



Custodial Operations Practice Directive

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Scope
<ol style="list-style-type: none">1. Human Rights2. Limitation of Human Rights3. Working with Substitute Decision Makers for Prisoners Under Guardianship and/or Administration Orders4. Prisoner Under a Guardianship/Administration Order5. Prisoner Has the Right to Contribute6. Confidentiality and Release of Information7. Contact Details

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.

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

- a) recognition and equality before the law;
- b) the right to protection of families and children;
- c) the right to privacy and to reputation;
- d) the right to humane treatment when deprived of liberty; and
- e) the right to liberty and security of person.

2. Limitation of Human Rights

In determining whether a limitation may be reasonable and demonstrably justifiable, the following factors are relevant to consider:

- a) The nature of the human right – this involves looking at the purpose and underlying value of the human right. For example, the right to privacy and reputation provides that a person has the right not to have their privacy, family, home or correspondence unlawfully, or arbitrarily interfered with.
- b) The nature of the purpose of the limitation – this involves considering the actual purpose or legitimate aim/reason for limiting the human right. For example, this practice directive provides for the limit to the right to privacy for prisoners who are assessed as having impaired capacity.
- 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, this practice directive provides for processes which, in circumstances of identified impaired capacity, limit a prisoner's right to privacy for the purpose of ensuring the prisoner's rights are appropriately managed and represented.
- d) Whether there are any less restrictive and reasonably available ways to achieve the purpose – this involves the necessity analysis where it is necessary to consider the purpose of the limitation and if it can be achieved in any other way.
- e) The importance between the purpose for the limitation and preserving the human right – this involves a balancing exercise of the benefits obtained by the limitation vs the harm caused to the human right. For example, does the benefit gained by the prisoner, by limiting their right to privacy, outweigh the limitation to their human rights in this regard?





Custodial Operations Practice Directive

3. Working with Substitute Decision Makers for Prisoners Under Guardianship and/or Administration Orders

3.1 Purpose

The purpose of this Custodial Operational Practice Directive (COPD) is to support Queensland Corrective Services (QCS) to collaborate with the Queensland Civil and Administrative Tribunal (QCAT), the Office of the Public Guardian (OPG) and the Public Trustee of Queensland (PT) to effectively meet the needs of prisoners under guardianship and/or Administration Orders.

3.2 Definitions

3.2.1 Queensland Civil and Administrative Tribunal

Under the *Guardianship and Administration Act 2000*, the Queensland Civil and Administrative Tribunal (QCAT) is responsible for making determinations about the need for the appointment of substitute decision makers for adults.

3.2.2 Guardian

Some people with impaired capacity may be unable to make decisions in certain areas of their life without support. *The Guardianship and Administration Act 2000* recognises the role of informal decision-making in a person's life. For example, a person's family might help make decisions for them without a formal appointment in place.

In other cases, a formal guardianship order may be needed. A guardian is a person appointed by QCAT to help adults with impaired capacity to make certain decisions in their life to ensure that the individual's rights and interests are being protected. Guardianship may be appointed for the following matters:

- a) personal matters;
- b) health care;
- c) accommodation;
- d) service provision;
- e) legal (not relating to property or finances) and;
- f) the National Disability Insurance Scheme (NDIS)

There may be other matters a guardian may be appointed for if there are special circumstances surrounding the individual, for example, who the person can have contact with. If the adult with impaired capacity has a family member or friend deemed suitable by QCAT to act as their guardian, that person will be appointed. If no person is found suitable, then the OPG will be appointed as a last resort. If a family member/friend is appointed as guardian, the OPG is not involved with the person and is unable to provide any information about the individual.

The role of the guardian is primarily that of decision-maker. Guardianship is not case management, and the appointment of a guardian does not remove the need for appropriate support services to be in place.

3.2.3 Administrator

In the same way QCAT can appoint a guardian to act on behalf of an individual for the above matters, they can also appoint a financial administrator to manage the finances of a person with impaired decision-making. If no one in the adult's life is considered suitable by QCAT to be appointed then the Public Trustee of Queensland (PT) may act as administrator.





Custodial Operations Practice Directive

A person's appointed administrator is only able to make financial decisions and has no authority to make any decisions that are not related to the person's finances.

3.3 Understanding a person's capacity to make a decision

An adult with capacity has the right to make legally recognised decisions about their life, such as healthcare choices, support services they may need and how they manage their finances.

Under the law it is not up to the adult in question to prove they have capacity. It is presumed that every adult has capacity to make all decisions until proven otherwise. This presumption is not affected by any personal characteristics such as disability, mental illness or age (if the person is over 18 years of age). The responsibility is on the person seeking to challenge the adult's decision-making capacity to prove the adult has impaired capacity. This can be done through a capacity assessment.

For information on assessing a person's capacity to make a decision refer to Appendix PE14 Understanding a Person's Capacity to Make a Decision

3.4 The role of the Office of the Public Guardian

The OPG is an independent statutory body whose role is to protect the rights and interests of adults who have impaired capacity for different matters. The OPG will assist people to make decisions about their lives by acting as their guardian when formally appointed by QCAT. The role of the Public Guardian is to make decisions in the person's life that support their will and preferences, support their right to make decisions, and assist them in pursuing their goals.

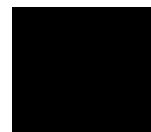
4. Prisoner Under a Guardianship/Administration Order

If it is identified through the Administrative Form 6 Transition from the Community Checklist or the completion of the Immediate Risk Needs Assessment (IRNA) that a prisoner is subject to a guardianship and/or administration order the assessing officer must notify the Senior Psychologist/Team Leader, Allied Health Services and the relevant accommodation manager to ensure that the prisoner's impaired decision-making is considered when determining placement within the corrective services facility. If a prisoner has a Guardianship/Administrative Order History (GAH) Flag, the Senior Psychologist/Team Leader, Allied Health Services is to contact QCAT to see if there is a current order in place.

If, as part of the admission process, it is identified that the prisoner entering custody has, or is likely to have, an appointed guardian and/or administrator, the Senior Psychologist/Team Leader, Allied Health Services of the corrective services facility is responsible for contacting QCAT to obtain confirmation by emailing enquiries@qcat.qld.gov.au.

For supervised individuals in the community with an appointed guardian or administrator, the supervised individual's case manager is responsible for contacting QCAT to obtain this information.

If the individual has a guardianship/and or administration order, a copy of the order should be obtained from QCAT and must be attached to IOMS for agency records.





Custodial Operations Practice Directive

For prisoners confirmed as having an appointed guardian, the Guardianship and/or Administration Order (GA) warning flag must be raised by the Senior Psychologist/Team Leader, Allied Health Services in the prisoner's IOMS record in accordance with the Custodial Operations Practice Directive (COPD) Reception Processes: Admission and Assessments and the Appendix SM1 Criteria for Warning Flag Indicators.

When activating the flag, IOMS will request a reason for the activation. Staff are to record information regarding:

- the type of order;
- how long the order is for;
- the name and contact details of the appointed guardian;
- date of appointment; and
- for what matters they are appointed.

A copy of the order/s is to be attached to the prisoner's IOMS record as a 'legal authority'. The management of such prisoners is to be undertaken in accordance with this COPD.

Prisoners with a GA or GAH warning flag may be eligible for support through the NDIS. Refer to the Appendix R12 Referral of Prisoners into the National Disability Insurance Scheme.

4.1 Involvement of an appointed guardian

When it has been identified that a prisoner has a guardianship appointment in place, the Senior Psychologist/Team Leader, Allied Health Services should discuss with the appointed guardian:

- their respective obligations;
- how the guardian wishes to exercise their role as decision maker;
- communication protocols between QCS and the guardian;
- any particular issues which may impact on the guardian's role as decision maker; and
- any relevant information the guardian may have about the prisoner (including the nature of the prisoner's impairment, any special needs for support etc).

The Senior Psychologist/Team Leader, Allied Health Services must ensure the contact details for the prisoner's substitute decision maker is entered in the prisoner's IOMS file in the 'Personal Details' section and a case note must be entered under the case note category 'guardian notification' to record the above information.

4.2 Provide notice of transfer to the appointed guardian

If a prisoner has an active GA warning flag indicator in IOMS a notification is to be made to the Office of the Public Guardian via email publicguardian@publicguardian.qld.gov.au to advise of the prisoner's transfer between corrective service facilities. This must occur prior to the transfer of the prisoner. Sentence Management Services (SMS) are responsible for completing the notification.

Refer to the COPDs Sentence Management: Assessment and Planning, and Classification and Placement.



Custodial Operations Practice Directive

5. Prisoner Has the Right to Contribute

While in custody, there may be instances where a prisoner has the right to contribute to or make or appeal a decision. For prisoners with an appointed guardian, the guardian may need to be involved in this process, i.e. if a decision relates to an area to which a guardian is appointed.

In these instances, the appointed guardian must be advised of the decision and may act on behalf of the prisoner. This is particularly relevant to a prisoner's transitional management from custody, as the appointed guardian may have to make decisions regarding the prisoner's accommodation post-prison. SMS must also contact the appointed guardian for involvement in parole applications and the planning and review processes if appointed for these matters.

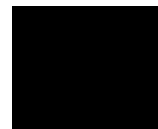
5.1 When a prisoner is required to sign documentation

If a prisoner is required to sign an acknowledgement of receipt of information and/or documentation relating to an area that a guardian is appointed, it is necessary to advise and provide the documentation to the appointed guardian. For example, if a guardian is appointed for accommodation and a Department of Housing application needs to be signed, the appointed guardian must sign the application, not the prisoner, as they have been deemed not to have capacity to make decisions regarding their accommodation.

The relevant QCS officer must contact the prisoner's guardian at the earliest opportunity to advise that the prisoner is required to sign documentation. This documentation must be forwarded to the appointed guardian as soon as possible to provide them with sufficient time to review the documentation, talk to the prisoner if required and discuss with the relevant QCS officer.

5.2 Pending discharge - guardianship order

If a prisoner has an active GA warning flag indicator in IOMS, SMS must contact the prisoner's appointed guardian for involvement in the prisoner's parole application process and/or release from QCS custody. If Re-entry Services are involved in a prisoner's transition from custody and are sourcing accommodation, the re-entry service provider must make contact with the appointed guardian to ensure the accommodation is approved (if the guardian is appointed for accommodation matters). A case note must be recorded in IOMS under the 'guardian notification' category - 'accommodation - access' sub-category.



6. Confidentiality and Release of Information

Under the *Information Privacy Act (IP) 2009* a person's agent is able to do, in accordance with the terms of the person's authorisation as agent, anything that the person can do (section 196). An agent is a person who has authority to act on the person's behalf and includes a QCAT appointed guardian or financial administrator.

QCS must not disclose personal information it holds to another entity unless an exemption under Information Privacy Principle 11 of the IP Act applies. One of these exemptions allows for the disclosure when it is authorised or required under law (IPP11(1)(d)).

Under the *Corrective Services Act 2006* QCS may disclose a prisoner's personal information if it is authorised under a law (section 341(3)(b)).





Custodial Operations Practice Directive

Under section 44 of the *Guardianship and Administration Act 2000* the OPG and Public Trustee have a right to all the information the adult would have been entitled to if the adult had capacity, when appointed by QCAT, as long as it is necessary and relevant to what the OPG/PT was appointed for.

If the OPG/PT requests information from QCS, the information exists and is under QCS control, and QCS determines the information is necessary and relevant to the appointment, QCS must give the information to the OPG/PT, unless there is a reasonable excuse not to.

When QCS receives requests for a prisoner's information under the *Guardianship and Administration Act 2000*, QCS must first be satisfied of the agent's authority by sighting a copy of the QCAT order appointing the OPG as the prisoner's guardian.

Once satisfied, QCS must only provide the agent information that would otherwise be provided to the prisoner and must also be reasonably satisfied the information requested is relevant and necessary for the guardian to make an informed decision. This is to be considered on a case-by-case basis. For example, if the OPG has been appointed by QCAT to make decisions on accommodation matters, and has asked QCS for the prisoner's psychologist reports, breaches, and incident reports, etc the request should be refused unless further information can be provided to show how the information is directly relevant to accommodation matters (indirect relevance is not sufficient).

Section 44(2) of the *Guardianship and Administration Act 2000* also provides that QCS does not have to provide information if there is a reasonable excuse not to do so.

For advice on releasing information to appointed guardians and administrators, contact QCS Right to Information & Privacy Group via privacy@corrections.qld.gov.au.

7. Contact Details

Queensland Civil and Administrative Tribunal (QCAT)

Website: <https://www.qcat.qld.gov.au>

Postal Address: GPO Box 1639, Brisbane 4001

Phone: 1300 753 228 between 8.30am and 4.30pm on weekdays

Email: enquiries@qcat.qld.gov.au

Office of the Public Guardian

Website: <http://www.publicguardian.qld.gov.au>

Office of the Public Guardian – Head Office and Brisbane Region

Phone: 1300 653 187 between 9.00am and 4.00pm on weekdays

Email: publicguardian@publicguardian.qld.gov.au

Office of the Public Guardian – Townsville

Phone: 4760 9688 between 9.00am and 4.00pm on weekdays

Email: [REDACTED]

Office of the Public Guardian – Ipswich

Phone: 3884 6650 between 9.00am and 4.00pm on weekdays

Email: [REDACTED]

Office of the Public Guardian - consent for mental health treatment

Phone: 1300 653 187 (business hours only)





Prisoner Entitlements

Office of the Public Guardian

PE

Custodial Operations Practice Directive

Email: [REDACTED]

The Public Trustee of Queensland

Phone: 1300 360 044 (business hours only)

Email: clientenq@pt.gov.au

For further information on guardianship and administration orders contact the Senior Psychologist/Team Leader, Allied Health Services in the first instance or contact QCS Psychological Services Unit at [REDACTED]

PUBLIC VERSION

