



# Tasmania Prison Service

## Director's Standing Order

### 4.16 – Access to Legal Resources

#### Purpose

The purpose of this Director's Standing Order (DSO) is to ensure that prisoners can access legal resources for the preparation and conduct of any criminal, family or civil law matters, as well as for education or recreational needs.

#### Scope

This DSO applies to all TPS staff and to all prisoners in the custody of the TPS.

This DSO does not apply to watch-house detainees. Watch-house detainee access to legal resources is the responsibility of Tasmania Police.

#### Definitions

Below are definitions specific to this DSO and its procedures. Refer to [TPS Key Terms and Definitions Glossary](#) for commonly used terms.

**Appellant** – means any person convicted, or any prosecutor, who wishes to appeal their sentence or conviction under the [Criminal Code 1924](#) or [Justices Act 1959](#).

**Appeal** – an application to the Tasmanian Supreme Court (Court of Criminal Appeal or single judge) for a decision to be reversed or amended. This can be an appeal against conviction and/or against the severity of the sentence and may be filed by the office of the Director of Public Prosecutions against the convicted person.

**Bail** – an accused person is given bail when they are charged but allowed to go free while waiting for a court hearing. Sometimes bail orders have conditions, or must have a surety (where the accused, or another person, agrees to give up an agreed sum of money if the accused fails to comply with the conditions of the bail order). Simple bail or oral bail does not require any documentation to be signed; the only condition is that the accused appear in court. Failure to appear in court is an offence.

**Legal resources** – means:

- access to legal representation (this includes the Legal Aid Commission of Tasmania, the TALS, Women's Legal Service or other public or private legal service)
- access to courts (whether this be by way of bail application, in person or via videoconference)
- access to legal documents relevant to a prisoner's criminal, family or civil law matters, including access to evidentiary materials
- access to legal publications (including Tasmanian and Australian legislation, and TPS publicly available DSOs).

**Removable storage device** – means a device, authorised under [DSO 1.08 – Contraband and Unauthorised Items](#), which can be plugged into a computer/laptop/tablet and used for accessing electronic data.

**TALS** – Tasmanian Aboriginal Legal Service.

**TimeBase system** – the software package in TPS facilities used to provide prisoner access to legislation.

## Minimum Requirements

1. Every prisoner has the right to have access to legal advice or to apply for legal aid.
2. Any person may apply to be admitted to bail.
3. Prisoners have the right to lodge an appeal against their sentence or conviction.
4. Persons aggrieved by an order of a justice may apply to the Supreme Court to review that order.
5. Private communications between a legal practitioner and a prisoner are protected by legal professional privilege.
6. TPS staff must ensure all prisoners are provided with reasonable access to legal resources.
7. Prisoners must be advised of the process for accessing legal resources, during initial and unit inductions and at other relevant times during their incarceration.
8. TPS staff must facilitate prisoner compliance with court orders, which order attendance at court facilities (either in person or via video-conference).
9. Access to legal representatives and resources must not be limited as a consequence of disciplinary action.
10. The following appendices are to be adhered to in relation to prisoner access to legal resources:
  - [Appendix A - Prisoner access to legal representation](#)
  - [Appendix B – Prisoner access to courts](#)
  - [Appendix C – Prisoner access to legal documents, legislation and legal publications](#)
  - [Appendix D – Poster for prisoner access to legal resources](#)

## Responsibilities

While all TPS staff are subject to this DSO, the following positions have specific functions:

### **Correctional Officers (Reception Prisons)**

Upon reception identify prisoners who require the assistance of legal services and initiate a referral to the relevant legal service.

### **Correctional Officers (Case Management)**

At the request of a prisoner, initiate a referral to the relevant legal service and coordinate access to the required legal resources.

### **Correctional Supervisors**

Facilitate processes for prisoners to access legal resources and execute bail documents, as required.

### **Escort and Transport staff**

Transport prisoners to and from their court appearances.

## **Sentence Management Unit (SMU)**

Send bail documents to facility Correctional Supervisors and Superintendents for execution and send signed bail documents back to the relevant court.

## **Staff Development and Recruitment**

Ensure new Correctional Officers are made aware of the importance of prisoner access to legal resources and understand how to initiate referrals to legal services, how prisoners access legal documents and publications, and how bail application processes work.

## **Facility-based Superintendents**

Oversee the implementation of legal resource access points across TPS facilities and ensure prison routines allow access to legal resources.

Execution of bail documents, as required.

## **Superintendent, SRC**

Oversight of procedures for the management of the SRC Legal Resource Centre.

## **PEaT**

PEaT can provide access to the Prisoner Computer network for Timebase and assist where possible to make available legal publications via the intranet and the Libraries Tasmania service.

In conjunction with the Sentence Management Division (SMD) will develop processes to audit legal publications available to prisoners through the Tasmanian Law Library or Community Legal Service to ensure that the publications are appropriate to the prison population.

## **References**

[Bail Act 1994](#), sections 7 and 23

[Corrections Act 1997](#), sections 12, 15, 16, 29(1)(o) and 37

[Criminal Code 1924](#), Chapter XLVI

[Justices Act 1959](#)

[DSO 1.08 – Contraband and Unauthorised Items](#)

[DSO 1.20 – External Escorts, Medical Appointments and Hospital Admissions](#)

[DSO 2.04 – Classification and Placement](#)

[DSO 4.02 – Prisoner Mail](#)

[DSO 4.03 – Prisoner Telephone Communication](#)

[DSO 4.05 – Visits \(Professional\)](#)

[DSO 4.14 – Prisoner/Detainee Property](#)

[Form 6AO – Tasmanian Aboriginal Legal Service Client Referral Form](#)

[Form 6AQ – Magistrates Court Bail Application](#)

[Form 6AU – Prisoner Education and Training Request for a Computer Account](#)

[Form 6BG – Notice of Appeal against Refusal of a Magistrate to Grant Bail](#)

[Form 6BH – Supreme Court Bail Application](#)

[Form 6H – Prisoner Education and Training Library Request](#)

[Form 6K – Request Form](#)

[Form 6V – Legal Aid Request Form](#)

[Tasmania Prison Service and Law Society of Tasmania – Memorandum of Understanding](#)

### **Document History and Control**

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#### **Appendix A – Access to legal representation**

Prisoners with ongoing or anticipated criminal, family or civil legal proceedings are encouraged to seek the assistance of professional legal counsel. Where a prisoner declines the assistance of professional legal counsel, the TPS will assist as far as practical to ensure that the prisoner has sufficient access to legal documents, legislation and legal publications (refer [Appendix C](#)).

#### **Referrals at reception**

Upon reception into custody, through the Tier 1 Assessment process, Correctional Officers - (Reception Prison) must provide prisoners with the opportunity to identify as needing the assistance of legal services.

If a prisoner requires legal assistance, Correctional Officers (Reception Prison) must facilitate an initial referral to the relevant legal service (whether this be the Legal Aid Commission of Tasmania, the TALS, Women's Legal Service or other public or private legal service) at the request of the prisoner.

Where applicable, Correctional Officers should provide prisoners with [Form 6V – Legal Aid Request Form](#) and/or [Form 6AO - Tasmanian Aboriginal Legal Service Client Referral Form](#).

#### **Referrals during time in custody**

During their time in custody a prisoner may, via their assigned Correctional Officer (Case Management) and/or using [Form 6K – Request Form](#), request a referral to a legal service.

Correctional Officers (Case Management) must facilitate a referral to the relevant legal service at the request of the prisoner.

#### **Contact with legal representatives**

Staff attention to confidentiality requirements ensures all prisoners are able to conduct their legal business securely.

Visits from legal representatives must occur in accordance with [DSO 4.05 – Visits \(Professional\)](#).

Telephone calls between prisoners and their legal representatives must occur in accordance with [DSO 4.03 – Prisoner Telephone Communication](#).



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#### **Appendix B – Prisoner access to Courts**

##### **Bail applications**

Remandees who are in TPS custody have the right to apply for bail and must be appropriately supported to do so.

At the request of a remandee, Correctional Case Officers must provide remandees with the relevant bail application form (either [Form 6BH – Supreme Court Bail Application](#) or [Form 6AQ - Magistrates Court Bail Application](#)).

Completed forms should be forwarded to the SMU. The SMU is responsible for sending bail application forms to the courts, and can receive forms from TPS staff in either electronic format or via internal mail.

##### **Service of bail documents**

If a prisoner admitted to bail is required to sign a document specifying the terms of that order, prisoners must not be released from custody until they have signed the bail order.

Only Correctional Supervisors and Superintendents (including Acting Supervisors and Superintendents) possess the delegation to execute a bail document.

Simple bail or oral bail does not require any documentation to be signed; the only condition is that the accused appear in court.

##### **Right of appeal**

Convicted prisoners in TPS custody have the right to make an appeal to the Supreme Court (Court of Criminal Appeal or single judge), for a reversal or amendment of a sentencing decision and/or conviction, and must be appropriately supported to do so.

Prisoner access to legislation and legal publications, for the purpose of preparing a case of appeal, must be managed in accordance with [Appendix C](#).

An appellant is entitled to be present at an appeal hearing, except where the appeal is on some ground involving a question of law alone. The TPS must ensure arrangements are in place for the appellant to appear in court, where the court orders the attendance of the appellant.

##### **Court attendance**

TPS Escort and Transport staff must transport prisoners to and from their court appearances as required, in accordance with court orders, which order prisoner attendance at court facilities.

The SMU is responsible for working with court staff to maintain daily court attendance lists, and for communicating these lists to TPS Escort and Transport staff, as well as relevant facility staff members.

The TPS will provide video-conference facilities, which will enable prisoners to attend court appearances remotely (where ordered).

Arrangements must be made to ensure prisoners attending court, or other transport locations, are provided with meals at normal times, or if this is not possible, a meal immediately before and after their attendance.

**Prisoner access to sentencing information**

The SMU is responsible for calculating and recording prisoner sentencing details.

Any prisoner requests relating to their sentence details (e.g. sentence length, earliest release date, parole eligibility date) must be referred to the SMU for response.



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#### Appendix C – Prisoner access to legal documents, legislation and legal publications

##### Access to legal documents

Prisoners who need access to their legal documents to prepare for a current or future court matter must be given access to these hard copy documents in their cell, or other designated area. A matter, which can be criminal, family or civil law related, does not have to be lodged with a court before a prisoner can have access to their legal documents, however evidence may be required to confirm that a legal matter is intending to be progressed.

A Superintendent may refuse or limit a prisoner's access to their legal documents, if the prisoner is unable to show evidence of why the access is required.

Where appropriate, prisoners may also view their legal material as supplied on a removable storage device and prepare legal documentation on a computer supplied by the TPS, or other authorised device. Prisoners are allowed access to legal material on a removable storage device **only if it has been provided by their legal representative**. It must also be accompanied by a letter from the prisoner's legal representative stating the contents of the removable storage device contain material relevant to the prisoner's current legal matter.

For prisoners with a Tier One Offence Severity Scale score of 5 (High Severity) or 7 (Greatest Severity) (as per [DSO 2.04 – Classification and Placement](#)), hard copy and electronic legal documents must be reviewed privately in interview room spaces.

TPS staff must not read the contents of any legal material that has been supplied either in hard copy by a legal representative, or on a removable storage device with a supporting letter from the prisoner's legal representative. Private communications between a legal practitioner and a prisoner are protected by legal professional privilege.

Legal documents relating to a prisoner, including any legal information supplied to a prisoner by their legal practitioner in person, via mail or removable storage device, must be managed in accordance with [DSO 4.14 – Prisoner/Detainee Property](#). The amount of legal documents a prisoner may have in their property is based on a test of reasonableness (e.g. approximately one tub), rather than a prescriptive amount.

Legal practitioners and legal assistants are permitted to exchange legal documents with prisoners during a professional visit. Correctional Officers may search but not read such documentation, in accordance with [DSO 4.05 – Visits \(Professional\)](#).

Mail received from a prisoner's legal representative, including any legal documents, must be managed as privileged mail in accordance with [DSO 4.02 – Prisoner Mail](#).

On request, prisoners must be provided with writing materials for the preparation of work relating to upcoming legal matters. If requests become excessive, or a prisoner has been in TPS custody for a lengthy period, prisoners should be encouraged to purchase items from the canteen.



## Legislation and legal publications

Provided that the safety, security or good order of the prison is not compromised, prisoners should be provided sufficient access to relevant up-to-date legislation via the TimeBase system. This will enable them to be informed when representing themselves or instructing their legal practitioners during a current, or likely, legal proceeding (whether this be the current legal matter for which they are in prison, or not).

Where appropriate, prisoners may also access legislation and legal publications for education or recreational needs.

TPS publicly available DSOs, and other relevant policy documents, should be made available to prisoners. Requests for access to policy/procedural documents should be made using [Form 6K – Request Form](#). Such requests should be assessed, taking into account whether the release of documents would compromise the safety, security or good order of the prison.

Publicly available DSOs and other relevant policy documents should, where appropriate, be made available to prisoners via the secure internal computer network or non-networked/stand-alone desktop computers and laptops. PEaT should manage the availability of these resources throughout TPS facilities, in conjunction with the SMU and facility-based Superintendents.

All prisoners must complete [Form 6AU – Prisoner Education and Training Request for a Computer Account](#) prior to accessing a computer.

At a minimum, the following legal publications should be made available to prisoners:

- Nutshell: Criminal Law 8<sup>th</sup> Edition
- Sentencing in Australia 9<sup>th</sup> Edition
- Uniform Evidence Law 16<sup>th</sup> Edition
- Understanding Law: An Introduction to Australia's Legal System 8<sup>th</sup> Edition
- LexisNexis Concise Australian Legal Dictionary 6<sup>th</sup> Edition
- Defend Yourself: Facing a charge in court
- The Family Law Handbook 5<sup>th</sup> Edition

PEaT, in conjunction with the Tasmanian Law Library and Libraries Tasmania should maintain a standard set of the above recommended legal publications, which will be made available to prisoners through the prison library.

PEaT, in conjunction with the SMD should develop processes to audit legal publications available to prisoners through prison libraries and the computer network, to ensure that the publications are appropriate to the prison population.

A prisoner may request to access copies of legislation, legal publications or case law not available in TPS facilities or through the prison library (using [Form 6K - Request Form](#)). The facility Correctional Supervisor or Superintendent must assess these requests prior to granting or refusing them, considering all of the relevant factors, including:

- whether it is appropriate for the prisoner to have access to a computer for the purposes of accessing the required information
- the ability of the prisoner to access the requested material by other means (e.g. through a legal practitioner or visitor)
- the likely cost to the TPS of obtaining that material

- whether the prisoner agrees to, and has the ability to meet, the cost of obtaining the material (if it is deemed this is outside the scope of TPS responsibilities)
- staffing resources that may be required to provide access to the requested material

Where infrastructure and resources are available, facility-based Superintendents are responsible for overseeing the implementation and management of suitable designated areas across TPS facilities for prisoners to access legal resources. Superintendents must establish processes to manage access to legal resources.

### **SRC Legal Resource Centre**

The Superintendent, SRC should identify and resource an area deemed suitable for use as a Legal Resource Centre by remandees.

The Superintendent, SRC should manage and maintain the Legal Resource Centre in conjunction with PEaT, and ensure that remandees are provided with access to sufficient legal resources (including legal publications and fact sheets).

The Legal Resource Centre should contain legal resources available via a secure internal computer network or non-networked/stand-alone desktop computers and laptops.

A level of privacy should be in place for remandees to access these resources, provided that the safety, security or good order of the prison is not compromised.



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#### Appendix D – Poster for prisoner access to legal resources

 **Access to Legal Resources**  
Legal representation  
Legal documents  
Legal publications

**NEED ACCESS TO LEGAL RESOURCES?**

 Ask a staff member for assistance

 You can request access to application forms, legal documents and legislation

 You can complete a request form to contact a lawyer by telephone

 Staff can make a referral to a legal service on your behalf