

Custodial Operations Policy and Procedures

8.9 Inmates conducting a business

Policy summary

Generally, and subject to the conditions set out below, an inmate can reasonably expect to have approval to conduct, control or manage their business affairs while they are imprisoned unless it would be contrary to the *Corporations Act 2001 (Commonwealth)* or any other law.

Management of Public Correctional Centres Service Specifications

Outcome	Safety and Security
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Scope

This policy applies to all correctional centres, court cell complexes and all other places of detention.

Related Documents

Crimes (Administration of Sentences) Act 1999

Crimes (Administration of Sentences) Regulation 2014

Management of Public Correctional Centre Outcome Specifications

Corporations Act 2001 (Commonwealth)

Business Names Act 2002

Related Custodial Operations Policy and Procedures

4.2 Receiving property after admission

4.3 Issuing property to inmates

7.2 Inmate Financials

8.1 Mail

8.2 Telephones

9.1 Applications and request forms

Definitions

COPP	Custodial Operations Policy and Procedures
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1 Policy

Corrective Services New South Wales (CSNSW) acknowledges that from time to time people who conduct, control or manage a business are imprisoned may have employees whose income and livelihood is dependent on the continuation of that business.

While an inmate has no explicit legal right to conduct, control or manage a business while in custody, there is also no legal or other limitation or prohibition on them doing so, apart from any prohibition or limitation imposed by a court and a general prohibition on inmates profiting from their crimes.

An inmate may be allowed to conduct, control, or manage a business while they are in custody provided it can be established:

- the business is lawful
- there is no conflict of interest with CSNSW operations
- the nature of the business will not cause embarrassment to CSNSW
- the inmate can conduct their business affairs within the privileges granted to them (including making telephone calls, receiving visitors, and the right of access to legal advisors). No additional privileges will be granted to the inmate for the purpose of conducting a business.

2 Procedures

2.1 Application by the inmate

An inmate must apply to the Governor for permission to conduct, control, or manage a business while they are in custody. For the application to be considered, it must be in writing and include the following details:

- the nature of the business they are seeking to conduct, control or manage.
- business name and address
- Australian Business Number (ABN)
- ASIC Business Name Registration number and expiry date
- Office holder(s) / Interested parties names, date of birth and addresses

The inmate must attach the above current evidence to their application as well as the nature of goods or services provided by the business.

Note: Pursuant to *the Business Names Act 2002*, the registration of the business name that records the name of a person convicted of certain offences may be amended or cancelled. The applicant should provide the Governor with a recent copy of the business registration to ensure that if prohibited by the legislation, the inmate's name has been removed from the registered business name. In certain circumstances, unless and until a suitable person is recorded as the person in whose name the business is registered, the business name cannot be registered and without registration the business cannot operate.

- the inmate must identify all persons who have a financial interest in the management of the business
- the inmate must acknowledge that if permission is granted for the inmate to conduct, control or manage a business from a correctional centre, CSNSW is not entering into any business relationship with the inmate. The inmate must also acknowledge in writing that CSNSW will not provide any additional services or equipment to the inmate including stationery, the use of facsimile, telephone or computer services.
- The inmate must acknowledge that permission may be withdrawn without notice at any time.

2.2 Review of the application

When a Governor receives an application from an inmate to conduct, control, or manage a business, the Governor must:

- examine the inmate's warrant and case management files for any evidence of any prohibition imposed by a court on the inmate conducting, controlling or managing a business
- confirm the business registration with the NSW Fair Trading

The Governor will not approve the application if:

- the inmate is prohibited by a court, the *Corporations Act 2001 (Commonwealth)* or any other law from managing, owning or controlling a business
- the business is or may be a threat to the security, good order and discipline of the correctional centre

- there is a conflict of interest between the inmate's business and CSNSW operations. For example, if the inmate's business was in the security industry; or if the business supplied goods or services to CSNSW or to an agent of CSNSW
- the nature of the inmate's business was likely to embarrass CSNSW or damage CSNSW reputation. For example, if the inmate's business was involved in the adult entertainment or sex industry
- the application requires the inmate to have any property other than the property that the inmate is entitled to have under the *Crimes (Administration of Sentences) Act 1999*, the *Crimes (Administration of Sentences) Regulation 2014*, or the COPP section 4 *Inmate Property*

2.3 Minimum conditions for approved applications

If a Governor approves an application by an inmate to conduct, control or manage a business while imprisoned, the following conditions apply:

- a copy of the approval and all accompanying documents used to assess the application must be kept on the inmate's case management file
- the inmate is not entitled to any additional privileges or property other than that which is granted to the inmate by the *Crimes (Administration of Sentences) Act 1999*, the *Crimes (Administration of Sentences) Regulation 2014*, or the COPP section 4 *Inmate Property*
- such privileges may be withdrawn for a proven misconduct irrespective of any adverse effect upon the inmate's business
- the inmate must not employ or seek to employ any employee officer of CSNSW
- the inmate must not employ or seek to employ another inmate or a person subject to supervision by CSNSW
- the Governor may impose any other conditions they believe are necessary for the maintenance of security, good order and discipline of the correctional centre
- the Governor may withdraw permission at any time if any of the above criteria cease to be met.

3 Document history

Version	Date	Reason for Amendment
1.0		Initial publication (<i>Replaces section 8.36 of the superseded Operations Procedures Manual</i>)