



Fitness to Stand Trial

in Western Australia

Criminal Law (Mentally Impaired Accused) Act 1996 (WA)



What is Fitness to Stand Trial?

If a person is accused of a crime, they need to have the mental capacity to understand and take part in the court process.

If the person pleads not guilty to the charges, their case will go to trial in the court. At the trial, evidence will be presented and it will be decided if the person is guilty or not guilty of the charges.

Before a trial can take place, the accused person needs to be considered mentally fit to plead and stand trial. This means that they are able to understand the charges, the effect of their plea, and to follow the court proceedings.

What makes a person unfit to stand trial?

A person's fitness to stand trial can be questioned at any time before or during a trial.

The question may be raised by the Police or Prosecution, the accused person themselves, their lawyer, or the Judge or Magistrate.

A person may be mentally unfit to plead or stand trial if they are suffering from a significant mental impairment, such as intellectual disability, mental illness, acquired brain injury or senility.

The impairment must be so much that the person is unable to:

- understand the nature of the charge;
- understand the need to plead to the charge or the effect of a plea;
- understand the purpose of the trial;
- understand or exercise the right to challenge the appointment of jurors;
- follow the course of the trial;
- understand the substantial effect of evidence presented by the prosecution in the trial; and/or
- properly defend the charges.

About Ruah Legal Services

Ruah Legal Services launched in 2019 when the Mental Health Law Centre (MHLC) merged with Ruah Community Services. MHLC has been helping Western Australians with mental illness for more than 20 years. MHLC continues its important work as a specialist centre of Ruah Legal Services. We are an independent, not for profit, community legal service and Western Australia's experts in mental health law.

If you have a legal issue connected to a mental illness and you are experiencing financial hardship, our qualified and experienced lawyers can give you free confidential advice and represent you in court.

We specialise in involuntary treatment and matters under the *Mental Health Act 2014 (WA)*. We can also advise on:

- Criminal matters
- Guardianship and Administration
- Mentally Impaired Accused Review Board hearings
- Responding to Restraining Orders
- Care and Protection matters
- Mental Health Tribunals

To find out if you are eligible for assistance please call our Telephone Advice Line or visit ruahlegal.org.au.

Who decides if a person is mentally fit?

The Judge or Magistrate will decide if the accused person is fit to plead and stand trial. Before making their decision, they may take other steps, such as:

- ordering the person to be examined by a psychiatrist or other expert;
- ordering a report, by a psychiatrist or other expert, to be submitted to the court;
- adjourning the proceedings and, if there is a jury, discharging the jury; and/or
- making any other order the court thinks is necessary.

What happens if a person is found to be unfit to stand trial?

If the Judge or Magistrate decides that the accused person is not fit to stand trial, they can adjourn the case for 6 months to determine whether the accused becomes fit during that time.

If the accused person is not fit to stand trial or will not become fit to stand trial, the Judge or Magistrate must dismiss the charge, and either;

- release the person; or
- make a Custody Order.

What is a Custody Order?

A Custody Order means that the accused person must be detained in an authorised hospital, detention centre or prison until they are released by the Governor of Western Australia.

A Custody Order can only be made if the offence carries the possibility of a term of imprisonment.

An accused person can only be sent to hospital (usually the Frankland Centre at Graylands Hospital) if they have a mental illness that is able to be treated, otherwise they are detained in prison or a detention centre.

In deciding whether to issue a Custody Order, the court must consider the:

- strength of the evidence against the person;
- the nature of the alleged offence;
- the circumstances of the alleged crime;
- the accused's character and history; and
- the public interest.

How long does a Custody Order last?

If a Custody Order is made, the accused person will be held indefinitely, at the Governor's pleasure, regardless of the charges they face.

The Custody Order will be reviewed at least once a year by the Mentally Impaired Accused Review Board (MIARB).

The MIARB has limited powers. Its recommendations go to the WA Attorney General who then makes a recommendation to the Governor of Western Australia who decides whether or not the accused person should be released.

Can an accused person be charged again if they become fit?

If charges have been dismissed in the Magistrates Court the accused cannot be charged again for the same offence.

If charges have been dismissed in the District or Supreme Court, the accused can be charged again for the same offence once they become fit to stand trial.

"Please note: In April 2023, the WA Parliament passed a new piece of legislation called the *Criminal Law (Mental Impairment) Act 2023*. This Act changes how Custody Orders are reviewed, how long they last and the processes for release. It is expected that the new Act will come into operation on 1 September 2024. For more information, please refer to our brochure: "The Law on Custody Orders in WA is Changing."

Need legal advice? Call our Telephone Advice line

Monday to Friday 9am to 4pm

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Ruah Legal Services acknowledges and respects the traditional Aboriginal and Torres Strait Islander owners of the land on which we work, the first people of this country. We pay our respects to their culture and their Elders past, present and future.

Everyone is welcome. Everyone belongs.



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