



Criminal Law (Mental Impairment) Act 2023 (WA)

PRACTICE NOTE 4 / 2024 – EXTENDED ORDERS [CUSTODY ORDERS]

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).

Extended Orders – Custody Orders

Under section 103(3) of the Act, the requisite ‘test’ for the Tribunal in making a recommendation to the Attorney General for an extended custody order is “*so as to ensure the adequate protection of the community against an unacceptable risk that the person will commit a serious offence*”.

The President recognises this is a very high benchmark for the Tribunal to be satisfied of and has concerns there may be other matters that contribute to the risk presented by a supervised person that would equally support an argument for the Tribunal to recommend that the Attorney General apply for an extended custody order.

The President understands significant risk can present in varying forms that are outside the threshold explained at section 103(3) and that it may be appropriate that the supervised person be subject to a period of community supervision that need not include the underlying custody order in order to manage such identified risks appropriately.

Community supervision is an option which is available to the Court to consider at an extended order hearing after an application is made. Section 110(4) refers.

Notes for the Tribunal

When considering a matter at an extended order hearing, the Tribunal is to consider and report on the need for an extended custody order as expressed at section 103, and must also consider whether a period of community supervision is more appropriate, as detailed in the matter at section 114(2), specifically that “*the supervised person should remain under supervision due to the person’s rehabilitation, retraining or resocialisation requirements*”.

Indeed, this is the requirement that the Tribunal will be considering at hearings and reports under section 104(2).

When considering the above, the Tribunal would be consistent in its approach of considering similar matters related to the need for an extended custody order and the President does not consider this to be an extension of authority not entitled to the Tribunal.

The Attorney General was briefed on this approach and accepted this as the preferred option, on 25 July 2024.



**Mental Impairment Review Tribunal
Western Australia**

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 'J. Curthoys'.

The Honourable Jeremy Curthoys
PRESIDENT
MENTAL IMPAIRMENT REVIEW TRIBUNAL

6 September 2024