



Western Australia

Criminal Law (Mentally Impaired Accused) Act 1996 2

**Criminal Law (Mentally Impaired Accused)  
Regulations 1997**



Western Australia

# **Criminal Law (Mentally Impaired Accused) Regulations 1997**

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Western Australia

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*Reprints Act 1984* as  
at 4 April 2008

Criminal Law (Mentally Impaired Accused) Act 1996<sup>2</sup>

## **Criminal Law (Mentally Impaired Accused) Regulations 1997**

### **1. Citation**

These regulations may be cited as the *Criminal Law (Mentally Impaired Accused) Regulations 1997*<sup>1</sup>.

[*Regulation 1 amended: Gazette 31 Jul 2007 p. 3795.*]

### **2. Commencement**

These regulations come into operation on the day on which the *Criminal Law (Mentally Impaired Accused) Act 1996* comes into operation<sup>1,3</sup>.

### **3. Court to provide documents to Board (s. 25)**

- (1) When a court makes a custody order the Registrar of the court is to —
  - (a) immediately notify the Board that the order has been made; and
  - (b) within 2 working days after the order is made give to the Board copies of the documents listed in subsection (2).
- (2) The documents to be provided to the Board are —
  - (a) the custody order;
  - (b) the prosecution notice or indictment;

- (c) either —
  - (i) the statement of facts by the prosecutor;
  - (ii) if there is no statement of facts, a copy of the relevant parts of the transcript of proceedings; or
  - (iii) if there is no transcript or it will not be available in time, a written summary of the facts prepared by the judicial officer who made the order;
- (d) the offender's criminal record (if tendered to the court);
- (e) any pre-sentence report;
- (f) any other reports considered by the court when making the custody order; and
- (g) either —
  - (i) the written reasons for making the custody order;
  - (ii) if written reasons are not given or they will not be available in time, a copy of the relevant parts of the transcript of proceedings; or
  - (iii) if there is no transcript or it will not be available in time, a written summary of the reasons prepared by the judicial officer who made the order.

*[Regulation 3 amended: Gazette 31 Jul 2007 p. 3795.]*

**4. Absence without leave — prescribed persons (s. 31)**

A person is qualified for the purposes of section 31(3) of the Act if the person is a mental health practitioner as defined in the *Mental Health Act 2014* section 4.

*[Regulation 4 amended: Gazette 29 Dec 2015 p. 5178.]*

**5. Forms**

- (1) The forms set out in Schedule 1 are prescribed in relation to the matters specified in those forms.

- (2) Subject to section 74 of the *Interpretation Act 1984*, if a form is prescribed in relation to a matter, the matter is to be done, effected or set out in that form.

**Schedule 1**

**Forms**

Form 1 — Arrest Warrant

WESTERN AUSTRALIA <i>Criminal Law (Mentally Impaired Accused) Act 1996, s. 37, 49</i> <b>ARREST WARRANT</b>	CWI Warrant No.:																
<b>To</b>	All police officers																
<b>Accused</b>	Name: _____ Date of birth: _____																
<b>Reasons for issue</b>	The accused has been charged with the offences set out below and was released on a release order. That order has now been cancelled.																
<b>Command</b>	You are commanded to arrest the accused and take him or her to the place of custody set out below.																
<b>Offences</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Charge/indict no.</th> <th style="width: 70%;">Offence</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Charge/indict no.	Offence														
Charge/indict no.	Offence																
<b>Release order</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Date of order: _____</td> <td style="width: 50%;">Date release: _____</td> </tr> <tr> <td colspan="2">Date order cancelled: _____</td> </tr> </table>	Date of order: _____	Date release: _____	Date order cancelled: _____													
Date of order: _____	Date release: _____																
Date order cancelled: _____																	
<b>Place of custody</b>																	



<b>Issuing officer</b>	Name:	Date:
	Office:	
	Signature:	
<b>Details of arrest</b> (To be completed by police officer)	Date:	Time:
	Place:	
	Police officer (name)	
	Station/division:	No.:
	Signature:	Date:

*[Form 1 amended: Gazette 31 Jul 2007 p. 3795.]*

Form 2 — Custody Order

<p>WESTERN AUSTRALIA</p> <p><i>Criminal Law (Mentally Impaired Accused) Act 1996,</i> s. 16, 19, 21, 22</p> <p style="text-align: center;"><b>CUSTODY ORDER</b></p>	<p><input type="checkbox"/> Supreme Court</p> <p><input type="checkbox"/> District Court</p> <p><input type="checkbox"/> Magistrates Court</p> <p><input type="checkbox"/> Children's Court</p> <p>At:</p>	
<b>To</b>	<p>All police officers                  All persons authorised to exercise a power set out in clause 5 of Schedule 2 to the <i>Court Security and Custodial Services Act 1999</i>                  Persons in charge of authorised hospitals                  Chief executive officers under the <i>Prisons Act 1981</i> or the <i>Young Offenders Act 1994</i>.</p>	
<b>Accused</b>	Name:	Date of birth:
<b>Command</b>	<p>The accused has been charged with the offences set out below. You are ordered to take the accused to the place of custody set out below and detain him or her there until a determination is made by the Board under section 25 of the <i>Criminal Law (Mentally Impaired Accused) Act 1996</i>.</p>	
<b>Reasons for issue</b>	<p><input type="checkbox"/> Unfit to stand trial —</p> <p style="padding-left: 20px;"><input type="checkbox"/> in court of summary jurisdiction (s. 16)</p> <p style="padding-left: 20px;"><input type="checkbox"/> in superior court (s. 19)</p> <p><input type="checkbox"/> Acquitted on account of unsoundness of mind —</p> <p style="padding-left: 20px;"><input type="checkbox"/> in superior court (s. 21)</p> <p style="padding-left: 20px;"><input type="checkbox"/> in court of summary jurisdiction (s. 22)</p>	

<b>Offences</b>	Charge/indict no.	Offence

  

<b>Place of custody</b>	
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<b>Issuing officer</b>	Name:	Date:
	Judicial officer (s) / Clerk of Arraigns	
	Signature:	

*[Form 2 amended: Gazette 28 Jul 2000 p. 4008; 31 Jul 2007 p. 3795.]*

Form 3 — Hospital Order

<p>WESTERN AUSTRALIA</p> <p><i>Criminal Law (Mentally Impaired Accused) Act 1996, s. 5, 14</i></p> <p><b>HOSPITAL ORDER</b></p>	<p><input type="checkbox"/> Supreme Court</p> <p><input type="checkbox"/> District Court</p> <p><input type="checkbox"/> Magistrates Court</p> <p><input type="checkbox"/> Children’s Court</p> <p>At:</p>
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<b>To</b>	<p>All police officers</p> <p>All persons authorised to exercise a power set out in clause 5 of Schedule 2 to the <i>Court Security and Custodial Services Act 1999</i></p> <p>Persons in charge of authorised hospitals</p> <p>Chief executive officers under the <i>Prisons Act 1981</i> or the <i>Young Offenders Act 1994</i>.</p>
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<b>Accused</b>	Name:	Date of birth:
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<b>Order</b>	<p>The accused has been charged with the offences set out below. You are ordered to take the accused to the authorised hospital set out below for examination by a psychiatrist to determine if he or she should be made an involuntary patient.</p> <p>If the accused is made an involuntary patient, you must detain him or her in an authorised hospital until the appearance date when you must bring him or her to court.</p> <p>If the accused is not made an involuntary patient, he or she is to be detained in custody in prison or a detention centre (as the case may be) until the appearance date.</p>
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Offences	Charge/indict no.	Offence

<b>Authorised hospital</b>			
<b>Appearance</b>	Date:	Time:	
	Place:		
<b>Issuing officer</b>	Name:		Date:
	Judicial officer (s) / Clerk of Arraignment		
	Signature:		
<b>Results of assessment by psychiatrist</b>	I have examined the accused and — <input type="checkbox"/> have <input type="checkbox"/> have not made him or her an involuntary patient.		
	Name of psychiatrist:		Date:
	Signature:		

*[Form 3 amended: Gazette 28 Jul 2000 p. 4009; 31 Jul 2007 p. 3795-6.]*

Form 4 — Release Order

WESTERN AUSTRALIA <i>Criminal Law (Mentally Impaired Accused) Act 1996, s. 35</i> <b>RELEASE ORDER</b>
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<b>Accused</b>	Name:	Date of birth:
	Address:	

<b>Offences</b>	Charge/indict no.	Offence

<b>Reason for order</b>	The accused was charged with the offences set out above. A custody order was made against the accused because he or she was —
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Unfit to stand trial —                         <ul style="list-style-type: none"> <li><input type="checkbox"/> in court of summary jurisdiction</li> <li><input type="checkbox"/> in superior court</li> </ul> </li> <li><input type="checkbox"/> Acquitted on account of unsoundness of mind —                         <ul style="list-style-type: none"> <li><input type="checkbox"/> in superior court</li> <li><input type="checkbox"/> in court of summary jurisdiction</li> </ul> </li> </ul>

<b>Release order</b>	The accused is to be released — <input type="checkbox"/> unconditionally or <input type="checkbox"/> on the following conditions:  Date accused to be released: _____ Date of expiry of order (if any): _____
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<b>Governor</b>	Name: _____	Date: _____
	Signature: _____	

<b>NOTE TO THE ACCUSED</b>	<b>If this release order is subject to conditions and you breach those conditions, the release order may be cancelled. If this happens the custody order made against you by the court will come back into force.</b>
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*[Form 4 amended: Gazette 31 Jul 2007 p. 3796.]*



**Notes**

<sup>1</sup> This is a compilation of the *Criminal Law (Mentally Impaired Accused) Regulations 1997* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Criminal Law (Mentally Impaired Defendants) Regulations 1997</i> <sup>4</sup>	11 Nov 1997 p. 6215-20	13 Nov 1997 (see r. 2)
<i>Criminal Law (Mentally Impaired Defendants) Amendment Regulations 2000</i>	28 Jul 2000 p. 4008-9	28 Jul 2000
<b>Reprint 1: The Criminal Law (Mentally Impaired Defendants) Regulations 1997 as at 6 Feb 2004</b> (includes amendments listed above)		
<i>Criminal Law (Mentally Impaired Defendants) Amendment Regulations 2007</i>	31 Jul 2007 p. 3794-6	r. 1 and 2: 31 Jul 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Aug 2007 (see r. 2(b))
<b>Reprint 2: The Criminal Law (Mentally Impaired Accused) Regulations 1997 as at 4 Apr 2008</b> (includes amendments listed above)		
<i>Criminal Law (Mentally Impaired Accused) Amendment Regulations 2015</i>	29 Dec 2015 p. 5177-8	r. 1 and 2: 29 Dec 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 30 Dec 2015 (see r. 2(b))

<sup>2</sup> Formerly referred to the *Criminal Law (Mentally Impaired Defendants) Act 1996* the short title of which was changed to the *Criminal Law (Mentally Impaired Accused) Act 1996* by the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 82.

<sup>3</sup> Formerly referred to the *Criminal Law (Mentally Impaired Defendants) Act 1996* the short title of which was changed to the *Criminal Law (Mentally Impaired Accused) Act 1996* by the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 82. This reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

<sup>4</sup> Now known as the *Criminal Law (Mentally Impaired Accused) Regulations 1997*; citation changed (see note under r. 1).