Republications of amended laws**

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