

Custodial Operations Policy and Procedures

14.2 Visiting magistrate hearings

Policy summary

Governors or delegated officers who are referring a charged inmate to a Visiting Magistrate must do so through the Department of Communities & Justice Legal (DCJ Legal). General Counsel of DCJ Legal coordinates arrangements for Visiting Magistrate hearings.

Visiting Magistrates may require correctional officers, non-custodial officers, inmates, ex-inmates, or other persons to attend hearings in person or by audio visual link from any correctional centre or place nominated by the Visiting Magistrate.

Governors are responsible for facilitating hearings at correctional centres and arranging the attendance of any persons called to appear at such hearings.

Governors are responsible for recording any penalties imposed by the Visiting Magistrate and administering certain penalties such as confinement to a cell, withdrawal of privileges, or payment of compensation.

Management of Public Correctional Centres Service Specifications

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| Service specification | Professionalism and accountability Safety and security |
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Scope

This policy applies to all Governors and delegated officers who refer correctional centre offences to Visiting Magistrates and facilitate Visiting Magistrate or District Court hearings (for appeals against decisions of Visiting Magistrates).

This policy also applies to officers who are called to appear before Visiting Magistrate hearings.

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1 Referrals to visiting magistrate

1.1 Decision to refer to Visiting Magistrate

When a decision has been made to refer an inmate charged with a correctional centre offence to a Visiting Magistrate, any inquiry into the matter must be discontinued immediately.

1.2 Submission of documents to the DCJ Legal

The hand-up documents for a referral must be checked to ensure the information is accurate and all witnesses are properly identified. The hand-up documents for correctional centre offences other than drug test offences are:

- *Inmate discipline action form, Part A and Part E*
- *Inmate misconduct report*
- *Incident/witness report*
- *OIMS Inmate Profile Document.*

For drug test offences the hand-up documents are:

- *Inmate discipline action form, Part A and Part E;*
- *Analyst's certificate* (only for a charge of failing a prescribed drug test);
- *OIMS Inmate Profile Document;* and
- the relevant misconduct package (**refer to COPP section 14.4 Drug test offences**).

All documents must be scanned and emailed to:

General Counsel
Department of Communities & Justice Legal (DCJ Legal)

Email: enquiries_generalcounsel@dcj.nsw.gov.au
Phone: (02) 8346 1388

The Governor may nominate a correctional officer to liaise with the DCJ Legal.

Upon receiving the referral documents, DCJ Legal will coordinate arrangements with the Chief Magistrate for the matter to come before a Visiting Magistrate the following month.

1.3 Procedures for submissions to the DCJ Legal

| | Procedure | Responsibility |
|----|--|-------------------|
| 1. | Provide all hand-up documents to the Governor. | Delegated officer |
| 2. | Check hand-up documents for accuracy and proper identification of witnesses. | Governor |
| 3. | Scan and email hand-up documents to DCJ Legal. | Governor |

2 Facilitation of hearings

2.1 Attendance of officers

When an officer is required to attend a Visiting Magistrate hearing, DCJ Legal will send a *Notification of visiting magistrate hearing* form to the correctional centre for completion by the Governor and officer.

Officers must be directed to attend the hearing. A written direction is included in the *Notification of visiting magistrate hearing* form.

Rostering arrangements must be made where required to ensure an officer can attend the hearing.

| | Procedure | Responsibility |
|----|--|----------------|
| 1. | Complete Part 2 of the <i>Notification of visiting magistrate hearing</i> form and serve on the officer. | Governor |
| 2. | Complete Part 3 of the <i>Notification of visiting magistrate hearing</i> form and return to the Governor. | Officer |
| 3. | Arrange for attendance of officers at a hearing including any rostering requirements. | Governor |

2.2 Attendance of charged inmates

Charged inmates must be informed of the date, time and place of a Visiting Magistrate hearing as soon as possible after the Governor has received notice from DCJ Legal. The inmate must also be informed that he or she is entitled to legal representation.

Charged inmates are required to appear before the Visiting Magistrate on all occasions (for mentions, hearings and sentencing proceedings) unless excused by the Visiting Magistrate. An inmate's legal representative must also be granted access to the hearing.

| | Procedure | Responsibility |
|----|---|----------------|
| 1. | Inform the charged inmate of the Visiting Magistrate hearing and entitlement to legal representation. | Governor |
| 2. | Arrange for the charged inmate to appear before the Visiting Magistrate with his or her legal representative. | Governor |

2.3 Attendance of inmate witnesses

Inmate witnesses are to be given notice of a requirement to appear before a hearing. Inmate witnesses are required to appear before hearings as required and until excused by the Visiting Magistrate.

Governors should be mindful of the security implications of charged inmates seeking to call inmates from other correctional centres as witnesses. This is a particular concern where high or extreme high security inmates are involved.

Governors should raise any concerns with DCJ Legal regarding inmates who may be called as witnesses before the Visiting Magistrate.

| | Procedure | Responsibility |
|----|--|-----------------------|
| 1. | Ensure inmate witnesses are notified of requirement to attend a Visiting Magistrate hearing. | Governor |
| 2. | Inform DCJ Legal of any security concerns. | Governor |

2.4 Attendance of ex-inmates

Correctional centres must facilitate the appearance of ex-inmates required to attend Visiting Magistrate hearings.

An ex-inmate who attends the correctional centre for a hearing must be escorted from the gate when called to appear and escorted back to the gate when excused by the Visiting Magistrate.

| | Procedure | Responsibility |
|----|---|-----------------------|
| 1. | Facilitate the attendance of an ex-inmate at a hearing. | Governor |
| 2. | Arrange for escorting officers to escort ex-inmates directly between the gate and hearing room. | Governor |

2.5 Hearing room

A suitable room with appropriate security at the correctional centre must be provided for a Visiting Magistrate hearing.

The Visiting Magistrate (punishments) book and original hand-up documents must be provided for the Visiting Magistrate.

| | Procedure | Responsibility |
|----|---|-----------------------|
| 1. | Arrange suitable room and appropriate security for Visiting Magistrate hearing. | Governor |
| 2. | Provide original hand-up documents and the Visiting Magistrate (punishments) book to the Visiting Magistrate. | Governor |

2.6 Recording of verdicts and penalties

The incident details, verdict and penalty must be recorded in the Visiting Magistrate (punishments) book and in OIMS.

| | Procedure | Responsibility |
|----|---|-----------------------|
| 1. | Ensure the incident details, verdict and penalty are recorded in the Visiting Magistrate (punishments) book and OIMS. | Governor |

2.7 Failure of officers to attend

If an officer fails to attend a hearing without reasonable cause, disciplinary action may be taken. General Counsel of DCJ Legal must be advised of any action taken in this regard.

A copy of the *Notification of visiting magistrate hearing* form, which includes the officer's acknowledgement (Part 3), is to be forwarded directly to the DCJ Legal without delay and a copy placed in their personnel file.

DCJ Legal may issue a summons or subpoena ordering the officer to attend all future court hearings.

| | Procedure | Responsibility |
|----|---|----------------|
| 1. | Inform General Counsel of DCJ Legal that an officer has failed to attend a hearing. | Governor |
| 2. | Email a copy of the completed <i>Notification of visiting magistrate hearing</i> form to General Counsel of DCJ Legal and place a copy in the officer's personnel file. | Governor |

3 Quick links

- [Related COPP](#)
- [Forms and annexures](#)
- [Related documents](#)

4 Definitions

| | |
|-------------------|---|
| AVL | Audio visual link |
| COPP | Custodial Operations Policy and Procedures |
| CSNSW | Corrective Services NSW |
| Delegated officer | Any officer who occupies or acts in the following positions which the Governor has delegated certain Governor's functions to deal with correctional centre offences: <ul style="list-style-type: none">• Manager of Security• Functional Manager |
| DCJ Legal | NSW Department of Communities & Justice Legal (formerly known as Office of the General Counsel (OGC)) |
| Officer | Correctional officer or non-custodial officer |
| OIMS | Offender Integrated Management System |

5 Document information

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| Business centre: | Custodial Operations | |
| Approver: | Kevin Corcoran | |
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| 1.0 | | Initial publication (<i>Replaces section 16 of the superseded Operations Procedures Manual</i>). |
| 1.1 | 12/03/20 | General formatting update and improvements |