

## Management of Transgender Inmates

This policy applies to all Correctional Centres in New South Wales, and to all court cells, lock-ups and police stations where persons are received into lawful custody by correctional officers. The policy for the management of transgender inmates notes that any person received into the custody of the N.S.W. Department of Corrective Services who self-identifies as transgender has the right to be housed in a correctional facility appropriate to their gender of identification.

### Introduction

The "Transgender (Anti-Discrimination and other Acts Amendment) Act 1996" was proclaimed on 1st October 1996, making it unlawful to discriminate against a person on the grounds of the person being transgender. The term transgender in the legislation is used to refer to all transgender persons, regardless of whether they have undergone surgical intervention. This is considered necessary, because discriminatory conduct usually occurs as a reaction to a person's dress, behaviour and other characteristics being at variance with the person's biological gender.

### Definitions

A transgender person is a person of one sex who:

- identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex;
- has identified as a member of the opposite sex by living as a member of the opposite sex; or
- being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex.

A reference to a transgender person also includes a reference to a person who is thought to be a transgender person, so that discrimination against a person on the ground of a person being transgender is unlawful whether the person is in fact a transgender or not.

A recognised transgender person is a person who has undergone sexual reassignment surgery and who has successfully applied for their birth registration and birth certificate to be altered to show their new sex.

Recognised transgender persons must be treated as a member of the sex recorded on their birth certificate.

### Policy

The policy for the management of transgender inmates applies to all correctional centres in New South Wales, and to all court cells, lock-ups and police stations where persons are received into lawful custody by correctional officers.

The policy for the management of transgender inmates is based on the following premises;

- that all inmates are case managed;
- that transgender inmates will be accommodated in a correctional centre of their gender of identification unless it is determined through case management that the inmate should more appropriately be assigned to a correctional centre of their biological gender;
- that placement of transgender inmates in a correctional centre of their biological gender will be assessed through the normal case management process and will be based on:
  - the nature of their offence and criminal history (for example crimes of violence - including sexual - against women or children);

- custodial history (for example previous management problems which impacted on the safety of other persons, or the security of the correctional centre); and
- perceived risk(s) to the continuing safety of the transgender inmate.

Any person received into the custody of the N.S.W. Department of Corrective Services who self-identifies as transgender has the right to be housed in a correctional facility appropriate to their gender of identification, subject to the following provisions:

- All transgender inmates will be initially received into the Metropolitan Remand and Reception Centre (M.R.R.C.) for full induction screening; and
- Continuing management and placement of transgender inmates will be assessed on an individual basis, through case management.

## Identification

Self-identification as a member of the opposite sex is the only criterion for identification as transgender.

Identification of a transgender person is to be made routinely on reception into corrective services' custody, whether at court or in a reception correctional centre. The "inmate lodgement form" has been amended to enable the self-identification of transgender persons.

Once identification as transgender has been made, the inmate must be kept separate from other inmates, accommodated in a single cell, provided access to separate shower and toilet facilities and must not be transported with any other inmate in the same compartment of a transport vehicle until the full induction screening process is complete.

## Initial Placement

### New Receptions - Courts

Court security staff and police are to advise the placement officer of every transgender inmate received into custody. The "lodgement advice form" has been amended for this purpose.

The placement officer is responsible for placing the transgender inmate into the M.R.R.C. The placement officer will fax the "lodgement advice form" to the M.R.R.C.

Where it is not possible to place a transgender inmate directly into the M.R.R.C. (For example, if the inmate is received at a country location), the placement officer will notify the receiving correctional centre by faxing the "inmate lodgement form" to the correctional centre.

The transgender inmate must be kept separate from other inmates, accommodated in a single cell, provided access to separate shower and toilet facilities and must not be transported with any other inmate in the same compartment of a transport vehicle until the full induction screening process is complete.

### New Receptions - Correctional Centres

The Governor, Deputy Governor or Officer in Charge of the correctional centre must be advised of the reception of a transgender inmate.

The Governor is responsible for ensuring that the transgender inmate is transferred as a matter of urgency to the M.R.R.C. for full induction screening.

Until the transfer to the M.R.R.C. can be effected, the transgender inmate must be kept separate from other inmates, accommodated in a single cell, provided access to separate shower and toilet facilities and must not be transported with any other inmate in the same compartment of a transport vehicle.

If necessary to ensure the safety of the inmate, the provisions of section 22AA (1) or (2) of the "Correctional Centres Act" may be invoked to place the inmate in protective custody.

## **Induction Screening**

All transgender inmates are to complete their induction screening in the M.R.R.C.

During the induction screening process, transgender inmates must be kept separate from other inmates of either gender, must be housed in a single cell and provided access to separate shower and toilet facilities, and must not be transported with any other inmate in the same compartment of a transport vehicle until the full induction screening process is complete.

As part of the induction screening process, a full social history (which may include a pre-sentence report, sentencing Judge's comments, criminal and/or custodial history and reports from relevant I.D.S. staff) is to be obtained to identify the inmate's particular needs and the most appropriate placement options and program pathways.

Unless there are overriding security and / or safety concerns arising from the induction screening process, then a transgender inmate is to be placed in a correctional centre appropriate to their gender of identification.

Placement of a transgender inmate in a correctional centre of their biological gender will be assessed through the normal case management process and will be based on:

- their offence history (for example, crimes of violence - including sexual - against women or children);
- custodial history (for example previous management problems which impacted on the safety of this or other inmates);
- perceived risk(s) to the continuing safety of the transgender inmate and / or any other person(s).

If a transgender inmate does not agree with the initial decision for their placement, they may seek a review of the decision by submitting a written application stating reasons for requesting the review, through the Governor to Director, Inmate Classification and Management Branch.

## **Classification and Accommodation**

Transgender inmates are to be given the same classification and placement options as the other inmates with whom they are managed.

That is, inmates who are placed in a correctional centre of their chosen gender will have the same classification and placement options as inmates of that gender whereas inmates placed in a correctional centre of their biological gender will have the same classification and placement options as inmates of their biological gender.

Continuing management and placement of transgender inmates will be assessed on an individual basis through case management.

Where the Case Management Team considers that the continued placement of a transgender inmate in a correctional centre of their gender of identification is no longer appropriate on the grounds of good order, security and/or safety and recommends the transfer of that inmate to a correctional centre of their biological gender, the Case Management Team is to submit a full report to the Governor, outlining the reasons for their recommendation.

The Governor is to consider the matter and make written recommendation in relation to the placement and management of the inmate. All documentation, with the comments of the Governor, will then be forwarded to the Case Management Committee for their approval to transfer of the inmate to a correctional centre of their biological gender.

If the Case Management Committee approves the transfer of the inmate to a correctional centre of their biological gender, Inmate Classification and Management Branch will determine the most suitable placement option for the inmate. Consideration must be given to the continued safety of the transgender inmate.

Any transgender inmate who considers that they should have a decision of Inmate Classification and Management Branch reviewed, may submit a written application, stating reasons, through the Governor to the Director, Inmate Classification and Management.

In the case of a transgender inmate managed by the Serious Offenders Review Committee (S.O.R.C.), the normal procedures for classification and placement will continue to apply.

Until their transfer to a correctional centre of their biological gender, the transgender inmate who is no longer considered suitable to remain in a centre of their gender of choice is to be managed and housed to ensure that they do not pose a risk to the good order of the centre, the safety of any person, or are at risk themselves.

If necessary to ensure the safety of the inmate, the provisions of section 22AA (1) or (2) of the Correctional Centres Act may be invoked to place the inmate in protective custody.

Transgender inmates housed in a correctional centre of their biological gender may remain in a centre with a higher security classification, provided that they sign a written memorandum of understanding that it is their choice to remain in that centre, and they are willing to abide by the conditions of that correctional centre.

Transgender inmates (of the same gender of identification) are to be clustered together wherever possible. Separate accommodation may be provided for transgender inmates contingent upon their being allowed access to the full range of services and programs that are provided to other inmates of that gender.

## **Management Issues**

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

Accordingly, all wing / unit records (e.g. muster book, cell card, cell register, inmate identification card) must be amended to reflect the inmate's chosen gender.

Except in the cases of emergency, strip searches and urinalysis procedures are to be performed by officers of the gender of identification of the inmate.

Transgender inmates have the right to dress at all times in clothing appropriate to their gender of identification - including those transgender inmates housed in correctional centres of their biological gender.

Correctional Centres are to provide transgender inmates with issue clothing and underwear appropriate to their chosen gender.

Transgender inmates housed in correctional centres of their biological gender are to be able to purchase the same personal care items, clothing, underwear and cosmetics through the buy up system as other inmates of their gender of identification.

## At Risk Status

Single cell accommodation is to be made available to all transgender inmates unless case management indicates that shared accommodation is required.

Transgender inmates are to be provided with separate toilet facilities and are to be allowed to shower separately.

## Escorting of Transgender Inmates

Until transgender inmates have completed the induction screening process, and have been assigned to a correctional centre, they 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. That is, they are to be escorted as "strict, one out protection".

Male to female transgender inmates assigned to a female correctional centre, and female-to-male transgender inmates assigned to a correctional centre of their biological gender (that is female) may be escorted with other female inmates, if case management indicates that there are no over riding safety or security concerns.

Male to female transgender inmates assigned to a correctional centre of their biological gender (that is male) 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. That is, they are escorted as "strict, one out protection".

During escorts, transgender inmates are to be provided with separate toilet facilities which allow them to maintain their privacy and dignity.

## Access to Health Services

It is Corrections Health Services' Policy that:

- Hormone therapy will only be provided to those transgender inmates who have been receiving this treatment before imprisonment;
- Elective gender surgery will not be performed on inmates if the cost is to be met by C.H.S.; and
- Transgender inmates may make application to have elective gender surgery, hormone therapy or other therapies of choice, specific to their needs, at their own cost.

## Rehabilitation and Integration

Transgender inmates are to be provided with access to the full range of correctional services and programs to the same extent as all other inmates.

Additionally, transgender inmates are to have access to services specific to their special needs, for example:

- Access to peak community services and groups such as The Gender Centre; and
- Community legal services with specialised knowledge in the area of transgender.

## Access to Information

A copy of this policy is to be made available to transgender inmates on reception.

Information about all services available within the correctional system and the community generally, including those specifically to meet the needs of transgender people, is to be made available to transgender inmates during the induction screening process.

Transgender inmates may purchase or receive through visits / mail publications which address the needs of transgender people, for example Polare, the information magazine of The Gender Centre. Publications legally designated as "restricted access" will not be permitted.

### **Policy Implementation**

A copy of this policy is to be provided to all identified transgender inmates in New South Wales Correctional Centres.

A copy of this policy is to be placed on all inmate notice boards.

All currently identified transgender inmates are to be placed before the Case Management Team as a matter of urgency to determine their ongoing placement and management in terms of this policy.

Inmates may make application to be identified and managed as transgender persons at any stage during their sentence.

Inmates making such applications are to be referred to the Case Management Team as a matter of urgency to determine their ongoing placement and management in terms of this policy.

Once an inmate has made application to be identified and managed as a transgender person, all the provisions of this policy relating to safety and security must be implemented as if the inmate had been newly received into custody as a transgender person.

That is, until a decision is made regarding their ongoing placement and management, the transgender inmate must be kept separate from other inmates, accommodated in a single cell, provided access to separate shower and toilet facilities and must not be transported with any other inmate in the same compartment of a transport vehicle.

If necessary to ensure the safety of the inmate, the provisions of section 22AA (1) or (2) of the Correctional Centres Act may be invoked to place the inmate in protective custody.

### **Policy Monitoring and Review**

Regional Commanders are to monitor the implementation of this policy.

Where policy amendments are required, the Transgender Policy Working Committee is to be reconvened. This committee is to comprise the following:

- Operations representative (Chairperson);
- Representative(s) from peak community group(s);
- Member of the Inmate Development Services;
- Corrections Health Service Representative; and
- Community legal representative with specialised knowledge in the area of transgender.