Equal Opportunity – Employees

Policy last updated

4 August 2025

Scope

- Schools
- All Department staff

Date: February 2020

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Overview

Overview

As an equal opportunity employer, the department is committed to providing safe, inclusive and respectful workplaces which are free from discrimination and harassment. Equal opportunity means that every person can participate freely and equally in areas of public life such as in the workplace, in education or in accessing goods and services. Discrimination is treating, or proposing to treat, someone unfavourably or bullying them because of a personal characteristic protected by law.

Equal opportunity law aims to promote everyone's right to equal opportunities, eliminate, as far as possible, discrimination, sexual harassment and victimisation and provide redress for people whose rights have been breached.

In Victoria, the main legislation which makes it unlawful to discriminate is the Equal Opportunity Act 2010. Other relevant Victorian laws are the Charter of Human Rights and Responsibilities Act 2006 and the Racial and Religious Tolerance Act 2001.

At the Commonwealth level, there is a range of legislation that provides for equal opportunity including the Fair Work Act 2009, the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Disability Discrimination Act 1992 and the Age Discrimination Act 2004.

The department's Equal Opportunity and Anti-Discrimination Policy <http://www2.education.vic.gov.au/pal/equal-opportunity/policy-and-guidelines> sets out the rights and responsibilities of employees and the department in relation to equal opportunity. All department employees are required to comply with the legislation and the department's policy. Managers and principals are required to ensure that the Equal Opportunity and Anti-Discrimination Policy, legislation and supporting principles and practices are integrated into appropriate workplace plans and activities.

Reporting and support

To report discrimination or harassment in our workplace or seek support, employees can speak with their principal or manager or the Conduct and Integrity Division. Workplace Contact Officers (WCOs) <http://www2.education.vic.gov.au/pal/workplace-contact-officer-wco-network/resources> are a good point of contact to find out who is best to talk to for a situation.

Support is available to employees, principals and managers involved in reporting and managing a discrimination or harassment complaint, even after the matter has been resolved.

Eligible employees also have access to the Employee Wellbeing Support Services (EWSS).

The EWSS provide free and confidential advice to proactively support the wellbeing of eligible department staff. Converge is the department's external provider of the Employee Wellbeing Support Services.

Staff can make appointments to receive tailored support across 8 different service streams and 6 specialist helplines. Immediate family members aged 18 years and over can access the Family Assist stream.

To access the services and make an appointment, call 1300 291 071 or book online via the Converge portal <https://portal.converge-online.com/> or mobile phone app (PDF) <https://content.sdp.education.vic.gov.au/media/employee-wellbeing-support-services-converge-app-poster-2161> , entering the organisational code **mywellbeing**.

Further information is available in the Employee Wellbeing Support Services <http://www2.education.vic.gov.au/pal/occupational-health-safety-wellbeing-management/guidance/employee-wellbeing-support-services> guidance chapter of the Occupational Health, Safety and Wellbeing Management in Schools policy.

An e-module has been created that all staff must complete to understand equal opportunity (available on the Resources tab <http://www2.education.vic.gov.au/pal/equal-opportunity/resources>) and how representative behaviours apply to their role. A second e-module for school leaders and managers must also be completed.

Inclusive workplaces guide

The Inclusive Workplace Guide supports and aids the implementation of the department's Equal Opportunity and Anti-discrimination Policy, bringing together available resources to assist principals/managers and employees to create inclusive and respectful workplaces.

This guide has been developed to assist everyone at department workplaces to support employees with diverse and intersecting identities. It gives practical tips to implement best practice in diversity and inclusion across teams, and to support staff to bring their whole selves to work. Each area of the guide goes into depth about what discrimination looks like and actions to

foster inclusion. There are also links to further resources and department policies.

Collection of staff information

The department respects its employees and its legislative obligations to support them.

One important way of achieving this is recognising that staff have diverse gender identities. The policy for the Collection and reporting of staff gender information <http://www2.education.vic.gov.au/pal/equal-opportunity/policy-and-guidelines/collection-and-reporting-staff-gender-information> has been developed and sets out when and how to collect information on staff gender. This ensures that privacy is maintained and staff information can be collected in a respectful and consistent way.

Related policies

- Code of Conduct <http://www2.education.vic.gov.au/pal/code-conduct/overview>
- Complaints – Information for Employees <http://www2.education.vic.gov.au/pal/complaints-information-employees/overview>
- Conduct and Integrity <https://eduvic.sharepoint.com/SitePages/Conduct-and-Integrity-Division.aspx>
- Department Values <http://www2.education.vic.gov.au/pal/values-department-values-schools/overview>
- Disability and Reasonable Adjustment – Employees <http://www2.education.vic.gov.au/pal/disability-and-reasonable-adjustment/overview>
- Inclusive Workplaces <http://www2.education.vic.gov.au/pal/inclusive-workplaces/overview>
- Employee Health Safety and Wellbeing – expert supports <http://www2.education.vic.gov.au/node/1248>
- LGBTIQ Inclusive Workplaces <http://www2.education.vic.gov.au/pal/lgbtiq-inclusive-workplaces/overview>
- Respectful Workplaces <http://www2.education.vic.gov.au/pal/respectful-workplaces/overview>
- Sexual Harassment – Employees <http://www2.education.vic.gov.au/pal/sexual-harassment/overview>
- Workplace Bullying <http://www2.education.vic.gov.au/pal/workplace-bullying/policy>
- Workplace Contact Officers Network <http://www2.education.vic.gov.au/pal/workplace-contact-officer-wco-

network/overview>

Relevant legislation

- Delegations <http://www2.education.vic.gov.au/pal/delegations/overview>
- Industrial Agreements <http://www2.education.vic.gov.au/pal/industrial-agreements/overview>
- Industrial Awards <http://www2.education.vic.gov.au/pal/industrial-awards/overview>
- Legislation – Employment Topics <http://www2.education.vic.gov.au/pal/legislation/overview>
- Ministerial Orders – Employment <http://www2.education.vic.gov.au/pal/ministerial-orders-employment/overview>

Policy and Guidelines

Equal Opportunity and Anti-Discrimination Policy

This Policy (last updated last updated 28 November 2018) contains the following chapters:

- Introduction
- Scope
- Legal framework
- Definitions
    - discrimination
    - sexual harassment
    - victimisation
    - vilification
    - positive duty
    - vicarious liability
    - reasonable adjustments
- Responsibilities
- Training
- Reporting or making a complaint
- Support and assistance
- Further application — school councils
- Collection and Reporting of Staff Gender Information Policy
- Gender information principles
- Appendix 1 Victorian Public Sector Standard Model for collecting staff gender information

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Introduction

Introduction

The Department of Education and Training (the Department) is committed to a diverse workforce and ensuring that all Department workplaces are free from discrimination and harassment. As such the Department is an equal opportunity employer committed to providing a safe environment where all employees are treated fairly and with dignity. Equal employment opportunity at the Department is about:

- freedom from discrimination and harassment
- merit selection focusing on essential job requirements
- respect for diversity
- good people management

These form the core elements of the Department's Equal Opportunity and Anti-Discrimination Policy. They recognise and value the diversity of our community, enable the attraction of the best skills from a wide talent pool and ensure that employees can realise their potential with the Department.

The objective of this policy is to ensure that people are treated as individuals, respected for their unique attributes and not excluded, harassed or bullied in any way, through unconscious bias, stereotypes or unlawful actions that may form the basis of discrimination, harassment, vilification or victimisation. The Department will not condone or tolerate victimisation, vilification, discrimination or harassment.

Scope

Scope

This policy applies to all Department employees in schools, central and regional offices, including:

- the Secretary and Deputy Secretaries
- executive officers, managers and principals
- employees (full-time, part-time, ongoing, fixed term or casual)

The policy applies to all of the Department's workplaces, including any location that employees may be considered to be carrying out work on behalf of the Department that is in the course of their employment.

Legal framework

Legal framework

Equal opportunity is a requirement under both Victorian and Commonwealth legislation. In Victoria, the key legislation which makes it unlawful to discriminate is the Equal Opportunity Act 2010 (Vic) <//www.legislation.vic.gov.au/in-force/acts/equal-opportunity-act-2010> .

Other relevant laws in Victoria are the Charter of Human Rights and Responsibilities Act 2006 (Vic) <https://www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006> and the Racial and Religious Tolerance Act 2001 (Vic) <https://www.legislation.vic.gov.au/in-force/acts/racial-and-religious-tolerance-act-2001> .

The Public Administration Act 2004 (Vic) <https://www.legislation.vic.gov.au/in-force/acts/public-administration-act-2004> (the Act) outlines the values, employment principles and standards that apply to public officials and all public sector employers. Under this Act, the Victorian Public Sector Commissioner must promote the public sector values and principles and issue standards concerning the application of the principles. The principle of equal employment opportunity is a binding standard and should be read alongside equal employment opportunity guidelines issued by the Victorian Public Sector Commissioner <https://vpsc.vic.gov.au/> .

At the Commonwealth level, there is a range of legislation which provides for equal opportunity including the Fair Work Act 2009 (Cth) <https://www.legislation.gov.au/Details/C2019C00270> , the Racial Discrimination Act 1975 (Cth) <https://www.legislation.gov.au/Details/C2016C00089> , the Sex Discrimination Act 1984 (Cth) <https://www.legislation.gov.au/Details/C2018C00499> , the Disability Discrimination Act 1992 (Cth) <https://www.legislation.gov.au/Details/C2018C00125> and the Age Discrimination Act 2004 (Cth) <https://www.legislation.gov.au/Details/C2019C00132> .

Both Commonwealth and Victorian equal opportunity legislation apply to the Department as an employer and to Department employees.

Definitions

Definitions

Discrimination
Discrimination is unfavourable treatment of a person in an area of public life (such as in employment and education) due to one of the following protected attributes:

- age
- breastfeeding
- carer and parental status
- disability
- employment activity
- gender identity (which includes gender expression)
- industrial activity
- intersex status
- lawful sexual activity
- marital or relationship status
- physical features
- political belief or activity
- pregnancy
- race (including colour, nationality, ethnicity and ethnic origin)
- religious belief or activity
- sex
- sexual orientation
- expunged homosexual conviction
- personal association with anyone who is identified by reference to any of the above protected attributes

Both State and Federal legislation prohibit direct and indirect discrimination.

Direct discrimination
Direct discriminiation is when a person or group of people treats, or proposes to treat, a person with a protected attribute unfavourably, because of that attribute. In determining whether a person directly discriminates, it is irrelevant whether or not the attribute is the only, or dominant reason for the unfavourable treatment, provided that it is a substantial reason.

Indirect discrimination
Indirect discrimination occurs if a person imposes or proposes to impose, an unreasonable requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons or groups of people with a protected attribute. Whether a requirement, condition or practice (or proposed requirement, condition or practice) is reasonable depends on all relevant circumstances.

Sexual harassment
Sexual harassment is unwelcome conduct of a sexual nature towards another person which could reasonably be expected to make that other person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal, visual or written. Sexual harassment is an unacceptable form of behaviour that will not be tolerated under any circumstances. Refer to the Department's Sexual Harassment — Employees Policy <http://www2.education.vic.gov.au/pal/sexual-harassment/overview> on the Schools Policy and Advisory Library.

Victimisation
Victimisation is when it is unlawful for a person to subject or to threaten to subject another person to any detriment because the other person, or someone associated with the other person, has made an allegation or complaint of discrimination or harassment on the basis of a protected attribute or asserted their rights under this policy or other relevant legislation.

Vilification
Vilification is when a person engages in conduct that incites hatred towards, serious contempt for, or revulsion or severe ridicule of, a person or group of people on the basis of race or religion. This can occur through a single act or a number of acts over a period of time.

Positive duty
The Department has a positive duty to take reasonable and proportionate measures to eliminate discrimination, sexual or other forms of harassment and victimisation from the workplace. This means for example, taking measures to ensure staff are undertaking training and regularly assessing workplace compliance to achieve improvement.

Vicarious liability
If an employee contravenes this Policy, the Department may be held liable for the conduct of that employee. Vicarious liability can also extend to the actions of agents of the Department, such as recruitment firms and consultants. It is therefore important that this Policy is understood by agents of the Department, including those responsible for hiring employees, including external recruiting firms.

Reasonable adjustments

Both Commonwealth and Victorian legislation require employers to make reasonable adjustments for employees with a disability. A range of factors must be considered in determining whether an adjustment is reasonable, including:

- the person's circumstances, including the nature of their disability
- the nature of the employee's role or the role that is being offered
- the nature of the adjustment required to accommodate the employee's disability
- the financial circumstances of the employer
- the size and nature of the workplace
- the effect on the workplace of making the adjustment, including the financial impact, the number of persons who would benefit or be disadvantaged by doing so, and the impact on efficiency and productivity and, if applicable, on customer service of doing so
- the consequences for the person or employee of not making the adjustment
- the consequences for the employer of making the adjustment.

Refer to the Disability and Reasonable Adjustment— Employees <http://www2.education.vic.gov.au/pal/disability-and-reasonable-adjustment/overview> for further information.

Responsibilities

Responsibilities

Responsibilities of the department

The department recognises its obligation under this policy to take reasonable measures to eliminate discrimination and harassment of any kind from its workplaces. The department is committed to:

- ensuring that there are clear processes in place for raising grievances and complaints
- taking action if the department is aware of any behaviour which could constitute discrimination or harassment, even if no complaint has been lodged. All employees can be liable for the actions of others if they authorise, encourage or assist discrimination or harassment to occur in the workplace
- clearly communicating and promoting these processes
- monitoring the implementation of this policy
- identifying potential risk factors and taking prompt, reasonable action to minimise those risks, including
- managing organisational change in an inclusive and participatory way, for example, consult with employees affected as early as possible and develop and maintain effective communication throughout the process
- implementing work systems to prevent the risk of discrimination or harassment. Ensure these systems maintain privacy and confidentiality of data collected and review and evaluate those systems, for example, seek feedback from employees through the People Matter Survey and School Staff Survey
- promoting positive working relationships in the department's workplaces
- ensuring information and training to support the effective implementation of this policy is accessible and available
- reviewing the policy every 2 years or earlier as required, and communicating any changes or updates of the policy to employees.

Responsibilities of executives, managers and principals

Executives, managers and principals are responsible for:

- promoting and modelling appropriate behaviour the department's values
- understanding what constitutes discrimination and knowing how to prevent or respond to any alleged discrimination
- monitoring the working environment to ensure as far as practicable that acceptable standards of conduct are maintained at all times and that

discrimination or harassment are not tolerated

- promoting awareness of the avenues for advice and the complaints procedures with respect to discrimination or harassment as set out in this policy
- treating complaints and behaviour which may constitute discrimination or harassment seriously and taking immediate action
- treating complaints of discrimination or harassment with appropriate confidentiality
- ensuring that a person is not victimised for making, or being involved in, a complaint of discrimination or harassment
- providing contact details for Workplace Contact Officers <http://www2.education.vic.gov.au/pal/workplace-contact-officer-wco-network/resources> to complainants or respondents where appropriate
- referring to this policy in their employee codes of conduct and practice
- completing the 'Respectful and Inclusive Workplaces – all staff' and 'Respectful and Inclusive Workplaces – leaders and managers' eLearn modules (refer to the Resources tab <http://www2.education.vic.gov.au/pal/equal-opportunity/resources> for links to these eLearns).

Responsibilities of all employees

Employees are responsible for:

- complying with this policy
- reporting any incident of discrimination or harassment that they have experienced or witnessed
- participating in any training provided by the department, including completing the Equal Opportunities e-learning module <https://edupay.eduweb.vic.gov.au/psp/hoadmin/EMPLOYEE/PSFT_LM/c/LM_SS_LEARNING.LM_LEARNING_ITEMS.GBL?Page=LM_SS_ACT_DTL&Action=U&LM_ACT_ID=1152&LM_CI_ID=1059&NAV=URL> on eduPay
- modelling appropriate behaviour, including the employment principles, the public sector standards (Victorian Public Sector Employment Principles and Standards <http://www2.education.vic.gov.au/pal/victorian-public-sector-employment-principles-and-standards/overview>) and the department's values (Values – Department and VPS Values for School Employees <http://www2.education.vic.gov.au/pal/values-department-values-schools/overview>)
- treating any allegations or complaints of discrimination or harassment with appropriate confidentiality
- completing the 'Respectful and Inclusive Workplaces – all staff' eLearn module (refer to the Resources tab <http://www2.education.vic.gov.au/pal/equal-opportunity/resources> for the link to this eLearn).

Training

Training

The 'Respectful and Inclusive Workplaces – all staff' and 'Respectful and Inclusive Workplaces – leaders and managers' eLearn modules (refer to the Resources tab <http://www2.education.vic.gov.au/pal/equal-opportunity/resources> for links to these eLearns) aim to increase awareness and understanding of the obligations, rights and responsibilities of all employees of the department under the relevant Commonwealth and Victorian legislation and in accordance with the department's values.

All department employees are required to complete these modules which address department policies on workplace conduct and educate employees about their rights and responsibilities under equal opportunity, anti-discrimination and workplace bullying laws and the Human Rights Charter <http://www2.education.vic.gov.au/pal/human-rights-charter/overview> . These modules support the department's commitment to providing safe, inclusive and respectful workplaces. The training courses may be accessed by employees at any time and at any stage of their employment.

Monitoring employee progress

Executives, principals and managers can monitor their employee completion rates of the online modules through their Manager Self Service <https://edupay.eduweb.vic.gov.au/psp/hoadmin/EMPLOYEE/HRMS/s/WEBLIB_PTPP_SC.HOMEPAGE.FieldFormula.IScript_AppHP?pt_fname=CO_MANAGER_SELF_SERVICE&FolderPath=PORTAL_ROOT_OBJECT.CO_MANAGER_SELF_SERVICE&IsFolder=true> (MSS) on eduPay. Further information can be obtained via staffdevelopment@education.vic.gov.au <mailto:staffdevelopment@education.vic.gov.au>

Reporting or making a complaint

Reporting or making a complaint

Employees can report or make a complaint about any incident of discrimination or harassment to their executive, manager, principal or seek advice from a Workplace Contact Officer.

The procedures for dealing with allegations of discrimination or harassment and possible consequences regarding any breach of this policy are dealt with in the Department's Guidelines for Managing Conduct and Unsatisfactory Performance in the Teaching Service <http://www2.education.vic.gov.au/pal/complaints-misconduct-and-unsatis-factory-performance/policy-and-guidelines> and Complaints — Information for Employees <http://www2.education.vic.gov.au/pal/complaints-information-employees/overview> on the Schools Policy and Advisory Library.

The Department encourages its employees to use the internal complaints processes to resolve any complaints relating to discrimination or harassment.

The Department encourages any employee who believes they have been the victim of a criminal offence to report the incident to the Victoria Police as soon as possible, as well as reporting the matter to their manager or principal.

If a complaint of discrimination or harassment is made, observed or brought to the attention of an executive, principal or manager, it must be acted upon immediately and managed in a sensitive and confidential manner.

Where discrimination or harassment is found to be substantiated, the consequences for the person against whom the complaint is made will depend on the particular circumstances. The consequences may include an apology, counselling, undertaking training, or disciplinary action including termination of employment.

At any time, employees may also choose to take a complaint of discrimination or harassment to the following organisations:

- Australian Human Rights Commission <https://www.humanrights.gov.au/>
- Fair Work Commission <https://www.fwc.gov.au/>
- Victorian Equal Opportunity and Human Rights Commission <https://www.humanrightscommission.vic.gov.au/make-a-complaint>

Support and assistance

Support and assistance

Support is available to all employees, principals and managers involved in reporting and managing a complaint, even after the matter has been resolved.

The department encourages all employees to speak to their manager or principal to discuss any questions or concerns they may have regarding the conduct of any department employee.

Employees can also seek support from a Workplace Contact Officer, Employee Wellbeing Support Services (EWSS), the Conduct and Integrity Division, the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission. Contact details or links for these supports are set out below:

- contact a Workplace Contact Officer <http://www2.education.vic.gov.au/pal/workplace-contact-officer-wco-network/resources>
- contact the Employee Wellbeing Support Services <http://www2.education.vic.gov.au/pal/occupational-health-safety-wellbeing-management/guidance/employee-wellbeing-support-services>
- contact the Conduct and Integrity Division <https://eduvic.sharepoint.com/SitePages/Conduct-and-Integrity-Division.aspx>
- contact Victorian Equal Opportunity and Human Rights Commission's <https://www.humanrightscommission.vic.gov.au/> free and confidential dispute resolution service
- contact Australian Human Rights Commission's <https://www.humanrights.gov.au/> free and confidential dispute resolution service
- contact the Fair Work Commission <https://www.fwc.gov.au/>

Further application — school councils

Further application — school councils

The Department encourages school councils to use this policy for volunteers, school council employees and contractors.

Collection and Reporting of Staff Gender Information Policy

Collection and Reporting of Staff Gender Information Policy

Introduction

The Department of Education and Training (the Department) respects its employees and its legislative obligations to support them.

One important part of achieving the above is recognising that staff have diverse gender identities. A new policy and standard model for collecting and reporting on staff gender information in the Victorian Public Sector (refer to the Resources <http://www2.education.vic.gov.au/pal/equal-opportunity/resources> tab) has been developed, for implementation across public service bodies by June 2019 and public entities by June 2021.

The Department's Collection and Reporting of Staff Gender Information Policy (the Policy) sets out principles that guide how the Department responds to this Whole of Victorian Government (WOVG) policy direction. It outlines the Department's obligations in the collection and reporting of its staff information in the context of gender, and includes a Standard Model (Appendix 1 <http://www2.education.vic.gov.au/pal/equal-opportunity/policy-and-guidelines/appendix-1-victorian-public-sector-standard-model>) which must be followed, unless there is a specific reason not to do so, which has a clear benefit and is well-communicated to staff.

Scope

Departmental staff, contractors and volunteers, including those located in schools, must comply with this Policy.

All departmental systems, which house data about departmental employees, are in scope.

TAFEs and funded non-government service providers are not in scope. Information about students is also not in scope.

Understanding gender diversity

Data collection about people often includes capturing a person's sex or gender. Historically, this has typically been documented using the biological

sex terms of ‘male’ and ‘female’. However, it is now understood that sex and gender are different concepts.

Sex
Sex refers to a person’s biological characteristics and is typically described as male or female. This binary state does not reflect the 1.7% of children born in Australia who are born with an intersex variation. An intersex person is born with atypical natural variations to physical or biological sex characteristics such as variations in chromosomes, hormones or anatomy. Intersex traits are a natural part of human bodily diversity. Not all intersex people use the term intersex

Gender
Gender is made up of 2 distinct concepts, gender identity, and gender expression.

Gender identity
Gender identity refers to the way an individual understands and identifies their gender. ‘Woman’ and ‘man’ are gender identities, but gender identity extends beyond this binary framework. Some people do not identify as a woman or a man, and may use terms such as ‘gender diverse’, ‘non-binary’ or a number of other terms to describe their gender.

Gender expression
Gender expression refers to the way a person outwardly expresses their gender through the way they dress, how they move, talk, behave and present themselves. The most common ways that people express their gender is through presenting as feminine, masculine or androgynous. Gender expression does not necessarily have to align with gender identity.

Transgender
Transgender is an umbrella term for people whose gender does not exclusively align with the one they were assigned at birth. For example, a person may be assigned the female sex at birth but identify as a man. This term includes people who will identify as a ‘woman’ or a ‘man’ as well as gender diverse or non-binary gender identities, When a person takes steps to affirm a gender identity that is different to their sex assigned at birth, this is sometimes referred to as gender ‘transition’ or ‘affirmation’.

The Department’s practices and policies must reflect the Department’s commitment to ensuring that gender diverse and transgender employees are treated equally and with respect. Failure to acknowledge gender diverse staff in a respectful way can have a strong negative impact on those individuals, particularly in a broader social context where their identities have been hidden, unacknowledged or actively rejected.

Policy position

The Department will:

- collect self-identified gender information rather than biological sex information from staff
- only collect gender information from staff when this is needed for a specific purpose, which will benefit staff in some way
- recognise and report on self-described gender identities (including non-binary and gender diverse) and recognise changes in gender over time

Gender information principles

The following principles outline how staff gender information is managed in the Department.

The Department recognises diverse gender identities

Departmental staff include people who have diverse gender identities. These staff need to be recognised, feel safe and be treated equally in the workplace. The Department's obligation to do so stems from its broader legislative obligations to:

- protect individuals against unlawful discrimination under the Equal Opportunity Act 2010
- offer equitable and fair treatment under the Public Administration Act 2004
- support employees' human rights under the Charter of Human Rights and Responsibilities Act 2006
- provide and maintain a safe and inclusive working environment under the Occupational Health and Safety Act 2004

The Department collects staff gender information only if necessary

When collecting any personal information from staff, consideration must be given to the purpose that information is required for, and whether that purpose will benefit staff in some way. Gender information is currently often collected because of long standing practice or convention, but is not actually required. If there is no clear need for gender information, it should not be collected and the provision of such information should be voluntary.

The Victorian Charter of Human Rights and Responsibilities (the Charter) protects the right to privacy and reputation (Charter of Human Rights and Responsibilities Act 2006, section 13). In some instances, collecting an individual's gender information can be seen to limit the right to privacy. Rights under the Charter can only be limited if a limitation is reasonable and

justified (that is, has a benefit that outweighs the negative impact of the limitation) and there are no other less restrictive options to achieve the purpose the limitation seeks to achieve (Charter of Human Rights and Responsibilities Act 2006, section 7).

Examples of appropriate reasons for collecting gender information include:

- to understand whether people of a particular gender have better or worse experiences at work (for example, in an employee experience survey)
- to understand workplace demographics and consider whether an organisation is an inclusive employer for people of different gender identities (for example, in human resources systems)
- to meet requirements around gender (for example, in Victoria, at least 50% of all future appointments to paid government boards and Victorian courts must be women)

Where it is necessary to collect gender information, it is important to explain the reason the information is being collected, and how it will be used. This helps to ensure that people feel comfortable and motivated to answer, and that they understand that the information will be used to ensure their workplace is meeting their needs. It is also important to ensure that privacy and confidentiality are protected, and that individuals are made aware of steps that will be taken to ensure their privacy is upheld.

The Department collects gender information rather than sex information

The Department generally does not have a legitimate need for information about the biological sex characteristics of their employees. Instead, self-identified gender identity should be collected, when required. This can be recorded as:

- man
- woman
- self-described (with free text input)

Further information on this can be found at Appendix 1 <http://www2.education.vic.gov.au/pal/equal-opportunity/policy-and-guidelines/appendix-1-victorian-public-sector-standard-model> .

Exceptions can be made to allow collection of biological sex information only where there is a clear benefit which is well communicated to staff and which outweighs the negative impact of limiting the right to privacy. This policy aligns with the Information Privacy Principles under the Privacy and Data Protection Act 2014 (under these Principles, VPS organisations must not collect personal information unless the information is necessary for their

functions or activities. If an organisation is collecting personal information from an individual, it must ensure the individual is aware why the information is being collected, and how it will be used. Refer to the Privacy and Data Protection Act 2014, Schedule 1).

Gender information may be provided to the Department by a third party or observer. In these cases, there needs to be consideration of whether the gender reported was self-identified in that original capture. If not, some indicator may be required.

Gender diverse (including transgender) and intersex status is collected only to benefit those staff

Gender diverse people (including transgender people) and people with intersex variations can experience discrimination and harassment in the workplace. It can be confronting for a person to be asked to provide information on their gender diverse or intersex status, and individuals may not feel safe providing this information. As such, this information should only be collected if the information will be used to benefit gender diverse or intersex staff, for example, to measure whether gender diverse people experience more discrimination than the wider workforce, and if the individual chooses to provide such information.

If it is necessary to collect information on gender diverse or intersex status, the reason should be clearly communicated and the information must only be used for this purpose. It is also important to ensure that privacy and confidentiality are protected and that individuals are made aware of steps that will be taken to ensure their privacy is upheld. Furthermore, questions about gender diverse or intersex status should be asked separately to questions about gender identity (rather than incorporated into those questions).

Reporting of gender in annual reports includes a non-binary gender category

All Victorian public sector agencies, including the Department, are required to publish number of staff by gender in its annual reports, as a condition of the Financial Reporting Directions (FRDs).

Since reporting on gender is mandatory, it should also be mandatory for the Department to include a self-described gender category which includes gender diverse and non-binary identities in reports, provided that confidentiality requirements are met.

Compliance and reporting

This policy is mandatory for the Department and its agencies. Any breaches of this policy should be reported to the Manager of Workforce Diversity and Inclusion via line management.

Responsibilities and governance

All staff, contractors and volunteers, including school-based staff, are responsible for ensuring their collection and reporting of gender information aligns with the principles in this Policy. This Policy and its subsequent iterations will be published on the Schools Policy and Advisory Library <http://www2.education.vic.gov.au/pal> .

Approving authority

The Policy was approved by the Executive Director, People Division.

Review

This Policy will be reviewed and updated on an annual basis from the date of its commencement.

Accountable officer

Executive Director, People Division.

Appendix 1 Victorian Public Sector Standard Model for collecting staff gender information

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Collecting gender information

The disclosure of gender should include a self-described gender descriptor (which includes gender diverse and non-binary identities). Disclosure of such information should be voluntary and strictly protect privacy and confidentiality.

Where it is necessary to collect information on gender, an explanation must be provided as to why the information is being collected and how it will be used. Questions on gender should have the following format:

What is your gender?

- woman
- man
- self-described (please specify)

All Victorian public sector agencies, including the Department, are required to publish the number of staff by gender in its annual reports, as a condition of the Financial Reporting Directions (FRDs).

Only 1 response should be permitted.

There is a large number of diverse gender identities including non-binary identities. As such, staff with a gender diverse or non-binary gender identities should be given the opportunity to specify their own gender in the free text field.

When reporting on gender information collected through this model, all free text responses can be reported on under a single 'self-described' category.

Collecting information about transgender status or intersex status

Information on a person's transgender status or intersex status is sensitive. This information should only be collected if it:

- is needed for a specific purpose, and

- will be used to benefit transgender or intersex staff

If collecting this information, the purpose for doing so should be clearly communicated, and the information must only be used for this purpose. Questions about transgender or intersex status should be asked separately to any question about gender (not incorporated into those questions).

Transgender status is distinct from intersex status. If you are asking about both transgender status and intersex status, this information should be sought in 2 separate questions, allowing a respondent to identify both transgender and intersex status if applicable.

For queries about how to ask questions on transgender status or intersex status, contact the Equality Branch, Department of Premier and Cabinet at equality@dpc.vic.gov.au <mailto:equality@dpc.vic.gov.au>

Further information

For further information on terminology around gender identity and the use of inclusive language in workplaces, refer to the Victorian Government's LGBTIQA+ inclusive language guide (html) <https://www.vic.gov.au/inclusive-language-guide> .

Resources

Resources

- Respectful and inclusive workplaces – all staff eLearn (staff login required) <https://edupay.eduweb.vic.gov.au/psp/EDUPPRD1/EMPLOYEE/PSFT_LM/c/LM_OD_EMPLOYEE_FL.LM_CRS_DTL_FL.GBL?Page=LM_CRS_DTL_FL&Action=U&LM_ACT_ID=8006&LM_CI_ID=1986&NAV=URL> or search LearnED to find course and enrol
- Respectful and inclusive workplaces – leaders and managers eLearn (staff login required) <https://edupay.eduweb.vic.gov.au/psp/EDUPPRD1/EMPLOYEE/PSFT_LM/c/LM_OD_EMPLOYEE_FL.LM_CRS_DTL_FL.GBL?Page=LM_CRS_DTL_FL&Action=U&LM_ACT_ID=8007&LM_CI_ID=1987&NAV=URL> or search LearnED to find course and enrol
- Equal Opportunity Guidelines for Victorian Government Schools (PDF) <https://content.sdp.education.vic.gov.au/media/eo-guidelines-1590>
- Victorian Public Sector policy and standard model for collecting and reporting on staff gender information (PDF) <https://www.dtf.vic.gov.au/sites/default/files/2018-05/Policy%20and%20standard%20model%20for%20collecting%20and%20reporting%20on%20staff%20gender%20information%20in%20the%20Victorian%20Public%20Sector.pdf%20>

Useful links

- Australian Human Rights Commission <https://www.humanrights.gov.au/>
- Victorian Equal Opportunity and Human Rights Commission <https://www.humanrightscommission.vic.gov.au/>

Reviewed 16 April 2024