



Sentence Management

MSO Management

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Custodial Operations Practice Directive

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Scope

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Official/Public

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1. Human Rights

To ensure corrective services officers act or make decisions in a way that is compatible with human rights, officers must give proper consideration to human rights relevant to the decision including, but not limited to:

- a) the right to equal and effective protection against discrimination;
- b) the right not to be treated or punished in a cruel, inhuman or degrading way;
- c) the right of an accused person who is detained or a person who is detained without charge to be segregated from persons convicted of offences, unless reasonably necessary, and to be treated in a way that is appropriate for a person who has not been convicted;
- d) the right to access health services without discrimination;
- e) the right to freedom of expression;
- f) the right to privacy;
- g) the protection of families as the fundamental group of society and the protection of children;
- h) the prisoner's cultural rights – generally and for Aboriginal peoples and Torres Strait Islander peoples; and
- i) the right to be treated with humanity and respect.

2. Limitation of Human Rights

Human rights can be limited if certain conditions are present:

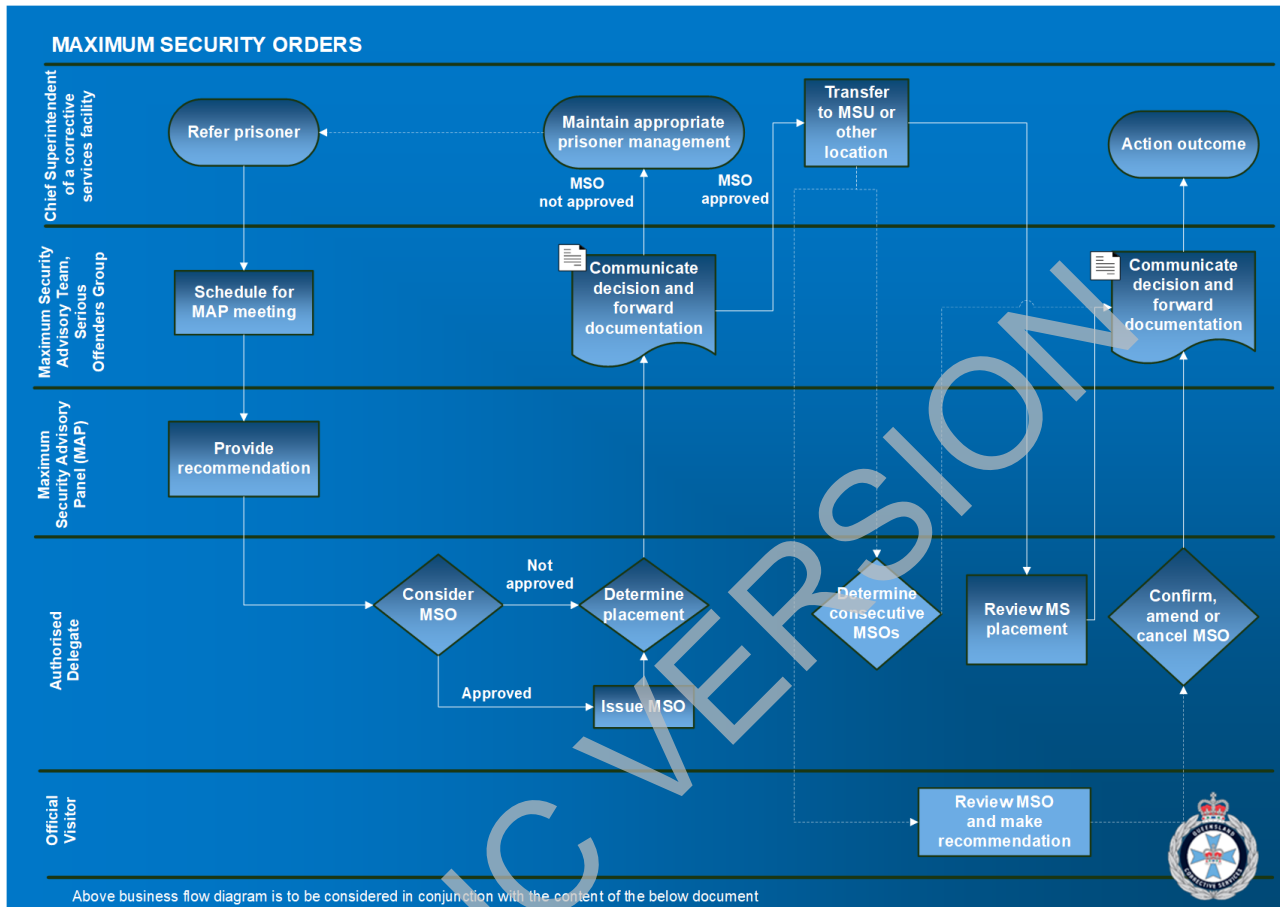
- a) the limit must be provided under law;
- b) the limit must be reasonable; and
- c) any imposition on the human rights must be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

A person's human rights should only be limited to the extent that is reasonably and demonstrably justified.





3. Maximum Security Orders



Pursuant to section 16 of the Corrective Services Regulation 2017 (CSR), if the Chief Executive knows, or reasonably believes, that a prisoner has a mental health condition or intellectual disability, they must notify a health practitioner (defined in the *Mental Health Act 2016*)* before making a Maximum Security Order (MSO) in relation to the prisoner. It is noted that this notification does not delay the placement of the prisoner in a Maximum Security Unit (MSU) by requiring an assessment be conducted prior to their placement.

When processing an MSO referral for a prisoner who has or is reasonably believed to have a mental health condition or intellectual disability, the Maximum Security Advisory Team (MSAT), Sentence Management Services must:

- forward an email from MSAT to the nominated Prison Mental Health Service (PMHS) contact person and the Senior Psychologist at the centre where the prisoner is likely to be placed in the MSU advising that the Chief Executive is considering issuing an MSO and placement in the MSU;
- the email must include that it is known or reasonably believed the prisoner has a mental health condition or intellectual disability;
- the email is also to request that if an MSO is issued any necessary follow up and/or monitoring of the prisoner by either PMHS or the Senior Psychologist be undertaken, as required;
- as a courtesy, MSAT must include the Chief Superintendent and MSU Manager at the potential placement centre in the email for information purposes; and
- record a case note on the Integrated Offender Management System (IOMS) noting the email has been sent to the nominated PMHS contact person.





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*Under schedule 3 of the *Mental Health Act 2016*, a health practitioner means a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, including, for example, a social worker.

4. Consult Regarding Prisoner

The Chief Superintendent or Superintendent of the corrective services facility recommending a prisoner be subject to an MSO must consult with the State-wide Manager, MSAT, prior to making an MSO referral.

5. Prepare Referral

At any point during the correctional episode, a prisoner may be referred for consideration of placement and management options, including under the conditions of an MSO.

Prisoners subject to an MSO are managed under regimes that may moderate aspects of their behaviour including interaction with staff, other prisoners and visitors.

Where the Chief Superintendent or Superintendent of the corrective services facility considers a prisoner poses a significant risk not suitable for management within mainstream accommodation and may meet the criteria for an MSO, an Administrative Form 324 Maximum Security Order Referral must be completed and provided, along with any relevant collateral information, to the authorised delegate via email to [REDACTED]. In emergent situations, written advice with details of the incident will be sufficient to progress the referral.

The MSAT maintains responsibility for scheduling referrals to the agenda for the Maximum Security Advisory Panel (MAP) and preparing any necessary documentation for presentation by the Chair. MSAT will provide the secretariat function for MAP.

MAP will make recommendations to the authorised delegate regarding an individual prisoner's placement.

6. Determine Security Classification and Maximum Security Order Suitability

The decision on security classification must have regard to each of the following legislative factors contained within section 12(2) of the *Corrective Services Act 2006* (CSA):

- a) the nature of the offence for which the prisoner has been charged or convicted;
- b) the risk of the prisoner escaping, or attempting to escape, from custody;
- c) the risk of the prisoner committing a further offence and the impact the commission of the further offence is likely to have on the community;
- d) the risk the prisoner poses to himself, other prisoners, staff members and the security of the corrective services facility;
- e) the length of time remaining to be served by the prisoner under a sentence imposed by a court; and
- f) information about the prisoner, if any, received from a law enforcement agency.





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Also, in accordance with section 12(3) of the CSA, the chief executive may have regard to any matter that is relevant to:

- a) the welfare or safe custody of the prisoner or other prisoners; or
- b) the security or good order of the corrective services facility.

In accordance with section 60(3) of the CSA, an MSO may only be made if the Chief Executive reasonably believes that one or more of the following apply:

- a) there is a high risk of the prisoner escaping, or attempting to escape;
- b) there is a high risk of the prisoner killing or seriously injuring other prisoners or other persons with whom the prisoner may come into contact; or
- c) generally, the prisoner is a substantial threat to the security or good order of the corrective services facility.

The authorised delegate may make an MSO which, pursuant to section 62(1) of the CSA, must include, if it is practicable, directions about the extent to which:

- a) the prisoner is to be separated from other prisoners; and
- b) the prisoner is to receive privileges.

Refer Queensland Corrective Services Instrument of Delegation of Chief Executive Powers, section 60 of the CSA, Administrative Decision Making Manual resource and Approved Form 7 Maximum Security Order.

A decision maker for an MSO may amend or repeal the instrument or decision. Refer to section 24AA of the *Acts Interpretation Act 1954* and Approved Form 7A Order for Amendment/Repeal of a Maximum Security Order.

7. Place Prisoner Subject to a Maximum Security Order

A prisoner subject to an MSO may be accommodated in a corrective services facility's MSU, detention unit or other prisoner accommodation area as considered necessary to manage the prisoner's individual risks and in consideration of relevant human rights. Placement in an area other than the MSU may be for the whole or part of the period for which an MSO is in effect. Refer to section 60(2) of the CSA.

The authorised delegate may make a safety order under section 53 of the CSA. During the period of the safety order, the prisoner may be accommodated separately from other prisoners, including, for example, in a health centre or in a detention unit. For a prisoner subject to an MSO who has been placed in a detention unit, refer to Custodial Operations Practice Directive (COPD) Prisoner Accommodation Management: Maximum Security Unit, COPD Prisoner Accommodation: Detention Unit and COPD At Risk Management: Safety Unit.

8. Issue Maximum Security Order

An MSO must not be for a period of longer than six months and accordingly, authorises the accommodation of the prisoner in an MSU, or in any other area considered necessary, for a period of not more than six months. Refer sections 60(2) and 60(4) of the CSA.

MSAT will maintain a record of prisoners subject to an MSO, including the approval date and period of the MSO. This record must be shared with the State Coordinator, Official Visitors, who in turn will maintain a record of the MSO review. Refer section 13.3 Conduct the Review of this COPD.





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8.1 Communicate decision and forward documentation

The signed MSO must be forwarded to the Chief Superintendent or Superintendent of either the corrective services facility where the prisoner is accommodated or to the corrective services facility with an MSU that is to receive the prisoner.

A copy of a signed MSO (or signed amended MSO) must be provided to a prisoner with all requirements of the order explained prior to the placement of the prisoner in the MSU.

9. Privileges

Under section 62 of the CSA, an MSO for a prisoner must include, if it is practicable, directions about the extent to which the prisoner is to receive privileges (in addition to directions about the extent to which the prisoner is to be separated from other prisoners).

Conditions about privileges must be limited to those that can be enjoyed within the MSU or in the area in which the prisoner is accommodated, and the enjoyment of which, in the circumstances of the MSO, may reasonably be expected not to pose a risk to the security or good order of the corrective services facility. Directions in an MSO will be based on the following minimum standards:

- a) associations as specified in the MSO or MSU Management Plan;
- b) telephone calls (excluding legal calls) – a prisoner may make two telephone calls of 10 minutes duration each to approved numbers each week;
- c) visits – a prisoner may receive visits pursuant to sections 153-154 of the CSA; and
- d) property – a prisoner's access to, and amount of, private property is in accordance with section 317 of the CSA and section 43 of the CSR.

The MSO may also include directions about the prisoner's access to programs and services, including training and counselling.

Access to privileges while subject to an MSO must be considered on a case-by-case basis, taking into account individual prisoner circumstances and relevant human rights.

Refer section 62 of the CSA, Queensland Corrective Services Instrument of Delegation of Chief Executive Powers and COPD Prisoner Accommodation Management: Maximum Security Unit.

The MSAT is to undertake communication with relevant stakeholders upon determinations being made relating to issuing an MSO.

10. Maintain Appropriate Prisoner Management

In the event that approval for an MSO is declined, the prisoner is to be managed in accordance with standard prisoner management practices. This may include management on an Intensive Management Plan (IMP) in accordance with the COPD Safety Orders and Intensive Management Plans: Intensive Management Plans.





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11. Transfer to a Maximum Security Unit

The authorised delegate responsible for making an MSO for a prisoner will determine the MSU where the prisoner is to be accommodated on the basis of considerations including:

- a) the prisoner's assessed risks and needs;
- b) the prisoner's compatibility with other prisoners;
- c) appropriate use of departmental resources or other organisational considerations;
- d) relevant human rights; and
- e) any other matter considered relevant (e.g. section 3 of the CSR which requires that an Aboriginal or Torres Strait Islander prisoner is to be accommodated in a corrective services facility as close as practicable to the prisoner's family unless the Chief Executive is satisfied the prisoner does not want to be accommodated near the prisoner's family).

Placement in an MSU is made to:

- a) provide a secure environment for the safe management of a prisoner placed on an MSO in accordance with the assessed risk to staff, other prisoners, the community or the security and good order of the corrective services facility including risk of escape; and
- b) provide enhanced behaviour management and encourage behaviour modification.

12. Review Security Classification and Placement of a Prisoner Subject to a Maximum Security Order

Under section 13 of the CSA, the chief executive of delegate may review a prisoner's security classification at any time. For a prisoner with a high security classification, the chief executive must review the prisoner's security classification in either of the following circumstances –

- a) the prisoner requests the security classification be reviewed and the prisoner has not requested the classification be reviewed during the previous 12 months;
- b) the security classification –
 - i. has been high for the previous 3 years; and
 - ii. has not been reviewed in the previous 3 years.

A review of placement is required in circumstances where a prisoner is to be transferred to another location and is to be recorded in IOMS within the Sentence Management – Decision Making Record. Unless legislatively required, requested by the prisoner or stipulated by the delegate, a review of security classification is not necessary.

The Chief Executive may provide for the prisoner's reintegration into the mainstream prisoner population of the corrective services facility before the period of the MSO ends.

13. Review Maximum Security Order and Make Recommendations

Refer section 63 of the CSA.

A review of an MSO will occur in one of two ways:

- a) at the request of a prisoner; or
- b) at the initiative of an Official Visitor.

13.1 Review at request of a prisoner

Refer sections 63(1) and (4) of the CSA.

A prisoner subject to an MSO may apply in writing to the Chief Executive for a referral of the MSO to an Official Visitor for review. If a prisoner requests assistance in making this application a corrective services officer must assist the prisoner.





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If the period of the MSO is three months or less, the prisoner cannot request a referral for review of the order more than once.

If the period of the MSO is more than three months, the prisoner cannot request a referral for the review of the order more than twice in any six month period.

A prisoner may also ask for an MSO to be referred to an Official Visitor if the Chief Executive or delegate amends the order. Refer section 63(5) of the CSA.

After receiving a request from a prisoner to review an MSO:

- a) the Chief Superintendent or Superintendent of the corrective services facility must notify the State Coordinator, Official Visitors of the request within three days of receipt of the request;
- b) written notification of the request must be provided, as soon as practicable, to an Official Visitor assigned to the relevant corrective services facility. The notification must:
 - i. state the necessity to conduct a review; and
 - ii. include advice regarding the identity of the authorised delegate who signed the MSO;
- c) notification of the commencement of the review must be given to the Assistant Commissioner, Specialist Operations via email to MSAT at [REDACTED]

The Official Visitor must review the order.

13.2 Review at initiative of Official Visitor

Refer sections 63(6) and 63(7) of the CSA.

An Official Visitor must review an MSO if:

- a) the period of the order is more than three months; or
- b) the order has not been reviewed:
 - i. at the prisoner's request; or
 - ii. within the previous three months.

The MSAT will provide the State Coordinator, Official Visitors with notification that a prisoner has been placed on an MSO. The State Coordinator, Official Visitors will provide:

- a) written notification of the requirement for a review to an Official Visitor assigned to the relevant corrective services facility. The notification must:
 - i. state the necessity to conduct a review; and
 - ii. include advice regarding the identity of the authorised delegate who signed the MSO.

13.3 Conduct the review

The Official Visitor must ensure that the requirements of the MSO are in accordance with relevant legislation and human rights.

When reviewing an MSO the Official Visitor may exercise the powers mentioned in section 291 of the CSA.

The Administrative Form 109 Official Visitor – Review of Maximum Security Order must be completed throughout the process to provide an executive summary and ensure legislative compliance. The completed administrative form must include the Official Visitor's recommendation whether the MSO should be confirmed, amended or cancelled.





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The Official Visitor must forward a review of the MSO to the State Coordinator, Official Visitors, who will provide the review to the Chief Superintendent, Sentence Management Services via email to the MSAT at [REDACTED]

The State Coordinator, Official Visitors will retain a record of the review, including the Official Visitor who conducted it and the date it was completed.

13.4 Confirm, amend or cancel Maximum Security Order

The Chief Executive or delegate must consider the recommendation of the Official Visitor and confirm, amend or cancel the MSO. The Chief Executive or delegate is not bound by the Official Visitor's recommendation. Refer section 63(9) and 63(10) of the CSA. The decision must be recorded using Administrative Form 109 Official Visitor – Review of Maximum Security Order.

13.5 Communicate decision

Following the Chief Executive or delegate's decision to confirm, amend or cancel the order, the prisoner and the Official Visitor must be advised in writing of the outcome. A copy of Administrative Form 109 Official Visitor – Review of Maximum Security Order with the Chief Executive or delegate's decision recorded on it must be provided to the State Coordinator, Official Visitors.

Refer Queensland Corrective Services Instrument of Delegation of Chief Executive Powers and Approved Form 8 - Order for Amendment/Cancellation of Maximum Security Order Following Official Visitor Review.

14. Determine Consecutive Maximum Security Orders

The authorised delegate may make a further MSO for a prisoner to take effect at the end of an existing MSO if there are relevant grounds to do so. Refer sections 60 and 61 of the CSA and the Administrative Decision Making Manual resource.

A further MSO must be made not more than 14 days before the end of the existing MSO.

A further MSO can only be made if, not more than 28 days before the end of the existing MSO, the prisoner is notified in writing from the Chief Executive or delegate that the Chief Executive is about to consider whether a further MSO should be made and the prisoner may, within 14 days after receiving the written notice, make submissions to the Chief Executive about anything relevant to the decision about making a further MSO. Additionally, a further MSO can only be made if the Chief Executive considers any submissions the prisoner makes.

This allows the prisoner time to make submissions regarding any decision to issue a consecutive MSO prior to such a decision being made.

A signed copy of a consecutive MSO must be provided to the prisoner prior to its commencement with all requirements of the order explained.

A decision maker for an MSO may amend or repeal the instrument or decision. Refer section 24AA of the *Acts Interpretation Act 1954*, and Approved Form 7A - Order for Amendment/Repeal of Maximum Security Order.





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15. Suspension of Maximum Security Order

Under section 63A of the CSA, a prisoner subject to an MSO may be transferred to another place and lawfully given into another person's custody, for example, a transfer to an authorised mental health service as a classified patient under the *Mental Health Act 2016*.

While the prisoner is in another person's custody, the MSO is suspended.

The suspension of the MSO ends when the prisoner returns to the Chief Executive's custody. The Chief Executive must review the MSO within seven days of the prisoner's return to the corrective services facility and confirm, amend or cancel it.

If the order is suspended under section 63A of the CSA, the Chief Executive must record the date on which the order was suspended, and the date on which the suspension ended. Refer to section 65(2)(e) of the CSA.

For further information regarding MSU processes not primarily actioned by Sentence Management refer to COPD Prisoner Accommodation Management: Maximum Security Unit.

PUBLIC VERSION

