

RELOCATING DETAINEES TO A NSW CORRECTIONAL CENTRE

POLICY NO. D40

ACT CORRECTIVE SERVICES



ACT
Government

Justice and Community Safety

Contents

1	PURPOSE	3
2	SCOPE	3
3	DEFINITIONS	3
4	PRINCIPLES	3
5	CATEGORIES OF RELOCATION	4
6	IDENTIFYING A POTENTIAL NEED TO RELOCATE.....	5
7	ASSESSMENT.....	5
8	NOTIFICATION, RIGHT TO RESPOND & DECISION.....	6
9	URGENT RELOCATION	7
10	RELOCATING A DETAINEE TO A NSW CORRECTIONAL CENTRE.....	7
11	RETURN OF A DETAINEE KEPT IN FULL-TIME DETENTION IN A NSW CORRECTIONAL CENTRE	8

1 PURPOSE

ACT Corrective Services (ACTCS) is committed to the safe, secure, decent, humane and just management of offenders by ensuring that their human rights are respected and protected.

The Corrections Management Act 2007 and Crimes (Sentence Administration) Act 2005 provides that an Australian Capital Territory (ACT) detainee may be kept in detention at an ACT or New South Wales (NSW) correctional centre. The Crimes (Sentence Administration) Act 2005 provides authority for the removal of an ACT detainee to a NSW correctional centre as well as the return of that detainee.

This policy supports the removal, detention and return of ACT detainees to and from NSW correctional centres in a manner consistent with their rights, as well as security and good order in ACT correctional centres.

2 SCOPE

This policy provides instructions for ACTCS staff about the relocation of detainees from an ACT correctional facility to a NSW correctional centre under section 26 of the Crimes (Sentence Administration) Act 2005.

This policy has no relation to, or impact on, the arrangements in the Crimes (Sentence Administration) Act 2005 Part 11.1 - Interstate Transfer of Prisoners.

This policy applies to all ACT correctional centres.

Where required, the Deputy Commissioner Custodial Operations may establish operational procedures under this policy.

3 DEFINITIONS

Relocation	the removal of an ACT detainee as directed by ACTCS to be accommodated in a NSW correctional centre.
Temporary relocation	the relocation of a detainee where the expectation is that the relocation will be short term and the intent is for a direction to be made to return the detainee to an ACT correctional centre at the earliest possible time.
Permanent relocation	the relocation of a detainee where the expectation is that the detainee will complete their sentence in NSW.

4 PRINCIPLES

- 4.1 Relocation of detainees to a NSW correctional centre is only to be undertaken for the safety and wellbeing of the detainee or for the purposes of security and good order of an ACT correctional centre.
- 4.2 The decision to relocate a detainee to a NSW correctional centre must be based on an assessment of the circumstances of the individual detainee and of the requirements for the security and good order of the ACT correctional centre. All reasonable steps for the

management of the detainee in the ACT must be considered before directing the relocation of the detainee to NSW.

- 4.3 Except where a detainee seeks or volunteers for relocation and provides informed consent, relocation is considered as a last resort option.
- 4.4 A relocation direction may only be made by the Commissioner if:
- a. there are no other reasonably practicable ways to accommodate and manage the detainee as required under ACT law in ACT correctional centres; or
 - b. in relation to relocations based on welfare requests, ACTCS reasonably believes that relocating the detainee to a NSW correctional centre will provide significant benefits in relation to circumstances which impact the detainee's welfare and wellbeing; and
 - c. ACTCS reasonably believes that NSW is able to appropriately accommodate and manage the detainee consistently with the requirements of human rights, decency and justice.
- 4.5 Where possible, relocation will be undertaken with the free and informed consent of the detainee.
- 4.6 Remandees must only be relocated in exceptional circumstances.
- 4.7 Detainees relocated to NSW are subject to Corrective Services NSW policies, procedures and processes while in the custody of Corrective Services NSW. However, ACTCS remains responsible for any in-person court appearances, release planning and reintegration of ACT detainees accommodated in NSW.
- 4.8 The Victim Liaison Officer must be informed as soon as practicable of any proposed relocation of a detainee in accordance with section 16J of the *Victims of Crime Act 1994*. If there is a registered victim who may be concerned about their safety in relation to a proposed relocation of a detainee, the concerns raised by the victim must be considered in the assessment process.

5 CATEGORIES OF RELOCATION

- 5.1 The relocation of a detainee from an ACT correctional centre to a NSW correctional centre will occur for one or more of the following reasons:
- a. as an **administrative requirement**
 - b. as an **appropriate health and welfare intervention**
 - c. for the **safety and security of the correctional centre and the detainees and staff within it**
 - d. for the **safety and security of the detainee**
- 5.2 Relocation as an **administrative requirement** may be undertaken where ACTCS has identified that a detainee cannot be detained in an ACT correctional centre in the manner required by the *Corrections Management Act 2007* due to lack of suitable and secure accommodation or lack of appropriate facilities to accommodate the detainee, and there are appropriate facilities to accommodate the detainee in NSW.
- 5.3 Relocation as an **appropriate health and welfare intervention** may be directed where:

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- a. ACTCS has identified that a detainee's physical or mental health needs cannot be met in an ACT correctional centre or sustained through local health interventions with ACTCS staff support, but can be in a NSW correctional centre
 - b. ACTCS has identified compelling reasons why a relocation to NSW would provide significant benefits in relation to circumstances which impact the detainee's welfare and wellbeing (e.g., access to family visits where this is difficult in ACT).
- 5.4 Relocation **for the safety and security of the correctional centre and the detainees and staff within it** may be directed where it has been identified by ACTCS that the level of risk posed by the detainee to staff and other detainees cannot be managed in an ACT correctional centre, but can be in a NSW correctional centre.
- 5.5 Relocation **for the safety and security of the detainee** may be directed where it has been identified by ACTCS that the level of risk to the detainee's personal safety from self or others cannot be managed in an ACT correctional centre but can be in a NSW correctional centre.

6 IDENTIFYING A POTENTIAL NEED TO RELOCATE

- 6.1 ACTCS may identify a potential need to relocate a detainee for one or more of the reasons in section 5 based on a range of different sources of information. These may include intelligence reports, operational reports to Senior Directors, advice from Justice Health Services, compelling reasons provided by a detainee, and other relevant sources.
- 6.2 A need to relocate one or more detainees may emerge over time (for example due to deterioration of a health condition) or emerge urgently (for example due to water damage to an accommodation unit).
- 6.3 Senior Directors are responsible for arranging an assessment of the need for relocation as follows:
- a. for an administrative requirement – the Senior Director Accommodation
 - b. for health or welfare reasons – the Senior Director Detainee Services
 - c. for security reasons – the Senior Director Operations.
- 6.4 Where relocation of several detainees as an administrative requirement becomes necessary, the Senior Director Accommodation may call for volunteers willing to relocate to NSW on a temporary or permanent basis. The Senior Director is not under any obligation to relocate detainees who have volunteered. The assessment and decision-making process outlined in this policy applies to detainees who have volunteered to relocate.
- 6.5 Where a need to relocate one or more detainees is urgent due to an imminent risk to a person or the security and good order of a correctional centre or an immediate lack of available accommodation, relocation may be directed by the Commissioner prior to a full assessment of considerations being undertaken in accordance with section 9 (Urgent Relocation).

7 ASSESSMENT

- 7.1 The Senior Director will establish the potential need for a detainee to be relocated and the reason. The Senior Director will request the Sentence Management Unit to prepare a report of relevant considerations to inform the decision on a potential relocation of one or more

detainees in accordance with the Relocating a Detainee to a NSW Correctional Centre Operating Procedure. The following factors must be considered in the assessment:

- a. sentencing status (remand vs sentenced)
 - b. Aboriginal or Torres Strait Islander status and cultural considerations
 - c. health status and any current health interventions
 - d. any registered victims and/or victim statement
 - e. access to visitors (this may include family members, friends, community members, people with cultural or spiritual connections, etc.)
 - f. availability in NSW of services, programs or facilities which better meet the detainee's needs
 - g. any other consideration specified by the Senior Director.
- 7.2 The Sentence Management Officer will request information from relevant business units and external agencies and provide a completed D40.F1: Relocation Assessment Report to the Senior Director. The Sentence Management Officer must request a completed D40.F3: Relocation Victim Information Form from the Victim Liaison Officer (VLO) and request the ACTCS Intelligence Unit complete an Intelligence Report and provide it to the requesting Senior Director. The Victim Liaison Officer must be asked to facilitate preparation of a victim statement where appropriate.
- 7.3 Where the detainee identifies as an Aboriginal or Torres Strait Islander person, the Aboriginal and Torres Strait Islander Services Unit must be contacted for input relating to cultural matters and other relevant considerations.
- 7.4 The Senior Director will consider the D40.F1: Relocation Assessment Report and any other relevant information and provide their assessment to the General Manager of the correctional centre using the D40.F1: Relocation Assessment Report.

8 NOTIFICATION, RIGHT TO RESPOND & DECISION

- 8.1 Where the General Manager determines relocation to NSW is necessary and appropriate, the detainee must be given formal written notice of the intended relocation using the D40.F2: Notice of Intended Relocation. The notice will include reasons for the relocation and provide the detainee a period of five (5) calendar days to respond in writing and/or provide additional information for consideration.
- 8.2 The General Manager must consider any information provided by the detainee and provide their recommendation and supporting information to the Commissioner for consideration.
- 8.3 The Commissioner will either authorise the relocation by completing a Direction to relocate a detainee to a New South Wales Correctional Centre or decline the relocation recommendation. The General Manager must ensure the detainee is informed of the decision as soon as practicable.
- 8.4 The usual period of notice to a detainee may be waived and the Commissioner make a direction authorising the relocation without prior notice to the detainee where the General Manager believes on reasonable grounds that provision of notice creates a reasonable risk of harm to staff or a detainee, or to the security and good order of a correctional centre. Written notice must be given to the detainee at the time of relocation. The detainee

maintains the right to respond in writing within a period of ten (10) calendar days following the relocation.

9 URGENT RELOCATION

- 9.1 Where a relocation is identified as urgent under Part 6, the Senior Director may complete the relevant sections of a D40.F1: Relocation Assessment Report and provide it to the General Manager of the correctional centre. The General Manager must make a recommendation to the Commissioner for decision.
- 9.2 Where the Commissioner has authorised an urgent relocation, a full assessment must be completed within five (5) business days following the relocation. The detainee must be given ten (10) calendar days to respond following the completion of the assessment.
- 9.3 The General Manager must consider the assessment and any information provided by the detainee and provide their recommendation and supporting information to the Commissioner for decision.
- 9.4 The General Manager must ensure that the detainee is informed of the Commissioner's decision as soon as practical.
- 9.5 Where the Commissioner decides that the detainee must be returned to an ACT correctional centre, the General Manager must arrange for the detainee to be returned to an ACT correctional centre at the earliest opportunity.

10 RELOCATING A DETAINEE TO A NSW CORRECTIONAL CENTRE

- 10.1 On receipt of a Direction to relocate a detainee to a New South Wales Correctional Centre, the General Manager must arrange for the detainee to be transported for admission to a NSW correctional centre at a date, time and location agreed with Corrective Services NSW.
- 10.2 A Direction to relocate a detainee to a New South Wales Correctional Centre must state the correctional centre which the detainee is being escorted to. Where a change of circumstances requires it, Corrective Services NSW may direct that the detainee be escorted to another correctional centre (for example if the correctional centre stated in the Direction is put into lockdown). The Direction will be updated with the new location as soon as reasonably possible.
- 10.3 The stated correctional centre indicated on the Direction to relocate a detainee to a New South Wales Correctional Centre in no way limits the right of Corrective Services NSW to make decisions regarding the accommodation arrangements of detainees held in detention in NSW. The Direction authorises the detainee to be kept in any NSW correctional centre.
- 10.4 The General Manager must direct the Senior Director to oversee the Direction to relocate the detainee by informing all relevant business units to initiate transfer of the detainee's file, property and any other appropriate information, including intelligence and victim information, to Corrective Services NSW. SAS must provide the required information to support the Corrective Services NSW classification and placement process prior to the relocation or as soon as practicable. SMU will contact the detainee's health service provider and request transfer of the detainee's medical records to the NSW Justice Health Service as appropriate. The Senior Director will direct the ACT Intelligence Unit to provide a targeted profile to NSW Corrective Services.

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- 10.5 Where an Aboriginal and Torres Strait Islander detainee is being relocated, the Aboriginal and Torres Strait Islander Services Unit must contact the Corrective Services NSW Aboriginal Strategy and Policy Unit to advise of the relocation and any relevant cultural matters.
- 10.6 Where appropriate the Sentence Management Officer may notify other relevant services of the relocation.

11 RETURN OF A DETAINEE KEPT IN FULL-TIME DETENTION IN A NSW CORRECTIONAL CENTRE

- 11.1 Relocation can be temporary or permanent.
- 11.2 The duration of a relocation may change if circumstances change, e.g., a change in the capacity to accommodate the detainee in an ACT Correctional Centre.
- 11.3 Where ACTCS determines that a detainee can return to an ACT correctional centre, a new Direction to Relocate must be made.
- 11.4 Sentence Administration will notify all relevant business units of the detainee's status where there is a change in the detainee's circumstances. The Intelligence Unit and Victim Liaison Officer must be notified when there is a change to the detainee's status, particularly upon release or return to the ACT.

Temporary relocation

- 11.5 Where a temporary relocation has been authorised by the Commissioner, the General Manager must ensure the detainee is returned to the ACT as soon as practical.

Permanent relocation

- 11.6 Where a permanent relocation has been authorised by the Commissioner, the detainee must be returned to the ACT as appropriate and required (for example for in-person court appearances and parole hearings). ACTCS is responsible for the return of detainees to ACT and the General Manager must ensure appropriate arrangements are made with Corrective Services NSW.
- 11.7 A detainee subject to a permanent relocation may request to return to an ACT correctional centre by submitting a return request in writing to the General Manager, including reasons in support of a return. The General Manager must arrange an assessment under this policy, subject to section 11.8, and may, upon review of the D40.F1: Relocation Assessment Report, make a recommendation to the Commissioner to authorise return of the detainee.
- 11.8 The General Manager is only required to consider one (1) return request from a detainee in every twelve (12) month period but may consider any return request at their discretion.

Parole

- 11.9 The Sentence Administration Board (SAB) must be notified when a detainee is relocated to NSW at the time of relocation.
- 11.10 Where a detainee has been relocated to NSW and they become eligible for parole, SAB will issue their parole eligibility notification and the detainee will be required to apply in the same manner as if they were accommodated in the ACT.
- 11.11 ACTCS must make appropriate transportation arrangements where a detainee is required to appear in person before the SAB. If the detainee is not to appear in person, arrangements will be made for them to appear via AVL or telephone.

Release

- 11.12 ACTCS must arrange for an ACT detainee kept in full-time detention in a NSW correctional centre to be returned to the ACT for the purpose of release, including release on parole, subject to consideration of individual circumstances as per section 11.13.
- 11.13 Individual circumstances of each detainee should be taken into consideration where there is an approved parole transfer in place for the detainee, or the detainee is considered eligible to be released in NSW.
- 11.14 Where an ACT detainee kept in full-time detention in a NSW correctional centre is due for release, at the sentence end date, and requests to remain in NSW, Throughcare and the Sentence Management Unit must consider their eligibility to be released in NSW as part of their Release Planning and must liaise with Corrective Services NSW Sentence Administration Section as required.
- 11.15 Where an ACT detainee's ACT sentence is finalised, and the detainee remains in NSW custody to serve a NSW sentence, ACTCS must provide a letter of completion of sentence to the detainee and Corrective Services NSW Sentence Administration Section.

RELATED DOCUMENTS

- A – D40.F1: Relocation Assessment Report
- C – D40.F2: Notice of Intended Relocation
- D – D40:F3 Relocation victim information form
- E – Direction to relocate a detainee to a New South Wales Correctional Centre
- F – Relocating Detainees to a NSW Correctional Centre Operating Procedure
- G – Release of an ACT Detainee Residing in a NSW Correctional Centre Operating Procedure

Ray Johnson APM
 Commissioner
 ACT Corrective Services
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