

**WESTERN AUSTRALIA**

**MENTALLY IMPAIRED DEFENDANTS REVIEW BOARD**

**ANNUAL REPORT**

**FOR THE YEAR ENDED 30TH JUNE 2001**

**CRIMINAL LAW (MENTALLY IMPAIRED DEFENDANTS) ACT 1996**

## **CRIMINAL LAW (MENTALLY IMPAIRED DEFENDANTS) ACT 1996**

TO: THE ATTORNEY GENERAL

FROM: THE MENTALLY IMPAIRED DEFENDANTS 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 functions during the previous financial year;*
- (b) statistics and matters relating to mentally impaired defendants; and*
- (c) the operation of this Act so far as it relates to mentally impaired defendants.”*

This report is submitted for your information and for general information and covers the period 1 July 2000 to 30 June 2001.

#### **Mentally Impaired Defendants Review Board Membership**

The following persons constituted the Mentally Impaired Defendants Review Board as at 30 June 2001.

Chairman: Hon. T A Walsh QC

Members: Rev. David Robinson  
Ms Joyleen Koolmatrie  
Mr Neil Morgan  
Mr David Richards - Psychologist  
Dr Ananth Pullela - Psychiatrist

Deputy Members: Ms Christabel Chamarette - Deputy to Rev. Robinson  
Ms Jane Thompson - Deputy to Mr Morgan  
Ms Susan McDonald - Deputy to Mr Richards  
Dr John C E Pougher - Deputy to Dr Pullela

A/Secretary: Mr Darren McCormack

## CHAIRMAN' S PREAMBLE

The statistics set out in this report reveal that the workload of the Board has not increased over the last twelve months. The Board met on 32 occasions (36 the previous year) and made 107 decisions in respect of 29 Mentally Impaired Defendants (92 decisions in previous year in respect of 28 Mentally Impaired Defendants). The number of Custody Orders imposed by the Courts, however, decreased from 9 to 2. There were 14 Orders for Leave of Absence (12 in the previous year) and 4 Release Orders (7 in the previous year).

The independent Review of the Administrative Operations of the Board has now been completed and the recommendations which have been made for improvements are expected to come into effect before the end of this year. As I emphasised in the previous report this will enable the Board to operate more efficiently and also to address the concerns of the various interested parties including Forensic Psychiatrists, Defendants, Victims and Associated Agencies.

The Board continues to receive the co-operation of the Psychiatrists charged with the responsibility of supervising and treating the various defendants and I once again place on record the Board' s appreciation of their commendable efforts to assist the Board to function effectively together with those of the related agencies including, in particular, the Department of Justice and Disability Services Commission.

### 1. BOARD' S WORKLOAD

During the period 1 July 2000 to 30 June 2001, the Board met on 32 occasions and made 107 decisions in respect of 29 Mentally Impaired Defendants.

No. of Decisions:		1	2	3	4	5	6	7
Per								
No. of Mentally								
Impaired Defendants:		1	9	4	6	4	4	0
No. of Decisions:	107	8	9	10				
Per								
No. of Mentally								
Impaired Defendants:	29	1	0	0				

## 2. 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.

Section 22: Order made by Court of Summary Jurisdiction.

During the period 1 July 2000 to 30 June 2001 a total of 2 Custody Orders were made by the Courts.

Jurisdiction	No. of Orders	S16	S19	S21	S22	Place of Custody
Supreme Court	0	0	0	0	0	(2) Graylands Hospital
District Court	2	0	1	1	0	
Petty Sessions	0	0	0	0	0	
Children's Court	0	0	0	0	0	
Total	2	0	1	1	0	

## 3. PLACE OF CUSTODY ORDERS BY BOARD

Section 25: *“Place of Custody to be determined (by Board) within 5 days of Order (by Court)”*

### PLACES OF CUSTODY

No. Considered by Board	<sup>(1)</sup> Authorised Hospital	Prison	Juvenile Detention Centre	<sup>(2)</sup> Declared Place
4	3	1	0	0

<sup>(1)</sup> Graylands Hospital is the only authorised hospital which has the facilities to cater for long term and high risk mentally impaired defendants.

<sup>(2)</sup> No place has yet been declared for this purpose.



#### 4. **REPORTS TO MINISTER**

##### **Section 33(1)**

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

##### **Section 33(2)**

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

- (a) within 8 weeks after the custody order was made in respect of the defendant;*
- (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.”*

<b>Total Reports</b>	<b>S33(2)(a)</b>	<b>(2)(b)</b>	<b>(2)(c)</b>	<b>(2)(d)</b>
33	5	0	11	17

#### 5. **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 defendant.”*

##### **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 defendant;*
- (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 defendant.”*

## **Section 28(2)**

*“A leave of absence order is an order that the defendant 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.”*

A total of 9 applications to permit Leave of Absence were approved by the Governor. There were also 5 Leave of Absence Orders approved by the Board (Leave of Absence had previously been approved by the Governor).

All 14 applications were for mentally impaired defendants detained at Graylands Hospital.

Two applications were for emergency medical treatment not available in Graylands Hospital, one was for emergency medical treatment and rehabilitation and eleven applications were to help with the rehabilitation of the defendant.

## **7. RELEASE OF MENTALLY IMPAIRED DEFENDANTS**

### **Section 35(1)**

*“The Governor may at any time order that a mentally impaired defendant 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 defendant is to be released -*

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

**7.1** A total of 4 applications for Release Orders were approved by the Governor. Two Release Orders were Conditional and Two were Unconditional.

Both Conditional Release Orders were for 6 months.

### **7.2 Cancellations (Section 37)**

There were no Release Order cancellations.

### **7.3 Completions (Section 38)**



Three Release Orders were completed thus discharging the persons from the terms of the Custody Order.

#### **7.4 Current Orders**

As of 30 June 2001 there are a total of 9 mentally impaired defendants living in the community under the terms of a Release Order with conditions.

### **8. MENTALLY IMPAIRED DEFENDANTS IN CUSTODY**

As at 30 June 2001 a total of 12 Mentally Impaired Defendants remain in custody. Three in prison and nine in Graylands Hospital.

### **9. GENDER/ABORIGINALITY**

There are presently 21 Mentally Impaired Defendants of which two are female.

There are 3 Aboriginals all of whom are male.

## ACKNOWLEDGMENT

The Board wishes to acknowledge the assistance and co-operation of all those personnel associated with the Board. In particular the Services provided by the Officers and Staff of the Department of Justice, Community Based Services, the Mental Health Division of the Health Department of Western Australia and the Disability Services Commission.

Chairman:	Hon. T A Walsh QC
Members:	Rev. David Robinson Ms Joyleen Koolmatrie Mr Neil Morgan Mr David Richards Dr Ananth Pullela
A/Secretary:	Mr Darren McCormack
Co-Ordinator:	Ms Alison Smylie