



## Custodial Operations Practice Directive

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## Custodial Operations Practice Directive

### 1 Human Rights

It is unlawful for corrective services officers 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) the right to protection from torture and cruel, inhuman or degrading treatment;
- c) freedom of thought, conscience, religion and belief, including the prisoner's freedom to demonstrate religion in observance and practice;
- d) freedom of expression;
- e) the right to privacy and to reputation;
- f) cultural rights – generally and for Aboriginal peoples and Torres Strait Islander peoples;
- g) the right to liberty and security of person;
- h) the right to humane treatment when deprived of liberty, including the right for a person detained without charge to be segregated, unless reasonably necessary, from prisoners who have been convicted of offences and to be treated in a way that is appropriate for a person who has not been convicted;
- i) the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all; and
- j) the right to access health services without discrimination including the right not to be refused emergency medical treatment that is immediately necessary to save the prisoner's life or prevent serious impairment to the prisoner.

### 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 direction for managing prisoners with significant vulnerabilities in accordance with their individual risks and needs.
- 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 enhances the human rights of the individual, by ensuring that prisoners with significant vulnerabilities are managed in accordance with their individual risks and needs, provided a safe environment, including those identified as being more vulnerable than the general prison population.
- 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 ensures that all prisoners are provided with a safe environment, including those identified as being more vulnerable than the general prison population.





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- 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.

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

### 3 Management of Prisoners of Concern (PoC)

The Prisoner of Concern (PoC) procedure provides direction for managing prisoners with significant vulnerabilities in accordance with their individual risks and needs. Queensland Corrective Services (QCS) staff have a duty of care to provide a safe environment for all prisoners, including those identified as being more vulnerable than the general prison population.

A PoC is a prisoner who is identified as having prominent and/or profound factors that significantly impair their functioning, and therefore require greater oversight and monitoring than that of the general prisoner population. A vulnerable prisoner in this context refers to a prisoner who is in need of special care, support or protection, due to factors that may be inclusive of their: age; disability; impairment; risk of abuse, harm or neglect; or due to some other identified risk factor/s. As a result of these identified vulnerabilities, a PoC may also be more at risk of being subjected to emotional, physical or sexual harm or victimisation than others.

There are a variety of factors that may make a person or group of people vulnerable within the custodial setting. Some examples of prisoners who may be assessed as requiring additional management as per the centre's PoC process may include the following:

- a) **Cognitive Impairment or Intellectual Disability.** Prisoners who are assessed as having a specific need relating to a severe or profound cognitive impairment or intellectual disability that significantly impacts on their personal interactions or ability to undertake daily living activities may require management under the PoC procedure. Not all prisoners who have a cognitive impairment flag will require management through the PoC procedure and this should be assessed on a case by case basis. Consideration should also be given to prisoners who are subject to Guardianship and/or Administration Orders, and those prisoners who are National Disability Insurance Scheme (NDIS) participants or who appear to be eligible to become an NDIS participant. Staff should refer to the Custodial Operations Practice Directive (COPD) Prisoner Entitlements: Office of the Public Guardian, Appendix R12 Referral of Prisoners into the National Disability Insurance Scheme and section 5 National Disability Insurance Scheme of this COPD.
- b) **Mental Health Condition/Impairment.** Prisoners who are assessed as having a mental health condition or diagnosis that significantly impairs their functioning or substantially disadvantages them beyond that of prisoners within the general population, may require management under the PoC procedure. This may include prisoners subject to Treatment Authorities under the *Mental Health Act 2016*, or prisoners with prior trauma, histories of deprivation or victims of abuse. There are a variety of mental health factors that may make a prisoner substantially more vulnerable than the general prisoner population. There is no warning flag to identify prisoners who are vulnerable due to the presence of mental health, therefore awareness and recognition by staff and communication between staff is vital in the management of these prisoners.





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- c) **Medical Condition/Physical Impairment.** Prisoners who are assessed as having a specific need, such as those relating to a severe or profound physical impairment or medical condition that significantly impact on their staff and peer interactions and/or ability to undertake daily living activities may require management under the PoC procedure.
- d) **Elderly prisoners.** Elderly or aged and infirmed prisoners whose age-related factors significantly impact on their staff and peer interactions and/or ability to undertake daily living activities may require management under the PoC procedure. This may include prisoners with additional issues such as changing physical needs, hearing/visual impairments and incapacity which can contribute to an added level of vulnerability.
- e) **Elevated Baseline Risk (EBLR) of Suicide and/or Self-Harm.** A prisoner with chronic or an elevated baseline risk of suicide or self-harm will present with ongoing risk factors that contribute to higher rates of suicide or self-harm in comparison to the general prison population. Due to the specific risk factors that are present with prisoners who are an elevated baseline risk of self-harm or suicide, appropriate steps must be taken to ensure ongoing effective management. If a prisoner is vulnerable due to their chronic risk of self-harm and or suicidal behaviour, they should be referred to and managed as per the COPD At-Risk Management: Elevated Baseline Risk (EBLR). EBLR prisoners are those that not currently acutely at risk and do not require crisis interventions, such as observations. If any staff member becomes aware that a prisoner may be at risk of suicide or self-harm or has concern for a prisoner's immediate safety and welfare, the Risk of Harm to Self procedure in the COPD At Risk Management: At Risk must be followed, along with the COPD At-Risk Management: Elevated Baseline Risk.

It is important to note that the above list is not exhaustive and there may be other prisoners or situations in which a prisoner is identified as a PoC and placed on the PoC register for additional oversight and/or management.

### 3.1 Allied Health Services

In some instances, or at some locations Psychologists, Occupational Therapists and/or Social Workers appointed to the following positions may be involved with the management of prisoners with significant vulnerabilities in accordance with their individual risks and needs:

- a) Allied Health Clinician;
- b) Senior Allied Health Clinician;
- c) Team leader, Allied Health Services; and
- d) Manager, Allied Health.

## 4 Process for Identifying a PoC

Where a prisoner has been identified as presenting with prominent and/or profound vulnerability factors, the identifying staff member is responsible for notifying both the Senior Psychologist/Team Leader, Allied Health Services, and correctional supervisor, who will then determine whether the prisoner will be placed on the centre's PoC register. It is also the responsibility of the identifying staff member to case note and record information regarding the prisoner in an accurate and timely manner, including whether a referral has been initiated.

Identifying PoCs can occur at multiple points of a prisoner's sentence including:

- a) **Upon reception into custody or transfer from another centre.** A psychologist or correctional counsellor is responsible for completing the Immediate Risk Needs Assessment (IRNA) upon a prisoner's admission, or a reception interview for all other transfers. Refer to the COPD Reception Processes: Admission and Assessments.





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- b) **Any point within a custodial period.** A prisoner can be considered for management under the PoC procedure at any point during their custodial episode where relevant information becomes known that indicates that prisoner presents with one or multiple prominent and/or profound vulnerability factors. All staff involved in the management of prisoners are to remain vigilant in identifying and recognising any vulnerability factors and must advise the Senior Psychologist and correctional supervisor.

The Senior Psychologist/Team Leader, Allied Health Services and correctional supervisor are responsible for making a decision on the prisoner's suitability for management under the PoC procedure and for completing a case note on the Integrated Offender Management System (IOMS) with the outcome of this decision.

The reasons for inclusion as a PoC must be documented in the case note, as well as in the PoC register. For prisoners referred for consideration who are assessed as not requiring PoC management, the outcome and reason for decision must be documented in IOMS as a case note.

### 4.1 PoC register

If a prisoner is assessed by the Senior Psychologist/Team Leader, Allied Health Services and correctional supervisor as having prominent and/or profound vulnerability factors requiring greater oversight and monitoring than the general prisoner population, they are to be included on the PoC register and the PoC warning flag is to be activated. Refer to the Appendix SM1 Criteria for Warning Flag Indicators.

Details in the register are to include the prisoner's demographic details (i.e. name, ID number), accommodation unit, brief reason for being on the list, nominated case manager/staff member (if applicable), frequency of contact with case manager/staff member (if applicable), and any other relevant information (such as important dates including court and release dates). The PoC register will also be used to document the outcomes of any scheduled reviews and any subsequent decisions made.

### 4.2 PoC management strategies

Where a prisoner is identified as being a PoC, staff must ensure that they are managed in accordance with their individual factors and vulnerability.

A PoC may require a greater level of care than that of the general prisoner population. For some prisoners, a different care pathway may be required. This should be considered on a case by case basis and professional discretion is to be used in decision making regarding the required management strategies for each individual prisoner. This may include review by a multi-disciplinary team or case conference process, which would be particularly relevant for prisoners who have complex needs requiring input from a number of disciplines.

If there are multiple prisoners presenting with complex needs, consideration should be given to relevant staff meeting on a regular basis to review the prisoners' individual needs and their management within the corrective services facility. The outcomes of any reviews must be documented in accordance with the record keeping requirements.

Prisoners who are identified as being a PoC may require additional management strategies, dependant on their presenting issues. This may include (but is not limited to) the following:

- a) A PoC may require regular contact with a nominated staff member (e.g. psychologist/allied health clinician, counsellor, Cultural Liaison Officer, education officer, program officer, Re-entry Services, health services) dependant on their identified needs.





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This may include regular welfare checks with a focus on the prisoner's identified vulnerability factors, or engagement with other Offender Development staff, such as program officers, Cultural Liaison Officers, educational officers, Sentence Management Services, Re-entry Services, or health services to ensure that the prisoner's vulnerability factors are considered in their ongoing management.

- b) In determining the frequency of contact consideration should be given to individual factors including the prisoner's presenting issues and behaviours as well as their level of engagement with other services or areas (e.g. program involvement, education, Prison Mental Health Services). For example, if a prisoner is identified as being a vulnerable prisoner and is receiving regular contact with an external service provider, they may not require as much regular contact with QCS Psychology staff.
- c) Any reviews of the PoC prisoner must consider the individual circumstances and needs of the prisoner, and may include the following:
  - i. the prisoner's accommodation needs and management within the corrective services facility;
  - ii. the prisoner's access to employment and rehabilitation activities (including programs and education courses);
  - iii. the provision of medical treatment and any psychological support/input;
  - iv. the provision of support for prisoners with a cognitive impairment/disability including linkages with the NDIS (refer to the Appendix R12 Referral of Prisoners into the National Disability Insurance Scheme and section 5 National Disability Insurance Scheme of this COPD); and
  - v. linkages to Re-entry Services for prisoners approaching or preparing for release from custody. Consideration should be given to whether they require referral to the Community Re-Entry Services Team (CREST) as a complex case if they are not eligible for through-care services based on their Risk of Reoffending (RoR) scores.
- d) A PoC may benefit from additional management strategies through the use of an Intensive Management Plan (IMP) for functional support. IMPs are multipurpose and may be implemented for prisoners who have been identified as requiring a greater level of case management and/or supervision. Refer to the COPD Prisoner Behaviour Management: Intensive Management Plans.
- e) A PoC may have specialised accommodation needs relating to their specific vulnerability. This should be assessed on a case by case basis, and in consultation with the relevant staff – refer to the COPD Prisoner Accommodation Management: Cell Allocation.

A PoC must have regular case notes entered on IOMS on at least a fortnightly basis by a nominated corrective services officer. The focus of the case notes will be on the prisoner's overall institutional conduct and behaviour, any changes in behaviour and/or presentation (either positive or negative), any apparent signs and/or concerns regarding health or mental health changes, engagement in activities and/or employment, and interactions with and attitudes towards staff and other prisoners.

It is the responsibility of each centre to keep a record/register of prisoners who have been identified as being a PoC.

Any decisions relating to a PoC and their associated management strategies are to be discussed with the Senior Psychologist/Team Leader, Allied Health Services and documented in the PoC register and in a case note on IOMS. It is the responsibility of the assigned case manager/staff member (if applicable) to follow up on any identified treatment or management needs.





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### 4.3 Exit from PoC process

At any stage, if it is assessed that the prisoner no longer presents with significant vulnerability factors or no longer requires management through the PoC procedure, the prisoner's status can be reviewed by the Senior Psychologist/Team Leader, Allied Health Services and correctional supervisor, and/or other relevant stakeholders.

If it is the consensus that a prisoner no longer presents as requiring management through the PoC process, the prisoner is removed from the PoC register and associated management strategies are ceased. The rationale and outcome are to be documented in a case note on IOMS. The main considerations for exit from the PoC procedure should include:

- a) the original reason for identification as a PoC;
- b) the vulnerability or other risk factors;
- c) the presence of protective factors; and
- d) any other relevant information that becomes known.

The prisoner's PoC warning flag is also to be deactivated. Refer to the Appendix SM1 Criteria for Warning Flag Indicators.

### 5 Referrals to the National Disability Insurance Scheme

The NDIS is a voluntary Australia-wide scheme to support people under the age of 65 with permanent disability that significantly impacts their ability to take part in everyday activities.

Prisoners may either be registered with the NDIS or be eligible to apply. An NDIS application can be made at any time during a prisoner's time in custody, however the application should be dependent on a prisoner's needs in custody and/or needs for re-entry purposes. This ensures that a prisoner has their disability needs met in custody and are not released without NDIS support.

Refer to the Appendix R12 Referral of Prisoners into the National Disability Insurance Scheme.

If staff experience any NDIS issues, contact should be made with Disability Services at [REDACTED], who will escalate issues to the Justice Liaison Team at the NDIA.

### 6 Additional Considerations – Prisoner with Acute At Risk Presentation

If any staff member becomes aware that a prisoner may be at-risk of suicide or self-harm or has concern for a prisoner's safety and welfare, a Notification of Concern must be initiated as per the Risk of Harm to Self-procedure. It should be noted that the PoC procedure does not replace the usual risk management process. Refer to the COPD At-Risk Management: At-Risk.

### 7 Transfer and Escort to Secure Facility

If a PoC is to be transferred between corrective services facilities, the officer responsible for authorising the transfer must ensure that a sending facility staff member advises an appropriate receiving facility staff member (e.g. correctional supervisor, Senior Psychologist/Team Leader, Allied Health Services, manager, sentence management) of the prisoner's vulnerability factors prior to departure from the sending facility.

The sending facility must provide an appropriate receiving facility staff member a copy of the prisoner's IMP if applicable; and ensure that the reasons for management under the PoC procedure (if relevant), is considered as part of the escort planning for the prisoner.





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Receiving facility staff members, who are given any information about the prisoner, must ensure that the correctional supervisor is advised of this information as soon as practicable, and make a case note of the information they received.

The receiving facility may reassess a PoC on admission to determine if the prisoner requires ongoing management through the PoC regime at that Centre. Where a reassessment occurs, the outcome is to be recorded in a case note on IOMS.

### 8 Discharge of a PoC

If a PoC is to be discharged to the community (e.g. release to liberty, release to parole), the prisoner's vulnerability factors must be considered for transitional and pre-release planning. Staff should identify a PoC prisoner's discharge status as soon as possible and ensure a referral to Re-entry Services is initiated. Where a prisoner's needs are complex, it is recognised that more time may be required for pre-release planning so late notice to services should be avoided where possible.

For PoCs who are to be discharged from custody and subject to community supervision, contact should be made with the relevant Community Corrections office to advise them of the prisoner's placement, and to provide relevant available information relating to the clinical and welfare needs of the prisoner. This must be recorded as a case note on IOMS.

### 9 Record Keeping

For the purpose of maintaining adequate records the following minimum information is required to be documented:

- a) Each centre must have a register of PoC prisoners for that centre, including: the prisoner's demographic details (i.e. name, ID number), accommodation unit, brief reason for being on the list, nominated case manager (if applicable), frequency of contact with case manager (if applicable), and any other relevant information including details of any scheduled reviews. Registers are to be maintained in a secure location for access by all centre staff.
- b) Any contact with the PoC prisoner, or communication with other corrective service facilities (in the instance of transfers) or Community Corrections (in the instance of releases) must be recorded as a case note on IOMS.

A record of all information and decision making activities must be kept in accordance with QCS Offender File Management and Record Keeping procedures.

### 10 Prisoners with Special Needs

#### 10.1 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.







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For information regarding a person's capacity, refer to the Appendix PE14 Understanding a Person's Capacity to Make a Decision.

### 10.2 Engaging prisoners with special needs

An important aspect of active prisoner engagement is ensuring that communication with prisoners who may have a special need occurs in a manner which is fair and does not place the prisoner at a disadvantage.

When the term 'special need' is used in relation to a prisoner, it refers to prisoners who, because of any condition or circumstance, have a reduced capacity to understand or comprehend the information being provided to them or to understand what is being asked of them.

The following circumstances should be considered as creating a special need until the contrary becomes apparent:

- a) immaturity, either in terms of age or development;
- b) any infirmity, including early dementia or disease;
- c) mental illness;
- d) intellectual disability;
- e) illiteracy or limited education which may impair the person's capacity to understand the questions being put to them;
- f) inability or limited ability to speak or understand the English language;
- g) chronic alcoholism;
- h) physical disabilities including deafness or loss of sight;
- i) drug dependence;
- j) Aboriginal and Torres Strait Islander people; and
- k) persons with impaired capacity.

### 10.3 Establishing whether a special need exists

When a corrective services officer engages with a prisoner they should identify whether a special need exists. This can be identified by establishing whether the prisoner is capable of understanding what is being asked of them, ensuring the prisoner understands the question/s posed or direction/s given and also ensuring the prisoner is capable of effectively communicating an answer to those questions or is able to respond to the direction that may be given to them. The corrective services officer should ensure, as far as is practicable, that the prisoner is capable of understanding what is happening to them in those circumstances and is aware of any consequences that may follow from those communications.

In making an evaluation, the corrective services officer should take into account the following factors:

- a) the nature of the condition giving rise to the special need. For instance, some physical handicaps have no effect on the ability of a person to understand and to answer questions. Conversely, some physical conditions do affect the ability of a person to communicate;
- b) the reason the prisoner is being spoken to;
- c) the complexity of the information sought from the prisoner;
- d) the nature of any direction or instruction provided to the prisoner;
- e) the impact that the results or consequences may have for the prisoner. A discussion with a prisoner that may substantially affect their rights or liberty (e.g. a discussion regarding an application for parole) may be subject to greater efforts to address the person's special need than a communication that is likely to have only a minor impact (e.g. directing the prisoner to attend to the oval);
- f) the age, standard of education, proficiency in the English language, cultural background; and





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- g) whether the person has been subject to a life event that may impact on the person's capacity to look after or manage their own interests (e.g. acquired brain injury from an accident).

### 11 Communicating with Prisoners with Special Needs

Depending on the nature of the communication with a prisoner with special needs it may be sufficient for the corrective services officer to phrase (or rephrase) questions in a manner which compensates for a lack of comprehension or understanding.

However, in other circumstances it may also be necessary to arrange for an interpreter (including a sign language interpreter where appropriate) to overcome communication barriers. Refer to the Appendix PE2 Translating and Interpreting Services for further guidance on the approved translating and interpreting services available to QCS.

#### 11.1 Use and selection of interpreters and translators for spoken written and sign languages

Where practicable, corrective services officers should provide professional, accessible and equitable services in response to the communication requirements for people from non-English speaking backgrounds, Aboriginal and Torres Strait Islander persons, or prisoners who may be deaf and hearing/speech impaired. This may require the use of an accredited interpreter.

#### 11.2 Using Cultural Liaison Officers, multilingual staff members or other persons

Multilingual staff, including family members or other community members should not be used in instances where an official (professional interpreter) should be used. This has the potential to create the perception of a conflict of interest or conflict of duty (e.g. a person employed by QCS may not be seen as an impartial person to translate for a prisoner). The circumstances of the interaction will be important when deciding whether to use an accredited interpreter, for example:

- the complexity of the interaction (e.g. a prisoner from a non-English speaking background who is subject to proceedings for a breach of discipline);
- any emergency or possible need to gain information quickly;
- availability of suitable people to assist in communication;
- availability of an accredited interpreter in a specific language or dialect;
- time required to access an interpreter; and
- gender roles, particularly when dealing with sensitive issues.

A person employed by QCS however may assist in communications or providing language, cultural and protocol advice to other QCS staff as well as liaising with victims and families, etc.

#### 11.3 Arranging an interpreter or translator

Interpreters, translators and Australian Sign Language (AUSLAN) interpreters accredited by the National Accreditation Authority for Translators and Interpreters (NAATI), should be utilised when authorised by the Chief Superintendent or delegate. Refer to the Appendix PE2 Translating and Interpreting Services for further guidance on the approved translating and interpreting services available to QCS.

When utilising an interpreter or translator, a corrective services officer should ensure that the interpreter:

- is identified to the prisoner;
- and the prisoner fully understand each other;





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- c) is acceptable to the prisoner; and
- d) is not seen as exercising authority over the prisoner.

Communications using an interpreter should take the following form:

- a) have the interpreter translate and ask the question;
- b) listen to the answer;
- c) have the interpreter translate and repeat the answer; and
- d) record the answer (if required).

Corrective services officers may have contact with people from diverse communities and backgrounds in the performance of their duties and should remain aware that many people will have cultural or religious beliefs which may impact on their practices and behaviours.

Interaction with diverse community members should be conducted in a manner that is fair and provides for those persons' beliefs where practicable.

Chief Superintendents should take into account the specific multicultural demographic characteristics of the particular corrective services facility, ensuring that staff interaction with diverse community members, including prisoners, should be conducted in a manner that is fair and provides for those person's beliefs where practicable.

PUBLIC VERSION

