

#### 4.2.2 Issues

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

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

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

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

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

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

Sections 36–37 deal with specific writing issues.

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

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

**individual:** means a natural person

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

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

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



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

### 4.3 The format of Local Laws



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

#### 4.3.1 Issues

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

An outline might include:

##### PART 1

##### Preliminaries

- Title
- Objectives
- Authorising provisions

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

## PART 2

### Procedural

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

## PART 3

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

## SCHEDULES

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

The essential criteria for the format of Local Laws are:

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

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

## 4.4 Referring to penalties in a Local Law



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

### 4.4.1 Legislative provision

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

#### **111 Location and effect of penalty provisions**

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

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

For example, a provision which states:

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

*Penalty: 2 penalty units*

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

Similarly, a provision which states:

*57. A person must not without a permit*

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

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

*Penalty: 2 penalty units*

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

## 4.5 The style and language of authorising Acts



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

### 4.5.1 Legislative provision

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

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

### 4.5.2 Issues

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

## 4.6 Drafting standards and principles



Local Laws must comply with current drafting practice.

### 4.6.1 Legislative provision

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

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

### 4.6.2 Issues

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

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

## 4.7 Limit to objectives



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

### 4.7.1 Legislative provision

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

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

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

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

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

#### 4.7.2 Issues

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

### 4.8 Incorporating material by reference



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

#### 4.8.1 What is 'incorporation by reference'?

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

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

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

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

#### 4.8.3 Some considerations about incorporating by reference

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

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

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

<sup>17</sup> This is discussed in more detail under the Accessibility section of this manual.



material and to ensure that the material is publicly available.<sup>18</sup>

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

#### 4.8.4 Legislative provision

Section 112(1) of the Act provides:

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

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

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

#### 4.8.5 Issues – how to apply, adopt, incorporate?

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

#### 4.8.6 Legislative provision

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

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

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

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

#### 4.8.7 Issues

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

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

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

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

#### 4.8.8 Issues – which version of the document?

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

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

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

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

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

#### 4.8.9 Issues – amended documents

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

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

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

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



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

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

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

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

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

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

The Council's Local Law provides.

##### Objectives of Local Law

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

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

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

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

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

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

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

Clause 10 of the Code provides that:

The failure to comply with any provision of this Code of Practice constitutes an offence under Council's relevant Local Law<sup>22</sup>

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

The Code is not incorporated into the Local Law.

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

<sup>21</sup> Whether this document has been approved by the Council is not clear.

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

<sup>23</sup> Nor does the one about meeting procedures.

#### 4.8.13 Matter incorporated by reference not amended until gazetted

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

#### 4.8.14 Legislative provision

Section 112(2) of the Act provides:

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

#### 4.8.15 Issues

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



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

#### 4.8.16 Availability of incorporated material

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



#### 4.8.17 Legislative provision

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

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

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

#### 4.8.18 Issues

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

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



- Serious consideration needs to be given to whether a Local Law should be complete within itself or rely on incorporated material. If the latter, consideration needs to be given to the extent. A factor in this will be the availability of the incorporated material.
- To put it beyond doubt that a document<sup>24</sup> is being incorporated by reference, it is suggested that an appropriately detailed form of words, including name and version, is used to identify the document.
- If only part of a document is relevant, then that part only should be incorporated. This can be done by referring explicitly to the part in question.
- Council needs to specify which version of the document is being incorporated – earlier, current or 'from time to time'. Unless 'from time to time' is specified, the incorporated document cannot be updated without updating the Local Law.
- An amended document is not effective to update until it is gazetted.
- It is suggested that incorporated documents must be in existence at the time the Local Law is made. If this is not the case, then at a minimum, the Local Law should provide that a document is not incorporated until a process is conducted under section 223, and the document is gazetted.
- Incorporated documents must be as readily available as the Local Law – for example, on Council's website.

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



## 4.9 Performance standards or prescriptive?



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

### 4.9.1 Legislative provision

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

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

### 4.9.2 What are performance standards?

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

A Council's Local Law incorporates a Code of Practice for building sites. The Code hedges its bets by including prescriptive and performance-based measures in the one clause defining site fencing<sup>25</sup>.

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

It provides:

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

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

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

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

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

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

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

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

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

Re-written this way the provision would read:

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

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

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

A further provision would require that:

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

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

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

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



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



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

## 4.10 Expressed plainly



Local Laws should be in Plain English.

### 4.10.1 Legislative provision

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

*A Local Law must – be expressed plainly and unambiguously.*

#### 4.10.2 Issues – Plain English

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

##### The Office of the Chief Parliamentary Counsel: Plain English Policy

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

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

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

#### 4.10.3 Issues – problems with expression

A number of problems consistently arise in legal drafting.



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



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

#### 4.11 Not exceed powers



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

##### 4.11.1 Legislative provision

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

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

##### 4.11.2 Issues

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

For example, a Local Law provides:

##### 7.5 Evidentiary provisions

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

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

This clause purports to extend the provisions of section 242 of the Act. To the extent it does so, it is invalid<sup>26</sup>.



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

## 4.12 Not retrospective



A Local Law must not have retrospective effect.

### 4.12.1 Legislative provision

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

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

### 4.12.2 Issues

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

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

<sup>26</sup> The Local Law also seems to confuse the concepts of delegation and authorisation.

## 4.13 Tax, fee, fine or penalty



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

### 4.13.1 Legislative provision

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

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

Section 113(1) provides:

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

Section 115 provides:

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

### 4.13.2 Issues

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

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

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

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



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

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

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

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

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

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



In the relevant provision of the Local Law:

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

## 4.14 Not shift onus of proof



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

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

### 4.14.1 Legislative provision

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

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

### 4.14.2 Issues

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

A problematic example of a Council Local Law<sup>27</sup> that provides:

#### Owner and occupier onus

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

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

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

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

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

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

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



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

## 4.15 No further delegation



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

### 4.15.1 Legislative provision

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

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

### 4.15.2 Issues

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

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

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

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

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

## 4.16 No unexpected or unusual use of powers



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

### 4.16.1 Legislative provision

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

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

## 4.17 Reviewing the draft



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

### 4.17.1 Issues

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

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

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

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

## 4.18 Reviewing the draft – Neighbouring and like Councils



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

### 4.18.1 Issues

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

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

Suggested points of comparison include:

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

Comparing with neighbouring Councils might well reveal explainable differences if the

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



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

## 4.19 Reviewing the draft - Charter of Human Rights



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

### 4.19.1 Legislative provision

Section 38 of the Charter provides:

#### 38 Conduct of public authorities

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

### 4.19.2 References

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

The Victorian Equal Opportunity and Human Rights Commission at: [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

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

### 4.19.3 Issues

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



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



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

#### What does the Charter mean for local government?

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

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

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

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

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

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

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

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

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

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



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



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

## 4.20 Reviewing the draft - Other provisions of Schedule 8



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

## 4.21 Reviewing the draft - Principles of justice and fairness

### 4.21.1 Legislative provision

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

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

### 4.21.2 Issues

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

## 4.22 Reviewing the draft - Undue trespass on rights

### 4.22.1 Legislative provision

Schedule 8 section 2(f) provides:

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

### 4.22.2 Issues

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

## 4.23 Reviewing the draft - Undue dependence on administrative decisions

### 4.23.1 Legislative provision

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

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

### 4.23.2 Issues

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

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

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

So:

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

#### 4.24 Reviewing the draft - National Competition Principles



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

##### 4.24.1 Legislative provision

Schedule 8(2)(j) of the Act provides that a Local Law must not restrict competition unless it can be demonstrated that –

- (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.

##### 4.24.2 Issues

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

## 5 Communicating and consulting on the draft

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



## 5.1 Starting communication



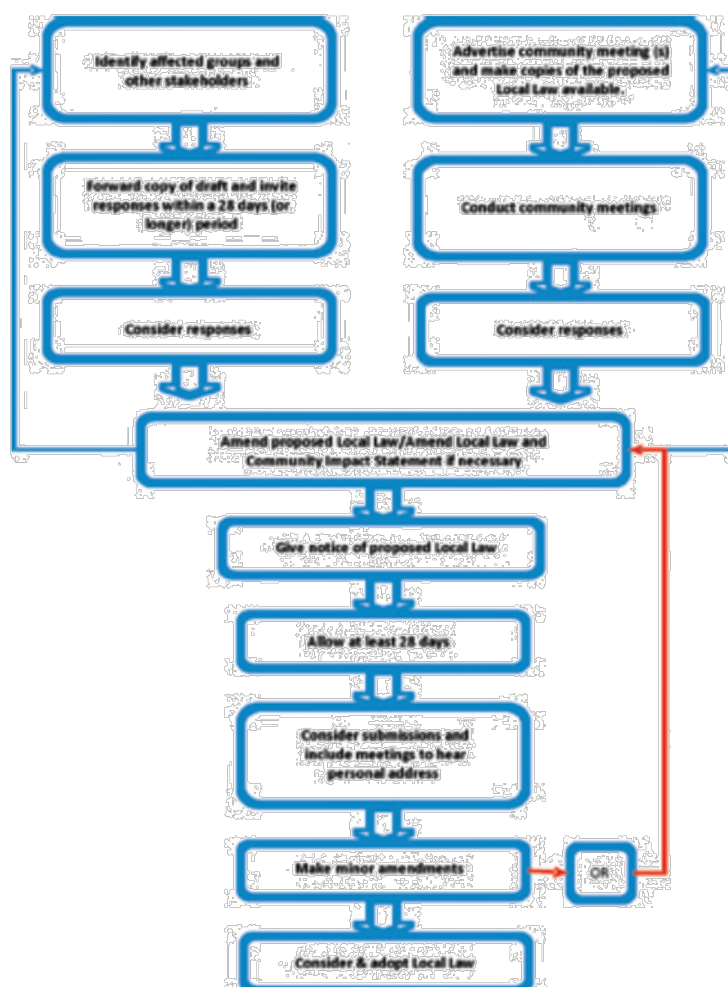
- Council needs to start communication and consultation on its proposed Local Law well before the statutory section 223 process.
- Council needs to take responses into account and needs to be prepared to make changes to its draft as a result of consultation.

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

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

### 5.1.1 Issues

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





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

## 5.2 Identifying and communicating with affected parties



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

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

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

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

## 5.3 Consultation meetings



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

### 5.3.1 Issues

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

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

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



The Local Law Community Impact Statement should include:

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

## 5.4 Public notice



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

### 5.4.1 Legislative provision

Section 119 of the Act provides:

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

### 5.4.2 Issues

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

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

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

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

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

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

*'... a copy of the proposed Local Law can be obtained from the Council office ...'*

Copies need to be readily available. It would be contrary to the spirit of the provision to charge for copies. Similarly, it would be unwise to put hurdles in the path of persons seeking copies. Such hurdles would include requiring personal attendance or requiring personal details of the applicant.

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

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



## 5.5 Considering submissions 5.6 Making amendments



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

### 5.5.1 Legislative provision

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

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

### 5.5.2 Issues

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

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



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



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

### 5.6.1 Issues

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

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

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

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



## 6 Making Local Laws

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

### 6.1 Resolution



Council makes the Local Law by ordinary resolution.

#### 6.1.1 Issues

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

### 6.2 Commencement



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

#### 6.2.1 Legislative provision

Section 121(1) of the Act provides:

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

<sup>29</sup> Unlike some other States in Australia, no special majority is required.

#### 6.2.2 Issues

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

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

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

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

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

## 6.3 Stay of operation



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

### 6.2.1 Legislative provision

Section 121(2) of the Act provides:

*Even though a Local Law has come into operation –*

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

### 6.3.2 Issues

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

GUIDELINES FOR LOCAL LAWS MANUAL

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## Implementing and enforcing Local Laws

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## Guidelines Part 3: Implementing and enforcing Local Laws

This part contains the following sections and contents:

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

## 7 Implementing Local Laws

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

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

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

### 7.1 Gazetting and giving notice



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

#### 7.1.1 Legislative provision

Section 119(3) of the Act provides:

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

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

#### 7.1.2 Issues

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

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

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

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

### 7.1.3 Legislative provision

Section 119(4) of the Act provides:

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

### 7.1.4 Issues

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

## 7.2 Ancillary materials – Forms, guidelines, etc.



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

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

- why the material is not incorporated into the Local Law

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

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

## 7.3 Authorisations and delegations



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

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

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

## 8 Accessibility and communication

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



## 8.1 Availability of Local Laws



Local Laws must be:

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

### 8.1.1 Legislative provisions

Section 120 of the Act provides:

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

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

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

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

### 8.1.2 Issues

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

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

## 8.2 Availability of materials incorporated by reference into the Local Law



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

### 8.2.1 Legislative provision

Section 120(3) of the Act provides:

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

### 8.2.2 Issues

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

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

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

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

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

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

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



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

The following sections expand on the question of availability.

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

<sup>32</sup> 'Notes for guidance – the preparation of statutory rules'

## 8.3 Education campaigns



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

### 8.3.1 Issues

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

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

Mail outs or other contact could be made with:

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

## 8.4 Publication and availability of Local Law and related material



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

### 8.4.1 Issues

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

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

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

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



Council should ensure:

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

## 8.5 Availability of materials on Council website



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

### 8.5.1 Legislative provision

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

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

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





For consistency, Council's website should include:

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

## 8.6 Website protocols



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

### 8.6.1 Issues

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

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

### 8.6.2 Accessibility of the Local Law itself

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

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

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



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



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

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

A Council has the following page on its website:

**Local Laws Permits - Applications and Procedures**

In accordance with Clause 8 of Council's General Local Law, a person must not:

- (a) sell, solicit or offer for sale any goods, services or motor vehicle on Council property.
- (b) place or allow to be placed any goods, advertising sign or obstruction on or over Council property.
- (c) sell, or offer for sale to a person on Council property, any goods or services from a property or a public place adjacent to that Council property.

A sign advertising a garage sale may be erected on Council property, without obtaining a permit, provided that the sign conforms with Council's standards and is removed the following day after the garage sale is held.

Local Laws permits may be obtained for a number of other activities. Generally an application fee applies and further information can be obtained by clicking on the relative link below.

**Links**

**Download Files**

- [Advertising Signs for Community Events](#)
- [Business Promotion in a Public Place](#)
- [Conduct of a Special Event](#)
- [Door-to-door Collections](#)
- [Goods for Sale on Footpath](#)
- [Heavy Vehicles](#)
- [Keeping of more than 2 Cats](#)
- [Keeping of more than 2 Dogs](#)
- [Mobile Roadside Trading](#)
- [Open Air Burning](#)
- [Roadside Collections](#)
- [Sidewalk Cafes](#)

[Back](#)

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



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

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

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

**Council X Home Page**

Menu:  
Aaaa  
Bbbb  
Cccc  
Local Laws  
Mmmm

Click a menu item to go to that page

**Council X Local Laws Page**

**Council X Community Local Law 1**

- This law concerns behaviour in public places.
- It prohibits activities which are offensive.
- It provides for a permit to be obtained prior to using Council property for organised activities set out in the local law

This local law and a listing of permits can be accessed by clicking [here](#).

**Council X Meeting Procedures Local Law**

- This law concerns the conduct of Council and Special Committee Meetings.
- It includes public participation in meetings.
- It sets out how the public may ask questions at meetings

This local law and a public question form can be accessed by clicking [here](#).

**Community Local Law 1**

This local law can be downloaded in PDF format by clicking the following link:  
**Community Local Law 1.PDF**

Community Local Law 1 requires the following permits for activities in public places. An application for permit, conditions of permit and advice of fees and other charges can be downloaded by clicking on the relevant permit.

Click	Activity	Local Law Clause
○	Retail goods displayed on footpath	Clause 12
○	Outdoor seating arrangement in connection with food premises	Clause 13
○	Street Party	Clause 14
○	Street Festival	Clause 15

## 9 Enforcement – Personnel and practices

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



## 9.1 Authorised officers



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

### 9.1.1 Legislative provision

*Section 224 of the Act provides:*

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

### 9.1.2 Issues

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

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

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

### 9.1.3 Issues – contractors

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

## 9.2 Requirements placed on authorised officers – Identity card



Authorised officers must present their identity card on request.

### 9.2.1 Legislative provision

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

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

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

### 9.2.2 Issues

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

## 9.3 Powers of authorised officers



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

### 9.3.1 Legislative provision

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

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

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

10 penalty units

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

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

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

10 penalty units

### 9.3.2 Issues

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

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

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



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

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

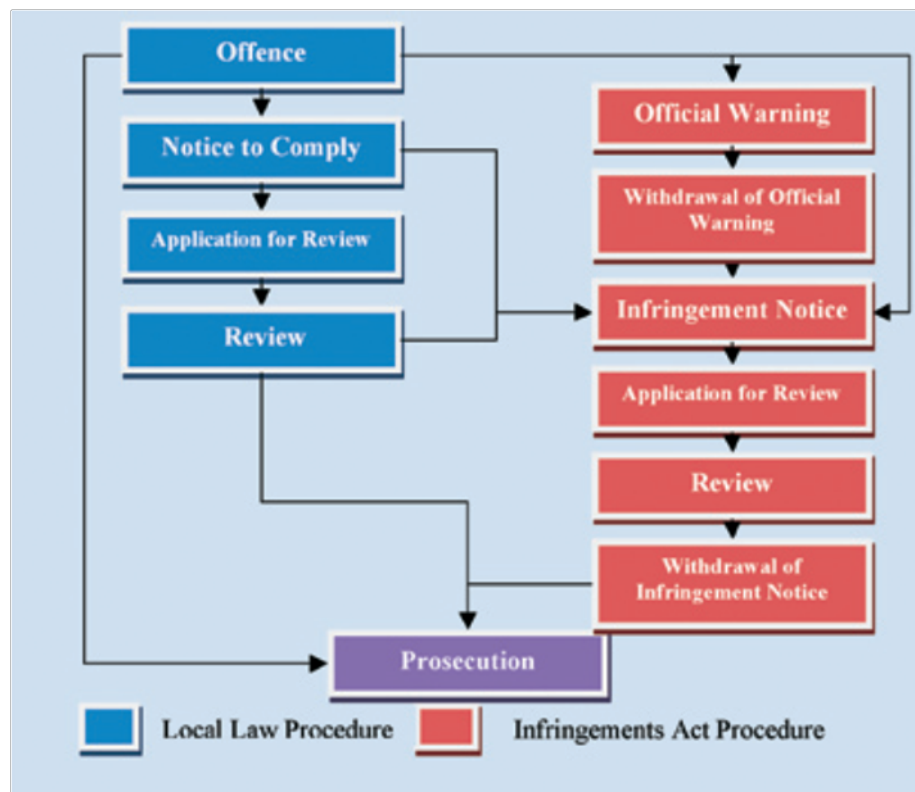


It is critical that persons instituting and following up enforcement action understand whether they are acting under the Local Law or the *Infringements Act 2006*.

### 9.4.1 Issues

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

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



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

## 9.5 Notices to comply and other actions under Local Law



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

### 9.5.1 Issues

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

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

## 9.6 Appeal and review provisions



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

### 9.6.1 Issues

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

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

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

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

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



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

### 9.7.1 Legislative provision

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

### 9.7.2 Issues

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



## 9.8 Infringement notices - *Infringements Act 2006* requirements



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

### 9.8.1 Legislative provision

Section 117 of the Act provides:

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

### 9.8.2 Issues

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

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

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

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

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



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

### 9.8.3 Withdrawal of infringement notice

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

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

## 9.9 *Infringements Act 2006* reviews



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

### 9.9.1 Legislative provision

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



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

### 9.9.2 Issues

Councils should have in place review procedures in respect of all actions taken under Local Laws. The act of issuing an infringement notice, however, invokes the *Infringements Act 2006* and the regulations<sup>35</sup> under that Act. In addition, regard must be had to the *Attorney-General's Guidelines to the Infringements Act 2006*.

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

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



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

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

## Completing the cycle

Review, amending and 'sunsetting'



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

This part contains the following sections and contents:

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



## 10 Review

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

### 10.1 Need for review of Local Laws



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

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

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

#### 10.1.1 Issues

In summary, better practice regulatory instruments are:

- necessary
- consistent (in language and effect)
- compliant (with the legislation under which they are made and other legislative requirements)

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

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

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

## 10.2 Areas for review



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

### 10.2.1 Issues

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

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

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

<sup>36</sup> Adapted for Local Laws from *Victorian Guide to Regulation*.

## 11 Amending a Local Law

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

### 11.1 Means of amending



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

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

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

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

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

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

#### 11.1.1 Legislative provision

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

*Section 27. Implied power to repeal or amend subordinate instruments*

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

#### 11.1.2 Issues

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

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

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

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

## 12 Sunset

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



## 12.1 The expiration of Local Laws



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

### 12.1.1 Legislative provision

Section 122 of the Act provides:

- (1) *Unless sooner revoked, a Local Law is by this section revoked on the day which is 10 years after the day which is the earliest day on which any provision of the Local Law came into operation.*
- (2) *If a Local Law has been amended, subsection (1) applies to the Local Law as amended from time to time and not to any of the amending Local Laws.*
- (3) *If a Local Law is revoked by this section, any Local Law amending that Local Law is also revoked.*

### 12.1.2 Issues

The Local Law expires - 'is revoked' – 10 years after it first comes into operation from the day it was made unless the Local Law itself had a provision making this later.

The fact that the Local Law may have been amended at some point within the ten years does not alter the expiry date. The amending Local Laws also expire on the same day, regardless of when they became operational.

A Local Law purporting to extend the operation of the existing Local Law by amending its date of 'expiry' would be ineffective because it would also be revoked 10 years after the original Local Law came into operation.

## 12.2 Renewal of the Local Law



- The only way to 'renew' a Local Law is to make a new one.
- It is recommended that Council start this process not less than a year in advance.

### 12.2.1 Issues

Council could, theoretically, make a new Local Law by simply re-making the old one. Apart from being a breach of trust with the community, this approach would place Council in breach of its obligation to (re) assess its Local Law for compatibility with the Charter of Human Rights, for example.

A well-intentioned Council will undertake all of the processes outlined in these guidelines prior to re-making its Local Laws. It is suggested that at least a year should be allowed to undertake the processes fully and transparently.

## Appendix 1

Outcomes, achieving outcomes, and documenting

Outcomes: The Local Law Community Impact Statement (LLCIS)

## Appendix 2

The Local Law Community Impact Statement (LLCIS) – Samples



## 13 Appendix 1 – Outcomes, achieving outcomes, and documenting outcomes.

### Understanding the external context of Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
1.1 The legislative context.	<ul style="list-style-type: none"> <li>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.</li> <li>These provisions also place restrictions on what Council may or may not do with regard to Local Laws.</li> <li>Council is expected to comply with all provisions.</li> </ul>		
1.2 The nature of Local Laws.	<ul style="list-style-type: none"> <li>The <i>Interpretation of Legislation Act 1984</i> applies to 'subordinate instruments.'</li> <li>A Local Law is a 'subordinate instrument' so many provisions of <i>Interpretation of Legislation Act 1984</i> apply to it.</li> <li>Council needs to understand these provisions.</li> <li>Local Laws can be revoked by the Governor in Council and are subject to Supreme Court appeal.</li> <li>Legislation other than the <i>Local Government Act 1989</i> impacts on Local Laws.</li> </ul>		
1.3 Some other legislation enabling or impacting the making of Local Laws.			
1.4 Reference materials.	<ul style="list-style-type: none"> <li>There is an array of reference material relevant to Local Laws.</li> <li>Most material is not specifically written about Local Laws, but is applicable.</li> <li>Council needs to be familiar with this material.</li> </ul>		

## Establishing Council's context: Researching and developing Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
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 a Local Law or at the beginning of each clause of the Local Law.	<ul style="list-style-type: none"> <li>• Council should identify exactly why it believes the Local Law is needed (for the particular clause is needed) including describing how Council went about arriving at that decision and the evidence on which the decision was based.</li> <li>• Consideration of the following issues will clarify the problem:               <ul style="list-style-type: none"> <li>– Who or what causes the problem? (that is, the source).</li> <li>– Who is impacted by the problem and what is the nature of the problem?</li> <li>– Who bears the cost of the problem? Is it Council on behalf of the community?</li> <li>– How extensive/current/permanent/entrenched is the problem? Is it minor, anticipated or temporary?</li> <li>– What is the evidence and is the evidence objective or anecdotal?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The source, nature, impact, severity and cost of the problem(s) should be articulated where possible.</li> </ul>
2.2 Relating the problem to Council objectives – Is it 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.	<ul style="list-style-type: none"> <li>• Council needs to demonstrate the linkage between the objective of the Local Law and Council's policy objectives.</li> <li>• The objectives might be in the Council Plan or similar document which sets out strategic objectives.</li> <li>• Council should consider in what way the Local Law provision will assist Council to achieve its policy objectives.</li> <li>• Council should evaluate whether the Local Law will remove an impediment to the achievement of objectives.</li> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• The Local Law Community Impact Statement should include a statement demonstrating the linkage between the objective of the Local Law provisions and Council's policy objectives. The statement would identify:               <ul style="list-style-type: none"> <li>– where Council's objectives are set out and may be read,</li> <li>– how the Local Law would assist Council to achieve its objectives or remove an impediment to achievement of its objectives.</li> </ul> </li> </ul>



Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
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>	<ul style="list-style-type: none"> <li>Council should set out clear indicators by which it will measure the ongoing need for Local Laws and the success of Local Laws.</li> <li>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.</li> <li>If the problem is temporary in nature but Council feels it still warrants a Local Law, the measurement period will obviously be shorter.</li> <li>The measurement period adopted should generally correspond with a review of the Local Law.</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> <li>The frequency of measurement (and review of the Local Law) should be set out in the Statement.</li> </ul>
2.4 Considering possible alternatives to a Local Law	<p>Council needs to consider whether there is a possible alternative to a Local Law that might better suit the needs of the community.</p>	<p>Council should consider:</p> <ul style="list-style-type: none"> <li>self-regulation – for example, by voluntary codes of practice</li> <li>quasi-regulation and co-regulation</li> <li>increased enforcement of existing provisions</li> <li>extending the coverage of existing legislation</li> <li>rewarding good behaviour (the star rating award system for food premises is a good example of this)</li> <li>'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</li> <li>public information and education campaigns</li> <li>information disclosure</li> <li>market-based instruments, such as subsidies</li> <li>consultation with affected groups (See sections 5.2 and 5.3.) This will generally identify the advantages and disadvantages flowing from each course of action</li> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>A statement identifying the alternatives to a new Local Law that were considered by Council should be included in a Local Law Community Impact Statement. The statement should include reasons why the alternative approaches were not deemed suitable.</li> </ul>

Heading		Outcome	Achieving the outcome	Local Law Community Impact Statement
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.	<ul style="list-style-type: none"> <li>To comply more fully with the legislative requirements, when a piece of legislation other than the <i>Local Government Act 1989</i> is relied on, it should be specifically referenced.</li> <li>The reference should be made to the particular Act and the specific provisions of the Act under which Local Laws are made.</li> </ul>	<ul style="list-style-type: none"> <li>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.</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>	<ul style="list-style-type: none"> <li>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.</li> <li>Perceived 'gaps' in legislation, that the Local Law is designed to fill, should be explained.</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> </ul>
2.7	Considering whether a State Government Act is more appropriate than a Local Law.	Council needs to identify any area where Council believes it is inappropriate to use Local Law making power.	<ul style="list-style-type: none"> <li>Council cannot transfer provisions from Local Laws to Acts.</li> <li>However, local government can play a role in facilitating legislative or policy change by collaborating with relevant State or Federal departments/agencies and working with local government peak bodies.</li> </ul>	<ul style="list-style-type: none"> <li>Council needs to explain in its Local Law Community Impact Statement why it believes State Government legislation is more appropriate.</li> </ul>
2.8	Identifying existing legislative provisions which may be overlapped by a Local Law	Council needs to take steps to ensure that a Local Law does not duplicate, overlap, contradict or is inconsistent with existing legislation.	<ul style="list-style-type: none"> <li>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.</li> <li>Council may identify legislation on a topic but believe a proposed Local Law does not duplicate, overlap, conflict or cause any consistency. In this case, this should be explained.</li> </ul>	<ul style="list-style-type: none"> <li>A statement identifying existing legislation Council has found on a topic and explaining why Council believes the proposed Local Law does not duplicate, overlap, conflict or cause any inconsistency should be included in a Local Law Community Impact Statement.</li> </ul>

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
2.9 Identifying planning scheme	Council must ensure that its Local Law does not duplicate or is inconsistent with any planning scheme.	<ul style="list-style-type: none"> <li>• Council needs to check with its own town/land use planners regarding any proposed Local Law. Presumably, Council would have already identified whether any planning provision could be utilised to achieve the objective sought.</li> <li>• Where possible, the Local Law should be worded sufficiently accurately to ensure that specific provisions do not duplicate the planning scheme.</li> <li>• A general disclaimer of the 'nothing in this Local Law ...' type can then be inserted, in addition, to ensure complete coverage.</li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
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.	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The risk assessment should address issues such as whether:               <ul style="list-style-type: none"> <li>– a problem exists</li> <li>– the problem is a Council problem that is, it impacts on the achievement of Council's objectives</li> <li>– a response to the problem is required</li> <li>– a Local Law is the best way of dealing with the problem</li> <li>– a Local Law is likely to be effective.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>