



Policy Directive 8

Prisoners with a Terminal Medical Condition

- Relevant Instruments:** [Crimes Act 1914](#) (Cth)
- [Criminal Law \(Mentally Impaired Accused\) Act 1996](#)
- [Dangerous Sexual Offenders Act 2006](#)
- [Prisons Act 1981](#)
- [Sentencing Act 1995](#)

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1. Purpose

- 1.1 This Policy Directive and the associated procedures identify the process under which relevant stakeholders and decision makers:
- are notified that a prisoner has a Terminal Medical Condition
 - consider whether the prisoner should be released to a non-custodial setting.
- 1.2 A prisoner with a Terminal Medical Condition is to be managed, on a day to day basis, in accordance with relevant legislation and related instruments.

2. Scope

- 2.1 This Policy Directive applies to both public and private prisons.

3. Policy

- 3.1 Relevant stakeholders (including decision makers) are to be notified when a prisoner is medically assessed as suffering from a Terminal Medical Condition.
- 3.2 Consideration is to be given as to whether it is appropriate to recommend that a prisoner with a Terminal Medical Condition be released to a non-custodial setting having regard to relevant factors. Such factors may include (but are not limited to) the prisoner’s sentence, the nature of the prisoner’s offences and their offending

history, the safety of the community, the safety and well-being of any victims, the intention of the sentencing court, the suitability of the non-custodial setting, views expressed by the prisoner and their family and the well-being of the prisoner.

4. Definitions

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.

5. Release of prisoners

5.1 Any consideration for early release of a prisoner with a Terminal Medical Condition will depend on their custodial status in line with the following:

5.1.1 For those prisoners held in custody in relation to remanded offences only, release must occur through a court process such as being granted bail or the prosecution being discontinued. Refer to [Policy Directive 8 - Prisoners with a Terminal Medical Condition – Procedures](#) for more information.

5.1.2 A prisoner with a Terminal Medical Condition who has been imprisoned by order of a court exercising State jurisdiction may be considered for release in one of the following ways:

- A mentally impaired accused (as defined in s 23 of the [Criminal Law \(Mentally Impaired Accused\) Act 1996](#)) may be considered for release under and in accordance with that Act.
- All other prisoners may be considered for release pursuant to the grant of a pardon in the exercise of the Royal Prerogative of Mercy. See Part 19 of the [Sentencing Act 1995](#). Refer to [Policy Directive 8 – Prisoners with a Terminal Medical Condition – Procedures](#) for more information)

5.2 Section 19AP of the [Crimes Act 1914](#) (Cth) allows the Commonwealth Minister responsible for the [Crimes Act 1914](#) (Cth) (or his or her delegate) to grant a Commonwealth prisoner early release on licence, but only if he or she is satisfied that “exceptional circumstances” exist which justify the granting of a licence (s 19AP(4)). Refer to [Policy Directive 8 - Prisoners with a Terminal Medical Condition – Procedures](#) for more information.

5.3 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 5.2 above) and for a pardon to be granted in the exercise of the Royal Prerogative of Mercy (refer Section 5.1.2) before release may occur. Refer to [Policy Directive 8 - Prisoners with a Terminal Medical Condition – Procedures](#) for more information.

6. Policy review

This Policy Directive is to be reviewed on a biennial basis. Procedures and appendices to this Policy Directive may be amended by the Deputy Commissioner Adult Justice Services as necessary to reflect changes to prison procedures or legislation.

7. Approved

Commissioner:

Signature:



Date:

8 December 2014

8. Policy sponsor

Assistant Commissioner Custodial Services

9. Contact person

The following persons may be approached on a routine basis in relation to this policy:

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