



Incident Management

Management of Evidence and Seized Property

Custodial Operations Practice Directive

IM

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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) cultural rights generally and cultural rights of Aboriginal peoples and Torres Strait Islander peoples;
- b) property rights;
- c) the right to privacy and to reputation;
- d) the right to freedom of expression;
- e) rights in criminal proceedings;
- f) the right to humane treatment when deprived of liberty; and
- g) the right to recognition and equality before the law.

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, all persons have the right to property, and must not be arbitrarily deprived of their property.
- 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, this document may limit a persons right to property in order to ensure the safety, security and good order of a correctional facility.
- 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 help to achieve said purpose or legitimate aim. For example, whether or not the seizure of a prisoners property will decrease the risk of that property, to the safety, security and good order of the correctional facility.
- d) whether there are any less restrictive and reasonable 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, proper consideration of whether or not the property is required to be seized either as evidence or for the safety, security and good order of the correctional facility.
- 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. The greater the limitation of the right, the more important the purpose will need to be to justify the limitation.





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For example, consideration of whether or not the good security of the correctional facility is sufficiently balanced against the limitation of the prisoners right to property.

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

3. Overview

Section 138(1) of the *Corrective Services Act 2006* (CSA) provides that a corrective services officer may seize anything found in a corrective services facility, whether or not in a person's possession, that the officer reasonably considers poses, or is likely to pose, a risk to:

- a) the security or good order of the facility; or
- b) the safety of persons in the facility; or is
- c) a prohibited thing found in a corrective services facility, other than on or in the possession of a prisoner who has the chief executive's written approval to possess the thing; or
- d) a prohibited thing found on or in the possession of a prisoner who does not have the chief executive's written approval to possess.

All seized property must be treated as evidence until there has been a determination by the Correctional Supervisor/Property Management Officer as to whether the item/s will be linked to an incident report that requires a Commissioner of Police (CoP) referral. [REDACTED]

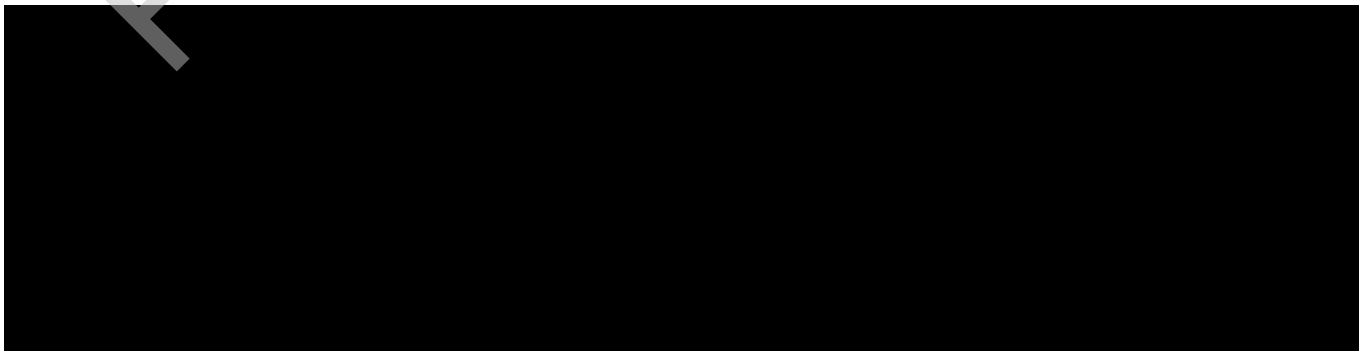
Where the matter is referred to the corrective services facility for consideration of breach action, the seized property must be treated as evidence until such time as any breach action is finalised.

Incident reports are not to be finalised until all seized items/evidence linked to the incident report have been collected by the Corrective Services Investigations Unit (CSIU), delivered to the local Queensland Police Service (QPS) station (in regional areas), returned to the owner or disposed of, under the authority of the Chief Superintendent or their delegate.

4. Methods of Detecting Evidence/Unauthorised Property

4.1 Electronic evidence - Unilink

'Email A Prisoner' is a service that provides prisoners and their families with an alternative method of communication. In circumstances where emails need to be accessed for evidentiary purposes, the Chief Superintendent can apply to the third-party provider, Unilink, for the release of the required emails. Unilink store emails for up to 13 months.





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4.3 Crime scene evidence

A crime scene may include a death in custody or recent serious/sexual assault against a person in a corrective services facility. A primary crime scene is one where the crime/incident was actually committed. A secondary crime scene is in some way related to the crime but is not where the actual crime took place. For example, the cell where a prisoner was seriously assaulted is a primary crime scene, while the exercise yard that contained a rubbish bin where a pair of bloodstained runners were found is a secondary crime scene.

If seized property is linked to a crime or potential crime scene, staff must ensure the scene is preserved and relevant information collected [REDACTED]

4.4 Planned operations

Planned operations may include lock down searches, targeted cell searches or unit searches. For planned operations, consideration must be given to ensuring that appropriate staff are available, including an officer allocated to the role of an Exhibit Officer, and that the appropriate equipment is also available, including evidence bags or containers, a hand-held digital camera and body worn cameras (BWCs).

BWCs must be activated during any planned operational activities. Refer to the Custodial Operations Practice Directive (COPD) Safety and Security Equipment: Body Worn Cameras.

Staff are to ensure they are wearing appropriate personal protective equipment (PPE). The Appendix S3 Safety Considerations for Searching should be read in conjunction with this section. When seizing any property, officers must ensure searches are conducted in accordance with the Practice Directives Search and Incident Management: Management of Evidence and Seized Property.

4.5 Emergent finds

Officers undertaking an emergent search and seizure of property are required to make an assessment of the scene and adopt appropriate practices. These practices may include activating a BWC, calling for additional staff to assist, securing the cell and/or removing the prisoner from the scene until additional staff can attend. Refer Appendix S3 Safety Considerations for Searching.

4.6 Concealed packages

In circumstances where an officer has located a package or container and the contents are unable to be readily identified, the officer must ensure the following (where practicable):

- a) a photograph is taken, or BWC activated, at the point of location (if this is operationally viable and safe to do so);
- b) the seized property is taken to a secure location for further investigation;
- c) the package should be IONSCAN tested to determine if there are illicit drugs present (if available);





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- d) during the opening of the package or container, a second officer with a BWC or handheld recording device must present with the device activated prior to the opening of the package. This is particularly relevant where it is suspected that the package or container may contain drugs or other high-risk property; and
- e) complete an incident report, if appropriate. [REDACTED]

5. Property Classifications

5.1 High risk property

High risk property includes property that is not easily identifiable, is easily transportable and has the potential to be of high value. Examples of high-risk property in a custodial environment include large quantities of medication, illicit substances, money, mobile phones (including sim cards) and other electronic devices. When an officer intends to seize or handle high risk property they must, where possible:

- a) use audio, video and/or photographic equipment – CCTV, body worn cameras (BWCs) or digital cameras to record the seizure, transportation and securing of property;
- b) where the recording of the seizure is not possible the officer taking possession of the high-risk property is to ensure there is another officer present and record details of the handling of the property in their notebook. They should also include these details in their officer report, including the details of the second officer;
- c) seal the seized property into a property bag or other suitable container; and
- d) notify the relevant person/s (i.e. Supervisor, Correctional Manager) nominated by the Chief Superintendent of the property seizure.

These strategies focus on mitigating the potential risk of allegations of inappropriate staff conduct.

5.2 Low risk property

Low risk property includes property where ownership cannot reasonably be established and is not considered to be of a high value or pose a risk to the safety and security of the centre or the safety of persons in the centre.

Examples of low risk property may include electrical items in working order, sales to prisoners (STP) shoes in reasonable condition, Compact Discs (CDs) [REDACTED]

When an officer intends to seize or handle low risk property they must, where possible:

- a) seek clarification from supervisor whether there will be an incident report raised that will require a CoP referral;
- b) if an incident report will be raised the seized property is to be treated as evidence;
- c) if no incident report is to be raised the officers are to seize the property and make reasonable efforts to establish ownership;
- d) if ownership cannot be determined the property is to be seized and Approved Form 25 Receipt for Seized Property (CSA s139) is to be completed noting the date, time and location of where the property was when seized. A copy is to be secured with the seized property; and
- e) item to be added to the evidence recording book and then secured in storage area.





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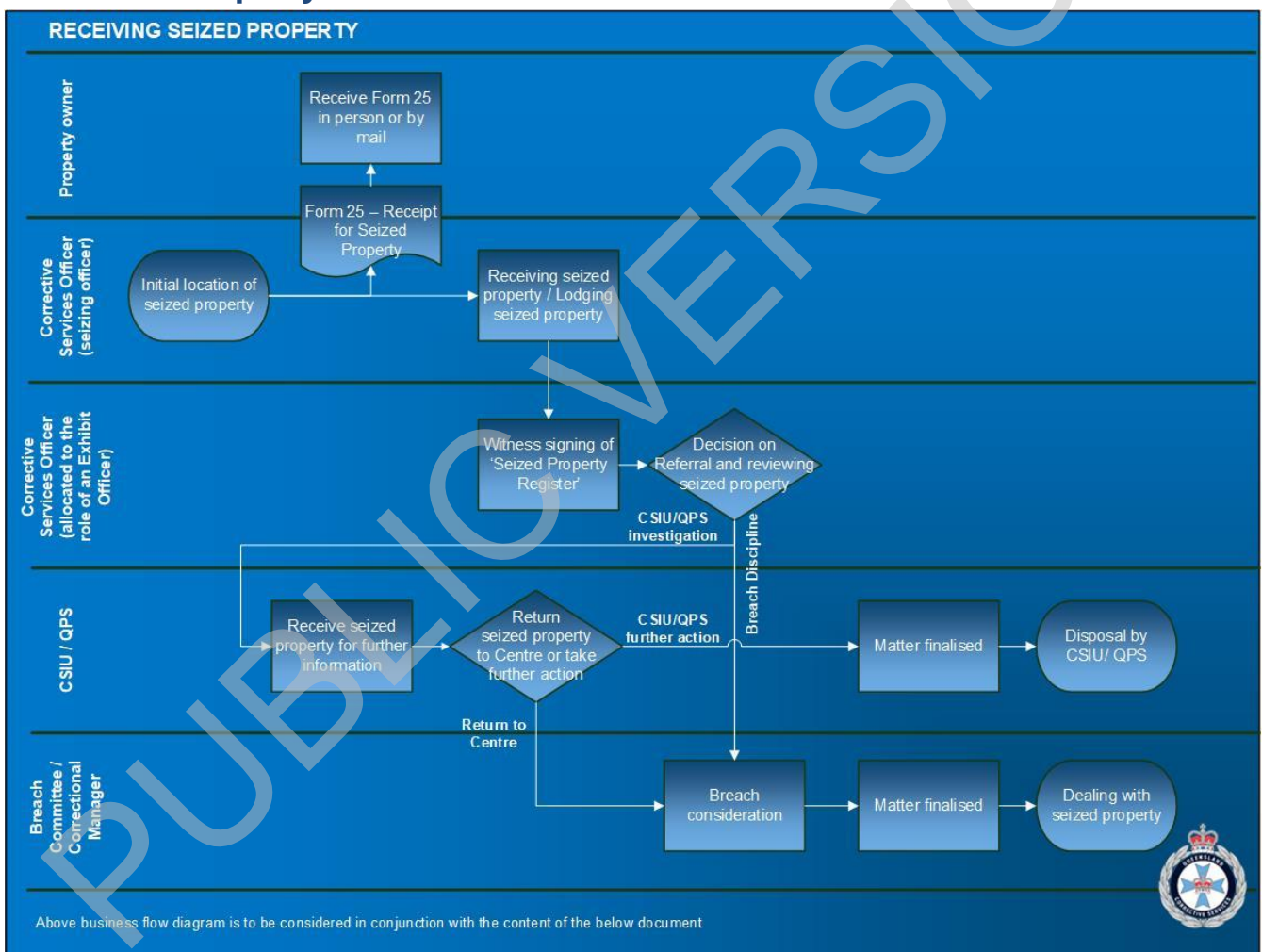
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Low risk property items do not require a second officer to record the transport and securing of the item into evidence storage area.

Low risk property does not include property issued by the centre, stationery or other consumables that have little monetary value, are **not** to be treated as high risk or low risk property.

If it is not practicable to photograph seized property at the location point, the officer must ensure the seized property is handled with care and removed from the scene, to allow for the photographing of the property after the seizure.

6. Seized Property Process



6.1 Initial location of evidence or seized property

Upon the initial location of property, the finding officer must consider the risk to the health and safety of any person in the near vicinity as a priority – the health and safety of staff, visitors and prisoners in the area is paramount.

6.2 Photographing of evidence or seized property

To ensure the effectiveness of secondary evidence, a photograph of seized property should be taken at the location point of seizure where the property was originally found (where practicable).



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If the evidence or seized property is moved without photographs being taken, in situ photographs should be taken as soon as practicable after seizure, in accordance with the requirements detailed below. These photographs may be tendered as evidence in court proceedings. The photographs are to be linked to the incident by attaching in IOMS, under the attachments tab of the incident report.

If there are multiple items seized from the same incident, these items are to be photographed in situ and then separately once permission has been given to move the evidence by the CSIU or the Chief Superintendent.

Photographing requirements of seized property after being removed from original location are as follows:

The background should:

- a) be as neutral as possible;
- b) be a light colour, such as white, beige or grey;
- c) not be a colour similar to the seized property;
- d) be as smooth and unmarked as possible; and
- e) be free from objects such as panels, shadows, lines, brickwork.

Lighting

- a) lighting must be neutral; and
- b) no reflective light.

Scale or Ruler

- a) a photograph may contain a height scale beside the seized property if considered appropriate. This is to be a common item that will enable the investigating officer to gauge the size of the item(s) that were seized. If there is an item introduced to the crime scene for this purpose it is to have as little impact as possible and is to be clearly reported in the incident report and the officers report.

6.3 Property receipt

When an officer seizes property from any person, a property receipt is to be issued to the relevant person by completing an Approved Form 25 Receipt for Seized Property (CSA s139). If delivery is not practicable at the time of the seizure, the property receipt should be delivered as soon as possible, in person or via mail.

If the ownership of the item is not known and the item is not considered to be a consumable the Approved Form 25 is to be completed and attached to the property prior to being secured into the evidence storage area.

The receipt must generally describe the thing seized and include any other information required under a regulation (CSA s139). When outlining the general description of the seized property, entries should clearly describe each item and may include:

- a) quantity;
- b) brand name;
- c) model number;
- d) serial number;
- e) distinctive markings;
- f) shape/size; and
- g) damages and defects.





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Once a property receipt is completed, the original must be provided to the person(s) from whom the property was seized, if applicable, and a copy must be attached to the incident corresponding with the seized property with a notation detailed in the incident report.

6.4 Property bags

To ensure the accuracy and integrity of information, a photocopy of the Property Register entry must be secured in the property bag. If there are multiple items of property from the same incident, these items are to be placed in separate property bags. To ensure all property bags are linked together and accounted for, each property bag must have a copy of the Approved Form 25 with the corresponding number of the seized property register noted and clearly labelled with how many property bags are included within that incident – for example, if there are three property bags, writing on the property bags: 1 of 3, 2 of 3 and 3 of 3.

Heat-sealed plastic bags will be used for the majority of seized property, not including property containing sharps, biological or organic substances.

Paper envelopes will be used for seized property consisting of biological or organic substances, for example, cannabis plants containing noticeable moisture. In these cases, the corresponding number from the seized property register must be clearly noted on the outside of the packaging.

Containers will be used for seized property consisting of sharps (excluding needles) that may pierce a heat-sealed plastic bag. Once the seized property is placed in the container, the container is to be placed into a heat-sealed plastic bag to ensure continuity of the evidence. Syringes and needles are to be placed in the appropriate syringe containers, where available.

If a property bag is not available upon the initial location of property, the seized property is to be placed in a temporary bag/container until a property bag is available. However, the item must be stored in the appropriate bag prior to the being secured in the evidence storage area.

If the seized property is too large to fit into a property bag or possesses features that would make storage in a property bag undesirable or unsafe, seek advice from a Correctional Manager for the most suitable method of containing or wrapping the seized property and leave the property in a secure location. If this secure location is different to where seized property is ordinarily stored, the location will need to be recorded in the Seized Property Register. In this circumstance, the Correctional Manager is to contact the CSIU to establish if the property is to be stored as evidence or can be stored as seized property.

6.5 Property Register

To establish proof of continuity of possession, an officer's notebook and Officer Report must document the handling or passing of seized property from one to another. After the lodgement of seized property, any further handling or passing of seized property from one officer to another must be recorded in the Property Register. Once the Property Register entry is completed, it is to be photocopied and attached to all property bags related to that incident. The register outlines information required, including:

- a) location of seizure;
- b) date of seizure;
- c) time of seizure;
- d) incident number;
- e) number of property bags;
- f) description of seized property;
- g) seizing officer's details;
- h) witnessing officer's details; and





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i) Chain of Custody.

It is imperative all seized property is recorded in the Property Register. All entries must be counter signed by a Correctional Supervisor and any transfer of seized property must be recorded in the Property Register – Chain of Custody section thereafter. The Chain of Custody is a contemporaneous record of each person in the chain of possession and includes how the seized property was dealt with by each person and who had possession of it.

After the seized property has been lodged, the 'Chain of Custody' entry must be completed at any time the property is removed by any person and this person must detail the reason for the removal. Each subsequent receiving person must sign for the item, including internal and external stakeholders e.g. an officer may remove the property for photographing and then return the property to the evidence cabinet. The acts of removing the property and returning the property must be recorded.

Where CSIU/QPS take possession of seized property, the 'Chain of Custody' entry must be completed. The CSIU/QPS will also provide a receipt for the seized property, which should be attached to the incident report in IOMS. The 'Chain of Custody' entry must also be updated in circumstances where CSIU/QPS return seized property to QCS.

6.6 Out of hours

Where possible, the seizing officer must place the property bag in the evidence cabinet, with the receiving officer being the witness. Preferably the receiving officer should be the officer that has access to the evidence cabinet. If the property is found out of hours, the seizing officer must place the property bag in a secure location (i.e. evidence drop bin) until the officer with access to the evidence cabinet is available to retrieve it.

6.7 Property found whilst on escort or external to a corrective services facility

Property may be located whilst on escort or external to the corrective services facility (i.e. hospital or escort vehicle). In these circumstances, the seizing officer is to handle the seized property in accordance with 'Handling of seized property' and find a suitable property bag/container for transporting the seized property to a nominated corrective services facility. Seized property is to be returned to the corrective services facility accommodating the prisoner who is linked to the seized property. In the circumstances where the ownership of the seized property is unable to be determined, the property is to be transported to a corrective services facility with the officer seizing the item complying with the handling evidence or seized property process.

6.8 Reviewing seized property

Seized property is to be reviewed by the Correctional Supervisor counter signing the property register to ensure continuity of possession and that evidentiary value has been upheld. In addition, this precaution will reduce the risk of intentional recirculation back into the prisoner population. A review includes checking:

- information outlined in the Property Register entry and confirming the information is consistent with the contents in the property bag, as well as the information recorded in the Incident on IOMS;
- photographic evidence has been attached to the Incident matter on IOMS;
- seized property is placed in appropriate property bags and in separate property bags if required;
- seized property has been placed in a secure location (i.e. evidence cabinet); and





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- e) further notification has been forwarded to CSIU/QPS if a second notification is required. At this point, an initial notification of the incident occurring should have already been forwarded to CSIU upon the Incident being lodged in IOMS.

6.9 Re-sealing of property bags

Any re-opening of an evidence bag needs to be recorded in the Property Register, including the reason for the re-opening.

6.10 Retention of seized property

Ensure seized property is retained in circumstances where the property is:

- a) potentially the subject of CSIU or QPS investigation; or
- b) being considered for breach action within the corrective services facility.

Unless one of the abovementioned circumstances occur or there is some other reason which exists making it necessary to retain the seized property, secondary evidence (photography) should be used and the original property should be disposed of or returned to the property owner in accordance with CSA s140 and 141.

6.11 Perishable property

The Chief Superintendent of a corrective services facility or delegate is not required to wait for the timeframes stated in CSA s140(6) to elapse if the seized thing is a perishable item. Perishable items may include home brews of alcohol, food, fruit etc. In the circumstances where perishable items are seized, the item should be photographed and the perishable item disposed of immediately, unless there is some other reason which exists making it necessary to retain the property as evidence.

7. Storage Considerations

The Chief Superintendent of a corrective services facility must ensure the below factors are considered (where practicable). Evidence storage considerations include:

- a) evidence storage cabinet is located within a restricted access area, not accessible to prisoners;
- b) evidence storage cabinet or evidence drop bins are secure and can only be unlocked by a person/s approved by the Chief Superintendent of the corrective services facility;
- c) evidence storage cabinet is only unlocked when two officers are present;
- d) CCTV footage of the room the evidence storage cabinet is located in; and
- e) an evidence drop bin (or similar) is accessible to officers for when seized property is found outside of business hours.

8. Audit and Oversight

The property register must be checked for compliance at the start of every shift by a Correctional Supervisor nominated by the Chief Superintendent.

The Chief Superintendent must delegate an officer the role of property officer whom will be responsible for the following:

- a) the weekly audit and reconciling of the property register and all seized property;
- b) the facilitation of the return or disposal of property process;
- c) the coordination with the CSIU for regular evidence pickups; and
- d) being the primary point of contact with the CSIU for the clarification of any property/evidence issues.

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An audit of all evidence and seized property must occur weekly. Audits are to be conducted by a Correctional Manager, along with the property officer delegated by the Chief Superintendent.

Audits may include:

- a) a physical security inspection of the evidence location area, safes and other security containers;
- b) ensuring all property in the evidence cabinet is connected to an ongoing incident;
- c) ensuring all property in the evidence cabinet that is no longer required for an ongoing incident are returned to the prisoner or disposed of in accordance with this COPD and the CSA s140;
- d) ensuring that an Approved Form 25 Receipt for Seized Property was completed and attached to the property and also a copy provided to the Prisoner (if applicable);
- e) Approved Form 26 Notice of Forfeit of Seized Thing has been completed and attached to the incident (if applicable) and a copy provided to the prisoner (if applicable) prior to the finalisation of the incident;
- f) all seized property is accounted for, ensuring there is no lost property;
- g) all seized property that has been held for the required timeframe and is not linked to an open Incident report or ongoing investigation is disposed of in the appropriate manner; and
- h) any other considerations the Chief Superintendent of the corrective service facility deems appropriate.

8.1 Processing of evidence and seized property

The Chief Superintendent is to delegate a correctional manager to oversee the regular processing of seized property including the weekly audit process.

9. Considerations for Forfeiture of Seized Property

Authority is to be sought from the Chief Superintendent regarding forfeiture of seized property. This must occur prior to the finalisation of the incident but after it has been confirmed that there is no further action required from the centre or CSIU/QPS. The Chief Superintendent will initially have to make a decision regarding if the seized property will be returned to the property owner, forfeited to the State or destroyed.

Seized property may only be retained if the Chief Superintendent reasonably considers its return to a person as inappropriate. If this is not the case, then the property must be returned to the property owner (CSA s141). In deciding not to return seized property to the property owner, the Chief Superintendent must consider the person's human rights, including (but not limited to) property rights and right to humane treatment when deprived of liberty. The reasons for why the property is returned to the property owner should be documented in the incident report.

The Chief Superintendent may make a decision to forfeit seized property in accordance with (CSA s140) if it is reasonably believed:

- a) possession of the property by a prisoner is an offence or a breach of discipline;
- b) it is necessary to keep the property to stop it being used to commit an offence;
- c) the property is inherently unsafe; or
- d) the ownership of the property cannot be established.

Under CSA s140(5), a forfeited thing becomes the State's property; and may be dealt with by the Chief Superintendent as they consider appropriate, including, for example, by—

- a) keeping the thing and applying it for the benefit of prisoners generally; or





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- b) donating the thing to a registered charity; or
- c) destroying it.

If a decision has been made to forfeit the seized property, the Chief Superintendent or nominated persons must ensure notice is given to the prisoner 28 days prior to the seized property being dealt with, i.e. prior to the seized property being destroyed.

Written notice must include the decision and the reasons for the decision, refer to Approved Form 26 Notice of Forfeit of Seized Thing.

A case note must be completed outlining that the Approved Form 26 Notice of Forfeit of Seized Thing has been delivered to the property owner.

If the property is unclaimed or the ownership cannot be established and all reasonable inquiries have been made, given the property's apparent value, 28 days written notice is not required (CSA s140).

9.1 Disposal of forfeited property

Once the Chief Superintendent has made a decision to forfeit the property to the State, a decision must be made of how this forfeited property is to be dealt with under CSA s140(5)(b). This decision will be outlined in the Approved Form 26 Notice of Forfeit of Seized Thing.

Prior to forfeited property being disposed of in accordance with the CSA s140(6), ensure:

- a) authority has been received from the Chief Superintendent;
- b) the owner of the property was given 28 days' notice of the intention to dispose of the property and 28 days have elapsed; and
- c) no application has been made under the *Justices Act 1886*, s39 in relation to the property within the 28 days' notice. If an application has been made, the application and any appeal against the application has been decided.

These timeframes do not apply in the instance that the seized property relates to a breach of discipline constituting an offence which is referred to the CoP (s138(3) CSA).

The Chief Superintendent may dispose of forfeited property in any means considered appropriate, including:

- a) keeping the property and applying it for the benefit of the prisoners and corrective service officers e.g. using the property at the QCS Academy for training purposes;
- b) donating the property; or
- c) destroying it.

Ensure a photocopy of the Approved Form 26 Notice of Forfeit of Seized Thing is attached to the property bag and the corresponding incident report in IOMS.

The incident report on IOMS must not be closed until the Approved Form 26 Notice of Forfeit of Seized Thing is attached. This will ensure that all property can be tracked until the Chief Superintendent has given authority for the forfeited property to be dealt with.

