

## Policy

# Supporting same sex attracted, intersex and gender diverse students

Please note this policy is mandatory and staff are required to adhere to the content

### Summary

This policy outlines school and preschool responsibilities for supporting all children and young people's equal opportunities to optimum learning and wellbeing outcomes, regardless of sexual orientation, intersex status or gender identity in accordance with the legislative requirements of the *Equal Opportunity Act 1984 (SA)* and the *Sex Discrimination Act 1984 (Cth)*.

Table 1 - Document details

<b>Publication date</b>	24 November 2016
<b>File number</b>	
<b>Related legislation</b>	<a href="#">Children's Protection Act 1993</a> <a href="#">Equal Opportunity Act 1984 (SA)</a> <a href="#">Sex Discrimination Act 1984 (Cth)</a> as amended by the <a href="#">Sex Discrimination Amendment (Sexual Orientation, Gender Identity And Intersex Status) Act 2013 (Cth)</a>
<b>Related policies, procedures, guidelines, standards, frameworks</b>	<a href="#">Access to legal services across DECD procedure</a> <a href="#">Child protection in schools, early childhood education and care policy</a> <a href="#">Information Sharing Guidelines for promoting safety and wellbeing (ISG), Ombudsman SA.</a> <a href="#">Information Sharing Guidelines for Promoting Safety Wellbeing (ISG) Procedure (DECD Appendix)</a> <a href="#">Protective Practices for Staff in their Interactions with Children and Young People</a> <a href="#">Selecting and using resources for educational purposes guideline</a> <a href="#">Sexual harassment policy</a> <a href="#">Transgender and intersex student support procedure</a> <a href="#">South Australian Strategy for the Inclusion of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer People (LGBTIQ) 2014-2016</a> <a href="#">SA Information Privacy Principles (IPPS) Instruction 2013 (Cabinet Administrative Instruction PC012)</a>
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Table 2 - Revision record

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November 2016	1.0	First publication.

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## 1. Title

Supporting same sex attracted, intersex and gender diverse students policy

## 2. Purpose

This policy aims to ensure that:

1. all children and young people receive a quality education in a safe, supportive and inclusive environment, free from discrimination, bullying and harassment regardless of intersex status, sexual orientation, gender identity or gender expression;
2. employees understand and meet their obligations to protect the above entitlement and
3. DECD complies with legislative requirements pursuant to the [Equal Opportunity Act 1984 \(SA\)](#) and the [Sex Discrimination Act 1984 \(Cth\)](#) as amended by the [Sex Discrimination Amendment \(Sexual Orientation, Gender Identity And Intersex Status\) Act 2013 \(Cth\)](#) and as outlined at 4.2.

## 3. Scope

This policy applies to all staff and volunteers working in DECD sites and early childhood education and care services, DECD education and care leaders and DECD corporate leaders.

## 4. Policy detail

Quality educational environments and learning experiences set a trajectory of lifelong outcomes for children and young people that impact their achievements, health, wellbeing and life opportunities throughout adulthood<sup>1</sup>. Same sex attracted, intersex and gender diverse children and young people have the same entitlement to a safe school environment as other children and young people. Research suggests that all schools are likely to have LGBTI (lesbian, gay, bisexual, transgender, intersex) students and that:

- approximately 10% of people are same sex attracted;<sup>2</sup>
- approximately 2% are gender diverse or transgender;<sup>3</sup>
- approximately 1.7 % has an intersex variation.<sup>4</sup>

Same sex attracted and gender diverse young people suffer high levels of verbal and physical homophobic and transphobic abuse in the community, with the most common place of abuse (80%) being at school.<sup>5</sup> This has a profound impact on their well-being, attendance and educational outcomes. There is a strong correlation between this abuse and increased rates of anxiety and depression and 'at risk' behaviours including self-harm and suicide.

These issues are compounded by a lack of visibility in LGBTI representation within school policy, the curriculum and leadership.<sup>6</sup>

<sup>1</sup> Deloitte Access Economics (2012), The socio-economic benefits of investing in the prevention of early school leaving

<sup>2</sup> Mitchell, A et al (2014) *5<sup>th</sup> National survey of Australian secondary students and sexual health 2013*, ARCSHS, La Trobe University, Melbourne.

<sup>3</sup> Clark, T.C. et al (2013) *Youth'12 Overview: The health and wellbeing of New Zealand secondary school students in 2012*. Univ of Auckland, New Zealand

<sup>4</sup> Australian Human Rights Commission (2014) *Face the facts: lesbian, gay, bisexual, trans and intersex people*

<sup>5</sup> Hillier, L et al (2010) *Writing themselves in 3*, La Trobe University, Melbourne.

<sup>6</sup> Australian Human Rights Commission (2015) *Resilient individuals: sexual orientation, gender identity & intersex rights*: National Consultation Report 2015

Research has indicated LGBTI students that knew their school had protective policies were more likely to feel safe to regularly attend school (75% v 45%), more likely to feel good about their sexuality (85% v 78%) and more likely to report structural/social support features at the school.<sup>7</sup>

It is important to read the definitions and abbreviations in section 7 before proceeding.

## 4.1 Legislative responsibilities

It is unlawful under State and Federal law for an education authority/site to discriminate against a student on the basis of sexual orientation, gender identity or intersex status.

Specific obligations are established by the following Acts:

- *Equal Opportunity Act 1984 (SA)*
  - recognises sex, chosen gender and sexuality as criteria for discrimination (section 29);
  - makes it unlawful for an educational authority to discriminate on the basis of sex, chosen gender or sexuality (section 37).
- *Sex Discrimination Act 1984 (Cth) as amended by the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 (Cth)*
  - Prohibits:
    - Sex discrimination (under section 5 of the act);
    - Discrimination on the ground of sexual orientation (under section 5a);
    - Discrimination on the ground of gender identity (under section 5b); and
    - Discrimination on the ground of intersex status (under section 5c).
  - explicitly identifies educational settings and makes it unlawful for an educational authority to discriminate on the grounds of a child or young person's sex, sexual orientation, gender identity or intersex status (section 21)

Relevant State principles and guidelines

- [SA Information Privacy Principles \(IPPS\) Instruction 2013 \(Cabinet Administrative Instruction PC012\)](#)
  - Establishes obligations for the collection, storage and disclosure of personal information collected by Government agencies. It also provides a right for an individual to access and amend their personal information.
- [SA Information Sharing Guidelines for promoting safety and wellbeing \(ISG\)](#)
  - Provides a state-wide approach to appropriate information sharing practice wherever there are threats to safety and wellbeing of children and young people
- [Information Sharing Guidelines for Promoting Safety Wellbeing \(ISG\) Procedure](#) (DECD)

<sup>7</sup> *Writing themselves in 3 op cit*

- This procedure constitutes the DECD Appendix to the SA Government ISG. It explains how the ISG is to be applied in the DECD context. The Procedure ensures that DECD staff:
  - follow the ISG decision making steps when sharing and seeking information to promote and protect children’s safety
  - ensure a child’s right to safety is paramount in guiding actions and is not overridden by other considerations such as privacy or confidentiality
  - share information about ‘at risk’ parents to help prevent children’s experience of cumulative harm
- [South Australian Strategy for the Inclusion of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer People 2014-2016](#)
  - Establishes that education services have:
    - school based activities that appropriately profile LGBTIQ topics throughout a child’s learning;
    - mechanisms in place to reduce and eliminate homophobia and transphobia in schools;
    - teachers who are appropriately trained regarding LGBTIQ issues<sup>8</sup>.

## 4.2 Policy requirements

In complying with this policy all DECD educational sites and services must:

1. provide quality education for all children and young people in a safe, supportive and inclusive environment, free from discrimination, bullying and harassment regardless of intersex status, sexual orientation, gender identity or gender expression;
2. ensure that employees have a considered understanding of sexual diversity, intersex and gender diversity and the issues that may face these population groups;
3. ensure that employees understand and comply with their legal obligations not to discriminate based on sexual orientation, intersex status, gender identity or gender expression;
4. incorporate and address sexual, homophobic, biphobic and transphobic bullying as part of the site’s anti-bullying and harassment policy;
5. ensure that sexual diversity, gender diversity and intersex are addressed in the implementation of the [Keeping Safe: Child Protection Curriculum](#), the [National Safe Schools Framework](#) and the Australian Curriculum. This applies across all learning areas of the Australian Curriculum but includes a specific focus in the Health and Physical Education: Foundation to Year 10 learning area (for further guidance see the [Curriculum, Pedagogy, Assessment and Reporting Policy for Reception-Year10](#));
6. support students, staff and families to access information and resources on gender diversity, intersex and sexual diversity and addressing discrimination and harassment;

<sup>8</sup> Government of South Australia, Department for Communities and Social Inclusion, *South Australian Strategy for the Inclusion of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer People 2014-2016* (May 2014)

7. ensure that all employees have access to professional learning opportunities, resources and support provided by SHine SA and the Safe Schools Coalition Australia program;
8. understand Information Privacy Principles (IPPS) Instruction relating to the right of a student to keep their gender identity, sexual orientation or intersex status private. Disclosure to others without informed consent or outside of mandatory reporting requirements and prescribed exemptions may violate obligations under the IPPS;
9. adhere to the requirements outlined in the DECD *Information Sharing Guidelines for promoting safety and wellbeing (ISG) – Procedure* that sets out a framework for disclosure of information that applies to all DECD employees;
10. follow the [Transgender and intersex student support procedure](#) to support gender diverse students to safely affirm their true gender identity at school.

### 4.3 Mandatory categories

The best interests of all children and young people need to be embedded in all aspects of decision making, local policies and service delivery. In the design of policies, procedures and programs sites must particularly address the following mandatory categories. These categories are not exhaustive.

#### 4.3.1 Bullying and harassment

Discrimination on the basis of sexual orientation, intersex status or gender identity must be addressed as a part of the anti-bullying and harassment policy, a requirement of all DECD sites. The policy must be accompanied by a procedure for resolving complaints. The policy must address the use of homophobic and transphobic language and behaviour. This includes both offensive terms (such as 'homo', 'lezzo', 'dyke', 'tranny', 'he-she') and the misuse of acceptable terms, for example, the word 'gay' when used as a negative or put down, such as 'that's so gay' when referring to an object or situation. This language is harmful and unacceptable regardless of the intention of the person who uses it.

Incidents of sexual, homophobic, transphobic and biphobic bullying should be recorded as part of the system-wide collection on specific data relating to bullying and harassment.

All schools are required to ensure that the policy is readily accessible to school community.

#### 4.3.2 Curriculum

All areas of the curriculum must be inclusive of gender diversity and sexual diversity. Programs and practices will challenge gender stereotypes, and gendered expectations, values and attitudes.

The Keeping Safe: Child Protection Curriculum (KS:CPC), a requirement under the DECD [Child protection in schools, early childhood education and care services policy](#) states that children and young people will engage with curriculum which explicitly teaches them about the nature of personal safety and wellbeing; help seeking and self-protecting behaviours and their responsibilities to the safety and wellbeing of others. The KS:CPC fits within the Health and Physical Education (HPE) learning area of the Australian Curriculum, but can also be incorporated across other learning areas.

The Australian Curriculum recognises diversity and promotes excellence and equity in education. In particular the [HPE \(Foundation to Year 10\) Curriculum](#) explicitly encompasses same sex attracted and gender-diverse students:

*“As with other areas of student diversity, it is crucial to acknowledge and affirm diversity in relation to sexuality and gender in Health and Physical Education. Inclusive Health and Physical Education programs which affirm sexuality and gender diversity acknowledge the impact of diversity on students’*

*social worlds, acknowledge and respond to the needs of all students, and provide more meaningful and relevant learning opportunities for all students.*

*The Australian Curriculum: Health and Physical Education (F–10) is designed to allow schools flexibility to meet the learning needs of all young people, particularly in the health focus area of relationships and sexuality. All school communities have a responsibility when implementing the Health and Physical Education curriculum to ensure that teaching is inclusive and relevant to the lived experiences of all students.”*

When teaching about reproduction, sexual health and sexuality education it is particularly important to ensure that the needs of all students are met, including students who may be same sex attracted, intersex or gender diverse.

#### 4.3.3 Professional Learning

- DECD has a Memorandum of Operational Collaboration (MOC) with SHine SA to support the implementation of the [Safe Schools Coalition Australia](#) (SSCA) in SA schools. SHine SA is the lead agency for the implementation of [Safe Schools Coalition South Australia](#).
- The SSCA initiative takes a whole school approach to support all staff to understand their role in creating safe and inclusive learning environments. It goes beyond the classroom to look at school policy, practice, the school environment and student leadership opportunities.

Safe Schools Coalition SA:

- supports the creation of safe and inclusive school environments for same sex attracted, intersex and gender diverse students, staff and families;
- addresses homophobic and transphobic bullying and discrimination;
- supports gender and sexual diversity; and
- improves student wellbeing.

SHine SA provides resources and information, consultative advice, professional development, student engagement resources and tailored support to meet the unique needs of each school community and to support the implementation of the SSCA initiative.

#### 4.3.4 Resources

Students, teachers and families may need support in understanding gender diversity, intersex and sexual diversity and/or addressing discrimination and harassment. Education sites and services are required to make available information and be aware of key resources and services and how to access them.

The purchase, development and promotion of digital and printed resources for teaching and learning should be cognisant of the sexual and gender diversity of children, young people and their families. Inclusive materials should be available to support the curriculum throughout students' early childhood, primary and secondary years.

Sites should ensure that students have access to developmentally appropriate books and other resources that reflect the diversity of sexuality and gender of all children and young people. (for further guidance see [Selecting and using resources for educational purposes guideline](#)).

### 4.3.5 Respecting privacy and confidentiality

Transgender, intersex and sexuality status are personal information and must be treated in accordance with confidentiality and privacy requirements. Disclosure to other students, employees, families or other third parties without informed consent or outside of mandatory reporting requirements and prescribed exemptions may violate obligations under the Information Privacy Principles (Circular 12).

Employees must adhere to their mandatory reporting obligations if they suspect on reasonable grounds that a child has been abused or neglected.

*The DECD Information Sharing Guidelines for promoting safety and wellbeing (ISG) – Procedure* sets out a framework for disclosure of information that applies to all DECD employees.

Related procedural information is available in the DECD Transgender and intersex student support procedure, and the supporting documents, [Challenging homophobia in schools: a guide for school staff](#) and [Supporting sexual diversity in schools: a guide](#).

## 5. Roles and responsibilities

Table 3 - Roles and responsibilities

Role	Authority/responsibility for
<b>Chief Executive</b>	This policy is issued under the authority of the Chief Executive in order to prevent discrimination on the basis of sexual orientation, gender identity or intersex status and to ensure compliance of DECD sites and staff with the legislative requirements of the <i>Equal Opportunity Act 1984 (SA)</i> and the <i>Sex Discrimination Act 1984 (Cth)</i> as amended by the <i>Sex discrimination amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 (Cth)</i> .
<b>Education Directors</b>	<p>Education Directors will ensure that:</p> <ul style="list-style-type: none"> <li>• all Principals and Preschool Directors are familiar with the policy and the DECD <i>Transgender and intersex student support procedure</i></li> <li>• sites are safe and inclusive environments for same sex attracted, intersex and gender diverse children, young people and families</li> <li>• sites have practices and procedures in place to address and respond to homophobia, transphobia and biphobia in addition to supporting young gender diverse and same sex attracted students.</li> </ul> <p>The Education Director will support sites to implement the policy and will respond to concerns</p>

Role	Authority/responsibility for
	raised by the school community and DECD employees in relation to the policy.
<b>Site Leaders</b>	<p>Site leaders are responsible for ensuring:</p> <ul style="list-style-type: none"> <li>• all employees are familiar with this policy and that sites are safe and inclusive environments for same sex attracted, intersex and gender diverse children, young people and their families (as per <a href="#">Protective practices guidelines</a>; Child protection policy)</li> <li>• all volunteers and service providers act in accordance with the obligations outlined in this policy</li> <li>• compliance with the <i>Information sharing guidelines for promoting safety and wellbeing (ISG)</i> procedure</li> <li>• gender diverse students are provided appropriate support (as per Transgender and intersex student support procedure)</li> <li>• the site's anti-bullying policy addresses homophobia, transphobia and biphobia to ensure the wellbeing and safety of same sex attracted, intersex and gender diverse young people</li> <li>• teaching and learning is inclusive and relevant to the lived experiences of all students</li> <li>• employees are appropriately trained to support and respond to the needs of same sex attracted, intersex and gender diverse children and young people</li> <li>• incidents of homophobic, transphobic and biphobic bullying, harassment and discrimination are recorded on EDSAS</li> </ul> <p>In addition, leaders of schools with a secondary enrolment are responsible for ensuring:</p> <ul style="list-style-type: none"> <li>• that secondary schools have a written policy against sexual harassment by students that incorporates procedures for resolving complaints</li> </ul>

Role	Authority/responsibility for
	<ul style="list-style-type: none"> <li>that the school community is made aware that it is unlawful under the <i>South Australian Equal Opportunity Act 1984</i> for a student 16 years and over to sexually harass another student or staff member.</li> </ul>
<b>Staff</b>	<p>All employees are responsible for:</p> <ul style="list-style-type: none"> <li>complying with this policy and modelling appropriate and professional conduct at all times</li> <li>responding to and challenging all forms of homophobic, transphobic and biphobic language and behaviour</li> <li>ensuring positive representation of gender diversity and sexual diversity across all areas of the curriculum</li> <li>promoting the use of inclusive and non-gendered language within the school</li> </ul>
<b>Statewide support services</b>	<p>Statewide support services are responsible for supporting sites to implement this policy. This includes assisting with the referral of children, young people and families to appropriate support services where possible.</p>

## 6. Monitoring, evaluation and review

This policy will be reviewed in line with the requirements of the DECD policy framework, within 12 months of the date of approval and in response to current research and any legislative changes. The policy will be evaluated within at least three years of the commencement unless it is required earlier because of legislative changes.

Site/service leaders will provide ongoing monitoring of their site's/service's compliance with this policy, with Education Directors supporting sites to address gaps in compliance and advising corporate leaders as required. Corporate leaders will maintain oversight of the policy's relevance, its alignment with legislation, state government commitments and national standards and will amend the policy as appropriate.

## 7. Definitions and abbreviations

Language in the same sex attracted, intersex and gender diverse community is constantly changing. The use of inclusive and acceptable terminology empowers individuals and enables visibility of important issues.

All terms mean something unique and specific to the person using them. There are also a large number of culturally distinct terms that are used and should be respected. Generally speaking, it is useful to ask which terms students may prefer and respect their choices.

Table 2 - Definitions and abbreviations

Term	Meaning
Bisexual	A person who is emotionally and romantically attracted to people of more than one gender. This is not necessarily in the same way or at the same time.
Discrimination	Treating a person in a way that results in that person receiving less favourable treatment because of their sexual orientation, gender identity or intersex status and includes discrimination as defined in the <i>Equal Opportunity Act 1984</i> (SA) and the <i>Sex Discrimination Act 1984</i> (Cth) as amended by the <i>Sex Discrimination Amendment (Sexual Orientation, Gender Identity And Intersex Status) Act 2013</i> (Cth).
Gender	Gender is generally understood as a social and cultural construction. A person's gender identity or gender expression is not always exclusively male or female and may or may not correspond to their sex.
Gender diverse	A broad term that can refer to all forms of gender identity and gender expression and includes people who may identify as for example trans, transgender, genderqueer or gender questioning. It refers to people whose gender expression or identity differs from the gender identity associated with the sex assigned them at birth or society's expectations. The person may identify as neither male nor female, or as both.
Gender expression	A person's gender expression is the outward signs they present to the world around them. This could include their choice of name and preferred pronoun (which may include using no pronoun), their style of dress and appearance and/or their mannerisms.
Gender identity	Refers to a person's strongly held internal sense of self, of being masculine or feminine, or both or neither. Gender identity does not necessarily relate to the sex a person is assigned at birth.
Heterosexism	Views or behaviours that assume everyone is, or should be, heterosexual and that other types of sexuality or gender identity are unnatural or not as good as being heterosexual. People with differences in their physical sex characteristics

Term	Meaning
	may experience heterosexism too. This may include elements of discrimination based on limited ideas about what is 'normal' and not 'normal'.
Intersex	<p>Intersex is an umbrella term for people born with sex characteristics that do not fit medical norms for female or male bodies. Intersex traits – or atypical sex characteristics – include a wide range of hormonal, genetic and gonadal differences that may be diagnosed prenatally, at birth, at puberty, when trying to conceive, or through random chance.</p> <p>Being intersex is not about gender identity and most intersex people identify as women or men. Some intersex people do not identify as the sex assigned to them at birth, and therefore may go through a process of affirming their true gender identity in a way that is similar to a transgender person.</p>
LGBTI	An acronym that is used to describe lesbian, gay, bisexual, transgender and intersex people collectively.
Pansexual	A person who is emotionally and romantically attracted to people of all genders. Some pansexual people aren't concerned with a person's gender and their attractions could be considered 'gender blind'.
~phobia (as in, homophobia, transphobia and biphobia)	<p>The fear, intolerance, and/or discrimination of people who identify as:</p> <ul style="list-style-type: none"> <li>▪ Same-sex attracted (homophobia)</li> <li>▪ Transgender, gender diverse or gender nonconforming (transphobia)</li> <li>▪ Bisexual (biphobia).</li> </ul> <p>These attitudes can be linked with hostility, verbal and physical abuse, prejudice or discrimination.</p>
Queer	Queer can have a range of different meanings for different people. Some identify as queer to mean non-heterosexual, or not aligned to their gender assigned at birth, or gender stereotypes broadly. For some, it simply means different. Some people find this term offensive.
Same-sex attracted	People who experience feelings of sexual and emotional attraction to others of the same sex.

Term	Meaning
	This term includes people who may identify in ways such as lesbian, gay, bisexual, queer, pansexual or heterosexual, or who are questioning their sexuality. Same-sex attracted people may not identify as LGBTIQ.
Sexual diversity	Refers to a diverse range of different sexualities, identities, and romantic or sexual attractions. This term includes those who may identify as same-sex attracted, lesbian, gay, bisexual, pansexual or something else.
Sistergirls and Brotherboys	Terms used by some Aboriginal and Torres Strait Islander communities to describe a person assigned male or female at birth and identifying or living partly or fully as another gender. Use and spelling of the terms may vary across different groups and communities, and other cultures will use different terms to describe gender diversity.
Sexual orientation	Refers to a person's emotional and/or sexual attraction to another person, which can include the following identities: heterosexual, gay, lesbian, bisexual, pansexual, asexual or same sex attracted.
Transgender (or trans or trans*)	An umbrella term used to describe a person whose gender identity or gender expression is different from the sex assigned to them at birth. An example is a child who is assigned a male sex at birth but actually feels more comfortable living as a girl and identifies as female.

These definitions have been sourced from:

- [Australian Human Rights Commission](#)
- [Safe Schools Coalition Australia](#)

## 8. Supporting documents

DECD approved policies/programs/guidelines

- [Australian Curriculum: Health and Physical Education: Foundation to Year 10](#)
- [Bullying and harassment at school: advice for parents and caregivers](#)
- [Curriculum, pedagogy, assessment and reporting policy for Reception-year 10](#)
- [Challenging homophobia in schools: a guide for school staff](#)
- [Child protection in schools, early childhood education and care policy](#)

- [Information sharing guidelines for promoting safety and wellbeing procedure](#)
- [Keeping Safe: Child Protection Curriculum](#)
- Memorandum of Operational Collaboration 2014-2017 (SHineSA & DECD)
- [National Safe Schools Framework](#)
- [Protective practices for staff in their interactions with children and young people](#)
- [Responding to abuse & neglect – Education & care training \(RAN-EC\)](#)
- [Safe Schools Coalition Australia](#)
- [Safe Schools Coalition South Australia](#)
- [School based counselling service – information for students](#)
- [Selecting and using resources for educational purposes guideline](#)
- [Sexual harassment policy](#)
- [Supporting sexual diversity in schools: a guide](#)
- [Transgender and intersex student support procedure](#)

## 9. References

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- United Nations Convention on the Rights of the Child