

# Gender Identity and Discrimination Policy

## Rationale:

It is unlawful to directly or indirectly discriminate against a student on the basis of their gender identity in the area of education under both the Victorian Equal Opportunity Act 2010 (EO Act) and the Commonwealth Sex Discrimination Act 1984 (SD Act). It is also unlawful to discriminate against a student on the basis of that student's 'intersex status' under the SD Act (an intersex person is born with atypical sex characteristics that do not fit within the binary definitions of male or female).

## Aims:

The Victorian *Charter of Human Rights and Responsibilities Act 2006* (**Charter**) requires that a school gives proper consideration to human rights in making decisions and must act compatibly with human rights. Decisions and actions in relation to a transgender or intersex student should give consideration to and be compatible with the student's Charter rights to privacy and right to protection of the best interests of the child.

## Implementation:

The Gender Identity Policy in the Schools Policy and Advisory Guide (**SPAG**) recommends that schools, in consultation with the student and his or her parents or carers, develop a student management plan (**SMP**) to support a student in gender transition or an intersex student at school. The Gender Identity Policy provides some guidance on the key areas that schools should give consideration to in developing the SMP.

The school needs to consider and record outcomes including on the following matters:

- if appropriate to do so obtain recommendations from a gender identity specialist or the student's treating medical practitioner (with the student and his or her parent's consent) about how best to support the student in gender transition or an intersex student at school and to inform the SMP
- participation in sporting activities of the student's acquired gender, where strength, stamina and physique are not relevant
- arrangements for school camps (including sleeping arrangements)
- access to toilet facilities of the student's acquired gender or unisex toilets
- decisions about whether the student will wear the uniform of their acquired gender and provide flexibility for intersex students to wear uniforms that are appropriate for them
- appropriately and sensitively managing the student's privacy – limiting information about the student's gender identity or intersex status to those staff who need to know, and where relevant agreeing on what information will be communicated to people who knew the student before the gender transition or who know that the student is intersex
- establishment of a Student Support Group to support the student in gender transition or where necessary to support a student's intersex variation
- any other strategies to ensure that the student is treated with respect and dignity at all times.



**Direct discrimination** occurs when a person treats a person with a protected attribute (in this case with a particular gender identity or on the basis of their intersex status) unfavourably because of that attribute. Direct discrimination may occur if the school denies or limits any access to any benefit provided by the school or subjects the student to any other detriment. For example, excluding a transgender student from using the toilet of their acquired gender because of their biological sex may limit or deny that student's access to the benefit.

**Indirect discrimination** is where a requirement, condition or practice is applied to all students equally but its application is likely to have the effect of disadvantaging students of the acquired gender or intersex students, and it is not reasonable. For example, it might be indirect discrimination for a school to rigidly apply its uniform policy to all students equally without regard to a student's gender identity or intersex status. The result of that policy might be that a student in gender transition would not be permitted to wear the uniform of his or her acquired gender and the requirement to do so is unreasonable.