



Prisoner Entitlements

Office of the Public Guardian

PE

Custodial Operations Practice Directive

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Custodial Operations Practice Directive

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 but are not limited to:

- a) recognition and equality before the law, including the right to equal and effective protection against discrimination;
- b) protection of families as the fundamental group of society and the protection of children; and
- c) the right to privacy and to reputation.

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 privacy and reputation provides that a person has the right not to have their privacy, family, home or correspondence unlawfully, or arbitrarily interfered with.
- b) The nature of the purpose of the limitation – this involves considering the actual purpose or legitimate aim/reason for limiting the human right. This practice directive supports Queensland Corrective Services (QCS) to work with the Office of the Public Guardian to effectively meet the needs of offenders under Guardianship and Administration Orders.
- 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. This practice directive enhances the human rights of the individual by providing information to facilitate representation by the Office of the Public Guardian.
- 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.
- 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.





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3. Working with Substitute Decision Makers for Offenders Under Guardianship and Administrative Orders

3.1 Purpose

The purpose of this protocol is to support Queensland Corrective Services (QCS) work with the Office of the Public Guardian to effectively meet the needs of offenders under Guardianship and Administration Orders.

3.2 Definitions

3.2.1 Queensland Civil and Administrative Tribunal

Under the *Guardianship and Administration Act 2000*, the Queensland Civil and Administrative Tribunal (QCAT) is responsible for making determinations about the need for the appointment of substitute decision makers for adults.

3.2.2 Guardian

Some people with impaired capacity may be unable to make decisions in certain areas of their life without support. The *Guardianship and Administration Act 2000* recognises the role of informal decision-making in a person's life. For example, a person's family might make decisions for them without a formal appointment in place.

In other cases, a formal guardianship order may be needed. A guardian is a person appointed by QCAT to help adults with impaired decision making capacity make certain personal and health care decisions to ensure that the individual's rights and interests are being protected.

If the adult with impaired decision making capacity has a family member or friend deemed suitable by QCAT to act as their guardian and/or administrator that person will be appointed. If no one in the adult's life is considered suitable by QCAT to be appointed then the Office of the Public Guardian may be appointed as guardian of last resort for the person's personal/healthcare matters.

The role of the guardian is primarily that of decision-maker: guardianship is not case-management, and the appointment of a guardian does not remove the need for appropriate support services and case management to be in place.

3.3 Understanding a person's capacity to make a decision

An adult with capacity has the right to make legally recognised decisions about their life, such as healthcare choices, support services they may need and how they manage their finances.

If an adult has impaired capacity for making a particular decision, someone else (a substitute decision-maker) might be needed to make the decision for them.

Under the law it is not up to the adult in question to prove they have capacity. It is presumed that every adult has capacity to make all decisions until proven otherwise. This presumption is not affected by any personal characteristics such as disability, mental illness or age (if the person is over 18 years of age). The responsibility is on the person seeking to challenge the adult's decision-making capacity to prove the adult has impaired capacity. This can be done through a capacity assessment.

For information on assessing a person's capacity to make a decision refer to the Appendix PE14 Understanding a Person's Capacity to Make a Decision.





3.4 The role of the Office of the Public Guardian

The Office of the Public Guardian is an independent statutory body whose role is to protect the rights and interests of adults who have impaired capacity for a matter. The Office of the Public Guardian will assist people to make decisions about their lives by acting as their guardian when formally appointed by QCAT. They can be responsible for personal and/or health matters, but not financial matters. QCAT may appoint an administrator to make financial decisions for a person if needed: in some cases this administrator may be the Public Trustee Qld.

4. Individuals Under a Guardianship/Administrative Order

If it is identified through the Administrative Form 6 Transition from the Community Checklist or the Appendix R6 IRNA Instruction that a prisoner is subject to a guardianship and/or administration order (due to an intellectual disability which impairs decision making capacity) the assessing officer must:

- make contact with the prisoner's substitute decision maker/s (e.g. appointed family member, Office of the Public Guardian (OPG), Public Trustee of Queensland);
- Offender Development staff must ensure the contact details for the prisoner's substitute decision maker are entered in the prisoner's IOMS file in the Personal Details section; and
- notify the relevant accommodation manager to ensure that the prisoner's impaired decision making capacity is considered when determining placement.

If, as part of the admission process it is identified that the prisoner entering custody has or is likely to have an appointed guardian or administrator, the Senior Psychologist of the corrective services facility is responsible for contacting QCAT to obtain confirmation.

For offenders on community supervision with an appointed guardian or administrator, the offender's case manager is responsible for contacting QCAT to obtain this information. If the individual has a guardianship order, a copy of the order should be obtained from QCAT and must be attached to IOMS for agency records.

Following confirmation that an offender has a guardianship order, the officer responsible is to ensure that this information is forwarded to Offender Rehabilitation and Management Services (ORMS) in Specialist Operations. An email should be sent to [REDACTED] outlining the prisoner's name and date of birth and providing confirmation that the guardianship order has been attached to IOMS. Any enquiries regarding this process should be directed to ORMS.

The Office of the Public Guardian may also contact QCS through the Offender Management inbox to advise that they are aware that an individual with a guardian or administrator is under QCS supervision. For these individuals, ORMS will attach the order on IOMS and notify the relevant Chief Superintendent of a corrective services facility or the District Manager of the relevant Community Corrections office that the offender has an appointed alternate decision maker.

Refer to the Administrative Form 6 Transition from the Community Checklist.

4.1 Provide notice of transfer to relevant stakeholder

If a prisoner has an active Guardianship and/or Administration Order (GA) warning flag indicator in IOMS a notification is to be made to the Office of the Public Guardian via email [REDACTED]. This must occur prior to the transfer of the prisoner.





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5. Guardianship/Administrative Order Flag

For offenders confirmed as having an appointed guardian, the Guardianship and/or Administration Order (GA) warning flag must be raised by a psychologist in the prisoner's IOMS record in accordance with the Custodial Operations Practice Directive (COPD) Sentence Management: Admission and Induction and the Appendix SM1 Criteria for Warning Flag Indicators.

Refer to IOMS – File Contents > Offender Details > Warnings and Flags – select 'Guardianship and/or Administration Order'.

When activating the flag, IOMS will request a reason for the activation. Staff are to record information regarding:

- the type of order;
- how long the order is for;
- type of matters it covers;
- indication that it is attached on IOMS and ORMS have been advised;
- the name and contact details of the appointed guardian;
- date of appointment; and
- for what purposes they are appointed.

A copy of the order/s is to be attached to the prisoner's IOMS record. The management of such prisoners is to be undertaken in accordance with this COPD.

Prisoners with a GA warning flag may be eligible for support through the National Disability Insurance Scheme (NDIS). Refer to the Appendix R12 Referral of Prisoners into the National Disability Insurance Scheme.

5.1 Involvement of an appointed guardian

When it has been identified that an offender has a guardianship appointment in place, the relevant QCS officer involved in the offender's case management should discuss with the appointed guardian:

- their respective obligations;
- how the guardian wishes to exercise their role as decision-maker;
- communication protocols between QCS and the guardian;
- any particular issues which may impact on the guardian's role as decision-maker; and
- any relevant information the guardian may have about the offender (including the nature of the offender's impairment, any special needs for support etc).

6. Offender has the Right to Contribute

If an offender has the right to contribute to, make or appeal a decision in an area that a guardian is appointed the appointed guardian must also be advised and may act on the behalf of the adult. This is particularly in relation to a prisoner's transitional management from custody, as the Public Guardian may have to make decisions regarding the prisoner's accommodation post-prison. The offender's appointed guardian should also be contacted for involvement in the planning and review processes.

The relevant QCS officer involved in the offender's case management should contact the offender's guardian to advise of the process that is to be undertaken and confirm the level of involvement of the Public Guardian.

Refer to the COPDs Sentence Management: Assessment and Planning and Classification and Placement.





6.1 Offender is required to sign documentation

If an offender is required to sign an acknowledgement of receipt of information and/or documentation relating to an area that a guardian is appointed, it is necessary to advise and provide the documentation to the appointed guardian.

The relevant QCS officer involved in the offender's case management should contact the offender's guardian at the earliest opportunity to advise that the offender is required to sign documentation. This documentation must be forwarded to the appointed guardian as soon as possible to provide the appointed guardian sufficient time to review the documentation and discuss with the relevant QCS officer.

The following list provides examples of situations which may require involvement from the appointed guardian:

- a) Upon an offender's admission into a corrective services facility or induction into community supervision, if a QCS officer is aware that an offender may have an appointed guardian, the relevant QCS officer should obtain confirmation of an appointed guardian through QCAT and details of the guardian's involvement.
- b) Alternatively, if an offender does not have an appointed guardian, however a QCS officer has information to indicate the offender may require an appointed guardian, the relevant QCS officer should contact QCAT to discuss how to proceed.
- c) The relevant QCS officer involved in the offender's case management should provide the appointed guardian with details of the offender's admission into QCS supervision, provide an overview of the offender's day to day management under QCS supervision and details of the nominated QCS contact person at the corrective services facility/district office.
- d) Prior to each review of the offender's management plan or similar, the relevant QCS officer should advise the appointed guardian of the review process, discuss the level of involvement of the appointed guardian in this process and forward any required documentation to the appointed guardian for review.
- e) Prior to an offender's release from QCS supervision or when a prisoner is submitting an application for parole, the relevant QCS officer involved in the offender's case management should advise the appointed guardian of this process and discuss the level of involvement of the appointed guardian in pre-release and accommodation decisions.
- f) At any point in which an offender under QCS supervision is required to sign documentation (completion of application for parole, consent to release confidential information form or notification of reportable offender acknowledgement) or has the right to contribute to, make or appeal a decision in an area.

6.2 Pending discharge - Guardianship and/or Administration Order

If a prisoner has an active Guardianship and/or Administration Order (GA) warning flag indicator in IOMS, staff must contact the prisoner's appointed guardian for involvement in the prisoner's release from QCS custody or parole application process.

7. Confidentiality

The *Corrective Services Act 2006* (CSA) outlines the provision of information which applies to communication between QCS staff and a guardian or administrator who is appointed by QCAT (this includes private individuals such as family members who have been appointed by QCAT). Under section 341 of the CSA, QCS staff have the authority to disclose relevant information to allow the guardian/administrator to make informed decisions.





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Under Section 44 of the *Guardianship and Administration Act 2000*, the nominated guardian or administrator for an adult has a right to all the information the adult would have been entitled to if the adult had capacity and which is necessary to make an informed exercise of the power. Further, at the guardian's or administrator's request, a person who has custody or control of the information must give the information to the guardian or administrator, unless the person has a reasonable excuse. Therefore, QCS staff should provide sufficient information to enable the guardian/administrator to make an informed decision on the matters for which they have oversight.

8. Resolution of Issues

If there is a dispute between QCS staff and a guardian or administrator who is appointed by QCAT, QCS staff must refer the case to ORMS staff in Specialist Operations who will liaise directly with QCAT to resolve the issue.

9. QCAT and Office of the Public Guardian Contact Details

QCAT

Website: <https://www.qcat.qld.gov.au>
Postal Address: GPO Box 1639, Brisbane 4001
Phone: 1300 753 228 between 8.30am and 4.30pm on weekdays
Email: enquiries@qcat.qld.gov.au

Office of the Public Guardian

Website: <http://www.publicguardian.qld.gov.au>

Office of the Public Guardian - Brisbane

Phone: 1300 653 187
Email: publicguardian@publicguardian.qld.gov.au

Office of the Public Guardian – Townsville

Phone: 4760 9688
Email: [REDACTED]

Office of the Public Guardian – Ipswich

Phone: 3884 6650
Email: [REDACTED]

