

**Review of the Standard  
Guidelines for Corrections in  
Australia**

Legal Aid NSW submission to the  
CSAC Working Group

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**Legal Aid**   
NEW SOUTH WALES

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## About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are socially and economically disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 32 community legal centres and 29 Women's Domestic Violence Court Advocacy Services.

The Legal Aid NSW Prisoners Legal Service (**PLS**) provides representation in hearings at the State Parole Authority, prison discipline offences before a Visiting Magistrate, and reviews of segregation directions. The PLS also provides general legal advice and minor

assistance to prisoners by way of a visiting advice service to most gaols, and responding to letters and telephone calls from or on behalf of prisoners.

The Legal Aid NSW Human Rights Group provides legal services that protect and promote human rights, with a focus on police powers, torts, and discrimination. This includes legal services to prisoners with human rights complaints.

Legal Aid NSW welcomes the opportunity to make a submission to the Corrective Services Administrators Conference Review Working Group review of the *Standard Guidelines for Corrections in Australia*. Should you require any further information, please contact:

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## Introduction

Legal Aid NSW thanks the Corrective Services Administrators Conference Working Group for the opportunity to contribute to the review of the Standard Guidelines for Corrections in Australia (**the Guidelines**). We consider most of the principles and goals of the current Guidelines to be appropriate. However we have set out below some suggestions for additions to the Guidelines for Custodial Corrections. Most of the proposed changes address issues that Legal Aid NSW practitioners have observed in practice in NSW custodial correctional facilities. Where client case studies have been used, we have changed their names to protect their privacy.

In the second part of this submission, we raise some concerns about the implementation of the Guidelines by Corrective Services NSW. While we accept that the Guidelines are not intended to be a set of absolute standards or laws to be enforced, we consider that implementation in practice is necessary in order for the Guidelines to be meaningful. To this end, we would be grateful for information on what monitoring or other accountability mechanisms are in place to ensure State and Territory policy and practice is generally consistent with the Guidelines.

## Suggested changes to the Guidelines

### Contact with legal representatives

Clause 1.17 of the Guidelines provides that “all prisoners who have legal matters pending” should be able to meet and have telephone conversations with their lawyers. In our view, all prisoners should be able to access legal representatives, even if they do not currently have a legal matter pending. Access to a lawyer may, for instance, be necessary in order for a prisoner to receive advice on whether to initiate legal proceedings. We therefore recommend that the term “who have legal matters pending” be deleted from clause 1.17. This clause may also be more appropriately placed under another section of the Guidelines, given that it is not only relevant to prisoners on remand.

We also recommend that clause 1.17 be amended to provide that such meetings and telephone conversations be “in private”. In NSW, inmates have to call their lawyer in timed, 10 minute calls, with other inmates and guards around them listening in. The calls are, at least in part, recorded. This is not consistent with the confidential and privileged nature of lawyer-client communications, or the United Nations Standard Minimum Rules for the Treatment of Prisoners.<sup>1</sup>

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<sup>1</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), A/RES/70/175, rule 61(1).

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## Access to non-English materials

Clause 1.42 of the Guidelines states that prisoners should be “appropriately managed according to their individual needs in regard to: health, any disability; cultural or linguistic issues”. However, as the case study below indicates, in practice there can be ambiguity over whether an inmate is allowed to have access to material in a language other than English, even where there are no security concerns.

### *Case Study*

Legal Aid NSW recently assisted a prisoner who is a Farsi speaker. He received a book in Farsi as a gift. As Corrective Services NSW were concerned about the content of the book, Legal Aid NSW had the introductory pages translated. This translation indicated that the book was essentially a self-help book. We submitted the translation and requested that the book be made available to the client. In response, Corrective Services NSW said that in their assessment, the inmate spoke adequate English and could not have access to material in his own language.

To address this issue, Legal Aid NSW suggests that a statement along the following lines be added to clause 1.42: “This includes the right to access material or publications in the prisoner’s own language, consistent with security requirements”.

## Transgender prisoners

Clause 1.44 of the Guidelines refers to the segregation of males and females. There is no reference to transgender and intersex prisoners. The placement of transgender and intersex prisoners is an issue that is dealt with inconsistently across State and Territory correctional facilities, and would benefit from guidance.

## The use of restraints on pregnant inmates

Clause 1.68 states that any instruments of restraint “are to be used in a timely, appropriate and legal manner for the minimum time necessary”. It goes on to state that restraints should be “removed during medical tests and procedures, provided this meets security and management requirements”. Clause 2.46 also provides that “arrangements are to be made for prisoners to give birth in a hospital outside the prison”. However, there is no guidance as to the use of restraints on women during labour or during neonatal hospital visits. There is also no reference to the placement of guards in hospital rooms when an inmate is giving birth.

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### Case study

Legal Aid NSW assisted a woman, Elisha, who was three months pregnant when sentenced. Elisha gave birth while in custody. She was handcuffed to a correctional officer when taken for her neonatal appointments at hospital and during an ultrasound. When Elisha went into labour she was transported to the hospital. She was forced to give birth in front of two correctional officers and in the absence of family members. Elisha was then ankle-cuffed to the bed immediately after giving birth and forced to breastfeed her newborn in front of two male correctional officers. The cuffs were eventually removed after intervention by medical staff.

To provide certainty and clarity around these issues, Legal Aid NSW recommends that the Guidelines be amended to provide:

- Pregnant inmates should never be restrained during labour.
- Female inmates should not be restrained during transport to neonatal appointments and hospital or immediately following childbirth unless they pose a serious risk to themselves or others, or a substantial flight risk, and this risk cannot be managed by any other means.
- All guards escorting pregnant inmates to hospital or to medical appointments should be female.
- Guards should not be present when a female inmate is in labour. They should be posted outside the door.

These principles reflect international best practice and widespread understanding around the appropriate treatment of female inmates who are pregnant, including amongst the medical community.<sup>2</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners also provide that instruments of restraint “shall never be used on women during labour, during childbirth and immediately after childbirth”.<sup>3</sup>

### Training for correctional officers

Legal Aid NSW recommends that the Guidelines stipulate that officers who work in prison units dedicated to inmates with mental illness should receive appropriate training. The requirement for training could be set out in the section headed “Health Services” (2.31-2.47), or in the section, “Special or Complex Needs of Offenders” (2.64-2.65).

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<sup>2</sup> See, for example, the National Commission on Correctional Health Care, *Position Statement: Restraint of Pregnant Inmates*, available at <http://www.ncchc.org/restraint-of-pregnant-inmates>; National Task Force on the Use of Restraints with Pregnant Women under Correctional Custody, *Best Practices in the Use of Restraints with Pregnant Women under Correctional Custody*. U.S. Department of Health and Human Services, 2012. These principles are consistent with recommendations of the South Australian Ombudsman in the *Report on the investigation into the Department for Correctional Services in relation to the restraining and shackling of prisoners in hospitals* (2012), p2.

<sup>3</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, rule 48(2).

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Alternatively, or in addition, clause 5.6 should be amended to specify that training for the corrections workforce should include training in supervising prisoners with mental illness and cognitive disabilities. This would again be consistent the United Nations Standard Minimum Rules for the Treatment of Prisoners.<sup>4</sup>

#### *Case study*

Legal Aid NSW had a client, Greg, in the mental health unit of a NSW correctional facility. Greg had severe self-harm issues. His release to parole was delayed in order to find accommodation. He was almost held until his full sentence because of his self-harm issues, which worsened the longer he was denied parole. When the Legal Aid NSW Prisoners Legal Service visited Greg to get instructions, he was brought in overalls done up at the back, hands cuffed behind his back and legs shackled. The correctional officers in the unit were not given special training to manage severely mentally ill inmates, and did not understand Greg had a clinical condition. For example, one officer stated, “He would get parole if he just stopped self-harming – he can choose to do this”.

### Completion of offence targeted programs

Legal Aid NSW submits that clause 3.6 of the Guidelines should be expanded to provide that prisoners should be able to access and complete offence-targeted programs necessary for their release, before their earliest release date. Many clients of the Prisoners Legal Service are refused parole because they have not been able to undertake programs such as CUBIT (a specialist sex offender program). Although we acknowledge that resources are often an issue, this is an appropriate goal for correctional services to aspire to.

### Medication on release

Clause 3.18 should be amended to provide that prisoners should be provided with medication and/or prescriptions to enable them to manage ongoing physical or mental health issues in the period immediately following their release. Often, our clients on mental health medication report being released from custody without a prescription, and then experience difficulty finding a doctor in the community to prescribe them medication. This leads to these offenders not taking their medication and their mental health deteriorating.

### Prisoners’ attendance at civil proceedings

We recommend that the Guidelines state that inmates should be able to attend civil proceedings via telephone or AVL. At present, arrangements are made for NSW inmates to attend court for their criminal matter. However, the same arrangements are not in place for inmates to attend the NSW Civil and Administrative Tribunal, the Housing Appeals Committee or court for civil proceedings.

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<sup>4</sup> Ibid, rule 76.

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## Searching of a child

Clause 3.34 should provide that the searching of a child should be carried out by a person of the same gender as the child.

## Staff members to provide name

The Guidelines should require corrections staff to provide their name and/or position when asked by inmate or a legal representative, to promote accountability. This requirement could be contained in the section of the guidelines dealing with systems management, or the section dealing with complaints and grievance resolution processes.

## Inspection

Clause 5.24 should require that regular inspections of prisons and prison services be performed by independent persons. It is appropriate that inspections are carried out by an objective, impartial person, at arms-length from the administering corrections department or agency.

## Compliance with the Guidelines

Legal Aid NSW understands that the purpose of this review is to determine what changes should be made to the Guidelines, rather than to examine compliance with the Guidelines by State and Territory correctional services. However, in reviewing the Guidelines, our lawyers reported many instances of non-compliance with the Guidelines by Corrective Services NSW. We note some of these below.

## Unconvicted (remand) prisoners

Legal Aid NSW lawyers have reported departure from the following principles:

- CI 1.11: Remand inmates are commonly housed with convicted inmates in NSW.
- CI 1.12: Remand prisoners in NSW are not permitted to wear their own suitable clothing.
- CI 1.17: Pre-booked and confirmed AVLs and telephone conferences between the Prisoners Legal Service and prisoners are often cancelled. This can be for a variety of reasons including centre lock down or staff shortages. Notice is not provided until the time of the scheduled call, which often results in a lengthy delay in speaking with the inmate.

## Effective complaint and grievance resolution processes

Inmates often inform our lawyers that they are not told about the procedures for making complaints. It is also common to hear that inmates are told by corrections staff not to make a complaint or their time in gaol will be significantly worse. External complaints cannot be made confidentially, contrary to clause 1.24.

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## Prisoners at risk of harm

Clause 2.22 of the Guidelines provide that prisoners at risk of self-harm should be placed under a management regime appropriate to their individual needs that is designed to ensure their well-being. In NSW, prisoners at risk of self-harm or suicide are usually held in dry cells. Before being placed in a dry cell, the inmate is stripped to underpants only. The cell is completely bare apart from a toilet and one blanket that cannot be torn up. The concrete slab sometimes does not have a mattress. The cell is under 24 hour camera surveillance, and the lights are on all day and night. Sometimes the cell is exposed to a yard where other inmates can see in through a perspex door. As noted above, correctional officers are not given special training to manage severely mentally ill inmates under suicide watch.

## Access to psychological and health services

Legal Aid NSW has concerns around inmate access to psychological care in NSW, as required by clauses 2.24-2.25, and the “Health Services” section of the Guidelines. As there are insufficient psychological staff in NSW prisons, psychologists focus on acute need cases. Inmates who have low-grade, complex issues and or issues such as post-traumatic stress or grief, which may have contributed to their offending behaviour or lead to problematic behaviour in prison, are not identified as needing psychological help. Even where such inmates are identified as needing psychological care, they often go untreated because of the lack of psychologists on staff.

Inmates with mental health and/or psychological issues are also unable access one on one counselling. They must undertake group therapy, again due to the lack of psychologists on staff.

Legal Aid NSW also has concerns around the extent to which inmates can access other health services in NSW prisons. Our casework indicates that the standard of health provided to inmates is not comparable to that of the general community, contrary to clause 2.31. Inmates report waiting lengthy periods of time before getting treatment, which often results in complications, hospitalisation and/or permanent damage. Frequent inmate transfers can also mean that medical treatment falls through. We have also had clients who have been unable to access specialists, or who have experienced significant delays accessing specialist medical care, contrary to clause 2.32.

## Rehabilitation

Legal Aid NSW also reports non-compliance with the following provisions of the Guidelines in NSW:

- 3.15 and 3.16: Many inmates in NSW are not provided with access to programmes and services that will assist them to make a successful transition from custody to community life. Frequently, housing issues are not addressed before release.
- 3.18: There is also a lack of after care services for former prisoners, and our lawyers have experienced a lack of engagement by prison staff when trying to facilitate services to assist inmates post-release.

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In light of the above issues, we would be interested to know what action, if any, is taken to monitor and/or report on consistency with the Guidelines in each State and Territory. We are concerned that without proper accountability mechanisms, the full potential of the Guidelines is not being realised.

Thank you again for the opportunity to contribute to this review.