



WESTERN AUSTRALIA

MENTALLY IMPAIRED ACCUSED REVIEW

BOARD

ANNUAL REPORT

for the year ended 30 June 2006

***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

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 2005 to 30 June 2006.

MENTALLY IMPAIRED ACCUSED REVIEW BOARD MEMBERSHIP

The following persons constituted the Mentally Impaired Accused Review Board as at 30 June 2006.

Chairman: Judge Valerie French

Members: Dr S J R Patchett M.B., Ch.B. – Psychiatrist member
Ms S E McDonald M App Psychology (Clinical and Educational) – Psychologist member.
Ms G Prideaux - Community member.
Mr C Somerville BA – Community member.
Mr G J Hall – Community member

Deputy Members: Dr P W Burvill MD DPM Emeritus Professor (UWA) – Deputy to Dr S J R Patchett.
Mr P McEvoy M Psych (Clinical) – Deputy to Ms S E McDonald
The Reverend D A Robinson AM BA BDivinity MTheology – Deputy to Ms G Prideaux
Ms H Fowler – Deputy to Ms G Prideaux
Ms N Bennett Dip Teaching BE JP – Deputy to Mr Somerville
Ms D Worthington – Deputy to Mr C Somerville
Ms D Annear - Deputy to Mr G J Hall
Mr M B Challen – Deputy to Mr G Hall

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

Several people occupied the role of Assistant Secretary to the Board during the past year, including Mr J Bell, Ms Sherrill Richardson, Ms C Jeffrey and Ms K Collins.

Judge Valerie French was appointed as Chairman of the Board effective from 10 April 2006.

PREAMBLE

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 39 occasions and made 231 decisions in regard to 39 mentally impaired accused persons. Both the number of meetings and the number of decisions made is rising. This trend is expected to continue during the next financial year.

Conditional Release Orders have remained relatively static in the last year with 15 cases on the 30th of June 2005 and 17 on the 30th of June 2006. Place of Custody Orders have increased in 2006, however included in the figures are amendments to the orders to include the identification of more than one place of custody. Other matters have fluctuated slightly. Concerns raised in the last Annual Report have not been alleviated in 2005/6. The trend to detain mentally impaired accused persons in a prison or detention centre has continued with no 'declared places' being identified.

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

Following the review of the then *Criminal Law (Mentally Impaired Defendants) Act 1996* and the *Mental Health Act 1996* by Professor D'Arcy Holman ("the Holman Report"), a committee was established and chaired by Dr Rowan Davidson, Chief Psychiatrist, Department of Health in October 2005. The Mentally Impaired Accused Review Board's representative was Ms Irene Morgan (Legal Research Officer). On August 9 2005, Dr Davidson submitted the Committee's report.

As was indicated in last year's Annual Report, the issue of limited beds remains critical – and whilst it was noted that 'secure hospitals' may include places other than the Frankland Centre or Graylands hospital, no individual accused person has been accommodated at places other than the Frankland centre (30 beds for both forensic and non forensic cases), Plaistowe Ward at Graylands Hospital (10 beds) or a prison.

It is understood that a number of budget bids have been made by other agencies to address the bed shortages.

The following issues which were raised in previous reports remain of concern:-

- a) The urgent need to establish "*declared places*" with appropriate levels of security and supervision in the community. A collaborative approach to this issue – involving the Department of Corrective Services, Disability Services Commission, Department of Health and the Public Advocate, continued during 2005/6.
- b) The need for a medium security placement at Graylands Hospital.
- c) The issue of lack of services and treatment for persons who traditionally reside in remote locations.

- d) The lack of designated Supervising Officers as provided under section 45 of the *Criminal Law (Mentally Impaired Accused) Act 1996*. Mentally impaired accused persons who come under the Mentally Impaired Accused Review Board's consideration are often high-risk persons who are held by the system with a great risk of harm involved. There are particular concerns that agreements involving non contact with victims, cannot be monitored properly under the current system.

4. Releases

One graduated release from a custodial setting has occurred. On 10 February 2006 the Board issued an Order for Leave of Absence for a mentally impaired accused person to undertake work party activities under escort by a prison officer. The intention was to ensure community safety, whilst commencing a graduated release program. The remaining components including home leave, have not commenced.

A cross agency steering committee comprising the Department of Corrective Services, Disability Services Commission, Mental Health Services and Office of the Public Advocate developed a release plan which resulted in a mentally impaired accused person being released to a remote region. There is a tri-state agreement between Western Australia, the Northern Territory and South Australia focusing on joint planning and effective communication to ensure that people with disabilities are adequately serviced. This will have implications for future releases of mentally impaired accused persons.

5. Victim Representative and Victim Issues

In view of the proposed amendments to the *Criminal Law (Mentally Impaired Accused) Act 1996*, the appointment of a Victim Representative to the Board was achieved by the use of a community representative position. *The Sentence Administration Act 2006* makes provision for amendments to section 42 of the *Criminal Law Mentally Impaired Accused Act 1996* in relation to membership of the Mentally Impaired Accused Review Board.

The Mentally Impaired Accused Review Board takes into account submissions from victims when considering recommendations to the Governor. In addition, victim issues are considered in detail even when a submission is not received.

The relationships between the various Victim Services of the Department of Corrective Services and the lines of communication between the Victim-offender Mediation Unit and the Victim Notification Register with the Mentally Impaired Accused Review Board have been strengthened.

In June 2005 the policy and procedure for the provision of information between the Mentally Impaired Accused Review Board and the Victim Notification Register was formalised.

Whilst the provision of this information has been successful, there is difficulty in relation to the mediating of agreements through the Victim-offender Mediation Unit. As stated earlier in the report, it may be perceived that there is some discrimination in the dealings with some mentally impaired accused persons as the Victim-offender Mediation Unit

only acts on referrals and they do not receive these from Health Services. The situation in relation to whether the accused person is 'supervised' will also impact on the ability to monitor any such agreement, which would only have effect for the duration of a Conditional Release Order.

6. Cross Border Project

As mentioned previously there is a tri state agreement in relation to consideration of the needs of persons with disabilities. In addition there is a cross border justice project which is considering the implications of the differences in the legislation in the three jurisdictions when persons with disabilities enter the criminal justice system. The Mentally Impaired Accused Review Board understands that this project is ongoing.

7. Restructure of Secretariat Staff

Traditionally, administrative support has been provided by the Parole Board Secretariat. The 2005 Annual Report indicated that a restructure of the 'Board Secretariat' had been proposed. There were 8 staff and this was to be increased to 11, however before permanent implementation occurred, the Inquiry into the Management of Offenders in Custody and in the Community occurred and the recommendations included a further restructure of the Parole Board in both its Secretariat structure and the composition of the Parole Board itself.

In effect section 43 of the *Criminal Law (Mentally Impaired Accused) Act 1996* appointed the Parole Board Secretary as the Secretary of the Mentally Impaired Accused Review Board. The Parole Board Secretariat provided considerably more support, most notably the service provided by Ms Irene Morgan - Legal Research Officer, than is identified by section 43 and it is intended that this section will be amended with the proclamation of The *Sentence Administration Act 2006*.

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 then *Criminal Law (Mentally Impaired Defendants) Act 1996* to function effectively, together with the assistance of related agencies such as the Courts, the Department of Corrective Services, the Department of Health, the Office of the Public Advocate and the Disability Services Commission, are greatly appreciated.

There have been a number of changes in the membership of the Mentally Impaired Accused Review Board during the course of the year. The following members resigned:-

- Mr H Wallwork QC (Chairman)
- Ms C Chamarette
- Professor N Morgan
- Ms A J Thompson

As Chairman, I would like to thank Mr Henry Wallwork and the retiring members for their contributions to the work of the Mentally Impaired Accused Review Board. I would like to take this opportunity to publicly thank 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 Corrective Services, 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.

JUDGE VALERIE FRENCH
CHAIRMAN

STATISTICS

A. BOARD'S WORKLOAD

During the period 1 July 2005 to 30 June 2006, the Board met on 39 occasions (26 the previous year) and made 231 decisions (180 the previous year) in respect of 39 Mentally Impaired Accused (37 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.

Jurisdiction	No. of Orders	S16	S19	S21	S22
Supreme Court	5		4		1
Magistrates Court	1	1			
District Court	3	1		2	
Petty Sessions	1	1			
Children's Court	1		1		
Total	11	3	5	2	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)"

Amendments to Place of Custody Orders have included alterations to enable the mentally impaired accused person to be detained at more than one place to facilitate the needs of the accused person whilst continuing to have consideration for community safety. It also allows the treating psychiatrists and or Community Corrections Officer to transfer the mentally impaired accused to the approved placement in a timely manner in light of bed shortages at the Frankland Centre or Graylands Hospital.

PLACES OF CUSTODY

Number considered by Board	Authorised Hospital*	Prison	Combined place	Juvenile Detention Centre	Declared Place**
18	6	3	9	0	0

Notes:

* The Frankland Centre and Plaistowe Ward, Graylands Hospital appear to be 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;*
- (a) whenever it thinks there are special circumstances which justify doing so; and*
- (b) in any event at least once in every year.”*

Total Reports	Section 33(2)(a)	Section 33(2)(b)	Section 33(2)(c)	Section 33(2)(d)
45	7	0	10	28

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.”

Total Leave of Absence	Section 27(1)	Section 27(2)	Section 28(1)	Section 28(2)
29	6	23	0	0

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

	2002/ 2003	2003/ 2004	2004/ 2005	2005/ 2006
Board Workload <ul style="list-style-type: none"> Meetings Number of Decisions Made 	33 118	29 176	26 180	39 231
Custody Orders (Courts) <ul style="list-style-type: none"> Section 16 (Unfit to Stand Trial – Lower Court) Section 19 (Unfit to Stand Trial – Supreme Court) Section 21 (Schedule 1 – Unsoundness of Mind) Section 22 (Unsoundness of Mind) 	(8) 1 3 4 0	(6) 1 - 4 1	(6) 2 1 2 1	(8) 1 4 2 1
Place of Custody Orders issued by the Board <ul style="list-style-type: none"> Authorised Hospital Prison Juvenile Detention Centre Declared Place Combined 	(8) 4 4 0 0 -	(9) 6 3 2 0 -	(11) 9 1 1 0 -	(18) 6 3 0 0 9
Reports to the Minister <ul style="list-style-type: none"> Section 33 (2)(a) Section 33 (2)(b) Section 33 (2)(c) Section 33 (2)(d) 	(30) 8 0 12 10	(39) 9 - 9 21	(37) 10 0 9 18	(45) 7 0 10 28
Leave of Absence approved by the Governor	3	9	9	7
Subsequent amendments to Leave of Absence Orders by the Board	5	17	15	22
Conditional Release Orders approved by the Governor	2	3	4	4
Unconditional Release Orders approved by the Governor	2	1	1	0
Cancellation of Conditional Release Orders	0	1	1	1
Completions	0	0	1	3
Conditional Release Orders (Current)	10	11	15	17
Accused persons in custody <ul style="list-style-type: none"> Prison & Detention Centre Frankland Centre and Plaistowe Ward 	(16) 7 9	(19) 9 10	(22) 11 11	(20) 8 12
Number of accused persons and gender <ul style="list-style-type: none"> Male Female 	(29) 26 3	(33) 30 3	(37) 34 3	(39) 36 3
Aboriginality <ul style="list-style-type: none"> Male Female 	(6) 6 0	(10) 10 0	(11) 11 0	(11) 11 0

