

WESTERN AUSTRALIA

MENTALLY IMPAIRED DEFENDANTS REVIEW BOARD

ANNUAL REPORT

FOR THE YEAR ENDED 30TH JUNE 2002

**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 2001 to 30 June 2002.

Mentally Impaired Defendants Review Board Membership

The following persons constituted the Mentally Impaired Defendants Review Board as at 30 June 2002.

| | |
|-----------------|---|
| Chairman: | Hon. T A Walsh QC |
| Members: | Rev. David Robinson Ms Sarina Jan Mr Neil Morgan Ms Susan McDonald - Psychologist Dr Ananth Pallela - Psychiatrist |
| Deputy Members: | Ms Christabel Chamarette - Deputy to Rev. Robinson Ms Jane Thompson - Deputy to Mr Morgan Mr David Richards - Deputy to Ms McDonald Dr John C E Pougher - Deputy to Dr Pallela |
| Secretary: | Mr Spiro Gougoulis |

CHAIRMAN'S PREAMBLE

The statistics set out in this report reveal that the workload of the Board has again not increased over the last twelve months. The Board met on 28 occasions (32 the previous year) and made 88 decisions in respect of 21 Mentally Impaired Defendants (107 decisions in previous year in respect of 29 Mentally Impaired Defendants). The number of Custody Orders imposed by the Courts decreased marginally from 2 to 1. There were 8 Orders for Leave of Absence (14 in the previous year) and 4 Release Orders (4 also in the previous year).

On 15 April 2002, the Attorney General announced a review of the structure and the operations of the Parole Board. Included in the review was the Mentally Impaired Defendants Review Board. The Attorney General appointed Mr Peter Frizzell to undertake a comprehensive review and Mr Frizzell's report is expected to be finalised by the end of August 2002.

In any event, matters have since further developed by way of the Hon. Minister for Health having determined to seek a review of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and the *Mental Health Act 1996* and requested Board representation in regard to involvement on the Stakeholder Committee for the purposes of the Review. The terms of reference are briefly outlined as follows:

- (a) the effectiveness of the operations of the Mentally Impaired Defendants Review Board
- (b) the need for the continuation of the functions of the Mentally Impaired Defendants Review Board and;
- (c) such other matters as appear to be relevant to the operations and effectiveness of the *Criminal Law (Mentally Impaired Defendants) Act 1996* including its relationship with the *Mental Health Act 1996*.

I have endorsed the Review and have appointed Dr Neil Morgan as my nominee on the Committee and Ms Irene Morgan as deputy.

Representatives of the Board, including myself, recently visited Graylands Hospital and welcomed the opportunity to view the facilities and meet representatives of their staff and psychiatrists. Such visits enable the Board to more effectively perform its functions.

In closing, 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 the related agencies, including, in particular, the Department of Justice and Disability Services Commission.

1. **BOARD'S WORKLOAD**

During the period 1 July 2001 to 30 June 2002, the Board met on 28 occasions and made 88 decisions in respect of 21 Mentally Impaired Defendants.

| | | | | | | | | |
|--------------------------------|-----------|---|---|----|---|---|---|---|
| No. of Decisions: | | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Per | | | | | | | | |
| No. of Mentally | | | | | | | | |
| Impaired Defendants: | | 0 | 5 | 3 | 4 | 5 | 3 | 0 |
| No. of Decisions: | 88 | 8 | 9 | 10 | | | | |
| Per | | | | | | | | |
| No. of Mentally | | | | | | | | |
| Impaired Defendants: 21 | | 0 | 0 | 1 | | | | |

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 2001 to 30 June 2002 One Custody Order was made by a Court.

| Jurisdiction | No. of Orders | S16 | S19 | S21 | S22 | Place of Custody |
|-------------------------|----------------------|------------|------------|------------|------------|-------------------------|
| Supreme Court | 0 | 0 | 0 | 0 | 0 | |
| District Court | 1 | 0 | 0 | 1 | 0 | (1) Graylands Hospital |
| Petty Sessions | 0 | 0 | 0 | 0 | 0 | |
| Children's Court | 0 | 0 | 0 | 0 | 0 | |
| Total | 1 | 0 | 0 | 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 | ⁽¹⁾Authorised Hospital | Prison | Juvenile Detention Centre | ⁽²⁾Declared Place |
|------------------------------------|--|---------------|--------------------------------------|-------------------------------------|
| 4 | 2 | 2 | 0 | 0 |

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

⁽²⁾ 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.”*

| Total Reports | S33(2)(a) | (2)(b) | (2)(c) | (2)(d) |
|----------------------|------------------|---------------|---------------|---------------|
| 22 | 1 | 0 | 8 | 13 |

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.”*

One application to permit Leave of Absence was approved by the Governor. There were also 7 Leave of Absence Orders amended by the Board (Leave of Absence had previously been approved by the Governor).

All 8 applications were for mentally impaired defendants detained at Graylands Hospital.

One application was for emergency medical treatment not available in Graylands Hospital and seven applications were to help with the rehabilitation of the defendant.

Between 1 July 2001 and 30 June 2002 One Leave of Absence Order was cancelled and a new Leave of Absence Order issued.

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. Three Release Orders were Conditional and One was Unconditional.

All three Conditional Release Orders were for an indefinite period.

7.2 Cancellations (Section 37)

There was One Release Order cancellation.

7.3 Completions (Section 38)

One Release Order was completed thus discharging the person from the terms of the Custody Order.

7.4 Current Orders

As of 30 June 2002 there are a total of 12 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 2002 a total of 9 Mentally Impaired Defendants remain in custody. Three in prison and six 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.

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|-------------------|--|
| Chairman: | Hon. T A Walsh QC |
| Members: | Rev. David Robinson Ms Sarina Jan Mr Neil Morgan Ms Susan McDonald Dr Ananth Pullela |
| Secretary: | Mr Spiro Gougoulis |
| Research Officer: | Ms Irene Morgan |
| Co-Ordinator: | Ms Alison Smylie |