



Custodial Operations Practice Directive

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Scope
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1. Human Rights

It is unlawful for corrective services officers and QCS staff to act or make decisions in a way that is not compatible with human rights, or in making a decision, fail to give proper consideration to a human right relevant to the decision.

Giving proper consideration to human rights entails identifying human rights which may be relevant to a decision and considering whether the decision would be compatible with human rights.

A decision will be compatible with human rights when it does not limit a human right, or only limits a right to the extent that is reasonable and demonstrably justifiable.

Human rights which may be relevant include:

- a) recognition and equality before the law, including the right to equal and effective protection against discrimination;
- b) freedom of thought, conscience, religion and belief, including the prisoner's freedom to demonstrate religion in observance and practice;
- c) property rights;
- d) the right to privacy;
- e) cultural rights – generally and for Aboriginal peoples and Torres Strait Islander peoples;
- f) the right to be treated with humanity and respect when deprived of liberty;
- g) the right to access health services; and
- h) the protection of families and children.

2. Limitation of Human Rights

In determining whether a limitation may be reasonable and demonstrably justifiable, the following factors are relevant to consider:

- a) The nature of the human right – this involves looking at the purpose and underlying value of the human right. For example, the right to health services provides for the right to access health services without discrimination and the right to not be refused medical treatment that is immediately necessary to save a person's life or to prevent serious impediment to that person.
- b) The nature of the purpose of the limitation – this involves considering the actual purpose or legitimate aim/reason for limiting the human right. For example, the limit to privacy provided for in this policy whereby a mouth inspection is required prior to the distribution of medication is to limit the diversion of medication, which could then be used to cause harm, directly or indirectly to other prisoners and officers.
- c) The relationship between the limitation and its purpose – this involves considering the rational connection between the limitation of the right, and whether this will actually help to achieve said purpose or legitimate aim. For example, mouth inspections and the supervised distribution of medication is effective in limiting the diversion of medication.
- d) Whether there are any less restrictive and reasonably available ways to achieve the purpose – this involves a 'necessity analysis' where it is necessary to consider the purpose of the limitation and if it can be achieved in any other way. For example, currently there is no more effective option available to officers than a mouth inspection at the time of medication distribution to limit the potentially harmful diversion of this medication.
- e) The importance between the purpose for the limitation and preserving the human right – this involves a balancing exercise of the benefits obtained by the limitation vs the harm caused to the human right. For example, does the security of person provided to other prisoners and officers by limiting the diversion of medication, outweigh the limit to privacy that is the impact of a mouth inspection.





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3. Overview of Q Health Service Provision

Queensland Health provides primary health care to prisoners who are incarcerated. These services are structured to care for adult prisoners (i.e. prisoners over the age of 18 years). Queensland Health (Q Health) does not provide health care to children accommodated with their mothers in a corrective services facility (Q Health will only treat a child within a corrective services facility in relation to an emergency situation).

During day-to-day interaction if a corrective services officer observes that a prisoner is presenting with apparent or expressed significant health concerns an immediate referral should be made to Q Health outlining any concerns.

3.1 Information Sharing with Q Health

In order to facilitate appropriate care of prisoners by Q Health, an Information Sharing Agreement is in place between QCS and Q Health which allows the exchange of information for shared clients without authorisation from the client.

It is preferable to obtain the shared client's authorisation to disclose information to Q Health under section 341(3)(d) of the CSA, via completion of an Administrative Form 160 Authority to Disclose, Release and Exchange Information (Custodial) or other written instructions. A shared client's refusal to give authorisation for their private details to be shared with Q Health should be respected wherever possible.

Where a prisoner provides general consent or authorisation to share information with those involved in their treatment and care, authorisation does not need to be sought before every instance of information sharing.

The Information Sharing Agreement is to be used when a shared client's authorisation cannot be obtained or when the information is reasonably required to facilitate the safe, secure, and effective supervision and management of shared clients and provide client focused health services.

Information can be shared orally, in writing, or in any other format. When QCS staff receive or share information under the Agreement they must ensure they document:

- the date and time information was received or shared;
- the name and title of the authorised employee that receives or shares the information;
- what information was received or shared; and
- that the information was received or shared under the Agreement.

Refer to the COPD Confidential Information: Disclosure of Confidential Information. Information Sharing Agreement and Operating Guidelines.





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4.6 Long-acting injection

The Chief Superintendent must ensure that a prisoner subject to the OST program who is being considered for work camp placement is on the long-acting injection (LAI) for a minimum of three to four weeks prior to placement. This allows the Q Health staff to ensure the prisoner is responding appropriately to the LAI and their levels have stabilised.

If all options for treatment have been explored and it is determined by Q Health that the prisoner would be unable to receive OST treatment at a work camp as there is no facility for treatment available within a reasonable proximity, the Chief Superintendent will ensure the prisoner is informed of the situation.

4.7 Prisoners with special needs

Care must be taken to ensure prisoners with special needs clearly understand the process being undertaken. Refer to the Engaging prisoners with special needs section in the Custodial Operations Practice Directive (COPD) Prisoners of Concern.



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6. Dispensing of General Medication

Administering medication to prisoners in a corrective services facility occurs daily and must be conducted in a structured and controlled manner.

Correctional staff will ensure the following:

- a) the security of the Q Health Staff is maintained at all times,
- b) prisoners maintain an orderly queue and do not interfere with the safe dispensing of medication,
- c) the prisoner's identification is confirmed prior to any medication being dispensed, and
- d) with the exception of approved self-managed medication, prisoners are to consume all medication at the point of dispensing,

Correctional staff should at a minimum conduct a mouth inspection, hand inspection and cup/bottle inspection to confirm that no medication has been diverted.





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9. Prisoner Carers

Prisoner carers may be employed to assist those prisoners who are identified as requiring assistance. This practice is to be limited to three basic areas of responsibility for which no first-aid or other training is required. These include:





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- a) cleaning the ill/infirm prisoner's cell;
- b) getting that prisoner's meal and other basic needs (e.g. reading material, etc.); and
- c) transporting the prisoner (e.g. by wheelchair, etc.) to the Health Centre or other location within the centre as needed

Prisoners are not permitted to be involved in assisting other prisoners with personal care (e.g. undressing, showering, toileting, etc.).

Chief Superintendents of corrective service facilities should ensure a Local Instruction is written outlining the selection and management process which clearly states the duties and limitations for suitable prisoners to be employed in this capacity.

When assessing the suitability for a prisoner to become a carer the following should be considered:

- a) offending behaviour with possible exclusions being elder abuse, exploitation in the capacity of a carer,
- b) custodial incident and breach history, and
- c) intelligence holding indicating a history of stand over tactics.

The prisoner requiring care may be consulted prior to the appointment of a carer.

Prisoner carers are to be employed in accordance with the COPD Prisoner Employment.

The provision of health care to prisoners remains the responsibility of Q Health. In cases where prisoners have been clinically assessed as requiring more significant care (e.g. personal care), consultation between QCS and Q Health will continue to occur.

10. Private Medical Treatment

Prisoners may have access to private medical practitioners and private medical treatment at their own expense. This will also include associated costs such as transport and corrective services officers providing an escort. Refer to the COPD Escorts: External Escorts for further information regarding planning and conducting an escort.

Prisoners may apply in writing for private medical treatment by a doctor or psychologist nominated by them in accordance with section 22 of the *Corrective Services Act 2006* (CSA).

The Chief Executive or delegate may give approval for a prisoner to be treated by a private medical practitioner if satisfied:

- a) the prisoner is able to pay for the examination or treatment and associated costs (refer to sections 22(3)(b) and (4) of the CSA);
- b) the application for the approval is not—
 - i. frivolous or vexatious (refer to section 22(3)(a)(i) of the CSA); or
 - ii. for an examination or treatment for participating in assisted reproductive technology (refer to section 22(3)(a)(ii) of the CSA);
- c) the doctor or psychologist nominated by the prisoner is willing and available to carry out the examination or treatment of the prisoner (refer to section 22(3)(c) of the CSA); and
- d) the provision of the examination or treatment does not pose a risk to the good order or security of the facility.

The Chief Executive or delegate must consider, but is not bound by, any report or recommendation made by the nominated doctor or psychologist (refer to section 22(5) of the CSA).





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Prisoners and private medical practitioners must be aware that prisoners in a secure or low custody facility do not have Medicare cards or Medicare numbers and are therefore ineligible for any Medicare reimbursement.

11. DNA Sampling

DNA sampling is the process of taking biological samples from a person's body for analysis to determine the unique DNA code of that person. While DNA analysis can be used for a number of things, this information relates only to the establishment of a DNA database by the Queensland Police Service (QPS) for use by law enforcement agencies.

The QPS is authorised to take DNA samples from prisoners who are serving sentences for indictable offences, whether sentenced in Queensland or elsewhere.

This process provides for a co-operative approach to the taking of DNA samples by the QPS from a prisoner serving a term of imprisonment for an indictable offence committed in another state or country who has been transferred and detained in a corrective services facility (refer to the *Police Powers and Responsibilities Act 2000* (PPRA) Division 3 – section 487 Taking DNA sample from transferred prisoner).

Effective risk management strategies must be utilised to minimise the potential for negative impact on the corrective services facility that may arise from the DNA sampling process.

11.1 Authority for DNA sampling

The PPRA provides:

- a) authority for police officers (who through experience, expertise or training are considered suitable) or doctors or nurses (who have been asked by police officers), to take a hair sample or mouth swab (DNA sample) from another person for DNA analysis;
- b) establishes procedures for taking DNA samples;
- c) authorises:
 - i. the establishment of a DNA database;
 - ii. the recording of information obtained by performing a DNA analysis of a DNA sample; and
 - iii. the use of the information in the database for investigations by declared law-enforcement agencies.

The taking of DNA samples from transferred prisoners is provided for under section 487 of the PPRA.

11.2 Advice to Queensland Police Service

When a sentenced prisoner is transferred from another state or country to Queensland, the Chief Superintendent of the receiving corrective services facility must advise the DNA and Forensic Sample Management Unit, QPS to enable arrangements to be made for DNA testing of the transferred prisoner if required.

11.3 Information to prisoners

Before the taking of samples commences, the Chief Superintendent of a corrective services facility must provide information regarding the processes involved in DNA sampling to the prisoner refer to the Appendix H1 DNA Sampling Information for Prisoner.

11.4 Methods of taking DNA samples

DNA samples are taken in one of two ways:





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- a) Mouth Swab: The person from whom the sample is to be taken is handed a swab consisting of a foam disc about the size of a \$2 coin, attached to a short straw-like handle. The DNA Sampler asks the person to rub the swab inside their cheeks. The swab collects cells that are subsequently analysed to determine the DNA code for that person. This is the preferred method of taking DNA samples.
- b) Hair Sampling: A DNA Sampler may take 10 to 12 individual hair strands including hair roots from a person.

A DNA sample should normally only be taken from a prisoner once. However, if no DNA profile is obtained from that sample, another DNA sample will be taken.

11.5 Provision of staff

QPS will provide a DNA Sampler to take DNA samples.

The Chief Superintendent of a corrective services facility must assign a corrective services officer to the DNA Sampler, who must remain with the DNA Sampler whilst they are in the facility. Q Health staff working in the health centre must not participate in any aspect of taking DNA samples.

11.6 Precautions to minimise impact on a facility

A prisoner will not be told the date or time DNA samples will be taken.

A prisoner must be informed about the taking of DNA samples and be given the opportunity to ask questions and raise concerns about the process. The level of concern, if any, must be monitored continuously until the collection process has been completed.

The Chief Superintendent of the corrective services facility should be aware of the possible distress taking DNA samples may cause some prisoners and ensure staff are vigilant in observing prisoners for any signs of an intention to self-harm.

11.7 Facilitating collection of samples

If requested, DNA Samplers must be given assistance to undertake their task.

The Chief Superintendent of the corrective services facility must provide DNA Samplers:

- a) secure storage for their equipment; and
- b) easy access to the room allocated for the sampling purpose.

The Chief Superintendent of the corrective services facility must roster sufficient corrective services officers to ensure a prisoner attends the DNA sampling area in a manner that does not delay the DNA Sampler.

Only corrective services officers are to escort prisoners.

In addition to escort staff, one corrective services officer must be in constant attendance in the DNA sampling area while samples are being taken.

The corrective services officer must:

- a) ensure the DNA sampling area is ready for use;
- b) manage a prisoner inside the DNA sampling room, except for the period during which the actual sample is being taken;
- c) confirm that an identified prisoner is serving a term of imprisonment for an indictable offence;





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- d) liaise with other corrective services officers about the movement of a prisoner to and from the DNA sampling room;
- e) ensure DNA Samplers have access to departmental documentation which confirms the identity of a prisoner;
- f) provide any other reasonable assistance requested by DNA Samplers;
- g) advise the Chief Superintendent of the corrective services facility immediately if a prisoner has refused to provide a sample;
- h) if it is envisaged that it will be necessary to use force against a prisoner to collect a DNA sample, a DNA Sampler or appointed liaison officer is to negotiate appropriate arrangements to take the DNA sample with the Chief Superintendent of the corrective services facility (refer to section 517(4) of the PPRA); and
- i) record in IOMS that the sample has been taken.

11.8 Protecting the dignity of persons while taking DNA samples

Samples are taken in an area that provides reasonable privacy for the person.

If reasonably practicable, a DNA sample is not taken:

- a) in the presence of someone whose presence is not required while the sample is being taken; or
- b) where someone not involved in taking the sample can see the sample being taken.

The prisoner must not be required to remove more clothing than is necessary for the DNA sample to be taken.

11.9 Refusal by a prisoner to provide a DNA sample

If a prisoner will not cooperate with the sampling process, the Chief Superintendent of the corrective services facility must first discuss with the prisoner the consequences of failure to comply.

If a decision is made to take the DNA sample, then the DNA Samplers will, in consultation with the Chief Superintendent of the corrective services facility, take a DNA sample.

Even if a prisoner refuses to allow a sample to be taken, they must remain in the sample area for the same length of time it would take to obtain a sample from a cooperative prisoner. This is to ensure the process does not confirm any non-compliance to other prisoners.

11.10 Use of force

If the use of force is unavoidable, the Chief Superintendent of the corrective services facility must request the DNA Sampler to attend at a time which is convenient to use such force as is necessary for the taking of a sample in a manner that minimises disruption to the facility and avoids any escalation of tension.

If force is used to take a DNA sample, the prisoner should be assessed prior to the return to their accommodation area to avoid further incident.

11.11 Record of DNA testing

The Chief Superintendent of a corrective services facility must ensure that a record of DNA testing is entered in IOMS for every prisoner tested.





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12. Prisoners with an Advance Health Directive (AHD)

An AHD is a legally enforceable document that allows a person to give directions about their future health care. An AHD operates only when a person's capacity becomes impaired, for example, a prisoner is suffering a medical episode and they are not responsive.

The Chief Superintendent should ensure there is a process for Q Health to inform QCS staff of prisoners at the centre who have made an AHD.

Where QCS is advised by Q Health that a prisoner has made an AHD, all reasonable efforts must be made to inform the officers managing the prisoner about this Directive. Officers must abide by the requirements of the Directive, which may include a refusal to consent to cardio-pulmonary resuscitation (CPR).

There may be circumstances where an officer may treat a prisoner while not aware of the AHD, for example, an officer may commence CPR on an unconscious prisoner without knowing the AHD was in place. This will not be in breach of the AHD providing the officer ceases treatment upon being informed of the existence of an AHD.

The potential impact on staff who manage prisoners with an AHD which is implemented is acknowledged, as is the potential impact on prisoners who may observe an AHD being carried out. Support via the preferred service provider is to be offered to all staff involved in the incident, (the circumstances relating to the incident are to be provided to the service provider by the Chief Superintendent of the corrective services facility or nominee) refer to the Critical Incident Support resources available on the QCS intranet for the appropriate course of action.

Refer to the COPD Incident Management: Death in Custody for details of the debriefing process to be followed and the management of associated prisoners after a death in custody.

13. Critically Ill Prisoners

13.1 Sentenced prisoners

If a sentenced prisoner is critically ill, they are to be encouraged to consider applying for exceptional circumstances parole. The prisoner can be referred to Sentence Management Services (SMS) to discuss their eligibility and the application process. Refer to section 176 of the CSA.

13.2 Remanded prisoners

Prisoners currently held on remand are ineligible to apply for exceptional circumstances parole. If an individual being held on remand is critically ill, SMS should be advised so they can liaise with the judiciary to determine if it is appropriate to have the prisoner released on bail.

If the prisoner is both sentenced and remanded for further outstanding charges, they will be required to gain both exceptional circumstances parole and bail before being released to the community.

14. Voluntary Assisted Dying (VAD)

The *Voluntary Assisted Dying Act 2021* gives Queensland persons who are suffering and dying, and who meet eligibility criteria, the option of requesting medical assistance to end their lives. This is not legally considered suicide.





Health

Health Needs

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The VAD process is a confidential process managed by Q Health. If a prisoner raises the topic of VAD with QCS staff, the prisoner must be directed to request further information from Q Health staff. QCS staff must not provide advice or information on this topic to a prisoner.

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