*Local Government Act 2020* – Local Laws

Victorian councils have the broad power to 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’ (Local Government Act 2020, section 71(1)).*

Councils utilise local laws to respond to issues and community needs within a local context. They typically deal with, but are not limited to, protection of local amenity as well as regulating activities on council controlled land and roads.

The *Local Government Act 2020* (2020 Act) continues the long-standing ability for councils to make local laws, but how they are made, and their application have been amended to improve the relevance and effectiveness of local laws.

The new framework

What is similar to the previous arrangements

Most matters concerning the making and operation of local laws under the 2020 Act are generally the same as applied under the *Local Government Act 1989* (1989 Act). For example, local laws -

* cannot be inconsistent with other legislation, nor duplicate or be inconsistent with the council’s planning scheme.
* must be expressed clearly and unambiguously and cannot exceed the power to make the local law under the relevant authorising Act.
* may incorporate by reference matters contained in other documents, codes, rules, and formulas.
* may provide for the determination of fees, granting of permits and licences, and delegation of powers under the local law.
* may prescribe penalties not exceeding 20 penalty units for a contravention and enable infringement notices to be served.
* automatically ‘sunset’ (are revoked) ten years after their making, unless revoked sooner.
* may continue to regulate the use of the council’s common seal.
* must comply with regulations relating to the preparation and content of local laws (as at September 2021, no such regulations have been made).

What has changed

Important changes to the local law framework in the 2020 Act include –

* Procedures for the conduct of council meetings is no longer regulated in local laws. Meeting procedures are now covered by the council’s Governance Rules.
* A council may nevertheless use local laws to create enforcement provisions involving penalties if its Governance Rules are not adhered to.
* Penalties for contravention of a local law made under the 2020 Act no longer remain at $100 per penalty unit. They are indexed in the same way as penalty units under other Victorian legislation.
* Councils must comply with their community engagement policy as part of the process for making local laws. The submission process mandated in section 223 of the 1989 Act no longer applies.
* Before a local law can be made, a certificate from an Australian lawyer with at least five years in the legal profession must be obtained stating the proposed local law is consistent with the local law requirements.

When the new arrangements commence

From **1 July 2021**, any new local laws must be made in accordance with the 2020 Act. In the meantime, local laws made under the 1989 Act continue to apply. Local laws made under the 1989 Act can be amended or revoked by a local law made under the 2020 Act.

Existing guidance on local laws

Better Practice Local Laws guides

In 2010, Local Government Victoria [produced comprehensive guidelines](https://www.localgovernment.vic.gov.au/council-innovation-and-performance/local-laws) to assist councils in the preparation and making of local laws.

These guidelines covered all aspects of local laws, from their preparation phase right through to their revision and amendment. They include a step-by-step operational document and resource book with case studies and examples. Part of the resource suite introduced the concept of the Local Law Community Impact Statement to foster better practice, and which addressed issues such as:

* Identifying the problem sought to be addressed
* Relating the problem to council objectives
* Measuring the success of a local law
* Considering alternatives to a local law
* Adopting a risk management approach
* Deciding the regulatory approach
* Ensuring least burden/greatest advantage
* Considering restrictions on competition
* Setting fees and penalty levels and dealing with permits and permit conditions
* Adopting a performance-based approach
* Effectively consulting with the local community

These guidance materials continue to be an excellent resource. Councils are encouraged to continue to have regard to the guides when preparing to make local laws under the 2020 Act (noting that the guides reference provisions of the 1989 Act which should be adapted where necessary).

Legislation relating to local laws

* Local Laws – *Local Government Act 2020,* Division 3 of Part 3 (sections 71 to 87).
* Meeting procedure local laws under 1989 Act continue to apply until Governance Rules made – *Local Government Act 2020* (section 60(8)).
* Community engagement policy and principles – *Local Government Act 2020* (sections 55 and 56).
* Local law penalty units under 1989 Act – *Sentencing Act 1991* (section 110(2)).

(Note although this section (which set a local law penalty unit at $100) has been repealed, it continues to apply to local laws made under the 1989 Act and still in effect *– Local Government Act 2020* (section 71(7)).

* Local law [penalty units](https://www.justice.vic.gov.au/justice-system/fines-and-penalties/penalties-and-values) under 2020 Act – *Sentencing Act 1991* (section 110(1)) and *Monetary Units Act 2004* (section 5(3)).
* Common seal and local laws – *Local Government Act 2020* (section 14(2)(b)).