



**GOVERNMENT OF
WESTERN AUSTRALIA**

2016/17 ANNUAL REPORT

**MENTALLY IMPAIRED ACCUSED
REVIEW BOARD
WESTERN AUSTRALIA**

FOREWORD

THE HON. JOHN ROBERT QUIGLEY, MLA
ATTORNEY GENERAL

To the Attorney General,
The Honourable John Robert Quigley

I present to you the Annual Report of the Mentally Impaired Accused Review Board for the year ended 30 June 2017.

This annual report is provided to you in accordance with section 48 of the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) which stipulates that 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 accused
- c. the operation of this Act so far as it relates to mentally impaired accused.



His Honour Judge Robert Cock QC
Chairman
Mentally Impaired Accused Review Board
www.miarb.wa.gov.au

IN LINE WITH STATE GOVERNMENT OF WESTERN AUSTRALIA 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.

CONTENTS

FOREWORD	2
CONTENTS	3-4
CHAIRMAN'S OVERVIEW	5-10
MENTALLY IMPAIRED ACCUSED REVIEW BOARD PROFILE	11
- PROFILE OF THE BOARD	
- MEMBERSHIP OF THE BOARD	
OPERATIONS OF THE BOARD	12-15
- WHEN THE COURT MAKES A CUSTODY ORDER	
- PLACE OF CUSTODY ORDER	
- CUSTODY OPTIONS	
- NOTIFICATION OF NEW MENTALLY IMPAIRED ACCUSED PERSONS	
- RELEASE CONSIDERATIONS	
- REPORTS TO THE MINISTER	
- INTERAGENCY COLLOBORATION	
- VICTIM CONSIDERATIONS	
STATISTICS	16-20
- BOARD MEETINGS PER FINANCIAL YEAR	
- CUSTODY ORDERS MADE BY THE COURTS	
- PLACE OF CUSTODY DETERMINED BY THE BOARD	
- AUTHORISED HOSPITAL	
- DECLARED PLACE	
- REPORTS TO THE MINISTER	

- LEAVE OF ABSENCE ORDERS
- RELEASE OF MENTALLY IMPAIRED ACCUSED PERSONS
- YEAR TO YEAR COMPARISON

REMUNERATION

21

CHAIRMAN'S OVERVIEW

The last financial year was another busy one for the Mentally Impaired Accused Review Board (the Board) which is established under the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) (the Act).

As at 30 June 2017 there were 40 mentally impaired accused under the Board's jurisdiction.

- Seven (7) were in an authorised hospital (or participating in leaves of absence from an authorised hospital).
- Two (2) were in a declared place.
- 12 were in prison (or participating in leaves of absence from prison).
- 19 were in the community subject to a Conditional Release Order (CRO).



RELATIONSHIPS AND NETWORKING

The Board continues to maintain and strengthen its relationships with all stakeholders, and particularly with a number of pivotal agencies.

A more flexible approach to the management of mentally impaired accused who are detained in a prison has been recently adopted by the Department of Corrective Services (DCS). This has facilitated Board requests to undertake expedited changes in security rating and prison transfers to facilitate leave of absence arrangements. For accused who have been granted a Leave of Absence Order (LOA) but are detained at a medium security prison, DCS provides the Board with regular updates on the accused's classification reviews which is critical to the placement of the accused. DCS has been able to facilitate the placement of certain accused at minimum security prisons so they may participate in appropriate leave periods in the community which are considered by Board members to be an essential part of the reintegration and rehabilitation of an accused. The Board is well aware that upon their return to prison from a temporary absence in the community, a mentally impaired accused presents a real potential to compromise prison security, due to the accused's person's special vulnerability and risk of being stood over. However, that risk should be capable of being managed, rather than creating an excuse to deny the accused person leave of absence to facilitate their reintegration into the community.

I have previously written that the location of mentally impaired accused people in a prison environment is harsh for them; those with a cognitive impairment often find their imprisonment difficult to understand and even more difficult to manage. The mainstream prison environment is rarely an appropriate location in which to place a person with a significant intellectual disability. The Board has again this year heard distressing reports regarding this very vulnerable cohort, and endeavours to facilitate the release of mentally impaired accused under its authority as soon as they can safely be permitted back into the community. Regrettably that is often a slow process, as the supports for them which are often necessary to satisfy us that they can be safely released are frequently inadequate and services not readily available. Mentally impaired accused with a mental illness who are no longer so unwell as to require hospitalisation are also placed in prison. For them, their futures often appear bleak, as their imprisonment is open-ended, and the longer they remain in prison the less able they are to manage in the community as they gradually lose skills and relevant connections.

As Chairman, I have continued with my endeavours to strengthen the Board's relationship with the State Forensic Mental Health Service. In order to achieve this, with the Board's Senior Advisory Officer, I continue to meet six times a year at Graylands Hospital with a treating psychiatrist from the Frankland Centre and the Head of Clinical Services, Community Forensic Mental Health Service and enjoy frank and constructive discussions regarding accused with a diagnosed mental illness. Such discussions have proved valuable and have assisted the Board achieve a greater level of oversight of each of the accused detained at Graylands Hospital and the Frankland Centre, as well as those who are under the care of the Community Forensic Mental Health Service.

The Board has strived to work with the Disability Services Commission (DSC) in identifying those accused who may be eligible for detention at the Bennett Brook Disability Justice Centre, which is a declared place, managed by staff of the DSC. During the year, the Board determined to place an additional mentally impaired accused at the declared place, but his transfer from prison has not yet occurred due to the absence of consent from the Minister for Disability Services. No explanation for the delay in the consideration of his case has been forthcoming from either the current or the former Minister.

One recommendation from the Blaxell and Hayward report entitled Bennett Brook Disability Justice Centre Independent Analysis and tabled in Parliament on 17 March 2016 by the Minister for Disability Services was that the DSC undertake an education program directed at the legal profession and at Members of the Criminal Lawyers Association in particular. Pursuant to the recommendation an information session for criminal lawyers was held at the office of Legal Aid on 20 July 2016. More than 30 lawyers attended the meeting and received a presentation from Dr Chalmers, the Director General of Disability Services and staff from the centre. I also spoke at the presentation. Whether that session was effective in breaking down apparent barriers to members of the legal profession embracing the use of the Act's provision is yet to be seen.

The DSC In-Reach Service Team continued to provide valuable support to people with an intellectual disability who are involved in the justice system, including people who have been sentenced, are on remand, mentally impaired accused, young people and people in the community. The service provides information, advocacy, planning and support directly to people with a disability or via consultancy with disability sector organisations, legal professionals, advocates and other government agencies.

As reported in previous years the Board continues to provide the Mental Health Law Centre with copies of reports prepared for hearings in respect of every client they represent. This procedure has now been entrenched in the Board processes and has extended, with the approval of DCS, to the provision of copies of reports from Community Corrections Officers (CCOs). The result is that the Board receives detailed and up to date submissions from the Mental Health Law Centre. The Director of Legal Aid, who now represents a significant number of mentally impaired accused, also is provided with copies of all relevant material. The Board has been significantly assisted by well-prepared submissions, which on a number of occasions has resulted in the Board's favourable consideration of elements of their case about which the Board members would not have otherwise been aware. The Board continues to conduct hearings by video-link from prisons, the Frankland Centre and the Bennett Brook Disability Justice Centre. This initiative had been embraced by a number of lawyers who now regularly appear for accused. We continue to accommodate requests from mentally impaired accused who are on either a leave of absence or a conditional release order for attendance at hearings. These attendances are always well controlled and have proven to be mutually insightful.

I am pleased to advise that the strong working relationships built with the staff in the office of the former Attorney General, which resulted in a reduction in the delay in approval to grant LOAs and a much improved response time for consideration of statutory reports and their return to the Board have been maintained following the change of Government.

MEETINGS

The Board generally holds two regular meetings per month. If an issue arises which requires prompt attention prior to the next regular meeting, for example where an accused seeks permission to attend a funeral, a quorum is assembled. It is now common at a regular Board meeting to have at least one and on occasions two video-links with an accused who is still in detention and hear from two or three solicitors representing accused people whose cases are under consideration at the particular meeting.

In addition to the regular attendance of solicitors and guardians representing particular accused, the Board has continued to permit observers to its meetings. Among the other visitors have been staff of the DCS, staff from Acacia prison, staff from the DSC, members of The Mental Health Advisory Service, employees of St Judes Midland, employees of Inclusion WA and members for Developmental Disability WA.

The Board has continued to encourage CCOs from DCS to attend Board meetings in order for them to develop an understanding of the Board's discussions and the processes it follows when considering an accused for release into the community. This has been subsequently of benefit to the Board as more material is now included in their reports which enable the Board to better determine the management of accused on leave of absence or conditional release where support is being provided by a community organisation and the accused is also monitored by a CCO.

REVIEW OF THE ACT

In late 2014, the former Attorney General commenced a review of the Act. A discussion paper was produced and widely circulated for the purpose of full public consultation.

The former Attorney General tabled the report of the Review in State Parliament on 7 April 2016. The report made 35 recommendations on a range of issues raised by submissions received during the course of the review. Key recommendations include proposals aimed at providing courts with greater flexibility when addressing juveniles found not guilty by reason of unsound mind or being mentally unfit to stand trial; provisions to require a judicial officer to have regard to whether there is a case to answer when an accused is found mentally unfit to stand trial; expansion of the disposition options available to the court when addressing an accused found mentally unfit to stand trial; removal of mandatory custody orders for juvenile accused; and changes to provide for a range of procedural fairness provisions to enhance the fair and equitable treatment of mentally impaired accused by the Board.

Following consultation with his parliamentary colleagues—in particular, the Ministers for Mental Health and Disability Services—the former Attorney General advised that he intended to take to Cabinet a package of reforms based on the recommendations of the report. There were two recommendations, 13 and 16 of the report, which proposed the formation of a working group of relevant stakeholders to give further attention to the operation of section 21 of the Act and mechanisms to enable indefinite custody orders to operate more fairly and effectively, whilst retaining the community protection and therapeutic objectives of the Act. A working group containing relevant stakeholders, including the Board, was assembled, and considerable work was undertaken by a group chaired by the Honourable Peter Blaxell. The final report of the working group, in which 19 further recommendations for changes to the statutory and other arrangements under the Act were made, was provided to the former Attorney General on 14 October 2016. Following the delivery of that report, despite some work having commenced on drafting a Bill, no changes to the law have emanated.

Whilst this annual report is not the place to discuss the detail of any of the recommendations for amendment, some of which were substantial and others more procedural, the fact remains that since it commenced, there have now been a number of reviews of the Act, every one recommending changes. The Board has over time developed and improved its practices, recognising the need to operate as the Act requires, in an endeavour to better encompass procedural fairness. The Board remains willing to assist in enshrining these improved practices in the Act. It also acknowledges that there are a number of recurring local complaints about the general principles upon which the Act is based and that the Act continues to be subject to adverse comment in local, national and international forums. The Act also continues to be the subject of adverse commentary in academic articles and law reform papers.

GRAYLANDS HOSPITAL

Mentally impaired accused with a diagnosed mental illness are able to be detained at the secure facility within Graylands Hospital, the Frankland Centre, which has a maximum capacity of 30 people. There is also the capacity in the short term to house up to seven at the less secure Hutchinson Ward. Utilising the facility of the Hutchinson Ward, the psychiatrists at Graylands are able to gradually release restrictions on mentally impaired

accused and monitor their progress prior to the Board, with the approval of the Governor, allowing them further freedom through a leave of absence.

As the Board has repeatedly been advised that the Hutchinson Ward is only available as a short term solution to temporarily house up to seven mentally impaired accused the Board remains of the opinion it has previously expressed that the expansion of forensic mental health services is urgently required at Graylands Hospital or at another site to accommodate and provide for the unique complexities of mentally impaired accused and people who have a mental illness.

THE DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) ACT 2015

The *Declared Places (Mentally Impaired Accused) Act 2015* commenced on 17 June 2015, and the Disability Justice Centre has been operating since August 2015. A mentally impaired accused is not to be detained in the declared place that is established by the DSC unless the Board is satisfied that the accused is a person with disability as defined in section 3 of the *Disability Services Act 1993* and the predominant reason for the disability is not mental illness; is satisfied that the accused has reached 16 years of age; and has regard to the degree of risk that the accused's detention in the declared place appears to present to the personal safety of people in the community or of any individual in the community. That Act also provides that the Board may only determine that a mentally impaired accused be detained in a DSC declared place if the member appointed by the DSC is present at the meeting at which the custody order is made. Even if the Board determines that a mentally impaired accused should be detained in the declared place, the accused is not to be detained there without the consent of the Minister to whom the *Disability Services Act 1993* is for the time being committed. There have been three different mentally impaired accused at the Disability Justice Centre since it opened. There has also been one accused who the Board sought to place at the Centre but the Board is yet to receive the consent from the Minister for Disability Services. He remains in prison and due to the distance from his supports, leaves of absence from prison are not considered practicable.

MEMBERSHIP OF THE BOARD

For the three months from February 2017 to April 2017 I was unable to perform my functions. During that period, his Honour Judge Sharp was appointed to act as the Chairman of the Prisoners Review Board and by virtue of that appointment also acted as Chairman of the Board. I am grateful for Judge Sharp for so willingly taking on these additional responsibilities, quickly gaining an understanding of the role and so effectively carrying out the duties so that there was no backlog at all upon my return in May 2017. Otherwise the membership of the Board remained constant throughout the reporting year.

I would like to conclude by conveying my personal thanks to the support staff who are provided by the Department of the Attorney General and the Board Members, each of whom who have once again diligently discharged their responsibilities and, in particular, given careful consideration throughout the year to the needs of the accused, the victims, the law and, most importantly, the safety of the community.

I am grateful to the former Attorney General, the Hon Michael Mischin MLC and the staff of his office for their responsiveness to recommendations from the Board. I also express my

gratitude to the incoming Attorney General, the Hon John Quigley MLA, for the speed at which he and his staff have dealt with correspondence from the Board.

A handwritten signature in blue ink, appearing to read 'Robert Cock', written in a cursive style.

His Honour Judge Robert Cock QC
Chairman
Mentally Impaired Accused Review Board

22 September 2017

PROFILE

THE MENTALLY IMPAIRED ACCUSED REVIEW BOARD

PROFILE OF THE BOARD

The Mentally Impaired Accused Review Board (the Board) is established under section 41 of the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) (the Act) and is governed by the provisions contained within it. The Act relates to criminal proceedings involving intellectually impaired or mentally ill people who are charged with offences and subsequently found not mentally fit to stand trial or acquitted by reason of unsoundness of mind.

The Magistrates Courts and Tribunals directorate within the Department of the Attorney General provides joint administrative support to the Prisoners Review Board, the Supervised Release Review Board and the Mentally Impaired Accused Review Board.

MEMBERSHIP OF THE BOARD

Pursuant to section 42(1) of the Act, the Board is established with the following members:

- (a) the person who is the chairperson of the Prisoners Review Board appointed under section 103(1)(a) of the *Sentence Administration Act 2003*;
- (ba) a deputy chairperson, to be nominated by the Minister and appointed by the Governor;
- (bb) a person who, under the *Disability Services Act 1993* section 9 or 10, works for the Disability Services Commission, appointed by the Commission;
- (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;
- (d) a psychologist appointed by the Governor.

His Honour Judge Robert Cock QC was appointed as the Chairman of the Board, effective from 26 March 2012.

On 29 April 2015, Clare Brady was appointed as a Deputy Chairperson of the Board, under section 42(1)(ba) of the Act. Ms Brady was reappointed on 18 July 2017 to the Board.

Pursuant to section 42A of the Act, the Board is required to have at least the Chairman and two other members of the Board to constitute a quorum.

In accordance with section 43(1) of the Act, the Board is supported by a Registrar. The role of the Registrar is to oversee the effective facilitation and management of Board meetings and the associated workload. The Registrar also has a pivotal role in providing high level advice to the Chairman and Board members in relation to mentally impaired accused.

OPERATIONS OF THE BOARD

WHEN THE COURT MAKES A CUSTODY ORDER

Pursuant to section 3 of the Criminal Law (Mentally Impaired Accused) Regulations 1997 (WA), the Registrar of the court is to immediately notify the Board when a Custody Order has been made; and within two working days after the order is made give to the Board copies of any required documents.

PLACE OF CUSTODY ORDER

Pursuant to section 25(1) of the Act, the Board is to review the case within five working days of the Custody Order being made and determine the place where the accused is to be detained.

CUSTODY OPTIONS

Section 24 of the Act requires an accused to be detained in an authorised hospital, a declared place, a detention centre or a prison. However, a mentally impaired accused cannot be detained in an authorised hospital unless the accused has a mental illness that is capable of being treated. Consequently, accused who suffer solely from a cognitive impairment are not suitable for a hospital placement. Subsequent to June 2015 these accused can now be placed in a “declared place” or in a prison.

NOTIFICATION OF NEW MENTALLY IMPAIRED ACCUSED PERSONS

The Board is to notify both the Public Advocate and Electoral Commission, pursuant to section 98(1) of the *Guardianship and Administration Act 1990* (WA) and section 59(2)(b) of the *Electoral Act 1907* (WA) of all new mentally impaired accused persons.

RELEASE CONSIDERATIONS

When making a recommendation to the Attorney General for the release of a mentally impaired accused the Board is to have regard for the following factors as outlined in section 33(5) of the Act.

- a) the degree of risk that the release of the accused appears to present to the personal safety of people in the community or of any individual in the community;
- b) the likelihood that, if released on conditions, the accused would comply with the conditions;
- c) the extent to which the accused's mental impairment, if any, might benefit from treatment, training or any other measure;
- d) the likelihood that, if released, the accused would be able to take care of his or her day to day needs, obtain any appropriate treatment and resist serious exploitation;
- e) the objective of imposing the least restriction of the freedom of choice and movement of the accused that is consistent with the need to protect the health or safety of the accused or any other person;
- f) any statement received from a victim of the alleged offence in respect of which the accused is in custody.

REPORTS TO THE MINISTER

Pursuant to section 33 of the Act, the Board provides the Attorney General with statutory reports that contain the release considerations outlined in section 33 (5) of the Act. There are varying circumstances where reports are provided to the Attorney General for consideration. These include:

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 eight 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.

Each statutory report prepared by the Board contains information gathered from a variety of sources and service providers. Statutory reports critically analyse information pertaining to an accused's criminal and medical history, substance abuse issues, treatment needs,

criminogenic factors, social background, protective factors and victim issues. These reports commonly address issues of a complex medical nature and can include an identification of the accused's criminogenic needs, based on expert opinion evidence, as well as the identification of any risk factors. Statutory reports allow the Attorney General to be well informed of an accused's situation and also provide the foundation for more detailed consideration of an accused's case when making an independent decision following a recommendation of the Board.

INTERAGENCY COLLABORATION

The management of accused under the authority of the Board requires extensive collaboration between government and non-government agencies throughout the State of Western Australia. The primary reason behind this level of collaboration is the fact that the Board does not have a source of funds to provide an accused with accommodation or with supervision by trained carers. Once a mentally impaired accused is of a sufficiently low risk to the safety of the community, such that he or she may be the subject of a Conditional Release Order, the Board has an obligation to consider the safety and welfare of the accused. The management of mentally impaired accused, including cognitively impaired accused, in the community presents many challenges. They usually have no accommodation and are not able to properly care for themselves.

The Board is to confirm that the appropriate arrangements are in place to ensure that the accused is appropriately cared for in the community and money to pay for that care must be found. Consequently, the chronic shortage of resources in the mental health system generally continues to present impediments to the release of accused.

Relationships with the variety of government and non-government agencies involved with mentally impaired accused have continued to improve and the Board now has far greater access to the sort of information required to make informed decisions concerning the risks to the community, the interests of victims and the needs of the accused. This change in approach has also allowed for a far closer scrutiny of cases and, when it is appropriate for an accused to be released into the community, it has allowed for a multi-faceted resolution and shared responsibility with other government departments such as the Disability Services Commission for the particular accused.

Other agencies with which the Board collaborates include, but are not limited to:

- Disability Services Commission;
- Mental Health Law Centre;
- Regional Home Care Services;
- Office of the Public Advocate;
- the Commissioner for Victims of Crime
- State Administrative Tribunal;
- Legal Aid;

- State Forensic Mental Health Services;
- Western Australian Police Service;
- Victim Notification Register; and
- Victim-Offender Mediation Unit.

As the Board does not have access to a funding stream to pay for housing or the care of mentally impaired accused, considerable time goes into encouraging these working relationships with the agencies that can provide these services. The Board's close working relationship with the Disability Services Commission has assisted the Board in gaining more detailed information in relation to community based support services available to mentally impaired accused. Meetings between Board representatives and the Disability Services Commission have allowed for a reciprocal relationship between the two agencies. The Board is provided with comprehensive release plans for a mentally impaired accused which have resulted in a better understanding of the operational procedures of the Disability Services Commission.

VICTIM CONSIDERATIONS

Pursuant to section 33(5)(f) of the Act, the Board is required to consider any statement received from a victim of an alleged offence. Victims can either write directly to the Board or can be contacted through the Victim-Offender Mediation Unit (VMU). VMU falls under the jurisdiction of the Department of Corrective Services. The Board often receives reports from VMU which can recommend protective conditions to ensure the rights and safety of both the offender and the victims are protected. In the event that the Board does not receive a written submission from a victim, victim issues are still considered through alternative sources of information. All victim submissions received by the Board are treated with the highest level of confidentiality.

Pursuant to section 33(6) of the Act, victim of an alleged offence, means:

- a) a person who suffered injury, loss or damage as a direct result of the alleged offence, whether or not that injury, loss or damage was reasonably foreseeable by the alleged offender; or
- b) where the alleged offence results in death, any member of the immediate family of the deceased.

The Board places great emphasis on these submissions and they are taken into account when the Board determines the conditions of release for a mentally impaired accused.

Victim who are registered with the Victim Notification Register (VNR) are automatically made aware of any recommendation of the Board.

STATISTICS

As of 30 June 2017, 40 mentally impaired accused were under the statutory authority of the Board. Each accused has an individual set of circumstances which are unique and need to be considered accordingly by the Board. The number of accused under the jurisdiction of the Board changes throughout the financial year period due to the number of custody orders made by the courts and the number of accused discharged from their custody orders.

BOARD MEETINGS PER FINANCIAL YEAR

YEAR	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
NUMBER OF MEETINGS	31	28	19	25	30

For the period from 1 July 2016 to 30 June 2017, the Board met on 30 occasions, including nine quorum meetings.

CUSTODY ORDERS MADE BY THE COURTS

Section 25 of the Act stipulates that the Board is required to review the case of an accused within five working days of a custody order being made by the courts.

YEAR	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
NEW CUSTODY ORDERS MADE BY THE COURTS	3	2	2	2	4

PLACE OF CUSTODY DETERMINED BY THE BOARD

Section 24(1) of the Act states that a mentally impaired accused is to be detained in an authorised hospital, a declared place, a detention centre or a prison, as determined by the Board, until released by an order of the Governor.

Place of custody as at 30 June 2017 for the 40 mentally impaired accused:¹

AUTHORISED HOSPITAL	PRISON	DECLARED PLACE	NOT IN CUSTODY
7	12	2	19

AUTHORISED HOSPITAL

Pursuant to section 21 of the *Mental Health Act 1996* (WA), Graylands Hospital and the Frankland Centre are considered to be the only authorised hospitals as both have the facilities to cater for long term and high risk mentally impaired accused persons.

DECLARED PLACE

Pursuant to section 23 of the Act, a declared place means a place declared to be a place for the detention of mentally impaired accused by the Governor. The recent proclamation of the *Declared Places (Mentally Impaired Accused) Act 2015* (WA) paved the way for the first declared place, known as the Disability Justice Centre, in the State of Western Australia. The *Declared Places (Mentally Impaired Accused) Act 2015* (WA) falls under the portfolio of the Minister for Disability Services.

Pursuant to section 24(5A) of the Act a mentally impaired accused is not to be detained in a declared place that is established by the Disability Services Commission under the *Disability Services Act 1993* (a DSC declared place) unless the Board –

- (a) is satisfied that the accused is a person with a disability as defined in the *Disability Services Act 1993* section 3 and the predominant reason for the disability is not mental illness; and
- (b) is satisfied that the accused has reached 16 years of age; and

¹ Not in custody figure includes accused that are on Conditional Release Orders, accused in breach of Conditional Release Orders and accused who are absent without leave.

- (c) has regard to the degree of risk that the accused's detention in the declared place appears to present to the personal safety of people in the community or of any individual in the community.

There are currently two mentally impaired accused who are detained at the Disability Justice Centre. The Board ordered that one other mentally impaired accused may be detained at the declared place, however he cannot be placed there without the consent of the Minister for Disability Services and as at 30 June 2017 consent had not been given.

REPORTS TO MINISTER

YEAR	2013-2014	2014-2015	2015-2016	2016-2017
NUMBER OF REPORTS SUBMITTED TO THE ATTORNEY GENERAL	44	45	41	47

Pursuant to section 33(2)(d) of the Act, the Board is required to give the Minister a written report about a mentally impaired accused in any event at least once in every calendar year. These are referred to as statutory reports.

LEAVE OF ABSENCE ORDERS

Pursuant to section 27(2)(a) of the Act, the Governor in Executive Council provides authorisation for the Board to issue Leave of Absence Orders (LOAs), not exceeding 14 days, with or without conditions. Once it is authorised to do so, prior making an LOA, the Board is required to have regard for the degree of risk the accused presents to the safety of the community and the likelihood of the accused's compliance with conditions.

An LOA is often granted to an accused for emergency medical treatment, or on compassionate grounds, such as attending a funeral. It also enables the accused to participate in rehabilitation programmes leading to his or her gradual reintegration back into the community.

Under the Act the Board is unable to amend the terms and conditions of an LOA, thus the Board must cancel an LOA should it intend on amending any terms and conditions and reissue a new LOA. The Board may, at any time, cancel an LOA and issue a new LOA to reflect any change in the accused's circumstances.

From 1 July 2016 to 30 June 2017 the Board issued a total of 27 LOAs.

RELEASE OF MENTALLY IMPAIRED ACCUSED PERSONS

NUMBER OF CONDITIONAL RELEASE ORDERS ISSUED BY THE GOVERNOR IN EXECUTIVE COUNCIL FOR 2016-2017	NUMBER OF ACCUSED CURRENTLY ON CONDITIONAL RELEASE ORDERS
4	18

Pursuant to section 35 of the Act, the Governor in Executive Council may order the release of an accused into the community with or without specific conditions.

The Board provides the Attorney General with a statutory report which focuses on the release considerations outlined in section 33(5) of the Act. The Governor in Executive Council, on recommendation from the Attorney General, then determines the suitability for the conditional release of a mentally impaired accused. From 1 July 2016 to 30 June 2017 the Governor in Executive Council issued four Conditional Release Orders. As at 30 June 2016, there were a total of 18 mentally impaired accused on Conditional Release Orders.

YEAR TO YEAR COMPARISON

YEAR	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
BOARD WORKLOAD <ul style="list-style-type: none"> Meetings Number of Decisions Made 	31 132	28 139	19 133	25 173	30 178
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) 	(3) 1 0 2 0	(2) 0 0 2 0	(2) 2 0 0 0	(2) 0 0 1 1	(4) 1 1 2 0

YEAR	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
REPORTS TO THE MINISTER	40	44	45	41	47
NUMBER OF LEAVE OF ABSENCE ORDERS ISSUED BY THE BOARD UNDER SECTION 28 OF THE ACT	37	49	19	44	27
CONDITIONAL RELEASE ORDERS APPROVED BY THE GOVERNOR IN EXECUTIVE COUNCIL	0	2	7	3	4
UNCONDITIONAL RELEASE ORDERS APPROVED BY THE GOVERNOR IN EXECUTIVE COUNCIL	0	0	1	3	2
CANCELLATION OF CONDITIONAL RELEASE ORDERS BY THE BOARD	2	1	0	1	0
NUMBER OF MENTALLY IMPAIRED ACCUSED DISCHARGED FROM A CUSTODY ORDER	0	0	1	3	3 ²
NUMBER OF MENTALLY IMPAIRED ACCUSED ON CONDITIONAL RELEASE ORDERS	10	9 ⁱ	15	14	18
ACCUSED PERSONS IN CUSTODY <ul style="list-style-type: none"> Prison and/ or Detention Centre Authorised Hospital 	(25) 17 8	(28) 18 10	(21) 15 6	(22) 16 6	(19) 12 7
TOTAL NUMBER OF MENTALLY IMPAIRED ACCUSED AS OF 30 JUNE	37	39	40	39	40

² This figure includes one deceased mentally impaired accused.

REMUNERATION

MEMBERS

The Member remuneration rate for a meeting is currently \$497, an increase from \$490 on 27 May 2016. Below is a breakdown of remuneration payments to Members in 2016/2017.

Member A	\$14,413
Member B	\$14,413
Member C	\$9,020
Member D	\$2,112
Member E	\$497

The Chairperson is a full time judge and is remunerated accordingly.

The full-time Deputy Chairperson is appointed by Executive Council (EXCO) and is paid a salary of \$121,980 as determined by EXCO.

The Public Sector Commission's annual reporting framework for the 2016/17 financial year requires board memberships to be reported in the Annual Report. This requirement includes the naming of board members and listing the remuneration that each board member received from the respective board during the financial year. The reporting framework further acknowledges that for security reasons, or reasons of sensitivity, these disclosures may be withheld. In consultation with the Attorney General, names of Mentally Impaired Accused Review Board members have been withheld for security reasons.