



MENTALLY IMPAIRED ACCUSED REVIEW BOARD

CRIMINAL LAW (MENTALLY IMPAIRED ACCUSED) ACT 1996

ANNUAL REPORT

For the year ended 30 June 2012

Foreword,

To the Honourable Mr Michael Mischin, MLC, Attorney General.

I present to you the Annual Report of the Mentally Impaired Accused Review Board of Western Australia for the year ended 30 June 2012.

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



His Honour Judge Robert Cock QC

CHAIRPERSON

MENTALLY IMPAIRED ACCUSED REVIEW BOARD

29 September 2012

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



MENTALLY IMPAIRED ACCUSED REVIEW BOARD

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MENTALLY IMPAIRED ACCUSED REVIEW BOARD

1 MESSAGE FROM THE CHAIRPERSON

2012 has seen a change in leadership at the Mentally Impaired Accused Review Board. On 26 March 2012 I was appointed Chairperson of the Board, succeeding Justice Narelle Johnson, of the Supreme Court, who held the position for the previous 3 years. I am pleased to record my gratitude to her Honour for the work during her term in which she greatly encouraging a disciplined and principled approach in all Board processes, involving in particular, evidence based decision making. She has imposed her well known strong work ethic and clarity of thinking, and left for me many elements which I have been very pleased to inherit.

The Board is established under and its functions are conferred on it by the Criminal Law (*Mentally Impaired Accused*) Act, 1996 (the Act). The Board reports and makes recommendations to the Attorney General on matters relating to people who are either unfit to stand trial or acquitted on account of unsoundness of mind and detained under custody orders issued under the Act.

The Board is funded for operations as part of the overall allocation of the Prisoners Review Board (PRB). The operations of the PRB are funded under the Department of the Attorney General's Court and Tribunal Services budget. In 2011–12 the annual budget for the PRB is \$3 386 540.

Pursuant to section 25 of the Act, the Board is to determine a place of Custody Order within five days of a Custody Order being issued by the Court. Under section 24(1) of the Act, a mentally impaired accused can be detained at an authorised hospital, a declared place, a detention centre or prison, as determined by the Board.

The Board's determination of where an accused should be detained is dependent upon a number of factors. In accordance with section 24(2) of the Act, a mentally impaired accused is not to be detained in an authorised hospital unless the accused has a mental illness that is capable of being treated (such as schizophrenia). The Board must be satisfied that the accused has a mental illness requiring treatment, which treatment is required in order to protect the health or safety of the accused or any other person or to prevent the accused doing serious damage to any other property and that the treatment can only be provided satisfactorily in an authorised hospital.

If the accused does not have a mental illness that is capable of being treated the Board can only determine that the accused is to reside at a prison, a detention centre (if the accused is under the age of 18 years) or a declared place. Mentally impaired accused who have either a cognitive impairment, a stable and treated mental illness or a dual diagnosis (of cognitive impairment and treated mental illness) can therefore only be detained at a declared place or a prison.

There are no provisions within the Act that specify the factors to which the Board must have regard in determining whether a mentally impaired accused is to be detained in a declared place. However, when the Board considers an accused's



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place of Custody Order, it has regard to a number of reports. Reports include but are not limited to, information relating to the alleged offence including statements of witnesses, psychiatric reports, psychological reports, neuropsychological reports, prison reports, treatment completion reports, community corrections reports, previous criminal and mental health history reports and historical information pertaining to the accused.

During the Board's deliberations it will weigh any possible risks the accused presents to the safety of themselves and any other individual within the community when determining an appropriate place of custody. If the Board is concerned that an inappropriate risk is present it may determine that the accused is to be detained in prison where they are likely to be monitored and subject to stricter security.

Pursuant to section 26 of the Act, the Board may at any time amend its determination as to the place where a mentally impaired accused is to be detained.

The lack of appropriate residential facilities, and the critical shortage of resources in the mental health system generally, continues to impede the effective discharge of the Board's functions and the operation of the Act. Mentally impaired accused who suffer from cognitive impairment rather than mental illness can only be held in prisons if they are placed on a custody order by the courts.

In many cases, particularly involving aboriginal mentally impaired accused who have little family or community support, they remain in prison even though they do not constitute a significant risk to the safety of the community. This is because there are simply no appropriate facilities or supportive accommodation for them to go to. If they are eligible for funding through Disability Services, arrangements to house them with extended family members with assistance from support services and mentors can sometimes be arranged. It was therefore very encouraging to hear, on 12 May 2012, the announcement from then Treasurer; Attorney General and the Minister for Mental Health that Government will establish Western Australia's first declared places to house people with intellectual or cognitive disability who have been accused but not convicted of a crime.

It was then announced that in the 2012-13 State Budget, the Government has committed \$11.3million over four years to establish two 10-bed disability justice centres and a prison in-reach program in the Perth metropolitan area, with another \$6.4million from the Disability Services Commission (DSC).

New legislation will apparently also be introduced to allow the DSC to operate the secure centres, with a focus on rehabilitation and training, in a community, home-like environment.

Of course, the recently proposed declared places are only intended for those mentally impaired accused whose major diagnosis is a cognitive impairment, and later in this report it can be seen that that would mean that less than half of the people currently under the jurisdiction of the Board would be eligible for such facilities.



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On a more positive note, I am pleased to report that I have been warmly welcomed by all members of the Board and the administrative staff. Each member of the Board treats their role with the considerable respect that its importance deserves. All are conscientious and contribute to a very relevant and responsible discussion at the meetings of the Board.

Throughout what has been my relatively short period here, I have observed the Board to have been ably supported by a small administrative team of equally hardworking and conscientious individuals, working at times under considerable pressure and constraints. Under the leadership and constant guidance of Robynann Davies, the Executive Manager and supported by Dawn Arrowsmith, the senior secretary and Serina Oregioni, who has been acting as the Registrar, all staff have contributed to what I have found to be a very harmonious workplace.

A handwritten signature in blue ink, appearing to read 'Robert Cock'.

His Honour Judge Robert Cock QC
Chairman
Mentally Impaired Accused Review Board
29 September 2012



MENTALLY IMPAIRED ACCUSED REVIEW BOARD

2 MENTALLY IMPAIRED ACCUSED REVIEW BOARD PROFILE

The Mentally Impaired Accused Review Board (the Board) is established under section 41 of the *Criminal Law (Mentally Impaired Accused) Act 1996* (the Act) and is governed by the provisions contained within it. The Act relates to criminal proceedings involving mentally impaired accused who are charged with offences and subsequently found unfit to stand trial or acquitted by reason of unsoundness of mind.

The Board meets at least once per month. As at 30 June 2012, thirty three mentally impaired accused are under the statutory authority of the Board.

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

MEMBERSHIP

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

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

There have been no changes to the composition of the Board since the previous Annual Report.

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

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, an accused who suffers solely from a cognitive impairment are not suitable for a hospital placement.

Of the 33 accused currently being managed by the Board, 18.2% suffer from an intellectual impairment which does not require treatment. A further 15.1% of accused have a dual diagnosis of intellectual impairment and mental illness. Depending on the status of the



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mental illness, a total of 33.3% of accused persons may not require treatment and cannot be detained in a hospital.

For these accused, the only effective custodial option is prison as there is currently no “declared place” in Western Australia. Recently the State Government announced that work on establishing a declared place was near finalisation. The Board welcomes the announcement.

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 8 weeks after the custody order was made in respect of the accused;
- (b) whenever it gets a written request to do so from the Minister;
- (c) whenever it thinks there are special circumstances which justify doing so; and



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(d) in any event at least once in every year.

Each statutory report prepared by the Board critically analyses information pertaining to an accused's criminal and medical history, substance abuse issues, treatment needs, criminogenic factors, social background, protective factors and victim issues.

POLICY OF GRADUATED RELEASE

The Board follows a policy of graduated release in consideration of releasing a mentally impaired accused. When deemed appropriate by the Governor in Executive Council, an accused will initially be granted access into the community for very short periods over an extended length of time.

During such periods, the accused may be subject to conditions which are determined by the Board pursuant to section 28 (2) (b) of the Act.

Following a substantial period of successful community access, the Board will subsequently consider releasing 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.

The policy of graduated release also ensures the mentally impaired accused has the best possibility for successful release at a later stage.

This policy has been endorsed by both the Chairperson of the Board and the Attorney General.

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. There is a perception that if a mentally impaired accused is of low risk to the safety of the community then it is a simple matter of making a recommendation to the Attorney General for the accused's release.

However, that perception completely ignores the fact that, once subject to a Custody Order, the Board has an obligation to ensure the safety and welfare of the accused. Many mentally impaired accused, including cognitively impaired accused, have no accommodation and are not able to properly care for themselves. By the time a Custody Order is made, families have often exceeded their capacity to care for the accused. Some accused have no family to support them or to act as carers or supervisors. It is not simply a matter of making a release order; arrangements have to be put in place to ensure that the accused is appropriately cared for in the community and money to pay for that care must be found.



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Fortunately, relationships with agencies also 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:

- Disabilities Services Commission;
- Mental Health Law Centre;
- Regional Home Care Services;
- Office of the Public Advocate;
- State Administrative Tribunal;
- Legal Aid;
- State Forensic Mental Health Services;
- Western Australian Police Service; and
- Victim Mediation Unit.

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.

The Board welcomes and places great emphasis on victim submissions. Victim submissions 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 other sources of information.

Victims who are registered with the Victim's Notification Register are automatically made aware of any recommendation of the Board.



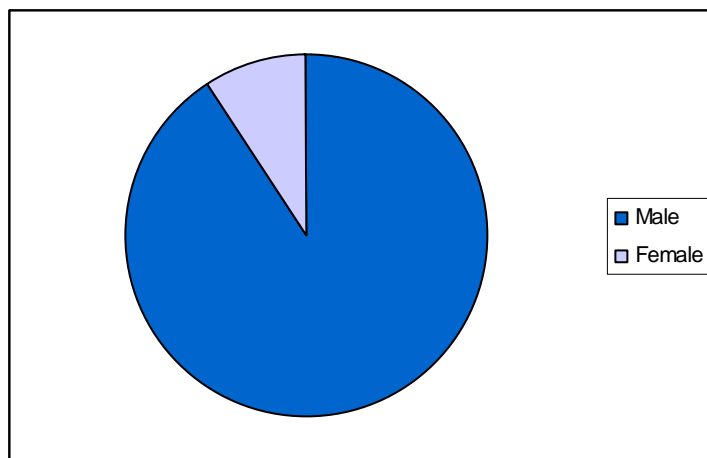
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3 MENTALLY IMPAIRED ACCUSED INDIVIDUALS PROFILE

As of 30 June 2012, thirty three mentally impaired accused were under the statutory authority of the Board. Each accused has a distinctive set of circumstances which are unique and need to be considered accordingly by the Board.

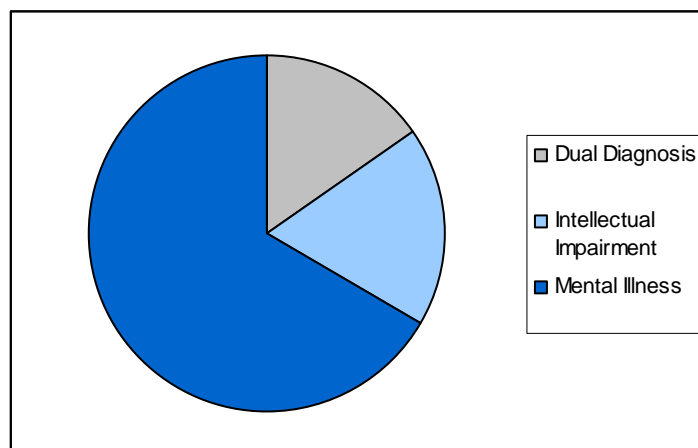
GENDER

During the period 1 July 2011 to 30 June 2012, the Board had under its statutory authority three female mentally impaired accused (9.1%) and 30 male mentally impaired accused (90.9%).



DIAGNOSIS

During the period 1 July 2011 to 30 June 2012, the Board had under its statutory authority 22 accused with a diagnosed mental illness (66.7%), six accused with a diagnosed intellectual impairment (18.2%) and five accused with a dual diagnosis of a combined intellectual impairment and mental illness (15.1%).

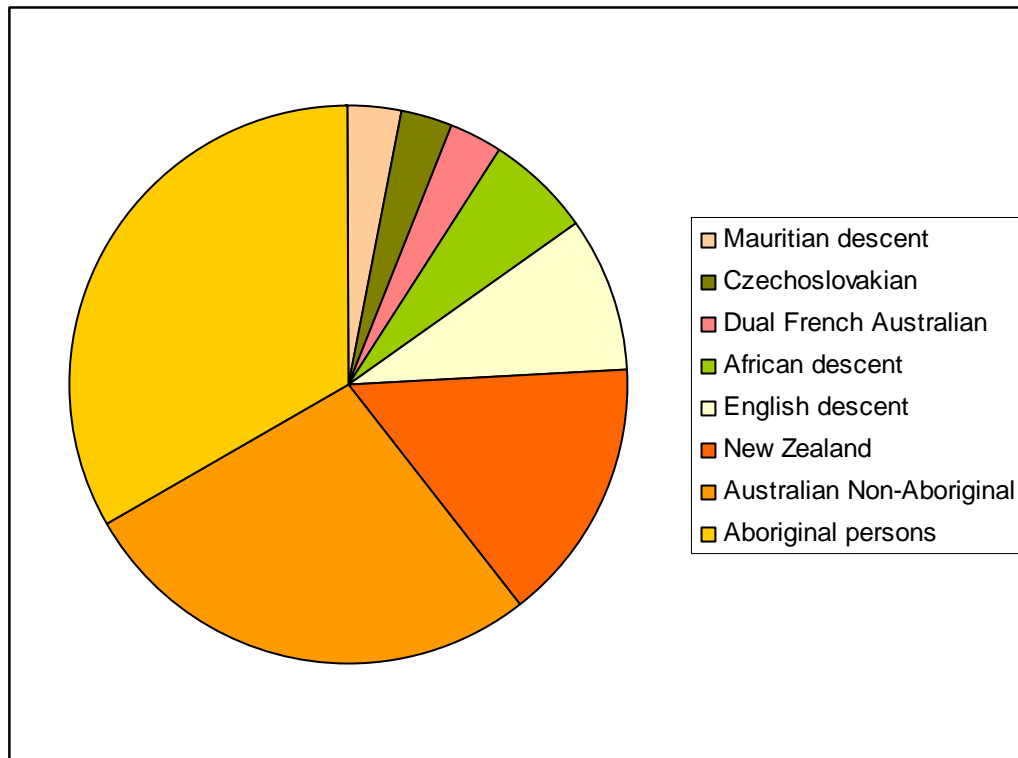




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ETHNICITY

During the period 1 July 2011 to 30 June 2012, the Board had under its statutory authority one person of Mauritian descent (3%), one person of Czechoslovakian descent (3%), one dual French/ Australian citizen (3%), two persons of African descent (6.1%), three persons of English descent (9.1%), five persons from New Zealand (15.1%), nine Australian non-Aboriginal persons (27.3%), and eleven Australian Aboriginal persons (33.3%).





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OFFENCE(S) FOR WHICH A CUSTODY ORDER WAS ISSUED

Type of offence	Number of offences
Wilful murder	12
Murder	3
Attempted murder	9
Manslaughter	2
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	1
Indecent assault	2
Indecent act with intent to offend	1
Trespass	1
Steal motor vehicle	2
Going armed in public	1
Stealing	2
Assault a public officer	1
Unlawful wounding	3
Grievous bodily harm	3
Assault occasioning bodily harm	7
Aggravated armed robbery	2
Aggravated burglary	1
Arson	1
Criminal damage by fire	1
Unlawful damage	1
Breach of bail	2
Common assault	1
Reckless driving	1
Unlawful act causing bodily harm	1

It should be noted that the total number of offences exceeds the total number of accused under the statutory authority of the Board, as each accused may have had a Custody Order issued for more than one offence.

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 a period of time.



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STATISTICS

Section 48 of the Act requires the Board to include in the Annual Report the “statistics.....relating to mentally impaired accused”. However, the Board accepts that a statutory body should keep statistics which assist in informing the public, often through the media, of the work it carries out and the issues relevant to that work.

The preparation of statistics initially involves identifying the types of statistical information which will assist the Board in carrying out its statutory obligations and which will inform the public of the nature and scope of the work being undertaken by the Board. Once the nature of the statistical information required is identified, it is then a process of retrieving the information from the data bases available to the Board or from its own records. Once information is retrieved and collated, it must then be kept up to date.

At the moment, the Board is simply not sufficiently resourced to collect, collate and maintain statistics of the type commonly requested, irrespective of its desire to do so. To require any of the current administrative staff to conduct this exercise would result in the Board being unable to carry out its core statutory requirements.

Identifying and maintaining comprehensive statistical information for the Annual Report, for website publication and in order to respond to media enquiries, has been determined by the Board to be a high priority for the coming year. The Board also intends to identify and maintain statistical information which will assist it in carrying out its statutory responsibilities and, where possible, assist in improving its decision making and future planning. However, the ability to achieve that aim is entirely dependent on the Board being appropriately resourced to engage a permanent research officer. In that way, all relevant statistical information can be obtained without any consequential adverse impact on the operation of the Board.

BOARD MEETINGS PER FINANCIAL YEAR

Year	2008-2009	2009-2010	2010-2011	2011-2012
Number of Meetings	10	14	16	25

During the period 1 July 2011 to 30 June 2012, the Board met on 25 occasions. This is compared to 16 meetings in the period from 1 July 2010 to 30 June 2011.

The increase in Board meetings for the 2011 to 2012 financial period is most likely attributed to the preference of the Chairperson to have a limited number of cases scheduled for review at each Board meeting.

The reduced number of matters discussed at each Board meeting allows a greater opportunity for Board members to review accuseds' files and also allows the Board to have more thorough and detailed discussions of each matter.



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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	2008-2009	2009-2010	2010-2011	2011-2012
New Custody Orders imposed by the courts	2	4	1	3

During the period of 1 July 2011 to 30 June 2012 the courts imposed three Custody Orders, under the Act and accordingly, pursuant to section 25 of the Act determined the accused's place of custody within five working days.

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.

The Place of custody for the period from 1 July 2011 to 30 June 2012 for the thirty three mentally impaired accused is as follows:

Authorised Hospital	Prison	Juvenile Detention Centre	Declared Place	In the community
10	15	0	0	8

As of 30 June 2012 there was a total number of:

- Ten mentally impaired accused in custody at an authorised hospital (30.3%);
- Fifteen mentally impaired accused in custody at a prison (45.5%); and
- Eight mentally impaired accused in the community (24.2%).

Authorised Hospital

Pursuant to section 21 of the *Mental Health Act 1996*, Graylands Hospital and the Frankland Centre are considered to be 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 is a place for the detention of mentally impaired accused as determined by the Governor. There is currently no declared place in the state of Western Australia.



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REPORTS TO MINISTER

Year	2008-2009	2009-2010	2010-2011	2011-2012
Number of reports submitted to the Attorney General	19	18	17	19

During the period 1 July 2011 to 30 June 2012, the Board submitted a total of 19 statutory reports to the Attorney General for consideration.

Since 2009 the information contained within the statutory reports has become increasingly more comprehensive and detailed with the information being obtained from a more diverse range of service providers. The completion of more thorough statutory reports not only allows the Attorney General to be well informed of an accused's situation but provides the foundation for detailed consideration of an accused's case when making a decision.

LEAVE OF ABSENCE ORDERS

Number of Leave of Absence Orders issued	Number of Leave of Absence Orders amended	Number of Leave of Absence Orders cancelled
1	7	0

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 programs leading to his or her gradual reintegration back into the community.

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. Prior to 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. The Board may, at any time, amend the conditions of a Leave of Absence Order to reflect any change in the accused's circumstances.



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RELEASE OF MENTALLY IMPAIRED ACCUSED PERSONS

Number of Conditional Release Orders issued by the Governor in Executive Council	Number of Conditional Release Orders amended by the Board	Number of Conditional Release Orders Cancelled by the Board	Number of accused currently on Conditional Release Orders
2	0	1	7

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 statutory report which focus 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.



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YEAR TO YEAR COMPARISON

	2008 - 2009	2009 - 2010	2010 - 2011	2011-2012
Board Workload				
• Meetings	10	14	16	25
• Number of Decisions Made	105	69	81	81
Custody Orders (Courts)	(2)	(4)	(1)	(3)
• Section 16 (Unfit to Stand Trial – Lower Court)	1	1	0	0
• Section 19 (Unfit to Stand Trial – Superior Court)	0	2	1	1
• Section 21 (Schedule 1 – Unsoundness of Mind)	1	1	0	2
• Section 22 (Unsoundness of Mind)	0	0	0	0
Place of Custody Orders issued by the Board (total)	(2)	(4)	(2)	(3)
• Authorised Hospital	1	0	0	3
• Prison	1	4	2	1 ¹
• Juvenile Detention Centre	0	0	0	0
• Declared Place	0	0	0	0
Reports to the Minister	19	18	17	19
Leave of Absence Order approved by the Governor in Executive Council	2	0	2	1
Subsequent amendments to Leave of Absence Orders by the Board	8	15	13	7

¹ A dual Place of Custody Order was issued for one mentally impaired accused.



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	2008 - 2009	2009 - 2010	2010 - 2011	2011-2012
Conditional Release Orders approved by the Governor in Executive Council	2	0	1	2
Unconditional Release Orders approved by the Governor in Executive Council	1	0	0	0
Cancellation of Conditional Release Orders by the Board	0	3	2	1
Number of mentally impaired accused discharged from a Custody Order	1	0	0	0
Number of mentally impaired accused on Conditional Release Orders	10	9	7	7
Accused persons in custody	(14)	(19)	(23)	(25)
• Prison and/ or Detention Centre	7	12	15	15
• Authorised Hospital	7	7	8	10