

In April 1995 the Commonwealth, State and Territory governments signed an agreement to implement the National Competition Policy (NCP) reform package, comprising the Conduct Code Agreement; and the Agreement to implement National Competition Policy and Related Reforms.

The Office of Local Government has sought the assistance of consultants to prepare these guidelines to assist councils in the review of existing local laws in Victoria by June 1999.

On first glance the Guidelines appear daunting, filled with economic terms, which are unfamiliar to most, and which may require a lengthy and potentially costly process to apply to the task of review.

This is not so. The Guidelines set out nine logical steps. Questions are posed to help councils in determining the best course of action and to provide some helpful assistance with a method to undertake the task. It is in recognition of the diversity of approaches of councils to regulations that no simple single formula can be applied.

However, there are three key questions which need to be asked by councils:

- who is the local law assisting?
- is it the best method of regulation? and
- can this be independently validated by ratepayers and consumers?

The process is systematic and can be simple. The challenge for all is to determine the best way of proceeding to remove competitive restrictions and encourage growth and development in Victoria.



Robert Maclellan
Minister for Planning and
Local Government

Foreword





INFRASTRUCTURE

May 1998

NATIONAL COMPETITION
POLICY AND LOCAL LAWS



Competition Policy

Victorian Local Government
Guidelines For Review Of
Local Law Restrictions
On Competition

Guidelines

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BACKGROUND

In April 1995 the Commonwealth, state and territory governments signed an agreement to implement the National Competition Policy (NCP) reform package, comprising the Conduct Code Agreement; Competition Principles Agreement (CPA); and the Agreement to Implement National Competition Policy and Related Reforms.

As part of its commitment to implementing the NCP, the Victorian Government is required to review and reform legislation that restricts competition. These reviews and reforms are required to extend to council local laws under clause 7 of the CPA. The CPA places an obligation on each council to identify and, where possible, reform anti-competitive provisions in all existing and proposed local laws. All new local laws have been required to comply with the legislative review provisions of the CPA from 1 July 1997. Existing local laws that restrict competition must be reviewed for compliance by June 1999. Councils are also required to report annually on progress made in implementing the legislative review provisions of the CPA.

The Office of Local Government (OLG), in conjunction with the Department of Premier and Cabinet, is assisting local councils to undertake local law reviews by the preparation of guidelines. The consultants were Deacons Graham & James, lawyers and Tasman Asia Pacific, economic policy and management consultants. Key contact persons for further advice are Richard Lewis and Andrew Chalet at Deacons Graham & James and Jennifer Orr at Tasman Asia Pacific.

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These guidelines represent the outcome of a four month process which involved four key stages. The first stage included a preliminary review of local laws and the preparation of draft guidelines based on NCP and Victorian legislation review guidelines.

The second stage involved consultation with eight councils to identify the extent to which the guidelines were able to be used by the officers who would have responsibility for reviewing local laws and to identify any key competition policy issues. The eight councils were Corangamite, East Gippsland, Greater Bendigo, Greater Geelong, Hobsons Bay, Stonnington, Yarra and Yarra Ranges. Feedback provided has been taken into account in preparation of the final form of the guidelines.

The third stage involved preparation of case studies utilising the guidelines. The fourth stage included the finalisation of the guidelines and case studies and the holding of workshop briefing sessions for council personnel in May 1998. The guidelines are intended to be complemented by the workshops providing an introduction to the use of the guidelines and their application to local laws.

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KEY TERMS

ACCC

Australian Competition and Consumer Commission

Access regimes

Process under Part IIIA of the Trade Practices Act that allows third parties to access certain infrastructure services such as pipelines and telecommunication networks to promote competition in upstream and/or downstream markets.

Competition

The market interaction between two or more firms producing rival goods and services.

Cost benefit analysis

A framework for comparing costs and benefits of an activity or regulation to determine whether that activity or regulation confers a net cost or a net benefit to the community.

CPA

Competition Principles Agreement 3 April 1995, between the Commonwealth, states and territories under which each level of government undertook to apply the principles of NCP. Under clause 7 the states and territories have agreed to apply the principles of NCP to local government. Relevant extracts are indicated in Appendix 3.

Externality

In some cases, parties do not bear the full costs or accrue the full benefits of their actions. These are known as situations of externality. Strictly speaking, there are both negative and positive externalities. "Negative externality" refers to the situation where the actions of one party adversely affects others in the community, but that party does not compensate those adversely affected for the costs they impose. For example, a member of the public may light a fire during a period of high fire danger, placing the property of others at risk. Positive externalities occur when the actions of one party provide a benefit to the community and members of the community do not pay to receive that benefit. For example, an individual picks up litter in the street but receives no payment for doing so.

Information asymmetry

The situation where the parties to a transaction have unequal information. As a consequence, one party can exploit the other. For example, a consumer may not be able to determine whether a good they purchase is safe to consume. In the absence of government regulation, the seller of that good or service may be able to mislead the consumer that the product is safe when in fact it is not.

Market

The set of all sale and purchase transactions for a particular good or service.

Market failure

Situation where the market, if left to its own devices, will not make the best use of the community's resources. In such cases, the community may be better off if the government interferes in normal market processes.

Natural monopoly

Situation where a market for a particular good or service is best served by a single firm, rather than two or more firms. Introducing competition in such cases would not make society better off. An example of natural monopoly at local government level might include the local olympic swimming pool in small communities.

NCC

National Competition Council

NCP

National Competition Policy

Public good

A good or service in respect of which use by one person does not generally prevent or limit use by other people, which cannot be depleted by additional consumers and for which it is very difficult, if not impossible, to exclude people from consuming even if they do not wish to pay for it. For example, street lighting or local drainage.

Self regulation

Occurs where businesses within an industry or geographic area reach agreement on product standards or business practices of their own volition to address concerns held by others in the community. The businesses concerned establish rules of conduct and self monitor compliance **with** those rules. Some may issue their own penalties for non-compliance.

Spillovers

Also known as externalities.

INTRODUCTION

The Victorian government has published two sets of guidelines to assist state government agencies to conduct legislative reviews. One provides guidance on how to review existing legislative restrictions on competition. The other focuses on new legislative proposals.

This set of guidelines extends the Victorian government legislative review guidelines to local laws. The guidelines are designed to assist councils to:

- clarify the objectives of new local laws, existing local laws and proposed amendments to existing local laws;
- analyse the effect of local laws on competition; and
- determine whether restrictions on competition are in the public interest.

These guidelines are consistent and compatible with the Victorian government guidelines. They provide councils or their agents with a step by step method to review existing and proposed local laws. These steps are outlined in Box 1 below and are the same for existing local laws and proposed new local laws.

Box 1

The 10 steps to review local laws

- Step 1: Clarify the objective of the local law and demonstrate how the local law achieves this objective
- Step 2: Identify whether the local law restricts competition
- Step 3: Determine which review model is appropriate
- Step 4: Demonstrate that the restriction is necessary to achieve the objective
- Step 5: Identify the costs to the community of the restriction
- Step 6: Identify the benefits to the community of the restriction
- Step 7: Assess whether benefits outweigh costs
- Step 8: Make recommendation and insert sunset clause
- Step 9: Fulfill reporting requirements
- Step 10: Implement review recommendations

Many councils have 'omnibus' local laws which contain a number of requirements relating to different subject matters in one local law. Each of these needs to be considered individually to identify the impact on competition. Councils will need to consider administrative arrangements to achieve an efficient review process, possibly by grouping provisions dealing with similar or related matters.

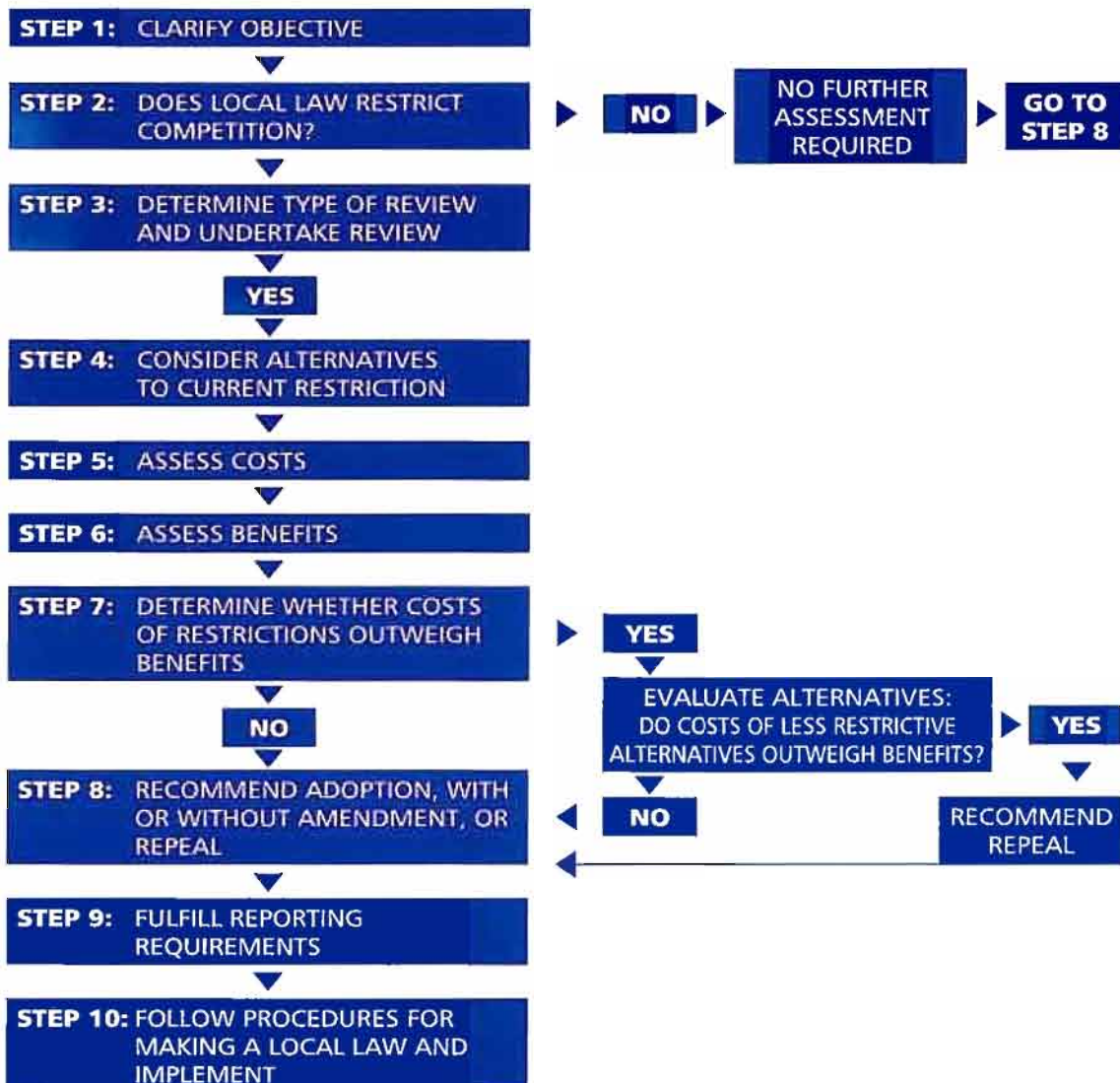
How to use these Guidelines

These guidelines lead councils through the 10 steps necessary to conduct and finalise a review of local laws to satisfy councils' local law review obligations under the NCP. The review process is summarised in the flow chart below. Each step in the process is explained in detail in separately tabbed sections of this document. Reviewers should begin at Step 1 and proceed to subsequent steps sequentially, ie only after completing the requirements of the preceding step.

Four case study local law reviews provide examples of the type and level of analysis that is expected under each step. The four case study reviews relate to itinerant traders, outdoor eating, advertising signs on roads, and clothing recycling bins. The worked case studies are presented at the end of each section. It is recommended that reviewers utilise the proforma provided in Appendix 1 to fulfil their reporting obligations.

Figure 1

Method For Reviewing Local Laws



The NCP requires governments to adopt economic frameworks to analyse existing and proposed legislation laws and regulations. Inevitably, reviewers will be required to understand some fundamental economic concepts in order to review local laws effectively. That means reviewers may be confronted with concepts that are unfamiliar. As far as possible, economic concepts are explained in plain language. A list of key economic terms is provided at the front of these guidelines. In addition, examples are used to assist non-economists to relate economic concepts to the realm of a council.

Key principles underlying these Guidelines

Before embarking on any review, it is useful for reviewers (ie review panel members and council officers) to familiarise themselves with the key principles underlying these guidelines. It is important that reviewers do not become lost in the technical detail of a review and lose sight of these principles. The key principles underlying these guidelines are outlined below.

What is the primary objective of local law reviews?

When reviewing local laws, reviewers are scrutinising new or existing local laws to ensure that anti-competitive laws are only introduced/continued where they satisfy a two-part competition test.

The competition test provides that:

- **legislation (including local laws) should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community clearly outweigh the costs; and**
- **the objectives of the legislation, (including local laws), can only be achieved by restricting competition.**

In short, local laws should not restrict competition unless there are very clear benefits from doing so and there is no alternative option to achieve the objective. If a council is not certain that these conditions apply, the onus is on councils to scrutinise the local law using the method proposed in these guidelines.

Sometimes there is discretion built into local laws. Many councils have guidelines or policies for the exercise of discretion under a local law. In such cases, reviews should include the policy or guidelines in order to fully appreciate the effect of the local laws on competition.

Why is competition important?

The NCP does not promote competition for its own sake but because competition is a powerful mechanism for generating public benefits. NCP recognises that regulations can often have unintended consequences. For example, they can create unwarranted barriers to entry for business, stifle innovation and/or reduce incentives for businesses to improve efficiency. This can lead to higher prices and less choice for consumers.

In many situations it is possible to meet community objectives without restricting competition and, therefore, avoid these unintended effects. For this reason, the framework for undertaking legislative reviews is one in which open and unrestricted competition in markets generally is preferred as the most efficient means of allocating the community's scarce resources.

As a general rule, restrictions on competition should generally be confined to particular situations where it is recognised that markets can fail to serve the public interest. These situations are referred to in economic literature as situations of "market failure". The concept of market failure is explained in detail under Step 1. At this point though, it is important to note

that even the presence of "market failure" is not sufficient alone to justify intervention which restricts competition. This is because there may not be net public benefits from such restriction. That is, the disadvantages of the restriction may be greater than the advantages. For this reason, there is a requirement under the review process to consider whether market failures may be addressed by means other than restricting competition. Alternative courses of action include less restrictive regulation, direct intervention and market-based solutions.

Objectivity and transparency

The capacity of reviewers to undertake a full and proper assessment will be affected by the degree of independence of those carrying out the review from those parties affected by the outcome of the review. At all times, reviewers *must be impartial*.

Reviews must also *be seen* to be impartial, otherwise interested parties may be discouraged from presenting their case to reviewers. Thus, it is important that review processes are fully transparent and seen to be fully transparent. To this end the guidelines require reviewers to submit summary reports to OLG at the completion of every local law review, even minor reviews. These reports must detail:

- the objective of the local law;
- the effect of the restriction on competition and the economy generally;
- the extent of community consultation;
- alternative, less restrictive, means for achieving the objective;
- the nature and, where appropriate, quantification of all costs and benefits associated with the restriction; and
- the reasons underlying any decision to introduce or continue a restriction.

Where OLG officers are concerned that councils are not using reviews to eliminate unnecessarily restrictive or excessively restrictive local laws, the matter will be referred to the Minister for Planning and Local Government. The **government has introduced legislation which will enable local laws** that are considered not to comply with NCP objectives. The Local Government (Amendment) Bill 1998 is expected to be debated in the spring session of Parliament in 1998.

Transparency is also promoted by a requirement for councils to report annually on the outcomes of reviews undertaken over the previous year and provide details of future reviews.

Rigour

All reviews should be rigorous. This need not mean that all reviews should make use of sophisticated techniques or have large budgets. It means that reviews should follow a consistent and logical approach. Where there is a quantitative assessment of costs and benefits, a standard cost-benefit analysis method should be adhered to. Assumptions should be clearly set out and open to public scrutiny. Conclusions should be fully based on analysis and evidence presented during the review. Local law review summary reports should clearly set out the logic underlying all recommendations. Where feasible, decisions should be based on empirical analysis.

The level of consultation also has a bearing on the rigour of a review. The nature and extent of consultation required will depend on the issues dealt with by a review, the degree of divergence of community attitudes and the controversy of issues raised by the review. Generally, it is important that reviewers identify a broad range of interested parties, not just those with a vested interest in the review. This can be achieved through the use of review panels which are representative of the broader community and/or consultation with a wide range of interest groups.

STEP 1 CLARIFY THE OBJECTIVE OF THE LOCAL LAW

Reviewers must formulate a concise and simple statement of the objective or purpose of the local law. To do this, reviewers should first determine the risk that the community would face if the local law was not in place, ideally using a market failure framework. Step 1.1 assists reviewers to do this. Once risk is established, it is useful at this point for reviewers to make themselves aware of any existing Commonwealth or state legislation that has the same or similar objective. This is the purpose of Step 1.2.

Step 1.1

Determining the risk that the community would face if the local law was not in place

The reviewer should provide a concise and simple description of what would happen in the absence of the local law, that is if the market were left to its own devices. In the case of a new local law, or an amending local law, this requires a description of the current market situation. Where the review is of an existing local law, this will require an understanding of the market before the restriction was introduced (see Box 2).

Box 2 Defining the relevant market

Generally, the "market" refers to the field of rivalry between firms. Reviewers are encouraged to adopt the broadest possible interpretation of the market when assessing the effects of a restriction on competition. The Australian Competition and Consumer Commission (ACCC) and National Competition Council (NCC) determine the relevant market after considering the four dimensions of a market:

- The product dimension: this refers to the types of goods and services produced.
- The geographical dimension: this refers to the area covered by the market. For example, does the market cover a portion of a municipality, the entire municipality, several councils or the entire state?
- The functional dimension: this refers to the stage in production or marketing that the activity relates to. For example, there may be separate markets for rubbish collection and rubbish disposal.
- The temporal dimension: this refers to the prospect that the size or scope of the market is likely to change over time. This dimension is particularly important for activities characterised by ongoing technological change.

Within a market there may be substitution between different products and sources of supply in response to a change in price. Any definition of a market should also have regard to potential participants and products in the market.

To be consistent with the objectives under the NCP, regulation should be considered as a last resort in the event that the market cannot achieve an efficient allocation of the community's resources if left to its own devices. This section provides a framework for reviewers to categorise situations where markets, if left to their own devices, can fail to deliver outcomes that are in the public interest. Reviewers should specify the objective of the relevant local law in terms of addressing one of the four situations outlined in Box 3. This will help to ensure that local laws target situations where markets can fail to achieve an efficient allocation of resources. In some cases, local laws may seek to address more than one market failure situation.

Box 3: Establishing objectives for the local law that are consistent with national competition policy objectives

Situations where parties cause damage to others but do not bear the cost of that damage – known as “externality” situations.

There are situations where, in the absence of some form of intervention, the activities of one group in the community can adversely affect the activities or enjoyment of another group. The first group enjoys a benefit because they are not accountable for the costs they impose on external parties. This situation is referred to in economic literature as an “externality” or spillover problem. In such cases the objective of legislation should be to either provide an incentive for the party to refrain from imposing damages or make the party accountable for the cost of their actions, eg by levying a tax or penalty. Another way of overcoming an externality is to mandate that parties cannot undertake the activities which are most likely to inflict damage on others without compensation.

Examples of local laws which aim to rectify externalities include: laws preventing smoking in public places; restrictions and charges associated with the use of public land; restrictions and charges associated with the keeping of animals; restrictions and charges associated with fires and incinerators; restrictions and charges on motor vehicle parking; husbandry of property laws (such as protection from danger, hazardous materials, rubbish, vermin and weeds, trees near roads); and restrictions and charges associated with advertising signs.

Situations where a good or service would not be provided if left to the market - known as “public good” situations

Some goods and services that the community desires cannot be traded in a market (or would not be traded at an ideal amount) and it is left to governments, in this case councils, to provide them. Goods and services that fit this description are known as public goods. One of the characteristics of public goods is that once they are provided, it is impossible or extremely difficult to exclude individuals from enjoying the benefits without contributing to the cost of supply. Another characteristic is that the enjoyment of one individual of the good or service does not reduce the availability of that good or service to others.

Popular examples of public goods include defence, lighthouses and health measures to check the spread of disease. Examples of public goods at the council level can include street lighting, local drainage and flood control and provision of open space.

Situations where competition is inefficient because the market is a "natural monopoly"

In some situations it is inefficient to have more than one supplier of a particular good or service in a market. This is because there are large economies of scale in production (ie strong advantages in one large and/or diversified firm supplying a market relative to two or more smaller/less diversified firms) due to high sunk costs, low operating costs and substantial barriers to entry or exit. This provides an opportunity for the sole trader to exploit their position of market power. They may do this by raising prices, restricting output or reducing quality.

Examples of natural monopoly at the state and national level include electricity networks, telecommunications networks and gas and water pipeline systems. At the council level, examples can include rubbish collection and recycling in small rural communities where the market for these services is thin and there is no good or service that can provide a substitute service.

Situations where a party can be exploited because they do not have equal knowledge - known as "asymmetric information" situations

In some cases buyers and sellers in a market have unequal knowledge about a good or service. The more informed party is able to exploit the less informed party by inflating price and/or reducing quality or safety. Ideally, where this situation arises the objective of the local law should be to require the provision of information to the party that is potentially disadvantaged. Often this is consumers. This is the rationale behind national consumer laws and fair trading laws. At the council level examples can include building regulations and fire notices.

Step 1.2

Ensure objectives are consistent with National Competition Policy

If reviewers cannot link the objective of an existing or proposed local law to at least one of the four situations described in Box 2, then the objective should receive greater scrutiny. As a guide, the following local law objectives are generally inconsistent with NCP principles and objectives and are likely to fail the competition test:

- to protect the income of local firms or individuals in the community (for example a local law that restricts or prohibits itinerant traders to protect established local firms);
- to prevent the reallocation of resources in the economy or to prevent the use of resources (for example, a prohibition on the use of council land for circuses using exotic animals preventing the use of council reserves for this activity);
- to prevent any loss in employment (for example, laws dealing with itinerant traders and door-to-door sellers);
- to encourage the location of new firms in the region even though it may be more efficient for them to locate elsewhere (for example, by means of financial concessions where the people who benefit do not bear the cost); and/or
- to prevent firms from relocating elsewhere even though it may be more efficient to do so (for example, through provision of concessions or subsidies).

Step 1.3

Identifying any existing legislation that has the same or similar objective

Where the Commonwealth or state governments have already introduced legislation that could apply to the area covered by a proposed or existing local law, care should be taken to avoid unnecessary duplication of legislation. Indeed, there are restrictions under the Local Government Act 1989, and in other legislation, on matters that local laws may cover. Reviewers should make themselves aware of any existing national, state or local laws that might address any of these market failures. A selection of potentially relevant state and national legislation is provided in Appendix 2.

Reviewers should state in the appropriate place in the local law review summary report (Appendix 1) whether they have undertaken this step and whether they were able to identify relevant existing legislation. Further details on reporting requirements are provided in Step 9.

LOCAL LAW CASE STUDIES

Four case study examples of local laws have been developed as part of the guidelines to assist users with the operation of the guidelines. Each case study follows the layout of the guidelines with the relevant step included at the end of each section.

The four case studies deal with different types of local laws and highlight different issues in the assessment undertaken in each step.

Set out below are the details of each local law used as the basis of the case studies and the assessment under Step 1.

LOCAL LAW CASE STUDY 1: ITINERANT TRADERS

Background Information

The local law provides:

- *A person must not without a permit erect or place on any road a vehicle, caravan, trailer, table, stall or other similar structure for the purpose of selling or offering for sale any goods or services.*
- *A person must not without a permit sell or offer for sale any goods on any road or public place.*

Scenario:

- Assume that the local law is being used to restrict itinerant traders to a small number of approved locations or to prevent the operation of itinerant traders in the municipality completely.
- Note that the local law does not make explicit the basis on which discretion to grant or refuse to grant a permit will be exercised. It is assumed that the council has a policy or guideline which is used by local law officers in deciding permit applications.

In practice, a council may use this local law to regulate itinerant traders in one of several ways. For example, a council may refuse to issue permits to any itinerant traders. Alternatively, a council may tender a restricted number of sites and not grant any permits outside those sites. Or a council may grant permits subject to payment of a pro rata fee (based on the area of land occupied by the trader) equivalent to the municipal rates in respect of premises used for the same purpose, as a form of “rental” of public land.

Step 1:

What is the objective of the local law?

1.1 What is the risk that the community faces in the absence of the local law?

The risk to the community may include:

Possible externality or spillover effects:

- Consumer protection risks if consumers are not able to find trader again to exchange faulty goods.
- Pedestrian and traffic safety if itinerant traders operate in dangerous locations
- Health risks if traders do not comply with appropriate health requirements
- Amenity impacts if traders operate adjacent to residential areas.

It may be tempting to list loss of income to local traders here. However, this objective does not conform with the concept of market failure as explained in Step 1.1 of the guidelines. If the only or main objective is to protect the income of local traders, the local law would be in direct conflict with NCP and should be repealed.

1.2 Does other legislation have the same objective?

Health regulations require the registration of vehicles used to transport food for human consumption. This is usually done by the council in which the vehicle is domiciled.

Road Traffic regulations provide some control over vehicle parking locations.

Consumer protection provisions of the Trade Practices Act makes sellers of a good or service accountable for faulty goods or poor service.

LOCAL LAW CASE STUDY 2: OUTDOOR EATING

The law provides:

A person must not establish an outdoor eating facility on any footpath, median strip, roundabout or garden or tree reserve without a permit.

The council may grant permits for the provision of such facilities on a footpath provided that:

- a) such facility is conducted in conjunction with and as an extension of food premises located immediately abutting such facility and the applicant for the permit is a person conducting such food premises;*
- b) such facility shall not be extended on to the footpath beyond two lines running at 90° angle from either side of the applicant's food premises;*
- c) such food premises are registered in accordance with the Food Act 1984;*
- d) where premises abut more than one street or lane, the facility shall not be located in the area of the footpaths which would be obscured from a pedestrian approaching from that other street or lane;*
- e) the facility must be kept in a clean and tidy condition. Table and chairs must be cleaned of all food scraps and spillage after each customer has left and at the end of each day;*
- f) the surrounding area must be thoroughly cleaned at the end of each day and all food scraps and spillages must be removed from the footpath or road.*

A person granted a permit under this clause commits an offence if the outdoor eating facilities are placed or kept contrary to sub-clause 2 or any conditions of the permit.

In determining whether to grant a permit under this clause the council will have regard to any guidelines determined by council from time to time.

Note that some councils view the local law process as a mechanism to gain income from the use of council land. This is not appropriate. If councils seek to raise revenue from the use of footpaths or other public land this should be done by means of a licence to occupy or other agreement.

Step 1:

What is the objective of the local law?

1.1 What is the risk that the community faces in the absence of the local law?

Possible externality spillover effects:

- obstruction to footpaths with possible personal injury
- unhygienic conditions resulting from spilt food etc if the premises were not properly maintained
- interference with use of carparking adjacent to footpaths if tables and chairs abut the kerbline

1.2 Does other legislation have the same objective?

Local law may in part duplicate State health legislation governing cleanliness and hygiene.

Conflict between the local law and the Summary Offences Act could be removed if the exercise of discretion under the local law provided that there be sufficient space for persons to move along the footpath.

LOCAL LAW CASE STUDY 3: CLOTHING RECYCLING BINS

The law provides:

- A permit from the council is required for the placing of clothing recycling bins on any land in the municipal district.
- A permit is not required under this local law for the placement of a clothing recycling bin in a place to which members of the public do not and might not reasonably be expected to have access.
- A person who places a clothing recycling bin on land in the municipal district contrary to this local law is guilty of an offence.

In addition to any other conditions, a permit for the placing of recycling clothing bins may:

- include a requirement that a permit holder hold a current contract of public liability insurance evidence of which is available upon request by an authorised officer of the council;
specify the type, design, construction, colour or finish of any bin used for the collection of clothing;
- specify that the bins bear the name and phone number of the permit holder and of any organisation for which funds are being collected;
- specify that the bins be maintained in a good condition and that they be cleared on a regular basis;
- require that the area surrounding any bin be kept in a clean condition;
- limit the number of bins which may be placed pursuant to the permit; and

- restrict the location or locations in which bins may be placed.
- A person must not interfere with, deposit rubbish in or remove the contents from a clothing recycling bin. (This clause does not apply to the person on whose behalf the bin was placed or an employee or agent of the person who placed the bin or any authorised officer.)

In administering this local law, assume that council has decided to restrict the granting of permits to bona fide charitable organisations that recycle clothing. This excludes non-charitable businesses who would provide the service for profit by selling recycled clothing or by converting deposited clothing to rags which are subsequently sold.

Step 1:

What is the objective of the local law?

1.1 What is the risk that the community faces in the absence of the local law?

Possible information asymmetry.

- council has decided to administer this law to exclude non-charitable organisations because it was considered that people depositing clothing to bins had an expectation that clothing would go to the needy (without profit) and not be used for some other purpose.

Possible externality or spillover effects:

- the placement of clothing bins in locations which are a hazard to vehicles or pedestrians
- bins being placed in locations which could cause a nuisance to occupiers of nearby premises
- bins may become unsightly and a health hazard.

1.2 Does other legislation have the same objective?

None identified.

Insofar as this local law regulates the location of clothing bins on private land, for example, at service stations or similar places having public access but under the responsibility of a private owner, there is a duplication with other law which places obligations on the owner to properly maintain the premises. This might include, in different situations, town planning controls under the relevant planning scheme and public nuisance and health requirements under the Health Act.

LOCAL LAW CASE STUDY 4: ROADSIDE ADVERTISING SIGNS

The local law provides:

- No person may without a permit erect or place an advertising sign on any road or reservation, or cause or authorise another person to do so.

The policy or conditions for the grant of a permit under this local law indicate that the council must take into account the following:

- the need for footpath advertising having regard to other advertising signs and any determination of council relative to signs;
- the design, construction, width and height of the sign;
- the placement of any sign so as not to obstruct pedestrians or vehicles;
- whether the construction will create a hazard to pedestrians; and
- provision of public liability insurance; and
- whether the appropriate fee has been paid.

Note that the reference to “any determination of council relative to signs” indicates material extraneous to the local law which would need to be reviewed as part of the assessment of this local law.

Step 1:

What is the objective of the local law?

1.1 What is the risk that the community faces in the absence of the local law?

Externality:

- inappropriate location of advertising signs leading to pedestrian injury or traffic hazards
- visual clutter
- inappropriate signage (eg defamatory or obscene material)

1.2 Does other legislation have the same objective?

There are national laws governing defamatory or obscene material which address this issue.

There are national laws on public liability that may provide redress for injury, however, it is recognised that the prevention of accidents is an appropriate objective.

Query whether advertising controls under the planning scheme might apply. The planning scheme would need to be checked to ensure that no controls applied on roads or to the size of signs regulated under the local law.



LOCAL LAW CASE STUDY 1

ITINERANT TRADERS

Background Information

The local law provides:

- *A person must not without a permit erect or place on any road a vehicle, caravan, trailer, table, stall or other similar structure for the purpose of selling or offering for sale any goods or services.*
- *A person must not without a permit sell or offer for sale any goods on any road or public place.*

Scenario:

- Assume that the local law is being used to restrict itinerant traders to a small number of approved locations or to prevent the operation of itinerant traders in the municipality completely.
- Note that the local law does not make explicit the basis on which discretion to grant or refuse to grant a permit will be exercised. It is assumed that the council has a policy or guideline which is used by local law officers in deciding permit applications.

In practice, a council may use this local law to regulate itinerant traders in one of several ways. For example, a council may refuse to issue permits to any itinerant traders. Alternatively, a council may tender a restricted number of sites and not grant any permits outside those sites. Or a council may grant permits subject to payment of a pro rata fee (based on the area of land occupied by the trader) equivalent to the municipal rates in respect of premises used for the same purpose, as a form of "rental" of public land.

LOCAL LAW CASE STUDY 2

OUTDOOR EATING

The law provides:

A person must not establish an outdoor eating facility on any footpath, median strip, roundabout or garden or tree reserve without a permit.

The council may grant permits for the provision of such facilities on a footpath provided that:

- a) such facility is conducted in conjunction with and as an extension of food premises located immediately abutting such facility and the applicant for the permit is a person conducting such food premises;*
- b) such facility shall not be extended on to the footpath beyond two lines running at 90° angle from either side of the applicant's food premises;*
- c) such food premises are registered in accordance with the Food Act 1984;*
- d) where premises abut more than one street or lane, the facility shall not be located in the area of the footpaths which would be obscured from a pedestrian approaching from that other street or lane;*
- e) the facility must be kept in a clean and tidy condition. Table and chairs must be cleaned of all food scraps and spillage after each customer has left and at the end of each day;*
- f) the surrounding area must be thoroughly cleaned at the end of each day and all food scraps and spillages must be removed from the footpath or road.*

A person granted a permit under this clause commits an offence if the outdoor eating facilities are placed or kept contrary to sub-clause 2 or any conditions of the permit.

In determining whether to grant a permit under this clause the council will have regard to any guidelines determined by council from time to time.

Note that some councils view the local law process as a mechanism to gain income from the use of council land. This is not appropriate. If councils seek to raise revenue from the use of footpaths or other public land this should be done by means of a licence to occupy or other agreement.

LOCAL LAW CASE STUDY 3

CLOTHING RECYCLING BINS

The law provides:

- *A permit from the council is required for the placing of clothing recycling bins on any land in the municipal district.*
- *A permit is not required under this local law for the placement of a clothing recycling bin in a place to which members of the public do not and might not reasonably be expected to have access.*
- *A person who places a clothing recycling bin on land in the municipal district contrary to this local law is guilty of an offence.*

In addition to any other conditions, a permit for the placing of recycling clothing bins may:

- *include a requirement that a permit holder hold a current contract of public liability insurance evidence of which is available upon request by an authorised officer of the council;*
- *specify the type, design, construction, colour or finish of any bin used for the collection of clothing;*
- *specify that the bins bear the name and phone number of the permit holder and of any organisation for which funds are being collected;*
- *specify that the bins be maintained in a good condition and that they be cleared on a regular basis;*
- *require that the area surrounding any bin be kept in a clean condition;*
- *limit the number of bins which may be placed pursuant to the permit; and*
- *restrict the location or locations in which bins may be placed.*
- *A person must not interfere with, deposit rubbish in or remove the contents from a clothing recycling bin. (This clause does not apply to the person on whose behalf the bin was placed or an employee or agent of the person who placed the bin or any authorised officer.)*

In administering this local law, assume that council has decided to restrict the granting of permits to bona fide charitable organisations that recycle clothing. This excludes non-charitable businesses who would provide the service for profit by selling recycled clothing or by converting deposited clothing to rags which are subsequently sold.

LOCAL LAW CASE STUDY 4

ROADSIDE ADVERTISING SIGNS

The local law provides:

- *No person may without a permit erect or place an advertising sign on any road or reservation, or cause or authorise another person to do so.*

The policy or conditions for the grant of a permit under this local law indicate that the council must take into account the following:

- *the need for footpath advertising having regard to other advertising signs and any determination of council relative to signs;*
- *the design, construction, width and height of the sign;*
- *the placement of any sign so as not to obstruct pedestrians or vehicles;*
- *whether the construction will create a hazard to pedestrians; and*
- *provision of public liability insurance; and*
- *whether the appropriate fee has been paid.*

Note that the reference to "any determination of council relative to signs" indicates material extraneous to the local law which would need to be reviewed as part of the assessment of this local law.

STEP 2 IDENTIFY WHETHER THE LOCAL LAW RESTRICTS COMPETITION

Not all local laws restrict competition. Those that do include laws relating to traffic regulation and parking, retail trading hours, itinerant traders, trading outside licensed premises (use of footpaths) and local laws made subsequent to state government deregulation that are not consistent with deregulation. Reviewers can determine whether the local law restricts competition by considering the following questions:

- Does/will the local law deter new entrants into a market?
- Does/will the local law prevent or discourage exit from a market?
- Does/will the local law discriminate between businesses or between consumers?
- Does/will the local law constrain the behaviour of consumers?
- Does/will the local law constrain the behaviour of businesses?

If any of these is answered in the affirmative, then the proposed or existing law is deemed to restrict competition and this fact should be noted in the Local law review summary report. If reviewers find that there are no restrictions, then the review concludes at this point and reviewers should go straight to Step 8 to finalise the review.

Situations where the local law directly restricts competition are of particular concern.

A local law is said to directly restrict competition where it provides for:

- only one person to supply the good or service (ie statutory monopoly);
- only one person to purchase a good or service (ie a monopsony);
- a mandatory reduction in the number of participants in the market (see Box 4 on the next page); or
- limits on the number of persons authorised to engage in a business, activity or occupation.

Step 2.1

Determining whether a local law will deter new entrants into a market

Local laws can deter new entrants into a market by raising barriers to entry, increasing the costs of entry, or making it more difficult for firms to secure a viable market. To test whether a local law restricts entry, reviewers should ask:

- Does/will the local law restrict competition by requiring that an activity be licensed or by imposing standards?
- Does/will the local law limit who may own a business?
- Does/will the local law limit or decrease the number of firms that may participate in the market?
- Does/will the local law impose significant compliance costs on businesses or individuals?

Example: An outdoor eating local law imposes standards for food preparation and consumption that exceed the requirements under state health laws. Compliance with these additional standards is costly. This may deter businesses from offering outdoor eating services.

Step 2.2

Determining whether a local law will prevent or discourage exit out of a market

Restrictions that discourage exit can discourage entry into a market, and thereby limit competition. To test whether a local law restricts exit, reviewers should consider:

- Does/will the local law impose a financial penalty on businesses or individuals simply because they are exiting the market?
- Does/will the local law affect the manner in which a business or individual may exit the market?
- Does/will the local law restrict re-entry of a business or individual upon exit from the market?

Example: A local law requires a business to make an upfront payment for a good or service provided by Council. A business seeks to exit the market part-way through the year. If council will not refund the business (on a pro-rata basis) an amount equivalent to goods or services not received, this may deter or delay a business from exiting the market.

Box 4 Regulating the number of participants in a market

A reduction in the number of participants does not automatically reduce the level of competition in a market. However, it is difficult to be prescriptive on exactly when a reduction will affect the level of competition. This will depend on a number of factors including the size of the market and the availability of substitutes. It has been suggested that laws that mandate fewer than 4 participants in the market are of concern. For some council areas, where markets are small and thin, this number may be too high. Consequently, the test here calls for reviewers to scrutinise any local law that directly or indirectly restricts the number of participants in a market.

Step 2.3

Determining whether a local law will discriminate between businesses or between consumers

Sometimes a local law can restrict competition by discriminating against some businesses or some consumers on the basis of, for example, their size, location, production method or product. To test whether a local law is discriminatory, reviewers should ask:

- Does/will the local law provide advantages (eg market power) to some businesses at the expense of others?
- Does/will the local law affect the size of firms in the market? For example, some local laws may favour larger firms over smaller firms, or vice versa, to influence the degree of market concentration.
- Does/will the local law benefit one group of consumers to the detriment of others?
- Does/will the local law restrict the free flow of goods or services from other parts of Australia?
- Does/will the local law discriminate between businesses or consumers on the basis of location?
- Does/will the local law create an advantage or disadvantage to public sector businesses over their private sector competitors or potential competitors (ie competitive neutrality)?
- Does/will the local law offer commercial incentives to some businesses but not others?
- Does/will the local law impose administrative costs in a discriminatory manner?
- Does/will the local law grant some firms access to resources or infrastructure but not others?

Example: A local law discriminates between different groups in the municipality or different parts of the municipality in relation to the sale or consumption of alcohol in public places, or in the use of parks and reserves for various social or sporting events, thereby providing advantages to some parties and disadvantages to others.

Step 2.4

Determining whether a local law will constrain the behaviour of consumers

Local laws that constrain the behaviour of consumers can limit the level of competition in a market. To test whether a local law will have this effect, reviewers should consider:

- Does/will the local law restrict consumer choice of supplier or products?
- Does/will the local law restrict consumer access to suppliers or products?
- Does/will the local law require consumers to purchase a good or service from a third party as a condition of supply of the good or service (ie third line forcing)?

Examples: A local law which requires households to purchase a "wheelie bin" from a particular manufacturer.

A local law which limits the number of itinerant traders or mobile vendors.

Step 2.5

Determining whether a local law will constrain the behaviour of businesses

Local laws can also restrict competition by constraining the behaviour of firms. To test whether a local law does this, reviewers should ask:

- Does/will the local law control prices or the level of production?
- Does/will the local law constrain the firm's choice in its hours of operation?
- Does/will the local law restrict the price of inputs used in production or the types or share of inputs used in production?
- Does/will the local law restrict quality, level or location of goods and services?
- Does/will the local law limit the ability of firms to be innovative, ie adopt new technologies and products or differentiate between existing products?
- Does/will the local law restrict advertising and promotional activities?
- Does/will the local law restrict the ability of an employer to employ workers of its own choosing?
- Does/will the local law require businesses to purchase a good or service from a third party as a condition of supply of goods or services (ie third line forcing)?

Examples: A local law restricts the use of advertising signs to premises which directly front the road on which the sign is to be located, preventing use of signs by nearby premises in arcades or upper levels of buildings.

A local law that imposes different noise limits and permitted hours of activity for building works undertaken by commercial operators relative to households.

A local law that prescribes how a business offering outdoor eating facilities can configure tables and chairs on a footpath.

CASE STUDY 1: ITINERANT TRADERS

How does the local law restrict competition?

2.1 Market entrants

The law does explicitly regulate market entry. It potentially prohibits or restricts any entry to the market supplied by itinerant traders. Council guidelines (which it is noted are not part of local law) may impose further restrictions or requirements which may create significant barriers to market entry.

2.2 Exit from market

There is no constraint on market exit.

2.3 Discrimination between businesses or consumers

The law discriminates between itinerant traders and other food vendors. It also discriminates against consumers who are not able to easily access food vendors operating from permanent facilities.

2.4 Constrain behaviour of consumers

The law restricts consumer choice. Potential consumers are forced to seek an alternative source of supply.

To the extent that the law may not allow certain types of traders or the operation of traders within particular areas or otherwise constrain traders this will restrict consumer behaviour.

As itinerant traders often operate outside normal retail hours this may represent a significant loss of choice.

2.5 Constrain behaviour of businesses

The law itself does not appear to constrain the behaviour of businesses. However, council guidelines may contain material which does and this should be noted. For example, if the law restricts hours of operation, types of food or location of operation, then the law will constrain the behaviour of the business.

The law may prevent entry to the itinerant trader market. Even if, in practice, the law is not enforced, it can add to uncertainty and therefore the business risk faced by potential itinerant traders. It also may constrain the choices of existing traders with permanent facilities in the local area who would like to offer a mobile service.

CASE STUDY 2: OUTDOOR EATING

How does the local law restrict competition?

2.1 Market entrants

To the extent that council denies a permit to any applicant, the law deters market entry. As long as no business that meets the requirements is refused a permit however, it is unlikely that the local law will deter entry. The requirements for siting and cleanliness are consistent with public safety and general health regulation.

It is noted that there may be guidelines determined by council which would need to be reviewed in conjunction with the local law, and any additional requirements or restrictions taken into account.

2.2 Exit from market

It does not appear that the local law imposes constraints on market exit.

2.3 Discrimination between businesses or consumers

Provided any business that met the requirements was granted a permit (ie there are no limits on the number of permits that may be granted), the local law does not appear to discriminate between businesses or consumers.

Clause (a) of the local law provides that:

The council may grant permits for the provision of such facilities on a footpath provided that:

(a) such facility is conducted in conjunction with and as an extension of food premises located immediately abutting such facility and the applicant for the permit is a person conducting such food premises.

Clause (a) may be interpreted to discriminate against stand alone kiosk operators.

Clause (a) requires that the applicant for the permit must be the person(s) conducting the food premises. It is not clear why this level of prescriptiveness is needed.

2.4 Constrain behaviour of consumers

To the extent that the law creates a framework for the use of council footpaths for outdoor eating, it can be viewed as enhancing consumer choice by facilitating the use of outdoor eating areas. However, if, in practice, the number of permits granted under this local law was limited, then this may constrain the behaviour of consumers by restricting the availability of outdoor eating establishments.

2.5 Constrain behaviour of businesses

The law does constrain the behaviour of businesses seeking to utilise footpaths for tables and chairs, however, the constraints do not appear to be significant. They are consistent with, and no more onerous than general state health regulations.

2.6 Direct restriction on competition

Clause 2(a) restricts the use of these facilities to persons conducting food premises which abut the footpath area. This may prevent the operation of "stand alone" kiosk type food facilities.

CASE STUDY 3: CLOTHING RECYCLING BINS

How does the local law restrict competition?

2.1 Market entrants

The law directly restricts market entry to charitable organisations only.

The requirement for a contract of public liability insurance is a significant requirement and may deter new entrants even if they qualified as bona fide charitable organisations.

Other aspects of the local law require the provision of information and impose operational obligations which do not impose a significant entry requirement.

Note that the requirement to specify the type, design and other details of any bin used may provide council with an opportunity to discriminate between types of bins and require the use of particular types.

2.2 Exit from market

There is no constraint on market exit.

2.3 Discrimination between businesses or consumers

The application of the law directly discriminates between charitable and non-charitable businesses who would or could provide the service. Aspects of the local law restricting placement of bins may affect accessibility and hence discriminate between depositors or potential depositors on the basis of location.

2.4 Constrain behaviour of consumers

If, in practice, the exercise of discretion meant that the number or location of bins across the municipality was restricted, the implied reduction in accessibility may influence a person's decision to deposit clothing or dispose of it in another way (eg with general household refuse).

2.5 Constrain behaviour of businesses

The law constrains the behaviour of businesses in two ways. First, and most significantly, as administered it prevents non-charitable businesses from participating in the market. Second, it may reduce the freedom of businesses who are participating in the market to locate bins where they wish, and to design and construct bins according to their preference.

CASE STUDY 4: **ADVERTISING SIGNS ON** **ROADS**

2.1 Market entrants

- restricts competition by imposing standards for approval
- compliance costs associated with design, construction and size requirements are relatively minor given that the sign would have to be designed in any event
- compliance also requires public liability insurance when the business may not otherwise have purchased such cover
- permit fee is an extra cost, but is likely to be relatively minor and therefore unlikely to constitute a barrier to entry

2.2 Exit from market

Local law does not affect free exit of a business from the market. The only deterrent to cessation of use of an advertising sign is non-refundability of permit fee. This is unlikely to be significant.

2.3 Discrimination between businesses or consumers

The local law may discriminate between businesses on the basis of location or premises. For example, it may discriminate on the basis of location if it applies to businesses located in one area (eg main street) but not others. It may discriminate on the basis of premises if it allows signs for shops fronting a main road but does not allow signs for shops which do not abut the road frontage (eg upstairs or in an arcade).

The signage law might discriminate between potential sign suppliers if compliance required use of particular technology.

It is unlikely that local law would discriminate between consumers, except perhaps on the basis of language.

2.4 Constrain behaviour of consumers

To the extent that it restricts the flow of information to consumers, this law may restrict consumer knowledge and, hence, choice of goods or services.

2.5 Constrain behaviour of businesses

The local law constrains the behaviour of businesses to the extent that they do not have complete freedom to make advertising strategy choices.

2.6 Direct restriction on competition

Where the local law is used to ban signage on footpaths absolutely, even if only in some locations, it directly restricts the ability of businesses to compete with other businesses.

In most cases, the law is administered in a way such that signage is not prohibited absolutely. All businesses are eligible to apply for signs and are granted a permit provided they meet the compliance requirements.

STEP 3 DETERMINE REVIEW PROCESS

The next step is to undertake a review which allows interested parties to have input and allows council to gain the benefit of independent advice on the costs and benefits of the local law. Many local laws contain a large number of separate controls which must be reviewed. Councils should consider carefully which parts of local laws can be reviewed together to achieve an efficient review process.

Step 3.1

Review Model

At this point, reviewers can use the information from the first two stages to determine which of the two review models – the public review model or the in-house reform model – best suits the local law under review.

The public review model is more onerous and administratively more costly than the in-house review model. It is appropriate where council considers there is a need for extensive community consultation using more formalised processes. The in-house review model still requires community consultation and some formalised processes. However, it is far less resource-intensive and administratively costly than the public review model. The table below (Table 1) is intended to help councils to identify the type of review required in different circumstances.

Once reviewers have selected the appropriate review model, there are a number of other decisions that must be made concerning the nature of the review. Reviewers must consider:

- the priority of the local law review;
- the resource requirements of the review;
- consultation requirements;
- the degree of independence required for the review;
- whether costs and benefits should be quantified; and
- the timeframe for the review.

The following sections assist reviewers to make decisions on each of these matters.

Step 3.2

Assigning priority to a review

Reviewers should determine whether the review of a local law should be given high, medium or low priority. Local laws identified as high or medium priority should be reviewed before those identified as low priority.

The level of priority that is appropriate will depend upon the likely significance of the benefits to the economy from reforming anti-competitive restrictions. To determine priority, reviewers should have regard to:

- the extent to which the local law affects competition and the economy generally; and
- the potential benefits to the community in reforming the local law.

Reviewers need only make a judgement about potential benefits. It is not necessary to quantify them at this stage.

TABLE 1 DECIDING WHICH REVIEW MODEL IS APPROPRIATE

Review model	When to use	Consultation and administrative processes
Public review	<p>Where Council considers:</p> <ul style="list-style-type: none"> • the net benefits of revoking or disallowing a restriction are potentially large; or • the costs and benefits of revoking or disallowing a restriction are not confined to one council jurisdiction; or • there is a large disparity in the views of different interest groups. 	<p>Appoint review panel.</p> <p>Prepare an issues paper which is available to all interested parties.</p> <p>Issue public notice of review and call for submissions.</p> <p>Participants should be given a minimum of 30 days to register their interest and/or prepare and lodge their submission.</p> <p>Submissions should be made available to the public.</p> <p>Council has the option of conducting a public forum (public meeting, round table or hearings) to discuss relevant issues.</p> <p>Review panel prepares draft report following the 9 step method of these Guidelines.</p> <p>Council calls for public comment on draft report (optional).</p> <p>Review panel prepares final report.</p>
In-house review	<p>Where council considers:</p> <ul style="list-style-type: none"> • the potential net benefits of revoking or disallowing a restriction are not large; and • the costs and benefits of revoking or disallowing a restriction are confined to one council jurisdiction; or • there is widespread agreement amongst different interest groups. 	<p>Appoint review panel.</p> <p>Reviewers should identify and approach key stakeholders.</p> <p>Prepare an issues paper which is available to key stakeholders.</p> <p>Issue public notification and call for submissions.</p> <p>Preparation of final report.</p>

Step 3.3

Determining the resource requirements of a review

Reviewers must decide on the type and level of resources required to undertake the review, including the size of the review panel, administrative support and the need to bring in technical expertise.

Generally, reviews that are conducted under the public review model may require a larger review panel and more administrative support resources than in-house reviews. An in-house review may have a review panel of just one or two persons, one of whom acts as chair (see Step 3.5). For public reviews, three or more panel members may be appropriate, depending on the expected workload of the panel based on the degree of community interest.

It is advisable to include a technical expert on the review panel wherever a decision on whether to remove legislated restrictions on competition requires an understanding of complex technical or public interest issues and/or wider industry reform considerations (eg multi-regional, state or national considerations).

Step 3.4

Determining the level of consultation that is appropriate

Consultation helps to ensure that reviewers identify all key interest parties and are adequately informed on issues relevant to the review. Consultation is also important as a means for council to provide information on their positions and policies to interested parties.

Regardless of which review model is used, reviewers begin by identifying the key stakeholders likely, or potentially likely, to be affected by:

- the introduction/continuance of the local law;
- the repeal of an existing local law;
- the rejection of a proposed local law; and/or
- the introduction of any alternative means of achieving the objective (see Step 4).

Stakeholders include any individual, group or organisation that has a personal concern, professional interest or involvement in the affected market.

It is difficult to be prescriptive about the number of stakeholders that should be consulted by reviewers or their agents under each review model. This is because the extent of consultation that is appropriate will vary, depending upon the issues under review, the extent of public interest in those issues and the divergence of the public's views on those issues.

Nevertheless, it is essential that reviewers do not just consult with parties that have a direct vested interest in the local law subject to review. Frequently microeconomic reforms deliver marginal benefits to a large proportion of the community at the expense of a small section of the community who may lose substantially if reforms are implemented. It is the latter group that often is the most vocal in speaking out against reforms. Reviewers must ensure that their net is cast wide enough to include the more silent majority so that they are not dominated by the views of a vocal minority.

Preparation of an initial issues paper is advisable under either review model. This will allow reviewers to check that the consultation net is cast wide enough and that key interest groups are included in the process. The issues paper should provide background information on the local law which is being reviewed, identify likely interested parties, set out key issues relevant to the review and solicit views on those issues.

The number of stakeholders to be consulted is best left to the judgement of reviewers. However, reviewers should bear in mind that they must detail their consultation processes and the stakeholders consulted in the summary report that is lodged with OLG. If the Minister considers that consultation was insufficient, there is a risk that the Minister may revoke the local law.

Consultation undertaken for public reviews is expected to be more extensive and more formal than for in-house reviews. Under either review model, submissions should be made in writing. However, for public reviews there is an additional opportunity for public comment provided by the issue of a draft report. Under the public model, there is also the option for the review panel to conduct public hearings or some other public forum to obtain information relevant to the review.

Step 3.5

Determining the degree of independence required

Regardless of review model, the chair of a review panel must be independent and regarded by people in the community as independent and impartial. That is, the chair should not be aligned to any parties or interests covered by the review. Under no circumstances should a person identified as a stakeholder be a member of a review panel.

In some cases, it may be highly desirable that the chair is also independent of council, for example if all councillors have revealed partiality or interest. Even where a councillor is not aligned to any stakeholder or view, it still may not be appropriate for that person to chair the panel on the grounds that the public is not likely to perceive that person as independent.

For public reviews, it is advisable that the chair of the review panel has a good understanding of NCP principles and objectives and/or an expertise in public policy.

Step 3.6

Determining whether to quantify costs and benefits

Reviewers should attempt to quantify all costs and benefits in situations where initial qualitative assessment suggests that a situation of net cost cannot clearly be established. For low priority reviews, quantification may be at the discretion of reviewers. This is in recognition that quantification can add considerably to the resource requirements, and hence costs, of a review. However, it is advisable that reviewers attempt to quantify at least the key costs and benefits even in low priority reviews.

Step 3.7

Determining the timing of a review

Reviewers should determine the start date for a review after considering priority. There is an obligation for review and reform of local laws to be completed by end June 1999. Reviews scheduled close to this time must take account of the time required to implement recommendations to meet this commitment.

CASE STUDY 1: ITINERANT TRADERS

What are the review's resource requirements?

3.1 Determine review model

This review would be a public review as the net benefits for the community of removing the restriction could be large and there is likely to be a large disparity in the views of different interest groups.

3.2 Priority of review

High priority.

Priority is determined with regard to the potential benefits of removing the restriction on competition. Since the local law directly imposes a restriction in the market for the services or goods on sale, the impact on competition may be substantial in some areas.

Priority is also determined by the level of community interest in the subject.

There is likely to be substantial community interest in relation to this local law.

3.3 What resource requirements will be needed?

A two or three person panel would be appointed with one person having relevant economic expertise. Council would allocate a staff member with secretarial support to be the administrative officer to assist the review panel.

3.4 Determine extent of consultation

Prepare an issues paper and make available to all interested parties.

Public notification and call for submissions together with direct mail to existing operators and known stakeholder groups.

Stakeholders might include:

- existing traders
- potential itinerant traders
- trader organisations

It is considered that a period of 28 days would be sufficient for the calling of submissions. Information should be available at the council offices regarding the nature and purpose of the review and the issues to be addressed in submissions.

3.5 Determine degree of necessary independence

There should be an independent chair of the review panel with a good understanding of competition policy objectives or microeconomic reform. Other members of the review panel should also be independent of council and not associated with any of the interest groups. Given the potential for political pressure from local traders, it will be important that council receives independent advice.

3.6 Quantification of costs and benefits

Quantification of costs and benefits should be undertaken where possible. Data available may include any cost differences between the product sold by the itinerant traders and that of other suppliers and information from food vendors about sales volumes (if available).

Costs and benefits not able to be quantified should be described and level of significance identified.

3.7 Determine timing of review

Timing of review will be dependent on the priority against other local law reviews undertaken by the municipality.

CASE STUDY 2: OUTDOOR EATING

What are the review's resource requirements?

3.1 Determine review model

This review would be either a public review or in-house review depending on the extent of outdoor eating provided within the municipality and the significance to the local economy. In municipalities with a major tourist area or significant restaurant/cafe precinct a public review would be justified. If there are only a small number of opportunities for this activity and little or no controversy regarding this matter an in-house review would suffice.

3.2 Priority of review

Medium priority.

Priority should be determined after considering the size of the relevant market ie the market for outdoor eating services. This is likely to be substantial in tourist areas or business centres with significant pedestrian/patron numbers.

3.3 What resource requirements will be needed?

The review panel should include a person with some expertise in financial or business matters. Council should provide suitable administrative support.

3.4 Determine extent of consultation

Prepare an issues paper and make available to all interested parties.

Public notification and call for submissions together with direct mail to existing operators and known stakeholder groups.

Stakeholders might include:

- existing restaurant operators
- catering and restaurateur trade organisations

- local or regional tourism organisations
- disability groups

It is considered that a period of 28 days would be sufficient for the calling of submissions. Information should be available at the council offices regarding the nature and purpose of the review and the issues to be addressed in submissions.

3.5 Determine degree of independence necessary

There should be an independent chair of the review panel with a good understanding of NCP objectives. It would also be useful if a member of the panel had some food retailing experience.

3.6 Quantification of costs and benefits

Quantification of costs and benefits should be undertaken where possible. Data available, or which may be provided in submissions, may include additional turnover value for restaurants and cafes in having tables and chairs on footpaths, compliance costs, administrative costs and enforcement costs.

Costs and benefits not able to be quantified should be described and the level of significant identified.

3.7 Determine timing of review

The timing of the review will be dependent on the priority against other local law reviews undertaken by the municipality. However, initial analysis suggests that a review of this local law be given a low priority since it does not appear to restrict competition, except to the extent that it may restrict the behaviour of stand alone kiosk operators. However, if the council guidelines for outdoor eating led to the possibility of discrimination between businesses in the granting of permits, the review should receive higher priority.

CASE STUDY 3: CLOTHING RECYCLING BINS

What are the review's resource requirements?

3.1 Determine review model

This review would be an in-house review as the net benefits of removing the restriction are not considered to be significant.

3.2 Priority of review

Medium. Since the local law directly deems a restriction in application, it deserves at least medium priority. The initial analysis indicates that the law could have a significant effect on competition in the market for recycled clothing.

3.3 Resource requirements

This review can be conducted utilising council in-house resources only.

3.4 Determine extent of consultation

Prepare an issues paper and make available to all interested parties.

Call for written submissions from key operators and any known stakeholder groups.

Consult with non-charitable service providers that may be operating in other jurisdictions.

Review existing pattern of bin use and operation.

Possibly consider writing to businesses or residents located around existing bins, particularly where operational problems are known to have arisen.

It is considered that a period of 28 days would be sufficient for the calling of submissions. Information should be available at the council offices regarding the nature and purpose of the review and the issues to be addressed in submissions.

3.5 Determine degree of independence necessary

Reviewers may be internal to council. Alternatively, council may choose to use external persons within the local community to provide a measure of independence from council.

3.6 Quantification of costs and benefits

Not necessary in this case.

Qualitative analysis would be sufficient identifying the general costs and benefits to the community.

3.7 Determine timing of review

Medium priority as against other local law reviews.

CASE STUDY 4: ADVERTISING SIGNS ON ROADS

What are the review's resource requirements?

3.1 Determine review model

This review would be a public review as the net benefits are potentially large.

This local law is likely to have an impact within all commercial areas within the municipality.

The risk of loss of visual amenity in the absence of regulation may be a significant one. It is unlikely that the risk to pedestrian traffic would be significant, although this would need careful assessment. To some extent this risk may be met by public liability insurance.

Many businesses may consider that the law unreasonably restricts advertising opportunities. It should be noted that advertising reaches not only potential local customers, but can be significant in capturing passing trade which would otherwise not be alerted to the availability of goods and services. This may be significant in tourist and rural areas.

3.2 Priority of review

Medium.

3.3 Resource requirements

The review panel should include at least two people. Administrative support would be required as necessary dependent on the number of submissions and issues raised in consultation.

3.4 Determine extent of consultation

Prepare an issues paper and make available to all interested parties.

Stakeholders are likely to include:

- commercial operators, shopkeepers and small business operators
- traders groups
- VicRoads
- health and public safety organisations/interest groups

Appropriate consultation may involve local advertising and press coverage using local media, direct mail to interested organisations or individuals affected including current permit holders. Other potentially interested community groups such as local police, traffic organisations, RACV and service organisations may also be approached.

It is considered that a period of 28 days would be sufficient for the calling of submissions. Information should be available at the council offices regarding the nature and purpose of the review and the issues to be addressed in submissions.

3.5 Determine degree of independence necessary

An independent chair should be appointed to undertake the review. The panel could possibly also comprise somebody with business experience and someone with urban design or public safety/engineering expertise. These persons might include, for example, ex-councillors, members of local community organisations or may draw on internal council resources.

It is important for public confidence in the review process that the review is seen to be independent of council. Consequently, the use of council staff in relation to controversial issues particularly within a small rural community would need to be carefully considered.

3.6 Quantification of costs and benefits

Quantification of costs and benefits may be possible. Where not, some general description of the order of magnitude of these should be provided. For example, within a rural or tourist area the role of advertising in attracting passing trade may be able to be estimated by relating it to known spending patterns. Similarly, evidence may be available from research findings elsewhere on the impact of advertising signs on footpaths and roadways in contributing to pedestrian injury or accident rates.

In many cases, however, it may only be possible to describe the nature of the costs and benefits, without quantifying them.

3.7 Determine timing of review

Timing of the review should be judged in the context of the review of all local laws.



STEP 4 DEMONSTRATE THAT THE RESTRICTION IS NECESSARY TO ACHIEVE THE OBJECTIVE

The NCP places an onus on reviewers to demonstrate that there is no less restrictive means of achieving the objective of the local law. This section provides a two step framework for reviewers to establish whether it is necessary to restrict competition to achieve a particular objective. Reviewers should already have linked the objective of the local law to the proposed restriction under Step 1 and described how the local law will either remove or ameliorate the market failure situation. Based on this assessment, reviewers should:

- consider a list of alternative means of achieving the objective; and
- identify the least restrictive means of achieving the objective.

Step 4.1

Consider a list of alternative means of achieving the objective

Frequently there will be more than one option to address the objective(s) identified in step 1. At this point, reviewers should consider alternative means of achieving the local law's objective.

Table 2 presents a list of suggested alternatives for each type of market failure situation discussed in Step 1. This list is intended as a starting point for reviewers and is not exhaustive. Reviewers should identify which of these alternatives could potentially deliver a similar or superior outcome relative to the restriction under review. The alternatives in Table 2 are presented as a hierarchy. Reviewers are asked to consider options that, as a rule, are likely to be most efficient first and only proceed to less efficient options if the most efficient options are considered unsuitable or inappropriate. However, reviewers should bear in mind that the list is not intended to prescribe what is best in terms of local laws. This is because the particular characteristics of issues dealt with by a local law might mean that what as a general rule is efficient may not be possible or efficient in a particular situation.

Reviewers should begin by identifying where in the hierarchy the existing or proposed local law restriction is located.

Next, reviewers should systematically consider whether options that are ranked higher in the hierarchy of alternatives in Table 2 could meet the objective of the local law, as described in Step 1. To do this, reviewers might consider the following types of questions:

- If the restriction calls for mandatory compliance, could compliance be voluntary? Generally, voluntary schemes are less restrictive and give consumers greater choice - some consumers prefer the option of a lower quality and lower priced good or service, while others may prefer higher quality at a higher price. Voluntary schemes can allow consumers to exercise their choice.
- If the restriction specifies how a product should be produced, or a service or activity carried out, is a less restrictive alternative possible - for example, by specifying a performance objective? For example, rather than stipulate how a business should configure and clean tables and chairs to obtain an outdoor eating permit, a local law could just specify that businesses are obliged to leave sufficient room for pedestrian movement and to keep the area neat and tidy.
- If the restriction restricts the number and/or qualification of persons providing a good or service, could the objective be achieved by industry codes of practice (ie self regulation)?
- Could the objective be met by providing information rather than setting product standards?
- Could council act as facilitator rather than regulator to achieve the objective?
- Where health and safety issues are relevant, does the alternative allow standards to be maintained?
- What are the resource and administrative requirements necessary to implement and maintain the alternative arrangement?

TABLE 2 FRAMEWORK FOR CONSIDERING ALTERNATIVES TO ANTI-COMPETITIVE LOCAL LAWS

Market failure category	Possible alternative response
Externality (ie potential external impact on others)	<p>Council could facilitate negotiations between parties to persuade parties that impose costs on others to take responsibility for their actions.</p> <p>Reallocate property rights so that parties bear the full cost of their actions.</p> <p>Taxes and charges levied on parties who do not bear the costs of their actions</p> <p>Prescribe performance objectives, leaving parties free to determine how best to meet the objective</p> <p>Prescribe minimum standards (eg environmental standards)</p> <p>Statutory limits on resource use</p> <p>Statutory prohibition/approval process</p>
Information asymmetry (ie inadequate information provided to customers)	<p>Provision of information by local businesses or consumer groups by their own volition</p> <p>Development of secondary markets in information eg utilising agents, insurers, consumer associations</p> <p>Utilise Commonwealth and state laws governing misleading advertising</p> <p>Product labelling</p> <p>Occupational and trade licensing</p> <p>Prescribed minimum product standards</p> <p>Statutory prohibition/approval process</p>
Public good	<p>Creation and allocation of property rights to encourage private provision</p> <p>Direct government provision</p>
Natural monopoly	<p>Self-regulation through voluntary codes of practice</p> <p>Utilise Commonwealth and state third party Access regimes (eg for water and other significant infrastructure)</p> <p>Utilise Commonwealth and state product liability/consumer protection laws</p> <p>Utilise Commonwealth and state laws that prohibit anti-competitive conduct</p> <p>Utilise Commonwealth and state laws that prevent anti-competitive mergers</p> <p>Utilise Commonwealth and state laws governing misleading advertising</p> <p>Apply to state government for price controls</p>

Step 4.2

Identifying the least restrictive means of achieving the objective

As noted in Step 4.1, some alternatives may be less restrictive than others. For example, general consumer protection laws may be less restrictive than laws to limit the use of inputs or method of production. Generally, the alternatives identified in Table 2 are ranked from least restrictive (usually market-based mechanisms) to most restrictive (more heavy-handed regulation).

Where there is more than one alternative, preference should be given to a market-based mechanism where it produces similar benefits to the restrictions but costs the same or less to implement. For example, to address information asymmetry problems information standards generally are less restrictive than prescriptive product standards. To address externality situations prescribed product or service outcomes (eg impacts on other persons from an activity) (eg area should be kept clean and tidy) are generally less restrictive than controls over the good or service (eg specifying minimum dimensions or frequency of cleaning).

Whether or not reviewers identify a less restrictive alternative means of achieving the objective affects how the review progresses from this point. In particular:

- If reviewers identify a less restrictive means of achieving a similar or superior outcome, then the review should amend the local law to incorporate the least restrictive alternative. Reviewers should then proceed to Step 5 to consider the costs and benefits of that alternative instead of the costs and benefits of the original restriction.
- If reviewers identify a less restrictive alternative but consider that the outcome under that alternative is likely to be inferior to the outcome under the initial restriction, then the reviewer should outline the reasons for this judgement in the summary review report. The review should then proceed from the next stage to consider both the costs and benefits of the inferior alternative and the costs and benefits of the original restriction.
- If reviewers cannot identify a less restrictive alternative then the review should proceed from the next stage to consider the costs and benefits of the original restriction.

CASE STUDY 1: ITINERANT TRADERS

Is this restriction necessary to achieve the objective?

4.1 Consider alternative means to achieve objective

(Assume that the local law is used to restrict the number of sites to a small number eg 3 or 4 sites in the municipality)

The law does address the objectives identified.

Rank the law in terms of Table 4.1.

- Statutory prohibition/approval process (externality)

Alternative means for achieving the objective might include:

- designating a large number of areas approved by council for use by itinerant traders.
- specifying minimum performance standards or requirements to meet traffic and pedestrian safety.
- requiring that persons must not prepare and sell food for human consumption without an appropriate health approval; and
- requiring the registration of the vehicle used by itinerant food traders as a vehicle approved for the transport of food.

It is recognised that the last two points relate to food traders only and involve some potential duplication of state health legislation.

4.2 Identify least restrictive means to achieve objective

The least restrictive means to achieve the objective would be to require that the locations used by itinerant traders meet performance standards and, in the case of food sellers, that the vehicles be appropriately licensed or approved for the purposes of preparing or carrying food.

The objective of protecting local traders is explicitly anti-competitive. If local traders wish to enter the market they may adopt the same practices as existing operators.

CASE STUDY 2: OUTDOOR EATING

Is this restriction necessary to achieve the objective?

4.1 Consider alternative means to achieve objective

The law addresses the market failure relating to health and cleanliness. It addresses the potential externality of untidiness by requiring that tables and chairs do not extend beyond the width of the premises and that the facility be kept in a tidy condition. This is the least restrictive option.

No information is available about the use of council's discretionary powers under its guidelines (referred to in the last paragraph of the local law). The manner in which discretion is exercised would need to be reviewed as part of the review of the local law in order to identify whether in practice the use of the local law is achieving the objective.

Rank the law in terms of Table 4.1

- performance objectives with permit requirement (externality)

To the extent that the health and cleanliness requirements under the local law mirror state government health legislation, they are redundant in local law.

It would be possible to dispense with the permit requirement and simply specify a suitable standard of operation which allows tables and chairs provided that the proper operation of footpaths is not blocked. This would complement the provisions of the Summary Offences Act.

4.2 Identify least restrictive means to achieve objective

It does not appear necessary to require that the applicant for the permit is a person conducting the food premises.

Otherwise the existing local law appears to be a model for the least restrictive means to achieve the objective. Alternatives such as requirements that a minimum width of footpath be left clear for pedestrian movement, that tables and chairs not be closer than a specified distance to the kerbline, etc would be more restrictive than a general requirement to keep the area tidy and not impede pedestrian movement on the footpath.

CASE STUDY 3: CLOTHING RECYCLING BINS

Is this restriction necessary to achieve the objective?

4.1 Consider alternative means to achieve objective

While the local law does address the market failure and objectives described in Step 1.1, the administration of the law is restrictive and goes beyond meeting these objectives.

Rank the law in terms of Table 4.1

- Prohibition/approval process (information asymmetry)
- Prohibition/approval process (externality)

There are less restrictive ways of dealing with information asymmetry concerns set out in Step 1. For example, council could require service providers to advertise on the bin whether they are a charitable or non-charitable organisation and/or whether deposited clothing is to be recycled or processed as rags. Indeed, it may not be necessary for council to regulate this through local laws because the traditional charity service providers themselves will have an incentive to reveal this information. If a charitable service provider believes donors prefer to donate to charity and have their clothes recycled rather than converted to rags, they have an incentive to advertise this information in a bid to attract donations away from potential and actual competitors.

Externality concerns can also be treated in a less restrictive way. For example, council could allow recycling bins to be located on private land without a permit as the owner

is legally responsible for the management of that land including any health or other risks associated with the operation of clothing bins.

Council could identify locations within the municipality where placement of bins on public land is acceptable or unacceptable. This would give service providers greater freedom to place bins where they wished. This approach could be coupled with a requirement for appropriate maintenance generally as presently specified in the local law but without the need for a permit.

4.2 Identify least restrictive means to achieve objective

The least restrictive means to achieve the objectives would be to allow any business (charitable or otherwise) to provide the service. Council could nominate locations on public land where the location of bins is not acceptable and specify any siting constraints necessary to achieve amenity and safety outcomes. There is no need for council to regulate the number, design or construction of bins.

In relation to provision of information about the use of donations to different charities (information asymmetry) the least restrictive alternative is to allow businesses to provide information; however they may not do this without some requirement being placed.

A permit might not be required at all for the placing of clothing recycling bins on private land, for example, at service stations or other premises where persons other than the council are legally responsible for the maintenance of those premises. This is a matter for private negotiation between relevant parties.

CASE STUDY 4: ADVERTISING SIGNS ON ROADS

Is this restriction necessary to achieve the objective?

4.1 Consider alternative means to achieve objective

The local law addresses the three forms of externality outlined in step 1.1. It is noted though, that in practice there is likely to be substantial discretion exercised in the administration of this local law.

Rank the law in terms of table 4.1

- statutory prohibition/approval process (externality)

An alternative would be to require a permit only in circumstances where the sign did not meet some very general criteria (performance objective) that are less restrictive than current requirements.

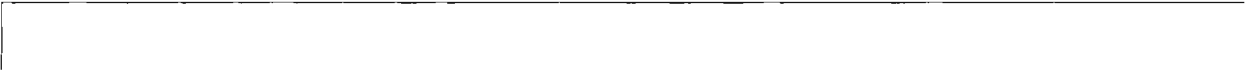
A number of existing local laws contain standards or guidelines for the location and size of signs which are deemed to comply and therefore not to require a permit.

4.2 Identify least restrictive means to achieve objective

The risk of pedestrian injury is partly met at the sign operator's expense through the provision of public liability insurance. However, this does not meet the full "cost" of an accident.

Defamatory and obscene material on signs is addressed by defamation and obscenity laws at a state or commonwealth level, so this aspect (sign content) does not need to be regulated.

The only remaining impact (externality) that may require intervention relates to visual pollution. The least restrictive means to address this externality would be to specify an operating envelope defining the minimum distance from the kerb and shop frontage and maximum signage size allowed. This would allow the business operator considerable (but not complete) freedom to determine the size and location of advertising. It is important that any standards specified are not overly prescriptive. Permit applications would only be required for signs outside the specifications.



STEP 5 ASSESS THE COSTS TO THE COMMUNITY OF THE RESTRICTION

This section provides reviewers with a framework to identify the costs that a local law restricting competition can impose on the community and the parties that bear those costs. It also assists reviewers to determine whether quantification of costs is necessary.

Step 5.1

Identifying costs categories

Reviewers are asked to describe actual or potential costs to the community that are brought about by the restriction. This section identifies different categories of costs to assist reviewers to adopt the broadest possible interpretation of costs.

Generally, restrictions on competition give rise to four types of economic costs relevant to local law reviews:

- **Administrative, enforcement, monitoring and compliance costs.** These costs generally are shared between businesses and council and other administrative authorities. Administrative, enforcement and monitoring costs include filing, record keeping and staff costs that are attributable to the local law in question. Compliance costs are the costs borne by businesses to comply with the local law that are over and above what they would incur if the local law didn't exist. Compliance costs include permit costs and other charges and fees borne by businesses. Generally, administrative, enforcement and compliance costs will be higher for more restrictive regulatory options ie those listed towards the bottom of the hierarchy of options to address each form of market failure in Table 2 under Step 4.

- **Efficiency costs.** There are two aspects to efficiency costs. One is efficiency losses due to increased unit cost of production eg because a business is not able to use least cost combinations of inputs. The second is efficiency losses because a business is not able to produce as much of a good or service as it would like. Where a local law restriction increases uncertainty and risk, it can impact on both aspects of efficiency. Efficiency costs are likely to be greatest for more restrictive regulatory options, ie those listed towards the bottom of the hierarchy of options to address each form of market failure in Table 2 under Step 4.
- **Social costs.** These include environmental damage, health and safety costs and other costs that frequently are referred to as "public bads" (eg increased crime). Social costs can also include costs associated with reduced employment and regional development (see Box 5, over).
- **Costs borne by consumers.** This includes increases in real price to consumers and costs associated with a reduced choice of product/quality/supplier/price combinations.

All of these costs can reduce the ability of firms to compete in the relevant market and thereby lessen competition.

Box 5 Employment and regional development costs and benefits

The community has an objective to increase the level of employment in the community and the percentage of people who are employed. The CPA makes provision for governments to take account of the employment effects of any restriction. However, reviewers must adopt an economy-wide perspective when considering employment implications of any restriction. For example, a restriction against street side vendors may protect jobs in established local businesses but it also costs street vendor jobs. Care should be taken to ensure that employment benefits do not capture transfers between regions, industries or firms rather than increases in the total number employed.

The same principle applies in the case of regional development costs and benefits. The community has an objective to promote growth in non-urban regions. The CPA makes provision for governments to take account of the regional development consequences of any restriction. An economy-wide perspective is essential to avoid situations where resources are being confined within one jurisdiction even though society would be better off if they were allowed to move to foster growth elsewhere.

Equity considerations

Usually with any microeconomic reform there are winners and losers. Often the introduction of a local law will cause a transfer of benefits from one group in the community to another. Strictly speaking, transfers are not costs. However, it is useful to think of negative transfers at the same time as you consider costs.

Transfers may be deliberate. For example Community Service Obligations (CSOs) often explicitly transfer the cost of an activity away from those who benefit but may not be able to afford the good or service (eg cross-subsidies). Transfers may also be unintentional. For example, a restriction may unintentionally transfer income from the poor to the wealthy.

In some cases a restriction on competition which favours some members of the public at the expense of others may be considered unfair. This may be a ground for the removal of the restriction. However, there may be situations where the community does not want to remove restrictions on competition because it would further disadvantage a group in the community that is already considered disadvantaged. Reviewers should be mindful that even if a group already considered disadvantaged is made worse off in the absence of the restriction, there may be other less restrictive means of dealing with this problem.

Step 5.2

Identifying those who bear the costs of the restriction or less restrictive alternative

It is important that reviewers have a clear idea of which persons, groups or organisations bear each of the costs identified in Step 5.1. These persons, groups or organisations then become key stakeholders in the review.

Parties who bear the costs of a restriction generally will come from one of four community groups:

1. parties who are directly affected by the local law, for example local businesses and residents;
2. parties who directly compete with those identified in 1, for example other businesses and other residents;
3. parties who are dependent on those identified in 1, for example employees, suppliers and consumers; and
4. parties representing wider community interests. For example, environmental concerns, health and safety concerns and parties affected in other areas.

Reviewers should check that costs are attributed to one or more individuals or businesses in each category. This list of affected parties can also act as a checklist to ensure that all relevant economic, social and economic costs are captured in Step 5.1.

Step 5.3

Quantifying the costs of a restriction or less restrictive alternative

Once reviewers have identified the costs of a restriction and who bears them, they should proceed to quantify those costs. Quantification of costs should be attempted under all review models, particularly where council expects that a situation of net cost or net benefit will be difficult to establish without empirical evidence. Quantification is also highly desirable where council expects that the restriction is likely to yield net benefits to the community. This is desirable because, under the NCP, there is a presumption against restrictions on competition. A council seeking to recommend that a restriction be continued or introduced should therefore be in a position to reassure the public that there is an empirical basis to its conclusion.

The difficulty of quantifying the costs of a restriction may require professional advice for major local law reviews. Even with outside expertise, though, it may not be feasible to quantify all costs in some situations. For example, because the costs associated with the estimation process may exceed the potential benefits from reforming the local law, or it may be too difficult to obtain information necessary to quantify costs.

Where it is not feasible to quantify costs, reviewers must at least indicate the value that the community places on the cost. Where this cannot be quantified, reviewers should make a judgment on their magnitude by rating each cost as insignificant, minor, moderate or significant. They must also explain the logic they have used to arrive at this judgment. This explanation should be more detailed for key costs affecting whether the restriction provides a net public benefit to the community.

Where quantification of costs is feasible, reviewers should provide supporting information detailing key assumptions and calculations pertinent to the estimates.

CASE STUDY 1: ITINERANT TRADERS

Submissions from interested parties would be taken into account in identifying any costs of the restriction.

The likely costs of the restriction to the community include:

Administrative, enforcement, monitoring and compliance costs:

- compliance monitoring and enforcement costs
- cost of use of public land to the business (if fee charged)

Efficiency Costs:

- profit foregone by potential itinerant traders
- loss in productive or technical efficiency (ie if itinerant traders could provide a service at lower unit cost than existing suppliers but are prevented from doing so)

Costs borne by consumers:

- reduction in consumer choice
- time spent by consumers to travel to nearest alternative service provider
- increased prices to consumers for goods or services as a result of restriction
- reduction in the quantity of food available

Social Costs:

- employment of itinerant traders

CASE STUDY 2: OUTDOOR EATING

Submissions from interested parties would be taken into account in identifying any costs of the restriction.

The potential costs to the community include:

Administration, enforcement, monitoring and compliance costs:

- cost of permit to the business seeking to place tables and chairs on footpath.
- monitoring and enforcement costs. These may be borne by council or other enforcement agencies (eg local police).

Efficiency Costs:

- costs borne by the applicant to comply with table and chair design/construction and layout requirements.
- profit foregone by the business seeking to place tables and chairs on footpath. These costs will be low if consumer demand for this service is low.

Costs borne by consumers:

- reduced consumer choice. This cost, implied by restricting options to consumers, will be low if consumers already face a significant number of alternative dining services.

Social Costs:

- employment foregone due to restriction.

CASE STUDY 3: CLOTHING RECYCLING BINS

Submissions from interested parties would be taken into account in identifying any costs of the restriction.

The likely costs of the current restriction to the community include:

Administrative, enforcement, monitoring and compliance costs:

- council costs of enforcement, dealing with enquiries from organisations etc
- compliance costs for charitable organisations (meeting permit requirements)

Efficiency Costs:

- reduction in productive efficiency if newcomer could process clothes more efficiently than incumbent
- profits foregone by businesses who would otherwise use donated clothing

Costs borne by consumers:

- fewer bins in the community (can lead to greater distance to travel to make donation)
- reduction in donor's choice of service provider

Social Costs:

- employment foregone in businesses who would otherwise use donated clothing.

CASE STUDY 4: ADVERTISING SIGNS ON ROADS

Submissions from interested parties would be taken into account in identifying any costs of the restriction.

The likely costs of the current restriction to the community include:

Administrative, enforcement, monitoring and compliance costs:

- cost of permit to the business seeking signage.
- Costs borne by the applicant to comply with design, construction, width and height requirements. This is not the total cost of the sign; rather it relates to the additional costs incurred above what the business seeking signage would otherwise incur (ie in the absence of the restriction).
- Cost to the applicant of public indemnity insurance, provided that insurance would not be obtained except for council's requirement under this local law.
- Monitoring and enforcement costs. These may be borne by local council or other enforcement agencies (eg local police).

Efficiency Costs:

- Profit foregone by the business refused signage as a result of the restriction. These will be low if the business can easily substitute street signage with other forms of signage and advertising.

Costs borne by consumers:

- reduced information to consumers. This cost will be low if consumers are able to receive the information via alternative signage and advertising.



STEP 6 ASSESS THE BENEFITS TO THE COMMUNITY OF THE RESTRICTION

This Section provides reviewers with a framework to identify the benefits that a local law restricting competition can provide to the community and the parties who receive those benefits. It also assists reviewers to determine whether quantification of benefits is necessary.

Step 6.1

Identify benefit categories

Reviewers are asked to describe actual or potential benefits to the community as a whole that are brought about by the restriction. This section identifies different categories of benefits to assist reviewers to adopt the broadest possible interpretation of benefits.

Just as restrictions on competition give rise to four types of economic costs, they also give rise to four types of benefits:

- **Administrative, enforcement and monitoring benefits.** These benefits generally are shared between businesses and council and other administrative authorities. Administrative, enforcement and monitoring benefits include savings on filing, record keeping and staffing costs. They also include the revenues council and other authorities obtain through permits and other charges as a result of the local law restriction. Generally, administrative, enforcement and monitoring benefits will be higher for less restrictive regulatory options ie those listed towards the top of the hierarchy of options to address each form of market failure in Table 2 under Step 4.

- **Efficiency benefits.** There are two categories to efficiency benefits. One relates to efficiency gains due to a reduction in unit cost of production; eg because a business is able to use least cost combinations of inputs with the restriction in place but was not able to in the “no restriction” situation. The second relates to efficiency gains because a business is able to produce as much of a good or service as it would like with the restriction in place, but could not in the “no restriction” case. Efficiency benefits are likely to be greatest for least restrictive regulatory options ie those listed towards the top of the hierarchy of options to address each form of market failure in Table 2 under Step 4.
- **Social benefits such as increased environmental amenity** (eg where a restriction conserves an environment or wildlife species, the community may derive a benefit from seeing that environment/wildlife, or from knowing that it is there), health and safety benefits (eg people may be able to live longer and lead better quality lives as a result of the restriction); and other benefits that frequently are referred to as “public desirables” (eg restrictions may promote law and order or certain kinds of behaviour or certain activities that are considered highly desirable by the community). Social benefits can also include consideration of the benefits associated with increased employment and regional development, although extreme caution is required when doing so (see Box 4).
- **Benefits enjoyed by consumers.** These include reductions in (real) prices to consumers and benefits associated with an increased choice of product/quality/supplier/price combinations due to the local law restriction.

Reviewers should not presume that the restriction will automatically provide benefits. There is an onus of proof on reviewers to show that estimated benefits of a restriction result from it and would not have resulted without it. To obtain this evidence for proposed new local laws, reviewers can look to other areas where the same restriction is already in place and compare that with the situation before the restriction was introduced. A before and after comparison can also be found where a council has removed a restriction. Where it is not possible to do before and after comparisons for the same municipality, reviewers may look to compare the benefits experienced by a municipality with/without a restriction against the benefits experienced under their own without/with restriction situation.

Equity considerations

The transfers that can result from the introduction/continuance of a restriction may be considered as positive by the community. For example, it may transfer income from the wealthy to the poor or it may ensure that those who benefit from an activity and can afford to pay for that benefit incur the cost of that activity.

Step 6.2

Identifying those who benefit from the restriction or less restrictive alternative

It is important that reviewers have a clear idea of which persons, groups or organisations enjoy each of the benefits identified in Step 6.1. These persons, groups or organisations then become key stakeholders in the review.

Parties who enjoy the benefits a restriction may come from one of four community groups:

1. parties who are directly affected by the local law, for example local businesses and residents;

2. parties who directly compete with those identified in 1, for example other businesses and other residents;
3. parties who are dependent on those identified in 1, for example employees, suppliers, and consumers; and
4. parties representing wider community interests, for example environmental concerns, health and safety concerns and parties affected in other areas.

Reviewers should check that benefits are attributed to one or more individuals or businesses in each category. This list of affected parties can also act as a checklist to ensure that all relevant economic, social and economic benefits are captured in Step 6.1.

Step 6.3

Quantifying the benefits of a restriction or less restrictive alternative

As in Step 5.3, reviewers should attempt to quantify the benefits of a restriction under all review models, particularly in situations where net cost or net benefit is likely to be difficult to establish without empirical evidence or where a council expects that a restriction will provide a net benefit to the community.

Where it is genuinely not feasible to quantify all benefits, reviewers are obliged to indicate the value that the community places on the benefit. If this is not possible, reviewers should rate the benefit as insignificant, minor, moderate or significant. They must also briefly explain the logic that they have applied to come to this judgement.

Where a quantitative assessment of benefits is made, reviewers should provide supporting information detailing key assumptions and calculations pertinent to the estimates.

CASE STUDY 1: ITINERANT TRADERS

Any benefits identified in submissions would be taken into account.

The likely benefits of the restriction to the community include:

Administrative, enforcement and monitoring benefits:

- any income gained from the use of public land by itinerant traders

Efficiency benefits:

- the additional profit earned by existing local businesses as a result of the restriction. This is the result of spin off trade to local businesses from customers who would otherwise have purchased goods from itinerant traders

Social benefits:

- protection of jobs in existing local businesses protected by the restriction

CASE STUDY 2: OUTDOOR EATING

Any benefits identified in submissions would be taken into account.

The likely benefits to the community of restricting the placement of tables and chairs on a footpath include:

Administrative, enforcement and monitoring benefits:

- permit revenue to the community

Social benefits:

- reduced risk to public health and safety
- additional employment to alternative service providers (eg takeaways, other dining)

CASE STUDY 3: CLOTHING RECYCLING BINS

Any benefits identified in submissions would be taken into account.

The likely benefits of the restriction to the community include:

Efficiency benefit:

- additional profit or charitable purpose achieved by monopoly incumbent

Social benefit:

- protection of employment in incumbent businesses
- prevention of health and amenity impacts
- certainty that clothes that are donated are used for a particular purpose (eg improved information availability)

Any benefits identified in submissions would also be taken into account.

CASE STUDY 4: ADVERTISING SIGNS ON ROADS

Any benefits identified in submissions would be taken into account.

The likely benefits of the restriction to the community include:

- increased environmental amenity due to deterrence of visual pollution. This benefit may be greater if there already is "visual congestion" in the area
- Reduced risk to public health and safety
- the value placed by the community of public indemnity insurance. This is not the same as the nominal coverage of such insurance. It is equivalent to the probability that a claim will be made against such a policy multiplied by the average value of that claim
- permit revenue to the community

Any benefits identified in submissions would be taken into account.



STEP 7 ASSESS WHETHER BENEFITS OUTWEIGH COSTS

Weighing up benefits and costs is, in many respects, the most important stage of any local law review. However, it can also be the most challenging stage of a review.

This section guides reviewers through the steps involved in determining whether the benefits of a restriction on competition outweigh the costs. A hypothetical example is provided using the advertising sign case study outlined in previous sections of these guidelines (ie steps 1 to 7).

It is recognised that for many local laws a fully quantified cost-benefit analysis will not be justified as the benefits may be minor relative to the cost of collecting and analysing data or there may be significant difficulty in quantifying some costs and benefits.

However in cases of major public reviews and for local laws where there are quantifiable costs and benefits, quantification using the following method should be followed. Step 7.4 deals specifically with unquantified costs and benefits.

Step 7.1

Re-check costs and benefits identified under Steps 5 and 6

At this stage of the review, it is important for reviewers to check that they have identified all the costs that accompany benefits (and all the benefits that accompany costs) under Steps 5 and 6. For example, improved environmental quality may come at the expense of increased administrative and production costs. The protection of profits for local traders may come at the expense of increased prices to consumers, increased time spent by consumers to obtain a good or service, a reduction in the amount of the good or service produced and compliance monitoring and enforcement costs.

Reviewers should check that there is no overlap between categories of benefit or cost that would make it inappropriate to simply sum all individual costs/benefits to arrive at a total cost/total benefit figure. This is to avoid double counting.

Once reviewers are satisfied that individual costs and benefits have been identified and quantified, where possible reviewers can begin to determine the overall effect of a restriction on competition. This can be done by weighing up the costs associated with the restriction against the benefits associated with that restriction.

Step 7.2

Weighing up quantified costs and benefits

Reviewers should begin by considering the costs and benefits for which current dollar values have been attributed under Steps 5 and 6. Essentially, there are three key steps to compare quantified costs and benefits:

1. take the list of quantified costs and calculate the net present value of costs (see Box 6, on page 66);
2. take the list of quantified benefits and calculate the net present value of benefits (see Box 6); and
3. subtract the net present value of costs from the net present value of benefits to obtain a final result.

If the final result is negative – that is, a situation of net cost is established – the community will be worse off as a result of the restriction. If the final result is positive – that is, a situation of net benefit – the community will be better off as a result of the restriction.

Hypothetical example using advertising sign case study

This hypothetical example is intended to show reviewers the process by which they can determine whether the benefits of a restriction outweigh costs. A cost benefit analysis is performed for two scenarios. The first analyses the situation where a local law prohibits the use of A-frame advertising signs on pavements altogether. The second analyses the less restrictive situation where a local law allows the use of A-frame signs on pavements, subject to various conditions.

List of costs and benefits for scenario 1

Under this scenario a local law effectively prohibits the use of A-frame advertising signs on pavements absolutely. The numbers presented in the table below are hypothetical. In practice they can be determined by consulting and surveying affected businesses, consumers and other interested parties. Advice on how reviewers can collect particular costs and benefits is provided in the notes below the table.

The table presents identified costs and estimated dollar value of costs then presents identified benefits and estimated dollar value of benefits. Reviewers will note that below the line

estimating total costs there is a line which places a dollar value on the net present value (NPV) of costs. Also, below the line estimating total benefits there is a line which places a dollar value on the NPV of benefits. This step is important in any cost benefit analysis. It is the step where all current and future costs and benefits are discounted so that they can be considered in terms of present day dollars. The method for calculating the net present value of costs and benefits is provided in box 6. However, there are many software packages that are able to make NPV calculations automatically.

As shown in the hypothetical example on the next page, the net present value of costs associated with a total ban on advertising signs on pavements is assumed to be \$1.1 million.

The net present value of benefits under the same scenario is assumed to be approximately \$603,000.

The next step involves a comparison of the NPV of costs and benefits. This is achieved by subtracting costs from benefits. A negative value indicates that, on balance, the restriction imposes greater cost than benefit on the community. In the hypothetical example, it is estimated that the community would be approximately \$500,000 worse off if the blanket ban on pavement advertising signs were introduced.

	<i>Estimated cost/benefit per year per film/customer</i>	<i>number of firms/customers</i>	<i>Estimated cost/benefit in a year</i>
Costs	\$		\$
Profits foregone by business due to change in consumer behaviour ^a	1000	40	40,000
Additional cost to utilise other forms of advertising ^b	150	40	6,000
Monitoring & enforcement costs ^c	na	na	6,000
Reduced information ^d	5	20000	100,000
Total costs			152,000
NPV of costs (for calculation, see Box 6)			1,132,104
Benefits			
Increased environmental amenity-relative to no local law ^e			80,500
Reduced risk to public health and safety ^f			500
Total benefits			81,000
NPV of benefits (for calculation, see Box 6)			603,292
NPV of benefits minus NPV of costs			- 528,812

Notes

- a In practice it can be estimated by surveying affected businesses.
- b In practice reviewers can estimate this cost by considering the cost of advertising in local newspapers etc that would not have been incurred in the absence of the local law less the amortised cost of the sign that would have substituted for the advertising.
- c In practice, reviewers can estimate this cost by considering the staffing (administrative staff and compliance inspectors), record keeping and penalty collection costs born by council as a direct result of the local law.
- d In practice, it could be estimated by surveying existing and potential customers (including locals and visitors to town) about the value they place on information contained on A-frame signs and the extent to which they think they can obtain that information elsewhere.
- e In practice it could be estimated by surveying constituents and visitors to ascertain the value they place on the increased environmental amenity caused by the local law.
- f In practice, it could be estimated as the difference between the probability of an injury in the absence of the local law and the probability of an insurance claim with the local law in place multiplied by the average value of a claim against that insurance policy.

List of costs and benefits for scenario 2

Under this scenario a local law allows the use of advertising signs on pavements, subject to a requirement that businesses must take out public liability insurance and various other limitations concerning the dimensions of the sign, placement of the sign and hours for which the sign may be left out. This is a less restrictive alternative to the scenario described previously. As for scenario 1, the numbers presented in the table below are hypothetical. In practice they can be determined by consulting and surveying affected businesses, consumers and other interested parties. Advice on how reviewers can collect particular costs and benefits is provided in the notes below the table.

The table on the next page presents identified costs and estimated dollar value of costs then presents identified benefits and estimated dollar value of benefits. The net present value of all costs is calculated in the same manner as it was in scenario 1. The method is detailed in box 3. As shown below, the net present value of costs associated with the less restrictive option (ie

allowing advertising signs on pavements, subject to various conditions) is assumed to be approximately \$130,000. The net present value of benefits under the same scenario is assumed to be approximately \$83,000.

The next step involves a comparison of the NPV of costs and benefits. This is achieved by subtracting costs from benefits. A negative value indicates that, on balance, the restriction imposes greater cost than benefit on the community. In the hypothetical example below, it is estimated that the community would be approximately \$50,000 worse off if the blanket ban on pavement advertising signs were introduced.

Reviewers will note that the net cost to the community under scenario 2 is far less than under scenario 1. Nevertheless, on the assumptions used for this case study the local law restriction should NOT be introduced in either case, because it fails the two part competition test (see "Key principles underlying these guidelines" in the Introduction) - that is, the benefits of the restriction to the community do not clearly outweigh the costs.

	<i>Estimated cost/benefit per year per firm/ customer</i>	<i>number of firms/ customers</i>	<i>Estimated cost/benefit in a year</i>
Costs	\$		\$
Profit forgone by business due to change in business behaviour ^a	0		0
Additional cost of constructing sign ^b	150	40	6,000
Cost of public indemnity insurance ^c	200	20	8,000
Administration monitoring & enforcement costs ^d	na	na	7,000
Permit fee borne by businesses ^e	50	40	2,000
Reduced information ^f	0		0
Total costs			23,000
NPV of costs (see Box 6)			132,291
Benefits			
Increased environmental amenity -relative to no local law ^g			5,500
Reduced risk to public health and safety ^h			3,500
Benefit of public indemnity insurance to community			150
Permit revenue ⁱ			2,000
Total benefits \$			11,150
NPV of benefits (see Box 4)			83,046
NPV of benefits minus NPV of costs			- 49,245

Notes

- a It is assumed that the less restrictive version of the local law does not affect the number or purchasing behaviour of customers.
- b In practice, this figure should reflect the once off cost to construct the sign to comply with the local law less the amount the business would otherwise have paid to construct the sign (ie in the absence of the local law).
- c In practice, this cost is not necessarily equivalent to the total cost of all affected businesses of purchasing public liability insurance. It should reflect the additional cost incurred as a result of the local law. For example, if 50 per cent of businesses would have taken out public liability insurance even in the absence of the local law the relevant figure is the cost borne by the remaining 50 per cent of businesses that would not otherwise have taken out such insurance.
- d In practice, it should include the staff and record keeping cost of processing permits, the administrative staff and inspectors to monitor and enforce the local law, and the cost of debt collecting services for unpaid penalties.
- e In practice, reviewers can use the financial cost of a permit to businesses.
- f It is assumed that the less restrictive version of the local law does not reduce the information available to consumers at all, because A-frame signs are allowed.
- g In practice, it could be estimated by surveying constituents and visitors to ascertain the value they place on the increased environmental amenity caused by the local law.
- h In practice, this can be estimated as being equal to the difference between the probability of an injury in the absence of the local law and the probability of an insurance claim with the local law in place multiplied by the average value of a claim against the public indemnity insurance.
- i In practice, it should be equivalent to the permit fee cost paid by businesses. The cost associated with collecting the fee will be included under administration, monitoring and enforcement costs.

Box 6 Calculating net present values for costs and benefits

There are three preliminary steps to calculate the net present value of a stream of costs or benefits:

First, reviewers should decide on the number of years the analysis should cover. As a rule of thumb, the number of years should reflect the number of years that the local law restriction is expected to apply.

Second reviewers should decide on the rate at which future costs and benefits should be discounted to be expressed in current dollar terms. Reviewers looking for a rule of thumb should consider using the long term bond rate (5.75 per cent as at 23 April 1998).

Third, reviewers should sum the total expected benefits or costs for each year.

These 3 estimates are required to utilise the net present value (NPV) formula shown below:

$$NPV = \sum_{t=1}^n \frac{C_t}{(1+r)^t}$$

where n = number of years;
 C_t = expected benefit or cost in each year; and
 r = discount rate.

Assume a local law is expected to apply for 10 years and the long term bond rate is 5.75 per cent. In the advertising example scenario 1, where expected costs are estimated to be \$152 000 each year, the NPV of costs will be given by:

$$\begin{aligned} NPV \text{ costs} &= \frac{152\,000}{1.0575} + \frac{152\,000}{(1.0575)^2} + \frac{152\,000}{(1.0575)^3} + \dots + \frac{152\,000}{(1.05)^{10}} \\ &= 1\,132\,104 \end{aligned}$$

ie NPV of costs is estimated to be \$1 132 104

The same calculation should be made to determine the NPV of benefits. In the advertising example, where expected benefits are estimated to be \$81 000 each year, the NPV of benefits will be given by:

$$\begin{aligned} NPV \text{ benefits} &= \frac{81\,000}{1.05} + \frac{81\,000}{(1.05)^2} + \frac{81\,000}{(1.05)^3} + \dots + \frac{81\,000}{(1.05)^{10}} \\ &= 603\,292 \end{aligned}$$

ie NPV of benefits is estimated to be \$603,292

Step 7.3

Undertake sensitivity testing where necessary

Where there is some uncertainty about a particular cost or benefit which can potentially affect the outcome of the cost-benefit assessment, it is advisable to undertake sensitivity analysis. For example, consider the worked example in Box 6 above. It is estimated that a total ban on A-frame signs would yield a net present value of negative \$100,000 – that is, the community is \$100,000 worse off with the restriction than without it. Outsiders may be sceptical that profit foregone by local traders is as high as \$2,000 each per annum. Reviewers may then set out to establish upper and lower bounds to the \$2,000 estimate. That is, they may decide that the actual amount will be at least \$1,000 but not more than \$2,500. Costs and benefits can be weighted again first using the conservative \$1,000 figure and later using the \$2,500 figure. This will produce a range rather than a point final estimate. As long as the range is within the bounds of negative numbers, the community will be worse off with the restriction.

Step 7.4

Consideration of unquantified costs and benefits

Sometimes reviewers will face the situation where they must consider unquantified costs and benefits. There are three reasons why reviewers may not quantify costs and benefits. First, in some cases it may be difficult to express a cost or benefit (eg; a social or environmental value) in dollar terms. Second, in some cases quantified assessment of costs and benefits will be extremely difficult eg because necessary information is not available. And third, in some cases the costs of empirical assessment would exceed the potential benefits from reforming a restriction and so reviewers judge that its quantification is inappropriate.

In these situations, reviewers should at a minimum develop a list of likely qualitative benefits and costs and assign an order of magnitude wherever possible. This type of assessment of costs and benefits will involve more judgment than empirical analysis. Reviewers should bear in mind three principles when making such judgments:

- Judgments should follow logically from the evidence presented in the final report, including public submissions and consultations;
- Judgments should be seen to follow logically from the evidence presented in the report; and
- Judgments should be clearly set out in the Local Law Review Summary Report and marked as judgments rather than estimates.

In relation to environmental or social costs and benefits which are not directly quantifiable, one way of estimating the order of magnitude of these items is to ask the question "what would the community be prepared to pay to achieve or maintain the benefit or avoid the cost?"

Alternatively it may be possible to establish an order of magnitude impact of the cost if a restriction is removed. For example, if without the tree clearing controls, vegetation was lost within an urban area, the impact on property values could be estimated by comparing with areas without similar tree cover.

What to do when there is a mix of quantified and unquantified effects

For most local law reviews, the weighing up of costs and benefits will comprise a mix of quantitative and qualitative results. In this circumstance, the net result should first be calculated using quantified information. This result should then be considered against the qualitative results. For example, a comparison of quantified costs and benefits may reveal that there is a net present value of retaining a restriction of negative \$100 000. That is, in present dollar terms, the restriction will cost the community \$100 000. However, an unquantified benefit might include substantially reduced environmental damage to a much-enjoyed environment or watercourse. In this situation, to come to a conclusion that the local law restriction should be retained, the reviewers must make a judgment that the disadvantage of increased environmental damage outweighs the quantified benefits associated with the without restriction situation. The reviewer should then explain the basis on which they have formed this judgment. Ideally judgments of this kind should be based on independent evidence of the value the community places on the particular environment or watercourse.

STEP 8 MAKE A RECOMMENDATION AND INSERT A SUNSET CLAUSE

Once they have weighed costs and benefits, reviewers should come to a decision as to whether the restriction should be retained or introduced. This Section guides reviewers through the steps of making a final recommendation and, where appropriate, setting a sunset clause on the restriction in the local law.

Step 8.1

Deciding whether to repeal, reject or amend a restriction

Where reviewers find in Step 7 that a restriction produces negative net benefits (ie net costs) to the community, there are four possible recommendations available to council:

- the local law should be repealed in whole;
- the local law should be repealed in part;
- the local law should be repealed subject to intermediate or transitional arrangements (eg move to fully deregulate but in stages rather than in one step); or
- the local law should be repealed but replaced with less restrictive arrangements that achieve the same objective.

If one of these options is chosen, reviewers should proceed to Step 9 of this guide.

Step 8.2

Deciding whether to introduce/continue a restriction

Where reviewers find in Step 7 that a restriction produces net benefits to the community, there are two possible recommendations available to council:

- the restriction should continue/be introduced unchanged; or
- the restriction is justified but local laws should be amended to reduce costs.

If one of these recommendations is chosen, reviewers should insert a sunset clause in the local law setting the timeframe for which the restriction is valid before it must be reviewed again. Generally, sunset clauses should range from 1 to 4 years depending on:

- the sensitivity of the issue to the community; and
- the prospect of a change in market conditions (eg rapid growth due to technological change, substantial change in the number of sellers/buyers, etc).



STEP 9 FULFIL REPORTING REQUIREMENTS

Once the recommendations of a review have been determined, the reviewers must fulfil two reporting requirements. They must:

- prepare a local law review summary report;
- prepare material to meet statutory annual reporting obligations.

Step 9.1

Preparation of a local law review summary report

A summary report must be completed for all local law reviews. This report must be forwarded to the Office of Local Government. The Minister for Planning and Local Government is responsible for providing reports to the Premier on progress in implementing the review and reform of local laws which restrict competition. The Premier compiles a report for Victoria, including local government, to meet the legislative review requirements of the Competition Principles Agreement (CPA).

A summary report form is provided in Appendix 1 which can be copied. This section provides explanatory notes to assist reviewers to complete this form. The numbers at left correspond with the headings on the pro forma in Appendix 1.

1. *Council*: State the name of the council undertaking the review.
2. *Name of the local law*: The reviewer should specify the name of the local law that is the subject of a review.
3. *Nature of the local law review*: The reviewer should note whether the local law review concerns a proposed local law or an existing local law. Since it is anticipated that councils will undertake several reviews each year, it also is useful if a reference number is assigned to each review, for example, number 7 of 1998.
4. *Council contact*: A person, usually the officer assisting the review panel, should be designated as the contact person.
5. *Review Panel*: The reviewer should list the name and occupation of each member of the review panel. This list should indicate the role of panel members, for example Chairperson, secretary etc. If any panel member has a direct interest in the outcome of the review this should be declared. If a panel member has technical expertise relevant to the review, this should also be noted. If insufficient space information should be attached to summary report form.
6. *Use of consultants*: If council has let the review, or part of the review, to external consultants, the name and contact details of the consultant should be listed and a brief description provided of services provided by the consultant. If insufficient space information should be attached to summary report form.
7. *Review*: The reviewer should indicate the review model selected and the priority assigned to the review in Step 3 of these guidelines.
8. *Time frame of review*: The reviewer should note the date that the local law review commenced and the date when it was completed.
9. *Level of consultation*: The reviewer should list all individuals, groups and organisations consulted during the review and provide a brief description of key stakeholders' views. The reviewer should also provide a list of all parties lodging formal submissions.
10. *Cost of review*: If possible, the reviewer should provide an estimate of the cost of the local law review. This should include staff costs, consultation costs and consultancy fees.

11. *Activity covered by the local law:* The reviewer should note the activity or activities which the local law covers eg parking, animal behaviour, itinerant traders, trading hours etc.
12. *Objective of the local law:* The reviewer should briefly describe the objective(s) of the local law, having due regard to information contained in Step 1.1 of these guidelines. The reviewer should provide a brief description of how the local law removes or ameliorates one or more of the market failures identified in Step 1.1. The reviewer should also note any consideration given to existing Commonwealth, state or local laws which might potentially duplicate the objective of the local law restriction under review.
13. *Nature of the restriction on competition:* The reviewer should record whether the review panel considers that the local law restricts competition or does not restrict competition. Where the local law is considered to restrict competition, the reviewer should describe how it does this, having due regard to information contained in Step 2 of these guidelines. Reviewers should make special note of any local law which directly mandates a restriction on competition.
14. *Consideration of alternative, less restrictive, means for achieving the objective:* Reviewers should list all alternatives considered and provide a brief comment on the suitability of those alternatives (eg would result in similar/superior/inferior outcome, less costly/more costly to administer etc), having due regard to material presented in Step 4 of these guidelines.
15. *Summary of costs/disadvantages associated with the restriction on competition:* The reviewer should complete the cost summary in the pro forma. The reviewer should consider for each cost:
- the nature of the cost and cost category (eg reduced efficiency – economic cost);
 - how the cost arises;
 - who bears the cost;
 - quantum of cost;
 - information source; and
 - when the cost will be incurred (eg immediately, following repeal of other local laws, etc).
16. *Summary of benefits/advantages associated with the restriction on competition:* The reviewer should complete the benefit summary in the pro forma. The reviewer should consider for each benefit:
- the nature of the benefit and benefit category (eg improve environmental amenity– social benefit);
 - how the benefit arises;
 - who enjoys the benefit;
 - quantum of benefit;
 - information source; and
 - when the benefit will be incurred (eg immediately, following repeal of other local laws, etc).
17. *Weighing up costs and benefits:* Provide details of calculations, assumptions and judgments made to assess costs and benefits. Indicate the type of cost benefit analysis undertaken (ie full formal, partial formal, informal) as described in Step 7 of the guidelines.

18. *Recommendation:* The reviewer should indicate which of the recommendation options identified in Step 8 of these guidelines applies. That is, where it is assessed that a restriction produces negative net benefits to the community, does the review panel recommend that:

- the local law be repealed in whole?
- the local law be repealed in part?
- the local law be repealed subject to intermediate or transitional arrangements?
or
- the local law be repealed but replaced with less restrictive arrangements that achieve the same objective?

19. Where it is assessed that a restriction produces a positive net benefit to the community, does the review panel recommend that:

- the restriction should continue/be introduced unchanged or
- the restriction is justified by the local law but should be amended to reduce costs.

20. *Implementation:* The reviewer should comment on how the recommendation is to be implemented and the time frame for implementation.

Step 9.2:

Annual reporting requirements

Councils also have specific annual reporting obligations. They must include in their annual report:

- a statement of which local laws have been reviewed, the outcome of those reviews and an implementation schedule;
- a timetable for reviewing local laws still to be reviewed;
- a statement that they have complied with NCP principles and objectives in making any new local laws; and/or
- a statement detailing any new local laws that restrict competition.



Council:	
Name of the local law:	
Nature of local law review: <input type="checkbox"/> Proposed Local Law <input type="checkbox"/> Existing Local Law	
Council contact details of responsible officer	
Name:..... Telephone:.....	
Review Panel	Number of panel members:.....
Name(s):.....	
.....	
Qualification(s):.....	
.....	
Expertise:.....	
.....	
.....	
Use of consultants	
Firm:.....	
Contact Name:..... Telephone:.....	
Address:.....	
Brief:.....	
.....	
.....	
.....	
Review Model:	Priority: <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low
Date review commenced: Date review completed:	
Consultation and Submissions (attach list of submitters and summary of submissions)	



Cost of Review:	
External costs (consultants, advertising, panel fees etc)	\$
.....	
.....	
Administrative costs (and other internal costs)	\$
.....	
.....	
Total costs	\$
Activity covered by local law:	
.....	
.....	
Objective(s) of the local law:	
.....	
.....	
.....	
Duplicate legislation identified:	
.....	
Nature of the restriction on competition:	
.....	
.....	
.....	
Consideration of alternative, less restrictive, means for achieving the objective	
Were less restrictive means of achieving the same objective identified?.....	
Describe alternatives that were considered:.....	
.....	
.....	
.....	
.....	
.....	
.....	
.....	



Summary of costs/disadvantages associated with the restriction on competition

Types of costs:

Administrative, enforcement and compliance:.....
.....
.....

Efficiency costs:.....
.....
.....

Social and Environmental costs:.....
.....
.....

Costs borne by consumers:.....
.....
.....

Summary of benefits/advantages associated with the restriction on competition

Types of benefits:

Administrative, enforcement and compliance:.....
.....
.....

Efficiency costs:.....
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Social and Environmental costs:.....
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Costs borne by consumers:.....
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Weighing up of costs and benefits

(Brief description of the manner in which the assessment of costs and benefits has been carried out and the key considerations)

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Conclusion/recommendation

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Sunset clause:..... **Expiry:**.....

Local law to be reviewed before: / / 20.....

List of attachments

Indicate which of the following attachments are completed and attached:

	Completed	Attached
1. Issues Paper	<input type="checkbox"/>	<input type="checkbox"/>
2. Review Panel Assessment Report	<input type="checkbox"/>	<input type="checkbox"/>
3. Council Report and Resolution	<input type="checkbox"/>	<input type="checkbox"/>



SUMMARY OF LEGISLATION

This part of the Guidelines identifies Commonwealth and State legislation which control or regulate various activities which Councils may also seek to regulate through the use of Local Laws.

It is not intended to be an exhaustive list, but rather provides an indication of some of the legislation which may need to be considered in relation to local laws.

Councils should ensure that there is no duplication of control and that any local law is consistent with the relevant State or Commonwealth legislation.

Commonwealth Legislation

Agricultural and Veterinary Chemicals Act 1994

Regulates the use of prescribed chemicals.

Agricultural and Veterinary Chemicals Code Act 1994

Allows for the evaluation, approval and control of the supply of active constituents for proposed or existing agricultural and veterinary chemicals.

Citizenship Act 1948

Regulates the requirements for persons to be citizens of Australia and the holding of citizenship ceremonies.

Delivered Meals Subsidy Act 1970

Provides for Commonwealth assistance towards the delivery of meals to aged and invalid persons by an "eligible organisation" eg. a religious organisation; a local governing body.

Disability Discrimination Act 1992

This Act aims to eliminate discrimination against people with disabilities, as far as possible, in areas such as work; education; the provision of goods and services; existing laws; administration of Commonwealth laws and programs.

Furthermore, it seeks to ensure that people with disabilities have the same rights to equality before the law as other members of the community, and to promote the recognition and acceptance within communities that people with disabilities have the same fundamental rights as the rest of the community.

Endangered Species Protection Act 1992

Promotes the recovery of species and ecological communities that are endangered or vulnerable, as well as endeavouring to prevent any danger to other species. It seeks to do this by promoting public understanding and public involvement in the conservation of species. The Act lists endangered flora and fauna, and provides for the preparation and implementation of recovery plans (which are the responsibility of the Commonwealth) and threat abatement plans.

Hazardous Waste (Regulation of Imports and Exports) Act 1989

Regulates the import and export of hazardous waste to ensure that it is disposed of safely so that people and the environment, both within and outside Australia, are protected from the harmful effects of waste. ss12 and 13 state that in order to import or export hazardous waste, a permit needs to be obtained from the Minister.

Industrial Chemicals (Notification and Assessment) Act 1989

Provides for a national system of notification and assessment of industrial chemicals for the purposes of protecting the Australian people and environment from the potential risks to public health and safety associated with the importation, manufacture or use of chemicals.

Interstate Road Transport Act 1985

Governs registration of motor vehicles and trailers. Section 25 of the Act states that a person shall not carry on long distance interstate road transport unless she or he holds a federal operator's licence or a state operator's licence. There is also provision under s44 for police officers and inspectors to have the power to stop and search motor vehicles if they believe, on reasonable grounds, that the vehicle has been involved in a contravention of the Act or of a federal road safety standard.

National Food Authority Act 1991

Establishes Food Advisory Committee and Food Standards Code.

National Measurement Act 1960

Establishes a national system of units and standards of measurements of physical quantities, and provides for the uniform use of those units throughout Australia

Protection of Moveable Cultural Heritage Act 1986

Seeks to protect Australia's movable cultural heritage (referred to in s7 as objects that are important to Australia for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons). Also supports the protection by foreign countries of their heritage of movable cultural objects. s15 establishes a National Cultural Heritage Committee.

Public Order (Protection of Persons and Property) Act 1971

Regulates the conduct of people taking part in an "assembly" on Commonwealth sites. Under the Act, it is an offence to cause actual bodily harm or damage to property in respect of Commonwealth premises, and the premises and personnel of Diplomatic and Special Missions, Consular Posts and International Organisations.

Telecommunications Act 1997
Telecommunications (Environmental Impact Information) Regulations 1997

Regulations specify the information that must be set out in a statement under subclause 55(4) of Schedule 3 to the Act (which relates to the installation of any part of a telecommunications network proposed before 1 January 1999 and not authorised by Div 3 of Part 1 of the Schd) about the environmental impact of the facility. Statements must include details of any local government requirements that need to be satisfied, in addition to a description of the facility and location; an environmental impact assessment of the facility and the measures being taken to protect the environment.

Trade Practices Act 1974

This Act aims to protect the welfare of Australians by promoting competition and fair trading, and providing for consumer protection. s52 prohibits a corporation, in trade or commerce, from engaging in misleading or deceptive conduct. s53 prohibits false or misleading representation in connection with the supply of goods or services.

Part IV deals with restrictive trade practices, and renders contracts, arrangements or understandings that restrict dealings or affect competition, unenforceable.

VICTORIAN LEGISLATION

Domestic (Feral and Nuisance) Animals Act 1994

s42 of this Act deals with the power of councils to make local laws with respect to the number of dogs and cats that may be kept on premises situated within the municipal district of the council. The local law may prohibit or regulate the keeping of dogs and cats in areas where threatened native fauna are at risk of attack.

Council may also make laws to require dog owners to clean up their animal's faeces in public places.

If the council has made a local law prohibiting the keeping of dogs or cats in a specified area, an officer of the council may destroy any prohibited animal found at large in the area.

Environment Protection Act 1970

This Act deals with water, atmosphere and land pollution.

Part VIII is concerned with the control of noise, s48A referring specifically to unreasonable noise from residential premises. Such noise is an offence under the Act.

Fair Trading Act 1985

Deals with unfair or undesirable trade practices in an effort to protect consumers. Prohibits misleading, deceptive and unconscionable conduct.

Food Act 1984

All food vehicles, not operated by or on behalf of the Crown, must be registered with the council. In order to be registered, the vehicle must first be inspected, and a Food Safety Programme needs to have been devised.

Health Act 1958

The function of every council under this Act is to seek to prevent diseases, prolong life and promote public health through organised programmes. (s29) Every 3 years, a Municipal Public Health Plan must be prepared by the council.

According to the Act, a council must remedy as far as possible all nuisances in its municipal district. For the purposes of the Act nuisance can amount to refuse, noise, and emissions.

There are regulations under the Act for protecting waterways, and councils may be directed by the Chief General Manager to clean up offensive waterways. (s69)

Litter Act 1987

Prohibits and regulates the deposit of litter in the environment of Victoria. s5 of the Act sets out a basic prohibition on littering. Note that the Act does not apply to the deposit of any litter that would constitute an offence under the Environment Protection Act. (s4)

Local Government Act 1989

Part 5 of this Act is concerned with local laws. s111(4) states that: if a planning scheme is in force in the municipal district of a council, the council must not make a local law which duplicates or is inconsistent with the planning scheme.

Road Safety Act 1986

Provides for safe, efficient and equitable road use. Under the Act, a person cannot park a car in a council controlled area contrary to the inscription on any sign associated with the area or part. (s90E)

Summary Offences Act 1966

The main purpose of this Act is to maintain public peace and order. Offences included under the Act are obstruction of footpaths (s5); public drunkenness (ss13-16); wilful destruction and damage of property (s9); lighting of fires in the open air (s11); obscene, threatening, insulting and abusive behaviour in public (s17).

EXTRACTS FROM COMPETITION PRINCIPLES AGREEMENT BETWEEN THE COMMONWEALTH AND THE STATES

Legislation Review

5. (1) The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
- (2) Subject to subclause (3), each Party is free to determine its own agenda for the reform of legislation that restricts competition.
- (3) Subject to subclause (4) each Party will develop a timetable by June 1996 for the review, and where appropriate, reform of all existing legislation that restricts competition by the year 2000.
- (4) Where a State or Territory becomes a Party at a date later than December 1995, that Party will develop its timetable within six months of becoming a Party.
- (5) Each Party will require proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the principle set out in subclause (1)
- (6) Once a Party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the Party will systematically review the legislation at least once every ten years.
- (7) Where a review issue has a national dimension or effect on competition (or both), the Party responsible for the review will consider whether the review should be a national review. If the Party determines a national review is appropriate, before determining the terms of reference for, and the appropriate body to conduct the national review, it will consult Parties that may have an interest in those matters.
- (8) Where a Party determines a review should be a national review, the Party may request the Council to undertake the review. The Council may undertake the review in accordance with the Council's work program.
- (9) Without limiting the terms of reference of a review, a review should:
 - (a) clarify the objectives of the legislation;
 - (b) identify the nature of the restriction on competition;
 - (c) analyse the likely effect of the restriction on competition and on the economy generally;
 - (d) assess and balance the costs and benefits of the restriction; and
 - (e) consider alternative means for achieving the same result including non-legislative approaches.
- (10) Each Party will public an annual report on its progress towards achieving the objective set out in subclause (3). The Council will publish an annual report consolidating the reports of each Party.

Application of the Principles to Local Government

7. (1) The principles set out in this Agreement will apply to local government, even though local governments are not Parties to this Agreement. Each State and Territory Party is responsible for applying those principles to local government.
- (2) Subject to subclause (3), where clauses 3, 4 and 5 permit each Party to determine its own agenda for the implementation of the principles set out in those clauses, each State and Territory Party will publish a statement by June 1996:
 - (a) which is prepared in consultation with local government; and
 - (b) which specifies the application of the principles to particular local government activities and functions.
- (3) Where a State or Territory becomes a Party at a date later than December 1995, that Party will publish its statement within six months of becoming a Party.