



# Prisons and Prisoners

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## Introduction

Prisoners in Queensland may be in the custody of either the Queensland Corrective Services (QCS), the Police, the courts or, if in a health institution, Queensland Health. Queensland prisons are administered by QCS, which includes the Parole Board of Queensland. There are two private prisons in Queensland that have been announced to return to state control.

Although there are no federal prisons in Australia, there are some federal laws that apply to people in Queensland prisons for Commonwealth offences (e.g. social security fraud and illegal importation of drugs).

Actions taken by persons in authority in prisons against people in prison are covered by administrative law.

## Prison Law, Policies and Guidelines

Prisons, by their nature, are highly regulated environments. Queensland prisons are governed by a hierarchy of laws, regulations, policies, procedures and guidelines made by parliament and QCS (and a large body of common law or judge-made law (case law) and a number of guiding international treaties and covenants) such as the:

- *Corrective Services Act 2006* (Qld) (Corrective Services Act)
- *Corrective Services Regulation 2017* (Qld) (Corrective Services Regulation)
- ministerial guidelines
- QCS Custodial Operations Practice Directives (COPD)
- officers' Code of Conduct.

The QCS must make a copy of the Corrective Services Act available to all prisoners and must ensure that prisoners are informed about their entitlements and duties under these policies and procedures. Practically, this is usually done by placing a copy in the prison library. The general manager of each prison is obliged to ensure that people who are illiterate or from a non-English speaking background understand their duties and entitlements under all of these laws, regulations and policies (s 11 Corrective Services Act).

## Prisoners' Right to Information

People in prison are entitled to access all laws, regulations, policies and procedures to which they are subject. They are also entitled to see most information on their files (held by the sentence management unit at the prison) on request. Other information regarding their personal affairs may be obtained through a right to information request. The relevant forms should be available at the prison, and a right to information request should be processed by the QCS's Right to Information section within 25 business days. No fee is payable for accessing information relating to the prisoner's personal affairs.

If the request is not responded to by the department within 25 business days, the request is deemed to have been refused, and the request can then be referred to the Information Commissioner, by request in writing, for review.

The department may refuse to provide some information on the basis that it is exempt under the *Right to Information Act 2009* (Qld). Refusals to provide information under a request are reviewable by referral to the Information Commissioner (see chapter on *Right to Information and Freedom of Information*).

## Going to Prison

Once arrested, a person is held in police custody at a police watch-house for a short time before being transferred to prison. Usually a person is not held in the watch-house for more than 21 days.

### Admission

Prisoners are allowed to make one telephone call at QCS's expense on being admitted to prison.

Many procedures are required on entry to prison and a full list can be obtained from QCS.

After being admitted to prison, an induction program will commence, which should provide all relevant information about the prison system and also about the particular prison at which they are located. Information should be made available to non-English speaking people in their own language, and provisions should be made for people with physical or intellectual disabilities to have access to alternative formats if required.

At the induction program, the person is usually provided with a prisoner information booklet and with information about all the rules that the person is required to comply with (i.e. mail, visits, phone calls, access to legal and health services, educational facilities and the sentence management process).

### Assessment

When a person arrives in prison, a number of assessments are undertaken to ensure that information supporting planning is gathered, analysed and interpreted at appropriate points throughout the period of incarceration. More information regarding assessment tools and outcomes are available from QCS.

## Prison placement and transfer

Factors that influence prison placement include:

- sentenced or remand
- geographic location
- security classification
- gender; transgender people may be sent to either a men's or a women's prison, depending on their particular circumstances, with consideration being given to factors such as whether hormone treatment or surgery has been undertaken, medical opinions and how long it has been since the person's transition. There is a procedure that governs access to treatment and placement called the 'transgender prisoners', which is available from QCS

- rehabilitation programs
- whether protection or special care is needed.

The following reasons may result in a transfer:

- ensure the person is accommodated according to the assessed risks and needs
- more effectively utilise agency resources
- provide closer family links through visitor access
- provide medical or psychiatric treatment
- assist graduated community access through a low security facility
- effect more appropriate placement in emergent situations
- complete programs
- attend a court, parole board or tribunal hearing
- manage protection or compatibility issues.

A work order may be granted transferring a person from a prison to a work camp. Queensland Corrective Services may also transfer a prisoner to another prison or to a place for medical or psychological examination or treatment.

A list of Queensland prisons and their locations is available from QCS.

## Family connections

When placing a prisoner, consideration should also be given by QCS to maintaining the person's family and community ties. There is a particular obligation in this respect in relation to Aboriginal and Torres Strait Islander people. According to Recommendation 168 of the Royal Commission into Aboriginal Deaths in Custody, which has been incorporated into the Corrective Services Regulation, Aboriginal people should be placed in a prison as close as possible to the place of residence of their family.

## Protection

Some people are separated for protection purposes if they are at risk of being harmed by others. This happens for a range of reasons, including the nature of the offence, past occupation, involvement in a prison dispute or as crown witness.

A person can request to be placed on protection at any time. Queensland Corrective Services owes a duty of care to all prisoners in its custody and must take all reasonable steps to ensure that a person who fears physical harm from other prisoners is protected from that harm. This usually means placement in a protection unit, on a management plan or on a safety order.

## Rehabilitation programs

People who have been assessed as needing rehabilitation for the crimes may be referred to a criminogenic program. Currently, programs include a range of treatment methods such as relapse

prevention planning, problem solving, safety planning, mood management techniques and cognitive behaviour methods. Some programs are tailored to meet the cultural needs of Aboriginal and Torres Strait Islander people or adapted for people with an intellectual impairment.

Programs are only run in particular prisons, and people will sometimes face a choice between remaining close to family and support, or being transferred in order to undertake a particular program.

If a person has been assessed as needing to complete a specific program and has not completed the program, this is not enough reason to deny parole. If the program has not been completed because the prisoner is still on the waiting list, this should be considered. More information on rehabilitation programs is available from QCS.

## **Residential accommodation**

Most high security prisons have a residential section within the secure perimeter. People in high security, who have demonstrated stable behaviour in the traditional prison cell arrangement, may be offered a place in the residential section. People in the residential section live in communal housing blocks and may prepare their own meals and manage other aspects of their own living arrangements.

## **Involuntary transfers**

If a person is being transferred to a prison in another region because of capacity utilisation purposes (e.g. the prison is full), this decision must be considered at each classification review. Subject to capacity issues, people who have been subject to an involuntary inter-regional transfer should be offered the opportunity to return to their facility of origin in the month preceding discharge to facilitate community transition arrangements upon release from custody.

## **Review of placement decisions**

Reconsideration of placement decisions can occur during classification reviews, but are not required by law. Placement can be reviewed due to a change in circumstances, such as safety concerns or program completion. A person in prison can request a review of their placement.

Although the Corrective Services Act seeks to limit a person's opportunity to object to any transfer by removing the right to seek judicial review of any decision involving transfer, case law suggests these provisions may be unconstitutional and legal advice should be sought.

## **Interstate transfers**

Interstate transfer applications are governed by the *Prisoners (Interstate Transfer) Act 1982* (Qld), which is part of a national scheme that includes mirror legislation in other states.

Applications may be made for a transfer for legal reasons where the prisoner is facing outstanding charges in another state, or a welfare transfer where the person's family, friends or other significant persons reside in another state. Applications for transfers for legal reasons can also be made by an attorney-general for the purposes of bringing a person before a court in their state. If a person is on parole, different legislation applies for extradition.

Interstate Transfer Application forms should be available at the prison. An application for a welfare transfer should be accompanied by supporting documentation from friends and family, including medical certificates if the health of a family member or friend is part of the reason for the transfer.

The process involves approval from the Attorney-General (transfer for legal reasons) or Minister for Corrective Services (welfare transfers) of both states and can therefore take several months, even years, to be processed and effected. If the request for a welfare transfer is refused, another application will not be considered for 12 months.

Complications can arise with the calculation of sentences of prisoners who transfer between states, especially where the sentencing practices of the states involved are very different (e.g. laws and practices in relation to remissions). In general terms, a person's sentence goes with them, and any direction or order made by the court in which they were sentenced will be enforced in the receiving state. However, the sentence will be deemed to have been imposed in the receiving state, and the laws of that state will apply.

## Deportation

Any non-citizen, including a permanent resident, who is convicted of a criminal offence in Australia and receives a sentence of 12 months imprisonment or more may be liable to criminal deportation under the *Migration Act 1958* (Cth). Criminal deportation may be appealed in the Administrative Appeals Tribunal.

Deportation usually takes place immediately upon release, either at the end of the full sentence or after release on parole. The deportee may be kept in immigration detention pending their deportation even where they have been released from custody for criminal offences.

## Prisoners' Security Classification

There are three security classifications, maximum, high and low (s 12(1) Corrective Services Act).

A person on remand is classified automatically as high security, but can be increased to maximum (s 12(1A) Corrective Services Act).

Four factors must be taken into consideration in deciding the person's security classification, including during any subsequent reviews:

- the nature of the offence (i.e. considerations of the severity of the offence and whether it included violence, which will be reflected in the length of sentence)
- the risk of the person escaping or attempting to escape
- the risk of the person committing a further offence, and the impact the commission of the further offence is likely to have on the community
- the risk the person poses to themselves and other people, staff members and the security of the facility (s 12(2) Corrective Services Act).

## Review

There is no guaranteed way to reduce security classification, as many factors are considered.

Positive factors include:

- participation in recommended programs
- satisfactory conduct within prison
- satisfactory work reports.

Negative factors include:

- breaches of prison discipline
- refusal to participate in programs
- attempted escapes.

There are event-based reviews after a significant event or scheduled reviews. A scheduled security classification review must be conducted:

- every six months for maximum security and continued detention order
- every 12 months for high security classification (s 13 Corrective Services Act).

A person's security classification may also be reviewed at other times, including following:

- an assault
- a change in circumstances such as a positive drug test, inappropriate behaviour of meeting an intervention milestone such as a program.

There must also be an event-based review when a person is returned to secure custody from low custody within 28 days of return.

## Challenging the review decision

If a review changes a person's security classification, QCS must provide an information notice, including reasons for the decision. If security classification is increased, the person must be advised that they can ask for reconsideration if they are dissatisfied, provided they do so in writing within seven days of having been notified (s 15 Corrective Services Act). Once the decision has been reconsidered, the person must be notified in writing of the result. According to procedure, reconsideration decisions must take place within 28 days. A person can also request reconsideration for the following reasons:

- offender management procedures were not followed
- inappropriate or inaccurate information formed the basis of the decision
- pertinent or relevant information was not considered.

Note that a person can still challenge a classification decision in the Supreme Court, despite attempts in the Corrective Services Act to exclude the *Judicial Review Act 1991* (Qld).



## Prison Visitors

The following visits are allowed (s 153 Corrective Services Act):

- one non-contact personal visitor once per week
- legal visits as required
- extra visits and contact visits can be approved.

In deciding applications for visitors, QCS must decide if the person would pose a risk to the prison, taking into account whether the visitor has escaped lawful custody, been convicted of helping another prisoner escape, committed an offence while visiting a prison or has been refused access to a prison previously. The usual procedure is that contact visits are approved once the visitor has been given a security clearance by police, which usually takes six to eight weeks. The *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) does not apply to the criminal history for visitors to prisons. Visitors are required to disclose all previous or pending charges prior to entry, regardless of whether the convictions are recorded or old (s 328 Corrective Services Act).

Most prisons now have an additional condition of entry that all visitors must supply a biometric scan of their fingerprints before entry.

Extra visits may be allowed for children visiting their primary care giver, visits with an Aboriginal elder or where a family has travelled a long distance for the visit.

Personal visits may be monitored, and an audiovisual or visual recording of the visit can be made and retained (s 158 Corrective Services Act).

If a visitor is denied visits at a particular prison, they are entitled to apply to QCS for a review of the decision. If still unsatisfied, the visitor may make a complaint to the ombudsman or take steps for a judicial review of the decision.

## What visitors can bring

All gifts and other items must be approved by the prison and go through the prison reception staff where they are searched for contraband. Approval varies from prison to prison.

Certain things are prohibited in prison including drugs, money, escape implements, weapons, keys, electronic cards, identification papers, lighters, cigarettes, jewellery, recording equipment, mobile phones, mail, alcohol and cameras. It is a criminal offence to bring these items into the prison.

## Searching visitors

Under s 159 of the Corrective Services Act, a prison officer may conduct a scanning search (e.g. by use of a magnetic wand waved over the body) of any visitor. Many prisons have walk-through metal detectors, and passive drug dogs or electronic drug detection equipment to detect illegal drugs.

A prison officer may also conduct a general search as well as a scanning search of any other visitor including a personal visitor who is to be given a contact visit. A general search means that the visitor may be required to reveal the contents of outer garments or hand luggage. The search is conducted without the prison officer touching the person or the luggage.

The general manager may revoke approval for the visit or the contact component if the visitor does not submit to a general search. A visitor who is refused access by the general manager is entitled to be given reasons for the refusal.

Prison officers cannot perform strip searches (personal searches) of visitors, but they can call police who may do so if they form the reasonable belief that a visitor may be concealing drugs or a weapon.

## **Prisoners – Life on the Inside**

### **Mail**

#### **Ordinary mail**

There is no restriction on the number of letters a person in prison may send or receive, except that all postage costs are usually met by the incarcerated person from the funds in their trust account. If the general manager is satisfied that the incarcerated person does not have enough money to pay postage costs, QCS may pay the postage costs for two letters per week sent by the person (s 44 Corrective Services Act).

A prison officer authorised by QCS has the power to open, read and censor ordinary mail sent to or from a prison. A correctional officer can seize ordinary mail to stop anything that poses a risk to the security or good order of the prison, or anything that appears to be intended for the commission of an offence or where a prohibited thing is suspected of entering or leaving the prison (ss 45, 46, 48 Corrective Services Act).

#### **Privileged mail**

Privileged mail is mail sent to or received by specified government officials and agencies including the ombudsman, the Minister, members of the Legislative Assembly, the Parole Board Queensland secretariat, police officers, official visitors and a person's lawyer. A person in prison must, if practicable, send their privileged mail in blue envelopes provided at the facility to help identify it as privileged mail.

Prison officers are authorised to open and search privileged mail only if they reasonably suspect that it contains a prohibited thing or something that may physically harm the person to whom it is addressed, or that it is not privileged mail. Privileged mail that is opened should not be read by any officer, and if an officer does read anything in the mail, the contents must not be disclosed to anyone. The opening and search must be in the prisoner's presence.

If a search of privileged mail reveals information about the commission of an offence (other than the offence for which the person is being detained) then the mail can be seized.

The general manager may seize something in privileged mail if it is a prohibited thing or it may physically harm the person to whom it is addressed (ss 47, 49 Corrective Services Act).

### **Phone calls**

Telephone calls from prison are subject to monitoring and recording. People in prison can request telephone numbers (e.g. family members, friends and legal representatives) be placed on their approved list of recipients. Following a basic security check, the person is then able to access those

approved recipients by telephone whenever they can gain access to the communal public phone in their unit or yard, provided they have the funds in their telephone account to meet the cost of the call. Call times are restricted depending on the prison. It is an offence for a prisoner to knowingly allow an approved number to be diverted to a non-approved number (s 50 Corrective Services Act).

The Prisoners' Legal Service Telephone Advice Line may be accessed at the advertised times by all incarcerated people free of charge. These calls are not monitored or recorded.

A number of other agencies have a free phone line that prisoners can access including Legal Aid Queensland, the Queensland Ombudsman, State Penalties Enforcement Registry and the Child Support Agency.

People who need to make an urgent call to a number that is not listed on their approved list can make a request through an officer or counsellor for the call to be placed.

Calls to incarcerated people from the outside will not usually be facilitated unless there has been a family or other emergency.

## **Prison employment**

All prisons in Queensland have some level of employment for people in prison. This may be work designed to maintain the prison itself such as work in the prison laundry, kitchen or as a unit cleaner. Employment prison industries are another option, which include metal, leather and wood-working workshops.

Prison employment is an area fraught with injustices as compared with the industrial protections and opportunities available to workers in the wider community. Pay structures are based on minimal payments determined by QCS procedure and do not truly reflect the hours of work or the level of skill exercised by prison workers. Unlike employed workers in the community, incarcerated people are not protected by industrial laws.

Some prison jobs can provide an opportunity to work with trade instructors and to learn skills that can be used on the outside. Educational and training modules for trades are available for some incarcerated people (e.g. TAFE colleges), however, it is usually not possible for a person to undertake a trade apprenticeship in prison.

There is no power to compel a prisoner to work, but most prisoners (especially those doing long terms) choose to work so as to earn money to pay for telephone calls and personal items. A person's willingness to work is also factored into considerations about their progress through the prison system, and it is likely to continue to affect their chances of being released on parole by a parole board. Prisoners who are willing to work, but there is no job available or they have a disability, are entitled to a small unemployment allowance.

## **Prisoner trust accounts**

Cash is a prohibited article in prison, as are bank cards or credit cards. All prisoner funds are held in a prisoner trust account, and all transactions are paper only and must be authorised by the prisoner's signature.

Family or friends of a prisoner may deposit money to the trust account, and all payment for work or amenities allowances received by the person are credited to their trust account. The person can then authorise transfers to their telephone card or payments for items purchased from the prison store. A prisoner can also request in writing that a trust account cheque be sent out to a third party (e.g. a family member or legal representative). The QCS can limit the amount of money deposited or sent out (ch 6 pt 11 div 1 Corrective Services Act).

## Health and medical

Incarcerated people in Australia lose their entitlement to free health care through the Medicare system when they are imprisoned.

The provision of medical services in Queensland prisons is the responsibility of Queensland Health. At least one doctor (a visiting medical officer) is appointed for each prison.

There is also a secure unit staffed by officers of QCS at the Princess Alexandra Hospital in Brisbane, and some northern and regional prisons have arrangements with other local hospitals for the examination and treatment of incarcerated people who require specialist medical staff and/or hospital accommodation. Each prison also engages visiting dentists.

Prisoners' rights to refuse medical examinations are limited by the Corrective Services Act and, in some instances, examination is required:

- for the classification of a prisoner
- for initial placement of the prisoner
- when making a decision to transfer a prisoner
- to assess a prisoner's suitability to participate in an approved program
- to assess the prisoner's suitability for leave of absence, early discharge or release (s 21(3) Corrective Services Act).

A person on a continuing detention order must submit to examinations by psychiatrists as required under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (DPSO Act).

Doctors have wide powers under the Corrective Services Act such as to:

- take a sample of a prisoner's blood or another bodily substance
- order a prisoner to provide a sample of the prisoner's urine or any other bodily substance and give the prisoner directions about the way in which the sample is to be provided (s 21(5) Corrective Services Act).

A person in prison must comply with an order or direction in relation to providing either of these types of samples. If the person does not submit to an examination or treatment, the doctor or anyone acting at the doctor's direction may use the force that is necessary to complete the examination or treatment (s 21(8) Corrective Services Act).

Doctors assigned to treat incarcerated people may also be required to conduct internal body cavity searches.

Incarcerated people can apply in writing to QCS to be examined or treated by a doctor or psychologist nominated by the person. The QCS may approve a request if the person can afford to pay for it and if the request is not considered frivolous or vexatious (s 22 Corrective Services Act).

A common difficulty for incarcerated people is access to regular medication. Some over-the-counter medications commonly used in the community, such as codeine and pseudoephedrine, may be considered prohibited substances. Some prescribed medications may be crushed to a powder by prison nursing staff in order to prevent trafficking in medication, especially sedatives and anti-depressants.

Complaints about prison health and medical services should first be taken up with Queensland Health staff. If the complaint is unable to be resolved by this method, a formal complaint about the health practitioner involved may be directed to the Office of the Health Ombudsman.

## Education

Queensland Corrective Services procedure provides for limited access to education in prison. There are a small number of full-time student positions in some prisons and laptops are provided. Any costs associated with education (e.g. course fees and textbooks) must be met by the student.

## Prison Discipline and Control

### Lawful orders

Section 20 of the Corrective Services Act provides that a prison officer may give a person a direction that the officer reasonably believes to be necessary:

- for the welfare or safe custody of the prisoner or other prisoners
- for the security or good order of a prison
- to ensure that the prisoner complies with an order
- to ensure a prisoner attends to enable a DNA sample to be taken under the *Police Powers and Responsibilities Act 2000* (Qld)
- to ensure that the prisoner does not commit an offence or a breach of discipline.

A person may incur a breach of discipline for disobeying a lawful order of a prison officer.

### Force and lethal force

A prison officer is also authorised to use the force, other than lethal force, that is reasonably necessary to:

- compel compliance with an order given or applying to a prisoner
- restrain a prisoner who is attempting or preparing to commit an offence or a breach of discipline
- compel any person who has been lawfully ordered to leave a corrective services facility and who refuses to do so
- restrain a prisoner who is attempting or preparing to harm themselves or others.

However, force should not be used unless the officer reasonably believes that there is no other way to compel or prevent a person from the conduct mentioned. The officer is required to issue a clear warning of the intention to use force and sufficient time for the person to comply. The use of force may involve the use of a gas gun, a chemical agent, riot control equipment, restraining devices or a corrective services dog.

Prison officers are trained in the use of lethal force and can use it in a range of circumstances but must cause the least possible risk of injury to anyone other than the person against whom it is to be used.

Section 146 of the Corrective Services Act provides that an officer may use the lethal force that is reasonably necessary to stop a prisoner from:

- escaping or attempting to escape from secure custody
- helping or attempting to help a prisoner escape from secure custody
- assaulting or attempting to assault another person who has escaped from secure custody in an immediate response to a prisoner.

In each of these circumstances, lethal force can only be used if the officer reasonably suspects that the person is likely to cause grievous bodily harm to or the death of someone other than the prisoner.

## Searching of Prisoners

There are five types of searches:

- scanning search
- general search
- personal search (pat search over clothing avoiding genital and breast areas)
- accommodation search (including possessions)
- strip search.

A scanning, general, personal or accommodation search can be ordered by the general manager or an officer if they suspect a person has something that risks security and good order of the prison. This very broad power cannot be exercised for an improper purpose such as punishment or sexual harassment. The general search power includes the power to search anything in the possession of a person in prison.

The chief executive of QCS is authorised to issue directions to a corrective services officer in relation to strip searching, including the times and/or manner in which prisoners are to be strip searched. The general manager must order strip searches in accordance with the directions. These directions differ depending on security classification of the person in prison and the prison itself. Prisoners are strip searched upon entering and leaving a prison, irrespective of the purpose. For example, a person will be strip searched upon returning from court, from hospital treatment or upon being transferred from another prison. People who are considered to be at risk of self-harm or suicide are also strip searched, a procedure that many prisoners in crisis perceive as punishment and find extremely stressful in circumstances where they are already having difficulty coping with the prison environment.

Incarcerated people are also strip searched after contact visits with friends and family and before a drug test.

In addition to these directions, the general manager may order a strip search to be conducted if they consider that it is necessary for the security and good order of the facility or necessary for the safe custody and welfare of prisoners at the facility. The discretion to require such a search must be exercised lawfully and may be subject to scrutiny by the ombudsman's office or by judicial review.

A strip search can only be carried out by an officer of the same gender as the prisoner and must be conducted by at least two officers. The Corrective Services Act also provides that officers must ensure that the way in which the person is searched causes minimal embarrassment, and it must be carried out as quickly as possible and allow them to dress as soon as the search is finished.

People in prison must be given the opportunity to remain partly clothed during the search by being allowed to dress the upper half of the body before removing clothing from the lower half (or vice versa) if it is reasonably practicable (s 38 Corrective Services Act).

A prisoner cannot be ordered to undress in the presence or view of a person of the opposite sex, unless that person is a doctor carrying out a medical examination or body search, or someone acting under the direction of a doctor.

All strip searches must be recorded in a register, with details of the persons present and details of anything seized during the search (s 40 Corrective Services Act).

Strip searching may be traumatic for many people and may re-traumatise those who have been victims of sexual assault. Research indicates that an overwhelming majority of women in prison have been victims of sexual assault. The availability of sophisticated technology, which can detect drugs and metal objects without the need for prisoners to remove clothing, is already in use in prisons. This raises questions about the need for mandatory strip search requirements.

Complaints about the manner in which strip searches are carried out may be referred to the Ethical Standards Unit of QCS or the Queensland Ombudsman. For legal advice or assistance, the matter may be referred to Prisoners' Legal Service.

## Internal body cavity searches

Internal body cavity searches can only be carried out by a doctor acting on the authority of the general manager (s 39 Corrective Services Act). In order for an internal search to be lawful, the general manager must reasonably believe that the prisoner has:

- ingested something that may jeopardise their health
- a prohibited thing concealed in their body which poses a risk to the security or good order of the prison
- concealed evidence of the commission of an offence or a breach of discipline by the prisoner.

A nurse must be present during the search, and if the doctor is not the same sex as the prisoner then the nurse must be.

A register must be kept of every body search, with details of anything seized from the prisoner (s 40 Corrective Services Act).

## **Blood, urine and other body samples**

Information on substance testing can be found on the QCS website. The QCS has wide powers under the Corrective Services Act to require test samples of blood, breath, hair or saliva to be taken from prisoners. Breath and urine samples may be collected by prison officers, but only a doctor or a nurse may take a blood, saliva or hair sample. Reasonable force may be used to enable the doctor or nurse to take the sample (s 42 Corrective Services Act).

The most common samples taken in Queensland prisons are urine samples, which are used to detect the presence of prohibited drugs. People in prison may be required to submit to either random testing or a targeted test. The consequences for a positive test are the same for both random and targeted testing.

Testing procedures will first be conducted by on-the-spot testing kits, but must be confirmed by laboratory testing. Before testing, people in prison will undergo a strip search and be allowed to get dressed before the test. The test must be done by two prison officers, and an officer in sight of the prisoner must be of the same gender.

Officers should adhere to departmental procedures when collecting samples. The procedures are subject to variation from time to time but may be found on the QCS website. If an officer fails to follow the procedure, and there is a risk that the sample may be contaminated or wrongly identified, any breach incurred by the prisoner as a result should be set aside. Disputes about procedure may be referred to the ombudsman's office or the Prisoners' Legal Service.

If a sample tests positive for a prohibited substance, there may be a resulting criminal charge or breach of prison discipline together with consequences for the person's progress through the prison system. A prisoner cannot incur a breach of discipline where they have been charged and either convicted or acquitted of a criminal offence for the same conduct. A positive result may be referred to the Commissioner of Police to determine whether they intend to prosecute the matter. If police do not intend to prosecute the matter, it will be referred back to the general manager of the prison, and breach proceedings may then be brought against the prisoner.

Recorded drug use in prison will almost certainly impact on decisions about security classification, progression to low security and chances of getting parole. For example, for men in prison, it is not possible to get a transfer to a prison farm (low security facility) within three months of a positive drug test.

If a person is unable to supply a sample without a reasonable excuse (one hour is usually allowed to produce a urine sample), the consequences are the same as for a positive drug test.

## **Breaches of Prison Discipline**

A breach of prison discipline is an internal prison process to punish the breaking of prison rules. Breaches of prison discipline that do not constitute a criminal offence are dealt with entirely within the prison. An officer hears a breach of discipline hearing. If the incarcerated person wishes to have



the breach reviewed, they must request a review immediately, and it will be referred to another officer who is more senior than the officer who heard the breach. Reviews of breach hearings are recorded.

Legal representation is not permitted at either the initial breach hearing or the review. A person who has language barriers or impaired mental capacity may be helped by someone else from the prison.

Behaviours that constitute breaches of discipline are set out in reg 5 of the Corrective Services Regulation and include the examples below. These provide that a person in prison may have breached discipline if they:

- disobey an officer's lawful direction
- wilfully or in a careless or negligent way execute a lawful direction by an officer
- make something that has not been expressly or impliedly approved by the general manager as something the prisoner may make
- possess or conceal something that has not been expressly or impliedly approved as something the prisoner may possess
- knowingly consume something that is not approved
- possess or administer medication without approval
- make a frivolous, vexatious or mischievous complaint about another prisoner or an officer
- organise or take part in gambling
- use abusive, indecent, insulting, obscene, offensive or threatening language in another person's presence
- wilfully damage video or monitoring equipment
- send mail as privileged which is not
- without a corrective services officer's approval, alter the prisoner's appearance or another prisoner's appearance so that they significantly differ from the prisoner's appearance described in the record.

A prison officer may decide to deal with a prisoner's alleged behaviour as either a minor or major breach of discipline, depending on factors such as the seriousness of the breach, whether the breach was intentional and the effect on the security of the prison. A prison officer is not compelled to breach a person if the officer considers that the breach was trivial, if there were particular circumstances or if the person's previous conduct, in the opinion of the officer, warrants the person not being breached.

If a person's conduct could be dealt with as both a breach of discipline and as a criminal offence, QCS must notify the Commissioner of Police, who will decide whether the conduct will be prosecuted. This advice will then be forwarded to the general manager of the prison. A person must not be punished for conduct if they have been convicted or acquitted of an offence for the same conduct.

If an incarcerated person is alleged to have committed a breach, the officer must decide whether a breach was committed within 24 hours of the officer becoming aware of the breach in the case of a

minor breach and, in the case of a major breach, within 14 days. The person will then be advised of the breach and given a reasonable opportunity to make submissions, including calling evidence or questioning witnesses in their defence. If the officer decides to breach someone, they must advise them of the decision and that they have a right to have the decision reviewed. If the prisoner wants to have the breach reviewed, they must notify the officer immediately after being informed of the decision to breach. Major breach proceedings must be videoed, and the tapes can be subject to right to information requests. The QCS website has further information about breaches of prison discipline.

## Prison Offences

### Unlawful assembly, riot and mutiny

Section 122 of the Corrective Services Act creates the offence of unlawful assembly for which the prisoner may be imprisoned for three years. A person in prison is also prohibited from taking part in a riot or mutiny, for which sentences of up to six years may be imposed.

An unlawful assembly is defined in the s 122 (Corrective Services Act) when three or more prisoners:

- assembled with intent to carry out a common purpose, and there are reasonable grounds to believe they will tumultuously disturb the peace or provoke other prisoners to tumultuously disturb the peace
- assembled with intent to carry out a common purpose, whether or not the assembly was lawful, conduct themselves in a way that there are reasonable grounds to believe they will tumultuously disturb the peace or provoke other prisoners to tumultuously disturb the peace.

Riot is defined as an unlawful assembly that has begun to act in a tumultuous way and is disturbing the peace.

If property is damaged in a riot or mutiny, the maximum sentence rises to 10 years, and if the riot endangers prison security, then a life sentence may be imposed. If a prisoner taking part in a riot or mutiny escapes, attempts to escape or aids others to escape, they may be liable to imprisonment for a maximum of 14 years.

### Other offences

Several other specific offences are created by ss 123 and 124 of the Corrective Services Act. These are criminal offences for which further sentences of imprisonment (maximum two years) may be ordered. The sections include provisions that a prisoner must not:

- possess, conceal or knowingly consume a prohibited thing or something intended to be used by a prisoner to make a prohibited thing
- prepare to escape
- kill or injure a corrections dog
- tamper with or destroy records
- attempt a disguise

- disobey a lawful direction of the proper officer of a court
- organise, attempt to organise or take part in any opposition to authority under the Corrective Services Act, whether inside or outside a corrective services facility
- without lawful authority, abstract information from, destroy information in or make a false entry in a record kept under the Corrective Services Act.

## Segregation of Prisoners and Solitary Confinement

A person may be involuntarily segregated from other people in prison either for:

- punishment (separate confinement (s 121 Corrective Services Act))
- administrative purposes (safety orders or maximum security (div 5, 6 Corrective Services Act)).

Most prisons have a detention unit, which has designated punishment cells with fewer amenities used for shorter punishment stays, and/or a crisis support unit, also known as a safety unit.

Segregation for punishment purposes (separate confinement) can be imposed for a maximum of seven days for a major breach of discipline and must comply with the provisions of ss 118 and 121 (Corrective Services Act):

- A doctor must examine the person as soon as practicable after the separate confinement order takes effect and as soon as it ceases to have effect.
- The terms of the order must take into account any special needs of the person and contain directions about the extent to which they are to receive privileges.

Segregation for administrative purposes (s 53 Corrective Services Act) can be ordered by a general manager either for an incarcerated person's safety or for the security or good order of the prison (a safety order). If a doctor or psychologist advises QCS that they believe there is a risk the person may harm themselves or others, or be harmed by others, or the safety order is necessary for the security or good order of the prison, they can make a safety order for up to one month. Safety orders can be consecutive, meaning the time spent in solitary confinement may be much longer than one month. The order must specify the conditions that apply to the person's treatment.

A person on a safety order should not forfeit any privileges other than those that they cannot practicably or desirably receive. Privileges are defined in reg 18 of the Corrective Services Regulation as including use of a library or musical instrument, buying non-essential items, contact visits or phone calls to family and accessing property. The person should be provided with a copy of the safety order, the order's duration and its conditions as to privileges. A person on a safety order is entitled to apply in writing to QCS for referral of the order to an official visitor (OV), and QCS must refer the matter to an OV (s 56(2) Corrective Services Act), who must conduct monthly reviews if the safety order requires confinement for more than one month. The OV can make recommendations to QCS about the order (s 56(6) Corrective Services Act), but the Corrective Services Act expressly states that such recommendations are not binding (s 56(9) Corrective Services Act).

Complaints about safety orders should be referred to the ombudsman's office. Requests for legal advice and assistance about the orders may be referred to Prisoners' Legal Service or the person's own lawyer. Safety orders are subject to judicial review.

A Maximum Security Order (MSO) (s 60 Corrective Services Act) for up to six months may be made by QCS, if they believe on reasonable grounds that:

- there is a high risk the prisoner will escape or attempt to escape
- there is a high risk the prisoner will inflict death or serious injury on other prisoners or other persons with whom the prisoner may come into contact
- the prisoner is a substantial threat to prison security and good order.

The orders can be made consecutively, meaning that the effective segregation can continue for years. The severity of the punishment imposed by an MSO makes it essential that questions about any MSO be pursued rigorously. It is particularly important that assistance be sought if an Aboriginal or Torres Strait Islander person or a person who suffers a mental illness becomes subject to an MSO, as cultural, religious and health needs of the individual are frequently overlooked in favour of security considerations. The rights and protection of vulnerable individuals may be violated if external assistance and scrutiny are not readily available.

If an incarcerated person becomes aware that QCS is proposing to impose an MSO, legal advice and/or assistance should be sought as soon as possible. The MSO will provide information about conditions and duration of the order and the extent of the person's segregation. A statement of reasons

## Conditions in solitary confinement

Regulation 4 of the Corrective Services Regulation provides that a person in solitary confinement must have access to water, a toilet and shower, appropriate clothing, mattress, sheets, blanket and pillow. They must also have the opportunity to exercise for at least two daylight hours a day, unless a doctor or nurse advises otherwise. Regulation 16 requires a health practitioner to be notified if a person will be placed on a maximum security order who has a mental health condition or intellectual disability.

## Prisoners' Release into the Community—Leave of Absence

The chief executive may grant an order for leave of absence to an incarcerated person for any one of a number of purposes, including community service, compassionate purposes (e.g. to attend a funeral or visit a seriously ill family member (s 73 Corrective Services Act)), educational or vocational activities, medical, dental or optical treatment (health leave), or another purpose that justifies the granting of leave (s 72 Corrective Services Act).

Potential contact with victims can be taken into account when considering whether to grant a leave of absence (LOA). Most LOAs will be supervised by a prison officer.

Where it is suspected that a person has not complied with an LOA order or QCS reasonably suspects the person poses a serious and immediate risk of harm either to themselves or someone else, the order

may be suspended and the person returned to secure custody. If there is no serious and immediate risk of harm to someone else, notification must be given prior to return to custody (s 85 Corrective Services Act).

There are no internal appeal procedures by which people can challenge decisions to revoke an LOA order or to return them to secure custody. However, the usual rules of procedural fairness still apply to such decisions, and people should be given an opportunity to answer allegations against them, even if that opportunity is given after they have been returned to a secure custody centre because of the security risk they are perceived to represent.

## **Prisoners' Release into the Community—Parole**

The first step in understanding a person's sentence and eligibility for parole is to obtain a copy of their sentence calculation sheet. Every incarcerated person is entitled to access their sentence calculation sheet. It may also be necessary to obtain the sentencing remarks from the sentencing court.

If there is an error, Legal Aid Queensland may be able to assist.

The only basis on which people in prison who have been sentenced can be released from prison before their full-time date is on parole. Parole is granted subject to the conditions set out in a parole order. The person is still under sentence and, if someone breaches the terms of their parole, they can be returned to custody. Any time they have served on parole prior to the breach is counted as time served under their sentence. Life-sentenced prisoners remain under sentence and subject to parole conditions for the rest of their lives. If a person is found to be a dangerous sexual offender, they can be detained beyond their full sentence if the Supreme Court finds that they are an unacceptable risk to the community.

Parole orders can include restrictions on a parolee's movements. A person on parole may be directed to remain at a stated place for stated periods, wear a stated device or to permit the installation of any device or equipment at the place where the parolee resides (s 200A Corrective Services Act). Section 200A also allows for the location of the prisoner to be monitored.

The parolee cannot leave the state without permission and cannot travel overseas except in exceptional circumstances for compassionate reasons. Parole conditions are listed in s 200 of the Corrective Services Act and further conditions may be placed on the relevant order, including electronic monitoring. The consumption of alcohol is often prohibited. A person on parole may also be obliged to participate in a community-based rehabilitative program under the terms of their order. They must report regularly to a parole officer and notify community corrections of any change of address or employment. A parole board can amend or remove a condition of a parole order.

Decisions about releasing a prisoner on parole are made by the Parole Board of Queensland (PBQ).

The Minister for Corrective Services may issue guidelines to the PBQ in relation to performing its functions. The current guidelines are available on the QCS website. These guidelines require PBQ to:

- give the highest priority to the safety of the community

- consider whether there is an unacceptable risk to the community if the prisoner is released on parole, and whether the risk would be greater if the prisoner does not spend a period of time on parole
- assess suitability factors, including:
  - criminal history and patterns of offending
  - likelihood of further offences
  - whether the person has been convicted of a serious sexual or serious violent offence
  - recommendations of sentencing court
  - cooperation with police and prison authorities
  - risk assessment reports
  - compliance with previous grants of parole
  - supports in the community
  - completion of programs.
- consider further information including:
  - length of time in prison
  - length of time in low custody or residential accommodation
  - negative institutional behaviour
  - intelligence information
  - length of time on a work order
  - potential parole conditions to enhance supervision and ensure compliance
  - transitional, residential and release plans
  - efforts to undertake rehabilitation opportunities.

The ministerial guidelines also state the following:

- The PBQ is required to give procedural fairness (also known as natural justice), meaning they must let a person know the main factors and material they are relying on if they are going to refuse an application for parole.
- The PBQ may also place an electronic monitoring device on a person as a condition of their parole.
- For sex offenders and serious violent offenders, the PBQ must consider whether to restrict access to websites, technology, applications or tools and any internet dating sites. People under or likely to come under the *Dangerous Prisoners (Sexual Offences) Act 2003* (Qld) may not be eligible for parole.

After receiving an application for parole, sentence management requests a home assessment and a copy of the application are sent to the parole board. The board must either grant or refuse a parole application within 120 days of receiving it. However, the board may decide to defer a decision until they obtain further information (e.g. a psychiatric evaluation). If the board defers the decision, the timeframe for making a decision becomes 150 days (s 193(3) Corrective Services Act). However, if the board fails to make a decision within 120 days (or 150 days if deferred), it can continue to consider the application.

If a board refuses an application, they must give the applicant written reasons for the refusal (s 193(5) Corrective Services Act), and they must set a date not more than six months after the refusal when they will consider a fresh application (s 193(5A) Corrective Services Act).

The responsibility for making a timely application for parole lies with the person in prison. Application forms should be available in the prison. People who have literacy or language problems should be provided with assistance, either by staff or by the Prisoners' Legal Service.

## Parole process

The following information has been adapted from the Prisoners' Legal Service factsheet *Parole Application Process*.

### First time application

A person can submit a parole application six months before their parole eligibility date.

### Parole previously refused

If a person has previously had an application refused, they can reapply when advised by PBQ.

The maximum time they will have to wait after a parole refusal is six months, or 12 months if they are serving a life sentence.

### Parole cancelled

If a person's parole has been cancelled, they can submit a new application straight away.

To apply for parole, a person should give a Form 29—Parole Application and a Form 176—Accommodation Risk Assessment Request to sentence management.

### Accommodation Risk Assessment

An assessment will be done about whether your nominated address is suitable.

A report will be written by Probation and Parole about this address for the PBQ.

### Parole Interview

A person in prison will be interviewed by QCS about their parole plans.

A person in prison can prepare for the interview by completing a Form 308—Prisoner Submission for Parole.

This form is to help to prepare for the questions asked in the interview. The form is not provided to PBQ, unless they ask for it.

After an interview, QCS will write a report that is provided to the PBQ to help them make a decision about parole. This report is called a Parole Board Assessment Report.

Once PBQ have received the accommodation risk assessment, and the parole board assessment report, they will consider an application. If they consider that they need more information, such as a relapse prevention plan, they will write a letter explaining what they need.

## **The Parole Board Queensland considers not to grant parole**

If PBQ are considering not granting parole, they will write a letter to the person in prison explaining their concerns about release.

A person in prison will have 14 days from when they receive this letter to make submissions to PBQ and state clearly why parole should be granted. They can ask for an extension if they need more time.

If someone receives a letter from PBQ considering not granting bail, it is very important that they write back to PBQ addressing each of the concerns the board raised.

Generally, PBQ must decide whether to grant parole within four months (120 days) of receiving a parole application. The board may decide within five months (150 days) if they need more information. For example, if they request a psychiatric opinion about risk to the community.

## **Parole is refused**

If PBQ refuses a parole application, they must give a written notice of the refusal and set a date when the person can reapply. A person can also request a statement of reasons from PBQ within 28 days from when the person in prison receives notice of the refusal.

Incarcerated people in Queensland are not entitled to legal representation when appearing before PBQ. The applicant may apply to appear personally or apply to have an agent appear on their behalf before PBQ. Current practice is that only a handful of applications to appear are granted every year.

## **Types of parole**

### **Exceptional circumstances parole**

Exceptional circumstances parole (s 176 Corrective Services Act) is unusual but available in limited situations. A person may apply on the approved form to a parole board for an exceptional circumstances parole order at any time during their sentence, even before their parole eligibility date. The circumstances have to be serious or extreme and need to have come about after the sentencing process. If serious or extreme circumstances were considered by the sentencing court, they will not form a basis for exceptional circumstances parole.

The explanatory notes to the Corrective Services Act provide two non-exhaustive examples of exceptional circumstances:

- an incarcerated person who develops a terminal illness
- an incarcerated person who is the sole carer of a spouse who contracts a chronic disease requiring constant attention.



Parole boards very rarely exercise this discretionary power. In making an application for exceptional circumstances parole, it is important to provide all relevant supporting evidence such as medical certificates, a letter of the doctor's prognosis in relation to any illness and evidence of proposed living arrangements and support networks.

### Court ordered parole

People sentenced to three years or less will be automatically released on the parole date set by the court, without needing to apply for parole. Court-ordered parole is subject to the conditions listed in s 200 of the Corrective Services Act.

### Parole board applications

People must apply to PBQ for a parole decision in the following circumstances:

- sentenced for longer than three years
- sentenced after 28 August 2006 for less than three years but the imprisonment includes a term for a serious violent offence or a sexual offence
- subject to a court-ordered parole order that has subsequently been cancelled or suspended under the Corrective Services Act.

### Parole eligibility date

An eligibility date is the date on which a person is eligible to be considered for parole and can make a parole application, which may be refused or granted by the parole board. Eligibility dates are generally set by the court (or 50% of the sentence) or:

- for serious violent offence 80% or 15 years
- for life (unless later date set by court):
  - 15 years
  - for repeat child sex offence 20 years
  - for murder of police officer 25 years
  - for multiple murders 30 years.

### Breach, suspension and cancellation

The PBQ may amend or suspend a parole order if they reasonably believe that the person on parole:

- has failed to follow a condition of their parole order
- presents a serious and immediate risk of harm to another person
- presents an unacceptable risk of committing an offence
- is preparing to leave the state without permission.

## Breach of parole process

The following information has been adapted from *Breaches of parole* published by Prisoners' Legal Service.

The Parole Board Queensland will generally make three decisions during the breach of parole process. The first two decisions happen quickly. The third decision takes more time and is only made once you are given the chance to have your say.

### Decision 1

A PBQ member can urgently suspend a parole order without telling the person on parole. An arrest warrant is then issued.

### Decision 2

The full PBQ must reconsider the urgent parole suspension within two business days. The PBQ must decide whether to suspend the parole order or release the person back into the community. If PBQ suspends a parole order, they must write to the person, saying why their parole was suspended and asking for an explanation of the breach, which must be provided within 21 days.

### Decision 3

The PBQ must consider the written submissions and make a new decision. The PBQ can decide to grant, suspend or cancel the parole order. There is no time frame for this decision.

If a person on parole commits an offence whilst on parole for which they are sentenced to another term of imprisonment, their parole is automatically cancelled, even if the parole order has expired by the time they are sentenced. However, time spent on parole before they committed the further offence counts as time served.

## Early discharge

The chief executive of the Department of Community Safety may grant up to seven days early release to a prisoner who has served at least half of their period of imprisonment (s 110 Corrective Services Act). This will normally allow people to catch timely transport where alternative transport options are unavailable on the scheduled release day.

## Prisoners' Grievances

There are very few mechanisms required by law for a formal internal merits review of corrective services decisions. The Queensland Civil and Administrative Tribunal cannot review decisions.

However, there are a number of general complaints systems available for people in prison.

### General manager

The general manager of each prison is responsible for the safe custody and welfare of people in their prison and should be readily available to hear complaints when requested to do so. Complaints to the general manager are made in writing using confidential or privileged mail, a blue letter.

## Ethical Standards Unit

Where a person has a complaint about officer conduct that they believe is in breach of the Officers' Code of Conduct they may make a complaint to the Ethical Standards Unit of QCS. This unit has the authority to investigate complaints pertaining to staff conduct. If there is no satisfactory response from the unit, the matter should be referred to external review.

Complaints to the Ethical Standards Unit can be sent to:

Ethical Standards Unit  
Queensland Corrective Services  
GPO Box 1054  
Brisbane Qld 4001

## Inspectors and chief inspector

The Corrective Services Act provides for the appointment of a chief inspector to coordinate both the official visitor scheme and any investigations of incidents, inspections of prisons and any review of operations and services of prisons. The Corrective Services Act also provides for the appointment of inspectors to carry out these investigations, inspections and reviews. Section 305 of the Corrective Services Act provides that inspectors report to QCS about the results of any investigation and any recommendations. There is no requirement on QCS to have regard to these reports.

## Official visitors

The Corrective Services Act provides that QCS may appoint an appropriately qualified person as an official visitor (OV) for a prison for a period of up to three years. There is no requirement to appoint more than one OV to a prison, but if two are appointed, one must be a lawyer and, if there is a significant proportion of Aboriginal or Torres Strait Islanders, at least one of the OVs must be an Aboriginal or Torres Strait Islander person. At least one of the OVs at a women's prison must be a woman (s 286 Corrective Services Act).

The Corrective Services Act provides that an OV must visit the prison to which they have been appointed at least once per month, unless otherwise directed by the Director-General. The function of the OV is to investigate prisoner complaints at the facility to which the OV is appointed. Official visitors are paid by QCS.

An OV may visit a prison at any time, except when a declaration of emergency is in force, and they can, on request, interview incarcerated people out of the hearing of other persons. The OV may inspect and copy any document kept under the Corrective Services Act that relates to a complaint the OV is investigating, other than a document to which legal privilege applies. Prison staff must not read mail addressed to an OV or listen to an interview between a prisoner and an OV. Prison officers must give OVs reasonable help to exercise their powers under the Corrective Services Act and must advise the OV on their next visit if a person has asked to see the OV in the meantime.

The OV must give a written report to QCS about an investigation, and at least every three months must give a written report summarising the number and type of complaints the OV has investigated.

After investigating a particular complaint, the OV may make a recommendation to the general manager and advise the incarcerated person of the recommendation, but these recommendations are not binding.

## **External Complaints Mechanisms Available to Prisoners**

### **Queensland Ombudsman**

The Queensland Ombudsman can investigate complaints regarding virtually any state government agency, including QCS. Like the OVs, the ombudsman's office has extensive powers of investigation but, in the final analysis, can only report to QCS and to parliament, and make non-binding recommendations.

The ombudsman's office has a free phone line to each prison, whereby people can access a complaints officer at the ombudsman's office directly and make a complaint. This direct line enables the ombudsman's office to initiate enquiries and/or an investigation immediately, although further particulars may be sought in person or in writing.

Officers make visits to the prisons at approximately six-monthly intervals. Through the mechanism of the ombudsman's office, complaints are aimed to be resolved through sustained pressure and negotiation with prison managers, both in the prisons and at the head office. The ombudsman can also undertake in-depth investigations at their discretion.

### **Health Ombudsman**

Complaints about health services provided in prison can be made to the Health Ombudsman.

It is advisable to speak to the health service provider at the prison before lodging an official complaint to see if the issue can be resolved in this way.

Complaints can be made by sending the following details to the Health Ombudsman:

- your name and contact details
- information about the health service provider you are complaining about
- the details of the issue you are complaining about, including when it happened
- any supporting documentation
- information on the steps you have already taken to resolve your complaint.

The Health Ombudsman will try to resolve the issue within 30 days and this may include the following:

- attempt to facilitate local resolution
- attempt to conciliate the complaint
- refer the complaint to the provider's registration board, or another organisation
- formally investigate the complaint
- take immediate action against the provider.

## Queensland Human Rights Commission

Queensland and anyone contracted by the state are classified as protected defendants for the purposes of the *Anti-Discrimination Act 1991* (Qld) (Anti-discrimination Act) in relation to complaints by people in prison or on parole. This means that any complaints of discrimination, sexual harassment or vilification that occur in prison or whilst under supervision (e.g. probation or community service) must first be addressed in writing to the general manager who then has a maximum of four months to resolve the complaint. If still unsatisfied, a written complaint must be made to the OV who has a further month to attempt resolution (s 319F Corrective Services Act). Only after this process has been exhausted can a complaint be made to the Queensland Human Rights Commission (QHRC). This lengthy process does not extend the limitation periods for lodging a complaint with the commission, which remains 12 months from the date of the discrimination, sexual harassment or vilification.

In addition, a test of reasonableness has been specifically defined and applied to instances of both direct and indirect discrimination. Monetary compensation for discrimination, sexual harassment and vilification will only occur when bad faith can be proven, and such compensation will be placed into a victim trust fund (see Civil claims below, the chapter on *Discrimination and Human Rights* and *Discrimination Complaints for Prisoners* by Prisoners' Legal Service).

## Queensland Police

There are two different ways people in prison can contact Queensland Police if they want to report a crime.

Write to the Corrective Services Investigation Unit (CSIU). The CSIU are Queensland Police officers who investigate illegal behaviour and activities within prisons, including the actions of correctional staff.

Complaints can be sent to:

Corrective Services Investigation Unit  
GPO Box 1054  
Brisbane Qld 4001

People who do not want to send a letter can also ring the Crime and Corruption Commission (CCC) for free on the prison Arunta telephone system. They can ask the CCC to investigate a crime, however, the CCC can also make a referral to Queensland Police to investigate the matter.

## Crime and Corruption Commission

The CCC can investigate complaints of official misconduct by officers, staff and management of all prisons, and probation and parole centres.

Official misconduct is defined in the *Crime and Misconduct Act 2001* (Qld) as conduct that, if proved, could be a:

- criminal offence
- disciplinary breach providing reasonable grounds for terminating a person's services.

Misconduct also includes the attempt to corrupt a public officer. Misconduct by correctional officers that may be appropriately referred to the CCC include criminal acts such as assaults or acts of criminal dishonesty, as well as serious disciplinary breaches which might provide grounds for a termination of the officer's employment. Officers employed by QCS are subject to a code of conduct, which is available on the QCS website. The CCC has no jurisdiction to investigate criminal activity within prisons that solely involves inmates or inmates in conjunction with members of the public.

An investigation by the CCC can result in criminal charges being laid, disciplinary action being taken or recommendations being made that corruption strategies be developed. Complaints can also be dismissed as unsubstantiated.

Investigations of complaints may be carried out by civil and police investigators attached to the CCC. Many complaints are referred back to QCS for internal investigation.

## Judicial Review of Corrective Services

Judicial review is not a review of the merits or fairness of a decision, but of the decision's lawfulness (e.g. whether proper procedure has been followed or the right matters have been taken into account by the decision maker). The Supreme Court hears applications for judicial review. The court cannot make a new decision in the place of the appropriate decision maker if it rules that the original decision was flawed, but it can refer the decision back to the original decision maker to make the decision again, properly and in accordance with the law.

A person affected by an administrative decision, which is not excluded by the Corrective Services Act, is entitled to a statement of reasons for that decision under s 32(1) of the *Judicial Review Act 1991* (Qld). The decision maker must provide a statement of reasons if the request was made within 28 days of the receipt of written notice of the decision. Obtaining a statement of reasons is a useful way of clarifying the evidence on which the decision was based and ensuring that all relevant considerations have been taken into account before deciding whether to commence proceedings for a judicial review of a decision. If a person believes a decision to be flawed, it is important to seek legal advice, as there is a substantial body of case law on many of the issues that are reviewable under the Corrective Services Act (for further information see chapter on *Complaints about Government*).

## Compensation Claims whilst in Prison

### Civil claims

Incarceration is not a legal disability and normal timeframes will apply to incarcerated people.

Awards of monetary compensation for a civil claim or compensation for a claim under the Anti-Discrimination Act made against the state and its employees or contractors will be placed into a victim trust fund (s 319N Corrective Services Act) for people in prison or on a probation, parole or community-based order (e.g. a fine option order). This applies to money awarded either during the period of incarceration or arising from matters that took place during this period. A person's debtors, including the State Penalties Enforcement Registry, will be able to claim from this fund as well as eligible victims.

## Workers' compensation

Incarcerated people working in jobs in prison (e.g. cleaning units, working in kitchens) are not considered workers. They are not entitled to workers' compensation and are not protected by the *Fair Work Act 2009* (Cth). If any injuries result from this work, advice should be sought about compensation for personal injury. It is strongly recommended that any prisoner who is injured whilst in prison seek legal advice as soon as possible and obtain legal advice as to their options and statutory time limits before deciding on how to seek redress for their injury.

## Negligence and criminal compensation

Prisoners may be able to sue for compensation where they can establish negligence, although damages will be limited as described above. People in prison should be conscious of the importance of obtaining and preserving evidence relevant to their injury. This may include a request for preservation of camera records, obtaining written statements from witnesses and seeking medical assistance as soon as possible, as well as obtaining medical records under the right to information. Much of this evidence will be destroyed if it is not requested within one month of the injury. Legal advice should be sought as soon as possible in relation to how best to seek redress for the injury and advice and assistance in relation to evidence relevant to any future claim for damages compensation for the injury.

People who are assaulted in prison can apply for victims of crime compensation. Legal advice should also be obtained if the assault was due to negligence by or in connection with the prison.

## Indefinite Detention Orders

The *Dangerous Prisoner (Sexual Offenders) Act 2003* (Qld) enables the Queensland Attorney-General to apply to the Supreme Court for a continuing detention order against a person who is serving the last six months of their period of imprisonment, without the prisoner having committed any further offence. At the initial hearing, the court may order an interim detention order based only on a finding that there are reasonable grounds to believe that the person poses a serious danger to the community if released in the absence of a supervision order. The court, in addition to making an interim detention order, may make a risk assessment order (i.e. an order that the person be examined by two psychiatrists, appointed by the court, who are required to prepare independent reports for the court). The effect of an interim detention order is that it permits a person to be imprisoned beyond the end of their sentence.

At the final hearing of the application, evidence will be provided by the two court-appointed psychiatrists. Sometimes, the prisoner is interviewed by another psychiatrist before the assessment order is sought, and their evidence is also presented. If the court is satisfied that the prisoner, if released in the absence of a supervision order under the DPSO Act, would be a serious danger to the community, it may make either a continuing detention order or a supervision order requiring the prisoner to be released under strict supervision as provided in the DPSO Act. The DPSO Act is crafted to capture most sexual offences, therefore making most sexual offenders potentially subject to indefinite imprisonment or supervision under the Act. It defines 'serious danger to the community' as meaning an unacceptable risk that the prisoner will commit a serious sexual offence if released from



custody without a supervision order being made. A serious sexual offence is broadly defined to mean a sexual offence involving violence or a sexual offence against children.

A continuing detention order differs from an indefinite sentence imposed by a court after a criminal trial and a finding of guilt. An indefinite sentence applies the principles of sentencing as it forms part of the sentencing process. It is clear that imprisonment in that case is related to the penalty imposed upon the prisoner for commission of an offence or offences. The effect of the continuing detention order is that it provides for indefinite imprisonment of a prisoner who has not committed any further offence, and in a process that is not a criminal trial. Under a continuing detention order, the person is imprisoned purportedly for care, control and treatment. It should be noted, however, that by the time the application is brought, the person will have already spent some considerable time in prison. The DPSO Act makes no provisions for care or treatment that in any way differentiates imprisonment under a continuing detention order from imprisonment under sentence.

## Federal Prisoners

A federal prisoner is someone convicted of an offence against Commonwealth law for example social security offences, importation of drugs and terrorism offences. As far as general prison conditions are concerned, they are treated the same way as state prisoners, subject to the same discipline and the same amenities because they are held in state prisons.

## Federal parole

Federal parole will have general and specific conditions. All federal parole orders include the following conditions:

- reporting to a parole officer
- obtaining approval from their parole officer for accommodation and employment
- keeping the parole officer informed of any changes of address or job
- requesting permission from the relevant authorities for any travel interstate or overseas.

## Early release

A federal prisoner can prior to their non-parole period apply for early release:

- early release on licence
- thirty days early release.

Early release on licence is similar to exceptional circumstances parole described above (see s 19AP *Crimes Act 1914* (Cth)).

Exceptional circumstances granted by the federal Attorney-General may include extensive cooperation with law enforcement agencies or development of a serious medical condition which cannot be adequately treated within the prison system. Excellent conduct, remorse or contrition, or family hardship (unless of an extreme kind) would not normally constitute exceptional circumstances.



The person seeking release on licence or their representative should write to the federal Attorney-General's Department setting out the grounds of the application. The Attorney-General may refuse to consider further applications made within one year of the original application, unless they include new material.

## **Revocation (breach) of parole orders and licences**

If a person on parole or licence is convicted of a further offence and is sentenced to more than three months imprisonment, it will result in the automatic revocation of the parole order or licence.

The Attorney-General may also revoke a parole order or licence at any time if there has been a breach of a condition of the order or licence. The Attorney-General will usually give 14 days written notice of the alleged breach to the offender and give them the opportunity to show cause as to why the order or licence should not be revoked. In some circumstances (e.g. the whereabouts of the parolee is unknown) the notice does not have to be given.

## **Escape from custody**

Where a person is in custody, whether on remand or sentenced for a federal offence only, and they escape from prison, the escapee must be charged under federal and not state law. If they are in custody for both state and federal offences (joint prisoners), they can be charged under either state or federal law but not both.

## **Administrative review**

Decisions made by the federal Attorney-General or their delegates are subject to the administrative review procedures outlined in the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The Commonwealth Ombudsman has power to investigate such decisions, and relevant documents are subject to release through the Commonwealth freedom of information legislation.

## **Prisoners in Mental Health Facilities**

The *Mental Health Act 2000* (Qld) (Mental Health Act) provides for a number of situations in which prisoners may be detained in security patients units in hospitals operated by Queensland Health. These include:

- a person on remand awaiting trial, who is in need of treatment for mental illness
- a person charged with criminal offences, who is found by the Mental Health Court to have been of unsound mind at the time of the alleged offence or to be unfit for trial due to a mental illness
- a sentenced person who is found to be in need of treatment for a mental illness.

A prisoner who is also a classified patient under the Mental Health Act, is still eligible for parole. The administrator of the mental health service where the prisoner is receiving treatment must, at least seven days before the end of the prisoner's period of imprisonment or parole eligibility date, give written notice of the ending or parole date to the Director of Mental Health. At the eligibility date, the patient will cease to be a classified patient, unless awaiting the start or continuation of other legal

proceedings for an offence. The patient may, however, continue to be held as an involuntary patient under other sections of the Mental Health Act (see chapter on *Mental Health Laws*).

## Deaths in Custody

When a person dies in the custody of corrective services, the general manager must notify the person nominated as the prisoner's contact person (usually next of kin) as soon as practicable. If the person who died was an Aboriginal or Torres Strait Islander prisoner, the Aboriginal and Torres Strait Islander Legal Service in the area must be notified and, if practicable, an Aboriginal or Torres Strait Islander elder, respected person or healer who is relevant to the person who died (s 24 Corrective Services Act).

There are two investigation processes, which take place following a death in custody:

- police service investigation conducted by police officers, who report to the coroner and, if relevant, the Director of Public Prosecution
- QCS investigation conducted by inspectors appointed by QCS, who report to QCS.

A coronial inquest will be based on the information gathered by these investigations.

### The coroner's inquest

A coroner's inquest is a way for the deceased person's family to find out precisely how the death occurred and to bring the circumstances surrounding a death in custody into the public arena. It is also an opportunity to make recommendations about how to prevent future similar deaths.

Under the *Coroners Act 2003* (Qld), the coroner must investigate the cause and circumstances of any death in prison custody. The coroner has the power to make or arrange for any examination, inspection, report or test that the coroner considers necessary for the investigation.

Following that inquiry (based on a report of the police investigation and a post-mortem examination), the coroner must hold an inquest into the death unless someone has been charged with an offence in which the question of whether the accused caused the death is an issue.

An inquest is a public hearing held to establish:

- the fact that a person has died
- the identity of the deceased person
- when, where and how the death occurred.

The coroner has wide powers in conducting the inquest to require a person to produce documents, to inspect or keep documents for a reasonable period, to order a person to attend an inquest until excused, and to give evidence or produce something. The Coroners Court is not bound by the rules of evidence.

The coroner may comment on anything connected with the death that relates to public safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future. The coroner must give a written copy of their comments to:

- a family member of the deceased person who has indicated that they will accept the document for the deceased's family
- any person who, as person with a sufficient interest in the inquest, appeared at the inquest
- the State Coroner
- the Attorney-General, the minister and the chief executive of QCS.

Findings are also published on the Queensland Courts website. Any person who, in the opinion of the coroner, has a sufficient interest in the subject or result of the inquest (this will usually be next of kin) may attend the inquest, either in person or represented by a solicitor or barrister and may examine and cross-examine witnesses.

## Legal Notices

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