Operational Policy Framework

Corrective Services

Prisons

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# Introduction

This Operational Policy Framework (**Framework**) aims to simplify and enable a consistent approach to the formulation of Operational Instruments that allows for staff at prisons to know what is required of them.

It outlines how Operational Instruments will be developed that are consistent with the *Prisons Act 1981* and *Prison Regulations 1982*, ensuring staff know the job they have to do, and how they need to do it. This encourages a safe and positive working culture and maintains the security and good order of all prisons.

The Framework supports and ensures a safer community by focusing on:

* Security of prisoners in correctional facilities
* Safety of our staff
* Safety of prisoners
* Rehabilitation.

Establishing safe, decent and humane prisons that are conducive to rehabilitation is the best way to reduce reoffending. In the longer term, reduced reoffending means a safer community; increased economic benefits from a reduction in crime and incarceration; and fewer traumatised victims.

The objectives of the Framework are to:

* Ensure the Operational Instruments are integrated, unambiguous and consistent with the *Prisons Act 1981* and *Prison Regulations 1982*
* Provide clear instructions to staff of the expectations regarding what, why and how they should perform their job
* Support continuous improvement and the dynamic nature of correctional services by enabling Operational Instruments to be updated in response to changes
* Create a single point of accountability for the development and release of Operational Instruments.

# Scope

This Framework applies to all prisons and the Court Security and Custodial Services contractor, administered by Corrective Services.

## Benefits

The Framework assists in:

* Maintaining safe and secure prisons
* Ensuring staff have a clear understanding on the requirements of the prison
* Reducing the risk of adverse judicial review outcomes arising from legislative non-compliance
* Expanding the capacity to deliver improved prisoner outcomes through integrated Operational Instruments
* Consistent judgement and application of prison services
* Ensuring compliance activities and checks are clearly aligned to Operational Instruments.

# Principles

The key principles that underpin the Framework:

## The responsible offender

The responsible offender approach to managing prisoners recognises that imprisonment and the justice system can inherently limit a prisoner’s personal responsibility. By promoting and encouraging personal responsibility, a prisoner’s opportunities for learning to make responsible choices, and to learn the effects of these choices, are increased and help them to lead better lives as members of the community.

## Decency and humanity

The decency and humanity approach emphasises that prisoners are provided with a reasonable quality of life while in Corrective Services’ care and are protected from harm. It requires that prisoners are treated lawfully, equitably and without prejudice.

## Procedural fairness

Procedural fairness is concerned with the process used by a decision maker, rather than the actual outcome reached. It requires a fair and proper process be used when making a decision.

## Accountability and transparency

The accountability principle holds people answerable for their actions and decisions by requiring that these are able to be explained, clarified and justified. Transparency is essential to accountability because it ensures that clear and accurate information is made available in a timely fashion.

# Strategic Framework 2021-2023

## The Framework

The Framework aligns to the Department of Justice Strategic Framework 2021-2023 key result areas for:

* Improved service delivery and collaboration
* Improved community safety and security
* Sustainable strategies and outcomes
* Improved community understanding of
* equal opportunity and human rights

# National and international references

When developing Operational Instruments, Corrective Services may consider, where appropriate and relevant to the specific subject matter of the policy, national and international material, including (but not limited to) the following:

* [Guiding Principles for Corrections in Australia 2018](http://justus/intranet/prison-operations/Documents/guidelines-for-corrections-in-aus.pdf)
* [United Nations Standard Minimum Rules for the Treatment of Prisoners (**Mandela Rules**)](http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf)
* [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)**[Bangkok Rules](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)**[)](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)
* [United Nations Standard Minimum Rules for Non-custodial Measures (**Tokyo Rules**)](http://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf)
* [United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](https://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf)
* [Department of Justice – Healthy Prisons Framework](http://justus/intranet/department/standards/Documents/Healthy-Prisons-Framework.pdf)
* [Department of Justice – Women in Prison Standard](http://justus/intranet/department/standards/Pages/ops-standards.aspx)
* National and international Corrective Services policies and procedures.

# Governance

The hierarchy of governance materials for prisons is set out in Figure 1.

Figure 1: Governance hierarchy – Prisons



## Legislation

The following key legislation provides the legislative authority for the management of prisons and prisoners in Western Australia:

* *Prisons Act 1981*
* *Prisons Regulations 1982*
* Rules (created under *Prisons Act 1981* s 35)
* Standing Orders (created under *Prison Act 1981* s 36(3) and 37)
* *Court Security and Custodial Services Act 1999*
* Other legislation that may apply in the context of a prison or the management of prisoners.

## Prison Rules

### What are Prison Rules?

Section 35 of the *Prisons Act 1981* allows, in summary, for rules to be made for the management, control, and security of prisons generally or a specified prison and/or of prisoners and management of officers of the Department of Justice (the Department). In practice, these rules are titled "Prison Rules".

Prison Rules are made by the Chief Executive Officer with the approval of the Minister for Corrective Services.

### When are Prison Rules made?

Prison Rules are rules, made for the management, control, and security of prisons generally or a specified prison, or for the management, control, and security of prisoners and the management of officers of the Department, including when the Chief Executive Officer wants to confer a discretionary authority on a person or class of persons. Prison Rules may specify and regulate the privileges which may be extended to prisoners and may provide for the withdrawal of such privileges.

In the event there is an inconsistency between a Prison Rule and the *Prisons Act 1981* and/or the *Prison Regulations 1982,* the rule has effect to the extent of the inconsistency, subject to the regulation. In simple terms, the *Prisons Act 1981* and the *Prison Regulations 1982* takesprecedence over the Prison Rule.

## Standing Orders

### What are Standing Orders?

The Superintendent of a prison may, with the approval of the Chief Executive Officer or delegate, make and issue written standing orders with respect to the management and routine of that prison[[1]](#footnote-1). The Superintendent may also issue orders to officers and prisoners that are necessary for the management and routine[[2]](#footnote-2) of that prison, as well for the good government, good order and security of the prison[[3]](#footnote-3). Such Standing Orders are in practice, and in this policy, referred to as Standing Orders.

### When are Standing Orders required?

As reference in s 36(3) and s 37 *Prisons Act 1981*, Superintendents may develop and implement Standing Orders to reflect the site specific conditions and risks such as managing different prisoner cohorts and security rating. Standing Orders provide a mechanism for localising Commissioner’s Operating Policy and Procedures (**COPPs**) but should be consistent with the content. Standing Orders assist staff understand the job they have to do, and how they need to do it at the respective prison.

## Commissioner’s Operating Policy and Procedures

### What are Commissioner’s Operating Policy and Procedures?

The Commissioner of Corrective Services has responsibilities delegated under the *Prisons Act 1981* and the *Prison Regulations 1982,* for the administration of that legislation[[4]](#footnote-4).

COPPs are the primary Operational Instruments for the management of prisons and prisoners. The COPPs are policy documents that provide instructions to staff as to how the relevant legislative requirements are implemented. COPPs will standardise the minimum service requirements across all prisons and clearly stipulate the discretion afforded to Superintendents when drafting Standing Orders.

### When are COPPs made?

COPPs operationalise the *Prisons Act 1981* and the *Prison Regulations 1982* and other relevant legislation to enable staff understand the job they have to do, and how they need to do it.

## Commissioner’s Instructions

### What are Commissioner’s Instructions?

Commissioner’s Instructions are interim Operational Instruments that support COPPs and provide a temporary instruction that overrides a current policy process or procedure. The Commissioner’s Instructions are policy documents.

### When are Commissioner’s Instructions made?

Commissioner’s Instructions are created when there is an urgent need to amend a COPP, which is not likely to be changed due to circumstances beyond the control of Operational Policy. Reasons and requirements for urgent amendments to COPPs could include but are not limited to:

* Response to a critical incident
* Feedback from operational staff
* Technological change
* Legislative change
* Response to recommendations or relevant Inquiries, Commissions and Inspectorates.
* Directives from the Director General or Commissioner

The Commissioner’s Instruction will provide staff with a range of information about the amendment including rationale, scope, any related/impacted COPPs and the commencement date. Commissioner’s Instructions will be issued with an expiry date no greater than 6 months. Within this time period, the corresponding COPPs shall be amended and the Commissioner’s Instruction revokedupon approval and broadcast of the amended COPP.

Commissioner’s Instructions are the only authorised method of issuing changes to COPPs. No other form of Operational Instruments are to be issued without approval from the Commissioner of Corrective Services and registration through Operational Policy to avoid, so far as possible, inconsistency with legislation or with other Operational Instruments.

# Other Departmental Frameworks

## Frameworks and policies external to Operational Policy

As the Department of Justice strives to improve service delivery in line with the Strategic Framework, areas outside of Operational Policy may require business area specific policies or frameworks. Current examples include the Security Management Framework, Emergency Management Framework and ARMS Manual.

The owners of such Frameworks or policies shall ensure that they do not contradict COPPs or other documents provided for in the Operational Policy Framework.

Where new or amended business area specific policies or frameworks are intended business areas should consult with Operational Policy to consider and agree on the most appropriate method for implementing such documents.

Where it is intended that policies or procedures from another Departmental Framework shall supersede or replace a COPP refer to section 7.4

# Process

## Development

Operational Policy is responsible for the development of Prison Rules and, COPPs, with Superintendents responsible for the development of Standing Orders. Prison Rules, COPPs and Commissioner’s Instructions are drafted by Operational Policy, and developed in consultation with internal and external subject matter experts and operational staff, and with legal advice as required. COPPs Commissioner’s Instructions and Standing Orders must be written in plain English and clearly explain what needs to be done, who will do it and when.

The development or amendment of Prison Rules, COPPs and Commissioner’s Instructions are also subject to a Diversity Impact Assessment where applicable (refer [Section 6](#_Diversity_Impact_Assessment)).

The process to develop or amend Prison Rules, COPPs and Commissioner’s Instructions is provided in a flow chart in [Appendix 1](#_Appendix_1_–) and the process to develop or amend Standing Orders is provided in the flow chart in [Appendix 2](#_Appendix_2_–).

## Security status

Prison Rules, COPPs and Standing Orders cover a range of operational procedures, processes and methodologies. These instruments may be marked as ‘Restricted Staff Only’ for the good government, good order, and security of the prison. This may also apply to a Commissioner’s Instruction where appropriate. Where requests are made to Operational Policy by persons or organisations for a restricted instrument as listed above, the request shall be referred as follows:

* For a Summons or Order to Produce send to: ‘InformationRelease@justice.wa.gov.au’
* Any other type of request, send to ‘FOI@justice.wa.gov.au.’
* For both referrals cc in ‘dcoperationalsupport@justice.wa.gov.au’.

## Approval

Prison Rules will be approved by the Director General and the Minister for Corrective Services.

COPPs and Commissioner’s Instructions will be approved by the Commissioner of Corrective Services.

Once the Standing Orders have been reviewed by Operational Policy, they will be approved by the respective Deputy Commissioner for public prisons or Assistant Director Private Prisons Contract Management for private prisons, as delegated by the Chief Executive Officer.

## Amendment and revocation

An amendment and/or a revocation to existing Prison Rules, COPPs and Commissioner’s Instructions must be raised with Operational Policy. Operational Policy will identify the impact and risks associated with the amendment and/or revocation request.

The Deputy Commissioner Operational Support will, on behalf of Operational Policy, provide to the Commissioner of Corrective Services a submission outlining the rationale, impact of the proposed amendment and/or revocation and a recommendation in relation to the proposed amendment and/or revocation. Amendments and revocations of:

* Prison Rules will require the Minister’s approval
* COPPs and Commissioner’s Instructions will require the Commissioner of Corrective Services’ approval
* Standing Orders will require approval from the relevant Deputy Commissioner’s or Assistant Director Custodial Contracts Management.

An amendment and/or a revocation to a Standing Order is the responsibility of the Superintendent.

Where the revocation of an existing Prison Rule, COPP or Commissioner’s Instruction is agreed upon by Operational Policy and the revocation is approved by the Commissioner as per this section, Operational Policy shall ensure that appropriate communication with the applicable business areas takes place. This can include:

* Links to the superseding policy
* Redirection requests with DOJ Online Services

## Recording and accessibility

The Department will maintain a central registry of all Prison Rules, COPPs and Commissioner’s Instructions on the Department’s internet[[5]](#footnote-5) site and intranet.

The intranet page incorporates all the policies and procedures into a single location with the Operational Instruments grouped under headings that are user friendly for frontline officers. The issuing of hard (paper) copies is to be minimised due to the likelihood of out-dated or revoked instruments remaining in circulation.

All relevant Operational Instruments are to be published at each prison in such a manner as to bring them to the attention of the prisoners. Each prison will take reasonable steps to have Operational Instruments made known to every prisoner who is illiterate and, for every prisoner who does not understand English, in a language that the prisoner understands.

## Currency

Significant risks can arise if Prison Rules, COPPs and Standing Orders are not kept up to date. Operational Policy will be the single source accountable for maintaining the currency of Prison Rules and COPPs, with Superintendents responsible for maintaining the currency of Standing Orders. Existing Operational Instruments will be amended or revoked when there is a catalyst for change.

Urgent changes to COPPs are facilitated by the development of a Commissioner’s Instruction. The process to amend Prison Rules and COPPs is provided in [Appendix 1](#_Appendix_1_–) and the process to amend Standing Orders is provided in [Appendix 2](#_Appendix_2_–).

## Version control

Every published Prison Rule, COPP and Standing Order must have a version history. The version history records the following:

* Version number
* Primary Author
* Description of version
* Date Completed
* Effective Date

# Diversity Impact Assessment

Corrective Services has a legal responsibility to ensure non-discrimination in a range of areas including the way services are delivered. An impact assessment of an Operational Instrument that is new or being revised is a practical way for Corrective Services to promote equality and awareness of the rights of diverse service users, in particular Aboriginal and Torres Strait Islanders and ethnic and other social minority groups, and to ensure compliance with Federal and State discrimination and equal opportunity legislation.

The development or amendment of all Prison Rules and COPPs therefore includes an assessment of the impact of the instrument on diversity and substantive equality, with particular attention to non-discrimination on the grounds of race, gender, and impairment.

Assessments are coordinated and carried out by Operational Policy and the use the Diversity Impact Assessment template (available from [Operational Policy](mailto:DCSOSP@justice.wa.gov.au)) developed in accordance with the Equal Opportunity Commission guidelines[[6]](#footnote-6). To provide diverse perspectives, where possible the group conducting the Diversity Impact Assessment will include a mix of female and male representatives from internal and external stakeholders.

# Assurance

Controls and compliance with the Operational Instruments created in accordance with this Framework will be monitored in accordance with the Department’s Assurance Framework.

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# Glossary and acronyms

| Term | Definition |
| --- | --- |
| Chief Executive Officer | Director General of the Department of Justice. |
| Commissioner’s Instruction | Interim Operational Instruments that support COPPs and provide the parameters for how legislation will be applied for the management of prisons and prisoners. |
| Commissioner of Corrective Services | The position designated by the Director General as responsible for the management of the Corrective Services Division of the Department of Justice. The Commissioner also holds the title of Deputy Director General. |
| Commissioner’s Operating Policy and Procedure (COPP) | Operational Instruments that provide instructions to staff on how the relevant legislative requirements are implemented. |
| Corrective Services | A division of the Department of Justice that provides support to the justice system and the community of Western Australia by ensuring the security and safety of detainees and prisoners as well as offenders on community-based orders, with a focus on rehabilitation. |
| Court Security and Custodial Services contractor | The organisation engaged to provide the services under the *Court Security and Custodial Services Act 1999*. |
| Deputy Commissioner Adult Male Prisons | The position designated by the Commissioner as responsible for the management of the Adult Male Prisons Directorate within the Corrective Services Division of the Department of Justice. |
| Deputy Commissioner Operational Support | The position designated by the Commissioner as responsible for the management of the Regulation and Operational Support Directorate within the Corrective Services Division of the Department of Justice. |
| Deputy Commissioner Women and Young People | The position designated by the Commissioner as responsible for the management of the Women and Young People Directorate within the Corrective Services Division of the Department of Justice. |
| Operational Instruments | Inclusive of Prison Rules, Commissioner’s Operating Policies and Procedures and Commissioner’s Instructions. |
| Operational Policy | An administrative branch of Corrective Services responsible for the development of Operational Instruments for the adult and youth custodial operational areas. |
| Staff | All persons employed by the Department of Justice. Also includes all contract workers authorised by the Commissioner of Corrective Services. |
| Standing Order | Legislated Operational Instruments where the Superintendent of a prison may, with the approval of the Chief Executive Officer, make and issue written standing orders with respect to the management and routine of that prison |
| Superintendent | The Superintendent as defined in section 36 of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html)and includes any reference to the position responsible for the management of a private prison under Part IIIA of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html). Does not extend to the Officer in Charge of a prison. |
| Prisoner | As defined in s 3 *Prisons Act 1981.* |
| Prison Rules | Legislated Operational Instruments providing the required authority to perform a function for the management, control, and security of a prisoner and/or of a prisoner. |

# Document information

## Document version history

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Version no** | **Primary author(s)** | **Description of version** | **Date completed** | **Effective Date** |
| 1.0 | Operational Policy | Approved by Commissioner, Corrective Services | 22 November 2019 | N/A |
| 2.0 | Operational Policy | Approved by A/Director Operational Policy, Compliance and Contracts | 9 April 2020 | 9 April 2020 |
| 3.0 | Operational Policy | Updated and approved by A/Director Operational Policy, Compliance and Contracts | 23 August 2023 | 24 August 2023 |

Appendix 1 – Creating or amending Prison Rules COPPs and Commissioner’s Instructions

Appendix 2 – Creating or amending Standing Orders

1. s 37 *Prisons Act 1981* [↑](#footnote-ref-1)
2. S 36(3) *Prisons Act 1981* [↑](#footnote-ref-2)
3. s 36 *Prisons Act 1981* [↑](#footnote-ref-3)
4. <http://justus/intranet/prison-operations/Pages/ac-delegations.aspx> [↑](#footnote-ref-4)
5. Staff only / restricted COPPs will not be published on the Department’s internet. [↑](#footnote-ref-5)
6. <http://www.eoc.wa.gov.au/substantive-equality/resources> [↑](#footnote-ref-6)