



MENTALLY IMPAIRED ACCUSED REVIEW BOARD

ANNUAL REPORT

For the year ended 30 June 2009

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.”

This report covers the period 1 July 2008 to 30 June 2009.

MENTALLY IMPAIRED ACCUSED REVIEW BOARD **MEMBERSHIP**

The following persons constituted the Mentally Impaired Accused Review Board as at 30 June 2009

Chairman: The Hon. Justice Narelle Johnson – Appointed
Chairperson effective 25 March 2009

Members: Ms S E McDonald, (Clinical and Educational)
Psychologist Member
Mr P McEvoy M Psychologist (Clinical)
Deputy to Ms McDonald
Mr Stuart Flynn, community member
Ms Gretchen Lee, community member

Her Honor Judge Valerie French resigned from her appointment as Chairperson
effective 25 March 2009

Dr P W Burvill MD DPM Emeritus Professor (UWA) – Psychiatrist member
(retired in Dec 2008)

Ms Merilee Garnett resigned as a community member in May 2009.

The Chairperson takes this opportunity to thank Judge French, Dr Burvill and Ms Garnett for the work undertaken on behalf of the Board during their terms of appointment.

MENTALLY IMPAIRED ACCUSED REVIEW BOARD ANNUAL REPORT 2008/2009

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 2009.

30 September 2009

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 10 occasions and made 105 decisions.

There are 25 people held under the Mentally Impaired Accused Act.

The number of MIARB detainees on Conditional Release Orders has remained the same for the second year in a row. That number remains at 10 cases current as at June 30 2009.

Two Accused received unconditional discharges from their detention order.

Concerns regarding the trend to detain mentally impaired accused persons in a prison or detention centre that have been raised in the last two Annual Reports have not been alleviated with no 'declared places' having been identified at this time.

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 2006/07; this is still being drafted and is yet to be tabled in parliament.

4. Releases

During the year the Governor approved the release of two people on *Conditional Release Orders* and two were not approved.

There were two candidates for *Unconditional Release from Custody Orders*, one was approved and the other denied.

5. Victim Representative and Victim Issues

The Mentally Impaired Accused Review Board places a great importance upon submissions from victims when considering recommendations to the Governor. In the event the Board does not receive a written submission in a matter victim issues continue to be considered in detail. Victims of crime regularly write to the Board expressing their feelings and make requests for conditions to be attached

to a prisoner's parole order. All letters received are placed before the Board and are treated with the highest level of confidentiality.

The Chairperson continues to strengthen the relationships between the Mentally Impaired Accused Review Board and the various victim services within the Department of Corrective Services, having met with the Victims Notification Unit and the Victims Offender Mediation Unit recently to ensure that the voice of victims are clearly heard at the Board.

Victims registered with the Victim's Notification Register are automatically made aware of decisions of the PRB.

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 CHAIRPERSON

It has been quite a difficult year for the Board in the past year. The Board was without a Chairperson for quite some time which substantially impeded its work. Further, the Board was also without a psychiatric member for a considerable time. The effect of the absence of a psychiatrist was that the Board could not use its power under the Criminal Law (Mentally Impaired Accused) Act 1996 (the Act) to cancel orders of the Board's clients when necessary. The Board had to adopt the somewhat more involved process of making a recommendation to the Attorney and the order being made by the Governor.

The Board also lost one of its senior members, who resigned during the year. A member of the Prisoners Review Board has kindly agreed to move to the Board to replace her. The Board has recently advertised for a psychiatric member and reserve psychiatric member so that, hopefully, the problems experienced by the Board this year do not recur.

The transitional process has been a difficult one but it is hoped that by the end of the year the Board will have a full complement, including reserve members, so that any departures from the Board will not have the same adverse impact. Unfortunately, legislative change will be required to allow for a Deputy Chairperson to be appointed so that the absence of a Chairperson will not have such a significant effect.

On my appointment, and after familiarising myself with the way in which the Board was operating, I formed the view that there was a distinct lack of the sort of management required of a Board of this type in order to ensure that timely action is taken on all matters and that reports to the Attorney General are prepared well within time. The Act appoints the Registrar of the Prisoners Review Board to also be the Registrar of the Board. However, the Registrar had not previously been asked to involve herself in the Board's activities. The Registrar is now managing the work of the Board which has caused a significant improvement in the handling of Board matters. The Registrar has also identified a number of ways in which the Board can more efficiently deal with the matters before it. Unfortunately, because of the various

problems which have occurred during this year, it will be some time before the work of the Board is entirely up to date.

During the relatively short period of my Chairmanship the primary concerns I have noted are the difficulties involved in the inter-agency co-operation which is such an important part of dealing with mentally impaired accused, and the limited scope of the information available to the Board in relation to the mentally impaired accused needs and capabilities in the community.

The Board is attempting to develop relationships with the relevant agencies to improve the level of co-operation but has not hesitated to correspond with the relevant agency, or to request the attendance of an officer of an agency at a meeting of the Board, in order to obtain a better indication of the cause of any inability to provide a service or any information requested.

The Board is attempting to increase the scope of the information available to it so as not to rely purely on psychiatric reports when making decisions with respect to a mentally impaired accused. Consequently, the Board has been in contact with organisations which deal with issues which commonly affect the mentally impaired accused. The Board has also recently used the power under s 45 of the Act to appoint a supervising officer to supervise a mentally impaired accused given leave of absence on conditions. The purpose is for the officer to report to the Board on how the mentally impaired accused is managing in the community. Time will tell whether this approach improves the quality of service the Board can provide to the mentally impaired accused and the community.

My predecessor, in her message for the previous annual report, referred to the fact that 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 Board's functions. This continues to be the case. In particular, the continued failure to nominate a secure supervised environment described in the Act as a 'declared place', means that mentally impaired accused who suffer from cognitive impairment rather than mental illness, and do not require hospital treatment, can only be held in a prison. It may be that some of these issues will be resolved by the changes to the legislation which are currently being considered. However, it will necessarily be some time before issues of this type, which confront the Board on a regular basis, are addressed.

MIARB Chairperson

The Hon. Justice N Johnson

STATISTICS

A. BOARD'S WORKLOAD

During the period 1 July 2008 to 30 June 2009, the Board met on 10 occasions (23 the previous year). The number of meetings has been reduced due to a Board decision to convene once per month instead of twice. The Board made 105 decisions in 2008/09, compared to 157 the previous year. During the past financial year the Board held two special meetings to deal with two new clients detained under the Mentally Impaired Accused Act.

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 that is not a schedule 1 offence.

Jurisdiction	No. of Orders	S21	S22
Supreme Court	1	1	
Magistrates Court	1		1
District Court	0		
Children's Court	0		
Total	2	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)”

PLACES OF CUSTODY

Number considered by Board	Authorised Hospital*	Prison	Combined Place	Juvenile Detention Centre	Declared Place**
2	1	1			

Notes:

* The Frankland Centre and Plaistowe Ward at 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)
21	0	2	0	6	13

E. LEAVE OF ABSENCE

The Board may, under certain circumstances, grant an Order for Leave of Absence from the Place of Custody, ie the prison or the Franklyn Centre at Graylands Hospital. A Leave of Absence may be granted for emergency medical treatment, or on compassionate grounds, such as attending a funeral. It also enables mentally impaired accused to participate in rehabilitation programs.

During the financial year 2008/09, 1 new Leave of Absence Order was issued to a new mentally impaired accused detainee. 9 detainees on existing Leave of Absence Orders had their orders amended to allow for medical treatment, for compassionate leave or for rehabilitation.

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.”

F. 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
3	2	1

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

Offence	Prison	Hospital	Conditional Release Order	Discharge From Order	Total Under MIARB
Wilful Murder	2	4	2	0	8
Murder		1	1	0	2
Attempted Murder	1	2	2		5
Manslaughter	1	0	1	0	2
Sexual Penetration of Child (U13 Yrs of Age)	1	0	0	0	1
Unlawful Wounding	1	0		0	1
Grievous Bodily Harm	0	0	1	0	1
Assault Occasioning Bodily Harm	1		1	2	2
Robbery Whilst Armed	0	0	1	0	1
Arson	0	1	0	0	1
Unlawful damage			1		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	2009
Board Workload					
• Meetings	26	39	27	23	10*
• Number of Decisions Made	180	231	170	157	105
Custody Orders (Courts)	(6)	(8)	(2)	(1)	(2)
• Section 16 (Unfit to Stand Trial – Lower Court)	2	1	1	0	1
• Section 19 (Unfit to Stand Trial – Superior Court)	1	4	0	0	
• Section 21 (Schedule 1 – Unsoundness of Mind)	2	2	1	1	1
• Section 22 (Unsoundness of Mind)	1	1	0	0	
Place of Custody Orders issued by the Board	(11)	(18)	(6)	(3)	(2)
• Authorised Hospital	9	6	3	1	1
• Prison	1	3	1	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)	(21)
• Section 33 (2)(a)	10	7	3	1	2
• Section 33 (2)(b)	0	0	0	0	0
• Section 33 (2)(c)	9	10	8	9	6
• Section 33 (2)(d)	18	28	19	17	13
Leave of Absence approved by the Governor	9	7	3	1	2
Subsequent amendments to Leave of Absence Orders by the Board	15	22	9	13	8
Conditional Release Orders approved by the Governor	4	4	5	2	2
Unconditional Release Orders approved by the Governor	1	0	4	7	1
Cancellation of Conditional Release Orders	1	1	2	2	0
Completion of Conditional Release Order	1	3	0	1	1
Conditional Release Orders (Current)	15	17	15	9	10
Accused persons in custody	(22)	(20)	(19)	(16)	(14)
• Prison and Detention Centre	11	8	9	9	7
• Frankland Centre and Plaistowe Ward	11	12	10	7	7
Number of accused persons and gender	(37)	(39)	(35)	(25)	(25)
• Male	34	36	33	23	23
• Female	3	3	2	2	2
Aboriginality	(11)	(11)	(8)	(8)	(8)
• Male	11	11	8	8	8
• Female	0	0	0	0	0

*Please note that MIARB meetings changed in 2008/09 from 2 meetings per month to one meeting per month.