

Tasmania Prison Service

Director's Standing Order

DSO – 2.24 Prisoners Conducting a Business

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1. Statement of Purpose

The purpose of this Director's Standing Order is to ensure that prisoners who wish to conduct a business during their period of custody with the Tasmania Prison Service do so in accordance with the [Corrections Act 1997](#).

This Director's Standing Order outlines the protocols for managing a prisoner who wishes to conduct a lawful business in or from prison during their period of custody with the Tasmania Prison Service. This includes prisoners who were conducting a business prior to their incarceration, as well as prisoners who wish to commence a new business.

The Tasmania Prison Service acknowledges that prisoners who were conducting a business prior to their incarceration (a pre-sentence business) may have employees whose income and livelihood is dependent upon the continuation of that business.

In determining whether to provide consent for a prisoner to conduct a business, the Director of Prisons (as delegated powers under the [Corrections Act 1997](#)) may consider any matter he / she thinks fit in the circumstances.

2. Desired Outcome

In determining whether to provide consent for a prisoner to conduct a business in or from prison, the Director of Prisons (as delegated powers under the [Corrections Act 1997](#)) may have regard to the matters described in this Director's Standing Order.

3. Scope

This Director's Standing Order applies to prisoners. This Director's Standing Order does not apply to detainees or watch-house detainees.

4. References (including Legislation, Policy, Forms and Other Documents)

[Corrections Act 1997](#), sections 6(3), 33, 34, 34AB and Schedule 1, Part 2, 35C

[Director's Standing Order 1.23 - Disciplinary Process](#)

[Director's Standing Order 2.02 - Induction and Case Management](#)

[Director's Standing Order 2.04 - Classification and Placement](#)

[Director's Standing Order 2.05 - Accommodation Placement](#)

[Director's Standing Order 2.19 - Contract System](#)

[Director's Standing Order 3.03 - Work Program](#)

[Director's Standing Order 3.04 - Prisoner/Detainee Allowances](#)

[Director's Standing Order 3.05 - Sport and Recreation Program](#)

[Director's Standing Order 4.01 - Requests and Complaints](#)

[Director's Standing Order 4.02 - Prisoner Mail](#)

[Director's Standing Order 4.03 - Prisoner Telephone Communication](#)

[Director's Standing Order 4.04 - Visits \(Personal\)](#)

[Director's Standing Order 4.12 – Prisoner/Detainee Monies](#)

[Director's Standing Order 4.14 - Prisoner/Detainee Property](#)

[Form 1AG – Tier 2 Assessment](#)

[Form 6BA – Request to Conduct a Business in Prison](#)

5. Definitions and Abbreviations

ABN – means an Australian Business Number (ABN).

ATO – means the Australian Tax Office.

Business – has its ordinary meaning; relevant factors for determining the existence of a business may include a profit-making purpose, the scale of the activities, the commercial character of the transactions, and whether the activities are systematic and organised.

CIS – means the Custodial Information System.

CM - means Content Manager, the Department of Justice records management system.

DSO – means Director's Standing Order.

Hobby – a pastime or leisure activity conducted in spare time for recreation or pleasure.

Pre-sentence business – a business conducted by a prisoner prior to their incarceration.

Prisoner art/craft work – refers to articles produced by a prisoner in a hobby, handicraft or art class, in an approved prison location or some other space set aside for prisoner art/craft work activities. It includes, but is not limited to, visual arts (drawings, paintings, carvings, pottery, glasswork, leatherwork, postcards, greeting cards, and sculpture), performing arts (plays, music, dance, and choreography) and literature (poetry, books, and drama scripts). Art/craft work is usually hand-made, and its maker or designer intended it to be 'artistic' rather than purely functional.

Prisoner – means, unless otherwise stated, a prisoner (as defined in the *Corrections Act 1997*).

TPS – means the Tasmania Prison Service.

6. Mandatory Policy

- 6.1. The Director of Prisons must determine whether to give consent for a prisoner to conduct a business in or from prison in accordance with the [Corrections Act 1997](#).
- 6.2. No prisoner is to conduct a business in or from prison without the consent of the Director of Prisons or the Director of Corrective Services, given specifically for that business.

7. Responsibilities

7.1. All staff

Any TPS staff member who becomes aware, during the course of their duties, that a prisoner is conducting a business in or from prison without obtaining consent from the Director of Prisons, must advise the TPS Directorate office.

7.2. Correctional Officers (Case Management)

Correctional Officers assigned case management duties for a prisoner who wishes to conduct a new business are responsible for explaining the contents of this DSO to that prisoner. Correctional Officers are also responsible for providing the prisoner with assistance when requesting permission from the Director of Prisons to commence a new business.

7.3. Correctional Officers (Reception Prison)

Correctional Officers within Reception Prisons are responsible for providing prisoners with the opportunity to disclose whether they were conducting a pre-sentence business upon reception into custody, through the Tier 2 Assessment process.

7.4. Directorate / Finance team

The TPS Directorate and TPS Finance team are responsible for providing support to the Director of Prisons in the making of decisions whether to allow a prisoner to conduct a business in or from prison.

7.5. Security and Intelligence Unit

The Security and Intelligence Unit, upon instruction from the Director of Prisons, is responsible for liaising with Tasmania Police (State Intelligence Service) (or equivalent Police service in

another jurisdiction if legislation in that jurisdiction allows for the exchange of information) when a prisoner seeks to obtain permission to conduct a business in or from prison.

7.6. **Director of Prisons**

The Director of Prisons as delegate of the Director of Corrective Services is responsible for making decisions whether to allow a prisoner to conduct a business in or from prison, in accordance with the [Corrections Act 1997](#). The Director of Prisons will advise the prisoner of the decision in writing.

7.7. **Tasmania Police (State Intelligence Service) / Equivalent Police Service in another jurisdiction (where applicable)**

Upon request from the TPS Security and Intelligence Unit, Tasmania Police (State Intelligence Service) (or equivalent Police service in another jurisdiction if legislation in that jurisdiction allows for the exchange of information) are responsible for advising whether a prisoner has previously committed any unlawful conduct (i.e. fraud) involving the running of a business. Tasmania Police are also to advise whether there are any known risks associated with the approval of a request for a prisoner to conduct a business (i.e. there are outstanding Tasmania Police investigations underway). These views are to be communicated to the Director of Prisons.

8. What Constitutes Conducting a Business

8.1. When TPS staff are determining whether a prisoner is conducting a business in or from the prison for the purposes of section 34AB of the *Corrections Act 1997*, the following factors may be relevant:

- whether the prisoner has a registered business name or an ABN for that business;
- whether the prisoner engages in the relevant activities for the purpose of making a profit;
- whether the prisoner engages in the relevant business activities on a continuous repetitive basis; and
- whether the prisoner conducts business activities in a planned and organised businesslike manner (including the keeping of business records and account books, maintaining a separate business bank account and the holding of relevant licenses or qualifications).

8.2. The sale of prisoner art/craft works and woodwork manufactured in prison will generally not be considered to constitute conducting a business unless the sale is conducted for the purpose of making a profit.

8.3. Prisoner art/craft and woodwork activities are usually undertaken as a hobby, with the sale of items covering the cost of the materials and prisoner labour only.

9. Prisoner Application to Conduct a Business

9.1. Identification of prisoners conducting a pre-sentence business

9.1.1. Correctional Officers within Reception Prisons are responsible for providing prisoners with the opportunity to disclose whether they were conducting a pre-sentence business upon reception into custody, through the Tier 2 Assessment process.

9.1.2. For prisoners who were conducting a pre-sentence business, Correctional Officers (Reception Prisons) must make them aware of the contents of this DSO.

9.1.3. If, during the course of their duties, a staff member becomes aware or reasonably believes that a prisoner is conducting a business in or from prison without the consent of the Director of Prisons, they must notify the Security and Intelligence Unit and the Directorate Office.

9.2. Request for consent to conduct a business in or from prison

9.2.1. A prisoner must not conduct a business in or from prison without the consent of the Director of Prisons.

- 9.2.2. For prisoners who were conducting a pre-sentence business, the prohibition to conduct business applies **immediately** upon the person becoming a prisoner (unless approval has been granted by the Director of Prisons for the prisoner to continue running this business). Prisoners should make arrangements for another person to operate their business while the prisoner is in custody.
- 9.2.3. A prisoner must apply to the Director of Prisons requesting permission to conduct a business using [Form 6BA – Request to Conduct a Business in Prison](#). Prisoners may seek assistance completing this form from their allocated Correctional Officer (Case Management).

9.3. Decision

- 9.3.1. In accordance with section 34AB of the *Corrections Act* 1997, in deciding whether to allow a prisoner to conduct a business in or from prison, the Director of Prisons may have regard to such matters as he or she thinks fit in the circumstances, including –
- whether the conduct of the business could reasonably be expected to excite adverse community reaction, particularly from victims of crime; and
 - whether there is any risk that any person could use the business for unlawful ends; and
 - whether the conduct of the business could disrupt prison routine or compromise its management, good order or security; and
 - whether the business is one that would be reasonably practicable and manageable to conduct in a prison environment; and
 - the regulatory requirements of conducting the business, and associated compliance and legal capacity issues; and
 - whether conducting a business of a like kind was the basis for, or a relevant factor in, previous unlawful conduct of the prisoner; and
 - whether there could be rehabilitative benefits for the prisoner.
- 9.3.2. To assist the Director of Prisons in making a decision to allow a prisoner to conduct a business, Directorate staff must examine a prisoner’s legal documentation thoroughly for any evidence of any prohibition on the prisoner conducting a business imposed by a Court.
- 9.3.3. The TPS Security and Intelligence Unit, upon instruction from the Director of Prisons, must consult with Tasmania Police (State Intelligence Service) (or equivalent Police service in another jurisdiction if legislation in that jurisdiction allows for the exchange of information) in relation to any request made by a prisoner to conduct a business. Tasmania Police are responsible for advising whether a prisoner has previously committed any unlawful conduct (i.e. fraud) involving the running of a business. Tasmania Police are also to advise whether there are any known risks associated with the approval of a request for a prisoner to conduct a business (i.e. there are outstanding Tasmania Police investigations underway).
- 9.3.4. The Director of Prisons must advise the prisoner of the decision in writing using the “Decision” section of [Form 6BA – Request to Conduct a Business in Prison](#).

9.4. Prisoner provided consent to conduct a business in or from prison

- 9.4.1. If approval is given for a prisoner to conduct a business in or from prison:
- no additional privileges or property allowances will be granted to the prisoner for conducting the business;
 - the prisoner must not seek to employ a Correctional Officer, State Service corrections employee or TPS volunteer;
 - the prisoner must not seek to employ another prisoner.
- 9.4.2. As per section 34AB(4) of the *Corrections Act* 1997, the Director of Prisons, if in his or her absolute discretion he or she considers it appropriate to do so, may withdraw

consent for a prisoner to conduct a business in or from prison at any time. The Director must specify a timeframe for the prisoner to cease business activities.

- 9.4.3. In accordance with section 34AB(5) of the *Corrections Act* 1997, no liability attaches to the Director or the Crown in respect of any consent given by the Director in good faith to a prisoner or the withdrawal by the Director of any such consent.

9.5. Prisoner failure to apply for consent to conduct a business in or from prison

- 9.5.1. If a prisoner succeeds by any means in conducting a business in or from prison without being given the required consent, the prisoner may commit a prison offence and must be dealt with in accordance with [Director's Standing Order 1.23 - Disciplinary Process](#).
- 9.5.2. If any TPS staff member becomes aware, during the course of their duties (in accordance with [Director's Standing Order 4.02 - Prisoner Mail](#), [Director's Standing Order 4.03 - Prisoner Telephone Communication](#) and [Director's Standing Order 4.04 - Visits \(Personal\)](#)), that a prisoner is conducting a business without obtaining consent from the Director of Prisons, they must advise the TPS Directorate office.

10. Records Management

- 10.1. Directorate Office staff must upload documentation relating to requests from prisoners to conduct a business in or from prison within the relevant prisoner's case management file in CM.

11. Document History and Access

Implementation Date	16/10/2018
Version Number	1.1
Date of First Issue	01/12/2017
Date of Further Amendments	16/10/2018 – Changes of titles to reflect organisational restructure
Additional Information	
Next Review Date	Five years from date of further amendments
Access to this DSO	Routine Disclosure

Approved by:

Ian Thomas
Director of Prisons