

Community Local Law Amendment 2025

Why now and how did we get here?

Council is currently inviting community feedback on changes to the Wellington Shire Council Community Local Law 2021. One of the proposed changes is to remove Clause 4.1(6).

This clause currently says:

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

- a) child under 6 years old;
- b) being cared for by a responsible person; or
- c) authorised by the facility manager

What has occurred?

Rainbow Local Government had asked Council to consider whether Clause 4.1(6) of its Community Local Law 2021 should be removed because it is discriminatory. Council and Rainbow Local Government recently consented to orders of the Victorian Civil and Administrative Tribunal (VCAT) for an updated Local Law to be presented with a recommendation to remove the clause. Following this request, Council reviewed the operation of this clause of the Local Law and sought its own legal advice.

The position that has been formed is that Clause 4.1(6) of the Local Law is likely to be inconsistent with the local law requirements set out in section 72 of the *Local Government Act 2020* because it:

- indirectly discriminates against people (particularly transgender, non-binary and intersex people) and is therefore inconsistent with the *Equal Opportunity Act 2010*; and
- It limits the right in section 8(3) of the Charter of Human Rights and Responsibilities Act 2006, which gives everyone equal and fair protection under the law without discrimination, and is therefore not consistent with that right.

On this basis, Council has started the formal process to remove Clause 4.1(6) from the Local Law.

Under the *Local Government Act 2020*, any change to a Local Law must involve community engagement. This is required even when the community has limited ability to

influence the outcome, as is the case with this proposed change because keeping the current rule would go against the law.

Council takes community safety very seriously, particularly in spaces such as change rooms and public toilets/bathrooms. Importantly, removing Clause 4.1(6) does not permit individuals to behave in an offensive or threatening way in these spaces. Such conduct is already prohibited under existing laws that apply across all public areas. If anyone has safety concerns, they should contact Victoria Police, and Council staff will do the same.

Further information about Rainbow Local Government is available at rainbowvotes.com.au.

Frequently Asked Questions

Why are you proposing to remove the clause from the existing Local Law?

This proposed change comes after a complaint from the Victorian-based advocacy group Rainbow Local Government and a direction made through the Victorian Civil and Administrative Tribunal (VCAT) process. Council's legal advice has confirmed that the current clause likely goes against the Equal Opportunity Act 2010 and the Charter of Human Rights and Responsibilities Act 2006, and therefore doesn't meet the requirements of the Local Government Act 2020. Making this change would bring Wellington Shire Council's policy in line with 90% of other Councils across Victoria.

Who is Rainbow Local Government?

Rainbow Local Government is a campaign coordinated by the Victorian Pride Lobby, a community-based advocacy group working to achieve equality, social justice, and human rights for LGBTIQ+ Victorians. The campaign promotes inclusion and representation in local councils and is grounded in collaboration with like-minded organisations that share its mission and vision.

What would this change mean?

We do not expect much to change day to day in the use of our facilities. But it does mean those who identify as non-binary, gender diverse or transgender can lawfully use toilets and facilities that they're most comfortable using. Children who are under the care of a parent or care provider will still be able to accompany them into the changeroom which the parent or care provider is using.

Are you proposing to remove male and female signage from toilets and facilities?

No.

What changes would community members expect to see?

We don't expect to see any changes to the way most people use these facilities.

Do other Victorian Councils currently have a clause like the one Council is promising to remove?

Out of the 79 Victorian Councils all have removed the clause except for 5, including Wellington.

Why doesn't Council add a unisex option to its toilets and facilities?

We already do - a great example is the toilet facility located at the Sale Botanic Gardens playground precinct. A lot of our existing older toilets and facilities only have female and male options. However, when we update these facilities, we will include where feasible, all-gender facilities alongside male-only and female only amenities.

Does this mean that anyone can act in an offensive or threatening way in toilets or similar facilities?

No. There are laws in place to protect our community from people behaving in an offensive or threatening way in all public spaces. People should always call the police if they have any safety concerns, and Council staff will do the same.

If this is a legal requirement, why are you seeking community feedback?

Under the *Local Government Act 2020*, any changes to the existing Local Law must include a community engagement process. While these proposed changes are required to comply with legislation and the law, the community can provide feedback for consideration.

It is important for the community to understand that while the legal direction for this change is clear, Council remains committed to listening to our community to help us better understand concerns and guide how we support inclusion and safety in public spaces. This includes exploring the future provision of all-gender facilities alongside male-only and female-only amenities.

The short answer is - we are committed to considering all feedback. However, not all suggestions may be incorporated if they conflict with legal requirements, existing policies or the overall objectives of the Local Law.

Has Council ever had to enforce this clause of the Local Law?

No, never.