



# Prisoner Entitlements

## Legal Resources

PE

### Custodial Operations Practice Directive

Process Owner: Custodial Operations

Security Classification: Official/Public

Version: 05

Implementation date: 12/10/2023

Review date: 2025

#### Scope

1. Human Rights
2. Limitation of Human Rights
3. Legal Resource Access for Prisoners
4. In-Cell Computer for Legal Purposes
5. Management of Prisoner's Legal Property
6. Electronic Communication Equipment
7. Primary and Secondary Legal Information



Official/Public

A printed or saved copy of this document is not the official version



### 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:

- a) the right to recognition and equality before the law;
- b) the right to a fair hearing;
- c) rights in criminal proceedings;
- d) right not to be tried or punished more than once;
- e) right to privacy and reputation; and
- f) cultural rights of Aboriginal and Torres Strait Islander peoples.

## 2. Limitation of Human Rights

In determining whether a limitation may be reasonable and demonstrably justified, 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 a fair hearing stipulates that a fair hearing will depend on the facts of the case. If access to legal resources were limited this may impact on this right.
- b) The nature and purpose of the limitation – this involves considering the actual purpose or legitimate aim/reason for limiting the human right. For example, rights in criminal proceeding provides a right to minimum guarantees regarding the treatment and how criminal proceedings will be conducted. Limiting access to legal representatives may impact on this right.
- c) The relationship between the limitation and its purpose – this involves considering the connection between the limitation of the right and whether this will assist with achieving the purpose or legitimate aim. For example, will the access to documents emailed into the centre achieve the purpose of allowing adequate time and facilities to communicate with a lawyer.
- d) Whether there are 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 whether it can be achieved in any other way. For example, is the access to emailed documentation processed by QCS staff for the prisoner the least restrictive process, considering the safety and security of the centre, QCS staff and other prisoners and the impacted rights of the prisoner, for example the right to privacy?
- e) The importance between the purpose of the limitation and preserving the human right – this involves balancing the benefits obtained by the limitation with the harm caused to the human right.





### Custodial Operations Practice Directive

For example, access to legal documentation by QCS staff, limits the prisoner's right to privacy, which is balanced against the benefits provided to the prisoner by way of expedited timeframes and removal of the requirement to attend court in person, with the associated processes and searches this requires.

### 3. Legal Resource Access for Prisoners

Under section 11 of the *Corrective Services Act 2006* (CSA), when admitted to a corrective services facility for detention, a prisoner must be informed about their entitlements and duties under the CSA, and the administrative directions and procedures relevant to their entitlements and duties. If a prisoner is illiterate or does not understand English, reasonable steps must be taken to ensure they understand their entitlements and duties, and the relevant administrative directions and procedures. A copy of the CSA must be made available to all prisoners.

Prisoners should be provided access to legal resources to enable the research of cases and relevant legislation and review evidentiary materials to enable them to be informed when representing themselves or instructing their legal practitioners in regard to a legal proceeding.

The Chief Superintendent of a corrective services facility should, where possible:

- a) identify and resource an area deemed suitable for use as a legal resource centre;
- b) manage and maintain the legal resource centre; and
- c) ensure prisoners are provided with access to legal resources and as far as is reasonably practicable in the circumstances, and consistent with the maintenance of safety and security requirements.

To access a corrective services facility's legal resource centre (with the exception of an in-cell computer) for legal purposes, a prisoner may seek approval by completing an Administrative Form 51 Legal Resource Centre Access. A prisoner does not need to have a current legal proceeding to seek approval and may apply for access for legal research purposes.

The Superintendent of a corrective services facility or nominee will determine the level of access an approved prisoner may have to a legal resource centre. A prisoner's urgent access to a legal resource centre may be provided for as the need arises.

#### 3.1 Assessment and approval

Upon receipt of an application to access a legal resource centre, and before determining the application, the Superintendent of the corrective services facility or nominee must consider the prisoner's access to justice and human rights, including the right to have adequate time and facilities to prepare their defence and to communicate with their lawyer or advisor.

Other factors to take into consideration include:

- a) the maintenance of public safety;
- b) the maintenance of security and good order within the corrective services facility;
- c) the fair use of the legal resource centre by other prisoners;
- d) whether the demonstrated need could be met by other means;
- e) the willingness of the prisoner to accept and comply with:
  - i. time limitations;
  - ii. use restriction;
  - iii. searches of the computer and related items for objectionable material or other misuse;
- f) any previous non-compliance of the prisoner with such conditions;





# Prisoner Entitlements

## Legal Resources

PE

### Custodial Operations Practice Directive

- g) any history or concerns about the prisoner in respect of electronic communication equipment or other unauthorised items;
- h) any security issues or other concerns relating to the prisoner; and
- i) the type of offences committed by the prisoner and the prisoner's previous conduct (e.g. offences relating to fraud, or possession of objectionable material, concerns about witness intimidation etc).

### 3.2 Approval

The Superintendent of the corrective services facility or nominee will determine applications and determine the level of access an approved prisoner may have to a legal resource centre.

If approval is granted, the completed Administrative Form 51 Legal Resource Centre Access or the completed Administrative Form 130 Request for Approval of In-cell Computer for Legal Purposes (if applicable) must be forwarded to the Education Officers or other nominated officer for processing.

A determination must be made as soon as possible following a prisoner submitting an application, within four weeks of the application being made.

Refer to section 128(2)(a) of the CSA, section 18 of the Corrective Services Regulation 2017 (CSR) and the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers.

### 3.3 Advise the prisoner

The prisoner must be informed in writing of the result of the application, including the reason/s if approval is not granted. This must be done as soon as possible following a prisoner submitting an application and within four weeks of the application.

### 3.4 Legal material not readily available

If a prisoner requests access to legal research material such as copies of legislation, case law or textbooks which are not available in a legal resource centre or other area nominated by the Chief Superintendent of the facility, the Superintendent of the corrective services facility or nominee must consider all relevant factors, including:

- a) the ability of the prisoner to access that material by other means (i.e. through a legal practitioner);
- b) the likely cost of obtaining that material;
- c) whether the prisoner agrees to, and has the ability to meet, the cost of obtaining the material; and
- d) staffing resources that may be required to provide access to the requested material.

A request to access materials not available in a legal resource centre, or other, may be facilitated via a standard prisoner request form utilised at the corrective services facility.

Where a prisoner is requesting access to State Library Queensland Resources, refer to the Appendix PD17 Instructions for Prisoners Requesting State Library Queensland Resources.

## 4. In-Cell Computer for Legal Purposes

A Chief Superintendent or Superintendent of a corrective services facility may approve a prisoner to have an in-cell computer for legal purposes. The computer must only be used for the approved purpose and must not contain any stored inappropriate or pornographic information or material.





### Custodial Operations Practice Directive

Prisoners may use the approved in-cell computer to generate legal material relating to matters they are preparing for court and also to maintain privileged material provided by their legal practitioners.

Legal computers are to be returned to the approving authority once all legal proceedings and/or research are completed, which can include preparation of an appeal application if relevant. Dependent on resource availability and timelines, the computer may be returned and a new application processed once confirmation is received that the appeal process has been approved. Each case should be assessed individually, with particular regard to the prisoner's rights in the criminal process and their recognition and equality before the law. Due to the limited number of in cell computers available, prisoners with current legal proceeding should be given priority access to in cell legal computers.

A prisoner must complete and submit an Administrative Form 130 Request for Approval of In-cell Computer for Legal Purposes to be considered for approval of an in-cell computer for legal purposes.

Only computers purchased and approved by QCS may be provided to a prisoner. [REDACTED]

[REDACTED]. For further information in relation to the process of application, approval and review of the in-cell computer access. Refer to the COPD Prisoner Development: Education.

## 5. Management of a Prisoner's Legal Property

A prisoner's legal property, including any legal information to be supplied to a prisoner by their legal practitioner, must enter the corrective services facility and be managed in accordance with the COPD Property: Management of Prisoner Property.

Legal mail in any format is subject to legal professional privilege. Any legal mail is defined as 'privileged mail' and must be managed in accordance with the COPDs Prisoner Entitlements: Prisoner Communications and Search: Prisoner Search.

Where a legal practitioner (or a QPS representative if a prisoner is self-represented) needs to provide a prisoner with legal material in a non-hard copy format, the material must be provided on a portable/external hard drive (preferred) or Compact Disk (CD).

The hard drive or CD should be clearly marked with the following information:

- a) name of the prisoner;
- b) outline of information contained on the hard drive or CD; and
- c) date of issue of the hard drive or CD to the prisoner.

All CDs should be enclosed in a protective CD case.

The minimum specifications of any portable/external hard drive provided to a prisoner is as follows:

- a) 55mm wide, 85mm long and 8mm depth;
- b) portable/external SSD hard drive; and
- c) have an USB C connection.







### Custodial Operations Practice Directive

The Legal Practitioner must supply the portable/external hard drive or CD (including a connection cord, which should be as short as possible and an adaptor to suit all USB connection types at the laptop end) and have the relevant materials uploaded and posted into the centre. The Legal Practitioner must also provide a signed letter on company letterhead stating only legal material relevant to the case has been saved to the portable/external hard drive or CD.

Education officers will maintain a small reserve of relevant adaptor cables, provided by DSIT, to be supplied to prisoners as needed if their legal representative/QPS fails to supply a useable connection cord. This cable is to be recorded in the prisoner's property list and returned when no longer necessary, refer to the COPD Property: Management of Prisoner Property.

At the completion of legal proceedings all legal material is to be returned to the prisoner's property for storage and further use if requested for appeal proceedings. Alternatively, prisoners can have all legal material posted out to a nominated person and pay for the cost of postage utilising the Administrative Form 40 Application to Expend From Trust Account (General) to cover the cost of postage.

## 6. Electronic Communication Equipment

### 6.1 Computer/s

A corrective services facility must maintain a computer/s designated for legal use by prisoners. The number of computers provided for access by prisoners for legal purposes will be at the discretion of the Chief Superintendent of a corrective services facility or nominated officer and subject to the resourcing availability of each facility.

A level of privacy should be in place in accord with the safety and security restrictions of the corrective services facility.

The following applies to a computer/s in the legal resource centre:

- a) must not be used for anything other than the approved purpose; and
- b) must not contain any stored inappropriate or pornographic information or material.

### 6.3 Photocopying/printing

A printer/s may be placed in a legal resource centre and linked to a computer/s.





# Prisoner Entitlements

## Legal Resources

PE

### Custodial Operations Practice Directive

The following applies:

- a) A prisoner who wishes to photocopy and/or print legal documents must have been approved to access a legal resource centre (refer to the Administrative Form 51 Legal Resource Centre Access) and provide direct consent to an officer nominated by the Chief Superintendent of the corrective services facility to handle the documents which may be subject to legal professional privilege. Officers are not entitled to read or make additional copies of the legal advice/documents.
- b) The prisoner must complete the Administrative Form 40 Application to Expend From Trust Account (General) authorising a deduction from their trust account for the photocopying and/or printing.
- c) Documents are to be provided to the officer nominated by the Chief Superintendent of a corrective services facility who will then print or photocopy the required number and give back the original documents to the prisoner.
- d) The officer nominated by the Chief Superintendent of a corrective services facility will then forward the completed Administrative Form 40 Application to Expend From Trust Account (General) to trust accounts for processing prior to placing the form on the prisoner's Offender File.

#### 6.3.1 Costs

Legal photocopying/printing is to be charged at the following rates:

- a) privileged mail is free; and
- b) legal documents for a prisoner's current case are free for the first 30 pages, then 10c per page thereafter.

#### 6.4 Electronic delivery of prisoner legal documents

Legal documents are only able to be electronically submitted to a prisoner's legal practitioner or, if the prisoner is self-represented, directly to a court.

The Chief Superintendent of the corrective services facility will determine when electronic delivery of legal documents may be facilitated. The following applies:

- a) A prisoner who wishes to have legal documents electronically delivered must provide direct consent via a signed Administrative Form 161 Consent to Receive and Provide Submissions Electronically to Legal Practitioner/Court.
- b) An officer nominated by the Chief Superintendent of the corrective services facility is to handle the documents which may be subject to legal professional privilege. Officers are not entitled to read or make additional copies of the legal documents.
- c) The officer nominated by the Chief Superintendent of the corrective services facility will obtain the legal practitioner's phone number and contact them by phone for verification and confirmation of the electronic delivery address.
- d) The officer nominated by the Chief Superintendent of the corrective services facility will then facilitate the electronic delivery of the documents. Documents are to be provided back to the prisoner once the submission process is complete.

#### 6.5 Facilitation of a prisoner's legal video conference with a government funded legal representative

For simple legal matters only, such as Legal Aid application declarations, Notices of Appeal, legal instructions, Authorities, and court forms, nominated officers are able to assist with the delivery and return of legal correspondence between a government funded legal representative and a prisoner to facilitate a legal video conference.





# Prisoner Entitlements

## Legal Resources

PE

### Custodial Operations Practice Directive

Prior to this process taking place, the prisoner must provide informed consent for the handling of legal documents by QCS staff by signing the Administrative Form 161 Consent to Receive and Provide Submissions Electronically to a Legal Practitioner/Court.

Legal documents associated with the reason for the video conference may be delivered by email from a government funded legal representative to the corrective services facility and the Chief Superintendent must provide a generic email inbox specifically for this purpose. Electronic communications must not be sent to a legal resource centre.

The legal representative must be advised by the nominated liaison officer of the corrective services facility that emails must be received two business days prior to any booked appointment time.

It is the responsibility of the legal representatives to explain the documents and witness any signatures required by the prisoner. To facilitate the signing of documents, the following process will be implemented:

- a) Legal Aid application declarations:
  - I. Corrective services facilities will have stock at hand in the video conference area.
  - II. The legal representative will complete the application during the interview process.
  - III. The officer nominated by the Chief Superintendent of the corrective services facility will then facilitate the emailing of the signed declaration to the legal representative.
- b) Notices of Appeal:
  - I. A Notice of Appeal will be emailed to QCS for printing and handing to the client prior to the video conference.
  - II. The document will then be signed during the video conference where the document will be explained to the client, by the legal representative, before signing.
  - III. An officer nominated by the Chief Superintendent will deliver the signed notice to Sentence Management Services (SMS) who will date stamp and email to the relevant court registry.
- c) Legal instructions:
  - I. Court related forms will be emailed to QCS for printing and handing to the client prior to the video conference.
  - II. The documents will then be signed during the video conference where the document will be explained to the client by the legal representative before signing.

It is the responsibility of the prisoner to make corrective service officers aware of any requirement to sign documents or the need for documents to be processed by SMS before leaving the video conferencing area.

An officer nominated by the Chief Superintendent will return any documents to the prisoner once they have been sent.

### 6.6 Damage to electronic communication equipment

Electronic communication equipment in a legal resource centre must be inspected on a regular basis, preferably after each use. Any damage (i.e. dents, scratches, scrapes), other than what is deemed normal wear and tear, must be recorded. Refer to the Administrative Form 133 Damage to Legal Resource Computer Equipment.







# Prisoner Entitlements

## Legal Resources

PE

### Custodial Operations Practice Directive

If a prisoner damages a computer (including hardware or software components), the power cable or any other electronic device, the prisoner may have their approval for use of the legal resource centre suspended pending an investigation.

The Chief Superintendent of the corrective services facility or nominated officer will determine the status of the approval pending the result of the investigation. Factors to be considered in this determination include:

- a) if the damage was wilful or accidental; and
- b) the impact of a suspension of the use of legal resources on the prisoner's rights in the criminal process and their recognition and equality before the law.

The Chief Superintendent of the corrective services facility or nominee may provide an alternative method of access to legal resources for a prisoner during a suspension period.

For reimbursement of the cost of replacing or repairing any property wilfully damaged by a prisoner, refer to section 314 of the CSA, section 42 of the CSR and this COPD.

## 7. Primary and Secondary Legal Information

Primary and secondary legal information is made available to approved prisoners only and should not be made available for lending to individual prisoners. These resources should remain in a legal resource centre (where applicable) or other area nominated by the Superintendent for access by all approved prisoners.

Below is a primary and secondary list of legislation that is to be made available to prisoners. Relevant information may be photocopied by a prisoner if approved.

### 7.1 Primary information sources to be made available to prisoners

#### Legislation

The following legislation at a minimum will be made available to prisoners:

- a) *Corrective Services Act 2006*;
- b) *Corrective Services Regulation 2017*;
- c) *Criminal Code Act 1899*;
- d) *Criminal Law (Rehabilitation of Offenders) Act 1986*;
- e) *Criminal Law (Sexual Offences) Act 1978*;
- f) *Dangerous Prisoners (Sexual Offences) Act 2003*;
- g) *Penalties and Sentences Act 1992*;
- h) *Penalties and Sentences Regulation 2015*;
- i) *Bail Act 1980*;
- j) *Crimes Act 1914 (Cth)*;
- k) *Judicial Review Act 1991*;
- l) *Acts Interpretation Act 1954*;
- m) *Criminal Proceeds Confiscation Act 2002*;
- n) *Uniform Civil Procedure Rules 1999*;
- o) *Police Powers and Responsibilities Act 2000*;
- p) *Family Law Act 1975*; and
- q) *Human Rights Act 2019*.





# Prisoner Entitlements

## Legal Resources

PE

### Custodial Operations Practice Directive

A prisoner may request access to copies of additional legislation. The Chief Superintendent of the corrective services facility or nominee will consider this request in accordance with the requirements of this section of this COPD.

#### Case law

A prisoner may request copies of case law. The Chief Superintendent of the corrective services facility or nominee will consider these requests on a case by case basis in accordance with this COPD.

### 7.2 Secondary information sources to be made available to prisoners

The following secondary information sources at a minimum will be made available to prisoners:

- a) Carter's Criminal Law of Queensland (textbook version);
- b) Cross on Evidence;
- c) Evidence Law in Queensland;
- d) Ross on Crime;
- e) An Introduction to Criminal Law in Queensland and Western Australia or Criminal Law in Queensland and Western Australia; and
- f) Queensland Law Handbook (published by Caxton Legal Centre).

A prisoner may request access to copies of additional secondary information. The Chief Superintendent of the corrective services facility or nominee will consider these requests in accordance with the requirements of this COPD.

E-books are considered to be a legitimate way of making resources available to prisoners, providing access to resources is not restricted by lack of access to relevant computers. The use of E-books is subject to approval by the Chief Superintendent of the corrective services facility.

