



Submission to the Australian Human Rights Commission (AHRC) Thematic Consultation on LGBTIQA+ People in Detention, 21 Nov 2025

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SCARLETALLIANCE.ORG.AU

PO BOX 854 | Newtown NSW 2042, Australia

ABN 86 612 112 065 | ARBN 149 618 137

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About Scarlet Alliance

Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation. Formed in 1989, our membership includes state and territory-based and national sex worker organisations and individual sex workers across unceded Australia.

Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, building their own alliances and choosing where and how they work. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

We have extensive experience advocating for the rights of migrant and LGBTIQA+ sex workers, many of whom face compounded discrimination and vulnerability in detention settings due to the intersection of sex work stigma and LGBTIQA+ discrimination.

Executive Summary

The existing *Human Rights Standards for Immigration Detention* (the standards), published by the Australian Human Rights Commission (AHRC) in 2013, provide a foundational framework for ensuring humane treatment in immigration detention facilities. However, the standards fail to address the distinct vulnerabilities, rights, and needs of LGBTIQA+ individuals, contributing to significant protection gaps, including heightened risks of violence, barriers to gender-affirming healthcare, unsafe housing arrangements, and inadequate mental health support.

Drawing on empirical research by Dr. Paul Simpson from the University of New South Wales (UNSW) and other researchers,¹ as well as international benchmarks such as the United Nations High Commissioner for Refugees (UNHCR) Guidelines No. 9² and the Yogyakarta Principles +10,³ this submission calls for urgent revisions to the standards. These updates should **emphasise alternatives to detention, individualised risk assessments, LGBTIQA+-affirming care, and comprehensive staff training.**

¹ Paul L Simpson, Joanne Reekie, Tony Butler, Juliet Richters, Lorraine Yap and Luke Grant, 'Sexual Coercion and Mental Health Among Men Who Have Sex With Men in NSW Prisons: Evidence from the 2017 Justice Health and Forensic Mental Health Network Survey,' (2019) 43(6) *Australian and New Zealand Journal of Public Health* 551. <https://doi.org/10.1111/1753-6405.12943>.

² United Nations High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 9: Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity*, UN Doc HCR/GIP/12/09 (23 October 2012). <https://www.unhcr.org/media/unhcr-guidelines-international-protection-no-9-claims-refugee-status-based-sexual-orientation>.

³ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics* (10 November 2017). <https://yogyakarta-principles.org/principles-en/yp10/>



The standards should be updated immediately, adopting a human-rights and public-health approach that:

- Centres safety and informed consent
- Requires individualised assessments
- Guarantees access to gender-affirming healthcare and confidential complaints
- Measures outcomes through disaggregated data and independent monitoring.

The updated standards must reflect key international developments, including United Nations detention norms (Nelson Mandela Rules; Bangkok Rules),⁴ UNHCR detention and LGBTQIA+ guidance,⁵ Council of Europe Committee for the Prevention of Torture (CPT) recommendations on transgender detainees,⁶ and the Association for the Prevention of Torture (APT) monitoring guide.⁷

Reforms must focus on individual accountability rather than collective punishment, ensuring that isolated incidents do not justify discriminatory policies that marginalise entire groups. This approach not only aligns with Australia's international obligations, but also promotes public health outcomes, reduces re-traumatisation for those fleeing persecution, and fosters a more equitable detention system.

Key Gaps and Limitations in the Existing Standards

The current standards articulate broad principles, including non-discrimination (Standard 1), access to healthcare (Standard 13), and protection from harm (Standard 17).⁸ However, they lack explicit provisions tailored to LGBTQIA+ detainees, despite well-documented evidence of their disproportionate vulnerabilities.

While the current standards recognise vulnerabilities for gay, lesbian, bisexual, transgender, and intersex people in accommodation (18.2), searches (3.5), and care planning (20.1)—allowing gender choice for searches and detainee input on housing—these provisions represent minimalist benchmarks that cite the Yogyakarta Principles selectively without enforcement mechanisms.⁹

This omission perpetuates systemic harms and violates international treaties such as the International Covenant on Civil and Political Rights (ICCPR) Article 7 (prohibiting cruel, inhuman, or degrading treatment), the Convention Against Torture (CAT), and the Convention on the Rights of Persons with Disabilities (CRPD).

⁴ OHCHR, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN Doc A/RES/70/175 (8 January 2016). <https://undocs.org/A/RES/70/175>;

OHCHR, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, UN Doc A/C.3/65/L.5 (21 December 2010).

<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial>.

⁵ UNHCR, *Need to Know Guidance: Working With Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons in Forced Displacement and Humanitarian Settings* (2 ed) (2021).

<https://emergency.unhcr.org/protection/persons-risk/protecting-lesbian-gay-bisexual-transgender-intersex-and-queer-lgbtqi-persons>.

⁶ Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *33rd General Report of the CPT: Transgender Persons in Prison and Other Places of Deprivation of Liberty*, Council of Europe (2023).

<https://www.coe.int/en/web/cpt/-/the-council-of-europe-anti-torture-committee-cpt-2023-general-report-focuses-on-the-protection-of-transgender-persons-in-prison>.

⁷ Association for the Prevention of Torture and Inter-American Commission on Human Rights, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide* (2018).

<https://www.apr.ch/en/knowledge-hub/towards-effective-protection-lgbti-persons-deprived-liberty-monitoring-guide>.

⁸ Australian Human Rights Commission, *Human Rights Standards for Immigration Detention* (2013).

https://humanrights.gov.au/sites/default/files/document/publication/HR_standards_immigration_detention.pdf.

⁹ Ibid.



Violence and Abuse

LGBTQIA+ individuals in detention experience elevated rates of physical and sexual assault, harassment, and staff indifference. Research indicates that transgender women are 13 times more likely to face sexual violence in detention than their cisgender counterparts.¹⁰ Gay and bisexual men often endure coerced disclosure of their sexual orientation, while lesbian and bisexual women are over-represented in carceral systems due to intersecting forms of discrimination.

These abuses not only inflict immediate harm but also deter reporting, perpetuating cycles of impunity and undermining trust in authorities. The absence of LGBTQIA+-specific violence prevention protocols leaves vulnerable detainees exposed to repeated victimisation.

Unsafe Housing and Solitary Confinement

There is no guidance on gender-affirming placements, resulting in transgender individuals being housed according to sex assigned at birth, which exacerbates risks. So-called "protective" segregation frequently isolates LGBTQIA+ detainees for up to 23 hours per day, leading to severe mental health deterioration, including post-traumatic stress disorder (PTSD), self-harm, and hallucinations — practices equated to torture under United Nations standards.¹¹

Additionally, open bathrooms and inadequate privacy measures compound humiliation and vulnerability, as detainees lack secure spaces for personal care.¹² The 2024 report *Not just an afterthought: The experience of women in immigration detention* found that the absence of transgender-specific policies and guidance material was inadequate, and highlighted inappropriate searches, such as male guards conducting searches on transgender women, as violating privacy and dignity and heightening trauma.¹³

Health and Mental Health Neglect

Essential services such as hormone replacement therapy (HRT), human immunodeficiency virus (HIV) and sexually transmitted infection (STI) care, and trauma-informed counseling are often denied or delayed.¹⁴ LGBTQIA+ asylum seekers and refugees require safe disclosure, peer support, and culturally competent services, which are conspicuously absent.

Denial of these services constitutes a breach of the right to health under the International Covenant on Economic, Social and Cultural Rights (ICESCR), potentially leading to irreversible health declines and increased suicide rates among a population already at heightened risk.

Poor Screening and Training

Intake processes risk involuntary "outing" of sexual orientation or gender identity (SOGI), with staff untrained in associated risks. The absence of transgender-specific policies creates environments where inappropriate

¹⁰ Australian Human Rights Commission, *Not Just an Afterthought: The Experience of Women in Immigration Detention* (December 2024) 36. <https://humanrights.gov.au/resource-hub/by-resource-type/reports/asylum-seekers-and-refugees-projects-reports/not-just-afterthought-women-immigration-detention>.

¹¹ Ibid 36-7.

¹² Ibid.

¹³ Ibid.

¹⁴ *Need to Know Guidance* (n 5).



searches, such as male guards conducting searches on transgender women, violate privacy and dignity, heightening trauma.¹⁵

Ethics and Marginalisation

Prolonged detention, averaging over 565 days, re-traumatises individuals fleeing persecution based on their sexual orientation and/or gender identity. This ignores ethical imperatives for vulnerability-based release and marginalises over-represented groups, such as those with intersecting identities (e.g., Indigenous or racialised LGBTQIA+ people).

These gaps not only contravene human rights norms but also impose unnecessary fiscal burdens on the Australian government through prolonged healthcare costs and legal challenges.

Advocacy Informed by Research: Dr. Paul Simpson (UNSW) and Others

Dr. Paul Simpson, a leading researcher at UNSW Justice Health, specialises in health, marginalisation, and ethics within carceral settings, with insights directly applicable to immigration detention as coercive environments.¹⁶ His model advocates systemic reform: integrated health, ethical care, and community-led policies prioritising rights. His research emphasises deliberative processes via citizens' juries and roundtables with prison health directors, emphasising holistic, person-centered care.¹⁷ Key findings include:

Health Priorities: Transgender and gender-diverse individuals face sexual coercion, such as transgender women negotiating survival sex in male-dominated spaces, while gay and bisexual men endure harmful "closeting" cycles. Recommendations advocate for whole-of-setting models ensuring continuity of HRT and mental health support, framing these as public health imperatives to prevent infectious disease spikes (e.g., HIV/STIs) and reduce morbidity. The International Detention Coalition (IDC) 2016 position paper documents global evidence of HRT denials and STI/HIV surges.¹⁸

Marginalisation: Over-representation stems from societal discrimination, leading to humiliation and ostracism. Trans women in men's facilities endure sexual coercion, dehumanisation ("you're a woman, a convenience, a cat, a poof, a thing"¹⁹); pathways rooted in pre-incarceration trauma. Ethical demands call for community-led policies, as seen in New South Wales prison revisions for transgender individuals.

Ethics: Research ethics prioritise incarcerated voices, emphasising consent, confidentiality, and autonomy; principles that detention systems often ignore. Complementary research from queer asylum seekers and refugees highlights needs for trauma-informed care and peer networks.²⁰

Recommended Changes to the Standards: Practical and Rights-Based

¹⁵ *Not Just an Afterthought* (n 10).

¹⁶ Paul L Simpson, Miriam Simpson, Armita Adily and Tony Butler, 'Prison Health Priorities in Australia: Outcomes of a National Deliberative Process With Citizens and Stakeholders', (2022) 10(1) *Health & Justice*, 12. <https://doi.org/10.1186/s40352-022-00173-5>; Paul L Simpson and Jocelyn Guthrie, 'Ethical Considerations in Prison Health Research: Lessons From Deliberative Engagement With Incarcerated Populations and Prison Stakeholders', (2023) 19(3) *International Journal of Prisoner Health*, 378. <https://doi.org/10.1108/IJPH-08-2022-0052>.

¹⁷ Ibid.

¹⁸ International Detention Coalition, *LGBTI Persons in Immigration Detention* (2016). https://idcoalition.org/wp-content/uploads/2016/06/LGBTI-Position_web_June-2016.pdf.

¹⁹ Mandy Wilson, Paul L Simpson, G Butler, Juliet Richters, L Yap, & Basil Donovan. (2017). 'You're a woman, a convenience, a cat, a poof, a thing, an idiot': Transgender women negotiating sexual experiences in men's prisons in Australia. *Sexualities*, 20(3), 380–402. <https://doi.org/10.1177/1363460716652828>

²⁰ *Need to Know Guidance* (n 5).



Reforms

To address these gaps, the standards must incorporate LGBTQIA+-specific, rights-based, and intersectional provisions. Below are priority reforms, with suggested policy wording for adaptation.

1. Mandatory Individualised Safety and Placement Framework

Require immediate, trauma-informed screening upon arrival, including voluntary questions on gender identity, sex characteristics, and safety concerns, conducted by trained clinicians with interpreters and informed consent safeguards. Placement decisions must default to the detainee's informed preference, subject to objective safety assessments.

Blanket rules (e.g., assigning transgender women to male units) are prohibited. Overrides must be documented and subject to rapid independent review, aligning with Council of Europe CPT and UNHCR guidance.²¹

2. Respect for Gender Identity and Documentation

Mandate use of affirmed names and pronouns in records and interactions. Provide access to gender-affirming clothing, makeup, and personal items unless evidence-based security reasons apply. Where verification of sex assigned at birth is needed, limit access with strict privacy protocols.

3. Guarantee Continuity of Gender-Affirming Healthcare

Ensure timely continuation of HRT, access to pre-exposure prophylaxis (PrEP)/post-exposure prophylaxis (PEP), and queer-inclusive mental health services. Denials must be documented and appealable, drawing on Simpson's models for person-centered care.²²

4. Prohibition on Solitary Confinement as "Safety"

Ban segregation as a default; prioritise integrated alternatives like dedicated units or community-based accommodation. Exceptions require judicial oversight, consistent with international standards that recognize prolonged solitary confinement as torture.²³

5. Violence Prevention, Reporting, and Response

Implement LGBTQIA+-sensitive protocols for sexual and gender-based violence (SGBV), including confidential reporting, forensic care, and survivor-centered remedies. Establish clear pathways for investigation and accountability.

6. Data, Monitoring, and Oversight

Mandate voluntary, confidential data collection on sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC) for outcome monitoring. Strengthen independent oversight by the AHRC and National Preventive Mechanisms (NPMs).

²¹ *Need to Know Guidance* (n 5);
Committee for the Prevention of Torture (n 6).

²² Paul Simpson et al. (n 16).

²³ *Nelson Mandela Rules* (n 4).



7. Training, Policy Co-Design, and Community Engagement

Require annual SOGIESC training co-designed with LGBTQIA+ organisations. Establish a formal advisory mechanism including lived-experience representatives to ensure policies reflect community needs and expertise.

8. Access to Legal Advice and Remedies

Fund LGBTQIA+-competent legal aid and advocates for asylum, sexual and gender-based violence, and health disputes. Ensure detainees have access to information about their rights and complaint mechanisms in languages they understand.

These reforms would harmonise with the National LGBTQIA+ Health Plan (2025-2035)²⁴ and reduce long-term harms to vulnerable populations.

Recent International, Regional, and Domestic Developments

Updated standards should explicitly reference:

International:

- UNHCR's 2021 *Need to Know Guidance*.
- Nelson Mandela Rules for vulnerability exemptions.
- Yogyakarta Principles +10 prohibiting solitary confinement and mandating affirming care.

Regional (Asia-Pacific):

- International Organisation for Migration (IOM) standards advocating alternatives to detention for LGBTQIA+ individuals.

Domestic:

- AHRC's 2024 *Not Just an Afterthought* Report, noting transgender policy gaps

International:

- The Council of Europe's CPT 2023/2024 reports provide operational language on transgender protections,²⁵ emphasising that ignoring these developments risks Australia's international reputation and exposes it to litigation.

²⁴ Department of Health and Aged Care, *National Action Plan for the Health and Wellbeing of LGBTQIA+ People 2025–2035* (10 December 2024).

<https://www.health.gov.au/resources/publications/national-action-plan-for-the-health-and-wellbeing-of-lgbtqi-a-people-2025-2035>.

²⁵ Committee for the Prevention of Torture (n 6).



International and Domestic Best Practices

Effective models exist that can inform Australian standards:

- **UNHCR Operational Guidance:** Checklists for protection and referrals as templates for standard operating procedures (SOPs).
- **CPT Recommendations:** Individualised assessments and health access, adaptable to Australia.
- **Community-Led Models (Australia):** Simpson's stakeholder forums for transgender prison policies.
- **EU and APT/Inter-American Organisation for Human Rights (IOI) Guides:** Monitoring indicators for privacy, health, and non-discrimination.

These practices demonstrate feasibility and effectiveness in reducing abuses while maintaining security.

Individual Accountability: Balancing Rights and Avoiding Collective Punishment

A critical principle underpins rights-based detention reform: **crimes committed by a transgender woman must not result in collective consequences for all transgender women**, as this constitutes discrimination under the *Sex Discrimination Act 1984* and violates ICCPR prohibition of collective punishment.²⁶

Instead, focus on individual accountability—prosecute and isolate the perpetrator as with any individual, regardless of identity.

Unpacking Rights Harmony

Women's rights to safety from gender-based violence are upheld through universal risk assessments (e.g., separating any violent individual, cisgender or transgender). Transgender rights to self-identification (per Yogyakarta Principles) must prevail unless evidence-based risks exist. Human rights demand proportionality: a single assault warrants justice, not identity-based exclusions.

Example: If a cisgender woman assaults another detainee, she faces individual punishment; the same applies to transgender women. Blanket bans marginalise innocent individuals, increasing suicide and violence risks; evidenced by the 13-fold assault rate on transgender women in inappropriate placements.

This framework protects victims while preventing discriminatory overreach, aligning with CPT and UNHCR standards.

Practical Implementation Checklist

The updated standards should mandate:

1. Trauma-informed arrival screening recording safety concerns
2. Affirmation of names and pronouns in all interactions
3. Individualized placement with documented overrides and reviews
4. Guaranteed HRT continuity and gender-affirming care
5. Alternatives to solitary confinement

²⁶ *Yogyakarta Principles Plus 10* (n 3); Committee for the Prevention of Torture (n 6).



6. Confidential SOGIESC data collection
7. Annual LGBTQIA+ training co-designed with communities
8. Independent monitoring with private interviews
9. Funded legal and advocacy referrals
10. Formal LGBTQIA+ advisory body.

Suggested Indicators for Monitoring and Reporting

To ensure accountability and transparency, the following indicators must be reported annually with privacy safeguards:

- Proportion of LGBTQIA+ detainees (voluntary identification)
- Complaints by LGBTQIA+ individuals, types, and resolutions
- Placement overrides and outcomes
- HRT continuations and interruptions
- Violence incidents and investigation timelines
- Staff training completions
- Access to legal services and advocacy.

Suggested Drafting Language for the Standards

Placement Clause

"A person must not be placed, housed, or transferred solely on the basis of sex assigned at birth, sexual orientation, gender identity, gender expression, or sex characteristics. Placement decisions must be based on an individual, evidence-based risk and needs assessment that considers the detainee's informed preference. Any override must be documented, time-limited, include a clinical rationale, and be subject to rapid independent review."

Healthcare Clause

"All detainees must have timely access to continuation of hormone replacement therapy, HIV and STI prevention and treatment (including PrEP and PEP), and gender-affirming healthcare. Denials must be documented with clinical justification and subject to independent appeal."

Training Clause

"All staff must complete annual training on SOGIESC sensitivity, trauma-informed care, and LGBTQIA+-specific health needs. Training must be co-designed with LGBTQIA+ organizations and include lived-experience perspectives."

Adapt similar clauses for intake, violence prevention, and oversight sections.

Closing and Practical Next Steps for the AHRC

To implement these reforms, the AHRC should:

1. Update standards with LGBTQIA+-specific clauses and publish standard operating procedures
2. Fund pilots for segregation alternatives and community-based detention options



3. Commission a 12-month independent review with disaggregated data reporting
4. Resource advisory participation and training programs
5. Ensure funded remedies and advocacy are available in all facilities

These steps will transform detention into a rights-respecting system, reducing harms and aligning with Australia's international human rights commitments. The current gaps expose vulnerable LGBTQIA+ detainees to preventable suffering and violate fundamental principles of dignity, equality, and non-discrimination. Scarlet Alliance is able to support the AHRC in this critical work through consultation, training co-design, and ongoing engagement.

