



Visitor access to prisons

Unresolved complaint report under
s 88 *Human Rights Act 2019*

26 October 2022

For public release

Introduction

1. The Commission received a complaint from an individual whose application for access approval to visit a corrective services facility was not approved by Queensland Corrective Services (**QCS**). As a result of QCS's decisions, the complainant was unable to visit his son in prison.
2. The complaint was accepted for resolution under the *Human Rights Act 2019* (Qld) (**HR Act**). The complaint was unable to be resolved.
3. In accordance with section 88 of the HR Act, this report contains:
 - a. the substance of the complaint;
 - b. actions taken by the Commission to attempt to resolve the complaint; and
 - c. details of action the Commissioner considers QCS, as respondent to the complaint, should take to ensure its acts and decisions are compatible with human rights.
4. The QCS was given an opportunity to make submissions in response to the recommendations contained in this report. The QCS's submissions by letter dated 10 October 2022 have been incorporated into this final report.
5. A copy of this report has been provided to all the parties, who must agree before it can be used in any proceeding in relation to a contravention of the HR Act.
6. It is intended that the Commissioner will publish this report under section 90 of the HR Act.

Summary of recommendations

7. QCS's actions and decisions which prevented the complainant from visiting his son in prison potentially limited the complainant's rights to:
 - a. Protection of families (s 26 of the HR Act);
 - b. Privacy and reputation (s 25 of the HR Act);
 - c. Cultural rights – Aboriginal peoples and Torres strait Islander peoples (s 28 of the HR Act).
8. The prisoner also has these rights, with the addition of humane treatment when deprived of liberty (s 30 of the HR Act).
9. Limitations on rights can still be compatible with human rights if they are demonstrably justified. QCS, as a public entity, has obligations to act and decide

compatibly with human rights, and give proper consideration to relevant human rights when making a decision.

10. There are many aspects of the governing legislation and the QCS Custodial Operation Practice Directive that help to ensure human rights are considered and respected in the framework for allowing visitors into QCS facilities. However, based on the allegations made in this complaint, the Commission recommends QCS takes the following action to ensure its actions and decisions are compatible with human rights:
 - a. Ensure decision-making is in accordance with the *Corrective Services Act 2006* (Qld), for example, only suspending access approval if a decision for access approval has first been made and specifying a timeframe for the suspension.
 - b. Ensure requests for reconsideration under the *Corrective Services Act 2006* (Qld) are carried out in accordance with that Act, and that applicants for access approval are advised of their rights to reconsideration and how to access them.
 - c. Mitigate against undue delay and distress caused by the need to obtain a criminal history check, including giving applicants an estimated timeframe for processing applications, providing guidance on the exercise of discretion to give interim approval for a visitor while they are awaiting a decision, and reinforcing the requirement to give procedural fairness to applicants against whom adverse decisions are made on the basis of their criminal history check.
 - d. In the course of the application process, obtain information from applicants about any accommodation they may need to participate in the application process or visit the prisoner.
 - e. In making a decision regarding visitor access that limits rights, include human rights considerations in the decision letter.

Summary of QCS's response

11. QCS acknowledges that as a public entity, it has obligations to act and make decisions which are compatible with human rights, and to give proper consideration to human rights when making a decision. QCS says it currently takes steps to ensure that these decisions are compatible with human rights, in the sense that any limitations are demonstrably justifiable.
12. In relation to the specific issue of access approval to visit a prison, QCS says:

QCS is committed to the critical role of community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders. QCS understands the importance of prisoners maintaining meaningful connections with family members while they are in custody in a corrective

services facility, and that maintaining such connections is an aspect of that humane containment and rehabilitation.

It must be acknowledged that QCS is a true front line public safety agency and our business has a complexity unmatched by many other areas of public administration. It is noted that prisoners are entitled to receive a visit from a personal visit once a week, subject to any limitations imposed, pursuant to the [Corrective Services Act 2006]. That a prisoner is entitled to receive such a visit does not mean that a visitor is automatically entitled to visit, or that the prisoner would like to accept such a visit.'

13. QCS maintains that their actions taken in response to events occurring were justified.
14. Notwithstanding, in relation to this report's recommendations, QCS:
 - a. acknowledges that its decisions were not clearly communicated to C and referenced incorrect provisions of the *Corrective Services Act 2006*;
 - b. agrees that a request for reconsideration of a suspension decision should be properly investigated and determined in accordance with the *Corrective Services Act 2006*, and agrees that the applicant should be advised of their rights of review and how to access them;
 - c. does not agree that providing specific guidance on the exercise of discretion to give interim approval for a visitor is appropriate, although it will consider including natural justice considerations in the personal visitors section of the QCS Custodial Operations Practice Directive;
 - d. is open to amending the approved access approval application form to note that if the applicant needs to discuss the form, they may contact the relevant corrective services facility, which each have dedicated visits processing staff; and
 - e. will consider including human rights considerations in decision letters to applicants.

Substance of the complaint

15. The complaint material outlines the substance of the complaint as follows:
 - a. The complainant (**C**) is an Aboriginal man with a criminal history. C identifies that he is deaf in one ear and has an acute brain injury.
 - b. On 12 May 2021, C applied for access approval to visit his son who was being detained at Arthur Gorrie Correctional Centre (**AGCC**). C says he was particularly concerned for his son's mental health and wanted to provide him with support.

- c. Also on 12 May 2021, C attended AGCC. C was directed to leave following alleged threats to cause damage C made to QCS visit booking staff. C believes his words were taken wrongly and misunderstood.
- d. By letter dated 17 May 2021, C was advised by the Deputy General Manager of AGCC that his 'access approval [had] been suspended under section 157 of the *Corrective Services Act 2006*' as a result of the incident on 12 May 2021. The letter advised that the incident had been forwarded to the Corrective Services Investigation Unit (**CSIU**) and that C's access to AGCC would be suspended for three months and until the CSIU have finalised their investigation. C was advised that he could access virtual visits during this time.
- e. By letter dated 8 June 2021, C was advised by QCS that his son had been relocated to Woodford Correctional Centre (**WCC**) and that C was required to complete a new Form 27 – Application to Visit. The letter noted that C had requested a review of the decision to suspend his visit access and that the review 'has now been finalised'.
- f. By email dated 9 June 2021, C raised with QCS his concerns about the difficulties of driving to Woodford to complete a new Form 27 in person and to again submit to the long process of criminal history checks. In response, QCS initially told C there was no need to complete a new form. However, on 20 July 2021, it appears when C directly contacted WCC he was told he would need to re-apply 'based on [his] conduct at' AGCC. It is alleged that C again became verbally irate with QCS staff.¹
- g. It appears C did not make a further application, but that WCC used their discretion to process C's earlier application for access approval made to AGCC. A criminal history check was obtained. By letter dated 16 August 2021, the Acting Chief Superintendent, General Manager of WCC made a decision under section 157(2) of the *Corrective Services Act 2006* that C poses 'a risk to the security and good order of the facility and you are not permitted access to the Woodford Correctional Centre.' However virtual visits were approved. The reasons given for the decision was C's 'behaviour on 12 May 2021 at Arthur Gorrie Correctional Centre and continued irate behaviour towards QCS staff at Woodford Correctional Centre'. The letter also indicates consideration of C's 'extensive criminal history that includes violence related offences in particular numerous drug possession convictions with [the] most recent being 2018'.
- h. C's complaint to the Commission was lodged on 27 July 2021. C's grievances include the requirement to have criminal history checks in order to visit prisons, the delays criminal history checks cause to the process, and the

¹ As per letter from WCC to C dated 16 August 2021.

impact, particularly the mental health impact, this has on prisoners and their families.

16. In its submissions, QCS sets out its position in relation to the incident occurring at AGCC on 12 May 2021. This position includes that C was made aware by QCS staff that his behaviour was unacceptable and was given several opportunities to de-escalate which were declined. QCS submits that in the circumstances, the actions taken in response to the AGCC incident were justified.
17. Given that this report is concerned with process issues, and makes no findings or recommendations in relation to whether the effect of QCS's response to the AGCC incident was proportionate or warranted, it has not been necessary to set out QCS's position on this issue in full.

Actions taken to try and resolve the complaint

18. The Commission attempted to resolve the complaint between the parties through conducting a conciliation conference.
19. C remained unsatisfied by the outcome of discussions.

Legal framework for visiting a corrective services facility

20. The *Corrective Services Act 2006* (Qld) (**CS Act**) sets out requirements for visiting corrective services facilities.

Access approvals

21. Before visiting a corrective services facility for the first time, a visitor must apply for 'access approval' from the chief executive in the approved form. The chief executive may grant access approval if satisfied that the visitor 'does not pose a risk to the security or good order' of the facility. Access approval may be given subject to conditions, such as only to visit a particular prisoner or at a particular facility.²
22. While waiting for access approval, the chief executive may give the visitor interim access approval to visit a corrective services facility if satisfied it is appropriate in the circumstances.³
23. If the chief executive refuses access approval, he or she may order that the visitor not make a further application for a stated period, which cannot be more than one year. The visitor can seek a review of the decision to refuse access

² *Corrective Services Act 2006* (Qld) ss 155 – 156.

³ *Corrective Services Act 2006* (Qld) s 156A.

approval. The chief executive must advise the visitor of the reconsidered decision.⁴

Criminal history

24. In making a decision on an application for access approval, the chief executive must consider certain matters, including whether the visitor has been convicted for offences relating to escape from custody or while they were visiting a prison⁵ In order to inform themselves, the chief executive may ask the Queensland Police Service (**QPS**) Commissioner to give him or her a written report about the person's criminal history and a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history.⁶
25. If the information is to be used by the chief executive to form a decision, the visitor must be given a reasonable opportunity to know and respond to that information.⁷

Suspension of or changes to access approvals

26. The chief executive can suspend a visitor's access approval in certain circumstances, including if the chief executive reasonably believes the suspension is necessary to preserve the security or good order of the corrective services facility. Generally, a suspension can be up to a year.⁸
27. The chief executive can also amend or revoke access approval if, because of a change in the visitor's circumstances, the visitor poses a risk to the security or good order of the corrective services facility.⁹
28. In both cases, the visitor can ask for reconsideration of the chief executive's decision.

Obligations under the Human Rights Act

29. QCS is a public entity under the HR Act with obligations to:
 - a. Make sure that decisions and actions are compatible with human rights; and
 - b. Give proper consideration to human rights when making the decision.¹⁰

⁴ *Corrective Services Act 2006* (Qld) s 156(6) – (11).

⁵ *Corrective Services Act 2006* (Qld) s 156(2).

⁶ *Corrective Services Act 2006* (Qld) s 334.

⁷ *Corrective Services Act 2006* (Qld) s 337.

⁸ *Corrective Services Act 2006* (Qld) s 157.

⁹ *Corrective Services Act 2006* (Qld) s 157A.

¹⁰ *Human Rights Act 2019* (Qld) s 58(1).

30. To be compatible with human rights, a decision or action that limits human rights must be reasonable and demonstrably justifiable. That is, the limitation must be:
- a. lawful; and
 - b. for a legitimate purpose; and
 - c. necessary and proportionate to achieve that purpose; and
 - d. strike the appropriate balance between preserving the human right and achieving the purpose of the limitation.¹¹
31. Proper consideration requires:
- a. identifying human rights that may be affected by the decision; and
 - b. considering whether the decision would be compatible with human rights.¹²

Discussion and recommendations

Human rights limited

32. The complaint alleges that C was unable to visit his son in prison due to decisions made by QCS. According to the Explanatory Notes to the Corrective Services Bill 2006: 'Visits provide an opportunity for prisoners to maintain contact with family and friends. Visits with family members provide a mechanism for prisoners to maintain family relationships, particularly between incarcerated parents and children.'¹³
33. C's access to visit family members who are in prison is protected under the HR Act by:
- a. The right to protection of families as a fundamental group unit of society.¹⁴
 - b. The right to not have a person's privacy or family unlawfully or arbitrarily interfered with.¹⁵
 - c. As an Aboriginal person, the right not to be denied cultural rights, including to enjoy, maintain, control, protect and develop kinship ties.¹⁶

¹¹ *Human Rights Act 2019* (Qld) ss 8 and 13.

¹² *Human Rights Act 2019* (Qld) s 58(5).

¹³ Explanatory Notes, Corrective Services Bill 2006 (Qld) 13.

¹⁴ *Human Rights Act 2019* (Qld) s 26.

¹⁵ *Human Rights Act 2019* (Qld) s 25.

¹⁶ *Human Rights Act 2019* (Qld) 28.

34. C's son's rights are similarly affected. Although human rights for prisoners are more limited, there are still minimum standards that need to be met to ensure a prisoner's humane treatment when deprived of liberty.¹⁷ This includes reasonable access to visits and communication with family, cultural rights, and support for mental health.
35. The legislative criteria for granting access approval for prison visitors indicates the purpose of the limitation of rights, that is, to preserve the security or good order of the corrective services facility.

Access approval must be given before it can be suspended

36. QCS's decisions of both 17 May 2021 and 16 August 2021 both purport to be decisions under section 157 of the CS Act, that is, decisions to 'suspend' C's access approval.
37. However, there is no indication of access approval first being granted, in order to then be suspended. If such a decision was made, then it was not clearly communicated to the C.
38. Further, the decision of 16 August 2021 does not indicate the length of the suspension. Section 157(2) of the CS Act provides:

The suspension may be –

 - (a) If paragraph (b) does not apply – for a period of up to 1 year; or
 - (b) If the visitor is charged with an offence allegedly committed in a corrective services facility – until the end of the proceedings for the offence.
39. An unlawful decision cannot be justified and is not compatible with human rights. An indefinite suspension of visitation rights is not provided for under the CS Act.

Recommendation 1: A decision under section 157 of the CS Act to suspend access approval must be preceded by a decision to grant access approval. A suspension decision must specify a timeframe for the suspension which, in accordance with section 157(2) of the CS Act, cannot usually exceed 12 months.

QCS response:

QCS agrees that a decision to suspend access approval under section 157 of the CS Act must be preceded by a decision to grant access approval. QCS does not consider that a suspension must specify the timeframe, as the requirement under section 157(2) is that the suspension 'may' be for a period of time. QCS acknowledges that practically, as a matter of course, an applicant would be provided with this time limit in the event a suspension decision is made.

¹⁷ *Human Rights Act 2019* (Qld) s 30.

QCS notes that an interim decision for access approval under section 156A of the CS Act can only apply where a decision has not yet been made under section 156 of the CS Act for access approval.

In relation to the decision made on 17 May 2021, QCS says:

- a. it was the intention of the delegate of the chief executive to have suspended, pursuant to section 157 of the CS Act, the interim access approval which the delegate had the power to grant to C under section 156A;
- b. it is acknowledged that this was not clearly communicated to C;
- c. it is acknowledged that the decision as communicated to C referenced the incorrect provision of the CS Act.

In relation to the decision made on 16 August 2021, QCS says:

- a. it was the intention of the delegate of the chief executive to have refused C access to Woodford Correctional Centre pursuant to section 156(1) of the CS Act;
- b. it is acknowledged that this was not clearly communicated to C; and
- c. it is acknowledged that the decision as communicated to C referenced the incorrect provision of the CS Act.

QCS acknowledges and agrees with the statement at paragraph 39 of this report.

Request for reconsideration should be properly dealt with

40. C sought a review of the decision dated 17 May 2021, which was 'finalised' when C's son was transferred to WCC. AGCC also indicated that the incident of 12 May 2022 had been referred to the CSIU for investigation but the outcome of that investigation was never communicated to the C.
41. The C was entitled to reconsideration of the suspension decision¹⁸ and to procedural fairness in relation to any adverse findings as a result of the CSIU investigation. Had that occurred:
 - a. Any error in suspending access approval without a grant of access approval first being made might have been identified;
 - b. The distress caused by the confusion of whether C had to make a further access application might have been avoided;
 - c. The C's concerns that he had been misunderstood regarding the alleged incident at AGCC on 12 May 2021 would have been properly considered.
42. The decision letter of 16 August 2021 also does not refer to C's rights of review under s 157. The decision letter dated 17 May 2021 contains a reference to the visitor's rights to review the decision made in that instance.

¹⁸ *Corrective Services Act 2006* (Qld) s 157(6)-(8).

43. Meaningful and accessible review rights form an important consideration as to whether a decision that limits human rights is least restrictive and therefore justified.

Recommendation 2: A request for reconsideration of a suspension decision should be properly investigated and the decision confirmed, amended or cancelled as provided for under the CS Act. Further, the applicant should be advised of their rights of review and how to access them.

QCS response:

QCS acknowledges and agrees with this recommendation and says it has already addressed this in its current policies and procedures.

QCS advises that there is a letter for use by delegates which sets out an applicant's rights of review in such decisions and how to access them. This is to be used as a guide and is not intended to take the place of proper investigation and decision making.

QCS acknowledges and agrees with the report's statement at paragraph 43.

Mitigate against undue delay and distress caused by criminal history checks

44. C alleges that he experienced unnecessary delay in receiving a decision regarding his access approval application because of the need to obtain a criminal history. He felt the process was additionally delayed because of the requirement to make a second application for access approval when his son was transferred, and his understanding that this would again restart the process of obtaining a criminal history. Unreasonable or unnecessary delay will amount to an unjustified limitation of rights.
45. The Commission acknowledges that criminal histories will generally be necessary to make a decision on an application for access approval and that delay can be the result of QPS processes.
46. The current Custodial Operations Practice Directive, Visitors to a Facility – Visits Process (**the QCS Directive**) published 7 July 2022¹⁹ has the following provisions relevant to mitigating delay:
- a. Each corrective services facility must nominate a person to be responsible for coordinating criminal history checks of visitors to the facility.²⁰

¹⁹ Queensland Corrective Services, *Custodial Operations Practice Directive: Visitors to a Facility – Visits Process*, version 08, 07/07/2022. Versions of the Practice Directive in place at the time the complaint allegations took place contain similar provisions.

²⁰ Ibid 7.

- b. Where a criminal history check has been completed and a visitor has been approved to visit a prisoner at a corrective services facility in Queensland, the visitor is not required to undertake another criminal history check (other than a twelve monthly update) before being approved to visit a prisoner at another corrective services facility.²¹
 - c. A separate process for Elders who have historical criminal offences.²²
 - d. Reference to the chief executive's power to grant interim access approval while an application for access approval is being considered under section 156A of the CSA.²³
47. In this case, C first made an application to visit AGCC on 12 May 2021. On 17 May 2021, that process was suspended for 3 months, until 17 August 2021. On 8 June 2021, C was advised his son had moved to WCC and was later given conflicting information about whether he would have to make a fresh application. Ultimately, C did not make a further application and a decision regarding access to WCC was made on 16 August 2021.
48. Interim approval under section 156A of the CS Act is an important mechanism to ensure delays in certain circumstances are not unreasonable, however, there is no publicly available criteria about when this discretion is applied.
49. The CS Act also provides that persons about whom criminal history checks are obtained be afforded natural justice, and that they have an opportunity to respond to information contained in their criminal histories. This is not dealt with in the QCS Directive in relation to personal visitors, although it does in relation to non-personal visitors.²⁴

Recommendation 3: Mitigate against undue delay and distress caused by the need to obtain criminal history checks by:

- giving visitors estimated timeframes for processing access approval applications to avoid frustration and manage expectations;
- giving guidance in the QCS Directive for the exercise of discretion to give interim approval for a visitor, including consideration of human rights, and corresponding amendment to the application form to allow the applicant to provide relevant information;
- reinforcing in the QCS Directive the requirement that a visitor be given an opportunity to respond to criminal histories, where they will be relied upon by the chief executive to refuse or limit access approval.

²¹ Ibid 7.

²² Ibid 8-9.

²³ Ibid 25-26.

²⁴ Ibid 18.

QCS Response:

QCS only agrees to consider the third point of this recommendation.

In response to the provision of decision making guidance for interim approvals, QCS says:

It is noted that section 156A of the CS Act makes provisions for interim access approval in circumstances where the chief executive (or delegate) is satisfied that it is **appropriate in the circumstance**. Whether or not interim access approval will be appropriate in the circumstance is something which the delegate will consider, based on the facts of the matter at hand.

...It is noted in the COPD [QCS Directive] that:

“The access approval process can take a significant amount of time therefore the Chief superintendent (or delegate) should consider granting an interim access approval after an application is made.

This access should be facilitated wherever possible and only withheld where there is information which indicates the applicant is a threat to the security and good order of the centre. This information can be sourced through, but not limited to, a review of IOMS and/or an Intel check, refer s 156A of the CSA.

A personal visit under the interim access approval must be a non-contact visit unless it is impracticable having regard to the facilities at the correctional centre.”

As granting interim access approval is a matter for the Chief Superintendent or delegate, it is not considered appropriate to provide specific guidance in the COPD as to the exercise of the Chief Superintends (sic) discretion. By not providing such guidance – which may be in the form of step-by-step considerations as an example – QCS ensures that the decision-maker exercises their power independently and based on the circumstances at hand. At an operational level, Chief Superintendents or delegates may contact a superior officer within QCS Head Office for guidance if it is required. This approach is considered and allows flexibility.

QCS further notes that C was permitted to have virtual visits and phone calls with his son. QCS considers the addition of virtual visits as an important step taken in recent years to ensure the familiar connection is maintained for prisoners and to support their associated human rights.

QCS says it will consider taking steps to include natural justice considerations in the personal visitors section of the QCS Directive. At an operational level, QCS advise that there are dedicated visits staff at each corrective services facility and if there are any questions in relation to the criminal history of an applicant, QCS staff may contact an applicant if considered appropriate.

Make reasonable accommodations for visitors

50. C indicates in the complaint material that he has a hearing impairment and a brain injury. Had this been known by QCS staff and decision makers, reasonable accommodations might have been made to avoid C's rising frustration at the application process and alleged behaviour.
51. Further, information about any reasonable accommodations C might need to access visits will facilitate a successful visit and preserve the security or good order of the corrective services facility.
52. Obtaining information of this nature further assists in protecting people's rights to equality and ensuring people are treated without discrimination, directly or indirectly.

Recommendation 4: Amend the application form for approval access, or incorporate into the information gathering process, the ability for visitors to indicate any accommodation they may need to participate in the application process or visit the prisoner.

QCS response:

QCS notes that it has dedicated visits processing staff who can assist visitors with enquiries and completing forms, and also has fact sheets at each corrective services facility and online resources as to the visits process. QCS says it is open to amending the approved form to note that if an applicant needs to discuss the form, they may contact the relevant corrective services facility.

Give proper consideration to human rights

53. Human rights, and the human rights obligations of QCS, are set out at the beginning of the QCS Directive. The requirement to consider human rights are reinforced throughout the QCS directive when making decisions:
 - a. to grant access approval;²⁵
 - b. to refuse access approval;²⁶
 - c. to suspend access approval;²⁷
 - d. to revoke access approval.²⁸

²⁵ Ibid 19.

²⁶ Ibid 21.

²⁷ Ibid 22.

²⁸ Ibid 22.

54. Under the QCS Directive, the consideration of human rights in making the decision must be recorded on IOMS.
55. In the case of *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QCS 273, the court held that proper consideration be approached in a common sense and practical way, and involves:
 - a. identifying which rights of the person may be affected by the decision;
 - b. seriously considering the impact of the decision on human rights;
 - c. identifying countervailing interests or obligations;
 - d. balancing competing private and public interests.
56. The decision letters included with the complaint material, dated 8 June 2021 and 16 August 2021, do not include any reference to human rights.
57. While there is no requirement under the HR Act to inform the applicant of the consideration given human rights by the decision maker, the Commission considers this to be best practice. It both fulfils the objects of the Act, including to build a culture of human rights, supports transparent and accountable decision making, and is consistent with the right to receive information under section 21(2) of the HR Act.

Recommendation 5: In making a decision regarding visitor access that limits rights, include human rights considerations in the decision letter to the applicant.

QCS response:

QCS says that it will consider including human rights considerations in correspondence issued on this point.

QCS clarifies that the fact that the letters issued in this case did not include such statements does not, on its face, indicate that human rights were not considered.