



**MENTALLY IMPAIRED
ACCUSED
REVIEW BOARD**

ANNUAL REPORT

For the year ended 30 June 2008

CRIMINAL LAW (MENTALLY IMPAIRED ACCUSED) ACT 1996

CRIMINAL LAW (MENTALLY IMPAIRED ACCUSED) ACT 1996

TO: The Attorney General

FROM: The Mentally Impaired Accused Review Board

REPORT PURSUANT TO SECTION 48

“Before 1 October in each year, the Board is to give a written report to the Minister on -

- (a) the performance of the Board’s function during the previous financial year;
- (b) statistics and matters relating to mentally impaired accused; and
- (c) the operation of this Act as far as it relates to mentally impaired accused.”

The report covers the period 1 July 2006 to 30 June 2008.

MENTALLY IMPAIRED ACCUSED REVIEW BOARD MEMBERSHIP

The following persons constituted the Mentally Impaired Accused Review Board as at 30 June 2008.

Chairman: Judge Valerie French

Members: Dr P W Burvill MD DPM Emeritus Professor (UWA) – Psychiatrist member
 Ms S E McDonald M App Psychology (Clinical and Educational) – Psychologist member
 All community members of the Prisoners Review Board are members of this Board by virtue of their appointments to the Prisoners Review Board, however to bring some stability and continuity to this Board generally the same 2 members sit;
 Merillee Garnett
 Stuart Flynn

Deputy Members: Deputy to Dr P W Burvill - Vacant
 Mr P McEvoy M Psych (Clinical) – Deputy to Ms S E McDonald

Dr S J R Patchett M.B., Ch.B. declined being reappointed as the Psychiatrist member for a further term from 31 December 2007 and the Chairman thanks him for his work during his term with the Board.

Judge Valerie French was appointed as Chairman of the Board effective from 10 April 2006.

1. The Act

The Act is concerned with persons found not guilty of offences due to unsoundness of mind and those found to be mentally unfit to stand trial.

2. Statistical Overview

The Mentally Impaired Accused Review Board met on 23 occasions and made 157 decisions.

Conditional Release Orders have dropped for the second year in a row with 17 cases current on 30 June 2006, 15 on 30 June 2007 and 10 on 30 June 2008. Concerns raised in the last two Annual Reports have not been alleviated in 2007/8. The trend to detain mentally impaired accused persons in a prison or detention centre has continued with no 'declared places' being identified.

3. Update on the Review of the *Criminal Law (Mentally Impaired Defendants (Act) 1996* and the *Mental Health Act 1996*

In the 2005/6 financial year the Board reported a committee had been formed to make recommendations on amendments to the abovementioned legislation. We reported that a draft bill was being developed during 2006/7; this is still being drafted and is yet to be tabled in parliament.

4. Releases

A number of graduated releases from a custodial setting have occurred during the year. The Governor has approved the release of two persons on Conditional Release Orders and seven on Unconditional Release from Custody Orders. It should be noted that one person who was subject to a Custody Order has passed away.

5. Victim Representative and Victim Issues

The Mentally Impaired Accused Review Board takes into account submissions from victims when considering recommendations to the Governor. In addition, victim issues are considered in detail even when a submission is not received.

The relationships between the various victim services of the Department of Corrective Services and the lines of communication between the Victim-Offender Mediation Unit, staff of the Victim Notification Register and the Mentally Impaired Accused Review Board, continue to be strengthened.

The Board secretariat continues to meet with representatives of the Victim Notification Register to ensure that victims are advised of relevant decisions as soon as possible and are given appropriate opportunity to forward submissions in relation to the impact on them of any release of a mentally impaired accused person.

6. Administrative Support

Administrative support to the Board is provided by the State Review Boards Secretariat, which also supports the Prisoners Review Board and the Supervised Release Review Board.

MESSAGE FROM THE CHAIRMAN

There has been a significant decrease in the number of cases under the jurisdiction of the Board in the past year. As at 30 June 2007 there were 35 mentally impaired accused under custody orders, held either in prisons or as in-patients at Graylands Hospital or in the community under conditional release orders. By 30 June 2008 that number had decreased to 25. The fall in the number of mentally impaired accused is partly the result of 7 accused being unconditionally discharged from their custody orders. These accused had been living in the community for some years and were mentally stable. If there is any deterioration in their mental health, or medical assistance is required they can be dealt with adequately by the community mental health system.

The lack of appropriate residential facilities, and the critical shortage of resources in the mental health system generally, continues to impede the effective discharge of the Boards functions and the operation of the legislation. Mentally accused who suffer from cognitive impairment rather than mental illness can only be held in prisons if they are placed on a custody order by the courts. In many cases, particularly involving aboriginal mentally impaired accused who have little family or community support, they remain in prison even though they do not constitute a significant risk to the safety of the community. This is because there are simply no appropriate facilities or supportive accommodation for them to go to. If they are eligible for funding through Disability Services, arrangements to house them with extended family members with assistance from support services and mentors can sometimes be arranged. However, despite the efforts of a number of welfare workers, agencies and committed individuals these arrangements often fail. The legislation (*The Criminal Law (Mentally Impaired Accused) Act 1996*) contemplates that in those cases mentally impaired accused could be placed in a secure supervised environment described as a 'declared place.' Unfortunately despite the fact that the legislation has been in operation for over ten years this has not occurred. Although new legislation is in the process of being prepared this will not effect real change unless appropriate facilities are established and there is an increase in the resources available within the mental health system.

Although the numbers of mentally impaired accused may seem relatively small the fact that a high proportion of inmates in our prisons also suffer from significant mental health issues should not be overlooked. The Board is aware that many cases come under the jurisdiction of the Board following a tragic violent incident that has occurred as a direct result of a person suffering from mental health problems being unable to access appropriate medical assistance in a timely manner.

JUDGE VALERIE FRENCH
CHAIRMAN

STATISTICS

A. BOARD'S WORKLOAD

During the period 1 July 2007 to 30 June 2008, the Board met on 23 occasions (27 the previous year) and made 157 decisions (170 the previous year) in respect of Mentally Impaired Accused persons.

B. CUSTODY ORDERS BY COURTS

Part 3 of the Act: Mental Unfitness to Stand Trial:

Section 16: Order made by Court of Summary Jurisdiction

Section 19: Order made by Superior Court

Part 4 of the Act: Acquitted on Account of Unsoundness of Mind:

Section 21: Order made by Superior Court for schedule 1 offence

Section 22: Order made by Court of Summary Jurisdiction or Superior Court for an offence not schedule 1 offence.

Jurisdiction	No. of Orders	S16	S19	S21	S22
Supreme Court	1			1	
Magistrates Court					
District Court					
Children's Court					
Total	1			1	

C. PLACE OF CUSTODY ORDERS ISSUED BY THE BOARD

Section 25:

“Place of custody to be determined (by Board) within 5 days of order (by Court)”

Amendments to Place of Custody Orders have included alterations to enable the mentally impaired accused person to be detained at more than one place to facilitate the needs of the accused person, whilst continuing to have consideration for community safety. It also allows the treating psychiatrists and or Community Corrections Officer to transfer the mentally impaired accused to the approved placement in a timely manner, in light of bed shortages at the Frankland Centre or Graylands Hospital.

PLACES OF CUSTODY

Number considered by Board	Authorised Hospital*	Prison	Combined Place	Juvenile Detention Centre	Declared Place**
3	1 (Amended)	1	1 (Amended)	0	0

Notes:

- * The Frankland Centre and Plaistowe Ward, Graylands Hospital, are the only authorised hospitals with the facilities to cater for long term and high risk mentally impaired accused persons.
- * No place has yet been declared for this purpose.

D. REPORTS TO MINISTER

Section 33(1):

“At any time the Minister, in writing, may request the Board to report about a mentally impaired accused.”

Section 33(2):

“The Board must give the Minister a written report about a mentally impaired accused -

- (a) within 8 weeks after the custody order was made in respect of the accused;
- (b) whenever it gets a written request to do so from the Minister;
- (c) whenever it thinks there are special circumstances which justify doing so; and
- (d) in any event at least once in every year.”

Total Reports	Section 33(1)	Section 33(2)(a)	Section 33(2)(b)	Section 33(2)(c)	Section 33(2)(d)
27	0	1	0	9	17

E. LEAVE OF ABSENCE

Section 27(1)

“The Board may at any time recommend to the Minister that the Governor be advised to make an order allowing the Board to grant leave of absence to a mentally impaired accused.”

Section 27(2)

“The Governor may at any time –

- (a) make an order allowing the Board to grant leave of absence to a mentally impaired accused;
- (b) cancel an order made under paragraph (a).”

Section 28(1)

“If an order under section 27(2) is in effect, the Board may at any time make a leave of absence order in respect of a mentally impaired accused.”

Section 28(2)

“A leave of absence order is an order that the accused be given leave of absence for a period, not exceeding 14 days at any one time, determined by the Board –

- (a) unconditionally; or
- (b) on conditions determined by the Board.”

Total Leave of Absence	Section 27(1)	Section 27(2)	Section 28
14	2	1	13

E. RELEASE OF MENTALLY IMPAIRED ACCUSED PERSONS

Section 35(1)

“The Governor may at any time order that a mentally impaired accused be released by making a release order.”

Section 35(2)

“A release order is an order that on a release date specified in the order the accused is to be released –

- (a) unconditionally; or
- (b) on conditions determined by the Governor.”

Total Release Orders	Conditional release orders	Unconditional Release Orders
9	2	7

G. ACCUSED PERSONS - ANALYSIS OF MAIN OFFENCE AND PLACE OF CUSTODY ORDER

(Note: One mentally Impaired Accused died while under a Custody Order in Acacia Prison)

Offence	Prison	Hospital	Conditional Release Order	Discharge From Order	Total Under MIARB
Wilful Murder	2	1	2	0	5
Murder	1	2	1	0	4
Attempted Murder	1	2	3	1	6
Manslaughter	1	0	1	0	2
Agg. Sexual Assault	1	0	0	0	1
Sexual Penetration of Child (U13 Yrs of Age)	1	0	0	0	1
Unlawful Wounding	1	0	0	0	1
Grievous Bodily Harm	0	0	1	0	1
Assault Occasioning Bodily Harm	0	1	0	2	1
Robbery Whilst Armed	0	0	1	0	1
Arson	0	1	0	0	1
Assault Public Officer	1	0	0	1	1
Wilful Damage				1	
Indecent Dealing				1	
Going Armed in Public				1	

It should be noted that these figures refer to individuals and do not reflect the number of offences nor whether there are a multiple of serious offences attributed to a single individual.

YEAR TO YEAR COMPARISON

	2005	2006	2007	2008
Board Workload				
• Meetings	26	39	27	23
• Number of Decisions Made	180	231	170	157
Custody Orders (Courts)	(6)	(8)	(2)	(1)
• Section 16 (Unfit to Stand Trial – Lower Court)	2	1	1	0
• Section 19 (Unfit to Stand Trial – Superior Court)	1	4	0	0
• Section 21 (Schedule 1 – Unsoundness of Mind)	2	2	1	1
• Section 22 (Unsoundness of Mind)	1	1	0	0
Place of Custody Orders issued by the Board	(11)	(18)	(6)	(3)
• Authorised Hospital	9	6	3	1
• Prison	1	3	1	1
• Juvenile Detention Centre	1	0	0	0
• Declared Place	0	0	0	0
• Combined	-	9	2	1
Reports to the Minister	(37)	(45)	(30)	(27)
• Section 33 (2)(a)	10	7	3	1
• Section 33 (2)(b)	0	0	0	0
• Section 33 (2)(c)	9	10	8	9
• Section 33 (2)(d)	18	28	19	17
Leave of Absence approved by the Governor	9	7	3	1
Subsequent amendments to Leave of Absence Orders by the Board	15	22	9	13
Conditional Release Orders approved by the Governor	4	4	5	2
Unconditional Release Orders approved by the Governor	1	0	4	7
Cancellation of Conditional Release Orders	1	1	2	2
Completion of Conditional Release Order	1	3	0	1
Conditional Release Orders (Current)	15	17	15	9
Accused persons in custody	(22)	(20)	(19)	(16)
• Prison and Detention Centre	11	8	9	9
• Frankland Centre and Plaistowe Ward	11	12	10	7
Number of accused persons and gender	(37)	(39)	(35)	(25)
• Male	34	36	33	23
• Female	3	3	2	2
Aboriginality	(11)	(11)	(8)	(8)
• Male	11	11	8	8
• Female	0	0	0	0

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ATTORNEY GENERAL

MENTALLY IMPAIRED ACCUSED REVIEW BOARD ANNUAL REPORT 2007/2008

In accordance with Section 48 of the *Criminal Law (Mentally Impaired Accused) Act 1996*, submitted on behalf of the Chairman and Members of the Mentally Impaired Accused Review Board, is the Annual Report of the Board for the twelve month period ending 30 June 2008.

LEE BATEMAN
PUBLIC RELATIONS AND MEDIA COORDINATOR
STATE REVIEW BOARDS SECRETARIAT
COURT AND TRIBUNAL SERVICES

30 September 2008