



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.

Human rights that may be relevant include:

- a) recognition and equality before the law;
- b) humane treatment when deprived of liberty
- c) the right to property;
- d) privacy and reputation;
- e) protection of families and children;
- f) cultural rights – generally and for Aboriginal and Torres Strait Islander peoples;
- g) the right to education; and
- h) the right to health services.

2. Limitation of Human Rights

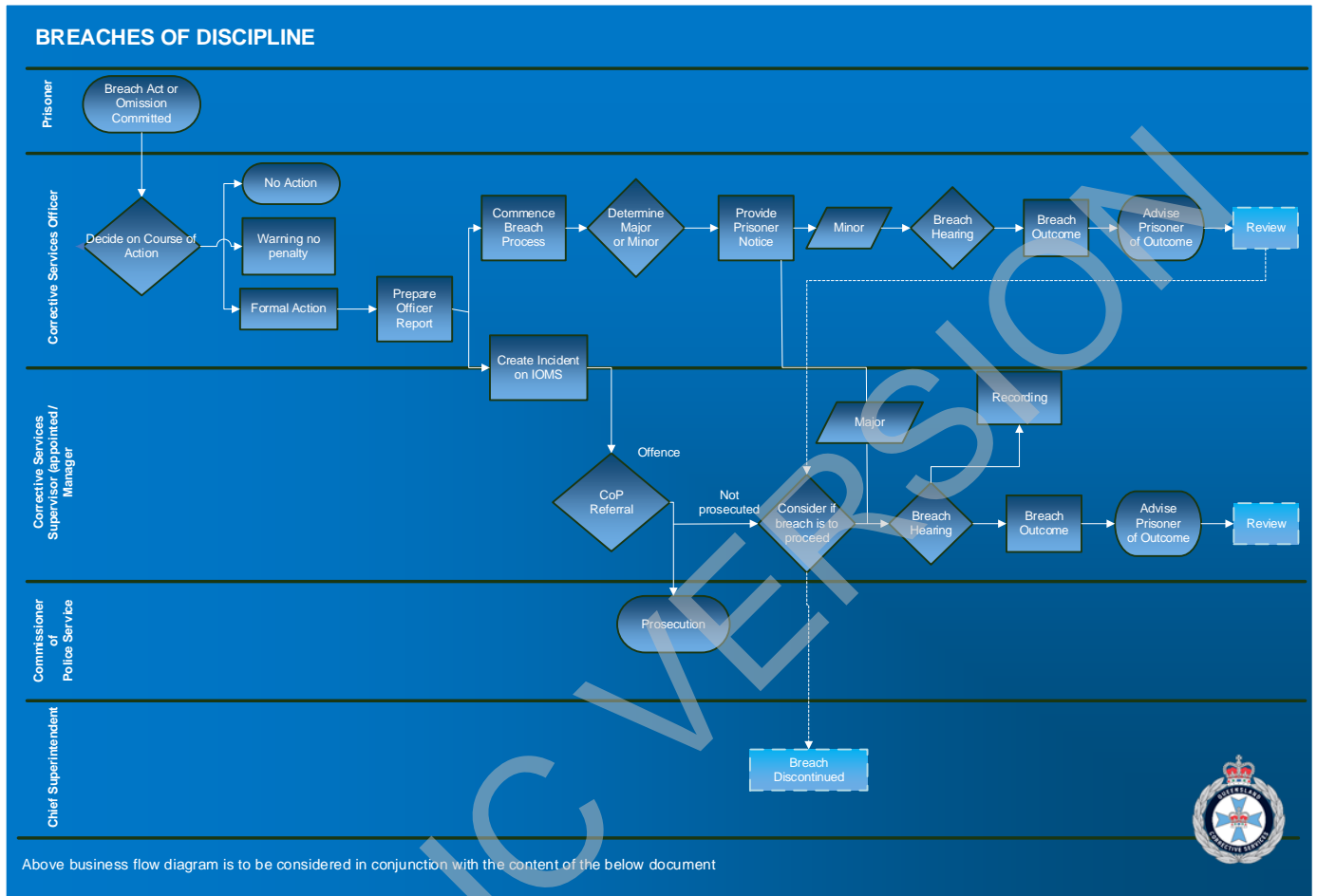
In determining whether a limitation may be reasonable and demonstrably justified, the following factors are relevant to consider:

- 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 humane treatment when deprived of liberty requires that all persons deprived of liberty must be treated with respect for the inherent dignity of the human person.
- 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, a breach hearing that results in a sanction to limit contact visits and therefore limit the protection of families and children, could be for the purpose of ensuring the safety and security of the centre.
- 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 help to achieve said purpose or legitimate aim. For example, a sanction to limit a prisoner's personal visits may protect the safety and security of the corrective services facility by limiting the opportunity for the introduction of contraband or similar, if this was the circumstance of the breach.
- 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, are there other outcomes to the breach process that would be equally appropriate but have a lesser impact on the prisoner's human rights.
- e) The importance between the purpose of 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, does the safety and security of the corrective services facility, provided by the deterrent factor of a breach sanction, outweigh the limit to the human right that may have been impacted by the sanction?





3. Breaches of Discipline Overview



Refer to sections 113-121 of the *Corrective Services Act 2006 (CSA)* and the Queensland Corrective Services Administrative Decision Making Guideline. Refer to the Appendix BOD1 Guide for Conducting Breach Hearings and Review Hearings.

The disciplinary process must provide a prompt, non-adversarial and procedurally fair mechanism to deal with alleged internal disciplinary breaches by prisoners. All acts or omissions must be dealt with separately and based on the circumstances of each individual occurrence.

Breach proceedings are to be fair, consistent and without bias with the dignity and rights of prisoners, including those with different beliefs, cultures and religions, respected.

Referring Officer – the officer who observes or become aware of an alleged breach of discipline and decides to initiate the breach of discipline process.

Deciding Officer – the officer who conducts the initial hearing of an alleged breach of discipline and makes decisions, firstly on whether the prisoner is guilty or not guilty of the alleged breach and secondly whether any penalty is to be imposed on the prisoner in circumstances where a finding of guilt has been made. Pursuant to the CSA, the deciding officer for a major breach of discipline must hold a more senior position than the referring officer.





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Reviewing Officer – the officer who conducts a review of the alleged breach of discipline (where requested by the prisoner pursuant to section 119 of the CSA) must hold a more senior position than the deciding officer and may confirm the decision, vary the decision or set aside and substitute another decision.

Collectively, deciding officers and reviewing officers are referred to as hearing officers.

For each alleged breach of discipline, the above roles must be performed by different officers, acting independently of each other. The exception to this rule is in a minor breach, where the referring officer and the deciding officer can be the same officer.

Officers performing the above roles must be authorised to do so by legislative instrument.

Refer to the Instrument of Limitation of Corrective Services Officers' Powers.

4. Breach Act or Omission Committed

Pursuant to section 113(1) of the CSA, breaches of discipline under the CSA are those acts or omissions committed by prisoners that are described in section 5 of the Corrective Services Regulation 2017 (CSR).

Breaches of discipline may be identified by direct observation by an officer or by evidence including:

- a) officer reports/witness statements;
- b) tests or samples;
- c) CCTV footage;
- d) photographs;
- e) body worn camera footage;
- f) other forms of physical evidence i.e. damaged equipment, unauthorised items made by prisoner; and
- g) other documents.

5. Decide on Course of Action

In responding to the incident or circumstances that give rise to the alleged breach of discipline, the referring officer must decide whether to:

- a) take no further action: or
- b) reprimand the prisoner without imposing any penalty: or
- c) commence a breach of discipline process, in accordance with this COPD (unless a referral to the Commissioner of Police (CoP) is required).

All breaches of discipline must be raised in IOMS.

In deciding on the appropriate course of action, a referring officer is to use their discretion, having regard to the nature of the breach, the circumstances surrounding the commission of the breach and the prisoner's past conduct and may seek advice from other officers. An officer must not impose a penalty on a prisoner for an alleged breach of discipline, other than through a breach of discipline process in accordance with this COPD.

Prisoners should not be transferred from residential accommodation to secure accommodation following an incident, until such time as consideration has been given to all the relevant factors.

If a prisoner is moved out of residential accommodation due to an alleged breach, they should not lose their position in residential until the breach has been proven.





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If a breach of discipline is considered to be of a minor nature the prisoner may continue to reside in the residential accommodation area.

5.1 Positive drug test result

Where a drug test confirms a 'positive' result for drug use by a prisoner, a referral to the Commissioner of Police (CoP) is not required, as a positive drug test in itself is not an offence in Queensland. A positive drug test, in the absence of any other alleged criminal conduct, should be dealt with as a breach of discipline only, subject to the requirements of COPD Substance Testing.

5.2 Breaches involving prisoners assigned to work camps

All incidents regarded as minor which do not constitute an offence or breach of discipline, should be addressed by the relevant field supervisor, through case management including a case note in IOMS.

When an incident involves a prisoner allegedly committing an offence or breach of discipline the field supervisor must advise the responsible manager, in person or by telephone, as soon as practicable and provide a risk assessment to the manager, by end of duty on that day, or sooner, as required by the manager.

The manager must contact the Chief Superintendent of the corrective services facility to which the respective work camp is aligned as soon as possible if the responsible manager has any concerns regarding the management and supervision of the prisoner and whether the prisoner's placement needs to be reviewed.

6. Prepare Officer Report

If a prisoner allegedly commits an act or omission which could be dealt with as an offence or as a breach of discipline, the referring officer must complete an officer's report, Administrative Form 312 Officer Report detailing the circumstances of the act or omission. If an incident report is raised in IOMS, an officer's report must be completed. The officer's report must describe the circumstances of the alleged breach or offence in as much detail as possible, including time, date and location.

The officer report must also detail whether there is body worn camera footage available of the incident. Refer to the COPD Safety and Security Equipment: Body Worn Cameras, the COPD Incident Management: Incident Management Process and the Administrative Form 312 Officer Report.

7. Commissioner of Police Referral

If it is determined that the matter is to be referred to the CoP for consideration as an offence, the prisoner must be advised verbally by an officer within 24 hours of this determination. The time and date of verbal notification must be recorded in the incident recorded in IOMS.

The CoP must be advised of the matter within 48 hours of the prisoner being advised that the matter will be referred to the CoP

An officer must not commence proceedings (refer to Commence Breach Process) against a prisoner for an alleged breach of discipline if the matter was referred to the CoP under section 114(2) of the CSA, unless the CoP has advised that the matter will not be prosecuted as an offence.

A prisoner must not be the subject of breach proceedings if the prisoner has been convicted or acquitted of an offence for the same act or omission.





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Refer to sections 113(4)-(5) and 114(2) of the CSA and the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers.

The Chief Superintendent of the corrective services facility must establish a process of monitoring the return of incidents for breach action from the CoP.

Refer to section 116(2)(a) of the CSA.

7.1 Actions if Commissioner of Police decides not to prosecute matter as an offence

If an act or omission referred to CoP under section 114(2) of the CSA is not to be prosecuted as an offence, the Chief Superintendent or nominee must consider whether to:

- a) commence the breach process via the Approved Form 23 Breach of Discipline; or
- b) take no further action.

In making a determination, the Chief Superintendent or nominee should consider the following factors:

- a) whether there is sufficient evidence likely to result in a finding of guilt in a breach process;
- b) the relative severity of the alleged act or omission by the prisoner;
- c) whether to proceed with the breach process is in the best interests of the centre, having regard for the purpose of prisoner discipline;
- d) individual circumstances of the prisoner, including the prisoner's institutional behaviour since the alleged act or omission occurred;
- e) whether other formal actions have been taken to manage the prisoner's behaviour in the period following the alleged act or omission (i.e. use of an Intensive Management Plan), which negate the need for a breach process;
- f) the amount of time that has elapsed since the alleged act or omission; and
- g) the availability of the prisoner to participate in the breach process.

If a determination is made not to proceed with the breach process, this must be documented on the Incident report in IOMS, including the reasons for the determination.

If the breach process is to commence, it must be progressed as a 'major' breach.

A Chief Superintendent or nominee may direct an officer to perform the role of referring officer and commence a breach process; where a matter has been returned from the CoP and it has been determined that breach action is appropriate.

8. Statutory Timeframes for Dealing with Breaches

If the matter was referred to the CoP and the CoP advises the Chief Executive or delegate that the matter will not be prosecuted as an offence, as soon as practicable, but within 14 days after the Chief Executive or delegate receives the advice, a decision on the alleged breach must be made (i.e. the 14 days in which the breach hearing/decision must occur commences from the time CoP advice has been received by a QCS officer, not the day it was read).

For example: An act or omission has been referred to the Corrective Services Investigation Unit (CSIU) under section 114(2) of the CSA via an IOMS incident report. CSIU communicate a decision not to prosecute to an officer at the corrective services facility on a Friday via the IOMS incident report but the officer at the facility first becomes aware of this on the following Monday morning.

The 14 day period in which a breach decision must be made commences from the Friday, i.e. the day the advice was received.





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Minor breach - If the matter was not referred to the CoP, a decision on the alleged breach must be decided within 24 hours after the time the alleged breach happened.

Major breach - If the matter was not referred to the CoP, a decision on the alleged breach must be made as soon as practicable, but within 14 days, after the deciding officer becomes aware of the alleged breach.

Refer to section 116(2)(b) of the CSA

9. Commence Breach Process

Where the matter is not being prosecuted as an offence the referring officer must, as soon as practical:

- a) Raise a breach of discipline in IOMS and link any associated incidents. The date of the breach of discipline recorded in IOMS must be the date on which the act or omission occurred (this may be different from the awareness date). If the date of the act or omission cannot be determined exactly, 'between dates' may be used i.e. "On a date between 16 and 20 June 20XX, prisoner Jones damaged the television in his cell." For example: A prisoner provides a test sample on the 1 January 20XX and the presumptive test indicated that the sample contains methylamphetamine. The sample is re-tested by the laboratory and confirmatory testing received on 1 February 20XX indicates the presence of methylamphetamine. The date the alleged breach occurred in IOMS must be 1 January 20XX. The Awareness date in IOMS would be 1 February 20XX.
- b) Complete Part A of the Approved Form 23 Breach of Discipline. The form must provide sufficient details of the circumstances of the act or omission alleged to constitute the breach of discipline and the relevant breach of discipline regulation, refer to section 5 of the CSR, i.e. if the alleged breach of discipline involves contravening a lawful direction of a corrective services officer, the referring officer must describe in specific detail the lawful direction that was contravened by the prisoner, including time, date and location.

The details of the breach will automatically appear in reporting service reports once the matter is raised in IOMS.

9.1 Breaches relating to prisoner making frivolous or vexatious complaint

A decision that a complaint is unsubstantiated does not necessarily mean the complaint was *frivolous* or *vexatious*.

A power to breach a prisoner under regulation 5(k) of the CSR must only be exercised where:

- a) the person who is responsible for authorising the outcome of the complaint has found that the prisoner complaint is frivolous or vexatious; and
- b) the officer hearing the breach of discipline was not the subject of the frivolous or vexatious complaint.

9.2 Breach of discipline of a female prisoner, if a child is accommodated with her

If a prisoner who has a child accommodated with her in a corrective services facility commits a breach of discipline, any disciplinary action to be taken must consider the best interests of the child.

Separation of the child from the prisoner must not be used as a form of discipline and any loss of privileges by the prisoner must not have any unintended result for the child.





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Child residency should not be used as a part of the hierarchy of privileges and sanctions within the facility to manage the behaviour of the mother. However, continued misconduct of the mother may indicate a need to reassess the accommodation of the child by the Accommodation of Children Panel. Refer to section 31 of the CSA.

9.3 Determine whether alleged breach is minor or major

The referring officer must make an initial assessment of the severity of the alleged breach of discipline, in terms of whether it is deemed to be a minor or major breach. Refer to section 113(4) of the CSA. This assessment must be recorded on Part A of the Approved Form 23 Breach of Discipline. This assessment is not required if the matter has been returned by the CoP with a determination that the matter is not being prosecuted as an offence. In that case, the matter must be progressed as a major breach.

When determining whether an alleged breach of discipline should be dealt with as a minor or major breach, the referring officer should consider:

- a) the seriousness of the breach;
- b) whether it has, or is likely to have, an adverse effect on the good order of the corrective services facility or adversely affect the prisoner or other prisoners;
- c) whether the prisoner was observed by other prisoners or staff when committing the breach;
- d) whether the prisoner's behaviour was intentional or accidental;
- e) the behaviour of other prisoners at the time of the breach and other relevant contextual issues;
- f) whether the prisoner was aware or ought reasonably to have been aware of the relevant rules;
- g) whether the prisoner's behavioural standards complied with the corrective services facility's requirements; and
- h) any other factor which in the opinion of the referring officer is relevant to the seriousness of the breach including past institutional behaviour of the prisoner.

9.4 Supervisor to check breach details

After the referring officer has added the alleged breach to IOMS, the supervisor must review the breach and ensure that:

- a) the matter is not pending return from the CoP;
- b) the chosen regulation correctly reflects the description of the breach circumstances;
- c) there is sufficient evidence to support the alleged breach;
- d) the officer's report/s adequately describes the circumstances of the alleged breach; and
- e) Part A of the Approved Form 23 Breach of Discipline is correct and contains an adequate description of the alleged act or omission.

The supervisor should consult with the referring officer as soon as practicable on any aspect that requires clarification, action or revision, prior to Part A of the Approved Form 23 Breach of Discipline being issued to the prisoner. If appropriate, the supervisor may substitute a different subsection of section 5 of the CSR, if it more accurately reflects the alleged conduct.

9.5 Provide prisoner notice of breach particulars and hearing

The referring officer must arrange for Part A of the Approved Form 23 Breach of Discipline to be issued to the prisoner-

- a) for major breaches, Part A of the Approved Form 23 Breach of Discipline must be provided to the prisoner at least 48 hours before the breach hearing with the prisoner is scheduled to occur; or
- b) for minor breaches, Part A of the Approved Form 23 Breach of Discipline must be provided at least two hours before the Breach hearing with the prisoner is scheduled to occur.





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The notice period may be reduced with the prisoner's consent. If a prisoner is known to have learning or comprehension difficulties, the referring officer must explain (or arrange a suitable person to explain) the contents of the Approved Form 23 Breach of Discipline to the prisoner.

Part A of the Approved Form 23 Breach of Discipline contains information advising a prisoner of:

- a) their right to make verbal or written submissions in their defence at a hearing;
- b) what action to take if they wish to rely on evidence of another person within the facility i.e. they must make a reasonable attempt to obtain written evidence from the person before the hearing; and
- c) the method in which they may obtain a copy of the relevant sections of the legislation prior to the breach hearing.

Part A of the Approved Form 23 Breach of Discipline must be completed detailing sufficient information for the prisoner to understand the circumstances surrounding the alleged breach of discipline.

The officer delivering the Approved Form 23 Breach of Discipline to the prisoner must ensure that a copy of Part A is given to the deciding officer for their reference with the officer's name and the date and time it was given to the prisoner recorded in Part A.

The breach process formally commences when the prisoner is handed the Part A of the Approved Form 23 Breach of Discipline.

9.6 Breach hearing conducted by deciding officer

A deciding or reviewing officer must conduct a hearing with the prisoner to decide whether a breach of discipline was committed.

Prior to the hearing taking place, the deciding officer should satisfy themselves about the following matters:

- a) that the chosen regulation correctly reflects the description of the alleged breach circumstances;
- b) that there is sufficient evidence to support the alleged breach;
- c) that the officer's report(s) adequately describes the circumstances of the alleged breach;
- d) whether there is any body worn camera or other recordings of the incident or alleged breach; and
- e) that Part A of the Approved Form 23 Breach of Discipline is correct and contains an adequate description of the alleged act or omission.

The deciding officer should consult with relevant officers on any aspect that requires clarification or revision. If the deciding officer determines that minor changes should be made to the content of Part A of the Approved Form 23 Breach of Discipline, these changes can be made in consultation with the prisoner at the hearing i.e. the time of the alleged breach is recorded incorrectly as 8.30pm when the correct time is 8.30am.

If the deciding officer determines that a major change should be made to the content of Part A of the Approved Form 23 Breach of Discipline (i.e. a new regulation subsection is to be added because it more properly reflects the alleged conduct of the prisoner), it will be necessary to cancel the existing Approved Form 23 Breach of Discipline and re-issue a new Approved Form 23 Breach of Discipline to the prisoner with the correct information. The prisoner must be provided with a reasonable amount of time to consider the changes before proceeding with the hearing.





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The deciding officer may decide to conduct further inquiries if they believe the existing evidence is insufficient.

Refer to section 116(1) of the CSA and the Instrument of Limitation of Corrective Services Officers' Powers.

9.7 Relevant factors

The following factors are relevant to the conduct of a hearing:

- a) The deciding officer must have no bias in the matter being decided.
- b) Where practicable, the deciding officer should have had no involvement in the circumstances which led to the alleged breach of discipline.
- c) The onus of proof lies with the referring officer initiating the breach (not the prisoner) to provide evidence in support of the alleged breach. The referring officer is not allowed any legal representation or other representation at the hearing.
- d) A prisoner is not allowed any legal or other representation; however the prisoner may be helped by someone from the facility if the prisoner is disadvantaged by language barriers or impaired capacity.
- e) The deciding officer must advise the prisoner of the available evidence that supports the alleged breach of discipline.
- f) The deciding officer must determine if body worn camera or other recordings will be considered during the breach hearing. Where a decision is made not to refer to these types of recordings during the breach hearing, reasons for this decision must be detailed.
- g) The prisoner must be given a reasonable opportunity to make submissions in their defence, including, for example by questioning any witness called by the deciding officer and calling a person within the corrective services facility to give evidence in the prisoner's defence unless, the deciding officer considers the evidence may be given in writing or in another form.
- h) The deciding officer must give consideration to the capacity of the prisoner to effectively participate and understand what is occurring during the hearing, including any language or comprehension difficulties that may exist. Strategies to ensure a prisoner's effective participation include inviting a suitable person to support the prisoner at the hearing.
- i) When considering a major breach of discipline, if appropriate in the circumstances, the deciding officer may declare the breach to be a minor breach of discipline and continue proceedings as a minor breach of discipline. Refer to section 117(2) of the CSA. The deciding officer must not upgrade a 'minor breach' matter to a 'major breach' matter.
- j) The deciding officer must make two key decisions during the hearing:
 - i. Whether the alleged breach is proven to the required standard of proof (refer to the standard of proof section).
 - ii. If a guilty plea or determination is made, what penalty (if any) is to be imposed on the prisoner?
- k) Before making a final decision on whether the alleged breach is proven, the deciding officer must seek a response from the prisoner about this aspect.
- l) Before making a final decision on penalty (where applicable), the deciding officer must advise the prisoner on what penalty is proposed and seek a response from the prisoner on the proposal, including submissions in mitigation of the proposed punishment.
- m) Immediately after making a decision the deciding officer must advise the prisoner of the decision, that the decision may be reviewed and how a decision is reviewed. Refer to section 118(4) of the CSA.

Refer to sections 116 and 119 of the CSA and the Instrument of Limitation of Corrective Services Officers' Powers.





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Refer to the Appendix BOD1 Guide for Conducting Breach Hearings and Review Hearings.

9.8 Decision considerations by deciding officer

Prior to making their decisions, a deciding officer must take all relevant factors into consideration, including, but not limited to, the below factors.

9.8.1 Considerations for whether breach is proven:

- a) The available evidence which supports or does not support the alleged breach.
- b) The resolution of any defences offered by the prisoner (resolution involves either accepting or rejecting a prisoner's defences and providing reasons for this determination).
- c) Whether the alleged breach is proven to the required standard of proof.

9.8.2 Considerations for whether to impose penalty:

- a) The severity of the breach.
- b) Any mitigating circumstances that might reduce the prisoner's liability to penalty.
- c) History of breaches committed by the prisoner.
- d) Institutional behaviour of the prisoner.
- e) The individual circumstances of the prisoner are taken into account, including any cultural, special needs and cognitive considerations.

9.8.3 Separate confinement by virtue of a safety order considerations

A prisoner may be subject to separate confinement by virtue of a Safety Order pursuant to section 53 of the CSA at the time of the alleged breach action or omission occurring.

Separate confinement by virtue of a Safety Order is not a punitive measure and is for the purpose of protecting the prisoner, to protect others or for the security and good order of the corrective services facility.

Time spent in separate confinement as a result of a Safety Order is not to be considered as 'time served' for disciplinary purposes.

9.8.4 Considerations for the outcome of the hearing

It is recommended that a deciding officer suspend the hearing, to allow time to consider the evidence and make their decisions in relation to:

- a) whether the breach is proven to the required standard of proof; and
- b) the penalty (if any) to be imposed.

The decision on an outcome is to be fair, consistent and without bias. The dignity and rights of prisoners, including those with different beliefs, cultures and religions, are to be taken into account and respected.

When making a decision to impose a further period of time in separate confinement for a breach of discipline after separate confinement by virtue of a Safety Order, the decision maker needs to give proper consideration as to the limitation of that decision on the prisoner's human rights, specifically the right of humane treatment when deprived of liberty, and also consider whether the same purpose can be achieved by a less restrictive means.

For example, whether the loss of privileges instead of separate confinement would achieve the purpose of a sanction for the breach of discipline.





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The decision to impose a separate confinement as a result of a safety order and a decision to require separate confinement as a penalty for a breach of discipline are not to be combined as they have a different purpose.

9.9 Documenting decisions by deciding officer

The deciding officer must complete relevant sections in Part B of the Approved Form 23 Breach of Discipline. This does not need to be completed during the hearing and may be completed as soon as practicable following the breach hearing.

The deciding officer must record adequate reasons for each decision they make in Part B of the Approved Form 23 Breach of Discipline, so that the rationale for the decisions can be understood by the prisoner and other persons who may review the matter.

9.10 Prisoner to be notified immediately of decision

Immediately after making a decision that a prisoner has committed a breach of discipline and a penalty has been determined, the hearing officer must tell the prisoner the decisions and the reasons for the decisions.

Where the decision was made by a deciding officer the prisoner must also be advised:

- a) that the prisoner may have the decision reviewed; and
- b) how the prisoner may have the decision reviewed.

If the prisoner indicates they want the breach decisions reviewed, any penalty(s) determined at the hearing are immediately suspended, pending review of the matter by a reviewing officer.

If a prisoner alleges an officer did not comply with a QCS procedure or process and this non-compliance had a direct connection to the alleged breach, this issue must be noted as part of the reasons for decision recorded on the Approved Form 23 Breach of Discipline, i.e. non-compliance with substance testing as per the COPD Substance Testing. This must also include the hearing officer's consideration of the issue raised by the prisoner.

10. Prisoner's Right of Review

A prisoner may request a review of the decisions made at the initial hearing of the breach of discipline. The entitlement to seek a review of a breach of discipline includes the right of review of both the liability for discipline (i.e. the decision that the breach is proven to the required standard of proof) and the decision on the penalty to be imposed. This includes circumstances where a prisoner may have pleaded guilty, or has been found guilty, of the breach of discipline and seeks a review only of the penalty imposed. In this case the review of the breach of discipline must be done by way of rehearing i.e. the breach of discipline hearing starts again, unaffected by the decision, on the material before the deciding officer and any further evidence allowed by the reviewing officer.

Refer to section 119(1) of the CSA.

If a prisoner requests a review of the decisions, the prisoner must advise the deciding officer immediately after being informed of the decisions as per section 118(5) of the CSA. The deciding officer must not make any comment that would influence the prisoner's decision on whether to seek a review.

If a prisoner advises the deciding officer that they want to have the decisions reviewed, the deciding officer's decisions are immediately suspended pending a review as per section 118(6) of the CSA. A review will involve new decisions, which may or may not be the same as the deciding officer's decisions.





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The review must be conducted by a more senior officer than the deciding officer. The reviewing officer must not be the same person as the deciding officer, even if the deciding officer is acting in a higher role at the time the review hearing is scheduled. In this eventuality the role must be performed by the next most senior position.

For example: *The Accommodation Manager is the deciding officer for prisoner A. Prisoner A indicates that they want the decision reviewed. When the decision comes to the Superintendent, the Manager, Accommodations is acting as the Superintendent. In this case the acting Superintendent must not review the decision and should forward the review to the Chief Superintendent of the corrective services facility.*

The reviewing officer should examine the documentation considered by the original deciding officer and determine if further inquiry is required prior to conducting a review hearing. Pursuant to section 119(2)(a) of the CSA, the reviewing officer is to make a decision, unaffected by the original decision, on the material before the deciding officer and any further evidence allowed by the reviewing officer.

The review must be held as soon as practicable after the prisoner informs the deciding officer they want a review. Refer to section 119(2)(b) of the CSA. The review must include a hearing, in which the prisoner and relevant persons are in attendance.

Refer to the Appendix BOD1 Guide for Conducting Breach Hearings and Review Hearings.

10.1 Relevant factors when conducting a review hearing

- a) A review is a new hearing of all aspects of the matter and not just a review of what happened before the deciding officer.
- b) The reviewing officer must have no bias in the matter being reviewed.
- c) Where practical, the reviewing officer should have had no involvement in the circumstances which led to the alleged breach of discipline.
- d) The onus of proof lies with the referring officer who initiated the breach (not the prisoner) to provide evidence of the breach. The referring officer is not allowed any legal representation or other representation at the hearing.
- e) A review must be based on the evidence considered by the deciding officer and any further evidence allowed by the reviewing officer;
- f) A reviewing officer may undertake further inquiry into the matter prior to conducting the review hearing.
- g) When a major breach of discipline, if appropriate in the circumstances, the reviewing officer may declare the breach to be a minor breach of discipline and continue proceedings as a minor breach of discipline.
- h) The reviewing officer must give consideration to the capacity of the prisoner to effectively participate and understand what is occurring during the review hearing, including any language or comprehension difficulties that may exist (strategies to ensure a prisoner's effective participation include inviting a suitable person to support the prisoner at the hearing).
- i) A prisoner is not allowed and legal or other representation, however the prisoner may be helped by someone from the facility if the prisoner is disadvantaged by language barriers or impaired capacity.





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- j) The prisoner must be given a reasonable opportunity to make submissions in their defence, including for example by questioning any witness called by the reviewing officer and calling a person within the corrective services facility to give evidence in the prisoner's defence unless the reviewing officer considers the evidence may be given in writing or in another form.
- k) The reviewing officer must advise the prisoner of the available evidence that supports the alleged breach of discipline.
- l) The reviewing officer must determine if body worn camera or other recordings will be introduced during the breach hearing. Where a decision is made not to refer to these types of recordings during the breach hearing, reasons for this decision must be detailed.
- m) The reviewing officer must make two key decisions during the review hearing.
 - i. Whether the alleged breach is proven to the required standard of proof (refer to the standard of proof section).
 - ii. If a guilty plea or determination is made, what penalty (if any) is to be imposed on the prisoner?
- n) Before making a final decision on penalty (where applicable), the reviewing officer must advise the prisoner on what penalty is proposed and seek a response from the prisoner on the proposal, including submissions in mitigation of the proposed punishment.

10.2 Making and documenting decisions by reviewing officer

In reviewing an alleged breach of discipline and prior to making their decisions, the reviewing officer must take all relevant factors into consideration, including:

For decisions on whether breach is proven:

- a) The available evidence which supports or does not support the alleged breach, including any additional evidence introduced by relevant persons during the review stage.
- b) The resolution of any defences offered by the prisoner (resolution involves either accepting or rejecting a prisoner's defences and providing reasons for this decision).
- c) Whether the alleged breach is proven to the required standard of proof.

For decisions on whether to impose penalty:

- a) The severity of the breach.
- b) Any mitigating circumstances that might reduce the prisoner's liability to penalty.
- c) History of breaches committed by the prisoner.
- d) Institutional behaviour of the prisoner.

It is recommended that a reviewing officer suspend the hearing, to allow time to consider the evidence and to make their decisions in relation to:

- a) whether the breach is proven to the required standard; and
- b) the penalty (if any) to be imposed.

The prisoner is to be notified immediately of the decisions made by the reviewing officer and the reasons for those decisions.

The reviewing officer must complete relevant sections in Part C of the Approved Form 23 Breach of Discipline. This does not need to be completed during the hearing and may be completed as soon as practicable following the breach hearing.

The reviewing officer must record adequate reasons for each decision they make in Part C of the Approved Form 23 Breach of Discipline, so that the rationale for the decision can be understood by the prisoner and other persons who may examine the matter.





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There are no further internal review rights available to the prisoner after the reviewing officer has made their decisions.

11. Standard of Proof for Decisions on Whether Breach is Proven

Hearing officers may determine that a minor breach of discipline is proven only if they are satisfied on the balance of probabilities that the allegation is true. When applying this standard of proof, hearing officers must be reasonably satisfied, based on the evidence, the allegation is true, but it does not mean that they have eliminated all doubt about the matter.

Hearing officers may determine a major breach of discipline is proven only if they are satisfied beyond reasonable doubt that the allegation is true. Hearing officers cannot be satisfied that a breach is proven beyond reasonable doubt, if a prisoner has provided information which raises a doubt about their guilt and the doubt cannot be eliminated by other evidence.

12. Recording of Hearings

An electronic visual and audio recording must be made of major breach of discipline hearings and reviews. Refer to sections 117(1) and 119(6) of the CSA. Where practicable, the visual recording should show all officers who are involved in the hearing. As a minimum, the visual recording must show the prisoner and the hearing officer.

When a major breach hearing or review is conducted, the hearing officer may suspend the hearing (and also the visual and audio recording), so as to consider information and material provided to them during the hearing. Where a visual and audio recording is suspended, the hearing officer should provide an explanation on camera as to the reason for the suspension.

A body worn camera may be utilised as a supplementary method of recording a breach of discipline hearing but not as the primary recording of the breach hearing. Body worn camera footage may also be made available during the breach of discipline process.

The Chief Superintendent of a corrective services facility must establish a process that ensures electronic visual and audio recordings are stored for a five (5) year period (from date of last action) in a secure and easily accessible manner.

13. Evidence Called by the Prisoner in their Defence

A hearing officer must provide the prisoner with a reasonable opportunity to introduce evidence from another person (including a prisoner) from within the corrective services facility, as part of their defence.

The prisoner may request that another person be called to give evidence at the hearing. However, a hearing officer may decide that such evidence is more appropriately given in writing or another form.

A prisoner must make a reasonable attempt to obtain the evidence from the person in writing, prior to the hearing, so that the evidence can be presented and assessed at the hearing.

If a prisoner has not made a reasonable attempt to obtain this evidence prior to the hearing, the hearing officer may determine not to consider this evidence. The hearing officer should allow the prisoner to make submissions on this issue. If the hearing officer decides not to allow the evidence, they should outline their reasons during the hearing.





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If evidence of this nature is presented by the prisoner, the hearing officer must then determine what weight is to be given to this evidence, compared to the other evidentiary sources that are available.

Refer to section 116 of the CSA.

14. Penalties that May be Imposed Where Breach is Proven

Where the breach has been proven to the required standard of proof, hearing officers must seek a response from the prisoner in relation to any proposed penalty(s), prior to making a final decision on penalty(s) to be imposed.

Hearing officers may:

- a) reprimand the prisoner without further punishment; or
- b) order that privileges the prisoner may have otherwise received be forfeited as follows:
 - i. minor breach — for the 24 hours starting when the prisoner is advised of the decision; or
 - ii. major breach — starting when the prisoner is advised of the decision and not exceeding seven (7) days; or
- c) order the prisoner to undergo separate confinement (refer to section 121 of the CSA). Separate confinement applies to major breaches and may apply to minor breaches only if the pre-conditions in section 118(3) of the CSA are established; and

Deciding officers and reviewing officers are required to take the individual circumstances of the breach into account. This must include the relevant human rights which are only to be limited in a way that is reasonable and demonstrably justifiable.

The protection of families and children provides that families are the fundamental group unit of society and are entitled to be protected by society and the State. Additionally, every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

When considering limiting privileges that impact family contact, for example phone calls and visits, the protection of families and children in particular is to be considered, including the human rights of the family members including children.

If the penalty involves forfeiture of privileges, the deciding officer or reviewing officer must specify in the Approved Form 23 Breach of Discipline which privilege(s) are to be forfeited, together with the start and end time of the forfeiture and the human rights considerations.

Refer to section 118 of the CSA and section 18 of the CSR for the items that are defined as prisoner privileges.

14.1 Considerations of separate confinement

When making a decision to impose a further period of time in separate confinement for a breach of discipline after separate confinement by virtue of a Safety Order, the decision maker needs to give proper consideration as to the limitation of that decision on the prisoner's human rights, specifically the right of humane treatment when deprived of liberty, and also consider whether the same purpose can be achieved by a less restrictive means. For example, whether the loss of privileges instead of separate confinement would achieve the purpose of a sanction for the breach of discipline.





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The decision to impose a separate confinement as a result of a safety order and a decision to require separate confinement as a penalty for a breach of discipline are not to be combined as they have a different purpose.

If a decision maker considers that the behaviour that has resulted in a breach of discipline can be addressed by a lesser penalty, then the lesser penalty should be imposed.

If separate confinement is ordered for the prisoner:

- a) the start and end date of any separate confinement penalty must be specified in the Approved Form 23 Breach of Discipline;
- b) the hearing officer must complete the Approved Form 24 Separate Confinement Order (unless the prisoner requests a review of the deciding officer's decisions); and
- c) the separate confinement order must contain directions about the extent to which the prisoner is to receive privileges, during the period.

Where a decision has been made for a prisoner to undergo a period of separate confinement following a breach or review determination, the day that the determination is made will count as the first day of the period of separate confinement. The period of days of separate confinement will be calculated as calendar days and the period of separate confinement stated in the order must not be more than seven days.

Where a prisoner is to be separately confined as a penalty following a breach or review determination, considerations must be made towards opportunities for meaningful interactions and activities. These may include considerations such as: distraction packs, sensory items, educational material or appropriate personal property.

14.1.1 Separate confinement pre-conditions for minor breaches

Separate confinement may be ordered for a minor breach of discipline only if the prisoner has habitually committed minor breaches of discipline and, on the occasion of the breach immediately preceding the alleged current breach, was warned that the next breach could result in the prisoner being separately confined (refer to section 118(3) of the CSA).

14.1.2 Separate confinement under At-Risk conditions

Where a prisoner under a current separate confinement order commences an at-risk episode requiring observations (inclusive of the Notification of Concern, Initial Response Plan and/or At-risk Management Plan), the separate confinement order and subsequent conditions must be immediately suspended.

Should the at-risk episode be assessed and finalised within the originally determined separate confinement order dates, the separate confinement order may be resumed. However, it must still end on or before the original finish date and time.

Should the at-risk episode not be finalised within the originally determined separate confinement order dates, the separate confinement order will be superseded and will not be resumed or completed.

Once a separate confinement order has been approved, no changes or modifications can be made to the order's date or time, i.e. extending the completion date following an order being suspended during an at-risk episode is not permitted. The separate confinement order may, however, be cancelled by the Chief Superintendent or delegate at any time under exceptional circumstances.





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14.2 Restitution payments

The payment of restitution is not to be considered by a deciding or reviewing officer in the breach process. This is a **separate process** delegated to the Chief Superintendent or the Superintendent of a corrective services facility.

15. Breach Circumstances Involving Drugs

Commencing a breach process must be considered in circumstances where a prisoner:

- a) has a positive result on a drug test (including fail to supply, refuse to comply or providing an adulterated sample;
- b) is found in possession of drug related utensils; or
- c) is found in possession of unauthorised medication.

In addition to the breach process, officers must consider the specific management responses to a prisoner's drug circumstances; refer to the COPD Substance Testing.

16. Finalising the Breach Process

At the conclusion of the breach process (inclusive of the review stage, if applicable) details of the outcome of the matter must be entered in IOMS and the breach closed. A signed copy of the Approved Form 23 is to be uploaded to IOMS, and the original signed Approved Form 23 must be retained on the prisoner's physical file.

When a breach of discipline is proven, a copy of the completed and signed Approved Form 23 Breach of Discipline is to be printed and provided to the prisoner. Refer to section 120 of the CSA and section 6 of the CSR.

It is not sufficient for the prisoner to receive a copy of the IOMS breach matter in replacement/lieu of the Approved Form 23.

A case note is to be recorded in IOMS indicating the date and time the prisoner was issued the Approved Form 23 Breach of Discipline.

If a prisoner wants to have a decision reviewed, the prisoner must advise the deciding officer immediately after being informed of the decision as per section 118(5) of the CSA. The deciding officer must not make any comment that would influence the prisoner's decision on whether to seek a review of a breach decision.

If the prisoner advised the deciding officer that they want to have the decision reviewed, the deciding officer's decision is stayed until the review is finished.

16.1 Breach discontinuation

If a breach proceeding is not to continue and the breach has already been entered in IOMS, the breach must be cancelled from the prisoner's IOMS file by a person of a higher authority. The Chief Superintendent of the corrective services facility must develop a process to ensure that if breach proceeding is not to continue (i.e. discharge of the prisoner) the reasons for discontinuation must be recorded in the breach of discipline raised on IOMS. If the breach has already been closed on IOMS, only the Chief Superintendent or Superintendent of a corrective services facility is authorised to request a Data Correction from the IOMS help desk for the removal of the breach.





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17. Management and Oversight Considerations

17.1 Transfer of prisoner with outstanding breach of discipline

The Chief Superintendent of a corrective services facility must establish a process that ensures prisoners transferred prior to the finalisation of a breach of discipline process, including those referred to the CoP, have notification of the pending breach action communicated to the receiving corrective services facility prior to the transfer of the prisoner.

Upon notification of the matter, the receiving corrective services facility become responsible for completing the breach process, including the implementation of any penalties determined by an officer at the originating corrective service facility.

17.2 Compliance review of cases

The Chief Superintendent of the corrective services facility must develop a process that ensures the facility's breach of discipline cases are reviewed. The review must ensure that breaches of discipline are being conducted in compliance with practices outlined in this COPD.

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