

Custodial Operations Policy and Procedures

21.11 Boards and tribunals

Policy summary

This policy details the role and responsibility of Corrective Services NSW (CSNSW) to provide information and adhere to directions set down by the following authorities;

- Mental Health Review Tribunal (MHRT)
- NSW Civil and Administrative Tribunal (NCAT)
- State Parole Authority (SPA) of NSW
- Serious Offenders Review Council (SORC).

Management of Public Correctional Centres Service Specifications

Service specification	Professionalism and accountability
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Scope

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

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1 Mental Health Review Tribunal

1.1 Policy

The MHRT has responsibility for regularly reviewing forensic and correctional patients, including those in correctional centres.

The MHRT is responsible for making recommendations to the Minister for Health on the release or the continued detention, care and/or treatment of forensic patients and correctional patients.

There are three categories of forensic patients:

- persons found unfit to plead
- persons found not guilty on the grounds of mental illness
- persons given a limiting term by the court following a special hearing.

Correctional patients are inmates who, while on remand or serving a sentence of imprisonment, are found to be mentally ill and who are transferred under a schedule to a mental health facility (**refer to COPP section 1.2 Reception – warrants and detainers**).

Inmates may also be remanded in custody for mental health assessments.

The transfer from CSNSW custody to a mental health facility or the transfer from a mental health facility to CSNSW custody of forensic patients who have been found unfit to plead or not guilty on the grounds of mental illness is effected under an order signed by the Secretary or by the Minister for Health in accordance with the provisions of Part 5, Division 2 *Mental Health (Forensic Provisions) Act 1990*.

Section 55 *Mental Health (Forensic Provisions) Act 1990* provides for the Secretary of NSW Health to order the transfer to a mental health facility of an inmate who is on remand or serving a determinate sentence who is either mentally ill or suffering from a mental condition for which treatment is available in a mental health facility.

In these cases the original order is forwarded with a covering letter from NSW Health direct to the Forensic Liaison Officer, Office of Statewide Administration of Sentences and Orders (OSASO) who will make the necessary transfer arrangements and will notify the correctional centre where the person is imprisoned and the mental health facility.

For more detailed information relating to forensic patients and correctional patients refer to OSASO *Procedures for forensic and correctional patients*.

2 NSW Civil and Administrative Tribunal

2.1 Policy

The NCAT deals with a broad range of matters, from tenancy issues and building works, to decisions on guardianship and administrative review of government decisions.

All matters before NCAT are dealt with by one of the four Divisions of the Tribunal;

- Administrative and Equal Opportunity Division
- Consumer and Commercial Division
- Guardianship Division
- Occupational Division.

Further information about the roles of each Division can be found on the [NCAT webpage](#).

The NCAT may require an inmate to:

- make a written submission,
- participate in a telephone conference, or
- provide an agent to act on their behalf when involved in proceedings.

NCAT will contact the Manager Offender Services and Programs (MOSP) or Senior Services and Programs Officer (SAPO) at the relevant centre to ensure the appropriate service can be facilitated.

Telephone case conferences between an inmate and the NCAT are privileged in the same way that inmates' legal telephone calls are subject to privilege. The NCAT is an exempt body therefore; these calls should not be monitored or recorded (**refer to COPP section 8.2 Inmate telephones**).

As case conferences generally last around 30 minutes, Governors must provide the inmate access to a telephone not connected to the Offender Telephone System (OTS). In all instances where the telephone conference cannot be facilitated, the Governor of the correctional centre must ensure that an officer contacts NCAT to reschedule the call.

The NCAT may require an inmate to attend a hearing or conference in person or via Audio Visual Link (AVL). NCAT will issue a Section 77 order under the *Crimes (Administration of Sentences) Act 1999*, directing the inmate to be produced when required to attend in person. The NCAT will make an online booking via the Scheduling System when they require an inmate to appear via the AVL.

3 State Parole Authority of NSW

The SPA is a statutory body established by the *Crimes (Administration of Sentences) Act 1999*. SPA consists of three types of members:

- Judicial Members
- Community Members
- Official Members (being Police and Community Corrections members).

The Authority sits in divisions of five members:

- one Judicial Member
- two Community Members
- two official Members (one Police and one Community Corrections officer).

The primary responsibilities of the SPA are to:

- consider those inmates for parole serving a sentence exceeding three years with a non-parole period
- consider breaches of parole orders, home detention and Intensive Correction Orders (ICO).

SPA has a statutory obligation to consider the release of an inmate on parole where a sentence is greater than three years and has a non-parole period. The minimum information SPA requires to consider an inmate's case is a Community Corrections officer's report, judges sentencing remarks and criminal history.

Further information on SPA can be obtained by viewing the [State Parole Authority website](#).

3.1 Court-based parole orders

A court will issue a parole order for sentences of three years and under at the time of sentencing. The SPA does not have jurisdiction in these cases.

However, the SPA may revoke such an order prior to the inmate's release in some circumstances (e.g. unsuitable post release arrangements).

The SPA has the power to grant parole in exceptional extenuating circumstances for sentences of any length.

3.2 Drug court revocation

When a Compulsory Drug Treatment (CDT) order is made by the Drug Court, any parole orders issued for sentences up to three years are revoked.

If the Drug Court revokes a compulsory drug treatment order, the associated parole order remains revoked and the SPA is required to consider the release of the offender, no matter the length of the sentence.

3.3 Inmates attendance before SPA

If the SPA makes an intention to refuse parole, it will issue the inmate with a:

- **Form 2B(h):** Notice of decision to refuse parole, or
- **Form 2B(r):** Application for reconsideration of intention to refuse parole, in accordance with section 139(1) of the *Crimes (Administration of Sentences) Act 1999*.

If the Form 2B(h) is issued, SPA will conduct a review hearing if the inmate applies to be reconsidered for parole.

If Form 2B(r) is issued, the inmate must provide SPA with reasons why a hearing is warranted.

Community Corrections Officers (CCO) must:

- deliver the Form 2B(h) or Form 2B(r) to the inmate,
- explain its contents, and
- have the inmate sign the **Form 2C: 'Inmate acknowledgement'**.

If the inmate requires assistance to complete the forms, there are different procedures for each form:

- Form 2B(h): the CCO can assist the inmate to complete the form and send the completed form to the SPA
- Form 2B(r): the CCO must refer the matter to the MOSP. In this case, the MOSP will arrange assistance for the inmate, and for the completed form to be forwarded to SPA. If a review hearing is to proceed, a supplementary pre-release report is due at SPA two weeks prior to the hearing date.

If the inmate does not require assistance to complete the forms, the CCO must send the signed Form 2C and completed Form 2B(h) or Form 2B(r) to SPA.

3.4 Legal representation at review hearings

Inmates appearing before the SPA appear via the Audio Visual Link (AVL).

An inmate attending a video conferencing studio for an AVL hearing has the same entitlements to services as inmates attending court in person (i.e. legal representation, interpreter services).

Staff at the SPA book an inmate's attendance before SPA in Offender Integrated Management System (OIMS) and provide this information to the correctional centre.

All inmates attending AVL are required to be at the Video Conferencing (VC) studio one hour prior to the time listed in their warrant. This is to facilitate inmates' access to legal calls prior to their appearance before court (**refer to COPP section 20.4 AVL for legal and court matters**).

Inmates attending SPA proceedings via AVL are entitled to hold pre-and/or post-case interviews with their legal representative, if the representative so requests. In such cases the Officer in Charge (OIC) of the VC studio must;

- facilitate pre-and post-case contact between the inmate and their legal representative via the telephone or AVL
- log any contact between the legal representative and their client in a telephone call register within the VC area
- ensure that the inmate's legal representative has identified themselves before facilitating pre-/post-case interviews.

Note: Only the inmate's legal representative may initiate pre-and post-case interviews.

3.5 Applications to the NSW Supreme Court following a decision by SPA

Under section 155(1) of the *Crimes (Administration of Sentences) Act 1999*, an inmate who SPA has determined not to release to parole may apply to the Supreme Court for a direction to be given to SPA as to whether the information relied upon by SPA was false, misleading or irrelevant.

Section 176(1) *Crimes (Administration of Sentences) Act 1999* provides that person whose parole, home detention or ICO has been revoked by SPA may apply to the Supreme Court for a direction to be given to the SPA as to whether the order has been revoked on the basis of false, misleading or irrelevant information.

On hearing the application, the Supreme Court may direct the SPA to reconsider its decision. The Supreme Court cannot overrule a SPA decision.

To apply to the Supreme Court, an *Application for direction to parole authority* must be submitted to the Registrar of the Supreme Court and a copy emailed to the centre's Sentence Administration office for placement on the inmates Digital Warrant File. It is not to be forwarded to SPA.

Correctional centre staff must ensure that a copy of the SPA's notice of determination and reasons for determination are attached to the inmate's completed *Application for direction to parole authority*.

3.6 Security of certain information from SPA

Section 194 *Crimes (Administration of Sentences) Act 1999* provides for information supplied to SPA is withheld from inmates if, in the opinion of the judicial member of SPA, disclosure would either:

- adversely affect the security, discipline or good order of a correctional centre
- endanger the inmate or any other person
- jeopardise the conduct of any lawful investigation
- prejudice the public interest
- adversely affect the supervision of any offender who has been released on parole
- disclose the contents of any offender's medical, psychiatric or psychological report.

Accordingly, if CSNSW officers are requested to provide a report to SPA, they must indicate in their report what information they consider should not be made available to

the inmate. However, a request under section 194 does not guarantee it will be granted.

Information forwarded by the SPA to the inmate via the Governor must be checked to ensure compliance with section 194. If the Governor believes that a document constitutes a threat to security, the Governor should advise the Secretary of SPA immediately.

The document in question will be referred to the judicial member of the SPA for a decision as to whether the material should be withheld from the inmate.

Governors must ensure staff are aware that any correspondence prepared by them for the SPA must have the endorsement of the Governor prior to submission.

3.7 Contact details of the SPA Secretariat

State Parole Authority

Locked Bag 5111

Parramatta NSW 2124

Attention: Director and Secretary

Email: secretary.paroleboard@dcj.nsw.gov.au

General Enquiries: (02) 8688 3635 Fax: (02) 8688 3699

4 Serious Offenders Review Council

4.1 Constitution and membership

The Serious Offenders Review Council (SORC) is an independent statutory authority constituted under section 195 *Crimes (Administration of Sentences) Act 1999*. It is both an entity in its own right as well as an umbrella organisation currently with three subcommittees whose functions are not necessarily related to serious offenders.

It consists of at least eight members and may have up to 14 members. Each person appointed to the SORC is appointed to a particular category of membership;

- judicial members (three persons -Chairperson, Alternate Chairperson and Deputy Chairperson appointed for terms of three years by the Governor of NSW)
- community members (at least three persons and may be up to nine, who reflect as closely as possible the composition of the community at large, appointed by the Governor of NSW on the recommendation of the Minister responsible for Corrections)
- official members (two CSNSW officers, appointed by the Commissioner)

4.2 Functions of the SORC

The statutory functions of the SORC are in section 197 of *Crimes (Administration of Sentences) Act 1999* and clause 311 of *Crimes (Administration of Sentences) Regulation 2014*. They include but are not limited to;

- providing advice and making recommendations to the Commissioner with respect to;
 - the security classification of serious offenders
 - the placement of serious offenders
 - the developmental programs provided for serious offenders
 - the designation and management of inmates as high security, extreme high security, extreme high risk restricted and national security interest (including the revocation or variation of such designation)
 - the security classification of those inmates who satisfy the CSNSW policy definition of public interest inmate and who are seeking access to unescorted pre-release programs
 - the security classification of inmates who are classified E2 (escape offence) and who are seeking reduction in security classification from medium to minimum security
- conducting review hearings when inmates appeal segregated or protective custody directions which are for periods of confinement in excess of 14 days - any inmate may lodge these applications
- providing of reports and/or advice to;
 - SPA concerning the release on parole of serious offenders
 - Federal Attorney General concerning the release on parole of serious offenders serving federal sentences.
 - the Commissioner of Corrective Services
 - the Minister responsible for corrections
 - the Supreme Court of NSW, when serious offenders are applying for a redetermination of life sentences handed down prior to the commencement of truth-in-sentencing (these hearings used to be known as section 13A applications and are now referred to as Schedule 1 applications – refer to *Crimes (Sentencing Procedures) Act 1999*)
- making recommendations to the Minister responsible for corrections with respect to transferring juvenile inmates from a juvenile correctional centre to an adult correctional centre
- The SORC publishes an Annual Report each calendar year, a copy of which is available on the CSNSW Intranet

Further information about the operations of the SORC is contained in the *Inmate Classification and Placement Policy and Procedures*.

4.3 Ancillary committees of the SORC

The SORC currently has three subcommittees that assist in the discharge of its business:

Pre-release leave committee

The Pre-Release Leave Committee (PRLC) is comprised of members of the SORC, with a quorum of three members (one from each of the membership categories:

- judicial
- community
- official

The Pre-Release Leave Committee assesses applications from inmates identified as “public interest” for participation in external, unescorted pre-release leave programs.

Further information about the Pre-Release Leave Committee is contained in the *Inmate Classification and Placement Policy and Procedures*.

Escape review committee

The Escape Review Committee (ERC) is comprised of members of the SORC, with a quorum of three members (one from each of the membership categories: judicial, community and official).

Clause 312(b) *Crimes (Administration of Sentences) Regulation 2014* empowers the Escape Review Committee to make recommendations to the Commissioner of CSNSW on the reduction in classification to minimum security of those inmates who have committed an escape offence.

Further information about the Escape Review Committee is contained in the *Inmate Classification and Placement Policy and Procedures*.

High security inmate management committee

The High Security Inmate Management Committee (HSIMC) is comprised of SORC members, with a quorum of three members (one from each of the membership categories: judicial, community and official).

The High Security Inmate Management Committee is assisted by a number of CSNSW senior officers who tender reports and provide advice. Refer *Classification and Placement Policy and Procedures* regarding personnel that may sit on HSIMC meetings. Governors and Managers of Security may also refer inmates who, in their opinion, should be considered for a high security rating.

The provisions relating to the designation of inmates as a security risk and their management are provided for in clauses 12-17 and 311-314 *Crimes (Administration of Sentences) Regulation 2014*.

Further information about the High Security Inmate Management Committee is contained in the *Inmate Classification and Placement Policy and Procedures*.

4.4 Segregated and protective custody review hearings

Any inmate may apply for a review of a segregated or protective custody direction once 14 days in separated confinement has been served. The review is heard by the SORC irrespective of whether or not the inmate is a serious offender.

The SORC may refuse to review a direction if:

- the application does not, in the opinion of the SORC, disclose substantial grounds for a review
- the SORC has previously determined a review of the same direction and, the application does not, in the opinion of the SORC, disclose substantially different grounds for review.

However, the SORC may not refuse to review a direction if a period of more than three months has passed since SORC determined a review of the direction.

The hearing can be conducted on site at the correctional centre accommodating the inmate or via video-link. CSNSW is generally represented by one of its legal officers. The inmate may choose to be self-represented or have someone appear for him/her. If the latter, it will usually be a solicitor from the Prisoners Legal Service of the Legal Aid Commission of NSW. It is the responsibility of the inmate to organise legal representation; the SORC will not do so.

The proceedings may be recorded but in any event the reasons for the decision will be minuted and distributed to the relevant parties (usually the inmate, the Governor and the legal officer).

For further information regarding the appropriate application to be completed by the inmate and associated procedures for submission to the SORC refer to **COPP section 3.4 Segregation**.

4.5 Registered victims of crime

The SORC is required, by statute, to seek the views of any registered victim of crime prior to making a recommendation to the Commissioner that an inmate (serious offender or public interest), be granted access to external unescorted, pre-release leave programs. This process inevitably results in some delay in the finalisation and forwarding of a recommendation to the Commissioner.

For serious offenders, when the SORC forms an intention to recommend to the Commissioner that the inmate progress to C3 to access unescorted external leave programs, the Secretariat will write to the registered victims via the Victims Register seeking submissions.

For public interest inmates who submit an application for progression to C3 to access unescorted external leave programs, if the Pre-Release Leave Committee (PRLC) forms an intention to recommend to the Commissioner that the inmate progress to C3, the Secretariat will write to any registered victims via the Victims Register seeking submissions.

4.6 Contact detail of the SORC Secretariat

Serious Offenders Review Council

Newington House

Private Bag 144

Silverwater NSW 1811

Attention: Executive Officer & Registrar

Email: SORC@dcj.nsw.gov.au

General Enquiries: [REDACTED] Fax: (02) 9289 5047

5 Quick links

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

6 Definitions

AVL	Audio Visual Link
CCO	Community Corrections Officer
CDT	Compulsory Drug Treatment
COPP	Custodial Operations Policy and Procedures
CSNSW	Corrective Services NSW
ICO	Intensive Correction Orders
MHRT	Mental Health Review Tribunal
MOSP	Manager Offender Services and Programs
NCAT	NSW Civil and Administrative Tribunal
OIC	Officer in Charge
OIMS	Offender Integrated Management System
OSASO	Office of Statewide Administration of Sentences and Orders
OTS	Offender Telephone System
SAPO	Services and Programs Officer
SPA	State Parole Authority
SORC	Serious Offenders Review Council
VC	Video Conferencing

7 Document information

Business Centre: Custodial Operations

Approver: Kevin Corcoran

Date of Effect: 16 December 2017

EDRMS container: 18/7485

Version	Date	Reason for Amendment
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1.0		Initial publication (<i>Replaces section 1 of the superseded Operations Procedures Manual</i>)
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1.1	12/03/20	General formatting update and improvements
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1.2	09/03/22	Updated to digital warrant file as per Commissioner's Memoranda <i>Transition to Digital Inmate Warrant Files 2022/03</i>
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