



Better Practice Local Laws Strategy

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Minister's Foreword

I am committed to working with local councils as Minister for Local Government, to identify ways for them to reduce their costs, improve services and cut costs for business.

The Councils Reforming Business initiative, which was launched in partnership with the Municipal Association of Victoria (MAV) in 2007, is the Victorian Government's response to this commitment. One of the aims of this initiative is to reduce the regulatory burden for business by improving the way that local laws are made.

Victoria's 79 councils are empowered under the *Local Government Act 1989* to prepare and enforce local laws. These local laws include regulation of a range of activities carried out by businesses and communities working with councils – from building and construction projects to road side trading.

Through the Better Practice Local Laws Strategy, the Government, working closely with local government can address the need for better practice in local law making to reduce the regulatory burden on businesses and ensure local laws are more accessible to the community.

This Strategy is testimony to a collaborative effort and the consultative process led by Local Government Victoria (LGV) in partnership with the MAV. The Strategy draws extensively on feedback to the initial discussion paper, *Towards Best Practice in Regulatory Local Laws*, and subsequent discussions and feedback on the draft Strategy.

The Strategy is also informed by a series of workshops which were attended by council officers from across Victoria. The views of the Department of Treasury and Finance, the Building Commission, and the Victorian Competition and Efficiency Commission were also considered in the development of the Strategy.

I endorse the Strategy's three chief recommendations, and look forward to working with the MAV and local councils on the implementation of the Better Practice Local Laws Strategy.

I would like to thank the councils and stakeholders who have participated in the development of this Strategy, and the Councils Reforming Business Steering Committee for its guidance and support.

RICHARD WYNNE MP
Minister for Local Government



Introduction

The need for a more robust and consistent process for local laws has been identified in a number of key reports and has been confirmed through consultation with the local government sector and key stakeholders. Through the Councils Reforming Business initiative, the State Government - in partnership with the Municipal Association of Victoria - has committed to reducing the burden on business through best practice local law making. This approach complements the initiatives of both the Commonwealth and State governments to reduce the regulatory burden on business.

The Better Practice Local Laws Strategy (the Strategy) will assist and empower councils to achieve best practice in the making and drafting of local laws. The Strategy recognises that councils need the flexibility to make local laws truly local where appropriate, but that there are genuine benefits for the community in achieving harmony and consistency between local laws, particularly where they impose burdens on business. This Strategy builds on and recognises good practice within the local government sector in Victoria, and aims to achieve a more transparent and consistent process for making local laws without imposing extra burdens on limited council resources.

The Strategy has been developed in the context of a range of other whole-of-government initiatives being developed across State and local government, designed to assist councils in streamlining and integrating their administrative operations and reducing red tape for businesses across the State. This includes initiatives such as EasyBiz, e-Planning and the Reduce the Regulatory Burden in Building and Construction project currently in development.

The Better Practice Local Laws Strategy has been developed following extensive consultation on the discussion paper released in April 2008, *Towards Best Practice in Regulatory Local Laws* and a draft *Best Practice in Regulatory Local Laws Strategy* released in September 2008. The Strategy comprises three complementary recommendations:

Recommendation One: **Implement robust, consistent and transparent local law making processes that reflect good regulatory practice.**

Recommendation Two: **Harmonise the regulatory environment for building and construction activities currently included in council local laws.**

Recommendation Three: **Enhance the consistency, structure and accessibility of local laws and associated processes.**



1. Project and Policy Context

The Better Practice Local Laws Strategy was developed as part of the Victorian Government's broader Councils Reforming Business (CRB) initiative. CRB is a \$4.7 million partnership initiative with the Municipal Association of Victoria (MAV), announced in the 2007-08 State Budget. This initiative is a significant reform program designed to help councils find new and effective ways to reduce their costs, improve services and cut costs for business through:

- smarter procurement practices;
- greater use of shared services;
- reducing costs to business through best practice law making; and
- improving processes for delivering affordable housing.

The Councils Reforming Business initiative is overseen by a Steering Committee comprising representatives from both the State Government and the MAV. It is consistent with the goals of the Council of Australian Governments' (COAG) National Reform Agenda, which aims to improve services and lift the nation's productivity. It also contributes to the Victorian Government's *Reducing the Regulatory Burden* initiative which aims to ensure that regulation is appropriate and that there is no unnecessary burden on businesses and not-for-profit organisations.

As part of the National Reform Agenda, COAG has agreed that all governments will establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulations and avoid unnecessary compliance costs and restrictions on competition. This agreement includes improving the quality of the regulatory impact assessment processes, better measurement of compliance costs, and broadening the scope of regulatory impact assessments across all Australian jurisdictions. Councils Reforming Business complements a number of other State Government projects, each developing opportunities for a service improvement-based approach to reducing regulatory burdens for business and improving administrative efficiencies for councils.

A number of key reports have considered the issue of whether local laws should be made the subject of a regulatory assessment process. In 2002, the Parliamentary Scrutiny of Acts and Regulations Committee (SARC), as part of its report of the *Inquiry into the Subordinate Legislation Act 1994*, recommended that the Minister for Local Government consult with councils about the establishment of a scrutiny process for local laws. In its 2005 report, *Housing Regulation in Victoria: Building better outcomes*, the Victorian Competition and Efficiency Commission (VCEC) recommended that the then Department for Victorian Communities develop a timetable for considering and implementing a scrutiny process for local laws. In its response, the government supported the VCEC's recommendation and undertook to progress a review of the appropriate scrutiny process for local laws.



2. Legislative Context

Local laws can cover a range of topics. In particular, local laws can operate to regulate numerous activities carried out by businesses operating within a particular municipality such as building and construction activity, stock movement, advertisements and signs, road side vending and shopping trolleys.

The *Local Government Act 1989* (“the Act”) gives to each of Victoria’s 79 councils a range of powers and functions including the power to make and enforce local laws. These powers and functions are those that the Parliament of Victoria considers necessary to ensure the peace, order and good government of each municipality. The provision of such power reflects the democratically elected nature of councils and that councils tailor their local laws to what they see as the needs of their municipality.

Part 5 of the Act deals specifically with the local law making process. Section 111 gives councils broad powers to make local laws for and with respect to any act, matter or thing in respect of which the council has a power or function under the Act or any other Act. Local laws are, however, subject to the limitation that they must not be inconsistent with any Act or regulation.

Section 123 of the Act provides that the Governor-in-Council can revoke a local law in whole or in part if the content of the local law represents a substantial breach of the matters specified in Schedule 8 of the Act. Schedule 8 sets out a number of principles with which local laws should comply.

Although the Act gives councils broad powers to make local laws, it provides little or no guidance to councils either as to what constitutes best practice in local law making generally or more particularly in relation to the impact of local laws on business. Schedule 8 of the Act provides some pointers. Clause 1(e) of that Schedule specifies that, wherever appropriate, the local law should set performance standards rather than prescribe detailed requirements as to the manner in which those standards shall be achieved. Clause 2(j) provides that a local law must not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole, outweigh the costs and that the objectives of the local law can only be achieved by restricting competition. The Act is otherwise silent as to the approach councils should adopt in terms of the circumstances and the manner in which they may choose to enact a regulatory local law.

Section 119 of the Act requires councils to give public notice of the intention to make a local law and section 223 specifies a minimum period for consultation on the proposed law. However, the Act otherwise gives councils little guidance as to the most effective way to consult their communities on the content of a proposed local law.



3. Project Methodology

The Better Practice Local Laws Strategy represents Stage Two of the Best Practice in Regulatory Local Laws project.

Stage One of the project involved the release of a discussion paper entitled *Towards Best Practice in Regulatory Local Laws* in April 2008 and the conduct of a series of workshops with interested council officers in May 2008. Six workshops were attended by 90 council officers representing 53 metropolitan and rural councils.

The discussion paper, *Towards Best Practice in Regulatory Local Laws*, suggested that there are three possible approaches to the development of a regulatory impact assessment process for local laws. Each of these options was discussed at the workshops. Further consultation was conducted with other stakeholders including the Department of Treasury and Finance, the Building Commission, and the Victorian Competition and Efficiency Commission.

A draft of the Strategy was released in September 2008 for further consultation.

The final Strategy includes amendments based on the feedback received as part of the consultation process for the draft Strategy.



4. Consultation - Key Findings

The key findings from consultation with local government and key stakeholders are summarised below:

- There was strong support for recommendations for a more consistent and robust local law making process and to enhance the consistency, structure and accessibility of local laws and associated processes.
- There was support for harmonising the regulatory environment for building and construction activity currently included in local laws, however further work is required to determine the best way to achieve this outcome.
- Any changes to the local law making process need to recognise the tensions that exist between councils having sufficient flexibility in making local laws to address local issues, and the benefits that could be achieved by adopting consistent approaches to local law making, or even particular local laws, across the State.
- Many Victorian councils currently lack the resources and expertise to undertake a Regulatory Impact Statement (RIS) process in the form of that mandated by the *Subordinate Legislation Act 1994*. All councils would benefit from ready access to information and tools directed towards achieving good regulatory practice.
- The preparation of 79 separate impact statements would not ensure that the burdens that businesses face due to variations in local laws between municipalities would be fully assessed.
- There was strong support for the 'Statement of Regulatory Intent' approach that takes advantage of work already done within councils by council officers and makes the local law making process more robust and transparent by putting that work into a consistent format across all municipalities.
- There are benefits for the Victorian community, business and councils in harmonising local laws where they have state-wide application.
- There are benefits for the Victorian community, business and councils in developing consistent formats for local laws. This consistency includes both the structure and formatting of local laws and their positioning on council websites with accompanying explanatory material.



5. Key Issues to be Addressed

The key issues that this Strategy addresses have been identified in a number of reports, and through further research and consultation with the local government sector and other stakeholders. The key issues are summarised below:

1. **Variations between the regulatory cultures and methods of councils can impose regulatory burdens, create uncertainty and increase costs to businesses operating in more than one municipality.**

The regulatory culture or method adopted by each council can affect the level of impact a local law can have on business. It is legitimate for councils to respond to community needs and to achieve key strategic policy objectives through the use of local laws. However, poorly considered or poorly designed regulation can place undue burdens on business and the community and impede business growth and development. It can also increase the enforcement costs to council and produce unintended side-effects. In the worst case the costs and risks of regulation can outweigh the benefits.

As the VCEC identified in *Housing Regulation in Victoria: Building better outcomes*, variations in the content of regulatory local laws can result in increased costs and burdens for businesses operating within a particular municipality. These increased costs and burdens can occur where different municipalities regulate the same subject matter in different ways. An example of this can be found in local laws dealing with building and construction. Two municipalities may each include a requirement for site fencing and signage but may set different minimum and maximum allowable dimensions for that fencing and signage, with the result that a builder working in both municipalities will require different equipment for the same purpose.

2. **Local laws are not consistently subjected to a regulatory impact assessment process.**

At present, it is difficult to quantify the impact of regulatory local laws because of the lack of any requirement that a proposed local law be subjected to a regulatory impact assessment process.

At the State Government level, legislative proposals that trigger certain thresholds are subject to a Business Impact Assessment (BIA), which must give specific consideration to impacts on small business, and/or a Regulatory Impact Statement (RIS) as set out in the *Subordinate Legislation Act 1994*. The assessments are also subject to oversight and approval by the VCEC.

The Commonwealth Government has adopted Principles of Good Regulatory Process and introduced Impact Assessment Processes for primary and secondary legislation. It is the role of the Office of Best Practice Regulation (OBPR), established within the Department of Finance and Deregulation, to work with government agencies to ensure that policy proposals do not generate unnecessary regulation.

The existence of these State and Federal approaches and reform programs leave Victorian councils exposed as the only level of government in Victoria which lacks a consistent approach, either in terms of legislative requirements or accepted understanding of good practice, as to how to assess the regulatory impact of laws.

3. Lack of guidance and information for local government on best practice local law making practices.

Local councils make local laws with limited capacity and very little guidance or information on best practice local law making practices.

In contrast, State Government departments and agencies have available to them the detailed information and guidance set out in the *Victorian Guide to Regulation* published by the Department of Treasury and Finance in 2007.

4. Lack of consistency in communicating local laws to the community.

Whether a local law represents best regulatory practice or is well structured and drafted can count for little, however, if it is not easily accessible by those affected by it, or it is subject to other documents, policies and guidelines that are not readily available. Persons seeking entry to a particular business opportunity in a municipality or seeking to engage in certain activities within that municipality need to have the confidence that they can assess all the requirements of the relevant laws in a clearly understandable and reliable form. Currently, the *Local Government Act 1989* is silent as to strategies a council may choose to use to inform and educate the community and stakeholders more generally about the content, administration and enforcement of local laws.

Further, inconsistency in titling and setting out of local laws between councils can make locating the relevant local law more difficult, create confusion and reduce the accessibility of the local law.



6. Better Practice Local Laws Strategy - Recommendations for Action

The objective of this Strategy is to introduce a robust, transparent and consistent local law making process which will reduce the regulatory burden on business and ensure local laws are more accessible to the community. The Strategy comprises three complementary recommendations that will contribute to achieving these objectives and reflect the views of the local government sector and other stakeholders, as obtained through the consultation process. The recommendations build on current best practice in local government in Victoria and are consistent with work being carried out across the State Government.

Through the development and implementation of recommendations in this Strategy, options for further improving the making and application of local laws may be identified. These options will be noted and considered by the State Government as part of a broader and longer term regulatory reform agenda.

Recommendation 1: Implement robust, consistent and transparent local law making practices that reflect good regulatory practice.

Action 1 Develop a good practice manual for use by councils.

The first action in this strategy is the preparation of a good practice manual for use by councils, containing a suite of tools, templates, information and guidelines about good practice in regulatory methods, drafting local laws and consultation practices.

An Implementation Committee including Local Government Victoria (LGV), the MAV and local government representatives would oversee and co-ordinate the development, publication and distribution of the manual in consultation with council staff, other peak bodies, the Victorian Department of Treasury and Finance, the Victorian Department of Justice and the VCEC.

Action 2 Amend the *Local Government Act 1989* to make provision for Ministerial Guidelines relating to local law making.

In conjunction with the manual, amendments would be proposed to Part 5 of the Act to allow the Minister for Local Government to publish guidelines or prescribe matters relating to the making of local laws. Guidelines would be aimed at achieving greater consistency in the approach adopted by councils in formulating, drafting and consulting on proposals for local laws.

The Ministerial Guidelines could include:

- the types of matters appropriate for inclusion in local laws and good practice in drafting local laws;
- the circumstances in which a local law has the potential to impose an appreciable cost or burden on business and alternative means of achieving the objectives of the proposed local law such as self-regulation, voluntary codes of conduct or the setting of performance standards;
- assessing the potential costs to council in implementing and enforcing the proposed local law;
- best practice in consulting on proposed local laws including guidelines about procedures to be adopted to ensure that:
 - a council preparing or considering a proposed local law identifies and consults any other council, government department or agency relevant to the subject matter of the proposed local law; and
 - proper consultation takes place with any sector of business or the public which may be affected by the proposed local law;
- the application, adoption or incorporation of matters in a local law and the use of Policies and Procedures Manuals in conjunction with local laws;
- the style and language to be used in drafting local laws and on good drafting practice, clarity and accessibility in relation to local laws including matters such as:
 - titling and ordering of local laws;
 - selection and use of definitions;
 - inclusion of appeal and review provisions;
 - exercise of discretions and the giving of reasons for decisions;

- the proper construction of offences and setting of penalties to assist in the administration and enforcement of local laws; and
- the information required for matters and scope of permits issued by councils.

The guidelines would also assist councils to develop a Statement of Regulatory Intent to accompany and inform consultation on local law proposals. The guidelines would do this by providing tools designed to assist councils in the preparation of such a Statement. This would include templates and formats for setting out:

- the objectives of a proposed local law;
- why the council believes that the local law is needed and how council went about making the decision that the law was needed, including evidence on which the decision is based;
- analysis of alternative approaches considered;
- the regulatory approach adopted by the proposed local law;
- the potential impact on affected groups, particularly small business, in meeting the requirements of the proposed local law;
- the relationship of the proposed local law to the council plan, strategic objectives and with state and federal laws, other local laws and planning schemes;
- strategic indicators by which the effectiveness of the local law will be assessed; and
- how affected groups will be informed of the impact of the proposed local law including any planned education and publicity campaigns.

The proposed use of guidelines would recognise that not all councils have equal resources to ensure immediate compliance with all aspects of the guidelines. It is also proposed that the extent of compliance with the guidelines would be subject to review after three years, when the Minister could give consideration as to whether it was appropriate to regulate or continue to rely on guidelines.

Action 3 Amend the *Local Government Act 1989* making provision for Credentialed Local Laws.

Proposed amendments to the Act will make provision for the Minister for Local Government to endorse local laws as Credentialed Local Laws once they have been through the regulatory assessment process. This Ministerial endorsement would then enable councils to adopt the local law without further processes, such as compliance with the Ministerial guidelines above.

Councils would be able to adopt the Credentialed Local Law with the confidence that it had been through an appropriate regulatory assessment process and is consistent across the State.

Action 4 Education and training of council officers.

The publication and distribution of the good practice manual and amendments to the Act would be supported by information and training for council officers.

Recommendation 2: Harmonise the regulatory environment for building and construction activities currently included in local laws.

Action 1 Prepare and develop options to harmonise the regulatory environment for building and construction activities currently included in local laws.

This action includes the preparation and development of options for harmonising building and construction issues currently included in local laws. This may include proposals to develop a Credentialed Local Law, code of practice, Ministerial guidelines or recommendations to amend state legislation. Various options may be recommended to address the range of issues currently included in the relevant local laws.

An Implementation Committee will be convened comprising LGV, MAV and other peak bodies, Department of Innovation, Industry and Regional Development (DIIRD), Building Commission Victoria and council officers.

LGV and MAV in consultation with the Implementation Committee will:

- Consider and articulate the various aims of the regulation of building sites;
- Clarify the role of local government, State Government and other agencies with responsibilities in the area of regulation of building and construction sites;
- Identify matters not covered by other legislation;
- Consider whether there are any significant differences in regulation as they relate to commercial and domestic building sites or between metropolitan, rural and interface councils; and
- Develop options for harmonising the regulation of building and construction sites by councils, that are aimed at:
 - Reducing the regulatory burden to the building and construction industry by creating transparent, consistent and streamlined regulations;
 - Improving consistency, clarity, and certainty of role and enforcement responsibilities of each relevant level of government; and
 - Achieving consistency in the administration and enforcement by councils of the regulations and associated processes.

The Implementation Committee would consult stakeholders as necessary. These may include:

- Australian Building Code Board;
- Consumer Affairs Victoria;
- Department of Treasury and Finance;
- Environment Protection Authority;
- Local Government Professionals Inc. (LGPro);
- Victorian Local Governance Association;
- Master Builders Association, Housing Industry Association, Urban Development Institute of Australia and other industry bodies and stakeholders; and
- Councils that are representative of the different operating environments across Victoria.

Recommendation 3: Enhance the consistency, structure and accessibility of local laws and associated processes.

Action 1 Develop protocols for placing local laws on council websites.

A consistent protocol for providing and maintaining local law material on council websites will be developed to support the amendments to the Act requiring all local laws to be placed on council websites.

This will enable best practice publishing of local laws. A key consideration in relation to the publication of local law related material on a council website is that the material should provide all necessary compliance information to those who are doing or seeking to do business or undertake an activity within a municipality. Further, it will include ways to bring to the attention of the community any changes in local laws or related standards, policies or guidelines or proposed changes.

Action 2 Develop best practice local law data protocols.

This action includes the development of local law data protocols and associated actions by LGV, in partnership with the MAV and other key stakeholders. These protocols would include guidance as to:

- Electronic access and search-ability of local laws;
- The location of local laws on council websites;
- Consistency in titling and structuring of local laws;
- Linking local laws with associated policies and guidelines and any other incorporated material;
- Use and content of electronic forms and application processes; and
- Consistency with other whole of Victoria data application projects such as EasyBiz.

Action 3 Collaboration across government.

LGV will identify opportunities for collaboration with State departments or agencies on related or overlapping initiatives such as the Department of Innovation, Industry and Regional Development's 'Reducing the Regulatory Burden in Building and Construction' project and the EasyBiz Phase II project.



7. Glossary

Credentialed Local Law	A model local law, subjected to an impact assessment process akin to the RIS process required by the <i>Subordinate Legislation Act 1994</i> . The aim of this process would be to ensure the law was well structured, complemented relevant State government or national laws and regulations, and contained the most appropriate regulatory model to address the problem to which the model local law was directed. The model local law would be assessed using accepted best practice regulatory assessment methods such as those described in the Victorian Guide to Regulation.
Regulatory Impact Statement	The Regulatory Impact Statement (RIS) process is mandated by the <i>Subordinate Legislation Act 1994</i> for statutory rules, regulations and a range of other subordinate instruments made by State Government Ministers, departments and agencies under the authority of Acts of the Victorian Parliament.
Statement of Regulatory intent	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 <i>Local Government Act 1989</i> . The content of the statement would be set out in guidelines issued by the Minister for Local Government but 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.
<i>Towards Best Practice in Regulatory Local Laws</i>	A discussion paper released in April 2008 by the Department of Planning and Community Development is available on the Local Government Victoria website localgovernment.vic.gov.au by following the links to 'Partnerships and projects' and then 'Councils Reforming Business'.
<i>Victorian Guide to Regulation</i>	<i>The Victorian Guide to Regulation</i> revised in April 2007 is the guide to developing regulation in Victoria and is available on the Department of Treasury & Finance website dtf.vic.gov.au by following the links to 'Publications' and then 'Guidelines'.

