COPP 6.2
Prisoners with a Terminal Medical Condition

Prison

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| PrinciplesAs referenced in the [Guiding Principles for Corrections in Australia, 2018](http://justus/intranet/prison-operations/Documents/guidelines-for-corrections-in-aus.pdf):4.1.1 Health and wellbeing services are available to prisoners, and they are aware of how to access them.4.1.4 Prisoners are provided a standard of health care equal to services available in the community that meet their individual physical health, mental health and social care needs fostering continuity of care between custody and the community.4.1.5 Prisoners are provided with appropriate health practitioners to deliver the right care at the right time, consistent with equivalent codes of conduct and professional/ethical standards as those applying to public health services in the community. |

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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

Stakeholders such as the relevant Superintendent and Sentence Management shall be notified when a prisoner is medically assessed as having a Terminal Medical Condition (TMC).

Notification to the Minister for Corrective Services (the Minister), in accordance with this COPP, at specific stages of a prisoner’s TMC, will allow notification to relevant authorities of the prisoner’s health status and circumstances. Where that relevant authority requests, the Department shall provide all relevant information.

Prisoners may apply for early release by way of a pardon[[1]](#footnote-1) (State), early release on licence[[2]](#footnote-2) (Commonwealth), or for specific prisoner cohorts (e.g., Mentally Impaired Accused[[3]](#footnote-3)) in accordance with the legislative provisions. While early release may be considered for a range of circumstances, a relevant authority may consider a prisoner with a TMC as satisfying the legislative requirements for granting such a request.

# Identification of a Prisoner with a Terminal Medical Condition

## Notification

### The Director Medical Services shall be notified by Health Services staff of any prisoner who has been diagnosed with a TMC.

### Following notification, the Director Medical Services:

1. determines the stage of the prisoner’s TMC.
2. creates a Health Advice which provides up-to-date information on the prisoner’s health and related circumstances, including the current classification of the prisoner’s TMC
3. ensures that Health Services staff have advised the prisoner of their medical condition and prognosis if not previously discussed and record a note in the TOMS Terminally Ill module that this discussion has occurred.

# Stages of Terminal Medical Condition

A prisoner’s TMC classification and ongoing review will be done by the Director Medical Services as per Health Services [PM22 Notification of a Terminally Ill Adult Patient](http://justus/communities/health-services/Pages/Policy-and-Procedure.aspx).

## Stage 1 – Potential of death in custody

### A prisoner’s TMC shall be classified as Stage 1 if the Director Medical Services is of the opinion the prisoner is unlikely to die within 12 months.

### If a prisoner’s TMC is classified as Stage 1, the Director Medical Services shall conduct a clinical review of the prisoner’s medical notes at least once every 3 months.

### In the course of conducting a clinical review, the Director Medical Services shall consider whether the prisoner’s medical condition remains terminal and, if so, whether it should remain classified as Stage 1 or be reclassified to another stage.

### At the conclusion of a clinical review, the Director Medical Services shall create a new health advice which provides up-to-date information regarding the prisoner’s health and related circumstances, including the current classification of the prisoner’s TMC. Stakeholders are notified via a TOMS email alert if the classification remains the same or if there is a change.

### If, at the conclusion of a clinical review, the Director Medical Services is of the opinion the prisoner no longer has a TMC, they shall include that opinion in the health advice referred to in section 4.1.4

### Upon receiving a notification under section 4.1.4, the DSM shall ensure to update the TOMS Terminally Ill Module.

## Stage 2 - Deterioration of terminal medical condition

### A prisoner’s TMC shall be classified as Stage 2 if the Director Medical Services is of the opinion that the prisoner is likely to die within 12 months but is unlikely to die within 3 months.

### If a prisoner’s TMC is classified as Stage 2, the Director Medical Services shall conduct a clinical review of the prisoner’s medical notes at least once every 3 months.

### In the course of conducting a clinical review, the Director Medical Services shall consider whether the prisoner’s medical condition remains terminal and, if so, whether it should remain classified as Stage 2 or be reclassified to another stage.

### Processes as mentioned in sections 4.1.4 to 4.1.6 are followed.

## Stage 3 - Death within 3 months or sudden death possible

### A prisoner’s TMC shall be classified as Stage 3 if the Director Medical Services is of the opinion the prisoner:

is likely to die within 3 months or

1. has medical conditions which may increase the potential for sudden death.

### If a prisoner’s TMC is classified as Stage 3, the Director Medical Services shall notify the:

DSM

1. Superintendent of the holding prison, who shall notify the Superintendent Administration or Director Operations Women Services as appropriate.

### Upon receiving a notification under section 4.3.2 the:

Superintendent shall ensure all routine management decisions consider the prisoner’s medical status

DSM shall, within 7 working days, prepare a briefing note for the Minister, refer to section 6.2.3

### If a prisoner’s TMC is classified as Stage 3 because the prisoner is likely to die within 3 months, the Director Medical Services shall conduct a clinical review of the prisoner’s medical notes at least once every fortnight.

### If a prisoner’s TMC is classified as Stage 3 because the prisoner has one or more medical conditions, which may increase the potential for sudden death, the Director Medical Services shall conduct a clinical review of the prisoner’s medical notes at least once every 2 months.

### In the course of conducting a clinical review, the Director Medical Services shall consider whether the prisoner’s medical condition remains terminal and, if so, whether it should remain classified as Stage 3 or be reclassified to another stage.

### At the conclusion of a clinical review, the Director Medical Services shall create a new Health Advice which provides up-to-date information regarding the prisoner’s health and related circumstances, including the current classification of the prisoner’s TMC. Stakeholders are notified via a TOMS email alert if the classification remains the same or if there is a change.

### If, at the conclusion of a clinical review, the Director Medical Services is of the opinion the prisoner no longer has a TMC, they shall:

include that opinion in the Health Advice referred to in section 4.3.7

1. notify the DSM of that opinion.

### Upon receiving a notification under section 4.3.8, the DSM shall ensure to finalise the prisoner within the TOMS Terminally Ill Module.

## Stage 4 - Death is imminent

### A prisoner’s TMC is to be classified as Stage 4 if the Director Medical Services is of the opinion the prisoner’s death is imminent.

### If a prisoner’s TMC is classified as Stage 4, the Director Medical Services shall:

notify the:

* DSM
* Superintendent of the holding prison, who shall notify the Superintendent Administration or Director Operations Women Services depending on the prisoner’s gender.
1. create a new Health Advice which provides up-to-date information regarding the prisoner’s health, including the likely progression of the prisoner’s medical condition(s) and the prisoner’s estimated life expectancy and the current classification of the prisoner’s TMC.

### Upon receiving a notification under section 4.4.2 the:

Superintendent shall ensure all routine management decisions consider the prisoner’s medical status

Superintendent shall, where the prisoner is a remand prisoner, take any action in accordance with section 6.8

DSM shall, within 3 working days, prepare a briefing note for the Minister, refer to section 6.2.4

### If a prisoner’s TMC is classified as Stage 4, the Director Medical Services shall:

ensure Health Services staff monitor the prisoner’s medical status daily

create additional Health Advice to advise of changes in the prisoner’s medical situation as necessary.

### If the Director Medical Services is of the opinion that the prisoner’s death is no longer imminent, shall:

complete a Health Advice providing up-to-date information regarding the prisoner’s health and related circumstances and reclassify the prisoner’s TMC. Stakeholders are notified via a TOMS email alert of the change in classification.

# Notification to the Next of Kin

## Communication – Next of kin

### The Superintendent in considering notifying the prisoner’s next of kin (given the sensitive nature of a TMC), should give careful thought to how and when the prisoner’s next of kin is notified of the prisoner’s condition (e.g. when a prisoner will be moved from prison for the treatment of a TMC).

### The general process for notifying the next of kin is outlined in [COPP 6.1 –Prisoner Access to Health Care](http://justus/intranet/prison-operations/Pages/prison-copps.aspx).

### The Superintendent shall ensure the prisoner or their next of kin (when prisoner unable to) provides their consent before any medical information is provided to the next of kin in accordance with [COPP 9.6 – Access to Information](http://justus/intranet/prison-operations/Pages/prison-copps.aspx).

### To prepare for the notification of the next of kin when death is imminent (e.g. prisoner is in palliative care), a communication plan may be developed in consultation with the prisoner, their next of kin, medical facility, the Superintendent and the Western Australian Police Force which will outline when and how the next of kin will be notified.

# Consideration to Release a Prisoner

## General requirement

### Any consideration for early release of a prisoner with a TMC will depend on their custodial status such as:

State Prisoner (section 6.3)

1. Commonwealth Prisoner (section 6.4)
2. Joint State and Commonwealth Prisoner (section 6.5)
3. person detained under the [*Criminal Law (Mentally Impaired Accused) Act 1996*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a199.html) (the MIAA) (section 6.6)
4. prisoner in custody pursuant to a continuing detention order under the [*High Risk Serious Offenders Act 2020*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147273.html)  (section 6.7)
5. Remand Prisoner (section 6.8)

## Advice to relevant authorities

### Information necessary for the relevant authority(s) (as identified in section 6.1.1) to consider the early release of a prisoner shall be compiled and provided by the Department.

### While information shall be provided when a prisoner reaches Stage 3 or 4 of a TMC, the DSM may be requested to provide information for other stages of a TMC.

### Within 7 working days of being notified (under section 4.3.2) that a prisoner’s TMC has been classified as Stage 3, the DSM shall prepare a Stage 3 briefing to the relevant releasing authority(s) (as identified in section 6.1.1). The Stage 3 briefing shall contain:

details of the prisoner’s sentence

the prisoner’s criminal history

the prisoner’s medical situation and life expectancy

likelihood of the prisoner dying in custody.

a transcript of the prisoner’s sentencing, including the Judicial Sentencing Remarks (where applicable)

details of the prisoner’s conduct while in prison

details relating to the prisoner’s participation in prison programmes

decisions of the Prisoners Review Board (where applicable)

information that may be relevant to consider if the prisoner is suitable for release, such as:

* details relating to the prisoner’s community supports, including views expressed by the prisoner and their family/any guardian where applicable
* victim issues (eg safety and wellbeing of any victims)
* safety of the community
* suitability of the non-custodial setting.

### Within 3 working days of being notified (in accordance with section 4.4.2) that a prisoner’s TMC has been classified as Stage 4, the DSM shall prepare a Stage 4 briefing to the relevant releasing authority(s) (as identified in section 6.1.1). If the prisoner has not been the subject of a prior Stage 3 briefing, the Stage 4 briefing shall contain those matters identified in section 6.2.3. If the prisoner has been the subject of a prior Stage 3 briefing, the Stage 4 briefing shall contain details of any changes to the information contained in the Stage 3 briefing.

### The DSM shall liaise with the Director Medical Services and the Superintendent of the holding prison, in order to obtain relevant information for inclusion in the briefing and to enable the making of management decisions in respect of the prisoner.

### The DSM may request a report from Adult Community Corrections for the prisoner’s family and community support (including suitable accommodation), suitability for release into the community and any other relevant factors.

### The DSM shall record the outcome and action(s) undertaken in a note in the Terminally Ill Module in TOMS.

## State prisoners

### Any prisoner who has been imprisoned by order of a court exercising State jurisdiction may be considered for release pursuant to the grant of a pardon in the exercise of the Royal Prerogative of Mercy (RPOM)[[4]](#footnote-4). Prisoners at any stage of a TMC may apply to the Attorney General for release under a RPOM.

### The DSM shall prepare a briefing (in accordance with section 6.2) for the Minister. The Minister to provide to the Attorney General. If the Attorney General considers the prisoner suitable for release, the DSM may be requested to provide additional information to support the Attorney General’s consideration of the matter.

### Where applicable and following written advice from the Attorney General or Governor in Executive Council, the Department shall take the necessary action to comply with any direction(s) given.

### Upon receiving advice under section 6.3.3 in respect of a prisoner, the DSM shall:

advise the Superintendent of the holding prison

advise the Superintendent Administration or Director Operations Women Services

record the outcome and any action(s) undertaken in a note in the Terminally Ill Module in TOMS.

## Commonwealth prisoners

### The Commonwealth Minister responsible for the [*Crimes Act 1914*](https://www.legislation.gov.au/Series/C1914A00012) (Commonwealth) (the Act) or their delegate may grant a Commonwealth prisoner early release on licence, but only if the Commonwealth Minister is satisfied that “exceptional circumstances” exist which justify the granting of a licence[[5]](#footnote-5).

### Applications for early release on licence shall be in writing and specify the exceptional circumstances relied upon to justify release[[6]](#footnote-6). Although prisoners themselves usually make applications, the Act allows for others (such as solicitors or family members) to apply on their behalf.

### Upon receiving notification in accordance with section 4.3.2 and/or section 4.4.2, in respect of a Commonwealth Prisoner, the DSM shall:

seek further advice from the Director Medical Services as to whether the prisoner’s TMC can be ‘adequately treated within the prison system’. The Director Medical Services shall provide this information in the form of either a Health Advice or a note in the Terminally Ill module of TOMS

prepare a briefing for the Minister (in accordance with section 6.2)

provide to the Minister advice for the Commonwealth Minister in regard to the prisoner’s TMC including what treatment is being provided or is necessary and whether it can be adequately treated within the prison system[[7]](#footnote-7).

## Release of joint State/Commonwealth prisoners

### Where a prisoner is serving a State and Commonwealth sentence of imprisonment at the same time, they will require both an early release on licence (refer section 6.4) and a pardon to be granted in the exercise of a RPOM (refer section 6.3) before release may occur.

## Mentally Impaired Accused prisoners

### A Mentally Impaired Accused (MIA) prisoner[[8]](#footnote-8) with a TMC may be considered for release under and in accordance with the *Criminal Law (Mentally Impaired Accused) Act 1996*.

### Upon receiving a notification in accordance with section 4.3.2 and section 4.4.2, in respect of a MIA prisoner, the DSM shall:

prepare a report (in accordance with section 6.2) for the Mentally Impaired Accused Review Board (MIARB)

prepare a briefing for the Minister similar to the requirements set out in section 6.2, outlining the actions taken to inform the MIARB regarding the prisoner’s TMC.

### Following written advice from the MIARB, the Department shall take the necessary action to comply with any direction(s) given.

### Upon receiving advice under section 6.6.3 in respect of a prisoner, the DSM shall:

advise the Superintendent (or his or her delegate) of the Holding Prison

advise the Superintendent Administration or Director Operations Women Services as appropriate

record the outcome and any action(s) undertaken in a note in the Terminally Ill Module in TOMS.

## Prisoners subject to a continuing detention order under the *High Risk Serious Offenders Act (2020)*

### For those prisoners held in custody subject to a continuing detention order pursuant to the *High Risk Serious Offenders Act 2020*, release can only be considered by the Supreme Court upon application for review of the continuing detention order.

### Where a prisoner subject to a continuing detention order has a TMC which has been classified as Stage 3 or Stage 4; and upon receiving a notification in accordance with section 4.3.2 and section 4.4.2 the following procedures apply:

The DSM shall notify in writing, the Community Offender Monitoring Unit (COMU) of the prisoner’s terminally ill classification and medical situation

COMU shall advise the State Solicitor’s Office (SSO) in writing of the prisoner’s medical situation and request that this information be forwarded to the prisoner’s legal representative(s)

COMU on receipt of an outcome from the SSO shall advise the DSM in writing of any actions taken in accordance with point (b) of section 6.7.2. The DSM shall record any such actions in a note in the Terminally Ill Module in TOMS and notify the applicable prison Superintendent in writing.

## Remand prisoners

### For those prisoners held in custody in relation to remanded offences only, release shall occur through a court process only such as being granted bail, or the prosecution being discontinued.

### Where a prisoner has been remanded in custody and has a TMC which has been classified as Stage 3 or Stage 4, the following additional procedures apply.

The Superintendent shall ensure the prisoner, their legal representative(s), the court and family members (where applicable) are consulted, with a view to assisting the prisoner to apply for, and if possible, secure a suitable bail arrangement given his or her medical condition

The Superintendent shall ensure that the DSM is advised, in writing, of any actions taken in accordance with section 6.7.3 (a). The DSM shall record any such actions in a note in the Terminally Ill Module in TOMS.

# Recordkeeping

## General

### On completion of the actions for an individual prisoner classified under these procedures the DSM shall provide all appropriate documents to Operational Information Management as soon as practicable, so the information can be digitised into Content Manager. Corporate Records Branch shall scan this file before providing original documentation to any external body.

# Annexures

## Related COPPs and other documents

**Related COPPs**

* [COPP 6.1 – Prisoner Access to Health Care](http://justus/intranet/prison-operations/Pages/prison-copps.aspx)
* [COPP 9.6 – Access to Information](http://justus/intranet/prison-operations/Pages/prison-copps.aspx)

**Other documents**

* [Guiding Principles for Corrections in Australia, 2018](http://justus/communities/security-intelligence/security-response/SOGPublications/Guiding%20principles%20for%20corrections%20in%20Australia%202018.pdf)
* [PM22 Notification of a Terminally Ill Adult Patient](http://justus/communities/health-services/Pages/Policy-and-Procedure.aspx)

## Definitions and acronyms

|  |  |
| --- | --- |
| Term | Definition  |
| Commissioner’s Operating Policy and Procedures (COPP) | COPPs are policy documents that provide instructions to staff as to how the relevant legislative requirements are implemented. |
| Commonwealth Prisoner | A prisoner imprisoned by order of a court exercising Commonwealth jurisdiction. |
| DSM | Director Sentence Management |
| Exceptional Circumstances | The *Crimes Act 1914* (Commonwealth) does not define “exceptional circumstances” but an extract from the Explanatory Memorandum for the legislation states:*“Exceptional circumstances are intended to cover matters that occur, usually post sentence, that significantly affect an offender’s circumstances such as extensive cooperation with law enforcement agencies or development of a serious medical condition which cannot be adequately treated within the prison system. Excellent conduct, remorse or contrition, or family hardship (unless of an extreme kind) would not normally constitute exceptional circumstances.”* |
| 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. |
| Health Advice | Created within the Terminally Ill module of TOMS and provides information regarding the prisoner’s medical condition(s), the current stage of the prisoner’s TMC (under these procedures) and the date scheduled for the next clinical review of the prisoner’s medical notes. |
| Holding Prison | The prison in which the prisoner is held. |
| Joint Prisoner | A prisoner in respect of whom both a State and Commonwealth sentence of imprisonment has been imposed. |
| MIAA | *Criminal Law (Mentally Impaired Accused) Act 1996* |
| MIAA Prisoner | A person detained under the *Criminal Law (Mentally Impaired Accused) Act 1996*. |
| MIARB | Mentally Impaired Accused Review Board |
| Next of Kin | For this policy, the term refers to the person(s) which the prisoner nominates as a contact to inform when they have a significant health issue. The person(s) nominated may include their spouse, the closest blood relative or a kinship/extended family relative. |
| Remand Prisoner | A State or Commonwealth prisoner charged with an offence but not yet convicted of any offence. |
| RPOM | Royal Prerogative of Mercy |
| State Prisoner | A prisoner imprisoned by order of a court exercising State jurisdiction. |
| Superintendent | A person designated as a Superintendent under s. 36(1) [*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 [*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 (OIC) of a prison. |
| Terminal Medical Condition (TMC) | One or more medical conditions that on their own or as a group may significantly increase a prisoner’s potential to die in custody, having regard to the nature of the condition(s) and the length of the prisoner’s sentence. |
| The Minister | The Minister for Corrective Services |
| Total Offender Management Solution (TOMS) | An electronic database used by the Department of Justice to record and manage comprehensive information relating to offenders in custody.  |

## Related legislation

* [*Crimes Act 1914*](https://www.legislation.gov.au/Series/C1914A00012) (Commonwealth)
* [*Criminal Law (Mentally Impaired Accused) Act 1996*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a199.html)
* [*High Risk Serious Offenders Act 2020*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147273.html)
* [*Prisons Act 1981*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html)
* [*Sentencing Act 1995*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_888_homepage.html)

# Assurance

It is expected that:

* Prisons will undertake local compliance in accordance with the [Compliance Manual](http://justus/intranet/department/standards/Pages/monitoring.aspx).
* The relevant Deputy Commissioner within Head Office will undertake management oversight as required.
* Monitoring and Compliance Branch will undertake checks in accordance with the [Operational Compliance Framework.](http://justus/intranet/department/standards/Pages/monitoring.aspx)
* Independent oversight will be undertaken as required.

# Document Information

## Document version history

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Version no | Primary author(s) | Description of version | Date completed | Effective date |
| 0.1 | Operational Policy  | Initial draft | 27 November 2019 | N/A |
| 0.2 | Operational Policy  | Updated following consultation | 22 January 2020 | N/A |
| 0.3 | Operational Policy  | Tabled for approval with the Project Steering Committee | 28 January 2020 | N/A |
| 0.4 | Operational Policy  | Amended following feedback from the Project Steering Committee | 28 February 2020 | N/A |
| 0.5 | Operational Policy  | Tabled for approval with the Project Steering Committee | 17 March 2020 | N/A  |
| 0.6 | Operational Policy  | Approved by the Project Steering Committee | 17 April 2020 | N/A |
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| 0.8 | Operational Policy  | Minor formatting amendments  | 05 August 2020 | N/A |
| 0.9 | Operational Policy  | Amended following feedback from Health Services and Professional Standards. | 04 May 2021 | N/A |
| 1.0 | Operational Policy | Approved by the Director Operational Projects, Policy, Compliance and Contracts | 20 May 2021 | 28 June 2021 |
| 2.0 | Operational Policy | Approved by the Commissioner | 28 November 2022 | 29 November 2022 |

1. Part 19 *Sentencing Act 1995* [↑](#footnote-ref-1)
2. s.19AP *Crimes Act 1914 (Cth)* [↑](#footnote-ref-2)
3. s. 23 *Criminal Law (Mentally Impaired Accused) Act 1996* [↑](#footnote-ref-3)
4. Part 19 *Sentencing Act 1995* [↑](#footnote-ref-4)
5. s. 19AP *Crimes Act 1914* [↑](#footnote-ref-5)
6. s. 19AP(3) *Crimes Act 1914* [↑](#footnote-ref-6)
7. s. 113A of the *Prisons Act 1981* [↑](#footnote-ref-7)
8. As defined in s. 23 of the *Criminal Law (Mentally Impaired Accused) Act 1996* [↑](#footnote-ref-8)