



**GOVERNMENT OF  
WESTERN AUSTRALIA**

# 2014/15 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 2015.

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](http://www.miarb.wa.gov.au)

30 September 2015

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

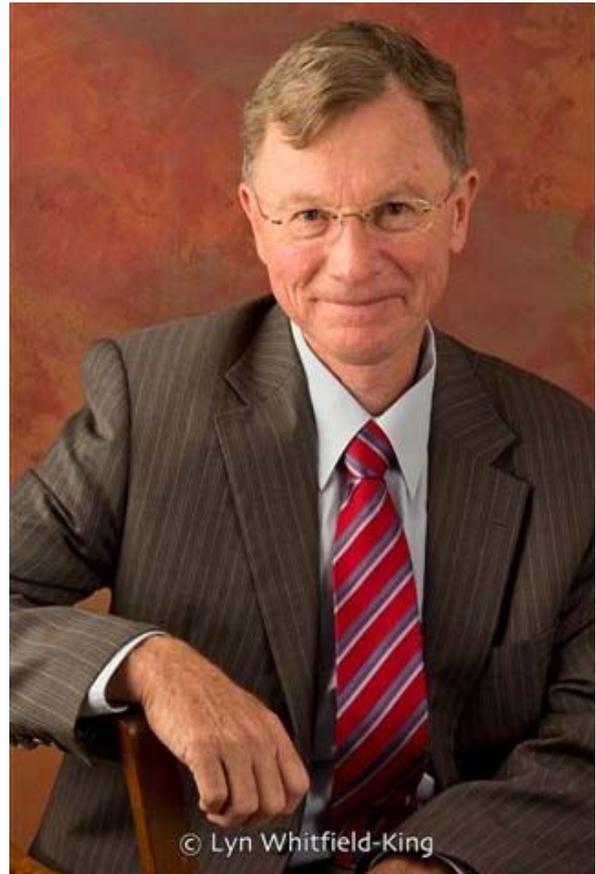
The last financial year has been another active and productive one for the Mentally Impaired Accused Review Board (the Board) which is established under the *Criminal Law (Mentally Impaired Accused) Act 1996 (WA)* (the Act).

## RELATIONSHIPS AND NETWORKING

The Board has worked to maintain and strengthen its relationships with all stakeholders, and particularly with a number of pivotal agencies. The Department of Corrective Services (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 that 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. The DCS has been able to facilitate the placement of certain accused at minimum security prisons so they may participate in appropriate leave periods in the community which are considered by Board members to be an essential part of the reintegration and rehabilitation of an accused.

The location of mentally impaired accused people in a prison environment is 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 one from the 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, which on 30 June 2015 was expected to be operational in July 2015. The Board has long advocated the need for a declared place and welcomed confirmation that the construction was almost complete. In my capacity as Chairman, in May 2015 I attended a training session for the staff who were recruited to manage the centre, and gave a presentation on the Board's processes. I was impressed with the obvious enthusiasm of the newly recruited team, and their interest in the rights of the people who will come under their control.

The Board is pleased to see a continuation of the work of the DSC InReach Service Team. This team acts as a central point of contact for accused persons so they may be linked with appropriate service providers in the community and further assists in the sourcing of support workers, housing, counselling and the identification of programmes for accused to participate in whilst in the community. The InReach Service Team has provided opportunities, where often none previously existed, for cognitively impaired accused to participate in leaves of absence from the prison environment. Members of that team provide support to accused who are imprisoned and offer assistance

In the previous reporting year, I 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 Board has been significantly assisted by these 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.

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.

As of 30 June 2015 the Board had a total of 40 mentally impaired accused under its authority. Of these 40 accused, seven were on a Custody Order, 15 were on a Conditional Release Order and 16 were on a Leave of Absence Order, resulting in 78% of all mentally impaired accused (which includes people found not guilty by reason of unsoundness of mind) being permitted some kind of access to the community.

## MEETINGS

The Board generally holds two meetings per month. It is now common to have at least one observer and one or two 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 over the past year welcomed a number of other visitors 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, the Commissioner for Victims of Crime, her policy officer, the President and the Executive Director of the Western Australian Association for Mental Health and staff of the Mental Health Law Centre.

The Board has also permitted 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. Several Community Corrections Officers have attended meetings to assist them prepare reports for the Board. This has been subsequently of benefit to the Board as material is now included in their reports which enables 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 Correction Officer.

The Board also invited members of the Community Campaign Against Residential Prisons to attend meetings and observe Board proceedings. This offer was accepted and several members subsequently regularly attended Board meetings. Discussion with them has suggested that their attendance has enhanced their understanding of the manner in which the Board operates and given them some confidence about the seriousness with which the Board members give consideration to the safety of the community. Although those attending from this community action group have not resiled from their stated opposition to the construction of a declared place in their neighbourhood, the Board is satisfied that by their attendance at meetings, they have been given a sound background in the workings of the Board and are better able to understand the Board's enthusiasm for the construction of a declared place in the metropolitan area.

## 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 CLMIA 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 CLMIA Act. Some issues and questions were set out in the Discussion Paper which was prepared to provide some 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 CLMIA Act.

After the review had commenced, the Board was pleased to invite a number of officers from the Department of the Attorney General to attend several meetings with the Board so as to gain a better understanding of the Board's current practices and also to enable discussion of a wide range of matters with the Board members.

## 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 six 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 six mentally impaired accused the Board is strongly of the opinion 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 been found not guilty by reason of unsoundness of mind.

## THE DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) ACT 2015

The *Declared Places (Mentally Impaired Accused) Act 2015* received the Royal Assent on 3 March 2015. That Act not only facilitates the operation of the declared place by the DSC, it also made some consequential amendments to the *Criminal Law (Mentally Impaired Accused) Act 1996*. One amendment was to set out a special set of considerations to which regard must be had before the Board determined that an accused shall be detained at the declared place. 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. It 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.

## MEMBERSHIP OF THE BOARD

Another amendment to the *Criminal Law (Mentally Impaired Accused) Act, 1996* resulting from the commencement of the *Declared Places (Mentally Impaired Accused) Act 2015* was the capacity to appoint a Deputy to the Chairperson and for the DSC to appoint a member to the Board. Accordingly, there were two appointments to the Board during the reporting year. The full-time Deputy Chairperson of the Prisoners Review Board was appointed as the Deputy Chairperson of the Board. The other members and I were pleased to welcome Ms Jody Waite, the employee of the DSC who was appointed a member of the Board by the DSC on 7 May 2015. Ms Waite is well known to the members of the Board through her earlier work as the Acting Disability Justice Prevention and Diversion Officer. She had previously frequently attended Board meetings as an observer in that capacity.

I would like to conclude by conveying my personal thanks to 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 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

30 September 2015

# 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 2015, forty mentally impaired accused are under the statutory authority of the Board and one accused was 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](http://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 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.

During the period 1 July 2014 to 30 June 2015, the Board had under its statutory authority 28 accused with a diagnosed mental illness (68.3%), seven accused with a diagnosed

intellectual impairment (17.1%) which does not require treatment and six accused with a dual diagnosis of a combined intellectual impairment and mental illness (14.6%). Depending on the status of the mental illness, some accused persons may not require treatment and cannot be detained in a hospital.

For these accused, the only effective custodial option is prison. However, a prison is often an inappropriate secure placement for an accused whose condition makes him or her extremely vulnerable and who, because of the risk he or she poses to the safety of the community, may spend longer in the prison environment than a prisoner sentenced for similar offences.

The reason why prison is the only effective custodial option is because, as at 30 June 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, whilst present during the 2014-15 FY, will be resolved during the 2015-16 FY with the opening of the new Declared Place (disability justice centre) in Caversham.

During 2014 to 2015 the Board engaged in discussions with the Disability Services Commission to facilitate the placement of accused with intellectual or cognitive disability in a disability justice centre. This centre will employ a range of advanced security measures to safeguard the community and ensure the accused resist serious exploitation. The Board worked with the Disability Services Commission on legislation to authorise the Commission to own and operate the disability justice centre.

The establishment of the disability justice centre will significantly benefit a number of accused who are unable to be released into the community because of the risk they pose to themselves or to the community, but who should not be detained in a prison environment.

## 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 usually at least 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.

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. 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. 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;
- 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.

Towards the end of the financial year, the Board was extensively consulted by the Disability Services Commission to facilitate the development of the Declared Places (Mentally Impaired Accused) Bill 2013 (WA). The Board remains highly supportive of the establishment of a declared place in the metropolitan area. A declared place will provide the accused with much needed and consistent support from the Disability Services Commission, which will ensure the accused has the essential care and support to facilitate his or her rehabilitation and reintegration into the community.

## VIDEOLINK AND PERSONAL APPEARANCES OF ACCUSED BEFORE THE BOARD

During 2014-2015 five mentally impaired accused appeared before the Board by video-link facilities conducted through either a prison or Graylands Hospital with one of these accused appearing before the Board on two separate occasions.

One other accused made a personal appearance before the Board where he was supported by his Community Corrections Officer, his parents and his lawyer. On several occasions lawyers have attended the Board's premises to make oral submissions to Board members on their client's behalf. In addition, Guardians have also appeared before the Board 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.

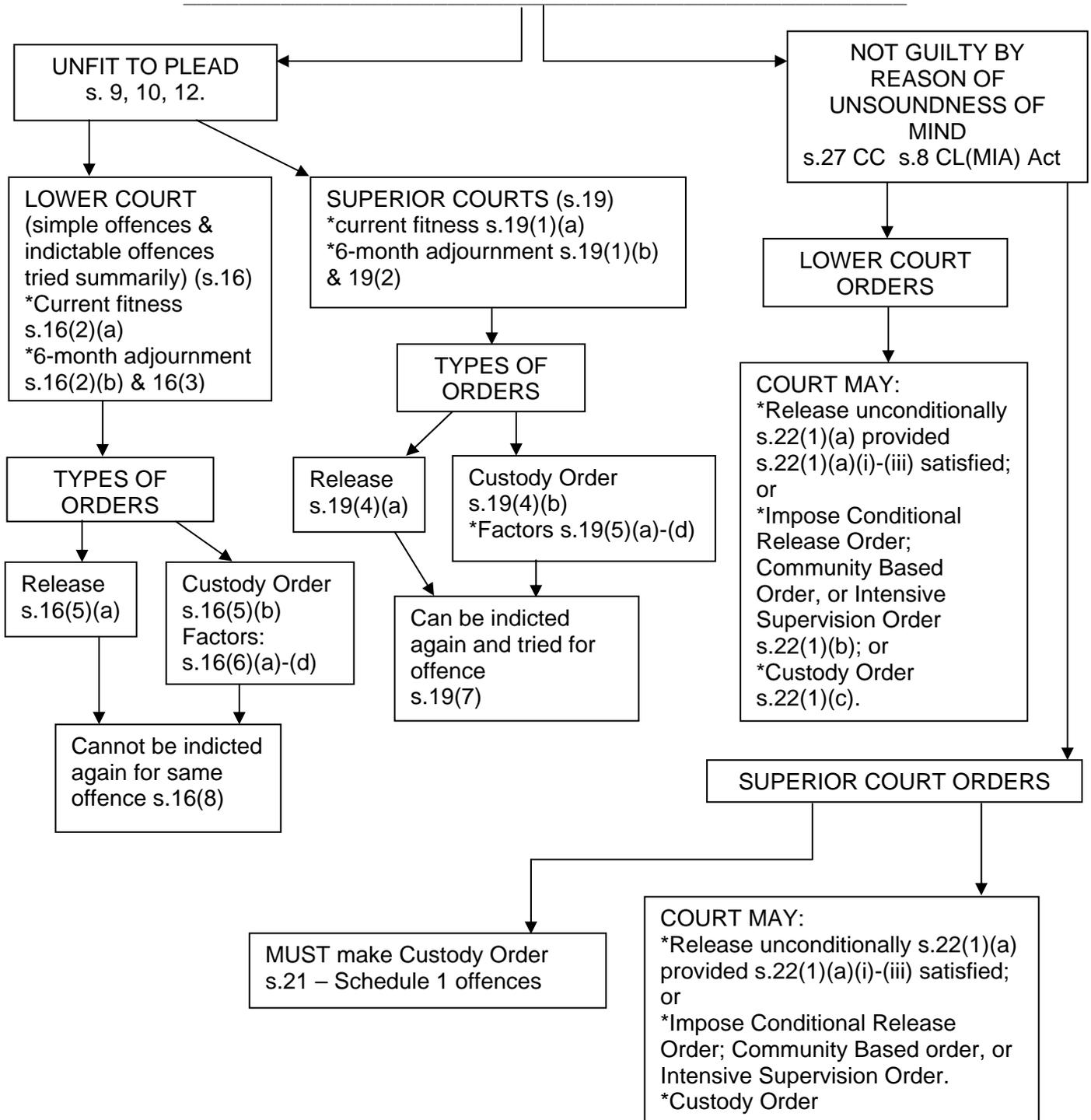
Victim submissions are provided in the majority of matters considered by the Board. The Board places great emphasis on these submissions and they are taken into account when the Board determines the conditions of release for a mentally impaired accused.

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.

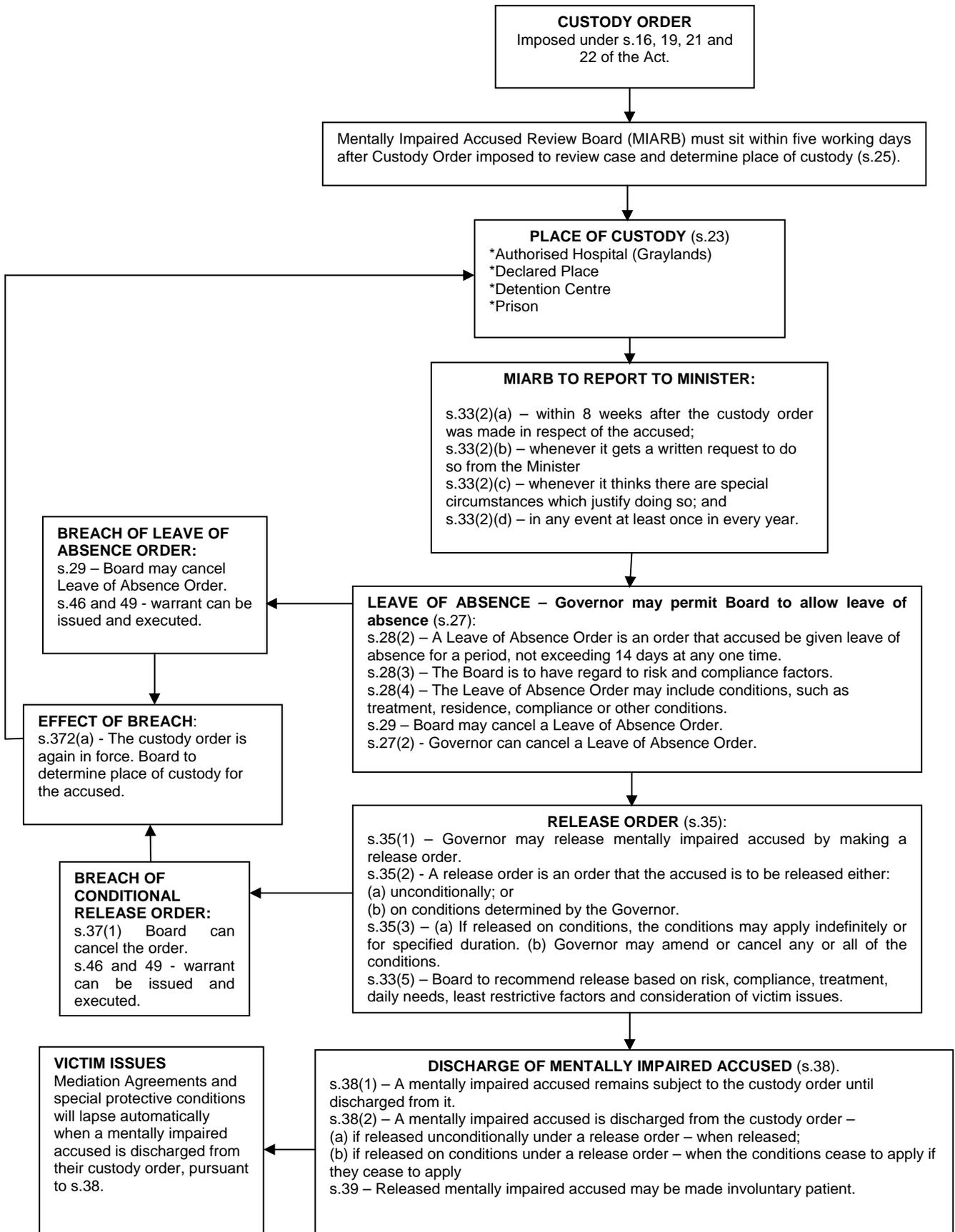
Victims who are registered with the Victim Notification Register are automatically made aware of any recommendation of the Board. The Victim Notification Register falls under the Department of Corrective Services.

**FIGURE 1.0: FLOWCHART DEMONSTRATING THE MAKING OF A CUSTODY ORDER UNDER THE CRIMINAL LAW (MENTALLY IMPAIRED ACCUSED ACT) 1996 (WA)**

**MAKING A CUSTODY ORDER  
CRIMINAL LAW (MENTALLY IMPAIRED ACCUSED) ACT 1996**



**FIGURE 2.0: FLOWHCART DEMONSTRATING THE MANAGEMENT OF AN ACCUSED ON A CUSTODY ORDER**



# MENTALLY IMPAIRED ACCUSED INDIVIDUALS PROFILE

As of 30 June 2015, forty mentally impaired accused were under the statutory authority of the Board. The number of accused under the jurisdiction of the Board fluctuates 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 2014 until 30 June 2015 the Board had a total of forty-one mentally impaired accused under its jurisdiction. During the period 1 July 2014 until 30 June 2015 the courts made two custody orders for two accused and one accused was discharged from their custody order. Each accused has an individual set of circumstances which are unique and need to be considered accordingly by the Board.

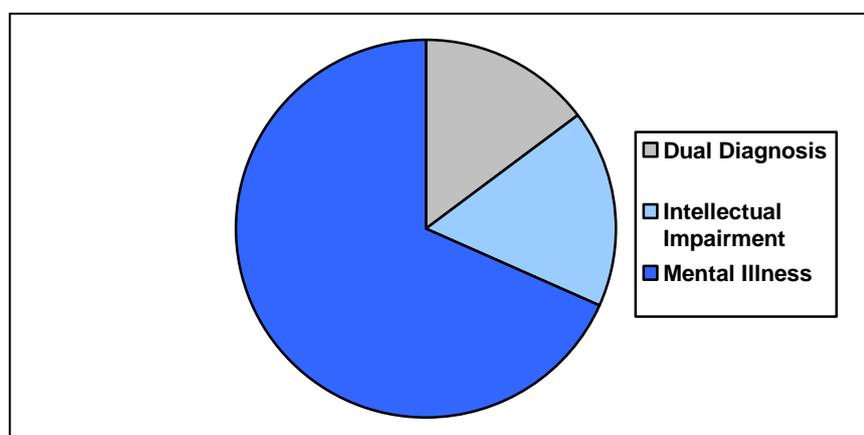
## GENDER

During the period 1 July 2014 to 30 June 2015, the Board had under its statutory authority five female mentally impaired accused (12.2%) and 36 male mentally impaired accused (87.8%). These statistics reflect the total number of accused (41) under the jurisdiction of the Board during the financial year period.

## DIAGNOSIS

During the period 1 July 2014 to 30 June 2015, the Board had under its statutory authority 28 accused with a diagnosed mental illness (68.3%), seven accused with a diagnosed intellectual impairment (17.1%) and six accused with a dual diagnosis of a combined intellectual impairment and mental illness (14.6%).

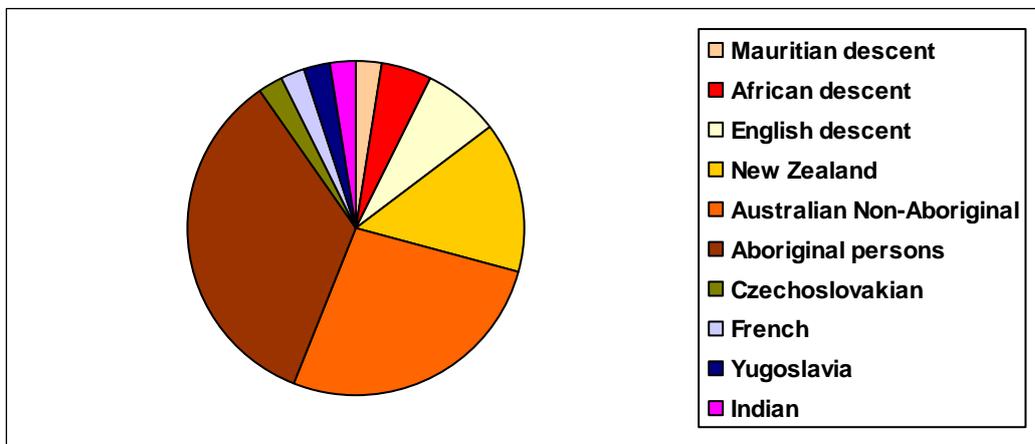
*Figure 3.0 – The identification of diagnoses of mentally impaired accused persons from 1 July 2014 to 30 June 2015*



# ETHNICITY

During the period 1 July 2014 to 30 June 2015, the Board had under its statutory authority one person of Mauritian descent (2.4%), one person of Indian descent (2.4%), one person of Czechoslovakian descent (2.4%), one person of Yugoslavian descent (2.4%), one person of French descent (2.4%), two persons of African descent (4.9%), three persons of English descent (7.4%), six persons from New Zealand (14.6%), eleven Australian non-Aboriginal persons (26.9%), and fourteen Australian Aboriginal persons (34.2%).

Figure 4.0 Ethnicity of mentally impaired accused persons from 1 July 2014 to 30 June 2015



# 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
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	1
Indecent assault	2
Indecent act with intent to offend	1
Indecent dealings with a child who is a lineal relative	3
Trespass	2
Steal motor vehicle	3
Going armed in public	1
Stealing	2
Assault a public officer	1
Unlawful wounding	3
Grievous bodily harm	3
Assault occasioning bodily harm	9
Aggravated armed robbery	2
Aggravated burglary	1
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
Assault person working in a hospital	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 time.

It is further noted that one mentally impaired accused may have more than one custody order imposed on them if they were effectively discharged from their first custody order.

## BOARD MEETINGS PER FINANCIAL YEAR

YEAR	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
<b>NUMBER OF MEETINGS</b>	16	25	31	28	19

For the period from 1 July 2014 to 30 June 2015, the Board met on 19 occasions, including two quorums.

## 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	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
<b>NEW CUSTODY ORDERS MADE BY THE COURTS</b>	1	3	3	2	2

During the period of 1 July 2014 to 30 June 2015 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:

AUTHORISED HOSPITAL	PRISON	JUVENILE DETENTION CENTRE	DECLARED PLACE	DECLARED PLACE	NOT IN CUSTODY <sup>1</sup>
6	15	0	0	0	19
15%	37.5%	0	0	0	32.5%

## 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. As of 23 June 2015 the Board began making dual place of custody orders for accused to be detained at either a prison or a declared place in anticipation of the facility becoming available within the 2015-16 FY.

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 –

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

- (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.

## REPORTS TO MINISTER

YEAR	2011-2012	2012-2013	2013-2014	2014-2015
<b>NUMBER OF REPORTS SUBMITTED TO THE ATTORNEY GENERAL</b>	19	40	44	45

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 year. These are referred to as statutory reports. During the period 1 July 2014 to 30 June 2015, the Board submitted a total of 45 statutory reports to the Attorney General.

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 2015, the Board provided five reports in accordance with section 33(2)(c) of the Act.

## LEAVE OF ABSENCE ORDERS

<b>NUMBER OF ACCUSED FOR WHOM LEAVE OF ABSENCE ORDERS WERE PERMITTED BY GOVERNOR UNDER SECTION 27 OF THE ACT</b>	<b>NUMBER OF LEAVE OF ABSENCE ORDERS ISSUED BY THE BOARD UNDER SECTION 28 OF THE ACT</b>
2	19

From the financial year of 1 July 2014 to 30 June 2015 the Governor permitted the Board to allow leave of absence to two mentally impaired accused. As of 30 June 2015 a total of 16 mentally impaired accused were on Leave of Absence Orders issued by the Board<sup>2</sup>.

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 replace it with 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 2014 to 30 June 2015 the Board issued a total of 19 Leave of Absence Orders.

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.

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.

The Governor's power is to authorise the Board, leaving it to the Board to determine, from time to time, what is appropriate by way of leave for the accused.

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<sup>2</sup> This statistic includes one accused on a Leave of Absence Order but considered absent without leave pursuant to section 31(1)(b) of the Act.

## RELEASE OF MENTALLY IMPAIRED ACCUSED PERSONS

NUMBER OF CONDITIONAL RELEASE ORDERS ISSUED BY THE GOVERNOR IN EXECUTIVE COUNCIL FOR 2014-2015	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
7	1	0	15

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 2014 to 30 June 2015 the Governor in Executive Council issued seven Conditional Release Orders. As at 30 June 2015, there were a total of 15 (37.5%) mentally impaired accused on Conditional Release Orders.

For the financial year 1 July 2014 to 30 June 2015, the Board amended one Conditional Release Order, pursuant to section 35(3)(b) of the Act.

## YEAR TO YEAR COMPARISON

YEAR	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
<b>BOARD WORKLOAD</b>					
• Meetings	16	25	31	28	19
• Number of Decisions Made	81	81	132	139	133
<b>CUSTODY ORDERS (COURTS)</b>	(1)	(3)	(3)	(2)	(2)
• Section 16 (Unfit to Stand Trial – Lower Court)	0	0	1	0	2
• Section 19 (Unfit to Stand Trial – Superior Court)	1	1	0	0	0
• Section 21 (Schedule 1 – Unsoundness of Mind)	0	2	2	2	0
• Section 22 (Unsoundness of Mind)	0	0	0	0	0
<b>PLACE OF CUSTODY ORDERS ISSUED BY THE BOARD (TOTAL)</b>	(2)	(3)	(3)	(2)	(5)
• Authorised Hospital	0	3	1	0	0
• Prison	2	0	2	0	0
• Juvenile Detention Centre	0	0	0	0	0
• Declared Place	0	0	0	0	0
• Dual Place of Custody Order – prison or Graylands	0	1	0	2	2
• Dual place of Custody Order – prison or Declared Place					3
<b>REPORTS TO THE MINISTER</b>	17	19	40	44	45
<b>NUMBER OF ACCUSED FOR WHOM A LEAVE OF ABSENCE ORDER PERMITTED BY THE GOVERNOR IN EXECUTIVE COUNCIL</b>	2	1	3	4	2

YEAR	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
<b>LEAVE OF ABSENCE ORDERS ISSUED BY THE BOARD</b>	13	7	27	49	19
<b>CONDITIONAL RELEASE ORDERS APPROVED BY THE GOVERNOR IN EXECUTIVE COUNCIL</b>	1	2	0	2	7
<b>UNCONDITIONAL RELEASE ORDERS APPROVED BY THE GOVERNOR IN EXECUTIVE COUNCIL</b>	0	0	0	0	1
<b>CANCELLATION OF CONDITIONAL RELEASE ORDERS BY THE BOARD</b>	2	1	2	1	0
<b>NUMBER OF MENTALLY IMPAIRED ACCUSED DISCHARGED FROM A CUSTODY ORDER</b>	0	0	0	0	1
<b>NUMBER OF MENTALLY IMPAIRED ACCUSED ON CONDITIONAL RELEASE ORDERS</b>	7	7	10	9 <sup>i</sup>	15
<b>ACCUSED PERSONS IN CUSTODY</b>	(23)	(25)	(25)	(28)	(21)
• Prison and/ or Detention Centre	15	15	17	18	15
• Authorised Hospital	8	10	8	10	6
<b>TOTAL NUMBER OF MENTALLY IMPAIRED ACCUSED AS OF 30 JUNE</b>	32	33	37	39	40

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