



MENTALLY
IMPAIRED
ACCUSED
REVIEW
BOARD

ANNUAL
REPORT
2017/18





FOREWORD

THE HON. JOHN ROBERT QUIGLEY MLA ATTORNEY GENERAL

To the Attorney General,
The Honourable John Robert Quigley

I present to you the Annual Report of the Mentally Impaired Accused Review Board for the year ended 30 June 2018.

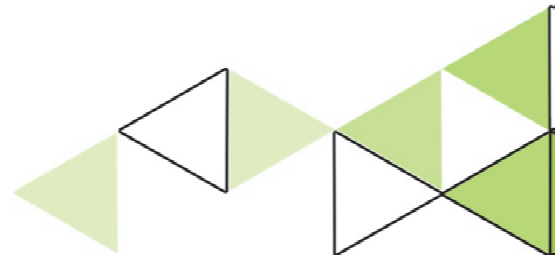
This annual report is provided to you in accordance with section 48 of the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) which stipulates that before 1 October in each year the Board is to give a written report to the Minister on –

- 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.

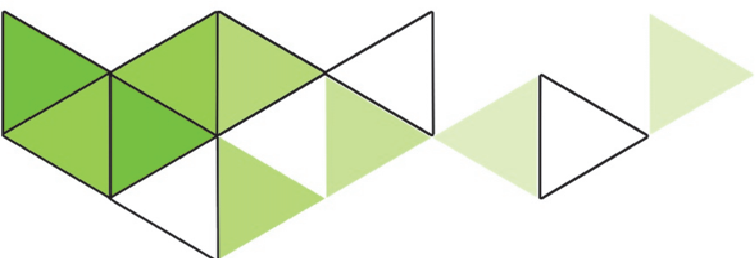
A handwritten signature in black ink, reading "Allan Fenbury".

His Honour Allan Fenbury
Chairperson
Mentally Impaired Accused Review Board

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CHAIRPERSON'S OVERVIEW

I was appointed as Chairperson, Mentally Impaired Accused Review Board on 1 April 2018, following the retirement of his Honour Judge Robert Cock in March following six years of service.

During his time as Chair, Judge Cock was unfailingly approachable, obliging and consistent in his dealings with others. His time was marked by a significant increase in the release rate of prisoners on parole and the extent and warmth of contact the Board has with other related agencies including many of the States' prisons. The Board wish His Honour well in his retirement

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

As at 30 June 2018 there were 38 mentally impaired accused under the Board's jurisdiction.

- Nine (9) were in an authorised hospital (or participating in leaves of absence from an authorised hospital).
- Two (2) were in a declared place.
- 10 were in prison (or participating in leaves of absence from prison).
- 17 were in the community subject to a Conditional Release Order.



MEETINGS



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

The meetings run extremely well and are characterised by thorough preparation and sometimes vigorous but always good natured debate.



RELATIONSHIPS & NETWORKING

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

MENTALLY IMPAIRED ACCUSED WITHIN A PRISON



In recent years, the Corrective Services division of the Department of Justice (Corrective Services) has adopted a more flexible approach to the management of mentally impaired accused who are detained in a prison. This has facilitated Board requests to undertake expedited changes in security rating and prison transfers to facilitate leave of absence arrangements.

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

I echo the views of my predecessor that the location of mentally impaired accused people in a prison environment is harsh for them given that they are not criminally responsible. It is inappropriate and causes regrettable stress and anxiety. It will be a most welcome day when the practice ceases.



REVIEW OF THE ACT

In 2017, policy officers within the Department of Justice's Policy and Aboriginal Services directorate contacted the then Chairperson of the Board in order to consult with his Honour regarding the McGowan Government's proposal to replace the Act with modern legislation which incorporates current best practice regarding the intersection of the law with those suffering from a mental impairment. The Chairperson was well placed to highlight some of the Act's deficiencies and was grateful for the opportunity to have input.

The Board continues to be involved in the development of a new Act and remains ready and willing to assist when required.



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. The Board may also situate a mentally impaired accused within open wards at Graylands Hospital when this is deemed appropriate by clinicians and the Board.

The recent closure of the Hutchison Ward at Graylands Hospital has placed even greater pressure on the need for the expansion of forensic mental health services in the State, whether that be at Graylands Hospital or at another site to accommodate and provide for the unique complexities of mentally impaired accused and people who have a mental illness.

THE DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) ACT 2015

The *Declared Places (Mentally Impaired Accused) Act 2015* (Declared Places Act) commenced on 17 June 2015, and the Disability Justice Centre (DJC) has been operating since August 2015.

Pursuant to section 24(5A) of the Declared Places Act a mentally impaired accused is not to be detained in a declared place that is established by Disability Services, Department of Communities (Disability Services) under the *Disability Services Act 1993* (Disability Services Act) unless the Board:

- (a) is satisfied that the accused is a person with a disability as defined in the *Disability Services Act 1993* section 3 and the predominant reason for the disability is not mental illness; and
- (b) is satisfied that the accused has reached 16 years of age; and,
- (c) has regard to the degree of risk that the accused's detention in the declared place appears to present to the personal safety of people in the community or of any individual in the community.

Pursuant to section 23 of the Declared Places Act, a declared place means a place declared to be a place for the detention of mentally impaired accused by the Governor.

Section 66(5C) of that Act also provides that the Board may only determine that a mentally impaired accused be detained in a declared place if the member appointed by Disability Services is present at the meeting at which the place of 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 that is responsible for the Disability Services Act.

There have been three mentally impaired accused at the DJC since it opened, with two currently being detained. The Board has attempted to place other mentally impaired accused at the DJC over the years however it has not received the consent of the Minister for Disability Services.

It is hoped that the resources available through the DJC can be accessed more frequently in the future. The Board's view is that it potentially provides a significantly beneficial placement option for mentally impaired accused who have an intellectual or cognitive disability as their primary diagnosis.

MEMBERSHIP OF THE BOARD



I would like to conclude by conveying my personal thanks to the support staff who are provided by the Department of the Justice and the Board Members. I am most impressed by the dedication, focus and work ethic of the staff. They are a very fine bunch of personnel. So far as the Board members go, they take their roles very seriously, prepare for meetings meticulously, and do their best to apply the relevant provisions of the legislation.

I also express my gratitude to the incoming Attorney General, the Hon John Quigley MLA, for the promptness with which he and his staff have dealt with correspondence from the Board.

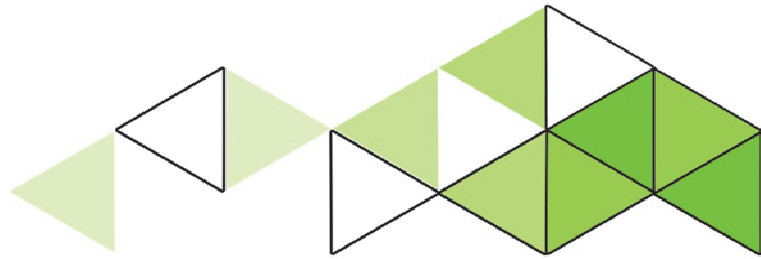
A handwritten signature in black ink that reads "Allan Fenbury".

His Honour Allan Fenbury
Chairperson
Mentally Impaired Accused Review Board

14 September 2018



PROFILE



THE MENTALLY IMPAIRED ACCUSED REVIEW BOARD

PROFILE OF THE BOARD

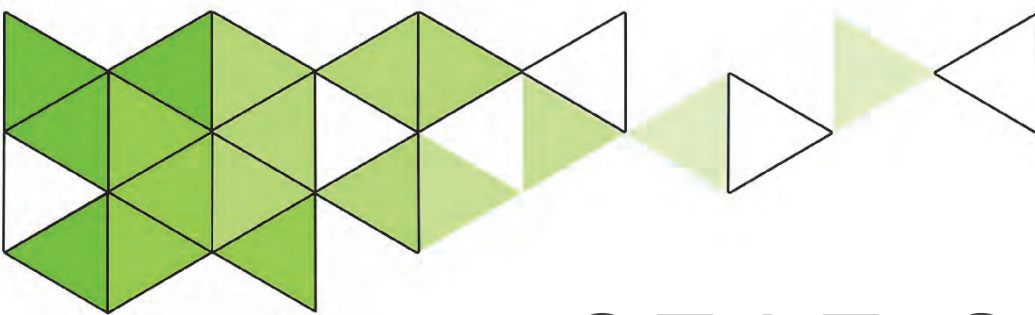
The Mentally Impaired Accused Review Board (the Board) is established under section 41 of the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) (the Act) and is governed by the provisions contained within it. The Act relates to criminal proceedings involving intellectually impaired or mentally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



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.



STATISTICS

As of 30 June 2018, 38 mentally impaired accused were under the statutory authority of the Board. Each accused has an individual set of circumstances which are unique and need to be considered accordingly by the Board. The number of accused under the jurisdiction of the Board changes throughout the financial year period due to the number of custody orders made by the courts and the number of accused discharged from their custody orders.

BOARD MEETINGS PER FINANCIAL YEAR



YEAR	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
NUMBER OF MEETINGS	28	19	25	30	31

For the period from 1 July 2017 to 30 June 2018, the Board met on 31 occasions, including 12 quorum meetings.



CUSTODY ORDERS MADE BY THE COURTS

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

YEAR	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
NEW CUSTODY ORDERS MADE BY THE COURTS	2	2	2	4	4

PLACE OF CUSTODY ORDERS MADE 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 order of the Governor.

Place of custody as at 30 June 2018 for the 38 mentally impaired accused:

AUTHORISED HOSPITAL	PRISON	DECLARED PLACE	NOT IN CUSTODY¹
9	10	2	17

Graylands Hospital and the Frankland Centre are considered to be the only appropriate authorised hospitals as both have the facilities to cater for long term and high risk mentally impaired accused persons. The declared place is known as the Disability Justice Centre.



REPORTS TO THE MINISTER

YEAR	2014-2015	2015-2016	2016-2017	2017-2018
NUMBER OF REPORTS SUBMITTED TO THE ATTORNEY GENERAL	45	41	47	41

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

LEAVE OF ABSENCE ORDERS



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

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

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

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

From 1 July 2017 to 30 June 2018 the Board issued a total of 27 LOAs.



RELEASE OF MENTALLY IMPAIRED ACCUSED PERSONS

NUMBER OF CONDITIONAL RELEASE ORDERS ISSUED BY THE GOVERNOR IN EXECUTIVE COUNCIL FOR 2017-2018	NUMBER OF ACCUSED CURRENTLY ON CONDITIONAL RELEASE ORDERS
3	17

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.

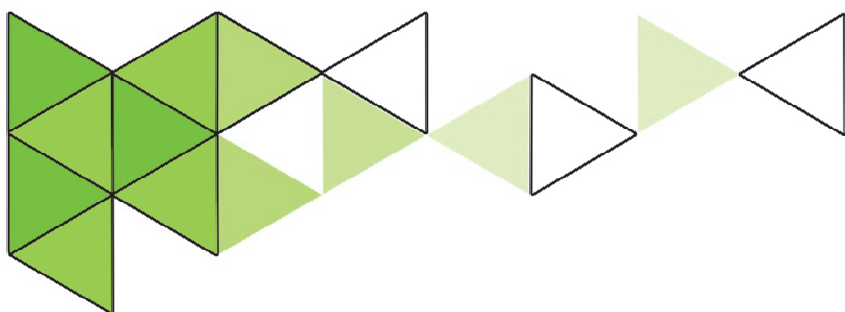
The Board provides the Attorney General with a statutory report which focuses on the release considerations outlined in section 33(5) of the Act. The Governor in Executive Council, on recommendation from the Attorney General, then determines the suitability for the conditional release of a mentally impaired accused. From 1 July 2017 to 30 June 2018 the Governor in Executive Council issued 3 Conditional Release Orders (CRO). As at 30 June 2018, there were a total of 17 mentally impaired accused on a CRO.

YEAR TO YEAR COMPARISON



YEAR	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
BOARD WORKLOAD - Meetings - Number of Decisions Made	28 139	19 133	25 173	30 178	31 189
CUSTODY ORDERS (COURTS) - Section 16 (Unfit to Stand Trial – Lower Court) - Section 19 (Unfit to Stand Trial – Superior Court) - Section 21 (Schedule 1 - Unsoundness of Mind) - Section 22 (Unsoundness of Mind)	(2) 0 0 2 0	(2) 2 0 0 0	(2) 0 0 1 1	(4) 1 1 2 0	(4) 1 3 0 0
REPORTS TO THE MINISTER	44	45	41	47	41
NUMBER OF LEAVE OF ABSENCE ORDERS ISSUED BY THE BOARD UNDER SECTION 28 OF THE ACT	49	19	44	27	27
CONDITIONAL RELEASE ORDERS APPROVED BY THE GOVERNOR IN EXECUTIVE COUNCIL	2	7	3	4	3
UNCONDITIONAL RELEASE ORDERS APPROVED BY THE GOVERNOR IN EXECUTIVE COUNCIL	0	1	3	2	6
CANCELLATION OF CONDITIONAL RELEASE ORDERS BY THE BOARD	1	0	1	0	0

YEAR	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
NUMBER OF MENTALLY IMPAIRED ACCUSED DISCHARGED FROM A CUSTODY ORDER	0	1	3	3 ²	6
NUMBER OF MENTALLY IMPAIRED ACCUSED ON CONDITIONAL RELEASE ORDERS	9 ⁱ	15	14	18	17
ACCUSED PERSONS IN CUSTODY	(28)	(21)	(22)	(19)	(19)
- Prison and/or Detention Centre	18	15	16	12	10
- Authorised Hospital	10	6	6	7	9
TOTAL NUMBER OF MENTALLY IMPAIRED ACCUSED AS OF 30 JUNE	39	40	39	40	38



² This figure includes one deceased mentally impaired accused.



REMUNERATION



MEMBERS

The Member remuneration rate for a meeting is currently \$497. Below is a breakdown of remuneration to Members in 2017/2018.

Member A	\$5,964
Member B	\$5,467
Member C	\$4,970
Member D	\$2,982
Member E	\$994

The Chairperson is a retired District Court Judge and is remunerated accordingly on the basis of a pro-rata sum equivalent to three days per week. This includes Chairpersonship of the Prisoners Review Board (PRB). Further remuneration for one day per week is paid due the Chairperson's additional appointment as Chairperson of the Supervised Release Review Board.

The Deputy Chairperson is remunerated by the PRB and consequently no cost to the Board arises.

The Public Sector Commission's annual reporting framework for the 2017/18 financial year requires board memberships to be reported in the Annual Report. This requirement includes the naming of board members and listing the remuneration that each board member received from the respective board during the financial year. The reporting framework further acknowledges that for security reasons, or reasons of sensitivity, these disclosures may be withheld. The names of Mentally Impaired Accused Review Board members have been withheld for security reasons.