

BETTER PRACTICE LOCAL LAWS

PRESENTATION

2010

GUIDELINES FOR LOCAL LAWS

Completing the Cycle: Review, Amendment & Sunsetting

- Review of Local Laws
- Amending the Local Law
- Sunsetting

Preparing for Local Laws

- Understanding the External Context
- Establishing Council's Context:
Researching & Developing Local Laws
- Understanding the Mechanisms Used
in Local Laws

Implementing & Enforcing Local Laws

- Implementing Local Laws
- Accessibility & Communication
- Enforcement –
Personnel & Practices

Creating the Local Law

- Drafting & Reviewing the Draft
- Communicating & Consulting on the
Draft
- Making the Local Law

Understanding the External Context

The Legislative Context...

- Authority to make Local Laws...the ***Local Government Act 1989***
- ***Part 5 and Schedule 8*** ... what a Council may or may not do in regard to Local Laws
- Council **to comply** with these provisions
- Ensure **Local Laws do not overlap, duplicate, conflict with or be inconsistent** with a range of existing legislative provisions

Understanding the External Context

The Nature of Local Laws...

- *Interpretation of Legislation Act 1984*
 - applies to “subordinate instruments”
 - a Local Law is a subordinate instrument
 - provisions of this legislation apply
- Council needs to **understand these provisions** - and those of other relevant acts and regulations
- Local Laws can be **revoked by the Governor in Council...** are subject to **Supreme Court appeal**
- Federal and State jurisdiction **legislation available online...**

Federal: www.comlaw.gov.au

State: www.legislation.vic.gov.au

Establishing Council's Context: Researching & Developing Local Laws

- **Identifying the Problem ...**
- **Relating the Problem to Council Objectives...**
- **Measuring Success...**
- **Considering Alternatives to a Local Law...**
- **Identifying the Power to Make a Local Law ..**
- **Inconsistencies and Contradictions...**
- **Taking a Risk Management Approach...**
- **Considering Different Approaches...**

Establishing Council's Context: Researching & Developing Local Laws

A Risk Management Approach...

- Use a risk management approach to prioritise the risks to be addressedassessing if..
 - a problem exists
 - the problem is a Council problem i.e. impacts on the achievement of Council's objectives
 - a response to the problem is required
 - a Local Law is the best way of dealing with the problem
 - a Local Law is likely to be effective

A Risk Management Approach...

L I K E L I H O O D	Certain					3	
	Almost Certain						1
	Likely						1
	Possible		2				
	Unlikely		2	3			
		Insignificant	Minor	Moderate	Major	Extreme	
		CONSEQUENCE					

RISK MATRIX

CONSEQUENCE ↓			LIKELIHOOD →				
			RARE Is possible but has not occurred in date or in any similar organisation or it's considered to have <1% chance of occurring	UNLIKELY Has never occurred at this Council but has occurred infrequently in other similar organisations or considered to have a 1% chance of occurring	POSSIBLE Has occurred at least once in the history of Council or considered to have a 5% chance of occurring	LIKELY Has occurred in the last few years in Council, or has occurred recently in similar Councils or circumstances continue to arise that could cause it to happen	ALMOST CERTAIN Has occurred on an annual basis in Council in the past or circumstances are in the train that will cause it to happen
5 Catastrophic	Financial People Bus. processes & Systems Environmental Reputation & Image	> \$2M Fatality - Single or Multiple Impact threatens survival of activity and Council Long term harm Royal Commission, parliamentary inquiry or national/international media	HIGH	HIGH	EXTREME	EXTREME	EXTREME
4 Major	Financial People Bus. processes & Systems Environmental Reputation & Image	\$200K - \$2M Serious incident - reportable to Worksafe Impact would threaten the survival or continued effective function of activity Significant harm Intense public, political and media scrutiny	MODERATE	HIGH	HIGH	EXTREME	EXTREME
3 Moderate	Financial People Bus. processes & Systems Environmental Reputation & Image	\$30K - \$200K Lost time incident and medical treatment Impact would not threaten activity, would be subject to significant review or changed operations Moderate harm Scrutiny required by external committees	LOW	MODERATE	HIGH	HIGH	EXTREME
2 Minor	Financial People Bus. processes & Systems Environmental Reputation & Image	\$5K - \$30K First aid or under one week lost time Impact would threaten the efficiency & effectiveness of some aspect of activity will be dealt internal Transient harm Scrutiny required by internal committees or internal audit to prevent escalation	LOW	LOW	MODERATE	HIGH	HIGH
1 Insignificant	Financial People Bus. processes & Systems Environmental Reputation & Image	\$0 - \$5K Near miss - no loss time or medical treatment Impact can be dealt with by routine operations Brief pollution Self improvement review required	LOW	LOW	LOW	MODERATE	HIGH

EXTREME RISK

Requires detailed research, planning and decision making at senior levels of management

HIGH RISK

Senior management attention and action needed.

LOW RISK

MODERATE RISK

Management responsibility must be specified

No major concern and can be managed by routine procedures

ACTIONS



The Local Law Community Impact Statement (LLCIS)

- The **explanatory document** for the community... to understand the nature/content of the Local Law and processes Council worked through to develop it
- An **internal tool/template** for Council to step through the Local Law making process
- Councils are not **required** to undertake this process as part of the development of subordinate legislation
- The Better Practice Local Laws Strategy **recommended** the use of a Local Laws Community Impact Statement

Mechanisms Related to Local Laws

Enforcement – General Considerations ...

- Mechanisms used to enforce Local Laws **impact on effectiveness**
- **Objective** of enforcement is compliance
- If **compliance** is not achieved, a **review** is required
- If **cost of achieving compliance** outweighs the gains, a **review** is required
- **Proper risk analysis** (including enforcement costing) will assist assessment/decisions
- **Penalties should be adequate**, but not excessive
- Breach of a similar Local Law provision should have a **similar impact across Councils**

Mechanisms Related to Local Laws

Notices...Cautions...Warnings...

Council needs to be clear about...

- **What it is trying to achieve** with notices to comply, cautions and warnings
- **Intended consequences** of these mechanisms... particularly whether failure to comply creates another offence
- If it is **creating its own procedures or using procedures** (such as official warnings) under the *Infringements Act 2006*
- Whether a warning is a **warning under the Local Law**, or an **official warning** under *Section 8* of the *Infringements Act 2006*.
- confusion here = following the wrong procedure

Mechanisms Related to Local Laws

Penalties...

- Council needs **to comply** with ...
 - legislative provisions related to penalties
 - the Attorney-General's guidelines on penalties related to infringement notice penalties
- **Infringement notices** ... an alternative method for dealing with minor offences

Mechanisms Related to Local Laws

Reviews and Appeals...

- If **infringement notices** are issued...**review provisions** of *Infringements Act 2006* are operative
- For **other decisions** of Council/officers...Local Laws need to **provide review mechanisms**
- Review processes should be **clear and transparent**
- Council processes closely mirroring those of the *Infringements Act 2006* lead to **greater understanding, consistency and transparency**

Implementing & Enforcing Local Laws

Implementing Local Laws...

- Gazetting and Giving Notice....Council must....
 - gazette and give public notice that it has made the Local Law
 - send a copy to the Minister for Local Government
- Ancillary Materials....
 - if relying on material not incorporated into the Local Law....be prepared to explain why
 - material to be readily available to the public
- Authorisations and Delegations....
 - Council can only effectively act through staff who are authorised or have appropriate delegated powers
 - critical to ensure delegations/authorisations are in place

Completing the Cycle: Review, amendment and 'sunsetting'

Review of Local Laws

- Council will periodically need to review the ongoing need for/ success of Local Laws and need for additional Local Laws
- Frequency of review determined by Council's commitment to the community in LLCIS...may be supplemented by ad hoc reviews
- Minimum review period...every ten years

Completing the Cycle: Review, amendment and ‘sunsetting’

Review of Local Laws (cont.)

- Council has unique knowledge of aspects of Local Laws to be reviewed
- Issues should include...
 - is there still a problem?
 - are the objectives being met?
 - are the impacts as expected?
 - is the Local Law still the most appropriate?

Completing the Cycle: Review, amendment and ‘sunsetting’

Amending a Local Law

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

Completing the Cycle: Review, Amendment and 'Sunsetting'

Sunset - Expiration and Renewal

- Local Laws expire after 10 years – whether or not amended in the meantime
- Only way to 'renew' a Local Law is to make a new one
- Recommended ... start this process not less than a year in advance