



Escorts

Leave of Absence

ECS

Custodial Operations Practice Directive

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1. Human Rights

It is unlawful for corrective services officers 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 but are not limited to:

- a) recognition and equality before the law,
- b) freedom of movement;
- c) protection of families and children;
- d) the right to health services;
- e) the right to education;
- f) cultural rights generally and for Aboriginal peoples and Torres Strait Islander peoples; and
- g) the right to humane treatment when deprived of liberty.

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 protection of families and children provides that families are a fundamental group unit in society and are entitled to be protected by society and the State.
- 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, within the custodial environment, a prisoner's contact with their family is regulated and monitored, for the safety and security of the corrective services facility, including staff and other prisoners.
- c) The relationship between the limitation and its purpose – this involves considering the rational connection between the legitimate right, and whether this will actually help to achieve said purpose or legitimate aim. For example, does the limit on prisoner's access to their family facilitate the safety and security of the corrective services facility. This document provides a process for prisoners to apply for a leave of absence, as a prisoner's ability to move around freely outside of the confines of the corrective services facility is also regulated and monitored for the security of person of the broader community.
- d) Whether there are any less restrictive and reasonably available ways to achieve the purpose – this involves the 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, approval of a Leave of Absence in accordance with this practice directive, in relevant circumstances, lessens the limitation on a prisoner's contact with their family. In addition, the process to facilitate a Remote Compassionate Visit (RCV) engages the right to protection of families and children and provides another avenue of contact for prisoners in compassionate circumstances.





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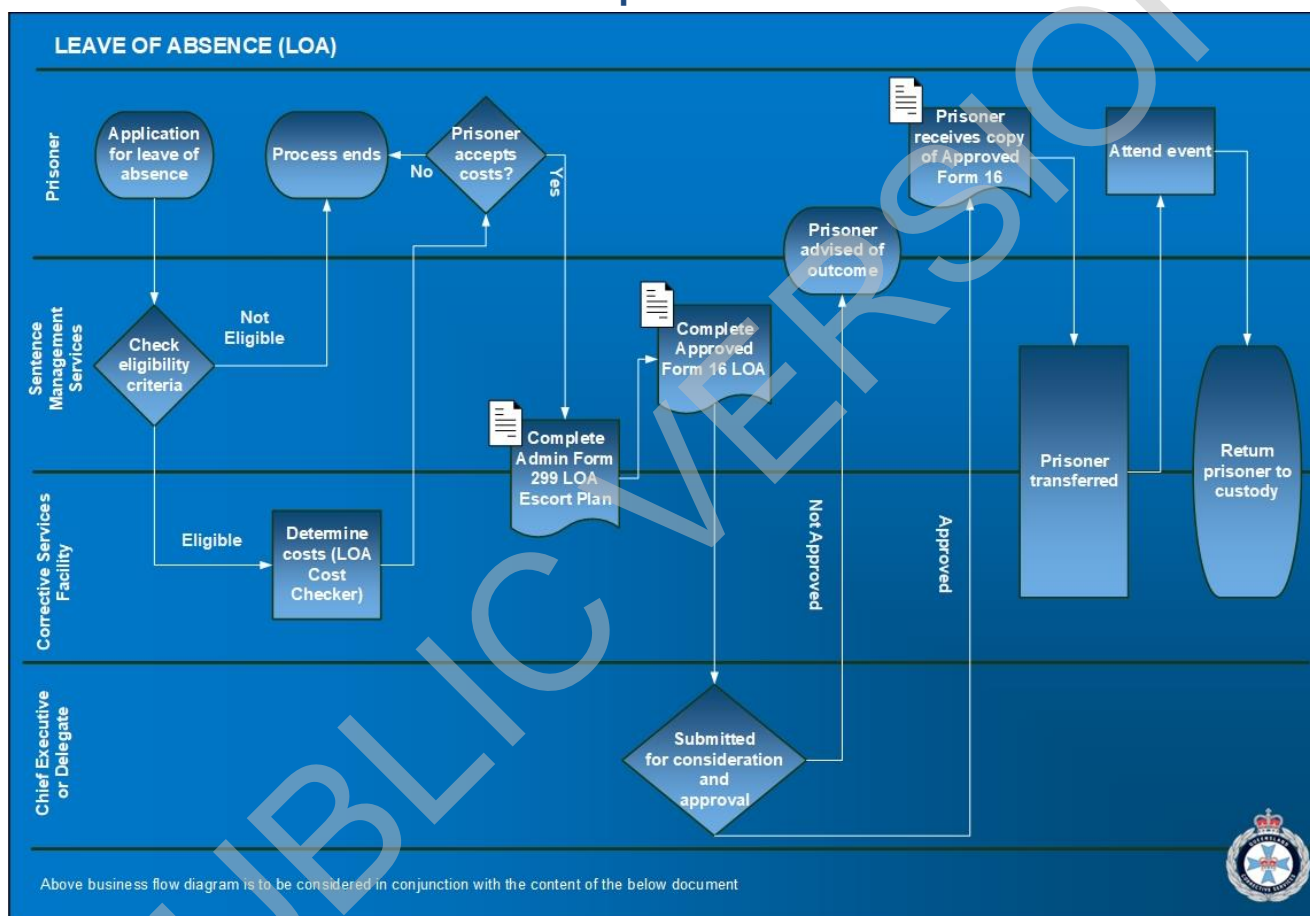
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- e) The importance between the purpose for the limitation and preserving the human right – this involves a balancing exercise of the benefits obtained by the limitation vs the harm caused to the human right. For example, does the safety and security of the corrective services facility and the broader community, which is facilitated to some extent by regulating and monitoring a prisoner's access to their family, outweigh the limit to the right to protection of families and children?

3. Leave of Absence Process Map



4. Eligibility Criteria

The delegate must consider all relevant factors when considering applications for leave of absence. Relevant factors for consideration are outlined in the Administrative Form 103 Application for Leave of Absence.

Consideration of applications for a leave of absence associated with education or community service should also reference the COPD Prisoner Entitlements: Education and Community Service Leave.

The Chief Superintendent or delegate may, by written order, grant a prisoner leave for the following:

- a) community service;





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- b) compassionate reasons;
- c) education or vocational activities;
- d) medical, dental or optical treatment; and
- e) any other reason that the Chief Superintendent or delegate considers reasonable.

Refer to section 72 of the *Corrective Services Act 2006* (CSA).

Compassionate leave may be granted for the following:

- a) to visit a relative who is seriously ill;
- b) to attend a relative's funeral;
- c) for a female prisoner who is the mother of a young child—to establish the child with a replacement primary care giver;
- d) for a prisoner who, before being imprisoned, was the primary care giver of a child—to maintain the relationship with the child; or
- e) for a prisoner who is a child's parent or kin but, before being imprisoned, was not the primary care giver of the child—to establish a relationship, or maintain the relationship, with the child.

The prisoner must prove the need for the leave to the satisfaction of the Chief Superintendent or delegate.

When considering whether to grant compassionate leave to a prisoner, the Chief Superintendent or delegate must take into account the prisoner's culturally specific needs (as well as those additional considerations listed on the Administrative Form 103 Application for Leave of Absence).

Refer to section 73 of the CSA.

Section 82(1) of the CSA identifies that the following prisoners may only be granted leave for compassionate or health purposes:

- a) a prisoner detained on remand for an offence;
- b) a prisoner detained under the *Migration Act 1958* (Cth);
- c) a prisoner imprisoned for an indefinite period for contempt;
- d) a prisoner detained under the *Criminal Law Amendment Act 1945*, part 3;
 - i. note: the *Criminal Law Amendment Act 1945* part 3 deals with indeterminate detention of offenders convicted of sexual offences; and
- e) a prisoner detained, other than as mentioned in paragraph (d), for a sexual offence.

Refer to section 81 of the CSA for leave of absence provisions for a prisoner who is serving a life sentence or is a serious violent offender, as defined under the *Penalties and Sentences Act 1992*, regardless of the length of sentence.

4.1 Possibility of victim contact

In granting leave of absence, the possibility of the prisoner having contact with the victim/s of the offence must be considered. Leave may be refused, or an alternative venue for the leave may be required, if it is assessed that the leave would cause distress to the victim/s. The leave of absence order may include a condition precluding contact with the victim/s.

For prisoners who have a Victims Register (VR) flag, who are under consideration for a leave of absence program, the Chief Superintendent of the corrective services facility must ensure a proximity check is requested via submitting a VR Custodial Proximity Enquiry in relation to the proposed participation site. This is to be recorded on the Administrative Form 20 Work Program Suitability Assessment/Community Service and Education LOA Assessment.





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VR will advise the Chief Superintendent of the corrective services facility if any relevant information is required to be provided as a factor for consideration as a part of their suitability assessment to participate in any leave of absence program. The information provided by VR is confidential and is not to be entered as a case note or attachment on IOMS.

If the prisoner is assessed as suitable to participate in a leave of absence program, the Chief Superintendent of the corrective services facility will ensure that the VR is provided with further advice regarding the prisoner's participation.

4.2 Domestic and Family Violence Orders (DFVOs)

When a prisoner is subject to a DFVO under the *Domestic and Family Violence Protection Act 2012*, a leave of absence order must include a condition that the prisoner must comply with the conditions of any current DFVO in which they are named as the respondent. Refer to the word version of the Approved Form 16 for the recommended wording of this condition.

4.3 High security prisoner restrictions

A high security prisoner must not be granted leave to attend any social/recreational activities (e.g. shopping/movies). This type of leave may only be granted in exceptional circumstances, for example, an unavoidable parental/family responsibility.

Refer to section 72(1)(e) of the CSA.

5. Assessment and Approval

Appropriate assessments are to be undertaken to assist with pre-release management, which is focussed on and assisted by graduated community access for prisoners in a safe, efficient and effective manner. The risk to the community is a key consideration in determining whether community access via a leave of absence will be granted. DFV intelligence holdings are to be reviewed in IOMS and considered as part of this assessment.

Assessment for leave of absence is focussed on obtaining appropriate and accurate information to assist in the decision making for graduated community access for prisoners. Community access for prisoners will be granted according to the identified needs of the prisoner and based on the results of the required assessments undertaken.

To be approved for community access:

- a) the purpose of the leave must have been assessed as valid;
- b) the prisoner must be eligible to apply; and
- c) all required assessments must be undertaken.





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Assessments for leave of absence must be submitted to the Chief Superintendent or delegate for consideration and approval.

Prior to the escort commencing, an Approved Form 16 Leave of Absence and an Administrative Form 299 Leave of Absence Escort Plan must be completed and given to the escorting officers. An Approved Form 16 Leave of Absence is the authority for a prisoner to be absent from a corrective services facility. The form should include details of any approved social passes from the leave residence if applicable.

The Approved Form 16 Leave of Absence should contain any additional conditions considered relevant to the nature of the leave of absence as well as those relevant to the individual circumstances of the prisoner. Refer to the word version of the Approved Form 16 for recommended wording of additional conditions in particular circumstances (noting that the conditions with asterisks are optional).

The Chief Superintendent of the corrective services facility is to nominate an officer responsible for processing of the leave of absence. This is to occur as soon as practicable to facilitate the leave of absence.

The Chief Superintendent or delegate is responsible for the approval and review of the leave of absence request. Refer to the QCS Instrument of Delegation of Chief Executive Powers.

5.1 Suspending or cancelling an order for leave of absence

The Chief Superintendent or delegate of the corrective services facility can suspend or cancel a leave of absence at any stage of the process, if there is a reasonable belief that the prisoner:

- a) has failed to comply with the conditions of the order;
- b) poses a serious and immediate risk of harm to someone else; or
- c) poses an unacceptable risk of committing an offence.

The prisoner must be notified of the suspension or cancellation of the leave of absence before they are required to return to the centre, unless there is a reasonable belief that the prisoner poses a serious and immediate risk of harm to someone else. Refer to section 85 of the CSA.

6. Interstate Leave of Absence

An interstate leave permit may be granted for a period of not more than seven days. Refer to the Approved Form 18 Interstate Leave Permit.

An interstate leave permit may only be granted if the State/Territory to which the prisoner wishes to travel is declared to be a participating State/Territory. Refer to section 96 of the CSA.

The facility holding a prisoner making a request for an interstate leave of absence must complete letters of notification and forward to the Deputy Commissioner, Custodial Operations. Refer to the Administrative Form 102 Interstate Leave of Absence – Notification Letters.

Refer to sections 89-96 of the CSA and sections 14 and 15 of the Corrective Services Regulation 2017.

The Chief Superintendent of the corrective services facility is to nominate an officer responsible for processing of the leave of absence. This is to occur as soon as practicable to facilitate the leave of absence.





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The Chief Superintendent or delegate is responsible for the approval and review of the leave of absence request. Refer to the QCS Instrument of Delegation of Chief Executive Powers.

7. International Leave of Absence – Mutual Assistance Approval

Approval may be granted for a prisoner to travel to a foreign country to give evidence in criminal proceedings or assistance in criminal investigations at the request of the Commonwealth Attorney-General (refer to section 96A of the CSA and sections 26 and 27 of the *Mutual Assistance in Criminal Matters Act 1987* (Cth)). The Commonwealth Attorney-General will only make a request for a prisoner to travel and provide assistance if the prisoner consents to the request.

The Commonwealth Attorney-General will send a written request including details of dates of travel and escort arrangements. Requests for prisoners will be sent to the Deputy Commissioner, Custodial Operations. Before a formal request is sent, the Australian Federal Police may contact the prisoner to determine if they are willing to provide assistance.

Before granting mutual assistance leave of absence the decision maker should be satisfied that the prisoner understands the purpose of the travel and consents to providing assistance in the criminal proceeding or investigation.

If approval is granted the decision maker must issue an Approved Form 45 Mutual Assistance Approval. The form should contain all conditions necessary for prisoner's travel to the foreign country. The form must be provided to the prisoner and to the Commonwealth Attorney-General. If approval is not granted the decision maker must advise the Commonwealth Attorney-General in writing that approval was not granted.

The period of approval will be until the prisoner is no longer required. It is not possible to specify the date the prisoner will return to Queensland.

A prisoner in a foreign country on mutual assistance approval remains eligible for parole. Arrangements can be made for the prisoner to be released from custody in the foreign country if parole is granted (refer to sections 26(3)(d)(ii) and 27(3)(c)(ii) of the *Mutual Assistance in Criminal Matters Act 1987* (Cth)).

8. Compassionate and Health Purposes Leave of Absence

A leave of absence for compassionate and health purposes:

- a) may be granted to a prisoner in emergency or special circumstances that are assessed as important for the emotional or physical well-being of the prisoner;
- b) are intended for specific and one-off occasions and should not normally be used for a continuous purpose, but may be granted:
 - i. on more than one occasion for the same purpose; or
 - ii. for an overnight stay.

Certain prisoners may only be granted leave of absence for compassionate or health purposes. Refer to the Eligibility Criteria section of this COPD and section 82(1) of the CSA.

In these circumstances, the prisoner must be escorted during the leave of absence. Refer to section 82(2) of the CSA.

A prisoner must apply for each instance of compassionate and health leave of absence using the Administrative Form 103 Application for Leave of Absence.





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Queensland Health is to advise the external health facility of any scheduled appointment.

Refer to sections 72, 73 and 82 of the CSA and the QCS Instrument of Delegation of Chief Executive Powers.

8.1 Guidelines for granting funeral leave

The granting of funeral leave should be carefully considered by the delegate and consideration given to options to facilitate grieving by prisoners that on an ascending scale would present the least risk for QCS while at the same time being effective and appropriate for the prisoner. The delegate should consider the following:

- a) the granting of funeral leave should always apply equally to all prisoners;
- b) cost and efficiency of delivering outcomes should be part of the decision maker's considerations; and
- c) the risk to the escorting officers should be considered in making decisions about whether and in what circumstances funeral leave is granted.

Options to support the grieving process, such as counselling, special telephone calls, video conferences and the use of the Remote Compassionate Visit process to allow virtual attendance at a funeral or later viewing of the funeral recording are to be considered as an alternative should the prisoner be unable to attend a funeral in person. Refer to Remote Compassionate Visit (RCV) section of this COPD.

Refer to the Appendix ESC3 Leave of Absence – Compassionate Leave for assistance in determining the most appropriate outcome for prisoners who have suffered familial loss and to provide alternatives to compassionate leave for funeral attendance (funeral leave) where appropriate.

8.2 Funeral attendance for Aboriginal and Torres Strait Islander prisoners – compassionate leave of absence

Recognition is given to the special kinship and family obligations of Aboriginal and Torres Strait Islander prisoners that extend beyond the immediate family in accordance with recommendation 171 of the Royal Commission into Aboriginal Deaths in Custody and section 28 of Queensland's *Human Rights Act 2019*.

Consideration should be given to the sections of this COPD and the COPD Escorts: External Escorts which will provide additional guidance for the approval and escort of Aboriginal and Torres Strait Islander prisoners attending funerals.

This section relates to attendance at funerals only and does not include other events.

8.3 Eligibility for funeral leave

A prisoner may be eligible to attend a funeral:

- a) where the deceased person was a relative or has family ties;
- b) where there is a cultural connection;
- c) if there are verifiable compassionate or exceptional circumstances; and
- d) if the person is or was married—in addition to the points above, a person who is or was a relative, of the kind described in any of those paragraphs, of the prisoner's spouse; or
- e) where the deceased person was a de facto partner.

In some instances, the deceased person may have had a closer relationship with the prisoner than is immediately apparent.





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Kinship within Aboriginal and Torres Strait Islander cultures often extends close relationship ties where a grandparent or aunt/uncle may assume a parent role, or a cousin a brother/sister relationship. For example, where an aunt has raised a child, she may assume a mother figure while her offspring are regarded as brothers and sisters.

Kinship must be verified prior to approval being granted for a prisoner to attend a funeral. The Cultural Liaison Officer, or equivalent position, will verify eligibility of the prisoner.

8.4 Application for compassionate leave

A prisoner must apply for compassionate leave of absence to attend a funeral using an Administrative Form 103 Application for Leave of Absence.

8.5 Approval and consultation for compassionate leave

Compassionate leave of absence to attend a funeral will only be granted when the Chief Superintendent of a corrective services facility, or delegate, through the Cultural Liaison Officer has consulted with the relevant community council to determine that:

- a) the deceased person was a close family member as defined in the abovementioned eligibility section of this COPD;
- b) the community and family approve of the prisoner attending the funeral. This is considered necessary since the victim/s of the prisoner's offence/s may be attending the same funeral;
- c) the community has been made aware of the proposed escort details and arrangements, in particular if handcuffs or other form of restraint are to be used;
- d) any proposed financial arrangements to allow the prisoner to attend will not place unnecessary hardship on the family of the prisoner or the deceased; and
- e) whenever possible, a representative of the community council will meet and accompany the escort throughout the visit. The nominated representative should provide a reliable contact number (preferably a mobile telephone number), which can be used, for example, by escorting officers in case of delays, etc.

It is important that community councils be made aware that under no circumstances can a prisoner act as a pallbearer where that prisoner is required to wear handcuffs or any other form of restraint. Only those prisoners approved to attend without restraint may act as a pallbearer; this will normally be prisoners of low security classification.





11. Financial Arrangements

The provision of staff and transport for the escort of prisoners to attend funerals is a costly exercise and may not be met through departmental operational budgets. Prisoners are expected to meet these costs themselves, either directly or by their families, communities or other approved sources. Refer to the Appendix ESC4 Leave of Absence - Escort and Cost Recovery.

Limited funds are made available for Aboriginal and Torres Strait Islander prisoners to attend approved funerals under the Family Support Program. Strict budgets apply to this scheme and these funds should only be considered as supplemental where other funding options fail to provide the total amount required.

Financial assistance should first be sought from the prisoner, the prisoner's family and/or the relevant community council. Where the total moneys required exceed the total moneys obtained, approval may be sought for the shortfall to be provided from the Family Support Program.

12. Remote Compassionate Visit (RCV)

If a prisoner is not approved or unable to attend a leave of absence for compassionate circumstances, a Remote Compassionate Visit (RCV) may be offered as an alternative. The RCV allows a prisoner to use the centre's technical infrastructure to remotely view a funeral or communicate with a seriously ill family member. Options may include via the use of live streaming, virtual personal visit software, videoconferencing or later viewing of a recording (in the case of a funeral). Refer to sections 51 and 150(f)(i) of the CSA regarding video conferencing.

A leave of absence request does NOT need to be considered prior to a RCV application being submitted. Prisoners may wish to apply for RCV, without considering a leave of absence application, for a variety of reasons including, but not limited to, prohibitive travel costs associated with attendance in person.

The Administrative Form 104 Application for Remote Compassionate Visit (RCV) must be submitted by the prisoner and approved by the Chief Superintendent of the corrective services facility or delegate.

In line with the restrictions for Compassionate and Health Purposes Leave of Absences, RCVs are intended for specific and one-off occasions and should not normally be used for a continuous purpose but may be granted on more than one occasion for the same purpose.





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If a prisoner seeks ongoing virtual contact with the same contact, consideration should be given as to whether this is more appropriately facilitated via the existing virtual personal visits process, detailed in the COPD Prisoner Entitlements: Prisoner Communication.

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