



Custodial Operations Practice Directive

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Scope

1. **Human Rights**
2. **Limitation of Human Rights**
3. **Overview**
4. **Definitions for the Purpose of this Directive**
5. **Initial Centre Placement**
6. **Reception and Ongoing Management**
7. **Accommodation**
8. **Risk of Harm to Self**
9. **Individualised Management**
10. **Case Notes**
11. **Sexual Assault**
12. **Prisoner Property**
13. **Search and Urinalysis**
14. **Request to Alter the Record of Sex**
15. **Considerations Regarding the *Anti-Discrimination Act 1991***





Custodial Operations Practice Directive

1. Human Rights

It is unlawful for corrective services officers to act or make decisions in a way that is not compatible with human rights, or in making a decision, fail to give proper consideration to a human right relevant to the decision.

Giving proper consideration to human rights entails identifying human rights which may be relevant to a decision and considering whether the decision would be compatible with human rights.

A decision will be compatible with human rights when it does not limit a human right, or only limits a right to the extent that is reasonable and demonstrably justifiable.

Human rights which may be relevant include:

- a) privacy and reputation;
- b) recognition and equality before the law;
- c) humane treatment when deprived of liberty;
- d) cultural rights – generally and for Aboriginal peoples and Torres Strait Islander peoples;
- e) protection of families and children; and
- f) freedom of expression.

2. Limitation of Human Rights

In determining whether a limitation may be reasonable and demonstrably justified, the following factors are relevant to consider:

- a) The nature of the human right - this involves looking at the purpose and underlying value of the human right. For example, the right to privacy and reputation provides for a person not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.
- b) The nature and purpose of the limitation – this involves considering the actual purpose or legitimate aim/reason for limiting the human right. For example, this practice directive engages the right to privacy by including the legislative requirement for a prisoner to obtain the permission of the chief executive before applying to alter their record of sex.
- c) The relationship between the limitation and its purpose – this involves considering the rational connection between the limitation of the right, and whether this will help to achieve said purpose or legitimate aim. For example, the requirement for a prisoner to obtain the permission of the chief executive before applying to alter their record of sex is to ensure that consideration can be given to factors relating to the safety of others, including whether the application poses a risk to the good order and security of the corrective services facility, and the safety and welfare of other persons.
- d) Whether there are any less restrictive and reasonably available ways to achieve the purpose – this involves a ‘necessity analysis’ where it is necessary to consider the purpose of the limitation and if it can be achieved in any other way. For example, is there a less intrusive way of ensuring the safety of others other than requiring the permission of the chief executive prior to a prisoner applying to change their record of sex?
- e) The importance between the purpose of the limitation and preserving the human right – this involves a balancing exercise of the benefits obtained by the limitation vs the harm caused to the human right. For example, does the safety and security of others, which is achieved by the consideration of the chief executive prior to a prisoner applying to change their record of sex, outweigh the limit to the right to privacy and reputation?





Custodial Operations Practice Directive

3. Overview

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, gender diverse, intersex and non-binary 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 transgender and gender diverse 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 relevant human rights and the reasonableness of the actions being considered.

A transgender prisoner who has had reassignment surgery completed and registered a change of sex with the Registry of Births, Deaths and Marriages is excluded from the requirements of this Custodial Operations Practice Directive (COPD). They are to be managed in accordance with their legally recognised sex.

4. Definitions for the Purpose of this Directive

It is acknowledged terminology is important and that not all people like to be defined by the same terms. For the purpose of this COPD, 'transgender and gender diverse people' is used as a term to be inclusive of intersex and non-binary individuals.

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

Brotherboys – refers to Aboriginal transgender men (registered as female at birth) who identify and live their lives as male.

Intersex – refers to people that are born with physical sex characteristics that don't fit medical norms for female or male bodies. Discrimination on the basis of a person's sex characteristics is unlawful under the *Anti-Discrimination Act 1991*

Gender Diverse - refers to people who identify as gender fluid, gender questioning, or genderqueer.

Gender Dysphoria - is a recognised medical condition in which a person's sex assigned at birth does not match their gender identity or expression, resulting in impaired functioning in daily life. One treatment for gender dysphoria is for the person to undergo a transition. Not all trans and gender diverse people have gender dysphoria, and of those who have dysphoria, for many it ceases with access to gender affirming health care.

Gender Identity - a person's internal and individual concept of self as male or female (both or neither, how an individual perceives themselves, and what they call themselves), whether or not it corresponds with the sex assigned to the person at birth. Gender identity includes a person's:

- personal sense of their body; and
- if freely chosen, modifications of their bodily appearance or functions by medical, surgical or other means; and
- other expressions of gender, including name, dress, speech and behaviour.





Custodial Operations Practice Directive

Non-binary - used to describe genders that do not fall into binary definitions of male or female.

Sex Characteristics - has a particular meaning under Queensland's discrimination laws. It refers to a person's physical traits linked to a person's sex, such as genitalia, reproductive organs, chromosomes, genes, hormones, and the changes that happen during puberty.

Sistergirls – refers to Aboriginal transgender women (registered as male at birth) who identify and live their lives as female.

Trans/Transgender – a transgender person (often shortened to trans person) is someone whose gender identity differs from that typically associated with the sex they were assigned at birth.

5. Initial Centre Placement

The initial placement decision for a transgender or gender diverse 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 or gender diverse 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 prisoner's offending;
- c) the prisoner's personal circumstances;
- d) the risk to the prisoner or to other prisoners at the placement facility;
- e) the sex characteristics of the prisoner (if known), i.e. genitalia, reproductive organs;
- f) the views of the prisoner's treating medical practitioner or psychiatrist (if known/available);
- g) whether the prisoner has lived as a member of the acquired gender in the community and for what length of time;
- h) whether the prisoner has had hormone treatment at any time to support their acquired gender;
- i) 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;
- j) the prisoner's preference for accommodation in a male or female corrective services facility;
- k) any concerns expressed by staff and the prisoner in relation to the prisoner's safety;
- l) where the prisoner could be accommodated appropriately within the placement facility;
- m) relevant human rights and associated cultural rights; and
- n) any other factors considered relevant.

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





Custodial Operations Practice Directive

6. Reception and Ongoing Management

While acknowledging the unique requirements of transgender and gender diverse prisoners, these do not take priority over safety and security considerations. As such, transgender and gender diverse 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 or gender diverse will be accepted as such and treated as their acquired gender, to the extent practicable. A transgender or gender diverse prisoner is to be referred to by their preferred name and the pronoun consistent with their acquired gender for example. This should occur in all communications with the prisoner, including verbal, written and also communication with third parties.

It is important that the prisoner's legal name is recorded on IOMS, as this must align with the name on the relevant court documents which provide the authority to hold the prisoner in custody.

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

When a prisoner who identifies as transgender or gender diverse 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

Until the full induction screening process is complete, a transgender or gender diverse prisoner (when this is known) 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 or gender diverse 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 or gender diverse 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.

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





Custodial Operations Practice Directive

A transgender or gender diverse 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 and gender diverse prisoners.

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

9. Individualised Management

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

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

9.1 Guidelines for Case Conferences

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

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/allied health clinician 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.





Custodial Operations Practice Directive

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 of the corrective services facility 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, Custodial Operations.

10. Case Notes

A transgender or gender diverse 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.

11. Sexual Assault

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.

12. Prisoner Property

At the discretion of the Chief Superintendent of the corrective services facility, a transgender or gender diverse prisoner is to be provided with specific clothing or other items for functional purposes, including appropriate underwear (for example, sports bras), if that clothing item is provided to prisoners of the gender with which the prisoner identifies, or if the item is otherwise considered appropriate in the circumstances.





Custodial Operations Practice Directive

Transgender and gender diverse prisoners may also purchase items to reflect their gender identity including hair dye, hair removal cream and shaving equipment, at the discretion of the Chief Superintendent of the corrective services facility.

13. Search and Urinalysis

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

Refer to COPDs Substance Testing and Search: Prisoner Search

14. Request to Alter the Record of Sex

A prisoner in the custody of the Chief Executive, including a prisoner subject to a continuing detention order, who intends to alter their recorded sex, must apply and obtain the Chief Executive or delegate's written permission before applying to alter their recorded sex under the *Births, Deaths and Marriages Registration Act 2023* (BDMRA) or an equivalent law of another state providing for the registration of an alteration to the person's sex.

Refer to sections 7 and 27AA of the CSA.

14.1 Application to request to alter the record of sex

The prisoner must apply on the Approved Form 3 Application to Alter the Record of Sex (Custody) and clearly state the reasons for submitting the application.

The prisoner is required to provide documentation to support their application, which may include a supporting statement by a person who has known the applicant for 12 months and believes the application is being made in good faith.

Importantly, the applicant is not required to provide records of medical treatment as this is no longer a requirement of the BDMR process, although these can still be provided and considered if they are available.

The prisoner must be provided with a reasonable timeframe to provide the information. If the documentation is not provided, then the application to alter the record of sex will not be further progressed until the information is received.

14.2 Processing the application

The Chief Superintendent of the corrective services facility must ensure all required information is contained within the application.

Once all the required information has been collected, including the Approved Form 3 Application to Alter the Record of Sex (Custody), the Chief Superintendent must complete an Administrative Form 315 Prisoner Application to Alter the Record of Sex Checklist.

When making a recommendation regarding the application the Chief Superintendent should refer to the considerations contained in section 14.6 Deciding an application.





Custodial Operations Practice Directive

The completed Approved Form 3 Application to Alter the Record of Sex (Custody) along with the Administrative Form 315 Prisoner Application to Alter the Record of Sex Checklist is to be submitted to Operational Support (Custodial and Community) via

14.3 Victims Register check

If the prisoner has a VR flag raised on IOMS, the Victims Register (VR) must be advised, by Operational Support, via email to [REDACTED] of the prisoner's application. The VR will provide any information available to them that may form part of the information for consideration based on the information holdings within VR such as whether the amendment of record of sex could be considered offensive to a victim of a crime or the immediate family member of a deceased victim of crime.

If requested by the Deputy Commissioner, the VR may notify relevant Eligible Persons (EPs) about the application and provide them an opportunity to provide a submission regarding whether the proposed amendment of record of sex could be considered offensive to them, a victim of a crime, or an immediate family member of the victim of a crime (should the victim of the crime be deceased).

The Victims Register may send relevant EPs correspondence advising of the request for an amendment of the record of sex.

In these instances, the relevant EPs will be given 21 days to provide a submission as to whether the proposed amendment of record of sex is offensive to the victim for consideration by the delegate.

The Victims Register will forward all submissions received under this part to Operational Support for consideration by the delegate.

14.5 Domestic violence considerations

Where the prisoner's criminal history records offences of domestic violence, offences committed in the context of domestic and family violence, or breaches of Domestic and Family Violence Protection orders, additional information may be sought from QPS to assist the decision maker.

Information is to be sought where the prisoner making the application has current or previous Domestic and Family Violence Protection Order/s.

14.6 Deciding an application

In deciding whether to allow a prisoner to amend the record of sex, the delegate must consider the legislative provisions as detailed in section 27AA of the CSA:





Custodial Operations Practice Directive

- a) whether the proposed alteration of record of sex or recognised details certificate poses a risk to the good order or security of a corrective services facility;
- b) the safety and welfare of the person and other persons;
- c) whether the Chief Executive reasonably believes the proposed alteration of record of sex or recognised details certificate could be used to further an unlawful activity or purpose;
- d) whether the proposed alteration of record of sex or recognised details certificate could be considered offensive to, or cause physical, mental or emotional harm to, a victim of a crime or an immediate family member of a deceased victim of a crime.

The delegate must also pay particular attention to a prisoner's fundamental human right to protect their privacy and reputation, including their individual identity.

Where the delegate's preliminary view is to not support the application, the decision maker must provide the prisoner with an opportunity to respond in writing, prior to a final decision being made. A prisoner must be provided with 21 days to provide any additional information or submissions to the decision maker.

The delegate must provide written reasons for their final decision on the application.

Refer to the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers.

14.7 Prisoner alteration to the record of sex approval

If approval is given for an alteration to the record of sex, the prisoner may then apply in the appropriate form to the registrar of Births, Deaths and Marriages. The prisoner must provide the Chief Superintendent of the corrective services facility with a copy of the final advice from the registrar that the alteration of record of sex has occurred. The Chief Superintendent of the corrective services facility must notify the Victims Register if the alteration of the record of sex has occurred and has been recorded on IOMS.

14.8 Update records

If approval is granted for the prisoner to alter their record of sex, IOMS must be updated to note the changes made to the prisoner's sex, only after final advice is provided from the Registry of Births, Deaths and Marriages.

If a prisoner alters their record of sex when discharged (i.e. not in the custody of the Chief Executive), and subsequently returns to custody or supervision, the prisoner must provide a copy of relevant documentation in relation to the alteration of record of sex to QCS.

Following confirmation of the alteration to the record of sex, the officer must:

- a) update IOMS to note the alterations made to the prisoner's sex;
- b) attach a copy of the documentation provided by the prisoner in IOMS; and
- c) case note the matter.

The Victims Register must be advised of the outcome of the application to alter the record of sex to update records and ensure that accurate information is held in relation to any prisoner listed on that register.





Custodial Operations Practice Directive

14.9 Prisoner alteration to the record of sex without permission

If the Chief Executive or delegate becomes aware that the prisoner has altered the record of sex without obtaining written permission, the Chief Executive or delegate may apply to the registrar under the BDRMA for the cancellation of the alteration.

The matter may be referred to QPS for investigation. Refer to sections 27(1), (3) and (4) of the CSA.

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 or gender diverse prisoner the same as other prisoners;
- b) they treat a transgender or gender diverse prisoner unfairly or improperly because the prisoner is transgender; and/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>.

