



Prisoner Entitlements

PE

Marriage, Civil Partnerships, Name Change and Voting

Custodial Operations Practice Directive

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Scope

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1. Human Rights Relating to Marriage/Civil Partnerships

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 a decision including but not limited to:

- a) recognition and equality before the law;
- b) privacy and reputation;
- c) protection of families and children;
- d) cultural rights generally and for Aboriginal peoples and Torres Strait Islander peoples; and
- e) humane treatment when deprived of liberty.

In light of this commitment, when considering an application by a prisoner to be married within a corrective services facility, or to make a declaration of civil partnership within a corrective services facility, Queensland Corrective Services (QCS) staff must:

- a) treat each application respectfully and in a non-discriminatory manner;
- b) recognise that families are the fundamental group unit of society and they are entitled to protection by society and the state. Prisoners have a right to be part of a family and to marry or enter into civil partnership where legal requirements are met, the same as any other member of society. The issue in question is whether allowing them to do so within the corrective services facility will compromise the safety and security of the facility;
- c) have regard to a prisoner's fundamental human right to:
 - i. not have their family unlawfully or arbitrarily interfered with. Interference may be arbitrary even if it is lawful where it is unreasonable, unnecessary and disproportionate;
 - ii. be treated with humanity and with respect for the inherent dignity of the person, with their rights curtailed only to the extent necessary due to confinement; and
- d) disallow an application in circumstances where the eligibility requirements under the *Marriage Act 1961* (Cth) or the *Civil Partnerships Act 2011* have not been satisfied.

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.





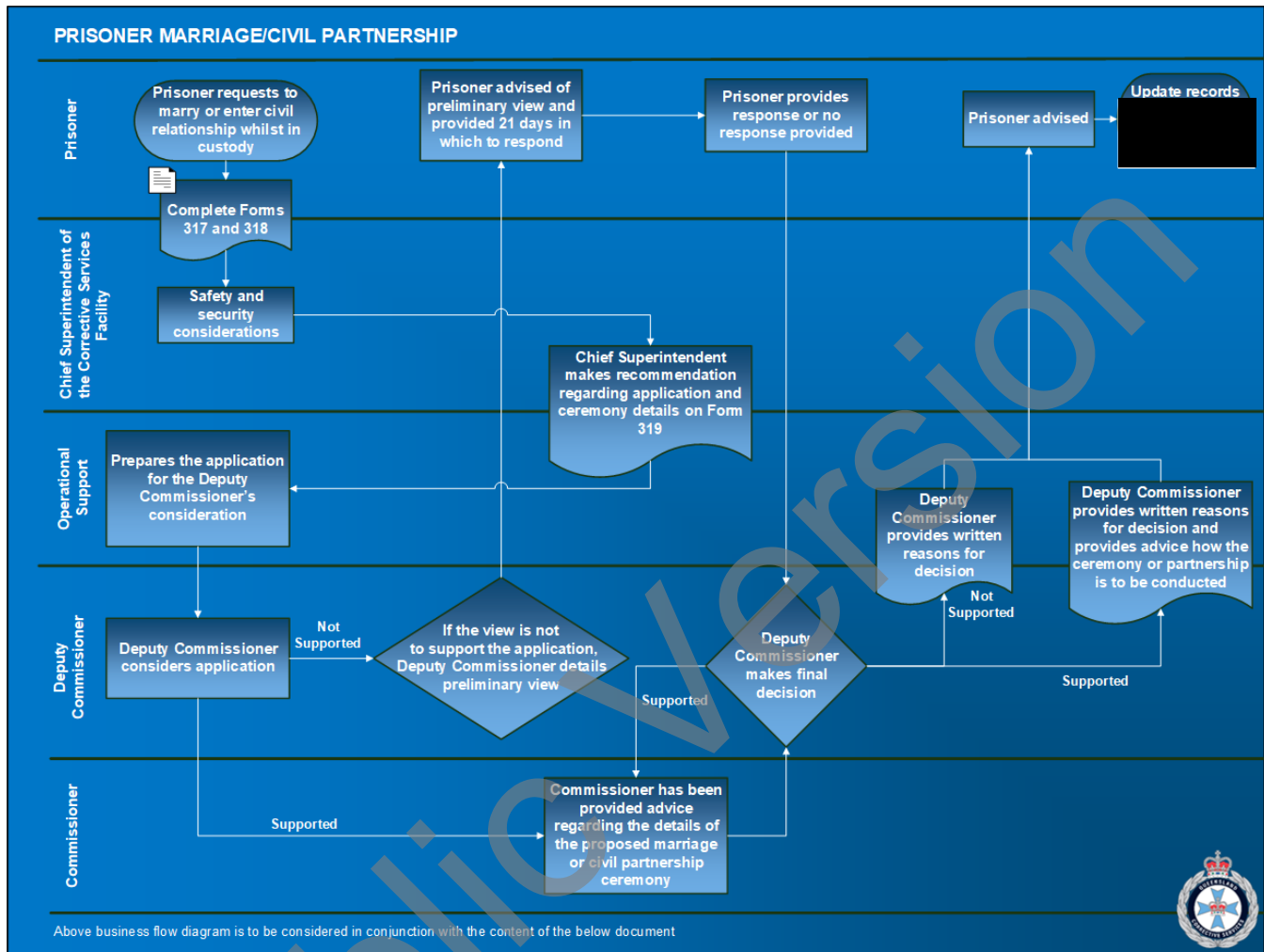
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3. Process Map for Prisoner Marriage/Civil Partnerships



4. Prisoner Marriage

A prisoner may seek to marry or enter into a civil partnership while in custody.

For a prisoner to marry within a corrective services facility the prisoner must seek the approval of the Chief Executive and if approved, the ceremony must be conducted in the way decided by the Chief Executive.

Section 26 of the *Corrective Services Act 2006* (CSA) provides that a person in the Chief Executive's custody must give the Chief Executive written notice before lodging a notice of intention to marry under the *Marriage Act 1961* (Cth).





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A prisoner may be married in a corrective services facility only with the Chief Executive's approval and the marriage must be conducted in the way decided by the Chief Executive. The *Marriage Act 1961* also details a number of requirements which must occur including:

- a) a registered celebrant must carry out the wedding ceremony;
- b) there must be two witnesses over the age of 18 years of age at the wedding ceremony;
- c) an interpreter must be at the wedding ceremony if one or both partners cannot understand or speak English; and
- d) the parties must sign the notice of intended marriage application form in the presence of a qualified witness (i.e. registered celebrant, Commissioner for Declarations, Justice of the Peace, barrister or solicitor, a legally qualified medical practitioner or a member of the Australian Federal Police or the police force of a state or territory).

The *Marriage Act 1961* also outlines legislative requirements for marriage including:

- a) the age of the person to be married, in certain circumstances a partner may require consent of a parent or guardian and a Magistrates Court order;
- b) a person cannot be married if:
 - i. they are still married to another person;
 - ii. they are in a relationship with their ancestor or descendant (by blood or adoption) or their sibling or half sibling;
 - iii. they are entering into the marriage due to duress or fraud; or
 - iv. they do not understand the nature and effect of the proposed marriage ceremony.

5. Prisoner Civil Partnerships

A prisoner may enter into a civil partnership with or without a declaration ceremony.

To enter a civil partnership with a declaration ceremony within a corrective services facility, the prisoner must seek the approval of the Chief Executive and if approved, the making of the declaration must be conducted in the way decided by the Chief Executive.

To enter a civil partnership without a declaration ceremony within a corrective services facility, the prisoner must provide written notice to the Chief Executive prior to making an application to the registrar of Births, Deaths and Marriages to register the relationship.

The *Civil Partnerships Act 2011* allows for a person to enter into a civil partnership if the person is not married or in a civil partnership and the person does not have a "prohibited relationship" with the person's proposed civil partner. A prohibited relationship includes a relationship with a lineal ancestor, lineal descendent, sister, half-sister, brother or half-brother. The person or the person's proposed civil partner must live in Queensland.

Two adults who are in a relationship as a couple, regardless of their sex, and who meet these eligibility criteria may enter into a civil partnership by:

- a) having their relationship registered under section 9; or
- b) making a declaration of civil partnership under section 11 and having their relationship registered under section 12 of the *Civil Partnerships Act 2011*.





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Section 26A of the CSA, provides a person in the Chief Executive's custody must give the Chief Executive written notice before:

- a) applying under the *Civil Partnerships Act 2011*, section 7 for registration of a relationship as a civil partnership; or
- b) giving a notice of intention to enter into a civil partnership under the *Civil Partnerships Act 2011*, section 10.

A prisoner in a corrective services facility may only make a declaration of civil partnership under section 11 of the *Civil Partnerships Act 2011* with the Chief Executive's approval. The making of the declaration must be conducted in the way decided by the Chief Executive.

Where a prisoner wishes to enter into a civil partnership by having a declaration of civil partnership ceremony in a corrective services facility, the requirements detailed in this Custodial Operations Practice Directive (COPD) must be complied with.

A prisoner who wishes to enter into a civil partnership by applying to the registrar of Births, Deaths and Marriages under section 7 of the *Civil Partnerships Act 2011* to register the relationship, must provide written notice to the Chief Executive before making the application to register the relationship as a civil partnership by completing an Administration Form 317 Application to Marry/Make a Declaration of Civil Partnership in a Corrective Services Facility or Written Notice to Enter into Civil Partnership whilst in Custody (Part A only).

6. Request by a Prisoner to Marry or Make a Declaration of Civil Partnership in a Corrective Services Facility

A prisoner may seek approval from the Chief Executive to marry or make a declaration of a civil partnership in a corrective services facility by completing an Administration Form 317 Application to Marry/Make a Declaration of Civil Partnership in a Corrective Services Facility or Written Notice to Enter into Civil Partnership whilst in Custody.

The prisoner must include the following information:

- a) details of the person whom they wish to marry or make a declaration of or enter into a civil partnership;
- b) the nature of any proposed ceremony, including the number and details of persons proposed to attend; and
- c) confirmation they meet the legislative criteria to marry or make a declaration of a civil partnership as detailed in the *Marriage Act 1961* or the *Civil Partnerships Act 2011*.

The proposed spouse or partner must complete an Administration Form 318 Confirmation Proposed Spouse or Partner Meets the Legislative Criteria to Marry/Make a Declaration of Civil Partnership. The relevant corrective services facility is responsible for posting the Administration Form 318 Confirmation Proposed Spouse or Partner Meets the Legislative Criteria to Marry/ Make a Declaration of Civil Partnership to the proposed spouse/partner at the address provided on the Administration Form 317 Application to Marry/Make a Declaration of Civil Partnership in a Corrective Services Facility or Written Notice to Enter into Civil Partnership whilst in Custody. This is to be accompanied by a letter under the hand of the Chief Superintendent of the corrective services facility. Refer to Appendix PE13 Letter to Proposed Spouse/Partner Template.





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6.1 Prisoner lodgement of intention

A prisoner seeking to marry while in a corrective services facility is responsible for lodging the relevant notice required by the *Marriage Act 1961*, at the prisoner's own expense, following approval by the decision maker. This includes the Notice of Intended Marriage in accordance with section 26 of the CSA.

A prisoner seeking to make a declaration of civil partnership while in a corrective services facility is responsible for lodging the relevant notice required by the *Civil Partnership Act 2011*, at the prisoner's own expense, following approval by the decision maker.

6.2 Counselling

Prisoners considering marriage in a corrective services facility should be encouraged to undertake pre-marital counselling with an appropriately qualified person approved by the Chief Superintendent of the corrective services facility at the prisoner's expense.

6.3 Processing the prisoner application

The Chief Superintendent of the corrective services facility must ensure all required documents or information are attached or contained within the application.

On receipt of an application to marry or make a declaration of civil partnership within a corrective services facility the Chief Superintendent will be responsible for undertaking the checks outlined in section 6.4 Safety and security considerations.

Once all the required information has been collected the Chief Superintendent must complete an Administration Form 319 Prisoner Marriage and Civil Partnership within a Corrective Services Facility Checklist and Chief Superintendent Recommendation and Administration Form 319a Ceremony Checklist.

When making the recommendation the Chief Superintendent must refer to the considerations contained in section 6.5 Approval by Deputy Commissioner, Custodial Operations. The completed Administration Form 319 Prisoner Marriage and Civil Partnership within a Corrective Services Facility Checklist and Chief Superintendent Recommendation and Administration Form 319a Ceremony Checklist are to be submitted to the

6.4 Safety and security considerations

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Where a prisoner has a DV-Current flag raised on IOMS, a review must be undertaken of the order conditions of any Domestic and Family Violence Protection Order (or any relevant order), to ascertain whether the proposed marriage or declaration of a civil partnership ceremony within a corrective services facility may potentially breach a condition of that order. This may impact on the decision to approve access to the corrective services facility for a person named in that order. The prisoner may be provided the opportunity to seek to have the order amended to ensure no conditions are breached.

QCSIG will provide any relevant information to the Chief Superintendent for their consideration.

The Chief Superintendent must review all relevant information to assess the potential of risk to:

- a) the safety of another person, including the applicant or their proposed spouse/partner, a person proposed to attend the ceremony or to staff; and
- b) the safety and security of the corrective services facility.



6.5 Approval by Deputy Commissioner, Custodial Operations

Ordinarily the decision to approve a prisoner to marry or make a declaration of a civil partnership in a corrective services facility will be made by the Deputy Commissioner, Custodial Operations. The Commissioner may authorise another officer to decide the application.

Refer to the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers.

When deciding an application, the decision maker must:

- a) consider the written application by the prisoner, including any supporting material;
- b) determine whether the prisoner and intended spouse/partner meet the legislative criteria to marry or make a declaration of a civil partnership as detailed in the *Marriage Act 1961* or the *Civil Partnerships Act 2011*;
- c) pay particular attention to a prisoner's fundamental human right to be part of a family and to marry or enter into a civil partnership where legal requirements are met, the same as any other member of society;
- d) consider whether allowing the marriage or declaration ceremony to be conducted within a corrective services facility would impact on the safety and security of the facility; and
- e) determine whether the safety of a person is, or would be, placed at risk by facilitating the marriage or declaration of civil partnership ceremony within a corrective services facility, including considerations detailed in section 6.4 Safety and security considerations.

If the decision maker's preliminary view is to not support the application, the decision maker must provide the prisoner with an opportunity to respond in writing, prior to a final decision being made. A prisoner has 21 days to provide any additional information or submissions to the decision maker. The decision maker must provide written reasons for their final decision on the application.





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6.6 Co-ordination of ceremony arrangements

Once approval has been granted for a prisoner to marry or make a declaration of a civil partnership in a corrective services facility all necessary arrangements for the ceremony will be made by Operational Support. Operational Support will make such arrangements in consultation with the Chief Superintendent of the corrective services facility and the applicants.

6.7 Ceremony details

Prior to making a decision to approve a prisoner to marry or make a declaration of a civil partnership in a corrective services facility, the decision maker must provide advice to the Commissioner regarding the details of the proposed marriage or civil partnership.

In determining the details of the ceremony, it is expected, if approved, the ceremony will be modest in nature and conducted in a suitable place within the correctional centre at the discretion of the Chief Superintendent. Refreshments are available only via the vending machine and in accordance with standard visits sessions. No further food or drink are permitted.

Attendees at the ceremony will generally be restricted to the two individuals who are to be married or entering into a civil partnership, the celebrant and witnesses required by law. The decision maker must also consider any specific religious or cultural considerations relating to the ceremony.

These are considered to be the general expectations of the ceremony. Requests to vary the expectations may be made at the time of the application. These requests are to be considered for approval by the decision maker.

If the decision maker grants approval for the prisoner to marry or make a declaration of a civil partnership in a corrective services facility the decision maker must also approve:

- a) the location of the ceremony;
- b) number of attendees;
- c) duration and format of the ceremony; and
- d) any other restrictions/considerations which may be considered necessary.

The decision maker must also advise the prisoner that:

- a) an authorised celebrant (civil or religious) approved by the Chief Superintendent of the corrective services facility must conduct a marriage ceremony;
- b) a registered civil partnership notary approved by the Chief Superintendent of the corrective services facility must conduct a declaration of civil partnership;
- c) the ceremony must not disrupt the operations of a corrective services facility;
- d) except for staff normally rostered for duty at the facility, the costs associated with a marriage or civil partnership are the responsibility of the prisoner, including the rostering of additional staff considered necessary for operational reasons;
- e) photographs are to be taken by centre staff only and vetted prior to issue; and
- f) attendees must comply with Appendix V1 QCS Appropriate Dress Standards Notice. No bridal gown or veil is to be worn.

Where the decision maker considers imposing restrictions to the proposed ceremony, the decision maker must provide the prisoner with an opportunity to respond in writing, prior to a final decision being made. A prisoner must be provided with 21 days to provide any additional information or submissions to the decision maker.

The decision maker must provide written reasons for their final decision on the application.





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It is the Chief Superintendent's responsibility to ensure if a ceremony takes place, it is conducted in the manner as detailed by the decision maker.

6.8 Additional considerations

Where two same-sex prisoners make an application to marry or a declaration of a civil partnership in a corrective services facility, the Chief Superintendent of the corrective services facility must ensure they are advised that they will continue to be managed as individuals. While the union will be respected and taken into account in decision-making, where relevant, it does not mean that their marital/civil partnership status overrides treatment considered to be necessary for them as individuals. There can be no commitment to ensure the prisoners are accommodated at the same corrective services facility, or if that is the case, that they would be accommodated together.

6.9 Personal visitors

All invitees attending a marriage or declaration of a civil partnership ceremony in the corrective services facility require prior access approval by the Chief Superintendent. The attendance at the marriage ceremony is considered a personal visit to which the usual visiting protocol applies. Refer to the COPD Visits: Visitors to a Facility.

7. Prisoner Marries, Declares a Civil Partnership or Registers a Civil Partnership Without Permission

If a prisoner does not provide written notification to the Chief Executive or delegate prior to lodging a notice of intention to marry or applying to enter into a civil partnership, the Chief Executive or delegate may refer the matter to the Queensland Police Service (QPS) for investigation.

Refer to sections 26(1), 26A(1)(a) and (b) of the CSA.

7.1 Prisoner requests a change of name

If the prisoner requests to change their name as a result of the marriage, or after entering into a civil partnership - refer to the change of name sections within this COPD.

QCS requires a prisoner to obtain the Chief Executive's written permission to change their name in accordance with section 27 of the CSA.

7.2 Update records

The IOMS record relating to the prisoner may be updated only after confirmation of the registering of the marriage or civil partnership by the prisoner.



8. Human Rights Relating to Change of Name by Prisoner

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

- a) recognition and equality before the law;
- b) privacy and reputation;
- c) protection of families and children;
- d) cultural rights generally and for Aboriginal peoples and Torres Strait Islander peoples; and
- e) humane treatment when deprived of liberty.





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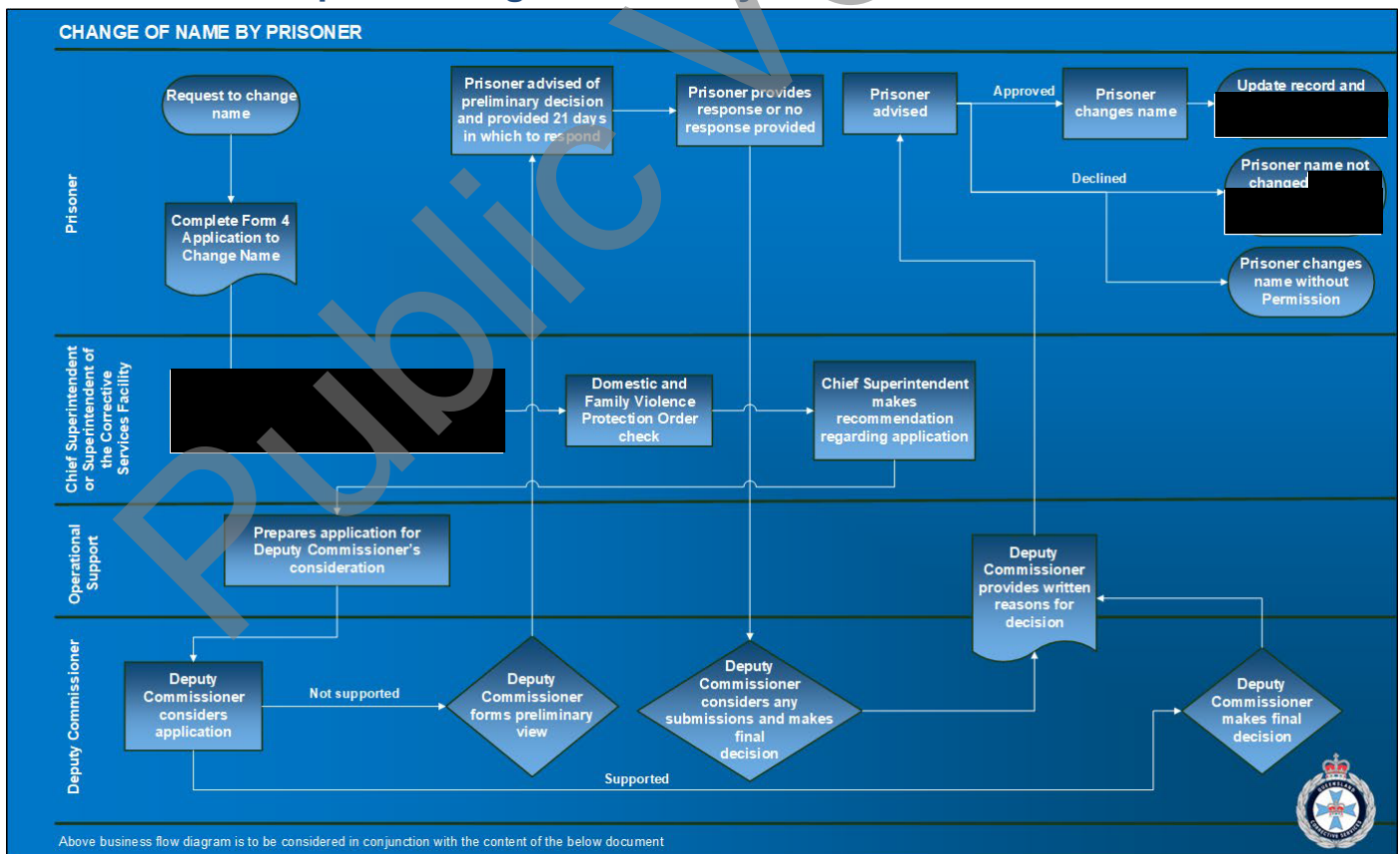
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In light of this commitment, when considering an application by a prisoner to change their name, QCS staff must:

- treat each application respectfully and in a non-discriminatory manner;
- recognise that an individual's privacy and reputation need to be protected. Prisoners have a right to protect their individual identity;
- the issues in question are whether allowing them to do so while they are in custody:
 - may pose a threat to the security of a corrective services facility;
 - compromise the safety of the person or other persons;
 - could be used to further an unlawful activity of purpose; and/or
 - could be considered offensive to a victim of crime or an immediate family member of a deceased victim of a crime;
- have regard to a prisoner's fundamental human right to:
 - not have their privacy and reputation unlawfully or arbitrarily interfered with. Interference may be arbitrary even if it is lawful where it is unreasonable, unnecessary and disproportionate;
 - be treated with humanity and with respect for the inherent dignity of the person, with their rights curtailed only to the extent necessary due to confinement; and
- only disallow an application in circumstances where the legislative requirements under the *Corrective Services Act 2006* have not been satisfied.

9. Process Map for Change of Name by Prisoner



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10. Request to Change Name

Refer to sections 7 and 27 of the CSA.

A prisoner in the custody of the Chief Executive, including a prisoner subject to a continuing detention order and a prisoner who is released to parole, who intends to change their name, must apply and obtain the Chief Executive or delegate's written permission before applying to change their name under the *Births, Deaths and Marriages Registration Act 2003* (BDMRA) or an equivalent law of another state providing for the registration of a change to the person's name.

The prisoner must apply on the Approved Form 4 Application to Change Name and clearly state the reasons for submitting the application.

A prisoner may be required to provide documentation to support their request to change their name. Examples of this include where they may make reference to changing their name back to their original birth name, or to take the name of another family member (e.g. their mother's maiden name).

The prisoner must be provided with a reasonable timeframe to provide the information. If the documentation is not provided, then the name change will not be further progressed until the information is received.

The prisoner must be informed in writing of any decision not to progress the name change application.

If the prisoner is a reportable offender intending to change their name (under the BDMRA or relevant law in a jurisdiction other than Queensland, including outside of Australia), they are also required to apply to the Police Commissioner for approval. Refer to section 74A of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

10.1 Processing the application

The Chief Superintendent of the corrective services facility must ensure all required documents or information are attached or contained within the application.

On receipt of an application to change name the Chief Superintendent will be responsible for undertaking the checks outlined in the sections below in sections.

Once all the required information has been collected, the Chief Superintendent must make a recommendation regarding the application. The Chief Superintendent should refer to the considerations contained in section 10.6 Deciding an application. The completed Approved Form 4 Application to Change Name along with the Chief Superintendent's recommendation is to be submitted to [REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10.4 Domestic violence considerations

Where the prisoner's criminal history records offences of domestic violence, offences committed in the context of domestic and family violence, or breaches of Domestic and Family Violence Protection orders, additional information may be sought from QPS to assist the decision maker.

Information is to be sought where the prisoner making the application has current or previous Domestic and Family Violence Protection Order/s.

10.5 Name change following marriage or divorce

There is no requirement for a prisoner to seek the Chief Executive's permission when assuming their married name or reverting back to their maiden name following a divorce. In such cases, an Approved Form 4 Application to Change Name is not required, however a prisoner must provide supporting documentation to the Chief Superintendent in order to ensure amendments to QCS records are accurately reflected.

10.6 Deciding an application

Refer to the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers.

Ordinarily the decision to approve a prisoner to change their name while in custody will be made by the Deputy Commissioner, Custodial Operations. The Commissioner may authorise another officer to decide the application.





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In deciding whether to allow a prisoner to change their name, the decision maker must consider the legislative provisions as detailed in section 27(2) of the CSA:

- whether the proposed name change poses a threat to the security of a corrective services facility;
- the safety of the person and other persons;
- whether the proposed name change could be used to further an unlawful activity or purpose; and
- whether the proposed name change could be considered offensive to a victim of a crime or an immediate family member of a deceased victim of a crime.

The decision maker must also pay particular attention to a prisoner's fundamental human right to protect their privacy and reputation, including their individual identity.

Where the decision maker's preliminary view is to not support the application, the decision maker must provide the prisoner with an opportunity to respond in writing, prior to a final decision being made. A prisoner must be provided with 21 days to provide any additional information or submissions to the decision maker.

The decision maker must provide written reasons for their final decision on the application.

10.7 Prisoner change of name approval

If approval is given for a change of name, the prisoner may then apply in the appropriate form to the registrar of Births, Deaths and Marriages. The prisoner must provide the Chief Superintendent of the corrective services facility with a copy of the final advice from the registrar that the change of name has occurred.

10.8 Prisoner change of name without permission

If the Chief Executive or delegate becomes aware that the prisoner has changed their name without obtaining the Chief Executive or delegate's written permission, the Chief Executive or delegate may apply to the registrar under the *Births, Deaths and Marriages Registration Act 2003*, for the cancellation of the name change.

The matter may be referred to QPS for investigation. Refer to sections 27(1), (3) and (4) of the CSA.

10.9 Update records

If approval is granted for the prisoner to change their name, IOMS must be updated to note the changes made to the prisoner's name, only after final advice is provided from the register of Births, Deaths and Marriages.



If a prisoner changes their name when discharged (i.e. not in the custody of the Chief Executive), and subsequently returns to custody or supervision, the prisoner must provide a copy of relevant documentation in relation to the name change to the corrective services officer.

Following confirmation of the name change, the officer must:

- update IOMS to note the changes made to the prisoner's name (including the provision of the prisoner's previous name as an alias);
- attach a copy of the documentation provided by the prisoner in IOMS; and
- case note the matter.





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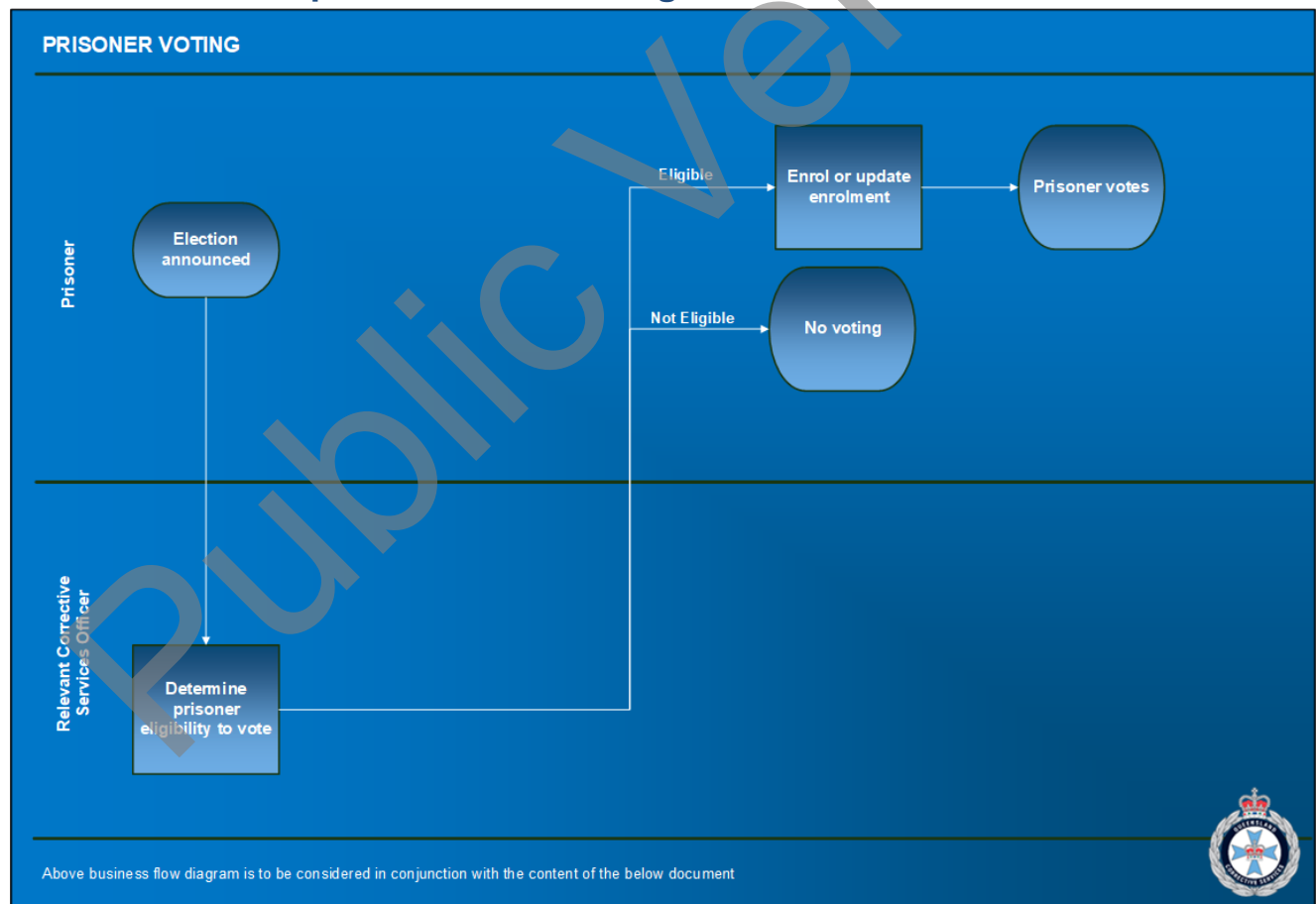
Advice must also be provided to QPS to inform of the prisoner's change of name.

11. Human Rights Relating to Prisoner Voting

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 a decision including but not limited to:

- a) recognition and equality before the law;
- b) taking part in public life;
- c) privacy and reputation; and
- d) humane treatment when deprived of liberty.

12. Process Map for Prisoner Voting



13. Determine Prisoner Eligibility to Vote and Voting Process

The process for prisoner voting is determined for each election in consultation with the Australian Electoral Commission (AEC) or Electoral Role Commission (ECQ).





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The preferred method of prisoner voting is by postal vote. An eligible prisoner can enrol at any time as a general postal voter by filling out the relevant form. The Chief Superintendent of the corrective services facility must provide a postal voting form to an eligible prisoner. Forms are available from, as relevant, either the:

- a) AEC's website or by contacting the AEC State Office for Federal elections; or
- b) ECQ's website www.ecq.qld.gov.au for State and local elections.

13.1 Eligibility to vote in Federal elections

A prisoner serving less than three years imprisonment, or a person on remand, may be eligible to be placed on the electoral roll and vote at a federal election in accordance with section 93 of the *Commonwealth Electoral Act 1918* (Cth).

A prisoner serving a sentence of three years or longer can remain on the electoral roll, however is not entitled to vote until released from prison.

Eligibility to enrol and to vote is determined by the AEC. Prisoners requesting information about their entitlement to enrol should be provided with relevant information from AEC's website www.aec.gov.au – search prisoner.

13.2 Eligibility to vote in state and local elections

A prisoner serving less than three years imprisonment, or a person on remand, may be eligible to be placed on the electoral roll and vote at a state or local election in accordance with section 106 of the *Electoral Act 1992*.

Eligibility to enrol and to vote is determined by the ECQ. Information can be obtained at www.ecq.qld.gov.au – search prisoner.

13.3 Enrol or update enrolment

Prisoners filling out an enrolment form may require assistance to confirm their identity in accordance with the requirements of the AEC, for example, accessing their driver's licence to prove their identity. Enrolment forms are available from the AEC's website www.aec.gov.au or by contacting the AEC State Office.

A prisoner may update their enrolment details, re-enrol or enrol by submitting the relevant form to the Australian Electoral Commission.

The Chief Superintendent of the corrective services facility must provide an enrolment form to an eligible prisoner. Forms are available from the AEC's website www.aec.gov.au or by contacting the AEC State Office.

13.4 Communication with AEC/ECQ

Communications between a prisoner and the AEC or ECQ are privileged mail (refer Appendix PE3 Schedule of Authorised Persons for the Purposes of Privileged Mail).

QCS has entered into a Memorandum of Understanding with AEC to provide information to enable the AEC to manage the electoral roll.

In accordance with the Memorandum of Understanding, a report will be provided each month detailing prisoners who have received a sentence of three years imprisonment or more.

