

# Administration (Amendment)

## Local Law (No. 1) 2016

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Dale Dickson  
Chief Executive Officer

# Council of the City of Gold Coast Administration (Amendment) Local Law (No. 1) 2016

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# **Council of the City of Gold Coast Administration (Amendment) Local Law (No. 1) 2016**

## **Part 1 Preliminary**

### **1 Short title**

This local law may be cited as *Administration (Amendment) Local Law (No. 1) 2016*.

### **2 Object**

The object of this local law is to amend *Local Law No. 3 (Administration) 2008* to—

- (a) make amendments empowering an authorised person to direct a person who is contravening or has contravened a local law to leave a public place (excluding a road) and not to re-enter the public place (excluding a road) for a period of up to 12 months; and
- (b) make consequential and minor amendments.

### **3 Commencement**

This local law commences upon publication of the notice of the making of *Administration (Amendment) Local Law (No. 1) 2016* in the gazette.

## **Part 2 Amendment of Local Law No. 3 (Administration) 2008**

### **4 Local law amended**

This part amends *Local Law No. 3 (Administration) 2008*.

### **5 Amendment of s4 (Application of local law)**

Section 4, from ‘the chief’ to ‘approval to’—

*omit, insert—*

‘the written agreement of the chief executive of the department which administers the *Transport Operations (Road Use Management) Act 1995* has been obtained for’.

### **6 Amendment of s30 (Direction to leave a public place)**

- (1) Section 30(1)(b), ‘not more than 3 calendar days’—

*omit, insert—*

‘—

- (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) Section 30(2) to (4) —

*omit, insert—*

‘(2) 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.’.

## **7 Renumbering of footnotes 2 to 11**

Footnotes 2 to 11—

*renumber* as footnotes 3 to 12.

## **8 Insertion of new s30A and s30B**

After section 30—

*insert—*

**‘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 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) —*

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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.

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.’.

## **9 Amendment of s38 (Unclaimed goods)**

- (1) Section 38(1), ‘dispose of goods under this section that’—  
*omit, insert—*  
‘seize, confiscate, remove, impound and dispose of goods under this section if the goods’.
- (2) Section 38(4), ‘*Property Agents and Motor Dealers Act 2000*’—  
*omit, insert—*  
‘*Motor Dealers and Chattel Auctioneers Act 2014*’.
- (3) After section 38(8) —  
*insert—*
  - ‘(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
    - (b) *Transport Operations (Road Use Management) Act 1995*, section 100(3) to (11), applies to the removal and disposal of the vehicle.’.

## **10 Amendment of s39 (Confiscated goods)**

- (1) Section 39(1), ‘remove, confiscate’—  
*omit, insert—*  
‘seize, confiscate, remove’.
- (2) Section 39(2)(b), ‘calendar’—  
*omit.*
- (3) Section 39(5), ‘*Property Agents and Motor Dealers Act 2000*’—  
*omit, insert—*  
‘*Motor Dealers and Chattel Auctioneers Act 2014*’.

- (4) After section 39(6) —

*insert—*

- ‘(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
- (b) *Transport Operations (Road Use Management) Act 1995*, section 100(3) to (11), applies to the removal and disposal of the vehicle.’.

## 11 Amendment of s41 (Review of a decision made under a local law)

- (1) After section 41(2)—

*insert—*

- ‘(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.’.

## 12 Replacement of s43 (Stop order)

Section 43—

*omit, insert—*

### ‘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.’.

**13 Amendment of s44 (Performance of work)**

- (1) Section 44(1)—

*omit, insert—*

- ‘(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).’.

- (2) Section 44(2), ‘under subsection (3)’—

*omit, insert—*

‘referred to in subsection (1).’.

- (3) Section 44(3)—

*omit, insert—*

- ‘(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) Section 44(5), ‘must comply with the written notice’—

*omit, insert—*

‘to whom a written notice is given under subsection (3) must comply with the written notice’.

- (5) Section 44(6)(b), ‘compliance notice issued’—

*omit, insert—*

‘a compliance notice or stop order given’.

- (6) Section 44(6)(c) and (d)—

*renumber* as section 44(6)(d) and (e).

- (7) After section 44(6)(b)—

*insert—*

‘(c) a written notice given under subsection (3); or’.

- (8) Section 44(7)—

*omit, insert—*

‘(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 a 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>3</sup>’.

- (9) Section 44(8), ‘removed’—

*omit, insert—*

‘which is seized, confiscated, removed or impounded’.

- (10) Section 44(10)(a)(ii), ‘compliance notice issued’—

*omit, insert—*

‘compliance notice or stop order given’.

- (11) Section 44(10)(a)(iii) and (iv)—

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<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*.

*renumber* as section 44(10)(a)(iv) and (v).

(12) After section 44(10)(a)(ii) —

*insert*—

‘(iii) a written notice given under subsection (3); or’.

(13) Section 44(11)(a), ‘local law’—

*omit, insert*—

‘Local Government Act’.

#### **14 Amendment of s46 (Inspection of premises or regulated activity)**

Section 46(3) ‘section 24 (Inspection)’—

*omit, insert*—

‘section 24 (Assessment of applications)’.

#### **15 Amendment of sch (Dictionary)**

(1) Schedule, definition *advertisement* —

*omit, insert*—

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

(2) Schedule, definition *compliance notice*—

*omit, insert* —

‘*compliance notice* means a notice given pursuant to section 42 (Compliance notice) of this local law.’.

(3) Schedule, definition *goods*, ‘advertisement’—

*omit, insert*—

‘advertising device’.

(4) Schedule, definition *land*, ‘*Integrated Planning Act 1997*’—

*omit, insert*—

‘Sustainable Planning Act 2009’.

(5) Schedule, definition **perform work**—

*omit, insert*—

‘**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.’.

(6) Schedule, definition **stop order** —

*omit, insert* —

‘**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.’.

(7) Schedule—

*insert*—

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

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

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

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