



# Advocacy and Correctional Services

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## 1. Purpose of the Practice Resource

- To assist OPA staff with navigating their way around Corrections issues, terminology and services
- To provide policy statements
- To provide practice assistance.

This is a complex area and this document is intended as a resource to provide a broad overview. Please seek supervision with your team leader or seek legal advice from the legal unit if you are involved in complex matters.

## 2. When might OPA be involved in advocating for people involved in the Corrections system?

OPA may have a role in advocating for individuals, who have disabilities, at various stages in the criminal justice and corrections process, including:

- pre court findings (arrest, police interview, charges, bail, remand)
- during the court process
- during the term of a prison sentence
- pre-release planning in prison
- post prison release but when the person is on parole or home detention
- when a person is subject to some sort of community order and is involved with Community Correctional Services.

Our advocacy will be more effective if we are familiar with how the Corrections system operates and can identify appropriate points of referral.

### 3. When might OPA be involved as guardian for people involved in the Corrections system?

Ordinarily, there would not be a need for a guardian for a person who is involved in criminal proceedings or corrections services. OPA is more likely to be involved on an advocacy basis. If a person is in prison, the range of lifestyle type decisions are likely to be reduced. However, it is possible prisoners and people involved in community corrections may have administrators.

OPA might be guardian for people in relation to non-Corrections related matters, such as medical and dental treatment and other health care. Sometimes, OPA will be guardian with accommodation decision-making powers in relation to post prison discharge options. It is noted that a prisoner who is concluding a prison sentence cannot be discharged without accommodation. However, the prison has no responsibility for arranging accommodation for remand prisoners who are entitled to bail or release.

### 4. Department of Justice – policy context – 2008 Justice Statement

The Justice Statement promises to “consider a new approach for the courts to better address the needs of people with a mental illness” and acknowledges this to be an issue of disadvantage which has only received only “sporadic attention in the courts” in the past.

It is noted in the Justice Statement that “moderate or severe mental illness affects an estimated seven per cent of people in the community at some point in their lifetime” and that “mental illness is disproportionately represented in the offender population – approximately 28 per cent of newly remanded prisoners have mental health issues.” It is conceded that “the criminal justice system is not the best place to treat people with a mental illness. Nevertheless, the courts must find a way to humanely respond to defendants with a mental illness.”

### 5. OPA – policy

OPA’s interest and concern in relation to the issue of Corrections is the over-representation of people with disabilities in the criminal justice system.

#### **5.1 People with disabilities should have the same opportunities as all other people in the community to access the full range of community based sentencing options.**

The *Sentencing Act 1991* specifies that a sentence of imprisonment should not be imposed except as a last resort, and only after all other options have been considered. People with disabilities who come before the courts should not be excluded because of their disability from accessing the full range of sentencing options that are available to people who do not have disabilities.

When considering sentencing options it is critical that Magistrates and Judges are fully informed of the circumstances of the person with a disability before the courts. OPA should ensure that the relevant service at the Melbourne Magistrates Court and all service providers are made aware when any person with a disability of whom we are aware is appearing before the courts.



Advocate/Guardians should consider making a referral to the Court Integrated Services Program (CISP). Defendants with disability and mental health issues are eligible for this program. A brochure is available on the Magistrates' Court website ([www.magistratescourt.vic.gov.au](http://www.magistratescourt.vic.gov.au))

## **5.2 People with disabilities are vulnerable and at risk in custodial environments. They should be afforded adequate protection from self harm and from harm by others when in custody in either a police lock up or a prison.**

Where there is a possibility that a person with a disability will be remanded in custody or sentenced to a period of imprisonment, the Advocate/Guardian should ensure that authorities are made aware that the individual concerned has a disability, is at risk whilst incarcerated and should be appropriately placed. The earlier a prisoner is identified as having a disability, the earlier authorities can place that prisoner into a safe, supportive environment.

Metropolitan police lock ups are inappropriate places to accommodate people with disabilities. Often the observation of prisoners in these facilities is inadequate and there is no room to separate prisoners with a disability from mainstream prisoners. Should staff have concerns about the placement of a person in a police lock up, contact should be made with the officer in charge of the police station concerned, to alert them to the presence of an 'at risk' prisoner in their cells. It is normal practice for prisoners with disabilities to be given priority in their movement through the system and into facilities which provide greater protection and which minimise the risk of self harm and exposure to mainstream prisoners.

Both police and prison authorities have a duty of care to ensure that vulnerable people are not only protected from mainstream prisoners, but also given access to appropriate support services and treatment.

## **5.3 Prisoners with disabilities have special needs. Programs, supports and services should be available which ensure that the special needs of these prisoners are adequately addressed.**

Once prisoners with disabilities are adequately protected, they should be provided with a range of special programs and treatment options, which are targeted to meet their special needs.

There is a protocol (2008) between Corrections Victoria and Disability Services which details the mutual responsibilities of these agencies. This protocol has been saved onto G drive under:  
G:Legal:Corrections:protocol

It is recommended that Advocate/Guardians familiarise themselves with this protocol to be clear about the responsibilities of Corrections Victoria and Disability Services in order to provide effective advocacy. Refer to 10.1 for further information about this protocol.

## **6. Practice issues**

### **6.1 Role of Advocate/Guardian**

If the person has a case manager, it would be their responsibility to ensure that the person with a disability has legal representation, and that the court is provided with up to date information concerning their current circumstances. If the person does not have a case manager or legal representation the advocate/guardian should explore whether it is possible for this to be arranged.

## 6.2 Arranging to visit a prisoner

### *Professional visits*

Contact the Operations (or Ops) Manager to enquire into the arrangements for visiting a prisoner. This will vary at different prisons. You will need to give adequate notice, usually 3 days. At the time of the first visit you will be required to become a registered visit. You will usually need to take photo ID.

Visits may be conducted freely or as a boxed visit, if there is a security issue.

### *Other visits*

Prisoners are only allowed to have a certain number of non-professional visitors. There is no limit to professional visitors. The process for non-professional visits is described below.

“You will need to write to the prisoner (care of Corrections Victoria) and ask him or her to have you placed on their approved Visitors List.

In your letter, you should include your full name, date of birth and address. It is then up to the prisoner to make the arrangements for you to be able to visit them.

Write to:

(prisoner's full name)  
C/- Corrections Victoria  
GPO Box 123  
Melbourne VIC 3001

Your letter will be forwarded to the prisoner.

If you have been previously convicted of an offence you will have to get permission to enter a prison. You will need to write a letter to the General Manager of the prison that you wish to visit, providing your CRN and the name of the prisoner you wish to visit, and requesting permission to visit.”

## 6.3 Liaising with Corrections Officers

If the person with a disability is already on a community based correctional order, it is important to ascertain whether the current offences, or their behaviour, places them in breach of that current order, and whether the Community Corrections officer will be commencing breach action or recommending them as suitable for a further community based sentencing option.

Advocate/Guardians should ensure that the criteria which supervising corrections staff use to determine whether breach action is to be taken against a person with a disability takes account of the special circumstances of the effect of the person’s disability upon their capacity to meet the order’s conditions. Where Community Corrections officers advise that they do not have discretion in relation to taking breach action or have found the person unacceptable for a further community based sentencing option, contact should be made with either a senior Community Corrections officer or the Centre Manager to further discuss the issues. Senior Community Corrections staff have greater discretion to determine not to take breach action and to accept people on a number of concurrent orders.

An Advocate/Guardian may liaise with a Community Corrections officer to obtain copies of court orders.

## 6.4 Submitting reports to court

An Advocate/Guardian should liaise with their team leader as to whether it is necessary to provide a report to the Court. It is important to be clear whether the report is being provided to the accused’s legal



representative or whether it is because the Court has requested a report to assist with making a sentencing disposition; such as s.96 of the *Sentencing Act 1991* which provides that the Court may order a pre-sentence report. If asked to provide a report consider seeking advice from the legal unit.

## 6.5 Attending court

An Advocate/Guardian might attend court for the following reasons:

1. they have been subpoenaed to do so;
2. they have agreed to attend court to be a witness, without the issuing of a subpoena;
3. in order to provide advocacy for their client; for instance to assist with communication.

An Advocate/Guardian should liaise with their team leader as to whether it is necessary to attend a court hearing and if required to, or proposing to give evidence as a witness, to seek advice from the Legal Unit.

## 7. Prisoners with disabilities

### 7.1 Prisoners with intellectual disabilities

#### *Justice Plans*

s.80 of the *Sentencing Act 1991* provides that if a court finds a person guilty of an offence and is considering making a community-based order in respect of the person or making a residential treatment order or releasing the offender on an adjournment, with or without recording a conviction, it may request a statement from the Secretary to the Department of Human Services that the person has an intellectual disability within the meaning of the [Disability Act 2006](#) and a plan of available services and a pre-sentence report.

The court may then decide to impose a special condition that the offender participate in the services specified in the justice plan or it may make a residential treatment order requiring the offender to be detained for a period of up to 5 years as is specified in the order in the residential treatment facility specified in the plan of available services to receive the treatment specified in the plan of available services.

The protocol between Corrections Victoria and Disability Services provides:

“When a Disability Services client with an intellectual disability is released on a CBO with the special condition of a justice plan, Community Correctional Services is responsible for supervising the order. However, Disability Services must monitor the implementation of the plan and assist with arrangements for the offender to meet their conditions, as stated in the plan.”

and

“A Disability Services case manager must be allocated to monitor the implementation of the justice plan for its duration (up to two years).”

### 7.2 Prisoners with other disabilities

The *Disability Act 2006* defines disability as “a sensory, physical or neurological impairment or acquired brain injury ....” and intellectual disability and developmental delay.

Disability Services may also have a role in relation to people who have disabilities other than intellectual disability.



## 7.3 Prisoners with ABI

Corrections Victoria's Disability Framework 2007-2009 (a copy of which is saved on G:Legal:Corrections:Disability Framework) specifies that Corrections Victorian will "undertake a full screening and identification study of acquired brain injury in the Victorian correctional system".

## 7.4 Prisoners with mental illness

The *Mental Health Act 1986* provides for the treatment of security and forensic patients.

A forensic patient means a person who is

- remanded in custody or detained in an approved mental health service; or
- committed to custody in an approved mental health service by a supervision order— under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*; or
- a person in an approved mental health service; or

A security patient means a person who is

- detained in an approved mental health service under a hospital security order or a restricted hospital transfer order; or
- a person detained in an approved mental health service while serving a sentence of imprisonment within the meaning of the International Transfer of Prisoners Act 1997 of the Commonwealth— including a person who is on leave of absence or special leave of absence or is absent without leave;

*Sentencing Act 1991*

Sections 90-94 provide for mentally ill offenders.

s.90 – assessment orders

s.91 – diagnosis, assessment and treatment orders

s.93 – restricted involuntary treatment orders

s.93A – hospital security orders.

## 7.5 Prisoners with dementia

The *Disability Act* expressly excludes age related disability within the definition of 'disability'. A person with dementia could be considered to have a 'mental illness' within the meaning of the *Mental Health Act*.

Potentially this group of prisoners may not be receiving necessary health care for their condition and there could be a need to advocate for this.

# 8. Corrections Victoria – services and responsibilities

## 8.1 Corrections Victoria

Corrections Victoria is responsible for the administration of prison sentences handed down by the courts.

It manages 60 community correctional services locations and is responsible for managing the 11 public prisons and overseeing the contracts relating to managing the 2 privately operated prisons.

Corrections Victoria has a *Disability Framework* which interfaces with the Department of Justice *Disability Action Plan*.

Corrections Victoria staff screen all prisoners to detect if they have a disability.

Corrections Victoria staff are responsible for working with an offender or prisoner to develop an individual management plan.

The Sentence Management Unit has responsibility for classifying and placing prisoners. When a prisoner with a disability is received into prison, account will be taken of their disability and issues including vulnerability, safety and access to programs and services considered in the placement process.

Once assessed, prisoners with an intellectual disability may be considered for transfer to other units, prisons or have an application made by Corrections Victoria to have a s.166 or s.180 transfer under the *Disability Act* to a residential treatment facility (that is, DFATS) or to a residential institution (that is, Colanda or Sandhurst). Applications for these transfers are extremely rare and are only considered if the person with a disability is believed to be at undue risk in the prison system and Disability Services can provide a more appropriate placement.

## 8.2 Prisons

There are 13 prisons across Victoria including two privately-operated prisons (Fulham Correctional Centre in Sale and Port Phillip Prison in Laverton) and 11 publicly-operated prisons. These prisons provide a range of correctional services from maximum security detention to reparation and treatment programs.

MAP (Melbourne Assessment Prison, located in Spencer St) is the facility that provides state-wide assessment and orientation services for all male prisoners received into the prison system. This is where prisoners are classified.

The Metropolitan Remand Centre is the facility where people on remand are held and is in Ravenhall (near Laverton).

Visit the Department of Justice website ([www.justice.vic.gov.au](http://www.justice.vic.gov.au)) and select [prisons](#) to locate or a profile on all 13 Victorian prisons, including brief histories and an overview of prison facilities and services, including information about the operator, security level and capacity, an accommodation description and location details.

### Disability accommodation within prisons

- HM Prison Ararat
  - Norval Unit, accommodates aged and medically incapacitated prisoners.
  - also houses persons on extended supervision orders, some of whom may have disability.
- HM Prison Loddon
  - Avoca Special Unit, , has 6 beds for housing prisoners with intellectual disability undergoing release preparation.
- Melbourne Assessment Prison has a 16 bed acute unit that houses prisoners with psychiatric disabilities and may be able to accommodate persons with other disabilities if required.
- Port Phillip Prison, Laverton North
  - Marlborough unit, has 35 beds for prisoners with cognitive disabilities
  - St Johns Hospital Unit has 20 beds
  - St Pauls Psycho-social Unit has 30 beds which can or may hold prisoners with disabilities.
- Dame Phyllis Frost Centre, Deer Park has the A6 Special Care Unit of 20 beds.



## 8.3 Community Correctional Services

Victoria's Community Correctional Services (CCS) supervises adult offenders (aged 18 years or over) who are sentenced by the courts to serve community-based orders or who are conditionally released from prison on parole by the Adult Parole Board.

Victoria's juvenile corrections management system is managed by the Victorian Department of Human Services.

Community Corrections Officers (CCOs) manage offenders and are responsible for ensuring they comply with the conditions of their community-based or parole orders. Conditions may include participating in:

- appropriate educational programs;
- community work;
- assessment and treatment programs.

All programs are required to focus on rehabilitation while ensuring offenders make suitable reparation to the community.

Where CCS identifies a person who may have a disability during a court assessment and this is likely to impact on sentencing options, they are required to make contact with the Disability Services Intake and Response team.

## 8.4 Corrections Victoria Disability Framework

A copy of this has been saved to G:Legal:Corrections:Disability Framework.

This may be a useful advocacy resource.

## 9. Disability Services

### 9.1 Protocol between Disability Services and Corrections Victoria

The interface between Disability Services and Corrections Victoria generally occurs after a person has been convicted of a criminal offence.

In July 2008, the Protocol between Corrections Victoria, Department of Justice and Disability Services, Department of Human Services 2008 was released. This protocol outlines the roles and responsibilities of Corrections Victoria and Disability Services, in relation to adult offenders and prisoners with a disability, at the interface of the two service systems. It also includes principles of good practice, which promote collaborative work focussed on positive outcomes for people with a disability.

Disability Services may also be involved in circumstances which do not involve Corrections Victoria. For example: supervised treatment orders and custodial or non-custodial supervision orders under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.

It is highly recommended that Advocate/Guardians familiarise themselves with this protocol as it could be a very useful advocacy resource. A copy has been saved onto G drive at **G: Practice Guidelines:Corrections:Protocol.**

The protocol states the following principles:

- People with a disability are citizens who have the right to be respected and the right to have equal opportunities to participate in the social, economic, cultural, political and spiritual life of society. As



citizens, people with a disability also have equal responsibilities towards Victorian society and should be supported to exercise these.

- All offenders with a disability have the same rights as other offenders to access and participate in services and programs that are appropriate to their needs. They should also have the same opportunities for a range of support, advocacy and sentencing options.
- Every attempt will be made to reduce the barriers that prevent participation in services and programs and for additional measures to be provided that ensure all people have access to services and programs.
- Equality of opportunity for offenders with a disability will be actively promoted, and unlawful discrimination will not be tolerated.
- Close partnerships between disability and correctional systems are integral to providing better outcomes for offenders with a disability in addressing reoffending and enhancing community safety.

The protocol states that Disability Services is responsible for following regular case practice for people involved in the criminal justice system as with others in the community who have requested services. However, there may be additional tasks when the person is involved with the criminal justice system. Refer to the protocol for an explanation of these tasks.

A court can request a 'plan of available services' from Disability Services in relation to a person who has an intellectual disability. This request comes after a person with an intellectual disability has pleaded guilty or has been found guilty. In response to the request from the court, Disability Services will either develop a justice plan or organise an assessment for a Residential Treatment Orders before developing a plan of available services.

The protocol states that there is general agreement between Corrections Victoria and Disability Services that in most circumstances a CBO is the most appropriate community disposition for offenders with an intellectual disability.

If Disability Services is aware that a person with a disability has been arrested and entered the prison system, they should inform the DFATS prison services coordinator who will in turn inform the Manager Operations, Sentence Management Unit, Corrections Victoria in order to ensure their safe management and placement.

If a person with a known or suspected disability is held in police custody, the Disability Services Intake and Response Service should be contacted for advice, information and referral. Where it is established that an existing client of Disability Services (specifically, a person with an intellectual disability) is being held in police custody, it is important for Disability Services to provide information regarding the person to the police station where the person is being detained, to assist in their safe management.

## **9.2 Disability Forensic Assessment and Treatment Service (DFATS)**

The Disability Forensic Assessment and Treatment Service (DFATS), formerly known as the State-wide Forensic Service, is funded by the Disability Services Division of DHS and managed by North and West Metropolitan Region.

DFATS delivers assessment, treatment and consultancy services for people with a disability, who are involved in the criminal justice system. Services are provided across a range of settings including onsite, in the community and in prisons. The Intensive Residential Treatment Program within DFATS has been proclaimed as a residential treatment facility under the *Disability Act 2006* and provides assessment and treatment in a secure facility for a small number of adults with an intellectual disability who have met the criteria for admission under section 152 of the *Disability Act*.



The DFATS prison services coordinator provides support to prisoners with an intellectual disability in the Victorian prison system and is the link between Disability Services, DFATS and Corrections Victoria.

## 9.3 Forensicare

Forensicare is responsible for the state-wide provision of adult forensic mental health services in Victoria. Forensicare provides specialist clinical services, together with a court service, research, training, professional education and services for victims of crime.

Forensicare is responsible for treating people with serious mental disorder in the criminal justice system and those patients at high risk of behaving violently. High quality clinical assessment and treatment that meets regulations, legislative and security requirements is provided by Forensicare through –

### [Thomas Embling Hospital](#)

The Thomas Embling Hospital is a 118-bed secure hospital, primarily for patients from the criminal justice system who are in need of psychiatric assessment and/or care and treatment.

### [Community Services](#)

The Community Forensic Mental Health Service is responsible for the provision of Forensicare's outpatient programs. The service provides state-wide assessment and multidisciplinary treatment to high risk clients referred from area mental health services, correctional providers, courts, Adult Parole Board, Thomas Embling Hospital, Acute Assessment Unit at Melbourne Assessment Prison, government agencies and private practitioners.

The Community Forensic Mental Health Service provides the following –

10. [Mental Health Program](#);
11. [Problem Behaviour Program](#);
12. [Court Services Program](#);
13. [Community Integration Program](#).

## 10. Services and Programs

### 10.1 Magistrates' Court Programs

The Magistrates' Court has a number of programs and services to assist those appearing before the court including:

- Aboriginal Liaison Officer
- Community Correctional Services
- Court Integrated Services Program (CISP)
- CREDIT – Bail Support Program
- Criminal Justice Diversion Program
- Enforcement Review Program
- Mental Health Court Liaison Service.
- Youth justice court advice service

Information and contact details can be found in the online 'Guide to Court Support Services' which can be downloaded from the Court Support and Diversion Services section of the Magistrates' Court website.

The Court Integrated Services Program (CISP) operates at Melbourne, Sunshine and Latrobe Valley Magistrates' Courts. Teams provide assistance relating to:

- drug and alcohol dependency
- homelessness
- mental health



- disability
- young offenders
- Koori specific needs.

Court Network is based at most Courts.

## 10.2 Independent Third Person Program

An Independent Third Person (ITP) is a volunteer trained to help people with a cognitive disability or mental illness when they are interacting with police as a victim, witness or alleged offender. Cognitive disability includes intellectual disability, acquired brain injury, and dementia. Each year ITPs attend more than 1,000 interviews.

An ITP is a crucial way to protect the rights and interests of people who may be disadvantaged by the effects of their disability. People with cognitive disabilities or mental illness can be disadvantaged in their interactions with police because they can have difficulty:

- understanding complex ideas;
- concentrating for a long time;
- processing information quickly;
- understanding their rights.

The police must contact the ITP before they interview the person with a disability. The ITP goes to the police station to:

- facilitate communication between the person with a disability and the police;
- assist the person with a disability to understand their rights;
- support the person with a disability.

The ITP program is currently piloting a program in prisons where prisoners are required to attend a disciplinary hearing due to alleged disciplinary offences whilst in prison.

## 10.3 Victoria Legal Aid

<http://vla.vic.gov.au>

(03) 9269 0120 or 1800 677 402 (country callers).

VLA have a range of publications and telephone information service and operate a prison advice service.

## 10.4 Victorian Association for the Care and Resettlement of Offenders (VACRO)

VACRO is a non-government, non-denominational organisation. VACRO's mission is to provide support and information for individuals charged with a criminal offence, offenders, prisoners and their families; as well as a leadership, education, training and research on the Justice System for the Community.

VACRO work is focused in three main areas:

- Justice System Services
- Family and Children's Services
- Research and Development.

<http://www.vacro.org.au>

## 10.5 ACSO (Australian Community Support Organisation)

ACSO is a community support organisation with a reputation for assisting some of the most highly disadvantaged members of our community: those not generally welcomed or able to be supported by other services due to their behaviour, presenting issues or offending history.

Programs provide:

- Case management, crisis assistance, housing placements and intensive outreach support for people involved in the criminal justice system
- Residential, outreach and therapeutic support for people with an intellectual disability
- Employment support and Job Placement for people experiencing significant disadvantage
- Alcohol and other drug assessments for people involved in the criminal justice system
- Outreach and psycho-social support for people with a mental health diagnosis Intensive outreach support for people with multiple and complex needs.

<http://www.acso.org.au>

Tel: 03 9413 7000

### **10.6 Darebin Community Legal Centre – Outreach to Prisons Program.**

The Darebin Community Legal Centre runs an Advocacy Program for women in prison, which provides information, referral and advocacy services.

265 High Street  
Preston Victoria 3072  
Tel: 03 9484 7753

[www.communitylaw.org.au/clc-darebin](http://www.communitylaw.org.au/clc-darebin)

### **10.7 Flat Out**

Flat Out is a state wide support service for women exiting prison, or who have had contact with the criminal justice system. Flat Out is a women's specific service. Flat Out does not work with men in any capacity, but will provide support to women experiencing domestic violence. Flat Out will also provide support to the children of women exiting prison.

**The Centre for the Human Rights of Imprisoned People (CHRIP)** is a project of Flat Out promoting access to justice and human rights for Victorian prisoners through individual legal services, legal education, community development, campaigning, and policy work that is fundamentally informed by a social justice and decarceration framework (work to prevent people going to, and returning to prison).

Tel: 9372 6155  
[www.flatout.org.au](http://www.flatout.org.au)

### **10.8 Victorian Criminal Justice Coalition**

The Victorian Criminal Justice Coalition provides public advocacy and lobbying and a community voice on behalf of those impacted by the operation of the criminal justice system.

## **11. Relevant Legislation**

The following legislation may be relevant to consider when advocating for an individual. Consult the Legal Unit for advice.



## **11.1 Guardianship and Administration Act 1986**

A prisoner or person involved in community corrections may have an administrator or a guardian or OPA might provide advocacy.

## **11.2 Charter of Human Rights and Responsibilities Act 2006**

Note s.24 of the Charter which relates to the right to a fair hearing; to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Also note s.25 of the Charter which relates to rights in criminal prosecutions.

A person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law and is entitled without discrimination to a number of minimum guarantees, including:

- the right to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication that he or she speaks or understands;
- to have the free assistance of assistants and specialised communication tools and technology if he or she has communication or speech difficulties that require such assistance.

Prisons (public and private) are ‘public authorities’ and required to be Charter compliant. Community Correctional Services is also a public authority.

## **11.3 Crimes Act 1958**

This provides for the various criminal offences.

## **11.4 Sentencing Act 1991**

This provides for the sentencing options, and criteria, to Magistrates and Judges if a person is found guilty of a criminal offence.

- Sections 80-83 provide for special conditions for intellectually disabled offenders (justice plans).
- Sections 90-94 provide for mentally ill offenders.

## **11.5 Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**

This provides for the defence of mental impairment and the dispositions available to a Judge if the defence is successfully made out. It also provides for the outcomes if it is determined that a person is not fit to stand trial.

## **11.6 Corrections Act 1986 and Corrections Regulations 1988**

The purposes of the Corrections Act are—

- (a) to provide for the establishment management and security of prisons and the welfare of prisoners; and
- (b) to provide for the administration of services related to community-based corrections and for the welfare of offenders; and
- (c) to provide for other correctional services.

s.47 sets out prisoners’ rights.

## **11.7 Disability Act 2006**



Pursuant to s.151 of the *Disability Act*, DFATS has been proclaimed a residential treatment facility (RTF). The purpose of a RTF is to provide compulsory treatment to persons with an intellectual disability.

A person with an intellectual disability may be admitted to a RTF pursuant to:

- (a) a residential treatment order made under the *Sentencing Act 1991*;
- (b) a parole order made under the *Corrections Act 1986*;
- (c) a custodial supervision order made under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*;
- (d) an order transferring the person from a prison under section 166;  
Sections 166-179 of the *Disability Act* provide for 'security residents' – who can be transferred from prison to residential treatment facilities.
- (e) an extended supervision order made under the *Serious Sex Offenders Monitoring Act 2005*.

People with intellectual disabilities who are subject to supervised treatment orders can also receive compulsory treatment.

### **11.8 Mental Health Act 1986**

This provides for treatment of involuntary patients, including security and forensic patients.

### **11.9 Serious Sex Offenders Monitoring Act 2005**

The main purpose of this Act is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who are a serious danger to the community to be subject to ongoing supervision (an extended supervision order) while in the community.

### **11.10 Sex Offenders Registration Act 2004**

The purpose of this Act is to require certain offenders who commit sexual offences to keep police informed of their whereabouts and other personal details for a period of time to reduce the likelihood that they will re-offend; and to facilitate the investigation and prosecution of any future offences that they may commit.

The Act creates the Register of sex offenders.

### **11.11 Equal Opportunity Act 1995**

It is noted that anti-discrimination legislation does not provide protection for people discriminated against on the basis of prior criminal history. However, potentially, prisoners may experience discrimination on the basis of their disability in accessing services in prison.

## **12. Miscellaneous – bail, remand, community orders, parole, home detention, prisoner release**

### **12.1 Bail**

When a person accused of a crime is arrested and charged by the police, they may be:

- granted bail and released while waiting for their court case;
- granted bail but not released until the bail requirements are met;
- held in custody until the court hearing;



- released (not on bail) and summonsed to appear at court at a later time.

Generally, accused people are granted bail. Even if they plead guilty before the court case, they still may be granted bail until the case is heard. Accused people held in custody can apply to be released on bail more than once before the case goes to court.

Victims of the alleged crime are entitled to be told if bail is granted, and any special conditions placed on the accused person, for example to stay away from them or their family.

Bail may be refused and the accused person held in custody, where the police or courts are satisfied that there is an unacceptable risk that they would:

- not appear in court;
- commit further offences while on bail;
- endanger the safety or welfare of the public;
- interfere with witnesses (including the victim) or obstruct the course of justice.

## 12.2 Remand

Remand prisoners are unsentenced and held in custody prior to and during their trial on criminal charges. This is to ensure that they are present for their trials, and happens when prisoners have not applied for bail, have been refused bail, cannot meet bail or provide a surety, or are unable or unwilling to meet the conditions set out in the bail bond.

Remand prisoners are innocent until proven guilty, and the law does not consider their confinement as a punishment. Therefore, remand prisoners are treated with the minimum of restrictions that still enable prisoner safety and good order, security and management of the prison.

## 12.3 Community Orders

Offenders may be required to serve out their sentence under a community-based disposition. Different types of community orders include Community Based Orders, Intensive Correction Orders and Combined Custody and Treatment Orders.

Community Correctional Services (CSS) manages adult offenders who are on community-based court orders or Adult Parole Board orders.

### *Community Based Orders*

There are four types of Community Based Orders:

- Standard Community Based Orders (CBO);
- Community Based Orders for Community Work only (CBO/CW);
- Community Work Permits (CWP);
- Community Based Orders in Default of Payment of a Fine (CBO/FD).

Standard CBOs can have different program conditions applied based on the offender's needs and the direction of the courts. The other three orders have only one program condition - to perform unpaid community work. The offender is required to undertake the unpaid community work hours imposed by the court and report to a Community Corrections Officer when issues arise regarding attendance.

### *Intensive Correction Orders*

An Intensive Correction Order (ICO) is an imprisonment sentence served in the community. In the hierarchy of sentencing, it sits directly under imprisonment.

Under the core conditions of an ICO, offenders must:

- report to or receive visits from a Community Corrections Officer twice weekly;



- perform unpaid community work and/or participate in treatment as directed by a Community Corrections Officer for 12 hours each week;
- participate in any special condition imposed by the court to attend one or more prescribed programs. Of the 12 hours, eight of these must be spent performing unpaid community work. Part or all of the remaining four hours can involve programs relevant to the offender's offending behaviour, such as assessment and treatment for drug/alcohol issues. If such treatment programs are not applicable, the offender must complete 12 hours of unpaid community work each week.

#### *Combined Custody and Treatment Orders*

The Combined Custody and Treatment Order (CCTO) targets those who committed drug and alcohol-related offences. These orders can only be imposed where the court is satisfied that drunkenness or drug addiction contributed to the offence. A CCTO can be imposed for up to 12 months. At least six months must be served in custody and the offender must participate in mandatory drug and alcohol treatment and testing. The remaining portion (up to six months) is served conditionally in the community.

## **12.4 Parole Orders**

When a prisoner is sentenced to more than 12 months imprisonment, there may be a period set where the prisoner is eligible for release on parole. Prisoners granted parole are still under sentence – parole is seen as a means of supervising and assisting prisoners to re-integrate into the community successfully, reducing the likelihood of re-offending.

#### *Parole*

The purpose of parole is to supervise the reintegration of offenders into the community, for at least six months before the end of their total sentence. While on parole, the offender is still considered to be under sentence. The *Sentencing Act 1991* requires a judge or magistrate to set a parole period for any sentence longer than 24 months, unless it is not appropriate. For sentences between 12 and 24 months, it is the court's decision whether or not to fix a parole period. Parole is not possible for sentences less than 12 months.

Parole benefits the wider community by ensuring offenders are supervised and supported during reintegration, and reducing recidivism. It is not simply a reward for a prisoner's good behaviour. Prisoners must make progress during their non-parole period in order to be considered for conditional release.

Aside from general obligations that must be met by all offenders on parole, further conditions imposed are tailored to each case. Conditions of parole may include:

- attendance for assessment for alcohol or drug addiction, or submitting medical, psychological or psychiatric assessment and treatment;
- no contact, directly or indirectly, with the victim or certain potential victims;
- no unsupervised contact with children;
- a curfew;
- strict conditions about place of residence and avoidance of certain geographical locations;
- abstinence from alcohol;
- requirements to attend personal development programs;
- random substance testing.

## **12.5 Home Detention**

The Home Detention Program began in Victoria in 2004, and enables the Adult Parole Board to direct selected non-violent, low security offenders from prisons to serve part of their sentences in home



detention. These offenders can maintain employment and family and community links, making successful rehabilitation and reintegration more likely.

Offenders must have completed two-thirds of their sentences and a maximum of six months may be served as home detention.

The board may revoke its orders or those made by the court where there has been a breach.

## 12.6 Prisoner Release Process

There is information about this on the Department of Justice website ([www.justice.vic.gov.au](http://www.justice.vic.gov.au)) - and select [prisons](#).

## 13. References

- Attorney-General's Justice Statement 2008
- Law Handbook 2009 ([www.lawhandbook.org.au](http://www.lawhandbook.org.au))
- Saved to G drive under Legal:Corrections
  - Protocol between Corrections Victoria (Department of Justice) and Disability Services (Department of Human Services)
  - Disability Services' Criminal Justice Practice Manual 2007
  - Corrections Disability Framework 2010-2012

## 14. OPA Policies / Papers

“From corrections to the community” – OPA submission in *G:\Systemic\Submissions\0403 From Corrections to the Community Submission to Corrections Victoria on transitional services for prisoners*

## 15. Other Relevant Practice Guidelines

‘Criminal Law – supporting clients’

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