

## Custodial Operations Policy and Procedures

### 3.8 Transgender and intersex inmates

#### Policy summary

A person received into custody must be managed as the gender with which they identify at the time of their incarceration.

Recognised transgender, transgender and intersex inmates are to be managed according to their identified gender in all stages of incarceration to provide best-practice, non-discriminatory, safe and secure management. This includes the form of address, escorts, placement assessment, searching and urinalysis, clothing and buy-ups, medication and health services, rehabilitation and integration, and access to information.

This policy also acknowledges and provides guidance for persons that do not identify as either male or female.

#### Management of Public Correctional Centres Service Specifications

Service specifications	Decency and respect
	Safety and security

## Scope

This section applies to all correctional centres and other facilities administered by or on behalf of Corrective Services NSW (CSNSW).

It also applies to all CSNSW employees, and where relevant to other personnel such as, Justice Health & Forensic Mental Health Network (JH&FMHN), contractors, subcontractors, and visitors.

# Table of contents

<b>1</b>	<b>Transgender and intersex inmates</b>	<b>4</b>
1.1	Inmate management	4
1.2	Form of address	4
1.3	Escorting	4
1.4	Reception, screening and induction	5
1.5	Placement assessment	5
1.6	Searching and drug testing	6
1.7	Clothing and buy-ups	7
1.8	Access to medication and health services	7
1.9	Rehabilitation and integration	8
1.10	Access to information	8
<b>2</b>	<b>Forms and annexures</b>	<b>9</b>
<b>3</b>	<b>Related COPP</b>	<b>9</b>
<b>4</b>	<b>Related documents</b>	<b>9</b>
<b>5</b>	<b>Definitions</b>	<b>9</b>
<b>6</b>	<b>Document information</b>	<b>11</b>

# 1 Transgender and intersex inmates

## 1.1 Inmate management

A person received into custody must be managed as the gender with which they identify at the time of their incarceration regardless of their identified gender in previous periods of incarceration.

A recognised transgender person **must** be treated as a member of the sex recorded on their identification documents (e.g. birth certificate, birth registration) showing that they are a recognised transgender person.

Transgender and intersex inmates are to be managed according to their identified gender. Self-identification as a member of the opposite gender is the only criterion for identification as transgender.

If, during their incarceration, an inmate makes an application to be identified and treated as a transgender person, the inmate is to be treated as a transgender person who has just been received into custody with all standard and reception screening and induction procedures to be redone.

This policy also acknowledges and provides guidance for persons that do not identify as either male or female.

Recognised transgender, transgender and intersex inmates will have the same classification and placement options, and the same access to services and programs as all other inmates in the correctional centre where they are housed.

## 1.2 Form of address

Recognised transgender inmates are to be addressed by name and according to their recognised sex.

Transgender and intersex inmates are to be addressed by their chosen name and according to their identified gender. Male-to-female transgender inmates are not to be called by their male given names (regardless of what is recorded on their warrant file) or referred to as 'he'; they are to be called by their female names and referred to as 'she'. A similar principle applies for female-to-male transgender inmates.

All accommodation records are to be amended to reflect the inmate's identified gender.

[REDACTED]

## 1.3 Escorting

A recognised transgender person **must** be treated as a member of the sex recorded on their identification documents (e.g. birth certificate, birth registration) and be

escorted as such. If no identification documents are available, the inmate is to be treated as a transgender inmate until the necessary documents are available.

Until transgender inmates, intersex inmates and inmates who do not identify as either male or female, have completed the induction and screening process and have been assigned to a correctional centre, they are to be kept separated from all other inmates during escorts. This is to ensure the safety of all inmates and avoid the risk of physical or sexual assault incidents occurring during transit of:

- recognised transgender, transgender and intersex inmates from other inmates
- other inmates from recognised transgender, transgender and intersex inmates.

When the induction, screening and assessment has been completed and the inmate's placement decided:

- male-to-female and female-to-male transgender inmates assigned to a female correctional centre may be escorted with other female inmates, if the governor determines that there are no known safety or security concerns
- male-to-female and female-to-male transgender inmates assigned to a male correctional centre are to be kept separate from all other inmates during escorts to avoid the risk of physical or sexual assault by other inmates in transit
- an inmate who does not identify as either male or female are to have escort conditions determined according to the assessment finding/s and placement in either a male or female centre (**refer to COPP section 19.1 General escort procedures**).

## 1.4 Reception, screening and induction

A recognised transgender inmate received into custody who has identification proof showing that they are a recognised transgender person, is to be sent to a correctional facility of their recognised sex.

All recognised transgender inmates received into custody who do not have identification proof showing that they are a recognised transgender person and who have a previous arrest/custody record as a different sex, must be sent to the Metropolitan Remand and Reception Centre (MRRC) for assessment and determination of placement.

Inmates who do not identify as male or female, who are received into custody must be sent to the MRRC for assessment and determination of placement.

For further information refer to the *Offender Classification and Case Management Policy and Procedures Manual* and **COPP section 1.1 Reception procedures**.

## 1.5 Placement assessment

An intersex person or a person who self-identifies as transgender has the right to be housed in a correctional facility of their gender of identification unless it is determined through classification and placement that the person should more appropriately be

placed in a correctional centre of their biological sex. The decision for this placement will be based on:

- the nature of their current offence and criminal history (for example, crimes of violence and/or sexual assault against women or children)
- custodial history (for example, previous behaviour in custody which impacted on the safety of other persons or the security of the correctional centre)
- perceived risk(s) to the continuing safety of the transgender inmate and/or other inmates.

When assessing a male-to-female transgender inmate, intersex inmate or an inmate who does not identify as either male or female for placement in a female correctional centre, the Classification & Placement Team (CPT) from Silverwater Women's Correctional Centre must take part in the CPT assessment process at the MRRC.

Inmates identified as or suspected of having cognitive impairment and who identify as transgender, intersex or neither male nor female, must have their capacity for decision-making assessed in considering placement and medical intervention. Access to appropriate support services e.g. State-wide Disability Services (SDS) and Additional Support Units should be considered in any placement decisions.

## 1.6 Searching and drug testing

Except in cases of emergency, the strip and pat searching of a recognised transgender inmate is to be conducted by an officer of the same sex as the recognised sex of the inmate. However, where an officer is not comfortable with this directive, another officer (of the same sex as the recognised transgender inmate) should be assigned the task.

Transgender and intersex inmates must be asked their preference regarding the gender of the officer conducting strip and pat search procedures. Except in cases of emergency, the strip and pat searching of a transgender or intersex inmate is to be conducted by an officer of the preferred gender.

The Officer in Charge (OIC) is to assign an officer of the preferred gender to conduct the search procedure however, where an officer is not comfortable with this directive, another officer (of the preferred gender) should be assigned the task. This principle also applies for inmates that identify as neither male nor female.

If the transgender or intersex inmate expresses no preference, search procedures should be conducted by an officer of the gender of identification of the inmate.

If the inmate who identifies as neither male nor female expresses no preference, search procedures should be conducted by a:

- male officer if the inmate is placed in a centre or area of a centre that is designated to house male inmates
- female officer if the inmate is placed in a centre or area of a centre that is designated to house female inmates (**refer to COPP section 7.3 Searching female inmates and 17.1 Searching inmates**).

Two officers should be present to supervise the drug testing procedure. Where possible, both of these officers (or at least one of these officers) must meet the same

sex/gender requirements as those detailed above for searching (**refer to COPP section 18.1 Testing inmates for drug use**).

## 1.7 Clothing and buy-ups

The inmate clothing policy in **COPP section 4.1 Property on reception and 4.2 Receiving property after reception** applies to recognised transgender, transgender and intersex inmates.

Recognised transgender inmates have the right to dress at all times in clothing appropriate to their recognised sex.

Transgender and intersex inmates have the right to dress at all times in clothing appropriate to their gender of identification, including those inmates housed in correctional centres of their biological sex. Clothing and underwear appropriate to their identified gender is to be provided to transgender and intersex inmates.

Transgender and intersex inmates are able to purchase the same personal care items, cosmetics, clothing and underwear through the buy-up system as other inmates of their identified gender.

An inmate who does not identify as either male or female is to be provided with their preference in relation to clothing to be issued and purchase of personal care items, cosmetics, clothing and underwear through the buy-up system (**refer to COPP section 8.14 Buy-ups**).

## 1.8 Access to medication and health services

For recognised transgender and transgender inmates who **have not** been prescribed hormone therapy in the community prior to custody:

- a treatment plan must be developed collaboratively by a multi-disciplinary team of JH&FMHN staff, CSNSW psychologists and:
  - if the inmate is sentenced to three months or more, his/her allocated Case Management Officer (CMO); or
  - if the inmate is sentenced to less than three months, an Offender Services & Programs (OS&P) staff member authorised by the Manager, Offender Services & Programs (MOSP).
- ongoing psychological interventions (as determined by the psychologist) are to be integral to the plan.

For recognised transgender and transgender inmates who **have** been prescribed hormone therapy in the community prior to custody:

- the hormone therapy must be continued and appropriately managed in custody by the Health Centre, General Practitioner in consultation with relevant JH&FMHN Clinical Directors. The inmate's treatment plan must be jointly developed by CSNSW and JH&FMHN staff.
- the treatment plan should provide clear management guidelines including ongoing risk assessments for the inmate and others within the centre as well as determining appropriate psychosocial support.

Transgender inmates may make an application to have elective gender surgery, hormone therapy or other therapies of choice, specific to their needs at their own expense.

JH&FMHN personnel will undertake monitoring of recognised transgender and transgender inmates prescribed hormone therapy to determine the safety and efficacy of the treatment.

When an intersex inmate requires medication, they will be assessed and managed by JH&FMHN and CSNSW staff on an individual needs basis (**refer to COPP section 6.8 Medications**).

Please refer to JH&FMHN policy 1.410 *Management of transgender patients* for further guidance on access to medication and health services.

## 1.9 Rehabilitation and integration

Recognised transgender, transgender and intersex inmates are to be provided with the same access to services and programs as other inmates. Additionally, recognised transgender, transgender and intersex inmates are to have access to services specific to their needs such as peak community services and groups e.g. the Gender Centre and legal services which specialise in the area of transgender and intersex people.

## 1.10 Access to information

On reception, recognised transgender, transgender and intersex inmates are to be given a copy of [REDACTED]

Recognised transgender, transgender and intersex inmates may purchase or receive, through visits or by mail, publications that address the needs of recognised transgender, transgender and intersex people e.g. a magazine published by the Gender Centre.



## 2 Forms and annexures

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## 3 Related COPP

[1.1 Reception procedures](#)

[4.1 Property on reception](#)

[4.2 Receiving property after reception](#)

[6.8 Medications](#)

[7.3 Searching female inmates](#)

[8.14 Inmate buy-ups](#)

[17.1 Searching inmates](#)

[18.1 Testing inmates for drug use](#)

[19.1 General escort procedures](#)

## 4 Related documents

[Anti-discrimination Act 1977](#)

[Crimes \(Administration of Sentences\) Act 1999](#)

[Crimes \(Administration of Sentences\) Regulation 2014](#)

[Justice Health and Forensic Mental Health Network policy 1.410 Management of transgender patients](#)

[Offender Classification and Case Management Policy and Procedures Manual](#)



[Sex Discrimination Act 1984 \(Commonwealth\)](#)

## 5 Definitions

CMO	Case Management Officer
CMU	Case Management Unit
COPP	Custodial Operations Policy and Procedures
CPT	Classification and Placement Team
Intersex	A person who has physical, hormonal or genetic features that are: <ul style="list-style-type: none"><li>• neither wholly female nor male</li></ul>

	<ul style="list-style-type: none"> <li>• a combination of male and female</li> <li>• neither female nor male</li> </ul> <p>An intersex person must be treated as a member of the gender with which they identify.</p>
JH&FMHN	Justice Health & Forensic Mental Health Network
MOSP	Manager, Offender Services & Programs
MRRC	Metropolitan Remand and Reception Centre
OIC	Officer in Charge
OS&P	Offender Services & Programs
Recognised Transgender	<p>A person who has undergone gender reassignment surgery and who has successfully applied for their birth registration and birth certificate to be altered, or for a change to be registered to show their new sex.</p> <p>Recognised transgender persons <b>must</b> be treated as a member of the sex recorded on their new birth certificate or recognised details certificate.</p>
SDS	State-wide Disability Services
Transgender	<p>A person who:</p> <ul style="list-style-type: none"> <li>• identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex, or</li> <li>• being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex.</li> </ul>

## 6 Document information

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<b>Approver:</b>		Kevin Corcoran
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1.0		Initial publication ( <i>Replaces section 7.23 of the superseded Operations Procedures Manual</i> )