12.2 – CLASSIFICATION OF FEMALE INMATES

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12.2. Classification of Female Inmates

12.2.1. Legislation

- **Crimes (Administration of Sentences) Regulation 2014**

Clause 13 states that:

(1) Each female inmate is to be classified in one of the following categories for the purposes of security:

**Category 5** Being the category of inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

**Category 4** Being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier that includes electronic surveillance equipment.

**Category 3** Being the category of inmates who, in the opinion of the Commissioner, should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.

**Category 2** Being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times but who need some level of supervision by a correctional officer or some other person authorised by the Commissioner.

**Category 1** Being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times and who need not be supervised.

(2) Subject to clause 17, the Commissioner may at any time vary or revoke a classification under this clause.

(3) Female inmates who are classified in Category 5 are prescribed to be serious offenders for the purposes of paragraph (f) of the definition of serious offender in section 3 (1) of the Act.

**NOTE: Information to be considered for Cat5 classification purposes**

For the purpose of making any decision with respect to a person’s classification under this division, consideration must be given to any advice received from NSW Police or from any other public authority (whether of this or any other State or Territory or of the Commonwealth) established for law enforcement, security or anti-terrorist purposes.

**NOTE: The provisions of Clause 14 apply to women who have committed an escape offence (refer Chapter 15 – Escapes)**

- Offender Classification & Case Management Policy & Procedures Manual
- Births, Deaths and Marriages Registration Act 1995

12.2.2. Women’s Classification System

Amendments to the Prisons (General) Regulation 1995, gave a legislative base to a new and separate
classification system (from male inmates) for female inmates in NSW. This system, which was designed with the specific profile of women inmates in mind, was developed to give priority to female inmate program needs. The female classification system requires that female inmates be managed with regard to the following factors:

- The classification and placement of female inmates is to be determined as part of a comprehensive and detailed case plan designed to address their individual and identified needs as a female. Initial classification is to be at a minimum security level unless there is strong evidence that significant reason(s) exist for a more restrictive security level;

- The classification and placement of female inmates aims to put the interests of the children of mothers who are serving a full time prison sentence at the highest priority by seeking to ensure the continuity of their relationship with their mother;

- Advice from Justice Health staff is to be obtained and recorded on the case file when placement is being considered for a female inmate where a high risk pregnancy is diagnosed;

- An inmate who has been convicted of a violent crime, an offence against children, or who displays violent behaviour is to undergo a suitability assessment prior to placement at centres which have the Mothers and Children Program. The suitability assessment is to include a report from a psychologist on the inmate’s suitability to be accommodated with children. A report from the Children’s Services Coordinator, Department of Community Services is also required if the offence has been against children.

- Transfer to Transitional Centre (Parramatta), Bolwara House (Emu Plains) – refer section – Transitional Centre, Parramatta and Bolwara House, Emu Plains. A Section 26(2)(1) Permit to enable placement in the transitional centre to occur must be approved before transfer.

### 12.2.3. Classification & Management Policy for Transgender Inmates

Refer Deputy Commissioner’s Memorandum No: 2011/99.

On 1 October 1996, the Transgender (Anti-Discrimination and other Acts Amendment) Act was proclaimed. This Act contained amendments to the Anti-Discrimination Act 1977, making it unlawful to discriminate against a person on the grounds of the person being transgender. The term transgender in the legislation is used to refer to all transgender persons, regardless of whether they have undergone surgical intervention. This is considered necessary, because discriminatory conduct usually occurs as a reaction to a person’s dress, behaviour and other characteristics being at variance with the person’s biological gender.

A **transgender person** is a person of one sex who:

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

- Has identified as a member of the opposite sex by living as a member of the opposite sex; or

- Being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex.

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

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

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

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

- That all inmates are case managed;
- That transgender inmates will be accommodated in a correctional centre of their gender of identification unless it is determined through case management that the inmate should more appropriately be assigned to a correctional centre of their biological gender;
- That placement of transgender inmates in a correctional centre of their biological gender will be assessed through the normal case management process and will be based on:
  - The nature of their offence and criminal history (for example crimes of violence – including sexual – against women or children)
  - Custodial history (for example previous management problems which impacted on the safety of other persons, or the security of the correctional centre)
  - Perceived risk(s) to the continuing safety of the transgender inmate.

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

- All transgender inmates will be initially received into the Metropolitan Remand and Reception Centre (MRRC) for full induction screening.
- Continuing management and placement of transgender inmates will be assessed on an individual basis, through case management, by a multi-disciplinary team of CSNSW staff including psychologists and Justice Health staff.

12.2.3.1. Procedures

Identification

- Self identification as a member of the opposite sex is the only criterion for identification as transgender.
- Identification of a transgender person is to be made routinely on reception into CSNSW custody, whether at court or in a reception correctional centre. The Inmate Lodgment form has been amended to enable the self-identification of transgender persons.
- Once identification as transgender has been made, the inmate must be kept separate from other inmates, accommodated in a single cell, provided access to separate shower and toilet facilities and must not be transported with any other inmate in the same compartment of a transport vehicle until the full induction screening process is complete.

Initial Placement

New Receptions – Courts

- Court security staff and police are to advise the placement officer of every transgender inmate received into custody. The Lodgment Advice form has been amended for this purpose.
- The placement officer is responsible for placing the transgender inmate into the MRRC. The placement officer will fax the Lodgment Advice form to the MRRC.
- Where it is not possible to place a transgender inmate directly into the MRRC (for example, if the inmate is received at a country location), the placement officer will notify the receiving correctional centre by faxing the Lodgment Advice form to the correctional centre.
• The transgender inmate must be kept separate from other inmates, accommodated in a single cell, provided access to separate shower and toilet facilities and must not be transported with any other inmate in the same compartment of a transport vehicle until the full induction screening process is complete.

**Induction Screening**

• All transgender inmates are to complete their induction and screening in the MRRC.

NOTE: Aboriginal inmates are to be advised that they may ask for attendance of an Aboriginal representative from within the ASPU or a designated Aboriginal officer of the department located in the metropolitan area.

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

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

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

• Placement of a transgender inmate in a correctional centre in their biological gender will be assessed through the normal case management process and will be based on:
  - Their offence history (for example, crimes of violence – including sexual – against women or children)
  - Custodial history (for example previous management problems which impacted on the safety of this or other inmates)
  - Perceived risk(s) to the continuing safety of the transgender inmate and/or any other person(s).

• If a transgender inmate does not agree with the initial decision for their placement, they may seek a review of the decision by submitting a written application stating reasons for requesting the review, through the General Manager to Director, Offender Classification, Case Management and External Leave Programs.

• If a transgender inmate is assessed by Justice Health as needing specialist referral, male and female inmates are to be transferred to Long Bay Hospital.

• The majority of transgender patients are male – to – female (M2F). They may be placed in specialized units in male correctional centres, or may request and be transferred for placement in female correctional centres. Female-to-male (F2M) transgender inmates are usually placed, for safety reasons, in female centres although placement may be arranged in male centres where suitable facilities exist.

**12.2.3.2. Case Management**

**Case Plan**

• For transgender inmates who are not receiving treatment a holistic management plan, to be included in their case plan, must be developed collaboratively by a multi-disciplinary team of health care staff and CSNSW psychologists and managers OS&P. Ongoing psychological interventions are to be integral to the plan.
• Where gender re-assignment surgery has not been performed and the inmate is placed in a custodial setting of their gender of identification, the inmate’s case plan must include a jointly developed CSNSW and Justice Health management plan. The plan should provide clear management guidelines including ongoing risk assessment both for the inmate and others in the centre as well as psychosocial support.

Classification and Accommodation

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

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

• When consideration is being given to the placement of transgender inmates in a women’s correctional centre, a senior representative from Silverwater Women’s Correctional Centre (Manager, OS&P (Employment), Assistant Superintendent; Senior Assistant Superintendent / Principal) and the Classification & Case Management Review Coordinator (Correctional Manager, Case Management, Classification & Placement - GEO, Case Management Supervisor - GEO) are to be present to advice the CMT in the MRRC and the inmate on programs, routines etc. Any documentation specific to female inmates at this stage in custody must be completed.

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

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

o The General Manager is to consider the matter and make written recommendation in relation to the placement and management of the inmate. All documentation, with the comments of the general manager will then be forwarded to the Manager/Deputy Manager, Classification & Placement for approval to transfer of the inmate to a correctional centre of their biological gender.

o The Manager / Deputy Manager, Classification & Placement approves the transfer of the inmate to a correctional centre of their biological gender deemed to be the most suitable placement option for the inmate. Consideration must be given to the continued safety of the transgender inmate.

o Any transgender inmate who considers that they should have a decision of Manager / Deputy Manager, Classification and Placement reviewed, may submit a written application, stating reasons, through the General Manager to the Director, Offender Classification, Case Management and External Leave Programs.

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

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

If necessary to ensure the safety of the inmate, the provisions of Section 11(1) or (2) of the Crimes (Administration of Sentences) Act 1999 may be invoked to place the inmate in protective custody.
Transgender inmates housed in a correctional centre of their biological gender may remain in a create with a higher security classification, provided that they sign a written memorandum of understanding that it is their choice to remain in that centre, and they are willing to abide by the conditions of that correctional centre.

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

At Risk Status

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

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

Escorting of Transgender Inmates

- Until transgender inmates have completed the induction and screening process, and have been assigned to a correctional centre, they are to be kept separated from all other inmates during escorts to avoid the risk of physical or sexual assault by other inmates in transit. That is, they are to be escorted as ‘PRNA’.

- Male to female transgender inmates assigned to a female correctional centre, and female to make transgender inmates assigned to a correctional centre of their biological gender (that is female) may be escorted with other female inmates, if the general manager indicates that there are no known safety or security concerns.

- Male to female transgender inmates assigned to a correctional centre of their biological gender (that is male) and female to male transgender inmates assigned to a male correctional centre are to be kept separate from all other inmates during escorts to avoid the risk of physical or sexual assault by other inmates in transit. That is, they are to be escorted as ‘strict, one out protection’.

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