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**The Parliament of Victoria**

**LEGISLATIVE ASSEMBLY**

# EDUCATION AND EQUAL OPPORTUNITY AMENDMENT (STUDENT PRIVACY, DIGNITY AND CULTURAL RESPECT) BILL 2026

## EXPLANATORY MEMORANDUM

*(Circulated by authority of Alecomm (Australian Legislative Ethics Commission))*

## General outline

### Purpose

The Bill would keep sex-separated communal toilets, showers and change rooms in Victorian schools, and would require a private alternative for any student who seeks one. It names the present Department rule as the rule that yields.

The Bill is the legislative child of the Victorian Student Privacy, Dignity and Cultural Respect Policy, SPD-P 2026/01. It is an amending Act. It inserts Part 2.2A into the Education and Training Reform Act 2006 and sections 42A and 42B into the Equal Opportunity Act 2010.

### Financial impact

There is no charge and no appropriation. The duty is to take reasonable steps to provide a private facility. Many schools already have a single-user toilet. A disability toilet is not the default solution. The cost, where a cubicle must be added, falls on the school and the Victorian School Building Authority in the ordinary capital program. No figure in this memorandum is a measured building cost.

### Why the present rule is changed

The Department of Education LGBTIQA+ Student Support policy, last updated on the Policy and Advisory Library on 5 December 2023, states that use of toilets, showers and change rooms "should be based on the student's gender identity and whichever facilities they will feel most comfortable using", and that students without a disability should not be required to use disabled toilets. The same policy says that excluding a transgender student from the toilet that matches their gender, because of the sex assigned at birth, may limit or deny that student's access to a benefit.

That guidance decides a communal undressing space by one student's affirmed identity. It does not require a private alternative before another student loses sex-based privacy. The same policy permits a mature-minor social affirmation without parental consent where parents are taken not to agree. Disagreement is not, by itself, a risk of serious harm. The Bill separates those questions.

Section 38 of the Equal Opportunity Act 2010 prohibits an educational authority from denying a student a benefit or subjecting a student to a detriment on a protected attribute, including gender identity. There is no present exception for a sex-separated school toilet. Section 21 of the Sex Discrimination Act 1984 (Cth) is to the same effect at federal level, and a Victorian exception is not a defence to a federal complaint. Clause 5 closes the Victorian gap only. Setting 2.13 of the policy records the Commonwealth companion that is still required.

## Notes on clauses

### Clauses 1 to 3

Purposes, commencement and definitions. The Act commences on the day after Royal Assent. The 12-month period is for the school review, not for the rule. Communal intimate facility is confined to a place where a student may undress, shower, change or attend to a private bodily function. It does not cover a classroom, library or playground.

### Clause 4 — new Part 2.2A

Part 2.2A is inserted after Part 2.2 (Government schools) of the Education and Training Reform Act 2006. Sections 2.2A.2 and 2.2A.3 state the privacy right and permit a sex-separated communal facility. Section 2.2A.4 is the condition of that permission: a private facility, not materially inferior, not a disability toilet by default, and available without a public declaration of a protected attribute. Section 2.2A.5 is the individual plan. A parent is consulted unless disclosure would expose the student to a demonstrable risk of serious harm. Disagreement with a gender identity is not that risk.

Section 2.2A.6 is the compelled-exposure rule. It is about undressing, not about ordinary co-education. Section 2.2A.7 protects a good-faith privacy request from discipline and from being recorded as misconduct. It does not protect bullying. Sections 2.2A.8 and 2.2A.9 require cultural and religious consideration and consultation. They do not confer a veto and do not require a school to endorse a doctrine. Section 2.2A.10 keeps safeguarding on behaviour and evidence.

Section 2.2A.11 covers camps. Section 2.2A.12 makes an inconsistent Department policy of no effect, and requires the Secretary, within 90 days, to withdraw or rewrite the gender-identity toilet sentence and the denial-of-a-benefit example in the LGBTIQA+ Student Support policy. Section 2.2A.13 is the impact assessment and the 60-day consultation. Section 2.2A.14 is the 12-month school review, with no student left without a dignified facility. Section 2.2A.15 preserves anti-bullying and anti-harassment protections.

### Clause 5 — sections 42A and 42B

Section 42A is inserted after section 42 of the Equal Opportunity Act 2010, in the education Division. It is an exception, and it is conditional. Reserving a communal intimate facility by sex is not gender-identity discrimination if reasonable alternative accommodation is provided. The authority cannot rely on the exception while denying access, humiliating the student, offering a materially inferior facility, excluding the student from education, or disclosing confidential information. Accommodating a request not to undress in the presence of a person of the opposite sex is not, of itself, discrimination. Section 42B requires reasonable consideration of a religious or cultural modesty request. It does not require endorsement of the belief.

### Clauses 6 and 7

Clause 6 is an interpretation rule tied to the Charter of Human Rights and Responsibilities Act 2006. Clause 7 is the standard repeal of the amending Act on the first anniversary. The amendments remain in the principal Acts.

## Statement of compatibility

The Bill engages sections 8, 13, 14, 15, 17 and 19 of the Charter of Human Rights and Responsibilities Act 2006: recognition and equality, privacy, freedom of thought, conscience, religion and belief, expression, protection of families and children, and cultural rights.

A limit on access to one communal facility is accompanied by a duty to provide a reasonable private alternative. Recognition of gender identity does not extinguish another student’s privacy, or a religious or cultural interest in modesty. Equality does not require every student to use the identical undressing space. Under section 7(2) of the Charter, the limit is a reasonable limit: it is confined to intimate facilities, it preserves access, it does not segregate ordinary education, and it is subject to consultation and review. Alecomm considers the Bill compatible with the Charter.

## Commonwealth interaction

The Sex Discrimination Act 1984 (Cth), section 21, makes it unlawful for an educational authority to discriminate on the ground of gender identity by denying a benefit or subjecting a student to a detriment. The single-sex school admission exception in section 21(3) does not answer a toilet complaint inside a co-educational school. A Victorian exception cannot be pleaded as a defence to a complaint under the Commonwealth Act. The policy setting is that a companion Commonwealth amendment is required, in the same terms as section 42A, before the rule is secure.

## Sources

Department of Education, LGBTIQA+ Student Support policy, Policy and Advisory Library, last updated 5 December 2023: toilet, shower and change-room sentence; disability-toilet sentence; denial-of-a-benefit example; mature-minor passage. Equal Opportunity Act 2010 (Vic), sections 38 and 42. Education and Training Reform Act 2006 (Vic), Part 2.2. Sex Discrimination Act 1984 (Cth), section 21. Charter of Human Rights and Responsibilities Act 2006 (Vic), sections 7, 8, 13, 14, 15, 17 and 19. Victorian Government multicultural reporting, cited in the starter for more than 300 ancestries, about 290 languages and almost 200 faiths.