



**GOVERNMENT OF
WESTERN AUSTRALIA**

**2015/16
ANNUAL REPORT**
MENTALLY IMPAIRED ACCUSED
REVIEW BOARD
WESTERN AUSTRALIA

FOREWORD

THE HON. MICHAEL MISCHIN, MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

To the Attorney General,
The Honourable Michael Mischin, MLC

I present to you the Annual Report of the Mentally Impaired Accused Review Board of Western Australia for the year ended 30 June 2016.

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

27 September 2016

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.

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CHAIRMAN'S OVERVIEW

The last financial year has been a very 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).

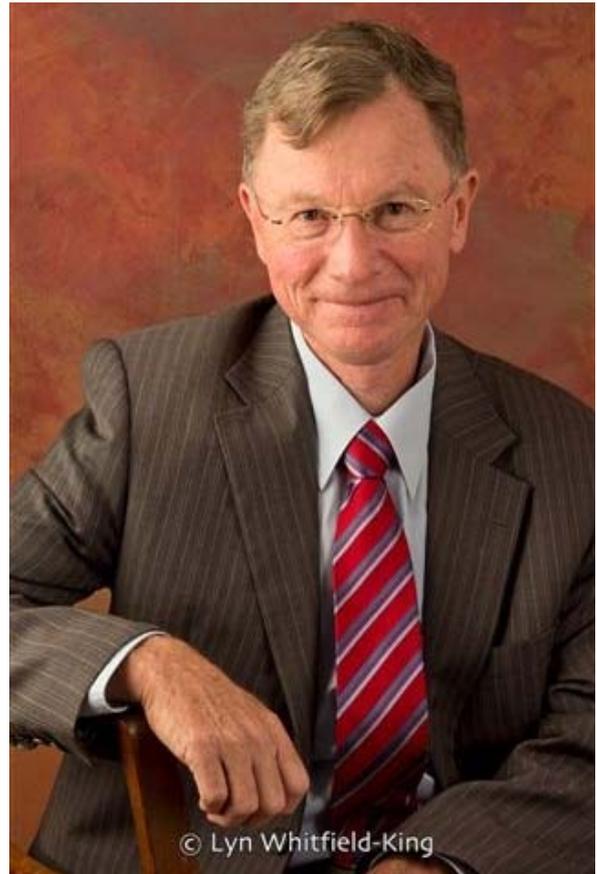
During the period 1 July 2015 to 30 June 2016, the Board had under its statutory authority at various times 42 individual mentally impaired accused in total. Of them, 28 accused had a diagnosed mental illness, seven (7) accused with a diagnosed intellectual impairment and six (6) accused with a dual diagnosis of a combined intellectual impairment and mental illness. The remaining accused was diagnosed with a medical condition that constituted a mental impairment but which did not meet the definition of a mental illness or an intellectual impairment (epilepsy resulting from an arteriovenous malformation). He has since been discharged from his custody order.

- As at 30 June 2016 there were 39 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)
- 16 were in prison (or participating in leaves of absence from prison)
- 16 were in the community subject to a Conditional Release Order (CRO).

RELATIONSHIPS AND NETWORKING

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

Historically, the Board also has difficulties reconciling policies of the Department of Corrective Services (DCS) and the effect of the adult custodial rules which override some prisoners' security ratings which had made it difficult to facilitate leaves of absence because of a prisoner's specific prison. This situation has improved significantly in recent months, following (and possibly because of) the institution by the Director of Legal Aid of litigation designed to force DCS to permit prisoners to access leave of absence. Recently the Department has been very responsive to Board requests to undertake expedited changes in security rating and prison transfers to facilitate leave of absence arrangements. DCS continues to communicate openly with the Board on its policy to only allow accused out on leave of absence periods in the community once they are assessed as minimum security



prisoners and are detained at a minimum security prison. For accused who have been granted a Leave of Absence Order 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.

I visited Wooroloo Prison Farm on 31 March 2016 as at that time there were six (6) mentally impaired accused in custody there. I was welcomed by the Superintendent who arranged for me to meet with the accused who were not on authorised leaves of absence. It was useful to discuss their particular circumstances with the accused and I gained a deeper understanding of the special difficulties they faced in the prison system.

The location of mentally impaired accused people in a prison environment is very often harsh for them, they 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.

In my capacity 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 now 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 continued to work closely with the Disability Services Commission (DSC) in identifying those accused who may be eligible for detention at the declared place which is to be managed by staff of the DSC, and became operational in August 2015 with the first accused moving there from prison on 21 August 2015. The Board has long advocated the need for a declared place and welcomed the opening of the Centre.

The Board is pleased to see a continuation of the work of the DSC In-Reach Service Team. The In-Reach service essentially incorporates both in-reach and out-reach and elements of prevention and diversion. This service supports people with 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 disability or via consultancy with disability sector organisations, legal professionals, advocates and other government agencies.

The aim of the service is to reduce recidivism and divert people with disability from the justice system. The service engages with Disability Services Commission staff and the disability sector to develop strategies for early intervention, prevention and diversion. These strategies are enhanced by working within court systems, police and corrective services.

There are currently two mentally impaired accused in prison who are eligible for services from the Commission's In-Reach service. There is one other who is currently in prison on remand who is on a CRO who has been a client of the service in the past and with whom the Commission is continuing to work. There are three mentally impaired accused who are participating in LOA from Prison who the Commission continues to work with in the community.

As reported in previous years, I have previously agreed to a procedure with the Mental Health Law Centre whereby copies of reports prepared for hearings of accused whom the Mental Health Law Centre represent, can be provided to their office prior to hearing of a particular matter so submissions can be provided to the Board which addresses new material. 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. The result is that the Board receives detailed and up to date submissions from Mental Health Law Centre. The Director of Legal Aid, who now represents a significant number of mentally impaired accused, is now also included under this procedure. 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. More frequently than ever before, accused have been permitted to appear at Board hearings by video-link from facilities which exist at either a prison or the Frankland Centre. This initiative had been embraced by a number of lawyers who now regularly appear for accused, and seems to be very effective. We have also accommodated a number of requests from mentally impaired accused who are on either a leave of absence or a conditional release order to appear in person at Board hearings.

Improved working relationships with the staff in the office of the Attorney General has resulted in a reduction in the delay in approval to grant Leave of Absence Orders and a much improved response time for consideration of statutory reports and their return to the Board.

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 visitors have been staff of the DCS, staff from the Disability Services Commission, staff from the Department of the Attorney General, and staff of the Mental Health Law Centre.

The Board has continued to permit some Community Corrections Officers 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 material are 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 Community Corrections Officer.

REVIEW OF THE ACT

In late 2014, the Attorney General, consistent with a commitment made in the lead up to the last State election, commenced a review of the Act. A discussion paper was produced and widely circulated for the purpose of full public consultation.

The State Government sought feedback and comments on the operation of the Act. Some issues and questions were set out in the Discussion Paper which was prepared to provide guidance on matters people may wish to consider, however, people were also invited to make submissions on any other aspect of the operation of the Act.

The 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 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. Although by the end of the reporting year, a working group had not been assembled, that has since occurred and recently considerable work has been undertaken by a group chaired by the Honourable Peter Blaxell.

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 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 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, although the Disability Justice Centre was not officially opened until 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 3 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 was not considered appropriate by the Minister for Disability Services and she declined to offer her consent. He remains in prison, although he is subject to leaves of absence currently permitting him to be absent from the prison for 13 days per fortnight.

It is disappointing that the Board has been unable to progress more mentally impaired accused to the Disability Justice Centre as it is a fine facility offering considerable opportunities. Regrettably however, the Centre has not been free of controversy. On New Year's Eve in 2015, two accused scaled a fence and absconded. The scale of the immediate police response appears to have been unnecessarily intensive, having regard to the low risk that both men posed. One was located the following day at a Perth Park and the other was returned a few days later by his mother. This escape exposed inadequacies in the security of the facility which then resulted in a decision by DSC to undertake a number of enhancements to security, necessitating a shutting of the facility and a temporary return to prison of the two accused then at the Centre.

MEMBERSHIP OF THE BOARD

The amendment to the Act resulting from the commencement of the *Declared Places (Mentally Impaired Accused) Act 2015* which allowed for the DSC to appoint a member to the Board and thereby increased the number of Board members has proven to have been most useful and improved the functioning of the Board; so much so that I believe consideration should be given to further increasing the Board membership by inviting nominees of DCS and from the State Forensic Mental Health Service. There were no appointments to the Board during 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.

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

27 September 2016

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.

As at 30 June 2016, thirty-nine mentally impaired accused are under the statutory authority of the Board and three accused were discharged from their custody order during the reporting year.

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.

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.

Further information can be found online at the Board's website – www.miarb.wa.gov.au

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 the following documents:

- Custody Order
- Prosecution notice or indictment
- Statement of facts by prosecutor
- Transcript of proceedings
- Written summary of the facts prepared by judicial officer who made the order (if no transcript available)
- Criminal record
- Any pre-sentence report
- Any other reports considered by court when making the order

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 and subsequent to June 2015 these accused can now be placed in a “declared place” or in a prison.

Prior to August 2015, there was no “declared place” in Western Australia. A lack of an appropriate secure residential facility for accused who present too high a risk to the safety of the community for them to be released, even if supervised, has long been recognised by the Board. This issue was resolved with the opening of the new Declared Place (Disability Justice Centre) in Caversham in August 2015.

During 2015 to 2016 the Board engaged with the Disability Services Commission to facilitate the placement of several accused with intellectual or cognitive disability in the Disability Justice Centre.

NOTIFICATION OF NEW MENTALLY IMPAIRED ACCUSED PERSONS

The Board is to notify both the Public Advocate and Electoral Commission of all new mentally impaired accused persons.

Pursuant to section 98(1) of the *Guardianship and Administration Act 1990* (WA), the secretary to the Board shall notify the Public Advocate accordingly.

Pursuant to section 59(2)(b) of the *Electoral Act 1907* (WA), the secretary to the Board must forward to the Electoral Commissioner;

- (i) a list containing the required information for each person who became a mentally impaired accused during the preceding month; and
- (ii) a list containing the required information for each person who ceased to be a mentally impaired accused during the preceding month.

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 is approximately fifteen pages in length and 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.

When deemed appropriate by the Governor in Executive Council, an accused will be granted access into the community for very short periods over an extended length of time. Initially, the Board will often recommend to the Minister that the Governor be advised to make an order allowing the Board to grant leave of absence to an accused, pursuant to section 27(1) of the Act. During such periods, the accused will be subject to conditions which are determined by the Board pursuant to section 28(2)(b) of the Act.

Following what is often a substantial period of successful community access, the Board will subsequently consider recommending allowing the accused into the community for lengthier periods of time. This measured approach towards release ensures that the accused maintains a validated level of stability and compliance in the community, whilst also aiming to ensure the personal safety of individuals in the community.

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.

VIDEOLINK AND PERSONAL APPEARANCES OF ACCUSED BEFORE THE BOARD

During 2015-2016, 10 mentally impaired accused appeared before the Board by video-link conducted through either a prison or Graylands Hospital.

On four occasions an accused person made a personal appearance before the Board. Lawyers representing mentally impaired accused now routinely attend Board meetings to make submissions on behalf of their clients. In addition, the Board has been pleased to invite guardians to present their client's case. All written requests for appearances before the Board are considered on an individual basis by the Chairman of the Board.

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. The Victim-Offender Mediation Unit falls under the jurisdiction of the Department of Corrective Services. The Board often receives reports from the Victim-Offender Mediation Unit which can recommend protective conditions to ensure the rights and safety of both the offender and the victims are protected.

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.

Victim submissions are provided in the majority of matters considered by the Board. 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.

All victim submissions received by the Board are treated with the highest level of confidentiality. 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.

Victims who are registered with the Victim Notification Register are automatically made aware of any recommendation of the Board. The Victim Notification Register falls under the Department of Corrective Services.

MENTALLY IMPAIRED ACCUSED INDIVIDUALS PROFILE

As of 30 June 2016, 39 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. From the period 1 July 2015 until 30 June 2016 the Board had a total of 42 mentally impaired accused individuals under its jurisdiction. During the period 1 July 2015 until 30 June 2016 the courts made two custody orders for two accused and three accused were discharged from their custody orders.

GENDER

During the period 1 July 2015 to 30 June 2016, the Board had under its statutory authority five female mentally impaired accused and 37 male mentally impaired accused. These statistics reflect the total number of individual accused (42) under the jurisdiction of the Board at various times during the financial year period.

DIAGNOSIS

During the period 1 July 2015 to 30 June 2016, the Board had under its statutory authority 28 accused with a diagnosed mental illness, seven accused with a diagnosed intellectual impairment and six accused with a dual diagnosis of a combined intellectual impairment and mental illness. The remaining accused was diagnosed with a medical condition that constituted a mental impairment but which did not meet the definition of a mental illness or an intellectual impairment.

STATISTICS

OFFENCE(S) FOR WHICH A CUSTODY ORDER WAS ISSUED

TYPE OF OFFENCE	NUMBER OF OFFENCES
Wilful murder	12
Murder	4
Attempted murder	10
Manslaughter	2
Dangerous Driving Causing Death	1
Unlawful killing	1
Sexual penetration of child (Under 13 Years of Age)	3
Sexual penetration of child (Under 16 Years of Age)	8
Indecent dealings with a child (Under 16 years of age)	3
Using electronic communication with intent to procure Indecent assault	1
Indecent act with intent to offend	3
Indecent dealings with a child who is a lineal relative	1
Trespass	3
Steal motor vehicle	3
Going armed in public	3
Stealing	1
Assault a public officer	4
Unlawful wounding	1
Grievous bodily harm	3
Assault occasioning bodily harm	9
Aggravated armed robbery	2
Aggravated burglary	2
Burglary	3
Arson	1
Unlawful damage	1
Breach of bail	2
Common assault	2
Reckless driving	2
Unlawful act causing bodily harm	1
Assault person providing health service to the public	3

TYPE OF OFFENCE	NUMBER OF OFFENCES
Assault person working in a hospital	1
Failure to stop at the scene of an accident and render assistance	1
Failure to report a traffic accident occasioning bodily harm	1
Possession of firearm/ammunition and not the holder of licence/permit	1
Unlicensed person possess firearm/ammunition	2
Possession of stolen or unlawfully obtained property	3
Possess a prohibited weapon	1
Inadequate storage facility for firearms	2

It should be noted that the total number of offences exceeded the total number of accused (42) under the statutory authority of the Board, as each accused may have had a custody order issued for more than one offence. An individual can also have multiple concurrent custody orders issued at different times for different offences.

It should also be noted that a custody order may be issued to an accused for a combination of serious offences and minor offences which form part of the custody order. Additionally, while one of the offences contained on the custody order may include a minor offence, the circumstances surrounding the minor offence may have been regarded as serious, for example, a pattern of repetitive or similar behaviour in the past which may have escalated over time.

BOARD MEETINGS PER FINANCIAL YEAR

YEAR	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
NUMBER OF MEETINGS	25	31	28	19	25

For the period from 1 July 2015 to 30 June 2016, the Board met on 25 occasions, including five 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	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
NEW CUSTODY ORDERS MADE BY THE COURTS	3	3	2	2	2

During the period of 1 July 2015 to 30 June 2016 the court issued two custody orders under the Act for two accused.

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 2015 for the forty mentally impaired accused:¹

AUTHORISED HOSPITAL	PRISON	JUVENILE DETENTION CENTRE	DECLARED PLACE	NOT IN CUSTODY
6	16(14)	0	0(2)	17

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.

Two mentally impaired accused whose principal place of custody was the Declared Place were absent from that facility on 30 June 2016 as they were temporarily being held at Karnet Prison Farm while construction work was being undertaken at the Declared Place.

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
- (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 whose place of custody is at the Disability Justice Centre. Neither were present at the facility on 30 June 2016 as they had been returned temporarily to prison to allow for upgraded construction works at the facility to take place. Both were subsequently returned to the Disability Justice Centre on 5 August 2016.

REPORTS TO MINISTER

YEAR	2012-2013	2013-2014	2014-2015	2015-2016
NUMBER OF REPORTS SUBMITTED TO THE ATTORNEY GENERAL	40	44	45	41

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. During the period 1 July 2015 to 30 June 2016, the Board submitted a total of 41 statutory reports to the Attorney General. The Board's obligation is to report once for each accused in each calendar year. Thus the figure for number of reports in a financial year may not reflect the number of mentally impaired accused who were subject to the Board's jurisdiction in the course of any one financial year.

The information contained within the statutory report is comprehensive and provides an overview of the accused from a diverse range of service providers. The reports are researched and contain analysis. 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. The work involved in producing these reports may involve liaison with representatives of other agencies and working towards the resolution of competing interests including accessing public funds or public housing. More detailed and thorough 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 a decision. Significantly, the necessarily detailed statutory reports are prepared so as to contain sufficient information for the Attorney General to make an independent decision following a recommendation of the Board.

In addition, pursuant to section 33(2)(c) of the Act, the Board must give the Minister a written report about a mentally impaired accused whenever it thinks are special circumstances which justify doing so. For the financial period ending 30 June 2016, the Board provided five reports in accordance with section 33(2)(c) of the Act.

LEAVE OF ABSENCE ORDERS

NUMBER OF ACCUSED FOR WHOM LEAVE OF ABSENCE ORDERS WERE PERMITTED BY GOVERNOR UNDER SECTION 27 OF THE ACT	NUMBER OF LEAVE OF ABSENCE ORDERS ISSUED BY THE BOARD UNDER SECTION 28 OF THE ACT
2	44

From the financial year of 1 July 2015 to 30 June 2016 the Governor permitted the Board to allow leave of absence to two mentally impaired accused.

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, not exceeding 14 days, with or without conditions. Once it is authorised to do so, prior making a Leave of Absence

Order, 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.

A Leave of Absence Order may be 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.

As of 30 June 2016 a total of 13 mentally impaired accused were subject to Leave of Absence Orders issued by the Board including accused on a Leave of Absence Order but considered absent without leave pursuant to section 31(1)(b) of the Act. The statistic also includes accused who were subject to Leave of Absence Orders but who were not literally absent from their place of custody on 30 June 2016.

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

From 1 July 2015 to 30 June 2016 the Board issued a total of 44 Leave of Absence Orders.

RELEASE OF MENTALLY IMPAIRED ACCUSED PERSONS

NUMBER OF CONDITIONAL RELEASE ORDERS ISSUED BY THE GOVERNOR IN EXECUTIVE COUNCIL FOR 2015-2016	NUMBER OF CONDITIONAL RELEASE ORDERS AMENDED BY THE BOARD OR BY THE GOVERNOR IN EXECUTIVE COUNCIL	NUMBER OF CONDITIONAL RELEASE ORDERS CANCELLED BY THE BOARD	NUMBER OF ACCUSED CURRENTLY ON CONDITIONAL RELEASE ORDERS
3	1	0	16

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 2015 to 30 June 2016 the Governor in Executive Council issued three Conditional Release Orders. As at

30 June 2016, there were a total of 16 mentally impaired accused on Conditional Release Orders.

For the financial year 1 July 2015 to 30 June 2016, the Board recommended that the Governor amend one Conditional Release Order, pursuant to section 35(3)(b) of the Act.

YEAR TO YEAR COMPARISON

YEAR	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
BOARD WORKLOAD					
• Meetings	25	31	28	19	25
• Number of Decisions Made	81	132	139	133	173
CUSTODY ORDERS (COURTS)	(3)	(3)	(2)	(2)	(2)
• Section 16 (Unfit to Stand Trial – Lower Court)	0	1	0	2	0
• Section 19 (Unfit to Stand Trial – Superior Court)	1	0	0	0	0
• Section 21 (Schedule 1 – Unsoundness of Mind)	2	2	2	0	1
• Section 22 (Unsoundness of Mind)	0	0	0	0	1
REPORTS TO THE MINISTER	19	40	44	45	41
NUMBER OF ACCUSED FOR WHOM A LEAVE OF ABSENCE ORDER PERMITTED BY THE GOVERNOR IN EXECUTIVE COUNCIL	1	3	4	2	2
CONDITIONAL RELEASE ORDERS APPROVED BY THE GOVERNOR IN EXECUTIVE COUNCIL	2	0	2	7	3

YEAR	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
UNCONDITIONAL RELEASE ORDERS APPROVED BY THE GOVERNOR IN EXECUTIVE COUNCIL	0	0	0	1	3
CANCELLATION OF CONDITIONAL RELEASE ORDERS BY THE BOARD	1	2	1	0	1
NUMBER OF MENTALLY IMPAIRED ACCUSED DISCHARGED FROM A CUSTODY ORDER	0	0	0	1	3
NUMBER OF MENTALLY IMPAIRED ACCUSED ON CONDITIONAL RELEASE ORDERS	7	10	9 ⁱ	15	14
ACCUSED PERSONS IN CUSTODY	(25)	(25)	(28)	(21)	(22)
• Prison and/ or Detention Centre	15	17	18	15	16
• Authorised Hospital	10	8	10	6	6
TOTAL NUMBER OF MENTALLY IMPAIRED ACCUSED AS OF 30 JUNE	33	37	39	40	39

ⁱ Two other accused had Conditional Release Orders approved by 30 June 2014 but were not released until early in the following year.

REMUNERATION

COMMUNITY MEMBERS

The Community 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 Community Members in 2015/16.

Community Member A	\$11,270
Community Member B	\$11,270
Community Member C	\$9,432
Community Member D	\$2,180
Community Member E	\$1,470

The Public Sector Commission's annual reporting framework for the 2015/16 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.