

## Custodial Operations Policy and Procedures

### 14.1 Inmate discipline

#### Policy summary

Correctional officers and non-custodial officers must report inmates who have committed correctional centre offences to the Governor or Officer in Charge (OIC).

Governors or delegated officers are responsible for charging inmates with alleged correctional centre offences, conducting inquiries into the allegations, and for making determinations and imposing penalties.

Governors or delegated officers may refer a charged inmate to a Visiting Magistrate for hearing and determination where an offence is of a serious nature.

Penalties imposed may include a withdrawal of privileges, confinement to cells or cancellation of certain rights to receive inmate payments. Inmates may also be ordered to pay compensation for causing property loss or damage as a result of committing a correctional centre offence.

An inquiry into a correctional centre offence must be completed within 28 days unless there are exceptional circumstances which warrant a continuation.

#### Management of Public Correctional Centres Service Specifications

Service specification	Professionalism and accountability Safety and security
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## Scope

This section applies to all correctional centres and other facilities administered by or on behalf of Corrective Services NSW (CSNSW), and to all CSNSW employees.

It also applies to all CSNSW employees, and where relevant to other personnel such as, Justice Health & Forensic Mental Health Network (JHNSW), contractors, subcontractors, and visitors.

# Table of contents

<b>1</b>	<b>Authority to deal with correctional centre offences</b>	<b>5</b>
1.1	Governor's functions	5
1.2	Delegation of Governor's functions	5
<b>2</b>	<b>Reporting correctional centre offences</b>	<b>6</b>
2.1	Inmate misconduct report and incident/witness report	6
2.2	Locking inmates in cells pending adjudication	7
<b>3</b>	<b>Hearing of charges by Governor or delegate</b>	<b>8</b>
3.1	Correctional centre offences which might also be criminal offences	8
3.2	Avoiding conflicts of interest and apprehended bias	8
3.3	Charging an inmate	9
3.4	Determining whether to refer a charge to visiting magistrate	9
3.5	Conducting inquiries	10
3.6	Assistance or representation for inmates during inquiries	11
3.7	Time limits for inquiries	11
3.8	Inmate discipline checklist	12
3.9	Governor's or delegate's determination	13
3.10	Governor's or delegate's determination	14
<b>4</b>	<b>Penalties for correctional centre offences</b>	<b>14</b>
4.1	Penalties Governor or delegate may impose	14
4.2	General considerations before imposing penalties	14
4.3	Considerations before withdrawing privileges	15
4.4	Procedures for considerations before withdrawing privileges	15
4.5	Considerations before confining an inmate to a cell	16
4.6	Cumulative penalties	16
4.7	Commencement of penalties	17
4.8	Recording of offences and penalties	17
4.9	Expiration of unserved penalties	18
<b>5</b>	<b>Orders to pay compensation</b>	<b>18</b>
5.1	Compensation for property damage	18

5.2	Issuing orders to pay compensation	18
5.3	Finance and administration	19
<b>6</b>	<b>Review of disciplinary decisions</b>	<b>20</b>
6.1	No right of appeal	20
6.2	Where a penalty has been imposed in error	20
6.3	Revocation of penalties	21
<b>7</b>	<b>Quick links</b>	<b>21</b>
<b>8</b>	<b>Definitions</b>	<b>21</b>
<b>9</b>	<b>Document information</b>	<b>23</b>

# 1 Authority to deal with correctional centre offences

## 1.1 Governor's functions

Only Governors or their delegated officers may exercise the statutory functions of dealing with correctional centre offences.

Only Governors or delegated officers may charge inmates with correctional centre offences and conduct inquiries. A charge may be based on information provided by any correctional officer or non-custodial officer who suspects an offence has been committed or is about to be committed.

Only Governors or delegated officers may make determinations and impose penalties. The only exception is where a Governor or delegated officer has referred a charge to a Visiting Magistrate for hearing and determination.

Where an inmate is charged with a correctional centre offence of a serious nature, the Governor or delegated officer may refer the charge to the Visiting Magistrate for hearing and determination if satisfied that it warrants referral. A delegated officer must consult the Governor before making a referral to a Visiting Magistrate.

There are specific guidelines for Governors for dealing with mobile phone offences (**refer to COPP section 14.3 Mobile phone offences**).

## 1.2 Delegation of Governor's functions

The following Governor's functions under section 52(1) of the *Crimes (Administration of Sentences) Act 1999* may be delegated:

- charging an inmate with a correctional centre offence; and
- conducting an inquiry into the alleged offence.

The following Governor's functions under section 53 of the *Crimes (Administration of Sentences) Act 1999* may be delegated:

- dismissing a charge;
- imposing a penalty for a correctional centre offence;
- deferring imposing a penalty for a correctional centre offence; and
- revocation of a penalty.

The following Governor's functions under section 57(2) of the *Crimes (Administration of Sentences) Act 1999* may be delegated:

- imposing a penalty for a correctional centre offence (drug test offence).

The following Governor's functions under section 59 of the *Crimes (Administration of Sentences) Act 1999* may be delegated:

- ordering that an inmate pay compensation to the Crown, where the inmate caused any loss or damage to property, as a result of committing a correctional centre offence.

The Governor's functions to deal with a correctional centre offence must only be delegated to officers occupying the following positions:

- Manager of Security (MOS)
- Functional Manager (FM).

There must be a current *Instrument of Delegation* before any delegated officer can exercise the functions of the Governor.

A Governor or delegated officer must not make a determination unless he or she conducted the inquiry. A determination must only be made by the same officer who conducted the inquiry.

**Note:** Only a Governor may deal with an offence against clause 122 of the *Crimes (Administration of Sentences) Regulation 2014*, where an inmate is alleged to have used a mobile phone, or been in possession of mobile phone or related parts. An offence under clause 122 must not be dealt with by a delegated officer.

	<b>Procedure</b>	<b>Responsibility</b>
1.	Complete the <i>Instrument of delegation</i> .	Governor
2.	Retain a copy of the <i>Instrument of delegation</i> in the Governor's administration file.	Governor

## 2 Reporting correctional centre offences

### 2.1 Inmate misconduct report and incident/witness report

A correctional officer or non-custodial officer who suspects an inmate has committed or is about to commit a correctional centre offence must report the matter to the Governor or OIC immediately.

The reporting officer must complete an *Inmate misconduct report*. Any officer who witnesses the alleged offence must also complete an *Incident/witness report*. However there are different reporting procedures for drug test offences (**refer to COPP section 14.4 Drug test offences**).

Inmates participating in a service or program must comply with any lawful and reasonable direction of the person employed or otherwise engaged in providing the service or program.

If the service or program is delivered by a non-custodial officer, that officer can report an inmate's failure to comply with a direction by informing a correctional officer and submitting an *Inmate misconduct report*. If the service or program is delivered by a contracted service provider, they can report the matter to a correctional officer.

Officers must write their reports from their own recollection of events and independently from each other. Reporting officers should have adequate facilities to meet this requirement (e.g. access to computers in separate areas).

The *Inmate misconduct report* and *Incident/witness report* forms must be submitted to the Governor or OIC of the correctional centre before the end of the watch on the day

on which the alleged offence was committed or before the reporting/witnessing officers cease duty.

	Procedure	Responsibility
1.	Complete and submit an <i>Inmate misconduct report</i> to the Governor or OIC before ceasing duty.	Correctional officer or non-custodial officer
2.	Complete and submit an <i>Incident/witness report</i> to the Governor or OIC before ceasing duty.	Correctional officer or non-custodial officer

## 2.2 Locking inmates in cells pending adjudication

An inmate may be locked in a cell pending adjudication for a correctional centre offence if it is necessary for the safety of persons or the security, good order and discipline of the correctional centre.

The only exception is where an inmate is found in possession of a mobile phone, SIM card, phone charger or any part thereof. In these cases the inmate must be locked in a cell pending reclassification or segregation (**refer to COPP section 14.2 Mobile phone offences**).

If an inmate has been locked in their cell pending adjudication, the correctional officer must immediately inform:

- the Governor or OIC; and
- a JHNSW medical or nursing officer.

Details of the lock-in and persons notified must be recorded in the *Inmate Accommodation Journal*.

If an inmate's clothing is confiscated due to a correctional centre offence having been committed, a replacement set of clothing must be provided to the inmate immediately.

An inmate who has been reported for one or more offences may be confined to a cell, whether for one or more periods of confinement, but for no more than 48 hours in total in respect of those offences.

	Procedure	Responsibility
1.	Lock the inmate in a cell if the inmate presents a risk to the safety of persons or the security, good order and discipline of the correctional centre.	Correctional officer
2.	Immediately report to the Governor or OIC that the inmate has been locked in a cell pending adjudication.	Correctional officer
3.	Immediately report to a JHNSW medical or nursing officer that the inmate has been locked in a cell pending adjudication.	Correctional officer
4.	Record details of the lock-in and persons notified in the <i>Inmate Accommodation Journal</i> .	Correctional officer

	<b>Procedure</b>	<b>Responsibility</b>
<b>5.</b>	Immediately supply the inmate with replacement clothing if the inmate's clothing has been confiscated for evidence.	Correctional officer
<b>6.</b>	Ensure an inmate is not confined to the cell for more than a total of 48 hours pending adjudication.	Governor

### **3 Hearing of charges by Governor or delegate**

#### **3.1 Correctional centre offences which might also be criminal offences**

Correctional centre offences of a serious nature which might also be criminal offences (e.g. assault, major property damage or indecent act) must be reported to the police in the first instance.

Victims of these types of offences must be given the opportunity to have the matter referred to the police for action.

No proceedings for a correctional centre offence are to commence or continue while police have carriage of the matter. If police decline to take action, the matter may be dealt with as a correctional centre offence.

	<b>Procedure</b>	<b>Responsibility</b>
<b>1.</b>	Report any offence which might be a criminal offence to the police. Take no further action while police have carriage of the matter.	Governor or delegated officer
<b>2.</b>	Ask a victim of a suspected criminal offence if they want police action. If so, follow procedure 1 above.	Governor or delegated officer
<b>3.</b>	Where police decline action, deal with the matter as a correctional centre offence.	Governor or delegated officer

#### **3.2 Avoiding conflicts of interest and apprehended bias**

If the Governor was directly affected by the alleged offence, e.g. they were assaulted by the accused inmate or witnessed the alleged offence, then they must refer the matter to another Governor for action prior to any charge being laid. The Governor must not refer the inmate to a delegated officer.

Similarly, a delegated officer in such circumstances must refer the matter to the Governor. The Governor may deal with the alleged offence or refer the inmate to another delegated officer of equal or higher substantive rank.



	Procedure	Responsibility
1.	If the delegated officer is involved or affected by the offence, refer the matter to another delegated officer of equal or higher substantive rank for hearing.	Governor
2.	If the Governor is involved or affected by the offence, refer the matter to the Governor of another correctional centre for hearing.	Governor

### 3.3 Charging an inmate

An *Inmate misconduct report* is to be dealt with promptly. On receipt of the *Inmate Misconduct Report* and *Incident/witness report* forms, the Governor or delegated officer should check that the reports have been prepared correctly and independently.

Following consideration of the *Inmate misconduct report and incident/witness report(s)* and any other evidence, the Governor or a delegated officer may decide to charge an inmate with a correctional centre offence or offences.

Schedule 2 of the *Crimes (Administration of Sentences) Regulation 2014* provides a full list of correctional centre offences.

Before proceeding to inquiry, Offender Integrated Management System (OIMS) must be checked to ascertain whether the inmate has a cognitive impairment or intellectual disability (**refer to COPP section 6.9 *Inmates with disabilities*** for specific information on checking the OIMS *Disabilities* screen and interviewing inmates with disabilities).

Refer to policy and procedures at subsection **3.6 *Assistance or representation for inmates during inquiries*** for providing assistance or representation to inmates during inquiries.

	Procedure	Responsibility
1.	Check all reports have been filled out correctly and independently.	Governor or delegated officer
2.	Consider reports and any other evidence and decide whether to charge the inmate.	Governor or delegated officer
3.	Check <i>OIMS Disabilities</i> screen for any record of the inmate having an intellectual disability or cognitive impairment.	Governor or delegated officer

### 3.4 Determining whether to refer a charge to visiting magistrate

After charging an inmate, the Governor or delegated officer may decide the correctional centre offence is of a serious nature and should be referred to a Visiting Magistrate.

Where a delegated officer considers the matter should be referred to a Visiting Magistrate, he or she must consult the Governor.

The Governor may refer a charge to a Visiting Magistrate without any inquiry being conducted, or refer a charge during an inquiry or after an inquiry. However, unless

there are exceptional circumstances, a referral should be made before the inmate is asked to plea and before any inquiry is conducted.

The inmate must be informed if the charge is to be referred.

The policy and procedures for the referral process and arranging for Visiting Magistrate hearings is at **COPP section 14.2 Visiting magistrate hearings**.

	<b>Procedure</b>	<b>Responsibility</b>
<b>1.</b>	Consult the Governor as to whether the charge should be referred to a Visiting Magistrate.	Delegated officer
<b>2.</b>	Determine whether the offence is of a serious nature and should be referred to a Visiting Magistrate.	Governor
<b>3.</b>	Inform the inmate the charge is to be referred to the Visiting Magistrate.	Governor or delegated officer

### **3.5 Conducting inquiries**

An inquiry into a correctional centre offence should commence within 24 hours of the alleged offence being reported to the Governor or delegated officer. For policy and procedures on completion times refer to subsection **3.7 Time limits for inquiries** of this policy.

An inquiry must be conducted in accordance with the following rules (as provided by section 52(2) of the *Crimes (Administration of Sentences) Act 1999*):

- the inquiry must be conducted with as little formality and technicality, and with as much expedition, as fairness to the inmate charged, the requirements of the Act and Regulation, and the proper consideration of the charge permit;
- the Governor or delegated officer is not bound by the rules of evidence, but may inform himself or herself of any matter in such manner as the Governor or delegated officer thinks fit;
- the inmate is entitled to be heard at any hearing during the inquiry and to examine and cross-examine witnesses;
- except as provided below, the inmate is not entitled to be represented by an Australian legal practitioner or by any other person;
- the Governor or delegated officer must allow a person (other than an Australian legal practitioner) to represent or assist the inmate if the Governor or delegated officer is satisfied:
  - that the inmate does not sufficiently understand the nature of the inquiry or
  - that the inmate does not understand English or is otherwise unable to properly represent himself or herself during the inquiry.
- if the inmate refuses or fails to attend at any hearing during the inquiry, the Governor may hear and determine the matter in the inmate's absence;
- evidence is not to be given on oath or by affidavit at any hearing during the inquiry;
- the Governor or delegated officer may allow any correctional officer or other person to be present, and to be heard, at any hearing during the inquiry;

- the Governor may transfer the conduct of an inquiry to the Governor of another correctional centre to which the inmate has been transferred.

In respect of each charge, the inquiry process and procedures detailed in the *Inmate discipline action form* are to be completed.

If, during an inquiry into multiple charges, an inmate has pleaded guilty to one charge, but not guilty to another charge, the inmate is still entitled to examine and cross-examine any witnesses in respect of the charge or charges he or she has elected to contest.

### 3.6 Assistance or representation for inmates during inquiries

If at any time during the inquiry the Governor or delegated officer is satisfied that an inmate cannot understand English, the Translator and Interpreter Service (TIS National) must be used (**Refer to COPP section 11.1 Language services**).

The Manager of the Statewide Disability Services (SDS) must be informed that an inmate requires a support person for inquiries and interviews if:

- the OIMS *Disabilities* screen provides that an inmate requires a support person for inquiries and interviews; or
- the Governor or delegated officer is satisfied that the inmate cannot sufficiently understand the nature of the inquiry, or is unable to properly represent himself or herself because of a possible cognitive impairment or intellectual disability.

An inquiry must not proceed until the support person has been provided.

	Procedure	Responsibility
1.	Use the Translator and Interpreter Service (TIS National) for inmates that cannot understand English.	Governor or delegated officer
2.	Inform the Manager SDS if the inmate requires a support person for inquiries and interviews or cannot sufficiently understand the nature of proceedings or represent him/herself.	Governor or delegated officer
3.	Postpone the inquiry until a support person is provided to assist or represent the inmate.	Governor or delegated officer

### 3.7 Time limits for inquiries

Inquiries into correctional centre offences must be concluded within **28 days of the offence being reported** to the Governor or delegated officer, unless there are exceptional circumstances (e.g. pending mobile phone analysis, availability of witnesses, inmate temporarily absent due to court matters). This excludes any time spent waiting for police to decide whether or not to proceed with criminal charges.

If an inquiry cannot be completed within 28 days, the Governor or delegated officer must dismiss the matter unless there are exceptional circumstances.

A delegated officer must inform the Governor of any inquiry which cannot be concluded within 28 days including any reasons for the delay.

Where an inquiry cannot be concluded within 28 days, the Governor must inform the regional Director, Custodial Operations including any exceptional circumstances which caused the delay and warrant a continuation.

**Note:** Governors of contract managed correctional centres must inform the General Manager, State-wide Operations, Custodial Corrections Branch not the Director, Custodial Operations.

A Director, Custodial Operations may revoke any penalty imposed on an inmate for a correctional centre offence, where the inquiry exceeded 28 days, if the director is satisfied that:

- the circumstances were such that an inquiry could have been reasonably concluded within 28 days; or
- the circumstances did not warrant the time taken to conclude the inquiry.

A decision by a Director, Custodial Operations to revoke a penalty must be recorded including reasons for the decision.

	Procedure	Responsibility
1.	Inform the Governor if an inquiry cannot be completed within 28 days of the offence being reported and reasons for the delay.	Delegated officer
2.	Dismiss a charge if an inquiry cannot be concluded within 28 days unless there are exceptional circumstances warranting a continuation.	Governor or delegated officer
3.	Inform the Director, Custodial Operations of any inquiry which will proceed beyond 28 days and the exceptional circumstances causing the delay which warrant a continuation <b>Contract managed centres only:</b> Inform the General Manager State-wide Operations of any inquiry which will proceed beyond 28 days and the exceptional circumstances causing the delay which warrant a continuation.	Governor
4.	Determine whether to revoke a penalty for a correctional centre offence where the inquiry took longer than 28 days and the delay was not reasonable under the circumstances.	Director, Custodial Operations
5.	Record the decision, and reason for the decision, where a penalty is revoked (record in OIMS).	Director, Custodial Operations

### 3.8 Inmate discipline checklist

The *Inmate discipline checklist* must be completed before a penalty of confinement to a cell is imposed.

It is not necessary for the *Inmate discipline checklist* to be completed where there is no intention to impose a penalty of confinement to a cell.

The *Inmate discipline checklist* covers important factors to be considered before a penalty of confinement to cell is imposed (e.g. self-harm history).

If the inmate is considered to be at risk of self-harm or suicide, mandatory notification procedures must also be complied with (**refer to COPP section 3.7 Management of inmates at risk of self-harm or suicide**).

	<b>Procedure</b>	<b>Responsibility</b>
1.	Complete the <i>Inmate discipline checklist</i> at the conclusion of the inquiry where a penalty of confinement to cell is to be imposed.	Governor or delegated officer
2.	Complete mandatory notification procedures if the inmate is considered to be at risk of self-harm or suicide ( <b>refer to COPP section 3.7 Management of inmates at risk of self-harm or suicide</b> ).	Governor or delegated officer

### 3.9 Governor’s or delegate’s determination

After having conducted an inquiry, the Governor or delegated officer must decide whether he or she is satisfied beyond reasonable doubt that the inmate is guilty of a correctional centre offence.

If the Governor or delegated officer is not satisfied beyond reasonable doubt that the inmate is guilty of the offence, the Governor or delegated officer must dismiss the charge. The inmate must be informed the charge was dismissed.

If the Governor or delegated officer is satisfied beyond reasonable doubt that the inmate is guilty of the offence, the Governor or delegated officer may:

- decide not to impose a penalty and dismiss the charge;
- defer imposing a penalty on condition that the inmate be of good behaviour for a specified period (not exceeding two months) and, if the condition is complied with, dismiss the charge after the end of that period;
- impose a penalty; and/or
- order the inmate to pay compensation for any loss of or damage to property as a result of the offence.

	<b>Procedure</b>	<b>Responsibility</b>
1.	Determine whether the inmate is guilty or not guilty of a correctional centre offence.	Governor or delegated officer
2.	Dismiss a charge if not satisfied the inmate is guilty and inform the inmate the charge was dismissed as soon as practicable.	Governor or delegated officer
3.	Decide whether to impose a penalty, or defer a penalty on condition of good behaviour, and/or order payment of compensation (for any loss or damage to property), if satisfied the inmate is guilty.	Governor or delegated officer

### **3.10 Governor's or delegate's determination**

After having conducted an inquiry, the Governor or delegated officer must decide whether he or she is satisfied beyond reasonable doubt that the inmate is guilty of a correctional centre offence.

## **4 Penalties for correctional centre offences**

### **4.1 Penalties Governor or delegate may impose**

The Governor or delegated officer may impose one (but not more than one) of the following penalties:

- reprimand and caution,
- deprivation, for up to 56 days, of such withdrawable privileges as the Governor may determine,
- confinement to a cell for up to 7 days, with or without deprivation of withdrawable privileges,
- cancellation of any right to receive payments under section 7 of the *Crimes (Administration of Sentences) Act 1999* for up to 14 days, but to the extent only to which those payments are additional to the payments made at the base rate to inmates generally or to inmates of a class to which the inmate belongs.

### **4.2 General considerations before imposing penalties**

Before imposing a penalty, the Governor or delegated officer should consider:

- the nature and seriousness of the correctional centre offence;
- the nature, seriousness and frequency of any other offences the inmate has committed in custody, including criminal offences (e.g. assault, destroy or damage property)
- criminal history
- inmate's case notes
- OIMS alerts
- inmate's recent behaviour and work history
- whether the inmate has already lost a privilege as a result of the offending conduct and the imposition of a penalty might be construed as an additional penalty (e.g. the inmate has been transferred to higher security accommodation or has incurred a reduction in wages)
- whether the inmate has had their OTAB removed, or not issued, as a result of an assessment
- a lesser penalty for a plea of guilty; and
- any relevant mitigating circumstances.

	Procedure	Responsibility
1.	Consider the nature and seriousness of the offence and any other offences the inmate has committed in custody.	Governor or delegated officer
2.	Consider the inmate's: <ul style="list-style-type: none"> <li>• criminal history</li> <li>• case notes</li> <li>• alerts</li> <li>• recent behaviour, and</li> <li>• work history.</li> </ul>	Governor or delegated officer
3.	Consider any privileges the inmate has lost due to the offence such as movement to a higher security area, reduction of wages, or the punitive effect of the removal of an OTAB.	Governor or delegated officer
4.	Consider any mitigating circumstances.	Governor or delegated officer

### 4.3 Considerations before withdrawing privileges

When imposing a penalty of 'off buy-ups', Governors or delegated officers have the discretion to allow inmates to purchase toiletries, hygiene related products and nicotine replacement items. The amount allowed to purchase these items is known as 'Commissary Amount Limit' which is \$20.

The OIMS and Corrective Services Industries (CSI) buy-up program do not have the capacity to restrict an inmate from purchasing an amount lower than the Commissary Amount Limit. Therefore where an 'off-buy-ups' penalty has been imposed, and the Governor or delegated officer has not exercised discretion to allow the inmate to purchase the Commissary Amount Limit, local action will be required to ensure the inmate cannot order a buy-up.

Contact with family and friends is an integral and effective management tool. An inmate's contact visit and telephone privileges should only be withdrawn as a last resort.

Where a penalty of 'off amenities' is to be imposed, the inmate's cellmate or cellmates must not be disadvantaged by the penalty.

### 4.4 Procedures for considerations before withdrawing privileges

	Procedure	Responsibility
1.	Decide whether to allow inmate to purchase the Commissary Amount Limit of \$20 if penalty is 'off buy-ups'.	Governor or delegated officer
2.	Inform CSI and/or finance and administration manager if 'off buy-ups' penalty includes Commissary Amount Limit.	Governor or delegated officer
3.	Consider cancellation of contact visits or telephone privileges as last resort.	Governor or delegated officer

	Procedure	Responsibility
4.	Ensure inmate's cellmate or cellmates will not be disadvantaged by the penalty.	Governor or delegated officer

#### 4.5 Considerations before confining an inmate to a cell

All information as listed in the *Inmate discipline checklist* must be considered.

Young Aboriginal inmates should not be confined to cells alone. This is consistent with recommendations 144 and 181 of the *Royal Commission into Aboriginal Deaths in Custody*. Alternative penalties should be considered.

Where an inmate has been referred to the Risk Intervention Team (RIT), the RIT Coordinator's advice should be obtained regarding any RIT Management Plan or Immediate Support Plan (ISP). Consideration should be given as to whether confinement to a cell is appropriate or an alternative penalty should be imposed.

If a penalty of confinement to a cell is imposed, any time the inmate has spent confined to the cell pending adjudication is to be counted towards the total.

	Procedure	Responsibility
1.	Consider all information in the <i>Inmate discipline checklist</i> .	Governor or delegated officer
2.	Obtain RIT Coordinator's advice regarding any inmate who has been referred to the RIT.	Governor or delegated officer
3.	Consider alternative penalties for young Aboriginal inmates and inmates on an RIT Management Plan or ISP.	Governor or delegated officer
4.	Include any time spent in cells pending adjudication in the total of time to be confined.	Governor or delegated officer

#### 4.6 Cumulative penalties

If an inmate is charged with two or more correctional centre offences, **and the charges are determined together or arise out of a single incident**, any cumulative penalties imposed for those offences must not, in respect of any particular kind of penalty, exceed the maximum penalty that may be imposed in relation to a single correctional centre offence.

For example, an inmate confined to a cell for four days for one offence cannot be confined to a cell for more than three days on another offence as this would exceed the maximum seven days confinement to cells.

	Procedure	Responsibility
1.	Ensure any cumulative penalties imposed do not exceed the maximum allowed for any particular kind of penalty.	Governor or delegated officer



## 4.7 Commencement of penalties

The inmate must be informed of the determination and the penalty to be imposed prior to commencing the penalty.

Prior to commencing a penalty of withdrawal of contact visits and informing the inmate, the MOS or OIC must be notified.

Prior to commencing a penalty of confinement to cell and informing an inmate, the following persons must be notified:

- Governor;
- MOS or OIC;
- JHNSW medical or nursing officer; and
- RIT Coordinator or RIT member (if the inmate is subject to an ISP or RIT Management Plan).

Where a penalty of confinement to cell is imposed for an inmate being managed under an ISP or RIT Management Plan, the inmate's plan and all RIT or ISP procedures must be adhered to.

	<b>Procedure</b>	<b>Responsibility</b>
1.	Inform the inmate of the determination before commencing any penalty.	Governor or delegated officer
2.	Inform the MOS or OIC prior to commencing withdrawal of contact visits and informing the inmate.	Governor or delegated officer
3.	Inform the Governor and MOS or OIC, JHNSW medical or nursing officer, and where applicable the RIT, before commencing confinement to a cell and informing the inmate.	Governor or delegated officer
4.	Ensure adherence to any RIT Management Plan or ISP procedures for an inmate at risk who is confined to a cell.	Governor or delegated officer

## 4.8 Recording of offences and penalties

After an inmate has been informed of the determination, the details of the offence, penalty and any order for compensation must be recorded in OIMS. This meets the recording requirement imposed on the Governor under section 61 of the *Crimes (Administration of Sentences) Act 1999*.

All procedural documents, reports and other documents relied on as evidence of the offence must be placed in the inmate's case management file.

	Procedure	Responsibility
1.	Ensure the offence, penalty and/or compensation details are recorded in the OIMS <i>Offences in Custody</i> module.	Governor or delegated officer
2.	<p>Ensure the following documents are placed in the inmate's case management file:</p> <ul style="list-style-type: none"> <li>• <i>Inmate discipline action form</i>;</li> <li>• <i>Inmate discipline checklist</i> (if applicable);</li> <li>• <i>Inmate misconduct report</i>;</li> <li>• <i>Incident/witness report</i>; and</li> <li>• any other documents relied upon as evidence of the offence (e.g. copy of receipts for repair of damage to property.)</li> </ul>	Governor or delegated officer

## 4.9 Expiration of unserved penalties

Any unserved part of a penalty for a correctional centre offence expires when an inmate is released from custody. This includes a release on bail, parole or for any other reason. An unserved penalty or part thereof cannot be reimposed on the inmate if the inmate is later readmitted to custody.

# 5 Orders to pay compensation

## 5.1 Compensation for property damage

Where an inmate caused the loss of or damage to property as a result of committing a correctional centre offence, he or she may be ordered to pay compensation to the Crown. If the property is owned by another person, then compensation is payable to that person. An order for compensation cannot be made for any other reason.

An order for compensation may be made whether or not a penalty is imposed for the correctional centre offence.

A Governor or delegated officer may order an inmate to pay a maximum of \$500 in compensation.

## 5.2 Issuing orders to pay compensation

If the Governor or delegated officer orders an inmate to pay compensation, the following details are to be recorded in the 'Action Taken by the Governor/Delegate' section of the *Inmate discipline action form*:

- amount of compensation to be recovered; and
- name of cost centre, agency or person awarded compensation.

Prior to recovering any compensation payments, the inmate must be informed of the order.

A copy of the *Inmate discipline action form* containing the order must be forwarded to the correctional centre's finance and administration manager for processing.

	<b>Procedure</b>	<b>Responsibility</b>
1.	Record the amount of compensation and name of awardee in the 'Action Taken' section of the <i>Inmate discipline action form</i> .	Governor or delegated officer
2.	Inform inmate of the order before recovering compensation.	Governor or delegated officer
3.	Forward a copy of the <i>Inmate discipline action form</i> to the finance and administration manager for processing.	Governor or delegated officer

### 5.3 Finance and administration

The finance and administration manager is responsible for processing an order for compensation. Payments are to be withdrawn from the inmate's trust account.

When inmate misconduct details are entered into OIMS and include an order for compensation, automatic weekly deductions are established by default at 25% of an inmate's wages and 75% of all other receipts including BPay. Deductions continue until the debt is paid or written-off (e.g. due to release from custody).

Governors (but not delegated officers) may give approval to override default deductions if the inmate has:

- sufficient funds to pay the compensation amount in full;
- arranged for funds to be deposited to pay compensation; or
- insufficient remaining funds for purchases such as weekly buy-ups or telephone calls, in which case the Governor may nominate a minimum amount the inmate shall receive weekly.

Deductions must not be withdrawn from an inmate's Centrelink payments.

Compensation awarded for damage to Crown property is to be credited to the relevant CSNSW cost centre or other agency's operating account via the Property Damage Reimbursement (refer to expense element 1196).

Compensation awarded for damage to another inmate's property is to be credited to the awardee's inmate trust account.

Compensation awarded for damage to a person's property is to be credited to the awardee's nominated bank account by electronic funds transfer or by other means at the Governor's discretion.

Where an inmate who is subject to an order for compensation is transferred to another correctional centre, the receiving centre must be made aware of the order.

The receiving centre must make the necessary deductions or establish an automatic garnishee and transfer the funds to the originating correctional centre for crediting to that cost centre or to an awardee.

	<b>Procedure</b>	<b>Responsibility</b>
1.	Process the order for compensation and withdraw funds from the inmate's trust account.	Finance and administration manager
2.	Credit the CSNSW cost centre or Crown agency's operating account where the centre or agency is awarded compensation.	Finance and administration manager
3.	Credit another inmate's trust account where that inmate is awarded compensation for damage to his or her property.	Finance and administration manager
4.	Credit a person's nominated bank account where that person is awarded compensation.	Finance and administration manager
5.	Establish an automatic garnishee on deposited monies and wages where the inmate has insufficient funds to pay compensation in full.	Finance and administration manager
6.	Notify the receiving centre's finance and administration manager of an order for compensation if the inmate is transferred to another centre.	Finance and administration manager
7.	Deduct compensation payment or establish an automatic garnishee and remit to the originating correctional centre for disbursement to the awardee.	Finance and administration manager (receiving centre)

## 6 Review of disciplinary decisions

### 6.1 No right of appeal

An inmate has no right of appeal from a decision of a Governor or a Governor's delegate to impose a penalty.

However, a decision to impose a penalty may be reviewed on an application by the inmate to the Supreme Court.

### 6.2 Where a penalty has been imposed in error

Where a penalty has been imposed on an inmate and it is clear that

- the facts as proven do not constitute an offence
- the inmate was not given an opportunity to be heard at the hearing or to cross examine any witness
- the inmate was unable to properly represent themselves at the hearing due to language or other difficulties in understanding the proceeding, or
- the proceedings were for any other reason manifestly unfair.

In the circumstances a Governor may refer a matter to the General Manager, Statewide Operations for review. This this is not a merits review and a case will not be reviewed merely because it was open for another decision-maker to reach a different conclusion.

If the General Manager, Statewide Operations determines that any of the above circumstances are made out, then the inmate’s record for that offence must be expunged.

### 6.3 Revocation of penalties

A Governor may revoke a penalty, imposed by the Governor or the Governor’s delegate, in the following circumstances:

- on compassionate grounds;
- where an order for compensation is void because it was issued for something other than a loss of or damage to property;
- where a penalty was imposed in error (e.g. prescribed penalty was issued for a third drug test offence but records show that it was the inmate’s first drug test offence)
- contravention of the cumulative penalty rule; or
- the penalty exceeds the maximum penalty prescribed under the *Crimes (Administration of Sentences) Act 1999*, pt 2 div 6.

If the penalty in question was issued by another Governor, then the matter must be referred to the Director, Custodial Operations who has the Commissioner’s delegation to revoke penalties.

## 7 Quick links

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

## 8 Definitions

COPP	Custodial Operations Policy and Procedures
Correctional centre offence	Any act or omission by an inmate (whether or not it is also a criminal offence): <ul style="list-style-type: none"> <li>• that occurs while the inmate is within a correctional centre or correctional complex or is taken to be in the custody of the Governor of a correctional centre; and</li> <li>• that is declared by the regulations to be a correctional centre offence for the purposes of Part 2 Division 6 of the <i>Crimes (Administration of Sentences) Act 1999</i>.</li> </ul>
CSI	Corrective Services Industries
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"> <li>• Manager of Security</li> <li>• Functional Manager.</li> </ul>
Drug test offence	A correctional centre offence under clause 153, 159(3), or 160(3) of the <i>Crimes (Administration of Sentences) Regulation 2014</i> .
FM	Functional Manager
JHNSW	Justice Health & Forensic Mental Health Network.
MIN	Master Index Number
MOS	Manager of Security
Non-custodial officer	A CSNSW officer, other than a correctional officer, who is performing duties in a correctional centre, e.g. services and programs officer, psychologist, community corrections officer, or case management officer.
Offender Tablet (OTAB)	Offender Tablets (OTAB) issued by Corrective Services NSW with specified functionality for distribution to inmates for use in cell (not to be confused with tablets issued by JUST Connect for the purposes of viewing legal briefs).
OIC	Officer in charge: the on-duty ranking correctional officer who is in charge of the correctional centre in the absence of the Governor, e.g. manager of security or night senior.
OIMS	Offender Integrated Management System
RIT	Risk Intervention Team
SDS	Statewide Disability Services
Withdrawable privilege	A privilege or amenity which may be withdrawn as a prescribed penalty for committing a correctional centre offence (e.g. access to contact visits, telephone calls, buy-ups). For the full list see clause 163 of the <i>Crimes (Administration of Sentences) Regulation 2014</i> .

## 9 Document information

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<b>Business Centre:</b>	Statewide Operations
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<b>Approver:</b>	Dr Anne Marie Martin (Deputy Commissioner Security and Custody)
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<b>Date of Effect:</b>	16 December 2017
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<b>EDRMS container:</b>	18/7367
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<b>Version</b>	<b>Date</b>	<b>Reason for amendment</b>
1.0	16/12/17	Initial publication ( <i>Replaces section 16 of the superseded Operations Procedures Manual</i> ).
1.1	12/03/20	General formatting update and improvements.
1.2	09/08/24	Addition in subsection 4.2 <i>General considerations before imposing penalties</i> to policy and procedure concerning Offender Tablets (OTAB). Refer to Deputy Commissioner's Memorandum 2024/31.

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