



Australian Capital Territory

# Crimes Amendment Act 2004

A2004-16

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Australian Capital Territory

# Crimes Amendment Act 2004

**A2004-16**

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

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes Amendment Act 2004*.

### 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)).

## Part 2 Crimes Act 1900

### 3 Legislation amended—pt 2

This part amends the *Crimes Act 1900*.

### 4 Definitions for pt 13 Section 300, new definitions

insert

*alternative offence*, for an offence, means an offence available as an alternative to the offence.

*conduct*—see the Criminal Code, section 13.

*engage in conduct*—see the Criminal Code, section 13.

### 5 Nature and conduct of special hearing Section 316 (9) (c)

*omit*

committed the acts that constitute the offence

*substitute*

engaged in the conduct required for the offence charged (or an alternative offence)

### 6 Verdicts available at special hearing Section 317 (1)

*omit*

committed the acts that constitute the offence charged

*substitute*

engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged)

**7 Section 317 (3)**

*omit*

committed the acts that constitute the offence charged

*substitute*

engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged)

**8 Section 317 (4)**

*substitute*

- (4) If, at a special hearing, the jury (or, if the special hearing is by a single judge without a jury, the judge) is satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged), the finding—
- (a) is not a basis in law for recording a conviction for the offence charged (or an alternative offence); and
  - (b) except as provided in section 319A (Action if accused becomes fit to plead after special hearing), bars further prosecution of the accused for any offence in relation to the conduct.

**9 Non-acquittal at special hearing—non-serious offence  
Section 318 (1) (b) (i)**

*omit*

committed the acts that constitute the offence charged

*substitute*

engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged)

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**10 Non-acquittal at special hearing—serious offence**  
**Section 319 (1) (b) (i)**

*omit*

committed the acts which constitute the offence charged

*substitute*

engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged)

**11 New section 319A**

*in division 13.2, insert*

**319A Action if accused becomes fit to plead after special hearing**

- (1) This section applies if—
- (a) the Supreme Court makes an order under section 318 or section 319 in relation to an accused; and
  - (b) the offence in relation to which the order is made is punishable by imprisonment for 5 years or longer; and
  - (c) the tribunal later decides the accused is fit to plead in relation to the offence.

*Note* For the relevant review of fitness to plead provisions, see the *Mental Health (Treatment and Care) Act 1994*, s 69A.

- (2) The director of public prosecutions must consider whether to take further proceedings against the accused in relation to the offence.
- (3) If further proceedings are taken and the accused is found guilty of the offence charged (or an alternative offence), the court must, in deciding the sentence for the offence, take into account any time the accused has spent in custody or detention in relation to the offence.

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

*omit*

committed the acts that constitute the offence

*substitute*

engaged in the conduct required for the offence charged

**13 Section 335 (4) (b)**

*omit*

committed the acts which constitute the offence

*substitute*

engaged in the conduct required for the offence charged

**14 Section 335 (7)**

*substitute*

- (7) If the Magistrates Court is satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged, the finding—
- (a) is not a basis in law for recording a conviction for the offence charged; and
  - (b) except as provided in section 335A, bars further prosecution of the accused for any offence in relation to the conduct.



**15 New section 335A**

*insert*

**335A Action if accused becomes fit to plead after hearing**

- (1) This section applies if—
  - (a) the Magistrates Court makes an order under section 335 (2), (3) or (4) in relation to an accused; and
  - (b) the offence in relation to which the order is made is punishable by imprisonment for 5 years or longer; and
  - (c) the tribunal later decides the accused is fit to plead in relation to the offence.

*Note* For the relevant review of fitness to plead provisions, see the *Mental Health (Treatment and Care) Act 1994*, s 69A.

- (2) The director of public prosecutions must consider whether to take further proceedings against the accused in relation to the offence.
- (3) If further proceedings are taken and the accused is found guilty of the offence charged, the court must, in deciding the sentence for the offence, take into account any time the accused has spent in custody or detention in relation to the offence.

**16 New division 13.7**

*insert*

**Division 13.7 Transitional****337 Application of amendments made by Crimes Amendment Act 2004**

The amendments of this part made by the *Crimes Amendment Act 2004* apply in relation to a hearing that takes place after the commencement of this section, regardless of when the person accused was found unfit to plead.

**338 Expiry of div 13.7**

- (1) This division expires 3 months after the day it commences.
- (2) This division is declared to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

## Part 3                      Mental Health (Treatment and Care) Act 1994

### 17    Legislation amended—pt 3

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

### 18    Section 69

*substitute*

#### 69    Review of people temporarily unfit to plead

- (1) This section applies if the tribunal makes a determination (the *initial determination*) under section 68 that a person is unfit to plead to a charge but is likely to become fit to plead to the charge within 12 months after the initial determination is made (the *12-month period*).
- (2) The tribunal may (on application or on its own initiative) review the person's fitness to plead at any time before the end of the 12-month period.
- (3) However, if the tribunal has not reviewed the person's fitness to plead within 6 months after the initial determination was made, the tribunal must review it as soon as practicable (but within 30 days) after that time.
- (4) If, before the end of the 12-month period, the person has not been found fit to plead, the tribunal must review the person's fitness to plead as soon as practicable (but within 3 months) after the end of the period.
- (5) On a review, the tribunal must determine on the balance of probabilities, and in accordance with section 68 (3) and (4), whether the person is unfit to plead.

- (6) The tribunal must tell the relevant court of each determination the tribunal makes about a person and may make recommendations to the court about how the person should be dealt with.
- (7) In this section:
- relevant court*—see section 68 (1).

**69A Review of certain other people found unfit to plead**

- (1) This section applies if—
- (a) the tribunal makes a determination under section 68 or section 69 that a person is unfit to plead to a charge; and
  - (b) the charge is for an offence punishable by imprisonment for 5 years or longer; and
  - (c) an order is made in relation to the charge under any of the following provisions of the *Crimes Act 1900*:
    - section 318 (2) (Non-acquittal at special hearing—non-serious offence);
    - section 319 (2) (Non-acquittal at special hearing—serious offence);
    - section 335 (2), (3) or (4) (Fitness to plead—Magistrates Court).
- (2) The tribunal may (on application or on its own initiative) review the person's fitness to plead at any time.
- (3) However, the tribunal must review the person's fitness to plead—
- (a) as soon as practicable (but within 3 months) after the end of 12 months after the order is made; and
  - (b) at least once every 12 months after each review.
- (4) Subsection (3) does not apply if—
- (a) the person has already been found fit to plead; or

- (b) the director of public prosecutions has told the tribunal, in writing, of the director's intention not to take further proceedings against the person in relation to the offence.
- (5) On a review, the tribunal must determine on the balance of probabilities, and in accordance with section 68 (3) and (4), whether the person is unfit to plead.
- (6) To remove any doubt, this section applies even if the person is no longer in custody or under a mental health order.

*Note* A person the subject of a proceeding may be summoned to appear at the proceeding (see s 90).

- (7) This section applies whether the determination mentioned in subsection (1) (a) was made before or is made after the commencement of this section.
- (8) Subsection (7) is declared to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (9) Subsections (7) and (8) and this subsection expire 3 months after the day this section commences.

## **19 Service of determinations and recommendations**

### **Section 71**

*after*

69

*insert*

, 69A

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2 March 2004.

**2 Notification**

Notified under the Legislation Act on 16 March 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).

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I certify that the above is a true copy of the Crimes Amendment Bill 2004 which originated in the Assembly as the Crimes Amendment Bill 2004 (No 2) and was passed by the Legislative Assembly on 11 March 2004.

Clerk of the Legislative Assembly

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