

## Inmate Classification and Placement Corrective Services NSW

# Classification and Placement of Transgender and Intersex Inmates

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# Classification and Placement of Transgender and Intersex Inmates

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# 1 Overview

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The policy and procedures within this document must be utilised in conjunction with the [OVERARCHING POLICY - Policy for Inmate Classification and Placement](#).

All staff must be familiar with the overarching policy prior to utilising this document.

The overarching policy and the instructions and procedures within this document apply to all staff involved in the inmate classification and placement processes within NSW correctional centres.

A person received into NSW 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 document also acknowledges and provides guidance for persons that do not identify as either male or female.

## 2 Related documents

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The policy and procedures within this document are intended to be implemented in conjunction with the relevant sections of the Custodial Operations Policy and Procedures (COPP) and other related policy and procedures, including:

- [Management of Public Correctional Centres Services Specifications](#)
- [CSNSW Fact Sheet: Transgender and intersex persons in custody](#)
- [Custodial Policy and Procedures \(COPP\) - 3.8 Transgender and Intersex Inmates](#)
- [\(CM CC\) PR1 - Procedures for the Reception, Screening, Induction and Orientation of CSNSW Inmates](#)
- [Custodial Policy and Procedures \(COPP\) - 1.1 Reception Procedures](#)
- [Custodial Policy and Procedures \(COPP\) - 19.1 Escorts - Subsection 7.5 Transgender and intersex inmates](#)
- [Policy for Case Management in Correctional Centres](#)
- [Justice Health Policy - 1.410 Management of Transgender Patients](#)
- [Inmate Classification and Placement - Initial Classification and Placement](#)
- [Inmate Classification and Placement - SORC and Subcommittee Managed Inmates](#)

## 3 Procedures for classification and placement of Transgender and Intersex inmates

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The policy and procedures within this document must be utilised with [Inmate Classification and Placement - Initial Classification and Placement](#).

In addition the following are required in regard to the classification and placement of transgender and intersex inmates.

### 3.1 Transgender and Intersex definitions

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In accordance with the [Anti-Discrimination \(ADA\) Act 1977](#), it is unlawful to discriminate against a person on the grounds of the person being transgender.

The term 'transgender' refers to all transgender persons, regardless of whether they have undergone surgical intervention.

Section 38A of the [ADA Act](#) defines a person being transgender or a transgender person, whether or not the person is a recognised transgender person, who:

- identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex; or
- 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,

and includes a reference to a person who is thought of as a transgender person, whether the person is, or was, in fact a transgender person.

Under NSW anti-discrimination legislation, a person is recognised as transgender if any of the following applies:

- in accordance with Section 32DA of the [Births, Deaths and Marriages registration Act 1995](#) a new birth certificate has been issued to the person specifying the person's gender;
- an amended birth certificate or an equivalent document known as an 'interstate recognition certificate' has been issued to the person by another Australian State or other Australian jurisdiction.

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

Section 38B of the [ADA Act](#) further defines discrimination on transgender grounds.

The [Sex Discrimination Act 1984](#) defines an intersex person as a person having physical, hormonal or genetic features that are:

- neither wholly female nor wholly male; or
- a combination of female and male; or
- neither female nor male.

An intersex person must be treated as a member of the gender with which they identify.

### 3.2 Transgender and intersex inmates in CSNSW

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A person who self-identifies as transgender has the right to be housed in a NSW correctional centre appropriate to their gender of identification, unless it is determined through classification that the transgender person should more appropriately be assigned to a correctional centre of their biological gender. The decision for this placement will be based on:

- the nature of their current offence and criminal history (for example, violent and/or sexual crimes 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);
- perceived risk/s to the continuing safety of the transgender inmate.

All transgender/intersex inmates (but not recognised transgender inmates) with proof of identification in accordance with Section 32DA of the [Births, Deaths and Marriages registration Act 1995](#) must be sent to the Metropolitan Remand and Reception Centre (MRRC) for induction screening, or Silverwater Women's Correctional Centre (SWCC), or the nominated reception centre.

All transgender/intersex inmates received into custody who have a previous arrest/custody record as a different gender, and who do not have proof of identification showing that they are a recognised transgender person, will be received initially into the MRRC or SWCC, or nominated reception centre for reception, induction, screening and orientation (RISO).

A recognised transgender inmate received into custody, who has identification proving such, is to be sent to a correctional facility of their recognised gender.

Continuing management and placement of transgender/intersex inmates will be assessed on an individual basis by a multi-disciplinary team of Corrective Services NSW (CSNSW) staff including psychologists and Justice Health and Forensic Mental Health Network (JH&FMHN) staff.

### **3.3 Initial Classification and Placement Assessment**

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Unless there are overriding security and/or safety concerns arising from the induction screening process, a transgender/intersex inmate is to be placed in a correctional centre appropriate to their gender of identification in accordance with the [Custodial Policy and Procedures \(COPP\) - 3.8 Transgender and Intersex Inmates – 1.5 Placement Assessment](#).

In addition to this, the following must apply:

- if a transgender/intersex inmate (male or female) is assessed by JH&FMHN staff as needing a specialist referral, JH&FMHN will arrange for placement at the Long Bay Hospital (LBH);
- when assessing for placement in a male centre for a female-to-male transgender inmate, the Classification and Placement Team (CPT) from MRRC must take part in the CPT/Assessment process; and when assessing for placement in a female centre for a male-to-female, the CPT from SWCC must take part in the CPT/assessment process at the MRRC or SWCC;
- transgender/intersex inmates will have the same classification and placement options as all other inmates in the correctional centre where they are housed;
- all classification and placement decisions for transgender/intersex inmates managed by the Serious Offenders Review Committee (SORC) or Subcommittees are in accordance with the [Inmate Classification and Placement - SORC and Subcommittee Managed Inmates](#);

- where the CPT considers that the continued placement of a transgender inmate in a correctional centre for 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 CPT is to submit a full report to the Governor, outlining the reasons for its recommendation with the inmate's safety to be included;
- the Governor is to consider the recommendation. If approved, all documentation with the comments (classification and placement assessment in OIMS) of the Manager of Security (MOS) or delegate will then be forwarded to the Manager/Deputy Manager, Classification and Placement (D/MCP) to ratify and action the transfer via the Senior/Classification and Placement Officer (S/CAPO);
- 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 identification, 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.

### 3.4 Procedure for Classification and Placement of Transgender and Intersex inmates - checklist

PROCEDURE	RESPONSIBILITY
1 Identification of transgender/intersex inmate.	CPT
2 Initial Classification and Placement Assessment completed in accordance with PR 2 – Procedures for Initial Classification and Placement. Transgender/intersex inmates will have the same classification and placement options as all other inmates in the correctional centre where they are housed.	CPT D/MCP
3 Unless there are overriding security and/or safety concerns arising the transgender/intersex inmate is to be placed in a correctional centre appropriate to their gender of identification in accordance with <a href="#">Custodial Policy and Procedures (COPP) - 3.8 Transgender and Intersex Inmates – 1.5 Placement Assessment</a> .	COPP
4 If a transgender/intersex inmate is assessed by JH&FMHN staff as needing a specialist referral, for both male and female transgender/intersex inmates will be placed at the LBH.	JH&FMHN
5 When assessing for placement in a male centre for a female to male transgender inmate the CPT from MRRC must take part in the CPT/Assessment process.	MRRC CPT with SWCC CPT
6 When assessing for placement in a female centre for a male-to-female transgender the CPT from SWCC must take part in the CPT/assessment process.	SWCC CPT with MRRC CPT
7 All classification and placement for transgender/intersex inmates managed by SORC or Subcommittees are in accordance with the Procedures for Classification and Placement of SORC and Subcommittee Inmates.	CPT D/MCP
8 Where it is considers that the continued placement of a transgender inmate in a centre of their gender of identification is no longer appropriate and it is recommended the transfer to a centre of their biological gender, must be reported to the governor.	CPT

PROCEDURE	RESPONSIBILITY
9 Placement support. All documentation with the comments of the MOS (or FM as delegated by the Governor in correctional centres that operate without a MOS) will then be forwarded for determination.	MOS, or FM
10 Recommendation to be considered.	Governor
11 Ratify and action the transfer.	D/MCP S/CAPO

Any staff member acting in the roles within this procedure adopts the responsibilities as prescribed in this process.

If any variation to the above is required written application outlining rationale for request is to be made to the Director Classification and Placement (DCP).

## 4 Abbreviations

ACRONYM	MEANING
CAPO	Classification and Placement Officer
COPP	Custodial Operations Policy and Procedures
CPT	Classification and Placement Team
CSNSW	Corrective Services New South Wales
DCP	Director Classification and Placement
DMCP	Deputy Manager Classification and Placement
JH&MHFN	Justice Health and Forensic Mental Health Network
LBH	Long Bay Hospital
MCP	Manager Classification and Placement
MOS	Manager of Security
MRRC	Metropolitan Remand and Reception Centre
NSW	New South Wales
RISO	Reception Induction Screening Orientation
SCAPO	Senior Classification and Placement Officer
SORC	Serious Offenders Review Council
SWCC	Silverwater Women's Correctional Centre

## 5 Document history

VERSION	DATE	REASON FOR AMENDMENT
1.0	25 October 2019	In line with Case Management Review outcomes
1.1	23 October 2020	General formatting update and improvements
2.0	2 February 2021	Full review conducted