

Briefing Paper on Protecting the Human Rights of Trans People in NSW Prisons

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Version control table

Version	Date adopted by NSW Trans and Gender Diverse Criminal Justice System Advisory Council	Notes on any amendments made	Next review date
1.0		Draft development for consultation	
2.0		Finalisation of draft	October 2022

Our Approach

The key principle of the policy is that *“self-identification with a gender that is different to what was presumed at birth is the only criterion for being trans.”*. Gender is a person’s knowing of being a male, female, and/or non-binary, regardless of any medical or legal gender affirmation steps taken, or not taken.

This document includes terms that undergo regular community reflection and refinement, this means definitions may change. For an up-to-date trans-affirming glossary, please visit [TransHub](#).

Policy review and re-writing process

The Trans and Gender Diverse Criminal Justice System Advisory Council (TGDCJAC) was formed in 2020 to provide advice about trans and gender diverse people impacted by the criminal legal system including those imprisoned. TGDCJAC includes the representation of trans and gender diverse people with lived experience of incarceration. A policy sub-committee of the council was formed to review the current Corrective Services NSW (CSNSW) Custodial Operations Policy and Procedures Section 3.8 ‘Transgender and intersex inmates’ (Version 1.0). This document articulates the approach, some of the available evidence as well as theoretical and operational issues considered by the policy sub-committee.

Human rights

The TGDCJAC policy sub-committee have reviewed the NSW Corrective ‘Transgender and intersex inmates’ Policy from a human rights framework. The approach of the sub-committee was that, in respect to these rights, trans and gender diverse (henceforth ‘trans’) people, like all other incarcerated populations, must be treated with dignity, humanity, and respect whilst incarcerated.

As part of this review, the sub-committee drew from key international human rights instruments and relevant national and state legislation, including the Universal Declaration of Human Rights¹, the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)² the United Nations’ Declaration on the Rights of Indigenous Peoples,³ and the *Sex Discrimination Act 1984* (which from August 1 2013 provides federal protection from both direct and indirect discrimination on the basis of sexual orientation, gender identity and intersex status⁴).

The revised policy recognises that the health and safety of trans populations in custody in New South Wales (NSW), alongside all incarcerated people, is the responsibility of CSNSW and the Justice Health and Forensic Mental Health Network (JH&FMHN). These organisations have a duty of care towards trans people in custody, and this responsibility extends to the social re-integration of incarcerated people back into the wider community.

The policy revision process reflects the following **key values and principles**. Some of these principles draw on the work developed by the International Commission of Jurists (ICJ).⁵

¹ United Nations (accessed November 11) The Universal Declaration of Human Rights. Available from: <https://www.un.org/en/universal-declaration-human-rights/>

² United Nations Office on Drugs and Crime (accessed November 11) The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules). Available from: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

³ United Nations (accessed 20 April 2021) United Nations’ Declaration on the Rights of Indigenous People. Available from: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

⁴ Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013. Available from: <https://www.legislation.gov.au/Details/C2013A00098>

⁵ International Commission of Jurists (icj), (2006). International Human Rights References to Human Rights Violations on the grounds of Sexual Orientation and Gender Identity. Available from: <https://www.icj.org/wp-content/uploads/2006/10/Human-rights-violations-sexual-orientation-thematic-report-2006-eng.pdf>

- Self-determination and agency: trans people are the experts on their own lives and should be afforded all opportunities to drive decision-making about their lives (regardless of whether they are in custody, detention, probation, parole, on remand, and irrespective of their legal status or conviction).
- Intersectionality: trans people are criminalised in complex and multi-faceted ways. Criminalised trans populations, who experience multiple forms of oppression, for example transphobia and racism, face unique harms which are different to the experience of the general population of incarcerated people or broader trans communities.
- Human rights: the intrinsic dignity, worth and respect of all persons.
- Protection of human rights: specifically, that government institutions should be responsible for the protection of the rights, health and safety of trans people in custody.
- Accountability: governments are responsible for creating mechanisms of accountability to ensure institutions are upholding human rights. This means that CSNSW is responsible for both the development of policies that adhere to human rights and for ensuring that human rights are upheld in their implementation and operationalisation. Accountability includes the independent (from government and private for-profit sector) monitoring and evaluation of policies, and procedures.
- Non-discrimination: prevention of and redress for direct and indirect discrimination in policy or practice.

Trans People in Custody (Key Issues)

Structural inequities and pathways to criminalisation

The TGDCJAC policy sub-committee recognise that addressing the disproportionate impact of the criminal legal system upon trans people will require more than an update to policy and practice within correctional centres. This is because the criminalisation and incarceration of trans people stems from a range of factors, including targeted policing.

The criminalisation and targeted policing of poverty, substance dependencies, mental health, and homelessness along with the systemic underfunding of social services result in significant disadvantage that can drive trans people into the criminal legal system^{6,7}. Structural barriers to gender affirmation and medical care, mental health supports, affordable safe housing, employment, and legal supports, coupled with discrimination across multiple social contexts, put many trans people at risk of criminalisation.

For trans people who are impacted by the criminal legal system, stigma, prejudice, and discrimination is intensified. Compared to general populations, trans people are more likely to experience assault and self-harm, and these experiences are amplified when trans people are incarcerated.^{8,9}

Trans people returning to the community from incarceration face further structural discrimination that directly impacts upon access to healthcare, housing, legal and social supports. In these ways, trans

⁶ Asquith, N., Dwyer, A., & Simpson, P. (2017). A Queer Criminal Career. *Current Issues In Criminal Justice*, 29(2), 167-180. doi: 10.1080/10345329.2017.12036094

⁷ Boon-Kuo, L., R. Meiners, E., & Simpson, P. (2018). Queer interruptions: Policing belonging in the carceral state. In P. Aggleton, R. Cover, D. Leahy, D. Marshall & M. Rasmussen, *Youth, Sexuality and Sexual Citizenship* (1st ed.). London: Routledge.

⁸ Van Hout, M., Kewley, S., & Hillis, A. (2020). Contemporary transgender health experience and health situation in prisons: A scoping review of extant published literature (2000–2019). *International Journal Of Transgender Health*, 21(3), 258-306. doi: 10.1080/26895269.2020.1772937

⁹ Blight, J (2000). Transgender inmates. *Trends and Issues in Crime and Criminal Justice no. 168*. Canberra: Australian Institute of Criminology. Available from: <https://www.aic.gov.au/publications/tandi/tandi168>

people serve multiple sentences: one imposed by society, one imposed by the court, one imposed by the conditions in prison, and one imposed by the ongoing consequences of incarceration.

The high-risk conditions that trans people face at all points in the criminal legal system, including whilst in custody, necessitate the careful formation of policies to address the needs of trans people, including ensuring that the social re-integration requirements of trans populations are provided for.

What we know

- Increasing international evidence indicates that trans people are over-represented in prisons.^{8,10,11}
- Research from the United States and Australia indicates that trans people who are placed in custodial settings that do not align with their self-determined gender against their will consistently report persistent experiences of physical, psychological, and sexual violence – and the violence of being forced to live within structures which do not recognise, accommodate, or respect gender.^{10,12}
- Internationally, trans people are over-represented as victims of sexual violence in prisons. A state-wide study in California found that when trans women were placed in men’s prisons, they were 13 times more likely to be sexually assaulted than men who were incarcerated in the same facilities¹³. A Sydney-based study found trans women in NSW prisons experienced both sexual assault and daily sexual harassment and coercion which impacted on their psychological and social well-being.¹²
- Trans people of colour are reported to be significantly overrepresented in the US prisoner population.¹⁴ While there is no reliable Australian data, given the over-representation of Aboriginal and Torres Strait Islander people in the Australian prisoner population,¹⁵ it is very plausible that Sistergirls, Brotherboys, and trans Aboriginal and Torres Strait Islander people are also over-represented in the Australian prisoner population.

What we do not know

- There is a lack of reliable data on the population of trans people in custody in Australia. Multiple factors inform data integrity issues. One crude estimate suggests there could be up to 400 trans people in Australian custody.¹⁶ This estimate is fraught with reliability concerns as data collection across the criminal legal system cannot currently disaggregate trans and cis people, and many trans people in custody are likely to be misgendered or do not disclose their gender to authorities due to safety concerns.
- There is a lack of reliable data about the number of trans deaths in custody (by suicide or acts of violence or neglect). This is impacted by issues relating to trans data collection – including the mis-

¹⁰ Grant M, et al. *Injustice at every turn: a report of the national transgender discrimination survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

¹¹ Brömdal, A., Clark, K., Hughto, J., Debattista, J., Phillips, T., & Mullens, A. et al. (2019). Whole-incarceration-setting approaches to supporting and upholding the rights and health of incarcerated transgender people. *International Journal Of Transgenderism*, 20(4), 341-350. doi: 10.1080/15532739.2019.1651684

¹² Wilson M, Simpson PL, Butler TG, Richters J, Yap L, Donovan B. ‘You’re a woman, a convenience, a cat, a poof, a thing, an idiot’: Transgender women negotiating sexual experiences in men’s prisons in Australia. *Sexualities*. 2017;20(3):380-402. doi:10.1177/1363460716652828

¹³ Jenness, V., Maxson, C. L., Matsuda, K. N., & Sumner, J. M. (2009). *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, p. 3. Irvine, CA: Center for Evidence-Based Corrections.

¹⁴ Grant M, et al. *Injustice at every turn: a report of the national transgender discrimination survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

¹⁵ Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133) <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/2-context/social-determinants-of-incarceration/>

¹⁶ *Why are transgender women jailed in men’s prisons around Australia?*. www.abc.net.au. (2020). Retrieved 1 February 2021, from <https://www.abc.net.au/news/2020-07-03/why-are-transgender-women-jailed-in-mens-prisons-in-australia/12416562>.

representation of identification and the lack of content relation to deaths by suicide and treatable medical conditions.

- The extent to which existing policies and procedures for trans people in custody, including general prison population policies and procedures, produce positive health, wellbeing and safety outcomes.

Historical and Theoretical considerations

The mythologisation and stereotyping of trans people as sexually predatory, violent, and deceptive, is pervasive throughout broader society and consolidated in our collective social consciousness through stigmatising media representations and popular culture. It is both a response to and consequence of a historical deficit in accurate representations of trans people and trans lives.¹⁷

These historical misconceptions are compounded in custodial settings and are assisted by anecdotal reporting and media sensationalism around specific cases of incarcerated trans people. Such misconceptions overlook the existing body of evidence that indicates trans people are not only more likely to be victims of physical and sexual violence and harassment than they are to be perpetrators of such acts but are more likely to be victims of violence and harassment than cisgender people (i.e., people whose gender is the same as that presumed for them at birth (woman or man)).

Examples of Policy Review Changes

The policy sub-committee have made a number of changes to the existing policy to bring it in line with a human rights approach. These include:

- a) *Language change*: It adopts a person-centred approach to language. For example, 'person' or 'trans person' replaces 'inmate'. Additionally, the articulation of 'self-determined gender' replaces 'gender with which they identify' and 'recognised transgender inmates' to reflect the updated definition of gender.
- b) *Preferences of trans people prioritised*: Critically, the preferences and rights of trans people in custody (regarding placement, escorts, assessment and all other custodial processes) is explicitly prioritised in all decision-making processes (including on initial reception).
- c) *Rights must/should override security assessments*: While decisions within correctional centres are focused on security considerations, the policy review process found these considerations should not usurp or overshadow the rights and agency of incarcerated trans people.
- d) *Removal of offence and custodial history as criteria in placement assessment*: The existing CSNSW policy approach to placement is based on assumptions informed by historical misconceptions about trans populations. For example, the existing policy states that trans people have the right to be housed in a prison of their gender of identification, however an assessment processes can override this right based on the nature of the person's offence and custodial history. In this scenario, assessment would take into account convictions for violence and/or sexual assault against women or children, or previous behaviour in custody that impacted the safety of other persons or security). This approach to placement selectively discriminates against trans people because cisgender populations are not placed according to the same assessment process. For example, cisgender men convicted of violence against men are not placed in women's prisons and cisgender women who are convicted of violence against women are not placed in men's prisons).

¹⁷ Miller, J. R. (2012). *Crossdressing Cinema: An analysis of transgender representation in film* [Doctor of Philosophy], Texas A&M University.

- e) The policy has been amended to refer to trans people alone. In consultation with relevant national bodies, the policy sub-committee has removed the reference to intersex people, whose experiences and needs were not adequately addressed in the existing policy and cannot be captured within the needs of trans people. It is essential that a policy be developed to address the needs of intersex people in custody in partnership with Intersex Human Rights Australia (IHRA) and Intersex Peer Support Australia (IPSA).

Policy into Practice

In order to adequately safeguard the safety, rights and wellbeing of trans people in prison, the sub-committee make the following recommendations about its implementation and operation in practice.

- The policy is intended to align with relevant JH&FMHN policies including medical gender affirmation models of care.
- The policy must be operationalised in conjunction with the JH&FMHN policy on trans and gender diverse populations.
- Further review and revision will be required of other CSNSW Custodial Operations Policy and Procedures, including but not limited to reception procedures, searching people, drug testing, receiving property and buy-ups to ensure they align with this policy.
- The policy must be incorporated into continual professional development and training for all staff and contractors in correctional centres in NSW.
- The policy must be reviewed in partnership with the NSW Trans and Gender Diverse Criminal Justice System Advisory Council within 18 months from when the policy comes into effect, and every two years thereon. As part of the review, an evaluation must be conducted by an independent (of government) organisation which focuses on the lived experience of trans people in prison and their health, safety, wellbeing and rights impacts of policy.

Trans and Gender Diverse People in NSW Custody Example Policy

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Introduction

(CSNSW) is committed to fostering an environment in which all people in custody are treated fairly and equitably, including trans and gender diverse people in custody.

We recognise that the experiences of incarcerated people who are trans or gender diverse in NSW can be fraught and have taken steps to consult widely to ensure this policy update reflects the commitment to, and recognition of, this population's needs.

All people received into custody must be treated according to their self-determined gender at the time of and throughout incarceration, regardless of any medical or legal gender affirmation interventions.

Trans and gender diverse (henceforth 'trans') people in custody are to be treated according to their self-determined gender at all stages to ensure that their time in custody is non-discriminatory, safe and secure. This includes the form of address, escorts, placement assessment, searching and urinalysis, clothing and buy-ups, medication and health services, rehabilitation and integration, and access to information and peer support.

Trans populations, like all other incarcerated populations, maintain the right to be treated with dignity, humanity and respect while incarcerated. Incarcerated trans people must be included and their needs prioritised in all decision-making processes regarding their placement, classification, escort safety, and access to programs and health services. Community representatives must be included in all placements of trans people in prisons. While decisions within correctional centres are focused on security considerations, these considerations must not usurp or overshadow the rights and agency of incarcerated trans people.

Definitions

'Trans' / 'Trans and Gender Diverse' are umbrella terms describing people whose gender is different to what was presumed for them at birth. This includes those who are binary (those who identify as female or male) and/or non-binary.

'Gender' is one's internal sense of whether they are a man, woman, non-binary, agender, genderqueer, genderfluid, Sistergirl, Brotherboy, or a combination of one or more of these definitions. Gender can be binary (either a man or a woman), or non-binary (including people who have no binary gender at all and people who have some relationship to binary gender/s).

A 'legal sex marker' is the classification recorded when a child's birth is registered. In NSW, markers are either female or male at birth and can later be amended to either female, male or non-specific.

'Medical affirmation' describes steps that trans people might undertake with the help of doctors or health professionals, including: taking some form of hormones, such as estrogen,

testosterone, or progesterone, or puberty blockers or having affirmative surgeries, such as chest surgery, genital surgery, facial surgeries, or more.

'Legal affirmation' describes steps a trans person might take when working with legal and legislative systems, including: updating their name or gender marker at work, school, or on forms of ID, their rights in various settings, and being affirmed while working within systems like the police, prison, and immigration.

'Social affirmation' describes the steps trans people might undertake to reveal their gender through non-medical steps. This can include adopting a new name and pronouns, coming out, wearing new clothing, or modifying the shape of their body, cutting or shaving hair, or experimenting with the voice.

Scope

This section applies to all correctional centres and other facilities administered by or on behalf of Corrective Services NSW (CSNSW). This includes: private prisons operated by GEO, Serco and MTC Broadspectrum; any police and court cells managed by CSNSW; and all prison transport.

It also applies to all CSNSW employees, contractors, subcontractors, volunteers and visitors, and, where relevant, to other personnel such as Justice Health & Forensic Mental Health Network (JH&FMHN), contractors, subcontractors, volunteers and visitors.

This policy must be implemented in conjunction with all relevant JH&FMHN policies relating to medical gender affirmation. The health and safety of trans populations is the responsibility of both CSNSW and the JH&FMHN.

For Security & Intelligence (S&I) staff, this policy must be read in conjunction with S&I Local Operating Procedures (LOPs). In the event of any inconsistency between this policy and S&I LOPs, this policy prevails.

This policy must be incorporated into development and training for all staff, contractors and volunteers in NSW Correctional Centres and monitored, evaluated, reviewed and updated in partnership with the NSW Trans and Gender Diverse Criminal Justice System Advisory Council (the 'Advisory Council') within 24 months from when the policy comes into effect in accordance with section 1.9. The policy should be read in conjunction with the NSW Trans and Gender Diverse Criminal Justice System Advisory Council's Briefing Paper on Protecting the Human Rights of Trans People in NSW Prisons.

Working with trans people in custodial environments

A person received into custody must be treated according to their self-determined gender at the time of incarceration.

The placement, assessment, escorting, searching and buy-up opportunities and general treatment of trans people in custody will not be determined by medical or legal gender affirmation steps taken, or not taken, but rather by their self-determined gender identity.

Any previously recorded gender markers must be updated as soon as is practicable after disclosure.

Trans people in custody are to be treated consistently with their self-determined gender. Self-identification with a gender that is different to what was presumed at birth is the only criterion for being trans.

If, during their incarceration, an application is made by an incarcerated person to be affirmed and treated as a gender that is different to what was presumed for them at birth, then the person is to be treated as their affirmed gender.

In all cases where an incarcerated person applies to be treated as a gender that is different to what was presumed for them at birth (and that is different from that which was prescribed or presumed on initial reception into custody), an individualised assessment and placement process must be carried out based on each individual's specific circumstances. This process must guide appropriate placement and support options.

If a new placement occurs in a new facility, then screening and induction procedures must be repeated in the new facility.

Trans people in custody will have access to services, programs and classification and placement options that suit their individual health, safety, wellbeing, rights and needs in the correctional centre where they are housed.

This access must be driven by the following principles:

- Trans people must not face disadvantage by virtue of being trans or because of their gender.
- The preferences and rights of trans people in custody (with regard to placement, escorts, assessment and all other custodial processes) must be prioritised in all decision-making processes (including on initial reception).
- Trans people must be treated and respected as their self-determined gender regardless of medial or legal affirmation steps taken.
- The placement of trans people must prioritise their own assessment of where they will be most safe and least vulnerable to violence and harassment whilst fully respecting their gender identity.
- The placement and any subsequent movement of trans people must be decided through a placement assessment panel that includes the trans person and community organisation representatives.
- CSNSW must always provide for immediate changes in placement should the person's assessment of their safety change.
- Protective custody must be for protection of the incarcerated person and must never be used as a form of punishment or convenience of management.
- Protective custody must be voluntary and based on informed consent, or otherwise be a last resort. Communication about the limitations and risks of protective custody must be made clear for all trans people considering this option.
- Security considerations must not be the only determinant of appropriate placement.
- Stable placements must be prioritised in order to ensure consistent support (i.e., people should not be regularly moved from centre to centre).

- Wherever possible placements must allow access to peer support, chosen family support and services identified as important by the trans person in custody.
- All CSNSW policies and practices must align with the Mandela Rules, international human rights standards and the Yogyakarta Principles Plus 10. Federal anti-discrimination law protects people from discrimination on the basis of self-determined gender.

Form of address

All staff must offer their first name and own pronouns when introducing themselves to people, before asking for a person's pronoun (e.g., him, he, she, her, they, theirs, etc).

All trans people in custody are to be addressed by their chosen name and according to their self-determined gender, regardless of whether they have legally affirmed their gender.

A trans woman in custody is to be called by their chosen name, asked for their pronouns, and referred to using their stated pronoun (regardless of what has been previously recorded on the warrant file or any other documents). Many trans women use she/her pronouns.

A trans man in custody is to be called by their chosen name, asked for their pronouns, and referred to using their stated pronoun (regardless of what has been previously recorded on the warrant file or any other documents). Many trans men use he/him pronouns.

A non-binary person in custody is to be called by their chosen name, asked for their pronouns, and referred to by their stated pronouns (regardless of what has been previously recorded on the warrant file or any other documents). Many non-binary people use they/them pronouns.

All accommodation records are to be amended to reflect the person's self-determined gender. A trans person's name, gender and pronouns must be recorded as a *case note* in the Offender Integrated Management System (OIMS) and recorded on the front of their warrant file to reduce discrepancies.

Staff must immediately facilitate a person's request to update their name or gender marker in the OIMS and all other databases. Staff must also facilitate access to legal gender recognition through the exemption process available via the NSW Registry of Births Deaths and Marriages.

Escorting

All trans people must be treated by their self-determined gender and be escorted as such. Trans people who have not legally affirmed their gender (i.e. updated identification documents) must be treated by their self-determined gender.

CSNSW staff are responsible for the safety of all people (including trans people) when they are moved (between Centres, Police Cells, or Courts). Decision making must consider the

safety of all people in custody and minimise the risk of physical or sexual assault incidents occurring during transit including assaults by staff or between incarcerated people.

Decisions around escorting must be made in consultation with the trans person and must be informed by any preferences the trans person may have about this travel. If there are concerns either by the trans person or staff about safety, trans people should be escorted separately.

Staff responsible for transport and escorts must regularly check in on the safety of the people being escorted, with additional checks required if there are trans people being moved. The ratio of staff to persons being escorted must always enable regular safety checking.

Reception, screening, induction and placement assessment

Data collection for all incarcerated people must be in line with the 2020 Australian Bureau of Statistics Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables.

All trans people have the right to be housed in a correctional centre of, or most closely aligned to, their self-determined gender. Assumptions about a person's gender or trans experience must not be made by any staff, including on reception.

All trans people, binary and non-binary, received into custody are to be asked about placement preferences and then sent, in a timely manner, to a correctional centre of their choice, regardless of whether this placement aligns with their self-determined gender.

All trans people, binary and non-binary, received into custody must be sent, in a timely manner, to the safest remand centre for them and be offered the opportunity to be supported by peers. This must occur regardless of whether the person received into custody has a previous arrest/custody record as a different gender.

Trans people who speak languages other than English must have access to trans-affirming translators and interpreters, and peers, and support provided if assistance in decision-making is required.

Trans people identified as or suspected of having cognitive impairment must have their capacity for decision-making assessed in considering placement, and support provided if assistance in decision-making is required.

Each placement and subsequent movement of a trans person must be decided through a placement assessment panel involving the incarcerated trans person, the applicable Classification & Placement Team (CPT) and representatives from community organisations such as NSW Community Advocates for People in Prison, Aboriginal and Torres Strait Islander Community Controlled Organisations or the Aboriginal Legal Service, the Gender Centre, Twenty10, Sex Workers Outreach Project NSW, Women's Justice Network, the Inner City Legal Centre and the State-wide Disability Services (SDS), ACON and other services as relevant.

Access to information and support

Upon disclosure, all trans people are to be discretely given a copy of *Fact sheet: trans and gender diverse persons in custody* and a copy of this policy. This policy must be available in hardcopy at all correctional and remand centres in NSW.

CSNSW are to facilitate access to relevant and appropriate support networks, services, programs and work opportunities. This includes access to regular visitation and peer support, including from Aboriginal and Torres Strait Islander Community Controlled Health Organisations, community-based services and family members. This also includes access to the Additional Support Unit, State-wide Disability Services (SDS), gender affirmation, sexual and mental health services. Specific services include The Gender Centre, Sex Workers Outreach Project NSW, Inner City Legal Centre, ACON, QLife and Twenty10.

CSNSW are to facilitate access for trans people to peer support and relevant, culturally safe, accessible and appropriate programs, delivered by both CSNSW and external providers.

All trans people may purchase or receive, through visits or by mail, publications and resources that address the needs of trans people. This includes, but is not limited to, materials relating to health, social, political, legal and cultural issues.

Where trans people are eligible, CSNSW must facilitate access to vote in elections.

Access to these services, programs and resources is to be facilitated swiftly and without delay.

Searching and drug testing

Strip searching is a matter of last resort. Strip searching must only be conducted where the circumstances are sufficiently serious to make it urgent and necessary. Suspicion of personal drug use does not constitute circumstances that are sufficiently serious to warrant strip searching.

Routine strip searching of incarcerated people is not permitted.

Trans people in custody must be asked their preference regarding the gender of the officer conducting strip and pat search or drug testing procedures. The searching and drug testing of trans people must be conducted by an officer of the trans person's preferred gender. Two officers must be present to supervise the searching or drug testing procedures.

If a trans woman or a trans man expresses no preference regarding the gender of the officer, search and test procedures must be conducted by an officer of the same gender as the incarcerated person.

If a non-binary person expresses no preference regarding the gender of the officer, search and test procedures must be conducted by a:

- male officer if the incarcerated person is placed in a centre or area of a centre that is designated to house men in custody; or
- female officer if the person is placed in a centre or area of a centre that is designated to house women in custody.

Clothing and buy-ups

All incarcerated people have the right to dress at all times in affirming clothing and underwear of their choice, including those trans people housed in gendered correctional centres that differ from their gender. Clothing and underwear is to be provided promptly at their request.

All people in custody must be able to purchase the same personal care items, cosmetics, clothing and underwear through an affordable buy-up system. All prisons must maintain up to date stock of a range of personal care and cosmetic items applicable to all people. For example, all correctional centres must carry hair removal products, tampons, pads, menstrual cups, binders, tucking underwear and prostheses at cost price.

Non-binary people in custody must be provided clothing of their preference and have the option of purchasing personal care items, cosmetics, clothing and underwear through an affordable buy-up system.

All incarcerated people must be able to receive gender affirming clothing, underwear personal care products and other items for social affirmation outside of the buy-up system.

Access to medication and health services

Every incarcerated trans person, regardless of their visa, residence or citizenship status, has the right to medically affirm their gender in the ways that work best for them. All processes related to how someone affirms their gender are medically necessary and a crucial part of mental health care. CSNSW must facilitate access to timely healthcare in collaboration with JH&FMHN.

Where trans people **have not** been prescribed gender affirming hormone therapy in the community prior to custody, and are seeking medical gender affirmation:

- A treatment plan must be developed collaboratively with the incarcerated person and JH&FMHN staff. This team must include a gender affirming GP and a trained peer.
- In addition, if the trans person is sentenced to:
 - three months or more, the team will also include their allocated Case Management Officer (CMO); or
 - less than three months, the team will also include an Offender Services & Programs (OS&P) staff member.
- All trans people seeking gender affirming hormones may commence with their expressed and informed consent, after consultation with their preferred GP so that they can adequately understand:
 - What gender affirming hormones are available;
 - Potential effects and side-effects;
 - Risks and benefits; and
 - Doses and application methods (patch, gel, tablet, injection, implant, etc); so that they can make a decision of their own free will.

Ongoing psychosocial and peer support, as determined by the incarcerated person and their preferred psychologist, are to be included as necessary.

- Assessment by a psychologist, psychiatrist or endocrinologist is not required for treatment access unless considered imperative by the prescribing physician or the incarcerated person.

For all trans people who **have** been prescribed gender affirming hormone therapy in the community prior to custody:

- the hormonal regimen must be continued and appropriately facilitated in custody by the Health Centre, General Practitioner in consultation with relevant JH&FMHN Clinical Directors. The treatment plan must be jointly developed by the trans person in custody, CSNSW and JH&FMHN staff.
- the treatment plan must provide clear guidelines including ongoing risk and mental health and wellbeing assessments with the trans person, and others within the centre as well as determining appropriate psychosocial and peer support.

All treating staff will place the experiences, expertise and needs of the trans person first, including those seeking full or partial feminising or masculinising hormonal affirmation.

Trans people may make an application through JH&FMHN to have surgery related to gender affirmation, hormone therapy or other therapies of choice, specific to their needs. The application process must be made clear and available to people and must be actioned in a reasonable timeframe.

JH&FMHN personnel will undertake the ongoing support, medical care and monitoring of all trans people prescribed gender affirming hormone therapy in custody in order to ensure the

safety and efficacy of the treatment and to work towards the gender affirming goals of the person.

Monitoring and evaluation

This policy must be incorporated into programs, development and training for all staff, contractors, sub-contractors and volunteers in all NSW correctional centres.

Within six months of the policy coming into effect, CSNSW and the Advisory Council must identify targets and key performance indicators for reporting.

CSNSW must release a formal implementation report to the Advisory Council within the first 12 months of the policy coming into effect, and thereafter every 12 months. These reports must document all steps CSNSW have taken to implement and operationalise the policy, including their activities, outputs and outcomes.

The policy must be reviewed and updated in partnership with the Advisory Council within 12 months from when the policy comes into effect. This review will include independent and anonymous evaluation by trans people who are incarcerated in NSW correctional centres

The policy must be reviewed in combination with other Custodial Operations Policy and Procedures including provisions on reception, property, medications, buy-ups, searching, drug testing and escorting, to ensure that all CSNSW policies and practices align with the Nelson Mandela Rules, international human rights standards and the Yogyakarta Principles Plus 10.

To facilitate independent and public oversight of detention facilities, CSNSW must provide access to all correctional centres and make performance reports available to stakeholders such as the Advisory Council, community advocacy groups, human rights organisations, social justice organisations, community legal centres, researchers who are independent from CSNSW, NSW Ombudsman and the Inspector of Custodial Services.