



Criminal Law (Mental Impairment) Act 2023 (WA)

PRACTICE NOTE 2 / 2024 – AFTER-HOURS BREACH

The Mental Impairment Review Tribunal

Section 195 of the *Criminal Law (Mental Impairment) Act 2023 (WA)* (the Act) provides that the President may from time-to-time issue, amend or revoke practice notes for regulating the practice and procedures of the Mental Impairment Review Tribunal (the Tribunal).

Notification of a breach/suspected breach – afterhours

The after-hours contact person is to follow the after-hours handbook for step-by-step guidance on what to do if you receive a call reporting a breach or suspected breach of an order under the Act.

The role of the after-hours contact is to be the conduit of information between the caller/reported breach and the information that is provided to the President. They are not required (or able) to provide advice or make a decision as it relates to an alleged breach or whether a warrant should be issued.

Paramount consideration

The paramount consideration for all functions performed under the Act is the protection of the community.

Warrants

It is likely that you will receive a call from Police asking for a warrant to be issued.

Refer to the after-hours handbook, but a warrant can only be issued for a breach of LOA Order.

A warrant cannot be issued for a breach of custody order alone.

For a breach of Community Supervision Order, there are limitations on immediate action that can be undertaken. A warrant can only be issued once an application is lodged in court by the State Solicitor's Office, which will more than likely be during business hours. Neither the courts nor the State Solicitor's Office has an after-hours arrangement for these matters in place.

Guidelines for dealing with a suspected breach of order

The after-hours manager has discretion to assess the merit of the reported breach or suspected breach. In doing so, the after-hours manager is to follow the after-hours handbook and consider the following:

1. Confirm the details of the supervised person, confirm the current order, expiry date of order, order conditions, any recent variations to order conditions. Request more information or clarification if there are gaps.
2. Establish what the breach or suspected breach is and match that up with the order conditions. Consider whether the reported breach is aligned to a breach of order conditions or is for something unrelated.
3. If the person has re-offended, ask what the new charges are. Are they serious offences. Do they involve victims, DV or other serious matters.



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4. Consider whether the reported breach is vexatious or whether the risk to the protection of the community is minimal or negligible.
5. Consider what realistic steps can be taken by the President after-hours in order to mitigate the risk. Ask the caller what they are wanting the President to do that they (the caller) cannot do themselves.
6. Assess whether other actions can be taken in lieu of an after-hours decision being made. For example, in the case of re-offending, can Police charge for the re-offending and refuse bail without the need for an after-hours warrant as well. That way, the matter can be listed to the Tribunal on the next working day hearing.
7. If the supervised person has already been charged with a new offence and is refused bail by Police and the phone call is just to notify the Tribunal of the new charge, it is more than likely that does not need an after-hours response and can be listed to a full Tribunal hearing within a few days – which can be actioned during business hours. There is no need to contact the President to issue a warrant in these cases.
8. If you are required to contact the President very late in the evening or in the early hours of the morning, send a text message to the President first to inform you are about to call.
9. If the President does not respond to a call within 30 minutes of the first call attempt on his contact number, the after-hours manager must advise the caller there is no capacity for the Tribunal to take any action at this time.
10. At this stage, a Deputy President will not be an alternative after-hours contact in the absence of the President.

Ultimately, the President is responsible for considering whether or not the highlighted risk can continue to be managed in the community, or whether a warrant needs to be issued.

Terms of the Practice Note

This practice notes takes effect on and from the date of signing and shall remain in full force and effect until such time as it is revoked by further instrument in writing signed by the President.

Signed

A handwritten signature in black ink, appearing to read 'Jeremy Curthoys'.

The Honourable Jeremy Curthoys
PRESIDENT
MENTAL IMPAIRMENT REVIEW TRIBUNAL

2 September 2024