

Module 8 — Councillors and the Workplace

Narration script · Huon Valley Candidate and Councillor Knowledge Series

Slide 1 — Councillors and the Workplace (title slide)

Welcome to Module Eight of the Huon Valley Candidate and Councillor Knowledge Series.

This module is about obligations that catch a lot of people by surprise. Work health and safety law and anti-discrimination law both apply to councillors — not as employees, but as people who turn up at a workplace and do work there.

It is short, but the content matters. Getting it wrong exposes you personally, and it exposes the council.

Slide 2 — Before You Begin

This module is designed for prospective candidates, election candidates, councillors and community members.

You may pause at any time.

It covers how work health and safety and anti-discrimination law apply to councillors — what Council owes you, and what you owe everyone else. This is general information, not legal advice.

Slide 3 — Not an Employee. Still at Work.

Start with the point that causes the confusion.

A councillor is not an employee of the Council, and is not covered by workers compensation insurance.

A councillor is also not an officer under the Work Health and Safety Act — that category covers the general manager and other senior decision-makers.

But when a councillor is doing council work, they are at a workplace. And a workplace is broad: the offices, the chambers, a depot, a site visit, anywhere the role takes you.

Under the Act, councillors sit in a category called Other Persons at the Workplace — the same category as a visitor. It carries real obligations.

Slide 4 — Who Is Who Under the Act

It helps to see where everyone sits.

Council is the PCBU — the person conducting a business or undertaking — and carries the primary duty.

The officers are the general manager and senior governance roles: those who make or influence decisions about the organisation as a whole.

Then there is a category the Act calls workers. That is wider than employees — it takes in contractors, labour hire, apprentices and volunteers as well. Everyone in that group is automatically covered by council policies.

Other Persons at the Workplace are councillors, the mayor, the deputy mayor and visitors. They are not automatically covered by council policies. They are still owed duties, and they still owe them.

Slide 5 — What Council and the General Manager Owe You

Council's duty runs in your direction first.

Council must ensure, so far as is reasonably practicable, the health and safety of its employees and contractors, and that others are not put at risk. That means a work environment without risks to health and safety, providing information, training, instruction and supervision, and monitoring conditions at the workplace.

The general manager must exercise due diligence to make sure Council complies. In practice that means building and enforcing the system — culture, accountability, resources and policies. Not doing the implementing personally, but taking an active and inquisitive role.

Two features matter. The duty is proactive: harm does not have to occur, the risk of harm is enough. And there is a hierarchy — eliminate the risk first, minimise it only where elimination is not reasonably practicable.

Slide 6 — Your Duty as an Elected Member

Now your side of it. Section 29 of the Act sets out three things.

Take reasonable care for your own health and safety. Take reasonable care that your acts or omissions do not adversely affect the health and safety of others. And comply, so far as you are reasonably able, with any reasonable instruction given by Council so that Council can meet its own duty.

There is no specific limit on what the second one covers. It applies to any act or omission that adversely affects another person — inappropriate, unreasonable or unlawful behaviour alike.

And here is the wrinkle. Council policies do not automatically bind you the way they bind an employee. You come under them by choosing to. Complying with them anyway is, in most cases, exactly how you meet your duty.

Slide 7 — The Reasonable Care Standard

So what does reasonable care actually mean?

It is proportionate to the control you have. It is a less onerous standard than reasonable practicability, and it takes account of your knowledge, your seniority and your resources. The more control you have, the more care is expected.

The test is put simply. Looking back after the event: did I do what a reasonable person in the same position as me would have done?

The mayor and deputy mayor have almost identical obligations. But their position alone raises the standard. They are expected to model exemplary behaviour, encourage participation in training, and make themselves available to help resolve disputes.

Slide 8 — The Other Act That Applies

Work health and safety is not the only Act in play. The Anti-Discrimination Act 1998 applies to councillors directly.

A councillor must not engage in conduct that is offensive, humiliating, intimidating, insulting or ridiculing on a protected ground, where a reasonable person would have anticipated that effect. Must not engage in sexual harassment. Must not victimise someone for having done something under the Act. Must not incite hatred, serious contempt or severe ridicule. And must not knowingly cause, induce or aid someone else to contravene the Act.

The protected grounds are broad — race, age, sexual orientation, gender, gender identity, marital status, pregnancy, parental status, family responsibility, religious belief and disability, among others.

And note the last line. Council may itself be liable for a councillor's breach if it has not taken reasonable steps. Your conduct is not only your problem.

Slide 9 — What It Looks Like in Practice

All of that sounds abstract. In practice, meeting the duty looks like a fairly ordinary list.

Model the behaviour you expect from others. Take part in training and education actively rather than reluctantly. Use the monitoring and reporting resources Council provides. Do not use complaint processes vexatiously. Fix the small hazards you are able to fix yourself. And consult, cooperate and coordinate with the other duty holders.

That last one used to be good practice. It is now a legal requirement, with penalties of up to one hundred thousand dollars for a council and twenty thousand for an individual.

And a practical warning: it is very difficult to over-communicate a policy. Tribunal and court decisions are full of successful claims resting on the fact that nobody ever explained it.

Slide 10 — When Something Goes Wrong

Three things to understand about how this operates.

First, no complaint is needed to start the clock. Nobody has to lodge anything before Council, the general manager, employees or councillors are obliged to act on a risk they know about.

Second, a withdrawn complaint does not end the duty. If a complaint is made and then withdrawn, every duty holder is still obliged to act.

Third, prevention beats response. Stopping behaviour before it happens counts for more than dealing with it afterwards.

If a matter does need to go somewhere, the paths include Council or a council officer, the Code of Conduct process, WorkSafe Tasmania, the Tasmanian Anti-Discrimination Commission, the Fair Work Commission, or the Magistrates Court. Module Five covers the Code of Conduct process.

Slide 11 — Five Things to Remember

Five things worth remembering.

One. You are not an employee, but when you are doing council work you are at a workplace.

Two. Take reasonable care for yourself, and for the effect of what you do on others.

Three. Follow Council's reasonable instructions, even though its policies do not automatically bind you.

Four. The more seniority and control you have, the higher the standard expected of you.

Five. The duty is proactive. The risk of harm is enough — harm does not have to happen first.