MENTALLY IMPAIRED ACCUSED REVIEW BOARD

ANNUAL REPORT

For the year ended 30 June 2011

CRIMINAL LAW (MENTALLY IMPAIRED ACCUSED) ACT 1996

Foreword,

To the Honourable Christian Porter, MLA, Treasurer, Attorney General.

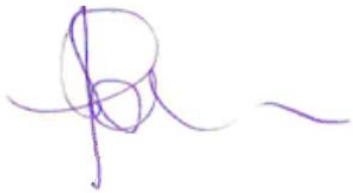
I present to you the Annual Report of the Mentally Impaired Accused Review Board of Western Australia for the year ended 30 June 2011.

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.



The Honourable Justice Narelle Johnson
Chairperson
Mentally Impaired Accused Review Board
30 September 2011

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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It has been a very busy year for the Mentally Impaired Accused Review Board (the Board). Positive changes identified in previous Annual Reports have been sustained over time and further developed. The result is that the Board has available to it an increased level of higher quality information and has enhanced its ability to analyse and understand that information, thereby increasing the quality of its recommendations and its decision making generally.

One method of achieving this outcome has been the increased emphasis on professional development including access to the published literature on issues relevant to the Board's decision making. This enhancement of the knowledge of Board members is also reflected in the content of the reports provided annually to the Attorney General in relation to each mentally impaired accused and on which he bases his advice to the Governor.

In the past year the Board has also focused on the development of strategic objectives and on forward planning. It is an easy matter for a statutory body such as the Board to continue functioning as it always has, without making any attempt to assess whether its performance can be improved. The Board is continually scrutinising its functioning and I believe that exercise will be enhanced by a clear statement of its future objectives.

Some positive changes have occurred in relation to matters which have concerned the Board for a number of years. Those matters are:

i) A lack of appropriate residential facilities for accused who present too high a risk to the safety of the community for them to be released, even if supervised;

ii) A chronic shortage of resources in the mental health system generally which is needed to pay for accommodation and supervision of an accused within the community;

iii) Inadequate resources to enable the Board to discharge its statutory responsibilities and meet the often competing and conflicting needs of the accused, the victim and the community.

As to the first of these matters, in the latter part of the last financial year, the Board was advised that the lack of an appropriate secure residential facility, referred to in the Act as a 'declared place', was being addressed by government. As it is the Board which makes the recommendation for placement in a secure residential facility, members of the Board have spent some time considering accommodation options which might be appropriate for a 'declared place' and have visited some organisations to view accommodation options.

Curiously, despite offering its assistance, the Board has not been invited to participate in developing a suitable model for the proposed 'declared place'. Nevertheless, the Board is extremely pleased that government has decided to implement this significant option which was clearly in the mind of the legislature when the Act was passed in 1996.

There is, however, one important factor to keep in mind. Some recent comments in the media give the impression that the creation of a 'declared place' means that no further orders for imprisonment will be made in relation to mentally impaired accused, or at least cognitively impaired accused. That is simply not the case. It must be understood that some accused who are not suitable for hospitalisation or for unsupervised release into the community are also not suitable for being detained in a 'declared place'. This is because of the risk certain accused pose to other mentally impaired accused residing in the 'declared place'.

The matter of the chronic shortage of resources in the mental health system is of significance to the operation of the Board because the Board does not have a funding stream to provide an accused with accommodation or with supervision by trained carers. Where a cognitively or mentally impaired accused is considered to be a sufficiently low risk to the community to be suitable for release, the greatest difficulty for the Board lies in identifying available accommodation of an appropriate type, identifying a sufficient number of trained carers to meet the level of supervision required by the accused, identifying an organisation which will accept responsibility for managing the carers and maintaining the required level of supervision, and identifying a source of funds to pay for these arrangements.

In the previous Annual Report reference was made to the practices implemented to address these problems. Those practices included appointing a Registrar to manage the work of the Board and using the power under the Act to appoint a supervising officer. As a consequence, relationships with external agencies also involved with mentally impaired accused have continued to improve and in 2011, the Registrar of the Board established a closer working relationship with a representative from the Disabilities Services Commission (DSC) by meeting in a fortnightly forum to discuss individual cases in greater depth. These meetings have allowed the Board to participate in the development of the comprehensive, funded and supervised release plans which are necessary in most cases involving the release of a mentally impaired accused.

There is no reason why these arrangements cannot continue and I hope to see a continuous improvement in the work done by the Board and a related improvement in outcomes for mentally impaired accused.

The adequacy of the resources available to the Board in order to discharge its statutory responsibilities to an acceptable standard is an issue which has confronted the Board since my appointment. Despite a slight decrease in the number of mentally impaired accused in the 2007 to 2008 financial year, the ensuing years have seen a regular increase resulting in the current number of 30 accused under the jurisdiction of the Board. In considering the workload of the Board, one of the most significant issues is the requirement to provide to the Attorney General annual written reports in relation to each mentally impaired accused. These are referred to as statutory reports. Addressing an inherited backlog of statutory reports has impaired the Board's ability to provide subsequent reports in a timely fashion. It is also the case that there has been a significant improvement in the standard of statutory

reports provided by the Board. These reports are now detailed, well researched, contain analysis rather than mere repetition of information, address complex medical issues, identify criminogenic needs and address risk factors. However, in order to maintain this standard, extra resources are required.

The other basis of the urgent need for additional resourcing is in the area of statistical information. Apart from the statutory obligation to publish statistics in the Annual Report, the Board also accepts the importance of identifying and providing to the public, usually through the media, statistical information necessary to inform the public of the work being carried out by the Board. Currently the Board is not sufficiently resourced to collect, collate and maintain statistics of the type commonly requested by interested parties without a consequent impact on the Board's ability to carry out its core statutory functions. A request for additional funding has been made to allow for this initiative.

Despite the difficulties mentioned, this Annual Report does contain some statistics relating to the work of the Board. Of our 30 accused, 36.7% (the highest percentage) are Aboriginal. The next highest is non-Aboriginal Australians at 26.7%. In terms of the nature of the offending or alleged offending of the accused, 34.28% of the total number of accused have committed or are alleged to have committed acts of violence resulting in the death of the victim. The statistics also reveal that 58.57% of the Board's client base has been charged with an offence involving violence. When the number of accused charged with violent offences (58.57%) is added to the number of accused charged with sexual offences (25.71%), the total is 84.28%. Therefore, 84.28% of the accused managed by the Board were charged with offences with the potential to adversely affect the safety of the community.

One final matter which has occurred in recent time is that the Board has been subjected to criticism about its conduct in relation to a particular cognitively impaired accused who was found unfit to stand trial. Much of the criticism is based on an incomplete knowledge of the factual circumstances relating to this accused and of the legislation. It is not an appropriate exercise of the Board's powers to make public confidential information so as to defuse public criticism. The consequence is that the Board is unable to properly explain its actions and must rely on opportunities to educate the community in other forums about how it functions.

Of greatest concern when issues of this nature are debated in the media is the almost complete absence of any reference to, or acknowledgement of, the interests of victims or of any risk to the community. Taking into account the interests of victims is an express requirement of the Act. The release considerations contained in the Act also require the Board to have regard to the degree of risk that the release of the accused appears to present to the personal safety of people in the community. Another particularly relevant factor is the interests of the accused, including whether he would be able to take care of his or her daily needs, obtain treatment, resist serious exploitation and protect his health or safety. Any decision as to release or continued detention is based on the available evidence and not on

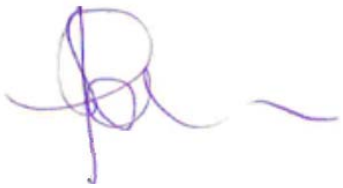
assumptions that an accused can care for himself, will not commit offences or is of no danger to the community.

Media articles have also emphasised the absence of any conviction and questioned the validity of the allegations which led to the charges against the accused. When considering these issues I believe it is important for the community to understand that the legislation provides that the court must be satisfied that a Custody Order is appropriate before such an order can be made. In making that determination the judge must have regard to the strength of the evidence against the accused, the nature of the alleged offence and the alleged circumstances of the commission of the offence. This consideration is made at the time when the allegations and the evidence are fresh.

In relation to a mentally impaired accused who has been found unfit to stand trial, any decision not to recommend the accused's release is based on the evidence before the Board, including any expert evidence. The situation is not dissimilar to that of the mental health patient who is the subject of an involuntary admission as a result of the risk that person poses to the community or to himself. The primary difference is that the mentally impaired accused has been charged with an offence.

A greater emphasis on all relevant factors and accurate information would improve the debate which is quite properly taking place on this important issue and will also improve the outcomes which may result.

No doubt the Board will continue to be challenged by the complexity of the issues involved in the decisions and recommendation it is required to make. However, providing the Board is adequately resourced, it will continue to improve on the initiatives already identified and happily accepts an obligation to continually strive to improve the work it carries out.



The Hon Justice Narelle Johnson
Chairperson
Prisoners Review Board

30 September 2011

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 people 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 2011, thirty mentally impaired accused are under the statutory authority of the Board.

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

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.

The Honourable Justice Narelle Johnson was appointed as the Chairperson of the Board, effective from 25 March 2009.

There have been only minor changes to the composition of the Board since the previous Annual Report. Apart from ensuring that both a deputy psychiatrist and a deputy psychologist have been appointed to the Board to ensure continuous access to expert knowledge, there has been only one change to membership. Mr Ed Hollywood, a psychiatric nurse who is a community member, has now been joined by Ms Barbara Hostalek who also has been appointed as a community member. Ms Hostalek is a veterinary surgeon who has extensive experience as a member of the Prisoners Review Board. She is an Aboriginal woman who makes a considerable contribution to the work of the Board and to an understanding of the issues confronting the Board and its clients.

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.

A Registrar was appointed to the Board in accordance with section 43 (1) of the Act. 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 Chairperson and Board members in relation to mentally impaired accused.

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.

Of the 30 accused currently being managed by the Board, 20% suffer from an intellectual impairment which does not require treatment. A further 16.7% of accused have a dual diagnosis of intellectual impairment and mental illness. Depending on the status of the mental illness, a total of 36.7% of 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, at the time of writing, there is 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 the subject of complaint by previous chairpersons of the Board

The Annual Report for July 2007 to June 2008 identified this problem and the scrutiny of Board files relating to long term accused reveal the repeated attempts of previous chairpersons to highlight the need for a secure accommodation option which does not involve imprisonment. This issue continues to impede the effective discharge of the Board’s functions and the practice in recent times has been to include a reference to the absence of a declared place in every statutory report where the resolution of the Board would be different if such a place existed.

However, in the latter part of the last financial year, the Board was made aware that steps were being taken to create a declared place under the Act. It is hoped that in the not too distant future there will be a secure accommodation option available to the Board other than prison. This will significantly impact on a number of accused who are unable to be released because of the risk they pose to themselves or to the community, but who should not be detained in a prison environment.

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

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

Each statutory report prepared by the Board is approximately thirty 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.

Since May 2011, the Board has had the additional resource of a Senior Advisory Officer whose principal role has been to prepare the statutory reports in relation to the thirty mentally impaired accused under the statutory authority of the Board.

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, can be difficult to manage in the community. They usually 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. Consequently, the chronic shortage of resources in the mental health system generally continues to present a problem for the Board.

In the 2007 to 2008 Annual Report there was a reference to the many cases, particularly involving Aboriginal mentally impaired accused who have little family or community support, where accused remain in prison because there are simply no appropriate facilities or supportive accommodation available to them.

The chairperson of the time noted that, despite the efforts of a number of welfare workers, agencies and committed individuals, arrangements for community placements often fail. In the 2008 to 2009 Annual Report, problems with interagency cooperation were noted, as was the limited scope of information available to the Board concerning the accused.

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.

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 Registrar of the Board has played an active role in this aspect of the Board's commitment to achieving the release of accused on release orders or conditional release orders. In 2011, the Registrar of the Board established a closer working relationship with a representative from the Disabilities Services Commission by meeting in a fortnightly forum to discuss individual cases in greater depth. These meetings assisted the Board in gaining more detailed information in relation to community based support services available to mentally impaired accused. These meetings have allowed for a reciprocal relationship between the two agencies, have allowed the Board to be provided with comprehensive release plans and have resulted in a better understanding of the operational procedures of the Disabilities Services Commission.

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.

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 other sources of information.

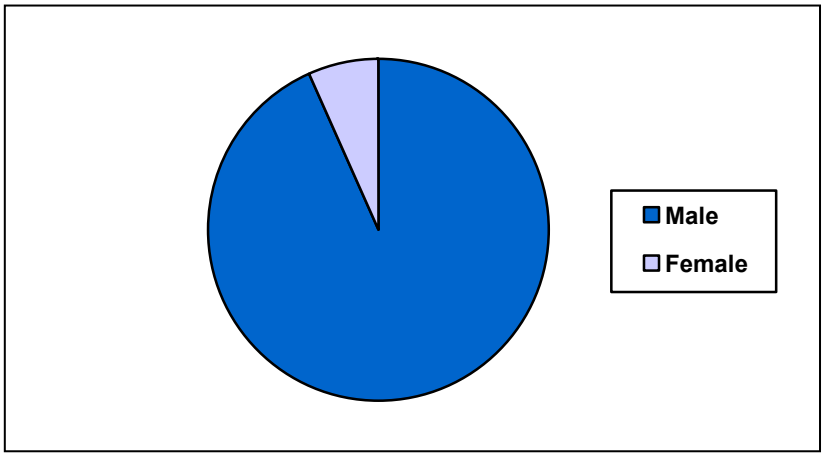
Victims who are registered with the Victim's Notification Register are automatically made aware of any recommendation of the Board.

3 MENTALLY IMPAIRED ACCUSED INDIVIDUALS PROFILE

As of 30 June 2011, thirty 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.

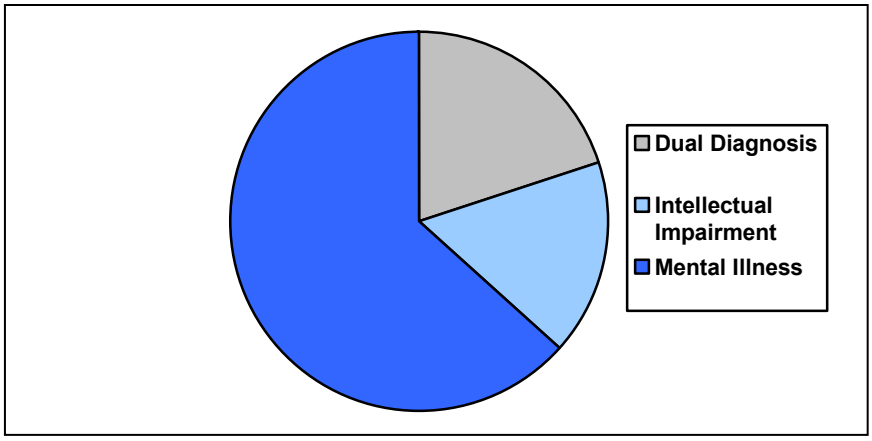
GENDER

During the period 1 July 2010 to 30 June 2011, the Board had under its statutory authority two female mentally impaired accused (6.7%) and 28 male mentally impaired accused (93.3%).



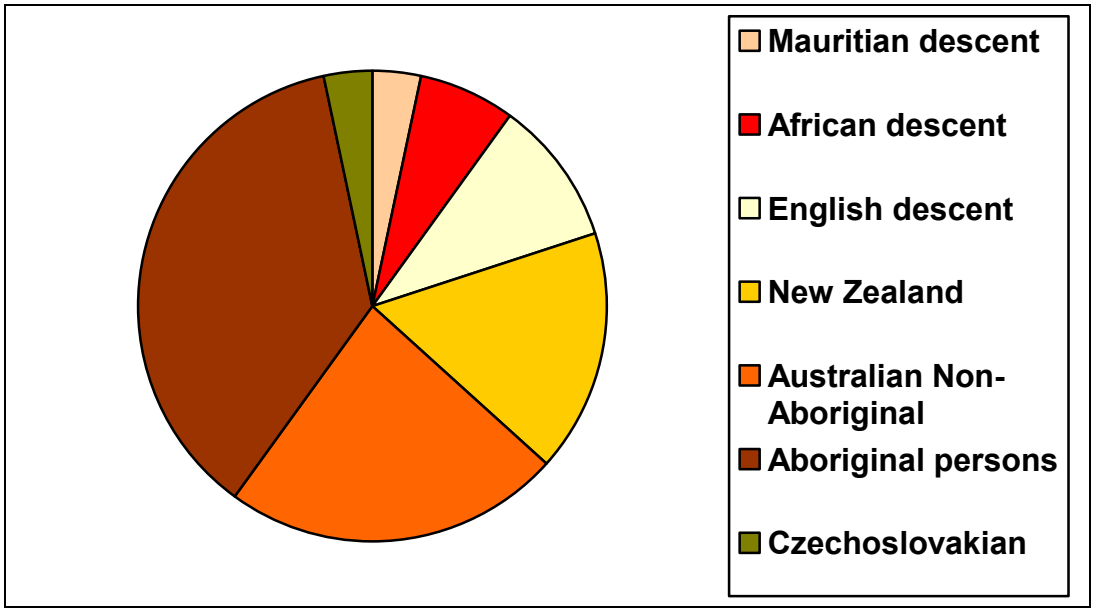
DIAGNOSIS

During the period 1 July 2010 to 30 June 2011, the Board had under its statutory authority 19 accused with a diagnosed mental illness (63.3%), six accused with a diagnosed intellectual impairment (20%) and five accused with a dual diagnosis of a combined intellectual impairment and mental illness (16.7%).



ETHNICITY

During the period 1 July 2010 to 30 June 2011, the Board had under its statutory authority one person of Mauritian descent (3.3%), one person of Czechoslovakian descent (3.3%), two persons of African descent (6.6%), three persons of English descent (10%), five persons from New Zealand (16.7%), seven Australian non-Aboriginal persons (23.4%), and eleven Australian Aboriginal persons (36.7%).



OFFENCE(S) FOR WHICH A CUSTODY ORDER WAS ISSUED

Type of offence	Number of offences
Wilful murder	12
Murder	2
Attempted murder	8
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	2
Assault occasioning bodily harm	6
Aggravated armed robbery	2
Aggravated burglary	1
Arson	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 time.

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
Number of Meetings	10	14	16

During the period 1 July 2010 to 30 June 2011, the Board met on 16 occasions. This is compared to 14 meetings in the period from 1 July 2009 to 30 June 2010.

The increase in Board meetings for the 2010 to 2011 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.

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
New custody orders made by the courts	2	4	1

During the period of 1 July 2010 to 30 June 2011 the Board received one custody order issued by the courts under the Act and accordingly 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.

Place of custody for the period from 1 July 2010 to 30 June 2011 for the thirty mentally impaired accused:

Authorised Hospital	Prison	Juvenile Detention Centre	Declared Place	In the community
8	15	0	0	7

As of 30 June 2011 there was a total number of:

- Eight mentally impaired accused in custody at an authorised hospital (26.7%);
- Fifteen mentally impaired accused in custody at a prison (50%); and
- Seven mentally impaired accused in the community (23.3%).

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.

REPORTS TO MINISTER

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

During the period 1 July 2010 to 30 June 2011, the Board submitted a total of 17 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.

A significant issue in terms of the workload of the Board is the requirement to provide annual written reports in relation to each mentally impaired accused. These are referred to as statutory reports. During the period 1 July 2010 to 30 June 2011, the Board submitted a total of 17 statutory reports to the Attorney General for consideration.

In the last Annual Report reference was made to the backlog of statutory reports which existed at the time of my appointment and the fact that the situation had been addressed as a result of a number of initiatives. One of those initiatives was the appointment, for a fixed term, of an administration officer whose role, in addition to other duties, is to draft these reports and to assist in implementing the resolutions of the Board. Whilst the backlog of statutory reports was addressed, writing those reports reduced the time available for the preparation of the more recent reports which were required to be drafted.

Since 2009, the information contained in the statutory reports has become increasingly more comprehensive with the information being obtained from a more diverse range of service providers. The reports are now well researched and contain analysis rather than mere repetition of opinion, the basis of which is usually not identified. The reports commonly address issues of a complex medical nature and can include identifying the accused's criminogenic needs, based on expert opinion evidence, as well as the identification of risk factors. The work involved in producing these reports can include dealing 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 not only allow the Attorney General to be well informed of an accused's situation, they also provide the foundation for more detailed consideration of an accused's case when making a decision. Significantly, the improved quality of statutory reports means that each report contains sufficient information for the Attorney General to make a decision contrary to the recommendation of the Board if he so chooses.

In order to maintain this standard and to keep up to date with the statutory reports, it is necessary to create a permanent position of report writer to the Board. Consequently, a request has been made for funding which hopefully will be approved.

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
2	13	1

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.

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
1	1	2	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.

YEAR TO YEAR COMPARISON

	2008 - 2009	2009 - 2010	2010 - 2011
Board Workload • Meetings • Number of Decisions Made	 10 105	 14 [1] 69	 16 81
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) 1 0 1 0	(4) 1 2 1 0	(1) 0 1 0 0
Place of Custody Orders issued by the Board (total) • Authorised Hospital • Prison • Juvenile Detention Centre • Declared Place • Combined	(2) 1 1 0 0 0	(4) 0 4 0 0 0	(2) 0 2 0 0 0
Reports to the Minister	19	18	17
Leave of Absence Order approved by the Governor in Executive Council	2	0	2
Subsequent amendments to Leave of Absence Orders by the Board	8	15	13

[1] The frequency of MIARB meetings changed in 2008/09 from two meetings per month to one meeting per month. Two special meetings were held during 2009/2010.

MENTALLY IMPAIRED ACCUSED REVIEW BOARD

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