



Custodial Operations Practice Directive

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Scope

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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) privacy and reputation;
- b) protection of families and children;
- c) humane treatment when deprived of liberty;
- d) cultural rights - generally and for Aboriginal peoples and Torres Strait Islander peoples;
- e) property rights; and
- f) freedom of thought, conscience, religion and belief.

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 humane treatment when deprived of liberty provides that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- 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 limits the prisoner's right to humane treatment when deprived of liberty by requiring that the prisoner is managed on a more restrictive management regime than other prisoners not managed on a Maximum Security Order (MSO).
- 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. For example, the limit to the prisoner's right to humane treatment when deprived of liberty as a result of a more restrictive management regime is a requirement for the safety of other prisoners and officers.
- 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. For example, could the safety of others be achieved by a less restrictive regime?
- 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 versus the harm caused to the human right. For example, does the more restrictive management regime, to ensure the safety of others, outweigh the consequential limits to the prisoner's right to humane treatment when deprived of liberty?

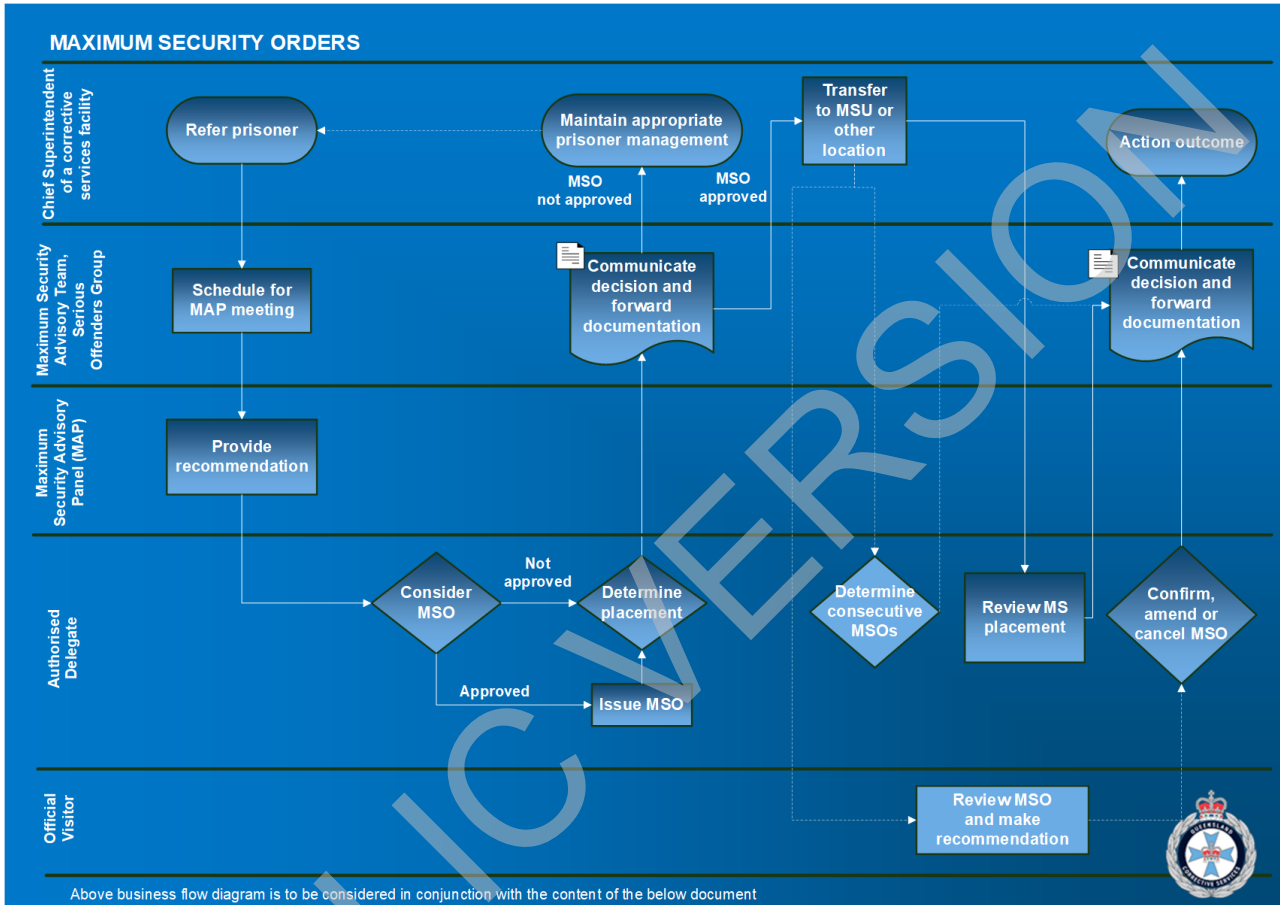




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A person's human rights should only be limited to the extent that is reasonably and demonstrably justified.

3. Maximum Security Orders



3.1 Prisoners with mental health conditions or intellectual disabilities

Pursuant to section 16 of the Corrective Services Regulation 2017 (CSR), if the Chief Executive knows, or reasonably believes, that a prisoner has a mental health condition or intellectual disability, they must notify a health practitioner (defined in the *Mental Health Act 2016*)* before making a Maximum Security Order (MSO) in relation to the prisoner. It is noted this is a notification only and an assessment by the health practitioner is not mandatory before making a MSO or placement decision. The notification must not delay the placement of the prisoner in the Maximum Security Unit (MSU).

*Under schedule 3 of the *Mental Health Act 2016*, a health practitioner means a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, including, for example, a social worker.

When processing an MSO referral for a prisoner who has or is reasonably believed to have a mental health condition or intellectual disability, the Maximum Security Advisory Team (MSAT), Sentence Management Services must:





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- a) forward an email to the nominated Prison Mental Health Service (PMHS) contact person and the Senior Psychologist at the centre where the prisoner is likely to be placed in the MSU advising that the Chief Executive is considering issuing an MSO and placement in the MSU;
- b) the email must include that it is known or reasonably believed the prisoner has a mental health condition or intellectual disability;
- c) the email is also to request that if an MSO is issued any necessary follow up and/or monitoring of the prisoner by either PMHS or the Senior Psychologist be undertaken, as required;
- d) MSAT must include the Chief Superintendent and MSU Manager at the potential placement centre in the email for information purposes; and
- e) record a case note on the Integrated Offender Management System (IOMS) noting the email has been sent to the nominated PMHS contact person.

If the prisoner is an open PMHS client, the Team Leader for West Moreton PMHS must be advised via email when the prisoner is placed on a new or consecutive MSO and if there are any changes in their location, via the below email addresses:



4. Prepare Referral

At any point during the correctional episode, a prisoner may be referred for consideration of placement and management options, including under the conditions of an MSO.

Where the Chief Superintendent or Superintendent of the corrective services facility considers a prisoner poses a significant risk not suitable for management within mainstream accommodation and may meet the criteria for an MSO, an Administrative Form 324 Maximum Security Order Referral must be completed and provided, along with any relevant collateral information, to the authorised delegate via email to [REDACTED]. In emergent situations, written advice with details of the incident will be sufficient to progress the referral.

All MSO referrals will be scheduled to the Maximum Security Advisory Panel (MAP), who will make recommendations to the authorised delegate. Refer to the MAP Terms of Reference for more information.





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5. Determine Maximum Security Order Suitability

In accordance with section 60(3) of the CSA, an MSO may only be made if the Chief Executive reasonably believes that one or more of the following apply:

- a) there is a high risk of the prisoner escaping, or attempting to escape;
- b) there is a high risk of the prisoner killing or seriously injuring other prisoners or other persons with whom the prisoner may come into contact; or
- c) generally, the prisoner is a substantial threat to the security or good order of the corrective services facility.

The authorised delegate may make an MSO which, pursuant to section 62(1) of the CSA, must include, if it is practicable, directions about the extent to which:

- a) the prisoner is to be separated from other prisoners; and
- b) the prisoner is to receive privileges.

Refer to the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers, section 60 of the CSA, Administrative Decision Making Manual resource and Approved Form 7 Maximum Security Order.

A decision maker for an MSO may amend or repeal the instrument or decision. Refer to section 24AA of the *Acts Interpretation Act 1954* and Approved Form 7A Order for Amendment/Repeal of a Maximum Security Order.

6. Issue Maximum Security Order

An MSO must not be for a period of longer than six months and accordingly, authorises the accommodation of the prisoner in an MSU, or in any other area considered necessary, for a period of not more than six months. Refer to sections 60(2) and 60(4) of the CSA.

MSAT will maintain a record of prisoners subject to an MSO, including the approval date and period of the MSO. This record must be shared with the State Coordinator, Official Visitors, who in turn will maintain a record of the MSO review. Refer to section 13.3 Conduct the Review of this COPD.

7. Place Prisoner Subject to a Maximum Security Order

A prisoner subject to an MSO may be accommodated in a corrective services facility's MSU, detention unit or other prisoner accommodation area as considered necessary to manage the prisoner's individual risks and in consideration of relevant human rights. Placement in an area other than the MSU may be for the whole or part of the period for which an MSO is in effect. Refer to section 60(2) of the CSA.

The authorised delegate may make a safety order under section 53 of the CSA. During the period of the safety order, the prisoner may be accommodated separately from other prisoners, including, for example, in a health centre or in a detention unit.

For a prisoner subject to an MSO who has been placed in a detention unit, refer to the COPD Prisoner Accommodation Management: Maximum Security Unit, COPD Prisoner Accommodation: Detention Unit and the COPD At Risk Management: Safety Unit.





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A review of placement is required in circumstances where a prisoner is to be transferred to another location and is to be recorded in IOMS within the Sentence Management – Decision Making Record. Unless legislatively required, requested by the prisoner or stipulated by the delegate, a review of security classification is not necessary.

In accordance with section 62(4) of the CSA, the Chief Executive may provide for the prisoner's reintegration into the mainstream prisoner population of the corrective services facility before the period of the MSO ends.

7.1 Communicate decision and forward documentation

The MSAT is to undertake communication with relevant stakeholders upon determinations being made relating to issuing an MSO. The signed MSO must be forwarded to the Chief Superintendent or Superintendent of either the corrective services facility where the prisoner is accommodated or to the corrective services facility with an MSU that is to receive the prisoner.

A copy of a signed MSO (or signed amended MSO) must be provided to a prisoner with all requirements of the order explained prior to the placement of the prisoner in the MSU.

8. Privileges

Under section 62 of the CSA, an MSO for a prisoner must include, if it is practicable, directions about the extent to which the prisoner is to receive privileges (in addition to directions about the extent to which the prisoner is to be separated from other prisoners).

Conditions about privileges must be limited to those that can be enjoyed within the MSU or in the area in which the prisoner is accommodated, and the enjoyment of which, in the circumstances of the MSO, may reasonably be expected not to pose a risk to the security or good order of the corrective services facility. Directions in an MSO will be based on the following minimum standards:

- a) associations as specified in the MSO or MSU Management Plan;
- b) telephone calls (excluding legal calls) – a prisoner may make two telephone calls of 10 minutes duration each to approved numbers each week;
- c) visits – a prisoner may receive visits pursuant to sections 153-154 of the CSA; and
- d) property – a prisoner's access to, and amount of, private property is in accordance with section 317 of the CSA and section 43 of the CSR.

The MSO may also include directions about the prisoner's access to programs and services, including training and counselling.

Access to privileges while subject to an MSO must be considered on a case-by-case basis, taking into account individual circumstances and relevant human rights.

Refer to section 62 of the CSA, the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers and the COPD Prisoner Accommodation Management: Maximum Security Unit.

9. Maintain Appropriate Prisoner Management

If approval for an MSO is declined, the prisoner is to be managed in accordance with standard prisoner management practices.





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This may include management on an Intensive Management Plan (IMP) in accordance with the COPD Prisoner Behaviour Management: Intensive Management Plans.

10. Transfer to a Maximum Security Unit

The authorised delegate responsible for making an MSO for a prisoner will determine the MSU where the prisoner is to be accommodated based on considerations including:

- a) the prisoner's assessed risks and needs;
- b) the prisoner's compatibility with other prisoners;
- c) appropriate use of departmental resources or other organisational considerations;
- d) relevant human rights; and
- e) any other matter considered relevant (e.g. section 3 of the CSR which requires that an Aboriginal or Torres Strait Islander prisoner is to be accommodated in a corrective services facility as close as practicable to the prisoner's family unless the Chief Executive is satisfied the prisoner does not want to be accommodated near the prisoner's family).

Placement in an MSU is made to:

- a) provide a secure environment for the safe management of a prisoner placed on an MSO in accordance with the assessed risk to staff, other prisoners, the community or the security and good order of the corrective services facility including risk of escape; and
- b) provide enhanced behaviour management and encourage behaviour modification.

11. Review Maximum Security Order and Make Recommendations

Refer to section 63 of the CSA.

A review of an MSO will occur in one of two ways:

- a) at the request of a prisoner; or
- b) at the initiative of an Official Visitor.

11.1 Review at request of a prisoner

Refer to sections 63(1) and (4) of the CSA.

A prisoner subject to an MSO may apply in writing to the Chief Executive for a referral of the MSO to an Official Visitor for review. If a prisoner requests assistance in making this application a corrective services officer must assist the prisoner.

If the period of the MSO is three months or less, the prisoner cannot request a referral for review of the order more than once.

If the period of the MSO is more than three months, the prisoner cannot request a referral for the review of the order more than twice in any six month period.

A prisoner may also ask for an MSO to be referred to an Official Visitor if the Chief Executive or delegate amends the order. Refer to section 63(5) of the CSA.

After receiving a request from a prisoner to review an MSO:

- a) the Chief Superintendent or Superintendent of the corrective services facility must notify the State Coordinator, Official Visitors of the request within three days of receipt of the request;





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- b) written notification of the request must be provided, as soon as practicable, to an Official Visitor assigned to the relevant corrective services facility. The notification must:
 - i. state the necessity to conduct a review; and
 - ii. include advice regarding the identity of the authorised delegate who signed the MSO;
- c) notification of the commencement of the review must be given to the Chief Superintendent, Sentence Management Services via email to MSAT at [REDACTED]

The Official Visitor must review the order.

11.2 Review at initiative of Official Visitor

Refer to sections 63(6) and 63(7) of the CSA.

An Official Visitor must review an MSO if:

- a) the period of the order is more than three months; or
- b) the order has not been reviewed:
 - i. at the prisoner's request; or
 - ii. within the previous three months.

The MSAT will provide the State Coordinator, Official Visitors with notification that a prisoner has been placed on an MSO. The State Coordinator, Official Visitors will provide:

- a) written notification of the requirement for a review to an Official Visitor assigned to the relevant corrective services facility. The notification must:
 - i. state the necessity to conduct a review; and
 - ii. include advice regarding the identity of the authorised delegate who signed the MSO.

11.3 Conduct the review

The Official Visitor must ensure the requirements of the MSO are in accordance with relevant legislation and human rights.

When reviewing an MSO the Official Visitor may exercise the powers mentioned in section 291 of the CSA.

The Administrative Form 109 Official Visitor – Review of Maximum Security Order must be completed throughout the process to provide an executive summary and ensure legislative compliance. The completed administrative form must include the Official Visitor's recommendation whether the MSO should be confirmed, amended or cancelled.

The Official Visitor must forward a review of the MSO to the State Coordinator, Official Visitors, who will provide the review to the Chief Superintendent, Sentence Management Services via email to the MSAT at [REDACTED]

The State Coordinator, Official Visitors will retain a record of the review, including the Official Visitor who conducted it and the date it was completed.





11.4 Confirm, amend or cancel Maximum Security Order

The Chief Executive or delegate must consider the recommendation of the Official Visitor and confirm, amend or cancel the MSO. The Chief Executive or delegate is not bound by the Official Visitor's recommendation. Refer to section 63(9) and 63(10) of the CSA. The decision must be recorded using the Administrative Form 109 Official Visitor – Review of Maximum Security Order.

11.5 Communicate decision

Following the Chief Executive or delegate's decision to confirm, amend or cancel the order, the prisoner and the Official Visitor must be advised in writing of the outcome. A copy of Administrative Form 109 Official Visitor – Review of Maximum Security Order with the Chief Executive or delegate's decision recorded on it must be provided to the State Coordinator, Official Visitors.

Refer to the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers and the Approved Form 8 - Order for Amendment/Cancellation of Maximum Security Order Following Official Visitor Review.

12. Determine Consecutive Maximum Security Orders

The authorised delegate may make a further MSO for a prisoner to take effect at the end of an existing MSO if there are relevant grounds to do so. Refer to sections 60 and 61 of the CSA and the Administrative Decision Making Manual resource.

A further MSO must be made not more than 14 days before the end of the existing MSO.

A further MSO can only be made if, not more than 28 days before the end of the existing MSO, the prisoner is notified in writing from the Chief Executive or delegate that the Chief Executive is about to consider whether a further MSO should be made and the prisoner may, within 14 days after receiving the written notice, make submissions to the Chief Executive about anything relevant to the decision about making a further MSO. Additionally, a further MSO can only be made if the Chief Executive considers any submissions the prisoner makes.

This affords the prisoner natural justice and the opportunity to make submissions regarding any decision to issue a consecutive MSO prior to such a decision being made.

A signed copy of a consecutive MSO must be provided to the prisoner prior to its commencement with all requirements of the order explained.

A decision maker for an MSO may amend or repeal the instrument or decision. Refer to section 24AA of the *Acts Interpretation Act 1954*, and the Approved Form 7A - Order for Amendment/Repeal of Maximum Security Order.

13. Expiry of Maximum Security Order

Reintegration into the general population of a corrective services facility at the expiry of a MSO must consider section 38 of the *Acts Interpretation Act 1954* and section 48(1) of the *Human Rights Act 2019*. Therefore, reasonable steps must be taken to facilitate a prisoner's reintegration prior to the expiration of the MSO, having regard to the operational requirements of the corrective services facility. Refer section 3.14 Reintegration Planning of the COPD Prisoner Accommodation Management: Maximum Security Unit.





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14. Suspension of Maximum Security Order

Under section 63A of the CSA, a prisoner subject to an MSO may be transferred to another place and lawfully given into another person's custody, for example, a transfer to an authorised mental health service as a classified patient under the *Mental Health Act 2016*.

While the prisoner is in another person's custody, the MSO is suspended.

The suspension of the MSO ends when the prisoner returns to the Chief Executive's custody.

The Chief Executive must review the MSO within seven days of the prisoner's return to the corrective services facility and confirm, amend or cancel it.

If the order is suspended under section 63A of the CSA, the Chief Executive must record the date on which the order was suspended, and the date on which the suspension ended. Refer to section 65(2)(e) of the CSA.

For further information regarding MSU processes not primarily actioned by Sentence Management refer to the COPD Prisoner Accommodation Management: Maximum Security Unit.

PUBLIC VERSION

