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**Local Law No. 3  
(Administration) 2008**

Consolidated version

Reprint No. **24**

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Dale Dickson  
Chief Executive Officer

**Council of the City of Gold Coast  
Local Law No. 3  
(Administration) 2008**

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# Council of the City of Gold Coast

## Local Law No. 3 (Administration) 2008

### Part 1 Preliminary

#### 1 Short title

This local law may be cited as *Local Law No. 3 (Administration) 2008*.

#### 2 Object

The object of this local law is to provide a framework for the administration, implementation and enforcement of the local government's local laws and subordinate local laws.

#### 3 Definitions—the dictionary

The dictionary in the Schedule (Dictionary) of this local law defines particular words used in this local law.

#### 4 Application of local law

This local law does not apply to a State-controlled road unless the written agreement of the chief executive of the Department which administers the Transport Operations (Road Use Management) Act 1995 has been obtained for~~the chief executive of the department which administers Chapter 6 of the Transport Infrastructure Act 1994 has given written approval to~~ the local government to exercise all or any of the powers under this local law in respect of the State-controlled road.

### Part 2 Applications and approvals

#### 5 Requirements of an application

- (1) An application for approval of a proposal must be made in the prescribed form.
- (2) The application must be accompanied by—
  - (a) the prescribed fee; and
  - (b) information, documents and materials required under the relevant local law; and
  - (c) such further information, documents or materials required by the local government or specified in a subordinate local law.
- (3) The local government may waive the requirements of this section—
  - (a) in an emergency; or

- (b) if there are special reasons for dispensing with the requirement; or
- (c) in the circumstances specified in a subordinate local law.

## **6 Determination of an approval**

- (1) If a local government has power under a local law to approve an application, the local government may—
  - (a) approve the application unconditionally; or
  - (b) approve the application subject to conditions; or
  - (c) refuse to approve the application.

*Example of subsection (1)—*

If a proposal for which the local government's approval is required may result in damage to property, the local government may, as a condition of giving its approval, require the applicant to give reasonable security (which may include a deposit of money, a guarantee or an insurance bond) to ensure that the damage is made good.

- (2) However, the local government's powers are subject to the provisions of the local law and any relevant subordinate local law, and the local government must, in deciding how to exercise its power, have regard to the criteria stated in the relevant local law or subordinate local law.

## **7 Proposals requiring multiple approvals**

- (1) If a proposal involves multiple approvals the local government must, if practicable, deal with the subjects on which its approval is required together.
- (2) If the local government decides that an application should be refused on a particular aspect of a proposal for which multiple approvals are required, it may refuse other applications required for the proposal even though other aspects of the proposal for which approval is required may be acceptable to the local government.

## **8 Certification of specified matters**

- (1) A local law may provide that a specified matter is subject to certification by a person specified by the local government.
- (2) If a local law provides that a matter is subject to certification by a person specified by the local government, the local government may accept the certificate from a person with recognised qualifications in the relevant field as evidence that—
  - (a) a proposal complies with the requirements of the local law; or
  - (b) a proposal for which approval has been given by the local law has been carried out in accordance with the requirements of the local law.

*Example of subsection (2)—*

A local law might provide that a permit to carry out roadside dining may be required to comply with specified technical requirements with respect to lighting and heating. In this case, the local government would, if compliance were made subject to certification by a person specified by the local government, be entitled to accept the certificate from a person with recognised electrician qualifications as evidence that the roadside dining complies with the specified requirements.

## **9 Power to change the conditions of an approval**

- (1) The local government may change a condition on which its approval has been given under a local law if the amendment is necessary to<sup>1</sup>—
  - (a) prevent harm to human health or safety or personal injury; or
  - (b) prevent property damage or a loss of amenity; or
  - (c) prevent environmental harm or environmental nuisance; or
  - (d) prevent a nuisance; or
  - (e) ensure that the proposal complies with the Local Government Acts and local laws that regulate the proposal.
- (2) This section does not limit the power a local government may have apart from this section to change a condition of an approval.

## **10 Cancellation or suspension of approvals**

- (1) A local government may cancel or suspend an approval—
  - (a) in the circumstances specified in section 9(1) of this local law; or
  - (b) for contravention of a condition of the approval.
- (2) A power given under a local law to cancel an approval includes a power to suspend the approval for a period determined by the local government.

## **11 Register of Approvals**

**The local government must prepare and keep records of all approvals given under a local law.**

## **12 Fraud and unlawful possession of an approval**

- (1) A person must not—
  - (a) in any application, notice or other document made or given to the local government or to an authorised person make a statement that to the person's knowledge is false; or

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<sup>1</sup> A change to the conditions of an approval includes a change by omission, exception, substitution or addition (see section 36 (Meaning of commonly used words and expressions) of the *Acts Interpretation Act 1954*).

- (b) by a false statement or representation obtain or attempt to obtain an approval; or
- (c) furnish any information that to the person's knowledge is false or misleading with respect to particulars required to be furnished in connection with an application for an approval; or
- (d) forge, within the meaning of the *Criminal Code*, an approval.

Maximum penalty for subsection (1)—165 penalty units.

- (2) A person must not have in the person's possession without reasonable cause for so doing—
  - (a) any article resembling an approval and calculated to deceive; or
  - (b) any document that was formerly an approval but that is void, cancelled, surrendered or expired.

Maximum penalty for subsection (2)—165 penalty units.

- (3) A person must not—
  - (a) use an approval unless it is an approval duly issued to the person; or
  - (b) lend an approval duly issued to the person to another person for use by that other person; or
  - (c) permit or suffer to be used by another person an approval duly issued to that person.

Maximum penalty for subsection (3)—165 penalty units.

- (4) Unless authorised by this local law, a person must not make or cause, permit or allow to be made—
  - (a) any endorsement, other than the person's signature on an approval, or
  - (b) any addition or alteration to an approval; or
  - (c) any erasure from an approval.

Maximum penalty for subsection (4)—165 penalty units.

- (5) An approval in respect to which any act or attempted act referred to in this section has been done is to be null and void.

## **Part 3                    Legal proceedings**

### **Division 1                Evidentiary aids**

#### **13            Evidentiary provisions**

- (1)        The appointment of an authorised person or the authority of an authorised person to do an act under a local law must be presumed unless a party, by reasonable notice to the local government, requires proof of these matters.
- (2)        A signature purporting to be the signature of the chief executive officer or an authorised person is evidence of the signature it purports to be.
- (3)        A certificate purporting to be signed by the chief executive officer stating that a stated person is or was an authorised person at a time, or during a stated period, is evidence of the matter stated in the certificate.
- (4)        A certificate purporting to be signed by the mayor, chief executive officer or an employee of the local government authorised by the mayor or chief executive officer stating any of the following matters is evidence of the matter—
  - (a)        a stated document is an appointment or a copy of an appointment; and
  - (b)        a stated document is a copy of a notice, direction, decision, order, approval or other instrument issued or given under a local law; and
  - (c)        on a stated day or during a stated period, a stated person was or was not the holder of an approval or other instrument issued or given under a local law; and
  - (d)        an approval or other instrument—
    - (i)        was or was not issued or given for a stated term; or
    - (ii)        was or was not in force on a stated day or during a stated period; or
    - (iii)        was or was not subject to a stated condition; and
  - (e)        on a stated day, an approval was suspended for a stated period or cancelled; and
  - (f)        on a stated day, the conditions of an approval were changed; and
  - (g)        on a stated day, a stated person was given a stated notice, direction or order under a local law; and
  - (h)        a stated document is a copy of a part of a register kept under a local law; and

- (i) a stated amount is payable under a local law by a stated person and has not been paid; and
  - (j) that a stated method of storage, preservation, handling or transportation of a sample taken under a local law has not materially affected the attributes of the sample; and
  - (k) another matter specified in a subordinate local law.
- (5) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.
- (6) A certificate purporting to be signed by an analyst stating any of the following matters is evidence of the matter—
  - (a) the analyst received from a stated person the sample mentioned in the certificate; and
  - (b) the analyst analysed the sample on a stated day and at a stated place; and
  - (c) the results of the analysis and the interpretation of the analysis results.
- (7) Any instrument, equipment or installation that is used by an authorised person or an analyst is taken to be accurate and precise in the absence of evidence to the contrary.
- (8) In a proceeding in which the local government applies to recover the costs and expenses incurred by it, a certificate by the chief executive officer stating that stated costs and expenses were incurred and the way and purpose for which they were incurred is evidence of the matters stated.
- (9) In a proceeding for an offence against a local law, proof of any exemption from any provision of a local law rests upon the person who seeks to rely on the exemption.
- (10) In a proceeding for an offence against a local law, if the age of any person is material, the court may decide upon its own view and judgment, whether any person charged or present before it has or has not attained any prescribed age, but nothing herein is to be construed to prevent the age of that person being proven.
- (11) In any proceedings for an offence involving a contravention of a local law, an averment in a complaint that—
  - (a) a named location is a public place; or
  - (b) a public place is within the territorial unit of the local government; or
  - (c) in the case of an offence under section 49(2) of this local law—
    - (i) a person is an executive officer of the corporation; and

(ii) the corporation has been convicted of an offence;

will be evidence of the fact stated.

#### **14 Responsibility for acts or omissions of representatives**

- (1) If in a proceeding for an offence against a local law it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (2) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority, is taken in a proceeding for an offence against a local law to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

#### **15 Joint and several liability**

- (1) If a local law imposes a liability on an owner of property, or a person engaged in a particular activity, and 2 or more persons are the owners of the relevant property, or are jointly engaged in the relevant activity, the liability is joint and several.
- (2) This section applies both to criminal and civil liability.

### **Division 2 Defences**

#### **16 Defence**

It is a defence to any breach or non-compliance of any provision contained in a local law if a person has a lawful excuse or defence.

*Example—*

It is a defence to any breach or non-compliance of any provision contained in a local law if a person was not criminally responsible in accordance with Chapter 5 (Criminal Responsibility) of the *Criminal Code*.

#### **17 General defence of owners**

If a local law makes the owner of property guilty of an offence if a particular act or omission happens with respect to the property it is a defence for the owner of the property to prove that—

- (a) the act or omission happened without the owner's knowledge or consent; and
- (b) the owner could not, by reasonable diligence, have prevented the act or omission.

## **Division 3            Rewards**

### **18        Rewards**

- (1) By resolution, the local government may, by public notice, offer a reward for information leading to the conviction of a person for—
  - (a) an offence involving damage to, or theft of, property of the local government or under the local government's control; or
  - (b) an offence against a local law.
- (2) The amount of the reward, and the conditions on which it is payable, must be decided by the local government.

## **Division 4            Costs**

### **19        Recovery of costs of investigation**

- (1) The court may order a person to pay to the local government the reasonable costs and expenses incurred by the local government in conducting an investigation of an offence under a local law, if—
  - (a) the person is convicted of an offence against a local law; and
  - (b) the court convicting the person finds the local government has reasonably incurred costs and expenses in taking a sample or conducting an inspection, test, measurement or analysis during the investigation of the offence; and
  - (c) the local government applies for an order against the person for the payment of the costs and expenses; and
  - (d) the court is satisfied it would be just to make the order in the circumstances of the particular case.
- (2) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

## **Division 5            Service of legal instruments**

### **20        Service of legal instruments**

- (1) The local government may give or serve a legal instrument to or upon—
  - (a) a person by—
    - (i) delivering the legal instrument to the person; or



- (ii) leaving the legal instrument at the person's address for service; or
  - (iii) forwarding the legal instrument by post in a prepaid letter addressed to the person; or
  - (iv) forwarding the legal instrument by post in a registered letter addressed to such person at the person's address for service; or
  - (v) delivering a copy of the legal instrument to some person who is in control of the property; or
  - (vi) fixing a copy of the legal instrument on some conspicuous part of the property if there is no person in control of the property to whom the legal instrument can be given or served; or
- (b) a person in that person's capacity as the owner or occupier of premises by—
- (i) delivering the legal instrument to the person; or
  - (ii) delivering a copy of the legal instrument to some person at the premises; or
  - (iii) fixing a copy of the legal instrument on some conspicuous part of the premises if there is no person on the premises to whom the legal instrument can be given or served; or
- (2) If the local government has given or served a legal instrument to or on a person pursuant to subsection (1), it is sufficient proof that the legal instrument has been given or served to or upon the person, for an officer of the local government to—
- (a) in the case of a legal instrument given or served to or upon a person pursuant to subsection (1)(a)(iii)—
    - (i) produce a copy of the legal instrument; and
    - (ii) give oral testimony that the legal instrument was properly stamped and addressed and put into the post; and
  - (b) in the case of a legal instrument given or served to or upon a person pursuant to subsection (1)(a)(iv)—
    - (i) produce a receipt purporting to be the registered receipt of the registered letter; and
    - (ii) give oral testimony as to the contents of the registered letter; and
  - (c) in all other cases—
    - (i) produce a copy of the legal instrument; and

- (ii) give oral testimony as to the manner in which the legal instrument was given or served to or upon the person.
- (3) A legal instrument is taken to have been properly given or served to or upon the owner or occupier of property if—
  - (a) the legal instrument is required to be given or served to or upon the owner or occupier of the property; and
  - (b) the name of the owner or occupier of the property is not known; and
  - (c) the legal instrument is addressed to the owner or occupier of the property by the description of the “owner” or “occupier” of the property in question (naming them) and without further name or description; and
  - (d) the legal instrument is given or served to or upon the person in accordance with subsection (1).
- (4) A legal instrument forwarded by post in a prepaid letter is taken to have been given or served to or upon the person at the last moment of the day of which the same ought to be delivered at its destination in the ordinary course of the post.

## **Part 4 Powers of council officers**

### **Division 1 Appointment of council officers under local law**

#### **21 Appointment**

- (1) The local government may appoint a person to a position provided for under a local law if that person possesses appropriate expertise or qualifications in respect of the powers to be exercised by a person in that position.
- (2) An appointment made by the local government may be general or subject to limitations stated in the appointment.

*Example of subsection (2)—*

A person may be authorised to exercise the powers of an authorised person under a particular local law but only in relation to a particular public place.

- (3) A person appointed by the local government to a position provided for under a local law is authorised by the local government to exercise the powers attaching to that position under the local law unless otherwise stated in the appointment.

#### **22 Identity cards**

- (1) The local government must issue an identity card to each person appointed to a position provided for under a local law.

- (2) A person must return any identity card and instrument of appointment to the local government as soon as practicable within 21 days after the termination of their appointment, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—40 penalty units.

### **23 Production of identity cards**

- (1) A person exercising a power under a local law must produce for inspection their identity card at the first reasonable opportunity.
- (2) The production of an identity card is evidence of the appointment of that person.

## **Division 2 Assessment of applications**

### **24 Assessment of applications**

**Before the local government decides an application, an authorised person may—**

- (a) inspect any premises, vehicle, equipment, animal, plant or thing to be involved in the proposal; and
- (b) measure, weigh, sample, test, photograph, videotape or otherwise examine anything that may be inspected.

## **Division 3 Investigation and enforcement**

### **25 False, misleading or incomplete documents**

- (1) A person must not give to the local government or a council officer a document containing information that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty for subsection (1)—50 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
- (a) informs the local government or a council officer of the extent to which the document is false, misleading or incomplete; and
- (b) gives the correct information to the local government or a council officer if the person has, or can reasonably obtain, the correct information.
- (3) A complaint against a person for an offence against subsection (1) is sufficient if it states that the document was false, misleading or incomplete to the person's knowledge.

### **26 False, misleading or incomplete information**

- (1) A person must not—

- (a) state anything to a local government or a council officer that the person knows is false, misleading or incomplete in a material particular; or
- (b) omit from a statement made to a local government or a council officer anything without which the statement is, to the person's knowledge, false, misleading or incomplete in a material particular.

Maximum penalty for subsection (1)—50 penalty units.

- (2) A complaint against a person for an offence against subsection (1) is sufficient if it states that the statement made was false, misleading or incomplete to the person's knowledge.

## **27 Production of documents**

A person who is required under a local law to produce a document must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

## **28 Production of approval**

- (1) A council officer may ask a person apparently acting under an approval to produce the approval immediately for inspection.
- (2) The person must produce the approval, unless the person has a reasonable excuse for not producing it.

Maximum penalty for subsection (2)—50 penalty units.

## **29 Analysis of samples**

- (1) The local government may have a sample taken by a council officer under a local law analysed.
- (2) A person must not, with intent to adversely affect the analysis of a thing—
  - (a) tamper with the thing before a council officer takes a sample of the thing for analysis; or
  - (b) tamper with a sample of a thing after it is taken by a council officer for analysis.

Maximum penalty for subsection (2)—50 penalty units.

- (3) If a particular method of analysis has been specified under a local law, the local government must follow the method.
- (4) The local government must obtain from the analyst a certificate or report stating the results of the analysis and the interpretation of the analysis results.

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## Division 4      General powers of direction

### 30      Direction to leave a public place

(1)      If an authorised person believes on reasonable grounds a person on a public place is contravening or has just contravened a provision of a local law, the authorised person may direct the person to—

(a)      leave the public place (other than a road)—

(i)      within a stated reasonable time; or

(ii)     immediately if the authorised person believes on reasonable grounds the contravention is serious; and

(b)      not re-enter the public place (other than a road) for a stated reasonable period of ~~not more than 3 calendar days.~~ —

(i)      if the authorised person believes on reasonable grounds that the contravention is serious and —

(A)     it relates to actual or threatened violence to a person at the public place — up to 20 calendar days; or

(B)     it involves damage to property at the public place — up to 20 calendar days; or

(ii)     otherwise — up to 3 calendar days.

~~(2) —~~

~~(3) — The person must comply with a direction given to the person under subsection (1), unless the person has a reasonable excuse for not complying with it.~~

~~Maximum penalty for subsection (2) — 50 penalty units.~~

~~(4) — An approval held by a person who is directed to leave the public place under subsection (1) is cancelled by force of subsection (2) when the person is required to leave the public place.~~

~~(5) — A person given a direction under subsection (1) must not re-enter the public place within the period stated in the direction unless the person has a reasonable excuse for the re-entry.~~

(2)      ~~Maximum penalty for subsection (4) — 20 penalty units.~~ A person who is given a direction to leave a public place (other than a road) under subsection (1)(a) must comply with the direction unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (2)—50 penalty units.

- (3) A person given a direction under subsection (1)(b) must not re-enter the public place within the period stated in the direction unless the person has a reasonable excuse for the re-entry.

Maximum penalty for subsection (3)—50 penalty units.

- (4) An approval held by a person who is directed to leave a public place (other than a road) under subsection (1) is cancelled by force of subsection (2) when the person is required to leave the public place.
- (5) If a direction under subsection (1) is given to a child, the authorised person must, as soon as reasonably practicable, notify a parent or adult guardian of the child unless a parent or adult guardian cannot be found after reasonable inquiry.

### **30A Exclusion notice**

- (1) The local government may give a written notice (a *proposed exclusion notice*) proposing to exclude a person from a public place (other than a road) for —
- (a) if the person is an adult — up to 12 months; or
  - (b) if the person is a child — up to 3 months<sup>2</sup>.
- (2) A proposed exclusion notice may only be given to a person under this section if—
- (a) the person has been given a direction under section 30(1)(a) to leave a public place —
    - (i) 3 or more times in the preceding 6 months; or
    - (ii) 5 or more times in the preceding 12 months; or
    - (iii) for conduct relating to actual or threatened violence to a person at a public place; or
    - (iv) for conduct that involved damage to property at a public place;  
and
  - (b) an exclusion notice under subsection (6) has not previously been given to the person for the same period in relation to the conduct and public place that formed the basis of a direction referred to in subsection (2)(a); and
  - (c) the proposed exclusion notice is likely to be a reasonable means of preventing the person from engaging in further conduct in a public place that could form the basis for an authorised person to give another

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<sup>2</sup> The Youth Justice Act 1992—

- (a) provides comprehensively for the laws concerning children who commit, or who are alleged to have committed, offences; and
- (b) ensures that courts that deal with children who have committed offences deal with them according to the youth justice principles established under the Act, for example, by providing that a child who admits committing an offence to a police officer may participate in a youth justice conference process.

direction under section 30(1)(a).

- (3) A proposed exclusion notice may propose to exclude a person from—
- (a) if the person is a child — 1 public place identified in the proposed exclusion notice; or
  - (b) if the person is an adult — 1 or more public places, each of which is identified in the proposed exclusion notice, or a particular type of public place.

Example for subsection (3) —

A proposed exclusion notice may propose to exclude a child from a specified library under the control of the local government or an adult from all libraries under the control of the local government within the local government area.

- (4) A proposed exclusion notice must state—
- (a) the identity of the person to be excluded; and
  - (b) a description of the public place or places or part of a public place or places from which the person is to be excluded; and
  - (c) the grounds for the proposed exclusion; and
  - (d) the period of the proposed exclusion; and
  - (e) that the person proposed to be excluded may make written representations to the local government about the proposed exclusion; and
  - (f) the time, at least 10 business days after the notice is given to the person proposed to be excluded, within which the person may make written representations to the local government about the proposed exclusion.
- (5) The local government must decide whether to give an exclusion notice to a person within 20 business days after the last day the person may make a written representation about a proposed exclusion under a proposed exclusion notice.
- (6) The local government may give a notice (an **exclusion notice**) to a person about the exclusion of the person from 1 or more public places described in the notice if—
- (a) a proposed exclusion notice has been given to the person; and
  - (b) the local government has decided that it is reasonable to give the person an exclusion notice after considering the criteria specified in subsection (7); and
  - (c) the local government is satisfied that giving an exclusion notice to the person is a reasonable means of preventing the person from engaging in further conduct in a public place described in the proposed exclusion notice that could form the basis for an authorised person to give another direction under section 30(1)(a).
- (7) In deciding whether it is reasonable to give an exclusion notice to a person under subsection (6), the local government must consider—
- (a) the likely impact (excluding a financial impact) on —

- (i) the person; and
    - (ii) any other person affected by the conduct that formed the basis for an authorised person to give the person a direction under section 30(1)(a); and
  - (b) public safety and order; and
  - (c) the nature and gravity of the conduct that resulted in an authorised person giving the person a direction under section 30(1)(a) including each of the following—
    - (i) whether the conduct of the person relates to actual or threatened harm to human health or safety or personal injury of other persons using the public place; and
    - (ii) whether the conduct of the person relates to actual or threatened damage to property in or on the public place; and
    - (iii) whether the conduct of the person is conduct which interferes or is likely to interfere with the ordinary and reasonable use and enjoyment of the public place by any other person; and
  - (d) any written representations made by the person —
    - (i) in response to a proposed exclusion notice given to the person ; and
    - (ii) within the time prescribed under subsection (4)(f).
- (8) After deciding whether to give an exclusion notice to a person under subsection (6), the local government must give to the person—
  - (a) if the local government is satisfied the proposed exclusion or an exclusion for a lesser period than the period stated in the proposed exclusion notice is reasonable — an exclusion notice; or
  - (b) if the local government is satisfied that the proposed exclusion is not reasonable — a written notice stating that it has decided not to proceed with the proposed exclusion.
- (9) An exclusion notice must state—
  - (a) the name of the person to whom the notice applies; and
  - (b) the grounds on which the notice has been given; and
  - (c) a description of the public place or places, or part of a public place or places, that the person must not enter; and
  - (d) when the notice takes effect; and
  - (e) the period during which the person must not enter a public place described in the notice; and
  - (f) the conditions, if any, imposed under subsection (10); and
  - (g) that it is an offence to enter a public place described in the notice in contravention of the notice; and
  - (h) the rights of review of the person to whom the notice is given.



- (10) An exclusion notice may allow the person to whom the notice applies to enter a public place, or part of a public place, described in the notice, for a specified purpose during the period of the exclusion if—
- (a) the local government considers there is a good reason why the person should be allowed to enter the place; and
  - (b) the local government considers that it is appropriate in all the circumstances.
- (11) An exclusion notice takes effect from the later of—
- (a) the date the notice is given to the person to whom the notice applies; and
  - (b) if the notice states a later date —the later date.
- (12) A person must not enter a public place in contravention of an exclusion notice unless the person has a reasonable excuse.
- Maximum penalty for subsection (12)—50 penalty units.
- (13) An approval held by a person who is given an exclusion notice under this section is cancelled by force of subsection (12) when the person is given the notice.
- (14) If a proposed exclusion notice or an exclusion notice is given to a child, the local government must, as soon as reasonably practicable, give a copy of the notice to a parent or adult guardian of the child unless a parent or adult guardian cannot be found after reasonable inquiry.

### **30B Variation or revocation of an exclusion notice**

- (1) A person to whom an exclusion notice applies may make application to the local government to vary or revoke the notice.
- (2) The local government may vary or revoke an exclusion notice if—
- (a) the person to whom the notice applies makes an application under subsection (1); and
  - (b) new facts or circumstances have arisen since the notice was given that make it appropriate for the notice to be varied or revoked; and
  - (c) a requirement of the notice is no longer a reasonable means of preventing the person to whom the notice applies from engaging in conduct in a public place described in the notice that could form the basis for an authorised person to give a direction under section 30(1)(a).
- (3) In determining whether to vary or revoke an exclusion notice under subsection (2), the local government must consider the matters set out in section 30A(7).
- (4) After deciding whether to vary or revoke an exclusion notice under subsection (2), the local government must give the person who applied under subsection (1)—
- (a) if the local government is satisfied it is appropriate to vary the notice — a varied exclusion notice which complies with section 30A(9); or
  - (b) if the local government is satisfied that an exclusion is not reasonable — a written notice stating that the notice has been revoked; or

(c) if the local government decides not to vary or revoke the notice —a written notice stating the decision.

(5) A varied exclusion notice given under subsection (4)(a) is an exclusion notice for all purposes.

### 31 Directions generally

- (1) An authorised person may direct a person committing a breach of a local law to—
  - (a) cease any conduct or activity which constitutes a breach of the local law; and
  - (b) take such action determined by an authorised person to ensure that the person does not commit a breach of this local law.
- (2) A person must comply with a direction of an authorised person made pursuant to this local law.

Maximum penalty for subsection (2)—50 penalty units.

## Division 5 Power to require name and address

### 32 Power to require name and address

- (1) An authorised person may require a person (the *other person*) to state the other person's name and address if the authorised person finds the other person—
  - (a) contravening a provision of a local law; or
  - (b) in circumstances that lead, or has information that leads, the authorised person to suspect on reasonable grounds the other person has just contravened a provision of a local law.
- (2) When making the requirement, the authorised person must warn the other person it is an offence to fail to state the other person's name and address, unless the other person has a reasonable excuse.
- (3) The authorised person may require the other person to give evidence of the correctness of the other person's name or address if the authorised person suspects, on reasonable grounds, that the name or address given is false.
- (4) The other person must comply with the authorised person's requirement under subsection (1) or (3), unless the other person has a reasonable excuse.  
Maximum penalty for subsection (4)—35 penalty units.
- (5) The other person does not commit an offence against subsection (4)—
  - (a) if the authorised person required the other person to state the other person's name and address on suspicion of the other person having contravened a provision of a local law; and

- (b) if it is not proved that the other person contravened a provision of a local law.

## **Division 6            Protection of council officers**

### **33            Protection from liability**

- (1) A council officer does not incur civil liability for an act or omission done honestly and without negligence during the course of employment as a council officer under a local law.
- (2) A liability that would, apart from this section, attach to a council officer attaches instead to the local government.

### **34            Deception of a council officer**

A person must not intentionally mislead or deceive a council officer in the exercise of their authority under a Local Government Act.

Maximum penalty—50 penalty units.

### **35            Use of offensive language or behaviour**

A person must not in relation to a council officer acting in the exercise of their authority under a Local Government Act—

- (a) use language that is insulting or offensive; or
- (b) behave in an insulting or offensive manner.

Maximum penalty—50 penalty units.

### **36            Impersonation of a council officer**

A person must not pretend to be a council officer.

Maximum penalty—50 penalty units.

## **Part 5                Miscellaneous**

### **37            Charges**

- (1) If a local law provides for the payment of a charge, and does not itself fix the amount of the charge, the charge may be fixed by resolution of the local government.
- (2) A resolution fixing a charge may provide for the reimbursement of the charge in appropriate circumstances.

*Example of subsection (2)—*

Suppose that a person pays a licence fee appropriate to a licence of 1 year's duration but, because

of unforeseen circumstances, surrenders the licence within 3 months after it is granted. A resolution might provide that, in such a case, the former licensee is to receive a partial reimbursement of the licence fee.

- (3) Unless specific provision to the contrary is made in a local law or resolution fixing a charge, the local government may, in an appropriate case, waive or partially remit a charge.

### 38 Unclaimed goods

- (1) The local government may seize, confiscate, remove, impound and dispose of goods under this section if the goods ~~that~~ are left on a public place, irrespective of whether the owner of the goods intended to relinquish ownership of the goods.
- (2) The local government may dispose of the goods—
- (a) as the local government sees fit, including by private sale, destruction, restoring or giving away if—
- (i) the goods are perishable; or
- (ii) the goods have no commercial value; or
- (iii) the value of the goods is so slight that it would not cover the cost of sale; or
- (iv) the goods cannot be sold at a public auction pursuant to subsection (2)(b); or
- (b) by public auction after a period of 1 month in the case of goods not specified in subsection (2)(a).
- (3) If goods are to be sold at public auction, the local government must give public notice of the public auction at least 14 calendar days before the date of the proposed public auction.
- (4) If a motor vehicle is to be sold, whether by public auction or otherwise, the sale of the motor vehicle must be in accordance with the Motor Dealers and Chattel Auctioneers Act 2014 ~~Property Agents and Motor Dealers Act 2000~~.
- (5) A person to whom goods other than a motor vehicle are sold, whether by public auction or otherwise, gains clear title to the goods freed and discharged from the interests of others.
- (6) The local government must apply the proceeds of sale, by public auction or otherwise, in the following manner—
- (a) first, towards the costs of the storage and sale of the goods; and
- (b) second, into a fund established for the purpose.

- (7) If, within 1 calendar year after the date of the sale, the former owner of the goods claims the proceeds of the sale of the goods, the net proceeds of the sale must be paid to the former owner but if no valid claim is made to the proceeds within that period, the local government may pay the proceeds of the sale into its general fund.
- ~~(8)~~ This section does not apply to the disposal of goods to the extent that there is an inconsistent provision in legislation, including a provision in a local law, dealing specifically with the disposal of goods of a particular class or type.
- ~~(9)~~ For the avoidance of doubt, if a vehicle is abandoned, left or found on a road in the circumstances mentioned in the *Transport Operations (Road Use Management) Act 1995*, section 100(12) —
- ~~(a)~~ this section does not apply to the removal or disposal of the vehicle; and
- ~~(a)(b)~~ *Transport Operations (Road Use Management) Act 1995*, section 100(3) to (11), applies to the removal and disposal of the vehicle.

### 39 Confiscated goods

- (1) If the local government or an authorised person exercises a power under a local law to ~~remove, confiscate~~seize, confiscate, remove or impound goods—
- (a) the property in the goods vests in the local government; and
- (b) the local government may dispose of the goods under this section.
- (2) The local government may dispose of the goods—
- (a) as the local government sees fit, including by private sale, destruction, rehousing or giving away, if—
- (i) the goods are perishable; or
- (ii) the goods have no commercial value; or
- (iii) the value of the goods is so slight that it would not cover the cost of sale; or
- (iv) the goods cannot be sold at a public auction pursuant to subsection (2)(b); or
- (v) the keeping of the goods is or is likely to cause a nuisance or a hazard; or
- (vi) the goods are of a type specified in a subordinate local law; or
- (b) by public auction after a period of 1 ~~calendar~~ month in the case of goods not specified in subsection (2)(a).

- (3) If goods are to be sold at public auction, the local government must give public notice of the public auction at least 14 calendar days before the date of the proposed public auction.
- (4) If goods are sold by private sale or at public auction, the proceeds of the sale must be applied in the order specified in section 38A of the *Local Government Act 2009*.
- (5) If a motor vehicle is to be sold, whether by public auction or otherwise, the sale of the motor vehicle must be in accordance with the *Motor Dealers and Chattel Auctioneers Act 2014*~~*Property Agents and Motor Dealers Act 2000*~~.
- (6) A person to whom goods other than a motor vehicle are sold, whether by public auction or otherwise, gains a clear title to the goods freed and discharged from the interests of others.
- (7) For the avoidance of doubt, if a vehicle is abandoned, left or found on a road in the circumstances mentioned in the *Transport Operations (Road Use Management) Act 1995*, section 100(12) —
  - (a) this section does not apply to the removal or disposal of the vehicle; and
  - ~~(a)~~(b) *Transport Operations (Road Use Management) Act 1995*, section 100(3) to (11), applies to the removal and disposal of the vehicle.

#### 40 Interpretation of terms

- (1) If a term used in a local law including this local law is not defined in the local law, the term is to, unless the context otherwise indicates or requires, have the meaning given to it by—
  - (a) a subordinate local law made pursuant to the local law or this local law; or
  - (b) this local law if a term is not defined in a subordinate local law; or
  - (c) the *Local Government Act 2009* if the term is not defined in a subordinate local law or this local law; or
  - (d) the Macquarie Dictionary if the term is not defined in a subordinate local law, this local law or the *Local Government Act 2009*.
- (2) If a term used in a subordinate local law is not defined in the subordinate local law, the term is to unless the context otherwise indicates or requires have the meaning given to it by—
  - (a) the local law pursuant to which the subordinate local law is made; or
  - (b) this local law if a term is not defined in the local law pursuant to which the subordinate local law is made; or

- (c) the *Local Government Act 2009* if the term is not defined in the local law pursuant to which the subordinate local law is made or this local law; or
- (d) the Macquarie Dictionary if the term is not defined in the local law pursuant to which the subordinate local law is made, this local law or the *Local Government Act 2009*.

## **Part 6                      Review**

### **41            Review of a decision made under a local law**

- (1) This part applies to a decision of the local government or an authorised person made under a local law.
- (2) The local government must carry out a review of a decision in accordance with the process for resolving administrative action complaints established by the local government in accordance with the provisions of Part 4, Chapter 9 of the *Local Government Regulation 2012*.
- (3) If a person applies for a review of a decision of the local government or an authorised person made under a local law, the review of the decision does not stay the decision that is the subject of the application.
- (4) However, the applicant for the review may, immediately after making the application, apply to the Magistrate's Court for a stay of the decision.
- (5) The Court may stay the decision to secure the effectiveness of the review.
- (6) A stay may be granted on conditions the Court considers appropriate.

## **Part 7                      Enforcement**

### **42            Compliance notice**

- (1) The local government may give a compliance notice to—
  - (a) a person who contravenes a local law; or
  - (b) any person involved in the contravention of a local law pursuant to section 48 (Liability of third parties) of this local law; or
  - (c) the owner or occupier, or both, of the premises on which the regulated activity is operated.
- (2) A compliance notice may require the person to whom it is given to—
  - (a) stop the contravention, if the contravention is of a continuing or recurrent nature; or
  - (b) perform work or otherwise take specified action to remedy the contravention (including the making of an application for a permit or approval under a relevant law) for or within a time specified in the

compliance notice, whether or not the contravention is of a continuing or recurrent nature; or

- (c) perform work or otherwise take specified action for or within a time specified in the compliance notice to ensure—
  - (i) compliance with a local law; or
  - (ii) compliance with the conditions of an approval; or
  - (iii) the operation of the regulated activity—
    - (A) does not result in harm to human health or safety or personal injury; or
    - (B) does not result in property damage or a loss of amenity; or
    - (C) does not result in environmental harm or environmental nuisance; or
    - (D) does not result in a nuisance; or
    - (E) does not result in the unsafe movement or obstruction of traffic or the unsafe use of a road; or
    - (F) does not have an adverse effect on the surrounding community; or
    - (G) complies with the prescribed criteria.

- (3) A person to whom the compliance notice is given must comply with the compliance notice.

Maximum penalty for subsection (3)—50 penalty units.

- (4) The compliance notice must set out—
  - (a) the provisions of the local law under which the requirement is made; and
  - (b) the time within which compliance is required; and
  - ~~(c) the consequences of contravention of the notice.~~
  - ~~(d) Stop order~~
  - ~~(e) The local government may, by written notice to the person operating a regulated activity, require the person to cease to operate the regulated activity within the time allowed in the written notice when—~~
  - ~~(f) a compliance notice is not complied with within the time allowed for compliance in the compliance notice; or~~



- ~~(g) — the person does not hold an approval from the local government; or~~
- ~~(h) — the operation of the regulated activity is in the local government's opinion likely to give rise to —~~
- ~~(i) — harm to human health or safety or personal injury; or~~
- ~~(j) — property damage; or~~
- ~~(k) — environmental harm; or~~
- ~~(l) — the operation of the regulated activity does not comply with —~~
- ~~(m) — the provisions of the Local Government Acts that regulate the operation of the regulated activity; or~~
- ~~(n) — the prescribed criteria relevant to the regulated activity; or~~
- ~~(o) — the conditions of an approval.~~
- ~~(p) — Before the local government gives a notice under subsection (1), the local government must consider the impact of the stop order, other than a financial impact on the holder of the approval, on those persons who would be affected by the regulated activity ceasing to be operated.~~
- ~~(q) — Example of subsection (2) —~~
- ~~(r) — *The local government must consider the impact on disabled persons who reside at rental accommodation which is to be the subject of a stop order.*~~
- ~~(s) — Subject to subsection (4), the person to whom a stop order is given must —~~
- ~~(t) — cease to operate the regulated activity; and~~
- ~~(u) — comply with the stop order.~~
- ~~(v) — Maximum penalty for subsection (3) — 200 penalty units.~~
- ~~(w) — The stop order ceases when the person to whom a stop order is given has, to the satisfaction of the local government, complied with —~~
- ~~(x) — the requirements of this local law; and~~
- ~~(y) — the prescribed criteria relevant to the regulated activity; and~~
- ~~(z) — the conditions of any relevant approval; and~~
- ~~(aa) — the requirements of any relevant compliance notice; and~~
- (c) — the requirements of the stop order.

**43** ~~43~~ **Stop order**

- (1) The local government may give a person operating a regulated activity an order (a *stop order*) requiring the person to cease to operate the regulated activity within the time allowed in the order if—
- (a) a compliance notice about the operation of the regulated activity is not complied with within the time allowed for compliance in the compliance notice; or
  - (b) the person does not hold an approval for the operation of the regulated activity from the local government; or
  - (c) the operation of the regulated activity does not comply with—
    - (i) the provisions of a Local Government Act that regulates the operation of the regulated activity; or
    - (ii) the prescribed criteria relevant to the regulated activity; or
    - (iii) the conditions of an approval that regulates the operation of the regulated activity; or
  - (d) the operation of the regulated activity is in the local government's opinion likely to give rise to—
    - (i) harm to human health or safety or personal injury; or
    - (ii) property damage; or
    - (iii) environmental harm.
- (2) A stop order under this section—
- (a) may be given orally or in writing; but
  - (b) may only be given orally if the continuation of the operation of the regulated activity, in the local government's opinion, poses—
    - (i) an urgent and serious threat to human health or safety; or
    - (ii) an urgent and serious threat of personal injury; or
    - (iii) an urgent and serious risk of property damage, environmental harm or loss of amenity.
- (3) Before the local government gives a stop order, the local government must consider the impact of the order, other than a financial impact on the holder of an approval, on those persons who would be affected by the regulated activity ceasing to be operated.

Example for subsection (3) — the local government must consider the impact on disabled persons who reside at rental accommodation which is to be the subject of the stop order.

- (4) The local government must confirm a stop order given orally under this section in writing by the next business day following the giving of the order.
- (5) Subject to subsection (6), the person to whom a stop order is given must—
- (a) cease to operate the regulated activity; and
  - (b) comply with the stop order.
- Maximum penalty for subsection (5) — 200 penalty units.
- (6) A stop order ceases when the person to whom the stop order is given has, to the satisfaction of the local government, complied with—
- (a) the requirements of this local law; and
  - (b) the prescribed criteria relevant to the regulated activity; and
  - (c) the conditions of any relevant approval; and
  - (d) the requirements of any relevant compliance notice; and
  - (e) the requirements of the stop order.
- (7) This section does not affect the local government’s powers under another law.
- (8) A stop order given under this section must state the following—
- (a) the provision of the local law that authorises the local government to give the stop order; and
  - (b) the time within which compliance with the stop order is required; and
  - (c) the consequences of contravention of the stop order.

#### **4344 Performance of work**

- (1) This section applies where a person has failed to perform work required to be performed by —
- (a) a compliance notice; or
  - (b) a stop order; or
  - (c) a notice given under subsection (3).
- ~~(1) This section applies where the local government has issued~~
- ~~(a) a notice under subsection (3).~~
- (2) A person committing an offence under a local law must make good any damage caused directly or indirectly by the commission of the offence, provided the local

government has first given the person a written notice ~~under subsection (3)~~ referred to in subsection (1).

~~(3) The local government may give a written notice to—~~

~~(a) the owner or occupier of premises who has performed work on the premises contrary to a local law requiring that person to demolish, remove, alter, repair or otherwise perform work in accordance with a local law; or~~

~~(b) the owner or occupier of premises who is required to perform work on the premises under a local law requiring that person to perform work in accordance with a local law; or~~

~~(c) the owner or occupier of premises on which it is necessary to perform work on the premises for local government purposes which is required under a Local Government Act, including for example public health and safety, requiring that person to perform work specified in the written notice; or~~

~~(d) a person who has performed work contrary to a local law requiring that person to demolish, remove, alter, repair or otherwise perform work in accordance with the local law; or~~

~~(e) a person who is required to perform work under a local law requiring that person to perform work in accordance with a local law.~~

(3) The local government may give a written notice to the owner or occupier of premises on which it is necessary to perform work on the premises for local government purposes which is required under a Local Government Act, including for example public health and safety, requiring that person to perform work specified in the written notice.

(4) A written notice given pursuant to subsection (3) must provide that the person to whom it is given has a reasonable time to take the action specified in the written notice.

(5) A person ~~must comply with the written notice~~ to whom a written notice is given under subsection (3) must comply with the written notice.

Maximum penalty for subsection (5)—50 penalty units.

(6) The local government may perform work when a person has failed to perform work required to be performed by—

(a) subsection (2); or

(b) a compliance notice issued compliance notice or stop order given under this local law; or

(b)(c) a written notice given under subsection (3); or

- ~~(e)(d)~~ a condition of an approval; or
- ~~(d)(e)~~ any other provision of a local law.
- ~~(7) The local government may in the course of performing work under subsection (6) remove any structure, equipment, animal, vehicle, plant or thing involved in the undertaking of the regulated activity or used in the commission of a nuisance, provided the removal is necessary in order to perform the work required under a compliance notice or a notice issued under subsection (3).<sup>3</sup>~~
- (7) The local government may, in the course of performing work under subsection (6), seize, confiscate, remove and impound any structure, equipment, animal, vehicle, plant or thing involved in the undertaking of thea regulated activity or used in the commission of a nuisance, provided the seizure, confiscation, removal or impounding is necessary in order to perform the work referred to in subsection (6).<sup>4</sup>
- (8) The local government may dispose of, in accordance with section 39, any material of any nature ~~removed~~ which is seized, confiscated, removed or impounded by the local government pursuant to this section.
- (9) An authorised person may perform the work that the local government is empowered to undertake pursuant to this section.
- (10) The Court may order a person found guilty of an offence under a local law to—
- (a) perform work required to be performed by—
- (i) subsection (2); or
- ~~(ii)~~ (ii) a compliance notice issued compliance notice or stop order given under this local law; or
- ~~(iii)~~ (iii) a written notice given under subsection (3); or
- ~~(iv)~~ (iv) a condition of an approval; or
- ~~(v)~~ (v) a provision of a local law; or
- (b) pay to the local government all costs incurred by the local government in performing the work pursuant to this section.
- (11) A notice given under subsection (3) must set out—

<sup>3</sup> ~~The exercise of this power is subject to section 142 (Entry by a local government worker, with reasonable written notice, under a remedial notice) of the *Local Government Act 2009*.~~

<sup>4</sup> The exercise of this power is subject to section 142 (Entry by a local government worker, with reasonable written notice, under a remedial notice) of the *Local Government Act 2009*.

- (a) the provisions of the ~~local law~~ Local Government Act under which the requirement is made; and
- (b) the time within which performance is required; and
- (c) the consequences of contravention of the notice.

#### **4445 Power of entry and cost recovery**

- (1) If the work to be carried out by the local government is on land of which the local government is not the owner or occupier, the local government may enter the land to perform the work under section 142 (Entry by a local government worker, with reasonable written notice, under a remedial notice) of the *Local Government Act 2009*.<sup>5</sup>
- (2) If the person who failed to perform the work is the owner of the land, the amount properly and reasonably incurred by the local government to perform the work is recoverable, together with any interest, under section 142 (Entry by a local government worker, with reasonable written notice, under a remedial notice) of the *Local Government Act 2009*.
- (3) If the person who failed to perform the work is not the owner of the land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person in default together with interest on the same basis as applies to an owner of the land under section 142 (Entry by a local government worker, with reasonable written notice, under a remedial notice) of the *Local Government Act 2009*.<sup>6</sup>

#### **4546 Inspection of premises or regulated activity**

- (1) An authorised person may, subject to chapter 5, part 2, division 1 of the *Local Government Act 2009*, inspect the undertaking of the regulated activity or any premises, including any vehicle, equipment, animal, plant or thing on the premises, to establish whether there is compliance with—<sup>7</sup>
  - (a) the requirements of a local law; or
  - (b) the prescribed criteria; or
  - (c) the conditions of an approval; or

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<sup>5</sup> A magistrate may make an order for entry under section 146 (Entry with, and in accordance with, a court order) of the *Local Government Act 2009* if the occupier refuses to permit entry.

<sup>6</sup> Section 142(8) of the *Local Government Act 2009* provides for the payment of interest on the same basis as for an overdue rate.

<sup>7</sup> Chapter 5 (Monitoring and enforcing the Local Government Acts), part 2 (The public), division 1 (Powers of authorised persons) of the *Local Government Act 2009* empowers an authorised person to enter a place to—

- (a) ensure that the place complies with the Local Government Acts;
- (b) find out whether the conditions on which a permit or notice was issued have been complied with; or
- (c) to inspect work that was carried out under a permit or notice.

- (d) the requirements of a compliance notice.
- (2) An authorised person may direct the owner or occupier of premises or the person undertaking the regulated activity to produce for inspection—<sup>8</sup>
- (a) all approvals granted by the local government; or
  - (b) any records that are required to be kept as a condition of the approval or as specified in a subordinate local law and may take copies or extracts from those records; or
  - (c) any vehicle, equipment, animal, plant or thing used on the premises or involved in the undertaking of the regulated activity; or
  - (d) any inspection, monitoring or management program required to be kept as a condition of the approval or as a requirement of the prescribed criteria or as specified in a subordinate local law.
- (3) An authorised person may, in relation to anything that may be inspected pursuant to ~~section 24 (Inspection)~~ section 24 (Assessment of applications) of this local law—
- (a) inspect, test, photograph, videotape or otherwise examine that thing; or
  - (b) copy a document; or
  - (c) take samples of or from anything; or
  - (d) take onto the property any persons, equipment and materials that the authorised person reasonably requires for exercising the authorised person's powers.
- (4) The owner or occupier of the premises or the person who is undertaking the regulated activity must comply with—
- (a) a direction of an authorised person pursuant to subsection (2); or
  - (b) the terms of a periodic inspection, monitoring or management program specified in a subordinate local law.

Maximum penalty for subsection (4)—50 penalty units.

## Part 8 Administrative provisions

### 4647 Attempts to commit offences

- (1) A person who attempts to commit an offence against a local law commits an offence.

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<sup>8</sup> Chapter 5 (Monitoring and enforcing the Local Government Acts) of the *Local Government Act 2009* provides for these powers.

Maximum penalty for subsection (1)—half the maximum penalty for committing the offence.

- (2) The provisions of the *Criminal Code* relevant to attempts to commit an offence apply to the attempt.

#### **4748 Liability of third parties**

- (1) Any person involved in a contravention of a local law commits an offence.

Maximum penalty for subsection (1)—the penalty for which any person who committed the contravention would be liable.

- (2) For the purposes of subsection (1), a person involved in a contravention of a local law is any person who—
- (a) has aided, abetted, counselled or procured the contravention; or
  - (b) has induced, whether by threats or promises or otherwise, the contravention; or
  - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
  - (d) has conspired with others to effect the contravention; or
  - (e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

#### **4849 Executive officers must ensure the corporation complies with the local laws**

- (1) The executive officers of a corporation must ensure the corporation complies with a local law.

- (2) If a corporation commits an offence against a provision of a local law, each of the corporation's executive officers also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of a local law is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complied with the provision.
- (4) However, it is a defence for an executive officer to prove—
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or



- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) This section applies so as not to limit or affect in any way the liability of a corporation to be proceeded against and punished for an offence committed by the corporation in contravention of a local law.

**4950 Owners and occupiers must ensure compliance with the local laws**

- (1) The owner and occupier of premises must ensure that an offence against a provision of a local law is not committed on the premises.
- (2) If an offence against a provision of a local law is committed on the premises, the owner and occupier of the premises also commit an offence.

Maximum penalty for subsection (2)—the penalty for the commission of the offence on the premises.

- (3) Evidence that an offence against a provision of a local law has been committed on the premises is evidence that the owner and occupier of the premises committed the offence.
- (4) However, it is a defence for an owner or occupier to prove that—
  - (a) the owner or occupier exercised reasonable diligence to ensure that an offence was not committed on the premises; or
  - (b) the offence was committed on the premises without that person's knowledge or consent.

**5051 Owner of a vehicle must ensure compliance with local laws**

- (1) If an offence is committed in relation to the parking or use of a vehicle in contravention of a local law, the owner of the vehicle will be deemed to have committed the offence, unless the evidence specified in subsection (2) proves otherwise.
- (2) For the purpose of subsection (1), the evidence may include—
  - (a) a statement in writing, verified upon oath or by statutory declaration, which proves to the satisfaction of the local government that an official traffic sign was not displayed in the regulated parking area in which the alleged offence was committed; or
  - (b) a statement in writing, verified upon oath or by statutory declaration, which proves to the satisfaction of the local government, that the official traffic sign displayed in the regulated parking area in which the alleged offence was committed does not or has not contained the alleged parking restrictions or prohibitions; or
  - (c) an illegal user declaration; or

- (d) a known user declaration; or
- (e) an unknown user declaration; or
- (f) a sold vehicle declaration; or
- (g) a permit authorising the person to park.

### **5152 Local laws do not apply to prescribed officer**

- (1) Unless otherwise specified in a local law, an offence provision of a local law does not apply in respect of a prescribed officer if the prescribed officer is—
  - (a) a council officer who is—
    - (i) an authorised person, acting in the course of their appointment; or
    - (ii) an employee of the local government, who is acting in the course of their employment; or
    - (iii) a person appointed to a position provided for in a local law, who is acting in the course of their appointment; or
    - (iv) a person assisting a person referred to in paragraphs (a)(i), (ii) and (iii), who is acting in the course of assisting the other person; or
  - (b) a person appointed as an agent or a contractor of the local government, who is acting in accordance with the terms of the agency or contract.
- (2) The exemption in subsection (1) only applies to an offence committed by a prescribed officer actively enforcing a Local Government Act the subject matter of the offence.

## **Part 9 Subordinate local laws**

### **5253 Subordinate local laws**

The local government may, in a subordinate local law, specify—

- (a) a thing as a structure pursuant to the Schedule (Dictionary) of this local law; and
- (b) a thing as a vehicle pursuant to the Schedule (Dictionary) of this local law; and
- (c) a mall, square, court or other public place under the local government's control as a local government road pursuant to the Schedule (Dictionary) of this local law; and

- (d) premises as a public place pursuant to the Schedule (Dictionary) of this local law; and
- (e) the recognised qualifications of a person certifying a matter pursuant to the Schedule (Dictionary) of this a local law; and
- (f) land as a reserve pursuant to the Schedule (Dictionary) of this local law; and
- (g) the information which is to accompany an application pursuant to section 5(2)(c) of this local law; and
- (h) the circumstances in which the local government may waive the requirements of section 5 (Requirements of an application) of this local law pursuant to section 5(3)(c) of this local law; and
- (i) a matter which may be the subject of a certificate signed by the chief executive officer pursuant to section 13(4)(k) of this local law; and
- (j) the types of goods that may be disposed of by the local government pursuant to section 39(2)(a)(vi) of this local law; and
- (k) the meaning of a term not defined in a local law including this local law pursuant to section 40(1)(a) of this local law; and
- (l) such other matters as are provided for in this local law.

## Schedule Dictionary

### section 3

***address for service*** means in relation to any person—

- (a) that person's usual or last known place of abode or business; or
- (b) the address for service last notified in writing by that person to the local government; or
- (c) the registered office under or for the purposes of any Act which requires the person to have a registered office.

~~*advertisement* has the meaning in Schedule 1 (Regulated activities) of Local Law No. 16 (Licensing) 2008.~~ ***advertising device*** has the meaning in Schedule 1 (Regulated activities) of Local Law No. 16 (Licensing) 2008.

***analyst*** means an appropriately qualified person to undertake the analysis of a sample taken under a local law.

***animal*** has the meaning given in Local Law No. 12 (Animal Management) 2013.

***application*** includes a request to the local government under a local law.

***approval*** means a consent, permit, licence, authorisation, registration, membership or approval under Local Government Act or a local law and includes all conditions of a consent, permit, licence, authorisation, registration, membership or approval.

***authorised person*** means a person who is authorised by the local government under this local law to exercise the powers of an authorised person under a local law.

***believes on reasonable grounds*** means a belief on grounds that are reasonable in the circumstances.

***building*** has the meaning given in the Building Act 1975.

***business day*** has the meaning given in the Acts Interpretation Act 1954.<sup>9</sup>

***charge*** means a charge prescribed by the local government pursuant to section

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<sup>9</sup> Section 36 of the Acts Interpretation Act 1954 defines a business day to mean a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

262(3)(c) of the *Local Government Act 2009*.

**chief executive officer** means the person appointed and employed by the local government as its chief executive officer pursuant to section 194 (Appointing a chief executive officer) of the *Local Government Act 2009*.

~~**compliance notice** means the written notice given pursuant to section 42 (Compliance notice) of this local law.~~ **compliance notice** means a notice given pursuant to section 42 (Compliance notice) of this local law.

**corporation** means a corporation as defined in the *Corporations Act 2001 (Cth)* and includes an association as defined in the *Associations Incorporation Act 1981*.

**council officer** means—

- (a) an authorised person; or
- (b) an employee of the local government; or
- (c) a person appointed by the local government to a position provided for in a local law; or
- (d) a person assisting a person referred to in paragraphs (a), (b) or (c).

**Court** means the court of law which has jurisdiction to deal with offences under this local law.

**direction** means a written or oral direction given by a council officer pursuant to sections 30 (Direction to leave a public place) or section 31 (Directions generally) of this local law.

**environmental harm** has the meaning given in the *Environmental Protection Act 1994*.

**environmental nuisance** has the meaning given in the *Environmental Protection Act 1994*.

**exclusion notice** see section 30A(6).

**executive officer of a corporation** means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

**goods** includes an animal, a plant, a vehicle, a boat, a personal watercraft, an ~~advertisement~~ **advertising device** and an article.

**hazard** means a situation in which there is a potential to cause loss whether it be of life, to health or property.

**identity card** means the identity card referred to in section 138A of the *Local Government Act 2009*.

**illegal user declaration** has the meaning given in the *State Penalties Enforcement Act 1999*.<sup>10</sup>

**knowledge** includes actual or constructive knowledge.

**known user declaration** has the meaning given in the *State Penalties Enforcement Act 1999*.<sup>11</sup>

**land** has the meaning given in the ~~*Integrated Planning Act 1997*~~ *Sustainable Planning Act 2009*.

**legal instrument** means an approval, notice, order, process, summons or other document required or authorised to be given or served to or upon a person under a local law.

**Local Government Act** has the meaning given in the *Local Government Act 2009* and includes all approvals granted pursuant to the Local Government Acts.

**local government area** has the meaning given in the *Local Government Act 2009*.

**local government road** means—

- (a) a road under the *Local Government Act 2009*; or
- (b) a mall, square, court or other public place under the local government's control that is specified in a subordinate local law to be subject to this local law; or
- (c) light rail land designated to be used as a road under section 359 of the *Transport Infrastructure Act 1994*.

**local law** includes any subordinate local laws and all approvals granted pursuant to a local law.

**multiple approvals** means the local government's approval of a proposal is required under two or more local laws or two or more provisions of the same local

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<sup>10</sup> Schedule 2 of the *State Penalties Enforcement Act 1999* defines an illegal user declaration to mean a statutory declaration stating facts establishing the vehicle was stolen or illegally taken at the relevant time.

<sup>11</sup> Schedule 2 of the *State Penalties Enforcement Act 1999* defines a known user declaration to mean a statutory declaration stating—

- (a) if the owner is—
  - (i) an individual—the owner was not in charge of the vehicle at the relevant time; or
  - (ii) a corporation—the vehicle was not being used for the corporation at the relevant time; and
- (b) the name and address of the person who was in charge of the vehicle at the relevant time.

law.

**nuisance** has the meaning given in *Local Law No. 8 (Public Health, Safety and Amenity) 2008*.

**occupier** of premises means the person who has the control or management of the premises.

**official traffic sign** has the meaning given in *Local Law No. 11 (Roads and Malls) 2008*.

**owner** means in the case of—

- (a) premises—the person for the time being entitled to receive the rent for the premises or would be entitled to receive the rent for it if it were let to a tenant at a rent; or
- (b) a vehicle—the person in whose name the vehicle is registered under a law of a State or Territory; or
- (c) property other than premises or a vehicle—the person who has a legal or beneficial interest in the property.

~~**perform work** has the meaning given in the *Local Government Act 2009* and includes—~~

~~(a) work required to be performed pursuant to a legal instrument or an approval; and~~

~~(b) without limiting sub-paragraph (a), seizing and removing a thing.~~  
~~**perform work** includes—~~

(a) work required to be performed pursuant to a legal instrument or an approval; and

(b) without limiting subparagraph (a), demolishing, altering, repairing, seizing, confiscating, removing and impounding a thing.

**plant** means any tree, bush, shrub, grass, fungi, algae or other thing terrestrial or aquatic including all natural parts of it or things naturally produced, of, by or from it.

**premises** means any land, building or structure and includes any part thereof.

**prescribed criteria** means the criteria specified in a subordinate local law with which the undertaking of the regulated activity must comply.

**prescribed fee** means the fee prescribed by the local government.

***prescribed form*** means the form prescribed by the local government.

***prescribed officer*** means a council officer and a person appointed as an agent or a contractor of the local government.

***property*** means premises, goods or any other thing.

***proposed exclusion notice*** see section 30A(1).

***proposal*** means an act, matter or thing for which the approval of the local government is sought.

***public notice*** means a notice published in a newspaper circulating in the local government area.

***public office*** has the meaning given in the *Local Government Act 2009*.

***public place*** means—

- (a) a road; or
- (b) trust land; or
- (c) a park or reserve as defined in *Local Law No. 9 (Parks and Reserves) 2008*; or
- (d) a bathing reserve as defined in *Local Law No. 10 (Bathing Reserves) 2008*; or
- (e) a council facility as defined in *Local Law No. 7 (Council Facilities) 2008*; or
- (f) premises of which the local government is the owner or occupier; or
- (g) premises which are managed or controlled by the local government; or
- (h) premises specified as a public place in a subordinate local law.

***recognised qualifications*** in a particular field means qualifications specified by a subordinate local law or approved by the local government as appropriate to a person or body that certifies the matter required by a local law.

***regulated activity*** means an activity the undertaking of which requires an approval under a local law.

***regulated parking area*** has the meaning given in *Local Law No. 2 (Regulated Parking) 2008*.

***representative*** means in the case of—



- (a) a corporation—an executive officer, employee or agent of the corporation; or
- (b) an individual—an employee or agent of the individual.

**reserve** means land which is placed under the control of the local government pursuant to legislation and includes land specified as a reserve in a subordinate local law.

**road** means a local government road or a State-controlled road.

**sold vehicle declaration** has the meaning given in the *State Penalties Enforcement Act 1999*.<sup>12</sup>

**State-controlled road** means a State-controlled road under the *Transport Infrastructure Act 1994*.

**state of mind** of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

~~**stop order** means the written notice given pursuant to section 43(1) of this local law which has not ceased pursuant to section 43(4) of this local law.~~ **stop order** means an order given pursuant to section 43 of this local law which has not ceased pursuant to section 43(9) of this local law.

**structure** has the meaning given in the *Local Government Act 2009* and includes a structure as defined under the *Building Act 1975* and any other thing specified in a subordinate local law.

**suspect on reasonable grounds** means a suspicion on grounds that are reasonable in the circumstances.

**trust land** means land dedicated as a reserve or granted in trust under the *Land Act 1994* and for which the local government is the trustee under the *Land Act 1994*.

**unknown user declaration** has the meaning given in the *State Penalties*

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<sup>12</sup> Schedule 2 of the *State Penalties Enforcement Act 1999* defines a sold vehicle declaration to mean a statutory declaration stating facts establishing the owner had sold or otherwise disposed of the vehicle before the relevant time and was not in charge of the vehicle at that time, including—

- (a) the name and address of the person to whom the vehicle was sold or disposed of; and
- (b) the date and, if relevant, time of the sale or disposal; and
- (c) if an agent made the sale or disposal for the owner, the name and address of the agent.

*Enforcement Act 1999.*<sup>13</sup>

**vehicle** has the meaning given in the *Transport Operations (Road Use Management) Act 1995* and includes anything specified as a vehicle in a subordinate local law

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<sup>13</sup> Schedule 2 of the *State Penalties Enforcement Act 1999* defines an unknown user declaration to mean a statutory declaration stating—

- (a) if the owner is—
  - (i) an individual—the owner was not in charge of the vehicle at the relevant time; or
  - (ii) a corporation—the vehicle was not being used for the corporation at the relevant time; and
- (b) the person making the declaration has not been able to find out who was in charge of the vehicle at the relevant time; and
- (c) the nature of the inquiries made to find out the name and address of the person in charge of the vehicle at the relevant time.