



Search

Visitors Search

S

Custodial Operations Practice Directive

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

Version: 08	Implementation date: 28/11/2024	Review date: 2027
-------------	---------------------------------	-------------------

Scope
<ol style="list-style-type: none">1. Human Rights2. Limitation of Human Rights3. Search Process Map4. Purpose5. Definition of General Search6. Definition of Scanning Search7. Search of a Visitor Before Entering a Corrective Services Facility8. Search a Visitor – Relating to a Security Offence9. Refusal by a Visitor to Submit to a Search10. Personal Protective Equipment (PPE)11. Visitor Found in Possession of Unauthorised Item/Prohibited Thing12. Recording the Search of a Visitor13. Powers of the Queensland Police Service (QPS) to Search a Person/s Without a Warrant



Official/Public



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:

- a) recognition and equality before the law;
- b) the right to privacy and reputation;
- c) cultural rights generally and for Aboriginal peoples and Torres Strait Islander peoples; and
- d) the protection of families and children.

2. Limitation of Human Rights

When considering whether an act or decision which limits a human right is reasonable and demonstrable justifiable, the following factors may be relevant:

- a) The human rights impacted (there may be multiple) and the nature of those rights - this involves looking at the purpose of the relevant human right. For example, the right to privacy and reputation provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.
- b) The nature and purpose of the limitation - this involves considering the actual purpose or legitimate aim/reason for limiting the human right. For example, the visitor search process limits a person's right to privacy for the purpose of ensuring the safety and security of the corrective services facility, by preventing contraband and other prohibited items from entering the facility.
- c) The relationship between the limitation and its purpose – this involves considering the connection between the limitation of the right and whether this will assist with achieving the purpose or legitimate aim. For example, are lawful searches conducted on visitors, which necessarily limit their privacy, an effective method of achieving the purpose of preventing the entry of prohibited items into a corrective services facility or detecting the commission of other security offences in order to protect the security and good order of a corrective services facility?
- d) Whether there are any less restrictive and reasonable ways to achieve the purpose – this involves a 'necessity analysis' where the purpose of the limitation is considered and whether it can be achieved in any other way. For example, are there other methods of ensuring the safety and security of the corrective services facility by limiting the entry of prohibited items, that do not involve a search of a visitor, which necessarily limits their right to privacy?
- e) The importance between the purpose of the limitation and preserving the human right - this involves balancing the benefits obtained by the limitation with the impact of the limitation on the human right. For example, does ensuring the safety and security of a corrective services facility, specifically through conducting lawful searches of visitors, outweigh the consequent limit to their right to privacy?





Search

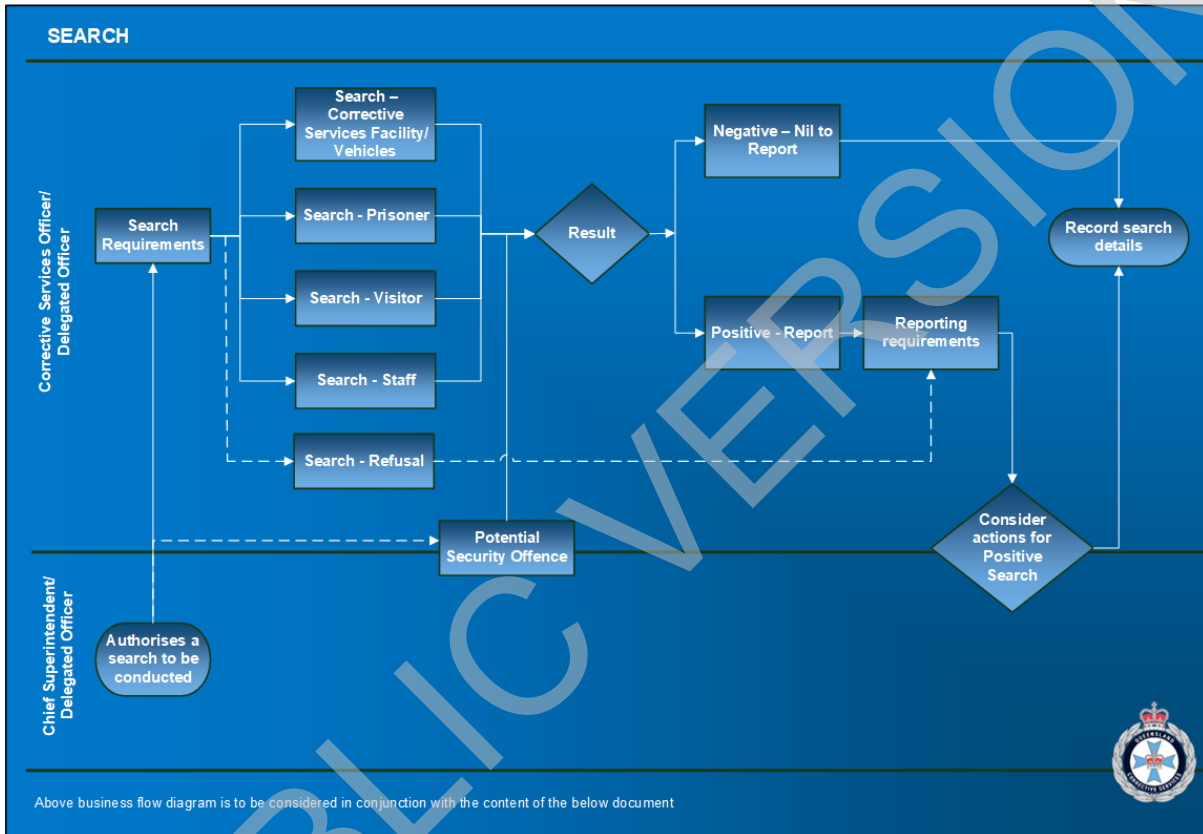
Visitors Search

S

Custodial Operations Practice Directive

QCS is committed to equality, diversity, inclusion and respect for human rights and all searches conducted under the provisions of this COPD must take into account considerations (e.g. cultural or gender diverse considerations) relevant to preserving the dignity and self-respect of the person being searched and to ensure minimal embarrassment to the person, without impeding the efficacy of the search.

3. Search Process Map



4. Purpose

This Custodial Operations Practice Directive (COPD) outlines the processes governing the search of visitors, including guidelines for the conduct of these searches. These procedural requirements are to ensure the integrity of the search of visitors prior to entering a corrective services facility and also in circumstances where a visitor may be suspected of having committed a security offence. Importantly, this COPD highlights the need for these searches to be undertaken in a manner that respects the dignity of the visitor concerned.

The *Corrective Services Act 2006* (CSA), authorises the search of visitors in two separate circumstances:

- a) before the visitor enters a corrective services facility – section 159 of the CSA; and
- b) where the visitor is found committing, or is reasonably suspected of having just committed, a security offence – section 136 of the CSA.





5. Definition of General Search

A general search, of a person, means a search -

- a) to reveal the contents of the person's outer garments or general clothes, or of a thing in the person's possession, including touching or moving the thing without touching the person;
- b) in which the person may be required to -
 - i. open their hands or mouth for visual inspection; or
 - ii. shake their hair vigorously.

Refer to Schedule 4 of the CSA.

6. Definition of Scanning Search

A scanning search of a person is a search of a person by electronic or other means that does not require a person to remove the person's clothing but may require another person or an apparatus to touch or come into contact with the person.

Where a scanning search involves the use of an apparatus for touching or coming into contact with a person who is submitting to a scanning search, the apparatus must be prescribed by regulation.

Examples of a scanning search:

- a) using a portable electronic apparatus that can be passed over the person;
- b) using an electronic apparatus through which the person is required to pass; and
- c) using a corrective services dog trained to detect the scent of a substance that is a prohibited thing.

The only exceptions to the above are those people with a recognised medical condition who may react to electronic scanning devices.

An ion scanning device is prescribed by section 26A(1) of the Corrective Services Regulation 2017 (CSR) for use in conducting a scanning search of a person. Refer to section 7.4 IONSCAN testing process.

A corrective services officer conducting a scanning search of a person must:

- a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and
- b) take reasonable care to minimise any physical contact with the person.

Refer to section 175A of the CSA.

7. Search of a Visitor Before Entering a Corrective Services Facility

7.1 Accredited visitor

The Chief Executive may require an accredited visitor to submit to a scanning search before entering a corrective services facility.

An accredited visitor includes:

- a) the Minister;
- b) a member of the Legislative Assembly;
- c) a judicial officer;
- d) a board member;
- e) the ombudsman;





Search

Visitors Search

S

Custodial Operations Practice Directive

- f) an inspector, including the chief inspector;
- g) the inspector of detention services;
- h) an official visitor;
- i) a community visitor (child) under the *Public Guardian Act 2014*;
- j) a child advocacy officer under the *Public Guardian Act 2014*; or
- k) any of the following persons:
 - i. a member of the UN subcommittee;
 - ii. a UN expert accompanying the UN subcommittee;
 - iii. an interpreter or other person assisting the UN subcommittee accompanying the subcommittee.

Refer to section 159(1) and Schedule 4 of the CSA.

7.2 Other visitors

The Chief Executive may require a visitor, other than an accredited visitor, to submit to a general search or scanning search before entering a corrective services facility.

All personal visitors to a high security corrective services facility must be subject to a scanning search by a static or handheld metal detector. All personal property of the visitor must be subject to a scanning search by an x-ray device and general search by a corrective services officer.

Personal visitors of a prisoner who enter a high security corrective services facility may be required to submit to both a scanning search and a general search where the visit is a contact visit.

Refer to section 159(2) of the CSA.

7.3 How the search of a visitor is to be conducted

When conducting a search, the delegated officer (refer to the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers) must ensure that:

- a) reasonable care is taken to protect the dignity and self-respect of the person being searched and to ensure minimal embarrassment to the person, without impeding the effectiveness of the search;
- b) specific consideration needs to be given to any cultural rights including cultural headwear and the gender of the searching officer (in culturally sensitive situations); and
- c) care is exercised when searching private property to avoid damage to the property.

Only searches authorised by the CSA may be conducted by corrective services officers within a corrective services facility.

7.4 IONSCAN testing process

A visitor may be required to undergo a scanning search utilising the IONSCAN testing process.





8. Search of a Visitor – Relating to a Security Offence

The Chief Superintendent or nominee must be notified immediately if a corrective services officer:

- a) finds a person committing a security offence; or
- b) finds a person in circumstances that lead, or has information that leads, the officer to reasonably suspect a person has just committed a security offence.

A security offence means an offence against Part 3 – General offences of the CSA or another offence that poses a risk to:

- a) the security or good order of a corrective services facility; or
- b) the security of a prisoner or a prisoner of a court.

The corrective services officer may, using reasonably necessary force to:

- a) conduct a general search or scanning search of the person; or
- b) search anything in the person's possession, including a motor vehicle.

The corrective services officer may, using reasonably necessary force, detain the person until the person can be handed over to a police officer.

A person must not be detained for a period longer than four hours. Where a corrective services officer detains a person in these circumstances, they must immediately advise the Chief Superintendent of the corrective services facility or nominee.

Refer to section 136 of the CSA and the Instrument of Limitation of Corrective Services Officers' Powers.

8.1 How the search of a visitor is to be conducted – security offences

In addition to the considerations for conducting a general search or scanning search of a visitor, if it is reasonably practicable to do so, the corrective services officer must, before conducting the search:

- a) tell the person the officer intends to conduct a search and what the officer intends to search;
- b) tell the person the reason for the search; and
- c) ask for the person's cooperation.

The corrective services officer must conduct the search in a way that respects the person's dignity and must also conduct the search as quickly as possible.

Refer to section 46 of the CSR.

8.2 Response to a search relating to a security offence – no item found

When the result of a search does not identify an unauthorised item or prohibited thing, the record of the details of the search are to be recorded in the relevant register. The Chief Superintendent may determine what further action, if any, is required in the circumstances.

9. Refusal by a Visitor to Submit to a Search

If a visitor does not submit to a general search when required to do so, the Chief Executive may revoke:

- a) for a personal visitor:
 - i. the visitor's access approval; or





Search

Visitors Search

S

Custodial Operations Practice Directive

- ii. the visitor's approval for the visit to be a contact visit; or
- b) for another visitor, the visitor's access approval.

Refer to section 159(3) of the CSA and the QCS Instrument of Delegation of Chief Executive Powers.

The Chief Executive, or authorised delegate, must give consideration to the individual circumstances of the scheduled visits, these considerations are to include:

- a) the human rights of the visitor and the prisoner;
- b) the reason the search has been refused;
- c) any available intelligence regarding the visit; and
- d) if there is an identified risk to the safety and security of the centre.

The Chief Executive, or authorised delegate may:

- a) deny access to the centre for the visitor;
- b) move the visit to a non-contact visit; or
- c) allow the visit to proceed as scheduled.

9.1 Direction to a visitor

Where an accredited visitor fails to comply with a requirement to undertake a scanning search, the visitor may be directed to leave the corrective services facility.

Where a visitor, other than an accredited visitor, fails to comply with a requirement to undertake a scanning search or general search the visitor may also be directed to leave the corrective services facility.

A corrective services officer may give a visitor a direction the officer reasonably considers necessary for the security or good order of the corrective services facility or a person's safety. The visitor must comply with the direction, unless the visitor has a reasonable excuse.

Refer to section 163 of the CSA.

If the visitor fails to comply with a direction given under section 163(2) of the CSA, the visitor may be directed to leave the corrective services facility.

If the visitor fails to leave the corrective services facility, a corrective services officer may, using reasonably necessary force, remove the visitor from the facility.

Refer to section 161 of the CSA.

9.2 Refusal to allow searches involving children

The Chief Executive or authorised delegate may request of an adult visitor who is responsible for an accompanying child, including an infant, that the child undergo a scanning and/or general search.

Refer to section 32 of the CSA and the QCS Instrument of Delegation of Chief Executive Powers.

Where an adult visitor, responsible for an accompanying child, refuses to give permission for the child to submit to a scanning and/or general search or to provide assistance for the child to be searched:





Custodial Operations Practice Directive

- a) the deciding officer must give consideration to the individual circumstances of the scheduled visits, these considerations are to include:
 - i. the human rights of the child, the visitor and the prisoner;
 - ii. the reason the search has been refused;
 - iii. any available intelligence in regard to the visit; and
 - iv. if there is an identified risk to the safety and security of the centre; and
- b) the deciding officer may:
 - i. deny access to the centre for both the adult and child visitor;
 - ii. deny access to the centre for the adult or child visitor;
 - iii. move the visit to a non-contact visit; or
 - iv. allow the visit to proceed as scheduled.

10. Personal Protective Equipment (PPE)

Supplied PPE must be utilised by staff when conducting a search to prevent needle-stick/blood and body fluids exposure (e.g. needle-stick resistant gloves or nitrile protective gloves).

Stocks of disposable PPE equipment must be maintained in each corrective services facility.

Refer to the Appendix S3 Safety Considerations for Searching.

11. Visitor Found in Possession of Unauthorised Item/Prohibited Thing

The Chief Superintendent of a corrective services facility or nominee must be notified where a search reveals that the visitor is in possession of an unauthorised item/or prohibited thing, or if there is a reasonable suspicion that the visitor is in possession of an unauthorised item and/or prohibited thing. Refer to the Appendix S1 Prohibited Things.

11.1 Preservation of evidence and disposal of seized property

A corrective services officer may seize anything found in a corrective services facility, whether or not in a person's possession that the officer reasonably considers poses or is likely to pose a risk to:

- a) the security or good order of the facility; or
- b) the safety of persons in the facility.

A corrective services officer may also seize a prohibited thing. However, a corrective services officer must not seize a document to which legal professional privilege attaches.

Refer to section 138 of the CSA and the Instrument of Limitation of Corrective Services Officers' Powers.

All seized property will be dealt with in accordance with the COPD Incident Management: Management of Evidence and Seized Property. The Chief Superintendent or Superintendent will make a determination on whether an unauthorised item or prohibited thing is to be retained as a result of the search of a visitor.

Where an item is seized, a receipt is to be provided to the visitor using the Approved Form 25 Receipt for Seized Property.

Refer to section 139 of the CSA.





Custodial Operations Practice Directive

Any seized item, which is to be retained, is to be stored in a secure location determined by the Chief Superintendent until a determination is made on whether the item is to be disposed of in accordance with sections 140 and 141 of the CSA.

12. Recording the Search of a Visitor

The Chief Superintendent of a corrective services facility must establish a hardcopy register for recording the details of searches of visitors. The hardcopy register must be completed as soon as practicable after the search is conducted.

There is no requirement to record a routine scanning search or general search of a visitor entering a corrective services facility. This includes circumstances where the search is limited in nature and there is no reasonable suspicion that the visitor may have possession of an unauthorised item or prohibited thing (i.e. as part of the general entry process to the corrective services facility).

A search of a visitor must be recorded in a register in circumstances where:

- a) the search relates to a visitor committing, or being suspected of committing, a security offence;
- b) the visitor is found in possession of an unauthorised item or prohibited thing; or
- c) the officer reasonably suspects the visitor may be in possession of an unauthorised item or prohibited thing and there is a need to undertake a more thorough general search or scanning search of the visitor. Examples include:
 - i. where a Passive Alert Drug Detection dog provides a positive indication and as a consequence the corrective service officer undertakes a more thorough general search of the visitor;
 - ii. where a corrective services officer has received intelligence holdings; and
 - iii. where it is necessary for the corrective services officer to direct the visitor to a room or other location for the purpose of undertaking the general search or scanning search.

Details of a search recorded in the register must include the:

- a) date of the search;
- b) time of the search;
- c) visitor's name;
- d) type of search conducted;
- e) officers present and the name of the officer who conducted the search;
- f) location where the search was conducted;
- g) reason for the search;
- h) results of the search, including the description of any unauthorised item or prohibited thing located;
- i) relevant statements made by the visitor; and
- j) any relevant post search action taken.

13. Powers of the Queensland Police Service (QPS) to Search a Person/s Without a Warrant

Officers of QPS have powers to search a person, including a search requiring the removal of clothing, refer to sections 29, 30 and 629-630 of the *Police Powers and Responsibilities Act 2000* (PPRA).





Search

Visitors Search

S

Custodial Operations Practice Directive

A QPS officer who reasonably suspects any of the prescribed circumstances for searching a person without a warrant may:

- a) stop and detain a person; and
- b) search a person and anything in the person's possession for anything relevant to the circumstances for which the person is detained.

For prescribed circumstances where a QPS officer may search a person without a warrant, refer to section 30 of the PPRA.

13.1 Search of a visitor acting at the direction of a QPS officer

A corrective services officer of the same gender as the visitor, acting at the direction of a QPS officer, may conduct a search of a person, including a search requiring the removal of clothing of a visitor, if there is no QPS officer of the same gender available to conduct the search. Refer to section 624A of the PPRA.

The visitor to be searched must be given:

- a) an explanation of the search process; and
- b) a reasonable opportunity to express a preference about the gender of the person who is to conduct the search.

Specifically, section 624A requires that a search may occur, upon direction of a QPS officer, by a person who is not a QPS officer, if reasonably necessary-

- a) to ensure that the person conducting the search and the person being searched are of the same gender; or
- b) to accommodate a preference expressed by the person being searched; or
- c) to address a concern related to gender in a way that minimises embarrassment and offence.

Gender preferences can be expressed in a way that would require different persons to search the upper body, lower body or head of the person. Gender preferences must be accommodated unless:

- a) there are reasonable grounds to believe the preference is expressed for an improper purpose; or
- b) it is not reasonably practicable to accommodate the preference.

In these circumstances the corrective services officer is acting at the direction of the QPS officer. Specific advice must be sought from the QPS officer regarding the nature of the search to be undertaken.

The PPRA provides limitations regarding removal of clothing searches at the direction of a QPS officer. Refer to sections 629 – 632 of the PPRA. These differ to the powers of a corrective services officer relating to removal of clothing searches under the provisions of the CSA.

A corrective services officer acting at the direction of a QPS officer to conduct a search of a visitor, must ensure the search is conducted in a manner that causes minimal embarrassment to, and protects the dignity of, the visitor.





Search

Visitors Search

S

Custodial Operations Practice Directive

If reasonably practicable, the QPS officer must, before conducting the search:

- a) tell the visitor they will be required to remove clothing during the search;
- b) tell the visitor why it is necessary to remove the clothing; and
- c) ask for the visitor's cooperation.

Refer to section 630 of the PPRA.

For a search requiring the removal of clothing, the visitor must be given the opportunity to remain partly clothed during the search, for example, by allowing the visitor to dress their upper body before being required to remove items of clothing from the lower part of the body.

The search must be conducted in a way providing reasonable privacy for the visitor.

Also, the search must be conducted as quickly as reasonably practicable and the visitor searched must be allowed to dress as soon as the search is finished.

The corrective services officer conducting the search must not make physical contact with the genital and anal areas of the visitor searched, but may require the visitor to hold their arms in the air or to stand with legs apart and bend forward to enable a visual examination to be made. It is important for the corrective services officer to clarify the specific requirements of the QPS officer prior to the search being conducted.

If the QPS officer seizes clothing because of the search, the QPS officer must ensure the visitor is left with or given reasonably appropriate clothing. The corrective services officer assisting the QPS officer may assist in the provision of reasonably appropriate clothing.

The corrective services officer assisting the QPS officer must consider any special needs of the person being searched.

Refer to sections 629 and 630 of the PPRA.

