

Students and Gender Identity: Information Paper

This information paper is prepared in response to the needs of schools when they address issues of students and gender identity. This is not a prescriptive or exhaustive document, but it includes links to resources schools can consult for additional information.

Guiding Principles

Schools have a responsibility to ensure all students are safe in an environment that provides a duty of care.

Schools have legal, ethical and professional responsibilities to ensure every student has the opportunity to learn, work and participate in an environment that is free from discrimination, harassment, bullying, vilification and victimisation.

No member of a school community should be treated less favourably because of personal characteristics such as sex, gender identity, race or disability.

Schools are encouraged to implement strategies, policies and procedures that are guided by the principles of acceptance, dignity and respect for diversity.

Schools recognise that respect for differences includes an acknowledgement of the rights of students whose gender identity does not align with their designated sex at birth.

Gender Identity – Definition

Gender identity is broadly defined as a person's innermost concept of self as male, female, a blend of both or neither. One's gender identity can be the same or different from their sex assigned at birth.

People can express their gender identity through the way they dress, a name change or medical intervention, such as hormone therapy or surgery.

Terms used to describe a person's gender identity include *trans*, *transgender* and *gender diverse*.

The *Australian Sex Discrimination Act 1984* defines gender identity as

'the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth'.

The *Victorian Equal Opportunity Act 2010* defines gender identity as:

‘the identification on a bona fide basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or by living, or seeking to live, as a member of the other sex.’

Gender dysphoria is a term for the distress people can experience as a result of the tension between their designated sex at birth and the gender with which they identify.

Transitioning refers to the process in which a transgender person commences living as a member of another sex. This can occur through medical intervention, style of dressing, or other behavior that indicates an intention to commence living permanently as a member of another sex.

The Law

Gender identity has the potential for discriminatory and unfair treatment under Victorian and Australian law.

In Victoria it is against the law to discriminate against a person because of their gender identity.

The *Equal Opportunity Act 2010*, however, includes exceptions, which mean that discrimination is allowed in certain circumstances.

Religious bodies and schools can discriminate on the basis of several personal characteristics, including gender identity, where the discrimination ‘conforms with the doctrines, beliefs or principles of the religion; or is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion’.

The *Australian Sex Discrimination Act 1984* allows discrimination, including on the grounds of gender identity, ‘in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed’, if the discrimination is carried out ‘in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed’.

Policies and Practice

ISV Member Schools are encouraged to devise and implement strategies, policies and practices to ensure the fair and equitable treatment of transgender students.

They are encouraged to develop management plans to support transgender students, drawing if necessary on expert external advice.

Policies relating to transgender students should be informed by schools’ obligations under Victorian and Australian equal opportunity and anti-discrimination legislation.

They can be developed in the broader context of other legislation and regulation relating to school registration and student welfare, and aligned with schools’ philosophical and religious foundations and existing student welfare policies.

Information on schools' obligations for student welfare can be found on the [ISV Compliance Framework](#).

The Compliance Framework includes Guidelines, Sample Policies and Check Lists on equal opportunity, which could assist Member Schools in drafting transgender policies.

Specific information relating to support and management plans for transgender students can be found in [ISV's Sample Gender Identity Policy document](#).

Schools can also access the Victorian Department of Education and Training's [Advice for Principals](#) on gender policy.

Resources

Legislation:

- [Equal Opportunity Act 2010 \(Vic\)](#)
- [Sex Discrimination Act 1984 \(Cth\)](#)

Other Resources:

- [ISV Sample Gender Identity Policy document](#)
- [ISV Compliance Framework – Equal Opportunity and Anti-Discrimination](#)
- [ISV – Student Wellbeing](#)
- [Victorian Equal Opportunity and Human Rights Commission](#)
- [Australian Human Rights Commission](#)
- [Royal Children's Hospital Gender Service \(includes links to support services\)](#)
- [Monash Health Gender Dysphoria Clinic](#)
- [The \(US\) National Coalition of Girls Schools](#)