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| **Management of Prisoners who are Trans, Gender Diverse or Intersex** | | | |
| **Section** | | 2. Prisoner Management | |
| **CR Number** | 2.4.1 | **Current Issue Date** | March 2021 |
| **Legislation & Policy** | | Corrections Act 1986  Charter of Human Rights & Responsibilities Act 2006  Victorian Equal Opportunity Act 2010  Commonwealth Sex Discrimination Act 2013  Corrections Regulations 2019  Privacy and Data Protection Act 2014  Births, Deaths and Marriages Registration Act 1996 | |
| **Standard** | | Prisoner Management | |
| **Attachments** | | Nil | |
| **Forms** | | Health care for prisoners who are trans, gender diverse or intersex  Prisoner Application – Wearing of Wigs  Outcome of Prisoner Application of Wearing of Wig | |

1. **PURPOSE**

To establish guidelines for the assessment and management of prisoners[[1]](#footnote-2) who are trans, gender diverse or intersex.

1. **REQUIREMENT**

2.1 All staff must adhere to these guidelines when taking action in relation to sentence and offender management processes and procedures.

2.2 All relevant staff must be appropriately informed and supervised to ensure compliance with these guidelines.

2.3 These guidelines are applicable to both convicted and unconvicted prisoners.

1. **GUIDING PRINCIPLE**

3.1 Save for the loss of liberty imposed by law, prisoners’ human rights include, but are not limited to, the rights of Victorian citizens enshrined in the *Charter of Human Rights & Responsibilities Act* 2006 (the Charter).

3.2 Prisoners who are trans, 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, gender identity, intersex status or related issues. As prisons are designed to accommodate only men or women there are a number of factors that result in trans, gender diverse and intersex prisoners being particularly vulnerable to harm and abuse. These include: the discriminatory attitudes that may be applied by people defining men and women; the behaviours of some prisoners who seek to exploit or take advantage of those who are more vulnerable; and the containment of prisoners in closed environments that while affording prisoners with a range of protections, must also balance the need for their humane containment with safety and security considerations.

3.3 In the placement of trans, gender diverse and intersex prisoners, the safety and welfare of the prisoner and of other prisoners are of paramount consideration. The risks associated with the placement of prisoners who present with breasts and / or a vagina in the men’s prison system or prisoners with a penis in a women’s prison system, are factors that must be considered when managing and supervising prisoners in either system. This is in acknowledgement that for trans, gender diverse and intersex prisoners placed in environments where the external manifestation of their gender does not accord with those people with whom they are accommodated, they are at heightened risk of sexual or physical assault. It is also recognised that for trans, gender diverse and intersex prisoners, placement in an environment that accords with their external manifestation of their gender, but not their gender identify, may equally be harmful. Relative to this risk, a much smaller proportion might pose safety risks to others, particularly if their criminal record indicates a history of sexual and / or physical violence.

1. **CONTEXT**

The key underlying principles of this Requirement are: safety and security (particularly for people who identify as trans, gender diverse or intersex) and rights and responsibilities afforded by legislation.

1. **GENDER IDENTITY, GENDER AND BIOLOGICAL SEX**
   1. **Protocol**
      1. For most people the sex assigned or assumed at birth is consistent with their self-identified gender, but for some, this is not the case. Many of the trans and gender diverse community do not fit within the male:female binary and identify as non-binary, gender diverse or use some other term to describe themselves.
      2. While the principles and processes for the management of trans and gender diverse and intersex prisoners are similar, they are two distinct groups.
   2. **People with Intersex Variations** 
      1. The term ‘intersex’ refers to people who are born with genetic, hormonal or physical sex characteristics that are not typically ‘male’ or ‘female’. Intersex people have a diversity of bodies and identities. Most intersex people identify in the sex they were raised and are not recognisable as being intersex externally.
      2. Being intersex is about biological variations and is therefore not about a person’s gender identity. Although most intersex people identify as men or women, some identify as neither male nor female, or both male and female.
      3. Most intersex people identify in the sex they were raised from birth. A small number of intersex people who are assigned the wrong gender at birth seek to assume a different gender later in life.
      4. In adolescence or adulthood some people with intersex variations may need medical or surgical intervention to align the various aspects of their body into harmony with their self-identification, and sometimes to reverse the effects of inappropriate surgical interventions when they were children.
      5. For many people with intersex variations, no issues will arise in a prison context which require special policy consideration. In such cases the necessary medical management of ongoing hormone and other treatment will take place in the routine medical context.
   3. **Trans and gender diverse people**
      1. A trans and gender diverse person is someone whose gender identity is not consistent with the sex assigned at birth.
      2. For trans and gender diverse people the process of aligning their body and gender is known as "gender affirmation".
      3. Some trans and gender diverse people undergo a range of treatments including hormonal and surgical treatments assist in the physical alignment with their gender identity, but not all trans and gender diverse people undertake such treatments. Many trans and gender diverse people have not had gender reassignment surgery and therefore have bodies that do not align with society’s assumptions about sex and gender.
   4. **Terminology**
      1. Language used to describe different Lesbian, Gay, Bisexual, Transgender, Queer (or questioning) and Intersex (LGBTIQ) people and by different parts of LGBTIQ communities, changes over time and can differ across cultures and generations. For the purpose of this Commissioner’s Requirement, definitions have been drawn from the *Rainbow eQuality Guide*: [www.health.vic.gov.au/about/populations/lgbti-health/rainbow-equality/definitions](http://www.health.vic.gov.au/about/populations/lgbti-health/rainbow-equality/definitions) and the LGBTIQ Inclusive Language Guide for Victorian Public Sector employees: [www.vic.gov.au/inclusive-language-guide](http://www.vic.gov.au/inclusive-language-guide)
      2. Staff should be aware that the people concerned might not make the same terminological distinctions as are used in this policy. Staff may also encounter outdated or even offensive terms in medical, psychological or legal contexts. It is always best to ask someone how they describe themselves and use these terms.
   5. **Gender affirming treatments**
      1. Not all trans or gender diverse people undergo treatment. Treatment may include counselling, hormone treatment, surgical intervention (genital and chest reconstruction), non-surgical dilatation (dilating or stretching an orifice or tubular structure beyond normal dimensions by medications or instrumentation), prostheses, gynaecological treatment (including pap smears), urological treatment and peer support.
      2. There are a range of common surgical treatments which may be used to assist in the physical alignment with the psychological gender, and some trans and gender diverse people have surgery to change their external genitalia and secondary sexual characteristics to match their self-identified gender. However, there are limitations to the use of surgery, and surgery will not be suitable for many trans, gender diverse and intersex people. Surgery is not a defining or necessary characteristic of a trans and gender diverse person's gender.
      3. Although most intersex people do not have gender identity issues, most have a need for continuing hormone treatment. Prison health staff will support prisoners through these processes. Justice Health’s healthcare policy, Health care for prisoners who are trans, gender diverse or intersex, provides additional information on the health care needs of prisoners who are trans, gender diverse or intersex and the provision of health services to this group. This policy is currently under review.
   6. **Relevant Legislation and policies**
      1. Both Victorian and Commonwealth laws make it unlawful to discriminate against a person because of their gender identity or intersex status.
      2. The *Commonwealth Sex Discrimination Act* 1984 makes it unlawful to discriminate against a person on the basis of their gender identity or intersex status. Similarly the Victorian *Equal Opportunity Act* 2010 makes it unlawful to discriminate against a person on the basis of gender identity, including where a person is of indeterminate sex.
      3. The *Charter of Human Rights and Responsibilities Act* 2006 (‘the Charter’) also protects against discrimination on the basis of gender identity. In particular, Article 8 (Recognition and equality before the law) relevantly states that:
2. *Every person has the right to enjoy his or her human rights without discrimination.*
3. *Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.*
   * 1. Consequently, the law requires that prisons and prison staff should not treat trans, gender diverse and intersex prisoners unfavourably because of their gender identity or intersex status and should act compatibly with the Charter. A limited number of exceptions may exist to these requirements, for instance where it is reasonable to treat someone unfavourably in order to ensure their or others safety and security. These decisions are to be made on a case by case basis following an individual assessment of the reasonableness of the actions that are contemplated and in accordance with our obligations under the Corrections Act to ensure the good order and security of the prison and the safety and wellbeing of prisoners. Staff are required to act in accordance with the guidelines outlined in this document and relevant legislation.
     2. Subject to relevant privacy provisions and policies, staff and contractors may use and disclose personal and confidential information in the performance of their duties. In relation to health information, the *Health Records Act* 2001 provides additional legislative protections for prisoners who are trans, gender diverse or intersex. Where a prisoner consents to the release of their health information to corrections staff, staff must manage this information within the parameters around which the consent has been given, and cognisant of the particularly sensitive nature of the information.
     3. In relation to privacy, staff and contractors must comply with the Information Management and Information Security policies and associated acceptable use policies by safeguarding personal or confidential information.
     4. The confidentiality provisions of the *Corrections Act* 1986 apply as usual, and in particular information concerning a prisoner’s gender identity or intersex status. There may be occasions when it is in the interests of the particular person’s safety or security that personal information is appropriate and reasonable to release to a limited number of other staff. An example of where such information will be shared is in respect to the escorting of prisoners to and from court or between prisons. As trans, gender diverse or intersex people may require separation from other prisoners in transit, prison supervising staff will ensure that escorting staff are aware of any separation requirements.
     5. Additionally, where a trans, gender diverse or intersex prisoner advises staff that they have not disclosed to family or friends that they are trans, gender diverse or intersex, staff will take all reasonable steps to ensure that in their interactions with family and friends (e.g., in the processing of visits), this information is not disclosed.
   1. **Trans, Gender Diverse and Intersex Prisoners Reference Group**
      1. The Trans, Gender Diverse and Intersex Prisoner Reference Group has been established to monitor and resolve operational issues that arise regarding the management of trans, gender diverse and intersex prisoners in custody.
      2. The group will also identify and consider opportunities for system improvements related to the management of trans, gender diverse and intersex prisoners in custody.
4. **CORRECTIONAL MANAGEMENT OF PRISONERS WHO ARE TRANS, GENDER DIVERSE OR INTERSEX**
   1. **Guiding Principle**
      1. As a guiding principle, a person should be imprisoned in the prison of their gender rather than their sex assigned or assumed at birth.
      2. In addition to those factors that the Secretary, Department of Justice and Community Safety (DJCS), must have regard to in the placement of trans, gender diverse and intersex prisoners, the person’s preference must be considered.
   2. **Protocol**

In respecting the privacy of the individual, it is not necessary to identify all imprisoned people who are trans, gender diverse or intersex, particularly where such identification is unlikely to influence their custodial management and supervision.

* 1. **Initial Reception**
     1. Victoria’s prison system is currently separated into two systems that are based on gender: a men’s system and a women’s system. These two systems currently remain the only placement options for people who identify as trans, gender diverse or intersex.
     2. In addition to considering the gender identity of a person received into the lawful custody of the Secretary, DJCS, the *Corrections Act* 1986 requires that with respect to the classification of a prisoner, the Secretary consider the risk the prisoner presents to prison security, the community, themselves, or any other person, having regard to any one or more of the following:
* the nature of the offence for which the prisoner has been charged or convicted
* the risk of the prisoner escaping, or attempting to escape, from custody
* the risk of the prisoner committing a further offence and the impact of the commission of the further offence is likely to have on the community
* any risk the prisoner poses to prison management, security and good order
* any risk the prisoner poses to the welfare of themselves and any other person
* the length of the prisoner’s sentence or, if the prisoner is awaiting trial, the maximum sentence applicable to the offences in respect of which the prisoner has been charged
* any other matter considered relevant to prison management, security and good order and the safe custody and welfare of the prisoner.
  + 1. Generally, prisoners are initially received into prison according to the gender specified on the documentation that accompanies them from Victoria Police or the courts. For male prisoners, this is likely to be the Melbourne Assessment Prison, while for female prisoners this will be the Dame Phyllis Frost Centre.
    2. Where Corrections Victoria’s Sentence Management Division (SMD) receives advice from Victoria Police or the Courts in advance of a person’s reception into prison custody that the person identifies as trans, gender diverse or intersex, including those people who identify as non-binary (i.e., an individual who identifies as neither or both male and female), a decision regarding which system the person will be received into, will be dependent on a number of factors. It is acknowledged that there may be limited information available to SMD at this point to assist in determining which system to receive the person. However, in addition to the matters outlined in section 6.3.2, the key issues to consider at this time include:
* the gender recorded on the documentation that will accompany the person into prison custody
* the gender which aligns to the person’s lived experience
* the person’s expressed views on the prison system in which they wish to be placed
* previous custodial history and placement decisions
* any available medical and / or psychiatric or psychological advice.
  + 1. Where information is not received in advance of a trans, gender diverse or intersex prisoner’s reception into prison custody, and:
* the prisoner presents with an anatomical sex that differs from their gender identity
* the prisoner presents with an anatomical sex that differs from their warrant, or
* the prisoner volunteers they are trans, gender diverse or intersex

the prison medical officer and SMD must immediately be notified of the fact.

* + 1. Prisoners who are trans and gender diverse and some prisoners who are intersex, are highly vulnerable in a corrections environment, and in every case, their initial placement must be reviewed as a matter of urgency by the SMD, according to the process detailed below. A record of the prisoner's gender identity or intersex status should also be made in the Reception Assessment module in E\*Justice.
    2. Prior to placement review by SMD, particular care must be taken to ensure the prisoner’s safety. This will ordinarily include the prisoner being kept separate from other prisoners and accommodated in a single cell with toilet and shower facilities. The prisoner’s preference concerning segregation from or interaction with other prisoners will be considered and given appropriate weight by SMD when determining placement. Prisoners who have been segregated, will be managed under the least restrictive conditions consistent with the reasons for the separation and to the extent necessary to minimise the risk associated with that reason.
    3. Prisoners identified as trans, gender diverse or intersex, will be offered copies of the Commissioner’s Requirement, ‘*Management of Prisoners who are Trans, Gender Diverse or Intersex’* and Justice Health’s Health care for prisoners who are trans, gender diverse or intersex upon their reception.
  1. **Sentence Management Division (SMD) and Initial Placement**
     1. Within three working days of their initial arrival of a prisoner who is trans, gender diverse or intersex (convicted or unconvicted) and after completion of the reception assessment and medical screening, a Sentence Management Panel (SMP)must be convened to discuss and confirm the appropriate placement of the prisoner within the prison, or another prison if deemed more appropriate.
     2. The SMP will include a representative of the SMD; a representative of the Health Services Provider (e.g. medical officer or delegate); Operations Manager or delegate; other relevant health staff; and a prison-based clinician (where available). Wherever practicable and appropriate, the medical officer or delegate will seek advice from medical and mental health specialists, including psychiatrists, psychologists, endocrinologists and general practitioners.
     3. All prisoners who are trans, gender diverse or intersex will be assessed by the SMP and an appropriate plan developed addressing issues relating to the placement and safety of the prisoner.

In determining the placement of a trans, gender diverse or intersex prisoner, SMD should seek the input or advice from a person with lived transgender experience.

* + 1. Each convicted prisoner must be assessed by the SMP to determine an appropriate sentence plan for that prisoner. Factors such as the prisoner’s background, their age, gender identity and expression and intersex status, their need for education and training and any proposed plans for rehabilitation should be taken into account when developing the plan.
    2. Issues relating to the medical treatment of prisoners who are trans, gender diverse or intersex will be referred to the treating medical officer at the prison.
    3. In addition to those matters described in section 6.3.2, placement of a trans, gender diverse or intersex prisoner will be determined by the SMP with reference to the following factors:
* confirmation of the prisoner’s gender. Consultation (undertaken by the prison medical officer) should occur with the prisoner’s treating practitioner in the community, wherever possible including their general practitioner, psychiatrist / psychologist or endocrinologist. Consultation may also occur with a publicly funded specialist facility such as the Monash Health Gender Clinic (or similar publicly funded specialist facility)
* the prisoner’s preferred placement (male or female prison).
  + 1. In considering the above factors, the safety and welfare of the prisoner and that of other prisoners will be the priority.
    2. The prisoner may seek a review of their placement by the Commissioner, Corrections Victoria or Commissioner’s delegate.
  1. **Placement within Prison**
     1. Ongoing management of prisoners who are trans, gender diverse or intersex, including placement within the prison, must be in accordance with existing Sentence Management and Case Management Review Committee (CMRC) processes. These decisions will be made with a view to ensuring the safety and welfare of the prisoner and other prisoners, as well as the security and good order of the prison.
     2. In regard to the case management of prisoners who are trans, gender diverse or intersex, case managers should ensure that key information and decisions which relate to their management and supervision while in custody are recorded in their Individual Management File. This includes documenting information and decisions relating to their clothing and appearance, identification (including preferred pronouns) and strip searches. This information should be reflected in any documentation prepared in advance of a prisoner transferring to another location and upon their reception at their new prison.
     3. Where a prisoner who is trans, gender diverse or intersex requests co-placement with another prisoner, this will be considered but not guaranteed, and only if the other prisoner supports the request. Co-placement is dependent on a range of factors, with priority given to the safety, security and good order of the prison. Other consideration will include, but are not limited to, both prisoners' security ratings, identified drug user status, and rehabilitation and program needs.
  2. **Prisoners who identify as trans and gender diverse following their initial placement**
     1. Following their reception into custody and initial placement, prisoners may seek to participate in gender affirming treatment while in custody. This is likely to result in these prisoners being accommodated in a system which accords with the gender assigned at birth, rather than the gender to which they now identify.
     2. Where a prisoner advises staff that they intend to participate in treatment staff should immediately undertake the following actions:
* establish if the prisoner feels safe and if they wish to remain accommodated in the unit in which they are currently placed or in alternative accommodation
* ascertain if they wish to be known by a different given name and pronoun
* advise the senior officer in the unit in which they are accommodated of the prisoner’s trans and gender diverse status
* document this information in a file note on the prisoner’s Individual Management File (IMF)
* advise the Offender Services Manager and the SMD
* notify the prison medical officer.
  + 1. Within three working days of confirmation that a prisoner has participated in gender affirming treatment, a SMP must be convened to discuss and confirm the appropriate placement of the prisoner within the prison, or another prison if deemed more appropriate.
    2. The SMP will include a representative of the SMD; a representative of the Health Services Provider (e.g. medical officer or delegate); Operations Manager or delegate; other relevant health staff; and a prison-based clinician (where available). Wherever practicable and appropriate, the medical officer or delegate will seek advice from medical and mental health specialists, including psychiatrists, psychologists, endocrinologists and general practitioners.
    3. As with all prisoners who are trans, gender diverse or intersex, the SMP will develop an appropriate plan to address issues relating to the placement and safety of the prisoner.
    4. In assessing the placement of the prisoner in light of their decision to undergo treatment, SMD will have regard to those matters outlined in sections 6.3.2, 6.3.4 and 6.4.6, specifically the prisoner’s preferred placement and the safety and security risks that their transition presents for themselves and / or others.
    5. Prisoners who advise staff of their intention to affirm their gender, will be offered copies of the Commissioner’s Requirement, ‘*Management of Prisoners who are Trans, Gender Diverse or Intersex’* and Justice Health’s Health care for prisoners who are trans, gender diverse or intersex and are to be managed in accordance with this policy.
  1. **Access to Rehabilitation, Work, Education and other programs**
     1. Prisoners who are trans, gender diverse or intersex must have access to the same range of work, rehabilitation, education and recreation programs and facilities as other prisoners.
     2. Decisions regarding participation in activities external to the prison, such as work gangs, will be on the basis of ensuring security and public safety.
     3. Participation in individual or group programs will be determined on the basis of need and the availability of programs at the prison. Programs are to be conducted in such a manner that protects the safety and welfare of all participants. Where appropriate, Prison General Managers must ensure that trans, gender diverse or intersex prisoners have access to external support services specific to their needs such as peak community services which specialise in the area of trans, gender diverse and intersex people.
  2. **Privacy considerations in accommodation units**

Prisoners who are trans, gender diverse or intersex will have access to shower, toilet and laundry facilities that maximise the prisoner's safety, personal privacy and dignity. Staff should be conscious of and manage any risks associated with other prisoners perceiving that trans, gender diverse or intersex prisoners are being singled out for ‘special treatment’.

* 1. **Appearance – Clothing and Makeup**
     1. Convicted prisoners who are trans, gender diverse or intersex will be provided with standard, prison issue clothing according to the prison where they are placed.
     2. Unconvicted prisoners who are trans, gender diverse or intersex will ordinarily have the right to wear their own clothing, with the proviso that the General Manager retains the right to determine what clothing is suitable within the prison. In some instances, the General Manager may require all unconvicted prisoners to wear prison issued clothing. For prisons that accommodate both convicted and unconvicted prisoners, unconvicted prisoners may be permitted to wear their own clothing where they do not mix with convicted prisoners and where it does not impact on the safety and security of the prison.
     3. All prisoners who are trans, gender diverse or intersex will have access to underwear appropriate to their preference.
     4. Prisoners accommodated in female prisons have access to a small range of cosmetics and toiletries through the prisoner shop. Prisoners who are trans, gender diverse or intersex who are accommodated in male prisons will have access to the same range of cosmetics and toiletries that are available within the women’s prisons.
     5. Assessments will be made by the CMRC on a case by case basis as to the manner in which the cosmetics will be worn and when they will be worn. In some instances it will be appropriate to restrict the use of such cosmetics to in-cell hours, or limiting the period or circumstances in which they are worn in out-of cell hours. In the management of a prisoner’s safety, consideration must be given to the degree to which their presentation may increase the risk of them being harmed or abused.
  2. **Appearance – Wearing of Wigs** 
     1. Prisoners who are trans, gender diverse intersex are permitted to apply to the General Manager to wear a wig by completing the Prisoner Application – Wearing of Wigs form.
     2. A prison General Manager may approve applications to wear a wig where there are exceptional circumstances on a case-by-case basis, such as when a prisoner considers hair as a significant feature of their gender affirmation, however, cannot grow their own hair. Any approval for wigs must be considered within the security, good order and management of the prison and the safety of the prisoner.
     3. Application outcomes by the General Manager are to be recognised at subsequent prison locations should the prisoner be transferred. However, General Managers may review the decision based on a prisoner’s change of circumstances (for example, the individual no longer wears a wig) or a change in exceptional circumstances (for example, a safety and security risk).
     4. Applications and outcomes should be documented in the IMF.
     5. Where permission to wear a wig is granted, the prisoner identification card must be updated with a photograph of the prisoner wearing their wig. In addition, a photograph must be taken of the prisoner wearing their wig and without their wig and uploaded onto E\*Justice, as per Commissioner’s Requirement 2.3.5 – Management of Prisoner Photographs. The photograph must be regularly updated should there be any changes to the wig.
     6. A prisoner’s wig, including wig maintenance products, is considered property and may be subject to searches. A wig will be searched in the same manner as a strip search of a prisoner, as per Commissioner’s Requirement 1.2.3 – Strip Searches in Prisons. The purchase and maintenance of the wig, including all associated costs (such as a new prisoner identification card) will be the responsibility of the prisoner.
  3. **Identification**
     1. One of the most common forms of detriment experienced by people who are trans and gender diverse, and to a lesser extent people who are intersex, is the use of inappropriate names and pronouns.
     2. In order to avoid this detriment and to promote their psychological and emotional wellbeing, prisoners who are trans, gender diverse or intersex should be addressed according to the name by which they wish to be known, including the use of pronouns appropriate to their gender identity. The exception to this is when the General Manager determines that the use of such a name is unacceptable on the basis that it may serve to threaten prison security, jeopardise the safe custody or welfare of a prisoner, be used to further unlawful activity or be regarded as offensive by a victim or an appreciable sector of the community. These factors reflect those that are prescribed in the Corrections Act for the Secretary to consider when a prisoner applies to formally change their name or the sex descriptor in their birth registration. A person who identifies as gender diverse or non-binary should be referred to by their name and by the pronouns that they use (which might be ‘they’ or some other term, or they might prefer no pronoun). A record of their preference, and any decision made by the General Manager to limit the use of such a name, should be entered into their IMF as soon a practically possible.
     3. Where the name on a prisoner’s warrant differs from the prisoner’s preferred name, the prisoner must be identified, on reception, against the name on their warrant. They will thereafter be addressed according to the name and gender they wish to be known by, in accordance with 6.11.2. Requests for surname changes must be followed as per Commissioner’s Requirement 4.3.1 – Prisoners’ Name Changes.
     4. Regardless of what is recorded on their warrant, the prisoner’s preferred name will be reflected in PIMS/E\*Justice against the current period of incarceration, as well as their prison identification card.
  4. **Escorts**

Escorting officers are responsible for ensuring the prisoner’s safety on inter-prison and other escorts. This may require a prisoner who is trans, gender diverse or intersex to be separated from other prisoners in transit. Prison supervising staff will make escorting staff aware of any separation requirements.

* 1. **Strip Search and Urinalysis**
     1. The strip searches for all prisoners under the *Corrections Act* 1986 and the Corrections Regulations 2019 are required to be conducted in the least intrusive manner possible, and within facilities that ensure the dignity and privacy of the prisoner being searched. It is essential that all strip searches comply with the procedure requirements of regulation 86 - 87 of the Corrections Regulations 2019 and Commissioner’s Requirement 1.2.3 – Strip Searches in Prisons.
     2. Wherever possible, strip searches and urinalysis procedures for prisoners who are trans, gender diverse or intersex are to be performed by officers of the gender nominated by the prisoner. This may be different from the prisoner’s own gender, in particular where ambiguous anatomy may give rise to distress or embarrassment and may involve a top/bottom strip search conducted by officers of different gender, depending on the area of the body being searched. General Managers are to establish procedures to allow, where possible, one male and one female officer to conduct the strip search, with them alternating the sequence of the search depending on which body area is to be searched.

The sensitivities of individual officers will also be taken into account when allocating responsibility for strip searching of prisoners whose external genitals are at variance to their gender identity.

* + 1. Where a trans, gender diverse or intersex prisoner uses a prosthesis, staff need to ensure that an appropriate balance is achieved between addressing any safety and security issues arising from the presence of the prosthesis and ensuring the prisoner’s dignity and privacy throughout the strip search or urinalysis process. Where the presence of the prosthesis does not create any safety and security issues, the prisoner should not be required to remove it. If the prosthesis is required to be removed during the strip search or urinalysis process, the prisoner should manage the handling and placement of the prosthesis throughout this process. Staff should seek guidance from the prison medical service or senior prison management if unclear on the nature of the prosthesis and any resulting safety or security issues.
    2. The final decision regarding the gender of officers to carry out strip searches or urinalysis procedures will be made by the General Manager, based upon the above guidelines.
    3. All correctional staff should be aware that people who are trans, gender diverse or intersex are very vulnerable to sexual assaults, both in the general community and in the correctional system. Intersex people may have a history of trauma associated with medical and surgical intervention as children or adults. Staff should be aware that strip searching may therefore reinvoke traumatic experiences of sexual and physical violence.
  1. **Pat Down Search**

Wherever possible, pat down searches for prisoners who are trans, gender diverse or intersex are to be performed by officers of the gender nominated by the prisoner.

* 1. **Access to Community Support Agencies**

Prisoners who are trans, gender diverse or intersex will be permitted access to support from appropriate community support agencies.

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| Larissa Strong  **Acting Commissioner** |

**Information below this point is administrative supporting detail**

**only and not subject to Commissioner’s review or approval.**

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| **Acronyms** | |
| CMRC | Case Management Review Committee |
| DPFC | Dame Phyllis Frost Centre |
| IMF | Individual Management File |
| MAP | Melbourne Assessment Prison |
| SMD | Sentence Management Division |
| SMP | Sentence Management Panel |

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| **Definitions** | | |
| Affirmed gender | The gender to which one identifies which may or may not match the individual's gender at birth. | |
| Asexual | An **asexual** person does not experience sexual attraction, but may experience romantic attraction towards others.  (https://www.vic.gov.au/inclusive-language-guide) | |
| Binary | Binary literally means something with two types or options, like male and female. | |
| Bisexual / bi | A person who is emotionally and sexually attracted to persons of the same and opposite sex. Often this term is shortened to *‘bi’*. An alternative description that may be preferred by some is *pansexual.* | |
| Brotherboy | Brotherboy (or brothaboy) is an Aboriginal English word that is broadly similar in meaning to ‘transgender man’. Brotherboys often identify as or live as men, and in some traditional communities gay women can also be included. Not all Aboriginal people who identify as transgender or gay call themselves brotherboys. Brotherboys are distinct from the wider LGBTIQ community with their own customs and identities. | |
| Cis / Cisgender | This refers to people whose gender identity is in line with the social expectations of their sex assigned at birth.  It is a term used to describe people who are not transgender. | |
| Coming out | The process through which an individual comes to recognise and acknowledge (both to self and to others) their sexual orientation, gender identity, and/or intersex status. | |
| Cross-dresser | A person who has an emotional need to express their alternate gender identity and be accepted in that role on a less permanent basis. | |
| Cultural competence/awareness | An approach that is responsive to the beliefs, values and practices of different groups or populations. The term is often used to highlight differences between the values and practices of minority and marginal groups and those of the dominant culture. While the term has most commonly been applied to ethnic and religious minorities it has recently been used to include minority sexual and gender diverse communities and their unique beliefs, values and practices. | |
| Discrimination | Discrimination occurs when any person is treated inequitably because of who they are; discrimination on the basis of sex, gender identity, intersex status, sexual orientation or relationship status is illegal in Australia, under commonwealth legislation, as well as a range of state/territory legislative instruments. | |
| Diversity | | The term diversity refers to what makes us different. It covers gender, age, language, disability, ethnicity, cultural background, sexual orientation and religious belief. Diversity also refers to our many other differences in education, work experience, occupation, abilities, values and beliefs, socio-economic background, family structure, relationship status and whether or not we have family and carer responsibilities. Diversity relates to people and communities. |
| Equity | | Equity is about fairness, and making sure all people have access to the same opportunities. |
| Fluid sexual orientation | | The concept that attraction to genders can change over time and/or circumstance. |
| Gay | | A person whose primary emotional and sexual attraction is towards people of the same sex. The term is most commonly applied to men, although some women use this term. |
| Gender affirmation | | See Transition / Affirmation |
| Gender diversity | | The term refers to people who fall outside the typical range of masculinity or femininity with regards to gender identity. It includes but is not limited to people who identify as agender (having no gender or androgenous), bigender (both a male and female) or as non-binary (neither male nor female). Some non-binary people identify as gender queer or gender fluid. |
| Gender dysphoria (see ‘gender incongruence’ | | A medical term used at times to explain trans and gender diverse people and the biological theories that result in a difference between the gender with which a person identifies and the physical sex attributes of their body.  From June 2018 the World Health Organization (WHO) declassified being transgender as a mental illness. The term ‘gender dysphoria’ has been replaced with ‘gender incongruence’ and has been placed under the broader platform of sexual health. |
| Gender expression | | The way in which someone chooses to physically express their gender, through name, pronoun, clothing, haircut, mannerisms etc. This is not the same as gender identity, which is our internal sense of our own gender. |
| Gender fluid | | See *gender diversity*. |
| Gender identity | | A person’s sense of identity defined in relation to the categories male and female, other or neither. For some people their sense of gender identity can be fluid (or change) over time. |
| Gender incongruence | | This is the preferred sexual health classification of transgender and gender diverse people by the World Health Organisation (WHO).  WHO describes gender incongruence as ‘characterised by a marked and persistent incongruence between an individual’s experienced gender and the assigned sex’. It replaces the stigmatising term ‘gender dysphoria’ which was used previously, however noting that this term is still used in Australia. |
| Gender questioning / Questioning | | A person whose sense of themselves is inconsistent in some way with the binary categories of male and female and who is in the process of redefining their gender. |
| Gender Confirmation Surgery | | A surgical procedure whereby the sex organs of a person are refashioned to that of the gender in which they identify. Formerly known as gender reassignment surgery, sex reassignment surgery (SRS) or genital reconstructive surgery (GCS). |
| Heterosexism | | The belief that everyone is, or should be, heterosexual and cisgender and that being non-heterosexual, or being gender diverse, is unhealthy and unnatural. Heterosexism can include biphobia, homophobia and transphobia and a fear of intersex people who challenge the assumption that there are only two sexes. |
| Homophobia | | A term used to describe the irrational fear, hatred, aversion to or discrimination against people who are homosexual, or same-sex attracted, or who are perceived to be homosexual or same-sex attracted. |
| Hormone therapy | | In the context of transitioning, the process of hormonally reassigning a person's biochemistry to match their gender identity. |
| Inclusive service provision | | The provision of services that are culturally sensitive and aware. This includes the provision of services that are able to meet the needs of people who are LGBTI in a culturally appropriate and sensitive manner. |
| Lesbian | | A woman whose primary emotional and/or sexual attraction is toward other women. |
| LGBTIQ | | An acronym which stands for lesbian, gay, bisexual, transgender, intersex, queer and questioning as an inclusive umbrella abbreviation to encompass a range of diverse sexualities, genders and sex characteristics.  This is the term commonly adopted by the Victorian Public Sector.  There are other variations, such as LGBTI, LGBTIQ+ and LGBTIQA+, where the + sign is generally used to represent genders and sexualities outside of the letters LGBTIQ. |
| Misgendering | | Describing or addressing someone using language that does not match a person’s gender identity or expression. For people with intersex variations, this may include a presumption that they have a non-binary gender identity, just as much as an assumption that they are a man, or a woman. |
| Non-binary | | A person who is **non-binary** is someone whose gender is not exclusively female or male; while a person who is agender has no gender. |
| Pansexual | A **pansexual** person is romantically and/or sexually attracted to people of all genders, binary or non-binary.  (https://www.vic.gov.au/inclusive-language-guide) | |
| People with intersex variations | People who are born with physical, biological or chromosomal sex characteristics that do not fit the typical expectations for male or female bodies. | |
| Queer | A term that is used by some people with an alternative sexual and/or gender identity whose identity is not adequately described by existing categories or labels such as lesbian, gay, or bisexual. It is also sometimes used as an umbrella term to include the full range of people with alternative sexual or gender identities in the LGBTIQ community. Note that for some, especially older LGBTIQ people, this is an offensive term. | |
| Same-sex attracted | Attraction towards people of one’s own gender. The term has been used particularly in the context of young people whose sense of sexual identity is not fixed, but who do experience sexual feelings towards people of their own sex. | |
| Sex | The biological attributes that define people as either male, female, a combination of female and male, or neither female nor male. These biological attributes include chromosomes, hormones and physical anatomy. | |
| Sexual Orientation, Sexuality and Sexual Identity | Sexual orientation refers to a person’s pattern of physical and/or emotional attraction to others, for example, being primarily attracted to other women (lesbian), other men (gay) or women and men (bisexual). Sexuality is used in this resource to describe a person’s sexual expression, in particular their sexual behaviours. Sexual identity is used to describe a person’s sense of identity derived from their sexual orientation and sexuality within the broader social context. | |
| Sistergirl | Sistergirl (or sistagirl) is an Aboriginal English word that is broadly similar in meaning to ‘transgender woman’. Sistergirls often identify as or live as women and in some traditional communities gay men can also be included. Not all Aboriginal transgender or gay people call themselves sistergirls. Sistergirls are distinct from the wider LGBTIQ community with their own customs and identities. | |
| Transgender | Transgender (sometimes shortened to “trans”) is an umbrella term used to describe a wide range of gender identities that differ from the perceived norms aligned to biological sex. Transgender is a term that may be used to describe someone whose gender identity does not match their birth gender, someone who identifies as both genders, neither gender or a third gender. Common terminology includes Transwomen (M to F) referring to those who were born male but identify as female; although many will identify only as female (not transwomen). Transmen refers to those who were born female but whose gender identity is male (F to M); although many will only identify as male and not transmen. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; many do not. Some transgender people change their gender expression to match their affirmed gender, many do not. | |
| Transition or affirmation | Describes both a public act and a process. It involves the permanent and public adoption of the style and presentation of the gender different to that of a person’s birth-assigned sex. It usually includes a change of name, chosen style of address and pronouns, as well as adopting the dress and style of presentation of a person’s innate gender. It may also involve gender reassignment surgery and/or hormone replacement therapy (HRT). Not all who transition undergo medically assisted gender reassignment. | |
| Transphobia | Fear and hatred of people who are trans or gender diverse. | |
| Transsexual | A person who is making, intends to make, or has made the transition to the gender with which they identify. Some people who transition access hormone therapy and/or surgery to bring their body into line with their gender identity. Note that not all people who have had hormone or surgical treatment identify as transsexual and may identify as female, male, transgender, trans or gender diverse or none of these. | |

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| **Associated Commissioner’s Requirements** |
| 1.2.3 - Strip Searches in Prison  1.2.9 - Contraband and Controlled Items  2.1.1 - Prisoner Property  2.4.2 - Anti-Discrimination with Respect to Prisoners  4.3.1 - Prisoners’ Name Changes  4.3.3 - Prisoners' Application to Alter their Record of Sex |

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| **Document Detail** | |
| Title: | Management of Prisoners who are Trans, Gender Diverse or Intersex |
| Owner: | Manager, Operations Directorate |

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| **Version Control** | | |
| Version | Date | Description |
| V9 | Mar-21 | Update |
| V8 | Jun-17 | Update |
| V7 | Jan-17 | Update |
| V6 | N/A | *No version 6 published* |
| V5 | Mar-16 | Update |
| V4 | Aug-15 | Update |
| V3 | Aug-14 | Update |
| V2 | May-09 | Update |
| V1 | Jun-08 | First Issue |

**PRISONER APPLICATION FOR WEARING OF WIG**

**INFORMATION FOR PRISONERS**

1. Applications will be assessed by the prison General Manager in exceptional circumstances on a case-by-case basis.
2. Prisoners granted approval to wear wigs will be monitored to ensure compliance and the General Manager may review any change of circumstances, post the initial approval.

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| **PRISONER DETAILS** | |
| **FULL NAME** |  |

|  |  |
| --- | --- |
| **CRN** |  |
| **LOCATION** |  |
| **REASON FOR REQUST** |  |
| **WIG DETAILS**  *(Include the following details: colour, length, material of wig; or attach wig specifications to the application)* |  |

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| **DECLARATION** |
| *I declare that the above is true and correct and if granted approval, I will comply with all relevant policies and requirements.* |
| **Signature**: **Date:** |

**OUTCOME OF PRISONER APPLICATION FOR WEARING OF WIG**

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| **PRISONER NAME: CRN:** |

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| The prisoner’s application for wearing of wig has been resolved as follows:  ⁭ Not approved  ⁭ Approved |
| **RATIONALE FOR DECISION**  Factors considered in assessing this application are described below: |

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| --- |
| **AUTHORISATION** |
| **General Manager – Print name:** |
| **Location:** |
| **Signature**: |
| **Date:** |

\*Decision to be recorded on IMF

\*If approval granted, prisoner to be informed and PIU for security monitoring purposes

1. ‘prisoners’, as defined in s.3 *Corrections Act* 1986 [↑](#footnote-ref-2)