

Policy and standard model for collecting and reporting on staff gender information in the Victorian Public Sector

Overview: policy position

All Victorian Public Sector (VPS) organisations will:

- a. collect self-identified gender information rather than biological sex information from staff;
- b. only collect gender information from staff where this is needed for a specific purpose, which will benefit staff in some way; and
- c. recognise and report on non-binary gender, and recognise changes in gender over time.

VPS organisations will use the VPS standard model for collecting staff gender information unless there is a specific reason to use a different model, which has a clear benefit and is well-communicated to staff.

A. Obligation to recognise non-binary gender in the VPS

VPS organisations have legislative obligations that require them to provide safe and inclusive work environments for all staff. This includes obligations to act compatibly with human rights,¹ prevent unlawful discrimination,² ensure employees are treated fairly and reasonably,³ and provide and maintain a safe working environment.⁴

In order to meet these obligations VPS organisations are required to recognise that staff have diverse gender identities. The sector must ensure that gender diverse staff are recognised, feel safe and are treated equally in the workplace. An important element of this is accurate collection and recording of staff gender information.

B. Collecting staff gender information only if necessary

When collecting any personal information from staff, it is important to first consider the threshold questions of whether that information is actually needed for a specific purpose, and whether that purpose will benefit staff in some way.

The Victorian Charter of Human Rights and Responsibilities protects the right to privacy and reputation.⁵ In some instances, collecting an individual's gender information can be seen to limit the right to privacy. Rights under the Charter can only be limited if a limitation is justified (i.e. has a benefit that outweighs the negative impact of the limitation), and there are no other less restrictive options to achieve the purpose the limitation seeks to achieve.⁶

Examples of important reasons for collecting gender information include to:

¹ *Charter of Human Rights and Responsibilities Act 2006*

² *Equal Opportunity Act 2010*

³ *Public Administration Act 2004*, section 8(b)

⁴ *Occupational Health and Safety Act 2004*

⁵ *Charter of Human Rights and Responsibilities Act 2006*, section 13

⁶ *Charter of Human Rights and Responsibilities Act 2006*, section 7

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

Gender information is currently often collected as a result of longstanding practice or convention, but is not actually required. If there is no clear need for gender information, it should not be collected.

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

C. Collecting gender information rather than sex information

VPS organisations generally do not have a legitimate need for information about the biological sex characteristics of their employees. Accordingly, VPS organisations should collect self-identified gender identity information from staff.

Exceptions should be made to allow collection of biological sex information only where there is a clear benefit which is well-communicated to staff, and which outweighs the negative impact of limiting the right to privacy. This policy aligns with the Information Privacy Principles under the *Privacy and Data Protection Act 2014*.⁷

D. Collecting information about transgender status or intersex status

Transgender people and people with intersex variations continue to face discrimination and harassment in the workplace. It can therefore be confronting to ask a person to provide information on their transgender or intersex status, and individuals may not feel safe providing this information. As such, this information should only be collected if the information will be used to benefit transgender or intersex staff, e.g. to measure whether transgender people experience more discrimination than the wider workforce.

If it is necessary to collect information on transgender or intersex status, the reason should be clearly communicated, and the information must only be used for this purpose. In addition, questions about transgender or intersex status should be asked separately to questions about gender identity (rather than incorporated into those questions).

E. Examples of current issues with collection of gender information in the VPS

VPS organisations must ensure that questions about staff gender are asked in a way that is clear, respectful and inclusive. Currently, many human resources forms or surveys collecting gender information do not provide adequate options for all respondents. For example, at DPC when staff first join the organisation, their

⁷ Under these principles, VPS organisations must not collect personal information unless the information is necessary for their functions or activities. If an organisation is collecting personal information from an individual, it must ensure the individual is aware why the information is being collected, and how it will be used. See *Privacy and Data Protection Act 2014*, Schedule 1.

forms offer only two categories to describe gender - 'female' and 'male'. If a new staff member does not respond, their gender is recorded as 'unknown' in the payroll system.

For new staff who do not fit in either of these categories, this is a clear statement that the organisation does not recognise their identity, and may raise concerns that the organisation will not be safe or inclusive.

When organisations do not offer a non-binary gender option, they miss an opportunity to signal to gender diverse employees that their identities are valued and respected, and to signal to staff more broadly that the organisation promotes inclusive attitudes and behaviours.

F. Approach to improving collection of gender information to include non-binary gender

The VPS standard model for collecting staff gender information, and accompanying guidance, is at [Appendix 1](#). To ensure information is collected respectfully and meets a consistent standard across the VPS, all VPS organisations must adopt the standard model.

The model asks the respondent to describe their gender, and offers answer options 'woman,' 'man,' and 'self-described'. A free text box is offered alongside the self-described category. A free text box is preferred to a tick-box list of gender options for a number of reasons:

- respondents can specify their gender in terms that they are comfortable with and which are meaningful to them;
- the reporting process is streamlined, as all free text responses can be reported on under a single 'self-described' category;
- there is a large number of non-binary gender identities, which are evolving, meaning that a list of options would be both lengthy and unlikely to be inclusive of everyone; and
- the standard model will not require frequent updating to add new gender identity terms to the list.

The terms 'woman' and 'man' are used rather than 'female' and 'male', as the latter terminology refers to sex, whereas 'woman' and 'man' are terms that refer to gender. Use of the terms 'woman' and 'man' is consistent with the intent of the model to collect gender information.

Alongside ensuring policies, procedures, practices and systems adopt the standard model, organisations will need to ensure they are capable of accommodating changes in gender over time. If someone transitions or affirms their gender while they are employed in a public sector workplace, employee records must be able to be readily updated to accurately reflect the person's affirmed gender.

This policy and model must be implemented by public service bodies by June 2019, and public entities by June 2021. This includes adoption of the model in human resources policies, procedures, information systems (including employee records), job and board application forms and other relevant internal forms and surveys, including employee opinion surveys such as the People Matter Survey.

G. Current issues with reporting on gender in annual reports

It is mandatory for VPS agencies to report publicly in annual reports on number of staff by gender. In doing so, they may report on a non-binary gender category, however this is optional.

This requirement is set out in Financial Reporting Directions (FRDs). FRD 15D prescribes executive officer disclosures that must be included in departments' annual report of operations. This includes disclosures of executive officer numbers for a department's portfolio entities. FRD 29B prescribes workforce data disclosures for public service bodies that employ staff under Part 3 of the *Public Administration Act 2004*.

FRD 22H includes requirements on workforce data disclosures for public entities. It does not require reporting on number of staff by gender. However, many public entities use FRD29B to guide the content they include in their reporting.

Any changes to the FRDs require Minister for Finance approval. The changes to the FRDs that enable reporting on diverse gender for all staff were implemented for the 2016-17 financial year. The updated FRDs were published on DTF's website in May 2017. However, no guidance has been provided on how the information should be collected and reported. DPC is working with DTF to ensure that additional guidance on collecting non-binary gender information is included in the 2017-18 Model Report for Victorian Government Departments, and is published alongside the FRDs on DTF's website.

Since it is mandatory to report on gender, it should also be mandatory to include a non-binary gender category in reports, provided confidentiality requirements are met.

H. Approach to improving reporting on gender in annual reports

DPC will work with DTF to seek Minister of Finance approval to update FRDs 15D and 29B to make gender reporting in line with the standard model mandatory for all public service bodies from 2019-20.

DPC will also work with DTF to determine whether updating FRD 22H to mandate reporting on staff gender would be an effective way to ensure public sector entities are adopting the standard model.

To be able to report in line with the standard model, as well as updating human resources systems outlined earlier in this paper, organisations may need to do further work e.g. around providing staff opportunities to update their gender identity information if relevant.

Appendix 1

Victorian Public Sector Standard Model for collecting staff gender information

Collecting gender information

The disclosure of gender should include a non-binary gender descriptor. Disclosure of such information should be voluntary and strictly protect privacy and confidentiality.

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

Questions on gender should have the following format:

What is your gender?

- Woman
- Man
- Self-described (please specify): _____

Only one response should be permitted.

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

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

Collecting information about transgender status or intersex status

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

- a) is needed for a specific purpose, and
- b) will be used to benefit transgender or intersex staff.

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

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

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

Further information

For further information on terminology around gender identity and the use of inclusive language in workplaces, refer to the Victorian Government's Inclusive Language Guide, available at <http://www.vic.gov.au/equality/inclusive-language-guide.html>.