

Recommendation 181

Summary: CSNSW should recognise that it is undesirable for Aboriginal inmates to be placed in segregation. Minimum standards for segregation should apply.

Full rec: That Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention. In any event, Corrective Services authorities should provide certain minimum standards for segregation including fresh air, lighting, daily exercise, adequate clothing and heating, adequate food, water and sanitation facilities and some access to visitors.

CSNSW Implementation

Implemented

Summary:

- The parameters for the segregated custody directions for inmates is enshrined in legislation under section 10 of the *Crimes (Administration of Sentences) Act 1999* and the United Nations Standard Minimum Rules (rule 37).
- COPP 3.4 ensures that no inmate is deprived of any rights or privileges and that consideration is given regarding segregation and cultural relationships that exist between Aboriginal people.
- Inmates are advised when placed under segregated custody direction that they are entitled to seek a review

Under the [Crimes \(Administration of Sentences\) Act 1999 Section 10](#) 'Segregated custody direction of inmates':

(1) The Commissioner may direct that an inmate be held in segregated custody if of the opinion that such segregation is necessary to secure--

- a) the personal safety of any other person, or
- b) the security of a correctional centre, or
- c) good order and discipline within a correctional centre.

(2) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre and, on each occasion he or she does so, must notify the Commissioner of that fact and of the grounds on which the segregated custody direction was given.

(3) A segregated custody direction given by the governor of a correctional centre does not apply in relation to any other correctional centre.

Furthermore, [rule 37 of the United Nations Standard Minimum Rules](#) for the Treatment of Prisoners states that any form of involuntary separation from the general prison population, such as segregation directions, whether as a disciplinary sanction or for the maintenance of order and security, should be subject to authorisation by law or by the regulation of the competent administrative authority.

[COPP section 3.4 Segregated custody direction at subsection 2.1 Policy](#) states that 'No inmate is to be deprived of any rights or privileges other than those imposed as a penalty for a correctional centre offence with which the inmate has been charged and a determination made. This includes the keeping of approved personal property e.g., goods purchased or under hire.'

Part 3 Placement of Aboriginal inmates into segregated custody states:

'Segregated custody directions may cause greater distress for an Aboriginal inmate than for other inmates. When considering such placements recognition must be given to the unique social and cultural relationships that exist between Aboriginal people.

...Placing an Aboriginal inmate in segregated custody is undesirable in the highest degree. These procedures are in accordance with the recommendations of the Royal Commission into Aboriginal Deaths in Custody and must be followed.

However, where a segregated custody direction is necessary, the Governor is to:

- ensure that the relevant Regional Aboriginal Programs Officer (RAPO) (who will provide support for the inmate) is informed.
- provide the segregated inmate with access to a member of the Aboriginal Inmate Committee or appropriate Aboriginal delegate. Such access may assist inmates who are experiencing problems that could lead to physical or mental harm.

The Governor or other authorised officer directing the segregated custody must ensure there is justification for the direction, and that detailed reports are provided to support the decision. The inmate must be informed of the specific reasons for their segregation.

Inmates are advised when placed under segregation that they are entitled to seek a review of their segregated custody direction. An inmate's placement in segregated custody can be reviewed by the Serious Offenders Review Council (SORC) at any time after the first 14 days have elapsed, but the inmate must be informed of this when first placed under a direction by the Governor, and sign acknowledgement of this.

Segregated custody directions must never be used if there are other satisfactory ways of managing the identified risk(s), of the inmate. Governors (and delegates) should consider the use of Behavioural Management Plans ([COPP 3.11](#)) in defining and conveying behavioural expectations for inmates.

If an inmate is moved while on a segregation direction the 3 months does not restart. If the segregated custody direction is to be continued, the clock on the three months review requirement under s 16 of the CAS Act does not restart. The original direction continues.

[Section 15 of the Crimes \(Administration of Sentences\) Act 1999](#) ('CAS Act') confirms that a segregated custody direction applies:

- S 15(1)(a) in relation to the correctional centre to which the inmate is transferred
- S 15 (1)(b) in relation to the conveyance of the inmate to the receiving correctional centre, including custody of the inmate in any correctional centre in which the inmate is held during the course of being conveyed to the receiving correctional centre.

When an inmate is received at a correctional centre, the segregated custody order must be reviewed within 72 hours of arrival. The governor may revoke, confirm, or confirm with amended terms the segregated custody order. The effect of a confirmed segregated custody direction is to continue the order that the inmate arrived at the correctional centre with. The clock for review requirements by the Commissioner (or delegate) under [section 16 \(CAS Act\)](#) is not reset.

Difference between segregation custody directions and protective custody directions

The effect of seg and protection can be similar. An inmate will be held in such a way that they will not associate with other inmates (protection/seg) or may be held in limited associated with other

like inmates, as determined by the Governor or delegate (seg only). Their placement in seg or protection will be reviewed by the Commissioner (or delegate) according to the requirements of section 16 of the Crimes (Administration of Sentences) Act 1999.

There are different levels of protective custody and only the highest-level Protection Non-Association (PRNA) has a similar effect as segregation. For example, reduced access to purposeful day activities including work, education and programs due to their status/identified risks.

Inmates that are in the category of Special Management Area Placement (SMAP) are afforded the same access to purposeful day activities as inmates in general/normal population. SMAP inmates are housed in groups with the ability to participate in work, programs and education. These are inmates with similar needs in relation to the vulnerability.

It is important to note that the criteria/purpose of seg and protection are different.

The criteria/purpose for segregated custody is s 10(1) CAS Act:

An inmate can only be placed on a segregated custody direction if in the opinion of the Governor (delegate) such segregation is necessary to secure:

- the personal safety of any other person
- the security of a correctional centre
- good order and discipline within a correctional centre

The criteria/purpose of protective custody is [s 11\(1\) of the CAS Act](#); the Governor must be of the opinion that the association of the inmate with other inmates constitutes, or is likely to constitute, a threat to the personal safety of the inmate.