

Custodial Operations Policy and Procedures

20.12 Designated terrorism evidence

Policy summary

An inmate in CSNSW custody will not be allowed to be in possession of evidence that has been designated as terrorism evidence by a prosecuting authority, as identified in a *Terrorism evidence notice*.

Access to the designated terrorism evidence must only be provided to the inmate under the supervision of their Australian legal practitioner (if represented) or the prosecuting authority (if unrepresented) via:

- in person attendance to the relevant correctional centre, or
- Audio Visual Link (AVL)/Video Conferencing (VC).

Standard procedures for visiting a correctional centre or booking an AVL/VC apply and are outlined in this policy.

Management of Public Correctional Centres Service Specifications

Service specifications	Decency and respect Professionalism and accountability
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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 all CSNSW employees.

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1 Inmate access to the designated terrorism evidence

1.1 Designated terrorism evidence

An inmate will not be allowed to be in possession of evidence that has been designated terrorism evidence by a prosecuting authority, as identified in a *Terrorism evidence notice* (notice).

Terrorism evidence means anything that contains or displays material that:

- advocates support for engaging in any terrorist acts or violent extremism, or
- relates to planning or preparing for, or engaging in, any terrorist act or violent extremism, or
- advocates joining or associating with a terrorism organisation.

A prosecuting authority may designate a thing as terrorism evidence only if they reasonably consider it to be terrorism evidence.

For the purposes of this policy, prosecuting authority is defined under section 281A of the *Criminal Procedure Act 1986 (CP Act)* as the following:

- in relation to criminal proceedings, the Director of Public Prosecutions, a delegate of the Director of Public Prosecutions, a police officer, or any other person acting in a public official capacity, who is responsible for the institution or conduct of a prosecution
- in relation to a criminal investigation, a police officer or any other person acting in a public official capacity who is responsible for the conduct of a criminal investigation.

1.2 Terrorism evidence notice

Under section 281(1)(a),(2) of the *CP Act*, a notice must identify the thing that has been designated terrorism evidence, and include the following information:

- that the prosecuting authority is not required to, and will not, give the inmate a copy of the designated terrorism evidence.

If unrepresented:

- that an unrepresented inmate may view/listen to the designated terrorism evidence at a place nominated (such as at the correctional centre, or via AVL/VC) by the prosecuting authority and under the supervision of the prosecuting authority.

If represented by an Australian legal practitioner:

- that the prosecuting authority will give an Australian legal practitioner who is representing the inmate, a copy of the designated terrorism evidence, and
- that the Australian Legal Practitioner must not allow the inmate to view/listen to the evidence except under their supervision, and
- that it is an offence for an inmate to be in possession of designated terrorism evidence, and for the Australian legal practitioner to give possession of designated terrorism evidence to the inmate.

The prosecuting authority may only issue designated terrorism evidence notice in cases that are currently before the court (including for appeals).

The prosecuting authority may provide a copy of a notice issued to the Governor or Officer in Charge (OIC) of the correctional centre.

1.3 Service of a terrorism evidence notice

Under section 281(1) of the *CP Act*, the prosecuting authority must serve the notice on either the:

- inmate (if unrepresented), or
- inmate's Australian legal practitioner (if represented).

CSNSW staff must support the judicial process, and provide assistance to members of the judicial system, legal profession, and the police in the administration of the legal process.

It is the responsibility of the person serving a notice on an inmate to ensure that service is carried out in line with the applicable rules of service. There will be times when the assistance of CSNSW staff will be required.

A notice will be considered as served on an inmate, even if they refuse for the notice to be served on them, if it is placed in front of them and the nature of the notice explained to them.

If the inmate is not immediately available, the Governor may accept the document(s) from the authorised person, and ensure that the document(s) are served on the inmate as soon as practicable. All action taken must be recorded in a case note in the Offender Integrated Management System (OIMS).

Each time a notice is served on an inmate by CSNSW staff, a case note must be entered into the OIMS, noting:

- the date and time the notice was served on the inmate, and
- the name and position of the individual who served it on the inmate.

If there is any doubt as to whether or not to accept any document(s) for service, the person attempting service is to be asked to wait while advice is sought from a senior officer or the Department of Communities & Justice Legal (DCJ Legal). The DCJ Legal can be contacted on (02) 8346 1388.

2 Return of designated terrorism evidence

2.1 Serving notice of requirement to return evidence later designated terrorism evidence

Under section 281J of the *CP Act*, a prosecuting authority may serve a notice identifying evidence that has been provided to an inmate, in or in connection with a criminal investigation/proceeding, which it later designates as terrorism evidence. This does not apply in cases where a matter has been finalised.

A notice served for this reason must also contain the following information:

- that the inmate must return the designated terrorism evidence, if it is in their possession, to the prosecuting authority within the period of time specified in the notice (not less than 7 days after the notice is served on the inmate), and:

If unrepresented:

- that an unrepresented inmate may, after having returned the designated terrorism evidence, view/listen to the evidence at a place nominated by, and under the supervision of the prosecuting authority, and
- the name and contact details of the person responsible for arranging for the unrepresented inmate to view/listen to the designated terrorism evidence on behalf of the prosecuting authority. CSNSW will not be responsible for arranging access to be provided.

If represented by an Australian legal practitioner:

- that the Australian legal practitioner representing the inmate may retain the designated terrorism evidence but must not allow the inmate to view/listen to the designated terrorism evidence except under their supervision, and
- that it is an offence for the inmate to be in possession of designated terrorism evidence and for an Australian legal practitioner to give possession of designated terrorism evidence to the inmate.

2.2 Arranging for collection of materials

An inmate may be required to return designated terrorism evidence within the time-frame specified in the notice:

- in person while attending court to the prosecuting authority or their Australian legal practitioner;
- by providing it to the prosecuting authority or to their Australian legal practitioner where they attend the correctional centre to collect the materials.

In the case that the designated terrorism evidence is returned to the Australian legal practitioner rather than to the prosecuting authority, the Australian legal practitioner will be responsible for returning the designated terrorism evidence to the prosecuting authority.

CSNSW staff are not responsible for collecting or handling the designated terrorism evidence.

The Governor or OIC of the correctional centre should receive written notification of a request to attend the correctional centre from the inmate’s legal representative or the prosecuting authority, preferably 48 hours prior to.

2.3 Procedures for return/collection facilitated in a correctional centre

	Procedure	Responsibility
1.	Serve the notice on the inmate/Australian legal practitioner in line with service requirements.	Prosecuting authority
2.	Facilitate attendance of the prosecuting authority or the inmate’s Australian legal representative for the purposes of complying with a notice and the return of designated terrorism evidence.	Governor/OIC/ Authorised officer
3.	Enter a case note into OIMS where the prosecuting authority or the inmate’s Australian legal practitioner attend the correctional centre to collect the materials, including: <ul style="list-style-type: none"> when they provided a request to the Governor or OIC to arrange for collection the date and time of attendance the name and position of the person who has attended the centre for collection of the materials. <p>Note: the identity of the individual(s) attending the centre and their position must be confirmed.</p>	Governor/OIC/ Authorised officer

3 Requests for access to the designated terrorism evidence

3.1 Unrepresented inmate

An unrepresented inmate may give the prosecuting authority a written notice (referred to as an *Access request notice*) that indicates that they require access to the designated terrorism evidence.

Following receipt of an *Access request notice*, the prosecuting authority must give the inmate reasonable access to the designated terrorism evidence to enable them to view/listen (but not copy) the evidence. This may require access to be given on more than one occasion.

The prosecuting authority may require any such access to take place subject to such conditions as they consider appropriate to ensure that there is no unauthorised reproduction or circulation of the designated terrorism evidence and that its integrity is

protected. The prosecuting authority may require any such access to take place under their supervision.

A person who is given access to designated terrorism evidence by a prosecuting authority must not:

- copy, or permit a person to copy, the designated evidence
- give the designated terrorism evidence to another person
- remove the designated terrorism evidence from the custody of the prosecuting authority
- publish the designated terrorism evidence.

3.2 Represented inmate

Once the prosecuting authority has served a notice on the Australian legal practitioner who is representing the inmate, the prosecuting authority will:

- give the Australian legal practitioner a copy of the designated terrorism evidence, or
- allow them to retain a copy of the evidence if it is already in their possession.

It is the responsibility of the inmate's Australian legal practitioner to supervise any access to the inmate to the designated terrorism evidence.

In relation to approvals and conditions for visits with a legal practitioner, all requirements outlined in **COPP sections 3.5 HS, EHS, EHRR, NSI, AA and Cat 5 and 10.4 Visits from legal practitioners and their employees or agents** must be adhered to and apply in conjunction with this policy.

3.3 Approval to provide access to the designated terrorism evidence to the inmate

The prosecuting authority (if the inmate is unrepresented) or the inmate's Australian legal practitioner (if represented) are to provide a written request to the Governor/OIC of the correctional centre, preferably 48 hours prior to, advising of their intention to provide access to the designated terrorism evidence to the inmate.

The written request is to include the following information:

- confirmation of their name and position in the prosecuting authority, or confirmation that they are the inmate's legal representative, and
- the date and time that they are requesting to provide access to the designated terrorism evidence, under their supervision, and
- the method that they are requesting to provide access to the designated terrorism evidence to the inmate (such as by notice that they are requesting to bring the designated terrorism evidence into the correctional centre, or will be showing it via AVL/VC).

A copy of the notice which identifies the designated terrorism evidence that will be shown to the inmate can be attached to the written notification and provided to the Governor/OIC of the correctional centre.

3.4 Procedures for seeking approval to provide access to the designated terrorism evidence

	Procedure	Responsibility
1.	Provide the written request to the Governor of the correctional centre, preferably 48 hours prior to, and include all required information.	Prosecuting authority/ Inmate's Australian legal representative
2.	Decide if the request is approved, or outline reasons for why it cannot be facilitated.	Governor/OIC

4 Providing access via AVL/VC (JUST Connect)

4.1 Policy

The inmate may be provided with supervised access to the designated terrorism evidence under the supervision of their Australian legal practitioner (if represented) or the prosecuting authority (if unrepresented) via AVL/VC.

Any attendance via AVL/VC must be booked via the Department of Communities & Justice (DCJ) scheduling system, JUST Connect. Appointments scheduled in JUST Connect for inmates who have the classification of NSI, ETI, EHS, or EHRR must be checked by correctional officers prior to the appointment being facilitated.

Correctional officers must check the visitor's status in OIMS to ensure that contact is allowed between the inmate and the appointment attendees.

Visitors for EHS and ETI inmates must be approved by the Governor of the correctional centre. All visitors for NSI and EHRR inmates must be approved by the Commissioner.

Approved appointments scheduled in JUST Connect will proceed unless correctional centre operations require a booking to be cancelled. Correctional officers within the AVL unit must ensure that the inmate is placed in the professional suite which corresponds to the AVL/VC studio indicated in the JUST Connect booking by the starting time of the scheduled appointment.

If the attendee does not dial into the AVL/VC studio during the course of the appointment (and they have not cancelled or notified the AVL unit that they will not attend), the inmate can be returned to their housing location at the conclusion of the appointment time. The booking in JUST Connect must be marked as 'did not occur'.

AVL staff should end a session at the conclusion of the appointed time to ensure the next appointment runs to schedule, however they may use their discretion to allow appointments to go longer than scheduled if doing so would not interfere with the next appointment.

Authorised users who have access to make bookings in JUST Connect have been verified by the Visitor Restrictions Unit (VRU) and the Corrections Intelligence Group (CIG). All users are required to agree to terms and conditions to ensure appropriate use of JUST Connect and AVL/VC facilities.

An authorised user of JUST Connect may make bookings for guest attendees, however they must be approved to visit the inmate, have an assigned Visitor Index Number (VIN), and had the relevant checks by CIG conducted. The Commissioner will decide if a visitor is approved for Inmates classified as NSI or EHRR, prior to a VIN being assigned.

Further information regarding how to use and manage appointments via JUST Connect can be accessed on the [JUST Connect](#) intranet page.

This policy section applies in conjunction with **COPP sections 3.5 HS, EHS, EHRR, NSI, AA and CAT 5 and 20.4 AVL for legal and court matters.**

4.2 Procedures

	Procedure	Responsibility
1.	Provide a written request to the Governor/OIC of the correctional centre preferably 48 hours prior to, and include all required information (refer to subsections 3.3 Approval to provide access to the designated terrorism evidence to the inmate and 3.4 Procedures for seeking approval to provide access to the designated terrorism evidence of this policy).	Prosecuting authority/ Inmate's Australian legal practitioner
2.	Create a booking via JUST Connect for the approved day and time. Note: approval as an authorised user must be provided, a VIN assigned (subject to the Commissioner's approval for NSI and EHRR inmates), and all relevant checks by CIG conducted.	Prosecuting authority/ Inmate's Australian legal practitioner
3.	Facilitate the prosecuting authority or the inmate's Australian legal practitioner supervising and providing access to the inmate via AVL/VC, if approved. Note: Governors/OICs must ensure that appropriate Local Operating Procedures (LOPs) are in place to manage all movements within the correctional centre and attendance via AVL/VC are in place.	CSNSW staff
4.	Ensure that an OIMS case note is entered to record all attendance via AVL/VC.	AVL staff

5 Providing access in-person

5.1 Policy

The prosecuting authority or the inmate's Australian legal practitioner may provide supervised access to the designated terrorism evidence in person by attending the correctional centre where the inmate is located (**refer to COPP section 10.5 Visits from legal practitioners and their employees or agents**). If a request for attendance in person is approved, the requestor must specify:

- that designated terrorism evidence will be shown to the inmate, and
- in what form the designated terrorism evidence will be brought into the centre.

If a request is made for the inmate to be moved to facilitate access (refer to subsection **5.3 Escorts** of this policy).

5.2 Devices & materials for Australian legal practitioners

Australian legal practitioners may apply in writing to the Governor of the correctional centre for approval to bring pagers, laptops, voice recording devices and removable storage devices (all referred to as a 'device') into a correctional centre on the condition that:

- they declare possession of the device(s) and produce them for inspection on entering and leaving the premises to the OIC of the gate and legal visiting area
- they retain personal possession of the device(s) at all times while on the premises
- they ensure that the accused person only views information contained on the device(s) under their supervision, but must not have physical access to, or to copy, edit/modify any content the device(s), or to the internet.

If approval is provided by the Governor, all device(s) will be subject to searching procedures (**refer to COPP section 17.3 Stop, detain, search of visitors and staff**).

All legal material brought into the centre by an Australian legal practitioner must be inspected and examined, and removed by the Australian legal practitioner at the end of the visit. Any material left behind after the meeting will be considered and treated as correspondence as per clause 115 of the *Crimes (Administration of Sentences) Regulation 2014*.

These procedures do not apply to law clerks or other legal professional visitors. They must comply with normal visitor restrictions for visits to inmates (**refer to COPP section 10.1 Visits to inmates**).

5.3 Escorts

Only under exceptional circumstances will CSNSW consider transporting the inmate to another location and the cost of the escort will be borne by the requestor.

All EHS or EHRR escorts must be conducted by appropriately trained staff from the Extreme High Security Escort Unit (EHSEU), Security Operations Group (SOG) staff (including regional SOG) or Immediate Action Teams (IAT). Standard operating procedures for EHS & EHRR escorts must be adhered to at all times.

Policy and procedures in **COPP section 3.5 HS, EHS, EHRR, NSI, AA and CAT 5 and 19.2 Movement orders** apply.

6 Possession & improper copying/circulation

6.1 Policy

A person who has possession of designated terrorism evidence and who knows, or should reasonably know that it is designated terrorism evidence must not:

- copy, or permit a person to copy the evidence
- give possession of the evidence to another person
- publish the evidence.

An accused person in CSNSW custody who knows, or should reasonably know that evidence is designated terrorism evidence, must not be in possession of that evidence, except:

- while under the supervision of the prosecuting authority or a person assisting the prosecuting authority (if unrepresented), or
- their Australian Legal Practitioner (if represented).

This does not apply to designated terrorism evidence that is in the possession of an accused person in CSNSW custody if:

- a terrorism evidence notice has been served on them, requiring them to return the designated terrorism evidence to the prosecuting authority, and
- the period for return (as specified in the notice) of the designated terrorism evidence has not ended.

If CSNSW staff are unsure regarding inmate possession of materials that may be prohibited goods as defined under clause 3 of the *Crimes (Administration of Sentences) Regulation 2014*, they must contact the DCJ Legal for advice.

7 Quick links

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

8 Definitions

AC, S&I	Assistant Commissioner, Security & Intelligence
AC, CC	Assistant Commissioner, Custodial Corrections
AFP	Australian Federal Police
Authorised officer	The officer authorised by the Governor to perform the functions prescribed as part of the Custodial Operations Policy and Procedures.
AVL	Audio Visual Link
Case note	A note made in 'Case Notes' in the Offender Integrated Management System recording a true, accurate and comprehensive account of all interviews and significant contacts with inmates
CDPP	Commonwealth Department of Public Prosecutions
CESU	Court Escort Security Unit
CIG	Corrections Intelligence Group
Computers	Includes desktop, tablets, integrated television and laptop computers
COPP	Custodial Operations Policy and Procedures
CSNSW	Corrective Services NSW
Designated terrorism evidence	Means anything that is designated as terrorism evidence by a prosecuting authority, as identified in a terrorism evidence notice
DCJ Legal	NSW Department of Communities & Justice Legal (formerly known as Office of the General Counsel (OGC))
Extreme High Security (EHS)	An inmate who constitutes: <ul style="list-style-type: none">• An extreme danger to other people; or• An extreme threat to good order and security.

Extreme High Risk Restricted (EHRR)	Means an inmate who constitutes: <ul style="list-style-type: none"> • An extreme danger to other people; or • An extreme threat to good order and security; and • There is a risk that the inmate may engage in, or incite other persons to engage in, activities that constitute a serious threat to the peace, order or good government of the State or any other place.
EHSEU	Extreme High Security Escort Unit
FM	Functional Manager
High Security (HS)	An inmate who constitutes; <ul style="list-style-type: none"> • A danger to other people; or • A threat to good order and security.
HRMCC	High Risk Management Correctional Centre
IAT	Immediate Action Team
JUST Connect	JUST Connect is the scheduling system used by the Department of Communities & Justice and external approved stakeholders to book legal and professional appointments with inmates by telephone, video conferencing or in person (dependent upon correctional centre facilities).
National Security Interest (NSI)	National Security Interest inmate as determined by the Commissioner if of the opinion of the Commissioner, there is a risk that the inmate may engage in, or incite, other persons to engage in, activities that constitute a serious threat to the peace, order or good government of the State or any other place.
NSWPF	NSW Police Force
ODPP	Office of the Department of Public Prosecutions
OIC	Officer in Charge
OIMS	Offender Integrated Management System
Publish	Means to disseminate or provide access to one or more persons by means of the internet, radio, television or other media
Prosecuting authority	Under section 281A of the <i>Criminal Procedure Act 1986</i> , prosecuting authority means: <ul style="list-style-type: none"> (a) in relation to <u>criminal proceedings</u>, the Director of Public Prosecutions, a delegate of the Director of Public Prosecutions, a police officer, or any other person acting in a public official capacity, who is responsible for the institution or conduct of a prosecution, and (b) in relation to a <u>criminal investigation</u>, a police officer or any other person acting in a public official capacity who is responsible for the conduct of a criminal investigation.

Prohibited goods	<p>Under Clause 3 of the <i>Crimes (Administration of Sentences) Regulation 2014</i>, prohibited goods means:</p> <ul style="list-style-type: none"> • money, or • anything that, in the opinion of a nominated officer, is likely to prejudice the good order and security of a correctional centre, or • any threatening, offensive, indecent, obscene or abusive written or pictorial matter, or • any offensive, indecent or obscene article, or • anything that could constitute a risk to national security (for example, because of a perceived risk that it may be used in connection with terrorist activities), or • anything that, in the opinion of a nominated officer, is intended to facilitate, incite or be used in connection with any unlawful activity.
Removable Storage Devices	<p>A device that can be plugged into a personal computer or laptop and then used for the purpose of storing electronic data. This device can then be removed and plugged into another computer that has the capacity to read the stored information.</p> <p>In the context of this policy means:</p> <ul style="list-style-type: none"> • DVD • USB Thumb Drive or Flash Drive • Portable hard drive
Service	<p>Service of a document is the process of giving a court or legal document to another in a way which complies with the relevant legal rules.</p>
SOG	<p>Security Operations Group</p>
Terrorism evidence	<p>Means anything that contains or displays material that:</p> <ol style="list-style-type: none"> (a) Advocates support for engaging in any terrorist acts or violent extremism, or (b) Relates to planning or preparing for, or engaging in, any terrorist acts or violent extremism, or (c) Advocates joining or associating with a terrorist organisation.
VC	<p>Video Conferencing</p>
VIN	<p>Visitor Index Number</p>
VRU	<p>Visitor Restrictions Unit</p>

9 Document information

Business centre:	Custodial Operations	
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