



Mount Isa City Council
Review of Possible Anti-Competitive Provisions

Local Law No. 6 (Waste Management) 2018

Introduction

Mount Isa City Council (“**Council**”) is conducting a review of possible anti-competitive provisions identified in the proposed *Local Law No. 6 (Waste Management) 2018* (“**the Proposed Local Law**”).

In April 1995, all three levels of government in Australia endorsed a package of legislative and administrative arrangements that underpin the National Competition Policy (“**the NCP**”). Under the NCP, all levels of government are committed to reviewing legislation that contains measures that may restrict competition.

Section 38 of the *Local Government Act 2009* relevantly states:

38 Anti-competitive provisions

(1) A local government must not make a local law that contains an anti-competitive provision unless the local government has complied with the procedures prescribed under a regulation for the review of anti-competitive provisions.

(2) A local law, to the extent that it is contrary to this section, has no effect.

Section 15 of the *Local Government Regulation 2012* requires a local government to comply with the “*National Competition Policy Guidelines for conducting reviews on anti-competitive provisions in Local Laws*”, Version 1, made by the Department of Infrastructure, Local Government and Planning (“**the Guidelines**”).

An anti-competitive provision in local laws (“**anti-competitive provision**”) means a provision that the Guidelines identifies as creating barriers to:

- (a) entry to a market; or
- (b) competition within a market.

This document reviews the Proposed Local Law in accordance with the Guidelines.

Analysis of proposed *Local Law No. 6 (Waste Management) 2018*

Step 1 – Identify possible anti-competitive provisions

The following provisions of the Proposed Local Law are potentially anti-competitive:

Provision	Potentially anti-competitive consequence
Section 5 (Designation of areas)	This provision may limit particular business activities in

<p>The Council may designate areas within its local government area to conduct general waste or green waste collection and decide the frequency of general waste or green waste collection in the designated areas.</p>	<p>specific areas. Businesses providing waste collection services may need to compete with Council services and comply with the requirements of the Proposed Local Law, restricting competition in the market and creating a barrier to enter the market.</p>
<p>Section 6 (Owner or occupier of relevant premises to supply waste containers)</p> <p>The Owner or occupier is required to have at the premises containers for the storage of waste.</p>	<p>This provision may restrict the conduct of businesses, creating a barrier to entering the market.</p>
<p>Section 7 (Requirements for storing general waste in waste containers)</p> <p>General waste is to be stored in accordance with prescribed requirements.</p>	<p>This provision may restrict the conduct of businesses, creating a barrier to entering the market.</p>
<p>Section 8 (General requirements for keeping waste containers at serviced premises)</p> <p>Occupiers of serviced premises must keep waste containers in designated places.</p>	<p>This provision may restrict the conduct of businesses, creating a barrier to entering the market.</p>
<p>Section 9 (Other requirements for storing general waste at particular serviced premises)</p> <p>Persons are required to ensure certain obligations about storing waste at certain premises are met.</p>	<p>This provision may restrict the conduct of businesses, creating a barrier to entering the market.</p>
<p>Section 11 (Depositing or disposal of general waste from premises other than serviced premises)</p> <p>Persons at non-serviced premises may be required to dispose of their waste in certain ways.</p>	<p>This provision may restrict the conduct of businesses, creating a barrier to entering the market.</p>
<p>Section 12 (Requirements for storing industrial waste)</p>	<p>This provision may restrict the conduct of businesses, creating a barrier to entering the market.</p>

Occupiers of relevant premises where there is industrial waste may be required to comply with certain requirements for dealing with industrial waste	
<p>Section 13 (Requirements to treat industrial waste for disposal)</p> <p>Occupiers of relevant premises where there is industrial waste may be required to treat the waste in accordance with requirements.</p>	This provision may restrict the conduct of businesses, creating a barrier to entering the market.

Step 2 – Determination of exclusions

Objective

The objective of the Proposed Local Law is to protect the public health, safety and amenity related to waste management by:

- regulating the storage, servicing and removal of waste;
- regulating the disposal of waste at waste facilities; and
- ensuring that an act or omission does not result in:
 - harm to human health or safety or personal injury; or
 - property damage or loss of amenity; or
 - environmental harm or environmental nuisance.

The Proposed Local Law seeks to preserve the current approach to waste management by replacing the provisions that are currently contained in Chapter 5A of the *Environmental Protection Regulation 2008* (“EPR”) and section 7 in Part 2A of the *Waste Reduction and Recycling Regulation 2011* (“WRRR”). These provisions are scheduled to expire on 1 July 2018.

Assessment of need for Local Law No. 6 (Waste Management) 2018

The Local Law aims to give Council the ability to protect public health, safety and amenity in the Mount Isa City local government area by effectively continuing the regulation of the storage, servicing, removal, disposal and treatment of waste.

A lack of adequate regulation would increase health, safety and amenity risks associated with the storage, collection and disposal of waste, and will also impact upon Council’s ability to enforce laws with respect to these matters.

The Council has responsibilities to ensure the good rule of the Mount Isa City local government area and to reduce risks for residents when possible. To achieve a consistent approach to waste management in the Mount Isa City, Council will ensure necessary controls are in place for the effective management of waste.

Without the Local Law in place, Council would be required to rely upon other mechanisms to control and regulate the management of waste in the local government area, none of which will be as effective as implementing the relevant provisions of the EPR and WRRR.

Without an effective method of controlling the storage and collection of waste, environmental health and safety risks would be imposed on communities within the Mount Isa City.

Analysis

Under the Guidelines, the following types of local laws are excluded from the review of anti-competitive provisions:

- local laws regulating the behaviour of individuals;
- local laws dealing solely with internal administrative procedures of a local government;
- local laws intended as legitimate measures to combat the spread of pests and disease;
- local laws to ensure accepted public health and safety standards are met; and
- repealing local laws.

Below is an analysis of the identified anti-competitive provisions in the Proposed Local Law against the exclusions set out in the Guidelines:

Provision	Applicable exclusion?
<p>Section 5 (Designation of areas)</p> <p>The Council may designate areas within its local government area to conduct general waste or green waste collection and decide the frequency of general waste or green waste collection in the designated areas.</p>	<p>This provision is a legitimate measure to combat the spread of pests and disease; and</p> <p>This provision ensures accepted public health and safety standards are met.</p>
<p>Section 6 (Owner or occupier of relevant premises to supply waste containers)</p> <p>The Owner or occupier is required to have at the premises containers for the storage of waste.</p>	<p>This provision is a legitimate measure to combat the spread of pests and disease; and</p> <p>This provision ensures accepted public health and safety standards are met.</p>

<p>Section 7 (Requirements for storing general waste in waste containers)</p> <p>General waste is to be stored in accordance with prescribed requirements.</p>	<p>This provision is a legitimate measure to combat the spread of pests and disease; and</p> <p>This provision ensures accepted public health and safety standards are met.</p>
<p>Section 8 (General requirements for keeping waste containers at serviced premises)</p> <p>Occupiers of serviced premises must keep waste containers in designated places.</p>	<p>This provision is a legitimate measure to combat the spread of pests and disease; and</p> <p>This provision ensures accepted public health and safety standards are met.</p>
<p>Section 9 (Other requirements for storing general waste at particular serviced premises)</p> <p>Persons are required to ensure certain obligations about storing waste at certain premises are met.</p>	<p>This provision is a legitimate measure to combat the spread of pests and disease; and</p> <p>This provision ensures accepted public health and safety standards are met.</p>
<p>Section 11 (Depositing or disposal of general waste from premises other than serviced premises)</p> <p>Persons at non-serviced premises may be required to dispose of their waste in certain ways.</p>	<p>This provision is a legitimate measure to combat the spread of pests and disease; and</p> <p>This provision ensures accepted public health and safety standards are met.</p>
<p>Section 12 (Requirements for storing industrial waste)</p> <p>Occupiers of relevant premises where there is industrial waste may be required to comply with certain requirements for dealing with industrial waste</p>	<p>This provision is a legitimate measure to combat the spread of pests and disease; and</p> <p>This provision ensures accepted public health and safety standards are met.</p>
<p>Section 13 (Requirements to treat industrial waste for disposal)</p>	<p>This provision is a legitimate measure to combat the spread of pests and disease; and</p>

Occupiers of relevant premises where there is industrial waste may be required to treat the waste in accordance with requirements.	This provision ensures accepted public health and safety standards are met.
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Council has concluded that in all respects, the anti-competitive provisions identified in the Proposed Local Law can be excluded from the need to further review them because:

- the provisions are intended as legitimate measures to combat the spread of pests and disease; and further or alternatively
- the provisions are designed to ensure accepted public health and safety standards are met.