



MENTALLY IMPAIRED ACCUSED REVIEW BOARD

ANNUAL REPORT

For the year ended 30 June 2010

CRIMINAL LAW (MENTALLY IMPAIRED ACCUSED) ACT 1996

Foreword,

To Attorney General Christian Porter, MLA

In accordance with section 48 of the *Criminal Law (Mentally Impaired Accused) Act 1996* I present to you the Annual Report of the Mentally Impaired Accused Review Board of Western Australia for the year ended 30 June 2010.



Justice Narelle Johnson
Chairperson
Prisoners Review Board

In line with State Government requirements, the Mentally Impaired Accused Review Board annual report is published in an electronic format with limited use of graphics and illustrations to help minimise download times.



MENTALLY IMPAIRED ACCUSED REVIEW BOARD

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MENTALLY IMPAIRED ACCUSED REVIEW BOARD

1 MENTALLY IMPAIRED ACCUSED REVIEW BOARD PROFILE

The *Criminal Law (Mentally Impaired Accused) Act* 1996 (the Act) relates to criminal proceedings involving mentally impaired people who are charged with offences. The Mentally Impaired Accused Review Board (the Board) is constituted under the Act.

The Board generally meets once per month at the Prisoners Review Board premises in Wembley. It currently manages 29 people.

The Board places great importance upon submissions from victims when considering recommendations to the Governor. There is a high proportion of matters considered by the Board (about 70%) where victim submissions are received. Victims of crime typically write to the Board expressing their feelings and making requests for conditions to be attached to a prisoner's parole order. All letters received are placed before the Board and are treated with the highest level of confidentiality. In the event the Board does not receive a written submission in a matter victim issues continue to be considered in detail to the extent of the information available.

Further, the Chairperson continues to strengthen the relationships between the Board and the various victim services within the Department of Corrective Services, Victims Notification Unit, the Victims Offender Mediation Unit to ensure that the voice of victims are clearly heard at the Board. Victims registered with the Victim's Notification Register are automatically made aware of decisions of the MIARB.

Administrative support to the Board is provided by a branch of the Magistrates Courts and Tribunals directorate of the Department of the Attorney General. This branch, commonly referred to as "the Prisoners Review Board" also supports the Prisoners Review Board and the Supervised Release Review Board.



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2 MESSAGE FROM THE CHAIRPERSON

It has been a very positive year for the Mentally Impaired Accused Review Board, created under the *Criminal Law (Mentally Impaired Accused) Act 1996*, and which deals with offenders who have been found not mentally fit to stand trial or not guilty of an offence on account of unsoundness of mind.

The fact that the work of the Board is now managed by the Registrar has allowed for a better understanding of the extent and scope of the work before the Board and allowed for the identification of a backlog of statutory reports from 2007, which has now been addressed.

The change in approach to the work of the Board has also allowed for a far closer scrutiny of cases and, where possible, for a multi-faceted resolution and shared responsibility for this specific client base with other government departments such as Disability Services Commission when, or if, it is appropriate that such clients be released into the community.

In the past the Board has been well served by its membership and this has certainly continued with the changes to the membership of the Board which occurred at the beginning of this year. The new and very committed membership are Leanne Webber (psychologist), Gretchen Lee (community member), Ed Hollywood (a community member with experience in working with mentally impaired people and those with mental health issues) and Dr Helen Slattery (psychiatrist). Each appointment has been a positive factor in the better management of the work of the Board which is particularly complex because of the issues which confront mentally impaired persons, who are often marginalised and vulnerable, and the potential risk which this client group presents to the community.

Yet again, the greatest problem which has faced the Board this year is the difficulty in housing mentally impaired persons without a treatable diagnosed mental health illness, for example, persons with only a cognitive impairment, when it is time for release into the community. Many have not committed life-threatening offences but can languish in prisons for longer than the usual sentence for the offences committed because of the risk they pose to the community. Further, cognitively impaired offenders are most vulnerable to the negative behaviours of other prisoners. Although the *Criminal Law (Mentally Impaired Accused) Act 1996* provides for a “designated place” to provide supervised secure accommodation for such people, other than in the prison environment, no such place actually exists in Western Australia. The Board hopes that this issue can be addressed in the not too distant future.



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I would particularly like to thank retired District Court Judge Alton Jackson QC, for taking over my role as Chairperson during my absence for several months as a result of a serious illness. I would also like to thank the Registrar and all members of the Board for their commitment and invaluable contribution to the work of the Board and I look forward to another year of dealing with the complex and challenging issues which arise in this area.

A handwritten signature in blue ink, appearing to be 'Narelle Johnson'.

The Hon Justice Narelle Johnson
Chairperson
Prisoners Review Board

30 September 2010



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3 MENTALLY IMPAIRED ACCUSED REVIEW BOARD MEMBERSHIP

Section 42(1) of the *Criminal Law (Mentally Impaired Accused) Act 1996* provides that the members of the Mentally Impaired Accused Review Board are :

- (a) the person who is the chairperson of the Prisoners Review Board appointed under Section 103(1)(a) of the *Sentence Administration Act 2003*;
- (b) the persons who are community members of the Prisoners Review Board appointed under Section 103(1)(c) of the *Sentence Administration Act 2003*;
- (c) A psychiatrist appointed by the Governor; and
- (d) a psychologist appointed by the Governor.

The chairperson of the Prisoners Review Board is currently The Hon. Justice Narelle Johnson, who was appointed chairperson effective from 25 March 2009

A Board meeting typically consists of the chairperson, psychologist and psychiatrist, two community members, the registrar and a secretary. This facilitates the effective operational case management of the clients and helps ensure a community reflective approach to decisions.



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4 STATISTICS

4.1 BOARD'S WORKLOAD

During the period 1 July 2009 to 30 June 2010, the Board met on 14 occasions. This compared to 10 in 2008/09

4.2 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

Number considered by Board	Authorised Hospital*	Prison	Combined Place	Juvenile Detention Centre	Declared Place**
4	0	4	0	0	0

Notes:

* The Frankland Centre and Plaistowe Ward at 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.

4.3 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 -

- within 8 weeks after the custody order was made in respect of the accused;
- whenever it gets a written request to do so from the Minister;



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- (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)
37	0	3	0	4	30

4.4 LEAVE OF ABSENCE

The Governor in Executive Council provides authorisation for the Board to issue leave of absence orders with conditions. The Board may, under certain circumstances, grant an Order for Leave of Absence from the Place of Custody, ie the prison, the Franklin Centre or the Plaistowe Ward at Graylands Hospital. A Leave of Absence may be granted for emergency medical treatment, or on compassionate grounds, such as attending a funeral. It also enables mentally impaired accused to participate in rehabilitation programs leading to their gradual reintegration back into the community.

During the financial year 2009/10, there were no new Leave of Absence Orders issued to mentally impaired accused detainees. 15 detainees on existing Leave of Absence Orders had their orders amended to allow for medical treatment, for compassionate leave, for rehabilitation or for community reintegration purposes.

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.”



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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.”

4.5 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	Amend Conditional Release Order	Unconditional Release Orders
2	0	2	0

4.6 ACCUSED PERSONS – ANALYSIS OF MAIN OFFENCE AND PLACE OF CUSTODY ORDER

Offence	Prison	Hospital	Conditional Release Order	Discharge From Order	Total Under MIARB
Wilful Murder	3	4	2	0	9
Murder	0	0	2	0	2
Attempted Murder	1	2	2	0	5
Manslaughter	0	0	1	0	1
Sexual Penetration of Child (U13 Yrs of Age)	3	0	0	0	3
Unlawful Wounding	1	0	0	0	1
Grievous Bodily Harm	0	0	1	0	1



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Offence	Prison	Hospital	Conditional Release Order	Discharge From Order	Total Under MIARB
Assault Occasioning Bodily Harm	1	0	1	0	2
Robbery Whilst Armed	2	0	0	0	2
Arson	0	1	0	0	1
Unlawful damage	2	0	0	0	2

It should be noted that these figures refer to individuals and do not reflect the number of offences nor whether there are a multiple of serious offences attributed to a single individual.

4.7 YEAR TO YEAR COMPARISON

	2006	2007	2008	2009	2010
Board Workload					
• Meetings	39	27	23	10	14 ¹
• Number of Decisions Made	231	170	157	105	69
Custody Orders (Courts)	(8)	(2)	(1)	(2)	(4)
• Section 16 (Unfit to Stand Trial – Lower Court)	1	1	0	1	1
• Section 19 (Unfit to Stand Trial – Superior Court)	4	0	0	0	2
• Section 21 (Schedule 1 – Unsoundness of Mind)	2	1	1	1	1
• Section 22 (Unsoundness of Mind)	1	0	0	0	0
Place of Custody Orders issued by the Board	(18)	(6)	(3)	(2)	(4)
• Authorised Hospital	6	3	1	1	0
• Prison	3	1	1	1	4
• Juvenile Detention Centre	0	0	0	0	0
• Declared Place	0	0	0	0	0
• Combined	9	2	1	0	0

¹ The frequency of MIARB meetings changed in 2008/09 from two meetings per month to one meeting per month. Two special meetings were held during 2009/2010.



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	2006	2007	2008	2009	2010
Reports to the Minister	(45)	(30)	(27)	(21)	(37)
• Section 33 (2)(a)	7	3	1	2	3
• Section 33 (2)(b)	0	0	0	0	0
• Section 33 (2)(c)	10	8	9	6	4
• Section 33 (2)(d)	28	19	17	13	30
Leave of Absence approved by the Governor	7	3	1	2	0
Subsequent amendments to Leave of Absence Orders by the Board	22	9	13	8	15
Conditional Release Orders approved by the Governor	4	5	2	2	0
Unconditional Release Orders approved by the Governor	0	4	7	1	0
Cancellation of Conditional Release Orders	1	2	2	0	3
Completion of Conditional Release Order	3	0	1	1	0
Conditional Release Orders (Current)	17	15	9	10	9
Accused persons in custody	(20)	(19)	(16)	(14)	(19)
• Prison and Detention Centre	8	9	9	7	12
• Frankland Centre and Plaistowe Ward	12	10	7	7	7
Number of accused persons and gender	(39)	(35)	(25)	(25)	(29)
• Male	36	33	23	23	27
• Female	3	2	2	2	2
Aboriginality	(11)	(8)	(8)	(8)	(11)
• Male	11	8	8	8	11
• Female	0	0	0	0	0