

Guidelines for Local Laws Manual

APPROVED



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Minister's Foreword



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.

Over the past 12 months, Local Government Victoria (LGV) has worked closely with Council representatives and peak bodies to address this need and develop comprehensive support for the sector.

I am now pleased to provide Councils with the final *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.

The manual introduces the Local Law Community Impact Statement (LLCIS). The LLCIS seeks to improve consistency, clarity and transparency for those affected by Local Laws, including businesses and community members, while serving as a tool for Councils to use throughout the Local Law making process.

Recent amendments to the *Local Government Act 1989* will further strengthen the sector's capacity for Local Law making. As Minister for Local Government, I will be able to make guidelines and directions to improve the consultation process and accessibility of Local Law materials.

The legislative changes complement the manual and other publications developed for Councils including *An overview for Councillors and Senior Executives* and the *Guidelines for Local Laws Resource Book*. Further support will be provided online and through a series of state-wide training workshops.

Better practice Local Laws are a core stream of the Councils Reforming Business (CRB) initiative being delivered by LGV and the sector. The manual and the other Local Laws resources are intended to directly support collaborative reform and the CRB agenda by improving Council services, reducing costs and cutting red tape for business.

I'd like to take this opportunity to thank the Better Practice Local Laws – Implementation Committee for its expert advice and the Councils and other groups that provided feedback to the draft manual and participated in workshops.

I encourage Councils to strive for better practice Local Laws by making good use of this manual and the other Local Laws resources.

A handwritten signature in dark ink, reading 'Richard Wynne' in a cursive style.

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 Law 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 Schedule 8(2)(j) of the Act 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 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.



The Resource Book supplements this Manual with case studies, discussion points and examples to assist Council officers to understand and consider relevant issues. At various sections in this Manual the resource book icon appears to alert users to the additional information contained in the resource book. The numbering of sections in the Resource Book mirror the corresponding section in the Manual.

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 under which Local Law is made
Identify existing legislation that might be used instead	→ State why existing legislation is 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.

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.

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 ...'

Preparing for Local Laws



Guidelines Part 1: Preparing for Local Laws

This part contains the following sections and contents:

Section	Contents
<p>Understanding the external context of Local Laws</p> <p>↓</p>	<p>→</p> <ul style="list-style-type: none"> • The legislative context • The nature of Local Laws • Other legislation that impacts the making of Local Laws • Reference materials
<p>Establishing Council's context: Researching and developing Local Laws</p> <p>↓</p>	<p>→</p> <ul style="list-style-type: none"> • Identifying the problem • Relating the problem to Council policy objectives: Identifying if it is a Council problem • Measuring success • Considering possible alternatives to a Local Law • Identifying (and staying within) the power to make a Local Law • Identifying existing legislation that might be used instead of a Local Law • Considering if a State Act is more appropriate than a Local Law • Identifying existing legislative provisions that may be overlapped by a Local Law • Identifying planning scheme requirements with which a Local Law may be inconsistent • A risk management approach to Local Laws • Considering and deciding on different Local Law approaches • The least burden/greatest advantage test for Local Laws • Possible restriction of competition by Local Laws
<p>Some mechanisms used in Local Laws</p>	<p>→</p> <ul style="list-style-type: none"> • Application of the Local Law • Enforcement – general considerations • Notices/Cautions/Warnings • Penalties • Infringement notices • Permits and licences • Purposes and conditions of permits, licences, etc. • Fees in relation to permits, etc. • Provisions for imposing fees • Reduction, waiver or refund of fee • Practices in relation to fees – summary • Delegations, authorisations and discretions • Review and appeal provisions

1 Understanding the external context of Local Laws

Section	Outcome
1.1 The legislative context	<p>The authority for Council to make Local Laws comes primarily from the <i>Local Government Act 1989</i>. The relevant provisions are Part 5 and Schedule 8 of the Act.</p> <p>These provisions also place restrictions on what Council may or may not do with regard to Local Laws.</p> <p>Council is expected to comply with all provisions.</p>
1.2 The nature of Local Laws	<p>The <i>Interpretation of Legislation Act 1984</i> applies to 'subordinate instruments'.</p> <p>A Local Law is a 'subordinate instrument' so many provisions of the <i>Interpretation of Legislation Act 1984</i> apply to it.</p> <p>Council needs to understand these provisions.</p> <p>Local Laws can be revoked by the Governor in Council and are subject to Supreme Court appeal.</p>
1.3 Some other legislation enabling or impacting the making of Local Laws	<p>Legislation other than the <i>Local Government Act 1989</i> impacts on Local Laws.</p>
1.4 Reference materials	<p>There is an array of reference material relevant to Local Laws.</p> <p>Most material is not specifically written about Local Laws, but is applicable.</p> <p>Council needs to be familiar with this material.</p>

1.1 The legislative context



- The authority for Council to make Local Laws comes primarily from the *Local Government Act 1989*. The relevant provisions are Part 5 and Schedule 8 of the Act.
- These provisions also place restrictions on what Council may or may not do with regard to Local Laws.
- Council is expected to comply with all provisions.

1.1.1 Issues

The making and enforcement of Local Laws is directed by legislation. The legislation both enables the making of Local Laws and puts parameters around the content and the processes. The main piece of legislation for Victorian Councils is the *Local Government Act 1989*². Other legislation also has provisions under which Council may make Local Laws.

In each case, the enabling legislation may also have directions or restrictions relating to Local Laws.

Some legislation impacts on specific aspects of Local Laws, such as how words and phrases will normally be interpreted. Other legislation contains provisions that must be complied with once an infringement notice is issued.

Finally, a considerable body of legislation needs to be considered in order to comply with the requirement that Local Laws shall not overlap, duplicate, conflict with or be inconsistent with existing legislative provisions.

Copies of legislation from the federal and state jurisdictions are readily available online. References to relevant websites are provided at section 2.8.3, legislation that Local Laws may overlap.

² Throughout these guidelines, the *Local Government Act 1989* is referred to as the Act.

1.1.2 Local Government Act 1989

The Act both enables the making of Local Laws and provides some directions on the content and process. These directions are positive and negative – that is Local Laws ‘may ...’ and Local Laws ‘must not ...’ The provisions are primarily found in Part 5 and Schedule 8 of the Act.

1.1.3 The status of Local Government Act 1989 provisions

Parliament intends that the whole of the Act including Schedule 8 has binding effect.

1.1.4 The provisions

1.1.4.1 Enabling

The enabling provision is contained within section 111(1) of the Act:

A Council may make Local Laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under this or any other Act.

This provision is extremely broad in its wording.

It is tempered, however, by Schedule 8 section 2(e) of the Act:

A Local Law must not embody principles of major substance or controversy or contain any matter which principles or matter should properly be dealt with by an Act and not by subordinate legislation.

The broadness of section 111(1) of the Act is further tempered by directing provisions.

1.1.4.2 Directing

The directing provisions are referenced throughout these guidelines. They are generally treated as representing the minimum acceptable practice – the compliance outcome.

1.2 The nature of Local Laws



- The *Interpretation of Legislation Act 1984* applies to 'subordinate instruments'.
- A Local Law is a 'subordinate instrument' so many provisions of the *Interpretation of Legislation Act 1984* apply to it.
- Council needs to understand these provisions.
- Local Laws can be revoked by the Governor in Council and are subject to Supreme Court appeal.

1.2.1 Local Law a subordinate instrument for purposes of *Interpretation of Legislation Act 1984*

Section 118 of the Act provides that a Local Law is a subordinate instrument for the purposes of the *Interpretation of Legislation Act 1984*. The *Interpretation of Legislation Act 1984* sets out various rules of interpretation and other provisions that are applicable to Local Laws. A person drafting Local Laws needs to be familiar with, and conscious of, these provisions. Where relevant, the provisions of the *Interpretation of Legislation Act 1984* are referred to throughout these guidelines.

1.2.2 Revocation by Governor in Council

While Local Laws are made by the individual Council, they are subject to being revoked by the Governor in Council on the recommendation of the Minister for Local Government.

1.2.2.1 Legislative provision

Section 123:

(1) *A Local Law may be revoked in whole or part by the Governor in Council by an*

Order in Council on the recommendation of the Minister.

(2) *In deciding whether to recommend that a Local Law be revoked, the Minister must consider –*

(a) *whether there is a substantial breach of any of the matters specified in Schedule 8; and*

(b) *whether the contents of the Local Law would be more appropriately contained in a planning scheme; and*

(c) *any other matter the Minister considers to be appropriate.*

(3) *If the Minister is of the opinion that a Local Law substantially breaches clause 2(j)³ of Schedule 8, she or he must not recommend that the Local Law be revoked unless she or he has consulted the Council that made the Local Law about the possible breach.*

1.2.3 Supreme Court appeal

It is also possible for a person to dispute the validity of a Local Law in the Supreme Court.

1.2.3.1 Legislative provision

Section 124:

A person may dispute the validity of a Local Law under section 103 of the Supreme Court Act 1986 as if a Local Law were a by-law.

With these exceptions, Local Laws in Victoria appear to be unique in not being subject to any formal review practice either during or after their making. This puts a heavy onus on Councils to ensure better practice Local Law making.

³ Clause 2(j) of Schedule 8 deals with restriction of competition.

1.3 Other legislation that impacts the making of Local Laws



- Legislation other than the *Local Government Act 1989* impacts on Local Laws.

1.3.1 Issues

Local Laws are developed within the context of other existing legislation. Some of this legislation, such as the *Infringements Act 2006* will impact on specific provisions of a Local Law. Other legislation, such as the *Charter of Human Rights and Responsibilities Act 2006* (Charter), applies to the Local Law as a whole and potentially to each substantive provision.

In developing Local Laws, Councils need to be aware and conscious of this legislation. While the draft Local Law will eventually be subject to review processes, a better practice approach would be mindful of the legislative context from the outset and incorporate relevant requirements and/or principles into the whole Local Law process.

By following this comprehensive approach a review is more likely to confirm the validity of the proposed Local Law rather than expose a need in the latter stages to re-write provisions in the light of impacting legislation.

Any Council personnel who deal with specific legislation with an impact on Local Laws should be involved to an appropriate degree in the development process. Where the impact is potentially significant – as, for example, in the case of the Charter – consideration should be given to including a staff member or other person familiar with the operation of the Charter on any panel or committee involved in developing the Local Law. Consistent input during the development stage will achieve a far better result than a referral to other departments of Council after development of a draft.

1.3.2 Legislation

The following table lists some legislation that impacts on Local Laws and which Councils need to take into account. The listing is by no means exhaustive. (See also section 2.8 of these guidelines 'Identifying existing legislative provisions which may be overlapped by a Local Law'.)

Act	Impact
<i>Charter of Human Rights and Responsibilities Act 2006 (Charter)</i>	Local Laws must be compatible with the rights contained in the Charter and are inoperative to the extent they are not.
<i>Infringements Act 2006</i>	Applies to infringement notices issued under Local Laws and determines form, content and processes including warning and withdrawal.
<i>Interpretation of Legislation Act 1984</i>	Local Laws are a subordinate instrument within the meaning of this Act. Accordingly, the construction of Local Laws is governed by this Act.
<i>Sentencing Act 1991</i>	Section 110 sets the value of a penalty unit in a Local Law at \$100. Penalty units are indexed annually.
<i>Age of Majority Act 1977</i>	Determines the age of majority.
<i>Summary Offences Act 1966</i>	Creates a number of offences related to 'good order' unless permit obtained from Council.
<i>Domestic Animals Act 1994</i>	Enables the making of Local Laws regulating number and location of dogs and cats and for other purposes.
<i>Food Act 1984</i>	Prohibits the making of Local Laws that could be made by way of regulation under the Food Act.
<i>Road Safety Act 1986</i>	Allows for parking fines for leaving a vehicle on the road in limited circumstances.
<i>Building Act 1993</i>	Has specific provision prohibiting Councils from making Local Laws on certain matters related to building.

1.4 Reference materials



- There is an array of reference material relevant to Local Laws.
- Most is not specifically written about Local Laws but is applicable.
- Council needs to be familiar with this material.

1.4.1 Materials that must be referenced

The following publications available online should be regarded as essential reading/viewing:

1.4.1.1 *Infringements Act 2006* – Attorney-General’s Guidelines

The Attorney-General’s Guidelines to the *Infringements Act 2006* apply to Council as an enforcement agency issuing infringement notices. These guidelines must be adhered to.
www.justice.vic.gov.au

1.4.1.2 Human Rights publications

The Victorian Equal Opportunity and Human Rights Commission is responsible for the administration of the Charter of Human Rights, which must be observed in the formulation of Local Laws.
www.humanrightscommission.vic.gov.au

1.4.2 Materials that should be referenced

These guidelines draw heavily on material available to Victorian government agencies. The following in particular are recommended for reference.

1.4.2.1 *Victorian Guide to Regulation*

The revised *Victorian Guide to Regulation* was published by the Department of

Treasury & Finance in April 2007. It deals extensively with concepts such as performance-based approach, consideration of regulatory alternatives and competition policy.
www.vcec.vic.gov.au

1.4.2.2 Guidelines of Parliamentary Counsel

In June 2009 the Office of the Chief Parliamentary Counsel Victoria issued Notes for Guidance for the Preparation of Statutory Rules. Since statutory rules are also subordinate legislation, these notes are a particularly valuable resource for those involved in developing and reviewing Local Laws.
www.ocpc.vic.gov.au

2 Establishing Council's context: Researching & developing Local Laws

Section	Outcome
2.1 Identifying the problem	<ul style="list-style-type: none"> The problem a Local Law seeks to solve needs to be specifically identified and stated either at the beginning of the Local Law or at the beginning of each clause of the Local Law.
2.2 Relating the problem to Council policy objectives: Identifying if it is a Council problem	<ul style="list-style-type: none"> The objective of the proposed Local Law must be within the function and powers of Council. This should be demonstrated by a statement in the Local Law.
2.3 Measuring success	<ul style="list-style-type: none"> Council needs to establish measures for the success of, and the ongoing need for, Local Laws. Council needs to state the frequency with which measurements will be taken.
2.4 Considering possible alternatives to Local Law	<ul style="list-style-type: none"> Council needs to consider whether there is a possible alternative to a Local Law that might better suit the needs of the community.
2.5 Identifying (and staying within) the power to make a Local Law	<ul style="list-style-type: none"> A Local Law must identify the authority on which it is based and remain within that power.
2.6 Identifying existing legislation that might be used instead of a Local Law	<ul style="list-style-type: none"> Council needs to fully explore existing legislation to ensure there are no existing provisions that could be used. Local Laws should not be created unnecessarily.
2.7 Considering if a State Act is more appropriate than a Local Law	<ul style="list-style-type: none"> Council needs to identify any area where Council believes it is inappropriate to use Local Law making power.
2.8 Identifying existing legislative provisions that may be overlapped by a Local Law	<ul style="list-style-type: none"> Council needs to take steps to ensure that a Local Law does not duplicate, overlap, contradict or is inconsistent with existing legislation.
2.9 Identifying planning scheme requirements with which a Local Law may be inconsistent	<ul style="list-style-type: none"> Council must ensure that its Local Law does not duplicate or is inconsistent with any planning scheme.
2.10 A risk management approach to Local Laws	<ul style="list-style-type: none"> A proposal to introduce a Local Law is an ideal opportunity to use a risk management approach to prioritise the risks sought to be addressed.

2.11	Considering and deciding on different Local Law approaches	<ul style="list-style-type: none"> • Council needs to consider different regulatory approaches and be clear about which approach it is adopting. • Council should be satisfied that the regulatory approach adopted is consistent throughout all materials relied on by Council – including material incorporated by reference.
2.12	The least burden / greatest advantage test for Local Laws	<ul style="list-style-type: none"> • Council must ensure that the regulatory approach it adopts involves the least burden or the greatest advantage to its community.
2.13	Possible restriction of competition by Local Laws	<ul style="list-style-type: none"> • Council's Local Laws must not restrict competition unless Council can demonstrate: <ul style="list-style-type: none"> – the benefits outweigh the costs; and – there is no other way of achieving the objective. • This also applies to policies and guidelines supporting Local Laws.

2.1 Identifying the problem



- The problem a Local Law seeks to solve needs to be specifically identified and stated either at the beginning of the Local Law or at the beginning of each clause of the Local Law.

understanding of the nature of the problem and how it would be addressed by the Local Law.



- Council should identify exactly why it believes the Local Law is needed (or the particular clause is needed) including describing how Council went about arriving at that decision and the evidence on which the decision was based.
- Consideration of the following issues will clarify the problem:
 - Who or what causes the problem, that is, the source.
 - Who is impacted by the problem and what is the nature of the problem?
 - Who bears the cost of the problem? Is it Council on behalf of the community?
 - How extensive/current/permanent/entrenched is the problem? Is it minor, anticipated or temporary?
 - What is the evidence and is the evidence objective or anecdotal?

2.1.1 Issues

Local Laws are made by Councils in response to a perceived problem. The Local Law is intended to mitigate or eliminate this problem.

As outlined in the *Victorian Guide to Regulation*, unless the source, nature and scale of the problem are fully understood, the proposed regulatory solution is likely to be inadequate, inappropriate and/or inefficient.

The Act does not specifically require Council to state what problem the Local Law is intended to address other than by reference to the purposes and general purport, though common sense dictates that Council should be able to do so. Better practice would be for Council to clearly identify and articulate its



- A Local Law Community Impact Statement should set out the problem or problems that each substantive provision (or group of provisions) of the Local Law is intended to address.
- The source, nature, impact, severity and cost of the problem(s) should be articulated where possible.



- Council needs to demonstrate the linkage between the objective of the Local Law and Council's policy objectives.
- The objectives might be in the Council Plan or similar document that sets out strategic objectives.
- Council should consider in what way the Local Law provision will assist Council to achieve its policy objectives.
- Council should evaluate if the Local Law will remove an impediment to the achievement of objectives.
- A rigorous examination will contribute to the demonstration that there is a genuine need for regulation and that a Local Law is the appropriate action.

2.2 Relating the problem to Council policy objectives: Identifying if it is a Council problem



- The objective of the proposed Local Law must be within the function and powers of Council. This should be demonstrated by a statement in the Local Law.



- The Local Law Community Impact Statement should include a statement demonstrating the linkage between the objective of the Local Law provisions and Council's policy objectives. The statement would identify:
 - where Council's policy objectives are set out and may be read
 - how the Local Law would assist Council to achieve its policy objectives or remove an impediment to achievement of its policy objectives.

2.2.1 Legislative provisions

Schedule 8 section 1(b)(i) provides:

A Local Law must in the case of a principal⁴ Local Law, clearly set out as part of its text the objectives of the Local Law.

Schedule 8 section 1(c) provides:

A Local Law must – be directed towards those objectives and not go beyond them.

2.2.2 Issues

The fact that a Council:

- has the power to make a Local Law; and
 - may be able to state the objective of the Local Law;
- does not dictate that it should necessarily make a Local Law or that a Local Law is the best method of addressing the problem.

2.3 Measuring success



- Council needs to establish measures for the success of, and the ongoing need for, Local Laws.
- Council needs to state the frequency with which measurements will be taken.

⁴ 'principal Local Law' is not defined in the Act but is presumably intended to refer to a substantive Local Law as distinct from one making an amendment or correction.

2.3.1 Issues

Council should have a clear idea of how it proposes to measure the success of individual provisions of the Local Law.

The ongoing need for and efficacy of a Local Law needs to be tracked. The problem that a Local Law is intended to address may not remain static over time. It may increase, in which case the Local Law provisions may prove to be inadequate. Alternatively, the problem may decline of its own accord, in which case the Local Law will no longer be necessary. Accordingly, the resources devoted to it such as inspections or audits, or the issuing of permits may also become unnecessary.

Council will also need to commit to how frequently these measurements will be undertaken and reported back to the community.



- Council should set out clear indicators by which it will measure the ongoing need for Local Laws and the success of Local Laws.
- A commitment should be made to the frequency with which measurements will be applied. The frequency may be variable depending on the importance/ impact of the Local Law.
- If the problem is temporary in nature but Council feels it still warrants a Local Law, the measurement period will obviously be shorter.
- The measurement period adopted should generally correspond with a review of the Local Law.



- The Local Law Community Impact Statement should include a statement about the indicators Council proposes to adopt to measure the success and ongoing need for Local Laws.
- The frequency of measurement (and review of the Local Law) should be set out in the Statement.

2.4 Considering possible alternatives to a Local Law



- Council needs to consider whether there is a possible alternative to a Local Law that might better suit the needs of the community.

2.4.1 Issues

Local Laws are one means of addressing a problem. They carry with them a compliance burden for business and the community. They also have costs for Council. Council should consider alternatives before introducing additional Local Laws. This consideration should be documented.

Appendix B of the *Victorian Guide to Regulation* sets out in some detail alternatives to explicit additional regulation.

Council should consider a range of practical, legal and educative approaches. For example blocking access to problem areas or improving lighting might address vandalism issues.



- Council should consider:
 - self-regulation – for example by voluntary codes of practice
 - quasi-regulation and co-regulation
 - increased enforcement of existing provisions
 - extending the coverage of existing legislation
 - rewarding good behaviour (the star rating award system for food premises is a good example)
 - ‘negative licensing’ which involves removing repeat or serious offenders from participation rather than imposing the costs and control of licensing on all participants from the outset
 - public information and education campaigns
 - information disclosure
 - market-based instruments such as subsidies.
- Consultation with affected groups (See sections 5.2 and 5.3) will generally identify the advantages and disadvantages flowing from each course of action.
- Council should document any attempt it has made to consider or introduce alternatives and indicate why these have not been successful or have not been adopted as the preferred option.



- A statement identifying the alternatives to a new Local Law that were considered by Council should be included in a Local Law Community Impact Statement. The Statement should include

reasons why the alternative approaches were not deemed suitable.

2.5 Identifying (and staying within) the power to make a Local Law



- A Local Law must identify the authority on which it is based and remain within that authority/ power.

2.5.1 Legislative provisions

Section 111(1) of the Act provides:

A Council may make Local Laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under this or any other Act.

Schedule 8 section 1(a) provides:

A Local Law must – accord with the letter and intent of the enabling Act.

Schedule 8 section 1(b)(ii) provides:

That in the case of a principal Local Law, it must clearly set out as part of its text the precise provision authorising the Local Law.

2.5.2 Issues

Most Local Laws comply with these provisions by specifying something like:

‘This Local Law is made under the provisions of section 111(1) of the Local Government Act.’

The reference to section 111(1) rather than section 111 is preferred as being the more ‘precise’ as required.

Section 111(1) is all encompassing and it could be argued that just about any Local Law has been made under it. However, Councils typically make Local Laws in relation

to matters that are specifically authorised by other legislation, such as the *Domestic Animals Act 1994*.



- To comply more fully with the legislative requirements, when a piece of legislation other than the *Local Government Act 1989* is relied on, it should be specifically referenced.
- The reference should be made to the particular Act and the specific provisions of the Act under which Local Laws are made.



- A statement identifying other existing legislation that touches on similar areas to the Local Law and explaining why that legislation does not suit the purpose (that is achieve the objective of the Local Law) should be included in a Local Law Community Impact Statement.

2.6 Identifying existing legislation that might be used instead of a Local Law



- Council needs to fully explore existing legislation to ensure there are no existing provisions that could be used.
- Local Laws should not be created unnecessarily.

2.6.1 Issues

This is a different exercise to section 2.8 – identifying existing legislative provisions which may be overlapped. The purpose here is to ensure that Local Laws are not unnecessarily made when the objective could be achieved by use of existing legislation.



- Council should document the steps it has taken to ensure that there is no existing legislation suitable for the purpose. This is particularly so if legislation does exist covering the same area⁵.
- Any perceived legislative ‘gaps’ that the Local Law is designed to fill, should be explained.

⁵ Graffiti is an example of a problem where some Councils have perceived a need for Local Laws even with the introduction of the *Graffiti Prevention Act 2007*.



- Council needs to identify any area where Council believes it is inappropriate to use Local Law making power.

2.7 Considering if a State Act is more appropriate than a Local Law

2.7.1 Legislative provision

Schedule 8(2)(e) provides that a Local Law shall not:

embody principles of major substance or controversy or contain any matter which principles or matter should properly be dealt with by an Act and not by subordinate legislation.

2.7.2 Issues

If a Council genuinely believes that a matter would be better dealt with by an Act and publicises this fact, then it is probably precluded from making a Local Law about the same matter.



- Council cannot transfer provisions from Local Laws to Acts.
- However, local government can play a role in facilitating legislative or policy change by collaborating with relevant state or federal departments or agencies and working with local government peak bodies.



- Council needs to explain in its Local Law Community Impact Statement why it believes State Government legislation is more appropriate.

2.8 Identifying existing legislative provisions that may be overlapped by a Local Law



- Council needs to take steps to ensure that a Local Law does not duplicate, overlap, conflict with, or is inconsistent with existing legislation.

2.8.1 Legislative provisions

Sections 111(2) and (3) provide that a Local Law:

must not be inconsistent with any Act or regulation and that a Local Law is inoperative to the extent that it is inconsistent with any Act or regulation.

Schedule 8(2)(i) provides that a Local Law must not:

Duplicate, overlap or conflict with other statutory rules or legislation.

2.8.2 Issues

Council needs to determine whether Local Laws are inconsistent with or overlap legislation or are 'filling a gap'.

2.8.3 Legislation that Local Laws may overlap

It is not possible to provide an exhaustive list of legislation that proposed Local Laws may duplicate, overlap, or with which they may conflict or be inconsistent. The range of existing legislation is simply too large to canvass all issues that might arise.

Council does need to consider both federal and state legislation: Acts and statutory rules. Council also needs to check against its own regulation, that is, other Local Laws that will remain in force in the municipality.

Most topics have been addressed by legislation in some form. It is recommended Council target its searches using subject matter or keywords to look for existing legislation and also consult the relevant government agencies. Useful search sites are:

Federal legislation:
www.comlaw.gov.au/

State legislation:
www.legislation.vic.gov.au/

2.8.4 Specific Legislation

Council should be particularly aware of the *Road Management Act 2004*, *Building Act 1993* and the *Food Act 1984*. These Acts have provisions that are particularly relevant to local government.



- Acts impacting on Local Laws are discussed in more detail in the Resource Book at section 2.8.



- Council should explain the steps it has taken to ensure that its Local Laws do not duplicate, overlap or conflict and are not inconsistent with existing legislation.
- Council may identify legislation on a topic but believe a proposed Local Law does not duplicate, overlap, conflict or cause any inconsistency. In this case, this should be explained.



- A statement identifying existing legislation Council has found on a topic and explaining why Council believes the proposed Local Law does not duplicate, overlap or cause any consistency should be included in a Local Law Community Impact Statement.

breach the requirement. A general disclaimer will also ensure the ongoing validity of the Local Law in the event of future changes to the planning scheme that would otherwise cause an inconsistency.

However, this approach transfers the onus for knowing the contents of the planning scheme to a member of the public, which is at odds with the better practice objective of improving clarity and accessibility of Local Law matters.

2.9 Identifying planning scheme requirements with which a Local Law may be inconsistent



Council must ensure that its Local Law does not duplicate and is not inconsistent with any planning scheme.



- Council needs to check with its own town/land use planners regarding any proposed Local Law. Presumably, Council would have already identified if any planning provision could be utilised to achieve the objective sought.
- Where possible, the Local Law should be sufficiently and accurately worded to ensure that specific provisions do not duplicate the planning scheme.
- A general disclaimer of the 'nothing in this Local Law ...' type can then be inserted, in addition, to ensure complete coverage.

2.9.1 Legislative provision

Section 111(4) provides:

If a planning scheme is in force in the municipal district of a Council, the Council must not make a Local Law which duplicates or is inconsistent with the planning scheme.

2.9.2 Issues

Note that this is not limited only to planning schemes adopted by Council.

Councils might perceive compliance with this provision to include:

- insertion of catch-all phrases such as 'nothing in this Local Law overrides any planning provision in force'
- provision that a permit under the Local Law is required unless the activity is 'consistent with a planning scheme.'

A general disclaimer clause like these examples will technically comply with the legislative provision and may be necessary to ensure the Local Law does not inadvertently



- A statement identifying any planning scheme requirement Council has found on a topic and explaining why Council believes the proposed Local Law does not duplicate, overlap or cause any consistency should be included in a Local Law Community Impact Statement.

2.10 A risk management approach to Local Laws



- A proposal to introduce a Local Law is an ideal opportunity to use a risk management approach to prioritise the risks sought to be addressed.

2.10.1 Issues

A risk management approach is an obvious tool to use when assessing if:

- a problem exists
- the problem is a Council problem, that is it impacts on the achievement of Council's policy objectives
- a response to the problem is required
- a Local Law is the best way of dealing with the problem
- a Local Law is likely to be effective.

As acknowledged in the *Victorian Guide to Regulation*, any problem identified as potentially requiring government intervention will have an element of risk attached to it.

A rigorously applied risk assessment compares 'apples with apples.' It will allow the Local Law process to be driven by a robust and accountable standard of assessment and provide a level of certainty in how the process will be approached.

Risk management techniques will also facilitate the assessment of whether the proposed treatment of the risk, that is, the Local Law will be effective in terms of:

- economic cost, which includes the cost of imposition on the community and the cost of enforcement
- social cost, for example, the restriction of freedom versus the community benefit
- any other criteria adopted.

It is important to remember the objective should not be to reduce the risk to zero. The

objective is to achieve balance between the risk reduction and the economic and social costs of reduction.



Section 2.10 of the Resource Book has a brief illustration of how a risk management approach could be used.



- Council's risk management function should be consulted on any proposed Local Law. The need for, and the provisions of, a Local Law should be validated by a risk assessment.
- The risk assessment should address issues such as whether:
 - a problem exists
 - the problem is a Council problem, that is, it impacts on the achievement of Council's objectives
 - a response to the problem is required
 - a Local Law is the best way of dealing with the problem
 - a Local Law is likely to be effective.



- The Local Law Community Impact Statement should document the results of a risk assessment showing that a relevant problem exists and that the proposed Local Law is an effective treatment/control.

2.11 Considering and deciding on different Local Law approaches



- Council needs to consider different regulatory approaches and be clear about which approach it is adopting.
- Council should be satisfied that the regulatory approach adopted is consistent throughout all materials relied on by Council – including material incorporated by reference.

The full regulatory impact of a Local Law cannot be assessed purely from the text of the Local Law. This is because there is a variety of ways in which the administration and enforcement of a Local Law can work either to increase or reduce the overall regulatory impact of the Local Law. These include the:

- incorporation of standards, codes, policies and guidelines
- exercise of discretions
- conditions attached to permits
- exemption from the requirements of a Local Law
- requirement to give public notice of application for a permit
- enforcement policies.

2.11.1 Issues

This matter is closely related to section 2.12 The least burden / greatest advantage test for Local Laws and to section 4.9 – Performance standards or prescriptive?

The following table of the range of impacts, adopted from the discussion paper *Towards Best Practice in Regulatory Local Laws* (April 2008), deals specifically with the building site context, but it also provides principles that are applicable to any Local Law issue.

High impact regulatory approach	Mid impact regulatory approach	Low impact regulatory approach
<ul style="list-style-type: none"> • Inspection and notification requirements • Prescriptive approach. • Requirement to obtain an Asset Protection or other form of permit or authorisation before commencing building work • Requirement to lodge bond and/or provide written indemnity to Council • Prescriptive requirements for matters such as site fencing, provision of sanitary facilities, refuse collection and storage facilities 	<ul style="list-style-type: none"> • Requirement for Asset Protection Permit or other form of authorisation • May also require a bond • Encourages better management of building sites, amenity and pollution issues by setting general requirements but leaving some discretion as to how requirements are implemented 	<ul style="list-style-type: none"> • Imposes a penalty if public assets are damaged during building work • Capacity to order remedial work to be carried out • May also suggest general standards to which persons engaged in building work should adhere • May specify an objective but leaves flexibility as to how it is to be achieved

If Councils are addressing similar problems, it is reasonable to expect that the regulatory approach adopted should be similar. If it is not, an explanation may be required.

Council needs to ensure that the regulatory approach adopted is consistent throughout all materials relied on by Council – including material incorporated by reference. A Local Law on its own may appear from its wording to be low or medium impact. Conditions attached to a permit, for example, may alter the overall level of impact.



- Council should understand and be able to articulate the regulatory approach or approaches it is adopting. It should have an understanding of why the particular approach is relevant to its community.
- If the approach adopted is different to that of neighbouring or like Councils, Council should be able to explain why this needs to be the case.
- Council should be able to demonstrate that the stated approach is consistent across all relevant documents: the Local Law, incorporated documents and any other documents.



- The Local Law Community Impact Statement should explain the regulatory approach adopted by Council and explain why this approach is relevant.
- Whether the approach is consistent with neighbouring and like Councils and, if not why not, would be explained.

2.12 The least burden/greatest advantage test for Local Laws



Council is obliged to ensure that the regulatory approach it adopts involves the least burden or the greatest advantage to its community.

2.12.1 Legislative provision

Schedule 8 section 1(d) provides:

A Local Law must – adopt the means of achieving those objectives which appear likely to involve the least burden or the greatest advantage on the community.

2.12.2 Issues

This section assumes the process has already been undertaken to establish that a Local Law is the best solution. Further consideration is then required to ascertain the best approach to be adopted by the Local Law. While this provision has implications for the whole community, it particularly comes into focus in relation to Local Laws which affect businesses – for example, footpath trading permits.

A formal assessment is not always required and an informal assessment will not necessarily measure burden and advantage in monetary terms.

Example: In proposing a Local Law requiring residents to bring empty rubbish bins back within their property on the day of collection, Council might observe as follows:

Burden

Since the bin has to be returned to the property at some time (because the existing Local Law requires that the rubbish bin be stored within the property) there is no discernible cost or other burden on members of the community in requiring the bin to be retrieved on the day of collection. There will always be a number of individual ratepayers who claim 'hardship' because they work shifts, etc. These issues need to be dealt with on their merits without losing sight of the burden/advantage to the community.

Where the proposed Local Law is likely to have a significant impact – particularly a quantifiable cost impact – on business or another identifiable section of the community, a more formal assessment may be appropriate.

The Australian Government Office of Best Practice Regulation lists a number of categories of impact to consider. The website www.finance.gov.au/obpr/about/ makes available a Business Cost Calculator which calculates costs of regulation under a range of categories outlined in the table on the next page.

Advantage

On the other hand, there are identifiable (though not necessarily quantifiable) advantages to the community in having bins on the street for the minimum reasonable time. Council may decide these advantages include:

- reduced risk of theft of bins (which could possibly be costed)
- reduced risk of bins causing / being involved in accidents
- improved visual amenity.

Compliance cost category	Description
Notification	Businesses face costs when they have to report certain events to Council either before or after the event has taken place.
Education	Businesses face costs in keeping up to date with Local Law requirements and communicating that information to existing and new staff.
Permission	Businesses face costs applying for and maintaining permission to conduct an activity, such as furniture/retail displays on footpaths.
Purchase costs	Businesses face costs when having to purchase a service such as legal advice or a product such as approved display stands for goods on footpaths or site fencing.
Record keeping	Businesses face costs to keep statutory documents up to date.
Enforcement	Businesses face costs when cooperating with audits, inspections and regulatory enforcement activities.
Publication and documentation	Businesses face costs when having to produce documents for third parties, such as site signs on building sites.
Procedural	Businesses face non-administrative costs imposed by some Local Laws.
Other	

The calculator enables parameters – such as number of businesses affected – to be entered together with an estimate of the degree of confidence about the figures entered. The calculator will tabulate costs and enable reports to be produced.

Councils must consider these matters of impact in determining the regulatory approach to be taken. For example, if obtaining a permit is onerous for the applicant and if issuing and enforcing a permit is onerous for Council, a Local Law that does not require a permit in the first instance might be a less burdensome means of achieving the objective for both parties.



- Council needs to make an explicit attempt to assess the costs of proposed Local Laws against the benefits.
- This could possibly be done using a tool like the Business Cost Calculator.



- The Local Law Community Impact Statement should include the results of an assessment of the burden of the proposed Local Law compared to its advantage.

2.13 Possible restriction of competition by Local Laws

- Council's Local Laws must not restrict competition unless Council can demonstrate:
 - the benefits outweigh the costs; and
 - there is no other way of achieving the objective.
- This also applies to policies and guidelines supporting Local Laws.

2.13.1 Legislative provision

Schedule 8 section 2(j) provides:

A Local Law must not – restrict competition unless it can be demonstrated that –

- (i) the benefits of the restriction to the community as a whole outweigh the costs*
- (ii) the objectives of the Local Law can only be achieved by restricting competition.*

2.13.2 Issues

This is a legislative restatement of the Victorian Government's commitment under National Competition Policy (NCP).

In December 2008, the Government issued *National Competition Policy and Local Government: A Revised Statement of Victorian Government Policy*. Local Laws are expected to comply with this policy imperative and Councils must report annually.

Recognising the review of Local Laws undertaken in 1999, that document says:

'... for Local Laws, Councils have satisfied the primary NCP obligation to review existing legislation and remove or justify any restrictions on competition. The ongoing obligation for Councils is to ensure that their Local Laws, and the policies and guidelines that inform their application (for example, in

determining whether to issue a permit under a Local Law), do not restrict competition unless:

- a Council can demonstrate that the benefits of the restriction to the community clearly outweigh the costs*
- the objectives of the Local Law can only be achieved by restricting competition.*

Under Schedule 8 of the Local Government Act 1989, Councils are required to apply this 'competition test' to any new Local Law. However, because a non-restrictive Local Law can become restrictive through the manner in which it is applied, Councils should continue to review their Local Laws, policies and guidelines from time to time ...'

New (and amended) Local Laws must comply with the National Competition Policy.

Where Local Law clauses are re-introduced without amendment, the 1999 assessment could be produced and reproduced. In respect of new Local Law provisions, however, a full process would need to be carried out.

The review applies not only to the written word of Local Laws but also to supporting documents, that is, policies and guidelines. Where policies or guidelines related to Local Laws are introduced, amended or updated, they must be subject to a competition assessment. Additional documents such as permit conditions can also clearly convert a non-restrictive Local Law to a restrictive one. Permit conditions are also subject to the requirement for review.

It is beyond the scope of this manual to set out in full the process for conducting a competition review. Council should have regard to the reporting guidelines, the revised statement on National Competition Policy and Local Government and the compliance template, all available online from the grants and funding section of the Local Government Victoria website www.localgovernment.vic.gov.au



Chapter 2.13 of the Resource Book contains an outline of the process of reviewing a Local Law against the competition test.



- Council needs to assess each relevant Local Law provision in accordance with the competition test.
 - The assessment needs to extend to any Council policies or guidelines and other material (such as permit conditions) supporting the Local Law.
-



- A review in accordance with National Competition Principles and a statement of whether a Local Law restricts competition and if so, that the benefits outweigh the costs should be included in the Local Law Community Impact Statement.
-

3. Understanding some mechanisms related to Local Laws

	Section	Outcome
3.1	Application of the Local Law	<ul style="list-style-type: none"> • Under section 116 of the Act, Council can decide the times, extent, cases, etc. to which a Local Law applies. • If Council wants to decide these matters, it needs to explicitly do so. • If Council wishes to reserve the right to, in the future, determine matters provided for by section 116, the Local Law should: <ul style="list-style-type: none"> – specifically reserve that right – specify the circumstances under which determination may be triggered – specify conditions which will apply – specify that Council will make the decision.
3.2	Enforcement – General considerations	<ul style="list-style-type: none"> • The mechanisms used to enforce Local Laws will impact on the effectiveness of the Local Laws.
3.3	Notices/ Cautions/ Warnings	<ul style="list-style-type: none"> • Council needs to be clear about and clearly articulate what it is trying to achieve when it uses mechanisms such as notices to comply, cautions and warnings. • Council needs to be clear about the intended consequences of these mechanisms – particularly whether failure to comply creates another offence. • Council needs to be extremely clear about whether it is creating its own procedures or using procedures – such as official warnings – under the <i>Infringements Act 2006</i>.
3.4	Penalties	<ul style="list-style-type: none"> • Council needs to comply strictly with legislative provisions related to penalties, including the fact that the maximum effective penalty allowed under a Local Law is 20 penalty units. • Council also needs to comply with the Attorney-General's guidelines on penalties related to infringement notice penalties.

3.5	Infringement notices	<ul style="list-style-type: none"> • Council needs to understand and be aware that the: <ul style="list-style-type: none"> – form – content – service – review – withdrawal <p>of Infringement notices are all governed by the <i>Infringements Act 2006</i> and the regulations made under that Act.</p> <ul style="list-style-type: none"> • These matters cannot be set by Council, the CEO or any officer or person. A Local Law is invalid to the extent it purports to change this. • Council does need to put in place procedures for review. • These do not necessarily need to be in the Local Law but details of the procedure should be readily available to the public.
3.6	Permits and licences	<ul style="list-style-type: none"> • Council processes and conditions in relation to permits need to be consistent.
3.7	Purposes and conditions of permits, licences, etc.	<ul style="list-style-type: none"> • The legislation presumes that the purposes for which permits, etc., will be issued and the conditions on which they will be issued will be set out in the Local Law – not held in reserve. • The conditions set out: <ul style="list-style-type: none"> – should be reasonable having regard to all the circumstances – should not include matters that cannot be complied with, such as joint named insurance – must not be utilised as an opportunity for Council to avoid liabilities that would otherwise exist.
3.8	Fees in relation to permits etc.	<ul style="list-style-type: none"> • A Local Law may contain a provision stating that Council may set fees by resolution.
3.9	Provisions for imposing fees	
3.10	Reduction, waiver or refund of fee	
3.11	Practices in relation to fees – summary	<ul style="list-style-type: none"> • Council needs to ensure that it complies with minimum legislative requirements in relation to fees. • Sections 113(2) and (3) of the Act call for the insertion of provisions into the Local Law which create the framework for dealing with fees. • This framework should be created by Council.

3.12	Delegations and authorisations and discretions	<ul style="list-style-type: none"> • Council needs to understand whether it is using the Local Law to delegate or relying on a general power of delegation. • Authorised officer is different to a delegate. • Council must understand clearly: <ul style="list-style-type: none"> – what powers and functions it is delegating or what authorisations it is granting – to whom or what positions – under which provision of the legislation.
3.13	Review and appeal provisions	<ul style="list-style-type: none"> • If infringement notices are issued, the review provisions of the <i>Infringements Act 2006</i> are operative and need to be followed rigorously. • For other decisions of Council or officers, Local Laws need to provide review mechanisms that should be clear and transparent. • Council needs to be clear about which review process it is following. • If Council's own review processes closely mirror those provided under the <i>Infringements Act 2006</i> there will be greater understanding, consistency and transparency.

3.1 Application of the Local Law



- Under section 116 of the Act, Council can decide the times, extent, cases, etc., to which a Local Law applies.
- If Council wants to decide these matters, it needs to explicitly do so.
- If Council wishes to reserve the right to determine matters provided for by section 116, the Local Law should:
 - specifically reserve that right
 - specify the circumstances under which determination may be triggered
 - specify conditions which will apply
 - specify that Council will make the decision.

3.1.1 Legislative provision

Section 116 of the Act provides that:

A Local Law may be expressed so as to do any or all or a combination of the following –

- a) apply at all times or at a specified time;*
- b) apply throughout the whole of the municipal district or in a specified part of the municipal district;*
- c) apply to all cases or to all cases subject to specified exceptions or to any specified case or class of case;*
- d) make provision for all cases or different provision for different cases or classes of case or different provisions for the same case or class of case for different purposes;*
- e) require a matter to be in accordance with a specified standard or specified requirement or approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies;*

f) provide in a specified case or class of case for the exception of persons or things or a class of persons or things from the Local Law, whether unconditionally or on specified conditions and either wholly or to the extent specified.

3.1.2 Issues

This is an extremely broad ranging but frequently misunderstood provision.

The requirement is that the Local Law itself may be expressed (within the words of the Local Law) to, for example, 'apply throughout the whole of the municipal district or in a specified part of the municipal district.' This seems to be well understood and many Local Laws have a provision to the effect that the Local Law 'applies throughout the whole of the municipal district'⁶.

Other limbs of this section, however, are sometimes misconstrued as giving power to Council to make up its mind in the future and that is not what section 116 says or intends.

Section 116(c), for example, contemplates that Council may specify in the Local Law that the Local Law will apply to all cases captured by the Local Law or may have exceptions which are set out in the Local Law or may apply to cases specified in the Local Law.

Council should actually define and make clear the specification in the Local Law itself, not simply make reference to the possibility of specification.

The following example provision, extracted from a Local Law currently in force, does not achieve the objective of section 116:

The Council may prescribe specified premises to be exempt from a provision of this Local Law for a specified time and on specified conditions.

⁶ In the absence of such a clause, the legal presumption would be that the Local Law did apply throughout the whole municipality so the use of the provision is probably more appropriately limited to cases where the Local Law is not intended to apply throughout the entire municipality.

Obvious questions arise: How is Council going to go about prescribing this? How will it be made public? Will the prescription be through the same process that found the Local Law was necessary in the first place? What sort of premises did Council have in mind? Why were these exemptions not made as part of the Local Law as required by the Act?



Section 116 of the Act is discussed further at section 3.1 of the Resource Book.



- It is preferable that section 116 be read and applied strictly.
- If it is contemplated that exceptions may apply, these should be specifically set out in the Local Law.
- If matters are required to be in accordance with a standard or approved process, etc., then the standard or approval process should be explicitly spelled out.

3.2 Enforcement – General considerations



The mechanisms used to enforce Local Laws will impact on the effectiveness of the Local Laws.

3.2.1 Issues

The level of compliance with [Local Laws] is, in part, related to the effectiveness of enforcement mechanisms. Only those [Local Laws] that can be realistically enforced should be put in place or retained. Without adequate enforcement, the credibility of the [Local Law] may be compromised and the desired objectives are unlikely to be achieved.⁷

The objective of enforcement is compliance with the Local Law to achieve the stated

⁷ *Victorian Guide to Regulation* – clause 3.2.11 (Local Law) substituted for 'regulation' appearing in the text.

policy outcome.⁸ If enforcement does not achieve compliance with the Local Law a review is necessary. If the cost of achieving compliance outweighs the gains, a review is also required.

Again, proper risk analysis including the costing of the treatment (enforcement) will help with assessing these aspects and making appropriate decisions.

Penalties should be adequate, but not excessive. (See 3.4 on penalties.) If the penalty for all offences is the same regardless of the seriousness of the offence, credibility will be compromised.⁹

In general, a breach of a similar Local Law provision should have a similar impact from Council to Council. If there is a wide discrepancy between neighbouring or like Councils in the penalty for similar offences, each Council runs the risk of loss of credibility. This is particularly the case where offences impact on businesses. Councils need to explain why their penalties are different to those of neighbouring or like Councils.

Enforcement which relies solely on penalties is questionable, particularly if the cost – to Council – of enforcement is high. Enforcement costs will be high if:

- there is a lack of education to enable and encourage voluntary compliance
- enforcement is reliant on constant intervention to detect offences – rather than targeted audits or effective responses to complaints
- imposition of a penalty is the only enforcement mechanism (See 3.3 Notices/Cautions/Warnings).

⁸ It most certainly should not be revenue-raising.

⁹ At least one existing Local Law specifies the maximum available penalty (20 penalty units) for all offences but reduces the penalty to 2 penalty units (or 10 in a limited number of cases) on issue of an infringement notice. This is presumably intended to give a magistrate maximum flexibility and to act as an added inducement to pay an infringement notice penalty rather than take one's chances with a magistrate. The exercise of this as better practice is questionable.

3.3 Notices/Cautions/Warnings



- Council needs to be clear about and clearly articulate what it is trying to achieve when it uses mechanisms such as notices to comply, cautions and warnings.
- Council needs to be clear about the intended consequences of these mechanisms – particularly whether failure to comply creates another offence.
- Council needs to be extremely clear about whether it is creating its own procedures or using existing procedures, such as official warnings under the *Infringements Act 2006*.

3.3.1 Issues

Many Local Laws have provision for the issue of a notice to comply, a caution or warning. To create clear Local Laws, Councils themselves need to be clear and careful about:

- what they are trying to achieve with these mechanisms
- the consequences that are intended;
- the circumstances under which the mechanism is used
- who is authorised to use the mechanism and the basis of that authority.

In particular, Council needs to be clear whether a warning is a warning under the Local Law or an official warning under section 8 of the *Infringements Act 2006*. Confusing these two issues will inevitably result in the wrong procedure being followed.

Council authorised officers taking enforcement action need to be equally clear about what it is they are doing. See section 9 of these guidelines Enforcement – personnel and practices.

3.3.2 Notice to comply

A notice to comply will generally be served because a breach of a Local Law has been detected or a breach of a permit issued has been detected. In either event, the breach itself will generally constitute an offence under the Local Law.

An issue then arises as to whether a failure to respond to a notice to comply is intended by Council to constitute a further offence. If the notice to comply is complied with, the question arises as to whether the original offence is then expiated, or made obsolete. Both the Local Law and the form of notice to comply need to make the intention of Council clear.

If a notice to comply has further repercussions such as possible cancellation of permit, then those repercussions also need to be clearly spelled out.



Section 3.3 of the Resource Book includes examples of difficulties caused by failure to be clear about what is intended.

3.3.2.1 Warning under *Infringements Act 2006*

Notices to comply and warnings provided for by the Local Law need to be clearly distinguished from an official warning issued under section 8 of the *Infringements Act 2006*.

If there is an ability to issue an infringement notice, then there is an ability to issue an official warning. This ability exists under the *Infringements Act 2006*. It does not need to be, and should not be, spelled out in a Local Law.



Section 3.3 of the Resource Book sets out the requirements for an official warning and withdrawal of an official warning.

3.4 Penalties



- Council needs to comply strictly with legislative provisions related to penalties including the fact that the maximum effective penalty allowed under a Local Law is 20 penalty units.
- Council also needs to comply with the Attorney-General's guidelines on penalties related to infringement notice penalties.

3.4.1 Legislative provision

Sections 115(1) and (2) of the Act provide that:

A Local Law may:

- prescribe a penalty not exceeding 20 penalty units for a contravention of a Local Law*
- prescribe a penalty not exceeding 2 penalty units for each day after conviction for an offence during which the contravention continues*
- prescribe higher penalties (not exceeding 20 penalty units) for a subsequent offence.*

If a Local Law does not expressly prescribe a penalty for a contravention of the Local Law the court before which proceedings are brought may impose a penalty not exceeding 10 penalty units.

3.4.2 Issues

3.4.2.1 Amount of penalties

In section 115(1)(c) of the Act the reference to higher penalties not exceeding 20 penalty units is absolute (that is, the total must not exceed 20). It does not mean 20 penalty units higher than the penalty for a first offence. A provision in a Local Law of 40 penalty units (or anything else in excess of 20) is invalid.

Section 110(2) of the *Sentencing Act 1991* effectively sets the value of a penalty unit at \$100. The Victorian Government has a policy of automatically indexing many fees and fines each year for inflation. This ensures the original intent for charging the fee or fine in the first place is maintained. For information and current amounts go to www.dtf.vic.gov.au

The revised Premier's Guidelines published under section 26 of the *Subordinate Legislation Act 1994* (which forms part of the *Victorian Guide to Regulation*) provides, among other things, that matters imposing 'significant criminal penalties' – such as fines exceeding 20 penalty units or imprisonment – should be in primary legislation rather than subordinate legislation, such as Local Laws (refer clause 1.08 of the guidelines).

Because penalty units are defined, there is strictly no need to define them in the Local Law. On the other hand, it might be useful to inform the community by stating that 'penalty units' has the same meaning as in section 110(2) of the *Sentencing Act 1991*.

3.4.2.2 Level of penalties

As stated at section 3.2 of these guidelines, breaches of similar provisions of Local Laws should normally have similar impacts across Councils and therefore attract similar (predictable) penalties.

Any large discrepancy in penalties for similar offences from one Council to another would require a justification.

3.4.2.3 Infringements Act 2006

Again, the *Infringements Act 2006* needs to be taken into account.

Annexure A to the Attorney-General's guidelines on infringement notices is a policy. Its introduction states:

Infringement notices offer an alternative method for dealing with minor offences, giving the person to whom a notice is issued the option of paying a fixed penalty, rather than

proceeding to a court hearing. This system uses inducements such as convenience of payment, lower fine levels than in open court, the avoidance of a conviction being recorded and saving of legal costs to dispose of matters in an efficient and timely manner.

In keeping with this policy, the guidelines state:

2. Level of penalty suitable for enforcement by infringement notice

An infringement penalty should generally be approximately no more than 20–25% of the maximum penalty for the offence and be demonstrated to be lower than the average of any related fines previously imposed by the Courts.

With the maximum penalty capped at 20 penalty units, Council may feel that a maximum infringement notice penalty of 5 penalty units (25%) is insufficient. Council will need to judge whether an infringement notice penalty is the most appropriate method of dealing with the problem and explain the rationale.

- Council should give active consideration to levels of penalties set.
- Any variation in penalty levels between Council and its neighbours or like Councils should be explained.



- Any variation between penalties adopted by Council and those adopted by its neighbouring or like Councils should be explained in the Local Law Community Impact Statement.

3.5 Infringement notices¹⁰



- Council needs to understand and be aware that the:

- form
- content
- service
- review
- withdrawal

of infringement notices are all governed by the *Infringements Act 2006* and the regulations made under that Act.

- These matters cannot be set by Council, the CEO or any officer or person. A Local Law is invalid to the extent it purports to change this.
- Council does need to put in place procedures for review.
- These do not necessarily need to be in the Local Law but details of the procedure should be readily available to the public.

3.5.1 Legislative provision

Section 117 of the Act provides:

(1) A Local Law may provide for a person to be served with an infringement notice specifying a fixed penalty for an offence against the Local Law as an alternative to a prosecution for the offence.

(1A) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the Infringements Act 2006.

- (2) The Local Law must specify –*
- (a) the amount of the fixed penalty*
 - (b) the person or class of persons who may issue a notice of infringement.*

¹⁰ Section 9.8 of these guidelines, infringement notices – *Infringements Act 2006* requirements deals with the use of infringement notices.

3.6 Permits and licences



Council processes and conditions in relation to permits need to be consistent.

3.6.1 Issues

Permits and licences under Local Laws are another area where Council needs to have clarity of thought to understand:

- exactly what is being permitted
- whether the permit is within Council's jurisdiction
- the conditions
- who has authority to issue the permit
- the effect of a breach of permit.

It is preferable to group activities for which a permit can be obtained separately from those which are prohibited.

An example of a Council Local Law provides:

8.1 A person must not ...

8.2 Despite subclause 8.1, a person may with a trading permit ...

9.1 Without a permit, a person must not ...

In this instance, the Local Law shows some lack of clarity and consistency. It adopts different approaches between clauses 8 and 9:

The Local Law would be better split into three discrete sections:

- Absolutely prohibited
- Permitted only with a trading permit
- Permitted only with a general permit.

Closer examination might also reveal there is no need to create a special category of 'trading' permit distinct from other permits.

References to permits should be consistent. A Local Law that variously refers to 'permit', 'consent', 'authority', 'written consent' and 'written authority' can be confusing.

References to who may issue a permit or take other action should be consistent unless the difference is deliberate. A Local Law which provides in various parts that a permit may be issued by 'an officer', 'an authorised officer' or 'Council' is likely to face problems of interpretation.

Generally, it is preferable that activities requiring a permit are collected together within a single section of the Local Law rather than being scattered.

Allowing different departments within Council to adopt different approaches to permits will lead to inconsistency. This will particularly be the case in relation to permit conditions. Permit conditions should reflect Council policy requirements, rather than the specific requirements of individual departments. The bulk of permit conditions should generally be standard.



- To achieve consistency, Council needs to be clear on its own requirements in relation to permits and permit conditions.
- Council needs to address issues such as:
 - exactly what is being permitted
 - whether the permit is within Council's jurisdiction
 - the conditions
 - who has authority to issue the permit
 - the effect of a breach of permit.
- Council processes and conditions in relation to permits need to reflect a consistent 'whole of Council' approach.

3.7 Purposes and conditions of permits, licences, etc.



- The legislation presumes that the purposes for which permits, licences, etc., will be issued and the conditions on which they will be issued will be set out in the Local Law, not held in reserve.
- The conditions set out:
 - should be reasonable having regard to all the circumstances;
 - should not include matters that cannot be complied with, such as joint named insurance
 - must not be utilised as an opportunity for Council to avoid liabilities that would otherwise exist.

3.7.1 Legislative provision

Section 113(1)(b) of the Act provides:

A Local Law may prescribe, regulate or determine the purposes for which and the conditions on which a Council may –

- (i) grant a permit, licence, authority or registration*
- (ii) perform or supply a service*
- (iii) supply any goods or information*

3.7.2 Issues

This and other provisions within the Act are expressed to be discretionary ('a Local Law may'). A question arises as to what happens if the discretion is not exercised.¹¹ Whatever the answer, a Local Law that allows Council to keep all its cards against its chest is not transparent, accountable nor informative. It is not good practice as it provides neither clarity nor predictability.

¹¹ Section 117, for example, says a Local Law may provide for an infringement notice to be issued as an alternative to prosecution. It seems to be generally accepted that if the Local Law does not utilise the opportunity to insert such a provision in a Local Law, then there is no authority to issue an infringement notice.

An example of a current Local Law provides:

Permits

Council may:

- (i) issue a permit with or without conditions
- (ii) refuse to issue a permit.

This example gives no indication to a prospective applicant what conditions may be required or why a permit may be refused. It also probably indicates the Council itself may not be clear or may be reserving the right to impose conditions at random.

3.7.3 Conditions attached to permits

Conditions attached to permits must be a reasonable response to the problem/risk addressed. This is another area where the experiences and expectations of Councils should be similar. A Local Law which seeks to impose conditions which are significantly different to those of its neighbouring or like Councils calls for explanation.

3.7.4 Specific conditions of permits - insurance

In many circumstances, it will be reasonable for Council to require a permit holder to have public liability insurance. Some existing permit conditions require a permit holder to have insurance jointly insuring the Council ('joint named insurance'). In practical terms, it would be extremely difficult for most permit holders to obtain such insurance, especially at any reasonable cost. In practice, it seems that many permit holders do not obtain joint named insurance, and that Councils do not check, or are themselves unclear of the requirement. Such anomalies do not reflect better practice and should be clarified to achieve certainty for all parties.

3.7.5 Specific conditions of permits – Indemnity clauses

Some Councils impose a condition requiring the permit holder to indemnify the Council against all claims including those arising solely from the negligence of the Council. Such conditions also effectively require the permit holder to waive any claim against Council.



Section 3.7 of the Resource Book gives an example of an indemnity clause.

Such requirements have the effect of ousting the jurisdiction of the courts to hear claims. Councils adopting these types of indemnities are effectively using the power of the Council to require a permit as an opportunity to relieve themselves of liabilities they would otherwise bear.

In the example cited in the Resource Book, if a customer tripped on a defect in the footpath for which the Council would otherwise be liable, it is relieved of liability by virtue of the trader having obtained a permit related to that section of footpath. This would be despite the fact that the permit has no connection with the condition of the footpath or any requirement imposed on Council by the *Road Management Act 2004* to inspect or repair the footpath.

Such an approach raises concerns about Council abrogation of responsibility. Such practices may come under scrutiny in the future.



- A Local Law should commit Council to a defined procedure and outcome in relation to permits. This achieves transparency and accountability.
- Ideally, the Local Law will set out clearly:
 - a form (or forms, if they vary with differing types of permit) of application for permit showing the information required to be provided by applicants
 - the factors Council will take into account in assessing an application
 - the conditions on which a permit will be issued
 - the consequences of breach or failure to comply with conditions
 - the circumstances under which a permit may be refused
 - the circumstances under which a permit may be cancelled or modified
 - the process that will be adopted to implement these matters and the timeline which will be adopted
 - the rights of an applicant to a review of the decision in relation to conditions or refusal.
- If these matters are not set out in the Local Law itself, they should at least be set out in a document (or documents) incorporated into the Local Law and available on Council's website.¹²
- Where it is not possible to set out conditions fully because, for example, they will be subject to a site inspection, this should be spelled out. Where the final conditions will be a mix of standard conditions and conditions determined as a result of a process such as site inspection, the standard conditions should be set out.

¹² Section 9.8 of these Guidelines, Infringement Notices - *Infringements Act 2006* Requirements deals with the use of Infringement Notices.

- Similar Councils should require similar conditions in like circumstances. If the conditions required by one Council differ from those of its neighbours or like Councils, an explanation is required.



- A Local Law Community Impact Statement should include an explanation of:
 - why the particular permit conditions are required
 - why any particular conditions cannot be spelled out in the Local Law
 - the process by which conditions will be determined
 - why conditions may vary from those of neighbouring or like Councils.

3.8 Fees in relation to permits, etc.



A Local Law may contain a provision stating that Council may set fees by resolution.

3.8.1 Legislative provisions

Section 113(1)(a) of the Act provides:

A Local Law may provide that a Council may by resolution determine a fee, charge, fare or rent in relation to any property, undertaking, goods, service or other act, matter or thing.

Section 113(1)(d) of the Act provides:

A Local Law may prescribe the fee which is payable for the granting, renewal or transfer of a permit, licence, authority or registration.

3.8.2 Issues

The *Victorian Guide to Regulation* acknowledges that some forms of regulation require the imposition of fees and charges, in which case the general government policy is that fees should be set on a full-cost recovery basis.

The purpose of fees chargeable under Local Laws will generally be to recover costs, not to make a profit or subsidise other forms of activity.

Fees are another area where similar, especially neighbouring, Councils should experience similar costs. If the adopted basis for setting fees is cost recovery, it stands to reason that the fees should be similar.

The 'Cost Recovery Guidelines' of September 2007 published by the Department of Treasury & Finance are stated to not apply to local government. Despite this, they contain useful material for consideration in setting fees and charges.

Again, compliance with the legislation is necessary. The Local Law must specify that Council may set fees and the process must be by resolution.

3.8.2.1 Bonds and security deposits

The Act does not specifically authorise bonds or security deposits. These are frequently (but inconsistently) used by Councils in connection with permits. This is particularly so where there is a possibility of damage to Council assets. Again, differences in practice between similar Councils, for example, whether bonds and deposits are imposed and the amount of them, need to be explained.

3.9 Provisions for imposing fees

3.9.1 Legislative provision

Section 113(2) of the Act provides:

The power to make a Local Law imposing fees may be exercised by providing for all or any of the following matters –

- (a) *specific fees*
- (b) *maximum or minimum fees*
- (c) *maximum and minimum fees*
- (d) *scales of fees according to the value of goods or services provided for the fees or the project being assessed*
- (e) *the payment of fees either generally or under specified conditions or in specified circumstances*
- (f) *the reduction, waiver or refund, in whole or in part, of the fees.*

3.9.2 Issues

In practice, unlike penalties, fees and charges are not often set out in Local Laws. Usually, a provision is inserted stating they will be set from time to time by resolution of Council. This is the normal annual practice of Councils as part of the budgeting process.

Councils would be wise to ensure that their Local Law contains a provision in accordance with section 113(2).

3.10 Reduction, waiver or refund of fee

3.10.1 Legislative provision

Section 113(3) provides:

If a Local Law provides for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply –

- (a) subject to specified conditions or in the discretion of any specified person or body*
- (b) either generally or specifically –*
 - (i) in respect of certain matters or transactions or classes of matters or transactions*
 - (ii) in respect of certain documents or classes of documents*
 - (iii) when an event happens*
 - (iv) in respect of certain persons or classes of persons*
 - (v) in respect of any combination of matters, transactions, documents, events or persons.*

3.11 Practices in relation to fees – Summary



- Council needs to ensure that it complies with minimum legislative requirements in relation to fees.
- Sections 113(2) & (3) of the Act call for the insertion and of provisions into the Local Law that create the framework for dealing with fees.
- This framework should be created by Council.



- Council should be able to demonstrate that setting of fees and related matters such as waiver or reduction is a transparent process with predictable outcomes.
- If persons are to be exempted from fees, for example, the circumstances under which this will happen and the matters that will be taken into account need to be set out.
- Significant differences in the level of fees between Council and its neighbours or like Councils need to be explained.



- Any significant variance between Council's fees and those of its neighbouring or like Councils should be explained in the Local Law Community Impact Statement.

3.12 Delegations and authorisations and discretions



- Council needs to understand whether it is using the Local Law to delegate or relying on a general power of delegation.
- 'Authorised officer' is different to a 'delegate'.
- Council must understand clearly:
 - what powers and functions it is delegating or what authorisations it is granting
 - to whom or what positions
 - under which provision of the legislation.

3.12.1 Legislative provision

Section 114 of the Act provides:

A Local Law may –

- (a) confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons and bodies*
- (b) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Council*
- (c) delegate to a Councillor or a member of the Council staff the power to –*
 - (i) sign, seal, issue, revoke or cancel any notice, order or agreement on behalf of the Council*
 - (ii) sign any document on behalf of the Council*
 - (iii) do any act, matter or thing necessary or incidental to the performance or exercise of any function or power by the Council.*

Section 224 of the Act allows Councils to appoint authorised officers:

‘for the purposes of the administration and enforcement of any Act, regulations or Local Laws which relate to the functions and powers of the Council.’

Under section 224A, the police may be authorised as officers:

‘if a provision of a Local Law of a Council regulates the use, possession or consumption of alcohol.’

Section 98 of the Act allows (with specified exceptions) for Council to delegate to any member of staff (including the CEO):

‘any power, duty or function of a Council under this Act or any other Act ...’

3.12.2 Issues

Section 114 is another provision that specifies what may be included in the Local Law. The following provision would not comply with Section 114:

Council may delegate to a Councillor or a member of the Council staff the power ...

If Councils wish to rely on section 114, the provision needs to be more specific, stating, for example,.

Council delegates to the Director of Infrastructure from time to time the power ...

An example of a Council’s Local Law that does properly use section 114 of the Act¹³ follows:

16.10 In accordance with section 114 of the *Local Government Act 1989*, the Council hereby:

(1) delegates to the *Chief Executive Officer*, the *Director Customer Services* and the *Director Corporate Services* and to any person for the time being acting for these persons, all the powers, discretions, authorities and considerations of Council under this Local Law including the powers, discretions and authority to issue or refuse *permits*, fix conditions and durations relevant to *permits*, cancel *permits*, require additional information, apply guidelines or policies of Council, waive the need for any *permit*, waive, fix or reduce fees or charges or to do any act, matter or thing necessary or incidental to the exercise of any function or power by the Council.

¹³ Although it may exceed the delegation powers of the Act. Refer to section 4.15 of the manual.

Councils will generally appoint authorised officers under section 224 of the Act. Councils need to understand that authorised officers are not delegates of Council; they are office holders in their own right. If Councils intend to appoint an authorised officer, they need to do so using section 224.

If it is intended that a person be both an authorised officer and a delegate, then both authorisation and delegation must be created.

If Councils intend that the authorised officers are able to issue infringement notices using section 117 of the Act, then that needs to be made explicit in the authority.

This becomes particularly important when it comes to enforcement, so care needs to be exercised.

3.13 Review and appeal provisions



- If infringement notices are issued, the review provisions of the *Infringements Act 2006* are operative and need to be followed rigorously.
- For other decisions of Council or officers, Local Laws need to provide review mechanisms that should be clear and transparent.
- Council needs to be clear about which review process it is following.
- If Council's own review processes closely mirror those provided under the *Infringements Act 2006* there will be greater understanding, consistency and transparency.

3.13.1 Issues – reviews under *Infringements Act 2006*

Where Council seeks to rely on infringement notices which trigger the operation of the *Infringements Act 2006*, Division 3 of the Act already provides for a review process. There is no point in Council reiterating the provisions of Division 3 in the Local Law. To do so only increases the risk of transcribing incorrectly.

The following example from a Local Law is sufficient reminder to the Council of the availability of the review process¹⁴. Recipients do not need to be reminded because their rights are required to be set out in the infringement notice.

Requests for review

Where a person has been issued with an infringement notice in accordance with clause xxx, the person may apply for an internal review of the decision to issue the infringement notice and the provisions of Division 3 of the *Infringements Act* shall apply.

A better version would be:

Application for review

A person may apply for an internal review of the decision to serve an infringement notice on them. The provisions of Division 3 of the *Infringements Act* apply.

¹⁴ Even this simple example illustrates the dangers of repeating legislative sections. It refers to the decision to 'issue' the infringement notice, whereas Division 3 of the legislation refers to the decision to 'serve' the infringement notice.

3.13.2 Issues – non *Infringements Act 2006* reviews

The legislation does not specifically require Local Laws to contain a provision for internal review of decisions made or actions taken under the Local Law. Notwithstanding this, actions by Councils under Local Laws should also be open to a review process. This is because, as previously noted, actions taken under Local Laws are otherwise not subject to practical review. The review process should include enforcement actions such as serving a notice to comply. It should also include administrative decisions made in relation to permits.

The review process needs to address:

Application

- The circumstances under which the review process will operate, for example, notices to comply, refusal to issue a permit, permit issued on conditions, other administrative action or any action taken by Council under the Local Law
- Persons who may request a review, for example, person, agent of person
- The timeframe within which a review needs to be requested
- The permitted (or excluded) grounds for a review
- The method of applying for a review, for example,
 - In writing
 - Stating grounds
 - Applicant details / proof of authority of agent
- Whether Council may request further information.

Process

- Whether the review process will suspend other action and if so until when
- Whether the review will be conducted by someone independent of the person who

took the action which is the subject of review (which should always be the case)

- Nominated person, or the class of persons or method of determining the person to conduct review
- Timeline for deciding the review
- Whether a request for further information extends the timeline and if so for how long.

Outcome

- What options are available to Council on review, especially if an option is to increase the level of enforcement
- How the review outcome will be conveyed to the applicant
- The applicant's rights on receipt of review outcome.



- Transparency and accountability require that the review process be set out fully so that all parties are aware of it.
- The process must be set out in the Local Law – or in a document that is incorporated into and available with the Local Law.
- It should not be set out in an internal guidelines or other document not available to the public.
- Council needs to be as committed to the process as the affected party.

Creating Local Laws



Guidelines Part 2: Creating Local Laws

This part contains the following sections and contents:

Section heading	Contents
Drafting and reviewing the draft ↓	→ Reference materials: <ul style="list-style-type: none">• <i>Interpretation of Legislation Act 1984</i>• The format of Local Laws• Referring to penalties in a Local Law• Style and language of authorising Acts• Drafting standards and principles• Limit to objectives• Incorporating material by reference• Performance standards or prescriptive?• Expressed plainly• Not exceed powers• Not retrospective• Tax, fee, fine or penalty• Not shift onus of proof• No further delegation• No inconsistency• No unexpected or unusual use of powers• Reviewing the draft• Reviewing the draft – Neighbouring and like Councils• Reviewing the draft – Charter of Human Rights• Reviewing the draft – Other provisions of Schedule 8• Reviewing the draft – National Competition Principles
Communicating and consulting on the draft ↓	→ <ul style="list-style-type: none">• Starting communication• Identifying and communicating with affected parties• Consultation meetings• Public notice• Considering submissions• Making amendments
Making the Local Law	→ <ul style="list-style-type: none">• Resolution• Commencement• Stay of operation

4 Drafting and reviewing the draft

Section	Outcome
4.1 Reference materials	<ul style="list-style-type: none"> • Council must have regard to the <i>Interpretation of Legislation Act 1984</i> that has rules about how Local Laws will be interpreted as well as the <i>Local Government Act 1989</i>. • Council would be wise to refer to the Guidelines on Statutory Rules issued by the Office of Chief Parliamentary Counsel.
4.2 <i>Interpretation of Legislation Act 1984</i>	<ul style="list-style-type: none"> • Existing provisions of legislation such as the <i>Interpretation of Legislation Act 1984</i> should be utilised where possible. For example, if a word or phrase is defined in enabling legislation or in the <i>Interpretation of Legislation Act 1984</i>, that definition should be accepted in the Local Law. If a different definition is required, it is preferable to use a different word or phrase and define it. • If the <i>Interpretation of Legislation Act 1984</i> states how a provision is to be interpreted, such as singular including plural, there is no need to repeat that in the Local Law. (It is already the law and repeating it is simply duplicating existing legislation.)
4.3 The format of Local Laws	<ul style="list-style-type: none"> • There is no set format for Local Laws. • The predominant criteria should be clarity and accessibility. • This commences with having a planned outline.
4.4 Referring to penalties in a Local Law	<ul style="list-style-type: none"> • The <i>Sentencing Act 1991</i> provides a convenient method of referring to penalties in Local Laws and it should be used.
4.5 The style and language of authorising Acts	<ul style="list-style-type: none"> • The language of Local Laws must be consistent with the Act.
4.6 Drafting standards and principles	<ul style="list-style-type: none"> • Local Laws must comply with current drafting practice.
4.7 Limit to objectives	<ul style="list-style-type: none"> • Local Laws must set out their objective in the Local Law and not exceed the objective.

4.8	Incorporating material by reference	<ul style="list-style-type: none"> • Many Councils incorporate material (such as policies, codes and guidelines) into their Local Laws by reference. • Incorporation by reference is a potentially complex area. It needs to be handled carefully if it is to be legally effective in adding material to Local Laws. • Council needs to have a clear view of issues such as: <ul style="list-style-type: none"> – whether Council means to incorporate a document or just refer to it – which version and which part of the document is incorporated – the implications of the document being amended • Documents that are incorporated effectively form part of the Local Law and need to be as readily available as the Local Law.
4.9	Performance standards or prescriptive?	<ul style="list-style-type: none"> • It is a legal requirement that, wherever appropriate, a Local Law be expressed in terms of performance standards rather than prescribed details.
4.10	Expressed plainly	<ul style="list-style-type: none"> • Local Laws should be in Plain English.
4.11	Not exceed powers	<ul style="list-style-type: none"> • Council's Local Law must not exceed the powers of the Act(s) under which it is made.
4.12	Not retrospective	<ul style="list-style-type: none"> • A Local Law must not have retrospective effect.
4.13	Tax, fee, fine or penalty	<ul style="list-style-type: none"> • There must be specific authority in the enabling Act to impose a tax, fee, fine or penalty. • No legislation allows Council to impose imprisonment.
4.14	Not shift onus of proof	<ul style="list-style-type: none"> • A Local Law must not reverse the onus of proof unless there is specific authority in the enabling Act. • The <i>Local Government Act 1989</i> does not provide authority to reverse onus of proof. • Other Acts under which Council is able to make Local Laws are unlikely to provide authority.
4.15	No further delegation	<ul style="list-style-type: none"> • A Local Law cannot normally delegate powers beyond the limit set by the enabling Act.
4.16	No unexpected or unusual use of powers	<ul style="list-style-type: none"> • Local Laws must not misuse the powers granted by the Act under which they are made. • This would include extending powers to unusual lengths or adopting artificial interpretations of provisions.

4.17	Reviewing the draft	<ul style="list-style-type: none"> • Council needs to review its draft Local Law. • A review against similar Local Laws of neighbouring and like Councils is also good practice. • The <i>Charter of Human Rights</i> requires the draft be reviewed. • National Competition Principles require that the draft be reviewed.
4.18	Reviewing the draft – neighbouring and like Councils	<ul style="list-style-type: none"> • Council should compare its proposed Local Law with those of its neighbours and like Councils.
4.19	Reviewing the draft – <i>Charter of Human Rights</i>	<ul style="list-style-type: none"> • The <i>Charter of Human Rights</i> requires that Local Laws not be incompatible with Human Rights. • A thorough and detailed review is the only way of establishing this. • The Charter applies to all materials such as policies, guidelines and manuals used in conjunction with the Local Law.
4.20	Reviewing the draft – other provisions of Schedule 8	<ul style="list-style-type: none"> • Schedule 8 has a number of other provisions that would require the draft Local Law to be reviewed. • These include: <ul style="list-style-type: none"> – principles of justice and fairness – absence of undue trespass on rights – absence of undue reliance on administrative decisions • These provisions pre-date the Charter of Human Rights. • The review against the <i>Charter of Human Rights</i> should ensure compliance with the provisions.
4.21	Reviewing the draft – principles of justice and fairness	
4.22	Reviewing the draft – undue trespass on rights	
4.23	Reviewing the draft – undue dependence on administrative decisions	
4.24	Reviewing the draft – National Competition Principles	<ul style="list-style-type: none"> • Draft Local Laws must be reviewed to ensure they do not breach National Competition Principles.

4.1 Reference materials



- Council must have regard to the *Interpretation of Legislation Act 1984* that has rules about how Local Laws will be interpreted, as well as the *Local Government Act 1989*.
- Council would be wise to refer to the Guidelines on Statutory Rules issued by the Office of the Chief Parliamentary Counsel.

This section is about the rules related to writing Local Laws. These rules are derived from two major sources. The first source is the *Interpretation of Legislation Act 1984*. This Act sets out how Local Laws will be interpreted. It determines what some words and phrases mean 'unless the contrary intention appears.'

The second source is the *Local Government Act 1989*, particularly Schedule 8.

The Office of the Chief Parliamentary Counsel Victoria 'Notes for Guidance – Preparation of Statutory Rules' has useful material related to statutory rules. Some of it is applicable to Local Laws.
www.ocpc.vic.gov.au

4.2 Interpretation of Legislation Act 1984



- Existing provisions of legislation such as the *Interpretation of Legislation Act 1984*, should be utilised where possible. For example, if a word or phrase is defined in enabling legislation or in the *Interpretation of Legislation Act 1984*, that definition should be accepted in the Local Law. If a different definition is required, it is preferable to use a different word or phrase and define it.
- If the *Interpretation of Legislation Act 1984* states how a provision is to be interpreted, such as singular including plural, there is no need to repeat that in the Local Law. It is already the law and repeating it is simply duplicating existing legislation.

4.2.1 Legislative provision

Section 118 of the *Local Government Act 1989* says:

'A Local Law is a subordinate instrument for the purposes of the *Interpretation of Legislation Act 1984*.'

Part III of the *Interpretation of Legislation Act 1984* contains provisions applicable to subordinate instruments. The scope of these provisions can be seen from the table of provisions below:

Section	Heading
22.	Subordinate instruments to be construed subject to legislative power of the State and to empowering Act
23.	Construction of subordinate instruments
24.	Time of commencement of subordinate instruments
25.	Time of expiry of temporary subordinate instruments
26.	Exercise of powers between making and commencement of subordinate instruments
27.	Implied power to repeal or amend subordinate instruments
28.	Provisions as to effect of repeal, etc., of subordinate instruments
29.	Effect of repeal, etc., of amending subordinate instrument
30.	Repeal and re-making
31.	Construction of references in subordinate instruments to other enactments
32.	Prescribing matters by reference to other documents
33.	Citation of references in regulations, rules, by-laws and Local Laws
34.	Construction of references in subordinate instruments to portions of subordinate instruments or Acts

Part IV of the *Interpretation of Legislation Act 1984* contains provisions applicable to Acts and subordinate instruments. The following table is extracted from the headings of Part IV. It shows the major sections which impact on Local Laws.

Section	Heading
35.	Principles of and aids to interpretation
36.	Headings, schedules, marginal notes and footnotes
36A.	Examples
36B.	Location of penalties, examples and notes
37.	Gender and number
38.	Definitions
38AA.	References to Australian Standards, etc.
39.	Parts of speech and grammatical forms
39A.	Definitions inserted by amending Act or subordinate instrument
40.	Exercise of powers and performance of duties
41.	Power to appoint
41AA.	Acting appointments
41A.	Power to make instrument includes power to revoke or amend
42.	Exercise of delegated powers
42A.	Construction of power to delegate
43.	Measurement of distances
44.	Time
45.	Construction of 'may' and 'shall'
47.	Reference to officer in general terms
48.	References to officers, localities, etc.
49.	Service by post
50.	Rules of court
51.	Provisions as to offences under two or more laws
53.	Strict compliance with prescribed forms not necessary
54.	Construction of references to Acts

4.2.2 Issues

Section 23 provides that if an expression in a Local Law also appears in the Act under which the Local Law is made, the expression has the same meaning as in the Act.

The *Local Government Act 1989* defines a substantial number of words. These include:

Chief Executive Officer
corporation
Council
farm land
municipal district
owner (in relation to land)
person
public body
public highway
publish
rateable land
rateable property
residential use land
road
senior officer
urban farm land

If Local Laws cite the *Local Government Act 1989* as the enabling Act, then those definitions apply by default.

Section 32 deals with incorporation of other documents. This is dealt with in more detail later in this section of this manual.

Section 35 provides that an interpretation of a Local Law that would promote its object (or purpose) is preferred to one that would not.

Sections 36–37 deal with specific writing issues.

Section 38 defines a number of words that are likely to appear in Local Laws including:

contravention: which includes a failure to comply as well as a breach. In a Local Law, it is not necessary to specify ‘... breaches or fails to comply with ...’ as the term contravene covers both.

individual: means a natural person

Land: includes buildings and other structures permanently affixed to land, land covered with water, and any estate, interest, easement, servitude, privilege or right in or over land.

Penalty unit: shall be construed in accordance with section 110 of the *Sentencing Act 1991*. Construed in accordance with is used because section 110 describes how a penalty unit is arrived at rather than defining it. Section 110 also has subsections (1) and (2), each of which arrives at a different value for a penalty unit.

Section 45 refers to ‘may’ and ‘shall’. ‘Must’ is generally preferable to ‘shall’.



Section 4.2 of the Resource Book gives an example of how the *Interpretation of Legislation Act 1984* can make clauses that are typically found in Local Laws unnecessary.

4.3 The format of Local Laws



- There is no set format for Local Laws.
- The predominant criteria should be clarity and accessibility.
- This commences with having a planned outline.

4.3.1 Issues

There is no legislative provision directing the format of Local Laws. Like all Council documents, Local Laws should be commenced with a planned outline.

An outline might include:

PART 1

Preliminaries

- Title
- Objectives
- Authorising provisions

- Commencement (by default is the day the Local Law is adopted but can be specified)
- Cessation (by default the sunset point is 10 years from date of commencement but can be specified as less)
- Application (might include exemptions)
- Revocation of previous Local Law(s) if relevant
- Definitions.

PART 2

Procedural

- Permits:
 - Requirements
 - Applications
 - Compliance
 - Correction, amendment, cancellation.
- Impounding
- Fees
- Enforcement
 - Penalties
 - Notices to comply, directions, warnings
 - Infringement notices
 - Expiation of fines.

PART 3

- Specific provisions-related areas:
 - Reserves, animals, public places, roads, building works, etc.

SCHEDULES

- Form of Notice to Comply
- Form of Application for Permit
- Permit
- Permit Conditions
- Form of Notice of Impounding
- Notification of Building Works

The essential criteria for the format of Local Laws are:

- All matters required by legislation (for example, statement of objectives and enabling provisions) must be addressed.

- Local Laws must be clearly laid out and accessible. A member of the public should be able to easily find out their rights and obligations under the Local Law. They must have access to necessary forms and information.

4.4 Referring to penalties in a Local Law



- The *Sentencing Act 1991* provides a convenient method of referring to penalties in Local Laws and it should be used.

4.4.1 Legislative provision

Section 111 of the *Sentencing Act 1991* provides a convenient method of referring to penalties. It reads:

111 Location and effect of penalty provisions

A penalty set out at the foot of a provision of an Act, subordinate instrument or Local Law must, unless the context otherwise requires, be construed as indicating that a contravention (whether by act or omission) of the provision is an offence against the Act, subordinate instrument or Local Law punishable on a finding of guilt (with or without recording a conviction as required by section 7) by a penalty not exceeding that set out.

This means that simply stating a penalty at the end of a provision indicates that a breach of the provision is an offence for which the penalty applies.

For example, a provision which states:

57. A person must not light a fire in the open without a permit.

Penalty: 2 penalty units

validly indicates that breaching the provision by lighting a fire in the open without a permit is an offence for which the penalty is 2 penalty units.

Similarly, a provision which states:

57. *A person must not without a permit*

(a) *Light a fire in the open, or*

(b) *Allow any fire in the open to remain alight*

Penalty: 2 penalty units

validly indicates that breaching the provision by lighting a fire in the open without a permit or allowing a fire in the open to remain alight are both offences. The penalty for each offence is 2 penalty units.

4.5 The style and language of authorising Acts



The language of Local Laws must be consistent with the Act.

4.5.1 Legislative provision

Schedule 8 section 1(f) of the Act provides:

A Local Law must be expressed consistently with the language of the enabling Act.

4.5.2 Issues

By virtue of the *Interpretation of Legislation Act 1984* expressions used in the enabling Act have the same meaning when used in the Local Law. The writer of Local Laws can deliberately insert a different meaning, but that would be inconsistent with Schedule 8.

4.6 Drafting standards and principles



Local Laws must comply with current drafting practice.

4.6.1 Legislative provision

Schedule 8 section 1(f) of the Act provides:

A Local Law must be expressed in accordance with modern standards of drafting applying in the State of Victoria.

4.6.2 Issues

Because all subordinate legislation other than Local Laws is ultimately drawn up by the Office of the Chief Parliamentary Counsel, there is not a great deal of published, educative material available on 'modern standards.'¹⁵ The best indicators of 'modern standards' are recently created regulations. It is recommended that some examples of these be reviewed.

Writers should be aware of, and follow, relevant provisions in the *Interpretation of Legislation Act 1984* and the *Subordinate Legislation Act 1994*.

4.7 Limit to objectives



Local Laws must set out their objective in the Local Law and not exceed the objective.

4.7.1 Legislative provision

Schedule 8 section 1(b) of the Act provides:

A Local Law must in the case of a principal Local Law, clearly set out as part of its text the objectives of the Local Law.

Schedule 8 section 1(c) of the Act provides:

A Local Law must be directed towards those objectives and not go beyond them.

¹⁵ One of the key factors to take into account is that Local Laws should be expressed in plain English. See section 4.10 of this manual – 'Expressed Plainly.'

4.7.2 Issues

In section 2.2 of this manual ‘Relating the problem to Council policy objectives: Identifying if it is a Council problem’ the question of objectives was discussed. Sections 1(b) and (c) of Schedule 8 call for the objectives to be written into the Local Law. It will then be reasonably apparent if the Local Law exceeds the stated objective.

4.8 Incorporating material by reference



- Many Councils incorporate material (such as policies, codes and guidelines) into their Local Laws by reference.
- Incorporation by reference is a potentially complex area. It needs to be handled carefully if it is to be legally effective in adding material to Local Laws.
- Council needs to have a clear view of issues such as:
 - whether Council means to incorporate a document or just refer to it
 - which version and which part of the document is incorporated
 - the implications of the document being amended.
- Documents that are incorporated effectively form part of the Local Law and need to be as readily available as the Local Law.

4.8.1 What is ‘incorporation by reference’?

Incorporation by reference means making a document or part of a document binding as if it was part of the Local Law. An example is a Local Law that requires work to be done to the level specified in an Australian Standard.

4.8.2 Some potential problems – incorporated or referred to? Which version?

Whether or not a document is incorporated by reference into the Local Law or is merely referred to makes a fundamental difference to whether it can be relied on as part of the Local Law. Council needs to be extremely clear about what it is attempting to do.

Council needs to be extremely clear about which **version** of the document it is intended to incorporate into the Local Law. It needs to be clear whether it is intended that updated versions of the document can be adopted. If so, provision must be made for this process and it must be done by notice in the Government Gazette for each version.

4.8.3 Some considerations about incorporating by reference

The Office of the Chief Parliamentary Counsel Victoria has published guidance on the preparation of statutory rules (a form of subordinate legislation). That guidance suggests that consideration needs to be given to the following:

- There must be express power in the authorising Act to empower the application, adoption or incorporation of material in a statutory rule.¹⁶
- Members of the public affected by the rule must be able to access the incorporated document so that they can understand the contents and effect of the rule.¹⁷
- Whether the incorporated material is readily available at a reasonable cost.
- The requirements set out in section 32 of the *Interpretation of Legislation Act 1984* that are designed to facilitate parliamentary oversight of incorporation of

¹⁶ Section 112(1) of the *Local Government Act 1989* provides the authority.

¹⁷ This is discussed in more detail under the Accessibility section of this manual.

material and to ensure that the material is publicly available.¹⁸

- remember that the incorporated material may not be a self-contained document and may apply, adopt or incorporate other material.

4.8.4 Legislative provision

Section 112(1) of the Act provides:

A Local Law may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether –

- wholly or partially or as amended by the Local Law
- as formulated, issued, prescribed or published at the time the Local Law is made or at any time before then
- as formulated, issued, prescribed or published from time to time.

While this seems straightforward, it actually presents a number of issues to consider.

4.8.5 Issues – how to apply, adopt, incorporate?

The first issue is how a matter is applied, adopted or incorporated. This will vary. In the case of a simple provision from a document, it will be enough to specify ‘in this Local Law, the provisions of clause 3 of X document apply ...’ Other circumstances may require more specification.

4.8.6 Legislative provision

Section 32(14) of the *Interpretation of Legislation Act 1984* provides that:

A document or matter is not applied, adopted or incorporated in a subordinate instrument by reason only that it is referred

to in the subordinate instrument, or in another document or other matter applied, adopted or incorporated in the subordinate instrument, if the document or matter so referred to does not affect the operation of the subordinate instrument.

4.8.7 Issues

Simply referring to a document will not necessarily incorporate it into the Local Law unless it is clear that the document affects the operation of the Local Law. In some instances, Council might mean this to be the case.

If the intention is to incorporate a document, it should be done clearly. A phrase such as ‘... reference should be had to Council’s policy on asset maintenance ...’ is insufficient because it does not direct to the specific source material.

For example, if Council’s policy on asset maintenance is successfully incorporated but it has a mass of material which has no relevance to the Local Law, the result will be confusing. If it is intended to invoke only part of the policy, this should be done accordingly.

‘By this reference, clause 15 “Vehicle Crossovers” of Council’s Policy on Asset Maintenance (Policy 11) dated August 2008 is incorporated into and must be read as part of this Local Law.’

4.8.8 Issues – which version of the document?

Section 112(1)(b) and (c) allow a document to be incorporated as that document exists at three points in time:

- As the document exists as at the time of making the Local Law.
- As the document existed at any time prior to making the Local Law, that is, a previous version of the document. This might be used, for example, if Council has developed processes around a version

¹⁸ This is not relevant to local government but as a concept is highly relevant to the question of whether only existing documents can be incorporated.

of an Australian Standard but the current version contains amendments not in accordance with Council processes.¹⁹

- As the document exists 'from time to time'. This option would be used if it was intended that updates of (amendments to) the document would have the effect of updating the Local Law. Section 112(2) makes it clear that while provision can be made for this, it is not an automatic process. Council has to gazette the update for it to become effective.

Councils need to ensure the Local Law clearly reflects Council's intention.

4.8.9 Issues – amended documents

The ability to adopt or incorporate a document as it exists 'from time to time' has its advantages. It is important to note, however, that amended versions of the document are not automatically applied. See section 4.8.13 of these guidelines, 'Matter Incorporated by Reference not amended until Gazetted.'

4.8.10 Issues – does the incorporated matter have to be in existence?

Some Councils rely on the reference in section 112(1)(c) to ... 'from time to time' as indicating that documents that do not exist at the time of making the Local Law can be adopted in the future. This is achieved by inserting into the Local Law a provision such as:

'... if such a policy is adopted by Council at any time.'



Section 4.8 of the Resource Book discusses in more detail the issue of whether a document needs to be in existence in order to be incorporated.

¹⁹ Note particularly the requirement for Council to make available copies of the document as adopted or incorporated even though the originator of the document may no longer maintain it.

It is suggested that (in common with State legislation and Local Laws in other States) it is better practice to only incorporate documents that exist at the time the Local Law is made.

If this practice is not followed, then at a minimum, Council should adopt the better practice of inserting a provision into the Local Law requiring that any document subsequently incorporated must be subject to the process of public notice, gazetted and consideration of submissions outlined in section 223.

4.8.11 Issues – being clear about whether Council wants to 'incorporate by reference'

A Council has a comprehensive Local Law. In addition, it has a policy document which mirrors the format of the Local Law and sets out Council's policy in relation to, for example, conditions which might be taken into account in considering an application for permit.

The Council's Local Law provides.

Objectives of Local Law

This Local Law should be read in conjunction with the ... City Council Community Local Law policy document and is made for the purposes of:

The expression 'read in conjunction with ...' means two documents stand side by side. Neither applies, adopts or incorporates the other. The use of 'should' rather than 'must' in this Local Law makes the phrase an invitation to read the other document – not an incorporation of it. The policy document is referenced but it is not 'applied, adopted or incorporated' by the Local Law. It is not 'incorporated by reference.'

In this particular case, that was the intention of Council. The policy document contains guidelines and other materials that Council

does not want to form part of its Local Law. Correspondingly, the Council could not argue in court that its guidelines applied and were binding on a defendant.

4.8.12 Issues – Local Law must incorporate the other document – not vice versa

Incorporation has to be done by the Local Law. A code or other document cannot purport to incorporate itself into the Local Law otherwise any penalties issued under such a code would be invalid.

In one current example, a Council has a 'Code of Practice for the Protection of Council Assets'²⁰ which is similar to documents used by a number of other Councils.²¹

Clause 10 of the Code provides that:

The failure to comply with any provision of this Code of Practice constitutes an offence under Council's relevant Local Law²²

The general Local Law makes no reference to the Code of Practice.²³ The Code of Practice contains matters which would normally be contained in a Local Law including the requirement for a permit and penalties of up to \$1000 for a first breach and \$2000 for a second breach of the Code.

The Code is not incorporated into the Local Law.

4.8.13 Matter incorporated by reference not amended until gazetted

Council needs to be conscious that matter incorporated by reference is not regarded as having been amended until the amendment is gazetted.

4.8.14 Legislative provision

Section 112(2) of the Act provides:

If a Local Law has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Council causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.

4.8.15 Issues

One problem with incorporating internal Council documents in Local Laws is that every time a change is made to the incorporated document, the change is not effective until the change is published in the Government Gazette.



Section 4.8 of the Resource Book gives an example of a failed attempt to get around the problem of a document incorporated by reference being updated.

4.8.16 Availability of incorporated material

With the exception of other legislation, matters incorporated into subordinate legislation must be as readily available as the subordinate legislation itself, because an incorporated document actually forms part of the subordinate legislation.

²⁰ The Code can be found by searching on Council's website – but not under that exact name. References on the website have a different name. See section of these guidelines on Accessibility.

²¹ Whether this document has been approved by the Council is not clear.

²² Which is the 'relevant' Local Law is not made clear. The Council has two Local Laws. It is reasonable to assume the 'relevant' Local Law is the general Local Law rather than the meeting procedures one.

²³ Nor does the one about meeting procedures.

4.8.17 Legislative provision

Section 32(3)(b)(ii) of the *Interpretation of Legislation Act 1984* provides that a copy of a matter

'...applied, adopted or incorporated must be kept available for inspection during normal office hours by members of the public without charge –

(ii) in the case of a subordinate instrument that is not a statutory rule, at the principal office of the body which made the subordinate instrument or at some other appropriate public office specified by the Minister administering the Act under which it is made by a notice published in the Government Gazette.

4.8.18 Issues

A copy of any document incorporated into a Local Law must be available for inspection without charge at the Council office during normal office hours. The risk for Council of a document not being available is that section 32(12) of the *Interpretation of Legislation Act 1984* may preclude a conviction.

However, section 82A of the Act now provides that in addition to being available at Council offices, Local Laws must also be available on Council's website. It follows that any document incorporated into the Local Law must similarly be available on Council's website. This is discussed in more detail in these guidelines at section 8 'Accessibility and Communication'.



- Serious consideration needs to be given to whether a Local Law should be complete within itself or rely on incorporated material. If the latter, consideration needs to be given to the extent. A factor in this will be the availability of the incorporated material.
- To put it beyond doubt that a document²⁴ is being incorporated by reference, it is suggested that an appropriately detailed form of words, including name and version, is used to identify the document.
- If only part of a document is relevant, then that part only should be incorporated. This can be done by referring explicitly to the part in question.
- Council needs to specify which version of the document is being incorporated – earlier, current or 'from time to time'. Unless 'from time to time' is specified, the incorporated document cannot be updated without updating the Local Law.
- An amended document is not effective to update until it is gazetted.
- It is suggested that incorporated documents must be in existence at the time the Local Law is made. If this is not the case, then at a minimum, the Local Law should provide that a document is not incorporated until a process is conducted under section 223, and the document is gazetted.
- Incorporated documents must be as readily available as the Local Law – for example, on Council's website.

²⁴ In this discussion, the word 'document' is used to summarise "...any matter contained in any document, code, standard, rule, specification or method..."

4.9 Performance standards or prescriptive?



It is a legal requirement that, wherever appropriate, a Local Law be expressed in terms of performance standards rather than prescribed details.

4.9.1 Legislative provision

Schedule 8 section 1(e) of the Act provides:

A Local Law must – wherever appropriate, set performance standards rather than prescribe detailed requirements as to the manner in which those standards shall be achieved.

4.9.2 What are performance standards?

Performance standards or 'performance based' is a general term that is usually contrasted with prescriptive. A performance-based provision sets out the performance required or the objective to be achieved without prescribing how it is to be achieved. A prescriptive provision sets out a rigid specification for compliance. The following provides a clear example of each approach:

A Council's Local Law incorporates a Code of Practice for building sites. The Code hedges its bets by including prescriptive and performance-based measures in the one clause defining site fencing²⁵.

It provides:

'site fencing means a fence around the entire perimeter of a building site at the commencement and for the duration of the building works,

Prescriptive →	(a) at a height of not less than 1500 millimetres with the diamond size no greater than 80 millimetres x 80 millimetres; and
Performance →	(b) so as to be capable of preventing litter from being transported from the building site by wind;'

It seems to be assumed – but curiously not stated – that the fence is some sort of mesh.

If the objective is to contain litter, subclause(b) on its own would achieve this and allow for possibilities such as:

- an existing 2000 mm high bluestone fence at the front and solid 1800mm high paling fence around the back and 2 sides
- a dense cypress hedge at the front
- solid ply temporary fencing panels all round.

Each of these would have the added benefit of containing dust and other pollutants as well as reducing noise. All of them, unfortunately, would need to be additional to a fence with a diamond size no greater than 80 x 80 in order to comply with the prescriptive provision in subclause (a).

The use of performance standards in Local Laws has the advantage of flexibility to suit circumstances – such as the existence of a fence that already exceeds the functionality of a rigidly specified 80 x 80 diamond. It allows for adaptation to changes in circumstances and technology without having to re-write Local Laws.

²⁵ This provision also combines definition with an operative provision. Site fencing is the item being defined. When site fencing must be erected is a matter to be stated as an obligation.

The downside is a lack of certainty as to whether a solution complies or whether it will be accepted by Council as complying. Performance standards also tend to require greater involvement on the part of Council in inspecting, assessing and making decisions as to compliance.

These problems can be overcome, where appropriate, with the use of 'deemed to comply' provisions. This involves that a performance standard is set and solutions that are known to be acceptable are specified without precluding other solutions that may be approved.

Re-written this way the provision would read:

'Site fencing means a fence around the perimeter of a building site capable of preventing litter from being transported from the building site by wind.

A site fence is deemed to comply with this requirement if it is not less than 1500 mm high and constructed of any of the following or any combination of the following:

- Mesh with a diamond of not less than 80 mm x 80 mm
- Fabric affixed to a structure capable of supporting the fabric in position
- Solid materials
- Vegetation, provided the vegetation is sufficiently dense to prevent the passage of litter
- Any other materials or combination of materials approved in writing by a Council officer.'

A further provision would require that:

'Site fencing must be in place whenever building works are being carried out.'

Alternatively, the primary requirement for site fencing could be set out in the Local Law and the types of fencing deemed to comply could be set out in an incorporated

code of practice. This enables the code to be updated by gazetting without the need to re-adopt the Local Law.

Many Local Laws already contain performance standard provisions. Others contain provisions that are close to setting performance standards. Most Local Laws that have any sort of qualification, condition or specification can be expressed in performance standard terms. These include Local Laws in areas such as street trading, keeping and control of animals, building sites, and general amenity.



- Council needs to make a deliberate decision to adopt a performance-based approach when writing Local Laws.
- If a performance-based approach is not appropriate, this should be explained.



- If a performance-based approach has not been adopted in respect of provisions or a range of provisions, the Local Law Community Impact Statement should include an explanation as to why this was not appropriate or possible.

4.10 Expressed plainly



Local Laws should be in Plain English.

4.10.1 Legislative provision

Schedule 8 section 1(f) of the Act provides:

A Local Law must – be expressed plainly and unambiguously.

4.10.2 Issues – Plain English

This provision touches on the whole subject of what has become known as ‘Plain English.’ The Office of the Chief Parliamentary Counsel (OCPC) has a Plain English policy as follows:

The Office of the Chief Parliamentary Counsel: Plain English Policy

The meaning of a law must be clear and legally certain if it is to achieve its purpose. In writing a law we see it as our task to ensure that the law achieves its purpose and that it is as easy to read and understand as is possible in the circumstances.

To assist users of the law it is our policy to –

- use plain language
- avoid the use of archaic and unnecessary words
- structure the law in a clear logical manner
- use a clear format
- use reader aids such as headings, tables of provisions and indexes
- use gender-neutral language.

4.10.3 Issues – problems with expression

A number of problems consistently arise in legal drafting.



Section 4.10 of the Resource Book sets out some common examples.



- Council needs to adopt a ‘Plain English’ policy in respect of all its documents and then apply that to its Local Laws and related documents.
- Council should refer to website resources found by a search of ‘Plain English’

4.11 Not exceed powers



Council’s Local Law must not exceed the powers of the Act(s) under which it is made.

4.11.1 Legislative provision

Schedule 8 section 2(a) of the Act provides:

A Local Law must not exceed the powers conferred by the Act under which the Local Law purports to be made.

4.11.2 Issues

A cursory review of some Local Laws has highlighted that this is a problem in a number of areas, particularly when Local Laws stray into telling courts how to act and what evidence the court may take into account.

For example, a Local Law provides:

7.5 Evidentiary provisions

In any proceedings for an offence against this Local Law, proof is not required as to any of the following matter until evidence is given to the contrary:

- a) the appointment and authority of any delegate to Council to perform any act or
- b) make any decision pursuant to this Local Law
- c) the authority and appointment of members of the police force and any person or member of the staff of the Council to perform any act or make any decision pursuant to this Local Law.

This clause purports to extend the provisions of section 242 of the Act. To the extent it does so, it is invalid²⁶.



Section 4.11 of the Resource Book contains further examples of Local Laws purporting to exceed the authority of the Act under which they are made.

4.12 Not retrospective



A Local Law must not have retrospective effect.

4.12.1 Legislative provision

Schedule 8 section 2(b)(i) of the Act provides:

A Local Law must not without clear and express authority in the enabling Act have any retrospective effect;

4.12.2 Issues

It is unlikely that a Council would seek to deliberately impose retrospective Local Laws. If a Local Law is expressed to come into effect at a future date, Council needs to ensure that:

- any action taken (such as the issue of an infringement notice) is taken under the existing Local Law
- any requirements such as gazettal and availability of the Local Law have been complied with.

4.13 Tax, fee, fine or penalty



- There must be specific authority in the enabling Act to impose a tax, fee, fine or penalty.
- No legislation allows Council to impose imprisonment.

4.13.1 Legislative provision

Schedule 8 section 2(b)(ii) of the Act provides:

A Local Law must not without clear and express authority in the enabling Act impose any tax or fee, or any fine, imprisonment or other penalty.

Section 113(1) provides:

A Local Law may provide that a Council may by resolution determine a fee, charge, fare or rent in relation to any property, undertaking, goods service or other matter or thing.

Section 115 provides:

A Local Law may prescribe a penalty not exceeding 20 penalty units for a contravention of a Local Law.

4.13.2 Issues

It is important to note that each of these provisions is concerned with what Council may and may not put into a Local Law.

The Act allows for a fee, charge, fare or rent, provided:

- that Council spells out in the Local Law what the fee, charge, fare or rent is for
- the fee, charge, fare or rent is determined by a resolution of the Council. That is, it is not capable of being delegated

Section 113(1) says that a Local Law may contain a provision to the effect that 'Council may by resolution determine a fee ...'

²⁶ The Local Law also seems to confuse the concepts of delegation and authorisation.

An example of a Council's Local Law provides that:

The Council may from time to time determine fees for the reinstatement of Roads, Footpaths or street trees damaged or altered by works of a type listed in clause ...

By leaving out the words 'by resolution' this provision of the Local Law leaves open the possibility that the fee could be determined by an officer under delegation. Council takes an unnecessary risk by not adhering strictly to the provisions of the Act.

Clearly the Act does not authorise a Local Law to contain a provision providing for imprisonment.

If 'fee, charge, fare or rent' can be construed to include bonds and security guarantees, then these would also be allowable. The onus for establishing this would be on Council.

While the Act refers to 'fee, charge, fare or rent', one item will not be all of these. Which it is needs to be specified.



In the relevant provision of the Local Law:

- Any charge should be accurately described as either a fee or a charge or a fare or rent.
- There should not be a generic clause authorising Council to ... by **resolution** determine a fee, charge, fare or rent in respect of any matter under this Local Law ... It is preferable to have a specific clause in respect of each item as it occurs in the Local Law – permit fee, impounding charge, etc.

4.14 Not shift onus of proof



A Local Law must not reverse the onus of proof unless there is specific authority in the enabling Act.

- The *Local Government Act 1989* does not provide authority to reverse onus of proof.
- Other Acts under which Council is able to make Local Laws are unlikely to provide authority.

4.14.1 Legislative provision

Schedule 8 section 2(b) of the Act provides:

A Local Law must not without clear and express authority in the enabling Act purport to shift the onus of proof to a person accused of an offence.

4.14.2 Issues

The Act does not contain any 'clear and express authority' to shift the onus of proof. Unless a Local Law is made under another piece of legislation, there is no authority to shift the onus of proof.

A problematic example of a Council Local Law²⁷ that provides:

Owner and occupier onus

(a) If any item is deposited in a receptacle specifically provided to an occupier for the recycling of domestic waste contrary to the provisions of clause 3.2

(b) the following persons are deemed guilty of an offence against clause 3.2 (b):

- (i) the owner of the land to whom the receptacle has been provided
- (ii) the occupier of the land to whom the receptacle has been provided
- (iii) the person that placed the receptacle on the road for collection by the Council or person acting on behalf of the Council ...

(c) In determining whether a person is guilty of an offence against clause 3.2 (b) a court must not rely on the provisions of sub clause (a) unless the court is satisfied that no other person has been found guilty of depositing the material in contravention of clause 3.2 (b) and that:

- (i) it is not practicable to discover who deposited the material; or
- (ii) it is not possible to file a charge against the person who deposited the material; or
- (iii) it is unlikely that the filing of a charge against the person who deposited the material would result in a finding of guilt.

This provision provides that potentially three people are guilty of a single offence unless they can prove otherwise. This is a clear case of reversing the onus of proof. It then compounds this – subclause (c) – by providing that the court cannot, for example, find the owner guilty unless the court is satisfied (c(ii)) that the tenant/occupier is really guilty but has left the jurisdiction.

²⁷ In contravention of Schedule 8(1)(b)(ii) the Local Law does not set out the provision authorising the Local Law. It must be assumed it is made under the *Local Government Act 1989*.



Section 4.14 of the Resource Book contains further examples of Local Laws that purport to shift the onus of proof.

4.15 No further delegation



A Local Law cannot normally delegate powers beyond the limit set by the enabling Act.

4.15.1 Legislative provision

Schedule 8 section 2(b) of the Act provides:

A Local Law must not without clear and express authority in the enabling Act provide for any further delegation of powers delegated by the Act.

4.15.2 Issues

These guidelines have set out the powers of delegation contained in sections 98 and 114 of the Act. An example of a Council's Local Law provides:

16.10 In accordance with section 114 of the Local Government Act 1989, the *Council* hereby:

(1) delegates to the *Chief Executive Officer*, the Director Customer Services and the Director Corporate Services and to any person for the time being acting for these persons, all the powers, discretions, authorities and considerations of *Council* under this Local Law including the powers, discretions and authority to issue or refuse *permits*, fix conditions and durations relevant to *permits*, cancel *permits*, require additional information, apply guidelines or policies of *Council*, waive the need for any *permit*, waive, fix or reduce fees or charges or to do any act, matter or thing necessary or incidental to the exercise of any function or power by the *Council*; and

As previously noted, this is an appropriate use of section 114. However, to the extent it

purports to give the Chief Executive Officer the power to fix fees, it exceeds section 113, which specifically reserves the right for Council to fix fees by resolution.

4.16 No unexpected or unusual use of powers



- Local Laws must not misuse the powers granted by the Act under which they are made.
- This would include extending powers to unusual lengths or adopting artificial interpretations of provisions.

4.16.1 Legislative provision

Schedule 8 section 2(d) of the Act provides:

A Local Law must not make unusual or unexpected use of the powers conferred by the Act under which the Local Law is made having regard to the general objectives, intention or principles of that Act.

4.17 Reviewing the draft



- Council needs to review its draft Local Law.
- A review against similar Local Laws of neighbouring and like Councils is also good practice.
- The *Charter of Human Rights* requires the draft be reviewed.
- National Competition Principles require that the draft be reviewed.

4.17.1 Issues

As with any document, the draft Local Law(s) needs to be reviewed. This will pick up errors and any lapse in good drafting practice.

However, the review of a Local Law is also effectively legislated by the *Charter of Human*

Rights and Responsibilities Act 2006 (Charter of Human Rights or the Charter).

In addition, it has been a theme of these guidelines that Councils should be aware of the practices of neighbouring and like Councils. A Council should be able to explain any significant differences between provisions of its Local Law and that of its neighbouring or like Councils if the provisions cover similar areas.

4.18 Reviewing the draft – Neighbouring and like Councils



Council should compare its proposed Local Law with those of its neighbouring and 'like' Councils.

4.18.1 Issues

Councils routinely compare their Local Laws with those of neighbouring Councils and, if the neighbours do not share similar characteristics, with 'like' Councils.

There is no legislative requirement that Councils compare their Local Law with neighbouring and like Councils. However, as it is good practice, that should be followed.

Suggested points of comparison include:

- scope: ascertaining what matters are covered, and whether any omissions from neighbouring Local Laws are oversights or deliberate
- legislative approach
- fees (this does not involve collusion in breach of Trade Practices provisions);
- penalties
- practices
- permit conditions.

Comparing with neighbouring Councils might well reveal explainable differences if the

neighbours are not 'like'. A combination of neighbouring and 'like' will provide a more relevant picture. Councils will already have experience of the characteristics of other Councils with which they compare matters. The number and range of comparisons is at Council's discretion.



- The Local Law Community Impact Statement should detail those neighbouring and like Councils whose Local Laws have been compared.
- The statement should detail the points of comparison.
- Significant differences between Council's proposed Local Law and those of its neighbours or like Councils should be explained.

4.19 Reviewing the draft - Charter of Human Rights



- The *Charter of Human Rights* requires that Local Laws not be incompatible with human rights.
- A thorough and detailed review is the only way of establishing this.
- The Charter applies to all materials such as policies, guidelines and manuals used in conjunction with the Local Law.

4.19.1 Legislative provision

Section 38 of the Charter provides:

38 Conduct of public authorities

(1) Subject to this section, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

4.19.2 References

To adequately address human rights issues in relation to Local Laws, Councils need to refer to a number of websites including:

The Victorian Equal Opportunity and Human Rights Commission at: www.humanright-scommission.vic.gov.au

The Human Rights Unit within the Department of Justice has issued Guidelines for Legislation and Policy Officers: www.justice.vic.gov.au

4.19.3 Issues

It is beyond the function of these guidelines to provide a detailed analysis of compliance with the Charter. The purpose of this material is to emphasise the importance of the Charter in the making of Local Laws and the need for Council to fully consider its obligations.



Section 4.19 of the Resource Book has an outline of the process for undertaking a review of Local Laws in relation to the Charter.

On 10 August 2007, Dr Helen Szoke, Chief Executive Officer, the Victorian Equal Opportunity and Human Rights Commission delivered a speech entitled 'Charter of Human Rights and Responsibilities: Implications for Local Government.' The following is an extract from that speech:

What does the Charter mean for local government?

When making Local Laws, Councils must be satisfied that they comply with the rights contained in the Charter. This obligation derives from two sources. As noted above, as public authorities Councils must comply with the obligation contained in section 38 of the Charter which provides:

Subject to this section, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

The making of Local Laws would constitute both an act and decision making on the part of Councils.

Separately from this, section 111 of the Local Government Act 1989 (Vic) ('LGA') states:

(1) *A Council may make Local Laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under this or any other Act.*

(2) *A Local Law must not be inconsistent with any Act or regulation.*

(3) *A Local Law is inoperative to the extent that it is inconsistent with any Act or regulation.*

Like any other Act of the Victorian Parliament, the Charter is one of the Acts encompassed by section 111 of the LGA. Importantly, section 111 of the LGA does not simply reinforce the obligation contained in section 38 of the Charter, it specifies the consequences of a failure to make laws that are consistent with human rights, namely that they will be inoperative.

Council must be satisfied that the Local Laws comply with the rights contained in the Charter. It is the view of Victorian Equal Opportunity and Human Rights Commission that Local Laws that do not comply with the Charter are inoperative.

The Charter applies to all decisions made by Council. Accordingly, not only the Local Law is affected but also all policies, guidelines, and other material used in association with Local Laws. This applies whether or not the material is formally incorporated into the Local Law.



- Council needs to undertake a review of its proposed Local Law in accordance with the procedures laid out in this manual.
- The review results would be made available to the community.



- A Local Law Community Impact Statement should include results of a review for compatibility with the Charter of Human Rights, that is, whether any rights are engaged and justifying any limitations on rights.

4.20 Reviewing the draft - Other provisions of Schedule 8



- Schedule 8 has a number of other provisions that would require the draft Local Law to be reviewed.
- These include:
 - principles of justice and fairness
 - absence of undue trespass on rights
 - absence of undue reliance on administrative decisions
- These provisions pre-date the *Charter of Human Rights*.
- The review against the Charter of Human Rights should ensure compliance with the provisions.

4.21 Reviewing the draft - Principles of justice and fairness

4.21.1 Legislative provision

Schedule 8 section 2(h) of the Act provides:

A Local Law must not – be inconsistent with principles of justice and fairness.

4.21.2 Issues

This provision of the Act pre-dates the Charter of Human Rights. To a large extent, it is probably superseded or replaced by the Charter. A proper review of the proposed Local Law to ensure it is compatible with the Charter will ensure compliance with this provision of the Act.

4.22 Reviewing the draft - Undue trespass on rights

4.22.1 Legislative provision

Schedule 8 section 2(f) provides:

A Local Law must not unduly trespass on rights and liberties of the person previously established by law.

4.22.2 Issues

Again, this provision of the Act pre-dates the Charter of Human Rights. A proper review of the proposed Local Law to ensure it is compatible with the Charter will ensure compliance with this provision of the Act.

4.23 Reviewing the draft - Undue dependence on administrative decisions

4.23.1 Legislative provision

Schedule 8 section 2(g) of the Act provides:

A Local Law must not – unduly make rights and liberties of the person dependent upon administrative and not upon judicial decisions;

4.23.2 Issues

This provision is directed towards Local Laws that entrap an affected person in successive administrative steps before allowing that person access to a court. As previously discussed, Local Laws are subject to very limited judicial review. Unless a person is prepared to take Supreme Court action, there is no opportunity for judicial review.

While not binding in Victoria, the *Queensland Legislative Standards Act 1992* provides a guide to good practice. It is consistent with this manual. Section 4 of that Act provides 'A law should make rights and liberties or obligations, dependent on administrative

power only if the power is sufficiently defined and subject to appropriate review.'

So:

- transparency in Council's administrative processes and clear review procedures become even more important,
- it is important that Local Laws are not used where other existing laws or provisions would give an affected person access to a judicial decision.

4.24 Reviewing the draft - National Competition Principles



Draft Local Laws must be reviewed to ensure they do not breach National Competition Principles

4.24.1 Legislative provision

Schedule 8(2)(j) of the Act 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
- the objectives of the Local Law can only be achieved by restricting competition.

4.24.2 Issues

This is a direct reflection of the State Government's commitment in respect of National Competition Principles. It has been discussed in this manual at section 2.13 'Possible restriction of competition by Local Laws.'

5 Communicating and consulting on the draft

	Section	Outcome
5.1	Starting communication	<ul style="list-style-type: none">• Council needs to start communication and consultation on its proposed Local Law well before the statutory section 223 process.• Council needs to take responses into account and needs to be prepared to make changes to its draft as a result of consultation.
5.2	Identifying and communicating with affected parties	<ul style="list-style-type: none">• To communicate effectively, Council needs to identify and make contact with affected parties.
5.3	Consultation meetings	<ul style="list-style-type: none">• It is suggested Council convene one or more consultation meetings prior to the section 223 process being commenced.
5.4	Public notice	<ul style="list-style-type: none">• Council must give public notice of its intention to make a Local Law.• The notice must include the 'purpose and general purport' of the Local Law.
5.5	Considering submissions	<ul style="list-style-type: none">• Council is obliged to consider all submissions made.• Council is not obliged to adopt the submissions but genuine consideration should be given and demonstrated.• Council should adopt a two-stage process to avoid considering submissions at the same meeting at which it is proposed to adopt the Local Law.
5.6	Making amendments	<ul style="list-style-type: none">• If Council makes substantial amendments to the proposed Local Law after public notice is given, Council will need to consider whether public notice needs to be given again.

5.1 Starting communication



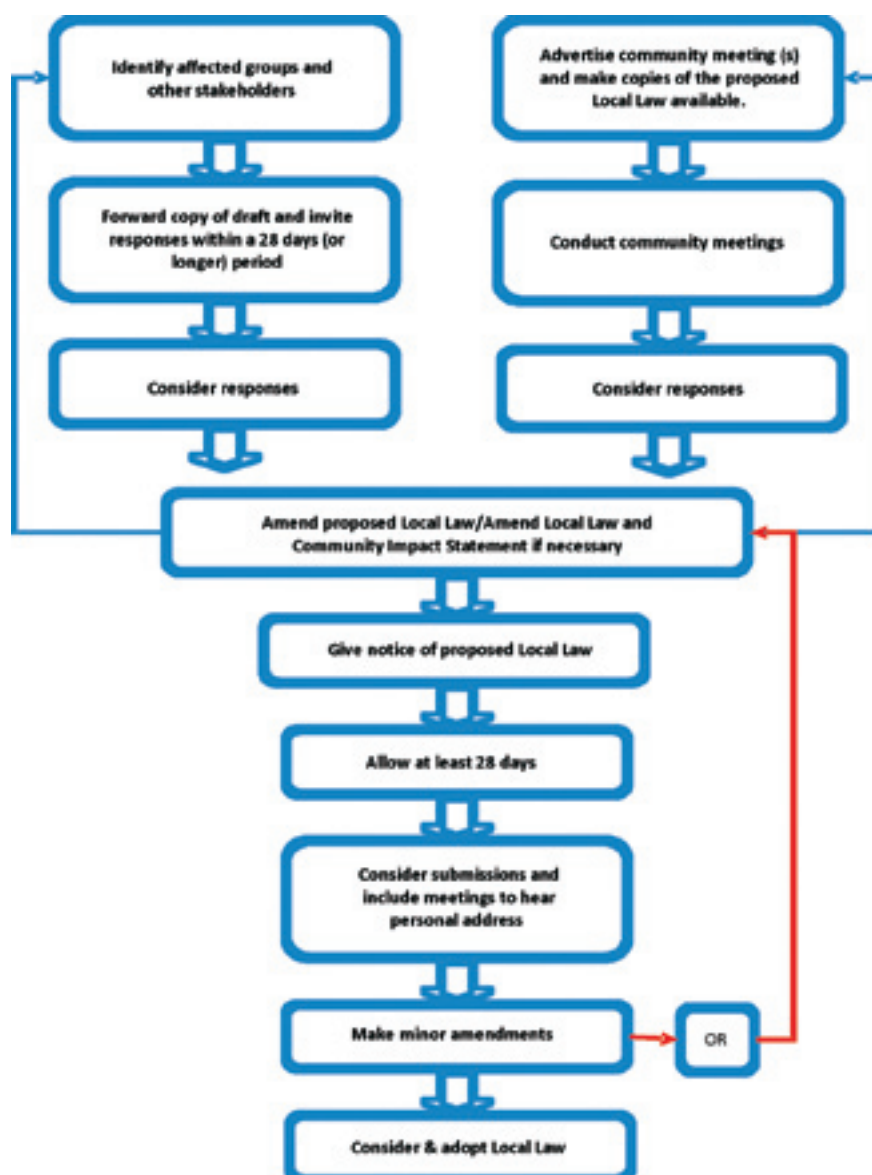
- Council needs to start communication and consultation on its proposed Local Law well before the statutory section 223 process.
- Council needs to take responses into account and needs to be prepared to make changes to its draft as a result of consultation.

5.1.1 Issues

The Act requires public notice to be given of a proposed Local Law and a period of not less than 28 days to be available for

submissions. A Council relying solely on this as its 'consultation' on a proposed Local Law would not discharge its obligation to its community and other stakeholders.

Genuine consultation – including openness to suggested changes – needs to start early in the Local Law making process. Council needs to develop and adopt its own consultation processes. This will be determined by community size, the content of the proposed Local Law, the areas of impact, and the degree of interest. The following diagram (or a variation of it as determined by Council) represents the sort of process the community is entitled to expect.





By way of contrast, section 5.1 of the Resource Book sets out the statutory process required for formal notice.

5.2 Identifying and communicating with affected parties



To communicate effectively, Council needs to identify and make contact with affected parties.

Councils that undertake better practice generally have a strong commitment to engaging their communities in the law making process. They recognise the value that genuine consultation can bring to the quality, acceptance and efficacy of the Local Law. Throughout the Local Law process these Councils go beyond the statutory requirements to undertake a number of beneficial tasks. One of these is to identify specific stakeholders who may be affected by proposed Local Laws and consult directly with them, by forwarding copies and seeking feedback.

A Council proposed a Local Law dealing with building and construction sites. In addition to the statutory processes for giving notice, the Council identified from its records* those builders that were active within the municipality and forwarded copies of the Local Law and related material to them.

*(The majority of builders are incorporated entities to which Information Privacy Principles do not apply. The use of Council's records for this purpose did not breach the *Information Privacy Act 2000*.)

5.3 Consultation meetings



It is suggested Council convene one or more consultation meetings prior to the section 223 process being commenced.

5.3.1 Issues

Depending on demand, Council may convene one or more meetings to discuss the proposed Local Law. Such a meeting would be in addition (and prior) to the meeting which would be required if a person expressed a desire to be heard as a result of the section 223 process.

It is in Council's interest to obtain and properly consider feedback from the community sooner rather than later. It provides the community and Council with confidence in the Local Law process and the outcomes. It can also reduce the possibility that serious concerns will be raised during the subsequent section 223 submission period.

What material is presented to such a meeting will be determined by the stage at which the meeting is held. If the meeting is held early in the development phase of the Local Law, it may be more of an information gathering session. If held later when a draft of the Local Law and the Local Law Community Impact Statement are prepared, then those drafts should be made available and feedback sought.



The Local Law Community Impact Statement should include:

- the response obtained as a result of community consultation
- any adjustments to the proposed Local Law made as a result.

5.4 Public notice



- Council must give public notice of its intention to make a Local Law.
- The notice must include the 'purpose and general purport' of the Local Law.

5.4.1 Legislative provision

Section 119 of the Act provides:

- (1) *Before a Council makes a Local Law it must comply with the following procedure.*
- (2) *The Council must give a notice in the Government Gazette and a public notice stating –*
- (a) *the purpose and general purport of the proposed Local Law*
 - (b) *that a copy of the proposed Local Law can be obtained from the Council office*
 - (c) *that any person affected by the proposed Local Law may make a submission relating to the proposed Local Law under section 223.*

5.4.2 Issues

'Public Notice' is defined in the Act. By virtue of section 82A, the public notice is required to be published on Council's website as well as in a newspaper.

The requirement that the general purport of a law be stated does not, by necessity, involve the identification of each and every substantive provision.²⁸ Council should, however, err on the side of providing too much rather than too little information. The purpose of the notice is to allow persons to accurately determine whether they are likely to be affected by the proposed Local Law. The notice should clearly enable this.

Council must also provide in the notice sufficient details of the process to enable

persons affected to make a valid submission under section 223. This would include advising, for example, that a person making a submission is entitled to be heard provided they request that in the submission.

The notice needs to specify the date by which submissions must be received. This is not 28 days. It is 'not less than 28 days from the date on which the notice is published'. The later of the Gazette or newspaper notice dates is required. In accordance with section 44(1) of the *Interpretation of Legislation Act 1984*, the 28 days does not include the day on which the notice appears. Section 223 calls for the **date** to be specified – not, for example' ... a period of 28 days,

'... a copy of the proposed Local Law can be obtained from the Council office ...' Copies need to be readily available. It would be contrary to the spirit of the provision to charge for copies. Similarly, it would be unwise to put hurdles in the path of persons seeking copies. Such hurdles would include requiring personal attendance or requiring personal details of the applicant.

Clearly, the term, 'proposed Local Law' needs to be interpreted to include any matter that operates as a provision of the Local Law. If the Local Law includes materials incorporated by reference, those materials need to be available with the Local Law.

Council's website must contain a copy of the notice. Strictly, in accordance with section 82A(2)(b)(i), Council's website only needs to contain a copy of the Local Law once it comes into operation. However, unlike a newspaper advertisement, appending the proposed Local Law (and all incorporated material) to the website copy of the notice has negligible cost. Communities would be entitled to expect that a copy of the proposed Local Law would be available on the website. To avoid confusion, this must be clearly labelled as 'draft' or 'proposed' and must be removed when the Local Law is adopted.

²⁸ Mandie, J in *Payne v Port Phillip City Council* [2007] VSC 507 paragraph 48.

5.5 Considering submissions 5.6 Making amendments



- Council is obliged to consider all submissions made.
- Council is not obliged to adopt the submissions but genuine consideration should be given and demonstrated.
- Council should adopt a two-stage process to avoid considering submissions at the same meeting at which it is proposed to adopt the Local Law.

5.5.1 Legislative provision

Section 223(1)(d) of the Act provides that:

the Council or special committee responsible for making the decision must consider all the submissions made.

5.5.2 Issues

Considering submissions does not require Council to agree with any submission or to change its proposed course of action. However, where community concerns are raised, Council would be ill advised to simply ignore them. Council should address the submissions and provide a reply.

It is possible to consider (and dismiss) submissions and proceed to adopt the Local Law at the same Council meeting. Transparency would, however, be more apparent if submissions are considered prior to the meeting at which Council proposes to adopt the Local Law. This will demonstrate that Council is prepared to review and consider submissions rather than having already pre-determined to adopt the Local Law regardless of the submissions.



- The final version of the Local Law Community Impact Statement should include a copy of Council's replies to submissions whether accepted or otherwise.



If Council makes substantial amendments to the proposed Local Law after public notice is given, Council will need to consider whether public notice needs to be given again.

5.6.1 Issues

Council must consider the consequences of making a change to the proposed Local Law after public notice has been given in accordance with section 119. The change may result from a submission or any other factor. If the change is minor there is no problem. If the change has any substance, Council will need to consider whether:

- the 'purpose and general purport' remain accurately stated in the public notice
- the Local Law remains essentially the same as that advertised and made available.

Council needs to surmise as to whether the amended Local Law could prompt a community group to want to make a submission. If so, Council needs to commence the public notice process again in order to afford that opportunity.

This is an excellent example of why early consultation is to be favoured. Councils that truncate the process risk criticism that they refused to make necessary changes because it was too late and too inconvenient because Council had already committed itself to a timeline.

6 Making Local Laws

	Section	Outcome
6.1	Resolution	Council makes the Local Law by ordinary resolution.
6.2	Commencement	The Local Law comes into operation on the day Council makes it, unless the Local Law itself expresses a different date.
6.3	Stay of operation	While it does not affect the validity of a Local Law, a failure to make the Local Law available may effectively operate to prevent the Local Law being used.

6.1 Resolution



Council makes the Local Law by ordinary resolution.

6.1.1 Issues

Having placed a public notice and considered submissions (if any) received under section 223 of the Act, Council is ready to make its Local Law. A Local Law is made by resolution of the Council.²⁹

6.2 Commencement



The Local Law comes into operation on the day Council makes it, unless the Local Law itself expresses a different date.

6.2.1 Legislative provision

Section 121(1) of the Act provides:

A Local Law or a provision of a Local Law comes into operation at the beginning of the day on which the Local Law is made or at the beginning of such later day as is expressed in the Local Law as the day on which the Local Law or provision comes into operation.

²⁹ Unlike some other States in Australia, no special majority is required.

6.2.2 Issues

Note that the Local Law comes into operation when it is made, that is, immediately, not when notice is published in the Gazette or a newspaper. The Council meeting adopting the Local Law may take place at night. Despite this, the Local Law comes into operation at the beginning of the day. This is unlikely to have any practical effect.³⁰

The Local Law itself may specify a different date on which it is to come into operation. This is important because it will determine:

- when the Local Law is operative
- when the previous Local Law is revoked (assuming, as will generally be the case, that the new Local Law is expressed to revoke a previous Local Law).

It is not clear that Council can specify a date by reference to an event. One Local Law, for example, says that it comes into effect on the day it is gazetted. This is probably based on a misunderstanding of section 121. It in turn gives rise to uncertainty and raises possible questions of evidence.

³⁰ Although, if the Local Law substantially changed the meeting procedure at which it was adopted this might be a matter to consider.

6.3 Stay of operation



While it does not affect the validity of a Local Law, a failure to make the Local Law available or give public notice of it may effectively operate to prevent the Local Law being used.

6.2.1 Legislative provision

Section 121(2) of the Act provides:

Even though a Local Law has come into operation –

- (a) a person cannot be convicted of an offence against the Local Law if it is proved that at the time of the alleged offence the Council had not complied with section 119(3) or 120(1) unless it is proved that at that time reasonable steps had been taken for the purpose of bringing the general purport of the Local Law to the notice of the public or of persons likely to be affected by it or of the person charged; and*
- (b) a person cannot be prejudicially affected or made subject to any liability by the Local Law if it is proved that at the relevant time the Council had not complied with section 119(3) or 120(1) unless it is proved that at that time reasonable steps had been taken for the purpose of bringing the purport of the Local Law to the notice of the public or of persons likely to be affected by it or of the person concerned.*

6.3.2 Issues

Section 121(2) of the Act does not have any impact on when the Local Law comes into operation. It merely places a limitation on its effectiveness in certain situations until public notice is given. Councils would be wise to ensure that the notification takes place as soon as practicable after the Council meeting.

Implementing and enforcing Local Laws



Guidelines Part 3: Implementing and enforcing Local Laws

This part contains the following sections and contents:

Section heading		Contents
Implementing Local Laws	→	<ul style="list-style-type: none">• Gazetting and giving notice• Ancillary materials – forms, guidelines, etc.• Authorisations and delegations
↓		
Accessibility and communication	→	<ul style="list-style-type: none">• Availability of Local Laws• Availability of materials incorporated by reference into the Local Law• Education campaigns• Publication and availability of Local Law and related material• Availability of materials on Council website• Website protocols
↓		
Enforcement – personnel and practices	→	<ul style="list-style-type: none">• Authorised officers• Requirements placed on authorised officers• Powers of authorised officers• Understanding enforcement acts – Local Law or <i>Infringements Act 2006</i>?• Notice to comply and other actions• Appeal/review provisions• Authorised or delegated authority• Having an opinion – section 42 of the <i>Interpretation of Legislation Act 1984</i>• Infringement notices – <i>Infringements Act 2006</i> requirements• <i>Infringements Act 2006</i> reviews

7 Implementing Local Laws

Section	Outcome
7.1 Gazetting and giving notice	<ul style="list-style-type: none"> • As well as gazetting and giving public notice of the intention to make a Local Law, Council must gazette and give public notice of the fact that it has made the Local Law. • Council must also send a copy to the Minister for Local Government.
7.2 Ancillary materials – forms, guidelines, etc.	<ul style="list-style-type: none"> • If Council wishes to rely on material that is not incorporated into the Local Law, it needs to be prepared to explain why. • That material needs to be readily available to the public.
7.3 Authorisations and delegations	<ul style="list-style-type: none"> • Council can only effectively act through staff who are either authorised or have appropriate delegated powers. It is critical that Council makes sure delegations and authorisations are in place.

Making a Local Law is not the end of the exercise. Council needs to be able to actually use the Local Law. To do this, Council needs to make sure it:

- has properly gazetted and given public notice
- has in place the functions and resources to actually implement the Local Law.

7.1 Gazetting and giving notice



- As well as gazetting and giving public notice of the intention to make a Local Law, Council must gazette and give public notice of the fact that it has made the Local Law.
- Council must also send a copy to the Minister for Local Government.

7.1.1 Legislative provision

Section 119(3) of the Act provides:

After a Local Law has been made the Council must give a notice in the Government Gazette and a public notice specifying –

- (a) *the title of the Local Law*
- (b) *the purpose and general purport of the Local Law*
- (c) *that a copy of the Local Law may be inspected at the Council office.*

7.1.2 Issues

While the Local Law comes into operation on its making or on the date specified within the Local Law, section 119(3) is important because of section 121(2). As previously seen, section 121(2) of the Act prevents a person from being convicted or being 'prejudicially affected' unless Council has complied with the section 119(3) requirement to provide notice. There are exceptions to this. For clarity, it is preferable for Council to

simply ensure the procedures are followed than have to argue the exceptions.

Subsection (c) – *a copy of the Local Law may be inspected at the Council office* is discussed in detail in the next section. As well as being available for inspection, the Local Law must also be available on Council's website (section 82A(2)).

Section 120(3) of the Act requires that 'a copy of every document incorporated by a Local Law under section 112' be available for inspection at the Council office. This is also discussed in more detail in the next section – section 2.2 'Availability of Materials Incorporated by Reference into the Local Law.'

7.1.3 Legislative provision

Section 119(4) of the Act provides:

After a Local Law has been made the Council must send a copy to the Minister.

7.1.4 Issues

Failure to provide a copy to the Minister for Local Government does not in any way invalidate the Local Law.

7.2 Ancillary materials – Forms, guidelines, etc.



- If Council wishes to rely on material that is not incorporated into the Local Law, it needs to be prepared to explain why.
- That material needs to be readily available to the public.

If Council intends to rely on material which is not incorporated by reference, obvious questions arise such as:

- why the material is not incorporated into the Local Law

- the status of the material in relation to the Local Law
- the basis on which a court should take it into account.

If Council does intend to rely on such material, it should also make sure that material is readily available. A court will treat such material on its merits.

7.3 Authorisations and delegations



Council can only effectively act through staff who are either authorised or have appropriate delegated powers. It is critical Council makes sure delegations and authorisations are in place.

In practice, Council can only enforce Local Laws through delegated and authorised personnel. Typically, Local Laws will rely heavily on authorised officers for day-to-day enforcement. It is critical, therefore, that delegations and authorisations are:

- validly issued
- current
- issued under the correct Local Law or other legislative authority.

8 Accessibility and communication

	Section	Outcome
8.1	Availability of Local Laws	<p>Local Laws must be:</p> <ul style="list-style-type: none"> • printed • available for inspection • available for purchase • on Council's website • in consolidated form.
8.2	Availability of materials incorporated by reference into the Local Law	<p>Council needs to ensure that material incorporated by reference into the Local Law is available to the same extent and in the same ways (for example, on Council's website) as the Local Law itself, preferably alongside or linked to the Local Law.</p>
8.3	Education campaigns	<p>Council should consider active steps such as education campaigns and mail outs to affected groups in order to publicise Local Laws.</p>
8.4	Publication and availability of Local Law and related material	<p>Local Laws and related material must be available for inspection on request.</p>
8.5	Availability of materials on Council website	<p>Council's Local Law must be available on Council's website.</p>
8.6	Website protocols	<ul style="list-style-type: none"> • It is insufficient for Local Laws and related materials to be summarised or buried on Council's website. • These materials need to be able to be found easily and in full.

8.1 Availability of Local Laws



Local Laws must be:

- printed
- available for inspection
- available for purchase
- on Council's website
- in consolidated form.

8.1.1 Legislative provisions

Section 120 of the Act provides:

- (1) *A Council must print copies of every Local Law which is in force in its municipal district.*
- (2) *A Council must ensure that a copy of every Local Law –*
- (a) *is available for inspection at the Council office during the Council office's office hours*
 - (b) *can be purchased on demand at the Council office during the Council office's office hours.*

Section 82A(2)(b) of the Act provides:

The Council must ensure that a copy of each Local Law made by the Council and in force is available on the Internet website –

- (i) *from the date the Local Law comes into operation*
- (ii) *in a consolidated and up-to-date form.*

8.1.2 Issues

'Available for inspection' should be treated as meaning available for inspection without charge. The price at which a Local Law may be purchased is not stipulated. The price, if any, should reflect the cost of printing only. It certainly should not be set to make a profit or to discourage purchase.

Unless the Local Law provides otherwise, the Local Law comes into operation on the day of the Council resolution. Councils need to ensure they have a full and current copy (that is, in consolidated and up-to-date form) on the Council website as of that date.

8.2 Availability of materials incorporated by reference into the Local Law



Council needs to ensure that material incorporated by reference into the Local Law is available to the same extent and in the same ways (for example, on Council's website) as the Local Law itself, preferably alongside or linked to the Local Law.

8.2.1 Legislative provision

Section 120(3) of the Act provides:

A Council must ensure that a copy of every document incorporated by a Local Law under section 112 is available for inspection at the Council office during the Council office's office hours.

8.2.2 Issues

On one view, section 120(3) is no longer required. Section 32(3)(b)(ii) of the *Interpretation of Legislation Act 1984* provides, in respect of subordinate legislation, that:

a copy of the matter so applied, adopted or incorporated must be kept available for inspection during normal office hours by members of the public without charge – ... at the principal office of the body which made the subordinate instrument.

Section 32(12) of the *Interpretation of Legislation Act 1984* contains a provision in respect of incorporated material which is virtually identical in effect to section 121(2) of the *Local Government Act 1989*. That is, a person cannot be convicted or 'prejudicially affected' if they can establish that a copy of the incorporated material was not available.

Section 32 of the *Interpretation of Legislation Act 1984* effectively extends section 121(2) of the *Local Government Act 1989* to matters

incorporated by reference into Local Laws. In short, material incorporated by reference into Local Laws must be available for inspection.³¹ The Local Law is not invalidated by the unavailability of material incorporated by reference. But in practical terms, Council will be prohibited from relying on operative provisions meaning that prosecutions and infringement notices may fail.

Documents incorporated by reference should be available for inspection both at Council offices and on Council's website. The exception to this (in respect of websites) may be when issues of copyright arise, for example, in relation to Australian Standards. In this case, the website should include a link or at least indicate that copies are available at Council offices and indicate where they may be purchased. This is partly resolved by observing the advice of the Chief Parliamentary Counsel that the use of detailed and extensive material should be reserved for 'industries familiar with and using the material.'³²

In reality, most documents incorporated by reference into Local Laws are documents created by the Council itself. There seems to be no reason why these documents cannot be made available on websites.



Section 8.2 of the Resource Book has an example of an incorporated document not being available.

The following sections expand on the question of availability.

8.3 Education campaigns



Council should consider active steps such as education campaigns and mail outs to affected groups in order to publicise Local Laws.

8.3.1 Issues

While there is no specific legislative requirement to publicise Local Laws beyond the formal notices, one of the keys to success in enforcement of Local Laws is prior knowledge and acceptance by those expected to comply. Affected individuals and groups will hopefully have been contacted and consulted during the development phase of a Local Law. Further education, including explaining the reasons for Local Laws, can be conducted by public meetings, through Council's newsletter and by direct mail outs.

Affected groups should already have been identified during the development phase and further contact advising of the actual introduction of the Local Law is a valuable continuance of this community consultation.

Mail outs or other contact could be made with:

- sports clubs
- other common interest clubs such as pet clubs
- community groups
- facility users
- developers and builders
- local businesses.

³¹ The next section of these guidelines argues that material incorporated by reference must not only be available for inspection but must be available on Council's website in the same way as the Local Law.

³² 'Notes for guidance – the preparation of statutory rules'

8.4 Publication and availability of Local Law and related material



Local Laws and related material must be available for inspection on request.

8.4.1 Issues

As previously discussed, the Act requires that copies of the Local Law be printed. An explanatory document setting out prescribed details in relation to the Local Law should also be made available. The purpose of this is not specified other than that copies must be available for inspection. All referenced material must also be available for inspection.³³

Councils should ensure that this obligation is clearly communicated across all departments so that customer service or web communications teams, for example, can understand their role and help Council meet the requirement.

Many Councils have excellent explanatory material, guidelines and codes of practice based on their Local Laws. This is to be commended and encouraged. However, it does not substitute for the requirement that the Local Law, explanatory document and material incorporated by reference must be available.



Council should ensure:

- the Local Law, all incorporated materials, and any materials that are not incorporated but are relied upon by Council are available on Council's website
- all such materials must also be available in hard copy. This could be achieved by having copies 'in stock.' (This is effectively a legislative requirement in the respect of the Local Law itself; Council must maintain printed copies.)
- if Council does not wish to maintain stocked copies, service centre and other relevant staff must have the training and resources to print relevant material from the Council website on request.
- no charge should be made for printing from the website since it is only an alternative to the requirement to have material in stock. The only charge could be for a person to take a copy of material.

8.5 Availability of materials on Council website



Council's Local Law must be available on Council's website.

8.5.1 Legislative provision

Section 82A(2)(b) of the Act provides:

The Council must ensure that a copy of each Local Law made by the Council and in force is available on the Internet website:

- *from the date the Local Law comes into operation*
- *in a consolidated and up-to-date form.*

³³ Given that a Local Law must be available for inspection, it is also a document which is required to be listed in accordance with section 82A(2)(c) of the Act.



For consistency, Council's website should include:

- the Local Law in current and consolidated format
- any material incorporated by reference into the Local Law under section 112 of the Act
- any other material Council relies on or takes into account in relation to the Local Law including guidelines, etc.

8.6 Website protocols



- It is not sufficient for Local Laws and related materials to be summarised or buried on Council's website.
- These materials need to be able to be found easily and in full.

8.6.1 Issues

Section 82A of the Act does not specify any position or place at which Local Laws must appear on Council's website. It also does not specify any format.

The *Better Practice Local Laws Strategy* identified that the accessibility of Local Laws on websites was a problem for those wishing to understand their rights and obligations under Local Laws.

8.6.2 Accessibility of the Local Law itself

Observations have revealed that it is not always straightforward for members of the public and businesses to identify the requirements placed on them by Local Laws for a range of reasons:

- Local Laws can be difficult to find on Council websites. Quite often, Council's website home page has no mention of Local Laws.

- The A-Z index does not contain an entry for Local Laws.
- The A-Z index contains an entry for 'Local Laws' but the link leads to a discussion about issues related to Local Laws, not the Local Laws themselves.
- The Council website home page includes a reference to 'Animals and Local Laws' or 'Parking and Local Laws'. A person interested in building sites is not likely to pay attention to either of these even though they may lead eventually to a copy of the Local Law.
- A Council can have multiple Local Laws without meaningful names, making it difficult to find relevant provisions: when Local Laws are eventually found, there are multiple Local Laws with names like 'Local Law number 1, Local Law number 2', etc. There is no indication of which Local Law contains which provisions.
- Advisory information provided is quite often incomplete. For example, there will be references to some required permits and not others, depending on which department within Council has published information or managed to have it incorporated into the website.
- Material incorporated by reference into the Local Law may not be available on the Council website.
- Where it is identified, for example, that a permit is required under the Local Law for an activity, the form of permit application, the conditions of permit, and the criteria that will be applied in determining an application outcome may be incomplete or missing.

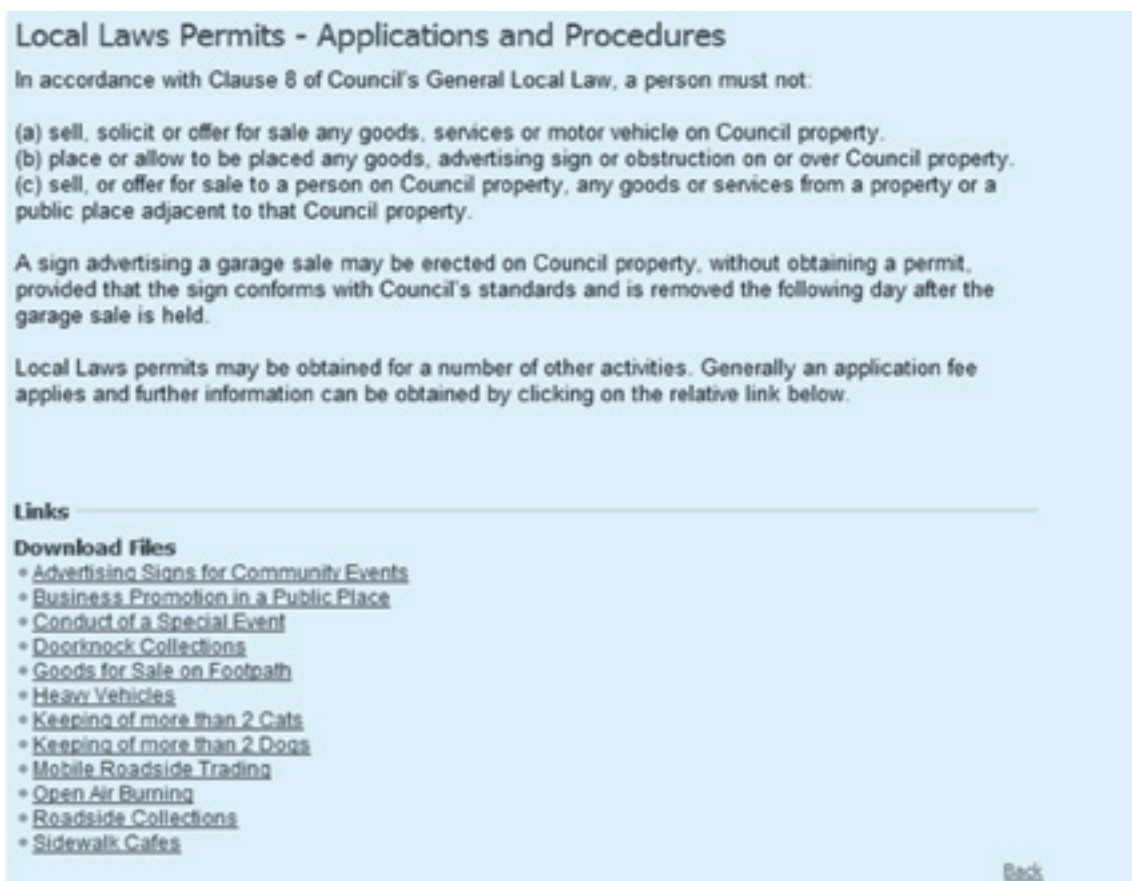


Section 8.6 of the Resource Book gives examples of Council websites that do not adequately comply with the requirement for Local Laws to be available on the website and one that is closer to the mark.

Many Councils appear to list permits required under Local Laws. This is helpful but quite often misleading and dangerous because:

- the listings are seldom complete
- the listings quite often do not lead to the actual Local Laws. Members of the public are still unable to access the actual Local Laws. They are unable to make their own judgements about what Local Laws affect them.

A Council has the following page on its website:



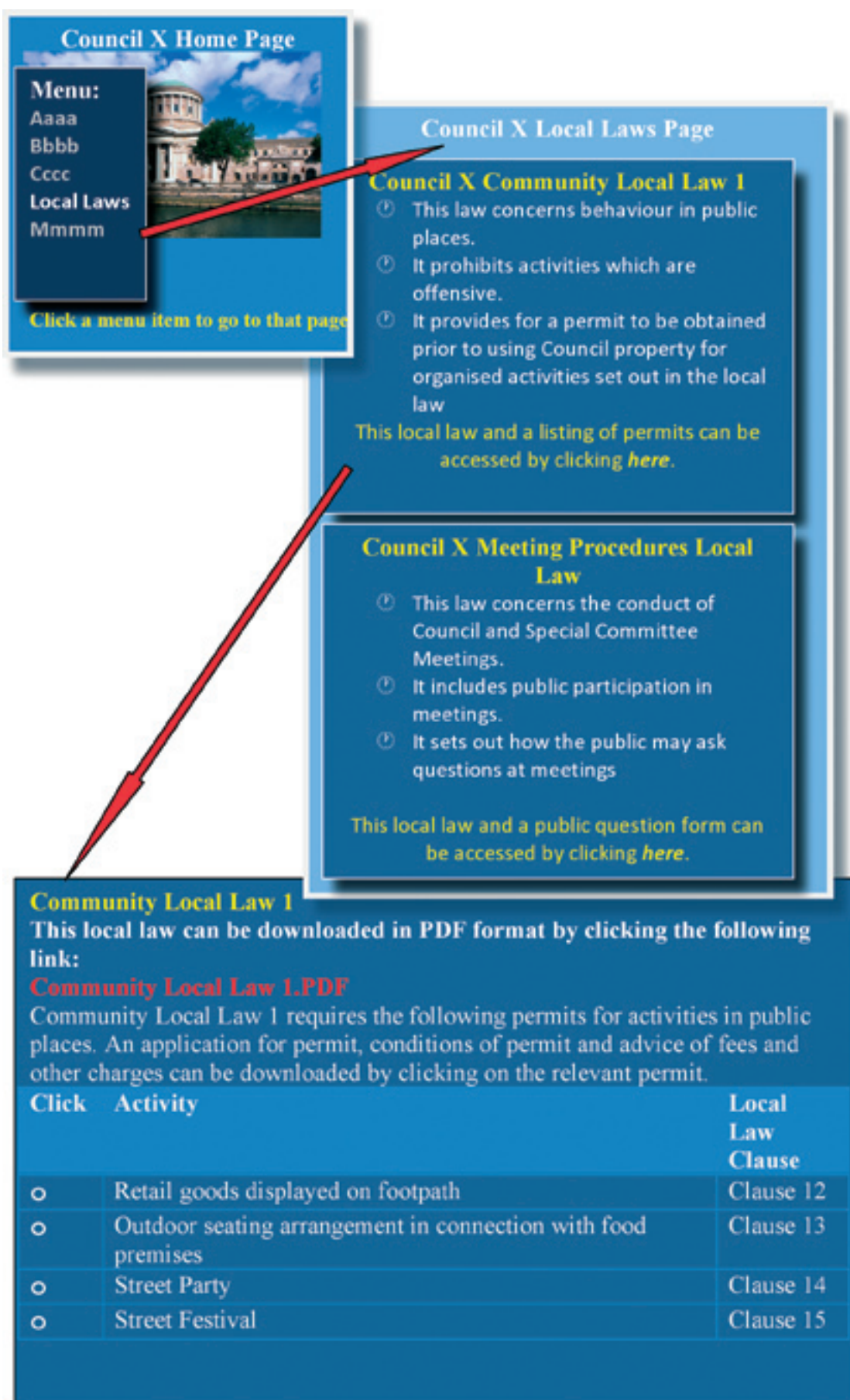
The page lists 12 permits as being required and available. The Local Law actually requires that a permit be obtained in a further 15 cases which are not listed. A person wishing to hold a street party or reside in a caravan, for example, would reasonably



- To provide adequate access to Local Laws, Council's website needs to have a menu item 'Local Laws' immediately visible on the Home Page of the website. Immediately visible means that the viewer should not have to take any further action – such as clicking on an 'accessibility menu' in order to see the reference.
- The menu item 'Local Laws' must link directly to a listing of Council's Local Law(s).
- If Council has more than one Local Law, the listing should provide a description of the contents of each Local Law. Such a description could be developed/extracted from the statement of objectives of the Local Law. It should be sufficiently detailed to enable a person to identify which Local Law deals with a topic in which they are interested.
- From the listings page, a person should be able to open a copy of each Local Law in its entirety.
- The linkage to each Local Law must also include a linkage to all material incorporated by reference into the Local Law.
- The linkage to Local Laws should include a further linkage to a listing of all permits required under that Local Law, specifying the operative clause of the Local Law which requires the permit.
- In respect of each permit required there should be access to:
 - an application for permit form
 - standard conditions of permit (Unless these are contained in full in the Local Law; even then it would not hurt to have them separately available)
 - permit fees, charges, deposits and any other relevant material.

There will be limited circumstances where incorporated material is not available. These might include where an Australian Standard is referenced. In this case, the website should include a link to a site where the material is available. At a minimum, directions should be given as to how a copy of the material may be viewed and obtained. If this is not readily possible, Councils should give consideration as to whether the material should be incorporated by reference.

The illustration on the following page shows the sort of linkage that is envisaged. The illustration is necessarily limited; considerably more detail about the content of the Local Law, for example, would be expected on a Council website.



9 Enforcement – Personnel and practices

	Section	Outcome
9.1	Authorised officers	<ul style="list-style-type: none"> To take action under a Local Law, Council will need to appoint 'authorised officers' in accordance with section 224 of the Act. The formalities of authorisation must be complied with.
9.2	Requirements placed on authorised officers – identity card	<ul style="list-style-type: none"> Authorised officers must present their identity card on request.
9.3	Powers of authorised officers	<ul style="list-style-type: none"> Authorised officers have extensive powers including power of entry. Powers must be exercised with caution and within authority.
9.4	Understanding enforcement action – Local Law or <i>Infringements Act 2006</i> ?	<ul style="list-style-type: none"> It is critical that persons instituting and following up enforcement action understand whether they are acting under the Local Law or the <i>Infringements Act 2006</i>.
9.5	Notices to comply and other actions under Local Law	<ul style="list-style-type: none"> A notice to comply must follow the form, process and procedure set out in the Local Law if it is to be effective.
9.6	Appeal and review provisions	<ul style="list-style-type: none"> Council must very clearly differentiate between an appeal or review process as specified under the Local Law and a review under the <i>Infringements Act 2006</i>. In both cases, the processes set out must be followed exactly.
9.7	Having an opinion – section 42 of the <i>Interpretation of Legislation Act 1984</i>	<ul style="list-style-type: none"> Unless Council deliberately provides otherwise, it will be bound by the opinion of a delegate.
9.8	Infringement notices – <i>Infringements Act 2006</i> requirements	<ul style="list-style-type: none"> The <i>Infringements Act 2006</i> sets out extensive provisions related to the issuing of infringement notices. Council cannot use its Local Laws to modify these provisions. Council must comply with the provisions.
9.9	<i>Infringements Act 2006</i> reviews	<ul style="list-style-type: none"> The <i>Infringements Act 2006</i> has extensive provisions in respect of requests for review and the conduct of reviews under that Act. These provisions must also be followed.

9.1 Authorised officers



- To take action under a Local Law, Council will need to appoint 'authorised officers' in accordance with section 224 of the Act.
- The formalities of authorisation must be complied with.

9.1.1 Legislative provision

Section 224 of the Act provides:

- (1) *A Council may appoint any person other than a Councillor to be an authorised officer for the purposes of the administration and enforcement of any Act, regulations or Local Laws which relate to the functions and powers of the Council.*
- (1A) *A Council must maintain a register that shows the names of all people appointed by it to be authorised officers.*
- (2) *The Council must issue an identity card to each authorised officer.*
- (3) *An identity card must –*
- (a) *contain a photograph of the authorised officer*
 - (b) *contain the signature of the authorised officer*
 - (c) *be signed by a member of Council staff appointed for the purpose.*
- (3A) *If a Council appoints a police officer to be an authorised officer under subsection (1), for the purposes of this section the police officer's certificate of identity is deemed to be an identity card issued under section 224(2) and is deemed to comply with section 224(3).*

9.1.2 Issues

Council must ensure it has authorised officers duly appointed at the time a Local Law comes into operation, or at least prior to Council wishing to undertake any enforcement action.

'Duly appointed' includes the formalities of a photographic identity card with signature

issued in accordance with the requirements of the Act, unless the authorised officer is a police officer.

9.1.3 Issues – contractors

Particular care needs to be exercised when authorised officers are contractors or employees of contractors. Councils will not necessarily be aware when a contractor's staff change unless notified by the contractor. Since authorisations are not transferable, one contractor employee cannot simply take over from another. A new authorisation must be issued, the old one cancelled and the identity card recovered.

9.2 Requirements placed on authorised officers – Identity card



Authorised officers must present their identity card on request.

9.2.1 Legislative provision

Sections 224(4) and (5) of the Act provide:

An authorised officer must produce his or her identity card upon being requested to do so.

An action taken or thing done by an authorised person is not invalidated by the failure of an authorised officer to produce his or her identity card.

9.2.2 Issues

An authorised officer should be instructed to produce their identity card when requested to do so. Any action taken is not invalidated by a failure to produce the card. This does not mean, however, that there are no repercussions. Proceedings for failing to obey a lawful command might well fail if the defendant establishes to the satisfaction of the court that they had no reason to believe the command was being given by an authorised officer.

9.3 Powers of authorised officers



- Authorised officers have extensive powers including the power of entry.
- Powers must be exercised with caution and within authority.

9.3.1 Legislative provision

Sections 224(6),(6A), (7) and (8) of the Act provide:

(6) For the purposes of this section, an authorised officer may demand the name and address of a person who has committed, or who the authorised officer reasonably suspects has committed or is about to commit, an offence against any Act, regulation or Local Law in respect of which he or she is appointed.

(6A) In making such a demand, the authorised officer must inform the person of the grounds on which the demand is made in sufficient detail to enable the person to understand the nature of the offence or suspected offence.

10 penalty units

(7) An authorised officer may enter any land or building in the municipal district at any reasonable time to carry out and enforce this or any other Act or any regulation or Local Law.

(8) A person is guilty of an offence if he or she –

- (a) refuses to give his or her name and address upon demand by an authorised officer; or*
- (b) obstructs or hinders an authorised officer while performing his or her duty; or*
- (c) falsely represents himself or herself to be an authorised officer.*

10 penalty units

9.3.2 Issues

The powers granted to authorised officers by section 224 of the Act are extensive. The power of entry to land and buildings, in particular, exceeds the powers of many other enforcement agencies.

Councils need to exercise extreme care to ensure officers are duly authorised. Subsection 6 makes it clear that authorised officers are not appointed 'at large'. The authorisation must specify the extent of the appointment and an authorised officer cannot demand a person's name if the suspected offence is outside the officer's appointment.

Council would be wise to treat subsection 7 as having the same limitation even though it is not expressed the same way as subsection 6.



- Council needs to have training in place for authorised officers.
- A manual and reference guide is essential for authorised officers.

9.4 Understanding enforcement action – Local Law or Infringements Act 2006?

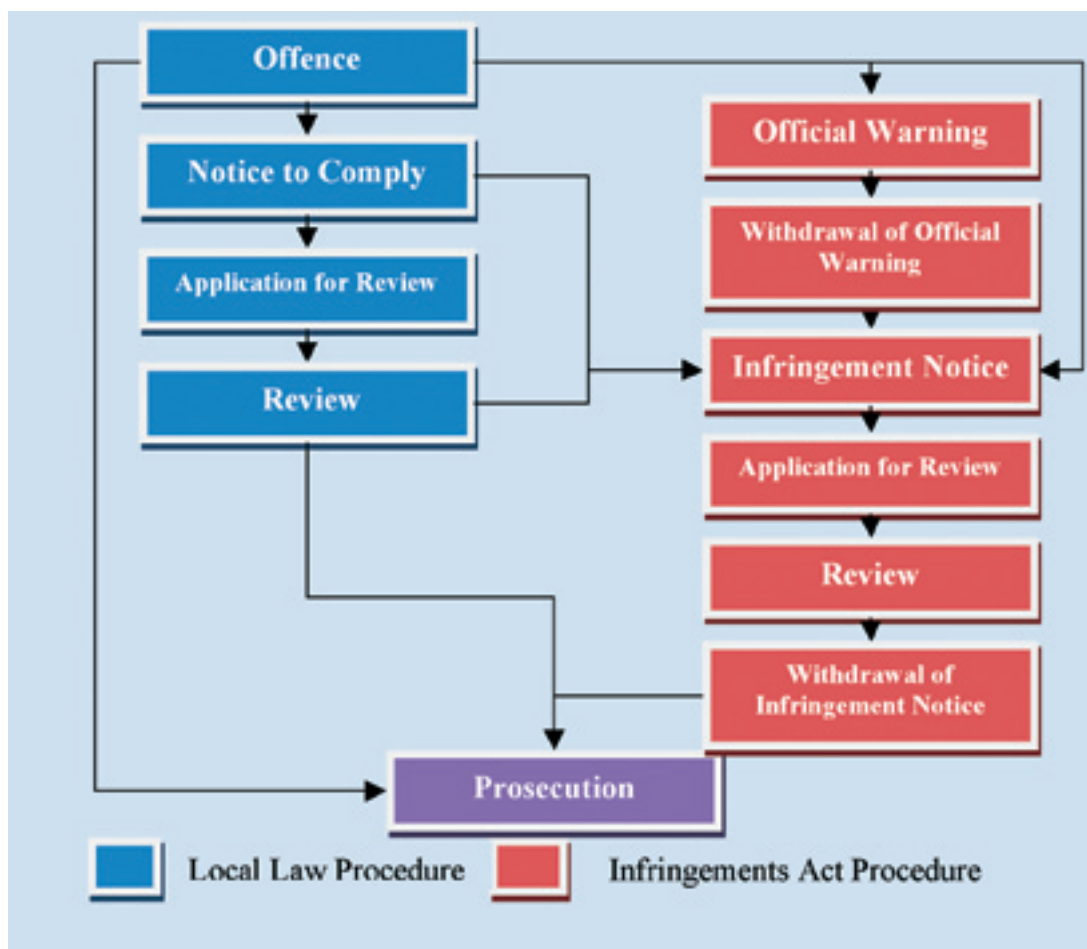


It is critical that persons instituting and following up enforcement action understand whether they are acting under the Local Law or the *Infringements Act 2006*.

9.4.1 Issues

Officers taking action in respect of a breach of a Local Law need to clearly understand the nature of the action they are taking. If their action is under the Local Law, then the provisions of the Local Law must be followed. If their action is taken under the

Infringements Act 2006 (such as issuing an infringement notice), then the provisions of the *Infringements Act 2006* must be followed. Action may swap from the Local Law to the *Infringements Act* and vice versa. The following diagram illustrates some of these possibilities.



An officer, on detecting an offence, may issue a notice to comply under the Local Law or an official warning under the *Infringements Act 2006* – or an infringement notice under that Act. If the offender asks for a review, the review will either be under the Local Law or under the *Infringements Act 2006* depending on the original action.

9.5 Notices to comply and other actions under Local Law



A notice to comply must follow the form, process and procedure set out in the Local Law if it is to be effective.

9.5.1 Issues

Notices to comply have been discussed in these guidelines under '3.3.2 Notice to Comply.'

Any form of action by way of notice, warning or direction can be taken by a properly authorised or delegated officer. If the action is to have any enforceable effect, however, it must be in accordance with the provisions of the Local Law itself. This is particularly the case if a failure to comply with a notice to comply constitutes an offence in its own right.

9.6 Appeal and review provisions



- Council must very clearly differentiate between an appeal or review process as specified under the Local Law and a review under the *Infringements Act 2006*.
- In both cases, the processes set out must be followed exactly.

9.6.1 Issues

As indicated at 9.4 'Understanding Enforcement Action – Local Law or Infringements Act?' whether a review is conducted under Council's Local Law or under the *Infringements Act 2006* will be determined by the action which is being reviewed.

The processes may well be similar, particularly if the Local Law is modelled on the procedures set out in relation to the *Infringements Act 2006*. Despite this, Council must be conscious at all times of which procedure is being implemented and communicate this clearly to the person seeking the review.

In either case, the procedure set down must be followed exactly if further action is to be taken.

Some specific requirements in respect of reviews under the *Infringements Act 2006* are set out later in this section.

9.7 Having an opinion – Section 42 of the Interpretation of Legislation Act 1984



Unless Council deliberately provides otherwise, it will be bound by the opinion of a delegate.

9.7.1 Legislative provision

Section 42 of the *Interpretation of Legislation Act 1984* provides, in effect, that where a person is acting under delegation (not as an authorised officer) and that action is dependent on the opinion, belief or state of mind of the delegate, the delegate may carry out the action acting on their own opinion, belief or state of mind, subject to the context requiring otherwise.

9.7.2 Issues

What this provision seems to indicate is that by ensuring the context requires otherwise Council can direct a delegate as to their opinion, belief or state of mind. This could be done in a Local Law by laying out guidelines to direct delegates' thinking. If Council fails to do so, Council is bound by the delegate's opinion.

9.8 Infringement notices - *Infringements Act 2006* requirements



- The *Infringements Act 2006* sets out extensive provisions related to the issuing of infringement notices.
- Council cannot use its Local Laws to modify these provisions.
- Council must comply with the provisions.

9.8.1 Legislative provision

Section 117 of the Act provides:

- (1) *A Local Law may provide for a person to be served with an infringement notice specifying a fixed penalty for an offence against the Local Law as an alternative to a prosecution for the offence.*
- (1A) *An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the *Infringements Act 2006*.*

9.8.2 Issues

Infringement notices are a mechanism commonly used in Local Laws. It is critical to understand that once the *Infringements Act 2006* is invoked by the Local Law providing for service of an infringement notice, it is the *Infringements Act 2006*³⁴ and the regulations under the *Infringements Act 2006* which prevail over any provision of the Local Law. Provisions in the Local Law which are inconsistent with the *Infringements Act 2006* are invalid.

It is not good practice to repeat sections of the *Infringements Act 2006* in the Local Law as part of the Local Law. It is better practice

to simply refer to the *Infringements Act 2006* provisions as being applicable and possibly attach them as an advisory appendix to the Local Law.

A common example of Local Laws being inconsistent with the *Infringements Act 2006* is a Local Law which provides a Council's own form of infringement notice that does not contain the 'prescribed details' nor provides for the Council or the CEO to approve a form of infringement notice. The prescribed details are contained in the *Infringements (Reporting and Prescribed Details and Forms) Regulations 2006*.



Section 9.8 of the Resource Book details the requirements for an infringement notice and withdrawal of infringement notice.

9.8.3 Withdrawal of infringement notice

It is important to note that Regulation 9 sets out the details required for a withdrawal notice.

Compliance with these provisions is also mandatory. This becomes important, for example, if it is proposed to withdraw an infringement notice and proceed to prosecution.

9.9 *Infringements Act 2006* reviews



- The *Infringements Act 2006* has extensive provisions in respect of requests for review and the conduct of reviews under that Act.
- These provisions must also be followed.

³⁴ Parts 1, 2 and 3 and Part 13. Other parts may apply if, for example, the offence is a parking offence for which the infringement notice is registerable.

9.9.1 Legislative provision

Section 22 of the *Infringements Act 2006* contains extensive material related to a review under that Act.



Section 9.9 of the Resource Book sets out in full section 22 of the *Infringements Act 2006*.

9.9.2 Issues

Councils should have in place review procedures in respect of all actions taken under Local Laws. The act of issuing an infringement notice, however, invokes the *Infringements Act 2006* and the regulations³⁵ under that Act. In addition, regard must be had to the *Attorney-General's Guidelines to the Infringements Act 2006*.

Council cannot substitute its own procedures for the process set out in the *Infringements Act 2006*. If Council has its own procedures for a review, which are not conducted under the *Infringements Act 2006*, Council needs to remain mindful of which process it is operating under. Ideally, any process developed by Council would closely mirror the process set out in the *Infringements Act 2006*.

A report by the Auditor General issued in June 2009 contains valuable material on reviews and the withdrawal of infringement notices.



Section 9.9 of the Resource Book contains some extracts from the report of the Auditor General on reviews and withdrawal of infringement notices including examples of good practice by Councils.

³⁵ These include the *Infringements (General) Regulations 2006* and the *Infringements (Reporting and Prescribed Details and Forms) Regulations 2006* which sets the period for a review to be completed at 90 days.

Completing the cycle

Review, amending and 'sunsetting'



Guidelines Part 4: Completing the cycle – Review, amendment and ‘sunsetting’

This part contains the following sections and contents:

Section heading		Contents
Review of Local Laws	→	<ul style="list-style-type: none">• Need for review of Local Law• Areas for review
Amending a Local Law	→	<ul style="list-style-type: none">• Means of amending
Sunset	→	<ul style="list-style-type: none">• The expiration of Local Laws• Renewal of the Local Law

10 Review

	Section	Outcome
10.1	Need for review of Local Laws	<ul style="list-style-type: none"> • Council will periodically need to review the ongoing need for and success of Local Laws, and the need for additional Local Laws. • The frequency of this review will be determined by Council's commitment to the community in its Local Law Community Impact Statement but may be supplemented by ad hoc reviews.
10.2	Areas for review	<ul style="list-style-type: none"> • Council will have its own unique knowledge of what aspects of Local Laws need to be reviewed. • At a minimum issues should include: <ul style="list-style-type: none"> – whether there is still a problem to address – whether the objectives are being met – if the impacts are as expected – if the Local Law is still the most appropriate approach.

10.1 Need for review of Local Laws



- Council will periodically need to review the ongoing need for and success of Local Laws and need for additional Local Laws.
- The frequency of this review will be determined by Council's commitment to the community in its Local Law Community Impact Statement but may be supplemented by ad hoc reviews.

- enforceable
- accessible
- efficient
- accountable
- transparent
- current.

These attributes can change over time. Legislation may change. The legislation under which Local Laws are made may change, requiring an amendment to the Local Law. New legislation may make a Local Law redundant. The problem which led to the introduction of a Local Law may no longer exist. And, of course, new problems may have emerged which need to be addressed.

Council staff should generally maintain (either formally or informally) a running list of Local Laws that need amendment, deletion or introduction.

All of these matters require that Council review its Local Laws.

10.1.1 Issues

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)

Council will have committed to measuring the ongoing need for, and success of, Local Laws. See section 2.3 'Measuring Success'. At the same time, the possible need for additional provisions or modifications to provisions in Local Laws could be assessed. Interim reviews can always be conducted in response to specific events.

10.2 Areas for review



- Council will have its own unique knowledge of what aspects of Local Laws need to be reviewed.
- At a minimum issues should include:
 - whether there is still a problem to address
 - whether the objectives are being met
 - if the impacts are as expected
 - if the Local Law is still the most appropriate approach.

10.2.1 Issues

The *Victorian Guide to Regulation* suggests there are a number of key issues to consider when reviewing subordinate legislation. These issues include:³⁶

- Is there still a problem that requires local government intervention? Have there been any relevant changes or developments since the Local Law was implemented?
- Are the objectives of the Local Law being met?
- Are the impacts of the Local Law as expected? Are there any effects or problems that were not anticipated?
- Is the Local Law currently in place still the most appropriate form of action? Does experience with the measure suggest ways that it can be improved to meet the objectives? Is a different regulatory approach now warranted?

Council will have its own experiences and officer and community feedback, which will inform the review process.

³⁶ Adapted for Local Laws from *Victorian Guide to Regulation*.

11 Amending a Local Law

Section	Outcome
11.1 Means of amending	<ul style="list-style-type: none"> Local Laws can only be amended in the same way as they are made. Councils need to be alert to 'unofficial' amendments by officers.

11.1 Means of amending



- Local Laws can only be amended in the same way as they are made.
- Councils need to be alert to 'unofficial' amendments by officers.

either re-adopting the whole Local Law with the amendment or by adopting an amending Local Law. If the latter course is used, Councils need to be aware of the requirement of section 82A(2)(b)(ii) for a consolidated copy of the Local Law to appear on the Council website.

At a minimum, this involves compliance with the provisions of section 119 of the *Local Government Act*:

- Public notice
- Government gazetted
- Submissions under section 223
- etc.

Anything other than a minor amendment – possibly a minor correction of an obvious error – would cause Council to give consideration to a fuller process. This will be a question of degree.

The insertion of a new provision would certainly trigger consideration of the parties affected by the provision and consultation with them in respect of that new provision. The insertion of a new provision or a number of new provisions would not necessarily trigger a full review – including consultation and LLCIS – in respect of the entire Local Law. Again, this is a matter of degree and of judgement for Council. The form of this consultation would depend on whether the parties constituted an identifiable small group or the community at large.

11.1.1 Legislative provision

Section 27 of the *Interpretation of Legislation Act 1984* provides:

Section 27. Implied power to repeal or amend subordinate instruments

Where an Act confers power to make a subordinate instrument the power shall, unless the contrary intention expressly appears, be construed as including a power, exercisable in the same manner and subject to the same conditions or limitations (if any), to repeal or amend a subordinate instrument made in the exercise of that power.

11.1.2 Issues

Section 27 of the *Interpretation of Legislation Act 1984* gives Council the ability to amend Local Laws. The difficulty is that any amendment (however minor) must be done in the same way as a Local Law was made.

An amendment (by way of change or addition of further provisions) can be achieved by

Councils need to be careful that Local Laws are not inadvertently amended by well intentioned staff correcting errors – genuine or perceived – and re-issuing printed copies of the Local Law. Proper policies and governance processes should be in place across Council to facilitate this.

Similarly, Councils need to be alert to Local Laws effectively being ‘amended’ by the publication of internal guidelines or other material purporting to explain what the Local Laws really mean or how they should be interpreted.

12 Sunset

Section		Outcome
12.1	The expiration of Local Laws	<ul style="list-style-type: none"> A Local Law expires after 10 years whether or not it has been amended in the meantime.
12.2	Renewal of the Local Law	<ul style="list-style-type: none"> The only way to ‘renew’ a Local Law is to make a new one. It is recommended that Council start this process not less than a year in advance.

12.1 The expiration of Local Laws



A Local Law expires after 10 years – whether or not it has been amended in the meantime.

12.1.1 Legislative provision

Section 122 of the Act provides:

- (1) *Unless sooner revoked, a Local Law is by this section revoked on the day which is 10 years after the day which is the earliest day on which any provision of the Local Law came into operation.*
- (2) *If a Local Law has been amended, subsection (1) applies to the Local Law as amended from time to time and not to any of the amending Local Laws.*
- (3) *If a Local Law is revoked by this section, any Local Law amending that Local Law is also revoked.*

12.1.2 Issues

The Local Law expires - 'is revoked' – 10 years after it first comes into operation from the day it was made unless the Local Law itself had a provision making this later.

The fact that the Local Law may have been amended at some point within the ten years does not alter the expiry date. The amending Local Laws also expire on the same day, regardless of when they became operational.

A Local Law purporting to extend the operation of the existing Local Law by amending its date of 'expiry' would be ineffective because it would also be revoked 10 years after the original Local Law came into operation.

12.2 Renewal of the Local Law



- The only way to 'renew' a Local Law is to make a new one.
- It is recommended that Council start this process not less than a year in advance.

12.2.1 Issues

Council could, theoretically, make a new Local Law by simply re-making the old one. Apart from being a breach of trust with the community, this approach would place Council in breach of its obligation to (re) assess its Local Law for compatibility with the Charter of Human Rights, for example.

A well-intentioned Council will undertake all of the processes outlined in these guidelines prior to re-making its Local Laws. It is suggested that at least a year should be allowed to undertake the processes fully and transparently.

Appendix 1

Outcomes, achieving outcomes, and documenting

Outcomes: The Local Law Community Impact Statement (LLCIS)

Appendix 2

The Local Law Community Impact Statement (LLCIS) – Samples



Understanding the external context of Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
1.1 The legislative context.	<ul style="list-style-type: none"> The authority for Council to make Local Laws comes primarily from the <i>Local Government Act 1989</i>. The relevant provisions are Part 5 and Schedule 8 of the Act. These provisions also place restrictions on what Council may or may not do with regard to Local Laws. Council is expected to comply with all provisions. 	✓	
1.2 The nature of Local Laws.	<ul style="list-style-type: none"> The <i>Interpretation of Legislation Act 1984</i> applies to 'subordinate instruments.' A Local Law is a 'subordinate instrument' so many provisions of <i>Interpretation of Legislation Act 1984</i> apply to it. Council needs to understand these provisions. Local Laws can be revoked by the Governor in Council and are subject to Supreme Court appeal. 		
1.3 Some other legislation enabling or impacting the making of Local Laws.	<ul style="list-style-type: none"> Legislation other than the <i>Local Government Act 1989</i> impacts on Local Laws. 		
1.4 Reference materials.	<ul style="list-style-type: none"> There is an array of reference material relevant to Local Laws. Most material is not specifically written about Local Laws, but is applicable. Council needs to be familiar with this material. 		

13 Appendix 1 – Outcomes, achieving outcomes, and documenting outcomes.

Establishing Council's context: Researching and developing Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
2.1	Identifying the problem	<ul style="list-style-type: none"> The problem a Local Law seeks to solve needs to be specifically identified and stated either at the beginning of a Local Law or at the beginning of each clause of the Local Law. Council should identify exactly why it believes the Local Law is needed (or the particular clause is needed) including describing how Council went about arriving at that decision and the evidence on which the decision was based. Consideration of the following issues will clarify the problem: <ul style="list-style-type: none"> Who or what causes the problem? (that is, the source). Who is impacted by the problem and what is the nature of the problem? Who bears the cost of the problem? Is it Council on behalf of the community? How extensive/current/permanent/entrenched is the problem? Is it minor, anticipated or temporary? What is the evidence and is the evidence objective or anecdotal? 	<ul style="list-style-type: none"> A Local Law Community Impact Statement should set out the problem or problems that each substantive provision (or group of provisions) of the Local Law is intended to address. The source, nature, impact, severity and cost of the problem(s) should be articulated where possible.
2.2	Relating the problem to Council objectives – Is it a Council problem?	<ul style="list-style-type: none"> The objective of the proposed Local Law must be within the function and powers of Council. This should be demonstrated by a statement in the Local Law. Council needs to demonstrate the linkage between the objective of the Local Law and Council's policy objectives. The objectives might be in the Council Plan or similar document which sets out strategic objectives. Council should consider in what way the Local Law provision will assist Council to achieve its policy objectives. Council should evaluate whether the Local Law will remove an impediment to the achievement of objectives. A rigorous examination will contribute to the demonstration that there is a genuine need for regulation and that a Local Law is the appropriate action. 	<ul style="list-style-type: none"> The Local Law Community Impact Statement should include a statement demonstrating the linkage between the objective of the Local Law provisions and Council's policy objectives. The statement would identify: <ul style="list-style-type: none"> where Council's objectives are set out and may be read, how the Local Law would assist Council to achieve its objectives or remove an impediment to achievement of its objectives.

2.3 Measuring success

- Council needs to establish measures for the success of, and the ongoing need for, Local Laws.
- Council needs to state the frequency with which measurements will be taken.

- Council should set out clear indicators by which it will measure the ongoing need for Local Laws and the success of Local Laws.
- A commitment should be made to the frequency with which measurements will be applied. The frequency may be variable depending on the importance/impact of the Local Law.
- If the problem is temporary in nature but Council feels it still warrants a Local Law, the measurement period will obviously be shorter.
- The measurement period adopted should generally correspond with a review of the Local Law.

- The Local Law Community Impact Statement should include a statement about the indicators Council proposes to adopt to measure the success and ongoing need for Local Laws.
- The frequency of measurement (and review of the Local Law) should be set out in the Statement.

2.4 Considering possible alternatives to a Local Law

Council needs to consider whether there is a possible alternative to a Local Law that might better suit the needs of the community.

Council should consider:

- self-regulation – for example, by voluntary codes of practice
- quasi-regulation and co-regulation
- increased enforcement of existing provisions
- extending the coverage of existing legislation
- rewarding good behaviour (the star rating award system for food premises is a good example of this)
- ‘negative licensing’ which involves removing repeat or serious offenders from participation rather than imposing the costs and control of licensing on all participants from the outset
- public information and education campaigns
- information disclosure
- market-based instruments, such as subsidies
- consultation with affected groups (See sections 5.2 and 5.3.) This will generally identify the advantages and disadvantages flowing from each course of action
- Council should document any attempt it has made to consider or introduce alternatives and indicate why these have not been successful or have not been adopted as the preferred option.

- A statement identifying the alternatives to a new Local Law that were considered by Council should be included in a Local Law Community Impact Statement. The statement should include reasons why the alternative approaches were not deemed suitable.

Achieving the outcome		Local Law Community Impact Statement	
Heading	Outcome		
2.5	Identifying (and staying within) the power to make a Local Law	<p>A Local Law must identify the authority on which it is based and remain within that authority/power.</p> <ul style="list-style-type: none"> To comply more fully with the legislative requirements, when a piece of legislation other than the <i>Local Government Act 1989</i> is relied on, it should be specifically referenced. The reference should be made to the particular Act and the specific provisions of the Act under which Local Laws are made. 	
2.6	Identifying existing legislation that might be used instead of a Local Law	<ul style="list-style-type: none"> Council needs to fully explore existing legislation to ensure there are no existing provisions that could be used. Local Laws should not be created unnecessarily. 	<ul style="list-style-type: none"> A statement identifying other existing legislation that touches on similar areas to the Local Law and explaining why that legislation does not suit the purpose (that is, achieve the objective of the Local Law) should be included in a Local Law Community Impact Statement.
2.7	Considering whether a State Government Act is more appropriate than a Local Law.	<ul style="list-style-type: none"> Council cannot transfer provisions from Local Laws to Acts. However, local government can play a role in facilitating legislative or policy change by collaborating with relevant State or Federal departments/agencies and working with local government peak bodies. 	<ul style="list-style-type: none"> Council needs to explain in its Local Law Community Impact Statement why it believes State Government legislation is more appropriate.
2.8	Identifying existing legislative provisions which may be overlapped by a Local Law	<ul style="list-style-type: none"> Council needs to take steps to ensure that a Local Law does not duplicate, overlap, contradict or is inconsistent with existing legislation. 	<ul style="list-style-type: none"> A statement identifying existing legislation Council has found on a topic and explaining why Council believes the proposed Local Law does not duplicate, overlap, conflict or cause any inconsistency should be included in a Local Law Community Impact Statement.

2.9 Identifying planning scheme

Council must ensure that its Local Law does not duplicate or is inconsistent with any planning scheme.

• Council needs to check with its own town/land use planners regarding any proposed Local Law. Presumably, Council would have already identified whether any planning provision could be utilised to achieve the objective sought.

• Where possible, the Local Law should be worded sufficiently accurately to ensure that specific provisions do not duplicate the planning scheme.

• A general disclaimer of the 'nothing in this Local Law ...' type can then be inserted, in addition, to ensure complete coverage.

• A statement identifying any planning scheme requirement Council has found on a topic and explaining why Council believes the proposed Local Law does not duplicate, overlap or cause any consistency should be included in a Local Law Community Impact Statement.

2.10 A risk

management approach to Local Laws
A proposal to introduce a Local Law is an ideal opportunity to use a risk management approach to prioritise the risks sought to be addressed.

• Council's risk management function should be consulted on any proposed Local Law. The need for, and the provisions of, a Local Law should be validated by a risk assessment.

• The risk assessment should address issues such as whether:

- a problem exists
- the problem is a Council problem that is, it impacts on the achievement of Council's objectives
- a response to the problem is required
- a Local Law is the best way of dealing with the problem
- a Local Law is likely to be effective.

• The Local Law Community Impact Statement should document the results of a risk assessment showing that a relevant problem exists and that the proposed Local Law is an effective treatment/control.

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
2.11	Considering and deciding on different Local Law Approaches.	<ul style="list-style-type: none">• Council needs to consider different regulatory approaches and be clear about which approach it is adopting.• Council should be satisfied that the regulatory approach adopted is consistent throughout all materials relied on by Council – including material incorporated by reference.	<ul style="list-style-type: none">• The Local Law Community Impact Statement should explain the regulatory approach adopted by Council and explain why this approach is relevant.• Whether the approach is consistent with neighbouring and like Councils and, if not why not, would be explained.
2.12	The least burden/ greatest advantage test.	<ul style="list-style-type: none">• Council is obliged to ensure that the regulatory approach it adopts involves the least burden or the greatest advantage to its community.	<ul style="list-style-type: none">• The Local Law Community Impact Statement should include the results of an assessment of the burden of the proposed Local Law compared to its advantage.

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
2.13 Possible restriction of competition by Local Laws	<ul style="list-style-type: none"> Council's Local Laws must not restrict competition unless Council can demonstrate: <ul style="list-style-type: none"> the benefits outweigh the costs there is no other way of achieving the objective. This also applies to policies and guidelines supporting Local Laws. 	<ul style="list-style-type: none"> Council needs to assess each relevant Local Law provision in accordance with the competition test. The assessment needs to extend to any Council policies or guidelines and other material (such as permit conditions) supporting the Local Law. 	<ul style="list-style-type: none"> A review in accordance with National Competition Principles and a statement of whether a Local Law restricts competition and if so, that the benefits outweigh the costs should be included in the Local Law Community Impact Statement.

Understanding some mechanisms related to Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.1 Application of the Local Law	<ul style="list-style-type: none">Under section 116 of the Act, Council can decide the times, extent, cases, etc. to which a Local Law applies.If Council wants to decide these matters, it needs to explicitly do so.If Council wishes to reserve the right to determine matters provided for by section 116, the Local Law should:<ul style="list-style-type: none">specifically reserve that rightspecify the circumstances under which determination may be triggeredspecify conditions which will applyspecify that Council will make the decision.	<ul style="list-style-type: none">It is preferable that section 116 be read and applied strictly.If it is contemplated that exceptions may apply, these should be specifically set out in the Local Law.If matters are required to be in accordance with a standard or approved process, etc., then the standard or approval process should be explicitly spelled out.	
3.2 Enforcement	<ul style="list-style-type: none">The mechanisms used to enforce Local Laws		
– General considerations	<ul style="list-style-type: none">will impact on the effectiveness of the Local Laws.		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.3	Notices/ cautions/ warnings	<ul style="list-style-type: none"> • Council needs to be clear about and clearly articulate what it is trying to achieve when it uses mechanisms such as notices to comply, cautions and warnings. • Council needs to be clear about the intended consequences of these mechanisms – particularly whether failure to comply creates another offence. • Council needs to be extremely clear about whether it is creating its own procedures or using procedures – such as official warnings – under the <i>Infringements Act 2006</i>. 	
3.4	Penalties	<ul style="list-style-type: none"> • Council needs to comply strictly with legislative provisions related to penalties including the fact that the maximum effective penalty allowed under a Local Law is 20 penalty units. • Council also needs to comply with the <i>Attorney-General's Guidelines to the Infringements Act 2006</i>. 	<ul style="list-style-type: none"> • Any variation between penalties adopted by Council and those adopted by its neighbouring or like Councils should be explained in the Local Law Community Impact Statement.

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.5	Infringement notices <ul style="list-style-type: none"> • Council needs to understand and be aware that the: <ul style="list-style-type: none"> – form – content – service – review – withdrawal • of <i>Infringement Notices</i> are all governed by the <i>Infringements Act 2006</i> and the regulations made under that Act. • These matters cannot be set by Council, the CEO or any officer or person. A Local Law is invalid to the extent it purports to change this. • Council does need to put in place procedures for review. • These do not necessarily need to be in the Local Law but details of the procedure should be readily available to the public. 		
3.6	Permits and licences	<ul style="list-style-type: none"> • Council processes and conditions in relation to permits need to be consistent. 	<ul style="list-style-type: none"> • To achieve consistency, Council needs to be clear on its own requirements in relation to permits and permit conditions. • Council needs to address issues such as: <ul style="list-style-type: none"> – exactly what is being permitted – whether the permit is within Council’s jurisdiction – the conditions – who has authority to issue the permit – the effect of a breach of permit • Council processes and conditions in relation to permits need to reflect a consistent ‘whole of Council’ approach.

3.7 Purposes and conditions of permits, licences, etc.

- The legislation presumes that the purposes for which permits, etc., will be issued and the conditions on which they will be issued will be set out in the Local Law, not held in reserve.
- The conditions set out:
 - should be reasonable having regard to all the circumstances
 - should not include matters which cannot be complied with, such as joint named insurance
 - must not be utilised as an opportunity for Council to avoid liabilities which would otherwise exist.

- A Local Law should commit Council to a defined procedure and outcome in relation to permits. This achieves transparency and accountability.

- Ideally, the Local Law will set out clearly:

- a form (or forms, if they vary with differing types of permit) of application for permit showing the information required to be provided by applicants

- the factors Council will take into account in assessing an application

- the conditions on which a permit will be issued

- the consequences of breach or failure to comply with conditions

- the circumstances under which a permit may be refused

- the circumstances under which a permit may be cancelled or modified

- the process that will be adopted to implement these matters and the timeline which will be adopted

- the rights of an applicant to a review of the decision in relation to conditions or refusal.

- If these matters are not set out in the Local Law itself, they should at least be set out in a document (or documents) incorporated into the Local Law and available on Council's website.

- Where it is not possible to set out conditions fully because, for example, they will be subject to a site inspection, this should be spelled out. Where the final conditions will be a mix of standard conditions and conditions determined as a result of a process such as site inspection, the standard conditions should be set out.

- Similar Councils should require similar conditions in like circumstances. If the conditions required by one Council differ from those of its neighbours or like Councils, an explanation is required.

- A Local Law Community Impact Statement should include an explanation of:

- why the particular permit conditions are required

- why any particular conditions cannot be spelled out in the Local Law

- unless the Local Law spells out the process, an explanation of the process by which conditions will be determined

- if conditions vary from those of neighbouring or like Councils, why that is the case.

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.8	Fees in relation to permits, etc.	A Local Law may contain a provision stating that Council may set fees by resolution.	
3.9	Provisions for imposing fees		
3.10	Reduction, waiver or refund of fee		
3.11	Practices in relation to fees – summary	<ul style="list-style-type: none"> • Council needs to ensure that it complies with minimum legislative requirements in relation to fees. • Sections 113(2) and (3) of the Act call for the insertion of provisions into the Local Law that create the framework for dealing with fees. • This framework should be created by Council. 	<ul style="list-style-type: none"> • Any significant variance between Council's fees and those of its neighbouring or like Councils should be explained in the Local Law Community Impact Statement.
3.12	Delegations and authorisations and discretions	<ul style="list-style-type: none"> • Council needs to understand whether it is using the Local Law to delegate or relying on a general power of delegation. • 'Authorised officer' is different to a 'delegate.' • Council must understand clearly: <ul style="list-style-type: none"> – what powers and functions it is delegating or what authorisations it is granting; – to whom or what positions; and – under which provision of the legislation. 	<ul style="list-style-type: none"> • Council should be able to demonstrate that setting of fees and related matters such as waiver or reduction is a transparent process with predictable outcomes. • If persons are to be exempted from fees, for example, the circumstances under which this will happen and the matters that will be taken into account need to be set out. • Significant differences in the level of fees between Council and its neighbours or like Councils need to be explained.

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.13	<p>Review and appeal provisions</p> <ul style="list-style-type: none"> • If infringement notices are issued, the review provisions of the <i>Infringements Act 2006</i> are operative and need to be followed rigorously • For other decisions of Council or officers, Local Laws need to provide review mechanisms that should be clear and transparent. • Council needs to be clear about which review process it is following. • If Council's own review processes closely mirror those provided under the <i>Infringements Act 2006</i> there will be greater understanding, consistency and transparency. 	<ul style="list-style-type: none"> • Transparency and accountability require that the review process be set out fully so that all parties are aware of it. • The process must be set out in the Local Law – or in a document that is incorporated into and available with the Local Law. • It should not be set out in an internal guidelines or other document not available to the public. • Council needs to be as committed to the process as the affected party. 	

Drafting and reviewing the draft of Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.1 Reference materials	<ul style="list-style-type: none">Council must have regard to the <i>Interpretation of Legislation Act 1984</i> that has rules about how Local Laws will be interpreted, as well as the <i>Local Government Act 1989</i>.Council would be wise to refer to the Guidelines on Statutory Rules issued by the Office of the Chief Parliamentary Counsel.		
4.2 <i>Interpretation of Legislation Act 1984</i>	<ul style="list-style-type: none">Existing provisions of legislation such as the <i>Interpretation of Legislation Act 1984</i>, should be utilised where possible. For example, if a word or phrase is defined in enabling legislation or in the <i>Interpretation of Legislation Act 1984</i>, that definition should be accepted in the Local Law. If a different definition is required, it is preferable to use a different word or phrase and define it.If the <i>Interpretation of Legislation Act 1984</i> states how a provision is to be interpreted, such as singular including plural, there is no need to repeat that in the Local Law. It is already the law and repeating it is simply duplicating existing legislation.		
4.3 The Format of Local Laws	<ul style="list-style-type: none">There is no set format for Local Laws.The predominant criteria should be clarity and accessibility.This commences with having a planned outline.		
4.4 Referring to penalties in a Local Law	<ul style="list-style-type: none">The <i>Sentencing Act 1991</i> provides a convenient method of referring to penalties in Local Laws and it should be used.		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.5	The style and language of authorising Acts <ul style="list-style-type: none"> The language of Local Laws must be consistent with the Act. 		
4.6	Drafting standards and principles <ul style="list-style-type: none"> Local Laws must comply with current drafting practice. 		
4.7	Limit to objectives <ul style="list-style-type: none"> Local Laws must set out their objective in the Local Law and not exceed the objective. 		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.8 Incorporating material by reference	<ul style="list-style-type: none"> Many Councils incorporate material (such as policies, codes and guidelines) into their Local Laws by reference. Incorporation by reference is a potentially complex area. It needs to be handled carefully if it is to be legally effective in adding material to Local Laws. Council needs to have a clear view of issues such as: <ul style="list-style-type: none"> whether Council means to incorporate a document or just refer to it which version and which part of the document is incorporated the implications of the document being amended. Documents that are incorporated effectively form part of the Local Law and need to be as readily available as the Local Law. 	<ul style="list-style-type: none"> Serious consideration needs to be given to whether a Local Law should be complete within itself or rely on incorporated material. If the latter, consideration needs to be given to the extent. A factor in this will be the availability of the incorporated material. To put it beyond doubt that a document is being incorporated by reference, it is suggested that an appropriate form of words, including name and version, is used to identify the document. If only part of a document is relevant, then that part only should be incorporated. This can be done by referring explicitly to the part in question. Council needs to specify which version of the document is being incorporated – earlier, current or ‘from time to time.’ Unless ‘from time to time’ is specified, the incorporated document cannot be updated without updating the Local Law. An amended document is not effective to update until it is gazetted. It is suggested that incorporated documents must be in existence at the time the Local Law is made. If this is not the case, then at a minimum, the Local Law should provide that a document is not incorporated until a process is conducted under section 223, and the document is gazetted. Incorporated documents must be as available as the Local Law – for example, on Council’s website. 	

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.9 Performance standards or prescriptive?	<ul style="list-style-type: none"> It is a legal requirement that, wherever appropriate, a Local Law be expressed in terms of performance standards rather than prescribed details 	<ul style="list-style-type: none"> Council needs to make a deliberate decision to adopt a performance-based approach. If a performance-based approach is not appropriate, this should be explained. 	<ul style="list-style-type: none"> If a performance-based approach has not been adopted in respect of provisions or a range of provisions, the Local Law Community Impact Statement should include an explanation as to why this was not appropriate or possible.
4.10 Expressed plainly	Local Laws should be in Plain English.	<ul style="list-style-type: none"> Council needs to adopt a 'Plain English' policy in respect of all its documents and then apply that to its Local Laws and related documents. Council should refer to website resources found by a search of 'Plain English.' 	
4.11 Not exceed powers	Council's Local Law must not exceed the powers of the Act(s) under which it is made.		
4.12 Not retrospective	A Local Law must not have retrospective effect.		
4.13 Tax, fees, fine or penalty	<ul style="list-style-type: none"> There must be specific authority in the enabling Act to impose a tax, fee, fine or penalty. No legislation allows Council to impose imprisonment. 	<ul style="list-style-type: none"> In the relevant provision of the Local Law: <ul style="list-style-type: none"> any charge should be accurately described as either a fee or a charge or a fare or rent. there should not be a generic clause authorising Council to '... by resolution determine a fee, charge, fare or rent in respect of any matter under this Local Law ...' It is preferable to have a specific clause in respect of each item as it occurs in the Local Law – permit fee, impounding charge, etc. 	

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.14 Not shift onus of proof	<ul style="list-style-type: none">A Local Law must not reverse the onus of proof unless there is specific authority in the enabling Act.The <i>Local Government Act 1989</i> does not provide authority to reverse onus of proof.Other Acts under which Council is able to make Local Laws are unlikely to provide authority.		
4.15 No further delegation	<ul style="list-style-type: none">A Local Law cannot normally delegate powers beyond the limit set by the enabling Act.		
4.16 No unexpected or unusual use of powers	<ul style="list-style-type: none">Local Laws must not misuse the powers granted by the Act under which they are made.This would include extending powers to unusual lengths or adopting artificial interpretations of provisions.		
4.17 Reviewing the draft	<ul style="list-style-type: none">Council needs to review its draft Local Law.A review against similar Local Laws of neighbouring or like Councils is also good practice.The Charter of Human Rights requires that the draft be reviewed.National Competition Principles require that the draft be reviewed.		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.20	<p>Reviewing the draft – other provisions of Schedule 8</p> <ul style="list-style-type: none"> Schedule 8 has a number of other provisions that would require the draft Local Law to be reviewed. These include: <ul style="list-style-type: none"> – principles of justice and fairness; – absence of undue trespass on rights; and – absence of undue reliance on administrative decisions These provisions pre-date the <i>Charter of Human Rights</i>. The review against the Charter of Human Rights should ensure compliance with the provisions. 		
4.21	<p>Reviewing the draft – principles of justice and fairness</p>		
4.22	<p>Reviewing the draft – undue trespass on rights</p>		
4.23	<p>Reviewing the draft – undue dependence on administrative decisions</p>		
4.24	<p>Reviewing the draft – National Competition Principles</p> <ul style="list-style-type: none"> Draft Local Laws must be reviewed to ensure they do not breach National Competition Principles. 		

Communicating and consulting on the draft

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
5.1 Starting communication	<ul style="list-style-type: none"> • Council needs to start communication and consultation on its proposed Local Law well before the statutory section 223 process. • Council needs to take responses into account and needs to be prepared to make changes to its draft as a result of consultation. 		
5.2 Identifying and communicating with affected parties	<ul style="list-style-type: none"> • To communicate effectively, Council needs to identify and make contact with affected parties. 		
5.3 Consultation meetings	<ul style="list-style-type: none"> • It is suggested Council convene one or more consultation meetings prior to the section 223 process being commenced. 		<ul style="list-style-type: none"> • The Local Law Community Impact Statement should include: <ul style="list-style-type: none"> – the response obtained as a result of community consultation – any adjustments to the proposed Local Law made as a result.
5.4 Public notice	<ul style="list-style-type: none"> • Council must give public notice of its intention to make a Local Law. • The notice must include the ‘purpose and general purport’ of the Local Law. 		
5.5 Considering submissions	<ul style="list-style-type: none"> • Council is obliged to consider all submissions made. • Council is not obliged to adopt the submissions but genuine consideration should be given and demonstrated. • Council should adopt a two-stage process to avoid considering submissions at the same meeting at which it is proposed to adopt the Local Law. 		<ul style="list-style-type: none"> • The final version of the Local Law Community Impact Statement should include a copy of Council’s replies to submissions whether accepted or otherwise.

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
5.6 Making amendments	<ul style="list-style-type: none">If Council makes substantial amendments to the proposed Local Law after public notice is given, Council will need to consider whether public notice needs to be given again.		

Making Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
6.1 Resolution	<ul style="list-style-type: none">Council makes the Local Law by ordinary resolution.		
6.2 Commencement	<ul style="list-style-type: none">The Local Law comes into operation on the day Council makes it, unless the Local Law itself expresses a different date.		
6.3 Stay of operation	<ul style="list-style-type: none">While it does not affect the validity of a Local Law, a failure to make the Local Law available may effectively operate to prevent the Local Law being used.		

Implementing Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
7.1	Gazetting and giving notice	<ul style="list-style-type: none"> As well as gazetting and giving public notice of the intention to make a Local Law, Council must gazette and give public notice of the fact that it has made the Local Law. Council must also send a copy to the Minister for Local Government. 	
7.2	Ancillary materials, forms, guidelines, etc.	<ul style="list-style-type: none"> If Council wishes to rely on material that is not incorporated into the Local Law, it needs to be prepared to explain why. That material needs to be readily available to the public. 	
7.3	Authorisations and delegations	<ul style="list-style-type: none"> Council can only effectively act through staff who are either authorised or have appropriate delegated powers. It is critical Council makes sure delegations and authorisations are in place. 	

Accessibility and communication

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
8.1 Availability of Local Laws.	Local Laws must be: <ul style="list-style-type: none">• printed• available for inspection• available for purchase• on Council’s website• in consolidated form.		
8.2 Availability of materials incorporated by reference into the Local Law.	<ul style="list-style-type: none">• Council needs to ensure that material incorporated by reference into the Local Law is available to the same extent and in the same ways (for example, on Council’s website) as the Local Law itself, preferably alongside or linked to the Local Law.		
8.3 Education campaigns.	<ul style="list-style-type: none">• Council should consider active steps such as education campaigns and mail outs to affected groups in order to publicise Local Laws.		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
8.4 Publication and availability of Local Law and related material	<ul style="list-style-type: none"> Local Laws and related material must be available for inspection on request. 	<p>Council should ensure:</p> <ul style="list-style-type: none"> the Local Law, all incorporated materials, and any materials that are not incorporated but are relied upon by Council are available on Council's website. all such materials must also be available in hard copy. This could be achieved by having copies 'in stock'. This is effectively a legislative requirement in respect of the Local Law itself; Council must maintain printed copies. if Council does not wish to maintain stocked copies, service centre and other relevant staff must have the training and resources to print relevant material from the Council website on request. no charge should be made for printing from the website – since it is only an alternative to the requirement to have material in stock. The only charge should be if a person wants to take a copy of material. 	
8.5 Availability of materials on Council website.	Council's Local Law must be available on Council's website	<ul style="list-style-type: none"> For consistency, Council's website should include: <ul style="list-style-type: none"> the Local Law in current and consolidated format any material incorporated by reference into the Local Law under section 112 any other material Council relies on or takes into account in relation to the Local Law including guidelines, etc. 	

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
8.6 Website protocols	<ul style="list-style-type: none">• It is not sufficient for Local Laws and related materials to be summarised or buried on Council's website.• These materials need to be able to be found easily and in full.	<ul style="list-style-type: none">• To provide adequate access to Local Laws, Council's website needs to have a menu item 'Local Laws' immediately visible on the Home Page of the website. 'Immediately visible' means that the viewer should not have to take any further action – such as clicking on an 'accessibility menu' in order to see the reference.• The menu item 'Local Laws' must link directly to a listing of Council's Local Law(s).• If Council has more than one Local Law, the listing should provide a description of the contents of each Local Law. Such a description could be developed/extracted from the statement of objectives of the Local Law. It should be sufficiently detailed to enable a person to identify which Local Law deals with a topic in which they are interested.• From the listings page, a person should be able to open a copy of each Local Law in its entirety.• The linkage to each Local Law must also include a linkage to all material incorporated by reference into the Local Law.• The linkage to Local Laws should include a further linkage to a listing of all permits required under that Local Law – specifying the operative clause of the Local Law which requires the permit.• In respect of each permit required there should be access to:<ul style="list-style-type: none">– an application for permit form– standard conditions of permit (Unless these are contained in full in the Local Law; even then it would not hurt to have them separately available)– permit fees, charges, deposits and any other relevant material.	

Enforcement – Personnel & practices

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
9.1 Authorised officers	<ul style="list-style-type: none"> To take action under a Local Law, Council will need to appoint 'authorised officers' in accordance with section 224 of the Act. The formalities of authorisation must be complied with. 		
9.2 Requirements placed on authorised officers – identity cards	<ul style="list-style-type: none"> Authorised officers must present their identity card on request. 		
9.3 Powers of authorised officers	<ul style="list-style-type: none"> Authorised officers have extensive powers, including power of entry. Powers must be exercised with caution and within authority. 	<ul style="list-style-type: none"> Council needs to have training in place for authorised officers. A manual and reference guide is essential for authorised officers. 	
9.4 Understanding enforcement action – Local Law or Infringements Act?	<ul style="list-style-type: none"> It is critical that persons instituting and following up enforcement action understand whether they are acting under the Local Law or the <i>Infringements Act 2006</i>. 		
9.5 Notices to comply and other actions under Local Laws	<ul style="list-style-type: none"> A notice to comply must follow the form, process and procedure set out in the Local Law if it is to be effective. 		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
9.6 Appeal and review provisions	<ul style="list-style-type: none">Council must very clearly differentiate between an appeal or review process as specified under the Local Law and a review under the <i>Infringements Act 2006</i>.In both cases, the processes set out must be followed exactly.		
9.7 Having an opinion – section 42 of the <i>Interpretation of Legislation Act 1984</i>	<ul style="list-style-type: none">Unless Council deliberately provides otherwise, it will be bound by the opinion of a delegate.		
9.8 Infringement notices – <i>Infringements Act 2006</i> requirements	<ul style="list-style-type: none"><i>The Infringements Act 2006</i> sets out extensive provisions related to the issuing of Infringement Notices.Council cannot use its Local Laws to modify these provisions.Council must comply with the provisions.		
9.9 <i>Infringements Act 2006</i> reviews	<ul style="list-style-type: none"><i>The Infringements Act 2006</i> has extensive provisions in respect of requests for review and the conduct of reviews under that Act.These provisions must also be followed.		

Review

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
10.1 Need for review of Local Laws	<ul style="list-style-type: none"> Council will periodically need to review the ongoing need for, success of, and need for additional Local Laws. The frequency of this review will be determined by Council's commitment to the community in its Local Law Community Impact Statement but may be supplemented by ad hoc reviews. 	★	✓
10.2 Areas for review	<ul style="list-style-type: none"> Council will have its own unique knowledge of what aspects of Local Laws need to be reviewed. At a minimum issues should include: <ul style="list-style-type: none"> – whether there is still a problem to address – whether the objectives are being met – if the impacts are as expected – if the Local Law is still the most appropriate approach. 		

Amending a Local Law

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
11.1 Means of amending	<ul style="list-style-type: none"> Local Laws can only be amended in the same way as they are made. Councils need to be alert to 'unofficial' amendments by officers. 	★	✓

Sunset

Heading	🎯 Outcome	★ Achieving the outcome	✅ Local Law Community Impact Statement
12.1 The expiration of Local Laws	<ul style="list-style-type: none">• A Local Law expires after 10 years – whether or not it has been amended in the meantime.		
12.2 Renewal of the Local Law	<ul style="list-style-type: none">• The only way to ‘renew’ a Local Law is to make a new one.• It is recommended that Council starts this process not less than a year in advance.		

14 APPENDIX 2 – The Local Law Community Impact Statement (LLCIS) - samples.

14.1 Contents of Appendix 2

This Appendix 2 contains:

14.1.1 Explanation

Local Law Community Impact Statement Explanation that gives a brief explanation of the contents of the fields which need to be completed by Council.

14.1.2 Sample

Local Law Community Impact Statement Sample that gives an example of the sorts of wording a Council might use in the Statement.

14.1.3 Template

Local Law Community Impact Statement Template that is a blank form of Statement for Councils to use.

14.2 Developing & completing a LLCIS

It is emphasised that Councils are free to develop their own form of explanatory document like the Local Law Community Impact Statement in whatever format and layout they choose. The following documents are intended as an aid only. They should not be slavishly followed. In particular, the wording of the completed Statement should be Council's own wording that addresses its unique circumstances.

[Name of Municipality]

Local Law Community Impact Statement

[Name or other identification of proposed Local Law]

Council provides the following information to the community in respect of the proposed Local Law.

PART A – General comments

Background

[This section might include the general context of the proposed Local Law, for example, whether the Local Law is new or the proposal results from the ‘sunsetting’ of an existing Local Law. It might be explained whether the proposed Local Law is a comprehensive ‘omnibus’ type law or whether it is one of a number of Local Laws.]

A brief outline of the process used to achieve a proposed draft Local Law – who was involved, the timeline, etc. might be inserted here or could appear in the Council Meeting Agenda report.]

Objectives

The objectives of the proposed Local Law are set out in the draft of the Local Law. *[Any additional comment about objectives could be made here]*

PART B – Comments on proposed Local Law overall³⁷

Measures of success of proposed Local Law

[2.3³⁸ Set out clear indicators by which Council will measure the success of the Local Law for example, reduction in complaints, reduction in instances of problem, etc.]

Set out the frequency with which success will be measured and reported on to the community].

Existing legislation that might be used instead

[2.6 Indicate other legislation that has been identified which touches on issues dealt with by the proposed Local Law and explain why these provisions are not suitable to resolve the problem.]

³⁷ The contents of this part will vary according to the conclusions reached by Council. If specific findings are made in respect of some provisions, these might best be reported in Part C against that provision. Similarly, if there are specific exceptions – for example, a problem addressed by the Local Law is of great community interest so Council proposes to report on success more frequently – that might be addressed specifically in Part C.

³⁸ References are to the relevant section of ‘Guidelines for Local Laws: Manual’

State legislation more appropriate	<i>[2.7 If Council is of the view that State Government legislation is more appropriate to deal with the problem, then it should not propose a Local Law to deal with the issue. This may lead to questions from the community as to why a matter is not covered by the Local Law and this should be explained.]</i>
Overlap of existing legislation	<i>[2.8 Identify existing legislation on any issue covered by the proposed Local Law and clarify why it does not overlap, duplicate or cause inconsistency with that legislation. That is, while the legislation and proposed Local Law may address the same topic, they deal with different aspects.]</i>
Overlap of planning scheme	<i>[2.9 As for legislation.]</i>
Risk assessment	<i>[2.10 The results of any risk assessment (that is, a report) undertaken should be attached. To the extent that the risk assessment report addresses issues, reference can be made in this table rather than reiterating the risk assessment report.]</i>
Legislative approach adopted	<i>[2.11 A brief explanation of the regulatory approach adopted by Council should be given and whether that approach is consistent throughout the entire proposed Local Law. Whether the approach adopted is consistent with neighbouring and like Councils could be addressed here or in the comparison section (4.18).]</i>
Restriction of competition	<i>[2.13 The results of a review in accordance with National Competition Principles should be attached.]</i>
Penalties	<i>[3.4 Any variation between the penalty levels adopted by Council compared to that of its neighbours or like Councils should be explained either here or in the comparison section (4.18).]</i>
Permits	<i>[3.7 If the proposed Local Law has a generic provision dealing with permits, this section should be used to briefly explain: why permit conditions are required, why any conditions are not spelled out, the process by which conditions will be determined, and if conditions vary from neighbouring or like Councils, why that is the case. If the proposed Local Law has permit requirements within specific provisions, a similar explanation should be provided in Part C against each provision.]</i>
Fees	<i>[3.11 Significant differences between the level of fees to be adopted by Council (if set out in the proposed Local Law) and those of neighbouring or like Councils should be explained either here or in the comparison section (4.18).]</i>
Performance standards or prescriptive	<i>[4.9 If Council has not adopted a performance-based approach in the drafting of the proposed Local Law, it should give a brief explanation here of why that is the case. Alternatively, Part C may be used to explain why particular provisions do not use a performance-based approach.]</i>

Comparison with neighbouring and like Councils	<i>[4.18 Council should detail those Councils whose Local Laws have been compared, the points of comparison and the result of the comparison.]</i>
Charter of Human Rights	<i>[4.19 The results of a review for compatibility with the Charter of Human Rights should either be set out here or attached. The results should specify whether any rights are engaged and justify any limitation on rights.]</i>
Consultation meetings	<i>[5.3 Council should set out the response(s) obtained as a result of community consultation and any adjustments made to the proposed Local Law as a result.]</i>
Submissions	<i>[5.5 Copies of Council's reply to submissions received should be attached.]</i>

[Name of Municipality]

Local Law Community Impact Statement

[Name or other identification of proposed Local Law]

Part C – Comments on specific parts or provisions of the proposed Local Law³⁹

Clause(s), section or part of Local Law	<i>[Operative provisions only, that is, preliminary or explanatory provisions do not need to be addressed unless the explanation helps in understanding. Where provisions within a part deal with a related issue, it may be more appropriate to address the part as a whole rather than the individual provisions.]</i>
Description or heading(s)	<i>[The Local Law Community Impact Statement will be read in conjunction with the draft Local Law. The purpose of this listing is to identify the relevant provision, not reiterate it.]</i>
The problem the provision is intended to address	<p><i>[2.1 Some problems will be obvious from the Local Law provision. Others will not. It is better to err on the side of explaining the obvious. For example, not everyone would immediately appreciate that a person living in a caravan on their own land or that having a back gate opening onto a reserve is a problem. Why this is a problem needs to be explained.</i></p> <p><i>Articulating the problem will help with accurate drafting, for example, an absolute prohibition on ‘using any part of premises to store second hand goods’ would catch a collector of first edition books or even a philatelist – possibly not what was intended.</i></p> <p><i>Differentiate between the fact giving rise to the problem and the problem. For example, the fact is driving of vehicles on reserves. The problem is damage to reserves. A related problem may be risk of injury from driving vehicles among spectators.]</i></p>
Description of the problem	<i>[2.1 Why is it a problem? What is the evidence? How big a problem? – for example, how many ratepayers inconvenienced, cost to Council (ratepayers), etc. Who causes the problem?]</i>
Council objective	<i>[2.2 Why is it a Council problem? A number of objectives may be involved: protection of Council assets, safety of public, public amenity. A reasonably specific objective is to be preferred. Words such as ‘amenity’ or ‘safety’ should be sufficiently qualified to relate them to a specific objective.]</i>

³⁹ This part appears on a separate page because a page will be required for each part or provision of the proposed Local Law addressed.

Where is Council's objective set out?	<i>[2.2 The objective may be set out in the Council Plan, or a policy document, or the results of a risk assessment that has been adopted by Council, etc.]</i>
How does proposed Local Law provision help achieve objectives?	<i>[2.2 Will it remove an impediment? Is it a direct solution – for example, requiring a notice or permit so Council can exercise control or will it make something an offence that will enable enforcement action to be taken?]</i>

City of Eastwood

Local Law Community Impact Statement - November 2009

Proposed: Eastwood General Local Law 2010.

Council provides the following information to the community in respect of the proposed Local Law.

PART A – General comments

Background

Council's *General Local Law 2002* expires on 28 February 2010. In November, 2008, Council appointed a Local Law Review Committee to review the 2002 Local Law. The proposed *Eastwood General Local Law 2010* is the result of that review.

The proposed Local Law contains all of Council's Local Law requirements except those relating to meeting procedures and use of the common seal. Those requirements are contained in the *Eastwood Local Law (Meeting Procedures and Other Matters) 2006* which is due to expire in 2015.

The proposed Local Law has been reviewed by Council's solicitors who confirm that it complies with all regulatory requirements.

Objectives

The overall objectives of the proposed Local Law are set out in the draft of the Local Law. For most provisions, the objective is obvious from the wording of the provision but additional information about the specific objectives behind provisions is provided in PART C of this report.

PART B – Comments on proposed Local Law overall⁴⁰

Measures of success of proposed Local Law

Council will measure the success of the Local Law as follows:

- The level of unrecovered costs of damage to Council property.
- The surveyed level of community satisfaction with community safety resulting from the Local Laws.
- Success in reducing nuisance or inconvenience in relation to shopping trolleys, building works and animals.
- Cost to the community of fees once these are set by Council.

Council will report annually to the community on the operation of the Local Law.

⁴⁰ The contents of this part will vary according to the conclusions reached by Council. If specific findings are made in respect of some provisions, these might best be reported in Part C against that provision. Similarly, if there are specific exceptions – for example, a problem addressed by the Local Law is of great community interest so Council proposes to report on success more frequently – that might be addressed specifically in Part C.

Existing legislation that might be used instead	In respect of noise emanating from building sites, Council has considered use of the <i>Environment Protection Act 1970</i> (EPA) and regulations as an alternative to provisions in the proposed Local Law. The EPA provisions, however, require giving of prior notice and the duration of enforcement action is limited.
State legislation more appropriate	Council is of the view that each of the problems identified in relation to the proposed Local Law is a Council problem and that, accordingly, the provisions of the proposed Local Law are an appropriate solution.
Overlap of existing legislation	Existing State legislation deals with the following issues which are also dealt with by the proposed Local Law: <ul style="list-style-type: none"> • Noise: <i>Environment Protection Act 1970</i> • Works in Roads: <i>Road Management Act 2004</i> • Graffiti: <i>Graffiti Prevention Act 2007</i>. Council believes the provisions of the proposed Local Law supplement the State legislation without duplicating, overlapping or creating any inconsistency.
Overlap of planning scheme	Council does not believe any provision of the proposed Local Law overlaps, duplicates or creates any inconsistency with any planning scheme.
Risk assessment	Council has adopted a risk management approach to the review and development of the proposed Local Law. Attached is a report detailing the results of a risk assessment conducted by Council. In respect of each substantive provision of the proposed Local Law the report details the problem, the rating of the severity of the problem according to the frequency and consequences (assuming no Local Law was in place either now or in the future) and the reduction in rating that is anticipated as a result of the Local Law.
Legislative approach adopted	Council believes in the minimum imposition on the community with Local Laws. The proposed Local Law reflects this approach by providing for: <ul style="list-style-type: none"> • reasonable penalties • minimum possible number of provisions which create offences • where possible, provision for permits rather than prohibition of activities • reasonable and appropriate permit conditions which in the main are set out in the proposed Local Law • reasonable enforcement procedures including provision for the giving of warnings where appropriate, provision of an internal review process for infringement notices and refusal of permits.
Restriction of competition	Council has conducted a review of the proposed Local Law in accordance with National Competition Principles. The results of that review are attached.

Penalties

Council has compared the general level of penalties provided for in the proposed Local Law with those of its neighbouring Councils X and Y and with Council Z that has a similar profile to the City of Eastwood. The penalty for all offences under the proposed Local Law (except for building) is 2 penalty units (\$200). This is the same as Councils X and Z and less than Council Y which has a minimum penalty level of 3 penalty units. Council feels that a base level of 2 penalty units is sufficient to act as a deterrent for most offences if there is appropriate enforcement vigilance.

For breaches of Council's Building Site Code of Practice, the proposed Local Law provides a penalty of 10 penalty units. This is similar to Council X but higher than Council Y. Council Z does not have a similar provision. The level of building activity in the municipality, while welcomed, is a source of considerable inconvenience to ratepayers and cost to Council – damage to assets, enforcement costs, etc. – unless builders are prepared to act responsibly. A higher penalty level is necessary to achieve this where builders persistently do not respond to warnings.

Permits

A number of provisions in the proposed Local Law require permits for various activities. As far as possible, Council has standardised its requirements for applications for permits and the conditions on which permits are issued or refused. As a result, Council has been able to gather all provisions related to permits in a single part (Part 9) of the proposed Local Law. Part 9 sets out a generic set of permit conditions. The generic conditions allow delegated officers to make determinations and impose final conditions as follows:

- Works in or on roads – whether a traffic management plan is required.
- Insurance – whether because of the magnitude or nature of the risk, an insurance level of greater than Council's minimum is required to be provided by the applicant.

Both these matters vary depending on circumstances and cannot be fixed in generic conditions.

The proposed permit conditions are similar in scope to those of Councils X, Y & Z with the exception that Council Z has a requirement for joint named insurance in all cases. Council does not believe this can be justified and believes Council Z will remove this requirement when it reviews its Local Law.

Fees

The proposed Local Law allows Council to set fees annually and this will be done as part of the budget process. Council does not expect to radically depart from the level of fees under the existing Local Law which are in line with Councils X, Y & Z.

Performance standards or prescriptive

Where appropriate and possible, Council has adopted a performance-based approach to Local Law provisions. For example, detailed prescriptive requirements regarding the housing of poultry and livestock have been replaced with requirements designed to ensure clean, healthy and secure environments. These have been supplemented by 'deemed to comply' provisions to give the community some guidance.

Comparison with neighbouring and like Councils	Council has compared the proposed Local Law with the existing Local Laws of Councils X, Y and Z. Comparisons have been made on: Scope of provisions, approach to enforcement, review procedures, fees, penalties and permit conditions. On each of these points the results are:
Charter of Human Rights	Council has assessed the proposed Local Law for compatibility with the Charter of Human Rights and Responsibilities. A report of this assessment is attached. In summary, Council found that the few provisions that engaged human rights – mainly to do with restricting movement of people – were justified by the need to maintain safety for the whole community.
Consultation meetings	In the process of developing the proposed Local Law, Council held two meetings to consult with stakeholders. A report on the results of those meetings is attached.
Submissions	In response to the public notice of the proposed Local Law, Council received 8 written submissions. These were considered at Council's meeting of (date) and 5 parties were heard in person. Attached is Council's response to those submissions.

Council

Local Law Community Impact Statement - date

Proposed: Local Law

Part C – Comments on specific parts or provisions of the Proposed Local Law⁴¹

[Name of Municipality]

Local Law Community Impact Statement

[Name or other identification of proposed Local Law]

Council provides the following information to the community in respect of the proposed Local Law.

PART A – General comments

Background

Objectives

The objectives of the proposed Local Law are set out in the draft of the Local Law.

PART B – Comments on proposed Local Law overall

Measures of success of proposed Local Law	
Existing legislation which might be used instead	
State legislation more appropriate	

⁴¹ Complete a page for each substantive provision (or part) of the proposed Local Law.

Overlap of existing legislation	
Overlap of planning scheme	
Risk assessment	
Legislative approach adopted	
Restriction of competition	
Penalties	
Permits	
Fees	
Performance standards or prescriptive	
Comparison with neighbouring and like councils	
Charter of Human Rights	
Consultation meetings	
Submissions	

[Name of Municipality]

Local Law Community Impact Statement

[Name or other identification of proposed Local Law]

Part C – Comments on specific parts or Provisions of the Proposed Local Law

Clause(s), section or part of Local Law	
Description or heading(s)	
The problem the provision is intended to address	
Description of the problem	
Council objective	
Where is Council's objective set out?	
How does proposed Local Law provision help achieve objectives?	

PROJECT TEAM

Chris Newman	Local Government Victoria
Paul Hedger	Compliant Systems
Natalie Dowling	Local Government Victoria

IMPLEMENTATION COMMITTEE

Alison Kingston	Bass Coast Shire Council
Alison Lyon	Municipal Association of Victoria
Steven Morrison	Whitehorse City Council
Tim Presnell	Local Government Victoria
Peter Shelton	Greater Dandenong City Council
Michael Tonta	Whittlesea City Council
Ken Waixel	Bayside City Council