

PRIVACY AND ANTI-DISCRIMINATION BRIEF FOR SELECTION COMMITTEE MEMBERS

PRIVACY

- The *Privacy (Private Sector) Amendment Act 2000 (Cth)* requires Local Government Management Solutions (LGMS) to ensure the privacy of applicants for positions in respect of the collection, usage, disclosure, storage and destruction of their personal information.
- Whilst Councils are exempt from this federal Act, they are covered by state legislation in the form of the *Privacy and Personal Information Act 1998 (NSW)*. This Act however, doesn't include within its definition of personal information, "information or an opinion about an individual's suitability for appointment or employment as a public sector official".
- Councils should be highly persuaded by the intent of the federal legislation and include employment suitability as personal information to be safeguarded in the sense of the federal Act.
- Personal information regarding applicants is defined as including opinion and is collected through applications, interviews, reference checks, psychometric testing etc. A sub-set of personal information is sensitive information which includes information relating to race/ethnicity, marital status, sexual preference, age etc.
- Committee members will need to be aware of how they use, disclose, store and/or destroy any personal information they collect during the recruitment and selection process. Accordingly, LGMS recommends the following:
 1. Copies of applications and notes made at interview should be stored in a secure manner during the process and securely destroyed on completion of the process (hand to Mayor for shredding).
 2. Councillors **MUST NOT** under any circumstances discuss the names and/or details of applicants with any persons outside of the recruitment process.
 3. Reference checks should only be undertaken by LGMS with referees nominated expressly by the applicant. If the committee considers it necessary that LGMS contact non-nominated referees, the applicant should be contacted for consent. Councillors **MUST NOT** under any circumstances conduct their own informal reference checks!
 4. Information collected on applicants should not be used for any purpose other than the primary recruitment purpose.

ANTI-DISCRIMINATION

- The *Anti-Discrimination Act 1977 (NSW)* requires both Local Government Management Solutions (as an employment agent) and Councils (as potential employers) not to illegally discriminate against a person when determining who should be offered employment.

- The Act stipulates that discrimination is illegal when based on the following grounds:
 - Race
 - Sex
 - Transgender
 - Marital status
 - Disability
 - Responsibility as a carer
 - Homosexuality
 - Age

- It is also illegal under the Act to vilify a person or group of persons on the grounds of race, transgender, homosexuality or HIV/AIDS. (Vilify: to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons, by a public act.)

- Discrimination may be allowed in some specific circumstances, such as where a “genuine occupational qualification” may override the grounds of Race or Sex, or where a job is one of two requiring the employment of a married couple. These exceptions do not generally apply in local government executive recruitment!

Note: Councillors should also make themselves aware of their common law duties and responsibilities towards job applicants and the judicial consequences of any breach.

By signing below, I acknowledge my responsibilities under relevant privacy and anti-discrimination legislation as detailed above:

PRINT NAME

DATE

SIGNED