



Prisoners with a Terminal Medical Condition – Procedures

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1. Introduction

This document operationalises [Policy Directive 8 – Prisoners with a Terminal Medical Condition](#) and ensures appropriate processes occur to notify relevant stakeholders and decision makers regarding prisoners with a Terminal Medical Condition.

2. Definitions

Commonwealth Prisoner	A prisoner imprisoned by order of a court exercising Commonwealth jurisdiction.
Designated Superintendent	A person designated as a Superintendent under section 36(1) of the Prisons Act 1981 and includes any reference to the position responsible for the management of a private prison under Part IIIA of the Prisons Act 1981 . Does not extend to the Officer in Charge (OIC) of a prison.
Director Health Services	Director Health Services and includes his or her delegate.
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 Terminal Medical Condition (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 Prisoner	A person detained under the Criminal Law (Mentally Impaired Accused) Act 1996 .

MSM	Manager Sentence Management and includes his or her delegate.
Remand Prisoner	A State or Commonwealth prisoner charged with an offence but not yet convicted of any offence.
State Prisoner	A prisoner imprisoned by order of a court exercising State jurisdiction.
Superintendent	The Designated Superintendent or OIC of a public prison and the Director or OIC of a private prison.
Terminal Medical Condition	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.
Total Offender Management Solution (TOMS)	An electronic database used by the Department of Corrective Services to record and manage comprehensive information relating to offenders in custody.

3. Identification of a prisoner with a Terminal Medical Condition

- 3.1** The Director Health Services may identify a prisoner as having a Terminal Medical Condition for the purpose of [Policy Directive 8 – Prisoners with a Terminal Medical Condition](#). The identification must be based on a medical assessment of the prisoner's health.
- 3.2** Upon identifying a prisoner as having a Terminal Medical Condition, the Director Health Services shall:
- determine the stage of the prisoner's Terminal Medical Condition, in accordance with [Section 4](#) below
 - create a Health Advice which provides up-to-date information regarding the prisoner's health and related circumstances, including the current classification of the prisoner's Terminal Medical Condition; and shall advise the prisoner of their medical condition and prognosis if this has not previously been discussed
 - shall enter a note in the Terminally Ill module in TOMS, advising that this discussion has occurred.
- 3.3** In the event that a prisoner must be moved from the Holding Prison for the treatment of a Terminal Medical Condition, the Designated Superintendent shall consider notifying the prisoner's next of kin in accordance with [Policy Directive 82 – Prisoner Movements](#).

4. Stages of Terminal Medical Condition

4.1 Stage One – Potential of death in custody

- 4.1.1** A prisoner's Terminal Medical Condition is to be classified as Stage One if the Director Health Services is of the opinion that the prisoner is unlikely to die within 12 months.

4.1.2 If a prisoner's Terminal Medical Condition is classified as Stage One, the Director Health Services shall conduct a clinical review of the prisoner's medical notes at least once every 3 months.

4.1.3 In the course of conducting a clinical review, the Director Health Services shall consider whether the prisoner still has a Terminal Medical Condition and, if so, whether it should remain classified as Stage One or be reclassified to Stage Two, Stage Three or Stage Four.

4.1.4 At the conclusion of a clinical review, the Director Health 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 Terminal Medical Condition.

4.1.5 If, at the conclusion of a clinical review, the Director Health Services is of the opinion that the prisoner no longer has a Terminal Medical Condition, the Director Health Services shall:

- include that opinion in the Health Advice referred to in Section 4.1.4
- notify the MSM of that opinion.

4.1.6 Upon receiving a notification under Section 4.1.5, the MSM shall finalise the prisoner within the Terminally Ill Module.

4.2 Stage Two - Deterioration of Terminal Medical Condition

4.2.1 A prisoner's Terminal Medical Condition is to be classified as Stage Two if the Director Health Services is of the opinion that the prisoner is likely to die within 12 months, but is unlikely to die within 3 months.

4.2.2 If a prisoner's Terminal Medical Condition is classified as Stage Two, the Director Health Services shall conduct a clinical review of the prisoner's medical notes at least once every 3 months.

4.2.3 In the course of conducting a clinical review, the Director Health Services shall consider whether the prisoner still has a Terminal Medical Condition and, if so, whether it should remain classified as Stage Two or be reclassified to Stage One, Stage Three or Stage Four.

4.2.4 At the conclusion of a clinical review, the Director Health 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 Terminal Medical Condition.

4.2.5 If, at the conclusion of a clinical review, the Director Health Services is of the opinion that the prisoner no longer has a Terminal Medical Condition, the Director Health Services shall:

- include that opinion in the Health Advice referred to in Section 4.2.4
- notify the MSM of that opinion.

4.2.6 Upon receiving a notification under Section 4.2.5 the MSM shall finalise the prisoner within the Terminally Ill Module.

4.3 Stage Three - Death likely within 3 months or one or more medical conditions with the potential for sudden death

4.3.1 A prisoner's Terminal Medical Condition is to be classified as Stage Three if the Director Health Services is of the opinion that the prisoner:

- is likely to die within 3 months
- has one or more medical conditions which may increase the potential for sudden death.

4.3.2 If a prisoner's Terminal Medical Condition is classified as Stage Three, the Director Health Services shall notify the MSM and the Designated Superintendent of the Holding Prison.

4.3.3 Upon receiving a notification under Section 4.3.2 in respect of a prisoner:

- the Designated Superintendent shall ensure that all routine management decisions made in respect of the prisoner have regard to the prisoner's medical status
- the MSM shall notify the Superintendent Administration
- the MSM shall, within 7 working days, prepare a briefing note for the Minister for Corrective Services which notifies the Minister of the prisoner's medical situation and life expectancy, the likelihood of the prisoner dying in custody and any other relevant information.

4.3.4 If a prisoner's Terminal Medical Condition is classified as Stage Three because the prisoner is likely to die within 3 months, the Director Health Services shall conduct a clinical review of the prisoner's medical notes at least once every fortnight.

4.3.5 If a prisoner's medical condition is classified as Stage Three because the prisoner has one or more medical conditions, which may increase the potential for sudden death, the Director Health Services shall conduct a clinical review of the prisoner's medical notes at least once every 2 months.

4.3.6 In the course of conducting a clinical review, the Director Health Services shall consider whether the prisoner still has a Terminal Medical Condition and, if so, whether it should remain classified as Stage Three or be reclassified to Stage One, Stage Two or Stage Four.

4.3.7 At the conclusion of a clinical review, the Director Health 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 Terminal Medical Condition.

4.3.8 If, at the conclusion of a clinical review, the Director Health Services is of the opinion that the prisoner's Terminal Medical Condition should be reclassified, the Director Health Services shall notify the MSM of the reclassification.

4.3.9 Upon receiving a notification under Section 4.3.8, the MSM shall notify the Superintendent Administration of the reclassification of the prisoner's Terminal Medical Condition.

4.3.10 If, at the conclusion of a clinical review, the Director Health Services is of the opinion that the prisoner no longer has a Terminal Medical Condition, the Director Health Services shall:

- include that opinion in the Health Advice referred to in Section 4.3.7
- notify the MSM of that opinion.

4.3.11 Upon receiving a notification under Section 4.3.10, the MSM shall finalise the prisoner within the Terminally Ill Module.

4.4 Stage Four - Death is imminent

4.4.1 A prisoner's Terminal Medical Condition is to be classified as Stage Four if the Director Health Services is of the opinion that the prisoner's death is imminent.

4.4.2 If a prisoner's Terminal Medical Condition is classified as Stage Four, the Director Health Services shall:

- notify the MSM and the Designated Superintendent of the Holding Prison
- 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 Terminal Medical Condition.

4.4.3 Upon receiving a notification under Section 4.4.2 in respect of a prisoner:

- the Designated Superintendent shall ensure that all routine management decisions made in respect of the prisoner have regard to the prisoner's medical status
- the Designated Superintendent shall, where the prisoner is a remand prisoner, take any action in accordance with [Section 6.5](#)
- the MSM shall notify the Superintendent Administration
- the MSM shall, within 3 working days, prepare a briefing note to the Minister for Corrective Services which notifies the Minister of the prisoner's medical situation and life expectancy, the likelihood of the prisoner dying in custody and any other relevant information.

4.4.4 If a prisoner's Terminal Medical Condition is classified as Stage Four, the Director Health Services shall:

- monitor the prisoner's medical status daily
- create additional Health Advices to advise changes in the prisoner's medical situation as necessary.

4.4.5 If the Director Health Services is of the opinion that the prisoner's death is no longer imminent, the Director Health Services shall:

- complete a Health Advice providing up-to-date information regarding the prisoner's health and related circumstances and reclassifying the prisoner's Terminal Medical Condition as Stage One, Stage Two or Stage Three
- notify the MSM and the Designated Superintendent of the Holding Prison of the reclassification of the prisoner's Terminal Medical Condition.

4.4.6 Upon receiving a notification under Section 4.4.5, the MSM shall notify the Superintendent Administration of the reclassification of the prisoner's Terminal Medical Condition.

5. Advice to relevant authorities – Stages Three and Four

5.1 This section applies in the case of a State Prisoner, a Commonwealth Prisoner, a Joint Prisoner, a person detained under the [Criminal Law \(Mentally Impaired Accused\) Act 1996](#) or a prisoner in custody pursuant to a continuing detention order under the [Dangerous Sexual Offenders Act 2006](#).

Note: For a remand prisoner, refer to Section 6.5.

5.2 Within 7 working days of being notified (under [Section 4.3.2](#)) that a prisoner's Terminal Medical Condition has been classified as Stage Three, the MSM shall prepare a Stage Three briefing / report to the relevant authority(s) (as identified in [Section 6](#)). The Stage Three briefing / report shall contain:

- details of the prisoner's sentence
- the prisoner's criminal history
- a transcript of the prisoner's sentencing, including the Judge's sentencing remarks (where applicable)
- victim issues
- 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)
- details relating to the prisoner's community supports (including any guardian where applicable)
- details of the prisoner's Terminal Medical Condition, including estimated life expectancy and details regarding the prisoner's mobility
- a recommendation as to whether the prisoner is suitable for release into the community (if, at the time, the MSM considers he or she has sufficient information to make such a recommendation).

5.3 Within 3 working days of being notified (in accordance with [Section 4.4.2](#)) that a prisoner's Terminal Medical Condition has been classified as Stage Four, the MSM shall prepare a Stage Four briefing / report to the relevant releasing authority(s) (as identified in [Section 6](#)). If the prisoner has not been the subject of a prior Stage Three briefing, the Stage Four briefing shall contain those matters identified in this Section and Section 5.2. If the prisoner has been the subject of a prior Stage Three briefing, the Stage Four briefing shall contain:

- details of any changes to the information contained in the Stage Three briefing
- a recommendation as to whether the prisoner is suitable for release into the community (if the MSM considers he or she has sufficient information to make such a recommendation)
- any additional matters that the MSM considers may be relevant to the question of whether the prisoner is suitable for release into the community.

- 5.4** If the MSM is unable to provide a recommendation ([Section 5.3](#)) within the required time frames the MSM shall:
- undertake urgent enquiries to enable him or her to make such a recommendation
 - as soon as possible, provide an additional briefing which includes such a recommendation.
- 5.5** The MSM will liaise with the Director Health Services and the Designated 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.
- 5.6** The MSM may request a report from Adult Community Corrections in relation to the prisoner's family and community support (including suitable accommodation), suitability for release into the community and any other relevant factors.

6. Prisoner categories and releasing authorities

6.1 State Prisoners

- 6.1.1 The MSM shall prepare a briefing (in accordance with [Section 5](#)) for the Minister for Corrective Services. Where a recommendation is made for the release of a prisoner, advice to the Attorney General is to be included and the advice and briefing shall be forwarded by the Minister (or his or her delegate) to the Attorney General for consideration.
- 6.1.2 Where applicable, and following written advice from the Attorney General or Governor in Executive Council, the Department of Corrective Services shall take the necessary action to comply with any direction(s) given.
- 6.1.3 Upon receiving a notification under Section 6.1.2 in respect of a prisoner, the MSM shall:
- advise the Delegated Superintendent (or his or her delegate) of the Holding Prison
 - advise the Superintendent Administration
 - record the outcome and any action(s) undertaken in a note in the Terminally Ill Module in TOMS.

6.2 Mentally Impaired Accused Prisoners

- 6.2.1 Upon receiving a notification in accordance with [Section 4.3.2](#) and [Section 4.4.2](#), in respect of a MIAA Prisoner, the MSM shall:
- prepare a report (in accordance with [Section 5](#)) for the Mentally Impaired Accused Review Board (MIARB)
 - prepare a briefing for the Minister for Corrective Services similar to the requirements of [Section 5](#) and outlining the actions taken to inform the MIARB regarding the prisoner's Terminal Medical Condition.
- 6.2.2 Following written advice from the MIARB, the Department of Corrective Services shall take the necessary action to comply with any direction(s) given.

6.2.3 Upon receiving a notification under Section 6.2.2 in respect of a prisoner, the MSM shall:

- advise the Designated Superintendent (or his or her delegate) of the Holding Prison
- advise the Superintendent Administration
- record the outcome and any action(s) undertaken in a note in the Terminally Ill Module in TOMS.

6.3 Commonwealth prisoners

6.3.1 Section 19AP of the Crimes Act 1914 (the Act) allows the Commonwealth Minister responsible for the Act (or delegate) to grant a Commonwealth prisoner early release on licence, but only if he/she is satisfied that “exceptional circumstances” exist which justify the granting of a licence. The Act does not define “exceptional circumstances” but the relevant extract from the Explanatory Memorandum that accompanied the legislation in Parliament 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.”

6.3.2 Applications for early release on licence must be in writing and specify the exceptional circumstances relied upon to justify release (s 19AP(3) of the Act). Although prisoners themselves usually make applications, the Act allows for others (such as solicitors or family members) to apply on their behalf.

6.3.3 Upon receiving notification in accordance with Section 4.3.2 and/or Section 4.4.2, in respect of a Commonwealth Prisoner, the MSM shall;

- seek further advice from the Director Health Services as to whether the prisoner’s Terminal Medical Condition can be ‘adequately treated within the prison system’. The Director Health 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 for Corrective Services (in accordance with [Section 5](#))
- provide to the Minister for Corrective Services advice to the Commonwealth Minister (refer s 113A, [Prisons Act 1981](#)) in regard to the prisoner’s Terminal Medical Condition including what treatment is being provided or is necessary and whether it can be adequately treated within the prison system.

6.4 Release of joint State / Commonwealth prisoners

6.4.1 Where a prisoner is currently serving both a State and Commonwealth sentence of imprisonment, the approval of both the Attorney General (State) and the Commonwealth Minister (or delegate) must be obtained in accordance with the processes stated in [Section 6.1](#) and [Section 6.3](#).

6.5 Remand prisoners

6.5.1 Where a prisoner has been remanded and is in custody and has a Terminal Medical Condition which has been classified as Stage Three or Stage Four, the following additional procedures apply.

6.5.2 The Designated Superintendent shall ensure that 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.

6.5.3 Upon receiving a notification in accordance with Section 4.3.2 and Section 4.4.2, in respect of a Remand Prisoner, the MSM shall prepare a briefing for the Minister for Corrective Services. The briefing shall contain:

- details of the prisoners remand offences
- details of the prisoner's Terminal Medical Condition, including estimated life expectancy
- relevant information regarding the prisoner's ongoing management and placement including actions taken by the Holding Prison in relation to [Section 6.5.2](#).

6.5.4 The Director Health Services shall arrange for any supporting medical reports, including any specialist reports to be provided to the Court where required.

6.5.5 The Designated Superintendent shall ensure that the MSM is advised, in writing, of any actions taken in accordance with Section 6.5.2. The MSM shall record any such actions in a note in the Terminally Ill Module in TOMS.

7. Recordkeeping

On completion of the actions for an individual prisoner classified under these procedures the MSM will place all appropriate documents on the prisoner's Offender In Custody File. Corporate Records Branch will scan this file before providing original documentation to any external body.

8. Approved

Commissioner or delegated authority per PD 8:

Signature:



Date:

8/12/14

9. Contact person

Manager Sentence Management

Principal Operational Policy Officer

10. Amendment history

Version	Approved	Effective from
1. First published	May 2002	May 2002
2. Amended	8 December 2014	15 December 2014