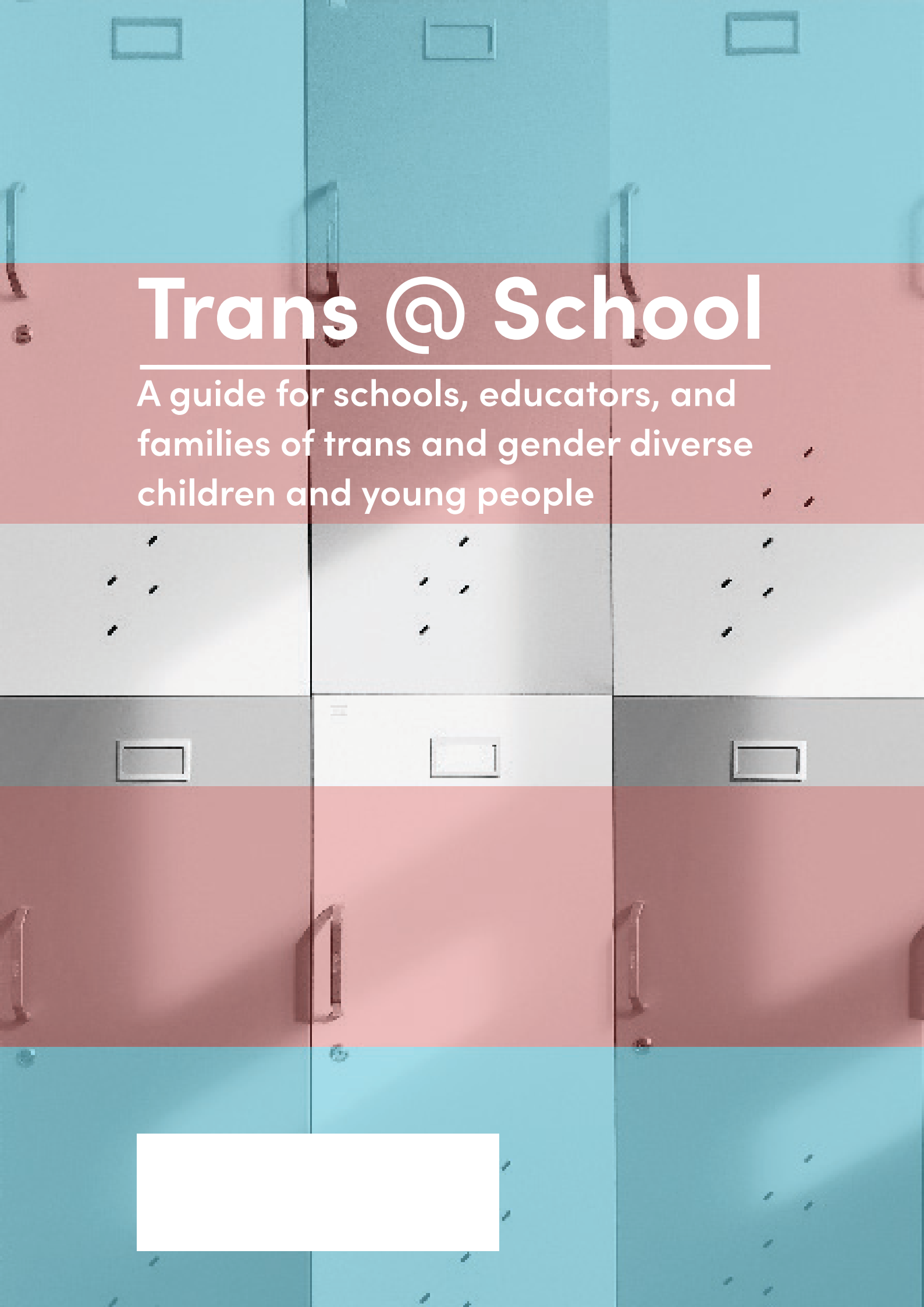

Trans @ School

A guide for schools, educators, and families of trans and gender diverse children and young people

This publication has been developed in partnership between the LGBTI Legal Service, Legal Aid Queensland and the Queensland Human Rights Commission, in consultation with the Queensland Children's Gender Service, young people, parents and educators.

This guide is for schools and provides guidance on matters that arise in the school environment.

A guide for trans and gender diverse students on these issues is available from the Queensland Human Rights Commission website at www.qhrc.qld.gov.au.

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We acknowledge Aboriginal peoples and Torres Strait Islander peoples as the First Australians and recognise their culture, history, diversity, and deep connection to the land, waters and seas of Queensland and the Torres Strait.

First Nations' languages reflect gender diversity, for example 'kwarte kwarte' in Arrente, 'kungka kungka' in Pitjantjatjara, 'yimpininni' in Tiwi and 'kungka wati' in Pintipi. We recognise that the discrimination and stigma that impacts on some First Nations' brotherboys and sistergirls stems from attitudes arising from the colonialisation of Australia.

Introduction

Some people's gender identity is different from their sex assigned at birth. This is known as being trans or gender diverse. Self-recognition of gender identity can emerge earlier than many people realise, with identity emerging for some children by three or four years of age. Others may not identify as trans or gender diverse until adolescence or adulthood. Some people may not identify as male or female and may be non-binary or agender.

School is an important part of life for children and young people. Schools not only have an ethical duty, but a legal responsibility to provide a safe and supportive environment that protects all students, including trans and gender diverse students. As such, schools need to know how to support trans or gender diverse students, and understand that each will have specific needs.

Children and young people express gender identity in many ways, such as in their choice of clothing, hairstyle, name and pronouns, behaviours, and social relationships. The school environment should support and affirm gender diverse students, so that they feel they can safely explore and express their developing gender identity, whatever this may be. The best approach is always to ask a student what they need in order to feel respected and affirmed. For this reason, a 'one size fits all' approach is unlikely to be successful. To succeed there must be clear and open communication between the school and the trans or gender diverse student (and when possible, their family) to ensure that the needs of the student are met.

Use this guide as a resource, but ensure that communication between the school and the trans or gender diverse student and their parents or support people is ongoing.

Purpose of this guide

We hope that this resource will assist families and educators to navigate the challenging issues that trans or gender diverse students sometimes face in the school environment. The information in the guide applies to both state schools and private schools, including faith-based schools.

This information is general in nature so that it is widely applicable. When supporting individual students, it is vital that schools tailor support to the individual needs of the student, and within the context of that particular school. Part of supporting trans and gender diverse students in school may be to develop a support plan. While not all students who identify as trans or gender diverse will require a plan to support them, schools should communicate with the student to determine their needs and if required put in place a plan for their support.

This resource contains both de-identified real life case studies and fictional scenarios to help illustrate the issues and to provide practical ways in which schools can support trans and gender diverse students.

Terminology

Terminology is important, and using inclusive terminology should always be the aim. In this guide we use the phrase 'trans and gender diverse' to acknowledge the many identities in the gender diversity spectrum.

Trans and gender diverse is an umbrella phrase that includes all identities within the gender identity spectrum, including (but not limited to) people who identify as transgender, transsexual, genderqueer, gender fluid, non-binary, sistergirl, brotherboy, trans man, or trans woman.

It's important to check with individuals what language they prefer. Language is always changing.

Terms used

Gender is part of how a person understands themself. A person's gender does not necessarily mean that they have particular sex characteristics.

Sex means whether a person is male, female, non-binary or another sex.

Gender identity means a person's understanding of themself as male or female, both, or neither. It affects how they perceive themself, and what they call themself. Gender identity can be a fixed and unchanging characteristic for some, however it can also be fluid or evolving for others.

> Note: For the purpose of unlawful discrimination, gender identity under the *Anti-Discrimination Act 1991 (Anti-Discrimination Act)* is defined in the following terms:
>
> *gender identity* is a person's internal and individual experience of gender whether or not it corresponds with their sex assigned at birth and includes a person's:
>
> - personal sense of the body
> - if freely chosen, modifications of their bodily appearance or functions by medical, surgical or other means;
> - other expressions of their gender, including name, dress, speech and behaviour.

Just to be clear, the definition is based on self-identification rather than legal paperwork including identification documents.

Gender expression is the way in which a person communicates their gender identity to others through behaviour, clothing, appearance, voice, and other forms of presentation. The Anti-Discrimination Act protects a person from discrimination based on their gender expression within the attribute of gender identity. See also – gender identity in this section.

Gender diverse refers to people who do not prescribe to binary roles or normative standards of expressing gender. Other identifications that may be used are gender fluid, gender questioning, or genderqueer.

Gender fluid means that a person's gender identity is not fixed. Some gender fluid people feel very masculine on some days, and feminine on others, while some live free from definition entirely.

Non-binary is used to describe genders that do not fall into binary definitions of male or female.

Affirming gender means affirming the gender that matches a person's gender identity. For example, if a person was assigned male at birth and identifies as female, the person affirms their gender as female.

Cisgender is a term used to describe people whose gender is the same as that assigned to them at birth. 'Cis' is a Latin term meaning 'on the same side as'.

Gender dysphoria is a recognised medical condition in which a person's sex assigned at birth does not match their gender identity or expression, resulting in impaired functioning in daily life. One treatment for gender dysphoria is for the person to undergo a transition. Not all trans and gender diverse people have gender dysphoria and of those who have dysphoria, for many it ceases with access to gender affirming health care.

Transgender (or **trans**) means that a person does not identify with the sex assigned at birth.

Transitioning is the process by which a person changes aspects of themselves to better match their gender identity.

A **medical transition** is the process by which a person changes their physical sex characteristics via hormonal intervention and/or surgery to more closely align with their gender identity.

A **social transition** is the process of making others aware of one's gender identity, changing name and pronoun in social settings, and changing gender expression.

Deadnaming is where a person is called by the name they no longer use. It can be distressing to the person to use a former name as this may be perceived as denying their gender identity.

Introduction to discrimination and human rights

A student who identifies as trans or gender diverse enjoys the same legal rights and protections as any other student. Anti-discrimination protections for students apply under the Queensland *Anti-Discrimination Act 1991* and the federal *Sex Discrimination Act 1984*.

Under the Queensland *Human Rights Act 2019*, students in state schools have the right to access primary and secondary education appropriate to their needs, and can expect equality before the law. Children also have the right to have their best interests protected.

The Human Rights Act recognises that children are entitled to special protections under the law because of their vulnerability. This means that the best interest of the child should be taken into account in all actions that affect a child. A child's 'best interests' will depend on the circumstances and is different for each individual. Consideration of best interests should take into account the child's views and recognise their autonomy to make decisions for themself when they are mature enough to do so.

In the context of education, this means that children in Queensland have a human right to a public education that enables them to develop to their full potential, caters for their individual circumstances, and allows them to express their individual identity.

The Human Rights Act also requires that children are protected against discrimination.

Unlawful discrimination under the *Anti-Discrimination Act* can be either:

Direct discrimination: less favourable treatment because of an attribute (such as gender identity, age, or sex), for example a school refusing to accept an enrolment application from a student because of their gender identity;

or

Indirect discrimination: imposing an unreasonable requirement that a person cannot comply with because of their attribute (such as gender identity, age, or sex), for example a school requiring all students to wear a school uniform based on their sex assigned at birth.

The Queensland Human Rights Commission (QHRC) helps resolve discrimination complaints under the *Anti-Discrimination Act 1991* (involving state or private schools) and human rights complaints against public entities (including state schools but not private schools) under the *Human Rights Act 2019*.

The federal *Sex Discrimination Act 1984* provides protection from discrimination for people who identify as trans and gender diverse, and the Australian Human Rights Commission (AHRC) resolves complaints made under this Act.

Why is getting it right so important?

All students and their families should feel that they belong in their school community. A sense of belonging is conducive to an environment in which students feel confident to participate, and which enables them to reach their full potential.

Being supportive and inclusive of trans and gender diverse students should be embedded in the school's culture, and not just 'on show' in the presence of people who belong to the trans and gender diverse community. There may be many students in a school community who have not 'come out', or who have family and friends who are trans and gender diverse. Behaviours, attitudes, and language should always be inclusive in order to avoid hurting or offending others.

Trans and gender diverse students are at significant risk of developing difficulties with mental health including anxiety, depression and suicidal thoughts. The experience of discrimination and bullying can be a barrier to fully participating in aspects of life, school and relationships. It impacts one's sense of emotional and physical safety which can impact on healthy emotional development.

For further information on the association between life experiences and the mental health of trans and gender diverse young people in Australia, refer to the Trans Pathways Study.

Holly's parents are enrolling her in Year 2 at a new primary school. The school is keen to ensure Holly feels safe and supported at school. At first they suggest that Holly uses a designated teacher toilet. Holly's parents explain that Holly is unhappy with this as she wants to use same toilets as her friends. The school explains they have an issue at present with girls and boys running into bathrooms and popping heads under doors as a joke. Holly's parents and the school discuss the best option to ensure that Holly isn't accidentally "outed" as trans during one of these games. Together Holly's parents and the school decide that the best solution is to install longer doors. After the new longer doors are installed, Holly starts using the girls toilets along with her friends. The longer doors have the added benefit of ensuring the privacy of all students.

Support for a student affirming their gender

When they are ready, the student affirming their gender may wish to have an initial meeting with the principal or their delegate, and bring along a parent, carer, family member, or other support person. You could also offer to have a meeting to explore how the school can best support the student. This initial meeting may assist the school to identify the student's wellbeing needs, concerns, and school support processes. If the school would like to involve other staff in the meeting, ensure that you consult the student first so that they feel comfortable and not intimidated.

The student should be in control of timing various aspects of their affirmation, including when to inform students and staff about their transition, as much as possible. The student might like to decide on a specific date from which to use their new name, pronoun, toilet facilities, and uniform, so that the process is coordinated and runs smoothly. Alternatively the student might want these things to happen in a staggered way over time. The student (and their family) should be kept informed of any delays to agreed support arrangements, such as modifications to toilet facilities.

There is no standard timeframe or sequence of steps in which a student affirms their gender. Schools should remain flexible and responsive to the student and their family, and understand that the needs of the student may evolve over time.

Be aware that not every trans or gender diverse young person goes through the same stages. Students who identify as gender fluid or non-binary may not affirm their gender in the same way as a student who identifies as male or female, but may still need support with changing the way they are identified within the school community.

Jim is a high school maths teacher. In February, a Year 9 student, Eric, confides to Jim that he is transgender and identifies as male. Eric is concerned about presenting as a male at school. Jim asks Eric if he is comfortable speaking to the school guidance counsellor. Eric agrees. Jim, Eric, and the guidance counsellor have a meeting to discuss Eric's concerns. After this informal meeting, Eric feels comfortable involving his parents and the school principal. Jim helps Eric organise a meeting to plan his transition.

Questions to ask

The most important thing is to ask the trans or gender diverse student what their needs and intentions are. They may have firm views about their affirmation, or may be unsure what exactly they want to happen. Before coming to any conclusions about the best way forward, have open discussions with the student about options, and consider what will work best for everyone.

Here are some prompts for things to discuss with the student:

- Does the student want to set a date from which they will start affirming their gender, or would they prefer it to happen over time? Does the date give enough time for practical measures to be put in place?
- Will the student have a new name and/or pronoun? What will these be, and when should other students and staff start using them?
- Who does the student think needs to know about their affirmation? Would they like any kind of announcement made, for example to their teachers? Would they prefer to let students and staff know themselves?
- Are there any resources about trans or gender diverse issues that could be made available to staff that you could suggest to school management?

Support person or ally

Students may benefit from the support of another person such as a friend, sibling, or parent, and the school should encourage the student to identify a support person.

Helpful resources include:

- Open Doors Youth Service
- GenderQueer Australia
- Transcend
- Headspace and their “Purple Pack”

Appropriate language

When you talk to a student about the time before they affirmed their gender at school, be careful to avoid statements such as ‘when you were a male/female…’ or using their former name. This kind of language may be distressing for a young person, as they usually feel that they have always been their gender and are simply affirming it now.

The best option is to ask the student how they would like you to refer to them when talking about past events. One option is to avoid gendering the student at all, and just refer to the relevant time instead. For example, ‘In September last year…’ or ‘when you were in year 5…’. Be guided by the words the student uses when they refer to themself in the past.

Names and pronouns

Schools should use the student's correct name and pronoun. It does not cause offence to ask the student about their preference, and simply asking the question 'What pronoun do you use?' is appropriate and respectful. Aside from 'he/him' and 'she/her', some students prefer gender-neutral pronouns such as 'they/them'.

Hearing others use the correct name and pronouns is strongly associated with positive wellbeing and can reduce mental health risks for students who are trans and gender diverse.

Misgendering is a term for describing or addressing someone using language that does not match how that person identifies their own gender. It is important that students should always be called by their correct name and gender.

Deadnaming is where a person is called by the name that they no longer use. It can be distressing to the person to use a former name as this may be perceived as denying their gender identity.

While accidental slip ups may happen when the change is new, continually and deliberately referring to a student by the wrong pronoun or a former name is discriminatory. Schools are responsible for ensuring that all staff (including casual, volunteer, and non-teaching staff) are aware of the student's correct name and pronouns, and must take the necessary steps to deal with any students who bully trans or gender diverse students.

Teachers and staff should actively model using the correct pronouns, and choose words and actions that affirm a student's gender. For example, a staff member could say, 'She will be late today.' or 'This girl is here to see you' when referring to a trans girl who is sometimes mistaken as a boy.

Problems may arise if the correct name is not reflected on the class roll. Aside from ensuring the permanent teaching staff are aware of the changes, schools should also consider and plan for situations where there is a relief teacher who may inadvertently make a mistake.

A number of students and/or staff may wish to wear a pronoun badge in solidarity. For example, the badge may say, 'My pronouns are she/her". To support the transitioning student, other students or staff may wear a pronoun badge as a mark of solidarity.

Ally is a high school student who identifies as non-binary. Staff at Ally's school are aware of Ally's identity and ensure they address Ally by their name and use the pronouns 'their' and 'them'. School leadership staff ensure new or temporary staff also use the correct pronouns.

School documentation and records

Students have the right to alter their personal details, such as their gender and name, so that their correct name is reflected on school records for day-to-day use.

Official documents, such as academic, testing, and school medical records may use the student's correct name upon their parents' or caregivers' request, or at their own request if the student is old enough and capable of making decisions of that nature.

As the majority of students are under the age of 18, it is difficult (or sometimes impossible) for them to legally change their name on primary legal documents, such as their passport or birth certificate, without parental consent. Therefore, requiring a student to legally change their identity documents prior to changing school records could amount to discrimination. Parental disapproval should not prevent day-to-day use of the student's correct name and pronoun. However, this situation will need careful management by school administration, especially if the student has not disclosed their gender identity to one or both parents.

It is particularly important for a former student who is seeking employment after finishing school to have their name and gender accurately reflected on school records.

Past students should be able to retrospectively change their details on school records if they have officially changed the record of their gender with the Registry of Births Deaths and Marriages, or alternatively their passport or drivers licence. This is particularly important for school-leavers who may need to rely on school records to obtain employment.

Medical information or medical evidence

Not everyone who is trans or gender diverse engages with medical or psychological services. Most of the adjustments that trans and gender diverse students will request of schools are to recognise and affirm their social transition. Social transition includes things like:

- change to a correct name or pronouns for everything except official records;
- access to the uniform that matches their gender identity;
- using the toilet that matches their gender identity.

Changes that allow for social transition should be allowed to occur, without insisting on medical information or evidence.

A school may seek medical information to ensure that a student's needs are being met, and this is appropriate. However, denying a request by a student to socially transition (that is, start presenting as their affirmed gender) because of a lack of medical evidence may be discriminatory.

The nature of medical treatment available to trans and gender diverse young people is often misunderstood. Trans and gender diverse children who have not entered puberty, typically those under 11 years, do not receive any medical interventions. The child and their family may be receiving mental health and family relationship support, but not in all cases. After the commencement of puberty, children may be accessing puberty blockers to delay the onset of puberty, which is a reversible treatment. Those in later adolescence, may begin gender affirming hormone treatment, which is partly reversible.

Although some students have diagnosed gender dysphoria (a recognised medical condition) or are accessing medical support, many students who are trans or gender diverse do not have any medical condition. Therefore, to suggest they have a medical condition may cause significant distress for a student who may not be interacting with any medical professionals about their gender identity.

Greg is being supported in affirming his gender identity by a gender service psychologist. Greg decides he would like to begin social transition starting with change in uniform and name at school as soon as possible. Greg and his mother meet with the school guidance officer to make this request. The gender service psychologist provides information on the positive benefits that affirming a young person's gender can have on mental health.

The guidance officer says the school will support Greg but advises them that the principal requires medical evidence of Greg's gender before these changes can occur. She tells Greg and his mother that Greg must continue wearing the girls' uniform until this evidence is received.

Greg is upset and refuses to attend school whilst his mother frantically tries to get a medical appointment to fulfil this requirement. Although Greg is able to provide the medical evidence to the school he becomes distressed about returning to school. His mother moves him to another school. Greg's mother makes a complaint on his behalf about discrimination on the basis of gender identity to the Queensland Human Rights Commission.

Privacy

Schools do not have the right to collect or store a student's sensitive, personal information, unless it is necessary for provide educational services to them. The consent of the student, or their parent or carer, is necessary to store sensitive, personal information. For state schools, the right to privacy is an important human right recognised under the *Human Rights Act 2019*.

Information about a student's transition (including former names) should only be given to staff on a 'need-to-know' basis. Ensuring the privacy of the student respects the student's right to be represented to the school community in the way they choose to be.

Tiff is a trans student who identifies as female. She has been taught science by Mrs Smith for several years. While in the staffroom one day, Mrs Smith is having a conversation with a new staff member, Mr Jones. Mr Jones asks Mrs Smith what Tiff's 'real name' is. Mrs Smith understands the question to be about Tiff's name registered at birth which she knows from a previous year of teaching her. She also knows she should not share this information; it could be a breach of the duty to maintain privacy and could affect Tiff's integration into the school system. Mrs Smith tells Mr Jones that her name is Tiff, and that is how she should be addressed.

New enrolments

When commencing at a new school, trans and gender diverse students and their families are only obliged to provide the school with information that is necessary to provide the student with educational services. Students are entitled to have their personal, historical, medical, social, and other information that is collected by the school kept private. The right to privacy and reputation in state schools is also protected by the *Human Rights Act 2019*.

If a new student or their family discloses to you that the student is trans or gender diverse, it important to start planning for how the school will affirm and support the student's gender identity.

The following is an example of supporting a new student in a primary school environment:

Erik and Sharleen have recently moved to a new school catchment and attend an enrolment interview for their son Chris with the deputy at their local primary school. Towards the end of the appointment Erik tells the deputy "there is one more thing, our son is a transgender boy". The deputy assures the parents that the school works hard to ensure a safe and supportive learning environment for all students. He asks what Chris and his parents need from the school to make things easier for Chris when he arrives.

Erik and Sharleen ask that Chris's preferred name is used on OneSchool. They have not yet changed the name formally. The deputy explains that they will ensure the system, including the class roll and academic achievements, reflects his preferred name and gender marker. He explains that as the family have not changed his name with Births, Deaths and Marriages the system will also need to include a record of Chris's legal name.

Erik and Sharleen raise the issue of bathrooms. The Deputy offers the options of using the unisex toilets, or the male bathrooms.

The deputy assures Erik and Sharleen that he understands Chris's being trans is private information but suggests telling the year coordinator or guidance officer so that they can provide particular support to him. Erik and Sharleen agree that this is a good idea.

After speaking to Chris, Erik and Sharleen tell the Deputy that Chris will use the unisex toilets for now. They agree to a follow up meeting in 3 months to check in about how Chris is going at the school.

The following is an example of supporting a new student in their transition to high school:

Lee has been supported throughout primary school to express her gender identity. When it comes time for high school, Lee's parents seek to enrol her in the same Christian girls' high school as her sister because they like the principal and believe that the supportive environment will also suit Lee.

They disclose to the school that Lee was assigned male at birth and that she will need private changing facilities for PE and some other considerations to engage fully in school life. When rumours about Lee's physical differences start circulating among the students the school works out a strategy to deal with the issue with Lee and her parents. With Lee's agreement, the principal enlists the support of parents, writing to them to confirm that they have an inclusive school that accepts all girls including transgender girls, and asking them to talk with their daughters about respect and inclusion.

The school manages to protect Lee's privacy while also establishing clear behavioural expectations and leadership. Lee is offered private changing facilities if she wants them, but she is also free to use the girls' bathrooms, play sport with her peers, and otherwise fully engage in high school.

Handling enrolments in single-sex schools

Schools cannot impose conditions on enrolment or refuse a student's enrolment on the basis of their gender identity.

Single-sex schools may rely on an exemption under the *Anti-Discrimination Act 1991 (Qld)* to refuse to enrol students not of the prescribed sex. This means that a student who has a gender identity that aligns with the gender of the school is entitled to enrol in that school. For example, a single-sex school for boys cannot refuse to accept the enrolment of a trans student who identifies as a girl. However, a school may choose not to rely on an exemption under legislation if it finds it can accommodate student diversity without discriminating. Many private schools, including faith-based schools, are leading the way in accepting and affirming trans and gender diverse students. For example, a girls' school encouraged a transmasculine student to remain in his all girls' school, where he already had strong support of his peers, after affirming his gender as male.

The single-sex exemption to the *Anti-Discrimination Act 1991* only applies at the time of an initial enrolment. To ask a student to leave a single-sex school on the grounds they have transitioned gender may amount to direct and indirect discrimination. Many students who transition while in single-sex schools choose to stay in that school with friends and established support, even if it means they are the only girl in a boys' school or vice versa. These students have a right to stay, and their needs must be accommodated.

Toilets and change room facilities

Visiting the toilet remains a serious obstacle for many trans and gender diverse students. In some cases, trans and gender diverse students avoid using the toilet altogether at school because of their needs have not been met with regard to toilet availability and accessibility. Problems associated with accessing safe toilet facilities contribute to some families' decisions to home school trans and gender diverse young people.

Trans and gender diverse students have a right to access toilets and change rooms that match their affirmed gender, or a private facility, if they prefer. There is no legal basis to deny a student access to a toilet that matches their gender identity.

Schools are responsible for ensuring that toilet facilities are safe to use. Unless a trans or gender diverse student has expressed a preference to use a designated toilet (such as a staff toilet or an accessible toilet) they should not be required to use such a facility exclusively. Being singled out from the other students might make the student feel ostracised. It might also unnecessarily expose a student and draw daily attention to their gender identity. In some circumstances, it may even result in inadvertently outing the student.

Schools should ensure that accessible/staff toilets being made available to the student are not kept locked, or if locked, students who need access are given a key. The student should not have to get the key from the office every time they want to go to the toilet as this is differential treatment compared with other students.

Where changes to the physical structure (better cubicle walls and doors) are needed to accommodate a trans or gender diverse student, the needs of the student must be weighed against the cost of changes or alternatives. Usually, the relatively small cost associated with upgrading toilet facilities, compared to the student's distress, means that the upgrade should occur.

Gender fluid or non-binary students should be allowed to use toilet facilities that they feel are appropriate and safe for them, and schools should appreciate that this choice may change, depending on the day and how safe the student feels at the time.

The school should discuss toilet and change room options available to a transitioning student in an open way, so that the student does not feel pressured into a decision they are not comfortable with. Following up regularly with the student is also advisable, as what might have seemed okay when it was first discussed might be problematic in practice, and adjustments may be needed.

Uniforms and dress standards

Clothing is an important part of the way that many trans and gender diverse young people express their gender identity. Implementing uniform policies, practices and procedures that recognise the needs of trans and gender diverse young people is essential for promoting positive student wellbeing. An inclusive and flexible uniform policy is not only beneficial for trans and gender diverse students but may increase the safety and comfort of all students.

Options provided to all students should include pants and shorts that can be worn by any student regardless of sex or gender identity.

Dress codes should allow for accommodation of individual needs and circumstances, including the needs of trans and gender diverse young people. There may be practical issues to overcome for example fit and sizing, so a common sense approach may be required when considering individual requests for modifications - for example, if the girls' blouse does not fit and the student requests to wear the sports polo instead.

A dress code that requires a trans or gender diverse student to wear a specified uniform of the gender with which they do not identify may breach anti-discrimination legislation and contribute to the student's social exclusion and isolation.

It is reasonable to ask a trans or gender diverse student to comply with uniform rules, particularly where they protect health and safety, such as wearing a hat. The school may set rules that apply to everyone such as no nail polish or make up. This will not be discrimination so long as the rules are equally applied to all students regardless of their sex or gender identity.

When attending a school formal or other official events out of uniform a student should be able to wear what they feel safe and comfortable in. For example, a trans female should be allowed to wear a dress, if that is what she prefers. It is reasonable for you to ask the student to wear something formal and appropriate for such an event, so long as there are not different expectations of trans and gender diverse students compared with cisgender students.

Eden is enrolled in a private co-ed school in Year 7. At 14 Eden begins affirming their gender identity as a non-binary person. Eden starts using them/their pronouns at school. The school uniform policy sets out two options - the boys' uniform and the girls' uniform. This does not make Eden feel very included. Eden decides that they will wear the boys' pants and the girls' blouse as this will make them feel most comfortable and will fit their body well. This decision is supported by the school. After the experience with Eden, the school decides to change their policy to express that students can dress in a manner consistent with their gender identity and expression, so long as it is within the existing uniform options and provided that a neat and tidy appearance is maintained by all students.

Sports and physical activities

Sport can play a major role in many students' lives, and not only improves mental and physical health, but builds a young person's social skills and their ability to develop healthy relationships.

Under 12 years old

The Queensland *Anti-Discrimination Act* contains no exemption to support gender segregation of children under the age of 12 in sport. This means that children of any gender may participate in any sport they choose. For example, an eight-year-old girl may freely join the under 9 boys in rugby, and cannot be refused a place in the team because of being female. Likewise, a boy may play a traditionally female sport, such as netball.

A gender fluid or non-binary student should be invited to participate with whichever gender they feel more comfortable, and schools should reconsider segregating any events based on gender, for instance different running races for boys and girls.

One exception is in the case of a competition formed to advance the interests of a minority group in a particular sport. For example, a girls' rugby union competition can exclude boys because the aim of the competition is to advance females in a traditionally male sport. A trans female student would be entitled to join that team.

12 years old and over

You may have heard it said that trans and gender diverse students have a physical advantage over other students in sport, particularly female athletes who were assigned male at birth. While this may occasionally be true, under Queensland laws students cannot be excluded from school sport on the basis of their gender identity.

The unfair advantage arguments have been made about students of particular racial background (such as Sudanese basketballers being at a height advantage, or Maori rugby players having a size advantage) and are irrelevant and offensive in that situation too. If any student has a physical advantage in a sport they are otherwise entitled to participate in, that is ordinarily encouraged and celebrated, and trans and gender diverse students who are good at, and enjoy, sports should have their participation facilitated as fully as possible.

For competitive sporting activities, in Queensland it is only lawful to restrict participation to either males or females if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity.

What constitutes competitive sport is not prescribed by legislation, but intra-school sport (i.e. sports played with other students of the school, such as PE lessons or athletics carnivals) would not be considered competitive. Social grade sport is also generally open to everyone. What is considered competitive sport will depend on the particular circumstances.

In summary, there are very limited exceptions in the law that can allow a school to restrict trans and gender diverse people's participation in sports. Schools should consider an approach that takes into account the many social and health benefits of everyone participating fully in sporting activities. The most inclusive and least restrictive approach is encouraged.

Gender-specific activities, camps and excursions

Schools may organise events and activities in which boys and girls attend separate classes, such as classes for sex and relationship education, sexual health, and competitive sporting activities. Trans and gender diverse students should be allowed to attend such activities the group that matches their gender identity. Gender fluid or non-binary students should be consulted about which group they would prefer to be placed with taking into account their comfort and safety.

For overnight events such as excursions and camps, students have the right to access the same sleeping facilities as other students of their affirmed gender, if they choose to do so. Gender fluid or non-binary students should be consulted about their preferred accommodation.

The same considerations with respect to use of toilet and change room facilities in schools apply to accessing such facilities by trans and gender diverse students while on excursion and camp. Gender fluid or non-binary students should be consulted about their preferences.

In advance of the camp you might want to find out from the student which peers they feel most comfortable with. You could also see if the student has any other special requests, such as private change facilities.

A high school takes all Year 9 students on a five week away from home camp every year. They usually have at least one trans student. One cabin is smaller and has an ensuite. They quietly arrange for the trans students and five friends that the trans student feels comfortable with to be allocated to that cabin. The school gains consent of the young person and their family to advise the on-site nurse that the child uses a chest binder. This way they can be provided with a private facility to hand wash their binder.

Bullying

Students have the right to learn in a safe and supportive environment that values diversity and individual identity, and should be free from bullying, harassment, discrimination, and violence. Trans and gender diverse students are often the targets of bullying including verbal and physical abuse.

The school must take reasonable steps to address bullying by students. Most schools already have an anti-bullying policy in place. Implementing and enforcing a specific policy that sets a clear expectation with students that homophobic/transphobic bullying is unacceptable can be an effective way to prevent bullying. If the school becomes aware that a student is experiencing bullying from other students on the basis of their gender identity, sex, sexuality or presumed sexuality, and fails to act on the issues, then the school may have indirectly discriminated against the student.

During a Year 10 English class, Alice wrote a short story about discovering she was transgender. Although Alice had always achieved consistently high marks for her written work, this time she failed. Alice was then made to read her story out loud to the class while her teacher made derogatory remarks. She was also teased and isolated by other class members. Alice complained to another teacher about her experiences, but was told that she should keep quiet about it or the harassment could get worse. As a result, her school work began to suffer and she increasingly missed classes. Alice was able to lodge a complaint against both the teacher and the school, claiming discrimination in education because of her identity as a trans female.

When parents or carers are not supportive

Managing a situation where one or both parents or carers are not affirming the student's gender identity can be very challenging for the school. Trans and gender diverse young people who have experienced family rejection can be at very high risk of suicide, suicidal ideation and depression.

Anti-discrimination legislation protects all students in the school, whether or not their parents and carers affirm their gender identity. Nonetheless, a student seeking to make a social transition at school will undoubtedly benefit from being supported by their parents. The degree to which parents and carers are supportive has a strong impact on the wellbeing of a trans or gender diverse young person.

The best way to manage the situation may be to first offer information and referrals to the parents. Parents and carers may be experiencing strong emotions about their child's gender identity. They may have limited or inaccurate information about gender identity. Providing parents and carers with someone to talk with as well as accurate, evidence informed information is essential. Sometimes parents and carers just need more time and the right support.

There are a number of referrals that you can provide to parents. The Australian Psychological Society has an information sheet for the parents, caregivers and families of trans and gender diverse children. Parents of gender diverse children provides information and links to a network of support. Transcend Support also provides information, support and referrals.

If you have provided information and referrals but the student still feels unsupported, there are a number of referrals you could provide to the student. The student can seek affirmative care from the Children's Health Queensland Hospital and Health Service Gender Services. This service may also be able to assist the student to work on the relationship with their parents or carers. If the student requires legal help then the LGBTI Legal Service may be able to give advice or act on their behalf.

If the student or another person has indicated that the student might be at risk of harm at home because of affirming their gender identity, schools must carefully consider how to handle the situation. This may influence the steps that the school will take to meet the student's needs while ensuring they act in the student's best interests and not in a way which could contribute to harm to the student.

Managing reactions of the school community

Be prepared to manage the reactions of your staff and the wider school community. Most people are not well educated about trans or gender diverse people, and you should educate your staff so that you they are ready to respond to any negative reactions within the school community.

If concerns are raised with the school about discomfort felt by other students or parents because of a transitioning student, deal with these directly. These concerns do not excuse the school from their responsibility to act in a non-discriminatory way towards a trans student, or to consider their human rights when providing them with an education.

Try to provide information about trans and gender diversity prior to the start of a student's transition process, so that staff are clear about what is expected of them. If there are negative reactions from staff that result in discrimination against the student the school risks being vicariously liable for the actions of those staff.

Trans and gender diverse students often feel uncomfortable being singled out or made the centre of attention. The student themself may not realise how controversial their transition may be, or be prepared for the responses of others. This means that the school may need to take proactive steps to educate their staff by providing general training on discrimination and human rights without the involvement or consent of the student. The Queensland Human Rights Commission can provide tailored training to schools.

The school is not required to advise parents and other students of the presence of a trans child in the school or in the year level. Unless it is at the specific request of the student, a general communication to all parents and students should not be sent out to "announce" a student transitioning. Doing so may place the student in an uncomfortable position or place them at risk. Note that in other situations where students need adjustments or modifications, such as on the basis of disability, these arrangements are generally not advised to the parents of other students.

Josie phones the year coordinator about an upcoming school camp to inquire about change and toilet facilities, to ensure her trans daughter Maya has a private space to change. The year coordinator requests a meeting. At the meeting the year coordinator tells Josie she would like to send a letter to all other parents advising them a trans girl is attending the camp but without disclosing her name. Josie questions why it is necessary to share Maya's private information with anyone else. The year coordinator advises she will need to check with the principal about whether they have to send the letter. In the days that follow Maya becomes so anxious about the possibility everyone will be guessing who the trans girl in their year level is that she refuses to go to camp.

Here are some tips:

- **Develop** standard responses to students, parents, and staff who raise issues about change rooms, toilet use, and physical appearance.
- **Anticipate** that misgendering or deadnaming (calling the person by the wrong name or pronoun) is likely to occur by accident to begin with, but be aware that these mistakes can be hurtful to a trans or gender diverse person. Any consistent and intentional misgendering or deadnaming could be unlawful discrimination.
- **Consider** and plan for what consequences there may be for a student who bullies or treats a transitioning student unfavourably.

Dealing with peer groups, parents, P&C associations and others

Research shows that communicating and engaging with students, staff, parents, and members of the school community, is important to ensure that trans and gender diverse students are safe and supported at school.

A family's acceptance and support of their child's gender identity is strongly associated with positive mental health and academic achievement, and schools should work closely with parents to cater for the individual needs of trans or gender diverse students, and provide appropriate referrals where necessary.

Celebrating events at school, such as Wear it Purple day (to foster supportive, safe, accepting environments for trans and gender diverse young people) or IDAHOBIT day (International Day Against Homophobia, Biphobia, Intersexism, and Transphobia), also helps to foster a culture that supports diversity and inclusion.

Faith-based schools can consider engaging allies from LGBTIQ+ groups within their denomination or faith tradition, social justice groups, or individual champions within their organisational hierarchy. Such allies may assist the school when facing resistance based on religious grounds from families and/or community members.

A Christian girls' school in a regional town enrolled a trans female student for the first time. The principal of the school did not hesitate to enrol the student. In making the decision to enrol the student she considered the teachings of Jesus in accepting those perceived as different, and treating them with the same respect, integrity and compassion as all members of the community. The school community widely supported the decision to enrol the student and more than 50 messages of support and goodwill were sent to the principal to communicate back to the student and her family that she is very welcome at the school.

Diversity and inclusion policies

Part of communicating a message of inclusion is to put in place specific and well-considered policies concerning trans and gender diverse students.

These policies are examples, drawn from those already in place in Queensland schools to build supportive environments for trans and gender diverse students. They are available to download as editable Word documents from the Commission's website.

Example diversity and inclusion policy A

At XX School we will:

- provide high-quality education for all students;
- respond constructively to the needs of educationally disadvantaged/marginalised students;
- view difference as a resource to support learning;
- ensure that all school community members feel safe and free from discrimination, bias and harassment; and
- promote locally negotiated responses to student, family and community needs through effective community engagement processes and cross-agency collaboration.

Gender diversity rationale:

Children are entitled to respect and to flourish regardless of gender. It is unlawful to discriminate against a person on the basis of sex, gender or gender identity.

Aim:

To ensure all students are provided with equal opportunities to reach their potential, irrespective of sex, gender, gender variance or expectations about gender.

Implementation:

1. XX School works to ensure all students receive equal respect and equal opportunities to succeed.

2. Learning and teaching programs are inclusive and enhance the capacity of gender diverse children to participate in all aspects of schooling.

3. Professional development provided for staff on topics including gender equity and gender identity.

4. Students are encouraged to express and celebrate their individuality, whether or not it conforms to gender stereotypes.

5. Inclusive and non-sexist language is used within the school, and gender based segregation will generally be avoided. Any segregation on the basis of gender (e.g. for sports teams) will respect the child's gender identity.

6. Students are entitled to use the bathroom associated with their gender identity.

7. Students will be supported in their choice of personal pronouns in school records and everyday usage.

8. XX School supports the right of each child to dress in accordance with their gender identity. The student dress code provides all students with safe and comfortable uniforms with unisex options.

9. XX School acts on any identified incidents of discrimination, harassment or bullying, including gender-based bullying.

10. This policy is to be read in conjunction with XX School's Responsible Behaviour Plan for Students policy of the school.

Example diversity and inclusion policy B

Introduction and statement of commitment

XX School is committed to providing all students with access to high-quality schooling that is free from discrimination based on gender and sexual orientation. We support the rights of all children and young people and are devoted to ensuring the safety and wellbeing of students. We are committed to enabling all students to have the freedom to be themselves in a safe and supportive environment.

Purpose

The purpose of this policy is:

- To promote an educational environment that is welcoming, safe and free from discrimination and stigma for all students, regardless of sex, gender identity, race, gender expression and sexual orientation.
- To ensure that all students have the opportunity to express themselves and live authentically.
- To enable compliance with legislation concerning discrimination, bullying, harassment and privacy.

Scope

This policy applies to all matters that relate to the care and wellbeing of students, and to all employees, parents, volunteers and visitors associated with XX School. It covers conduct that takes place at school, at school organised events and activities, and on school vehicles. This policy also pertains to usage of electronic devices that occurs at school and on school devices. It is to be read in conjunction with relevant legislation listed below.

Relevant legislation

According to the relevant legislation, it is a requirement for schools to ensure that no discrimination occurs on the basis of gender equity:

- *Anti-Discrimination Act (QLD) 1991*
- *Sex Discrimination Act (Cth) 1984*
- *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act (Cth).*

Privacy laws

All students have a right to privacy. According to privacy laws, a person's gender identity is private and consent must be given by the student to disclose or share information. Information about a student's transgender status, legal name or gender assigned at birth constitutes confidential medical information. Legal advice must be obtained before sharing without consent.

- *Information Privacy Act 2009 Queensland*

Student transitions

XX School will accept the gender identity of each individual student. Students who wish to transition while at school will work with the school counsellors and Principal, along with their parents (if possible), to customise their own individual transition plan. This will include time frames of the transition, their name and pronouns, outdoor education and sport arrangements, and considerations on toilet and change room use. There is no medical or mental health diagnosis or treatment threshold that students must meet in order to have their gender identity respected and recognised. However,

whenever possible, school counsellors will refer students who are expressing a desire to transition at school to external agencies to gain recommendations and support. Each student will have a unique process for transitioning and the school will work with them to ensure they understand the options before them. This will ensure that it is a student led process.

Student name

Respecting a young person's request to change their name and pronoun is an essential part of validating and supporting their identity. Students may refer to themselves by a name of their choosing. School staff are required to use the name, personal pronouns and preferred gender when requested by the student. Academic reports may use the student's preferred name if requested by the student.

Toilet and change room use

The use of toilets and changing rooms by students will be assessed on a case-by-case basis in discussion with the individual student. This will be discussed with the school counsellors or Principal with the goal being to maximise social integration, minimise stigmatisation and ensure safety and comfort. The options available to the student are; they may use the unisex toilets available around the school, or the student will use the toilet of the gender that they identify with. Considerations will be made that best suit the student in supporting them to feel safe and comfortable when at school.

School uniform

All students have the right to dress in a manner consistent with their gender identity and expression. Students are therefore permitted to wear the uniform of their choosing. The same uniform standards and guidelines apply to all students and it is an expectation that they will adhere to all uniform dress codes.

Curriculum

All curriculum is facilitated in a manner that promotes inclusivity. When developing and delivering curriculum around gender, relationships and sexuality, teachers should avoid making generalisations and assumptions about sexuality or gender identity. Teachers will be up to date with the most current resources and they promote inclusivity, acceptance and care for all.

Outdoor education program

When determining school camp arrangements, students will consult with the outdoor education department to talk over their choices about the sleeping arrangements, toilets and change areas. Whenever possible, students should be able to sleep in accommodation appropriate to their gender identity. Some transgender young people may not feel comfortable doing this and in such cases alternative sleeping arrangements will be made. When participating in physical activities on outdoor education days and camps, the student will negotiate with the staff about what degree of participation is appropriate. Activities that cause a great degree of discomfort will be discussed and alternative arrangements will be made if it is appropriate. Risk assessments can be carried out prior to outdoor education days in order to make any reasonable adjustments which will enable participation for the individual student.

Physical education and sport

All students have a right to participate in sporting activities. Physical education teachers are used to differentiating their lessons and taking into account the range of size, build and ability in the class to keep all students safe and so the same principles can be applied. These considerations should be discussed with individual students themselves and if appropriate, with their parents or guardians. The type of sport, level of ability and physical contact rules will be considered when deciding what is appropriate. Wherever possible, when teams are segregated by gender, students should be enabled to participate in the activity which corresponds to their gender identity if this is what they request. However, for children over 12 years of age, restrictions on participations in sport may be imposed if the restriction is reasonable, having regard to the stamina, strength or physical requirements of the sport. If a student is taking medication to suppress pubertal development that impacts on differences in strength and stamina (e.g. blockade of testosterone) this should be taken into consideration when considering if a restriction is required. Swimming can be problematic for young people identifying as a gender different from the physical development of their body. Flexibility may be required in either the swimming costume or participation in swimming.

Refer to the *Anti-Discrimination Act* Section 111 Sport.

Counselling support

Transitioning at school, or even developing a stronger understanding of one's gender identity, can be a very challenging time for students. At XX School, students will be provided with counselling support. The school counsellors are up to date in the most recent approaches to supporting LGBTIQ+ young people and can be utilised to provide assistance to help make it a less difficult time for young people. They can create support plans for the individual students during their time of transition. They can also provide referrals to outside agencies if required. Support can also be given to other members of the XX School community who are directly or indirectly associated with the individual student. This includes parents, siblings, and, with consent to disclose identity, other students and staff members.

Parental collaboration

The parents and guardians of transgender and gender nonconforming students play a crucial role in establishing a safe and supportive school environment. Whenever possible, parents will be key contributors to the formulation of a plan for helping their child be supported to learn free from discrimination at school. According to the Anti-Discrimination Act 1991 concerns regarding the views of the person's parents or other members of the school community do not provide exemptions from the legal requirement to either directly or indirectly discriminate (treat differently) a person due to their gender identity.

Bullying, harassment and discrimination

XX School takes bullying, harassment and discrimination very seriously. We are committed to ensuring that all students have a safe school environment. Therefore, any complaint alleging discrimination, harassment and bullying based on a student's actual or perceived gender identity, and expression, will be taken very seriously. The incident of discrimination will be given immediate attention and appropriate action will be taken following the Bullying and Harassment policy.

Documentation and risk management

When working with individual students, communications with parents, staff and external agencies will be documented and put with the confidential student notes. A risk management plan can also be completed to ensure that before, during and after transitioning, students will be supported in the best way possible.

About the Queensland Human Rights Commission

We work to protect and strengthen human rights in Queensland, and to help build a fairer, safer, and more inclusive community.

We do this by:

- Providing an expert dispute resolution service for discrimination, human rights, sexual harassment, and vilification complaints
- Providing a free and personalised information service on rights and responsibilities
- Training businesses, government and the community
- Supporting the development of policy and legislation to better protect rights
- Increasing public understanding and discussion of human rights and responsibilities

We are a statutory body established under the Queensland *Anti-Discrimination Act 1991* and were formerly called the Anti-Discrimination Commission Queensland. We were renamed the Queensland Human Rights Commission on 1 July 2019 with the commencement of the *Human Rights Act 2019*.

Training

As the leading authority on the *Human Rights Act 2019*, we are responsible for delivering practical training to help all people in Queensland to understand their rights and responsibilities under the Act, and to help organisations to promote and protect people's human rights. We also offer training on a variety of aspects of anti-discrimination law, including information and capacity building workshops on gender identity and supporting trans and gender diverse employees.

You can contact our training team at training@qhrc.qld.gov.au.

Complaints, information and enquires

The Commission has a free enquiry service which can provide information about the Human Rights Act and Anti-Discrimination Act, rights and responsibilities under these laws, our complaints process, and referrals to other support or complaint agencies where relevant.

Our highly skilled complaint management team is responsible for assessing all complaints received and working with parties to resolve the issues through conciliation.

You can read more about our complaints process and conciliation on our website at www.qhrc.qld.gov.au, or contact our enquiry line on 1300 130 670.

Contact us

STATEWIDE ENQUIRY LINE: 1300 130 670

WWW.QHRC.QLD.GOV.AU

TRAINING@QHRC.QLD.GOV.AU