



**WESTERN AUSTRALIA**

**MENTALLY IMPAIRED ACCUSED REVIEW**

**BOARD**

**ANNUAL REPORT**

**for the year ended 30 June 2005**

***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**

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### **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 2004 to 30 June 2005.

### **MENTALLY IMPAIRED ACCUSED REVIEW BOARD MEMBERSHIP**

The following persons constituted the Mentally Impaired Accused Review Board as at 30 June 2005.

**Chairman:** H A Wallwork QC

**Members:** Dr P Burvill MD DPM FRANZCP FRECPsych FRCPE Emeritus Professor (UWA) – Psychiatrist member.  
Mr P McEvoy M Psych (Clinical) – Psychologist member.  
Professor N Morgan BA (Jurisprudence) MA (Criminological Studies) PhD with Distinction - Community member.  
The Reverend D A Robinson AM BA BDivinity MTheology – Community member.  
Mr C Somerville BA – Community member.

**Deputy Members:** Ms N Bennett Dip Teaching BE JP – Deputy to Mr Somerville.  
Ms C Chamarette M Psych (Clinical Psychologist) - Deputy to Rev Robinson.  
Ms S McDonald M App Psychology (Clinical and Educational) – Deputy to Mr McEvoy.  
Dr A Pullela MB BS FRANZCP – Deputy to Dr Burvill.  
Mrs A J Thompson LL.B BA - Deputy to Professor N Morgan.  
The Right Reverend M B Challen AO BSc Licentiate of Theology – Second Deputy to Professor M Morgan.

**Legal Research Officer:** Ms I Morgan, LL.B (Hons) LL.M.

Several people took on the role of the Assistant Secretary during the past year, including Ms B Boyle, Mr D McCormack, Ms G Brown, Ms C Jeffrey and Ms K Collins.

Mr Wallwork was appointed as Chairman of the Board on 1 April 2004.

## **PREAMBLE**

### **1. Change of Name**

In May 2005, the *Criminal Law (Mentally Impaired Accused) Act 1996* (the Act) was proclaimed, replacing the *Criminal Law (Mentally Impaired Defendants) Act 1996*. The use of "Defendant" was considered inappropriate in describing those persons who come under this Act because of the determination in some cases that they had been found to be mentally unfit to stand trial. The Act is also concerned with persons found not guilty of offences due to unsoundness of mind.

### **2. Statistical Overview**

The Board met on 26 occasions and made 180 decisions in regard to 37 mentally impaired accused persons. While the number of meetings is declining (33 in 2002/3 and 29 in 2003/4) the number of decisions made is rising (118 in 2002/3 and 176 in 2003/4).

The most significant rise in the past year has been in the number of current Conditional Release Orders. By the end of June 2005 there were 15 current CROs compared with 11 in 2004. Otherwise the number of Place of Custody Orders by the Board has risen slightly from 9 in 2004 to 11 in 2005. Other matters such as Orders for Leave of Absences and subsequent amendments have remained steady. Of concern is the increasing trend of the number of mentally impaired accused persons who are detained in a prison or detention centre (9 in 2004 and 11 in 2005).

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

In December 2003, a report on the Review of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and the *Mental Health Act 1996* was presented to the Minister for Health by Professor D'Arcy Holman ("the Holman Report").

In October 2004, a Committee on the Review of the *Criminal Law (Mentally Impaired Defendants) Act 1996* was established and chaired by Dr Rowan Davidson, Chief Psychiatrist, Department of Health. The purpose of this Committee was to progress the recommendations in the Holman Report and to provide a report to the Minister for Health and the Attorney General on the recommendations and other appropriate matters.

Ms Irene Morgan (Legal Research Officer) of the Board was appointed as the Board's representative. On August 9 2005, Dr Davidson submitted the Committee's report.

The Board reiterates that the following issues should be addressed as a matter of priority as explained in the annual Report of 2004:-

- (a) There are only 30 beds at the Frankland Centre, Graylands Hospital for civil patients and mentally impaired accused persons. There is an urgent need to increase the number of beds to meet demands.

- (b) There is an urgent need to establish “*declared places*” with appropriate levels of security and supervision in the community.

In a letter dated 5 May 2005, the Director General of the Department of Justice (DOJ) responded to the Board’s concerns with the following information:-

- A working group of senior officers has recently been established to develop a viable plan for (name deleted) release into the Community. Members of the group include the Principal Clinical Consultant (DOJ), the Assistant Superintendent Special functions Unit Casuarina Prison, the Deputy Public Advocate, the Director Country Services Co-ordination (Disability Services Commission) and a representative from the Office of Mental Health. It is anticipated that the group will report within the next few months.
- Over the past 12 months, there has been extensive cooperation and discussion between DOJ, the Public advocate, Disability Services Commission and the Department of Health to formulate a viable model for a “*declared place*”. It has been acknowledged that a “*whole of government*” approach with respect to expertise and resources is required. As a consequence, a senior officers ‘group has been established to report back to the Human services Directors’ General Group within four months on a preferred service model or models for a “*declared place*”.

The Board welcomes this progress and looks forward to being advised on any developments in this area.

As at 30 June 2005, there were 9 mentally impaired accused persons in prison or in a detention centre, 8 of whom were Aboriginal persons. The lack of a “*declared place*” leaves no alternative but to incarcerate some unconvicted people with a mental illness or disability within the prison system.

The Board reiterates its view that it is inappropriate to detain those who have brain damage, and intellectual disability or dementia, in a prison. Such placements can place these individuals in a vulnerable environment. In addition, such mental conditions are very often irreversible and unlikely to improve in the foreseeable future. There is an urgent need for a number of “*declared places*” which are secure, supervised and which service the needs of the mentally impaired accused persons.

- (c) There is a need for a medium-security placement at Graylands Hospital to facilitate and assist the gradual transition of mentally impaired accused persons from a maximum security unit at the Frankland Centre before they are deemed suitable for a transfer to a minimum security unit, prior to eventual release into the community. A medium security placement would alleviate to a certain degree the problem of the shortage of beds at the Frankland Centre.
- (d) Greater inter-agency collaboration is required between Government Agencies such as the Disability Services Commission, Public Advocate, Department of Health and the Department of Justice in order to formulate suitable and viable release plans, including accommodation, in all parts of the State. In some cases, the Board notes that the release of a mentally impaired accused person is hampered or delayed, as the relevant agencies find it difficult to resolve issues of responsibility and funding.
- (e) The Board remains concerned that nine of the eleven mentally impaired accused persons who are currently in prison or in a detention centre are of Aboriginal

descent. Most of them come from regional or remote parts of the State and are young men with a combination of mental health problems including mental illness, intellectual impairment and brain damage due to substance use. Brain damage and intellectual impairment are conditions which cannot be treated or improved with medication.

- (f) The limited provision of mental health services in regional areas continues to be of great concern to the Board. To give an example, the Board considered a case of an Aboriginal man with paranoid schizophrenia who required close and structured supervision in the community if he were to be released into the community. The Board was advised that there was only one resident psychiatrist based in Geraldton who was responsible for the whole of the Midwest/Gascoyne region, and that the Mental Health Service was only able to offer case management of one hour per week. The Board urges that immediate funding be given to provide more services to country areas.
- (g) The Board continues to be concerned with the lack of designated Supervising Officers as provided for under section 45 of *the Act*. Meetings have been held with the Department of Justice to discuss this issue, however funding has yet to be provided to the Board. There is a concern that the appointment of Supervising Officers is not only a health matter and that the Justice System needs to take some responsibility. Offenders who come under the Mentally Impaired Review Board's consideration are often high-risk persons who are held by the system with a great risk of harm involved. They need supervision in the community.

In the past year the possibility of requiring a graduated Leave of Absence (LOA) and then a release on an indefinite Conditional Release Order (CRO) has been raised. This would be equivalent to a prisoner being granted a Pre Release Program prior to release on parole. The Board has never released a mentally impaired accused person who is in prison, on a graduated leave of absence; rather such persons are released to a CRO. It appears discriminatory for a mentally impaired accused person to be able to get a LOA from an authorized hospital but not from a prison.

The lack of Supervising Officers creates difficulties in being able to effectively supervise mentally impaired accused persons in the Community to ensure they comply with the conditions placed on their CROs or LOAs. The Board is particularly concerned that agreements involving non contact with victims cannot be monitored properly under the current system.

#### **4. Victim Representative and Victim Issues**

The Board has been advised that amendments will be made to the Act by the end of 2005 to allow for the appointment of a Victim Representative on the Board. This will be in line with the appointment of a Community/Victim member of the Supervised Release Review Board who was appointed on 1 January 2005.

When deciding whether to make a recommendation to the Governor that a mentally impaired accused person be granted Leave of Absence from his or her place of custody, or be released on a Conditional Release Order, the Board is required to consider a number of factors set out in the Act. The proposed amendments to the Act will include a

requirement that the Board take into account submissions from victims when considering recommendations to the Governor.

It has been the Board's practice to consider Victim Issues in detail when making its deliberations and to consider the possible effect of a mentally impaired accused person's release on victims as well as on any potential victims.

Over the years, Victim Issues have been given an increasing role to play throughout the criminal justice system and the Board welcomes the proposed legislative amendments to strengthen their representation in the Justice System.

The relationships between the various Victims Services of the Department of Justice and the lines of communication between the Victim Mediation Unit (VMU) and the Victim Notification Register (VNR) with the Board have been strengthened. It is important that communications between these services are robust and give a quality service to victims to ensure they are given the information they need about release plans for the perpetrators of offences, or alleged offences, against them.

In June 2005 the policy and procedure for the provision of information from the Mentally Impaired Accused Review Board (MIARB) and the VNR was formalised with the VNR. A registered applicant is provided with the following information:-

- General details about the MIARB, in a standardised format.
- Details of the custody order, the date the order was made, the Court in which the order was made and the location of the accused person.
- The date for review by the MIARB.
- The granting of a Leave of Absence Order and general details in relation to any conditions which include community access, and/or victim contact conditions. The information will not include details such as dates, times or location of the leave, unless prior approval to do so is obtained from the MIARB.
- The MIARB's intention to make recommendations to the Attorney General, the subsequent approval of the recommendations by the Board and the reply from the Attorney General.
- The granting of a Conditional Release Order, including details pertaining to special conditions that may be relevant to the registered person. Relevant information may include details about no contact conditions, the inclusion of a VMU protective agreement, or exclusion zones.

## **5. Restructure of Secretariat Staff**

Over the past twelve months, there has been a high turnover of staff with respect to the Secretary/Manager's and the Assistant Secretary's positions. It is hoped this situation will be addressed by the recent restructure of the administrative aspects provided by the Secretariat to the Parole Board and the Mentally Impaired Accused Review Board in accordance with the recommendations from the Review by Mr Peter Frizzell (Department of Premier and Cabinet), in 2002.

There are currently eight staff employed in various roles to provide legal, managerial and administrative support to the Parole Board, Mentally Impaired Accused Review Board and the Supervised Release Review Board. It is planned that this number will be

increased to eleven. The new positions were advertised internally recently, to be filled immediately after Expressions of Interest. The process to fill the positions permanently should be completed by December 2005.

The proposed eleven positions are:

- Legal Research Officer (Level 7)
- Manager (Level 7)
- Senior Secretary (Level 5)
- Secretary (Level 4)
- Assistant Secretary (Level 4)
- Coordinator (Level 3)
- Administrative Officer (Level 2)
- Support Officer (Level 2)
- Records Officer (Level 1)
- Records Officer (Level 1)
- Records Officer (Level 1)

A major outcome of this restructure will be one administrative group focussed on supporting the functions of each of the three Boards. The Level 7 Manager's position will assist in making this important position more attractive with the prospect of attracting and retaining appropriately experienced and knowledgeable personnel. It is anticipated that the Manager will be able to devote more time to provide leadership and management roles and provide strategic direction. Generic staffing of the other positions will provide for the flexibility required to cover periods of absence due to secondment, annual or other leave. This will broaden the knowledge base within the unit and provide for improved customer service and succession planning.

## **6. Visitors to the Board**

The Board had four visitors over the past twelve months, who observed the proceedings of Board meetings. This is a significant reduction in the number from last year when there were twelve visitors. The Board welcomes visitors to observe meetings and is happy to provide for them in the foreseeable future.

## **CONCLUSION AND ACKNOWLEDGEMENT**

The Board wishes to acknowledge the ongoing cooperation throughout the year of the Psychiatrists and their treating teams who have the responsibility of monitoring and treating the mentally impaired accused persons. Their commendable efforts to assist the Board to function effectively, together with the assistance of related agencies such as the Courts, the Department of Justice, the Department of Health, the Office of the Public Advocate and the Disability Services Commission, are greatly appreciated.

The Board takes this opportunity to acknowledge and thank the Secretariat of the Board for their valuable contribution, support and hard work.

As Chairman, I would like to extend my personal thanks to all Board members, Deputies and Staff for their work and contribution during the year. I also wish to thank the services provided by the Department of Justice, the Department of Health, the Office of the Public Advocate, the Disability Services Commission, and other Agencies and Voluntary Organisations involved in the rehabilitation and reintegration of mentally impaired accused persons into the Community.

As Chairman, I also wish to thank the Secretariat staff for their support and hard work in what is a challenging and complex task.

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H A WALLWORK QC  
CHAIRMAN



## **STATISTICS**

### **A. BOARD'S WORKLOAD**

During the period 1 July 2004 to 30 June 2005, the Board met on 26 occasions (29 the previous year) and made 180 decisions (176 the previous year) in respect of 37 Mentally Impaired Accused (33 the previous year).

### **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

Section 22: Order made by Court of Summary Jurisdiction.

During the period 1 July 2004 to 30 June 2005, the Courts made 7 Custody Orders.

<b>Jurisdiction</b>	<b>No. of Orders</b>	<b>S16</b>	<b>S19</b>	<b>S21</b>	<b>S22</b>	<b>Place of Custody</b>
<b>Supreme Court</b>	1				1	(1) Graylands Hospital (0) Prison
<b>Magistrates Court</b>	1	1				(1) Graylands Hospital (0) Prison
<b>District Court</b>	3	1		2		(3) Graylands Hospital (0) Prison
<b>Petty Sessions</b>	1	1				(0) Graylands Hospital (1) Prison
<b>Children's Court</b>	1		1			(1) Detention Centre
<b>Total</b>	7					

**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**

<b>Number considered by Board</b>	<b>Authorised Hospital*</b>	<b>Prison</b>	<b>Juvenile Detention Centre</b>	<b>Declared Place**</b>
7	5	1	1	0

Notes:

- \* Graylands Hospital appears to be the only authorised hospital which has 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.”*

<b>Total Reports</b>	<b>Section 33(2)(a)</b>	<b>Section 33(2)(b)</b>	<b>Section 33(2)(c)</b>	<b>Section 33(2)(d)</b>
37	10	0	9	18

**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 to 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 the 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.”*

**YEAR TO YEAR COMPARISON**

	<b>2001/ 2002</b>	<b>2002/ 2003</b>	<b>2003/ 2004</b>	<b>2004/ 2005</b>
Board Workload				
• Meetings	28	33	29	26
• Number of Decisions Made	88	118	176	180
Custody Orders (Courts)	(1)	(8)	(6)	(6)
• Section 16 (Unfit to Stand Trial – Lower Court)	0	1	1	2
• Section 19 (Unfit to Stand Trial – Supreme Court)	0	3	-	1
• Section 21 (Schedule 1 – Unsoundness of Mind)	1	4	4	2
• Section 22 (Unsoundness of Mind)	0	0	1	1
Place of Custody Orders issued by the Board	(4)	(8)	(9)	(11)
• Authorised Hospital	2	4	6	9
• Prison	2	4	3	1
• Juvenile Detention Centre	0	0	2	1
• Declared Place	0	0	0	0
Reports to the Minister	(22)	(30)	(39)	(37)
• Section 33 (2)(a)	1	8	9	10
• Section 33 (2)(b)	0	0	-	0
• Section 33 (2)(c)	8	12	9	9
• Section 33 (2)(d)	13	10	21	18
Leave of Absence approved by the Governor	1	3	9	9
Subsequent amendments to Leave of Absence Orders by the Board	7	5	17	15
Conditional Release Orders approved by the Governor	3	2	3	4
Unconditional Release Orders approved by the Governor	1	2	1	1
Cancellation of Conditional Release Orders	1	0	1	1
Completions	1	0	0	1
Conditional Release Orders (Current)	12	10	11	15
Accused persons in Custody	(9)	(16)	(19)	(22)
• Prison & Detention Centre	3	7	9	11
• Frankland Centre and Plaistowe Ward	6	9	10	11
Number of accused persons and gender	(21)	(29)	(33)	(37)
• Male	19	26	30	34
• Female	2	3	3	3
Aboriginality	(3)	(6)	(10)	(11)
• Male	3	6	10	11
• Female	0	0	0	0