



Sentence Management Release/Discharge

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Custodial Operations Practice Directive

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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.

The purpose of the policy is to ensure prisoners are being released and discharged from custody lawfully and in some circumstances are provided with the opportunity to apply for early discharge.

The human rights engaged include:

- a) right to liberty and security of person;
- b) humane treatment when deprived of liberty;
- c) cultural rights – Aboriginal peoples and Torres Strait Islander peoples;
- d) freedom of movement; and
- e) protection of families and children.

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, this policy engages the right to liberty and security of person which requires that a person may not be arbitrarily detained and a person must not be deprived of their liberty except on the grounds and in accordance with procedure established by law.
- 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, this policy document limits the right to liberty where a person may be subject to pre-release Court Ordered Parole suspension.
- c) The relationship between the limitation and its purpose – this involves considering the rational connection between the limitation and of the right, and whether this will actually help to achieve said purpose or legitimate aim. For example, pre-release Court Ordered Parole suspension impacts on the right to liberty and security of person, however this is balanced against the possible risk to others in the community and is also prescribed in accordance with procedures established by law.
- 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. To a large extent the processes outlined in this directive are required by legislation, however where QCS does have discretion, this step of the human rights impact assessment is to be considered.





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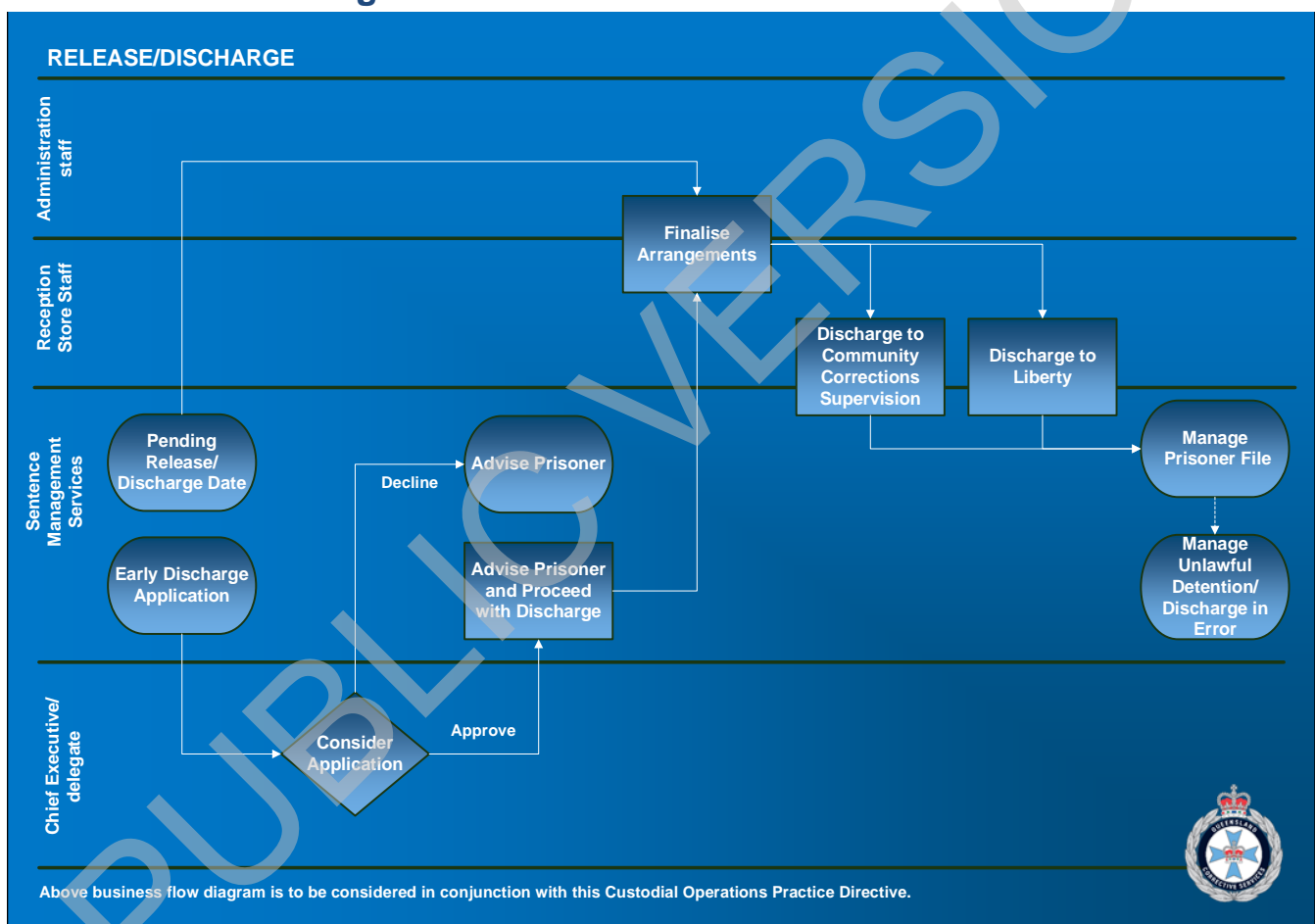
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- e) The importance between the purpose for the limitation and preserving the human right – this involves a balancing exercise of the benefits obtained by the limitation vs the harm caused to the human right. The greater the incursion of the right, the more important the purpose will need to be to justify the limitation. For example, when determining an early discharge application, if this is refused, do the considerations taken into account outweigh the limitation to the prisoner's human rights?

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

3. Release/Discharge



In accordance with Schedule 4 of the CSA, the terms discharge and release have distinct definitions and are not interchangeable.

- Discharge means the release of the person from lawful custody, other than on parole. A prisoner's discharge date is the day on which the person is eligible to be discharged.
- Release means the release on parole. The day they are eligible to be released to parole is their release day.



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3.1 Pending discharge/release date

In accordance with section 108 of the *Corrective Services Act 2006* (CSA), the discharge/release process is inclusive of:

- recording discharge details (including address to discharge/release);
- verifying sentence details; and
- management and return of property, trust accounts and valuables.

Aboriginal and Torres Strait Islander Liaison Officers/Counsellors must be involved in discharge processes for Aboriginal and Torres Strait Islander prisoners. This includes discharge/release planning and transition processes to support prisoners prior to and at discharge/release from custody.

A prisoner's discharge/release dates and conditions must be checked for accuracy and explained to the prisoner (if necessary) by Sentence Management Services (SMS). The prisoner's discharge/release details and discharge/release authority are to be recorded in the Integrated Offender Management System (IOMS). The prisoner's identity must be confirmed by date of birth and photograph.

3.2 Guardianship and/or Administration Order

If a prisoner has an active Guardianship and/or Administration Order warning flag indicator in IOMS, staff must contact the prisoner's appointed guardian for involvement in the prisoner's release from Queensland Corrective Services (QCS) custody. Refer to the Custodial Operations Practice Directive (COPD) Reception Processes: Admission and Assessments.

3.3 Discharge from work camp

Consideration must be given to, where practicable, discharging prisoners directly from a work camp. For example, if a prisoner is to be discharged to a location that is closer to the work camp than the managing corrective services facility, and Community Corrections requirements can be met (if applicable), it may be beneficial to discharge the prisoner from the camp and not return them to the managing corrective services facility.

3.4 Updating contact details upon release

Prisoners should be advised they will need to update their contact details upon release with various government agencies including, as relevant (e.g. Services Australia, Department of Housing, Local Government, Planning and Public Works (Housing) or Child Support Agency).

3.5 Consent for booking prisoner travel

Where QCS is assisting in making travel arrangements, the prisoner is to complete the Administrative Form 94 Prisoner Travel Profile Form prior to arranging the travel.

4. Lawful Release/Discharge Decision-Making Tool

Prior to a prisoner being released or discharged from QCS custody, an Administrative Form 174 Lawful Release/Discharge Decision-Making Tool (Lawful Detention Unit) and the Administrative Form 174A Lawful Release/Discharge Decision-Making Tool (Centre SMS) must be completed. An accompanying Appendix SM12 Lawful Release/Discharge Practice Instruction provides guidance to staff on the completion of each section of these tools. Each completed tool must be scanned and attached to the prisoner's IOMS file prior to their release or discharge from QCS custody.





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The lawful decision officer responsible for confirming the decision will be at the level deemed appropriate in the current SMS Oversight Controls.

Localised processes for support of the administrative functions of admission and discharge can be implemented if deemed necessary by the relevant Regional Manager, SMS.

In the event that IOMS is not operational, an Approved Form 21 Discharge Order is to be manually prepared. A copy of the Approved Form 21 Discharge Order must be filed in the Offender File and attached in IOMS when the system is restored.

4.1 Remaining in custody after discharge/release date

In accordance with section 111 of the CSA, a prisoner is able to apply in writing to the Chief Executive for permission to remain in a corrective services facility after their discharge day or release day, whether they are being discharged to bail, released to parole, or discharged to liberty. Prisoners must voluntarily apply to remain in a corrective services facility after their discharge or release date.

This process is to be used to ensure that appropriate arrangements are made for the prisoner's discharge or release, including:

- a) a date when transport is available for return to their community; or
- b) in exceptional circumstances where it is impossible or unsafe for a prisoner to be released or discharged on their scheduled release or discharge day (e.g. an extreme weather event).

Where a prisoner has applied to remain in custody after their discharge day they must be discharged within four days after the discharge day. This time limit does not apply to prisoners due to be released on parole. Refer to section 111(3) of the CSA.

5. Early Discharge Application

5.1 Eligibility

Early discharge, if approved by the delegate, reduces the period of imprisonment imposed by the sentencing court for the punishment of the prisoner. Early discharge should only be ordered when confirmation of the prisoner's ties with a particular location or community have been verified, and when transport availability is otherwise not available on the calculated day of discharge.

In accordance with section 110 of the CSA, the Chief Executive or delegate may order that the prisoner be discharged within seven days immediately before the prisoner's discharge date. The process is not relevant to prisoners who are to be released to parole.

There is no automatic entitlement to early discharge. The overriding principle of community safety through the minimisation of risk, must be considered by returning the prisoner back to their community on their discharge day. Consequently, for early discharge to be ordered a prisoner should be given access to a transport option which would otherwise not be available where early discharge is not granted, and when a prisoner has no other means of transport to return to their community on the day of discharge. Consideration should be given to which day of the week transport is available, however, early discharge cannot be ordered any more than seven days earlier than the calculated discharge date.





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5.2 Prisoner application process

A prisoner may apply for early discharge by submitting an Administrative Form 175 Application for Early Discharge to SMS no less than 14 days prior to the intended date of discharge. The delegated authority to grant early discharge is in accordance with the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers.

The decision should also consider whether an alternate form of transport is available closer to the discharge date than what has been requested for by the prisoner.

5.3 Consider application

Following the prisoner submitting an application, the following steps are to be undertaken to assist in determining the suitability of the submission:

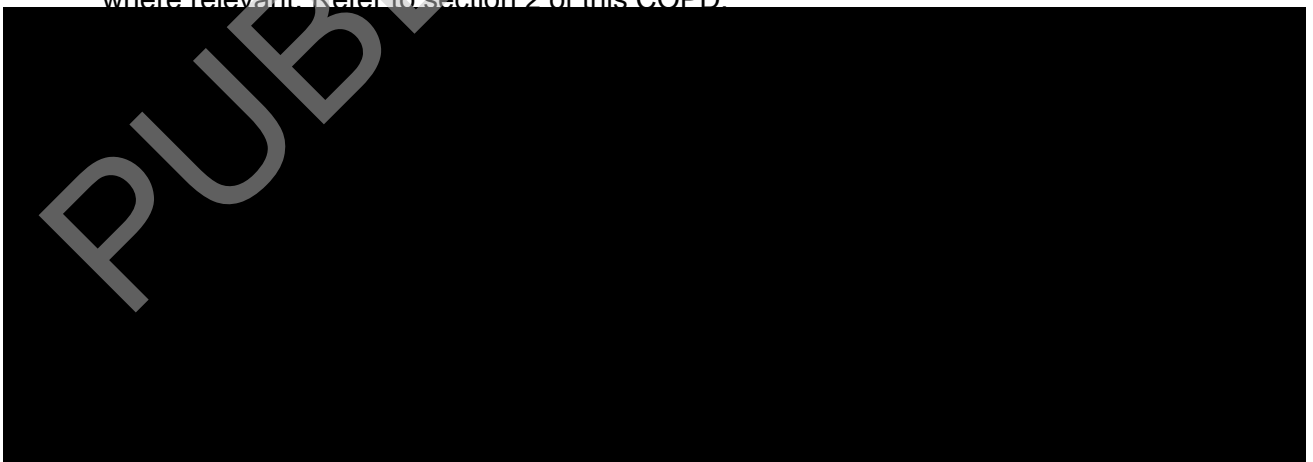
- Verify the accuracy of the information provided by the prisoner such as the link between the prisoner and the prisoner's community or community/family supports. Confirmation of information may require and include making contact with individuals or agencies in the prisoner's community. Any written submissions must be checked for authenticity. Actions taken to check information should be commented against in the relevant section in the application form.
- If necessary, enquiries should be made on the prisoner's behalf to the relevant public transport authority to establish a date when transport is available, which falls closest to the prisoner's custodial end date.
- Complete the Sentence Management Services and the Sentence Management Services – Recommendation sections of the Administrative Form 175 Application for Early Discharge.

The completed Administrative Form 175 Application for Early Discharge must be forwarded to the Chief Executive or delegate who will make a determination regarding early discharge.

5.4 Approve/decline prisoner application

The decision maker must consider:

- the prisoner's human rights under the *Human Rights Act 2019*, including (but not limited to) freedom of movement, cultural rights and right to the protection of families and children, where relevant. Refer to section 2 of this COPD:





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Once a decision is made, the following is to occur:

- a) The prisoner must be notified of the decision so that the prisoner can notify their community/family regarding their pending arrival. If early discharge has been:
 - i. declined the prisoner may be issued with a copy of the completed Administrative Form 175 Application for Early Discharge which outlines the factors considered by the decision maker; or
 - ii. approved the decision maker must issue the Approved Form 21 Discharge Order.
- b) If public transport is used, arrangements for the transport must be made by a trust account officer and direct payment made to the transport provider.
- c) Sentence Management Services must record any amendment to the prisoner's sentence calculations in IOMS. Early discharge is to be undertaken in accordance with the Sentence Calculation and Administration Manual Part 1.7 (Discharge Dates).

5.5 Finalise arrangements

Custodial staff requirements associated with the discharge of a prisoner are detailed in the COPD Reception Processes: Custodial Discharge.

6. Discharge/Release to Community Corrections Supervision

When a prisoner transfers from a corrective services facility to Community Corrections supervision, the sending location must:

- a) ensure all relevant documents are finalised, including relevant assessments or planning documents;
- b) explain the conditions of the order to the prisoner, if the order is a Board Ordered Parole (BOP) order or if it is a Court Ordered Parole (COP) order with additional conditions added by PBQ;
- c) provide the prisoner with a copy of the order in person if order is BOP or if COP with additional conditions added by PBQ, otherwise attach to Release/Discharge Certificate; and
- d) have prisoner confirm release/discharge address.

LDU must create a draft order in IOMS and ensure that the order expiry date is consistent with the prisoner's sentencing details in the Sentence Calculation.

Relevant non-electronic documentation must be filed correctly in the Offender File for transfer to the relevant Community Corrections office. SMS will undertake filing of SMS related documents. Refer to the Appendix Offender Content – IO Offender files.

7. Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA) Management

Prisoners who are detained under the provisions of the DPSOA are not eligible to apply for early discharge from custody under section 110 of the CSA.





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8. Immediate Court Ordered Parole Release

Where a prisoner is in custody at the time of sentencing and an immediate Court Ordered Parole release date is imposed, LDU are to complete the Sentence Calculation and make arrangements for the Sentence Calculation to be checked on the same day.

LDU must also create a draft Court Ordered Parole Order in IOMS and ensure that the parole order expiry date is consistent with the prisoner's sentencing details in the Sentence Calculation.

When the prisoner reports to the Community Corrections office, the Community Corrections officer is to activate the Court Ordered Parole Order, enter all order conditions and issue a copy of the order to the offender.

In the event that IOMS is not operational, an Approved Form 31 Court Ordered Parole Order is to be manually prepared by the LDU and forwarded to the relevant Community Corrections office. A copy of the Court Ordered Parole Order must be filed in the Offender File by either centre SMS or community corrections and LDU will attach in IOMS, when the system is restored.

Any action to suspend the prisoner's Court Ordered Parole Order by the Community Corrections officer must not be deferred if a sentence calculation has not been completed/checked.

9. Release from Custody to Court Ordered Parole

A prisoner's release to Court Ordered Parole must be in accordance with the date fixed for the prisoner's release to parole under Part 9, Division 3 of the *Penalties and Sentences Act 1992* (PSA). Accordingly, the Chief Executive or authorised delegate must issue an Approved Form 31 Court Ordered Parole Order for the release of the prisoner to parole on the date fixed by the court. Refer to sections 199 and 200 of the CSA and the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers.

If a prisoner with a parole release date has other matters for which they have been remanded in custody or the prisoner is detained for an offence where a parole release or eligibility date has not been set, the prisoner must not be released to Court Ordered Parole. However, the prisoner may be released to Court Ordered Parole if the prisoner has been granted bail in relation to the charges for which the prisoner has been remanded or detained or those charges have been withdrawn. Refer to section 199 of the CSA and sections 160A-160H of the PSA.

Court ordered parolees are subject to the standard conditions of parole. The Parole Board Queensland (PBQ) may also amend a Court Ordered Parole Order to contain any conditions the Board reasonably considers necessary to ensure the prisoner's good conduct or to stop the prisoner committing an offence.

Sentence Management Services at a corrective services facility are responsible for:

- confirming a prisoner's residential address/contact details which must be updated in IOMS as part of the discharge process;
- printing the court ordered parole order and discharge certificate, attaching it to the offender file; and





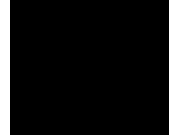
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- c) emailing the relevant Community Corrections District Manager on the day before or the morning of the release to notify of the prisoner's release details.



LDU must create a draft order in IOMS and ensure that the order expiry date is consistent with the prisoner's sentencing details in the Sentence Calculation and produce the discharge certificate and attach to IOMS.

Reception Store staff at a corrective services facility are responsible for:

- a) 'moving out' on IOMS the prisoner to the relevant Community Corrections office at the time of discharge; and
- b) providing a copy of the Approved Form 31 Court Ordered Parole Order, and any other sentencing documents to the prisoner on the day before or the morning of the prisoner's release to Court Ordered Parole and directing the prisoner to report to a Community Corrections office upon release.

10. Pre-Release Court Ordered Parole Suspension



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11. Court Ordered Parole Induction

While there is no mandatory requirement for Court Ordered Parole inductions to be undertaken by Community Corrections officers in corrective services facilities, there may be occasions where Community Corrections officers attend the corrective services facility to undertake such inductions as part of their local case management initiatives.

A full induction will be completed by the respective Community Corrections office in accordance with Operational Practice Guidelines once the prisoner has been released.

12. Release from Custody to Board Ordered Parole

Prior to the release of a prisoner to Board Ordered Parole (BOP), LDU must ensure that the expiration date of the BOP order is consistent with the prisoner's sentencing details in the prisoner's Sentence Calculation.

If there is no draft BOP order on IOMS, LDU will email Parole Board Secretariat (ParoleBoardQLD@corrections.qld.gov.au) and request that this is completed.

If the expiration date on the BOP order is incorrect, LDU must advise the Parole Board Secretariat (ParoleBoardQLD@corrections.qld.gov.au) and request that the BOP order be amended.

13. Discharge from Custody to Bail

Section 8 of the *Bail Act 1980* allows a court to grant bail to a prisoner who is being held in custody on remand or for a sentenced prisoner who has been granted appeal bail.

The prisoner will be signed into bail in accordance with section 20(6)(c)(i) of the *Bail Act 1980* and the Queensland Corrective Services Instrument of Delegations. Section 20(5)(a) of the *Bail Act 1980* requires the bail conditions are explained to the prisoner by the representative of the court or authorised delegate. The responsibility to comply and readiness and willingness of the prisoner will be ascertained by the judge who grants the bail and who determines the conditions. As a delegate, QCS' role is purely administrative in providing the bail undertaking to the person and countersigning the order. It is entirely the responsibility of the bailed person to comply with a bail condition they have agreed to before the court.





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SMS are not required to conduct any collateral checks in relation to a prisoner's ability to comply with a condition ordered on the bail undertaking. The exception to this is if the court issued a requirement for compliance prior to release to bail. LDU will conduct the necessary pre-release checks as required. It is lawful to detain the prisoner until the condition for release is met. Upon receipt of written notification confirming the condition is satisfied, the bail undertaking must be actioned without delay.

The delegate will explain the bail undertaking to the prisoner ensuring they understand the nature and extent of the obligations imposed by the bail undertaking and the consequences for failure to comply. The delegate must be satisfied the prisoner understands the bail conditions and the consequences of failing to comply.

The prisoner must sign where indicated and the delegate must sign to indicate they witnessed the prisoner's signature. Pursuant to section 20(7) of the *Bail Act 1980* SMS is required to provide the signed undertaking to the proper officer of the court who granted bail.

Should there be numerous bail undertakings for bail from different courts, the delegate is to explain each undertaking separately and be satisfied the prisoner understands their obligations to each bail undertaking.

In addition to attaching a copy of the signed bail undertaking to IOMS and a hard copy to the prisoner's file, SMS will enter a case note to demonstrate that the terms of the undertaking were fully explained to the prisoner prior to them signing the bail undertaking including the consequences for failing to comply.

If the prisoner fails or refuses to sign the bail undertaking they cannot be released to bail and their failure to sign must be reported to the issuing court immediately. Their continued detention in custody is lawful until a bail undertaking is signed.

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14. Release/Discharge to Australian Border Force (ABF) custody

If a prisoner is to be released/discharged to ABF custody, ABF will request via the SMS generic email address at the relevant location that a travel risk assessment be completed.

On occasion, SMS may be requested to provide a photograph of the prisoner to prepare passport and/or travel documentation. SMS are to coordinate the process and ensure the document/s are completed in a timely fashion.

When completing the travel risk assessment, a Security Risk Rating is not to be assigned. The Security Risk Rating will be determined by ABF. SMS are not to provide copies of criminal or traffic histories or information regarding membership of a criminal organisation to the ABF. The ABF are required to seek that information through official channels.

14.1 Board Ordered Parole

The PBQ will impose the following three parole conditions on every parole order provided to a prisoner who is released on Board Ordered Parole to the custody of ABF, negating the need for a travel permit to be generated by SMS:

- a) you are approved to travel interstate and overseas while in the custody of the Australian Border Force;
- b) if you are released from the custody of the Australian Border Force in a State of Australia other than Queensland, you are approved to remain in that State for a period of time no longer than the maximum period of time that still enables you to comply with the requirement to report in person to Queensland Community Corrections within 48 hours of your release; and
- c) if you return to Australia after being removed, you are to report to your nearest Queensland Community Corrections office within 48 hours.





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14.2 Court Ordered Parole

Prisoners who are to be released to Court Ordered Parole in Queensland, but detained by ABF in an interstate facility, or who are required to travel interstate for the purpose of their detention while subject to a parole order, require a travel permit. The process for issuing a travel permit is consistent with the Appendix 3 Interstate Parole Application Protocol.

SMS are to complete the Approved Form 34 Permit to Leave and Remain Out of Queensland, including the below conditions and forward to the relevant delegate for endorsement – refer to the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers:

- a) you are approved to travel interstate and overseas while in the custody of the Australian Border Force;
- b) if you are released from the custody of the Australian Border Force in a State of Australia other than Queensland, you are approved to remain in that State for a period of time no longer than the maximum period of time that still enables you to comply with the requirement to report in person to Queensland Community Corrections within 48 hours of your release; and
- c) if you return to Australia after being removed, you are to report to your nearest Queensland Community Corrections office within 48 hours.

14.3 Federal Parole

Federal prisoners who are to be released to parole to be detained by ABF in an interstate facility, or who are required to travel interstate for the purpose of their detention while subject to parole will have conditions outlined in their parole order in relation to their reporting requirements should they be released from ABF custody while still subject to parole. These conditions will negate the need for a travel permit being issued by SMS. Sentence Management Services should liaise with the Federal Offenders Unit if they are not satisfied that conditions have been included.

15. Manage Prisoner File

15.1 Archiving records

When a prisoner is transferred to a Community Corrections office, corrective services facility staff must send the most recent Offender File to the Community Corrections office within one business day of the transfer. All remaining files are to be sent to Central Archives. For example: if "prisoner A" has Offender File parts 1, 2 and 3 and also several Detention, Professional Management and Case Management Files. The Offender File Part 3 must be sent to the Community Corrections office. The remaining files (Parts 1 and 2 of the Offender File, along with all the Detention, Professional Management and Case Management Files) must be sent to Central Archives. Files must be complete and up-to-date at the time of transfer. Any temporary file must be amalgamated with the original file prior to transfer. Prior to forwarding, files should be reviewed for duplication. Any duplication of an original document, or print out of information stored in IOMS, must be removed from the files and destroyed.

The transfer, and the completed movement of the files, must be recorded in the RecFind database.

Documents that are unable to be attached to the prisoner's files at the time of the transfer or that are subsequently received must be forwarded to the prisoner's new location for inclusion on the prisoner's file clearly marked with the:

- a) prisoner's full name;
- b) prisoner's IOMS number;





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- c) prisoner's date of birth; and
- d) name of receiving Community Corrections office.

When a prisoner is discharged to liberty the prisoner's files should be retained for no longer than 14 days. During that time all relevant original documents must be affixed to the prisoner's file. Duplicates of original information on the file or print outs of information stored in IOMS must be removed and destroyed.

SMS will undertake filing of SMS related documents only.

If a prisoner's file has been sent to a central office unit and a temporary file has been created, it must be retained by the discharging corrective services facility until the original file has been returned. The temporary and original file must then be amalgamated and forwarded to Wacol Archives for storage.

In exceptional circumstances, documents for a discharged prisoner may be forwarded to Wacol Archives for filing if the relevant facility has been unable to attach it to the prisoner's file/s prior to the file's dispatch.

Such documents must be clearly marked with the:

- a) prisoner's full name;
- b) prisoner's IOMS number;
- c) prisoner's date of birth; and
- d) name of the sending corrective services facility.

The RecFind database must be updated by SMS at the relevant corrective services facility when a file is moved to a new location, closed or destroyed.

Permanent status records must not be destroyed. An original record created in relation to a prisoner remains the property of QCS and must not be removed, altered or destroyed without appropriate authorisation in accordance with the Retention and Disposal Schedule regarding:

- a) the destruction of temporary status at the expiration of the minimum retention period;
- b) the disposal of electronic and hard copies; and
- c) distinguishing records which are to be retained temporarily or are of continuing value to QCS and the State that must be kept permanently.

All inactive records must be archived according to the requirements of the *Public Records Act 2002* and the Retention and Disposal Schedule.

15.2 Releases on parole to ABF custody, extradition or interstate transfer

When a prisoner is to be released on parole to ABF custody, extradition or interstate transfer, SMS are to send the Offender file and transfer the prisoner on IOMS to the Community Corrections jurisdiction where the prisoner has nominated to reside or in the absence of this, the Community Corrections jurisdiction of the last known address. Sentence Management Services must also advise the District Manager of that office of the parolee's release circumstances (e.g. release to the custody of the ABF). Unless exceptional circumstances exist, notification to the relevant District Manager is to occur no later than the day of release.

