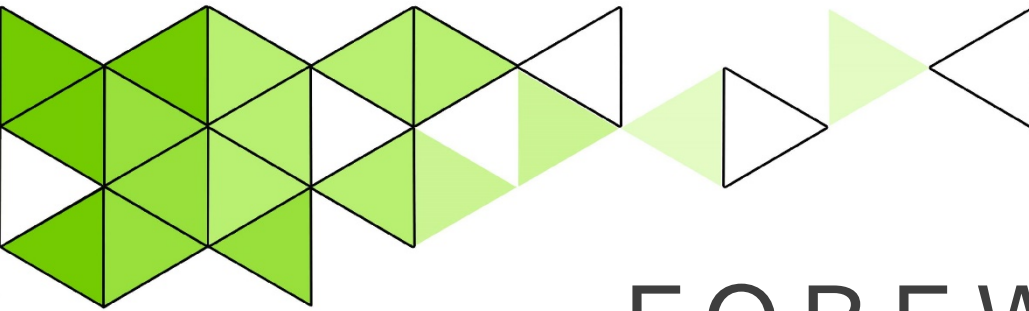




MENTALLY
IMPAIRED
ACCUSED
REVIEW
BOARD

ANNUAL
REPORT
2019/20





FOREWORD

**THE HON. JOHN ROBERT QUIGLEY MLA
ATTORNEY GENERAL; MINISTER FOR COMMERCE**

To the Attorney General,
The Honourable John Robert Quigley

I present to you the Annual Report of the Mentally Impaired Accused Review Board for the year ending 30 June 2020.

This annual report is provided to you in accordance with section 48 of the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) which stipulates that 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 functions during the previous financial year;
- b. statistics and matters relating to mentally impaired accused;
- c. the operation of this Act so far as it relates to mentally impaired accused.

A handwritten signature in black ink, reading "Allan Fenbury". The signature is written in a cursive, flowing style.

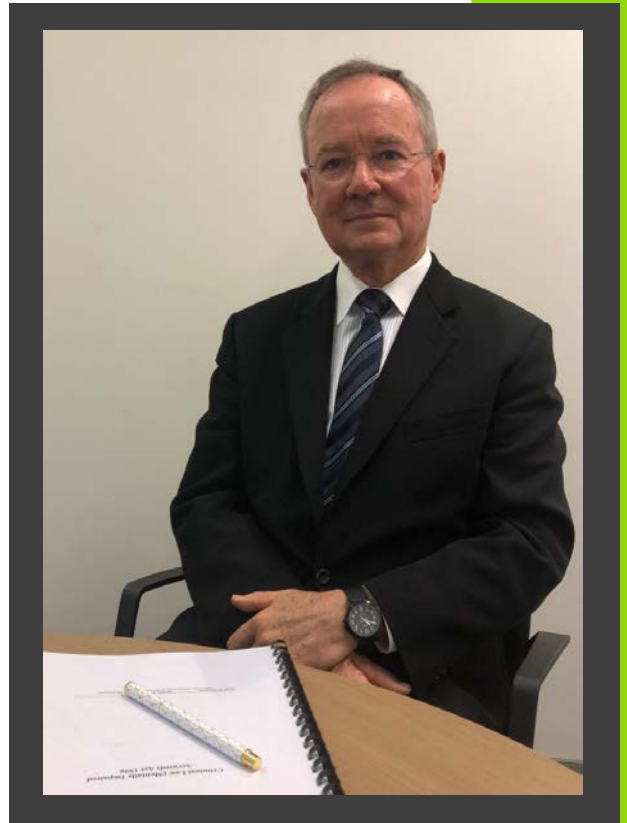
His Honour Mr Allan Fenbury
Chairperson
Mentally Impaired Accused Review Board

CHAIRPERSON'S OVERVIEW

The last financial year was another busy one for the Mentally Impaired Accused Review Board (the Board) which is established under the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) (the Act).

As at 30 June 2020 there were 50 mentally impaired accused under the Board's jurisdiction. Of those:

- 22 were in an authorised hospital (or participating in leaves of absence from an authorised hospital);
- 2 were in a declared place;
- 11 were in prison (or participating in leaves of absence from prison); and
- 15 were in the community subject to a Conditional Release Order.



During this period the Board maintained its strong relationship with external stakeholders, in particular with staff at Graylands Hospital and the Disability Justice Centre.

The Board continues to be actively involved in providing advice on the new Criminal Law (Mental Impairment) Bill 2020 which, in time and when passed in Parliament, we hope will provide a more contemporary pathway for the safe reintegration into the community for accused persons whilst ensuring the safety of the community. I am hopeful this new legislation will remove the indefinite detention of accused persons; provide the Board with more streamlined powers and processes; and reduce some of the lengthy lag times we are currently experiencing. It perplexes me that, under the current Act, the Board alone is unable to allow accused persons access to basic human rights. This seems to me to be an overly punitive approach to a very vulnerable cohort of people for whom I feel most concerned.

As a result of the COVID-19 pandemic, leaves of absence for a number of accused were suspended because of the risk of infection their fortnightly passage from the community back to Graylands Hospital presented to other patients. This was to the serious detriment of these accused. Nevertheless, sometimes such challenges present us with an opportunity to explore new ideas. Indeed, by section 44(2) of the Act, the Board is legislatively enabled to do all things necessary or

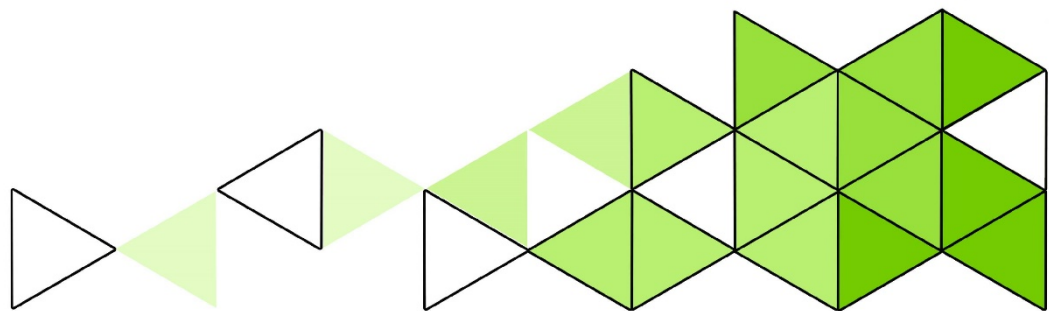
convenient to be done for or in connection with, or incidental to, the performance of its functions. In a collaborative effort with staff at Graylands Hospital, I was pleased the Board were a part of this process and were able to approve alternative accommodation and, as a result of this effort, several accused were able to continue with their leave in the community with only minimal disruption. It is these types of occasions where I am pleased the Board is able to have a positive impact on stakeholder relationships and the management of accused at their place of custody and in the community.

I would also like to convey my personal thanks to the wonderful support staff who are provided by the Department of the Justice and the Board Members, in particular for their conduct during the COVID-19 pandemic and associated restrictions. I was most impressed with the ability of staff to find a way to carry on with minimal disruptions as well as the ability of staff and Board Members to quickly and efficiently adapt to the new changes. It is a credit to the staff we have here who do their best to apply the relevant provisions of the legislation, no matter what the circumstance.



His Honour Mr Allan Fenbury
Chairperson
Mentally Impaired Accused Review Board

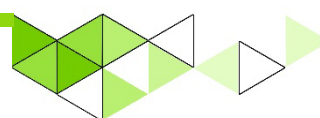
18 September 2020



STATISTICS

As of 30 June 2020, 50 mentally impaired accused were under the statutory authority of the Board. Each accused has an individual set of circumstances which are unique and need to be considered accordingly by the Board. The number of accused under the jurisdiction of the Board changes throughout the financial year period due to the number of custody orders made by the courts and the number of accused discharged from their custody orders.

BOARD MEETINGS PER FINANCIAL YEAR



YEAR	2015-2016	2016-2017	2017-2018	2018-2019	2019-20
NUMBER OF MEETINGS	25	30	31	24	38

For the period from 1 July 2019 to 30 June 2020, the Board met on 38 occasions.



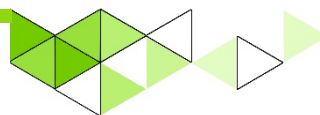
CUSTODY ORDERS MADE BY THE COURTS

A court may determine to place an accused person, who is found unfit to stand trial, on a custody order pursuant to section 16 or section 19 of the Act. A court may determine to place an accused person, who is acquitted on account of unsoundness of mind, on a custody order pursuant to section 21 or 22 of the Act.

Section 25 of the Act stipulates that the Board is then required to review the case of an accused within five working days of a custody order being made by a court.

YEAR	2015-2016	2016-2017	2017-2018	2018-2019	2019-20
NEW CUSTODY ORDERS MADE BY THE COURTS	2	4	4	8	11

PLACE OF CUSTODY ORDERS MADE BY THE BOARD



Section 24(1) of the Act states that a mentally impaired accused is to be detained in an authorised hospital, a declared place, a detention centre or a prison, as determined by the Board, until released by order of the Governor.

The declared place is known as the Bennett Brook Disability Justice Centre.

Place of custody, as at 30 June 2020, for the 50 mentally impaired accused:

AUTHORISED HOSPITAL	PRISON	DECLARED PLACE	NOT IN CUSTODY¹
22	11	2	15



REPORTS TO THE MINISTER

Section 33 of the Act outlines when the Board is required to give the Minister a written report about a mentally impaired accused. These are referred to as statutory reports.



YEAR	2015-2016	2016-2017	2017-2018	2018-2019	2019-20
NUMBER OF REPORTS SUBMITTED TO THE ATTORNEY GENERAL (Statutory Reports)	41	47	41	41	58

¹ Not in custody figure includes accused that are on Conditional Release Orders.

RELEASE OF MENTALLY IMPAIRED ACCUSED PERSONS



NUMBER OF CONDITIONAL RELEASE ORDERS ISSUED BY THE GOVERNOR IN EXECUTIVE COUNCIL FOR 2019-2020	NUMBER OF ACCUSED CURRENTLY ON CONDITIONAL RELEASE ORDERS AS AT 30 JUNE 2020
1 (including amendments to Conditional Release Orders)	15



BOARD REMUNERATION

The Public Sector Commission's annual report guidelines for the 2019/20 financial year requires board memberships to be reported in the Annual Report. This requirement includes the naming of board members and listing the remuneration that each board member received from the respective board during the financial year. The reporting requirements further acknowledges that for security reasons, or reasons of sensitivity, these disclosures may be withheld. The names of Mentally Impaired Accused Review Board members have been withheld for security reasons.

Position Title	Member Name	Type of remuneration	Period of membership	Term of Appointment / Tenure	Base Salary / Sitting Fees	Gross/actual remuneration for the financial year
Chairperson - His Honour Mr Allan Fenbury		Salary*	Entire reporting period	Part-time	\$0	\$0
Deputy Chairperson	B	Sessional Payment	Entire reporting period	Sessional	\$619	\$1,857
Member	B	Sessional Payment	Entire reporting period	Sessional	\$497	\$9,940
Member	C	Sessional Payment	Entire reporting period	Sessional	\$497	\$9,940
Member	D	Sessional Payment	Entire reporting period	Sessional	\$497	\$7,455
Member	E	Sessional Payment	Entire reporting period	Sessional	\$497	\$3,479
Member Department of Communities	F	Nil	Entire reporting period	N/A	\$0	\$0
Member Department of Communities	G	Nil	Entire reporting period	N/A	\$0	\$0
Total						\$32,671

* The Chairperson of the Mentally Impaired Accused Review Board is remunerated as the Chairperson of the Prisoners Review Board appointed under section 103(1)(a) of the *Sentence Administration Act 2003*.