

SINGLE SEX PRISONS



[WA] Commissioner's Operating Policy and Procedure (COPP) 4.6
Trans, Gender Diverse and Intersex Prisoners: Review, Report
and Recommendations

November 24 – 30, 2020

Single Sex Prisons Australia – SSPA (formerly known as Single Sex Prisons WA) is a coalition of political lobbyists, researchers, analysts, legal experts, community figures, ex-incarcerated females, activists, campaigners and concerned Australian residents.

Key Point Summary by Single Sex Prisons AU

Report produced by Single Sex Prisons AU

Recommendations from Single Sex Prisons AU

Review undertaken by Single Sex Prisons AU

References by Single Sex Prisons AU

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Contents

Key Point Summary	3
Report on the Review of Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners	5
Recommendations based on the Review of Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners	8
Review of Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners	9
References from Review of Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners	43
Contact Information	46
Copyright Information	47

Key Point Summary

On November 24, 2020 the WA Department of Justice announced the adoption of *trans prisoner reforms*.

The *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* was made publicly available. This was one day after the *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* was implemented.

Upon initial investigations, it appeared no community consultation occurred in regard to gauging the community's expectations, the validity of such policies or regarding the drafting of the policies.

Upon reviewing *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*, 83 key issues were identified. There are over 250 secondary issues in addition to the 83 key issues that were identified.

The majority of provisions within *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* can be implemented within the single-sex penal environment that matches the biological sex of prisoners and detainees.

The provisions on placement of "trans," "non-binary" and intersex prisoners effectively serves to remove sex-segregation from the WA prison/penal system.

The emphasis on, and effectiveness of, risk assessment and management strategies, policies and procedures are seriously undermined by the fact that the *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* provisions on placement remove a crucial dimension of risk management (sex-segregation) from WA prisons and other WA penal facilities.

It is unclear why the WA Department of Justice considers introducing a new dimension of risk to the female prisoner and detainee population, instead of implementing provisions within the sex-segregated penal environment, as equating to a "balancing" of the welfare and rights of all prisoners and detainees in WA prisons and other WA penal facilities.

The persistent reference to "identifying" as intersex, as well as the conflation of biological sex, "gender" and "gender identity," demonstrates an alarming lack of understanding of the aforementioned terms and conditions etc. which undermines the credibility of the entire policy and any similar policies.

The *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* appears to be in direct conflict with WA State legislation (i.e. Gender Reassignment Act 2000).

The *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* is in breach of the "Nelson Mandela Rules" - UN Standard Minimum Rules for Treatment of Prisoners - UN Office on Drugs and Crime, Rule 11, the Bangkok Rules, specifically for women, the United Nations Human Rights Office of the High Commissioner Statement of Women and Detention, the Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

Western Australia is breaching numerous other of Australia's own and international human rights obligations with the adoption of *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.

The recognition of “gender identity” is in direct conflict of universally recognised and legally protected sex-based rights and protections.

Relevant stakeholders and affected parties were not consulted or part of the process of determining need or validity of the *Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* or consulted during the drafting process.

There exist at least two options of solutions that will effectively address genuine safety concerns and/or well-being risks for at-risk “trans,” “non-binary” and intersex prisoners and detainees which do not compromise the safety and well-being of other prisoner and detainee populations.

The WA State government and Australian Federal government may be liable for numerous violations of human rights with the adoption of *Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* by the WA Department of Justice.

Report on the Review of Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners

1. It appears no community consultation took place at any point during the process of planning, drafting or adopting *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
2. Key relevant stakeholders were not consulted at any point during the process of planning, drafting or adopting *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
3. No thought or consideration appears to have been given to the practicality of the policies and procedures within *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
4. No thought or consideration appears to have been given to the potential problems in day to day functions, systems and happenings with the adoption of *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
5. No analysis appears to have been conducted regarding the infringement upon human rights that stems from the adoption of *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
6. No thought or consideration appears to have been given regarding the potential negative impacts on WA Prison (and other WA penal facilities) employees caused by the adoption of *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
7. No research appears to have been conducted on the part of WA Department of Justice regarding the overwhelming amount of evidence showing biological males pose serious and deadly risks to biological females, especially when biological males are allowed to be housed in female sex-segregated prisons and spaces.
8. No consideration appears to have been given regarding linguistically diverse prisoners, detainees or employees.
9. No consideration appears to have been given regarding culturally diverse prisoners, detainees or employees.
10. No consideration appears to have been given regarding religiously diverse prisoners, detainees or employees.
11. The majority of provisions within COPP 4.6 can be implemented within the single-sex penal environment that matches the biological sex of prisoners/detainees.
12. The provisions on placement of "trans," "non-binary" and intersex prisoners and detainees effectively serves to remove sex-segregation from the WA penal system.
13. The emphasis on, and effectiveness of, risk assessment and management strategies, policies and procedures are seriously undermined by the fact that the COPP 4.6 provisions on placement remove a crucial dimension of risk management (sex-segregation) from WA prisons and other WA penal facilities.
14. It is unclear why the WA Department of Justice considers introducing a new dimension of risk to the female prisoner population, instead of implementing provisions within the sex-segregated penal environment, an equation to a "balancing" of the welfare and rights of all prisoners and detainees in WA prisons and other WA penal facilities.

15. The persistent reference to “identifying” as intersex, as well as the conflation of biological sex, “gender” and “gender identity,” demonstrates an alarming lack of understanding of the aforementioned terms and conditions etc. which serves to further undermine the credibility of *Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
16. The WA Department of Justice is knowingly overriding sex-segregation policies and norms.
17. 83 key issues were identified during the review of *Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
18. Over 250 secondary issues were identified during the review of *Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
19. The *Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* serves to circumvent current WA state legislation (i.e. but not limited to Gender Reassignment Act 2000).
20. Numerous, serious human rights violations and breaches were identified during the review of *Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
21. Some of the Acts, treaties etc. that may have been breached include, but are not limited to:
 - Sex Discrimination Act 1984
 - Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
 - Fair Work Act 2009
 - Fair Work Regulations 2009
 - The Convention on the Elimination of All Forms of Discrimination Against Women
 - Nelson Mandela Rules - UN Standard Minimum Rules for Treatment of Prisoners - UN Office on Drugs and Crime, Rule 11
 - Bangkok Rules, specifically for women
 - The United Nations Human Rights Office of the High Commissioner Statement of Women and Detention
 - Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000)
 - Convention Concerning Discrimination in Respect of Employment and Occupation
 - Convention on the Rights of Persons with Disabilities
 - Convention on the Rights of the Child
 - Declaration of the Rights of the Child
22. The *Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* policy/document infringes upon sex-based rights & protections, religious-based rights & protections and other human rights & protections.
23. The Western Australian state government and the Australian federal government may be liable for numerous, serious human rights violations and breaches on state, national and international levels.
24. The WA Department of Justice is open to liability issues and lawsuits with the adoption of *Commissioner’s Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* and any other similar policies.

25. The Western Australian State Government is open to liability issues and lawsuits with the adoption of *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* and any other similar policies.
26. The Australian Federal Government is open to liability issues and lawsuits with the adoption of *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* and any other similar policies.

Recommendations based on the Review of Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners

1. The WA Department of Justice, the WA Department of Corrective Services, all WA prisons, jails or other WA penal facilities should immediately abolish *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners* and all other similar policies that serve to remove sex-segregation within WA prisons, jails and other WA penal facilities.
2. The WA Department of Justice, the WA Department of Corrective Services, all WA prisons, jails and other WA penal facilities should immediately seek legal advice pertaining to any previous adoption of policies similar to *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
3. The WA Department of Justice, the WA Department of Corrective Services and any other WA penal governing bodies need to seek out community consultation before developing, drafting or implementing policies in the future.
4. In addition to Recommendation #3, the WA Department of Justice, the WA Department of Corrective Services and any other WA penal governing bodies need to seek out the advice and input from genuinely relevant stakeholders before developing, drafting or implementing policies in the future.
5. The WA Department of Justice and affiliated government bodies and WA penal facilities should immediately put a media plan in place for public scrutiny and criticism if they proceed with *Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners*.
6. Implement provisions for the welfare of at-risk "trans," "non-binary" and intersex prisoners within the context and confines of single-sex WA penal environments (maintaining sex-segregation). This could be accomplished through one of the following examples:
 - Build new and separate wings, units, pods, etc., facilities, showers, toilets etc. within all WA prisons, jails and other WA penal facilities to house and facilitate all at-risk "trans," "non-binary" and intersex prisoners.
 - This will address all genuine concerns regarding safety and well-being for at-risk "trans," "non-binary" and intersex prisoners.
 - This will create jobs.
 - Build new and separate jails, prisons and other necessary penal facilities (as needed per population of at-risk "trans," "non-binary" and intersex prisoners in WA) to house at-risk "trans," "non-binary" and intersex prisoners.
 - This will address all genuine concerns regarding safety and well-being for at-risk "trans," "non-binary" and intersex prisoners.
 - This will create jobs.
 - This will give the WA Department of Justice and the WA Department of Corrective Services the opportunity to ensure that all employees of the new WA prisons, jails and other necessary WA penal facilities undergo specialist training in order to provide the standard of care deemed necessary for at-risk "trans," non-binary" and intersex prisoners.

Review of Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners

COPP 4.6

Principles

1.1.4 Management systems, policies and procedures are evidence based and are informed by human rights principles and operational practice.

1) "Evidence based" – what evidence was used to determine the need for segregation based on "gender identity?"

1.a) Is the WA Department of Justice aware of any evidence supporting sex-segregation in prisons and other penal facilities?

1.b) If the answer to 1.a is yes, what justification does the WA Department of Justice have for ignoring said evidence?

1.c) If the answer to 1.a is yes, would that evidence be taken into account when considering a request for placement of a prisoner/detainee in a facility opposite to their biological sex?

1.d) An abundance of peer reviewed, cited evidence exists that shows why sex-segregation in prisons (and other penal facilities) was necessary in the first place – what new evidence shows that sex-segregation in penal facilities is no longer necessary?

1.e) What "human rights principles" is COPP 4.6 based on?

1.f) Human rights principles (Sex Discrimination Act, Nelson Mandela Rules - UN Standard Minimum Rules for Treatment of Prisoners - UN Office on Drugs and Crime, Rule 11, Bangkok Rules - specifically for women) have been dismissed, ignored or determined to not matter as much as the human rights principles the Department of Justice claims COPP 4.6 is "informed by." What was the process to determine which human rights principles were to be ignored and which were to be the basis for COPP 4.6?

1.g) Did the WA Department of Justice refer to any evidence that shows why sex-segregation exists in prisons (and other penal facilities) while considering adopting COPP 4.6?

1.3.1 Effective systems provide prisoners/offenders with opportunities to make requests or complaints and access appropriate information.

2) Has any long-term research been conducted to determine the effectiveness of current or soon-to-be adopted policies regarding prisoners/offenders making requests or complaints and accessing appropriate information?

2.a) How is "appropriate information" determined and defined?

2.1.1 Custodial environments provide safe and humane containment of prisoners, commensurate with the assessed risk, recognising that the deprivation of liberty is deemed as punishment

3) Considering COPP 4.6 infringes on the human rights of children, girls and women, how can the WA Department of Justice claim to provide safe and humane containment of female prisoners and detainees with the adoption of COPP 4.6?

3.a) Principle 2.1.1 cannot be reconciled with the adoption of COPP 4.6. What does the WA Department of Justice intend on doing to address this conflict between this policy and one of its principles?

2.1.2 Prisoners are accommodated in a safe, clean and liveable environment which considers both risk and individual needs, particularly the needs of those who are most vulnerable

4) What risk assessments were performed regarding risk to female prisoners and/or detainees when biological male prisoners and/or detainees are housed with them, able to access their bathrooms, showers and others historically sex-segregated spaces?

4.a) Who is defined as being “most vulnerable?”

4.b) How was the answer to 4.a determined?

4.c) Can this provision be implemented within a single-sex prison environment matching the prisoner’s/detainee’s biological sex?

2.4.2 Staff model prosocial behaviour by treating all persons with decency, respect and fairness

5) Is this a new policy only included in COPP 4.6?

5.a) If the answer to 5 is yes, why?

3.1.3 Prisoners/offenders, visitors and staff, particularly those most vulnerable or at-risk, are safe from bullying, intimidation and victimisation (including verbal, mental or physical abuse, damage or property theft).

6) Who is defined as “particularly those most at risk?”

6.a) What was the process of determining the answer to 6?

6.b) Has the WA Department of Justice determined, through risk assessment procedures, that female prisoners/detainees will not be at a higher risk of being verbally, mentally or physically abused if biological male prisoners/detainees are housed with them?

6.c) If the answer to 6.b is yes, how was this determined?

6.d) If the answer to 6.b is no, what is the WA Department of Justice’s explanation for not assessing potential risks of harm to female prisoners/detainees with the adoption of COPP 4.6?

6.e) Can this provision be implemented within a single-sex prison environment matching the prisoner’s or detainee’s biological sex?

4.1.4 Prisoners are provided a standard of health care equal to services available in the community that meet their individual physical health, mental health and social care needs fostering continuity of care between custody and the community.

7) Females in the community have the legally protected right to have sex-segregated spaces and services. This legal right is recognised at state, national and international levels. What is the WA Department of Justice's explanation for why it was determined females do not deserve these rights when they are detainees or prisoners within WA Corrective Services systems and facilities?

7.a) Males in the community have the legally protected right to have sex-segregated spaces and services. This legal right is recognised at state, national and international levels. What is the WA Department of Justice's explanation for why it was determined males do not deserve these rights when they are detainees or prisoners within WA Corrective Services systems and facilities?

7.b) The Prisoner Health Care services will need to be expanded to accommodate for both males and females within the same facilities. Health care provision for males and females is different due to biological differences and the different way diseases and conditions present in both the sexes. Have WA prisons and other WA penal facilities made practical and budgetary provisions for this?

7.c) Has the WA Department of Justice and WA Prisons made practical, logistical and financial provisions for accommodating any requested "gender affirming care" for "trans" prisoners/detainees?

7.d) If a "trans" or "non-binary" or intersex prisoner requires "gender affirming care," and that prisoner is a super-max prisoner, and they require extensive hospital stays and multiple visits to specialists, has the WA Department of Justice put in place safeguards and protections for the community and staff at said hospitals and specialist facilities?

7.e) Has the risk and cost been assessed of accommodating these demands?

7.f) If procedures such as breast augmentation, laser hair removal, facial feminisation surgery (all considered "gender affirming care") for example are made accessible and funded by WA prisons and other penal facilities, will the same procedures be made available to females on the basis that this is necessary for their "gender expression?"

7.g) If the answer to 7.f is no, why not? This is discrimination on the basis of sex.

7.h) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

Policy

This COPP has been developed to provide a standardised approach to the management of trans, gender diverse or intersex prisoners in Western Australia (WA) Prisons.

8) What surveys were conducted, or what research was used, to determine there are a high enough number of "trans," "gender" diverse or intersex prisoners/detainees in WA prisons/penal facilities to justify the adoption of COPP 4.6?

Local, internal and external stakeholders have been engaged in the development of this COPP to ensure the policy reflects the commitment of the Department in the recognition of these vulnerable prisoners.

9) The stakeholders mentioned by the Department of Justice (Curtin University, WA AIDS Council, Trans Folk WA) are not relevant to prisons, inmates or sex-discrimination. They are not relevant research groups or human rights experts. It is difficult to understand why these apparent “stakeholders” were consulted.

9.a) Why was the community not consulted?

9.b) Why was the Prison Officers Union not consulted?

9.c) Why were human rights experts not consulted?

9.d) Why were legal experts not consulted?

9.e) Why were relevant community groups like Sisters Inside Inc. not consulted?

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.

10) “Gender” is not “assigned” at birth.

10.a) Biological sex is determined at fertilisation, is observable in utero from the first trimester and is observed and recorded at birth.

10.b) “Male” and “female” are biological sex classifications, not “identities.” If the WA Department of Justice cannot differentiate between biological sex and “identity,” are they the best ‘people’ to be drafting policies regarding human rights?

10.c) Is it the position of the WA Department of Justice that “gender” is assigned at birth?

10.d) Have WA prisons and other WA penal facilities historically been segregated by biological sex?

10.e) If the answer to 10.d is yes, how have WA Prison Superintendents, Officers and other staff been able to determine the correct placement of prisoners and detainees prior to the implementation of COPP 4.6?

10.f) “or in another way which reflects their gender identity.” Will the WA Department of Justice be facilitating the numerous “gender identities,” claimed to exist, in WA prisons and other WA penal facilities?

10.g) If the answer to 10.f is no, does this not equal discrimination based on “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.

11) This definition of intersex is incorrect and not factual.

11.a) Intersex conditions are serious medical conditions, not identities.

11.b) We are alarmed at the WA Department of Justice's lack of understanding of basic facts regarding intersex conditions, as well as being very alarmed at the stakeholders', that were involved in the process of developing COPP 4.6, lack of understanding of intersex conditions.

It is unlawful to discriminate against a person based on their gender identity or intersex status. Trans, non-binary or intersex prisoners shall be treated with the same dignity and respect given to any other prisoner and shall not be discriminated against on the grounds of their gender identity or intersex status.

12) It is already unlawful to discriminate against anyone based on their sex.

12.a) What reasoning does the WA Department of Justice have for doubting current legal protections against discrimination?

12.b) Can the WA Department of Justice provide examples of Western Australian "trans," "gender" diverse or intersex prisoners/detainees being discriminated against in a manner which does not meet the definition of discrimination based on biological sex?

12.c) Has the WA Department of Justice received legal advice stating that sex-segregation in WA prisons/penal facilities constitutes discrimination on the grounds of "gender identity" or intersex status?

12.d) Is it the position of the WA Department of Justice that sex-segregation in WA prisons and other WA penal facilities constitutes discrimination on the grounds of "gender identity" or intersex status?

The National Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Health Alliance provides that trans, gender diverse and intersex people are more likely to experience poor mental health including depression, anxiety and self-harm due to social exclusion and discrimination.

13) Did the WA Department of Justice take any steps to verify and substantiate the information used from the National LGBTI Health Alliance?

13.a) If the answer to 13 is yes, what steps were taken?

13.b) If the answer to 13 is no, what reasoning was used to determine there was no need for independent research or analysis of information used from the National LGBTI Health Alliance?

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

14) Did the WA Department of Justice take in to consideration the challenges that COPP 4.6 will present to their employees and prisoners/detainees?

14.a) For many females their culture forbids them to be in intimate and close proximity to males that are not from their family. What policies and protections will be adopted to address the challenges COPP 4.6 will present for female prisoners and detainees from culturally diverse backgrounds?

14.b) For many males and females from linguistically diverse backgrounds, “trans/gender” diverse ideology and associated language and terms are confusing and unknown. What policies and protections will be adopted to address challenges COPP 4.6 will present for prisoners and detainees from linguistically diverse backgrounds?

14.c) Many female and male prisoners may come from religious backgrounds that forbid them to be near a member of the opposite sex in intimate spaces such as bathrooms, showers and sleeping quarters. What policies and protections will be adopted to address the challenges brought on by COPP 4.6 thus presented to prisoners and detainees from religiously diverse backgrounds?

14.d) The Department of Corrective Services *Policy Directive 74: Appendix - Procedures – Management of Women in Custody* (Introduction) states “1.

*The Department of Corrective Services is committed to providing programs, interventions, activities and services **targeted to the unique needs of women in custody.** Informing this position is the knowledge that **the lives of many women offenders are characterised by a wide range of exclusionary deprivations such as poverty, poor education, lack of employment skills, histories of abuse both as a child and as an adult, unemployment, poor housing, extensive health problems, especially mental health, inability to access services and low life expectancy. This is particularly relevant to Aboriginal women, whose experience of life in society is fraught with danger from violence, social marginalisation and economic disadvantage.**”*

14.e) Regarding the use of the word “women,” is the WA Department of Justice referring to biological females or referring to anyone who “identifies” as “trans” or “non-binary” or is intersex?

14.f) Has the WA Department of Justice conducted any analysis regarding the impact that the implementation of COPP 4.6 may have on the ability of WA penal system employees to target the “unique needs of women in custody?”

14.g) Has the WA Department of Justice conducted any analysis regarding the impact that COPP 4.6 may have on the lives of female prisoners and detainees that have histories of abuse, both as a child and as an adult?

14.h) Has the WA Department of Justice conducted any analysis regarding the impact that the implementation of COPP 4.6 may have on the mental health of female prisoners and detainees?

14.i) Has the WA Department of Justice conducted any analysis regarding the impact that the implementation of COPP 4.6 may have on the ability of female prisoners and detainees to access services?

14.j) Has the WA Department of Justice conducted any analysis regarding the impact that implementation of COPP 4.6 may have on female Aboriginal prisoners and detainees, “whose experience of life in society is fraught with danger from violence [and] social marginalisation...”?

14.k) Has the WA Department of Justice conducted any analysis regarding the impact that the implementation of COPP 4.6 may have on the mental health of female prison officers and other female staff members?

14.l) Does the WA Department of Justice acknowledge the conflicting policies within The Department of Corrective Services Policy Directive 74: Appendix - Procedures – Management of Women in Custody and COPP 4.6?

14.m) Has the WA Department of Justice and/or the WA Department of Corrective Services made provisions for the litigation that will arise when women are raped and assaulted by male prisoners/detainees being housed in female facilities when this is a foreseeable risk?

Accommodating the needs of prisoners who identify as trans, non-binary or intersex will be met through individualised support, access to programs, medical and psychological services and appropriate care from staff, balanced against risks to security and/ or the good order of the prison.

15) What procedures of determining balance against risks to security and/or order of the prison/penal facility will be used?

15.a) Does the WA Department of Justice have existing and matching policies, support, access to programs, medical and psychological services and appropriate care from staff for prisoners/detainees that do not “identify” as “trans,” “gender” diverse or that are not intersex?

15.b) If the answer to 15.a is no, why not and what justification does the WA Department of Justice have for offering these supports, programs, services and care for prisoners/detainees that do not “identify” as “trans,” “gender” diverse or that are not intersex?

15.c) What assessments were undertaken to determine the capacity of the WA penal system and staff to adopt such extensive policies and procedures?

15.d) The Prisoner Health Care services will need to be expanded to accommodate for both males and females within the same facilities. Health care provision for males and females is different due to biological differences and the different way diseases and conditions present in both the sexes. Has WA Prisons made practical and budgetary provision for this?

15.e) Has the WA Department of Justice and the WA penal system made practical, logistical and financial provision for accommodating any requested "gender affirming care" for “trans” prisoners?

15.f) If a “trans” or “non-binary” or intersex prisoner requires “gender affirming care,” and that prisoner is a super-max prisoner, and they require extensive hospital stays and multiple visits to specialists, has the WA Department of Justice put in place safeguards and protections for the community and staff at said hospitals and specialist facilities?

15.g) Has the risk and cost been assessed of accommodating these demands?

15.h) If procedures such as breast augmentation, laser hair removal, facial feminisation surgery (all considered "gender affirming care") for example are made accessible and funded by the WA penal

system or Justice Department etc., will the same procedures be made available to females on the basis that this is necessary for their "gender expression"?

15.i) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

Prisoners who self- identify as trans, non-binary or intersex shall be provided with gender specific clothing, personal hygiene and other items that is aligned to their self-identified gender.

16) What is defined as "gender specific clothing?"

16.a) Are current male and female prisoners/detainees aware of these alternative options in "gender specific clothing?"

16.b) We are concerned that, once again, the WA Department of Justice is confusing biological sex with "gender identity."

16.c) What is defined as "gender specific hygiene" items?

16.d) Are current male and female prisoners/detainees aware of these alternative options in "gender specific hygiene" items?

16.e) Will the WA Department of Justice be providing "gender specific clothing" for the numerous "genders" that the trans lobby recognise?

16.f) Why is it necessary for prisoners/detainees to "identify" as a "gender" in order to have access to specific clothing items?

16.g) As per The Department of Corrective Services Policy Directive 74: Appendix - Procedures – Management of Women in Custody – 5.1.6, "all articles of clothing should be clearly labelled with the prisoner's name" – has the WA Department of Justice taken into consideration the potential amount of wasted clothing, resources and money in a situation where the preferred name of a "trans," "gender" diverse or intersex prisoner is changed?

16.h) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

The management of prisoners who are trans, non-binary or intersex in a custodial setting must seek to protect both the welfare and rights of the prisoner and the welfare and rights of others (eg staff, other prisoners).

17) Did the WA Department of Justice conduct any assessments, seek any legal advice or undergo any analysis regarding potential conflicts between sex-based protections & policies and the adoption of COPP 4.6?

17.a) Has the WA Department of Justice taken into consideration that the management of "trans," "gender" diverse or intersex prisoners/detainees under COPP 4.6 is in direct conflict with sex-segregation within WA prisons and other WA penal facilities which is one of the measures meant to protect the welfare and rights of female prisoners and detainees?

17.b) Has the WA Department of Justice and/or the WA Department of Corrective Services made provisions for the litigation that will arise when women are raped and assaulted by male prisoners/detainees being housed in female facilities when this is a foreseeable risk?

17.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

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

18) Did the WA Department of Justice conduct any surveys with current employees regarding the addition of these extensive policies?

18.a) Did the WA Department of Justice consult any relevant stakeholders (i.e. Prison Officers Union) regarding the adoption of COPP 4.6 in relation to the pressures on and fairness toward employees?

18.b) Do WA prison employees risk being reprimanded or fired if they refer to a prisoner/detainee by "he" if their preferred pronoun is "she," "they," "Ze" or one of numerous other "pronouns?"

18.c) Has the WA Department of Justice taken into consideration the capacity of linguistically and/or culturally diverse employees to adopt terminology and language they may not be familiar with or in agreeance with?

18.d) Has the WA Department of Justice taken into consideration potential breaches of Religious Freedoms Bills in regards to enforcing the adoption of COPP 4.6 on WA prison/penal system employees?

18.e) Has the WA Department of Justice taken into consideration the possibility that the use of "preferred pronouns" that do not match biological sex has the potential to obfuscate or minimise the facts and seriousness of details of any incidents of violence or sexual assault that occurs within WA prisons/penal facilities?

18.f) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

Reception

3.1 General process

3.1.1 Assumptions about a prisoner being trans or gender diverse should not be made by any staff. Each prisoner should have the right and ability to express their gender identity and have access to the support required for day to day practical arrangements such as clothing and toiletries.

19) What reasoning does the WA Department of Justice have to expect employees will be assuming the "gender identity" of prisoners/detainees?

19.a) What process was used to determine that a prisoner's/detainee's right to express "gender identity" trumps a prisoner's/detainee's right to sex-segregated spaces and protections as legally obliged to have under state, federal and international laws?

19.b) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

3.1.2 For many prisoners, prison reception is the first opportunity to disclose their gender identity.

3.1.3 Reception should provide a safe space for prisoners to disclose their gender identity.

20) What is defined as a "safe space?"

20.a) Are other prisoners/detainees entitled to a "safe space" to disclose potentially relevant or urgent information?

20.b) If the answer to 20.a is yes, then why are special policies needed for "gender" diverse or "trans" and intersex prisoners/detainees?

20.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

3.1.4 Reception processes shall be in accordance with COPP 2.1 – Reception.

3.2 Identity

3.2.1 Disclosing of a prisoner's gender should be conducted sensitively and appropriately.

3.2.2 The Reception Officer shall inform the Superintendent/ Officer in Charge (OIC) or relevant authorised officer if a prisoner self identifies as trans, gender diverse (non- binary) or intersex.

21) What is the purpose for this step?

21.a) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

3.2.3 The dignity, sensitivity and privacy of any prisoner who identifies as trans, non- binary, or intersex shall be respected.

22) Is the dignity, sensitivity, and privacy of any prisoner/detainee to be respected?

22.a) If the answer to 22 is yes, then why are special policies needed for "trans," "non-binary" and intersex prisoners/detainees?

22.b) If the answer to 22 is no, why are "trans," "non-binary" and intersex prisoners/detainees being given such priority and special privileges?

22.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

3.2.4 Where a prisoner self identifies as trans or intersex, the Reception Officer shall ask the prisoner what their self-identified gender is.

3.2.5 Where a prisoner self identifies as trans, non-binary or intersex the Reception Officer shall ask the prisoner what their preferred name is.

3.2.6 The Reception Officer shall note the prisoner's preferred name and self-identified gender, in the Total Offender Management Solution (TOMS) record.

23) Are prisoners/detainees that do not "identify" as "trans," "non-binary" or that are not intersex (even though, again, you cannot identify as intersex) given the option of using a (preferred) name other than their legal name?

23.a) If the answer to 23 is no, why not?

23.b) Did the WA Department of Justice analyse the possible risks and problems associated with allowing criminals to use essentially fake names other than their legal names?

23.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

3.2.7 Particular care shall be taken with usage of gender specific terms. Prison Officers shall ask the prisoner what their preferred pronouns are (e.g. she, he or they etc).

24) Has any consideration been given for linguistically diverse employees and the fairness and legalities of requiring them to adopt such policies and procedures?

24.a) Considering that "gender identity" has been scientifically labelled as a recent social contagion it would be common sense to assume that many prisoners may not be aware of what "gender identity" is or that they have the option of "identifying" as a "gender." Will the WA Department of Justice be asking all prisoners/detainees, from this point on, if they "identify" as a "gender," and if so, and a prisoner/detainee does not understand what this means, will the WA Department of Justice require the Reception Officers to explain what a "gender identity" is and how it is defined, as well as how "trans," "non-binary" and intersex are defined?

24.b) Will prisoners/detainees be provided with a list of "gender identities" to choose from?

24.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

3.2.8 The Reception Officer shall record the preferred prisoner's pronouns in the prisoner's TOMS record. The Reception Officer shall also inform prisoners that it is possible to alter pronouns at a later date.

25) Has any consideration been given to the complicated nature of not only requiring employees to take on new terms, language and policies, but to also let these preferences from prisoners/detainees be fleeting and changeable?

25.a) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

3.2.9 The Reception Officer shall ask the prisoner their preferred gender of the Prison Officers conducting their search and document their preference in TOMS.

26) Has any risk assessment been conducted to analyse the potential risks associated with letting "trans-identified" biological males prefer female employees for intimate searches?

26.a) Were any female prison officers consulted about this policy?

26.b) Are WA prisoners/detainees that do not “identify” as “trans,” non-binary” or that are not intersex given the option to choose which sex Prison Officer conducts their searches?

26.c) Are WA prisoners/detainees that do not “identify” as “trans,” non-binary” or that are not intersex given the option to choose which “gender” Prison Officer conducts their searches?

26.d) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

3.2.10 Prison Officers must address the prisoner in the prisoners preferred name and pronoun.

27) Has any consideration been given to the possible disruption of the balance of power that exists within WA prison/penal environments?

27.a) Has any consideration been given to how this type of policy may be manipulated and used against employees?

27.b) Did the WA Department of Justice research any of the documented cases of extreme violence and harassment that many females have endured from “trans-identified” biological males?

27.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

Preferred Placement

3.3.1 Where a prisoner self identifies as trans, non-binary or intersex, the Reception Officer shall ask the prisoner their preferred placement and document the response in TOMS.

28) Are prisoners/detainees that do not “identify” as “trans,” “non-binary” or that are not intersex given options of where they would like to be placed?

28.a) If the answer to 28 is no, why not?

3.3.2 Reception Officers shall explain to the prisoner they may be initially allocated to a prison according to their legally recognised gender until a placement decision has been reached.

29) The WA Department of Justice has, yet again, confused biological sex with “gender.” The credibility of this document is shaky, at best.

29.a) Is this temporary placement not a form of discrimination, and therefore a crime?

3.3.3 Staff should be aware that a prisoner who self identifies as trans, non-binary or intersex may require additional supports particularly during the first night in custody (see section 7).

Searches

4.1 Searches

4.1.1 Searches must be performed in a respectful manner and afford prisoners who self-identify as trans, non- binary or intersex with dignity and respect throughout the search.

30) Is it standard policy and procedure to perform searches in a respectful manner for all prisoners/detainees?

30.a) If the answer to 30 is no, then why are crimes being committed against prisoners/detainees in WA prisons and penal facilities?

30.b) If the answer to 30 is yes, then why are special policies needed for “trans,” “non-binary” and intersex prisoners/detainees?

30.c) Is it standard policy and procedure to afford prisoners/detainees dignity and respect throughout a search?

30.d) If the answer to 30.c is no, then why are crimes being committed against prisoners/detainees in WA prisons and penal facilities?

30.e) If the answer to 30.c is yes, then why are special policies needed for “trans,” “non-binary” and intersex prisoners/detainees?

30.f) Is the applicable procedure for conducting searches to be determined by a prisoner’s/detainee’s biological sex or “gender identity?”

30.g) If the answer to 30.f is “gender identity,” has the WA Department of Justice considered the potential security risks?

30.h) What safeguards will the WA Department of Justice have in place to address potential security risks of biological male prisoners/detainees taking advantage of COPP 4.6 to potentially undergo less searches, less often?

30.i) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

4.1.2 Prison Officers conducting the search of a prisoner who has self-identified as trans, non-binary or intersex shall check TOMS for the preferred gender of the Prison Officer to conduct the search.

31) Has any consideration been given regarding the variety of intense situations where Prison Officers may need to conduct a search, and that it also may be a time-sensitive situation?

31.a) Will the WA Department of Justice be instructing Prison Officers to ignore and forego training, instincts, circumstances and risks in the interest of checking which preferred “gender” of Prison Officer the prisoner/detainee has listed on TOMS?

31.b) “Gender identity” is classified as an ideology. Has any consideration been given regarding Prison Officers that do not subscribe to this ‘ideology?’

31.c) Has the WA Department of Justice considered what is legally and morally acceptable in the situation where a Prison Officer does not “identify” as any “gender?”

31.d) Will the WA Department of Justice be requiring Superintendents or other Managers of WA prisons and penal facilities to interview all WA prison/penal facility employees to determine their “gender?”

31.e) What will the WA Department of Justice recommend WA prison/penal system staff do about employees that do not “identify” as any “gender?”

4.1.3 Where a prisoner identifies as trans, non-binary or intersex the prisoner shall be searched by the Prison Officer of the gender documented on TOMS. A prisoner may also request Prison Officers of differing genders complete top/bottom searches (dual search).

32) This policy (4.1.3) is in breach of legally recognised sex-based protections.

32.a) Did the WA Department of Justice seek legal advice or counsel on this part of COPP 4.6?

32.b) Has the WA Department of Justice considered the legal implications of this policy?

32.c) Did the WA Department of Justice research any of the following legislative Acts, Treaties or Agreements to determine the legality of this policy?

Sex Discrimination Act 1984

Australian Human Rights Commission Act 1986

International Covenant on Civil and Political Rights

Convention Concerning Discrimination in Respect of Employment and Occupation

Convention on the Rights of Persons with Disabilities

Convention on the Rights of the Child

Declaration of the Rights of the Child

Declaration on the Rights of Disabled Persons

Declaration on the Rights of Mentally Retarded Persons

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Fair Work Act 2009

Fair Work Regulations 2009

The Convention on the Elimination of All Forms of Discrimination Against Women

Nelson Mandela Rules - UN Standard Minimum Rules for Treatment of Prisoners - UN Office on Drugs and Crime, Rule 11.

Bangkok Rules, specifically for women.

The United Nations Human Rights Office of the High Commissioner Statement of Women and Detention. Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

32.d) If the WA Department of Justice answers no to having researched any of the above Legislative Acts/Treaties, please explain why the specific listed legislation/treaty was not researched.

4.1.4 Where a Prison Officer declines to search the prisoner they shall request via the Senior Officer, another Prison Officer, of the prisoners preferred gender, to conduct the search.

33) Does the WA Department of Justice consider the act of declining to search a “trans,” “non-binary” or intersex prisoner/detainee a form of discrimination on the grounds of “gender identity” or intersex status?

33.a) What procedures are Prison Officers to follow when needing to conduct a search under time-sensitive or risky circumstances yet are required to relocate to find a Senior Officer?

33.b) Has any consideration been given to the many potential problems and risks that may arise from procedures like this?

33.c) What procedures are in place in case a Prison Officer of the prisoner’s/detainee’s preferred “gender” is not available to conduct a search?

4.1.5 Prison Officers shall conduct searches in accordance with COPP 11.2 – Searching.

34) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

34.a) Has any consideration been given to the contradictions to the COPP 11.2 Searching Principles that COPP 4.6 presents? We have included a very small portion of COPP 11.2 Searching Principles to demonstrate the contradictions and problems COPP 4.6 presents.

COPP 11.2 Searching

Prison

Principles

As referenced in the Guiding Principles for Corrections in Australia, 2018:

2.3.12 Staff, prisoners and visitors are searched lawfully, in the least invasive manner possible and with due regard to their rights and dignity.

35) Seeing as the COPP 11.2 Searching Principles require that staff, prisoners and visitors are searched lawfully, in the least invasive manner possible and with due regard to their rights and dignity, why did the WA Department of Justice see a need for new, extensive and special policies for “trans,” “non-binary” and intersex prisoners?

35.a) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

3.2.7 *The security and safety of staff, prisoners, visitors and the community is supported by a variety of strategies and systems to prevent, detect and deter contraband*

36) Has WA Department of Justice given any thought to how COPP 4.6 may cause interruption and delays in searching procedures and how that conflicts with assuring security and safety of staff, prisoners, visitors and the community?

36.a) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

COPP 11.2 Policy

*Searches of people and property entering and exiting prisons, as well as prison environments and transport vehicles, are necessary aspects of the overall strategy to detect and prevent the passage of unauthorised items into prisons. **Effective searches can assist to increase the safety and security of every person within the prison and reduce the likelihood of escapes and major disturbances.***

37) Has the WA Department of Justice taken into consideration the reality that the policies and procedures in COPP 4.6 will undermine the ability of Prison Officers to conduct effective searches?

37.a) Does the WA Department of Justice recognise the risks to staff, visitors, prisoners and the community if effective searches cannot be conducted?

37.b) Is the WA Department of Justice aware that there have been serious problems surrounding the ability to search "trans" prisoners in countries that have adopted similar policies to COPP 4.6?

37.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

Searches of all persons and their property shall be conducted in a manner that:

- *maintains the dignity, self-respect and privacy of the person*
- *avoids any unnecessary and unreasonable humiliation and embarrassment*
- *ensures the person knows how a search will be conducted and their rights and obligations in relation to that search.*

Search practices will utilise various methods and available technology, adopting the least intrusive option possible to minimise the negative impact on a person, without compromising the search integrity (eg hand held metal detectors).

38) With current protections taken into consideration, what processes did the WA Department for Justice use to determine the necessity of adopting new, extensive and special policies for "trans," "non-binary" and intersex prisoners? This concludes the portion of COPP 11.2 Searching Principles.

38.a) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

Initial placement

5.1.1 The Reception Officer shall communicate the prisoners preferred placement to the Superintendent.

39) Are other prisoners/detainees that do not “identify” as “trans,” “gender” diverse or that are not intersex given the option to have preferred placement?

39.a) If the answer to 39 is no, why not?

39.b) Prisons and other penal facilities have historically been sex-segregated. What justification does the WA department of Justice have for overriding community expectations?

39.c) Prisons and other penal facilities have historically been sex-segregated. What justification does the WA department of Justice have for overriding sex-based laws and protections?

39.d) What justification does the WA Department of Justice have for removing sex-segregation practices from WA prisons and other WA penal facilities?

5.1.2 The Superintendent/ OIC, shall offer the prisoner a single cell and the ability to access a separate shower and toilet facility.

40) Has any consideration been given regarding overcrowding and lack of separate spaces to accommodate requests under this policy?

5.1.3 The prisoner shall be managed in a manner that responds to their particular risk until a placement decision is made.

41) What risk assessment processes will WA Prison Officers use to determine the “particular risk” of prisoners getting special placement due to COPP 4.6?

41.a) Is it possible that a “self-identified” “trans,” “non-binary” or intersex prisoner may be determined to not be at any particular risk?

5.1.4 Placements shall also be made in accordance to COPP 2.3 – Assessments, placements and sentence management.

42) Since policies and procedures for placement of prisoners/detainees already exists, what process did the WA Department of Justice use to determine that more and extensive, special polices were necessary for “trans,” “gender” diverse and intersex prisoners/detainees?

42.a) Did the WA Department of Justice analyse current policies and procedures for placement of prisoners/detainees against the newly adopted policies and procedures for placement of prisoners/detainees to determine if there were any contradictions? We have included a sampling from COPP 2.3 – Assessments, placements and sentence management to demonstrate the contradictions that COPP 4.6 presents.

COPP 2.3 Placements

Banksia Hill Detention Centre

3.4 Placement of male and female detainees

*3.4.1 Detainees in the custody of BHDC shall be placed in suitable units. **Male and female detainees shall be assigned to separate accommodation units.***

43) What does the WA Department of Justice intend to do to address this direct contradiction between COPP 4.6 and COPP 2.3?

43.a) What reasoning does the WA Department of Justice have for overriding the policies outlined in COPP 2.3?

3.4.2 Female detainees shall be housed in the separate and secure ‘Yeeda’ or CUE Unit female precinct.

44) What reasoning does the WA Department of Justice have for overriding the policies outlined in COPP 2.3?

44.a) Has the WA Department of Justice sought legal advice on this policy and its direct contravention of COPP 2.3?

44.b) Has the WA Department of Justice sought legal advice on this policy and its direct contravention of numerous Acts, Treaties and Agreements, state, federal and international?

44.c) Has the WA Department of Justice advised the Western Australian State and Australian Federal governments that Western Australia may be in breach of numerous human rights laws and policies from numerous separate legislative acts and treaties?

44.d) Has the WA Department of Justice and/or WA Prisons considered how a rise in pregnant female prisoners/detainees will be managed should intact males be housed in the female estate?

44.e) In other jurisdictions a rise in both wanted and unwanted pregnancies amongst females is experienced when males are housed with them. It is reasonably foreseeable that the same will happen in WA Prisons and other WA penal facilities. How will the WA Department of Justice and WA Prisons and penal facilities accommodate this and fund the provision of contraception, abortion and pre and post-natal care?

44.f) Is there a super-max penal facility for females in WA?

44.g) If the answer to 44.f is no, how does the WA Department of Justice intend for WA penal facilities to accommodate a super-max male prisoner who claims a “trans identity?”

44.h) Has the WA Department of Justice made provision for the litigation that will arise when women are raped and assaulted by male prisoners/detainees being housed in female facilities when this is a foreseeable risk?

3.4.3 *Male detainees are housed in the following units:*

1. *Intensive Support Unit (ISU)*
2. *Jasper*
3. *Karakin*

45) What reasoning does the WA Department of Justice have for overriding the policies outlined in COPP 2.3?

45.a) Has the WA Department of Justice sought legal advice on this policy and its direct contravention of COPP 2.3?

45.b) Has the WA Department of Justice sought legal advice on this policy and its direct contravention of numerous Acts, state, federal and international?

45.c) Has the WA Department of Justice advised the Western Australian State and Australian Federal governments that Western Australia may be in breach of numerous human rights laws and policies from numerous separate legislative acts and treaties? This concludes the sampling from COPP 2.3.

45.d) Has the WA Department of Justice and/or WA Prisons considered how a rise in pregnant female prisoners/detainees will be managed should intact males be housed in the female estate?

45.e) In other jurisdictions a rise in both wanted and unwanted pregnancies amongst females is experienced when males are housed with them. It is reasonably foreseeable that the same will happen in WA Prisons and other WA penal facilities. How will the WA Department of Justice and WA Prisons and penal facilities accommodate this and fund the provision of contraception, abortion and pre and post-natal care?

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

46) Are these privileges offered to prisoners/detainees that do not “identify” as “trans” or “gender” diverse?

46.a) If the answer to 46 is no, why not?

46.b) Is it not a matter of discrimination if prisoners/detainees that do not “identify” as “trans” or “gender” diverse are not offered the same provisions outlined in 5.1.5?

46.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

Privacy

6.1.1 Prisoners who self- identify as trans, non-binary or intersex shall be given access to shower, toilet and laundry facilities which seek to maximise their safety and dignity.

47) Are prisoners/detainees that do not “identify” as “trans” or “gender” diverse given access to shower, toilet and laundry facilities which seek to maximise their safety and dignity?

47.a) If the answer to 47 is no, this is discrimination.

47.b) Are the shower, toilet and laundry facilities which seek to maximise the safety and dignity of “trans”, “non-binary” or intersex prisoners/detainees entirely separate from toilet, shower and laundry facilities for other prisoners/detainees?

47.c) If the answer to 47.b is no, then how can the WA Department of Justice and/or WA Prison Officers guarantee the safety and dignity of prisoners/detainees that are the opposite biological sex to a “trans”, “non-binary” or intersex prisoner/detainee that is allowed to use the same toilet, shower and laundry facilities?

47.d) What process was used to determine which prisoner’s/detainee’s rights to safety and dignity were more important than other prisoner’s/detainee’s rights to safety and dignity?

47.e) Has the WA Department of Justice and/or WA Prisons considered how a rise in pregnant female prisoners/detainees will be managed should intact males be housed in the female estate?

47.f) In other jurisdictions a rise in both wanted and unwanted pregnancies amongst females is experienced when males are housed with them. It is reasonably foreseeable that the same will happen in WA Prisons and other WA penal facilities. How will the WA Department of Justice and WA Prisons and penal facilities accommodate this and fund the provision of contraception, abortion and pre and post-natal care?

47.g) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

First Night in Custody

7.1.1 Prisoners shall be received into an environment where they feel safe and supported.

48) There is overwhelming evidence that shows prisoners and detainees are not received into an environment where they feel safe and supported. This is particularly true for Indigenous prisoners, especially for female Indigenous prisoners.

48.a) What justification does the WA Department of Justice have for disregarding current, serious, deadly gaps in this policy for all prisoners/detainees?

48.b) What justification does the WA Department of Justice have for elevating the safety of a numerically insignificant group of people above the existing issues executing this policy in general?

48.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

7.1.2 Prisoners who self-identify as trans, non-binary or intersex may feel particularly vulnerable on their first night in custody. Prison Officers shall, where possible, ensure that the prisoner’s individual needs and anxieties are addressed before being secured for the night.

49) What process was used to determine that “trans,” “non-binary” or intersex prisoners/detainees are “particularly vulnerable” any more than the average female or male prisoner/detainee that does not “identify” as “trans” or “non-binary?”

49.a) What justification does the WA Department of Justice have for policies that require, where possible, Prison Officers to cater to specific individual needs that are not human rights?

49.b) What consideration has been given to the time, energy, resources and attention that this policy will require of Prison Officers?

49.c) What consideration has been given to the prisoners and detainees that will be neglected due to this policy?

49.d) Why has the WA Department of Justice ignored overwhelming evidence regarding vulnerability, but that of female prisoners that are housed with biological male prisoners?

49.e) Has the WA Department of Justice and/or the WA Department of Corrective Services made provisions for the litigation that will arise when women are raped and assaulted by male prisoners/detainees being housed in female facilities when this is a foreseeable risk?

49.f) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

7.1.3 Essential reception and first night procedures and entitlements shall be explained to the Prisoner. Prison Officers shall ensure prisoners are informed of what will occur over the following days and the help available including support and counselling services.

50) Are the services and supports available for all prisoners/detainees?

50.a) If the answer to 50 is no, why not?

50.b) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

7.1.4 Prisoners who self-identify as trans, non-binary or intersex shall be provided with decent and appropriate clothing including underwear appropriate to the prisoner's self-identified gender.

51) What clothing is defined as "underwear appropriate to the prisoner's self-identified gender?"

51.a) Is the WA Department of Justice aware that clothing does not have a "gender?"

51.b) Has the WA Department of Justice considered the average amount of underwear that WA prisons and jails (and other penal facilities) readily have on stock?

51.c) Has the WA Department of Justice considered situations where prisoners/detainees that do not "identify" as "trans" or "non-binary" or that are not intersex may not be supplied with necessary clothing due to the demands of "trans" and "non-binary" "self-identified," or intersex, prisoners/detainees?

51.d) What processes were used to determine which prisoners/detainees could potentially go without necessary clothing?

51.e) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

7.1.5 Prisoners shall be made aware of prison routines and how to access available services.

52) Are there services that are available, or that will be available, to “trans,” “non-binary” or intersex prisoners that are not and/or will not be available to prisoners that do not “identify” as “trans” or “gender” diverse?

52.a) If the answer to 52 is yes, why is the WA Department of Justice withholding services from other prisoners?

Property

8.1.1 The Superintendent shall consider providing the prisoner with clothing and personal effects (e.g. cosmetics) appropriate for their self- identified gender and individual requirements in accordance with COPP 3.1 – Managing prisoner property. This particularly applies to prisoners who are placed in a prison that is not in accordance with their self-identified gender, or are non-binary.

53) What is defined as “non-binary” clothing and personal effects?

53.a) Which specific clothing and personal effects does the WA Department of Justice consider appropriate for which “genders?” (i.e. Which “gender” does the WA Department of Justice consider cosmetics appropriate for?)

53.b) As noted on the Canteen Price List of WA Prisons, female prisoners in Bandyup Women’s Prison must pay for cosmetics.

53.c) As per 53.b – are “trans,” “non-binary” or intersex prisoners being given cosmetics for free?

53.d) If the answer to 53.c is yes, why are female prisoners in Bandyup Women’s Prison being treated unfairly?

53.e) Is it necessary for the WA Department of Justice to consider certain clothing and personal effects to be appropriate for anyone’s “gender” in order for it to be provided?

53.f) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

8.1.2 In particular, Superintendents shall provide and accommodate requests for underwear and toiletries based on the self- identified gender of the prisoner.

54) Is the WA Department of Justice aware that there are currently multiple “gender identities” according to those that believe in “gender identities?”

54.a) How will WA prisons and other penal facilities accommodate this wide range of underwear and toiletries?

54.b) Regarding budgets, has the WA Department of Justice undertaken assessments of the cost to accommodate requests for underwear and toiletries based on “gender identity?”

54.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

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

55) Is there a current list of potential risks and safety issues associated with issuing underwear and toiletries to prisoners/detainees?

55.a) If the answer to 55 is no, what is the cause for heightened risks and safety issues when issuing underwear and toiletries to “trans,” “non-binary” and intersex prisoners/detainees?

55.b) Is the WA Department of Justice knowingly adding more risks and safety issues to an already risky and unsafe job/situation?

Placement

9.1.1 Particular care should be taken where a prisoner who self-identifies as trans, non-binary or intersex is likely to be located in long-term care and separation as this may have serious mental health consequences. The Superintendent shall manage the prisoner in an appropriate supportive environment.

56) What is the basis of this claim?

56.a) What is defined as an “appropriate supportive environment?”

56.b) Have serious mental health consequences been observed and recorded when prisoners/detainees that do not “identify” as “trans” or “non-binary,” or are not intersex, are located in long-term care and separation?

56.c) If the answer to 56.b is yes, is “particular care” taken with prisoners/detainees that do not “identify” as “trans” or “non-binary,” or are not intersex?

56.d) If the answer to 56.b is yes, does the Superintendent manage these prisoners/detainees in an appropriate supportive environment?

56.e) If the answer to 56.d is no, does this not equate to discrimination?

56.f) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

9.1.2 The Superintendent or Deputy Superintendent shall convene a meeting as soon as possible to discuss the ongoing management and appropriate placement of the prisoner.

57) Has any consideration been given to the amount of time and resources it will take to enforce this policy/procedure?

57.a) Has any consideration been given to the duties and prisoners/detainees needs that 9.1.2 will pull prison officers away from?

57.b) Has any consideration been given to the pressures, stresses and potential harmful mental health consequences that Prison Officers may experience due to these expectations?

57.c) Were any relevant Unions or representatives of employees consulted on the overall policy, and specific parts such as 9.1.2?

57.d) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

9.1.3 A prisoner must self-identify as trans, non-binary or intersex to be considered for placement in a prison which is different to their biological sex or the gender listed on their warrant or other instrument authorising imprisonment.

58) The WA Department of Justice is admitting in 9.1.3 that they are knowingly removing sex-segregation from within WA penal facilities?

58.a) This is a blatant violation of girls' and women's sex-based rights & protections and boys' and men's sex-based rights & protections.

58.b) What justification does the WA Department of Justice have for overriding sex-segregation in WA prisons and other penal facilities?

58.c) Was any analysis conducted regarding the inevitable mistakes, loss of information and other problems that will occur due to the obfuscation of details of identity?

58.d) It appears that biological sex and "gender" are being conflated again within COPP 4.6.

9.1.4 Where a prisoner has self-identified as non-binary they shall be considered for placement in accordance to their preference.

59) Are these preference options available to prisoners that do not "identify" as "non-binary?"

59.a) If the answer to 59 is no, does this not amount to discrimination?

59.b) If all other provisions within COPP 4.6 can be implemented within a single-sex penal environment then what is the purpose of provisions 9.1.3 and 9.1.4?

9.1.5 Placement of trans non-binary or intersex prisoners shall include consideration for the prisoners safety, dignity and welfare.

60) What considerations have been taken regarding the safety, dignity and welfare of female prisoners and detainees that can now have biological males housed with them? Many of whom (the female prisoners and detainees) are victims of violent and/or sexual assaults committed by males, and many of whom are incarcerated for nonviolent crimes.

60.a) When placement of a "trans" or "non-binary" prisoner or detainee directly conflicts with the rights, safety and dignity of other prisoners, how will WA Prison Officers decide which prisoners'/detainee's human rights to uphold and which to deny?

60.b) Has the WA Department of Justice and/or the WA Department of Corrective Services made provisions for the litigation that will arise when women are raped and assaulted by male prisoners/detainees being housed in female facilities when this is a foreseeable risk?

60.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

9.1.6 The prisoner shall be given the opportunity to provide input in regards to the placement at the prison to which they will be placed for their sentence.

61) Is this privilege extended to prisoners and detainees that do not “identify” as “trans” or “non-binary?”

61.a) If the answer to 61 is no, why not?

61.b) If the answer to 61 is yes, then why have segregated prisons and other penal facilities at all?

61.c) Does the WA Department of Justice recognise that 9.1.6 may be a violation of sex-based human rights?

9.1.7 The Superintendent shall consider the following when determining the prisoner’s placement:

- a) the nature of the prisoners current offence and criminal history
- b) previous custodial history, including previous behaviours and incidents which have impacted on the safety and security of the prison
- c) perceived risks to the safety of the prisoner and/or other prisoners
- d) intelligence reports.

62) Will the criteria for the above-mentioned considerations be made publicly available?

62.a) In regard to the above-mentioned consideration “a” – there are numerous examples of extremely dangerous criminals that are biological males being housed with female prisoners. What assurances can the WA Department of Justice give the stakeholders, prisoners and the community that male prisoners or detainees that could potentially harm female prisoners or detainees will not be given such opportunities if they happen to “identify” as “trans” or “non-binary” or that are intersex?

62.b) In regard to the above-mentioned consideration “c” – “perceived risks to the safety of the prisoner and/or other prisoners” – is this consideration taken in regard to placement for all prisoners and detainees?

62.c) If the risks to other prisoners exist alongside perceived risks to the “trans” or “non-binary” prisoner, what process will be used to determine which prisoner has higher risks?

62.d) Does the WA Department of Justice acknowledge that no amount of risk assessment or consideration given to items listed under 9.1.7 can preclude or determine risk of harming prisoners/detainees of the opposite sex?

62.e) Will the credibility of the prisoners’/detainee’s claim of being “trans,” “non-binary” or intersex be considered under 9.1.7 when making a placement decision?

62.f) If the answer to 62.e is yes, how will the prisoner’s/detainee’s claim of being “trans,” “non-binary” or intersex be authenticated?

62.g) What material facts would lead to a *request for placement* with prisoners/detainees of the opposite sex being denied?

9.1.8 The Superintendent or Deputy Superintendent shall contact the relevant Assistant Commissioner to seek a decision of the prisoners' placement.

9.1.9 The relevant Assistant Commissioners from each prison estate shall consider the placement of a prisoner at a prison that is different to the gender of the prisoner on their warrant or legal documentation.

63) Is the "relevant Assistant Commissioner" employed at the same prison/penal facility they may need to make this type of decision for regarding a prisoner's/detainee's placement?

63.a) Does the Assistant Commissioner normally have to make decisions on placement of prisoners/detainees?

63.b) Has any consideration been given to the potential extra workload for Assistant Commissioners?

63.c) If the answer to 63 is no, what reasoning does the WA Department of Justice have for involving staff that are not on site in relation to a facility that placement needs to be decided for?

63.d) "Gender" is not a material reality.

63.e) Biological sex is what WA Police Officers should be recording for factual record keeping. Is the WA department of Justice insinuating that WAPOL records inaccurate details of persons they are detaining?

63.f) Is the WA Department of Justice claiming that WA Prisons and other penal facilities are segregated based on "gender" as opposed to biological sex?

63.g) If the answer to 63.f is no, how can a prisoner/detainee be placed in a wing, unit or prison/penal facility based on "gender" when WA Prisons and penal facilities are not segregated by "gender?"

9.1.10 The placement decision shall be communicated to the relevant Superintendents and prisoner.

Orientation

10.1.1 The orientation process should ensure the prisoner has access to relevant information including, health and well-being and ongoing support.

64) Are prisoners/detainees that do not "identify" as "trans" or "non-binary" given access to information regarding their health and well-being and ongoing support?

64.a) If the answer to 64 is no, why not?

64.b) If the answer to 64 is no, what reasoning does the WA Department of Justice have for withholding beneficial information and services from other prisoners/detainees?

64.c) If the answer to 64 is yes, what reasoning does the WA Department of Justice have for creating new and extensive policies?

64.d) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

10.1.2 Orientation shall be managed in accordance with COPP 2.2 – Orientation.

Appeals

11.1.1 Where placement in a prison which is different to the prisoner's biological sex is denied, the prisoner shall be allowed to appeal the decision.

65) The WA Department of Justice has admitted, again, that they are removing sex-segregation from WA Prisons and other penal facilities.

65.a) What authority does the WA Department of Justice have for overturning historical and proven to be necessary sex-segregation policies?

65.b) What reasoning does the WA Department of Justice have for allowing biological males to be housed with biological females in WA penal facilities or vice versa?

65.c) What justification does the WA Department of Justice have for violating girls' and women's human rights?

65.d) Has the WA Department of Justice informed the WA State and the Australian Federal Governments that Western Australia is violating national and international human rights codes, laws and treaties?

65.e) Did the WA Department of Justice seek legal advice or counsel regarding their decision to violate girls' and women's and children's human rights?

11.1.2 The prisoner shall appeal in writing to the relevant Assistant Commissioner.

66) Are prisoners that do not "identify" as "trans" or "non-binary" given the option of appealing their placement in a specific prison/penal facility?

66.a) If the answer to 66 is no, why not?

66.b) If the answer to 66 is no, why are special privileges and social power being given to "trans" and "non-binary" or intersex prisoners/detainees?

11.1.3 The relevant Assistant Commissioner shall review the appeal and communicate the outcome to the relevant Superintendents.

11.1.4 The Superintendent at the prison where the prisoner is accommodated shall ensure the prisoner is informed of the appeal outcome.

67) What safety measures are in place to protect Superintendents that will be delivering potentially upsetting news to a potentially violent and/or unpredictable male prisoner/detainee?

67.a) Did the WA Department of Justice research Australia's own history of violent male criminals that self-identify as women in order to gain access to female facilities and prisoners/detainees?

67.b) Did the WA Department of Justice research the history of violent male criminals that "self-identify" as women in order to gain access to female facilities and prisoners from Germany, Spain, Ireland, Canada or the UK?

Prisoner Management Plan

12.1.1 All prisoners may present with a variety of risks and needs, with no two prisoners alike, each prisoner shall be assessed according to individual needs.

68) Does 12.1.1 refer to all “trans”, “non-binary” and intersex prisoners/detainees or all prisoners/detainees regardless of biological sex or “identity?”

68.a) If the answer to 68 is – all “trans,” “non-binary” and intersex prisoners/detainees, why are these prisoners’/detainees’ perceived needs taking such precedence?

68.b) If the answer to 68 is – all prisoners/detainees regardless of biological sex or “identity,” why is 12.1.1 included in COPP 4.6?

68.c) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

12.1.2 A prisoner must be permitted to express the gender with which they self-identify regardless of the prison location.

69) What is defined as “expression of gender?”

69.a) Are prisoners/detainees that do not “identify” as one of multiple “genders” allowed to express themselves with such freedom?

69.b) If the answer to 69.a is no, what justification does the WA Department of Justice have for discriminating against other prisoners/detainees?

69.c) Has any consideration been given to how many “genders” the trans lobby claims exist?

69.d) What procedures does the WA Department have in place for WA penal facilities to address situations where a “trans” prisoner’s/detainee’s “gender expression” directly interferes with another prisoner’s/detainee’s human rights?

69.e) Has the WA Department of Justice provided WA penal system employees with official lists of “expressions of gender?”

69.f) What consideration has been given to how policies like this will confuse or compromise linguistically, culturally or religiously diverse employees?

69.g) What consideration has been given to how policies like this will confuse or compromise linguistically, culturally or religiously diverse prisoners/detainees?

69.h) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

12.1.3 Once the final prison determination regarding the prisoner's placement has been made, the prisoners' management meeting shall include (but is not limited to):

- a) Superintendent/ Deputy Superintendent
- b) Medical Practitioner
- c) Prison Counselling Service
- d) Independent expert (where possible) from a gender identity supporting agency
- e) Where required, external support services and/or advocacy agencies.

70) Does the WA Department of Justice have separate, private or independent funding support for all of these additional processes, services and privileges being awarded to "trans," "non-binary" and intersex prisoners/detainees?

70.a) Has any consideration been given regarding the extremely high expectations this policy places on staff within WA penal facilities?

70.b) Has any consideration been given to how these policies and procedures within COPP 4.6 will impact the mental health and well-being of staff of WA penal facilities?

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

- a) facility, unit and cell accommodation options including the authority to change the prisoners placement
- b) gender self-identification
- c) searching requirements
- d) urinalysis testing and equipment
- e) clothing and toiletry requirements
- f) medical access and requirements
- g) ongoing support
- h) employment and programs
- i) recreation
- j) associations with other prisoners
- k) visits
- l) risks
- m) intelligence reports
- n) at risk assessment in accordance with COPP 4.9 – At-Risk prisoners

o) other relevant issues.

71) Are prisoners/detainees that do not “identify” as “trans” or “non-binary” or that are not intersex allowed to have such control over and involvement with their punishment in WA prisons and other penal facilities?

71.a) If the answer to 71 is no, what is the WA Department of Justice’s justification for allowing “trans,” non-binary” or intersex prisoners/detainees to have such a big influence on their punishment within WA prisons and other penal facilities?

71.b) Has any consideration been given to how these policies will inevitably disrupt the power dynamics that have historically been present and necessary within prisons, jails and other penal facilities?

71.c) Has any analysis been conducted regarding the long-term implications of COPP 4.6?

71.d) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

12.1.5 The Superintendent shall ensure a Prisoner Management Plan is completed and approved following the meeting and communicated to the relevant staff.

72) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

12.1.6 The Superintendent shall seek approval of the Prisoner’s Management Plan from the relevant Assistant Commissioner.

73) Has any consideration been given to current responsibilities and workloads of Superintendents within WA prisons and other WA penal facilities?

73.a) Has any consideration been given to the potential negative impacts of COPP 4.6 for Superintendents?

73.b) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

Access to Programs

13.1.1 The Superintendent shall consider and aim to provide equal access for prisoners who self-identify as trans, non-binary or intersex to programs, purposeful activities and services consistent with the prisoners self-identified gender.

74) What programs, activities and services does the WA Department of Justice consider to be consistent with a particular “gender?”

74.a) Is the WA Department of Justice confusing “gender” with biological sex, again?

74.b) Assuming 13.1.1 means that a prisoner/detainee of the male biological sex may be given “equal access” to programs, activities and services offered to biological female (sex) prisoners/detainees, has the WA Department of Justice given any thought to how allowing male prisoners/detainees to access

female programs, activities and services may restrict the access to those programs, activities and services for female prisoners/detainees?

74.c) Assuming 13.1.1 means that a prisoner or detainee of the male biological sex may be given “equal access” to programs, activities and services offered to biological female (sex) prisoners/detainees, has the WA Department of Justice sought legal advice on this matter?

74.d) Assuming 13.1.1 means that a prisoner or detainee of the male biological sex may be given “equal access” to programs, activities and services offered to biological female (sex) prisoners/detainees, has the WA Department of Justice informed the WA State government and the Australian Federal government that Western Australia is in violation of girls’ and women’s sex-based rights and protections?

74.e) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

Access to Support

14.1 Access to external support services

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

75) Has any thought been given to how long 14.1.1 will take?

75.a) Is it not discrimination to withhold preferred placement of “trans,” “non-binary” or intersex prisoners and detainees?

75.b) Are prisoners that do not “identify” as “trans” or “non-binary” or that are not intersex catered to in such a manner as described in 14.1.1?

75.c) If the answer to 75.b is no, what is the reasoning for catering to some prisoners and not others?

75.d) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

14.2 Visits from friends and family

14.2.1 Prisoners shall be given access to contact visits in accordance with COPP 7.2 – Social Visits.

76) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner’s/detainee’s biological sex?

14.2.2 Where appropriate, Superintendents shall provide trans, non-binary and intersex prisoners with the opportunity to change clothing for visits in a manner that affords privacy, dignity and safety.

77) Is this opportunity afforded to prisoners/detainees that do not “identify” as “trans” or “non-binary” or that are not intersex?

77.a) Has any consideration been given to the practicality of 14.2.2?

77.b) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

Access to Prison Health Services

15.1.1 Trans, non-binary and intersex prisoners shall be assessed and clinically managed in accordance with their clinical needs and in accordance with Health Services (HS) policies.

78) Are all prisoners not afforded this human right?

78.a) If the answer to 78 is no, what reasoning does the WA Department of Justice have for violating the human rights of prisoners/detainees?

78.b) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

Escorts

16.1.1 The officer in charge of movements or other delegated position shall ensure trans, non-binary or intersex prisoners are escorted in accordance with COPP 12.2 – Coordination of escorts, COPP 12.3 – Conducting escorts and COPP 12.4 –Prisoner transfers.

79) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

16.1.2 Escorting Officers shall ensure that the trans, non-binary or intersex prisoner is not transported with other prisoners in the same pod.

80) What is the reasoning for 16.1.2?

80.a) Are there safety concerns regarding transporting "trans" or "non-binary" or intersex prisoners/detainees?

80.b) Has any consideration been given regarding the practicality of 16.1.2?

80.c) Has any analysis been conducted regarding the impact that 16.1.2 will have on other prisoners/detainees needing transport?

80.d) Has any analysis been conducted regarding the impact that 16.1.2 will have on internal systems and procedures?

80.e) Has any analysis been conducted regarding the impact that 16.1.2 will have on other prisons, jails, courts etc. in relation to timing of the transport of prisoners/detainees?

80.f) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

16.1.3 Departmental contractors shall be notified by the relevant SO at the time of escort of the trans, non-binary or intersex prisoner's requirements including the requirements of searching.

81) Can the WA Department of Justice confirm that they will be requiring other businesses and individuals aside from staff on the payroll of WA prisons and penal facilities to abide by policies (above and beyond the expected norm for Contractors) that may conflict with their own personal, cultural or religious beliefs?

81.a) Has any consideration been given regarding how 16.1.3 could negatively impact on departmental contractors from linguistically diverse backgrounds?

81.b) Has any consideration been given regarding how 16.1.3 could negatively impact on departmental contractors from culturally diverse backgrounds?

81.c) Has any consideration been given regarding how 16.1.3 could negatively impact on departmental contractors from religiously diverse backgrounds?

81.d) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

Prisoners Self-identifying as Trans, Non-Binary or Intersex Post Admission

17.1.1 A prisoner who identifies as trans, non-binary or intersex post admission shall be managed in accordance with this COPP.

82) Does the WA Department of Justice acknowledge the fact that you cannot identify as intersex?

82.a) How will the WA Department of Justice prevent 17.1.1 being manipulated and/or exploited by biological male prisoners/detainees?

82.b) Has any risk assessment been undertaken regarding housing biological male prisoners and/or detainees with biological female prisoners and/or detainees?

82.c) Did anyone within the WA Department of Justice conduct any research regarding the overwhelming amount of evidence showing that biological males that "identify" as women to be housed in female prisons/penal facilities, units etc. do so to gain access to vulnerable female prisoners and/or detainees?

82.d) Did the WA Department of Justice review the report by British psychiatrists who warned against this type of policy (17.1.1) on the basis that males will use it to gain access to victims and have a perceived easier time while incarcerated due to the differences in the women's and men's estates, and that it is naive to think they will not do so? (2015)

82.e) Does the WA Department of Justice acknowledge that the removal of sex-segregation in WA Prisons and other penal facilities under the implementation of COPP 4.6, and any other similar policies, violates and breaches Australia's human rights obligations re: separation of males and females in prisons, jails and other penal facilities under human rights agreements and treaties which Australia is signatory to or committed to (i.e. {but not limited to} CEDAW, Nelson Mandela Rules – UN Standard Minimum Rules for Treatment of Prisoners – UN Office on Drugs & Crime, Rule 11 and Bangkok Rules)?

82.f) Did the WA Department of Justice seek legal advice regarding 17.1.1?

82.g) Has the WA Department of Justice informed the WA state government and the Australian Federal government that Western Australia is violating girls' and women's sex-based rights and protections?

17.1.2 The Superintendent shall be responsible for ensuring documentation of the prisoners preferred gender, name, pronouns, searching and placement requirements is completed in TOMS.

83) Can this provision be implemented within a single-sex prison/penal environment matching the prisoner's/detainee's biological sex?

Standing Orders

18.1.1 Superintendents may develop Standing Orders compliant with this COPP as operationally required.

18.1.2 For prisons requiring a standing order this shall be compliant with COPP 1.3 – Standing Orders and the Departments Operational Policy and Procedure Framework.

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<https://www.refworld.org/docid/45139c9b4.html>
4. Department of Corrective Services Policy Directive 74 - Management of Women in Custody:
<https://www.correctiveservices.wa.gov.au/files/prisons/adult-custodial-rules/policy-directives/pd-74.pdf>
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<https://www.correctiveservices.wa.gov.au/files/prisons/adult-custodial-rules/policy-directives/pd-74-appendix-procedures.pdf>
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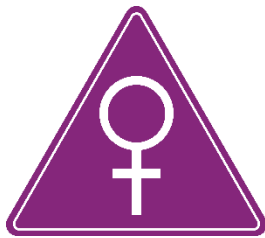
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