

Guidelines for Local Laws Manual

CONSULTATION DRAFT

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Minister's Foreword



Local Laws are used by Victorian Councils to respond to local contexts and community needs and to achieve strategic policy objectives.

The *Better Practice Local Laws Strategy*, which I released in December 2008, identified a strong need for Councils to apply a more robust and consistent process for Local Law making.

Following consultation with the sector, I am pleased to provide Councils with the consultation draft of the *Guidelines for Local Laws Manual*. The manual is a step-by-step resource that aims to help Councils achieve better practice Local Law making from the preparation phase right through to the revision and amendment of Local Laws.

Better practice Local Laws are a core stream of the Councils Reforming Business initiative being delivered by Local Government Victoria (LGV) in collaboration with the sector's peak bodies. Given the complexity of regulatory reform, the manual introduces the Local Law Community Impact Statement (LLCIS), which serves as a tool for Councils to use throughout the Local Law making process and an explanatory document for community stakeholders.

A Bill currently before Parliament will strengthen the sector's capacity for Local Law making by allowing me, as Minister for Local Government, to make guidelines

and directions to improve the consultation process and accessibility of Local Law materials to businesses and the community. The manual, together with other resources, complements these proposed changes to Local Law provisions in the *Local Government Act 1989*.

I encourage Councils to review the draft manual and participate in the consultative process that will inform the final manual and the other resources.

A handwritten signature in cursive script that reads "Richard Wynne".

Richard Wynne
Minister for Local Government

Guidelines for Local Laws Manual

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About these guidelines resources



Guidelines for Local Laws: Resources for Councils

The *Guidelines for Local Laws Manual* is just one of four Local Laws resources targeted to specific Council audiences.

Local Laws overview

The overview provides a snapshot of key issues for Councillors, CEOs and Executive/General Managers to consider. It provides the necessary context and outlines the benefits of a strategic, consistent and whole-of-Council approach to Local Law regulation.

Manual

The manual is a comprehensive, central reference document to assist Councils with Local Law processes. It provides instructions on matters pertaining to Local Law activities, and it clearly outlines why and when each step should be taken.

Finding what you need in the manual

The manual is divided into four clear parts: preparing for; creating; implementing and enforcing; and reviewing and amending Local Laws. Each part has a table of contents which provides a clear summary of the scope of the manual and commences with a summary diagram showing the major sections and the topics within.

Using the manual

The document can be read as a whole or in parts so that Council can easily access relevant material at the various stages of development and implementation of Local Laws.

The appendices

The appendices contain a summary of the outcomes to be achieved, instructions for achieving the outcome, and suggestions for content of a Local Laws Community Impact Statement. Appendices are intended to be used as 'at a glance' checklists.

Resource Book

The Resource Book supplements the manual by providing additional, detailed information. The manual includes pointers to sections in the Resource Book for Council officers seeking further discussion, examples or case studies of relevant points.

Finding what you need in the Resource Book

For consistency, the section numbering in the Resource Book mirrors that of the manual. The Resource Book also has a table of contents that sets out headings clearly.

Training

Online resources and training workshops will also be available to support Councils in achieving better practice in Local Law making.

About these guidelines resources

Purpose

These resources are intended to assist Councils in Victoria to achieve better practice when considering, making, implementing, enforcing and reviewing their Local Laws.

Better practice will ensure that Local Laws are accessible and clear to the community, reduce the regulatory burden on business and assist Councils in achieving policy outcomes.

Background: The road to better practice

The need for a more robust and consistent process for Local Laws was identified in the *Better Practice Local Laws Strategy* released by the Minister for Local Government in December 2008.

The Strategy responded to a number of key reports that raised concerns about the Local Law regulatory environment, and in particular, it sought to deliver on the National Reform Agenda to reduce regulatory burden. It was the result of extensive consultation undertaken as part of the Councils Reforming Business partnership between the Department of Planning and Community Development (DPCD) through Local Government Victoria (LGV) and the Municipal Association of Victoria (MAV).

The resources seek to address two recommendations presented within the Strategy:

1. Implement robust, consistent and transparent law making processes that reflect good regulatory practice; and
2. Enhance the consistency, structure, accessibility and understanding of Local Laws and associated processes.

Regulation is a significant task that demands serious and proper attention at all stages. Undertaking better practice regulation requires an understanding of multiple

processes and contexts, a significant time investment and a commitment to the principles of engagement and consultation. It also necessitates a consistent 'whole of Council' approach.

For Council and its staff, the Local Law process can be a daunting proposition, sometimes outsourced to external legal teams. These guidelines seek to make such tasks less daunting and less onerous. They fill a void by providing Council with guidance and resources to understand why and how to undertake better practice.

Councils utilise Local Laws to respond to issues and community needs within a local context, and to achieve strategic policy objectives. Local government and its regulatory instruments are also key mechanisms for progressing State Government policy and legislation. These guidelines do not seek to impose rigid uniformity in Local Laws. They recognise local government as a distinct and essential tier of government empowered and best placed to make Local Laws in the interests of Victorian communities. The guidelines do seek to equip Councils to undertake best practice and to achieve a consistent level of performance in Local Law making and enforcement, at the organisational and sector-wide levels.

Characteristics of better practice Local Laws

Local Laws are a form of regulatory instrument. Better practice regulatory instruments in any jurisdiction share certain characteristics or principles.

These characteristics are outlined in the *Victorian Guide to Regulation*, which is the definitive guide to developing regulation in Victoria within the context of the Victorian Government's vision of well-targeted, effective and appropriate regulation.

In summary, better practice regulatory instruments are:

- necessary
- consistent (in language and effect)
- compliant (with the legislation under which they are made and other legislative requirements)
- enforceable
- accessible
- efficient
- accountable
- transparent
- current.

It is envisaged that the *Guidelines for Local Laws Manual* will enable Victorian Councils to develop and deliver Local Laws that incorporate all of these characteristics of better practice.

Each of the characteristics is interrelated. In particular, it is a theme of these guidelines that where Local Laws are transparent and Councils demonstrate accountability, increased consistency will result. Accountability will be demonstrated by open and transparent approaches, including genuine consultation. Accountability will also be demonstrated by ensuring that Local Laws and all related materials are easily accessible at the development stage and during the life of Local Laws.

Accessibility

Improving the accessibility of Local Laws and associated processes is a critical objective of these guidelines. At a minimum, Councils are obliged to display Local Laws on their website. Councils also rely extensively on material that is additional to the actual Local Law – including Council policies and guidelines. Councils in Victoria are unique in being permitted to incorporate this material by reference into Local Laws. Correspondingly, it is a strong theme of these guidelines that better practice (and common

sense) dictate that all associated material should be as accessible as and linked to the Local Law itself.

Further information on better practice to enhance accessibility is outlined in Section 8 'Accessibility and communication'.

How to use the *Guidelines for Local Laws Manual*

Developing and delivering regulation is a complex task that requires a proper amount of time and resourcing. Local Laws are not derived by an officer just sitting down and writing. There are many processes and multiple people who have to be involved in these processes, within the Council organisation, in the wider community and from relevant agencies.

The processes start with identifying the need for a Local Law. They progress to identifying the need to review and re-introduce Local Laws. Taking anything less than the full journey will dilute better practice and compromise the quality and efficacy of the Local Law. The guidelines are arranged to cover the processes in logical sequence, allowing Council to easily utilise the parts or sections that relate to the current place in the sequence.

While the processes in these guidelines are presented in linear or sequential format, there is a high degree of interrelationship.

For example, determining the objectives of a Local Law is an important step in demonstrating that a Local Law is the appropriate mechanism to address a problem. It is also an important component in a risk assessment and is a required step in carrying out a competition test. As a related issue, while a risk assessment is shown as a process, it should not be regarded as a 'stand alone' item. A risk management framework could be used as an umbrella under which to conduct all of the processes

related to the development of Local Laws. Similarly, determining which means of achieving an objective imposes the 'least burden,' as directed by Schedule 8(1)(d) of the *Local Government Act 1989*, will involve the same cost calculation as required by the requirement of the Act Schedule 8(2)(j) to ensure the benefits outweigh the costs.

The guidelines are constructed to indicate what Council must do to achieve legislative compliance, what it should also do to achieve better practice and how it can explain Local Laws matters to its community. Each of these three components is woven together to reflect the consolidated approach that Councils are encouraged to adopt.

1. Outcome: legislative compliance



Throughout the manual the target icon points to advice on compliance with legislative and other requirements. In describing what Councils must achieve, these segments of the manual:

- outline the desired outcome
- list the legislative or other requirement
- discuss issues related to the outcome
- in some instances, provide observations of better or poor practice.

2. Achieving the outcome



This star icon is placed wherever guidance is provided on how to achieve the outcome through better practice. These components build on the better practice approaches already adopted by some Councils. The

objective of these guidelines is to share and facilitate such practices and to embed them as common practice across local government in Victoria.

Demonstrating the outcome



The Local Law Community Impact Statement (LLCIS) serves two functions. It is an internal tool/template for Council to step through the Local Law making process and it is also an explanatory document for the community to understand the nature and content of the Local Law and the processes that Council has worked through to develop it. The tick icon indicates what should be incorporated into the LLCIS.

Local Law Community Impact Statement (LLCIS)

At the State level, regulation is subject to a rigorous regulatory impact process, befitting its impact on regulators, the community and business.

The Regulatory Impact Statement (RIS) process is a critical part of developing regulatory measures because it requires policy makers to consider a range of pertinent matters. The basic purpose of the RIS as outlined in the *Victorian Guide to Regulation* is:

- a process to ensure that regulation is only implemented when there is a justified need
- that only the most efficient forms of regulation are adopted
- that there is an adequate level of public consultation in the development of regulatory measures.

Local government in Victoria seems to be unique among Australian jurisdictions in not being required to undertake a robust process akin to the Regulatory Impact Statement (RIS) as part of the development of subordinate legislation. *The Better Practice Local Laws Strategy* identified this as a deficiency and put forward a strong recommendation for this to be addressed.

*The Strategy proposed the introduction of 'a detailed public statement that could accompany any proposal to make or amend a Local Law and inform the consultation process under section 223 of the Local Government Act 1989. The content of the statement would include a broad range of information such as Council's reasons for seeking to adopt the proposed Local Law, why Council had adopted a particular regulatory approach and why other approaches had been rejected, an indication of the section of the community and business that may be impacted by the law and information about anticipated costs both to those potentially affected by the Local Law and to the Council in administration and enforcement of the law.'*¹

These guidelines develop this concept further by introducing the Local Law Community Impact Statement (LLCIS) as the explanatory document for the community, and integrating its components into the Council's processes of better practice Local Law making.

The LLCIS is envisaged as less onerous than a formal RIS. For those Councils already undertaking good practice, the LLCIS can be developed without much additional effort or imposition. For Councils seeking to improve their Local Law making practices, the LLCIS will become the foundational document to guide the process.

The steps to develop the Local Law will be linked to the stages of developing the LLCIS. By simply following better practice,

the deliberations and documentation should come relatively naturally, as they are complementary.

In practice, when a Council proposes to adopt a Local Law, it usually considers an accompanying agenda item report that will most likely have been prepared by officers or the committee charged with Local Law review. An LLCIS would have a lot in common with this report and will form a significant part of the report or an attachment to it.

By implementing the LLCIS, Councils and their communities can be confident that they are undertaking better practice.

The LLCIS concept is shown schematically on the following page. The steps are referenced throughout this manual. Where it is recommended that a matter be included in an LLCIS, this is indicated in the text by the tick icon.



Appendix 2 provides three LLCIS documents to assist Councils and includes:

- a blank template
- a template with explanation of the type of comment required
- a sample of a completed LLCIS.

¹ *Better Practice Local Laws Strategy*, December 2008, page 18.

Developing the Local Law Community Impact Statement (LLCIS)

Steps in developing a Local Law	Steps to develop a Local Law Community Impact Statement
Identify problem	→ Statement of the nature of the problem
Relate problem to Council objectives	→ Specify the Council objective – confirm it is a Council problem
Develop indicators by which success of Local Law will be measured	→ Set out indicators
Consider alternatives to Local Law	→ State alternatives considered/ why rejected
Identify power to make Local Law	→ Statement of exact provisions Local Law made under
Identify existing legislation that might be used instead	→ State why not satisfactory to solve problem
Other actions until end of process	→ Other actions until end of process
Local Law development process complete	Local Law Community Impact Statement complete

It is envisaged that the Local Law Community Impact Statement would be available with and published with the proposed Local Law and other material in hard copy and on Council's website.

The cumulative contents of a Local Law Community Impact Statement built up by following the process is outlined at Appendix 1.

Conventions adopted in these guidelines

References

References to 'the Act' are references to the *Local Government Act 1989*. In some instances, this Act is referred to in full to avoid confusion with any other Act that is being referenced.

References to 'section' are references to sections of the *Local Government Act 1989*, unless otherwise noted.

References to 'Schedule 8' are references to Schedule 8 of the *Local Government Act 1989*.

Citations

For brevity and clarity, sections of the Act are not generally formally quoted in the legislative manner. For example,;

Section 113(1)(b)(ii) of the Act would be formally quoted as:

'S.113 Permits, licences, fees and charges

1. A Local Law may –
 - (b) Prescribe, regulate or determine the purposes for which and the conditions on which a Council may –

(ii) perform or supply a service; or ...'

Instead, unless it would be misleading, the meaning of the relevant section is stated in the following format:

Section 113(b)(ii) of the Act provides:

A Local Law may prescribe, regulate or determine the purpose for which and the conditions on which a Council may perform or supply a service.