

Factsheet *for local government councillors*



*This factsheet has been developed to assist local government councillors understand their responsibilities under anti-discrimination law. It should be read in conjunction with **Anti-Discrimination Guidelines for Local Councils** which provides more detailed information on how anti-discrimination law affects local councils.*

This factsheet has been developed by the Anti-Discrimination Board of NSW in conjunction with the Division of Local Government, Department of Premier and Cabinet.

Anti-discrimination law in NSW

Under the NSW *Anti-Discrimination Act 1977* it is unlawful to discriminate against someone (treat them less favourably than others) or harass them, because of their own or their friends', relatives' or associates':

- sex (including pregnancy and breastfeeding);
- race (including colour, descent, nationality, ethnic and ethno-religious background or national origin);
- age;
- marital or domestic status;
- homosexuality (actual or presumed, male or female);
- disability (physical, intellectual, mental or infection such as HIV, whether past, present, future or presumed);
- transgender status; or
- responsibilities as a carer.

The law applies to:

- the types of services and facilities Council provides and the way in which they are provided;
- council meetings and decisions, including the way councillors treat each other; and
- Council's employment practices.

The *Local Government Act 1993* also has Equal Employment Opportunity provisions which don't cover all the grounds for discrimination but give local councils specific responsibilities to plan for and achieve a diverse workplace.

Your Council's Code of Conduct must also be considered.

Four types of discrimination

Direct discrimination

Direct discrimination happens when assumptions are made about a person just because they belong to a particular group of people (race, sex, age etc).

Indirect discrimination

This is when a written or unwritten requirement, rule or policy is applied to everyone, but unreasonably disadvantages more people from one group compared to another group.

Harassment

Harassment is behaviour that is:

- unwelcome; *and*
- offensive, humiliating or intimidating; *and*
- creates a hostile environment (in the workplace, or in service delivery); *and*
- happens because of sex, pregnancy, breastfeeding, marital or domestic status, race, disability, homosexuality, transgender, age or carer responsibilities.

Sexual harassment is unwelcome:

- advances, or requests for sexual favours; or
- conduct of a sexual nature that a reasonable person would expect to find offensive, humiliating or intimidating.

Vilification

Vilification is a public act, that incites hatred, serious contempt or severe ridicule of a racial group, homosexual people, transgender people or people with HIV/AIDS.

What happens if someone makes a complaint to the Anti-Discrimination Board?

If someone believes they have been unlawfully discriminated against or harassed by Council, councillors or council employees, they can make a complaint to the Anti-Discrimination Board of NSW.

If the Board is satisfied that the complaint falls within its jurisdiction, it will discuss the matter with all parties. The Board is impartial.

The Board will try to 'conciliate' the complaint, that is, help the parties to reach a private and confidential settlement. For information on the types of settlement available see *Anti-Discrimination Guidelines for Local Councils*.

If a complaint can't be conciliated it may be referred to the Equal Opportunity Division of the Administrative Decisions Tribunal. The Tribunal can order up to \$100,000 compensation, plus costs, for each complaint. Tribunal hearings are usually public and can be reported in the media.

Can a complaint about discrimination be made under a council's code of conduct?

Yes. Under the Local Government Act, councils are required to adopt a code of conduct that incorporates the provisions of the *Model Code of Conduct for Local Councils in NSW*. The Model Code of Conduct sets the minimum requirements of conduct for council officials (councillors, members of staff of councils, administrators, members of council committees, conduct reviewers and delegates of council) in carrying out their functions. The Model Code is prescribed by regulation.

Council officials:

- must not do anything that causes, comprises or involves intimidation, harassment or verbal abuse;
- must not act in a way that results in discrimination, disadvantage or adverse treatment in employment or service provision;
- must treat others with respect;
- must consider issues consistently, promptly and fairly and in accordance with established procedures, in a non-discriminatory manner; and
- must not harass, discriminate against, or support others who harass or discriminate against colleagues or members of the public.

The procedures for managing complaints about the conduct of council officials are set out in the Model Code and each council's code of conduct.

Whose legal responsibility is it to make sure the law is followed?

Council's liability

Council must take 'all reasonable steps' to prevent unlawful harassment, discrimination, vilification and/or associated victimisation:

- between elected members;
- between employees;
- from a councillor or councillors to an employee or employees;
- from an employee or employees to a councillor or councillors;
- from Council, a councillor, or a council employee to a member of the public; and

- between members of the public on council premises or at council organised occasions.

Councillors' individual liability

A councillor may also be personally legally liable if:

- they act in a discriminatory, harassing or vilifying way towards another person, including another councillor, when carrying out council duties;
- they encourage, aid or allow the council to do something discriminatory or harassing; or
- they personally intervene in, or make a decision about a complaint without applying the rules of natural justice or due process.

As a councillor how can I make sure that Council follows anti-discrimination law?

Be careful about your own behaviour

Councillors need to be careful how they speak to and behave towards council employees, other councillors and community members. Therefore, don't do anything that is, or could be, interpreted as sexual, sexist, racist, ageist, and so on.

Remember that:

- everyone has different values and opinions about what is inappropriate behaviour;
- every employee has the legal right to a safe, discrimination and harassment free workplace;
- every councillor has the right not to be vilified or harassed; and
- every community member has the right to fair and non-discriminatory services.

Be careful of words used and how they are said. Apologise sincerely if you have unintentionally upset someone.

Don't personally intervene in complaints of discrimination or harassment. Leave such decisions to council employees or to Council as a whole.

Be careful about discussions and decisions made at council meetings

There must be no unlawful vilification, by anyone, during council meetings.

If vilification or abuse occurs, councillors should publicly disassociate themselves and make sure that

it is not repeated. They may need to exclude people from the meeting.

Decisions made at council meetings which are discriminatory can be overturned by the courts. Council may also have to pay compensation including legal costs to those discriminated against.

Employment practices

As a councillor you should ask for regular reports on:

- progress against the EEO management plan;
- the background (age, race, gender, disabilities etc) of staff being appointed, promoted and leaving; and
- the numbers and types of staff discrimination/harassment grievances.

You can get more information about how to make sure Council's employment practices are non-discriminatory from the Anti-Discrimination Board's *Guidelines for Managers and Supervisors*.

Check Council services

Councillors should monitor Council service

provision decisions to make sure they are fair and non-discriminatory.

Councillors may ask for regular reports on:

- progress under the Delivery Program and Operational Plan;
- which groups have been consulted in relation to Council's community engagement strategy; and
- the numbers and types of community member discrimination/harassment complaints.

Keep an eye on service delivery practices

The General Manager should ensure that all employees:

- are directed not to discriminate against, harass or vilify any members of the public;
- follow a written and fair complaints handling procedure; and
- are regularly trained in non-discriminatory service provision.

The General Manager should provide reports to Council on the implementation of these measures.

Anti-Discrimination Board of NSW

www.lawlink.nsw.gov.au/adb

Discrimination enquiries and complaints

Phone (02) 9268 5544

Toll free 1800 670 812

Email enquiries: adbcontact@agd.nsw.gov.au

Email complaints: complaintsadb@agd.nsw.gov.au

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