

**LOCAL LAW NO. 2****General Public Amenity**

<b>CLAUSE</b>	<b>DESCRIPTION</b>	<b>Minimum (Infringement) Penalty</b>	<b>Maximum Penalty</b>
29(2)	USE OF MUNICIPAL TRANSFER STATION - Noncompliance with the conditions of the transfer station	3	15
29(4)	USE OF MUNICIPAL TRANSFER STATION - Noncompliance with the conditions of the transfer station	3	15
29(6)	USE OF MUNICIPAL TRANSFER STATION Removal of materials from the transfer station without permission	2	10
30(1)	DRAINAGE TAPPINGS Interference with a drain under Councils control	5	20
30(2)	DRAINAGE TAPPINGS Deposit of waste down a Council drain	5	20
31(1)	TREES, PLANTS, SIGNS OR STRUCTURES NOT TO OBSTRUCT OR OBSCURE Objects interfering with passage of traffic in contravention with the local law	3	15
32(1)	CONTROLS APPLYING TO ROAD RESERVES AND NATURE STRIPS Occupation of a nature strip or road reserve in contravention with the local law	2	10
32(2)	CONTROLS APPLYING TO ROAD RESERVES AND NATURE STRIPS Noncompliance with a direction to remove objects in contravention with the local law	5	20
33(1)	COUNCIL TO APPROVE ROAD NAMES Applying a name to a road or street in contravention of the local law	2	10
34(1)	STREET AND RURAL ROAD NUMBERS TO BE DISPLAYED Street or rural road number not adequately displayed	2	10
35(1)	A VEHICLE CROSSING IS REQUIRED Improperly constructed vehicle crossing	5	20
35(3)	A VEHICLE CROSSING IS REQUIRED Failing to maintain a vehicle crossing	5	20
36(1)	CONSTRUCTING, REMOVING OR ALTERING A VEHICLE CROSSING Works on a vehicle crossing undertaken without a permit	5	20
36(2)	CONSTRUCTING, REMOVING OR ALTERING A VEHICLE CROSSING Constructing or using a second vehicle crossing in contravention of the local law	5	20
37(1)	TEMPORARY VEHICLE CROSSINGS Person responsible for works must obtain permit	5	20

**LOCAL LAW NO. 2****General Public Amenity**

<b>CLAUSE</b>	<b>DESCRIPTION</b>	<b>Minimum (Infringement) Penalty</b>	<b>Maximum Penalty</b>
37(2)	<b>TEMPORARY VEHICLE CROSSINGS</b> Person responsible for vehicle crossing also responsible for any damage and must comply with directions by Council to repair	5	20
38(1)	<b>REDUNDANT VEHICLE CROSSING</b> Redundant crossings removed in contravention with the local law	5	20
39(1)	<b>ERECTING OR PLACING ADVERTISING SIGNS</b> Placing an Advertising Sign over a road	5	20
41(1)	<b>ROADSIDE TRADING</b> Roadside trading in contravention of the local law	3	15
43(1)	<b>LOCATING GOODS FOR SALE</b> Locating goods for sale in contravention of the local law	5	20
44(1)	<b>OUTDOOR EATING FACILITIES</b> Establishing an outdoor eating facility in contravention with the local law	5	20
45(1)	<b>REMOVING AN OUTDOOR EATING FACILITY</b> Noncompliance with request to remove an outdoor eating facility	5	20
46(1)	<b>PLACING BULK CONTAINERS</b> Placing a Bulk Container in contravention of the local law	3	15
47(1)	<b>ROAD OCCUPATION FOR WORKS</b> Carrying out works on a roadside in contravention with the local law	5	20
47(3)	<b>ROAD OCCUPATION FOR WORKS</b> Noncompliance with conditions of a permit regarding repair of the road	5	20
48(1)	<b>STREET PARTIES, STREET FESTIVALS AND PROCESSIONS</b> Holding a Street party, Street Festival or Procession in contravention with the local law	3	15
49(1)	<b>COLLECTIONS</b> Soliciting gifts of money in contravention with the local law	3	15
50(1)	<b>PARKING IN RESIDENTIAL AREAS</b> Parking Heavy Vehicles in contravention of the local law	2	10
50(3)	<b>PARKING IN RESIDENTIAL AREAS</b> Failure to remove Heavy Vehicle if broken down	2	10
51(1)	<b>LEAVING UNREGISTERED OR ABANDONED VEHICLES</b> Leaving unregistered or abandoned vehicles in a public place	5	20

**LOCAL LAW NO. 2****General Public Amenity**

<b>CLAUSE</b>	<b>DESCRIPTION</b>	<b>Minimum (Infringement) Penalty</b>	<b>Maximum Penalty</b>
57(1)	OFFENCES CONCERNING LIVESTOCK ON ROADS Moving livestock on a road in contravention with the local law	5	20
57(2)	OFFENCES CONCERNING LIVESTOCK ON ROADS Grazing livestock on a road in contravention of the local law	5	20
57(4)	OFFENCES CONCERNING LIVESTOCK ON ROADS Moving livestock on a road in contravention with the local law	2	10
60(1)	COUNCIL-OPERATED STANDPIPES Using a Council operated Standpipe in contravention of the local law	5	20
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68(3)	EXEMPTIONS Noncompliance with the conditions of an exemption	5	20
69(1)	OFFENCES Making false representations in contravention of the local law	5	20
73(1)	FAILURE TO COMPLY WITH A 'NOTICE TO COMPLY' Failing to comply with a notice	5	20





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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.

Richard Wynne  
Minister for Local Government

## Guidelines for Local Laws Manual

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## About these guidelines resources

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## 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.'*<sup>1</sup>

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.

<sup>1</sup> *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

About these guidelines resources

GUIDELINES FOR LOCAL LAWS MANUAL

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

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

## Conventions adopted in these guidelines

### References

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

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

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

### Citations

For brevity and clarity, sections of the Act are not generally formally quoted in the legislative manner. For example, section 113(1)(b)(ii) of the Act would be formally quoted as:

**'S.113 Permits, licences, fees and charges**

1. A Local Law may –

(b) Prescribe, regulate or determine the purposes for which and the conditions on which a Council may –

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

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

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

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



## Preparing for Local Laws

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## Guidelines Part 1: Preparing for Local Laws

This part contains the following sections and contents:

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

## 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*<sup>2</sup>. 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.

<sup>2</sup> 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)<sup>3</sup> 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.

<sup>3</sup> 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](http://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](http://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](http://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](http://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"> <li>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.</li> </ul>
2.2 Relating the problem to Council policy objectives: Identifying if it is a Council problem	<ul style="list-style-type: none"> <li>The objective of the proposed Local Law must be within the function and powers of Council.</li> <li>This should be demonstrated by a statement in the Local Law.</li> </ul>
2.3 Measuring success	<ul style="list-style-type: none"> <li>Council needs to establish measures for the success of, and the ongoing need for, Local Laws.</li> <li>Council needs to state the frequency with which measurements will be taken.</li> </ul>
2.4 Considering possible alternatives to Local Law	<ul style="list-style-type: none"> <li>Council needs to consider whether there is a possible alternative to a Local Law that might better suit the needs of the community.</li> </ul>
2.5 Identifying (and staying within) the power to make a Local Law	<ul style="list-style-type: none"> <li>A Local Law must identify the authority on which it is based and remain within that power.</li> </ul>
2.6 Identifying existing legislation that might be used instead of a Local Law	<ul style="list-style-type: none"> <li>Council needs to fully explore existing legislation to ensure there are no existing provisions that could be used.</li> <li>Local Laws should not be created unnecessarily.</li> </ul>
2.7 Considering if a State Act is more appropriate than a Local Law	<ul style="list-style-type: none"> <li>Council needs to identify any area where Council believes it is inappropriate to use Local Law making power.</li> </ul>
2.8 Identifying existing legislative provisions that may be overlapped by a Local Law	<ul style="list-style-type: none"> <li>Council needs to take steps to ensure that a Local Law does not duplicate, overlap, contradict or is inconsistent with existing legislation.</li> </ul>
2.9 Identifying planning scheme requirements with which a Local Law may be inconsistent	<ul style="list-style-type: none"> <li>Council must ensure that its Local Law does not duplicate or is inconsistent with any planning scheme.</li> </ul>
2.10 A risk management approach to Local Laws	<ul style="list-style-type: none"> <li>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.</li> </ul>

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

## 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.

## 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.

### 2.2.1 Legislative provisions

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

*A Local Law must in the case of a principal<sup>4</sup> 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.

<sup>4</sup> '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.



- 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.



- 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.

## 2.3 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.



### 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.

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



- 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

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 area<sup>5</sup>.
- Any perceived legislative ‘gaps’ that the Local Law is designed to fill, should be explained.

<sup>5</sup> 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.

### 2.7.1 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/](http://www.comlaw.gov.au/)

State legislation:  
[www.legislation.vic.gov.au/](http://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.

## 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.

### 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

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.



- 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.



- 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.

### 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 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.

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



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.

**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.

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/](http://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.

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

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.



- 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.

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.



- 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](http://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.

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- 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"> <li>• Under section 116 of the Act, Council can decide the times, extent, cases, etc. to which a Local Law applies.</li> <li>• If Council wants to decide these matters, it needs to explicitly do so.</li> <li>• 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"> <li>– specifically reserve that right</li> <li>– specify the circumstances under which determination may be triggered</li> <li>– specify conditions which will apply</li> <li>– specify that Council will make the decision.</li> </ul> </li> </ul>
3.2 Enforcement – General considerations	<ul style="list-style-type: none"> <li>• The mechanisms used to enforce Local Laws will impact on the effectiveness of the Local Laws.</li> </ul>
3.3 Notices/ Cautions/ Warnings	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Council needs to be clear about the intended consequences of these mechanisms – particularly whether failure to comply creates another offence.</li> <li>• 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>.</li> </ul>
3.4 Penalties	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Council also needs to comply with the Attorney-General's guidelines on penalties related to infringement notice penalties.</li> </ul>



3.5	<b>Infringement notices</b>	<ul style="list-style-type: none"> <li>• Council needs to understand and be aware that the:               <ul style="list-style-type: none"> <li>– form</li> <li>– content</li> <li>– service</li> <li>– review</li> <li>– withdrawal</li> </ul> </li> </ul> <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"> <li>• 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.</li> <li>• Council does need to put in place procedures for review.</li> <li>• These do not necessarily need to be in the Local Law but details of the procedure should be readily available to the public.</li> </ul>
3.6	<b>Permits and licences</b>	<ul style="list-style-type: none"> <li>• Council processes and conditions in relation to permits need to be consistent.</li> </ul>
3.7	<b>Purposes and conditions of permits, licences, etc.</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The conditions set out:               <ul style="list-style-type: none"> <li>– should be reasonable having regard to all the circumstances</li> <li>– should not include matters that cannot be complied with, such as joint named insurance</li> <li>– must not be utilised as an opportunity for Council to avoid liabilities that would otherwise exist.</li> </ul> </li> </ul>
3.8	<b>Fees in relation to permits etc.</b>	<ul style="list-style-type: none"> <li>• A Local Law may contain a provision stating that Council may set fees by resolution.</li> </ul>
3.9	<b>Provisions for imposing fees</b>	
3.10	<b>Reduction, waiver or refund of fee</b>	
3.11	<b>Practices in relation to fees – summary</b>	<ul style="list-style-type: none"> <li>• Council needs to ensure that it complies with minimum legislative requirements in relation to fees.</li> <li>• 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.</li> <li>• This framework should be created by Council.</li> </ul>

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

### 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 –*

- apply at all times or at a specified time;*
- apply throughout the whole of the municipal district or in a specified part of the municipal district;*
- apply to all cases or to all cases subject to specified exceptions or to any specified case or class of case;*
- 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;*
- 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'<sup>6</sup>.

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.

<sup>6</sup> 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.<sup>7</sup>*

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

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

policy outcome.<sup>8</sup> 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.<sup>9</sup>

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).

<sup>8</sup> It most certainly should not be revenue-raising.

<sup>9</sup> 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.dff.vic.gov.au](http://www.dff.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 notices<sup>10</sup>



- 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.*

<sup>10</sup> 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.<sup>11</sup> 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.

<sup>11</sup> 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.<sup>12</sup>
- 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.

<sup>12</sup> 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.



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

### 3.8 Fees in relation to permits, etc.

#### 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 Act<sup>13</sup> 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.

<sup>13</sup> 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 process<sup>14</sup>. 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.

<sup>14</sup> 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

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## Guidelines Part 2: Creating Local Laws

This part contains the following sections and contents:

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

## 4 Drafting and reviewing the draft

Section	Outcome
4.1 <b>Reference materials</b>	<ul style="list-style-type: none"> <li>• 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>.</li> <li>• Council would be wise to refer to the Guidelines on Statutory Rules issued by the Office of Chief Parliamentary Counsel.</li> </ul>
4.2 <b><i>Interpretation of Legislation Act 1984</i></b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.)</li> </ul>
4.3 <b>The format of Local Laws</b>	<ul style="list-style-type: none"> <li>• There is no set format for Local Laws.</li> <li>• The predominant criteria should be clarity and accessibility.</li> <li>• This commences with having a planned outline.</li> </ul>
4.4 <b>Referring to penalties in a Local Law</b>	<ul style="list-style-type: none"> <li>• The <i>Sentencing Act 1991</i> provides a convenient method of referring to penalties in Local Laws and it should be used.</li> </ul>
4.5 <b>The style and language of authorising Acts</b>	<ul style="list-style-type: none"> <li>• The language of Local Laws must be consistent with the Act.</li> </ul>
4.6 <b>Drafting standards and principles</b>	<ul style="list-style-type: none"> <li>• Local Laws must comply with current drafting practice.</li> </ul>
4.7 <b>Limit to objectives</b>	<ul style="list-style-type: none"> <li>• Local Laws must set out their objective in the Local Law and not exceed the objective.</li> </ul>

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

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



## 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](http://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