



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 2006 to 30 June 2007.

MENTALLY IMPAIRED ACCUSED REVIEW BOARD MEMBERSHIP

The following persons constituted the Mentally Impaired Accused Review Board as at 30 June 2007.

Chairman: Judge Valerie French

Members: Dr S J R Patchett MB, ChB – Psychiatrist member
Ms S E McDonald M App Psychology (Clinical and Educational) – Psychologist member
Merillee Garnett
Stuart Flynn
Other Members appointed to the Prisoners Review Board as may be required

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

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

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 27 occasions and made 170 decisions. Both the number of meetings and the number of decisions made is lower than was anticipated for the year.

Conditional Release Orders have remained relatively static in the last year with 17 cases current on 30 June 2006 and 15 on 30 June 2007. Concerns raised in the last Annual Report have not been alleviated in 2006/7. 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*

Last financial year the Board reported a committee had been formed to make recommendations on amendments to the abovementioned legislation.

A draft bill is currently being developed.

4. Releases

A number of graduated releases from a custodial setting have occurred during the year. The Governor has approved the release of five persons on Conditional Release Orders and four on Unconditional Release from Custody Orders.

5. Victim Representative and Victim Issues

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.

The Board secretariat has met with representatives of Victim Notification Register on a number of occasions to ensure that victims are advised of relevant decisions as soon as possible and are given appropriate opportunity to forward submissions in relation to the impact on them of any release of a mentally impaired accused.

6. Restructure of Secretariat Staff

Administrative support to the Board is provided by the newly named State Review Boards Secretariat, which also supports the Prisoners Review Board and the Supervised Release Review Board.

MESSAGE FROM THE CHAIRMAN

There has been little change in the volume of cases under the jurisdiction of the MIARB in the last year. Although the number of meetings and decisions made is less than the previous year this has occurred as part of a rationalising of the operations of the Board. It does not reflect a decrease in the workload. The nature of MIARB cases necessitates frequent reviews by the Board to monitor the progress of the mentally impaired accused. If the mental stability of a mentally impaired accused has improved they may be considered for a gradual return to the community. This process is approached in a very cautious way and is informed by detailed psychiatric and psychological reports that are presented for consideration on a regular basis.

The effective discharge of the Board's functions and the operation of the legislation continue to be hampered by the lack of secure supervised residential facilities. There are a number of mentally impaired accused who suffer from cognitive impairment rather than mental illness. They cannot be treated in a hospital and are held in prisons. In some cases they do not represent a risk to the safety of the community but remain in prison because there is no alternative available.

The legislation contemplates that in those cases they could be placed in a secure supervised environment described as a "declared place". This would enhance their opportunities for rehabilitation and avoid unnecessary and often long term imprisonment. In some cases the length of time that such people remain in prison is out of all proportion of seriousness that resulted in their Custody Order.

The Criminal Law (Mentally Impaired Accused) Act 1996 has now been in operation for over 10 years. Unfortunately there is as yet no such thing as a "declared place".

The Past decade has also seen a marked reduction in the availability of places in psychiatric hostels or similar supportive and secure residential facilities for the care of persons suffering from cognitive impairment or intellectual disability.

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.

There have been a number of changes in the membership of the Mentally Impaired Accused Review Board during the course of the year.

As Chairman, 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 acknowledge 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 2006 to 30 June 2007, the Board met on 27 occasions (39 the previous year) and made 170 decisions (231 the previous year) in respect of 34 Mentally Impaired Accused (39 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 for schedule 1 offence

Section 22: Order made by Court of Summary Jurisdiction or Superior Court for an offence not schedule 1 offence.

Jurisdiction	No. of Orders	S16	S19	S21	S22
Supreme Court	1			1	
Magistrates Court	1	1			
District Court					
Children's Court					
Total	2	1		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**
6	3	1	2	0	0

Notes:

- * The Frankland Centre and Plaistowe Ward, Graylands Hospital, are 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;
- (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	Section 33(1)	Section 33(2)(a)	Section 33(2)(b)	Section 33(2)(c)	Section 33(2)(d)
30	0	3	0	8	19

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 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 a 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)
12	3	9	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.”

Total Release Orders	Conditional release orders	Unconditional Release Orders
9	5	4

G. ACCUSED PERSONS - ANALYSIS OF OFFENCES AND PLACE OF CUSTODY ORDER

(Note: Two mentally Impaired Accused died while under a Custody Order)

Offence	Prison	Hospital	Conditional Release Order	Discharge From Order	Total
Attempted Murder		0	4	0	7
Assault Occasioning Bodily Harm	1	1	2	4	8
Arson	0	1	0	0	1
Grievous Bodily Harm	0	1	0	0	1
Grievous Bodily Harm (with intent)	0	0	1	0	1
Wilful Murder	2	3	3	0	8
Murder	0	0	1	0	1
Wilful Damage	0	0	1	0	1
Manslaughter	1	0	1	0	2
Going Armed in Public	0	1	0	0	1
Indecent Dealing	1	0	0	0	1
Aggravated Burglary	0	0	1	0	1
Unlawful Wounding	1	0	0	0	1
Assault Public Officer	2	0	0	0	2
Sexual Penetration of Child (U13 Yrs of Age)	1	0	0	0	1
Robbery Whilst Armed	0	0	1	0	1

YEAR TO YEAR COMPARISON

	2004	2005	2006	2007
Board Workload <ul style="list-style-type: none"> Meetings Number of Decisions Made 	29 176	26 180	39 231	27 170
Custody Orders (Courts) <ul style="list-style-type: none"> Section 16 (Unfit to Stand Trial – Lower Court) Section 19 (Unfit to Stand Trial – Superior Court) Section 21 (Schedule 1 – Unsoundness of Mind) Section 22 (Unsoundness of Mind) 	(6) 1 - 4 1	(6) 2 1 2 1	(8) 1 4 2 1	(2) 1 0 1 0
Place of Custody Orders issued by the Board <ul style="list-style-type: none"> Authorised Hospital Prison Juvenile Detention Centre Declared Place Combined 	(11) 6 3 2 0 -	(11) 9 1 1 0 -	(18) 6 3 0 0 9	(6) 3 1 0 0 2
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) 	(39) 9 - 9 21	(37) 10 0 9 18	(45) 7 0 10 28	(30) 3 0 8 19
Leave of Absence approved by the Governor	9	9	7	3
Subsequent amendments to Leave of Absence Orders by the Board	17	15	22	9
Conditional Release Orders approved by the Governor	3	4	4	5
Unconditional Release Orders approved by the Governor	1	1	0	4
Cancellation of Conditional Release Orders	1	1	1	2
Completions	0	1	3	0
Conditional Release Orders (Current)	11	15	17	15
Accused persons in custody <ul style="list-style-type: none"> Prison and Detention Centre Frankland Centre and Plaistowe Ward 	(19) 9 10	(22) 11 11	(20) 8 12	(19) 9 10
Number of accused persons and gender <ul style="list-style-type: none"> Male Female 	(33) 30 3	(37) 34 3	(39) 36 3	(35) 33 2
Aboriginality <ul style="list-style-type: none"> Male Female 	(10) 10 0	(11) 11 0	(11) 11 0	(8) 8 0

