COPP 4.7 Mentally Impaired Accused Prisoners

Prison

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| Principles As referenced in theGuiding Principles for Corrections in Australia, 2018*:*  1.1.4 Management systems, policies and procedures are evidence based and are informed by human rights principles and operational practice.  1.1.5 Relationships are established with key state and federal justice agencies to support and enhance information sharing.  2.1.3 Individuals are managed and supervised in a manner that responds to their particular risk and needs, including the impacts of victimisation and trauma.  2.1.5 Prisoners of all cultural backgrounds are treated and managed with the principles of substantive equality and according to their individual needs. |

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# Scope

This Commissioner’s Operating Policy and Procedure (COPP) applies to all prisons administered by or on behalf of the Department of Justice (the Department).

# Policy

This COPP provides the policy and outlines the procedures for Mentally Impaired Accused (MIA) prisoners. A MIA prisoner is a person who is subject to a custody order under the *Criminal Law (Mentally Impaired Accused) Act 1996* (CLMIA Act).

Mental impairment is an umbrella term that captures mental illness, intellectual disability, brain damage and senility.

Individuals with a mental impairment are sometimes charged with criminal offences. In some of these cases, the impairment is such that it would be unreasonable for the person to be held criminally liable for their actions.

This might be because they were of unsound mind when they committed the offence or because they are unable to understand the justice process.

Although not criminally liable, these individuals may pose an ongoing risk to the community and themselves. In these circumstances the judicial officer may issue a custody order under the CLMIA Act.

A custody order is an order that the person be detained in:

1. an authorised hospital
2. a ‘declared place’
3. a prison or
4. if a child, a detention centre.

The place of custody is determined and periodically reviewed by the Mentally Impaired Accused Review Board (MIARB).

Custody orders are of indefinite duration, with release at the discretion of the Governor.

A MIA prisoner is a ‘prisoner’ for the purposes of the *Prisons Act 1981*. Accordingly, standard policies and procedures apply to MIA prisoners except as otherwise indicated in legislation or this COPP.

Interactions with, and decision-making in respect of, MIAs should reflect:

1. their status as not criminally responsible
2. the needs and vulnerabilities associated with their mental impairment in accordance with [COPP 4.8 – Prisoners with Disability](https://justus/intranet/prison-operations/Pages/prison-copps.aspx).

Consideration should be given to placing MIA prisoners on SAMS in accordance with [COPP 4.9 – At-Risk Prisoners](https://justus/intranet/prison-operations/Pages/prison-copps.aspx) to ensure proactive management of their vulnerability.

# Reception

### Where a MIA prisoner is placed on a Custody Order in prison, reception procedures shall be managed in accordance with [COPP 2.1 – Reception](https://justus/intranet/prison-operations/Pages/prison-copps.aspx), [COPP 4.8 – Prisoners with Disabilities](https://justus/intranet/prison-operations/Pages/prison-copps.aspx) and [COPP 4.1 – Remand Prisoners.](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)

# Management and Placement

### Placement and security ratings for MIA prisoners shall be determined in accordance with [COPP 2.3 – Assessments and Sentence Management](https://justus/intranet/prison-operations/Pages/prison-copps.aspx).

### For these purposes, a MIA prisoner shall be regarded as a sentenced prisoner. This means that:

1. a MAP-Sentenced checklist shall be completed within 5 working days of initial receival
2. an Initial IMP is to be developed, generally within 6 weeks of the making of the Custody Order.

# Prison Charges

### Where a prison charge is made against a MIA prisoner, consideration shall be given for alternative management options

### By definition, MIA prisoners have previously been found to be not criminally responsible for their conduct. Charging MIA prisoners with prison offences therefore carries a high risk of unjust outcomes.

### Generally, charges should only be laid where:

1. the MIA prisoner appears to understand the nature and purpose of the proceedings
2. alternative management options that could prevent recurrence of the offending behaviour have been considered.

### Advice on these matters may be sought from relevant prison services such as Health Services, Mental Health and Alcohol and Other Drug Services, or Psychological Health Services.

### If charges are laid, the Superintendent shall appoint a person to assist and represent the MIA prisoner throughout the proceedings in accordance with s.76(2) of the *Prisons Act 1981.*

# Absence Permits

### A MIA prisoner is not eligible to be granted an absence permit unless the absence is for:

1. the facilitation of the provision of medical or health services
2. the furthering of the interests of justice

### Leave of absence for these purposes shall be managed in accordance with [COPP 14.5 – Authorised Absences and Absence Permits](https://justus/intranet/prison-operations/Pages/prison-copps.aspx).

### Leave of absence for other purposes is managed under a separate system established by the CLMIA Act in accordance with section 7.

# Leave of Absence

### The Governor may grant the MIARB the authority to make a Leave of Absence Order (LOA) in respect of a MIA prisoner. Where this has occurred, the MIARB may grant a MIA prisoner a LOA for a period not exceeding 14 days at a time.

### LOA will only be facilitated from a minimum security facility unless otherwise approved by the Director Sentence Management.

### A LOA of may include conditions allowing the MIA prisoner to:

1. be granted compassionate leave in accordance with [COPP 14.5 – Authorised Absences and Absence Permits](https://justus/intranet/prison-operations/Pages/prison-copps.aspx).
2. participate in activities akin to external activities in accordance with [COPP 8.7 – External Activities.](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
3. participate in other reintegration activities in accordance with section 7.2.

### When entering a MIA prisoner’s temporary placement on TOMS, the reason is to be entered as “S28 MIA – Leave of Absence”.

## LOA for other reintegration activities

### A LOA may permit a MIA prisoner to participate in specified reintegration activities. Because a LOA may not exceed 14 days, MIA prisoners may regularly leave and return to prison.

### To facilitate this, the prison shall work collaboratively with whoever is supporting the MIA prisoner while they are in the community. This may be:

1. a ‘supervising officer’, typically a Community Corrections Officer
2. another support person such as an Non-Government Organisation support worker, family member or guardian.

### The prison shall liaise with the support person/s to ensure that the conditions of the LOA can be implemented in a safe and orderly manner. This should include an agreed handover plan addressing the:

1. time of collection and return of the MIA prisoner to the prison
2. maintenance of any medication regime during the LOA
3. protocols in the event of a breach or a welfare concern.

### Where the LOA conditions have been breached (e.g. the MIA prisoner was not returned to the prison and there has been no contact from the support person) Officers shall contact the Western Australian Police and the MIARB for further direction.

# Review by the MIARB

### The MIARB is required to review a MIA prisoner within 8 weeks after the Custody Order was made and at least once in every year thereafter[[1]](#footnote-2).

### The MIARB may seek a report from the prison as part of the review process.

### If a prison report is needed, this will have been indicated in the previous review decision, together with the due date for the report and any specific topics to be addressed (e.g. likelihood of placement in a minimum security facility).

### The Authorised Assistant Superintendent shall ensure that a MIA Review Report shall be finalised on TOMS by the due date.

# Release

### Only the Governor may order the release of a MIA prisoner. This may occur at any time, but usually on the recommendation of the MIARB.

### Release may be granted with or without conditions.

### Release of a MIA prisoner shall be in accordance with [COPP 14.6 – Prisoners Release from Custody](https://justus/intranet/prison-operations/Pages/prison-copps.aspx).

# Annexures

## Related COPPs

* [COPP 2.1 – Reception](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 2.3 – Assessments and Sentence Management](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 4.1 – Remand Prisoners](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 4.8 – Prisoners with Disability](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 4.9 – At-Risk Prisoners](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 8.7 – External Activities](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 12.2 – Coordination of Escorts](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 14.5 – Authorised Absences and Absence Permits](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 14.6 – Prisoners Release from Custody](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)

## Definitions and acronyms

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| Term | Definition |
| Accused Person | A person to whom a formal information containing an allegation of a criminal offence has been delivered, or a person arrested for a criminal offence |
| Authorised Hospital | In accordance with *s541* of the *Mental Health Act 2014*, is a public hospital, or part of a public hospital in respect of which an order is in force or is a private hospital the licence of which is endorsed under s26DA(2) of the *Hospitals and Health Services Act 1927*. |
| Commissioner’s Operational Policy and Procedures (COPP) | COPPs are policy documents that provide instructions to staff as to how the relevant legislative requirements are implemented. |
| Conditional Release Order | A release order made by the Governor for a mentally impaired accused person to be discharged from their custody order with conditions set out by the Governor for an indefinite or set period. |
| Declared Place | A declared place is any place declared to be suitable by the Governor for detaining persons under the *Mentally Impaired Accused Act 1996* who meet the following criteria   1. The accused is a person with a disability and the main reason for that disability is not mental illness; and 2. The accused is 16 years of age; and 3. Regard is had to the risk to the community. |
| Detention Centre | A place declared to be a detention centre as defined in s13 of the *Young Offenders Act 1994.* |
| Disability Justice Centre | A declared place where residents have been accused but not convicted of a crime and have been deemed by a court as unfit to plead to the charges because of their disability. This decision means that these people are considered to be mentally impaired accused. |
| Governor | The representative of the Queen in a state of the Commonwealth of Australia |
| Guiding Principles for Corrections in Australia, 2018 | The guidelines and the accompanying principles constitute outcomes or goals to be achieved, rather than a set of absolute standards or laws to be enforced. They represent a statement of intent that each Australian State and Territory can use to develop their own range of relevant legislative policy and performance standards to reflect best practice and community demands. |
| Hospital Order | An order made under the *Mentally Impaired Accused Act 1996* where an accused person is taken and detained in an authorised hospital and examined by a Psychiatrist. |
| Medical Practitioner | A person who is registered under the *Health Practitioner Regulation National Law (WA) Act 2010* in the medical profession (e.g. a doctor). |
| Mental illness | As defined in the *Mentally Impaired Accused Act 1996* underlying pathological infirmity of the mind, whether of short or long term duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli. |
| Mentally Impaired Accused  (MIA) | The meaning given in the s. 23 of the *Mentally Impaired Accused Act 1996*, an accused in respect of whom a custody order has been made and who has not been discharged from the order. |
| Mentally Impaired | As defined in the *Mentally Impaired Accused Act 1996* means intellectual disability, mental illness, brain damage or senility. |
| Prison officer | A person engaged or deemed to have been engaged to be a prison officer under s.13 of the[*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html)or deemed to have been appointed under s.6 to an office designated. |
| Prisoner | Any person in as defined in s.3 of the *Prisons Act 1981*; also includes a person not yet in the custody of a prison, but in the custody of a Contractor under the *Court Security and Custodial Services Act 1999*. |
| Psychiatrist | A medical practitioner who is —  (a) a Fellow of the Royal Australian and New Zealand College of Psychiatrists; or  (b) a person, or a person in a class of person, prescribed by the mental Health Regulations for this definition. |
| Senior Officer (SO) | A prison officer under s. 13 of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html) and a person appointed or deemed to have been appointed under s. 6 of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html) to an office designated by rules for the purposes only of this definition, who has successfully completed the ELTP and the Department’s Senior Officer promotional process. |
| Staff | Any person in the paid or unpaid employment of the Department of Justice, Corrective Services, including contractors, subcontractors and volunteers. |
| Standing Order | Legislated Operational Instruments where the Superintendent of a prison may, with the approval of the Chief Executive Officer, make and issue written standing orders with respect to the management and routine of that prison (s. 37 of the *Prisons Act 1981*) |
| Superintendent (Prison) | The Superintendent as defined in s.36 of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html)and includes any reference to the position responsible for the management of a private prison under Part IIIA of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html). Does not extend to the Officer in Charge of a prison. |
| Unconditional Release Order | A release order made by the Governor for a mentally impaired accused person to be formally discharged from their custody order without conditions. |

# Related legislation

* *Prisons Act 1981*
* *Prisons Regulations 1982*
* *Health Practitioner Regulation National Law 2010*
* *Mentally Impaired Accused Act 1996*
* *The Declared Place (Mentally Impaired Accused) Act 2015*
* *Mental Health Act 2014*

# Assurance

It is expected that:

* Prisons will undertake local compliance in accordance with the Compliance Manual.
* The relevant Deputy Commissioner within Head Office will undertake management oversight as required.
* Operational Compliance Branch will undertake checks in accordance with the Operational Compliance Framework.
* Independent oversight will be undertaken as required.

# Document Version History

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| Version | Primary author(s) | Description of version | Date completed | Effective date |
| 0.1 | Operational Policy | Initial draft | 18 July 2019 | n/a |
| 0.2 | Operational Policy | Updated following consultation | 13 March 2020 | n/a |
| 0.3 | Operational Policy | Tabled for approval with the Project Steering Committee | 17 March 2020 | n/a |
| 0.4 | Operational Policy | Approved by the Project Steering Committee | 17 April 2020 | n/a |
| 0.5 | Operational Policy | Updated following consultation | 30 November 2021 | n/a |
| 1.0 | Operational Policy | Approved by Director Operational Projects, Policy, Compliance and Contracts |  | 28 December 2021 |

1. s33(2) *Criminal Law (Mentally Impaired Accused) Act 1996* [↑](#footnote-ref-2)