Sentence Management
Corrective Services NSW

Placement of inmates

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1. Policy Statement and Purpose

Correctional Centre placement is governed by clause 20 of the *Crimes (Administration of Sentences) Regulation 2014*. This clause outlines the mandatory factors the Commissioner (or delegate) must consider when placing an inmate into a specific correctional centre. The Commissioner (or delegate) must ensure all inmates have a correctional centre placement. Placement must consider correctional centre security and the safety of staff and inmates. Placement should support access to necessary treatment, program and/or service needs outlined in an inmate's case plan or service plan. Placement must support inmates to prepare for their legal proceedings including access to legal representatives, legal material, and court attendance. Correctional centre placement should be individualised, using a holistic and person-centred approach. Placement decisions should support rehabilitation and promote safe community reintegration.

All placement decisions must consider the mandatory factors outlined in Clause 20(1) of the Crimes (Administration of Sentences) C(AS) Regulation 2014. Placement decisions should give special consideration to the importance of connection to culture and community for Aboriginal people.

All statutory decisions, including placement, should be made with the objectives of the *Crimes (Administration of Sentences) Act 1999* (CAS Act) (section 2A) in mind. Decision making must be clearly documented.

This policy supersedes any earlier policies and all associated instructions, memos or documents relating to guidance in placement decisions.

2. Related Legislation and other relevant documents

This policy document incorporates the legal obligations of CSNSW relating to placement that are contained in:

- Crimes (Administration of Sentences) Regulation 2014 (CAS Regulations)
- Crimes (Administration of Sentences) Act 1999 (CAS Act)
- Instrument of delegations
- State Records Act 1998 (NSW)
- DCJ record keeping

The key documents for use by staff in the application of this policy are:

- Governors report on unsuitability of placement form (Governor's Placement Report)
- Governor's Placement Report Policy
- Placement Practice Guide
- COPP 19.1 General escort procedures

- COPP 19.2 Movement orders and permits

3. Guiding principles for inmate placement and transfers

Placement decisions are examples of administrative decisions made by public servants in the conduct of their role. They can be challenged or appealed if the person subject to the decision, such as an inmate subject to placement in a correctional centre, considers they have been negatively impacted. To avoid challenges of placement decisions, decision makers must be guided by the following principles:

- The decision is authorised – i.e. made by someone legally authorised to make it
- The decision making process is fair and consistently applied
- The decision is based on only relevant considerations
- The decision is reasonable, unbiased and made in good faith and for a proper purpose

For a placement decision to be authorised/lawful, it must only be made by the Commissioner or staff who have delegation through the position they hold in CSNSW. The CSNSW Instrument of Delegations lists the positions that currently hold this delegated authority. Governors of a correctional centre or anyone reporting to a Governor do not hold this delegation. This means that they cannot make a placement decision nor cancel or revoke a placement decision or associated section 23 orders. Only the Commissioner and those who have delegated authority can cancel/revoke a placement decision.

Correctional centre advice on the suitability of a placement is important. Governors may report if a current or future placement decision is, in their view, not suitable (Clause 21). The Governor submits a Governor's Placement Report to the Commissioner via Sentence Management (see Governor's Placement Report Policy). The Governor Placement Report is the only legal avenue for a Governor to try to change a placement decision.

Placement processes must be fair, transparent, and consistently applied. Placement decisions must not be punitive. Sentence Management staff have authorised delegation to exercise professional judgement and discretion in decision making and are responsible for creating formal records outlining the key mandatory factor(s) that informed the decision and any other relevant considerations. The Commissioner (or delegate) must place every inmate into the most suitable correctional centre where a current vacancy exists, or where one will become available in the immediate future. Once a placement decision is made, the transfer can be executed by a Section 23 order.

Placement decisions should give special consideration to the importance of connection to culture and community for Aboriginal people. There must be formal consultation (i.e., email records) with the Aboriginal Classification and Placement Team (ACPT) prior to

overriding any decision about an Aboriginal Inmate's placement by someone outside of the ACPT.

Temporary placements into a correctional centre do not require a placement decision, or consideration of the clause 20 mandatory factors.

All statutory decisions, including placement, should be made with the objectives of the *Crimes (Administration of Sentences) Act 1999* (CAS Act) (section 2A) in mind. This ensures that people in custody are:

- removed from the general community and placed in a safe, secure and humane environment,
- kept under supervision in a safe, secure and humane manner,
- provided with opportunities for rehabilitation with the goal of supporting successful and safe community reintegration; and
- not endangered, including the staff

Placement and transfer decisions:

- are an exercise of statutory power subject to review by the Supreme Court
- can only be made by the Commissioner or persons with authorised delegation,
- must consider all mandatory factors prescribed in clause 20 of the Crimes (Administration of Sentences) Regulation 2014 and any other relevant factor(s),
- must ensure decisions are made in line with the objectives of the *Crimes (Administration of Sentences) Act 1999* (CAS Act) (section 2A); and
- must be reviewed at least once every 12 months and at other times as determined by the Commissioner.

3.1. Placement

3.1.1 Clause 20(1), CAS Regulation - Mandatory factors requiring consideration in placement decisions

Clause 20 (1) of the Crimes (Administration of Sentences) Regulation 2014 outlines the factors that must be considered in deciding an inmate's placement. This includes:

(a) the inmate's classification,

(a1) if the inmate's classification is Category Life, that such inmates should be confined at all times by a secure physical barrier unless extraordinary circumstances exist, (that is a medium security centre or above)

(b) if available, the sentencing court's comments in relation to the inmate,

(c) any assessment that has been made as to the inmate's physical or mental health,

(d) the provision of health care services to the inmate,

(e) whether or not the inmate is likely to be removed from Australia,

(f) the inmate's criminal history and history of behaviour during any previous period of imprisonment,

(g) the inmate's history of behaviour while subject to supervision otherwise than as an inmate under any conditions of bail or parole or any other conditions imposed by a court order (including an extended supervision order under the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017*),

(h) any assessment that has been made (whether by an employee of Corrective Services NSW or of any other government department or public authority) as to —

(i) the level of risk that the inmate poses to good order and security, and

(ii) the likelihood that the inmate may try to escape from custody, and

(iii) any factors contributing to the inmate's criminal behaviour, and

(iv) the likelihood of the inmate committing further offences, whether of the same or of a different kind,

(i) the need to protect the community,

(j) the proximity of the correctional centre to the inmate's family members,

(k) the availability of resources and appropriate programs and services at the correctional centre in which the inmate is to be held.

3.1.2 Clause 20(2), CAS Regulation - Other factors for consideration in placement decisions

Placement decisions must consider all relevant factors. Sub-clause 20(2) of the CAS Regulation specifies that what the decision maker can consider is not limited to mandated considerations, however, only relevant factors can inform decisions. All decisions must be formally recorded outlining the key mandatory factor(s) that informed the decision and any other relevant considerations.

Refer to the Placement Practice Guide for information on how to make an informed placement decision and associated procedures.

3.1.3 Placement considered not suitable

A Governor may form the view that an inmate is not suitable for current or future placement at a correctional centre. The Governor will submit a Governor's Placement Report outlining the reasons why they believe an inmate is not suitable according to the mandatory factors (see Governor's Placement Report Policy). The Commissioner or delegate must determine the inmate's continued placement in the centre or alternate placement. This must consider the mandatory factors, any other relevant factors and the concerns identified in the Governor's Placement Report.

If the Governor's Placement Report is accompanied by a request to review the person's classification, the Manager/Deputy Manager Classification and Placement (M/DMCP)

must be sent the report via sentencemanagement@correctiveservices.nsw.gov.au, so that classification may be considered .

If the classification rating does not require a review, the Governor's Placement Report is to be forwarded to the Director Sentence Management for a placement review.

Where the classification rating is changed and the inmate is no longer eligible for placement at that centre, the reasons for the change in classification must be outlined in the approval comments. The actions taken by the centre to address the inmate's behaviour and/or why risk mitigation strategies cannot be implemented must be clearly outlined.

For further information refer to Governor's Placement Report Policy.

3.2. Transfer

Section 23 of the CAS Act is the legal mechanism required to transfer an inmates' placement from one correctional centre to another. Any section 23 transfer effects a change of placement and requires the consideration of mandatory factors in clause 20(1).

A transfer may be delayed where there are valid reasons for doing so.

An order to transfer an inmate under section 23 can only be 'cancelled' (revoked) or delayed by the Commissioner or a person who has delegated authority to make placement decisions by the Commissioner. Correctional centre staff do not have authority to make or revoke placement decisions or associated section 23 orders.

4. Triggers for placement review

There are different circumstances which may trigger a review of placement. This may be based on legislative requirements or other relevant factors.

4.1. Legislative Requirement

4.1.1 Clause 20(1)(a), CAS Regulation - Classification category

The Commissioner must have regard to the inmate's classification in deciding placement (Clause 20(1)(a)). An inmate's classification must be determined as soon as practicable after an inmate is first received into a correctional centre. Following the inmate's initial classification, a decision regarding placement should be made that provides the level of static and dynamic security appropriate to their classification category.

Placement reviews must occur at least once every 12 months or at other times as determined by the Commissioner. To meet this requirement, the review of placement

must be decided prior to the 12 month period being reached. This includes inmates who are "serious offenders" as defined in the CAS Act.

4.1.2 Clause 21, CAS Regulation - Placement at centre not suitable

When a Governor forms the view, an inmate is not suitable for a placement at a correctional centre, they must submit a Governor's Placement Report to Sentence Management. The Commissioner (or delegate) must decide if the inmate will continue placement in the centre or decide on an alternate placement (Clause 23).

4.1.3 Clause 32, CAS Regulation - Inmate request

An inmate **may,** at any time, request a review of their placement into a correctional centre, except for their initial placement from court cells or another jurisdiction (if relevant) (clause 32). Any subsequent CSNSW placement decision is reviewable.

The Commissioner (or delegate) **must** review placement if the inmate:

- presents information that was not available or provided at the time of the decision; or
- demonstrates the decision did not follow procedural fairness.

A placement review may be refused if the request is not warranted (e.g., found to be frivolous, or vexatious) or if the placement is reasonable based on available accommodation across the state. The reason for the refusal of placement review must be recorded.

Correctional centre staff must submit any request for review of placement. The decision to conduct a placement review is the responsibility of the Commissioner or delegated authority.

4.2. Other triggers for placement review

Clause 20(3) of the Crimes (Administration of Sentences) Regulation 2014 outlines the other possible triggers for a placement review. This includes, but is not limited to:

4.2.1 Case plan activity, treatment, program or service access

A review of placement may be required to facilitate the inmate's access to a specific activity, treatment, program or service need, where it is not available at their current location. This may include participation in traineeships or education opportunities; criminogenic, reintegration and leave programs; or mental health and health related programs or services.

A placement review may be requested following:

- formal receipt of an offer of acceptance or enrolment into an activity, treatment, program or service, such as notification of acceptance into a mental health unit, traineeship or criminogenic program.
- a referral in OIMS outlining the reasons the inmate needs to be moved to another facility, for example access to specific education, employment, or reintegration

program. Referrals must detail the relevant case plan step and/or the benefits in moving the inmate to the proposed location.

4.2.2 Change in inmate's eligibility for the centre's cohort

A review of placement may be required following a change in circumstances, resulting in the inmate no longer being eligible for placement at the correctional centre. This may include for example, care in placement (e.g. protection/segregation), other individual circumstance changes (e.g. medical conditions) or any other individual or systemic change related to suitabilty of correctional centre cohort.

5. Authority to commence unscheduled placement review

The authority to approve an unscheduled placement review sits with the Commissioner and delegated authorities only. Correctional centre staff cannot authorise an unscheduled review of placement.

New information or a change in circumstance must be brought to the attention of Sentence Management staff who will determine if a placement review is required.

All requests for a review of an inmate's placement must be referred to the relevant M/DMCP via email (cc to sentencemanagement@correctiveservices.nsw.gov.au) for authorisation, prior to an assessment being loaded into OIMS (Referral for review of placement).

Following authorisation the Senior/Classification and Placement Officer (S/CAPO) must load a placement assessment in OIMS and schedule a Classification and Placement Team (CPT) to commence the process.

When in the opinion of the Governor (or their delegate) the inmate is not suitable for placement at the centre, the Governor must submit the Governor's Placement Report to Sentence Management (see section 4 or Governors Placement Report Policy).

6. Placement decisions

Making placement decisions is an exercise of statutory power and may be subject to review by the Supreme Court. The decision must:

- reflect the view of the authorised decision maker after consideration and assessment of all mandatory and other available relevant information and
- be based on evidence and the key facts that arise from the evidence, along with the conclusions drawn from the facts.

Information provided by other staff may be used to inform the decision of the staff member who holds delegated authority for placement decisions.

When making a placement decision only relevant information can be considered and used to inform the decision. A record of the factors and why they were determinative in making the decision must be clearly recorded.

The placement decision cannot simply be giving effect to someone else's decision.

Placement decisions must consider:

- the individual circumstances of the inmate,
- documentation such as reports, medical assessments, video (CCTV or body worn cameras)
- policy and procedure but the application of policy cannot not be entirely inflexible. Where there is appropriate reason to do so a decision maker may depart from the policy. However, it is imperative that the rationale for such departure is documented within the decision outcome.

7. Record Management

CSNSW staff are obligated to adhere to the *State Records Act 1998* (NSW) and all relevant CSNSW and DCJ Policies including the DCJ Records Management Policy. All material used to inform the placement decision must be recorded in the placement assessment in OIMS.

All documentation must be stored in the inmate's case management file in EDRMS. A state record means a record made or received by a person:

1. in the course of exercising official functions in a public office, or
2. for the purpose of a public office, or
3. for the use of a public office.

Records are the information, regardless of format or media, created, received, or maintained by employees in the course of CSNSW business which are evidence of business activities and transactions as well as the associated actions, decisions, outputs, and outcomes. This includes emails sent and received that relate to the making of a placement decision. All emails must be saved into the inmates EDRMS case file by the decision maker as part of the placement package.

All staff responsible for making placement decisions are responsible for keeping a record of business activities conducted as part of their role in accordance with the DCJ Records Management Policy.

Records are evidence of business conducted by an organisation. Any reference to a record in this policy refers to records in any format as defined in the State Records Act 1998.

CSNSW employees are responsible for keeping a record of business activities conducted as part of their role. Examples of business activities include but are not limited to:

- Actions
- Decisions
- Events
- Conversations
- Advice
- contracts and agreements
- client interaction or activities
- directions (operational, financial and other)
- inputs and outputs
- statistics and reporting
- formation of policy and procedure
- maintenance of inventories and registers maps or plans.

CSNSW records (irrespective of format) stored in shared drives, personal drives, email folders, SharePoint sites, workstations and on backup disks or drives e.g. USB drives are not compliant with CSNSW's record keeping obligations. These drives and locations are not compliant because they:

- do not capture sufficient metadata to meet the legal recordkeeping requirements for retention and disposal
- do not allow records to be widely searchable or accessible to all who need them
- are not authenticated and are not secure from alteration or deletion.

The placement decision must clearly outline the actual reasons why the decision was made by reference to the mandatory factors and any other relevant matters considered. Where the decision involved preferring or giving more weight to one factor rather than others, this should be clearly identified and the reason for preferring this factor should also be explained. Where an Inmate Placement Checklist has been utilised, the checklist should be saved in the inmate's EDRMS Case Management File, referencing the date of the assessment in the title and the OIMS assessment must contained the EDRMS reference.

8. Glossary of terms

ACRONYM	DEFINITION
ACPT	Aboriginal Classification and Placement Team
CAS	Crimes (Administration of Sentences)
M/DMCP	Manager/Deputy Manager Classification and Placement
OIMS	Offender Integrated Management System

S/CAPO	Senior/Classification and Placement Officer

9. Document history

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