

What legal rights do you have at school as a trans and gender diverse young person?

A resource for trans and gender diverse young people and their families in Victoria

Fact Sheet

This fact sheet answers some common questions trans and gender diverse young people, and their families, have about their rights at school in relation to school uniforms, bathrooms, camps and sports teams.

By reading this resource you will get a better understanding of your rights at school in Victoria.

You have rights

As a trans and gender diverse student in Australia, you have the same rights and protections under the law which is afforded to all students.

Schools have a legal duty of care to protect students from risks of harm (that the school should be able to anticipate) and to do what is reasonable to ensure you are safe at school, so that you feel safe and protected when you are attending school.

In spite of these obligations, it can still be daunting to navigate the different gendered facilities and activities at school. For example, wearing a gendered school uniform, using gendered bathrooms, going on school camps and participating in school sports teams.

Further, many trans and gender diverse students have found their schools to be unsupportive of their gender status, and therefore fail to make the student feel safe at school.

Discrimination at school

What is discrimination?

Generally speaking, discrimination means treating (or proposing to treat) someone unfairly or less favourably than others because of one or more of their personal characteristics. This can happen in different places and contexts.

Discrimination is only against the law when it happens in an area of public life, including schools. This means it is against the law for schools and teachers to discriminate against you, either directly or indirectly, on the basis of your gender identity.

What counts as discrimination?

It is discriminatory, and therefore unlawful, for a school to treat you less favourably than other students because you are trans and gender diverse, such as by:

- Refusing or failing to accept your application for admission as a student
- Only admitting you as a student on certain terms (that would not otherwise apply)

- Denying you access, or limiting your access, to any benefit provided by the school
- Expelling or subjecting you to any disadvantage

Are there any exceptions?

Yes, there are some. For example, it is usually not against the law to discriminate against someone in sport on the basis of their gender where the activity is a competitive sport and some competitive advantage may be gained (and where children are aged over 12). This could involve refusing or failing to select someone for a sporting team or excluding them from participating in the sporting team.

What can you do if you are being discriminated against?

If you are being discriminated against by a school and or teacher because you are trans and gender diverse, you have the right to make a complaint or take legal action.

For more information, read our Fact Sheet on 'How to deal with gender discrimination' in Victoria (link provided below under Where to get help and more information).

Do any other laws exist in Australia to specifically protect the rights of trans and gender diverse students?

No, but education policies and guidelines exist which address aspects of schooling for trans and gender diverse students such as:

- changing your name/gender used at school
- school uniforms
- bathrooms
- school camps
- sports teams

Policies and guidelines are important and do help protect trans rights at school. Some states have started to implement policies in line with broader anti-discrimination legislation. However, they don't carry the same authority as legislation.

The policies that guide schools vary depending on which state or territory you live in, as well as which school you go to.

What about in Victoria?

The Victorian Department of Education and Training's 'School Policy Advisory Guide' has provided the following guidance to schools and teachers in regards to gender identity:

The purpose of this policy guidance is to ensure schools support students' gender identity, including those with intersex status, in line with both the *Victorian Equal Opportunity Act 2010* (Vic) and the *Sex Discrimination Act 1984* (Cth).

Under this policy, the school may elect to create a 'school management plan' with a student, which should, amongst other things, cater for a student's gender identity and settle appropriate arrangements in relation to toilet facilities.

The Victorian Government also funds the 'Safe Schools' program. This program encourages schools to foster a safe environment that is supportive and inclusive of LGBTI students, by providing access to resources, education and training for staff and students.

Where to get help and more information

- Justice Connect has a fact sheet on *How to deal with gender discrimination* available online: <https://justiceconnect.org.au/resources/how-to-deal-with-gender-discrimination-and-transphobia-vic/>
- Victoria Legal Aid's Equality Law Program may help if you have experienced discrimination, sexual harassment or victimisation on the basis of your gender and/or sexuality: <https://www.legalaid.vic.gov.au/find-legal-answers/discrimination-harassment-and-bullying/get-help>
- Fitzroy Legal Service offers a LGBTIQ legal advice service for family law matters: <https://www.fitzroy-legal.org.au/>
- Parents of Gender Diverse Children provides peer support nationally to parents and those parenting trans and gender diverse children. To access their resources or make an enquiry, visit their website at <https://www.pgdc.org.au>
- The Victorian Department of Education and Training provides a useful guide for schools regarding the legal rights and responsibilities around transgender students in schools: <https://www.education.vic.gov.au/school/principals/spag/health/Pages/genderidentity.aspx>
- Transgender Victoria is the leading body for trans and gender diverse advocacy and support in Victoria: <https://transgendervictoria.com/>
- Ygender is a peer-led social support and advocacy group for trans and gender diverse young people in Victoria: <https://www.ygender.org.au/>
- Drummond Street Services provides social support, counselling, and other community services for LGBTIQ people: <https://ds.org.au/>
- Switchboard Victoria is a peer-led confidential counselling and support services for LGBTIQ people in Victoria: <http://www.switchboard.org.au/>