

TRANS AND GENDER DIVERSE PARTICIPATION IN SPORT 2022

PURPOSE

Eastern Independent Schools Melbourne Inc. (EISM) has developed this policy to ensure that its practices allow for the inclusion and participation of transgender and gender diverse students in sport.

This policy updates our EISM Board 2018 Policy which approved categories for transitioning students.

This policy has been developed having regard to the Australian Human Rights Commission -: Guidelines for the inclusion of transgender and gender diverse people in sport, 2019 and the Victorian Equal Opportunity & Equal Rights Commissioner issued “Guideline: Trans and gender diverse inclusion in sport” 2017.

BACKGROUND

EISM is responsible for facilitating and conducting mid-week sport competitions and sporting events in the eastern region of Melbourne for the benefit of co-educational member school students. EISM currently provides for weekly competition in the following sports for students in years 7 to 12:

Badminton	Basketball	Cricket	Football	Hockey
Indoor cricket	Indoor soccer	Netball	Soccer	Softball
Table Tennis	Tennis	Touch football	Ultimate Frisbee	Volleyball

In addition, whole of EISM events in athletics, swimming and cross country are conducted.

EISM is an inclusive association and supports and encourages the participation of students in our sporting program and events. At EISM we recognise that participation in sport provides our students with physical, social and mental health benefits. It is therefore important that we ensure that students can participate regardless of their sex or gender identity.

In June 2019 the Australian Human Rights Commission released “Guidelines for the inclusion of transgender and gender diverse people in sport”. These Guidelines provide EISM and its member schools with a clear explanation of how to ensure that our transgender and gender diverse students can participate in our programs and events as well as outlining our legal requirements.

COMMONLY USED TERMS

EISM recognises that terminology can have an impact on a student's identity, wellbeing and dignity. Using the right language respects individuality and recognises transgender and gender diverse people in our community.

- **Gender Identity** – is defined in the Sex Discrimination Act 1984 (Cth) (the Act) as the gender related to the identity, appearance or mannerisms or other gender related characteristics of a person, with or without regard to the person's designated sex at birth. For example, a person's birth certificate may include a marker which indicates that the persons designated sex is female when that person identifies as a man (in other words, their gender identity is that of a man).
- **Gender diverse** – is an umbrella term that includes all the different ways gender can be experienced and perceived – it can include - trans/transgender, genderqueer, non-binary, gender non-conforming and many more.
- **Intersex status** – this means that a person has physical, hormonal or genetic features that are neither wholly female or wholly male; a combination of female or male or neither female or male.
- **LGBTQI** – is an acronym for lesbian, gay, bisexual, transgender, queer/questioning, and intersex.
- **Non-binary** – is a term used to describe a person who does not identify exclusively as either a man or a woman.
- **Pronouns** – these are the grammatical means of referring to a person. Trans and gender diverse people may prefer to use gender neutral pronouns such as they/them/their.
- **Transgender** – is a general term used to describe a person whose gender identity is different from the sex they were assigned at birth. Being transgender is about how a person describes their own gender.
- **Transition** – transition or affirmation refers to the social, medical or legal steps that a transgender person takes to affirm their identity.

LEGAL FRAMEWORK

It is against the law to discriminate against someone because of their gender identity.

EISM must operate with the legal requirements of federal *Sex Discrimination Act 1984 (Cth)* and the *Equal Opportunity Act 2010 (Vic)*.

At EISM we have an obligation to ensure that people are treated fairly when playing, coaching or umpiring at our sporting events.

Under the *Equal Opportunity Act 2010 (Vic)*, EISM has a positive duty, as far as practicable, to eliminate discrimination, sexual harassment and victimisation. Clear policies, codes of conduct and behaviours at all levels will ensure we provide all students with inclusive sport. In 2017 the Victorian Equal Opportunity & Equal Rights

Commissioner issued the “Guideline: Trans and gender diverse inclusion in sport.” This guideline is aimed at sporting organisations and staff and is designed to explain the legal framework.

While it is against the law to discriminate against another person on the basis of their gender identity in sport an **exception** may apply.

Exception – single sex competitions

There are exceptions in the *Equal Opportunity Act 2010 (Vic)* relating to single-sex competitions which mean that students of a particular sex or gender identity can be lawfully excluded in some circumstances.

The exceptions that only apply to *single-sex competitions*. It is still unlawful to discriminate against that person in most other areas related to sport – such as non-competitive sport, employment, appointment as a coach or umpire, or the use of toilets, change rooms and other facilities.

There are three exceptions in the Act which allow EISM to run single-sex competitions in particular circumstances:

1. Exclusion of people of one sex or with a gender identity from participating in a competitive sporting activity in which the **strength, stamina or physique** of players is relevant.¹
2. Exclusion of people of one sex from participating in a competitive sporting activity if participation in the activity is necessary for progression to an elite level competition and the exclusion is necessary to enable participants to progress to national or international elite level competition.²
3. Exclusion or restriction of one sex from participating in a competitive sporting activity is intended to facilitate the participation of people of a particular sex, and this is a reasonable approach.³

These exceptions do not apply to sporting activities for children under the age of 12 years.⁴

In 2018 EISM adopted a policy which applied the following exceptions to certain sporting categories. It should be noted that the strength, stamina or physique exception is the only sport exception under the Sex Discrimination Act.

i. Exception – strength, stamina or physique

Sporting clubs may run single-sex competitions where the strength, stamina or physique of the competitors is relevant to the outcome (for example, a male swimmer may have a competitive advantage competing in an exclusively female swimming race). This exception means that trans and gender diverse people may be excluded from single-sex competitions in some circumstances.

However, the skill and competition level of the activities should be carefully considered when deciding whether it is appropriate to use this exception (see section 1.5). The relevance of strength, stamina or physique will also depend on the sport.

¹ *Equal Opportunity Act 2010 (Vic)* s 72 (1).

² *Equal Opportunity Act 2010 (Vic)* s 72 (1A) (a).

³ *Equal Opportunity Act 2010 (Vic)* s 72 (1B).

⁴ *Equal Opportunity Act 2010 (Vic)* s 72(3).

Past case law has determined they are relevant for callisthenics⁵ but not lawn bowls.⁶

EISM recognises that the purpose of this exception is to ensure that students do not have an unfair advantage in single-sex competitions. Before applying this exception the following will be considered:

1. Is there any evidence which supports the relevance of strength, stamina and physique to the specific sport?
2. How would a trans or gender diverse student's participation lead to an unfair advantage?
3. What would be the impact of excluding the student from participation?
4. By participating in the specific sport is there a risk to the student or others in the competition?

TRANS AND GENDER DIVERSE PARTICIPATION

EISM will support the participation of trans and gender diverse students in single sex competitions as appropriate to their identified gender. Communication on Non Binary participation will be led by the individual player and their parents/guardians with a focus on which team they consider the most appropriate to join.

EISM recognises that Testosterone can increase a person's strength, but sport is about more than just strength. Fitness, training, age and experience often play a bigger part in making someone a good player. Recent studies have shown no significant link between testosterone and performance for elite female athletes.⁷

EISM continues to develop options for gender inclusive sport. Badminton, Ultimate Frisbee, Table Tennis and Netball are now offered as gender inclusive in weekly competitions. Currently under consideration are tennis, volleyball, and touch rugby. These will be reviewed annually based on student demand.

EISM has developed guidelines which have determined where an exception to participation can be made. The safety of all students must be considered. The issue driving the exception will be the strength and physique of the student.

The following categories of sport are considered a possible risk for trans and gender diverse students as they may involve collision during sporting contests: Basketball, Football, Hockey, Soccer and Touch rugby.

⁵ See, for example, *McQueen v Callisthenics Victoria Inc* [2010] VCAT 1736.

⁶ See, for example, *Royal Victorian Bowls Association Inc* [2008] VCAT 2415. In later cases involving lawn bowling, exemptions were granted under the 1995 Equal Opportunity Act's equivalent to section 89 of the *Equal Opportunity Act 2010* (Vic), on the basis that certain events were part of what was described as the elite pathway leading to national and international championships.

⁷ See, for example, S Bermon et al, 'Serum androgen levels in elite female athletes' (2014) 99(11) *The Journal of Clinical Endocrinology & Metabolism*, 4328.

Procedures

Trans and gender diverse students are the primary responsibility of the home school. EISM expects that the Head of School/Director of Sport has:

1. Met with the student and their parents/guardians to discuss their sporting expectations and preferences for participation in EISM competitions. At this stage issues relating to safety and risk for the student will be considered and all parties will agree on the best sporting options for the student.
2. If a student is seeking to compete in a sport considered high risk then this will be raised with the Principal for formal advice to EISM.
3. EISM will brief the opposition school Principal for agreement.

At all times the privacy of the student must be respected and only relevant information will be shared. The student and their parents/guardians must approve all communications.

Before making a decision to exclude a student on the basis of their gender identity from participating in a competitive school sporting activity, or modifying participation in such an activity, the home school will consult:

1. The student and their parents/guardians and provide them with the opportunity to have input into any decision to exclude the student from a competitive sporting activity;
2. On how best to respect the dignity of the student;
3. The student to ensure that their privacy is protected.

Information about a student's gender identity is personal information of a sensitive nature and should not be disclosed to the wider school community without the consent of the student and their parents/guardians.

Consideration of applying exceptional circumstances will be done on a case by case basis by the EISM Principals of the respective schools involved, and with information and recommendations from the Directors/Heads of Sport.

The school's reasoning and decision-making process would also need to be documented in case the decision to exclude (or include) a transgender or gender diverse student were challenged. Importantly, where an exception does arise, there is no obligation to exclude. That is, while lawfully a school may exclude the student, they also can lawfully include the student, provided it is safe to do so. It is always preferable to include students and encourage their participation