COPP 7.5 Trans, Gender Diverse and Intersex Detainees

Youth Detention Centre

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| Principles In the context of the following:  [Australian Human Rights Commission National Principles for Child Safe Organisations, 2018](https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf)  Risk management strategies focus on preventing, identifying and mitigating risks to children and young people.  The organisation, including staff and volunteers, understands children and young people’s diverse circumstances and provides support and responds to those who are vulnerable.  [Australasian Youth Justice Administrators Standards, 2009](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)  Physical resources support safe and positive environments for staff, children and young people. |

# Contents

[1 Scope 3](#_Toc146270190)

[2 Policy 3](#_Toc146270191)

[3 Admission 4](#_Toc146270192)

[3.1 Admission 4](#_Toc146270193)

[3.2 Identity 4](#_Toc146270194)

[3.3 Preferred placement 5](#_Toc146270195)

[4 Searches 5](#_Toc146270196)

[5 Initial Placement 5](#_Toc146270197)

[6 Property and Clothing 6](#_Toc146270198)

[7 Placement 6](#_Toc146270199)

[8 Management Plan 7](#_Toc146270200)

[9 Access to Support 8](#_Toc146270201)

[9.1 Visits from friends and family 8](#_Toc146270202)

[10 Access to Health Services 8](#_Toc146270203)

[11 Escorts 8](#_Toc146270204)

[12 Detainees Identifying as Trans, Gender Diverse, or Intersex Post Admission 8](#_Toc146270205)

[13 Annexures 9](#_Toc146270206)

[13.1 Related COPPS and document 9](#_Toc146270207)

[13.2 Definitions and acronyms 9](#_Toc146270208)

[13.3 Related legislation 11](#_Toc146270209)

[13.4 Assurance 11](#_Toc146270210)

[14 Document Version History 11](#_Toc146270211)

# Scope

This Commissioner’s Operating Policy and Procedure (COPP) applies to all Youth Detention Centre Custodial Officers and staff.

# Policy

This COPP has been developed to provide a standardised approach to the management of trans, gender diverse, and intersex detainees.

Local, internal, and external stakeholders were engaged in the development of this COPP to ensure the policy reflected the commitment of the Department in the recognition of these vulnerable detainees.

Some people may identify with a gender different to the one they were assigned at birth. Trans and gender diverse people may identify as male, female, non-binary (that is, neither male nor female), or in another way which reflects their gender identity.

Intersex is a term used for people who are born with sexual anatomy, reproductive organs and/or chromosomes that are inconsistent with the typical definitions of male and female. Intersex variation is quite separate to their gender identity. People with an intersex variation identify as either male or female, however, there are some who identify as neither.

It is unlawful to discriminate against a person based on their gender identity or intersex status[[1]](#footnote-1).Trans, non-binary, and intersex detainees shall be treated with the same respect and dignity accorded to any other detainee and shall not be discriminated against on the grounds of their gender identity or intersex status[[2]](#footnote-2).

[LGBTIQ+ Health Australia](https://www.lgbtiqhealth.org.au/) provides that trans, gender diverse, and intersex children and young people are more likely to experience poor mental health including depression, anxiety, and self-harm due to social exclusion and discrimination.

For trans, gender diverse, and intersex children and young people, puberty and adolescence can be additionally challenging and a time of distress regarding development and changes in their bodies.

Detainees identifying as trans, non-binary, or intersex may experience segregation or reduced support network options. In the report ‘[Trans pathways: The mental health experiences and care pathways of trans young people](https://www.telethonkids.org.au/projects/past/trans-pathways/)’, close to 50% of trans young people have attempted suicide at one point in their life.

Challenges may be exacerbated for detainees who have other distinct identities or experiences. This includes detainees who are Aboriginal, from culturally and linguistic diverse backgrounds, have a disability, are from a religious faith, or from regional or remote locations.

Accommodating the needs of detainees who self-identify as trans, non-binary, or intersex shall be met through individualised Personal Support Plans (PSP), access to programs, medical and psychological services, and appropriate care from staff, balanced against risks to the security and good order of the detention centre.

Custodial Officers need to be aware of different terminology distinctions amongst trans and gender diverse detainees and be respectful of the detainees own, individual language.

# Admission

## Admission

### Assumptions about a detainee being trans or gender diverse should not be made by any staff, including on reception.

### All admission processes shall be in accordance with [BHYDC COPP 2.1 – Admission](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

## Identity

### The Custodial Officer admitting the detainee shall inform the Superintendent and Senior Managers by email if a detainee self identifies as trans, non-binary, or intersex.

### The dignity, sensitivity, and privacy of any detainee who self identifies as trans, gender diverse, or intersex shall be respected.

### Where a detainee self identifies as trans or intersex, the Custodial Officer shall ask the detainee what their preferred name and self-identified gender is.

### Where a detainee self identifies as non-binary, the Custodial Officer shall ask the detainee what their preferred name is.

### The Custodial Officer shall note the detainee’s preferred name and self-identified gender on the Total Offender Management Solution (TOMS).

### Particular care shall be taken with usage of gender specific terms. Custodial Officers shall ask the detainee what their preferred pronouns are (eg, she, he, or they).

### The Custodial Officer shall record the detainee’s preferred pronouns on TOMS.

### The Custodial Officer shall ask the detainee their preferred gender of the Custodial Officers conducting their search and document their preference on TOMS.

### Custodial Officers shall address the detainee using the detainee’s preferred name, gender, and pronoun.

## Preferred placement

### Where a detainee self identifies as trans, non-binary, or intersex, the Custodial Officer shall ask the detainee their preferred placement and document their response on TOMS.

# Searches

### Custodial Officers preparing to search a detainee who has self-identified as trans, non-binary, or intersex shall check TOMS for the detainee’s preferred gender of the Custodial Officer prior to conducting the search.

### Custodial Officers shall confirm which gender the detainee self identifies as prior to searching the detainee.

### Where a detainee identifies as trans, non-binary, or intersex, the detainee shall be searched by a Custodial Officer in accordance with the search preference documented on TOMS. A detainee may also request Custodial Officers of differing genders to complete top/bottom searches (dual search).

### Where a Custodial Officer declines to search the detainee they shall request via the Senior Officer, that another Custodial Officer, of the detainee’s preferred gender conduct the search.

### In circumstances where the gender of a detainee is not readily identifiable, the Senior Officer is to ask what gender the detainee identifies as. The search must be conducted in accordance with the answer**[[3]](#footnote-3)**.

### Where no answer is given as to the detainee’s gender, the person shall be treated as the gender that they appear to be to the Senior Officer[[4]](#footnote-4).

### Custodial Officers shall conduct searches in accordance with the relevant YDC [Searches COPP](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

# Initial Placement

### Placement of trans, gender diverse, or intersex detainees must include consideration for their safety and welfare. Risks may include increased vulnerability through experiencing sexual coercion and psychological distress from other detainees. As such, the detainee must be managed in a manner that responds to their particular risk.

### The detainee’s preferred placement documented on TOMS shall be considered.

### Initial placement of the detainee shall be made in conjunction with the Unit Manager, Senior Officer and Superintendent.

### Placement shall be also managed in accordance with [COPP 2.3 – Placement](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

### Where possible, contact with additional support services and/or advocacy agencies, shall be made prior to placement of the detainee.

# Property and Clothing

### The Custodial Officer shall ask the detainee which BHYDC clothing they would prefer to wear (eg, male, female, or a mix of both).

### The Superintendent shall consider providing the detainee with clothing and personal effects (eg, toiletries) appropriate for their gender identity and individual requirements in accordance with [COPP – 4.1 Property](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

### Additional clothing and personal effects shall be assessed based on individual requirements, risks, and safety.

### Haircuts shall be managed in accordance with the relevant [YDC Unit Management COPP](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

### The Superintendent must always consider any risks and safety issues when issuing property.

# Placement

### The Superintendent or Deputy Superintendent shall convene a meeting as soon as possible to discuss the long term placement of the detainee.

### Contact with additional support services and/or advocacy agencies shall be made, where possible, prior to long term placement of the detainee.

### Where possible, the detainee shall be given the opportunity to provide input into the Unit to which they will be placed.

### The Superintendent’s Multi-Disciplinary Team (MDT) meeting shall include, but is not limited to:

1. Senior Managers
2. Operational staff
3. Director Health Services (or delegate)
4. Psychologist
5. Mental Health Nurse or Psychiatrist.

### The MDT shall assess each detainee individually regarding needs, placement, and risk.

### Consideration in terms of placement shall also include (but is not limited to):

1. any risks to the detainee and/or others
2. the detainee’s preference for accommodation
3. risks to safety, security, and the good order of the Detention Centre
4. the nature of the offending
5. personal circumstances
6. medical requirements
7. at risk assessment in accordance with [COPP 7.4 – Detainees at Risk of Self-Harm or Requiring Additional Support and Monitoring](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).
8. any other relevant factors.

### Trans, gender diverse, and intersex detainees shall be placed into an area of the Detention Centre with due regard to their safety and at-risk status and managed in accordance with [COPP 7.4 – Detainees at Risk of Self-Harm or Requiring Additional Support and Monitoring](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

### The MDT shall consider a referral to Perth Children’s Hospital Gender Diversity Service or other appropriate medical services determined by Psychological or Health Services staff.

### The placement decision shall be communicated to the detainee.

### The Superintendent or Deputy Superintendent shall inform the Assistant Commissioner Women and Young People of the placement decision and management of the detainee.

# Management Plan

### The Superintendent or Deputy Superintendent shall convene a meeting with the MDT as soon as possible to discuss the ongoing management of the detainee.

### Management considerations shall be given to (but not limited to):

1. any risks to the detainee and/or other detainees
2. risks to staff
3. risks to the safety, security, and good order of the Detention Centre
4. the nature of offending and historical offences
5. personal circumstances
6. ongoing support
7. disability
8. medical requirements
9. at risk assessment in accordance with [COPP 7.4 – Detainees at Risk of Self-Harm or Requiring Additional Support and Monitoring](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).
10. other relevant issues.

### Trans, gender diverse, and intersex detainees shall be provided with the same access to services and programs as other detainees.

### The management plan shall be explained to the detainee.

# Access to Support

### Where possible, contact with additional support services and/or advocacy agencies shall be considered.

### Accommodating the needs of a detainee who identifies as trans, gender diverse, or intersex shall be met through an individualised PSP, access to programs, medical and psychological services and appropriate care from staff, balanced against risks to the security and good order of the Detention Centre.

### The MDT shall ensure a PSP is prepared following the Superintendent’s meeting in accordance with [BHYDC COPP 7.6 – Personal Support Plans](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

## Visits from friends and family

### Social visits shall be managed in accordance with the relevant [YDC Social Visits COPP](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

# Access to Health Services

### Trans, gender diverse, and intersex detainees shall be assessed and clinically managed in accordance with their clinical needs and [Health Services (HS) policies](https://dojwa.sharepoint.com/sites/health-services).

# Escorts

### The Senior Officer Admissions shall ensure trans, gender diverse, or intersex detainees are placed on the special needs escort list for all external escorts in accordance [COPP 10.2 – Scheduling Escorts](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

### Escorting Custodial Officers shall ensure the detainee is not transported with other detainees in the same pod and shall be provided the opportunity to use toilet facilities separately from other detainees.

# Detainees Identifying as Trans, Gender Diverse, or Intersex Post Admission

### The pace of gender transitioning is usually determined by the detainee. Support shall be made available and, where relevant, Health Services may make appropriate referrals.

### Where a detainee identifies that they are transitioning to a different gender, a meeting shall be called with the MDT to determine the detainee’s requirements in accordance with this COPP.

### The Superintendent shall be responsible for ensuring documentation of the detainee’s preferred gender, name, pronouns, searching, and placement requirements is completed on TOMS.

# Annexures

## Related COPPS and document

* [COPP 2.1 – Admission](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [COPP 2.3 – Placement](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [BHYDC COPP 6.9 – Unit Management](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [COPP 7.4 – Detainees at Risk of Self-Harm or Requiring Additional Support and Monitoring](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [BHYDC COPP 7.6 – Personal Support Plans](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [BHYDC COPP 9.6 – Searches](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [COPP 10.2 – Scheduling Escorts](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [BHYDC COPP 11.2 – Social and Interfacility Visits](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [Unit 18 COPP 14.4 – Social Visits](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [Commissioner for Children and Young People Issues Paper – LGBTI children and young people](https://www.ccyp.wa.gov.au/media/2609/issues-paper-lgbti-children-and-young-people-october-2017.pdf)

## Definitions and acronyms

| Term | Definition |
| --- | --- |
| Commissioner’s Operating Policy and Procedure (COPP) | Operational Instruments that provide instructions to staff how the relevant legislative requirements are implemented. |
| Custodial Officer | An officer with custodial functions, appointed under section 11(1) of the *Young Offenders Act 1994*; or a person who is appointed under section 11(1a)(a) as a custodial officer. This includes but is not limited to Youth Custodial Officers, Unit Managers and Senior Officers. |
| Department | The department of the Public Service principally assisting the Minister in the administration of the *Young Offenders Act 1996* |
| Detainee | Means a person who is detained in a detention centre as defined in s3 of the *Young Offenders Act 1994*. |
| Gender Diverse | An umbrella term that is used to describe gender identities that demonstrate a diversity of expression beyond the binary framework. |
| Gender Identity | The way a person defines their internal sense of gender. |
| Intersex | People who are born with sexual anatomy, reproductive organs and/or chromosomes that are inconsistent with the typical definitions of male and female. |
| Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) | Refers collectively to people who are lesbian, gay, bisexual, trans and/or intersex and is used to refer to people who have a diverse gender or sexual orientation, or who are intersex. |
| Multi-Disciplinary Team (MDT) | Multi-Disciplinary Assessment and Planning Team.  The MDT brings together expertise to conduct a detainee’s treatment assessment that includes cultural, health, mental health, psychological, education and security. The MDT provides input for a detainee’s induction, orientation and care process and helps develop the detainees’ care and transitional through care plan. |
| Non-Binary | Any person who does not exclusively identify as either male or female |
| Officers and Employees of Particular Classes | The following descriptions of classes of officers and employees are prescribed for the purpose of s 11(1a)(b) of the *Young Offenders Act 1994*, in r 49(2) of the *Young Offender Regulations 1995*:  (a) Medical staff persons who have undergone medical, nursing or health training and hold qualifications indicating successful completion of that training.  (b) Teaching staff persons who provide recreation or sports supervision, teachers, vocational trainers and social trainers.  © Program support staff counsellors, program facilitators and librarians.  (d) Centre support staff cleaning staff, laundry staff, gardening staff, vehicle driving staff, maintenance staff and hairdressers. |
| Personal Support Plan (PSP) | Detainee management plan that takes into account any risk issues that may affect the detainee whilst at BHYDC (Note: This definition will change once BHYDC AT Risk review is finalised) |
| Public Service Officer | An officer employed in the State Government Public Service, subject to Part 3 of the *Public Sector Management Act 1994* and includes such officers and other persons as are necessary to implement or administer this Act. |
| Senior Officer | A Custodial Officer who is substantive to this rank, or a Unit Manager, or Custodial Officer acting in the capacity of Senior Officer, appointed by the Chief Executive Officer with reference to s11 of the *Young Offenders Act 1994* |
| Staff | Any person or officer of the Department of Justice, including a Public Service Officer, Youth Custodial Officer or an employee of a particular class; and any contractor who provides services to the Department of Justice. |
| Superintendent | In accordance with section 3 of the *Young Offenders Act 1994, ‘*The person in charge of a detention centre’ |
| Trans | Umbrella term used to describe all people whose gender identity is different to the sex they were assigned at birth. |
| Youth Detention Centre | A gazetted detention centre declared by the Minister to be a detention centre to accommodate male and female, remanded or sentenced detainees. Refer to section 13 of *Young Offenders Act 1994.* |

## Related legislation

* *Commonwealth Sex Discrimination Act 1984*
* *Young Offenders Act 1994*
* *Young Offenders Regulations 1995*
* *Western Australia (WA) Equal Opportunity Act 1984*

## Assurance

It is expected that:

* The YDC will undertake local compliance in accordance with the [Compliance Manual](https://dojwa.sharepoint.com/search/Pages/results.aspx?k=operational%20compliance&ql=3081).
* Women and Young People, Head Office will undertake management oversight as required.
* Operational Compliance will undertake checks in accordance with the [Operational Compliance Framework](https://dojwa.sharepoint.com/search/Pages/results.aspx?k=operational%20compliance&ql=3081).
* Independent oversight will be undertaken as required.

# Document Version History

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| --- | --- | --- | --- | --- |
| Version no | Primary author(s) | Description of version | Date completed | Effective date |
| 1.0 | Operational Policy | Approved by the Commissioner and Project Steering Committee | 28 October 2020 | 23 November 2020 |
| 2.0 | Operational Policy | Approved by the A/Director, Operational Projects, Policy, Compliance and Contracts | 1 April 2022 | 1 April 2022 |
| 3.0 | Operational Policy  Memo Reference:  D23/940474  Content Manager Reference:  S23/99515 | Endorsed by the  A/ Assistant Commissioner Women and Young People | 9 November 2023 | 18 December 2023 |
| Approved by the Deputy Commissioner  Operational Policy | 15 November 2023 |

1. *Commonwealth Sex Discrimination Act 1984* [↑](#footnote-ref-1)
2. *Equal Opportunity Act 1984* [↑](#footnote-ref-2)
3. r 81 (2) (a) *Young Offenders Regulations 1995* [↑](#footnote-ref-3)
4. r 81 (2) (b) *Young Offenders Regulations 1995* [↑](#footnote-ref-4)