

**CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (STANDARD OF PROOF)
BILL 2025**

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Crimes (Administration of Sentences) Amendment (Standard of Proof) Bill 2025 forms part of the suite of reforms that the NSW Government has progressed to increase safety and accountability within NSW correctional facilities. The amendments will also align NSW with the standard of proof applied in inmate discipline proceedings in the majority of other Australian jurisdictions.

The Bill amends the *Crimes (Administration of Sentences) Act 1999 (CAS Act)* to change the standard of proof for correctional centre offences determined by governors and their delegates that currently requires satisfaction beyond a reasonable doubt that the inmate is guilty of the offence (the criminal standard), to instead require satisfaction on the balance of probabilities (the civil standard).

The CAS Act will retain the current criminal standard of proof for matters referred to and determined by a Visiting Magistrate. Criminal matters will also continue to be referred to the NSW Police Force (**NSWPF**) as appropriate for consideration of criminal prosecution. If prosecuted, a criminal prosecution would ultimately be determined by a court based on the criminal standard of proof.

The amendments respond to findings in the NSW Ombudsman's *Investigation into inmate discipline in NSW correctional centres* report (**the Ombudsman's Report**). The Ombudsman's Report found that aspects of the application of Division 6 of the CAS Act by Corrective Services NSW (**CSNSW**) were inconsistent with the requirements of the CAS Act and the Regulation and therefore contrary to law, for reasons including correctional centre offences not being proven beyond reasonable doubt.

The Public Service Association (**PSA**) has advocated for changes to the standard of proof, based on the findings in the Ombudsman's Report, and supports the changes in the Bill.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill will enhance accountability and transparency and restore public confidence in the NSW Corrective Services system by ensuring that current practices for inmate discipline proceedings are operating according to law.

The amendments are intended to strike a balance between processing adjudications in a quick and informal way, while retaining discretion for more serious offences to require a higher standard of proof for a finding of guilt.

The amendments will align NSW with the legal test for the standard of proof applied in inmate discipline matters in most other Australian jurisdictions, where the "balance of probabilities" is the standard of proof applied.

By changing the standard of proof for matters determined by governors and their delegates to one appropriate for administrative decisions and administrative decision makers, the Bill aims to strengthen correctional officer and community safety and ensure that inmates are held to account for their behaviour while in custody.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Statement of Public Interest
Tabled by *Mr. Bultsey*
18/10/25
EST of the Parliaments

The policy objectives of the reform can only be achieved through legislative amendment to the CAS Act.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The amendments will align the legal test for the standard of proof in NSW for inmate discipline proceedings with other jurisdictions and current CSNSW practices, providing clarity on CSNSW powers and functions necessary to manage inmates.

These changes will complement improvements that have already been implemented under a comprehensive reform package to enhance accountability and transparency and restore public confidence in the NSW Corrective Services system, as recommended by several recent public reviews and reports, including the Ombudsman's Report and the Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre. This includes:

- The *Crimes (Administration of Sentences) Amendment Act 2025*, designed to provide clarity on CSNSW powers and functions necessary to manage inmates and strengthen the correctional officer misconduct offence.
- The *Inspector of Custodial Services Amendment Act 2025* to introduce an internal review mechanism for decisions made under the correctional centre discipline provisions. The addition of an internal review mechanism provides an extra safeguard to lowering the burden of proof.
- Commencing steps to reinforce CSNSW staff understanding of existing legislative and policy requirements, redrafting the Custodial Operations Policy and Procedure and associated forms (in consultation with the PSA) and addressing other practical matters, such as improved record keeping.

Without the amendments, there is concern there will be increased difficulty in holding inmates accountable for their actions with potential flow on effects in correctional centre safety.

It is noted that recommendation two of the Ombudsman's Report specified that any reforms to inmate discipline to address non-compliant process should be focused on process improvement and not risk adversely affecting the rights of inmates overall, such as by reducing the standard of proof required for offences. Whilst this commentary is acknowledged, jurisdictional comparison and consultation with the PSA suggests that an administrative decision making system requiring that matters be proven to a criminal standard may not be fit for purpose.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The amendments in the Bill will commence on assent. CSNSW will implement the amendments to the CAS Act through policy updates and officer training. Work is already underway to prepare this material ahead of commencement.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The PSA was consulted on the changes in the Bill.