



Western Australia

Criminal Law (Mental Impairment) Act 2023

Criminal Law (Mental Impairment) Act 2023

Contents

Part 1 — Preliminary

Division 1 — Introduction

1.	Short title	4
2.	Commencement	4

Division 2 — General overview

3.	Overview of Act	4
4.	Overview: supervision orders	6
5.	Overview: appeals and internal review	8
6.	Overviews are guide only	8

Division 3 — Objects, principles and paramount consideration

7.	Objects and principles	9
8.	Paramount consideration	11

Division 4 — Interpretation

9.	Terms used	11
10.	Child-specific considerations	18
11.	Commission of offence: persons who have been acquitted on account of mental impairment	18

Division 5 — Other provisions

12.	Act binds Crown	19
13.	Application of <i>Courts and Tribunals (Electronic Processes Facilitation) Act 2013</i> Part 2	19

Notes

	Compilation table	20
	Uncommenced provisions table	20

Defined terms

Criminal Law (Mental Impairment) Act 2023

An Act —

- to make provision in relation to criminal proceedings involving persons with mental impairment; and
- to provide for special criminal proceedings for persons who are unfit to stand trial; and
- to provide for the supervision of persons who, in special criminal proceedings, are found to have committed an offence; and
- to provide for the supervision of persons acquitted on account of mental impairment; and
- to provide for the safe reintegration into the community of persons supervised under this Act; and
- to repeal the *Criminal Law (Mentally Impaired Accused) Act 1996* and the *Criminal Law (Mentally Impaired Accused) Regulations 1997*; and
- for related purposes.

Part 1 — Preliminary

Division 1 — Introduction

1. Short title

This is the *Criminal Law (Mental Impairment) Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Division 2 — General overview

3. Overview of Act

- (1) This Part provides for preliminary matters, including —
 - (a) the objects of this Act and the principles and considerations to which persons performing functions under this Act must have regard; and
 - (b) the interpretation of terms and expressions used in this Act.
- (2) Part 2 provides for certain general matters appropriately dealt with at the beginning of this Act, including provisions that —
 - (a) address matters that can take place in the initial stages of criminal proceedings; or
 - (b) have a bearing on many of the provisions that follow including, importantly, aspects of the interaction of this Act with the *Mental Health Act 2014*.

- (3) Part 3 provides for —
- (a) raising and deciding the question of whether an accused is fit to stand trial; and
 - (b) the court procedures, including special proceedings, for dealing with an unfit accused.
- (4) If a person is acquitted on account of mental impairment in an ordinary criminal proceeding or is so acquitted on appeal, and therefore must be dealt with under this Act, Part 4 provides that the court must deal with the accused under Part 5 of this Act.

Note for this subsection:

The *Criminal Procedure Act 2004* section 149(1) and the *Criminal Appeals Act 2004* sections 30(5), 32(7) and 32A(6) set out the requirement to deal with such acquitted accused under this Act.

- (5) Part 5 provides for the orders that can be made by a court in relation to an accused who —
- (a) has been acquitted on account of mental impairment; or
 - (b) although not fit to stand trial, has been found to have committed an offence.

Note for this subsection:

The court can release the person unconditionally (in some circumstances), or impose a community supervision order or custody order.

- (6) Part 6 provides for the administration, by the Mental Impairment Review Tribunal, of the orders to which supervised persons are subject.

Note for this subsection:

A supervised person is a person subject to a supervision order made under this Act.

- (7) Part 7 provides, in effect, for the extension of custody and community supervision orders by the Supreme Court if the court is satisfied that it is necessary on grounds that relate to the protection of the community.

- (8) Part 8 provides for mental health advocacy services for unfit accused and supervised persons, unless those services can be provided under the *Mental Health Act 2014* or the *Declared Places (Mental Impairment) Act 2015*.
- (9) Part 9 provides for victim impact statements and victim submissions to be given or made to a relevant court or the Mental Impairment Review Tribunal.
- (10) Part 10 provides for the Mental Impairment Review Tribunal, its jurisdiction, membership, procedures and related matters.
- (11) Part 11 provides for —
 - (a) the transfer of supervised persons to another State or Territory in which a corresponding law is in force; and
 - (b) the transfer to the State and disposition of persons subject to an interstate supervision order; and
 - (c) the interaction between that Part and other transfer related laws.
- (12) Part 12 provides for appeals to the Court of Appeal against certain decisions of courts other than courts of summary jurisdiction.
- (13) Part 13 includes provisions relating to electronic monitoring of supervised persons, the protection and sharing of information, interactions between supervision orders and sentences, and other provisions of general application.
- (14) Part 14 repeals the *Criminal Law (Mentally Impaired Accused) Act 1996* and provides for the transition from the repealed Act to this Act.

4. Overview: supervision orders

- (1) Supervision orders are —
 - (a) custody and community supervision orders made under Part 5;

- (b) custody orders made under Part 6 in the course of the administration of a supervision order under that Part; see section 89(1);
 - (c) interim and extended custody and community supervision orders made under Part 7;
 - (d) community supervision orders made under Part 7 in the course of the review of an extended custody order under that Part; see section 110(4) or 121(3);
 - (e) interim dispositions made under Part 11 for a person subject to an interstate supervision order who is transferred to the State;
 - (f) custody and community supervision orders made under Part 11 on review by the Supreme Court of an interim disposition; see section 206(3)(a) and (b).
- (2) Other than interim dispositions, which are made by the Minister, supervision orders are made by a court.
- (3) The custody and community supervision orders referred to in subsection (1)(a) can be made following —
- (a) an ordinary criminal proceeding in which the accused is acquitted on account of mental impairment; or
 - (b) an appeal under the *Criminal Appeals Act 2004* in which the offender is acquitted on account of mental impairment; or
 - (c) a special proceeding under Part 3 Division 3.
- (4) Although custody and community supervision orders referred to in subsection (1)(b), (d) and (f) are not made under Part 5, Part 5 (to the extent relevant) applies to their making; see sections 89(5), 110(5), 121(4) and 206(5).
- (5) Although interim and extended custody and community supervision orders, and interim dispositions, are not custody or community supervision orders as defined, Part 6 (to the extent

relevant) applies to the administration of them; see sections 107(4), 108(4), 109(2), 113(2) and 205(4) and (5).

5. Overview: appeals and internal review

- (1) Relevant decisions, findings and orders of courts in ordinary criminal proceedings and in proceedings under Parts 3 and 5 are appealable under the *Criminal Appeals Act 2004*.
- (2) The results of those appeals can include that the accused must be dealt with under this Act; see Part 4.
- (3) Part 6 Division 7 provides for —
 - (a) internal review of decisions of the Tribunal in the administration of supervision orders under Part 6; and
 - (b) appeals to the Supreme Court against decisions of courts of summary jurisdiction relating to making, cancelling or confirming custody orders and community supervision orders; and
 - (c) appeals to the Supreme Court against some initial decisions of the Tribunal and most internal review decisions of the Tribunal.
- (4) Part 12 provides for appeals to the Court of Appeal against certain decisions of courts other than courts of summary jurisdiction.

6. Overviews are guide only

The overviews in this Division and the overviews in other Parts of this Act are intended only as a guide to the general scheme and effect of this Act, and do not limit or otherwise affect the other provisions of this Act.

Division 3 — Objects, principles and paramount consideration

7. Objects and principles

- (1) The objects of this Act are as follows —
- (a) to ensure the protection of the community;
 - (b) to ensure persons with mental impairment who are charged with an offence —
 - (i) are identified early in their contact with the justice system; and
 - (ii) are given a reasonable opportunity to become fit to stand trial; and
 - (iii) are given a fair hearing even if they are unfit to stand trial in accordance with ordinary procedures; and
 - (iv) are not found to have committed the offence unless, on the evidence available, it can be proved to the ordinary criminal standard of proof that the person committed the offence; and
 - (v) are subject to the least possible interference with their rights and dignity;
 - (c) to ensure that persons who are subject to supervision orders —
 - (i) are afforded procedural fairness in relation to the administration and management of those orders; and
 - (ii) are reintegrated into the community in a safe manner.
- (2) A person performing a function under this Act (including when constituting or a member of a court or tribunal) must have regard to the following principles —

- (a) that persons with mental impairment should be subject to the least possible restriction on their freedom consistent with the protection of the community;
- (b) that persons with mental impairment in the justice system should have access to advocacy services;
- (c) that persons with mental impairment in the justice system should be provided with the best possible treatment, care and support;
- (d) that persons with mental impairment in the justice system should be dealt with in a manner that is culturally appropriate;
- (e) that persons with mental impairment in the justice system should not be subject to outcomes under this Act that restrict their freedom more severely than if they had been convicted of the offence that they have been found to have, or are alleged to have, committed;
- (f) that there should be special provision to ensure the fair treatment of children with mental impairment who have been found to have, or are alleged to have, committed offences;
- (g) that detaining a child with mental impairment for an offence, whether before or after the child is found to have committed the offence, should only be used as a last resort and, if required, should only be used for as short a time as is necessary;
- (h) that the detention of a child, if required, should be in a facility that is for, and suitable for, children;
- (i) that if a child who has not reached the age of 16 years is detained in a facility in which an adult is detained, the child should not be exposed to contact with an adult detained in the facility;

- (j) that if a child who has reached the age of 16 years is detained in a facility in which an adult is detained, the child should not share living quarters with an adult detained in the facility;
- (k) that victims of offences committed by persons with mental impairment should have the opportunity to be acknowledged and heard;
- (l) that the role of carers and families in the treatment, care and support of persons with mental impairment should be recognised.

8. Paramount consideration

The paramount consideration of a person when performing a function under this Act (including when constituting or a member of a court or tribunal) is the protection of the community.

Division 4 — Interpretation

9. Terms used

- (1) In this Act —

accused means a person charged with an offence, and includes a person —

- (a) acquitted on account of mental impairment or in respect of whom a finding under section 41(2)(c) has been made; but
- (b) in respect of whom no order has yet been made under section 46;

administrator means —

- (a) an administrator as defined in the *Guardianship and Administration Act 1990* section 3(1); and
- (b) a donee of an enduring power of attorney as those terms are defined in the *Guardianship and Administration Act 1990* section 102;

advocacy services officer has the meaning given in the *Mental Health Act 2014* section 374(1);

audio link has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

authorised hospital has the meaning given in the *Mental Health Act 2014* section 4;

carer has the meaning given in the *Carers Recognition Act 2004* section 5;

CEO means the chief executive officer of the Department;

CEO (Corrections) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Sentence Administration Act 2003* Part 8;

CEO (Young Offenders) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994*;

charge has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

Chief Mental Health Advocate has the meaning given in the *Mental Health Act 2014* section 4;

Chief Psychiatrist has the meaning given in the *Mental Health Act 2014* section 4;

child means a person who is under 18 years of age;

child-specific considerations means the considerations set out in section 10;

close family member has the meaning given in the *Mental Health Act 2014* section 281;

community has a meaning affected by subsection (3);

community corrections officer has the meaning given in the *Sentence Administration Act 2003* section 4(2);

Community Services Department means the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004*;

community supervision order (CSO) means an order of a kind referred to in section 52 made under —

- (a) section 46(1)(b); or
- (b) section 110(4); or
- (c) section 121(3); or
- (d) section 206(3)(b);

custody order (CO) means an order of a kind referred to in section 49 made under —

- (a) section 46(1)(a); or
- (b) section 89(1); or
- (c) section 206(3)(a);

declared place means a place to which a declaration under section 60 applies;

Department means the department of the Public Service principally assisting in the administration of this Act;

Deputy President means a Deputy President of the Tribunal;

detention centre has the meaning given in the *Young Offenders Act 1994* section 3;

Disability Services Commission means the Disability Services Commission referred to in the *Disability Services Act 1993* section 6;

DSC declared place means a declared place that is controlled and managed by or on behalf of the Disability Services Commission under the *Declared Places (Mental Impairment) Act 2015*;

enduring guardian has the meaning given in the *Guardianship and Administration Act 1990* section 3(1);

experienced lawyer has the meaning given in section 155;

extended community supervision order means an order made under section 114(1);

extended custody order means an order made under section 110(1);

extended order means an extended community supervision order or an extended custody order;

guardian means —

- (a) a guardian as defined in the *Guardianship and Administration Act 1990* section 3(1); and
- (b) an enduring guardian;

health professional has the meaning given in the *Mental Health Act 2014* section 4;

hospital order means an order made under section 19;

inpatient treatment order has the meaning given in the *Mental Health Act 2014* section 4;

interim community supervision order means an order made under section 108(2);

interim custody order means an order made under section 107(2);

interim disposition has the meaning given in section 200;

involuntary inpatient has the meaning given in the *Mental Health Act 2014* section 4;

involuntary patient has the meaning given in the *Mental Health Act 2014* section 4;

leave of absence order has the meaning given in section 77(1);

limiting term —

- (a) for a custody order — means the term set under section 50(2); and
- (b) for an extended custody order — means the term set under section 110(1);

member means a member of the Tribunal;

mental health advocate has the meaning given in the *Mental Health Act 2014* section 4;

mental illness has the meaning given in the *Mental Health Act 2014* section 4;

mental impairment means any of, or a combination of, the following —

- (a) an intellectual disability;
- (b) a mental illness as defined in *The Criminal Code* section 1(1);
- (c) an acquired brain injury;
- (d) dementia;

Minister for Corrective Services means the Minister to whom the administration of the *Prisons Act 1981* is committed;

parent, in relation to a child, includes any person who has parental responsibility (as defined in the *Family Court Act 1997* section 68) for the child;

personal information means information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

prescribed means prescribed by regulations made under this Act;

President means the President of the Tribunal;

prison has the meaning given in the *Prisons Act 1981* section 3(1);

psychiatrist has the meaning given in the *Mental Health Act 2014* section 4;

psychologist has the meaning given in the *Mental Health Act 2014* section 4;

Public Advocate has the meaning given in the *Guardianship and Administration Act 1990* section 3(1);

remuneration has the meaning given in the *Salaries and Allowances Act 1975* section 4(1);

representative, of a supervised person, means any of the following —

- (a) a guardian of the person;
- (b) a person recognised by the Tribunal under section 58 as a representative of the supervised person;

safety of the community has a meaning affected by subsection (4);

serious offence means an offence listed in Schedule 1;

special proceeding means a proceeding under Part 3 Division 3 Subdivision 3;

specified, in relation to an order, instrument or other document made under or referred to in this Act, means specified in that order, instrument or document;

statutory penalty has the meaning given in the *Sentencing Act 1995* section 4(1);

supervised person means a person subject to a supervision order;

supervising officer, for a supervised person, means a person designated under section 99 for the supervised person and, where relevant, includes a person referred to in section 54(2)(a);

supervision order means any of the following —

- (a) a community supervision order;
- (b) a custody order;
- (c) an extended community supervision order;
- (d) an extended custody order;
- (e) an interim community supervision order;
- (f) an interim custody order;
- (g) an interim disposition;

supporting agency has the meaning given in section 219;

support measure means any measure that may facilitate participation of an accused or supervised person in proceedings before a court or the Tribunal, including (without limitation) any of the following —

- (a) that the accused or supervised person, while before the court or Tribunal, have near them a person approved by the court or Tribunal who may provide them with support;
- (b) that the accused or supervised person have a communication partner (as defined in section 21) while communicating with the court or Tribunal;
- (c) that the accused or supervised person communicate with the court or Tribunal through the use of any device (for example, a communication board) approved by the court or Tribunal;

trial does not include —

- (a) a proceeding in relation to bail; or
- (b) a sentencing proceeding; or
- (c) a special proceeding;

Tribunal means the Mental Impairment Review Tribunal established by section 156;

underlying custody order, in relation to a leave of absence order, means the custody order in respect of which the leave of absence order is made;

unfit accused means an accused who is currently unfit to stand trial or in respect of whom the question of fitness to stand trial has been raised but has yet to be resolved;

victim, of an offence, has the meaning given in section 142;

video link has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

working day means a day other than a Saturday, a Sunday or a public holiday.

- (2) A reference to varying conditions of an order includes a reference to —
 - (a) imposing new conditions on the order; and
 - (b) cancelling 1 or more, but not all, conditions of the order.
- (3) A reference to the community includes any community and is not limited to the community of Western Australia or Australia.
- (4) A reference to the safety of the community includes a reference to the safety of an individual in the community.

10. Child-specific considerations

For the purposes of this Act, the child-specific considerations are —

- (a) the age and level of maturity of the child;
- (b) the availability of a responsible person (as defined in the *Bail Act 1982* Schedule 1 Part C clause 2) to care for the child;
- (c) any requirement that the child attend school or educational or vocational training;
- (d) the availability of accommodation for the child;
- (e) any involvement in relation to the child of the Community Services Department;
- (f) the best interests of the child.

11. Commission of offence: persons who have been acquitted on account of mental impairment

- (1) A reference in this Act to the commission of an offence includes, in relation to a person who has been acquitted of the offence on account of mental impairment, a reference to the doing of the act or the making of the omission that would have constituted the offence of which the person was acquitted.

- (2) A reference in this Act to an offence that a person is found to have committed includes a reference to an offence of which the person was acquitted on account of mental impairment.
- (3) This section applies unless the contrary intention appears.

Division 5 — Other provisions

12. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

13. Application of *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2

The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies to this Act.

[Parts 2-15 have not come into operation.]

[Schedule 1 has not come into operation.]

=====

Notes

This is a compilation of the *Criminal Law (Mental Impairment) Act 2023*. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Law (Mental Impairment) Act 2023</i> Pt. 1	10 of 2023	13 Apr 2023	13 Apr 2023 (see s. 2(a))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Criminal Law (Mental Impairment) Act 2023</i> (other than Pt. 1)	10 of 2023	13 Apr 2023	1 Sep 2024 (see s. 2(b) and SL 2024/175 cl. 2)
<i>Western Australian Marine Amendment Act 2023</i> s. 32	31 of 2023	11 Dec 2023	1 Sep 2024 (see s. 2(b)(ii) and SL 2024/175 cl. 2)

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
accused.....	8(1)
administrator	9(1)
advocacy services officer	9(1)
audio link	9(1)
authorised hospital	9(1)
carer	9(1)
CEO	9(1)
CEO (Corrections)	9(1)
CEO (Young Offenders)	9(1)
charge.....	9(1)
Chief Mental Health Advocate	9(1)
Chief Psychiatrist	9(1)
child	9(1)
child-specific considerations.....	9(1)
close family member.....	9(1)
CO.....	9(1)
community	9(1)
community corrections officer.....	9(1)
Community Services Department	9(1)
community supervision order.....	9(1)
CSO.....	9(1)
custody order.....	9(1)
declared place	9(1)
Department.....	9(1)
Deputy President.....	9(1)
detention centre.....	9(1)
Disability Services Commission	9(1)
DSC declared place.....	9(1)
enduring guardian	9(1)
experienced lawyer	9(1)
extended community supervision order	9(1)
extended custody order	9(1)
extended order.....	9(1)
guardian	9(1)
health professional	9(1)
hospital order	9(1)
inpatient treatment order	9(1)
interim community supervision order	9(1)
interim custody order	9(1)

Defined terms

interim disposition	9(1)
involuntary inpatient	9(1)
involuntary patient	9(1)
leave of absence order.....	9(1)
limiting term	9(1)
member	9(1)
mental health advocate.....	9(1)
mental illness	9(1)
mental impairment	9(1)
Minister for Corrective Services	9(1)
parent	9(1)
personal information	9(1)
prescribed.....	9(1)
President	9(1)
prison	9(1)
psychiatrist	9(1)
psychologist	9(1)
Public Advocate	9(1)
remuneration	9(1)
representative	9(1)
safety of the community.....	9(1)
serious offence	9(1)
special proceeding.....	9(1)
specified	9(1)
statutory penalty.....	9(1)
supervised person.....	9(1)
supervising officer	9(1)
supervision order.....	9(1)
supporting agency	9(1)
support measure	9(1)
trial	9(1)
Tribunal.....	9(1)
underlying custody order	9(1)
unfit accused	9(1)
victim	9(1)
video link	9(1)
working day	9(1)

© State of Western Australia 2023.
This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0).
To view relevant information and for a link to a copy of the licence, visit www.legislation.wa.gov.au.
Attribute work as: © State of Western Australia 2023.
By Authority: GEOFF O. LAWN, Government Printer