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22 July 2025

## By email

Project Lead  
Governance Team  
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## Re: Proposed Amendments to the Wellington Shire Council Community Local Law 2021

Thank you for the opportunity to contribute to the community feedback process in relation to the proposed amendments to the Wellington Shire Council Community Local Law 2021 (**Local Law**).

Equality Australia is a national LGBTIQ+ organisation dedicated to improving the well-being and circumstances of LGBTIQ+ people and their families. For nearly a decade, Equality Australia has been extensively involved in contributing to legal and policy reform relating to LGBTIQ+ communities and, most relevantly for this submission, the needs of trans and gender diverse people. Our submission is focused on two of the key changes to the Local Law relevant to our work:

1. A clause about which genders can use certain toilets or change rooms which has been removed because it conflicts with other laws like the *Equal Opportunity Act 2010* (Vic) (**Equal Opportunity Act**); and
2. All gendered pronouns like 'he' or 'she' being updated to inclusive terms like 'they' or 'their' to ensure the Local Law applies to everyone.

In summary, we welcome these changes to ensure that the Local Law extends dignity and respect to transgender and non-binary people in the Wellington Shire Council area and ensure the Local Law's compliance with discrimination laws at both state and federal levels.

### Issue 1: Change regarding access to toilets

The current Local Law includes clause 4.1(6), which provides that:

A person must not enter or use any dressing room, shower or toilet in or at a **municipal facility**, or any passage leading to it, that is inappropriate for their sex unless that person is:

- a. a child under the age of 6 years; or
- b. in the care of a responsible person; or
- c. a person authorised by the **manager**.

The proposed amendments seek to remove this clause in full.

It is important to consider this amendment in light of the fact that for trans people using the bathroom can become a very stressful and even unsafe experience. This can make public outings and connecting with community services difficult if journeys need to be planned to minimise the need to use public

bathroom facilities. This adverse effects of excluding trans people from accessing the bathroom facilities best suited to their gender identity is further evidenced, by analogy, to trans young people having been known to develop urinary tract or kidney infections due to their discomfort in using bathrooms at school.

We welcome the proposed change as it would clarify that transgender and non-binary people in the Wellington Shire Council can lawfully access the toilets best suited to their gender identity, thereby extending to them increased respect and dignity. It is important for local councils to provide community infrastructure that is inclusive and supports people to participate in local communities and access services.

This approach is consistent with the Equal Opportunity Act in relation to protections against discrimination on the basis of gender identity.<sup>1</sup>

While we understand that ‘sex’ should be interpreted to mean the sex that a person identifies with, we consider that the wording of the current provision may lead to uncertainty and the potential reading of the provisions as mandating the use of toilets in accordance with their sex assigned at birth. This may lead to increased scrutiny for any person who has a non-stereotypical gender presentation, whether or not that person is transgender. The provision as drafted may encourage council staff to breach both federal and state discrimination, and human rights laws.

Under section 18(d) of the Equal Opportunity Act, an employer must not discriminate against an employee by subjecting the employee to any other detriment. This could relate to the permitting the councils employees to access the toilets, dressing rooms or showers at the council’s facilities, which correspond with their gender identity.<sup>2</sup>

Additionally, section 44 of the EOA provides that a person must not discriminate against another person:

- By refusing to provide goods or services to the other person; or
- In the terms on which goods or services are provided to the other person; or
- By subjecting the other person to any other detriment in connection with the provision of goods or services to him or her.

We note that “services” under the EOA is defined to include services provided by a municipal council, and this could be construed to include the provision of dressing rooms, showers or toilets.<sup>3</sup>

Further section 15 provides the council must take reasonable and proportionate measures to eliminate certain forms of discrimination under the Equal Opportunity Act, which includes the above.

In addition, the federal *Sex Discrimination Act 1984* (Cth) prohibits discrimination in the areas of work and goods and services based on gender identity.<sup>4</sup>

Furthermore, under section 38 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) provides that it is unlawful for a public authority (which includes local councils<sup>5</sup>) to act in a way that is incompatible with a human right, or in making a decision, to fail to give proper consideration to a relevant human right. Section 8(2) of the Charter provides that “[e]very person has the right to enjoy their human rights without discrimination”, which includes the discrimination on the basis of gender identity.<sup>6</sup>

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<sup>1</sup> *Equal Opportunity Act 2010* (Vic) ss 6(d), 7, 8 and 9.

<sup>2</sup> *Equal Opportunity Act 2010* (Vic) s 18(d).

<sup>3</sup> *Equal Opportunity Act 2010* (Vic) s 4 (definition of “services”)

<sup>4</sup> See *Sex Discrimination Act 1984* (Cth) ss 5B, 14, 22.

<sup>5</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 4(1)(e), *Local Government Act 2020* (Vic) s 3 (definition of ‘Council’).

<sup>6</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 3 (definition of ‘discrimination’); *Equal Opportunity Act 2010* (Cth) pt 2.

Additionally, the provision may be incompatible with the right to privacy (section 13) and the right to freedom of expression (section 15).

## **Issue 2: Use of pronouns in the Local Law**

Equality Australia also supports the proposed updating of gendered pronouns to inclusive terms such as “they” or “their” throughout the Local Law. This change ensures the inclusivity of transgender and non-binary people, that the language of the Local Law does not continue to overlook non-binary people, and adds clarity that the clauses of the Local Law apply to all people in the Wellington Shire Council area. This approach is also consistent with section 4.10.2 of the *Guidelines for Local Laws Manual* which states it is part of the Plain English Policy of the Office of the Chief Parliamentary Counsel to “use gender-neutral language”, as part of broader aim to “ensure that the law achieves its purpose and that it is as easy to read and understand as is possible the circumstances.”<sup>7</sup>

A wide range of legislation in Victoria and also nationwide has already removed gendered language where it is unnecessary or exclusionary.

Thank you for the opportunity to make this submission and we welcome any further questions or discussion.

Warm regards,



Heather Corkhill  
**Legal Director**

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<sup>7</sup> Local Government Victoria, Department of Planning and Community Development (Vic), *Guidelines for Local Laws Manual* (February 2010) 68.