



Custodial Operations Practice Directive

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Scope
<ol style="list-style-type: none">1. Human Rights2. Limitation of Human Rights3. Overview4. Prisoner Employment Process5. Suspension/Termination from Employment6. Employment Case Reporting7. Maximum Security Unit (MSU) Prisoner Employment

PUBLIC VERSION





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.

The human rights engaged include:

- a) humane treatment when deprived of liberty;
- b) the right to education;
- c) freedom from forced work; and
- d) cultural rights – generally and for Aboriginal peoples 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 freedom from forced work requires that a person must not be made to perform forced or compulsory labour;
- 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, the limit to the right to have access, based on the person's abilities, to further education and training is required to ensure the safety and security of the corrective services facility;
- c) the relationship between the limitation and its purpose – this involves considering the rational connection between the limitation of the right, and whether this will actually help to achieve said purpose or legitimate aim. For example, the setting of employment standards ensures the right to freedom from forced work is balanced against the prisoner's access to employment. The standards are also used to assess the suitability of the prisoner for the employment that may include training and vocational training opportunities, and a risk assessment may preclude a prisoner from this opportunity;
- d) whether there are any less restrictive and reasonably available ways to achieve the purpose – this involves a '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, if a prisoner is precluded from particular employment opportunities for reasons related to safety and security considerations, is there a process for this to be reassessed at a later date?
- 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. The greater the incursion of the right, the more important the purpose will need to be to justify the limitation. For example, is the limitation to training opportunities associated with employment, balanced against the safety and security of the corrective services facility?

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





Custodial Operations Practice Directive

3. Overview

The Chief Superintendent of a corrective services facility must provide for employment of prisoners by assigning prisoners to available positions using an interdisciplinary approach that considers a prisoner's behaviour.

Rehabilitation is the primary driver of prison industries therefore it is not classified as a significant business activity. Refer Compendium of National Competition Policy Agreements: Competitive Policy and Principles (NCP) s3(1). However, the necessary commercial aspects of prison industry activities require that elements of NCP requirements are observed in order to guard against any anti-competitive conduct.

The provision of employment and associated vocational education and training must consider the special needs of female prisoners, Aboriginal and Torres Strait Islander prisoners and any disadvantaged prisoners. Refer to sections 3, 265 and 266 of the *Corrective Services Act 2006* (CSA).

General employment principles:

- a) remand-only prisoners are not required to be employed but should be encouraged to be employed;
- b) sentenced prisoners are employed wherever possible;
- c) sentenced prisoners are expected to work or seek employment as vacancies arise unless:
 - i. the facility's medical staff certify that the prisoner is unfit for work; or
 - ii. the prisoner is on an approved full-time education program; and
- d) a high level of safety, security and good order of the corrective services facility must be maintained.

Sentenced prisoners are expected to engage in meaningful activity that contributes to skills acquisition and positive behaviour development. Remand-only prisoners are also encouraged to participate in meaningful activity.





4. Prisoner Employment Process



4.1 Complete Prisoner Employment Application

The employment process is to commence at a point appropriate to the prisoner, such as when the prisoner has demonstrated motivation to engage in employment.

The nominated corrective services officer must ensure that each prisoner completes the Administrative Form 136 Prisoner Employment Application. The prisoner must document any known medical condition that may preclude them from working in available employment streams including the kitchen, any industries workshop and/or other employment areas.

For example, a prisoner who declares medical fitness to work in any prison industries workshop may prove ineligible if presenting with asthma or an allergy to dust to fill a vacancy in any of the paint workshops.

4.2 IOMS check

Following receipt of the Administrative Form 136 Prisoner Employment Application, the nominated corrective services officer must refer to IOMS to identify any issues that may preclude the prisoner from gaining employment.





Custodial Operations Practice Directive

4.3 Employment application

The nominated corrective services officer must propose employment option/s following a review of the prisoner's completed Administrative Form 136 Prisoner Employment Application and IOMS file. An employment application must be created in IOMS. The application nominates up to three jobs that the prisoner would prefer to have.

4.4 Interview prisoner

Prior to a position being allocated to a prisoner, the appropriate Work Area Supervisor must interview the prisoner to ascertain suitability.

4.5 Conduct medical assessment

Any relevant information must be sought from the Q Health Team Leader Allied Health Practitioner if a prisoner's completed Administrative Form 136 Prisoner Employment Application identifies there may be a medical condition relevant to the employment application. The Prisoner must have given permission for this information to be shared.

4.7 Approval

Any employment allocation must be approved as soon as practicable by the Chief Superintendent of a corrective services facility or nominee. The decision is to be recorded in IOMS.

4.8 Advise prisoner

The prisoner must be informed by the nominated corrective services officer of the decision as soon as practicable using the information on Administrative Form 136 Prisoner Employment Application.

4.9 Commence employment

The prisoner must be allocated to the job in IOMS by the nominated corrective services officer and commence employment as soon as practicable.

4.10 Workplace induction

The Work Area Supervisor is responsible for providing:

- a) an employed prisoner with a workplace induction and ensuring the prisoner signs a document outlining the contents of the specific induction provided. This is to be recorded and case noted in IOMS. If the prisoner refuses to sign the document it must be noted in IOMS and the prisoner must not be placed in that employment; and
- b) the necessary personal protection equipment with instructions on the requirement of its use and maintenance.

4.11 Transfer/change employment

A prisoner will not be eligible to request a transfer from their allocated job until they have completed four weeks in that employment, unless otherwise approved by the Chief Superintendent of the corrective services facility or nominee.





Custodial Operations Practice Directive

The following applies for an employment transfer/change:

- a) A prisoner wishing to transfer between work areas must complete the Administrative Form 138 Prisoner Employment Transfer Application and an employment application must be created in IOMS.
- b) A prisoner approved for transfer to a new employment position will be remunerated at the level of the new position which may be less than the previous held position.
- c) Both the current and receiving work area supervisors must agree to the transfer.
- d) The normal employment placement process is followed with the receiving work area supervisor or nominated officer responsible for ensuring the entering of details in IOMS and obtaining necessary clearances.

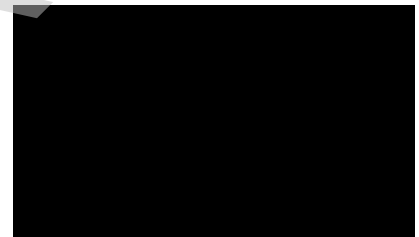


The Work Area Supervisors is responsible for the above and the Chief Superintendent of a corrective services facility or nominee is responsible for the approval and review. The Chief Superintendent of a corrective services facility or nominee may also initiate a prisoner's employment transfer for the good order or efficient operation of the facility.

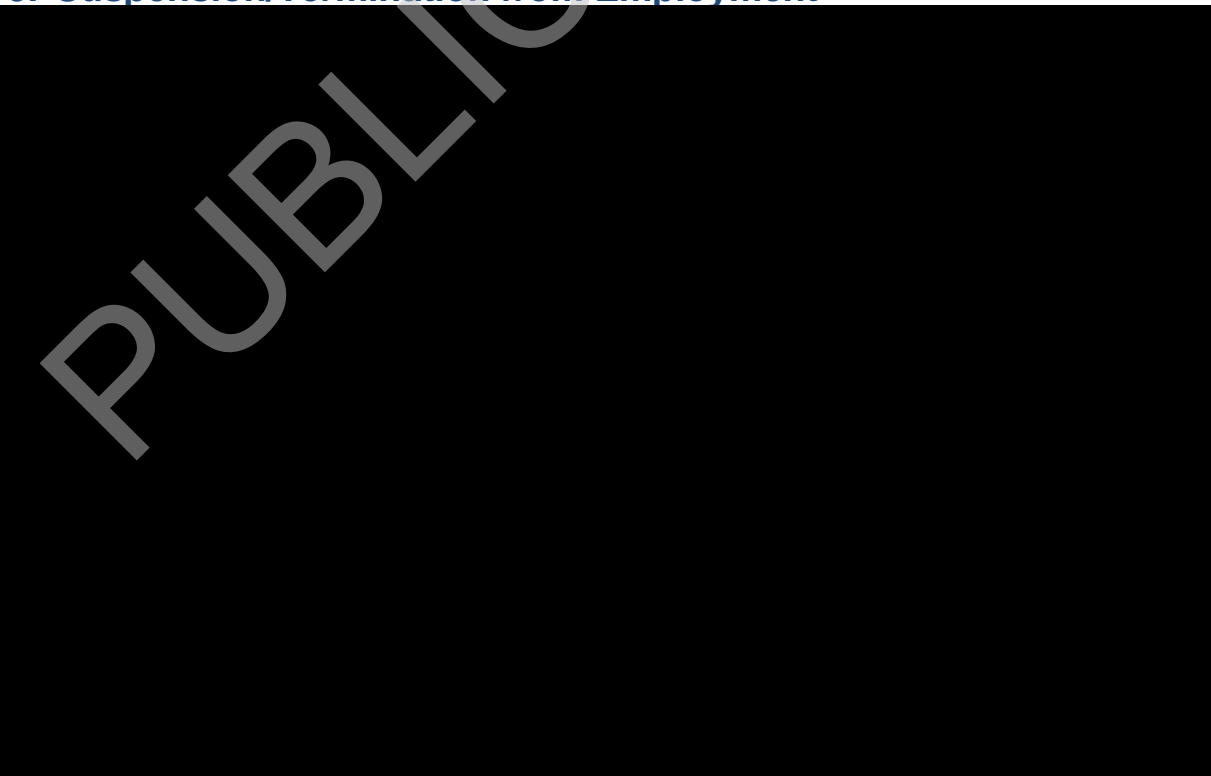
4.12 Employment records

Employment records must be maintained in IOMS to assist:

- a) prisoner management with comprehensive employment information and case notes;
- b) the gathering of accurate statistics for reporting purposes;
- c) accuracy of waiting lists and vacancies; and
- d) correct employment incentive payments to prisoners.



5. Suspension/Termination from Employment





Custodial Operations Practice Directive

5.1 Immediate suspension

A prisoner may be suspended immediately and returned to their accommodation area in the following instances:

- a) dangerous workplace practice;
- b) sabotage to plant, equipment, materials, work in progress or finished product;
- c) behaviour that adversely affects the safety and security of the corrective services facility/workshop;
- d) abusive, threatening or disruptive behaviour;
- e) failure to attend required vocational training or education; and/or
- f) intelligence that indicates the prisoner may present a risk to the safety, security and good order of the workplace.

5.2 Return prisoner to accommodation

The prisoner is to be interviewed to determine whether employment will be suspended prior to returning the prisoner to their accommodation area. Following this, return the prisoner to their accommodation area pending a Multi-disciplinary Committee meeting and decision from the Chief Superintendent of a corrective services facility or nominee.

5.3 Notify corrective services manager and supervisor

The Work Area Supervisor must notify the relevant corrective services manager and corrective services supervisor of the prisoner's suspension.

5.4 Interview prisoner

An interview must be conducted following the immediate suspension of a prisoner from employment for the purposes of completing the Administrative Form 139 Employment Suspension/Termination Report.

5.5 Complete Employment Suspension/Termination Report

The Work Area Supervisor must document the suspension by filling out the Administrative Form 139 Employment Suspension/Termination Report detailing the reasons.

The suspension must also be noted in IOMS as a case note, recommending the period and conditions of the suspension made to the relevant corrective services manager. The prisoner's employment records must also be updated in IOMS.

A copy of the Administrative Form 139 Employment Suspension/Termination Report must be attached in IOMS.





5.9 Decision

The Chief Superintendent of a corrective services facility or nominee is responsible for making a determination, as soon as practicable, following a Multi-disciplinary Committee meeting including whether to terminate, reinstate, or change incentive pay rate or other. The decision including reasons for the decision must be recorded using the Administrative Form 139 Employment Suspension/Termination Report. The completed form is to be attached in IOMS.

5.10 Other suspension

5.10.1 Interview prisoner

If there is reasonable belief that a prisoner has not fulfilled the basic requirements of the position as described in the position description, the Work Area Supervisor must interview the prisoner displaying poor work performance and/or unacceptable behaviour. The interview must identify the areas relating to the prisoner's poor performance. The following should be considered:

- a) strategies the prisoner can use to improve performance;
- b) agreement by the prisoner to undertake these strategies to improve performance; and
- c) suspension or termination from work pending ratification from the Multi-disciplinary team.

Work area supervisors must document the interview in IOMS as a case note.

The Work Area Supervisor may suspend the prisoner's employment, return the prisoner to their accommodation area and refer the matter to the Multi-disciplinary team.

5.10.2 Breaches of discipline

A corrective services officer who issues an employed prisoner with a breach of discipline cannot enforce any penalty in regard to the prisoner's incentive payment level.

If an employed prisoner's behaviour at any time results in a breach of discipline, the corrective services officer issuing the breach must advise a corrective services supervisor who must refer the matter to the Multi-disciplinary Committee for consideration.

Breaches of discipline must be dealt with in accordance with the Custodial Operations Practice Directive Breaches of Discipline.



Custodial Operations Practice Directive

5.10.3 Unacceptable behaviour

Any unacceptable behaviour (not limited to breaches of discipline) by a prisoner must be considered at the Multi-disciplinary Committee meeting.

Minimum standards of behaviour and work performance are required by prisoners who wish to maintain or increase their current position and incentive payment rate. Unacceptable behaviour or work performance may incur the penalty of being placed in lower level employment positions (and receiving a lower level incentive payment rate).

5.10.4 Failure to attend programs

In the structured day schedule at a secure corrective services facility, prisoners should participate in prescribed intervention programs in the period they are not participating in employment. Where a conflict between work and attendance at a recommended program is unavoidable, the prisoner will be able to attend the program and continue to be paid. Prisoners must not receive additional incentive payments for undertaking training/programs.

Prisoners who refuse to participate in prescribed programs may incur the penalty of being placed in lower level employment positions (and therefore receive a lower level incentive payment rate). Any non-compliance must be considered at the multi-disciplinary team meetings.

In a low security corrective services facility, the Chief Superintendent of a corrective services facility must ensure that employment arrangements are flexible enough to allow a prisoner to attend programs identified as relevant to their rehabilitation.

To complete this process refer to the above sections 5.5 – 5.9 as per the process map.

5.10.5 Advise prisoner

The prisoner is to be notified of the decision using the Administrative Form 139 Employment Suspension/Termination Report.

6. Employment Case Reporting

An employment case report is a summary of case notes to provide information relevant to the prisoner's supervision, behaviour, interaction and attitude while undertaking employment within a correctional environment.

Work Area Supervisors will complete employment reports in IOMS for all prisoners employed within their area including corrective services officers who supervise prisoners employed within non-prison industries areas (e.g. accommodation units/program areas).

At a minimum, information in an employment case report must be provided on:

- the prisoner's conduct, and behaviour in the workplace;
- the prisoner's attitude towards staff and other prisoners in the workplace;
- the prisoner's motivation, work ethic and progress in the position;
- changes the prisoner is required to make or progress that has been made in terms of conduct, behaviour, attitude towards staff and other prisoners in the workplace; and
- viable linkages with employment (if relevant).





Custodial Operations Practice Directive

At a minimum, one employment report is to be completed quarterly. Summary case reports are to be completed upon a request from Sentence Management Services.

Additional employment reports will be submitted in the following situations:

- a) ceasing employment;
- b) change of employment; and
- c) significant changes in behaviour, attendance or attention to duties. Information of this nature would also be significant to record via a case note to make other staff aware of the prisoner's change in their behaviour.

6.1 Guidelines for behavioural and employment case reporting

Care must be taken to ensure that the date/s of contact with the prisoner is recorded in all documents.

The recording of information will assist in determining:

- a) goals and milestones including pre-release planning for the next review period (to be established or confirmed from the plan);
- b) the prisoner's classification; and
- c) the prisoner's placement.

A detailed statement and/or reasons must be included in each box selected in IOMS. Each statement must be explained and validated by descriptive information.

Corrective services supervisors will monitor and audit the completion of case notes on a monthly basis and record a case note identifying that an audit has been conducted.

7. Maximum Security Unit (MSU) Prisoner Employment

A MSU prisoner may be employed as a unit worker within the MSU, excluding those prisoners on stage 1 of the progression pathway. The nature of the role is subject to the operational requirements of the unit and consistent with the prisoner's Maximum Security Order and MSU Management Plan. A prisoner employed as a unit worker within the MSU must be provided with a duty statement outlining their duties. Prisoner participation in employment outside the MSU is not permitted.

A personal search of prisoners undertaking cleaning/laundry duties must be conducted before and after completing duty. Cleaners/laundry persons must not have visual or verbal contact with other prisoners while performing their duties unless otherwise approved. Cleaners/laundry persons must be continuously supervised by MSU staff while performing their duties. If no prisoner is approved for employment, the Chief Superintendent or Superintendent of the corrective services facility must make alternative cleaning arrangements that do not involve prisoner association.

A prisoner must not be employed to clean any area beyond the MSU internal security perimeter nor the unit's movement control station, visits area, prisoner reception, vehicle lock, kitchen or any other area which may present a security risk.





Custodial Operations Practice Directive

All equipment that is required to carry out cleaning/laundry duties must be supplied from within the unit and on completion of the cleaning/laundry duties all equipment and supplies must be securely stored.

PUBLIC VERSION

