



**WESTERN AUSTRALIA**

**MENTALLY IMPAIRED DEFENDANTS REVIEW BOARD**

**ANNUAL REPORT**

**for the year ended 30th June 2003**

**CRIMINAL LAW (MENTALLY IMPAIRED DEFENDANTS)  
ACT 1996**

# **CRIMINAL LAW (MENTALLY IMPAIRED DEFENDANTS) ACT 1996**

**TO: The Attorney General**

**FROM: The Mentally Impaired Defendants Review Board**

## ***REPORT PURSUANT TO SECTION 48***

*“Before 1 October in each year, the Board is to give a written report to the Minister on -*  
*(a) the performance of the Board’s functions during the previous financial year;*  
*(b) statistics and matters relating to mentally impaired defendants; and*  
*(c) the operation of this Act so far as it relates to mentally impaired defendants.”*

This report is submitted for your information and for general information and covers the period 1 July 2002 to 30 June 2003.

## ***MENTALLY IMPAIRED DEFENDANTS REVIEW BOARD MEMBERSHIP***

The following persons constituted the Mentally Impaired Defendants Review Board as at 30 June 2003:-

Chairman:	Hon T A Walsh QC
Members:	Ms C Chamarette Dr M Winch Dr N Morgan Ms S McDonald - Psychologist Dr A Pullela - Psychiatrist
Deputy Members:	Rev D Robinson - Deputy to Ms Chamarette Mr C Somerville – Deputy to Dr Winch Mrs J Thompson - Deputy to Dr Morgan Mr P McEvoy - Deputy to Ms McDonald Dr P Burvill - Deputy to Dr Pullela

The following persons also performed duties as deputy members during part of the year:-

- ◆ Dr E Pougher (as deputy to Dr Pullela)
- ◆ Mr D Richards (as deputy to Ms McDonald)

## **CHAIRMAN'S PREAMBLE**

### **1. Statistical Overview**

The statistics set out in this report reveal that the workload of the Board has increased over the last 12 months. The Board met on 33 occasions (28 the previous year) and made 118 decisions in respect of 29 mentally impaired defendants (88 decisions in previous year in respect of 21 mentally impaired defendants). The number of Custody Orders imposed by the Courts increased from 1 to 8. The Governor approved 3 Orders for Leave of Absence (1 in the previous year) and the Board amended 5 Orders for Leave of Absence (7 in the previous year). The Governor approved 2 Conditional Release Orders (3 in the previous year) and 2 Release Orders (1 in the previous year). It is of concern that the number of Aboriginal mentally impaired defendants has doubled over the last 12 months (increase from 3 to 6 males).

### **2. Update on Review of the Board**

In April 2002, the Attorney General appointed Mr Peter Frizzell (Principal Reviewer and Director Strategic Review, Department of the Premier and Cabinet) to undertake a comprehensive review of the Board. The Board held discussions with Mr Frizzell, who also attended a meeting of the Board as part of the Review. In August 2002, a *Report on the Review Parole Board, the Mentally Impaired Defendants Review Board and the Supervised Release Review Board* (the "Frizzell Report") was handed down with 38 recommendations.

However, the Report stated that it would be "pre-emptive of this Review to make recommendations" in any aspects of the Mentally Impaired Defendants Review Board, in view of the announcement by the then Hon Minister for Health and the Attorney General to review the *Criminal Law (Mentally Impaired Defendants) Act 1996* and the *Mental Health Act 1996*. Therefore, a copy of the Frizzell Report was provided to the Stakeholder Committee, Review of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and the *Mental Health Act 1996* (please see next heading).

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

Currently, a Review of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and the *Mental Health Act 1996* is in progress and it is envisaged that a final report will be submitted to the Minister for Health at the end of 2003. The terms of reference are briefly outlined as follows:-

- (a) the effectiveness of the operations of the Mentally Impaired Defendants Review Board
- (b) the need for the continuation of the functions of the Mentally Impaired Defendants Review Board and;
- (c) such other matters as appear to be relevant to the operations and effectiveness of the *Criminal Law (Mentally Impaired Defendants) Act 1996* including its relationship with the *Mental Health Act 1996*.

I appointed Dr Neil Morgan as my nominee on the Committee and Ms Irene Morgan (Legal Research Officer) as deputy. The Committee has been reviewing a wide range of issues, and the Board has also directly communicated a range of concerns to the Attorney General:-

#### **(a) Need for a "declared place"**

Once a Custody Order has been imposed by the court, the Board is required to make a Place of Custody Order pursuant to section 24 of the *Criminal Law (Mentally Impaired Defendants) Act 1996*, which provides that "a mentally impaired defendant 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”.

The lack of a “declared place” means that a mentally impaired defendant is either detained in a prison or an authorised hospital. Only those with a treatable mental illness can be detained in an authorised hospital (namely, the Frankland Centre) whilst those with an intellectual disability, brain damage or senility end up in prison.

Currently, 7 mentally impaired defendants are incarcerated in prison. The prison environment is inappropriate for those who have brain damage, an intellectual disability or dementia. Moreover, such mental condition is unlikely ever to improve. Of more concern is the fact that 4 out of the 7 mentally impaired defendants who are currently in prison are Aboriginals from remote and regional parts of the State. This has the following ramifications:-

- (i) They are displaced from their respective Communities.
- (ii) It is difficult for the individual to maintain regular personal contact and support from family and Community members.
- (iii) it has proved difficult to develop appropriate release plans.

***(b) Need for medium-security placement at Graylands Hospital***

The lack of a medium-security placement at Graylands Hospital means that mentally impaired defendants are being detained at the Frankland Centre (maximum-security) for an extended period of time before they are deemed suitable for transfer to Plaistowe Ward (open ward), for eventual release into the community. The availability of a medium-security placement at Graylands Hospital would assist the effective transition of mentally impaired defendants from a maximum secure unit through to the community, as well as contributing to the safety of the community.

This issue has been raised with the Attorney General and the Board received a positive response from the then Minister for Health in February 2003. According to the Minister, this issue has been raised with the Department of Justice and the Department of Health, and a submission for funding for this proposal is to be made to the Treasury.

***(c) Appointment of Supervising Officers***

Since its inception in 1997, no supervising officers have been appointed under section 45 of the Act as the Board has not been provided with the mechanism or funding to do so. The lack of a supervising officer creates difficulties in ensuring that the release or leave conditions for the mentally impaired defendants are supervised, and that the safety of the public and victims are protected. The consequence of putting members of the public at risk of harm cannot be underestimated. This matter therefore requires urgent consideration and funding.

***(d) Inter-agency Collaboration***

Greater inter-agency collaboration between the Disability Services Commission, Public Advocate, Department of Health and the Department of Justice is required in order to formulate a suitable and viable release plan for mentally impaired defendants.

**4. Visits to Graylands Hospital**

Representatives of the Board, including myself, have visited Graylands Hospital and welcomed the opportunity to view the facilities and meet representatives of their staff and psychiatrists. Such

visits enable the Board to explain the role of the Board and its obligations under the Act. Equally, the psychiatrists and registrars gave their perspectives regarding their obligations towards the patients.

## **5. Early identification of prisoners with mental illness and diversionary programs for those with intellectual disability**

The Board welcomes the new partnership between the Departments of Justice and Health regarding early identification and treatment of prisoners who enter the prison with a mental illness, and providing them with options for treatment and rehabilitation. This initiative is a key part of the Community Re-entry Program for Prisoners which is designed to assist offenders to re-establish themselves in the community, when released. It is hoped that the initiative will extend to mentally impaired defendants who are currently in prison and not simply to convicted offenders.

The Board also welcomes a joint effort between the Department of Justice and the Disability Services Commission in diverting people with intellectual disabilities away from the criminal justice system. We have been informed that the diversionary program is underway in the Central Law Courts and the Board hopes that it will ultimately result in the decrease in offending behaviour amongst people with intellectual disability.

## **6. Visitors**

The Board had a number of visitors who observed the proceedings of Board meetings over the last 12 months, and I am happy for this to be continued in the foreseeable future.

## **7. New initiatives**

The Board has taken and will be undertaking proactive initiatives including:-

- (a) Bi-annual visits to Graylands Hospital to meet psychiatrists and registrars.
- (b) Seminars (twice per year) with psychiatrists, registrars and treating team about the role and obligations of the Board under the Act and the contents of reports submitted to the Board.
- (c) Similar seminars with guardians, Community Corrections Officers and other relevant agencies with an understanding of the respective roles of the agencies in formulating a viable release plan for a mentally impaired defendant.
- (d) Appointment of a full time Legal Research Officer in January 2003.

## **8. Conclusion and Acknowledgement**

Whilst the number of mentally impaired defendants has increased from 21 to 29 over the last 12 months, the complexity of each case has also increased. However, the Board continues to receive the co-operation of the psychiatrists who have the responsibility of monitoring and treating the mentally impaired defendants. Once again, I place on record the Board's appreciation of their commendable efforts to assist the Board to function effectively together with the related agencies, including, the Courts, the Department of Justice, the Department of Health and the Disability Services Commission.

As Chairman, I should like to extend my personal thanks to all Board members and deputies for their work and contribution during the year. I also wish to thank the Staff of the Board for their support which they have brought to what can often be a challenging and complex task.

## A. BOARD'S WORKLOAD

During the period 1 July 2002 to 30 June 2003, the Board met on 33 occasions and made 118 decisions in respect of 29 mentally impaired defendants. Of the 29 mentally impaired defendants, the Table below shows that the Board made 1 decision with respect to 1 defendant; 2 decisions with respect to 5 defendants; 3 decisions with respect to 6 defendants, and so forth.

<b>No. of Decisions: 118</b>	1	2	3	4	5	6	7	8	9	10
<b>Per number of mentally impaired defendants: 29</b>	1	5	6	9	1	3	3	0	1	0

## B. CUSTODY ORDERS BY COURTS

### Part 3 of the Act: Mental Unfitness to Stand Trial:

Section 16: Order made by Court of Summary Jurisdiction.

Section 19: Order made by Superior Court.

### Part 4 of the Act: Acquitted on Account of Unsoundness of Mind:

Section 21: Order made by Superior Court.

Section 22: Order made by Court of Summary Jurisdiction.

During the period 1 July 2002 to 30 June 2003, the Court made 8 Custody Orders.

Jurisdiction	No. of Orders	S16	S19	S21	S22	Place of Custody
<b>Supreme Court</b>	4	0	1	3	0	(3) Graylands Hospital (1) Prison
<b>District Court</b>	3	0	2	1	0	(1) Graylands Hospital (2) Prison
<b>Petty Sessions Court</b>	1	1	0	0	0	(1) Prison
<b>Children's Court</b>	0	0	0	0	0	
<b>Total</b>	<b>8</b>	<b>1</b>	<b>3</b>	<b>4</b>	<b>0</b>	

## C. PLACE OF CUSTODY ORDERS BY 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	<sup>(1)</sup> Authorised Hospital	Prison	Juvenile Detention Centre	<sup>(2)</sup> Declared Place
8	4	4	0	0

- (1) Graylands Hospital is the only authorised hospital which has the facilities to cater for long term and high risk mentally impaired defendants.
- (2) No place has yet been declared for this purpose.

There were also an additional two occasions when the Board amended the initial Place of Custody Order.

## **D. REPORTS TO MINISTER**

### **Section 33(1):**

*“At any time the Minister, in writing, may request the Board to report about a mentally impaired defendant.”*

### **Section 33(2):**

*“The Board must give the Minister a written report about a mentally impaired defendant:*

- (a) within 8 weeks after the custody order was made in respect of the defendant;*
- (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.”*

<b>Total Reports</b>	<b>Section 33(2)(a)</b>	<b>Section 33(2)(b)</b>	<b>Section 33(2)(c)</b>	<b>Section 33(2)(d)</b>
30	8	0	12	10

## **E. LEAVE OF ABSENCE**

### **Section 27(1)**

*“The Board may at any time recommend to the Minister that the Governor be advised to make an order allowing the Board to grant leave of absence to a mentally impaired defendant.”*

### **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 defendant;*
- (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 defendant.”*

### **Section 28(2)**

*“A leave of absence order is an order that the defendant 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.”*

Three applications to permit Leave of Absence were approved by the Governor. There were also 5 Leave of Absence Orders amended by the Board (Leave of Absence had previously been approved by the Governor).

All 8 applications were for mentally impaired defendants detained at Graylands Hospital.

One application was for emergency medical treatment not available in Graylands Hospital; two were for emergency medical treatment not available in Graylands Hospital and escorted ground access within Graylands Hospital; one was for emergency medical treatment not available in Graylands Hospital and escorted ground access within Graylands Hospital with hospital staff only; one was to add a residential conditional; one was to add an accommodation condition; one was to add a no contact direct/indirect with victim condition, and one was to help with the rehabilitation of the defendant.

## **F. RELEASE OF MENTALLY IMPAIRED DEFENDANTS**

### **Section 35(1)**

*“The Governor may at any time order that a mentally impaired defendant 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 defendant is to be released –*

*(a) unconditionally; or*

*(b) on conditions determined by the Governor.”*

1. A total of 4 applications for Release Orders were approved by the Governor. Two Release Orders were Conditional and two were Unconditional. Of the two Conditional Release Orders, one Order was initially not approved but when additional information was provided was subsequently approved. The two Conditional Release Orders were for an indefinite period.

### **2. Cancellations (Section 37)**

There were no Release Order cancellations.

### **3. Completions (Section 38)**

There were no Release Order completions.

### **4. Current Orders**

As of 30 June 2003 there are a total of 10 mentally impaired defendants living in the community under the terms of a Release Order with conditions.

During the period 1 July 2002 to 30 June 2003, one mentally impaired defendant who was subject to an Indefinite Conditional Release Order, died.

## **G. MENTALLY IMPAIRED DEFENDANTS IN CUSTODY**

As at 30 June 2003, a total of 16 mentally impaired defendants remain in custody, with 7 in prison and 9 in Graylands Hospital.



## **H. GENDER/ABORIGINALITY**

There are presently 29 mentally impaired defendants of which 3 are female.

There are 6 Aboriginals, all of whom are male.

### **ACKNOWLEDGEMENT**

The Board wishes to acknowledge the assistance and co-operation of all those personnel associated with the Board. In particular, the services provided by the officers and staff of the Frankland Centre, Graylands Hospital, Courts, Department of Justice, Department of Health of Western Australia, and the Disability Services Commission.

Chairman: Hon T A Walsh QC

Members: Ms C Chamarette  
Dr M Winch  
Dr N Morgan  
Ms S McDonald  
Dr A Pullela

Deputy Members: Rev D Robinson  
Mr C Somerville  
Mrs J Thompson  
Mr P McEvoy  
Dr P Burvill

Acting Secretary: Mr R Fong  
Legal Research Officer: Ms I Morgan  
Co-Ordinator: Ms A Smylie

## YEAR TO YEAR COMPARISON

	<b>2000 / 2001</b>	<b>2001 / 2002</b>	<b>2002 / 2003</b>
Board Workload			
♦ Meetings	32	28	33
♦ Number of cases	107	88	118
Custody Orders (Courts)	(2)	(1)	(8)
♦ Section 16 (Unfit to Stand Trial – Lower Court)	0	0	1
♦ Section 19 (Unfit to Stand Trial – Superior Court)	1	0	3
♦ Section 21 (Schedule 1 - Unsoundness of Mind)	1	1	4
♦ Section 22 (Unsoundness of Mind)	0	0	0
Place of Custody Orders (Board)	(4)	(4)	(8)
♦ Authorised Hospital	3	2	4
♦ Prison	1	2	4
♦ Juvenile Detention Centre	0	0	0
♦ Declared Place	0	0	0
Reports to Minister	(33)	(22)	(30)
♦ Section 33(20(a))	5	1	8
♦ Section 33(2)(b)	0	0	0
♦ Section 33(2)(c)	11	8	12
♦ Section 33(2)(d)	17	13	10
Leave of Absence Orders approved by the Governor	9	1	3
Subsequent amendments to Leave of Absence Orders by the Board	5	7	5
Conditional Release Orders approved by the Governor	2	3	2
Release Orders approved by the Governor	2	1	2
Cancellation of Conditional Release Orders	0	1	0
Completions	3	1	0
Conditional Release Orders (current)	9	12	10
Defendants in custody	(12)	(9)	(16)
♦ Prison	3	3	7
♦ Graylands	9	6	9
Gender	(21)	(21)	(29)
♦ Male	19	19	26
♦ Female	2	2	3
Aboriginality	(3)	(3)	(6)
♦ Male	3	3	6
♦ Female	0	0	0