

**Activities on and Trading in Thoroughfares and Public Places
Local Law**

Local Government Act 1995

LOCAL GOVERNMENT ACT 1995

[Shire of Cranbrook]

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL LAW

TABLE OF CONTENTS

PART 1 - PRELIMINARY

- 1.1 Citation
- 1.2 Definitions
- 1.3 Application
- 1.4 Repeal

PART 2 – ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - General

- 2.1 General prohibitions
- 2.2 Activities allowed with a permit - general
- 2.3 No possession and consumption of liquor on thoroughfare

Division 2 - Vehicle crossing

Deleted

Division 3 - Verge treatments

Deleted

Division 4 - Property numbers

Subdivision 1 - Preliminary

- 2.14 Interpretation

Subdivision 2 - Assignment and marking of numbers

- 2.15 Assignment of numbers

Division 5 - Fencing

- 2.16 Public place – Item 4(1) of Division 1, Schedule 3.1 of Act

Division 6 - Signs erected by the local government

- 2.17 Signs

- 2.18 Transitional

Division 7 - Driving on a closed thoroughfare

- 2.19 No driving on closed thoroughfare

PART 3 – ADVERTISING SIGNS ON THOROUGHFARES

Division 1 - Preliminary

- 3.1 Interpretation

Division 2 - Permit

- 3.2 Advertising signs and portable direction signs
- 3.3 Matters to be considered in determining application for permit

Division 3 – Conditions on permit

- 3.4 Conditions on portable sign
- 3.5 Conditions on election sign

PART 4 – OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1 - Animals and vehicles

- 4.1 Leaving animal or vehicle in public place or on local government property
- 4.2 Prohibitions relating to animals

Division 2 - Shopping trolleys
Deleted

PART 5 - ROADSIDE CONSERVATION

Division 1 - Preliminary

- 5.1 Interpretation
- 5.2 Application

Division 2 - Flora roads

- 5.3 Declaration of flora road
- 5.4 Construction works on flora roads
- 5.5 Signposting of flora roads
- 5.6 Driving only on carriageway of flora roads

Division 3 - Special environmental areas

- 5.7 Designation of special environmental areas
- 5.8 Marking of special environmental areas

Division 4 - Planting in thoroughfares

- 5.9 Permit to plant
- 5.10 Relevant considerations in determining application

Division 5 - Clearance of vegetation

- 5.11 Permit to clear
- 5.12 Application for permit

Division 6 - Fire management

- 5.13 Permit to burn thoroughfare
- 5.14 Application for permit
- 5.15 *When application for permit can be approved*
- 5.16 Prohibitions on burning

Division 7 - Firebreaks

- 5.17 Permit for firebreaks on thoroughfares
- 5.18 application for permit cannot be approved

Division 8 - Commercial wildflower harvesting on thoroughfares

- 5.19 General prohibition on commercial wildflower harvesting
- 5.20 Permit for revegetation projects

PART 6 - TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - Stallholders and traders

Subdivision 1 - Preliminary

- 6.1 Interpretation

Subdivision 2 - Permits

- 6.2 Stallholder's permit
- 6.3 Trader's permit
- 6.4 No permit required to sell newspaper
- 6.5 Relevant considerations in determining application for permit
- 6.6 Conditions of permit
- 6.7 Exemptions from requirement to pay fee or to obtain a permit

Subdivision 3 - Conduct of stallholders and traders

- 6.8 Conduct of stallholders and traders

Division 2 - Street entertainers

Subdivision 1 - Preliminary

- 6.9 Interpretation

Subdivision 2 - Permits

- 6.10 Permit required to perform
- 6.11 Variation of permitted area and permitted time

- 6.12 Duration of permit
- 6.13 Cancellation of permit
- 6.14 Obligations of permit holder
- Division 3 - Outdoor eating facilities on public places
 - 6.15 Interpretation
 - 6.16 Permit required to conduct Facility
 - 6.17 Matters to be considered in determining application
 - 6.18 Obligations of permit holder
 - 6.19 Removal of Facility unlawfully conducted
 - 6.20 Use of Facility by public
 - 6.21 Temporary removal of Facility may be requested

PART 7 - PERMITS

- Division 1 – Applying for a permit
 - 7.1 Application for permit
 - 7.2 Decision on application for permit
- Division 2 - Conditions
 - 7.3 Conditions which may be imposed on a permit
 - 7.4 Imposing conditions under a policy
 - 7.5 Compliance with and variation of conditions
- Division 3 - General
 - 7.6 Duration of permit
 - 7.6 Renewal of permit
 - 7.8 Transfer of permit
 - 7.9 Production of permit
 - 7.10 Cancellation of permit

PART 8 - OBJECTIONS AND APPEALS

- 8.1 Application of Part 9 Division 1 of Act

PART 9 - MISCELLANEOUS NOTICES

- 9.1 Notice to redirect or repair sprinkler
- 9.2 Hazardous plants
- 9.3 Notice to repair damage to thoroughfare
- 9.4 Notice to remove thing unlawfully placed on thoroughfare

PART 10 - ENFORCEMENT

- Division 1 - Notices given under this local law
 - 10.1 Offence to fail to comply with notice
 - 10.2 Local government may undertake requirements of notice
- Division 2 - Offences and penalties
 - Subdivision 1 - General
 - 10.3 Offences
 - Subdivision 2 - Infringement notices and modified penalties
 - 10.4 Prescribed offences
 - 10.5 Forms

SCHEDULE 1

PRESCRIBED OFFENCES

Local Government Act 1995

SHIRE OF CRANBROOK

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL
LAW**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Cranbrook resolved on the fifteenth day of June 2001 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the Shire of Cranbrook Activities in Thoroughfares and Public Places and Trading Local Law.

1.2 Definitions

In this local law unless the context otherwise requires -

"**Act**" means the *Local Government Act 1995*;

"**applicant**" means a person who applies for a permit;

"**authorized person**" means a person authorized by the local government under section 9.10 of the Act to perform any of the functions of an authorized person under this local law;

"**built-up area**" has the meaning given to it in the *Road Traffic Code 2000*;

Regulation 3 of the *Road Traffic Code 2000* provides -

"**built-up area**" means the territory contiguous to and including any road –

- (a) on which there is provision for street lighting at intervals of not over 100m for a distance of at least 500m or, if the road is shorter than 500m, for the whole road; or
- (b) which is built up with structures devoted to business, industry or dwelling houses at intervals of less than 100m for a distance of one half a kilometre or more;".

"**bulk rubbish container**" means a bin or container designed or used for holding a substantial quantity of rubbish and which is unlikely to be lifted without mechanical assistance, but does not include a bin or container used in connection with the local government's regular domestic rubbish collection service;

"**carriageway**" has the meaning given to it in the *Road Traffic Code 2000*;

Regulation 3 of the *Road Traffic Code 2000* provides -

“carriageway” means a portion of a road that is improved, designed or ordinarily used for vehicular traffic, and includes the shoulders, and areas, including embayments, at the side or centre of the carriageway, used for the stopping or parking of vehicles; and, where a road has 2 or more of those portions divided by a median strip, the expression means each of those portions, separately;”.

"CEO" means the chief executive officer of the local government;

"commencement day" means the day on which this local law comes into operation;

"Council" means the council of the local government;

"crossing" means a crossing giving access from a public thoroughfare to -

- (a) private land; or
- (b) a private thoroughfare serving private land;

"district" means the district of the local government;

"footpath" has the meaning given to it in the *Road Traffic Code 2000*;

Regulation 3 of the *Road Traffic Code 2000* provides -

“footpath” means an area that is open to the public that is designated for, or has as one of its main uses, use by pedestrians;”.

"garden" means any part of a thoroughfare planted, developed or treated, otherwise than as a lawn, with one or more plants;

"intersection" has the meaning given to it in the *Road Traffic Code 2000*;

Regulation 3 of the *Road Traffic Code 2000* provides -

“intersection” means –
(a) the area where 2 or more carriageways meet; or
(b) the area within which vehicles, travelling by, on or from different carriageways may come into conflict;”.

"kerb" includes the edge of a carriageway;

"lawn" means any part of a thoroughfare which is planted only with grass, or with a similar plant, but will include any other plant provided that it has been planted by the local government;

"liquor" has the meaning given to it in section 3 of the *Liquor Licensing Act 1988*;

"local government" means the *[insert name of local government]*;

"local government property" means anything except a thoroughfare –

- (a) which belongs to the local government;

(b) of which the local government is the management body under the *Land Administration Act 1997*; or

(c) which is an 'otherwise unvested facility' within section 3.53 of the Act;

"**lot**" has the meaning given to it in the *Town Planning and Development Act 1928*;

"**owner**" or "**occupier**" in relation to land does not include the local government;

"**permissible verge treatment**" means any one of the 4 treatments described in clause 2.8(2), and includes any reticulation pipes and sprinklers;

"**permit**" means a permit issued under this local law;

"**permit holder**" means a person who holds a valid permit;

"**person**" does not include the local government;

"**premises**" for the purpose of the definition of "public place" in both this clause and clause 6.1, means a building or similar structure, but does not include a carpark or a similar place;

"**public place**" includes any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include –

(a) premises on private property from which trading is lawfully conducted under a written law; and

(b) local government property;

"**Regulations**" means the *Local Government (Functions and General) Regulations 1996*;

"**sign**" includes a notice, flag, mark, structure or device on which may be shown words, numbers, expressions or symbols;

"**thoroughfare**" has the meaning given to it in the Act, but does not include a private thoroughfare which is not under the management control of the local government;

"**town planning scheme**" means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*;

"**townsite**" means the townsite of [*insert names of townsites*] which are –

(a) constituted under section 26(2) of the *Land Administration Act 1997*; or

(b) referred to in clause 37 of Schedule 9.3 of the Act;

"vehicle" includes –

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes –

- (a) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
- (b) a pram, a stroller or a similar device; and

“verge” means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

(1) The following local laws are repealed –
Local Laws Relating to:

- (a) Removal and Disposal of Obstructing Animals or Vehicles, published in the Government Gazette of 19 May 1971; and
- (b) Hawkers, published in the Government Gazette of 12 December 1980.

Provisions of other written laws

Throughout this local law text boxes have been inserted containing references to provisions of other written laws which complement this local law. These provisions have been reproduced in full in a separate document published in the Local Laws Manual, titled 'Complementary Legislation'. This can be found in Section 4 (Legislative Review) starting on page 27

Delegation

See sections 5.42 to 5.46 of the *Local Government Act 1995* and sections 58 and 59 of the *Interpretation Act 1984*.

PART 2 – ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - General

2.1 General prohibitions

A person shall not -

- (a) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (b) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or

Games and rollerskates

See section 1305 of the *Criminal Code*.

Damage to roads and liability for the damage

See sections 84 and 85 of the *Road Traffic Act 1974*.

Putting glass etc on roads

See regulation 1609 of the *Road Traffic Code 1975*.

Securing of loads

See regulation 1610 of the *Road Traffic Code 1975*.

Compensation and restitution orders

See Part 16 of the *Sentencing Act 1995*, sections 111, 117 (compensation orders) and 120 (restitution orders).

Criminal damage

See section 444 of the *Criminal Code*.

Littering

See sections 23 and 24 of the *Litter Act 1979* and also regulations 4, 5 and 6 of the *Litter Regulations 1981*.

Graffiti

See sections 65(2) and 80A of the *Police Act 1892*.

Wilful damage to property

See section 80 of the *Police Act 1892*.

Injuring or destroying native or acclimatised animals or birds on parks, roads or reserves

See section 97 of the *Police Act 1892*.

2.2 Activities allowed with a permit - general

(1) A person shall not, without a permit –

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) damage a thoroughfare;
- (c) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 5.13;
- (d) fell any tree onto a thoroughfare;
- (e) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.

(2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

Permit requirements – Part 7

Wherever a permit is required to be obtained under this local law, the provisions of Part 7 of the local law will apply.

Disturbing local government land or anything on it

See regulation 5 of the *Local Government (Uniform Local Provisions) Regulations 1996*.

Events on roads

See Part VA of the *Road Traffic Act 1974* and the *Road Traffic (Events on Roads) Regulations 1991*.

Processions and public meetings

See regulation 1613 of the *Road Traffic Code 1975*.

2.3 No possession and consumption of liquor on thoroughfare

- (1) A person shall not consume any liquor or have in her or his possession or under her or his control any liquor on a thoroughfare unless –
 - (a) that is permitted under the *Liquor Licensing Act 1988* or under another written law; or
 - (b) the person is doing so in accordance with a permit.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.

Limitations as to liquor on unlicensed premises
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See section 119 of the <i>Liquor Licensing Act 1988</i> .

Division 2 - Vehicle crossing

2.4 & 2.5 Deleted

Division 3 - Verge treatments

2.6 to 2.13 Deleted

Division 4 - Property numbers

Subdivision 1 - Preliminary

2.14 Interpretation

In this Division, unless the context requires otherwise -

"**Number**" means a number of a lot with or without an alphabetical suffix indicating the address of the lot by reference to a thoroughfare.

Subdivision 2 - Assignment and marking of numbers

2.15 Assignment of numbers

The local government may assign a Number to a lot in the district and may assign another Number to the lot instead of that previously assigned.

Division 5 - Fencing

2.16 Public place – Item 4(1) of Division 1, Schedule 3.1 of Act

The following places are specified as a public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act –

- (a) a public place, as that term is defined in clause 1.2; and
- (b) local government property.

Division 6 - Signs erected by the local government

2.17 Signs

- (1) A local government may erect a sign on a public place specifying any conditions of use which apply to that place.
- (2) A person shall comply with a sign erected under subclause (1).

- (3) A condition of use specified on a sign erected under subclause (1) is to be for the purpose of giving notice of the effect of a provision of this local law.

2.18 Transitional

Where a sign erected on a public place has been erected under a local law of the local government repealed by this local law, then on and from the commencement day, it is to be taken to be a sign erected under clause 2.17 if –

- (a) the sign specifies a condition of use relating to the public place which gives notice of the effect of a provision of this local law; and
- (b) the condition of use specified is not inconsistent with any provision of this local law.

Division 7 - Driving on a closed thoroughfare

2.19 No driving on closed thoroughfare

- (1) A person shall not drive or take a vehicle on a closed thoroughfare unless –

- (a) that is in accordance with any limits or exceptions specified in the order made under section 3.50 of the Act; or
- (b) the person has first obtained a permit.

- (2) In this clause –

"closed thoroughfare" means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

Closing certain thoroughfares to vehicles

See sections 3.50 and 3.50A of the *Local Government Act 1995*, and regulations 4 to 6 of the *Local Government (Functions and General) Regulations 1996*.

Roads may be closed

See section 92 of the *Road Traffic Act 1974*.

PART 3 – ADVERTISING SIGNS ON THOROUGHFARES

Traffic-control signals and traffic signs

See regulation 301 of the *Road Traffic Code 1975*.

Division 1 - Preliminary

3.1 Interpretation

In this Part, unless the context otherwise requires -

"advertising sign" means a sign used for the purpose of advertisement and includes an "election sign";

"direction sign" means a sign which indicates the direction of another place, activity or event, but does not include any such sign erected or affixed by the local government or the Commissioner of Main Roads;

"election sign" means a sign or poster which advertises any aspect of a forthcoming Federal, State or Local Government election; and

"portable direction sign" means a portable free standing direction sign; and

"portable sign" means a portable free standing advertising sign.

Division 2 - Permit

3.2 Advertising signs and portable direction signs

- (1) A person shall not, without a permit –
 - (a) erect or place an advertising sign on a thoroughfare; or
 - (b) post any bill or paint, place or affix any advertisement on a thoroughfare.
- (2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which neither exceeds 500mm in height nor 0.5m² in area, provided that the sign is placed or erected on a thoroughfare on an infrequent or occasional basis only to direct attention to a place, activity or event during the hours of that activity or event.
- (3) Notwithstanding subclause (1), a person shall not erect or place an advertising sign -
 - (a) on a footpath;
 - (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;
 - (c) on or within 3m of a carriageway;
 - (d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
 - (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

3.3 Matters to be considered in determining application for permit

In determining an application for a permit for the purpose of clause 3.2(1), the local government is to have regard to -

- (a) any other written law regulating the erection or placement of signs within the district;
- (b) the dimensions of the sign;
- (c) other advertising signs already approved or erected in the vicinity of the proposed location of the sign;

- (d) whether or not the sign will create a hazard to persons using a thoroughfare; and
- (e) the amount of the public liability insurance cover, if any, to be obtained by the applicant.

Division 3 – Conditions on permit

3.4 Conditions on portable sign

If the local government approves an application for a permit for a portable sign, the application is to be taken to be approved subject to the following conditions –

- (a) the portable sign shall -
 - (i) not exceed 1m in height;
 - (ii) not exceed an area of 1m² on any side;
 - (iii) relate only to the business activity described on the permit;
 - (iv) contain letters not less than 200mm in height;
 - (v) not be erected in any position other than immediately adjacent to the building or the business to which the sign relates;
 - (vi) be removed each day at the close of the business to which it relates and not be erected again until the business next opens for trading;
 - (vii) be secured in position in accordance with any requirements of the local government;
 - (viii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person; and
 - (ix) be maintained in good condition; and
- (b) no more than one portable sign shall be erected in relation to the one building or business.

3.5 Conditions on election sign

If the local government approves an application for a permit for the erection or placement of an election sign on a thoroughfare, the application is to be taken to be approved subject to the sign –

- (a) being erected at least 30m from any intersection;
- (b) being free standing and not being affixed to any existing sign, post, power or light pole, or similar structure;
- (c) being placed so as not to obstruct or impede the reasonable use of a thoroughfare, or access to a place by any person;
- (d) being placed so as not to obstruct or impede the vision of a driver of a vehicle entering or leaving a thoroughfare or crossing;
- (e) being maintained in good condition;
- (f) not being erected until the election to which it relates has been officially announced;
- (g) being removed within 24 hours of the close of polls on voting day;
- (h) not being placed within 100m of any works on the thoroughfare;
- (i) being securely installed;
- (j) not being an illuminated sign;
- (k) not incorporating reflective or fluorescent materials; and

- (1) not displaying only part of a message which is to be read with other separate signs in order to obtain the whole message.

PART 4 – OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1 - Animals and vehicles

4.1 Leaving animal or vehicle in public place or on local government property

- (1) A person shall not leave an animal or a vehicle, or any part of a vehicle, in a public place or on local government property so that it obstructs the use of any part of that public place or local government property, unless that person has first obtained a permit or is authorized to do so under a written law.
- (2) A person will not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.
- (3) A person will not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

4.2 Prohibitions relating to animals

- (1) In subclause (2), "owner" in relation to an animal includes –
 - (a) an owner of it;
 - (b) a person in possession of it;
 - (c) a person who has control of it; and
 - (d) a person who ordinarily occupies the premises where the animal is permitted to stay.
- (2) An owner of an animal shall not –
 - (a) allow the animal to enter or remain for any time on any thoroughfare except for the use of the thoroughfare as a thoroughfare and unless it is led, ridden or driven;
 - (b) allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place; or
 - (c) train or race the animal on a thoroughfare.
- (3) An owner of a horse shall not lead, ride or drive a horse on a thoroughfare in a built-up area, unless that person does so under a permit or under the authority of a written law.

Unattended stock on roads

See regulation 1702 of the *Road Traffic Code 1975*.

Restrictions on driving of stock

See regulation 1702A of the *Road Traffic Code 1975*.

Permit for driving of stock

See regulation 1703 of the *Road Traffic Code 1975*.

Division 2 - Shopping trolleys

4.3 to 4.8 Deleted

PART 5 - ROADSIDE CONSERVATION

Division 1 - Preliminary

5.1 Interpretation

In this Part -

"MRWA" means Main Roads Western Australia;

"protected flora" has the meaning given to it in section 6(1) of the *Wildlife Conservation Act 1950*;

"rare flora" has the meaning given to it in section 23F of the *Wildlife Conservation Act 1950*;

"Roadside Conservation Committee" means the Roadside Conservation Committee established under the Land Resource Policy Council within the Office of Premier and Cabinet; and

"special environmental area" means an area designated as such under clause 5.7.

5.2 Application

This Part does not apply to the townsite.

Division 2 - Flora roads

5.3 Declaration of flora road

The local government may declare a thoroughfare which has, in the opinion of the local government, high quality roadside vegetation to be a flora road.

5.4 Construction works on flora roads

Construction and maintenance work carried out by the local government on a flora road is to be in accordance with the 'Code of Practice for Roadside Conservation and Road Maintenance' prepared by the Roadside Conservation Committee.

5.5 Signposting of flora roads

The local government may signpost flora roads with the standard MRWA 'flora road' sign.

5.6 Driving only on carriageway of flora roads

- (1) A person driving or riding a vehicle on a flora road shall only drive or ride the vehicle on the carriageway.
- (2) Subclause (1) does not apply where -
 - (a) conditions on the thoroughfare do not reasonably permit a vehicle to remain on the carriageway;
 - (b) there is no carriageway; or

- (c) an exemption from the application of subclause (1) has been obtained from the local government.

Division 3 - Special environmental areas

5.7 Designation of special environmental areas

The local government may designate a thoroughfare, or any part of a thoroughfare, as a special environmental area which -

- (a) has protected flora or rare flora; or
- (b) in the opinion of the local government, has environmental, aesthetic or cultural significance.

5.8 Marking of special environmental areas

The local government is to mark and keep a register of each thoroughfare, or part of a thoroughfare, designated as a special environmental area.

Division 4 – Planting in thoroughfares

5.9 Permit to plant

A person shall not plant any plant or sow any seeds in a thoroughfare without first obtaining a permit.

5.10 Relevant considerations in determining application

In determining an application for a permit for the purpose of clause 5.9, the local government is to have regard to -

- (a) existing vegetation within that part of the thoroughfare in which the planting is to take place; and
- (b) the diversity of species and the prevalence of the species which are to be planted or sown.

Division 5 - Clearance of vegetation

5.11 Permit to clear

A person shall not clear and maintain in a cleared state, the surface of a thoroughfare within 1m of that person's land without first obtaining a permit and any other approvals which may be required under any written law.

Notice of clearing where clearing in excess of 1ha

See regulation 4 of the *Soil and Land Conservation Regulations 1992*.

5.12 Application for permit

In addition to the requirements of clause 7.1(2), a person making an application for a permit for the purpose of clause 5.11 shall submit a sketch plan clearly showing the boundary of the person's land and the portions of the thoroughfare joining that person's land which are to be cleared.

Division 6 - Fire management

5.13 Permit to burn thoroughfare

A person shall not burn part of a thoroughfare without first obtaining a permit or unless acting under the authority of any other written law.

Back-burning

See section 44(1)(c) of the *Bush Fire Act 1954*.

5.14 Application for permit

In addition to the requirements of clause 7.1(2), an application for a permit for the purposes of clause 5.13 shall –

- (a) include a sketch plan showing the portions of a thoroughfare which are proposed to be burned; and
- (b) advise of the estimated fire intensity and the measures to be taken to protect upper storey vegetation from the burn.

5.15 When application for permit can be approved

The local government may approve an application for a permit for the purpose of clause 5.13 only if the burning of the particular part of the thoroughfare will –

- (a) reduce a fire hazard and alternative means of reducing that hazard, such as slashing or the use of herbicides, are considered by the local government to be not feasible or more detrimental to native flora and fauna than burning; or
- (b) in the opinion of the local government, be beneficial for the preservation and conservation of native flora and fauna.

5.16 Prohibitions on burning

Notwithstanding anything to the contrary in this local law, an application for a permit for the purpose of clause 5.13 is not to be approved by the local government –

- (a) for burning between 31 August and 1 May of the following year where the intensity of the burn could damage native flora and fauna; or
- (b) in any year to any person for any part of a thoroughfare which is on the opposite side of the carriageway to that portion of the thoroughfare for which a permit to burn has been approved in the same year.

Division 7 - Firebreaks

5.17 Permit for firebreaks on thoroughfares

A person shall not construct a firebreak on a thoroughfare without first obtaining a permit.

5.18 When application for permit cannot be approved

- (1) The local government is not to approve an application for a permit for the purpose of clause 5.17 where the thoroughfare is less than 20m wide.
- (2) Subclause (1) does not apply where the firebreak is, in the opinion of the local government, desirable for the protection of roadside vegetation.

Division 8 - Commercial wildflower harvesting on thoroughfares

5.19 General prohibition on commercial wildflower harvesting

Subject to clause 5.20, a person shall not commercially harvest native flora on a thoroughfare.

5.20 Permit for revegetation projects

- (1) A person shall not collect seed from native flora on a thoroughfare without first obtaining a permit.
- (2) The local government may approve an application for a permit under subclause (1) only where-
 - (a) the seed is required for a revegetation project in any part of the district; and
 - (b) the thoroughfare, or the relevant part of it, is not a special environmental area.
- (3) Unless the local government specifically provides to the contrary on a permit, if the local government approves an application for a permit for the purpose of subclause (1) it is to be taken to be approved subject to the following conditions –
 - (a) the collection of the seed is to be carried out so as not to endanger the long time survival of the native flora on the thoroughfare; and
 - (b) any licence or approval which may be required under any other written law is to be obtained by the applicant.

Protected flora

See sections 23A and 23B of the *Wildlife Conservation Act 1950*.

PART 6 - TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - Stallholders and traders

Application of Fair Trading Act 1987

Stallholders and traders will all be "suppliers" of goods or services within the *Fair Trading Act 1987*. Accordingly, the provisions of the Act relating to misleading or deceptive conduct, unconscionable conduct, false representations and unsolicited goods will apply to them.

Subdivision 1 - Preliminary

6.1 Interpretation

In this Division, unless the context otherwise requires -

"Competition Principles Agreement" means the Competition Principles Agreement executed by each State and Territory of the Commonwealth and the Commonwealth of Australia on 11 April 1995;

"public place" includes -

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law.

"stall" means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, hired or offered for sale or hire;

"stallholder" means a person in charge of a stall;

"stallholder's permit" means a permit issued to a stallholder;

"trader" means a person who carries on trading;

"trader's permit" means a permit issued to a trader; and

"trading" includes -

- (a) the selling or hiring of, the offering for sale or hire of or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place for the purpose of -
 - (i) offering them for sale or hire;
 - (ii) inviting offers for their sale or hire;
 - (iii) soliciting orders for them; or
 - (iv) carrying out any other transaction in relation to them; and
- (c) the going from place to place, whether or not public places, and -
 - (i) offering goods or services for sale or hire; or
 - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services,

but does not include –

- (d) the delivery of pre-ordered goods or services to the purchaser of those goods or services or to the person nominated by the purchaser of those goods or services whether or not payment for those goods or services is accepted on delivery; or
the taking of further orders for goods or services from the purchaser of those pre-ordered goods or services or from the person nominated by the purchaser of those pre-ordered goods or services when those orders are taken at the same time as a previous order is being delivered, whether or not payment is made for those goods or services at the time of taking the order;
- (e) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder's permit;
- (f) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (g) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (h) the selling or hiring or the offering for sale or hire of –
 - (i) goods by a person who represents a manufacturer of the goods; or
 - (ii) services by a person who represents a provider of the services,which are only sold directly to consumers and not through a shop.

Subdivision 2 - Permits

6.2 Stallholder's permit

- (1) A person shall not conduct a stall on a public place unless that person is –
 - (a) the holder of a valid stallholder's permit; or
 - (b) an assistant specified in a valid stallholder's permit.
- (2) Every application for a stallholder's permit shall –
 - (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants to be engaged by the applicant in conducting the stall, as well as their names and addresses if already engaged;
 - (c) specify the proposed location of the stall;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of operation;
 - (e) specify the proposed goods or services to be sold or hired or offered for sale or hire from the stall; and
 - (f) be accompanied by an accurate plan and description of the proposed stall.

6.3 Trader's permit

- (1) A person shall not carry on trading unless that person is –
 - (a) the holder of a valid trader's permit; or
 - (b) an assistant specified in a valid trader's permit.

- (3) Every application for a trader's permit shall –
- (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants, if any, to be engaged by the applicant in trading, as well as their names and addresses if already engaged;
 - (c) specify the location or locations in which the applicant proposes to trade;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
 - (e) specify the proposed goods or services which will be traded; and
 - (f) be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.
- (4) The conditions subject to which the local government may approve an application for a trader's permit include that the permit holder is permitted to remain at a particular location for as long as there is a customer making a purchase, but if there is no customer making a purchase the permit holder must move on from that location within a reasonable time of the last purchase having been made.

6.4 No permit required to sell newspaper

Notwithstanding any other provision of this local law, a person who sells, or offers for sale, a newspaper only is not required to obtain a permit.

6.5 Relevant considerations in determining application for permit

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to –
- (a) any relevant policies of the local government;
 - (b) the desirability of the proposed activity;
 - (c) the location of the proposed activity;
 - (d) the principles set out in the Competition Principles Agreement; and
 - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds –
- (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
 - (b) that the applicant is not a desirable or suitable person to hold a permit;
 - (c) that –
 - (i) the applicant is an undischarged bankrupt or is in liquidation;
 - (ii) the applicant has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager has been appointed in relation to any part of the applicant's undertakings or property; or

- (d) such other grounds as the local government may consider to be relevant in the circumstances of the case.

6.6 Conditions of permit

- (1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include –

- (a) the place, the part of the district, or the thoroughfare to which the permit applies;
- (b) the days and hours during which a permit holder may conduct a stall or trade;
- (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;
- (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
- (e) the number of persons and the names of persons permitted to conduct a stall or trade;
- (f) the requirement for personal attendance at the stall or the place of trading by the permit holder and the nomination of assistants, nominees or substitutes for the permit holder;
- (g) whether and under what terms the permit is transferable;
- (h) any prohibitions or restrictions concerning the -
 - (i) causing or making of any noise or disturbance which is likely to be a nuisance to persons in the vicinity of the permit holder;
 - (ii) the use of amplifiers, sound equipment and sound instruments;
 - (iii) the use of signs; and
 - (iv) the use of any lighting apparatus or device;
- (i) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
- (j) the care, maintenance and cleansing of the stall or any structure used for trading and the place of the stall or any structure;
- (k) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
- (l) the acquisition by the stallholder or trader of public risk insurance;
- (m) the period for which the permit is valid; and
- (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.

- (2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder authorize another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit shall apply to the nominee as if he or she was the permit holder.

6.7 Exemptions from requirement to pay fee or to obtain a permit

- (1) In this clause –

"charitable organisation" means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium; and

"commercial participant" means any person who is involved in operating a stall or in conducting any trading activity for personal gain or profit.

- (2) The local government may waive any fee required to be paid by an applicant for a stallholder's permit or a trader's permit on making an application for or on the issue of a permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on –
 - (a) on a portion of a public place adjoining the normal place of business of the applicant; or
 - (b) by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.
- (3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

Subdivision 3 - Conduct of stallholders and traders

6.8 Conduct of stallholders and traders

- (1) A stallholder while conducting a stall or a trader while trading shall –
 - (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
 - (b) not display a permit unless it is a valid permit; and
 - (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Weights and Measures Act 1915*.
- (2) A stallholder or trader shall not –
 - (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
 - (b) act in an offensive manner;
 - (c) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
 - (d) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

Dealers not to call during certain hours
Dealers to leave premises when so requested
Dealers to indicate their purpose for making calls
Offence to harass or coerce

See sections 9 to 12 of the *Door to Door Trading Act 1987*.

Division 2 - Street entertainers

6.9 to 6.14 Deleted

Division 3 - Outdoor eating facilities on public places

6.15 Interpretation

In this Division -

"**Facility**" means an outdoor eating facility or establishment on any part of a public place, but does not include such a facility or establishment on private land;

"**permit holder**" means the person to whom a permit has been issued for the purpose of clause 6.16; and

"**public place**" has the meaning given to it in clause 6.1.

6.16 Permit required to conduct Facility

A person shall not establish or conduct a Facility without a permit.

6.17 Matters to be considered in determining application

In determining an application for a permit for the purpose of clause 6.16, the local government may consider in addition to any other matter it considers relevant, whether or not-

- (a) the Facility is conducted in conjunction with and as an extension of food premises which about on the Facility, and whether the applicant is the person conducting such food premises;
- (b) any abutting food premises are registered in accordance with the *Health Act 1911* and whether the use of the premises is permitted under the town planning scheme;
- (c) the Facility will comply with any local law made under section 172 of the *Health Act 1911*;
- (d) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (e) the Facility would -
 - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
 - (ii) impede pedestrian access; and
- (f) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

6.18 Obligations of permit holder

(1) The permit holder for a Facility shall –

- (a) ensure that the Facility is conducted at all times in accordance with the provisions of this local law and any local law made under section 172 of the *Health Act 1911*;
- (b) ensure that the eating area is kept in a clean and tidy condition at all times;
- (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times;
- (d) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of any part of the public place arising from the conduct of the Facility; and

- (e) be solely responsible for all rates and taxes levied upon the land occupied by the Facility.
- (2) Whenever, in the opinion of the local government, any work is required to be carried out to a Facility, the local government may give a notice to the permit holder for the Facility to carry out that work within the time limited by the notice.
- (3) In subclause (2), “work” includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a Facility.

6.19 Removal of Facility unlawfully conducted

Where a Facility is conducted without a permit, or in contravention of a condition of a permit, any tables, chairs, umbrellas or other equipment may be removed by an authorized person and impounded in accordance with the Act.

6.20 Use of Facility by public

- (1) A person shall not occupy a chair or otherwise use the equipment in a Facility the subject of a permit unless the person uses them for the purpose of consuming food or drinks provided by the Facility.
- (2) A person shall leave a Facility when requested to do so by the permit holder.

6.21 Temporary removal of Facility may be requested

- (1) The permit holder for a Facility is to temporarily remove the Facility when requested to do so on reasonable grounds by an authorized person or a member of the Police Service or an emergency service.
- (2) The permit holder may replace the Facility removed under subclause (1) as soon as the person who directed her or him to remove it allows it to be replaced.

PART 7 - PERMITS

Division 1 – Applying for a permit

7.1 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law shall -
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

7.2 Decision on application for permit

- (1) The local government may –
 - (a) approve an application for a permit unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a permit.
- (2) If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.
- (4) Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the local government to impose other conditions on the permit under subclause (1)(a).
- (5) Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the local government to refuse the application for a permit on other grounds under subclause (1)(b).

Division 2 - Conditions

7.3 Conditions which may be imposed on a permit

The local government may approve an application for a permit subject to conditions relating to -

- (a) the payment of a fee;
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the approval of another application for a permit which may be required by the local government under any written law;
- (f) the area of the district to which the permit applies;
- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond against such damage;
- (h) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government; and
- (i) the provision of an indemnity from the permit holder indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder.

7.4 Imposing conditions under a policy

(1) In this clause –

"policy" means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 7.2(1)(a).

- (2) Under clause 7.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.
- (3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 7.2(2).
- (4) An application for a permit is to be taken not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.
- (5) Sections 5.94 and 5.95 of the Act shall apply to a policy and for that purpose a policy is to be taken to be information within section 5.94(u)(i) of the Act.

7.5 Compliance with and variation of conditions

- (1) Where an application for a permit has been approved subject to conditions, or where a permit is to be taken to be subject to conditions under this local law, the permit holder shall comply with each of those conditions.
- (2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

Division 3 - General

7.6 Duration of permit

A permit is valid for one year from the date on which it is issued, unless it is –

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 7.10.

7.7 Renewal of permit

- (1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.
- (2) The provisions of –
 - (a) this Part; and
 - (b) any other provision of this local law relevant to the permit which is to be renewed,shall apply to an application for the renewal of a permit *mutatis mutandis*.

7.8 Transfer of permit

- (1) An application for the transfer of a valid permit is to –
 - (a) be made in writing;
 - (b) be signed by the permit holder and the proposed transferee of the permit;
 - (c) provide such information as the local government may require to enable the application to be determined; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by –
 - (a) an endorsement on the permit signed by the CEO; or

- (b) issuing to the transferee a permit in the form determined by the local government.
- (4) Where the local government approves an application for the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

7.9 Production of permit

A permit holder is to produce to an authorized person her or his permit immediately upon being required to do so by that authorized person.

7.10 Cancellation of permit

(1) Subject to clause 8.1, a permit may be cancelled by the local government on any one or more of the following grounds –

(a) the permit holder has not complied with a -

- (i) condition of the permit; or
- (ii) provision of any written law which may relate to the activity regulated by the permit.

(b) if it is relevant to the activity regulated by the permit –

- (i) the permit holder has become bankrupt, or gone into liquidation;
- (ii) the permit holder has entered into any composition or arrangement with creditors;
or
- (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager is appointed in relation to any part of the permit holder's undertakings or property.

(2) On the cancellation of a permit the permit holder –

- (a) shall return the permit as soon as practicable to the local government; and
- (b) is to be taken to have forfeited any fees paid in respect of the permit.

PART 8 - OBJECTIONS AND APPEALS

8.1 Application of Part 9 Division 1 of Act

When the local government makes a decision -

- (a) under clause 7.2(1); or
- (b) as to whether it will renew, vary, or cancel a permit,

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

PART 9 - MISCELLANEOUS NOTICES

9.1 Notice to redirect or repair sprinkler

Where any portion of a thoroughfare has been damaged, the local government may by notice to the person who caused the damage order the person to repair or replace that portion of the thoroughfare to the satisfaction of the local government.

PART 10 - ENFORCEMENT

Division 1 - Notices given under this local law

10.1 Offence to fail to comply with notice

Whenever the local government gives a notice under this local law requiring a person to do any thing, if the person fails to comply with the notice, the person commits an offence.

10.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 10.1, the local government may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

Disobedience to lawful order issued by statutory authority

See section 178 of the <i>Criminal Code</i> .

Division 2 - Offences and penalties

Subdivision 1 - General

10.3 Offences

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

Subdivision 2 - Infringement notices and modified penalties

10.4 Prescribed offences

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that –
 - (a) commission of the prescribed offence is a relatively minor matter; and
 - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

10.5 Forms

Unless otherwise specified, for the purposes of this local law -

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

Deviation in forms

See section 74 of the *Interpretation Act 1984*.

SCHEDULE 1

PRESCRIBED OFFENCES

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
2.1(a)	Plant of 0.75m in height on thoroughfare within 10m of intersection	125
2.1(b)	Damaging lawn or garden	125
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	125
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	125
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250
2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	250
2.3(1)	Consumption or possession of liquor on thoroughfare	125
2.17(2)	Failure to comply with sign on public place	125
2.19(1)	Driving or taking a vehicle on a closed thoroughfare	350
3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	125
3.2(3)	Erecting or placing of advertising sign in a prohibited area	125
4.1(1)	Animal or vehicle obstructing a public place or local government property	125
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	125
4.2(2)(b)	Animal on public place with infectious disease	125
4.2(2)(c)	Training or racing animal on thoroughfare in built-up area	125
4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	125
4.5	Person leaving shopping trolley in public place other than trolley bay	125
4.6(2)	Failure to remove shopping trolley upon being advised of location	125
5.6(1)	Driving a vehicle on other than the carriageway of a flora road	250
5.9	Planting in thoroughfare without a permit	250
5.11	Failure to obtain permit to clear a thoroughfare	600
5.13	Burning of thoroughfare without a permit	600
5.17	Construction of firebreak on thoroughfare without a permit	600
5.19	Commercial harvesting of native flora on thoroughfare	600
5.20(1)	Collecting seed from native flora on thoroughfare without a permit	350
6.2(1)	Conducting of stall in public place without a permit	350
6.3(1)	Trading without a permit	350
6.8(1)(a)	Failure of stallholder or trader to display or carry permit	125
6.8(1)(b)	Stallholder or trader not displaying valid permit	125
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	125
6.8(2)	Stallholder or trader engaged in prohibited conduct	125
6.16	Establishment or conduct of outdoor eating facility without a permit	350

6.18	Failure of permit holder of outdoor eating facility to comply with obligations	125
6.20(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility	60
6.20(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	60
7.5	Failure to comply with a condition of a permit	125
7.9	Failure to produce permit on request of authorized person	125
10.1	Failure to comply with notice given under local law	125

Dated of 200_ .

The Common Seal of the }
 Shire of Cranbrook }
 was affixed by authority of a }
 resolution of the Council in the }
 presence of: }

MAYOR/PRESIDENT

CHIEF EXECUTIVE OFFICER

National Competition Policy Review of Model Local Laws Relating to Thoroughfares and Public Places

Final Report

For:

Treasury Department
April 1999
28092

Approved by: *Ray Challen*

Position: Project Director

Signed: _____

Date: April 18, 1999

Approved by: *Robert Pullella*

Position: Project Manager

Signed: _____

Date: April 18, 1999

TABLE OF CONTENTS

Review Conduct

CHAPTER 1.

1. INTRODUCTION

CHAPTER 2

2. LEGISLATIVE OBJECTIVES

CHAPTER 3

3. IDENTIFICATION OF RESTRICTIONS ON COMPETITION

3.1 General Nature Of Restrictions

3.2 Identification Of Restrictions

3.2.1 Part 1 – Preliminary

3.2.2 Part 2 – Activities on Thoroughfares and Public Places

3.2.3 Part 3 – Advertising Signs on Thoroughfares

3.2.4 Part 4 – Obstructing Animals, Vehicles or Shopping Trolleys

3.2.5 Part 5 – Roadside Conservation

3.2.6 Part 6 – Trading in Thoroughfares and Public Places

3.2.7 Part 7 – Permits

CHAPTER 4

4. PUBLIC CONSULTATION

CHAPTER 5

5. PUBLIC EFFECTS ON COMPETITION AND THE ECONOMY

5.1 Introduction

5.2 Activities on Thoroughfares and Public Places

5.3 Advertising Signs On Thoroughfares:

5.4 Obstructing Animals, Vehicles, or Shopping Trolleys:

5.5 Roadside Conservation:

5.6 Trading in Public Thoroughfares and Public Places

5.7 Permits

CHAPTER 6.

6. CONCLUSIONS AND CHANGES MADE TO THE LOCAL LAWS

APPENDIX

Deleted Restrictions With Public Benefit Tests

REVIEW CONDUCT

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DATE OF REVIEW

July 1998 – May 1999.

THOSE INVOLVED IN THE REVIEW

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CHAPTER 1.

1. INTRODUCTION

Under the *Competition Principles Agreement* between State and Commonwealth governments, the Western Australian government has an obligation to review legislation to ensure that any anti-competitive effects of the legislation are in the public interest. Clause 7(1) of the agreement includes the local laws and by-laws of local governments within the scope of requirements for legislation review.

This report was prepared for a consultancy commissioned by a joint working party comprising representatives from the Western Australian Municipal Association, the Department of Local Government, the Institute of Municipal Management and the Western Australian Treasury Department. The purpose of the consultancy was to undertake a review in accordance with principles of National Competition Policy of a set of model local laws prepared by the Western Australian Municipal Association: the *Local Laws Relating to Activities on Thoroughfares and Trading in Thoroughfares and Public Places*. The initial report prepared by ERM Mitchell McCotter Pty Ltd has been modified in this document to take account of changes made to the draft local laws. Local governments under the Local Government Act 1995 may enact these laws.

The model local laws are intended to replace a range of local laws that currently deal separately with several matters relating to the use of thoroughfares and public places, and as well introduce laws to regulate several activities not previously addressed by local-government legislation. The general issues addressed by the model local laws are as follows:

- a. Administration of permits for various uses of thoroughfares and public places.
- b. Prohibition or restriction of various activities in thoroughfares and public places.
- c. Rights and duties of the owners and occupiers of land abutting thoroughfares and public places.
- d. Rights and responsibilities relating to animals and vehicles on thoroughfares and public places.
- e. Provision of shopping trolleys for customers by retail businesses.
- f. Placing of signs in thoroughfares.
- g. Conservation of roadside vegetation.
- h. Trading in thoroughfares and public places.

The review of the legislation and the identification of potential restrictions on competition was undertaken in accordance with the Western Australian Government's clause 7 *Competition Policy Statement* for local government¹, the Treasury Department's *Legislation Review Guidelines*², and the Treasury Department's draft *Local Law Review Guidelines*³ that were being prepared concurrently with this study.

The report for this study has been written with an objective of clearly showing the processes and reasoning behind the identification of potential restrictions on competition.

Chapter 2 describes the objectives of the local laws.

Chapter 3 discusses the general nature of restrictions on competition that may arise from local government legislation and identifies restrictions in the legislation being examined.

¹ Local Government Competition Policy Committee, 1996. *Local Government Clause 7 Competition Policy Statement*, Western Australian Government 13 June 1996.

² Western Australian Treasury Competition Policy Unit, April 1997. *Legislation Review Guidelines*.

³ Western Australian Treasury Competition Policy Unit, August 1998. *Local Law Review Guidelines* (Draft).

Chapter 4 simply states that in accordance with the defined scope of the consultancy , no public consultation was undertaken.

Chapter 5 then examines the potential restrictions on competition arising in relation to the various matters addressed by the legislation. The potential advantages and disadvantages of the restrictions are listed, public-benefit tests are undertaken for each restriction, and alternative means of achieving the regulatory objectives are reviewed. Conclusions are drawn as to whether the provisions of the legislation giving rise to the restriction are in the public interest or whether an alternative means of regulation should be pursued.

In *Chapter 6*, the results of the public-benefit tests and assessment of regulatory alternatives are summarised and the conclusion drawn that restrictions contained within the local laws and discussed in some detail in chapter 5 of this report are consistent with the principles of National Competition Policy.

CHAPTER 2

2. LEGISLATIVE OBJECTIVES

The objective of the local laws is to provide for the orderly use by private individuals and business firms of thoroughfares and public places within the district of any local government enacting the laws.

Lands within thoroughfares and public places comprise a "commons" in the sense that the lands are available for non-exclusive use by all persons. Where demand for use of this land is high, situations develop where use of the land by one person may interfere with use of the same land by other persons. The purpose of the local laws is generally to manage potential conflicts and by specifying rights and duties of persons in relation to various uses of land within thoroughfares and public places.

The specific objectives of particular provisions of the local laws relating to thoroughfares are indicated in *Chapter 5*.

CHAPTER 3

3. IDENTIFICATION OF RESTRICTIONS ON COMPETITION

3.1 General nature of restrictions

Before listing and describing potential restrictions on competition, it is useful to define what would constitute a restriction on competition within the context and scope of the legislation being examined.

Restrictions on competition correspond in a very broad sense to restrictions on the freedom of firms and consumers to engage in the economic activities of business or consumption. The term firms is used in a broad sense to include any person or party engaged in production of a good or service, either on a for-profit or non-profit basis. This may include government agencies. The term consumers refers to any person or party engaged in utilising resources, goods or services for reasons of personal gratification. For the purposes of reviewing local laws, the Competition Policy Unit of Treasury indicated that attention should be given only to restrictions on competition relating or potentially relating to the commercial activities of firms.

It should be noted that restrictions on competition may occur regardless of whether a constraint applies equally or unequally to all firms affected by the legislation. It may be argued that if the restriction applies equally to all participants in a particular industry or market then it is not considered to constitute a restriction on competition. However, from a broader perspective such restrictions may affect competition for resources or goods between different sectors of the economy and thus potentially affect the allocation of resources and goods through the economy.

The laws enacted by local government authorities typically relate to the use of land, buildings and associated assets within the respective municipal areas. This includes both private and public lands. Within this context, restrictions on competition were considered to arise for business firms in the following general cases.

- A local law discriminates or provides for discrimination amongst firms with respect to use of public lands or public property.
- A local law discriminates or provides for discrimination amongst firms with respect to use of private property or assets or freedom to engage in commercial activities.
- A local law imposes constraints on a firm in relation to use of public land or assets in instances where the firm is otherwise permitted to make use of that land or property.
- A local law imposes constraints on a firm in relation to use of the firm's own private property or assets or freedom to engage in commercial activities.
- A local law imposes costs on a firm through levying of fees and charges.
- Not all constraints or costs on business activity are considered restrictions on competition. For the local laws, the following types of constraints on business activity were not regarded as restrictions for the purposes of the review.
- A general and uniformly applied prohibition on use of public lands or assets for reviews spacing in this give commercial activities.
- Levying of council rates.

3.2 Identification Of Restrictions

The legislation is divided into 'parts', 'divisions' and 'subdivisions' and 'clauses' that relate to different matters concerning the administration of the legislation or particular activities in use of public land. This section of the report briefly describes the scope of each part, division and subdivision of the legislation and identifies potential restrictions on competition.

3.2.1 Part 1 – Preliminary

Clauses of Part 1 contain definitions and transitional provisions. No potential restrictions on competition were considered to arise in this part.

3.2.2 Part 2 – Activities on thoroughfares and public places

Clauses of Part 2 place constraints on activities able to be undertaken in public places including both public property and public places on private property, such as arcades or verandahs of shopping centres. Potential restrictions on competition arise from clauses requiring permits to be obtained for certain activities on thoroughfares and public places.

Restriction 1:

A permit is required to excavate land through or under a kerb or footpath; place any materials on a verge other than for rubbish collection by the local government; cause any obstruction to users of a thoroughfare; cause any obstruction to a water channel or water course; fell any tree across a thoroughfare, use a hoist above a thoroughfare; place a bulk rubbish container on any thoroughfare (Clause 2.2).

Division 2 is concerned with vehicle crossings between a road and adjacent properties. Potential restrictions on competition arise from a clause requiring permits to be obtained for constructing and using temporary crossings.

Restriction 2:

A permit from the local government is required for the construction or use of a temporary crossing, and the local government may require a bond or deposit from the permit holder pending reinstatement of the thoroughfare (Clauses 2.4(1), 2.4(3)).

Clauses of Division 3 of Part 2 relate to use of thoroughfare verges for lawns and gardens. Subdivisions 1 to 3 place constraints on use of thoroughfare verges for lawns and gardens. The constraints are unlikely to affect commercial use of adjacent property and the constraints do not discriminate or provide for discrimination between any firms or persons. Consequently no potential restrictions on competition were considered to arise in these subdivisions of the legislation. Subdivision 4 (Clause 2.13) allows for the local government and other authorities to disturb a verge without compensation to the owner or occupier of adjacent land for any damage to lawns, gardens or any hard surface. Potential restrictions on competition arise from the potential for costs to be imposed on the owner or occupier of the adjacent land.

Restriction 3:

The local government and other authorities may disturb a verge without compensation to the owner or occupier of adjacent land for any damage to lawns, gardens or any hard surface (Clause 2.13).

Clauses of Division 4 of Part 2 provide for the local government to assign a street number to a property. No potential restrictions on competition were considered to arise in this division of the legislation.

Division 5 of Part 2 provides the local government with power to require any owner of land adjoining a public place or local government property as defined, to erect a fence. Potential restrictions on competition arise from the potential for costs to be imposed on the owner of the adjacent land to which such a requirement is applied.

Restriction 4:

The local government may require any owner of land adjoining a public place or local government property to erect a fence (clause 2.16).

3.2.3 Part 3 – Advertising signs on thoroughfares

Part 3 places restrictions on the placement of advertising signs on thoroughfares. Potential restrictions on competition arise from the requirement for firms to hold a permit for placement of signs on thoroughfares, and from constraints on the use of signs.

Restriction 5:

A permit from the local government is required for a person to erect on a thoroughfare or place any advertising sign above a specified minimum size, or to post any bill or paint, place or affix any advertisement on a thoroughfare. Constraints are imposed on the locations at which signs may be placed, dimensions of signs, information able to be contained on a sign and times at which signs may be displayed. (Clauses 3.2, 3.4).

Restriction 6:

The holder of a permit for a sign may be required by the Local Government to hold public liability insurance (Clauses 3.3,7.3).

3.2.4 Part 4 – Obstructing animals, vehicles or shopping trolleys

Division 1 of Part 4 places prohibitions and restrictions on activities involving vehicles and animals on thoroughfares and other public places. Potential restrictions on competition arise from clauses requiring permits to be obtained for certain activities on thoroughfares and public places, and from clauses providing for discrimination amongst persons in regard to use of public places.

Restriction 7:

A permit from the local government is required to leave an animal or vehicle, or any part of a vehicle, in a public place so that it obstructs the use of that public place for more than specified maximum periods; or to ride or drive a horse on a thoroughfare in a built up area (Clauses 4.1 & 4.2).

Division 2 of Part 4 places restrictions on retailing firms which make shopping trolleys available for the use of customers. Potential restrictions on competition arise from requirements that shopping trolleys be marked with the name of the retailing firm and the retailing firm be responsible for their return when abandoned in a public place.

Restriction 8:

A firm making shopping trolleys available to customers is required to mark the trolleys with the name of the firm, and is to remove an abandoned shopping trolley from a public place within 24 hours of being notified of its location by the local government or otherwise ask the local government to return the trolley at the firm's cost (Clause 4.6).

3.2.5 Part 5 – Roadside conservation

Clauses of Part 5 impose restrictions on activities on thoroughfares with the objective of protecting roadside vegetation within the thoroughfares. Potential restrictions on competition arise where permits from the local authority are required to undertake certain activities in relation to the vegetation on thoroughfares.

Restriction 9:

A permit from the local authority is required to clear vegetation within a thoroughfare, burn part of a thoroughfare, construct a firebreak within a thoroughfare, or collect seed from a thoroughfare (Clauses 5.11, 5.13, 5.17, 5.20).

3.2.6 Part 6 – Trading in thoroughfares and public places

Clauses of Part 6 impose constraints on trading activities within thoroughfares and public places. The trading activities affected by the legislation are stallholding, trading, street entertainment, and providing outdoor eating facilities.

Division 1 of Part 6 relates to stallholders and traders. Potential restrictions on competition arise from requirements to hold a permit from the local government to engage in these activities and from constraints on how the activities may be undertaken.

Restriction 10:

A permit from the local authority is required to conduct a stall on any thoroughfare or public property, or trade in any public place.

Restriction 11:

An application for a stallholder's or trader's licence must provide the local government with details of the applicant's proposed activities. (Clauses 6.2, 6.3).

Restriction 12:

Stallholder's and trader's permits may limit the types of goods sold; the locations at which activities may be conducted; the times during which activities may be conducted; and the equipment or structures that may be utilised for the purposes of the activities. (Clause 6.6(1)).

Restriction 13:

Constraints may be imposed on the activities that may be engaged in by a stallholder or trader to attract custom, including prohibitions or restrictions on audible advertising, and the use of signs. (Clause 6.6 (1)(h)).

Division 2 of Part 6 relates to street entertainers. Potential restrictions on competition arise from requirements to hold a permit from the local government to engage in these activities and from constraints on how the activities may be undertaken.

Restriction 14:

A permit from the local authority is required to perform in a public place. Permits for performing may limit the locations at which performances may be conducted, the times during which performances may be conducted, and the nature of the performance. The local government may cancel a permit if the sound caused by the permit is considered to adversely affect the enjoyment, convenience or comfort of other persons in the public place, or if the performance is otherwise considered to constitute a nuisance. (Clauses 6.10, 6.11, 6.13).

Division 3 of Part 6 relates to outdoor eating facilities on public places. Potential restrictions on competition arise from requirements to hold a permit from the local government to conduct an outdoor eating facility and from constraints on how the facility may be conducted.

Restriction 15:

A permit is required to establish or conduct an outdoor eating facility. (Clause 6.16).

Restriction 16:

The local government may require the holder of a permit for an outdoor eating facility to hold public liability insurance. (Clause 7.3).

Restriction 17:

An outdoor eating facility must be conducted in accordance with specified requirements for cleanliness, tidiness and serviceability of furniture and structures. (Clause 6.18).

Restriction 18:

The holder of a permit for an outdoor eating facility may be required to undertake works for the removal, alteration, repair, reinstatement or reconstruction of any part of a public place, or be liable for the costs of such works, where the works arise in connection with the facility. (Clauses 6.18, 6.21).

3.2.7 Part 7 – Permits

Clauses of Part 7 specify procedures for administering permits that may be issued by a local government in relation to activities regulated under other parts of the legislation. The procedures for administering permits may impose restrictions on competition due to requirements and costs imposed on persons in regard to applying for or holding a permit. Although these restrictions would only arise in relation to the particular activities for which permits are required, they can be addressed in general terms and are considered to give rise to the following potential restrictions.

Restriction 19:

Applicants for permits may be required to provide information on proposed activities to the local government (Clause 7.1).

Restriction 20:

Fees may be charged for application, approval and transfer of permits (Clauses 7.1, 7.3, 7.8).

Restriction 21:

Transfer of permits is subject to approval by the local government (Clause 7.8).

CHAPTER 4

4. PUBLIC CONSULTATION

In accordance with the defined scope of the consultancy project for this legislative review, no public consultation was undertaken.

CHAPTER 5

5. PUBLIC EFFECTS ON COMPETITION AND THE ECONOMY

5.1 Introduction

The review of the legislation identified twenty-five (25) potential restrictions on competition, of which four (4) have been removed completely from the local laws. Details of the restrictions which have been deleted are given in Chapter 6 or this report. In this chapter the potential economic and social advantages and disadvantages of the 21 remaining restrictions are identified, and discussed in terms of the guidelines for legislative review issued by the Competition Policy Unit of Treasury. Quantitative or qualitative assessments of the advantages and disadvantages of each restriction are described to determine the public benefit of the restriction and the relevant parts of the legislation. Potential benefits of alternative means of regulation are assessed and conclusions drawn which justify the provisions of the legislation giving rise to each restriction on competition being maintained, subject in some cases, to the judicial use of such provisions.

Parts of the legislation for which no potential restrictions on competition were identified are not addressed further in this report.

5.2.1 Activities on thoroughfares and public places

Restriction 1:

A permit is required to excavate land through or under a kerb or footpath; place any materials on a verge other than for rubbish collection by a local government; cause any obstruction to users of a thoroughfare; cause any obstruction to a water channel or water course; fell any tree across a thoroughfare; use a hoist above a thoroughfare; place a bulk rubbish container on any thoroughfare (Clause 2.2).

Objectives

Reduction and/or control of nuisance, inconvenience or safety hazards to users of public spaces.

Maintenance of public assets.

Effects of the Restriction:

- Costs** The restriction may result in increased costs of construction activities and similar commercial activities requiring temporary use of road verges, obstruction of thoroughfares or excavation within public spaces. Costs of up to a few hundred dollars may be incurred in securing permits, or additional costs of undertaking commercial activities if an application for a permit is not approved. Refusal of a permit would be uncommon.
- Benefits** Substantial benefits may arise in the form of costs avoided through reduction and/or control of nuisance, inconvenience or safety hazards to users of public spaces. Disturbance and obstruction of footpaths, road verges and roads may result in substantial hazards to users of the facilities if not controlled and undertaken in accordance with standards enforced by local governments through the permit system.
- The requirement for permits enables better protection and maintenance of public assets by allowing a local government to identify parties disturbing land and facilities in thoroughfares, to modify works so as to minimise impacts on public assets, and to ensure that remedial works are undertaken or the costs of remedial works are recovered.

Assessment of Public Benefit:

Requirements for permits to utilise land on thoroughfares may cause costs up to a few hundred dollars to be incurred by private landowners. Benefits were not quantified but the restriction would reduce potential costs associated with hazards and obstructions on thoroughfares. The restriction was therefore assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

An alternative means of controlling use of public space in thoroughfares for construction activities would be to establish rules and standards for these activities. This is not considered practical due to the wide range of potential activities and situations that would need to be addressed. Such an approach would also reduce the ability of a local government to identify parties responsible for any damage to public facilities.

Overall Conclusions:

The provisions of the legislation requiring permits for construction and similar activities in thoroughfares were assessed as producing a net public benefit and there was not considered to be any alternative and less restrictive means of securing this benefit. It was therefore concluded that no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 2:

A permit from the local government is required for the construction or use of a temporary crossing, and the local government may require a bond or deposit from the permit holder pending reinstatement of the thoroughfare (Clauses 2.4(1), 2.4(3)).

Objectives:

Reduction and/or control of nuisance, inconvenience or safety hazards to users of public thoroughfares.

Maintenance of public assets.

Effects of the Restriction:

- Costs** The restriction may result in increased costs of construction activities and other activities requiring temporary access to land across road verges. Costs of up to a few hundred dollars may arise from time requirements and provision of information for permit application and processing. 'Temporary' costs of up to several hundred dollars may be incurred in provision of bonds or deposits.
- Benefits** Substantial benefits may arise from controlling disruption of footpath and thoroughfare surfaces. Disturbance and obstruction of footpaths, road verges and roads may result in substantial hazards to users of the facilities if not controlled and undertaken in accordance with standards enforced by local governments through the permit system. These benefits would arise from reduction and/or control of nuisance, inconvenience or safety hazards to users of thoroughfares that may arise in the absence of local government control of the relevant activities.
- The requirement for permits enables better protection and maintenance of public assets by allowing a local government to identify parties disturbing land and facilities in thoroughfares, to modify works so as to minimise impacts on public assets, and to ensure that remedial works are undertaken or the costs of remedial works are recovered.

Assessment of Public Benefit:

Requirements for permits, bonds and deposits to construct temporary crossings may cause costs up to several hundred dollars to be incurred by private landowners. Benefits were not quantified but the restriction would reduce potential costs associated with hazards and obstructions on thoroughfares. The restriction was therefore assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

An alternative means of controlling construction and use of temporary crossings would be to establish rules and standards for these activities. This is not considered practical due to the wide range of situations that would need to be addressed. Such an approach would also reduce the ability of a local government to identify parties responsible for any damage to public facilities.

Overall Conclusions:

The provisions of the legislation requiring permits for temporary crossings were assessed as producing a net public benefit and there was not considered to be any alternative and less restrictive means of securing this benefit. It was therefore concluded that no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 3:

The local government and other authorities may disturb a verge without compensation to the owner or occupier of adjacent land for any damage to lawns, gardens or any hard surface (Clause 2.13).

Objectives:

Cost savings in works of local government and utility companies.

Effects of the Restriction:

- Costs** The restriction may impose costs on owners of private land abutting a thoroughfare through disturbance of lawns, reticulation services, etc. and temporary restriction of access to properties. It is envisaged that these costs would be negligible for non-commercial land since current practice amongst local governments and utility companies is to minimise disruption of access to properties and restore reticulation systems and surfaces of verges to the extent practicable after any works. Potentially high costs may be incurred where works disrupt access to commercial premises and cause a temporary loss of custom to affected businesses.
- Benefits** It is envisaged that the restriction would give rise to substantial cost savings in works of local government and utility companies. Although these service providers typically undertake substantial reinstatement of disturbed areas on road verges, cost savings would arise from the ability of these service providers to carry out works without incurring time delays and other costs that may arise if they were liable for any damage to private assets on the affected land.

Assessment of Public Benefit:

Disruption of a verge for service works may impose costs on the owner or occupier of adjacent property although conventional practice amongst local governments and utility companies is to minimise disruption and restore verge areas. Benefits were not quantified but the restriction would probably greatly reduce costs associated with utility works. The restriction was therefore assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

There is not considered to be any practical alternative means for a local government to facilitate works on verges.

Overall Conclusions:

The provisions of the legislation allowing disruption of verge areas without liability for damages was assessed as providing a net public benefit and there was not considered to be any alternative and less restrictive means of securing this benefit. It was therefore concluded that no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 4:

The local government may require any owner of land adjoining a public place or local government property to erect a fence (Clause 2.16).

Objectives:

Reduction of public nuisance or hazards to users of public places and local government property.

Effects of the Restriction:

- Costs The provisions of the legislation allow a local government to impose costs on owners or occupiers of land through mandatory requirements to erect fences or other structures to enclose land. Costs may range from a few hundred dollars for a fence or barrier across a small parcel of land, up to possibly many thousand dollars for fencing of large parcels of land or erection of barriers to prevent escape of noise or materials from land.
- Benefits Benefits from the restriction may arise where the erection of fences or barriers reduces costs incurred by users of a public place or local government property as a result of use of adjacent private land, or there is a reduction in public exposure and risk to hazards on the private land. These benefits may be substantial where health or safety issues are concerned. Large costs may be associated with personal accidents on thoroughfares caused by escape of animals from private land and accidents arising from uncontrolled access to hazardous private land. Costs may also arise from inconvenience or nuisance where materials or animals escape from land.

Assessment of Public Benefit:

Mandatory requirements for construction of fences or barriers may impose substantial costs on private landowners. Benefits were not quantified but the provision may allow avoidance of large costs associated with hazards to public safety. The restriction was assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

The alternative means of controlling hazards arising from private land is to rely on civil law relating to damages or nuisance. This may in any case occur in instances where the relevant provisions of the local law are not applied. Sole reliance on civil law may not be appropriate, however, in addressing a known hazard prior to any cost arising from the hazard. Processes of civil law also have the disadvantages of involving substantial expense to remedy any problem situation, and of requiring any complainant against a situation to at least initially bear costs of addressing a conflict relating to a nuisance or hazard. In view of these disadvantages, sole reliance on civil law is not considered to be in the public interest.

Overall Conclusions:

The provisions of the legislation allow the local government to compulsorily require a landowner to erect a fence or other barrier were assessed as providing a net public benefit. Civil law represents an alternative means of regulation, but may not be appropriate in all circumstances where a hazard needs to be reduced and would be a more expensive means of resolving conflicts over situations of nuisance or hazards. It was therefore concluded that no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

5.3 Advertising signs on thoroughfares:

Restriction 5:

A permit from the local government is required for a person to erect on a thoroughfare or place an advertising sign, or to post any bill or paint, place or affix any advertisement on a thoroughfare. Constraints are imposed on the locations at which signs may be placed, dimensions of signs, information able to be contained on a sign and times at which signs may be displayed. (Clauses 3.2, 3.4).

Objectives:

Reduction of costs on users of public space arising from nuisance, inconvenience or safety hazards arising from erection or placement of signs.

Effects of the Restriction:

- Costs** Potentially substantial costs may arise from foregone opportunities for advertising that the restriction entails. The restriction does not prohibit the use of signs, but only place restrictions on the use of signs. Hence the use of signs for advertising may still occur, but may be restricted to levels or scope less than would be desired by the business firms placing signs.
- Benefits** The restriction may result in benefits from reduced costs to users of thoroughfares and other public places through nuisance, inconvenience or hazards of signs. For example, uncontrolled placement and dimensions of signs on thoroughfares may result in obstruction of views from motor vehicles causing accidents. Similarly, uncontrolled placement of signs on footpaths may produce safety hazards. A lack of control of information presented on signs may impose costs on users of thoroughfares through loss of visual amenity.

Assessment of Public Benefit:

Costs and benefits of the restriction were not rigorously quantified hence a definitive statement of the public benefit in the restriction cannot be made. However, as firms are not totally prohibited from using signs, and as potential hazards and loss of visual amenity that may arise from uncontrolled placement of signs on roads and footpaths, it is likely that net public benefits accrue to some control over use of signs. The restriction was therefore assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

An alternative to a permit system as a means of controlling use of public space in thoroughfares for placement of signs would be to establish rules and standards for these activities. This is not considered practical due to the wide range of potential activities and situations that would need to be addressed by any rules or standards.

Overall Conclusions:

The costs and benefits of the restriction was not quantified, but it was assessed that the restriction probably results in a net public benefit due to the potential costs arising in a situation of no control over use of thoroughfares for signs. There was not considered to be any alternative and less restrictive means of securing this benefit. It was therefore concluded that no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 6:

The holder of a permit for a sign may be required by the Local Government to hold public liability insurance (Clauses 3.3, 7.3).

Objectives:

Provision for users of thoroughfares and public spaces to obtain compensation for losses or injuries arising from the placement or erection of signs.

Effects of the Restriction:

- Costs** The restriction may result in costs of a few hundred to a few thousand dollars per annum being imposed on firms through requirements to purchase insurance.
- Benefits** Mandatory requirements for public liability insurance may reduce costs that would otherwise be borne by users of thoroughfares where signs in thoroughfares contribute to accidents and personal injury and the owner of the sign does not hold appropriate insurance or does not have the resources to meet the cost of damages. The legislation allows a local government to exercise discretion in the requirement for insurance according to the potential hazard associated with proposals to erect signs.

Assessment of Public Benefit:

Costs and benefits of the restriction were not rigorously quantified hence a definitive statement of the public benefit in the restriction cannot be made. However, costs of insurance would generally not be

large and, as signs in public places may often impose some level of potential hazard, it is likely that net public benefits accrue to the requirement for insurance.

Alternative Means of Achieving Objectives:

In the absence of requirements for public liability insurance, persons suffering injury as a result of signs placed in thoroughfares may still be able to claim compensation for damages through processes of civil law. This would however shift some costs of obtaining compensation from the owner of the sign to the person suffering injury. This is not considered to be in the public interest.

Overall Conclusions:

Costs and benefits of the restriction were not quantified, but it was assessed that the restriction probably results in a net public benefit due to the relatively low costs of insurance and protection of public users of thoroughfares. Relying on individual decisions of firms in relation to insurance and on civil processes for claiming compensation for damages would be a less restrictive means of regulation but would shift some costs from private firms to public users of thoroughfares. It was considered that such an alternative would not be in the public interest and therefore no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

5.4 Obstructing animals, vehicles, or shopping trolleys:

Restriction 7:

A permit from the local government is required to leave an animal or vehicle, or any part of a vehicle, in a public place so that it obstructs the use of that public place for more than specified maximum periods; or to ride or drive a horse on a thoroughfare in a built up area (Clauses 4.1 & 4.2).

Objectives:

Reduction of costs on users of public space arising from nuisance, inconvenience or safety hazards.
Protection of public assets.

Effects of the Restriction:

Costs	Where enforced, the restriction may result in costs of tens to hundreds of dollars being incurred by users of motor vehicles and owners/occupiers of private land adjacent to thoroughfares. Costs may arise from time and resources necessary to obtain a permit, or costs from restricted activities where a permit is not granted. There is likely to be a relatively low incidence of these costs. Permits would not be required in many circumstances where use of public places for leaving animals or vehicles does not impose a significant obstruction to use of the place, or an obstruction is present for less than the specified period of time. Also, it is unlikely that local governments would strictly enforce the provisions of the laws, but rather apply the provisions on an "as needs" basis to control the use of public space or prevent damage to public assets.
Benefits	Potentially substantial benefits may arise from opportunistic enforcement of the provisions of the legislation where necessary for the protection from damage of public assets such as footpaths, or controlling obstruction of thoroughfares.

Assessment of Public Benefit:

Requirements for permits to utilise public space may infrequently impose costs of up to a few hundred dollars on private persons. Benefits were not quantified but the restriction would comprise reductions in costs associated with damage to land surfaces, footpaths and pavements on public places, and costs associated with nuisance, inconvenience or hazards to other users of public places. The restriction was therefore assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

The provisions of the laws giving rise to the restriction are aimed at allowing for use of public places that may cause or impose costs on the public. An alternative means of controlling use of public places for the relevant activities would be to establish rules and standards for these activities. This is not considered practical due to the wide range of possible activities and situations that would need to be addressed.

Overall Conclusions:

The provisions of the legislation requiring permits for the relevant activities were assessed as providing a net public benefit and there was not considered to be any alternative and less restrictive means of securing this benefit. It was, therefore, concluded that no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 8:

A firm making shopping trolleys available to customers is required to implement measures to mark the trolleys with the name of the firm, and is to remove an abandoned shopping trolley from a public place within 24 hours of being notified of its location by the local government or otherwise ask the local government to return the trolley at the firm's cost (Clause 4.6).

Objectives:

Reduction of costs on users of public space arising from nuisance, inconvenience or safety hazards arising from abandonment of shopping trolleys.

Effects of the Restriction:

Costs	The restriction may impose costs of several hundred to many thousand dollars to retail businesses through requirements to collect trolleys or otherwise pay for their return. This could also involve an inconvenience cost at inopportune times. However, when trolleys are taken (or stolen) from business premises the alternatives are loss or damage to the trolley and this also means costs to the public.
Benefits	Reduction of costs on users of public space arising from nuisance, inconvenience or safety hazards resulting from abandonment of shopping trolleys. These benefits could be substantial in some instances such as where motor vehicle accidents are avoided.

Assessment of Public Benefit:

Costs and benefits of the restriction were not rigorously quantified hence a definitive statement of the public benefit in the restriction cannot be made. However, due to the potential hazards arising from abandoned shopping trolleys on roads and footpaths, it is apparent that prompt return of the trolleys to business premises would give rise to public benefits.

Alternative Means of Achieving Objectives:

One alternative considered was to require a firm making shopping trolleys available for the use of customers to obtain a permit to do so, and as a condition of permit, implement measures to prevent shopping trolleys being moved beyond the retailing firm's premises. Such a restriction was considered to conflict with the user friendly image which firms strive to project. Another alternative would be to fine the owner of the shopping trolley where a trolley is found abandoned in a public place, and in this way induce measures by the firm to keep trolleys on the business premises. This would raise charges of punishing an innocent party for the crimes of another. In view of the mutual benefits to both the firm and the local government and public from the prompt return of the trolleys to the business premises, this was considered the preferred option.

Overall Conclusion:

The restriction was assessed to be in the public interest.

5.5 Roadside conservation:

Restriction 9:

A permit from the local authority is required outside townsites to clear vegetation within a thoroughfare, burn part of a thoroughfare, construct a firebreak within a thoroughfare, or collect seed from a thoroughfare (Clauses 5.11, 5.13, 5.17, 5.20).

Objectives:

Protection of vegetation within road reserves, particularly remnant native vegetation in rural areas.

Effects of the Restriction:

- | | |
|----------|--|
| Costs | The restriction may in some instances impose costs on owners or occupiers of land abutting thoroughfares through a restricted ability to control fire hazards and weeds in roadside vegetation. |
| Benefits | Substantial public benefits may arise from maintenance of values of biodiversity, visual amenity, wildlife corridors, and windbreaks associated with remnant native vegetation in road reserves. Widespread clearing of native vegetation in many rural areas has given rise to situations where original vegetation systems and native fauna of agricultural areas are often only represented in road reserves. In many instances these reserves are the only known habitats of rare and endangered species of flora ⁴ . |

Assessment of Public Benefit:

Costs and benefits of the restriction were not rigorously quantified hence a definitive statement of the public benefit in the restriction cannot be made. However, the importance of roadside vegetation in conservation of native flora and fauna is generally acknowledged, particularly in rural or semi-rural areas. Given broad government objectives of environmental protection and ecologically sustainable development, it is considered that these benefits exceed the costs imposed on owners and occupiers of land abutting thoroughfares, at least for the rural and semi-rural areas. On this basis it was assessed that the restriction results in a net public benefit.

Alternative Means of Achieving Objectives:

An alternative to the permit requirement would be for local governments to issue guidelines addressing the issue of roadside clearing and protection of vegetation, however, such guidelines would be unlikely to be as effective as the local law restriction in protecting native vegetation.

⁴ Breckwoldt, R.,1990. *Living Corridors*, Canberra, greening Australia Ltd.

Overall Conclusions:

Although not quantified, it was assessed that the restriction probably results in a net public benefit due to the importance of roadside vegetation in maintaining bio-diversity in rural areas that have otherwise been largely cleared. Provided the restriction is applied only in rural or semi-rural areas there would be no inconsistency with principles of National Competition Policy.

5.6 Trading in public thoroughfares and public places

Restriction 10:

A permit from the local authority is required to conduct a stall on any thoroughfare or public property, or trade in any public place.

Objectives:

Provision for local authorities to control and co-ordinate the nature, location and times of stallholding and trading in thoroughfares and public places.

Effects of the Restriction:

Costs	The requirement for stallholders and traders to obtain permits does not in itself give rise to any public costs. Rather, costs depend on the manner in which a permit system is operated and administered, including such matters as restrictions on the issue of licences, fees and charges pertaining to licences, and restrictive conditions attached to licences. These matters were addressed in the review as separate restrictions.
Benefits	The requirement for stallholders and traders to obtain permits provides a mechanism for local authorities to control and co-ordinate commercial and other activities being undertaken in thoroughfares and other public places. There is considered to be a substantial public benefit in such control due to the costs potentially imposed on the public by nuisance, inconvenience and hazards potentially caused by unregulated commercial activities.

Assessment of Public Benefit:

The requirement for stallholders and traders to obtain permits was assessed as providing a net public benefit due to the absence of any costs arising from a permit system per se and substantial benefits of co-ordination of commercial activities with other uses of thoroughfares and public places.

Alternative Means of Achieving Objectives:

Alternative means of controlling stallholding and trading activities and co-ordinating these activities with other uses of thoroughfares and public places are:

- (i) to abolish the permit system and establish general rules for conduct of these activities; and
- (ii) to use a negative licensing scheme whereby persons that are considered unsuitable to conduct business as traders are prevented from doing so.

Neither of these alternatives is considered to be of any public benefit viz. a viz. the existing licensing system. The use of general rules would reduce the flexibility of local authorities to regulate the activities of individual stallholders or traders on a case by case basis according to the location and nature of these activities. A negative licensing scheme would be more expensive to administer and would not be suited to achieving the principal objectives of the local laws, which is to regulate the nature and location of stallholding or trading activities rather than the identity of persons undertaking the activities.

Overall Conclusions:

The requirement for stallholders or traders to obtain permits was assessed as providing a net public benefit. There was not considered to be any alternative and less restrictive means of achieving regulatory objectives and it was thus concluded that the provisions of the local laws giving rise to the restriction are consistent with principles of National Competition Policy.

Restriction 11:

An applicant for a stallholder's or trader's permit must provide the local government with information details of the applicant's proposed activities. (Clauses 6.2, 6.3,).

Objectives:

Protection of consumers from unscrupulous or unethical traders.

Provision for local authorities to secure information on proposed stallholding or trading activities and thereby to make informed decisions on granting of a permit and attachment of conditions to a permit.

Effects of the Restriction:

Costs	Indirect costs of up to a few hundred dollars may be incurred by applicants for permits as a result of the time necessary to compile the necessary information.
Benefits	The restriction was assessed as providing benefits in terms of consumer protection and minimising costs imposed by stallholders and traders on users of thoroughfares and public places. Stallholders and traders may conduct trading through temporary displays of merchandise in thoroughfares or other public places. Provision of information to the local government would enable informed assessment of the potential impacts of an activity on other uses of the relevant public property or assets, and setting of appropriate conditions on a licence to enable such impacts to be managed. These benefits of co-ordinating activities of traders with other uses of public places could be very large where this allows for avoidance of potential safety hazards.

Assessment of Public Benefit:

Provision of information to a local authority may impose costs of up to a few hundred dollars on applicants for traders licences. These costs were considered to be outweighed by potential benefits to the public through co-ordinated use of public space and consumer protection. The restriction was therefore assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

There is not considered to be any alternative means for a local government to secure information on proposed trading activities other than to have this information provided by the proponents of these activities.

Overall Conclusions:

The provisions of the legislation requiring information to be provided by a permit applicant were assessed as producing a net public benefit and there was not considered to be any alternative and less restrictive means of securing this benefit. It was therefore concluded that the provisions of the local laws giving rise to the restriction are consistent with principles of National Competition Policy.

Restriction 12:

Stallholder's and trader's permits may limit the types of goods sold; the locations at which activities may be conducted; the times during which activities may be conducted; and the equipment or structures that may be utilised for the purposes of the activities. In determining an application, the local government is to have regard to the principles set out in the Competition Principles Agreement. (Clauses 6.6(1), 6.5(1))

Objectives:

Minimisation of costs on users of thoroughfares and other public places through lower nuisance, inconvenience or hazards of street trading.

Potentially –

Limitation of potential competition between street traders and established shops and thereby provision of security of investment returns for the shops.

Effects of the Restriction:

- Costs** Any limitation by a local government on the areas within which stallholders and traders may conduct business and the scope of business activities may reduce competition between street traders and between the traders and shops selling similar products. This would give rise to reduced consumer access to the services of these street traders, reduced consumer choice in the purchase of the relevant goods, and higher prices for the goods. These effects were not quantified, but they may be significant. Two general surveys of street trading identified in this review^{5,6}, indicate that most opposition to street trading occurs from established shopkeepers and private-property owners in response to fears of downward pressure on prices. The existence of this concern suggests that restricting permits would keep prices higher than they would be in the absence of such restriction. However, observations have also been made that street traders may in some circumstances attract customers to commercial areas and increase demand for goods. This may offset downward pressure on prices resulting from an increase in supply in presence of street traders.
- Benefits** Provision for the local governments to control locations of stallholding and trading and the scope of these activities may give rise to substantial benefits in avoiding obstruction of footpaths and other public places, particularly where proposed street-trading activities involve temporary displays of merchandise or trade from a motor vehicle. Benefits would comprise the reduction in costs that may otherwise be incurred by users of thoroughfares and other public places through nuisance, inconvenience or hazards.
- Limitation of areas in which stallholders and traders may conduct business may be used by a local government to reduce competition between the street traders and established shops. This is a generally perceived benefit of the restrictions, although actual benefits are uncertain and potentially variable depending upon the degree of restriction applied by a local government and the types of goods or services traded. Restrictions on minimum distances of trading from shops selling similar goods appear to arise from concerns of shop proprietors of "unfair" competition from street traders. The street traders are perceived to have an unfair advantage due to abilities to escape paying rent or taxes, and the ability to benefit from investment by shop owners in advertising and shopfronts that attract customers to the area.
- This potential competitive advantage would, however, be negated by the levying of charges ranging from \$15 per day to \$1250 per annum on holders of stallholder's and trader's permits, as provided for in the local laws.
- A literature search failed to reveal any analyses of competition between street traders and established shops. Anecdotal evidence suggests that street trading may increase or decrease the custom of established shops depending on particular circumstances of location and the goods or services being sold.
- Observations by Houston⁷ indicate that street traders may actually increase custom of adjacent businesses by attracting potential customers to the area, and moving street traders away from established businesses has been observed to reduce the custom of shops by attracting potential customers away from the area.

In view of these observations and the absence of any contrary evidence, it was assessed that there was no significant benefit to restricting the locations of street-trading activities to protect existing businesses.

Assessment of Public Benefit:

⁵ Houston, L.O., 1993. Streetwise, *Planning* 59(5):20-22.

⁶ Davies, S., 1985. Managing Downtown Public Spaces, *Technology Review* 88(6):18-25

⁷ Houston, L.O., 1993 op cit.

The restriction on locations and activities of stallholders and street traders was assessed as giving rise to potentially significant costs to consumers through reduced choice and higher prices, and public benefits through restricting street-trading activities in locations where these may impose costs on other users of thoroughfares and public places. The benefits were assessed as outweighing the costs and the restriction thus determined to be in the public interest.

Alternative Means of Achieving Objectives:

The restriction was assessed as providing public benefits through limiting stallholding and trading activities in locations where these may impose costs on other users of thoroughfares and public places, but no public benefits where provisions of the local laws are used to limit competition between traders and established shops. An alternative and less restrictive means of regulation would be to specify that a local authority may only limit the area within which street-trading activities may occur for the purposes of preventing obstruction of thoroughfares or preventing inconvenience, nuisance or hazards to users of thoroughfares and public places.

Overall Conclusions:

The provisions of the local laws allowing a local authority to restrict areas of trading activities were assessed as providing a net public benefit, due to the ability of an authority to limit potential costs imposed by trading activities on other users of thoroughfares and public places. However, so as to prevent an abuse of powers which exist in clause 6.6(1) to restrict competition, these powers are governed by clause 6.5(1) which requires a local government to have regard to principles set out in the Competition Principles Agreement in determining an application for a permit. Per se, the provisions within clause 6.6(1) restricting locations, times, equipment and structures do not offend the Competition Principles Agreement, but where any provision is used to protect existing business or would have that effect, that decision needs to be justified as in the public interest in terms of the Agreement.

Restriction 13

Constraints may be imposed on the activities that may be engaged in by a stallholder or trader to attract custom, including prohibitions or restrictions on audible advertising, and the use of signs. (Clause 6.6(1)(h)).

Objectives:

Reduction in costs on users of thoroughfares and other public places through lower nuisance by stallholders and street traders.

Effects of the Restriction:

- Costs** The restriction may impose substantial costs on stallholders and traders by restricting their abilities to advertise and attract attention of prospective customers. Small costs may also accrue to consumers through less awareness of the availability of services provided by the street traders.
- Benefits** Benefits comprise reduced aural nuisance to users of thoroughfares and public places, and reduced obstruction of thoroughfares and public places by signs. This benefit may be substantial for some public places, but small in major retail areas where it has become common practice for some established shops to use loudspeakers and announcers to attract custom.

Assessment of Public Benefit:

The restriction was assessed as likely to provide a net public benefit if applied in residential areas. No significant benefit is likely in major retail areas where some established shops engage in advertising practices similar to those which can be prohibited for street traders. A discretionary control to the local government to be applied on a case by case basis was therefore preferred to an absolute prohibition.

Alternative Means of Achieving Objectives:

An alternative but more restrictive means of regulation would be a general prohibition on audible advertising and the use of signs, but this would catch traders in circumstances where a net public benefit may not exist.

Conclusions:

A restriction on audible advertising by stallholders and traders was assessed as providing a net public benefit. The restriction could take the form of a general prohibition or an alternative and less restrictive means of achieving the regulatory objective would be for local authorities to regulate the audible advertising that may be undertaken by traders on a case-by-case basis according to the street-trading activities proposed in applications for permits. The latter option has been preferred and is consistent with principles of National Competition Policy.

Restriction 14:

A permit from the local authority is required to perform in a public place. Permits for performing may limit the locations at which performances may be conducted, the times during which performances may be conducted, and the nature of the performance. The local government may cancel a permit if the sound caused by the permit is considered to adversely affect the enjoyment, convenience or comfort of other persons in the public place, or if the performance is otherwise considered to constitute a nuisance. (Clauses 6.10, 6.11, 6.13)

Objectives:

Reduced costs on users of thoroughfares and other public places through control of nuisance, inconvenience or hazards of street performers and audiences.

Effects of the Restriction:

- Costs** Requirements for permits would impose costs on street performers of up to about \$100 in permit fees and associated costs of time and resources to apply for permits. No additional fees or charges apply to street performers.
- Restrictions on locations and times of street performances may impose costs on the performers through foregone business opportunities. However, it is considered more likely that restrictions on locations and times may actually serve to raise incomes of performers through reducing competition for audience attention and reducing "interference" between performers.
- Benefits** Restriction of locations and times of street performances may provide substantial benefits to users of thoroughfares and other public places through reducing potential costs from nuisance, inconvenience or hazards of street performers and audiences. In the absence of regulation, street performances may cause substantial costs to be incurred through obstruction of footpaths and other public places.

Assessment of Public Benefit:

The review of advantages and disadvantages indicates that a permit system is likely to provide a net public benefit through the consequent ability of the local government to reduce nuisance, inconvenience and hazards to public users of thoroughfares and public places. Although not quantified, these benefits were assessed as outweighing the costs of up to \$100 imposed on street performers through costs of obtaining permits, and foregone income of street performers due to restrictions on locations of performance.

Alternative Means of Achieving Objectives:

There is not considered to be any alternative to a permit system as a means of providing the public benefits in restricting locations of street performance to reduce nuisance, inconvenience and hazards to public users of thoroughfares and public places.

Overall Conclusions:

Although not quantified, it was assessed that there is a net public benefit in restrictions on competition arising from requirements for permits to be obtained for any street performance and for locations and types of performance to be controlled to prevent nuisance, inconvenience and hazards to public users of thoroughfares and public places. There is not considered to be any less restrictive means of regulation and therefore no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 15:

A permit is required to establish or conduct an outdoor eating facility (Clause 6.16).

Objectives:

Reduced costs on users of thoroughfares and other public places through lower nuisance, inconvenience or hazards arising from outdoor eating facilities.

Provision for local governments to capture financial returns from the use for commercial activities of public space and public facilities.

Effects of the Restriction:

- Costs** The requirement for permits would impose costs on proprietors of outdoor eating facilities of up to a few hundred dollars per annum in permit fees (\$50 to \$60 per annum) and associated costs of time and resources to apply for permits. Charges of up to several thousand dollars per annum may be levied on permit holders, determined on a case-by-case basis for individual facilities according to numbers of tables and chairs located within the public space.
- Benefits** The requirement for permits would give rise to substantial benefits through reducing potential costs to users of thoroughfares and other public places through nuisance, inconvenience or hazards of the outdoor eating facilities. Substantial obstruction of footpaths and other public places may occur in the absence of regulation. Conditions on the conduct of an outdoor eating facility are attached to permits to minimise such problems and costs.
- The permit system allows a local government to capture financial returns from the use for commercial activities of public space and public facilities. Outdoor eating facilities in public places may impose costs on the public and the local government through obstruction of thoroughfares and increasing demand for public facilities such as rubbish removal. An ability to levy charges on traders allows these costs to be recovered and also allows the public to collect "rent" for the use of public space.

Assessment of Public Benefit:

A permit system is likely to provide a net public benefit through the consequent ability of a local government to:

- reduce nuisance, inconvenience and hazards to public users of thoroughfares and public places; and
- capture financial returns from the use of public space and facilities for commercial activities.

Although not quantified, these benefits were assessed as outweighing the costs of up to several thousand dollars per annum imposed on the persons engaging in street trading.

Alternative Means of Achieving Objectives:

There is not considered to be any alternative to a permit system as a means of providing the public benefits in allowing revenues to be captured by local governments from street trading, and restricting locations of outdoor eating facilities to reduce nuisance, inconvenience and hazards to public users of thoroughfares and public places.

Overall Conclusions:

Although not quantified, it was assessed that there is a net public benefit in restrictions on competition arising from requirements for permits to be obtained for any outdoor eating facilities. There is not considered to be any less restrictive means of regulation and therefore no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 16:

The local government may require the holder of a permit for an outdoor eating facility to hold public liability insurance (Clause 7.3).

Objectives:

Provision for users of thoroughfares and public spaces to obtain compensation for losses or injuries arising from the conduct of outdoor eating facilities.

Effects of the Restriction:

- | | |
|----------|---|
| Costs | The restriction may result in costs of a few hundred to a few thousand dollars per annum being imposed on proprietors of outdoor eating facilities through requirements to purchase insurance. |
| Benefits | Mandatory requirements for public liability insurance would reduce costs that would otherwise be borne by users of thoroughfares where outdoor eating facilities contribute to accidents and personal injury and the proprietor does not hold appropriate insurance or does not have the resources to meet the cost of damages. The legislation allows a local government to exercise discretion in the requirement for insurance according to the potential hazard associated with an outdoor eating facility. |

Assessment of Public Benefit:

Costs and benefits of the restriction were not rigorously quantified hence a definitive statement of the public benefit in the restriction cannot be made. However, as costs of insurance would not be large, and outdoor eating facilities unavoidably impose some level of potential hazard, it was assessed that net public benefits accrue to the requirement for insurance.

Alternative Means of Achieving Objectives:

In the absence of requirements for public liability insurance, persons suffering injury as a result of outdoor eating facilities may still be able to claim compensation for damages through civil processes. This would however shift some costs of obtaining compensation from the proprietor of the facility to the person suffering injury. This is not considered to be in the public interest.

Overall Conclusions:

Costs and benefits of the restriction were not quantified, but it was assessed that the restriction results in a net public benefit due to the relatively low costs of insurance and protection of public users of thoroughfares and other public places. Relying on individual decisions of firms in relation to insurance and on civil processes for claiming compensation for damages would be a less restrictive means of regulation but would shift costs from private firms to users of public places. It was considered that such an alternative would not be in the public interest and therefore no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 17:

An outdoor eating facility must be conducted in accordance with specified requirements for cleanliness, tidiness and serviceability of furniture and structures (Clause 6.18).

Objectives:

Maintenance of aesthetic quality, safety and public-health standards in outdoor eating facilities.

Effects of the Restriction:

- | | |
|----------|---|
| Costs | The requirements on management of an outdoor eating facility may impose costs on the proprietor of the facility of up to several thousand dollars per annum. However, the requirements would not generally exceed what may be regarded as "good practice" for management of an eating facility and nor would they be significantly different from standards applying generally to eating-houses. Thus the additional cost imposed on a proprietor by the restriction is likely to be small. |
| Benefits | The restriction would provide benefits to users of outdoor eating facilities and other users of public places through maintenance of aesthetic quality, safety and public health standards in outdoor eating facilities. Use of public places for outdoor eating facilities may lead to obstruction and safety hazards to other users of the public places, increased litter, and potential public health hazards from dispersal of food wastes. The standards for cleanliness and maintenance of outdoor eating facilities reduce these effects. |

Assessment of Public Benefit:

Costs and benefits of the restriction were not rigorously quantified hence a definitive statement of the public benefit in the restriction cannot be made. However, the costs of complying with regulatory requirements would not be larger than would occur in meeting normal standards of maintenance and cleanliness for eating facilities on private premises. Due to the potential benefits to users of public places, the restriction is regarded as being in the public interest.

Alternative Means of Achieving Objectives:

There is not considered to be any alternative to imposition of regulatory standards for ensuring standards of maintenance and cleanliness in outdoor eating facilities.

Overall Conclusions:

Costs and benefits of the restriction were not quantified, but it was assessed that the restriction results in a net public benefit due to potentially substantial benefits in maintaining aesthetic qualities, safety standards and public-health standards in public places used for eating facilities. There is not considered to be any less restrictive means of achieving these benefits and hence no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 18:

The holder of a permit for an outdoor eating facility may be required to undertake works for the removal, alteration, repair, reinstatement or reconstruction of any part of a public place, or be liable for the costs of such works, where the works arise in connection with the facility (Clauses 6.18, 6.21).

Objectives:

Maintenance of aesthetic quality, safety and public-health standards in outdoor eating facilities.

Effects of the Restriction:

- | | |
|----------|--|
| Costs | Costs of up to a few tens of thousand dollars may be imposed on proprietors of outdoor eating facilities through requirements of a local government for works considered necessary to render a site suitable for an outdoor eating facility. Works would generally encompass such measures as modifying surface pavements, installing lighting and constructing barriers between a facility and an adjacent roadway. |
| Benefits | The restriction would provide benefits to the users of outdoor eating facilities and other users of the relevant thoroughfare or public place through maintenance of aesthetic quality, safety and public health standards in outdoor eating facilities. |

Assessment of Public Benefit:

This restriction relates to financing of works necessary for public places to make these suitable for use as outdoor eating facilities. In so far as such works may be required to maintain aesthetic quality, safety and public health standards in outdoor eating facilities the restriction was assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

An alternative means of regulation would be for the local government to meet the costs of works and recoup these costs through "rents" charged for the use of the public places by the permit holder for an outdoor eating facility. Ultimately the cost would be borne by the permit holder, but this alternative imposes some risk on the local government in relation to investment in the works. For this reason, the alternative is not considered to be in the public interest.

Overall Conclusions:

The funding by the permit holder of works necessary in public places to allow use for outdoor eating facilities was assessed as providing a net public benefit. Although these works could be financed by the local government and costs recouped through permit charges, direct funding of these works by the permit holder is considered to be in the public interest as it allows the local government to escape risk associated with private business operations. Consequently, no changes to the relevant provisions of the legislation are deemed necessary to comply with principles of National Competition Policy.

5.7 Permits

Restriction 19:

Applicants for permits may be required to provide information on proposed activities to the local government (Clause 7.1).

Objectives:

Provision for a local authority to acquire the necessary information on an applicant for a permit and on the nature of the activity pertaining to the application so as to make informed decisions on the granting of a permit.

Effects of the Restriction:

Costs	The restriction would result in increased costs of activities requiring permits. This would include costs to the applicant in time and resources to prepare documentation that would range from tens of dollars where application involves only filling in a simple form (such as with an application for a residential parking permit) to possibly several hundred dollars where detailed descriptive information and plans are required (such as with an application to conduct an outdoor eating facility). Costs are minimised by use of standard application forms for most of the activities requiring permits.
Benefits	The restriction would enable minimisation of the costs imposed by permit holders on the local government or other users of public property. Provision of information to the local government would enable informed assessment of the potential impacts of an activity on other uses of the relevant public property or assets, and setting of appropriate conditions on a permit (if granted) to enable such impacts to be managed. These benefits could be very large where the provisions of the legislation allow for avoidance of accidents in public spaces with costs of many thousands of dollars and potential liability of local government for such costs. Information in addition to standard forms is required for activities that may impose significant costs on competing users of public space through obstruction of thoroughfares, safety hazards, or damage to public property. The local government may bear liability for such costs if it allows uses of public space that create hazards.

Assessment of Public Benefit:

Provision of information to the local government may impose costs of up to several hundred dollars on applicants for permits. Potential benefits of many thousands of dollars arise from reduced risks of costs being imposed on members of the public and the local government through uncontrolled use of public spaces. The restriction was therefore assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

There is not considered to be any alternative means for a local government to secure information on proposed private uses of public space other than to have this information provided by the proponents of these activities.

Overall Conclusions:

The provisions of the legislation requiring information to be provided by a permit applicant were assessed as producing a net public benefit and there was not considered to be any alternative and less restrictive means of securing this benefit. It was therefore concluded that no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 20:

Fees and charges may be levied for application, approval and transfer of permits
(Clauses 7.1, 7.3, 7.8).

Objectives:

Enabling of cost recovery for local government in the administration of permits and provision for capture of a return to the public for the private commercial use of public space.

Effects of the Restriction:

Costs	<p>The restriction would result in increased costs of activities requiring permits through levy of fees and charges on permit applicants and permit holders. Costs would range from nominal fees in the order of \$10 to \$20 for permits for non-commercial activities, to fees and charges of several thousand dollars per annum for commercial activities. Section 6.16 of the Local Government Act 1995 allows for such fees or charges to be imposed by a local government authority for providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government. Notes to the local laws suggest a schedule of fees and charges for commercial activities (stallholders, traders and outdoor eating facilities) comprising administrative fees for permits of \$50 to \$100, and additional charges ranging from \$15/day to \$1250/year for stallholders and traders, and charges to per levied on a 'per chair' basis for outdoor eating facilities.</p> <p>The restriction may result in sub-optimal use of public space and public assets if a local government exploits monopoly powers over public property to raise charges and revenues. However, limitations on these powers would arise from competition for supply of trading sites by private landowners and by the political processes of local government.</p>
Benefits	<p>The provisions of the legislation enable cost recovery by local government in administration of permit systems and also allow for capture of a financial return for the public for commercial use of public property and assets. It is envisaged that fees and charges relating to permits may result in generation of local government revenue of up to several tens of thousand dollars per annum from charges for commercial use of public space.</p>

Assessment of Public Benefit:

Levying of fees and charges imposes costs on permit holders for the purposes of recouping of the costs incurred by local governments in administering permit systems, and obtaining a financial return for the commercial use of public space and public assets. In so far as individual permit systems are in the public benefit, and private benefits are obtained by the permit holders from the use of public property, these fees and charges are considered to provide a public benefit. Although there is some potential for the local government to exercise monopoly powers over public property in levying charges, this potential is probably limited by competitive supply of trading sites on land used by the private sector, and by the political processes of local government.

Alternative Means of Achieving Objectives:

There is not considered to be any alternative to permit fees by which local governments may recoup costs of administering permits.

In capturing a return to the public for commercial use of public space, systems of 'rents' or 'royalties' based on turnover or profit of the activities pertaining to the permit would in theory have efficiency advantages over fixed charges. However, costs of administration would be substantially higher due to difficulties in monitoring the activities. Therefore, there is not considered to be any public benefit in these alternatives.

Overall Conclusions:

The transfer payments represented by the fees and charges were considered to provide a public benefit and there was not considered to be any alternative and less restrictive means of securing this benefit. It was therefore concluded that no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

Restriction 21:

Transfer of permits is subject to approval by the local government (Clause 7.8).

Objectives:

Provision for a local government to restrict, where appropriate the holding of permits.

Lower costs to local governments in administering permit systems.

Effects of the Restriction:

Costs	The restriction may increase costs to permit holders of activities requiring permits by up to a few hundred dollars. Costs would be incurred in applying for transfer of a permit and in providing the relevant local government with information in support of any application.
Benefits	The restriction may substantially reduce costs to local government in regulating activities subject to permits through facilitating the administration of records for permit systems and an ability of a local government to exercise control over the identity of persons holding permits.

Assessment of Public Benefit:

Requirements for permit transfers to be approved by the relevant local government may impose costs of up to a few hundred dollars on applicants for transfer of permits. Potential benefits were not quantified but the restriction would reduce administrative costs for maintaining a permit system and would increase the capability of local government to regulate use of public space and avoid costs and liabilities associated with inappropriate use of public space. The restriction was therefore assessed as providing a net public benefit.

Alternative Means of Achieving Objectives:

There is not considered to be any alternative means for a local government to secure information on permit transfers or to control the identity of permit holders other than to require approval of transfers by the local government.

Overall Conclusions:

The provisions of the legislation requiring local-government approval of licence transfers were assessed as producing a net public benefit and there was not considered to be any alternative and less restrictive means of securing this benefit. It was therefore concluded that no changes to the relevant provisions of the legislation are necessary to comply with principles of National Competition Policy.

CHAPTER 6.

6. CONCLUSIONS AND CHANGES MADE TO THE LOCAL LAWS

The restrictions on competition arise from the local laws related for the most part to requirements for permits to be obtained to undertake particular activities within thoroughfares and public places. Requirements for permits were assessed as generally being in the public interest due to benefits of:

- (i) protecting the convenience, health and safety of users of thoroughfares;
- (ii) allowing for local governments to capture financial returns on behalf of the public from persons and firms using public places and facilities for private commercial activities; and
- (iii) providing for protection of public assets from damage by private use.

In view of the public interest in requirements for permits, there is generally no requirement for changes in the legislation in order to comply with the principles of National Competition Policy.

Despite the general finding of public interest in use of permits to regulate the use of thoroughfares and public places, there were four instances where provisions were not assessed as being in the public interest and these provisions which are listed below have been removed from the local laws. The full reviews of the deleted restrictions are appended to this report by way of guidance to those undertaking reviews at a local level.

A person shall not drive any vehicle over or across a kerb or footpath except at a crossing.

This restriction was thought to impose unnecessary restrictions on the actions of private individuals and is unlikely to be enforced. Also, it could be safer to park vehicles partly across a kerb.

The local government may refuse a stallholder or trader's permit on the grounds that the needs of the district, or the part for which the permit is sought, are adequately catered for by established shops or by persons who have valid permits to carry on trading or to conduct a stall.

This was thought to be inconsistent with principles of National Competition Policy.

A stallholder or trader shall not attempt to conduct a business within a distance of 300m of any shop or permanent place of business that is open for business and has for sale any goods or services of the kind being offered for sale by the stallholder or trader.

Again, this was thought to be inconsistent with principles of National Competition Policy.

A permit for street entertainment is not transferable.

A less restrictive provision now allows transfer subject to the approval of the local government.

The Local Government Act Services Committee of the Western Australian Municipal Association has argued that restrictions 2 and 3 above may be justified as being in the net public interest by a rural local government, eg. where viability of the service centre is at risk, and this argument is contained in the Guidance Notes being issued with the local laws. However, the Association has conceded, that in the spirit of the Competition Principles Agreement, any Council wanting to reinstate these clauses should be required to do so by providing to the Minister with their proposed local laws (section 3.12(3)(b)) a cost-benefit analysis particular to their own circumstances.

In three other cases, modifications have been made to the local laws in order to make provisions less restrictive and therefore compatible with National Competition Policy.

The restrictions which remain in the local laws and as discussed in Chapter 5 of this Report, are now assessed as complying with principles of National Competition Policy.

APPENDIX

Deleted restrictions with public benefit tests

Restriction 1:

A person shall not drive any vehicle over or across a kerb or footpath except at a crossing

Objectives:

Reduction of costs on users of public space arising from inconvenience or safety hazards. Protection of public assets.

Effects of the Restriction:

Costs	Where enforced, the restriction may result in costs of tens to hundreds of dollars being incurred by users of motor vehicles and owners/occupiers of private land adjacent to thoroughfares. It is unlikely that local governments would strictly enforce the provisions of the laws, but rather apply the provisions on an “as needs” basis to control the use of public space or prevent damage to public assets. There may also be a safety cost, as vehicles may be parked on the carriageway, rather than partially on the kerb.
Benefits	Potential benefits may arise from opportunistic enforcement of the provisions of the legislation where necessary for the protection from damage of public assets such as footpaths.

Assessment of Public Benefit:

Benefits were not quantified but the restriction would comprise reductions in costs associated with damage footpaths and pavements on public places, and costs associated with hazards to other users of public places. The restriction was assessed as not providing a net public benefit.

Alternative Means of Achieving Objectives:

An alternative means of controlling the movement of vehicles would be to establish rules and standards. This is not considered practical due to the wide range of situations that would need to be addressed.

Overall Conclusions:

The provisions of the legislation were assessed as not providing a net public benefit. There was not considered to be any alternative and less restrictive means of securing a net benefit. It was, therefore, concluded that this provision of the legislation should be removed to comply with principles of National Competition Policy.

Restriction 2:

The local government may refuse to grant a stallholder's or trader's permit on grounds of the needs of the district being adequately catered for by established shops or other permit holders.

Objectives:

Limitation of competition between individual permit holders and between permit holders and established shops, particularly for the purpose of protecting shop owners from unfair competition from stallholders and traders.

Effects of the Restriction:

Costs Any limitation by a local authority on numbers of permits issued may give rise to reduced consumer choice in the purchase of goods offered by traders and higher prices for goods offered for sale by traders due to restricted entry to the stallholding and trading "industries" and restricted competition between individual permit holders and between permit holders and shops selling similar products. Neither of these effects could be quantified, but they may be significant.

Benefits Restriction of numbers of permits was assessed as providing no significant public benefit. In general terms, the restriction on numbers of stallholders and traders would benefit existing permit holders and shops at the expense of consumers. This is not considered to be a public benefit within the context of National Competition Policy.
The restriction on competition between permit holders and shops selling similar products may provide public benefits through constraining the ability of the stallholders and street-traders to exploit investment made by shop proprietors in advertising and promoting their businesses. Although this may be considered a public benefit, the effect would rely more on restrictions on the locations at which stallholders and traders may conduct business rather than restricted numbers of permit holders.

Assessment of Public Benefit:

The restriction on numbers of stallholders and traders was assessed as giving rise to potentially substantial costs to consumers through reduced choice and higher prices. There was not considered to be any public benefit and hence the restriction was assessed as giving rise to a net public cost.

Alternative Means of Achieving Objectives:

In view of the lack of public benefits of the restriction, no alternative means of achieving regulatory objectives were considered.

Overall Conclusions:

The provisions of the local laws providing for limitation of numbers of stallholder's and trader's permits were assessed as giving rise to a net public cost. No alternative means of achieving the regulatory objectives were considered and it was concluded that the provisions of the local laws are inconsistent with Principles of National Competition Policy.

Restriction 3:

A stallholder or trader must not attempt to conduct business within a distance of 300 metres of a shop which sells goods, wares or merchandise similar to those being offered for sale by the stallholder or trader.

Objectives:

Minimisation of costs on users of thoroughfares and other public places through lower nuisance, inconvenience or hazards of street trading.

Limitation of potential competition between street traders and established shops and thereby provision of security of investment returns for the shops.

Effects of the Restriction:

Costs Any limitation by a local government on the areas within which stallholders and traders may conduct business and the scope of business activities may reduce competition between street traders and between the traders and shops selling similar products. This would give rise to reduced consumer access to the services of these street traders, reduced consumer choice in the purchase of the relevant goods, and higher prices for the goods. These effects were not quantified, but they may be significant. Two general surveys of street trading identified in this review^{8,9} indicate that most opposition to street trading occurs from established shopkeepers and private-property owners in response to fears of downward pressure on prices. The existence of this concern suggests that restricting permits would keep prices higher than they would be in the absence of such restriction. However, observations have also been made that street traders may in some circumstances attract customers to commercial areas and increase demand for goods. This may offset downward pressure on prices resulting from an increase in supply in presence of street traders.

Benefits Provision for the local governments to control locations of stallholding and trading and the scope of these activities may give rise to substantial benefits in avoiding obstruction of footpaths and other public places, particularly where proposed street-trading activities involve temporary displays of merchandise or trade from a motor vehicle. Benefits would comprise the reduction in costs that may otherwise be incurred by users of thoroughfares and other public places through nuisance, inconvenience or hazards. Limitation of areas in which stallholders and traders may conduct business may be used by a local government to reduce competition between the street traders and established shops. This is a generally perceived benefit of the restrictions, although actual benefits are uncertain and potentially variable depending upon the degree of restriction applied by a local government and the types of goods or services traded. Restrictions on minimum distances of trading from shops selling similar goods appear to arise from concerns of shop proprietors of “unfair” competition from street traders. The street traders are perceived to have an unfair advantage due to abilities to escape paying rent or taxes, and the ability to benefit from investment by shop owners in advertising and shopfronts that attract customers to the area. This potential competitive advantage would, however, be negated by the levying of charges ranging from \$15 per day to \$1250 per annum on holders of stallholder’s and trader’s permits, as provided for in the local laws. A literature search failed to reveal any analyses of competition between street traders and established shops. Anecdotal evidence suggests that street trading may increase or decrease the custom of established shops depending on particular circumstances of location and the goods or services being sold.

⁸ Houston, L.O., 1993. Streetwise, *Planning* 59(5): 20-22.

⁹ Davies, S., 1985. Managing Downtown Public Spaces, *Technology Review* 88(6): 18-25.

Observations by Houston¹⁰ indicate that street traders may actually increase custom of adjacent businesses by attracting potential customers to the area, and moving street traders away from established businesses has been observed to reduce the custom of shops by attracting potential customers away from the area.

In view of these observations and the absence of any contrary evidence, it was assessed that there was no significant benefit to restricting the locations of street-trading activities to protect existing businesses.

Assessment of Public Benefit:

The restriction on locations and activities of stallholders and street traders was assessed as giving rise to potentially significant costs to consumers through reduced choice and higher prices, and public benefits through restricting street-trading activities in locations where these may impose costs on other users of thoroughfares and public places. The benefits were assessed as outweighing the costs and the restriction thus determined to be in the public interest.

Alternative Means of Achieving Objectives:

The restriction was assessed as providing public benefits through limiting stallholding and trading activities in locations where these may impose costs on other users of thoroughfares and public places, but no public benefits where provisions of the local laws are used to limit competition between traders and established shops. An alternative and less restrictive means of regulation would be to specify that a local authority may only limit the area within which street-trading activities may occur for the purposes of preventing obstruction of thoroughfares or preventing inconvenience, nuisance or hazards to users of thoroughfares and public places.

Overall Conclusions:

The provisions of the local laws allowing a local authority to restrict areas of trading activities were assessed as providing a net public benefit, due to the ability of an authority to limit potential costs imposed by trading activities on other users of thoroughfares and public places. An alternative and less restrictive means of achieving legislative objectives would be to specify that a local authority may only limit the area within which trading activities may occur for the purposes of preventing obstruction of thoroughfares or preventing inconvenience, nuisance or hazards to users of thoroughfares and public places. Amendment to this effect of provisions of the local laws giving rise to the restriction would be consistent with principles of National Competition Policy. (*Note: the restriction was deleted as being anti-competitive*)

Restriction 4:

A permit for street entertainment is not transferable.

Objectives:

Provision for a local government to control and co-ordinate the nature, location and times of street performances to reduce nuisance, inconvenience or hazards of street performers and audiences.

¹⁰ Houston, L.O., 1993. *op cit.*

Effects of the Restriction:

Costs	The inability to transfer permits may impose costs on street performers through restricting the ability to trade permits for favoured times or locations of performances. These costs may be significant, but are probably small. Low revenues of street performers would probably limit the “market value” of permits and the benefits of a market in allocation of times and locations for performing.
Benefits	The inability to transfer permits may give rise to substantial benefits to users of thoroughfares and other public places through reducing potential costs from nuisance, inconvenience or hazards of street performers and audiences. Transferability of permits would reduce the ability of local governments to control street performances and ensure that locations and times of particular performances are controlled according to the nature of the performance, impacts on other users of thoroughfares and public places, and interactions between performers in close proximity to one another.

Assessment of Public Benefit:

The review of advantages and disadvantages indicates that prohibition of transfer of permits for street performance is likely to provide a net public benefit through the consequent ability of the local government to reduce nuisance, inconvenience and hazards to public users of thoroughfares and public places. Although not quantified, these benefits would appear to outweigh the likely small costs to street performers that may result from limited access to locations for performances.

Alternative Means of Achieving Objectives:

An alternative means of regulation would be to allow transfers of permits subject to approval by the local government. Benefits of such an alternative would accrue to some street performers through increased access to particular performance locations, whilst still allowing the local government to maintain the necessary control over types of performances. These benefits may be small due to low revenues from street performance and potentially limited demand for transfers of permits.

Overall Conclusions:

Although not quantified, it was assessed that there is a net public benefit in restricted transferability of permits for street entertainment. However, allowing transfer of permits subject to approval by the local government may be a less restrictive means of regulation and provide small benefits to street performers through increasing access to preferred locations for performance. This alternative is a preferred means of regulation under the principles of National Competition Policy (*Note: the alternative was included in the local law*).

