



# Sentence Management

## Manage Unlawful Detention / Discharge in Error

SM

### Custodial Operations Practice Directive

Process Owner: Specialist Operations	Security Classification: Official/Public
--------------------------------------	--

Version: 02	Implementation date: 15/08/2024	Review date: 2026
-------------	---------------------------------	-------------------

Scope
<ol style="list-style-type: none"><li>1. Human Rights</li><li>2. Limitation of Human Rights</li><li>3. Internal Oversight and Review Controls</li><li>4. Identification, Notification and Approval for Release/Discharge or Apprehension</li><li>5. Review and Reporting of Incident</li></ol>

PUBLIC VERSION



Official/Public



## 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 a 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 it is reasonable and demonstrably justifiable.

Human rights which may be relevant include, but are not limited to:

- a) recognition and equality before the law;
- b) freedom of movement;
- c) right to education;
- d) right to privacy and reputation;
- e) right to health services;
- f) protection of families and children;
- g) right to liberty and security of person; and
- h) 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 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.
- b) The nature and purpose of the limitation - this involves considering the actual purpose or legitimate aim/reason for limiting the human right.
- c) The relationship between the limitation and its purpose – this involves considering the connection between the limitation of the right and whether this will assist with achieving the purpose or legitimate aim.
- d) Whether there are any less restrictive and reasonable ways to achieve the purpose – this involves a 'necessity analysis' where the purpose of the limitation is considered and whether it can be achieved in any other way.
- e) The importance between the purpose of the limitation and preserving the human right - this involves balancing the benefits obtained by the limitation with the impact of the limitation on the human right.

The nature of the processes detailed in this Custodial Operations Practice Directive (COPD) are largely administrative in nature, hence will not engage human rights.

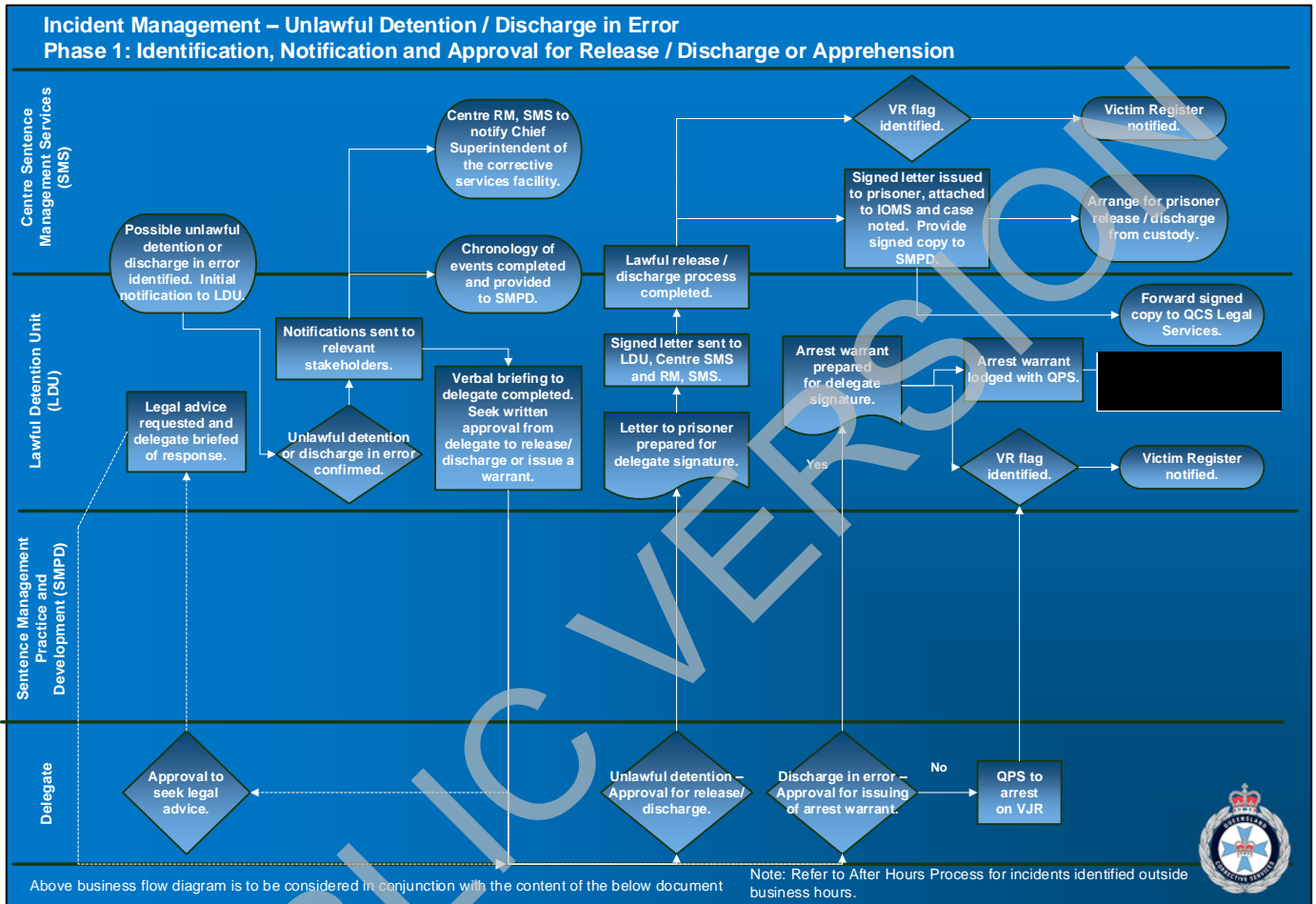
## 3. Internal Oversight and Review Controls

Sentence Management Services are responsible for the internal oversight and review of key risk areas. Refer to the Internal Oversight and Review Controls attached in the related Directives and documents menu of this Practice Directive and the Administrative Form 140 Internal Oversight Control – Temporary Role Variation Request Form.





## 4. Identification, Notification and Approval for Release/Discharge or Apprehension



### 4.1 Notification of error

When a possible incident is identified, the Assistant Manager or Manager of the managing location must immediately notify the Statewide Manager, LDU and the Regional Manager of the originating centre by way of an email and a phone call to request an urgent review of the case. This notification must include any relevant details to support review by the LDU. The LDU will review the case and confirm whether an incident has occurred in addition to ensuring all relevant sentencing documents and warrants have been attached in IOMS.

If the LDU confirms the prisoner was unlawfully held or discharged in error they must immediately notify the Regional Manager of the managing location and the Statewide Manager, LDU of the incident through an initial telephone call. The Statewide Manager or Manager, LDU must immediately brief the Chief Superintendent, Sentence Management Services (SMS) and the Superintendent, Statewide Operations, SMS. Where it is known, the briefing is to include identification of the agency or department responsible for the error.





### Custodial Operations Practice Directive

The Manager of the managing location or Manager, LDU is responsible for providing a detailed chronology immediately upon incident confirmation for all QCS attributable errors and 'as needed' for other agency attributable errors. The chronology is used by the relevant LDU staff member to prepare a flash brief for the Assistant Commissioner, Specialist Operations, if deemed necessary by the Chief Superintendent.

The chronology must include:

- a) prisoner's name;
- b) prisoner's date of birth;
- c) prisoner's IOMS number;
- d) prisoner's ethnicity;
- e) sentencing / remand details;
- f) offences (including domestic violence flag);
- g) parole release/eligibility date;
- h) full time discharge date;
- i) last known address;
- j) last Community Corrections reporting location (if applicable); and
- k) summary of events that have contributed to the incident.

#### 4.1.1 Example of 'Chronology'

- a) On 19 December 2016 Prisoner Unknown was admitted into Random Correctional Centre (RCC) on remand for matters listed before Magistrates Court Toowoomba on 20 December 2016. Appearance was via video link.
- b) On 20 December 2016 at 1.02pm the Magistrates Court Toowoomba emailed RCC Sentence Management inbox the court outcome for all charges. The prisoner was convicted and not further punished. VJR attached.
- c) RCC Sentence Management took no action on this court outcome. Prisoner Unknown has been unlawfully detained for 1 day on 21 December 2016.

The Manager, SMS at the originating location must immediately notify the Chief Superintendent of the corrective services facility of the incident of unlawful detention or discharge in error upon receiving confirmation that the incident has occurred.

The LDU may be required to participate in case conferencing to assist in determining contributing factors and/or the attributable agency.

#### 4.2 Release or apprehension approval

The LDU is responsible for briefing and seeking written approval from the Chief Superintendent, SMS or the Assistant Commissioner, Specialist Operations to release/discharge the prisoner, regardless of the responsible agency or department. Should arrangements need to be made for the prisoner to be returned to Queensland Corrective Services (QCS) custody, the LDU must be notified. Where necessary, phone contact is made to alert the recipient to the email for immediate action.

The Chief Superintendent, SMS or Assistant Commissioner, Specialist Operations may require the Statewide Manager, LDU to seek legal advice in relation to the incident prior to approving the prisoner's release/discharge or return to QCS custody.

The prisoner is not to be released/discharged, until confirmation has been provided by the Chief Superintendent, SMS or the Assistant Commissioner, Specialist Operations.





### Custodial Operations Practice Directive

If it has been determined a prisoner has been unlawfully detained, prior to the prisoner's release/discharge from QCS custody, SMS must inform the prisoner of the error that has resulted in their unlawful detention. Refer to the Appendix SM30 Issuing Unlawful Detention Letters.

If it has been determined a prisoner has been discharged in error, a warrant must not be issued until confirmation of lawfulness to do so has been obtained. Refer to the Appendix SM6 Issuing and Withdrawing Warrants.

The Principal Advisor or the Statewide Manager, LDU is responsible for preparing, having the warrant endorsed and lodging the warrant with the Queensland Police Service (QPS). A warrant is to be issued in accordance with the Appendix SM6 Issuing and Withdrawing Warrants. Once lodged, the Principal Advisor, LDU will attach the warrant documents to the IOMS and raise the arrest warrant flag in IOMS.

[REDACTED] SMS may utilise endorsed local process guides in relation to incident management, inclusive of further stakeholder liaison.

Should the release or apprehension approval process continue after business hours, the Principal Advisor or Statewide Manager, LDU is to provide handover to the SMS On-call Manager for finalisation.

### 4.3 Victims Register

After the identification of a discharge in error from QCS custody, regardless of cause or Agency responsibility, the LDU must immediately confirm whether the prisoner is identified as having a VR flag raised on IOMS for the mistakenly discharged prisoner. Refer to Appendix SM1 Criteria for Warning Flag Indicators.

If the prisoner is identified as having a VR flag, the Victims Register must be notified by phone, followed by an email to [REDACTED]

VR staff will be responsible for the release of information to eligible persons during business hours.

Outside normal business hours, the On-call SMS Manager is to be notified by phone and follow up with an email advising of the discharge in error and the prisoner's VR status. Victim contact is to be made by the On-call SMS Manager immediately in this instance.

Under section 324A(1)(d) and (f) of the *Corrective Services Act 2006* (CSA), the chief executive must give an eligible person the following information about a prisoner in relation to whom the eligible person is registered –

- the escape of the prisoner and the date of the escape;
- the fact, and date, of any particular circumstances relating to the prisoner that could reasonably be expected to endanger the eligible person's life or physical safety e.g. the prisoner is mistakenly discharged before their discharge day, or the prisoner is granted unsupervised leave.





### Custodial Operations Practice Directive

*(A staff member from VR or the On-call SMS Manager and/or Superintendent will assess and determine if the information relating to the prisoner could reasonably be expected to endanger the eligible person's life or physical safety).*

Section 324A(2)(b) of the CSA stipulates that information under section 324A(1)(d) and (f) **must** be given to the eligible person **immediately** after the chief executive becomes aware of the information.

Outside normal business hours, the On-call SMS Manager will review the eligible person's IOMS profile, contact the eligible person/s to notify of the incident and detail the contact and response in the IOMS VR case notes.

When contacting the eligible person, the On-call SMS Manager will:

- a) provide their name and position and advise the contact is occurring on behalf of the QCS VR;
- b) the nature of the incident involving the prisoner of concern; and
- c) if necessary, encourage the eligible person to contact QPS if they have any immediate or future safety concerns.

If contact cannot be established, where practicable and safe to do so, a voice mail message may be left requesting the eligible person contact the On-call SMS Manager at the earliest opportunity or the QCS VR on the next business day.

The On-call SMS Manager will also send an email to [REDACTED] detailing:

- a) nature of the incident;
- b) whether contact was established;
- c) if contact was not established whether a voice mail message was left requesting contact;
- d) information provided to the eligible person;
- e) any issues raised by the eligible person; and
- f) if a case note was completed.

If the prisoner is arrested outside of business hours, the On-call SMS Manager will again contact the eligible person and provide an update on the prisoner's status. The contact is to be recorded in an IOMS VR case note and detailed in an email to VR via [REDACTED]

The release of information relevant to section 324A(1)(d) and (f) of the CSA to an eligible person **outside of business hours occurs** in accordance with section 325(2)(a) and (k).

The Assistant Commissioner, Specialist Operations, and Chief Superintendent, or Superintendent, SMS should be advised if the eligible person raises any issues that may result in media attention.

It is the responsibility of the rostered On-call SMS Manager to ensure they have the relevant IOMS VR access and VR training; should any assistance be required for this, engage with QCS VR staff.

#### 4.4 Incidents outside of business hours

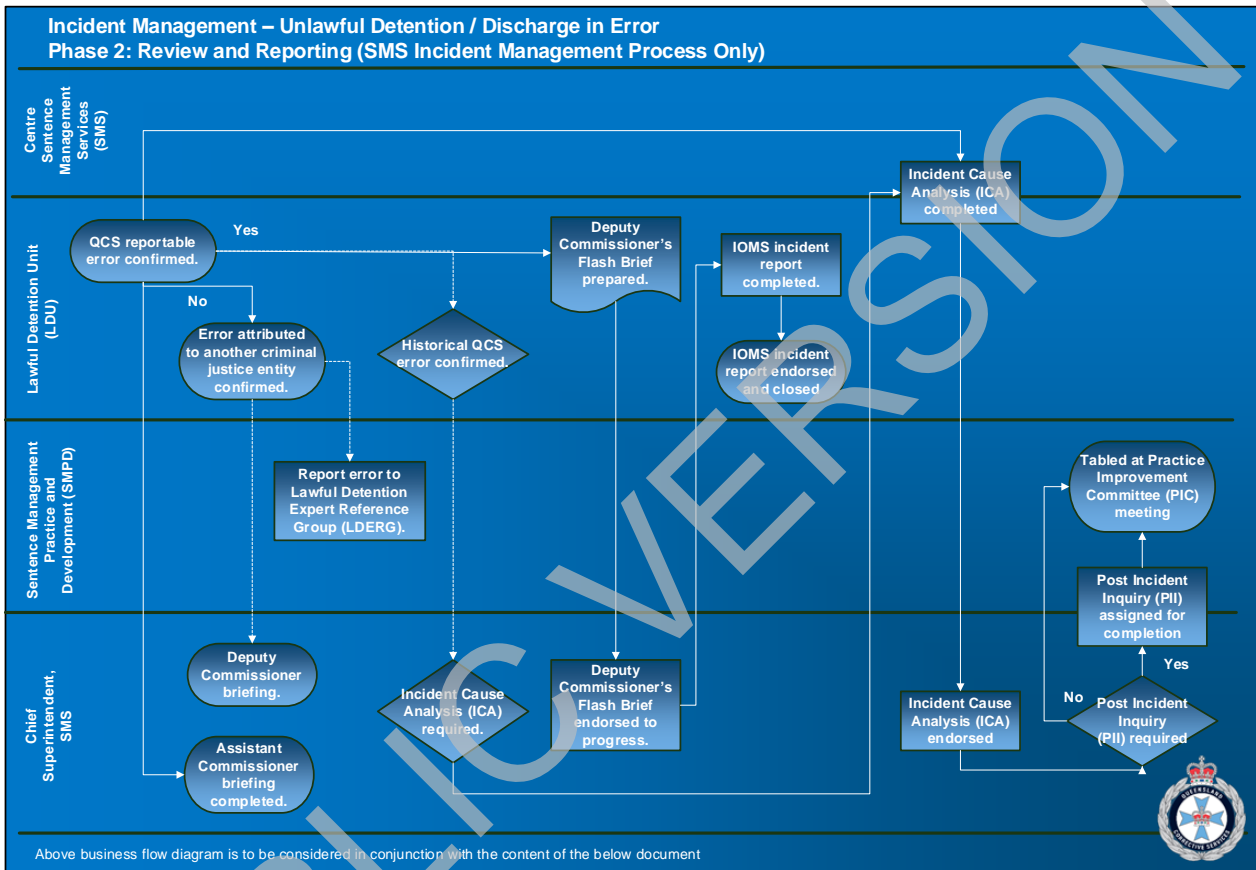
Should an unlawful detention or discharge in error be identified outside of normal business hours, the notification process and issuing of a warrant/permission to release will be organised by the SMS 'on call manager' in liaison with the rostered Superintendent, SMS. This will be inclusive of managing if there is a relevant VR flag on IOMS.





As soon as possible on the following business day, the SMS On-call Manager is to ensure notification of the incident is provided to the LDU and Superintendent, SMS Operations.

## 5. Review and Reporting of Incident



All identified incidents of unlawful detention and discharge in error of a QCS prisoner, regardless of cause or Agency responsibility, require immediate notification to the Principal Advisor, LDU, Statewide Manager, LDU and, Superintendent, Sentence Management Operations and the Chief Superintendent, SMS immediately upon becoming aware of the incident.

A QCS attributable error is when a prisoner is unlawfully detained or discharged in error from QCS custody due to a QCS error.

For QCS attributable errors, and ONLY when a brief is requested by the Assistant Commissioner, Specialist Operations or the Chief Superintendent, SMS; the Principal Advisor or the Statewide Manager, LDU is responsible for preparing and forwarding the Flash Brief to the Chief Superintendent, SMS for review, and on-forwarding to the Assistant Commissioner, Specialist Operations for endorsement and distribution by the next business day of the incident's confirmation.





### Custodial Operations Practice Directive

For those errors resulting from the actions of other agencies, a Flash Brief may not be required unless requested by the Assistant Commissioner, Specialist Operations, the Deputy Commissioner, Community Corrections and Specialist Operations or the Chief Superintendent, SMS. Errors determined to be attributable to another criminal justice entity will be reported by the Principal Advisor or the Statewide Manager LDU to the Lawful Detention Expert Reference Group (LDERG) in accordance with the process in its Terms of Reference.

By the next business day after the incident, the Principal Advisor or the Statewide Manager, LDU is required, for QCS attributable errors, to complete an incident report in IOMS that includes any immediate local or statewide remedial actions identified in the Flash Brief. The Chief Superintendent, or Superintendent, SMS are responsible for endorsing and closing the IOMS incident report.

#### 5.1 Incident Cause Analysis (ICA)

An SMS officer identified by the Chief Superintendent, or Superintendent, SMS must undertake an ICA within five business days of the incident's identification.

The Chief Superintendent, or Superintendent, SMS may require an SMS officer to complete an ICA with sentence management staff for an error determined to be attributed to another criminal justice entity. The purpose of the ICA will be for QCS practice improvement.

The ICA must provide:

- a) a chronology of the incident;
- b) an analysis as to its cause;
- c) localised remedial actions implemented to address the identified issue; and
- d) a recommendation as to whether a further inquiry is warranted and the reasons to support the recommendation endorsed by the Regional Manager aligned to the incident location.

The ICA is not to include any personal details of the prisoner within the document. A unique identifier will be provided by Sentence Management Operations for the purpose of referencing. The ICA is to be completed according to the guidelines and on the approved template and completed in addition to other reports and briefing notes.

The completed ICA is to be forwarded to the Chief Superintendent or Superintendent, SMS within five business days of the incident occurring. The Chief Superintendent or Superintendent, SMS is responsible for endorsing or rejecting the remedial actions, and if necessary, recommendation for a further inquiry. The Chief Superintendent or Superintendent, SMS will record reasons for their decision within the ICA.

Refer to the Incident Cause Analysis Guidelines and Incident Cause Analysis Template attached to the Related Directives and documents of this COPD.

#### 5.2 Post Incident Inquiry (PII) and Practice Improvement Committee (PIC)

The ICA is used by the Chief Superintendent, SMS or Assistant Commissioner, Specialist Operations, to determine whether a Post Incident Inquiry (PII) is required.

If the Chief Superintendent, SMS or Assistant Commissioner, Specialist Operations decides a PII is not required, the reasons for the decision will be recorded on the ICA.







### Custodial Operations Practice Directive

The ICA must be included as an agenda item at the next scheduled Practice Improvement Committee (PIC) meeting. The endorsed remedial actions are to be approved by the PIC and recorded on the PIC Action Register for tracking and communication to SMS staff by Sentence Management Operations.

If the Chief Superintendent, SMS or Assistant Commissioner, Specialist Operations determines a PII is required in relation to the incident, the Chief Superintendent, SMS will allocate completion of the PII to an appropriate person. [REDACTED]

[REDACTED] The endorsed remedial actions are to be approved by the PIC and recorded on the PIC Action Register for tracking and communication to SMS staff by Sentence Management Operations.

Sentence Management Operations is responsible for ensuring any PIC endorsed amendments to the Sentence Administration and Calculation Manual or associated sentence administration practices occur in consultation with the LDU and communicating these changes to sentence management staff. Sentence Management Operations is responsible for ensuring any PIC endorsed procedural document amendments occur and for communicating these changes to sentence management staff.

Sentence Management Operations is responsible for maintaining the PIC Action Register and reporting the number of incidents to the Chief Superintendent, SMS on an as-needed basis.

PUBLIC VERSION

