COPP 4.8 Prisoners with Disability

Prison

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| Principles As referenced in theGuiding Principles for Corrections in Australia, 2018:  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.  2.2.4 Upon reception or transfer, prisoners undergo an initial assessment to identify any immediate needs and facilitate access to appropriate services, including health, interpreters and disability services.  2.3.7 Access to interpreting and translation services is provided to any prisoner/offender who advises of, or is observed to have, difficulties in understanding or communicating in English.  4.1.9 Prisoners are provided with respectful and culturally appropriate health care. |

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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

The Department is committed to the safety and individual management of prisoners with disability in accordance with state[[1]](#footnote-2) and federal[[2]](#footnote-3) legislation.

This COPP provides the policy and procedure for the identification and referral for the management of prisoners with a disability.

In accordance with legislation, the Department has developed a [Disability Access and Inclusion Plan](https://justus/intranet/human-resources/Pages/equity-diversity.aspx) (DAIP) 2018-2023 which details the Department’s disability services prioritises and delivers positive outcomes in accordance with the *Disability Services Act 19931.* Information about disability and the justice system is provided in the Department’s [Disability Awareness Manual](https://justus/intranet/prison-operations/Documents/disability-awareness-manual.docx) including the monitoring and review of strategies and outcomes.

In accordance with the Departments DAIP​, prisoners shall have access to opportunities and shall be provided with services available.

The prison’s Health Services (HS) and Mental Health and Alcohol and Other Drug Services (MHAOD) provides for the treatment, management and/or rehabilitation of adult prisoners with disability. The Offender Services, Disability Coordination Team (Disability Coordination Team) provides a central contact point for disability related enquiries and are responsible for the raising of disability related alerts and flags in the Total Offender Management Solution (TOMS).

Entry Level Training Programs provide Prison Officers with training and awareness of disability services.

All communications with prisoners should be embedded in such a way that language diversity is acknowledged and understood.

Prisoners unable to communicate in spoken and/or written English are made aware of their right to communicate in their preferred language. If required, prisoners shall be provided with an interpreter who is certified by the National Accreditation Authority for Translators and Interpreters (NAATI).

Prisoners who have difficulty communicating or understanding information being presented to them, shall be provided with a support person as required.

# Identification of a Prisoner with Disability

## Procedure

### Reception is the first opportunity for a Prison Officer to potentially identify a prisoner who may have a disability. Disabilities may not always be apparent at reception, as not all disabilities are visible or immediately recognisable.

### The Reception Officer shall complete an At Risk Management System – Reception Intake Assessment (ARMS-RIA) on TOMS in accordance with [COPP 2.1 – Reception](https://justus/intranet/prison-operations/Pages/prison-copps.aspx).

### The Reception Officer shall ask the prisoner if they are:

1. registered with National Disability Insurance Scheme (NDIS)
2. if they are known or receive services from the Department of Communities, Disability Justice Team
3. if they have a guardian
4. identify as having a disability.

### The Reception Officer is to record any responses to section 3.1.3 on the prisoner’s ARMS-RIA checklist on TOMS.

### An automated email is sent to the Disability Coordination Team where a Prisoner Officer documents ‘YES’ to any of the questions in section 3.1.3.

### Where a prisoner is unable to respond appropriately to questions in section 3.1.3 and the Reception Officer suspects the prisoner may have a neurocognitive disability, they shall email the Disability Coordination Team and record the information on the prisoners ARMS-RIA checklist on TOMS.

### If it is identified by Health Services staff that a prisoner requires further assessment for psychosocial disability, a referral shall be made to MHAOD. The MHAOD nurse will assess the prisoner and determine further priorities, risks and management in accordance with NDIS requirements.

### Where a Prison Officer identifies or suspects a prisoner may have a physical or sensory disability, they shall contact the Senior Officer to inform the relevant Clinical Nurse Manager of their concerns.

### The Senior Officer shall document the contact and action in the offender notes on TOMS.

### The Clinical Nurse Manager shall contact the Disability Coordination Team.

### The Prison Assessments Team or applicable Officers shall complete the Management and Placement (MAP) checklist on TOMS within 5 days of entry to prison.

### Prisoners may have another opportunity to discuss their disability or needs at orientation in accordance with [COPP 2.2 – Orientation](https://justus/intranet/prison-operations/Pages/prison-copps.aspx) or during any medical examination.

### Prison Officers should be mindful that a prisoner may not wish to disclose information regarding their disability.

### When a prisoner informs prison staff about their disability, the person receiving/privy to this information shall ensure that the prisoner is given the opportunity to do so in a confidential location. This privacy allows the prisoner the opportunity to disclose information without fear of judgement or prejudice from others.

### If a prisoner does not disclose their disability at reception, Prison Officers shall inform the prisoner of other methods available to report this, should they change their mind.

### Prison Officers shall acknowledge the prisoner’s disability and explain what services and support is available to them and how to access this.

# Referrals to the Disability Coordination Team

### Where a Prison Officer suspects a prisoner has a disability not identified during the reception process, they shall email the [Disability Coordination Team](mailto:OM-SDDisabilityCoordination@justice.wa.gov.au) with their concerns and record the information on TOMS.

### The Disability Coordination Team can also be contacted for guidance with NDIS processes and applications.

### The Disability Coordination Team shall:

1. assist with obtaining information to determine whether the prisoner is a client of the NDIS
2. assist in contacting the relevant case managers if the prisoner is a client of the NDIS
3. if necessary, assist in making a referral to the NDIS
4. complete a desktop assessment to determine if a disability flag and/or guardianship flag is required on TOMS.

## Disability flag

### The disability flag system is the primary method for identifying prisoners with disability on TOMS. Flags on TOMS are exclusively raised by the Disability Coordination Team.

### The disability flag on TOMS includes information about the type of disability the prisoner has and whether the prisoner is a participant of NDIS, has a guardian or administrator, and/or is a Department of Communities Disability Services client.

### The medical status page on TOMS is managed by nurses which includes tabs relevant to Prison Officers managing prisoners with disability including psychiatric, physical and intellectual disability.

### Prison Officers are to ensure awareness of the prisoner’s disability and any other available information.

## Guardianship alert

### The Disability Coordination Team has governance of the TOMS Guardianship alert, which alerts staff to the relevant information when a prisoner has a legally appointed substitute decision maker.

### The Guardianship alert is not featured on the banner of an offender’s TOMS profile, however staff can access information relating to the alert by going into the offender alert section.

### The Guardianship alert currently covers Guardianship and Administration orders.

# Placement and Management

## Placement

### Placement shall meet the security and disability requirements of the prisoner in accordance with [COPP 2.3 – Assessments and Sentence Management](https://justus/intranet/prison-operations/Pages/adult-custodial-rules.aspx).

### Should the proposed placement not be available, reasonable adjustments shall be made to ensure the prisoner’s safety and health needs are met.

## Escorts and transfers

### The movement’s officer shall obtain information and/or seek advice from HS regarding any assistance required during an escort in accordance with [COPP 12.2 – Coordination of Escorts](https://justus/intranet/prison-operations/Pages/adult-custodial-rules.aspx).

### Should a prisoner with a physical disability request assistance for direction within the facility, prison staff shall take them to their destination, if possible.

### When conducting a transfer in accordance with [COPP 12.4 Prisoner Transfers](https://justus/intranet/prison-operations/Pages/prison-copps.aspx) prison staff shall complete a Prisoner Movement Risk Assessment or External Movement Risk Assessment prior to the prisoner being allocated to a new area.

## Guidelines for a unit conference involving prisons and the Department of Communities personnel

* + 1. In the event that there are differing views in the case management of a prisoner with a physical disability and agreement cannot be established, Corrective Services and the Justice Coordinator from the Department of Communities, shall convene a Unit Conference as necessary and shall include the:

1. Assistant Superintendent Operations at the prison where the prisoner is being held
2. Nurse Manager
3. Service Director Department of Communities, or their delegate.

# Inclusive Language

## Best practice terminology

### When talking about a person with disability, best practice is to put the person first, and the impairment second (where relevant).

### Prison staff shall ensure their level of communication is appropriate to the prisoner’s disability. A physical disability may have no impact on a prisoner’s comprehension and communication.

### Prison staff are to be aware that prisoners with mild intellectual disability often have developed coping strategies to conceal their lack of understanding such as:

1. silence
2. routine agreement to questions asked
3. brief answers to questions asked
4. becoming hostile when asked questions that they cannot answer.

### Prison staff shall speak slowly and clearly and avoid technical terms when speaking with the prisoner.

### It is important that prison staff are sensitive to disability issues and communicate with the prisoner patiently, simply, courteously, and precisely.

### Prison staff shall allow the prisoner time to understand the information, reiterating the question in plain english to confirm their understanding.

### Prison staff shall stay away from terms such as “person without disability” and “non disabled” as many people with disability are very able.

### Prison staff shall continue to treat the prisoners with respect and use inclusive terms when conversing with them.

### Prison staff shall not imply that people with a disability are victims or objects of pity. Avoid using emotional terms when describing the prisoner’s disability such as “suffering from”, or “afflicted by/with”, instead replacing it with “experiences”, “developed” “has”.

### When dealing with a prisoner who has a physically disability, prison staff shall refer to their disability, if required, using the most accepted term “wheelchair user” or “person who uses a wheelchair”. Wheelchair “bound” or “confined” are terms that disempower the prisoner and can potentially lead to mental illness and/or self-harm.

# Interviewing a Prisoner with Disability

### Where are prisoner with a disability flag, is interviewed regarding a prison incident they have been involved in or witnessed, prison staff shall conduct the interview as soon as practical, so that the series of events is still current.

### The interview shall be conducted in a formal manner, so the prisoner is aware of the importance of the discussion. Video or audio devices should be used once the interview has commenced, for serious matters.

### Prison staff shall let the prisoner know that they are under no obligation to participate in the interview however, if they do participate, they are allowed a support person. Where the prisoner does not understand these options a support person shall be provided.

### The support person shall be a neutral independent person, and not be involved in the situation being discussed. The support person shall be in attendance prior to the interview being conducted.

### The role of the support person is to be a neutral third party who facilitates communication between the interviewer and the prisoner. The support person may provide emotional support and ensure the prisoner is aware of their rights, however, unless that person is a registered practitioner, they cannot provide legal counsel or advocate on behalf of the prisoner.

### Some prisoners are open to suggestion and therefore, care shall be taken for the duration of the interview not to ask leading or suggestible questions. Prison staff shall:

1. ensure the prisoner understands why they are present
2. not ask questions that suggest the answer you want to hear
3. use simple language when asking a question
4. speak in a clear and consistent tone and ensure that non-verbal communication is compatible with verbal content
5. not ask excessive and/or long winded questions
6. take time to verify the facts presented and obtain corroboration of admission or statements made
7. try to ask only a few ‘closed questions’
8. ensure the prisoner has time to respond to the question
9. if requested provide written content in an accessible format.

### Prison staff should be aware that without adapting the interview process or techniques to meet disability and/or access needs, prisoners with an intellectual disability may be prone to agreeing with interviewers or providing an unreliable account of the incident due to miscommunication or not being properly informed. Interviewers can easily fall into the trap of leading a prisoner to a pre-determined conclusion.

### Prison staff shall repeat their advice or directions using different words if necessary.

### After the interview, the prisoner shall be advised of the process moving forward and support services available to them, should they wish to seek assistance.

# Standing Orders

## General requirements

### Superintendents may develop a Standing Order, compliant with this COPP as operationally required.

### For prisons requiring a Standing Order this shall be compliant with [COPP 1.3 – Standing Orders](http://justus/intranet/prison-operations/Pages/prison-copps.aspx) and the Department’s [Operational Policy and Procedure Framework](http://justus/intranet/department/standards/Documents/opp-framework-prisons.docx).

# Annexures

## Related COPPs

* [COPP 1.3 – Standing Orders](http://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 2.1 – Reception](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 2.2 – Orientation](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 12.2 – Coordination of Escorts](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 12.4 – Prisoner Transfers](https://justus/intranet/prison-operations/Pages/prison-copps.aspx)

## Related documents

* [Disability Services Policy](https://justus/intranet/human-resources/Pages/equity-diversity.aspx)
* [Disability Access and Inclusion Plan](https://justus/intranet/human-resources/Pages/equity-diversity.aspx)
* [Disability Awareness Manual](https://justus/intranet/prison-operations/Documents/disability-awareness-manual.docx)
* [Operational Policy and Procedure Framework](http://justus/intranet/department/standards/Documents/opp-framework-prisons.docx).

## Definitions and acronyms

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| Term | Definition |
| Administration Order | An order made under s64 of the *Guardianship and Administration Act 1990* where the State Administrative Tribunal has declared an adult to be in need of an administrator of their estate and appoints a person/s to this position. |
| Commissioner’s Operating Policy and Procedure (COPP) | Operational Instruments that provide instructions to staff on how the relevant legislative requirements are implemented. |
| Disability  *(Disability Services Act 1993)* | The *Disability Services Act 1993* defines ‘disability’ as meaning a disability: which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments,which is permanent or likely to be permanent.which may or may not be of a chronic or episodic nature.which results in:  * a substantially reduced capacity of the person for communication, social interaction, learning or mobility * a need for continuing support services. |
| Guardianship Order | An order made under s43 of the *Guardianship and Administration Act 1990* where the State Administrative Tribunal has declared an adult to be in need of a guardian and appoints a person/s to safeguard their interests. |
| 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. |
| Impairment | Any loss or abnormality of psychological, physiological or anatomical structure or function. |
| Intellectual Disability | Refers to developmental disorders, meaning that they occur during the developmental period. Includes intellectual and developmental disability which relates to difficulties with:   * + 1. thought processes     2. learning     3. communicating     4. remembering information and using it appropriately     5. making judgments     6. problem solving.   Intellectual disability is the result of interaction between developmentally attributable cognitive impairment, attitudinal and environmental barriers. Intellectual disability can last for years or be lifelong. |
| Neurocognitive Disability | Refers to any type of brain disorder or neurological disruption which is acquired rather than developmental. A Neurocognitive Disability can result from but is not limited to:   * + 1. Acquired Brain Injury (ABI)     2. Autism     3. Traumatic Brain Injury (TBI)     4. violence     5. stroke     6. lack of oxygen the brain     7. trauma     8. alcohol or drug use     9. infections     10. Foetal Alcohol Spectrum Disorder (FASD).   Neurocognitive Disability can impact physical, emotional, behavioural, and psychosocial functioning. |
| Prison Officer | As defined in s. 3(1) of the *Prisons Act 1981*. Also includes any contract worker authorised by the Commissioner in accordance with s.15I (1)(b) of the *Prisons Act 1981* to perform the functions of a prison officer. |
| Prisoner | Any person in lawful custody and referred to as a prisoner 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 contract |
| Physical Disability | An impairment that may temporarily or permanently affect a person’s physical capability, dexterity, stamina and/or mobility.  A physical disability may be cause by a genetic or inherited disorder, serious illnesses, and injury. Physical disability may appear as but is not limited to:   * + 1. ABI     2. spinal cord injury     3. spina bifida     4. cerebral palsy     5. cystic fibrosis     6. epilepsy     7. multiple sclerosis     8. muscular dystrophy     9. tourette syndrome     10. dwarfism     11. amputation |
| Psychosocial Disability | A disability which can arise from a mental health issue. A psychosocial disability may be temporary or lifelong. Not everyone who has a mental health condition will have a psychosocial disability. |
| Senior Officer | A prison officer under s13 of the Prisons Act 1981 and a person appointed or deemed to have been appointed under s 6 of the Prisons Act 1981 to an office designated by rules for the purposes only of this definition, who has successfully completed the ELTP and department’s Senior Officer promotional process. |
| Sensory Disability | An impairment that affects a person’s senses such as sight, touch, hearing, taste, smell or spatial awareness. This is not limited to one sense, as some people may experience several sensory losses.  A sensory disability may include but is not limited to: blindness or low visiondeafness or hearing losssensory processing disorder People with sensory processing disorder may be diagnosed as either:   1. hypersensitive – they are more likely to over reactive and avoid sensory stimulation 2. hyposensitive – they are under reactive and seek out sensory stimulation.   A sensory disorder can cause severe functional impairment, which can be disruptive to daily life, routines and learning processes. |
| Staff | All persons employed by the Department of Justice. Also includes all contract workers authorised by the Commissioner in accordance with s 15I (1) of the *Prisons Act 1981* to perform a function. |
| 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 (s37 of the *Prisons Act 1981*) |
| Superintendent | The Superintendent as defined in s 36 of the *Prisons Act 1981* includes any reference to the position responsible for the management of a private prison under Part IIIA of the *Prisons Act 1981*. |

## Related legislation

* *Prisons Act 1981*
* *Prisons Regulations 1982*
* *Disability Discrimination Act 1992*
* *Disability Services Act 1993*

# 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 | 25 August 2021 | n/a |
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1. *Disability Services Act 1993* (WA) [↑](#footnote-ref-2)
2. *Disability Discrimination Act 1992* (Cth) [↑](#footnote-ref-3)