



Transgender Prisoners

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Custodial Operations Practice Directive

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Specialist Operations

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Official/Public





1. Human Rights

To ensure corrective services officers act or make decisions in a way that is compatible with human rights, officers must give proper consideration to human rights relevant to the decision including but not limited to:

- a) a person's right to enjoy their human rights without discrimination;
- b) the right to equal and effective protection against discrimination;
- c) the prisoner's right to privacy;
- d) the person's right to be treated with humanity and respect; and
- e) the right to access health services without discrimination.

2. Limitation of Human Rights

Human rights can be limited if certain conditions are present:

- a) the limit must be provided under law;
- b) the limit must be reasonable;
- c) any imposition on the human rights must be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

A prisoner's human rights should only be limited to the extent that is reasonably and demonstrably justified.

3. Overview

Queensland Corrective Services (QCS) is committed to equality, diversity, inclusion and respect for human rights and acknowledges the emerging differences of definitions/terms provided when referring to members of the transgender community. Prisoners who are transgender, gender diverse or intersex must be treated with the same respect and dignity accorded to any other prisoner and must not be discriminated against or harassed on the grounds of their medical condition, sexual identity, gender identity, intersex status or related issues.

Considerations relevant to the Lesbian, Gay, Bisexual, Trans/transgender, Intersex, Queer/questioning and Asexual (LGBTIQA+) cohort of prisoners (where this is known) must be taken into account during any decision making. Decisions are to be made on a case-by-case basis following an individualised assessment of relevant factors, including the reasonableness of the actions being considered.

4. Definitions

Transgender – is a term used to describe all those whose gender identity is at odds with their biological sex.

Gender Identity – refers to the intrinsic sense of the gender that the person feels they should be, rather than their birth gender. The gender that a person identifies as regardless of their biological sex.

Acquired Gender (Social Gender) – is the gender in which a person lives their everyday life.

Gender Dysphoria – is a recognised medical condition in transgender people that causes significant dysphoria (distress) with the sex and gender they were assigned at birth, as they feel strongly that they are not the gender they physically appear to be.





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5. Initial Centre Placement (Transgender Prisoner)

The initial placement decision for a transgender prisoner must be made by an Assistant Commissioner within Custodial Operations in consultation with the Chief Superintendent of the corrective services facility. Sentence Management Services staff will record the decision in a Sentence Management Decision Making Record (SMDMR).

Subsequent transfer decisions for a transgender prisoner must be made by the relevant Sentence Management Services delegate in consultation with the Chief Superintendent of the corrective services facility.

When making the placement decision the following factors must be considered:

- a) the risk the prisoner may pose to the safety and security of the placement facility;
- b) the nature of the offending;
- c) the prisoner's personal circumstances;
- d) the risk to the prisoner or to other prisoners at the placement facility;
- e) the views of the prisoner's treating medical practitioner or psychiatrist (if known/available);
- f) whether the prisoner has lived as a member of the acquired gender in the community and for what length of time whether the prisoner has had hormone treatment at any time;
- g) whether the prisoner has undergone or is undergoing a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other gender characteristics of the prisoner identified by a birth certificate, so that the prisoner could be identified as a person of the acquired gender;
- h) the prisoner's preference for accommodation in a male or female corrective services facility;
- i) any concerns expressed by staff and the prisoner in relation to the prisoner's safety;
- j) where the prisoner could be accommodated appropriately within the placement facility;
- k) relevant human rights and associated cultural rights; and
- l) any other factors considered relevant.

The Deputy Commissioner is to be advised of relevant transgender prisoner management considerations, including placement, transfer or significant events involving the prisoner.

A transgender prisoner who has had reassignment surgery completed and noted in the Register of Births is excluded from this requirement.

6. Reception (Transgender Prisoner)

While acknowledging the unique requirements of transgender prisoners, these do not take priority over safety and security considerations. As such, transgender prisoners are subject to all existing QCS prisoner management practices including demonstrating acceptable behaviour and complying with centre rules.

A prisoner who self identifies as transgender will be accepted as such and treated as their acquired gender, to the extent practicable. A transgender prisoner is to be referred to by their preferred name and the pronoun consistent with their acquired gender for example, a male to female prisoner is to be referred to using the pronoun 'she' or 'her'. This should occur in all communications with the prisoner, including verbal, written and also communication with third parties.

If a prisoner identifies as transgender, this information should be immediately reported to the relevant manager, who will then implement a process that is approved by the Chief Superintendent to recognise the prisoner as such.





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When a prisoner who identifies as transgender is admitted to a corrective services facility the Chief Superintendent of the corrective services facility must:

- a) consider the prisoner's individual circumstances prior to initial placement;
- b) ensure the prisoner's human rights are limited to the least amount possible, while still ensuring the prisoner's safety and the safety and security of the facility; and
- c) forward the prisoner's details for purposes of the assessment to the Deputy Commissioner, Custodial Operations.

7. Accommodation (Transgender Prisoner)

Until the full induction screening process is complete, a transgender prisoner must be accommodated in a single cell and must not be transported with any other prisoner in the same compartment of a transport vehicle.

A decision about appropriate accommodation of a transgender prisoner within the placement facility must be made by the Chief Superintendent of the corrective services facility having regard to:

- a) the security and good order of the facility;
- b) any concerns expressed by staff and the prisoner in relation to the prisoner's safety; and
- c) any other factors considered relevant.

Transgender prisoners should not be placed on a safety order, isolated or restricted from association with other prisoners, work or programs, unless this is reasonably necessary to mitigate risk to:

- a) the prisoner;
- b) other prisoners;
- c) staff; or
- d) the security or good order of the correctional centre.

Transgender prisoners are to be managed on an individualised case by case basis, through a multidisciplinary approach.

The Deputy Commissioner, Custodial Operations is to be advised of relevant transgender prisoner management consideration, including placement, transfer or significant events involving the prisoner.

A transgender prisoner should be provided access to shower and toilet facilities that provide for the privacy and dignity of the prisoner.

8. Risk of Harm to Self

In accordance with sections 3 and 266 of the *Corrective Services Act 2006* (CSA), staff must maintain an awareness of the specific at-risk management issues pertaining to offenders with special needs including transgender prisoners.

Refer to the Custodial Operations Practice Directive At Risk Management: At Risk.





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9. Transgender Prisoner Management

If a prisoner identifies as transgender, this information should be immediately reported to the relevant manager, who will then implement a process that is approved by the Chief Superintendent, to recognise the prisoner as such.

A prisoner who self-identifies as transgender will be accepted as such and treated as their acquired gender, to the extent practicable.

A transgender prisoner is to be referred to by their preferred name and the pronoun consistent with their acquired gender for example, a male to female transgender prisoner is to be referred to using the pronoun 'she or her'. This should occur in all communications with the prisoner, including verbal, written and also communication with third parties.

Transgender prisoners are to be managed on an individualised case by case basis, through a multidisciplinary approach. Case conferences should be held by the multidisciplinary team which may include representatives from QCS management, Queensland Health and/or a specialist health provider, support agencies, psychologist and/or counsellor, a cultural liaison officer (where appropriate), a corrective services officer and the prisoner.

Refer to the Appendix TG1 Gender Health Services Stakeholder and Support Group Contacts.

10. Guidelines for Case Conference – Transgender Prisoner

An initial case conference should occur within seven days of a transgender prisoner being received into a corrective services facility or where a prisoner in custody self identifies as being transgender.

Further case conferences should occur on a monthly basis for the first three months and then may be extended to at least one case conference quarterly.

The multi-disciplinary team may include:

- a) a correctional supervisor/manager;
- b) a corrective services case officer for the prisoner;
- c) a psychologist and/or counsellor;
- d) a cultural liaison officer (where appropriate);
- e) a representative from Queensland Health and or other specialist health provider for the prisoner;
- f) a representative of a support agency; and
- g) the prisoner.

The case conference should consider the individual circumstances of the prisoner, including:

- a) the safety, dignity and privacy of the prisoner (and others where relevant) in terms of the prisoner's accommodation, particularly where the prisoner progresses through changing the social gender in which they live;
- b) any concerns raised by the prisoner in relation to their treatment/management within the corrective services facility;
- c) provision of access to property, clothing and other requests for functional items to assist the prisoner;
- d) provision of access to support groups for the prisoner;
- e) the prisoner's access to work and rehabilitation activities;
- f) requests for transfers/placement considerations;
- g) provision of medical treatment to the prisoner, including psychological support; and
- h) through-care for prisoners preparing for release from custody.





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In circumstances where the case conference may not resolve a concern raised by the prisoner, then the issue should be referred by the correctional supervisor or manager to the Chief Superintendent for consideration.

Any request for transfer by the prisoner to another corrective services facility must be progressed according to the COPD Sentence Management: Transfers.

A summary/record of the case conference should be case noted in IOMS and outcomes reported to the Deputy Commissioner.

11. Transgender Prisoner Case Notes

A transgender prisoner must have regular case notes entered on IOMS on at least a fortnightly basis by a nominated corrective services officer. The focus of the case notes will be on the prisoner's overall institutional conduct and behaviour, any changes in behaviour or presentation (either positive or negative), any concerns regarding health changes, engagement in activities and/or employment, and interactions with and attitudes towards staff and other prisoners.

A corrective services supervisor is to approve and review the case notes.

12. Sexual Assault

Queensland Corrective Services (QCS) has a duty of care to provide a safe environment for prisoners in the correctional system. All staff involved in the management of prisoners must understand their roles and professional accountabilities in regard to the prevention and management of sexual assault within the correctional environment.

Staff must have an awareness of:

- a) sexual assault prevention strategies;
- b) high-risk periods (e.g. reception, moving unit, cell double ups);
- c) high-risk groups (e.g. youthful offenders, and those who identify as LGBTIQ+);
- d) where and when opportunistic sexual assault may occur (e.g. places of communal interaction such as exercise yards);
- e) the indicators of sexual assault in victims (e.g. "acting out" in some way, withdrawal); and
- f) the characteristics of perpetrators of sexual assault (e.g. exercising of power, previously been a victim, anger).

A prisoner must be encouraged to be involved as much as possible in their management within the correctional environment.

If an officer detects any overt signs of prisoner vulnerability to sexual assault, the officer must immediately report their suspicions to the unit manager.

All actions must be handled in such a way as to ensure the privacy and safety of victims and witnesses.





14. Search (Transgender Prisoner)

Staff should be aware, and be prepared for the fact, that a transgender prisoner may not have the genitalia of the gender with which the prisoner identifies.

15. Considerations Regarding the *Anti-Discrimination Act 1991*

The *Anti-Discrimination Act 1991* (the Act) seeks to promote equality for all persons and protection from unfair discrimination in certain areas of activity, including work, education and accommodation on various attributes including gender identity. Public acts of vilification on the basis of race, religion, sexuality or gender identity are also unlawful under the Act.

Discrimination happens because people have stereotypical or prejudged ideas or beliefs about other people because they happen to belong to a particular group of people or because they have certain personal characteristics or attributes.

The Act prohibits two types of discrimination namely, direct and indirect discrimination.

Direct discrimination occurs when a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.

Indirect discrimination occurs when a person imposes, or proposes to impose, a term:

- a) with which a person with an attribute does not or is not able to comply;
- b) with which a higher proportion of people without the attribute comply or are able to comply; and
- c) that is not reasonable.

A 'term' includes a condition, requirement or practice, whether or not written.

Any person who is subject to an alleged contravention of the Act may make a complaint to the Queensland Human Rights Commission (QHRC). The QHRC may attempt to resolve the matter by conciliation, or if appropriate, refer the matter to the Queensland Civil and Administrative Tribunal for determination.

QCS staff should be aware that they may breach the provisions of the Act where:

- a) they do not treat a transgender prisoner the same as other prisoners;
- b) they treat a transgender prisoner unfairly or improperly because the prisoner is transgender; or
- c) they do not treat any information regarding the gender identity, biological sex, status or name, confidentially.

Further information regarding the provisions of the Act may be obtained from the QHRC's website at <http://www.qhrc.qld.gov.au>.

