

Model Local Law No.5 (Parking) 2010

Version 1.2

GUIDANCE NOTES

Disclaimer

These guidance notes have been compiled for your information only and should not be treated as an exhaustive statement on the subject. Nor should they be considered as rendering to you legal or professional service. The Department of Infrastructure, Local Government and Planning (DILGP) recommends that independent legal advice be sought on any matter of interpretation of the model local laws or template subordinate local laws. The information is provided on the basis that you are responsible for making your own assessment of the topics discussed.

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Purpose

These guidance notes aim to assist local governments interpret and implement the set of seven model local laws gazetted on 25 June 2010. They provide explanatory commentary on each model local law and its relevant subordinate local law template.

The guidance notes set out the scope and purpose of each part of the model local law and associated provisions within the relevant template subordinate local law and explain how the model is intended to be applied. The notes also identify:

- how linkages between the different model local laws form an integrated regulatory regime
- how the model laws link with other relevant legislation including the *Local Government Act 2009* (LGA).

A set of guidance notes is available for each model local law and should be read in conjunction with the relevant model local law and template subordinate local law.

Context

Model local laws 2010

The model local laws were developed following consultation with stakeholders undertaken in 2007–08. The model local laws cover a range of matters considered appropriate for local government to regulate such as:

- undertaking prescribed activities in a local government area
- bathing reserves
- parking
- community and environmental matters
- animal management and the regulation of other activities on local government controlled areas, facilities and roads.

See Appendix 1 for the full list of models. The models are available on the Department of Infrastructure, Local Government and Planning's (DILGP) website at www.dilgp.qld.gov.au.

The model local laws are presented as an integrated package with Model Local Law No.1 (Administration) 2010 (the Administration Model) being the framework for all other model local laws.

The Administration Model sets out common approval processes for:

- undertaking specific activities
- legal proceedings
- enforcement provisions
- miscellaneous matters upon which the other model local laws rely.

This means there is only one set of provisions for obtaining a local government's approval on a matter, rather than duplicating these provisions within each model local law. It ensures the model local laws are streamlined but flexible, enabling local governments to make local laws on new issues in the future without having to repeat relevant approval and enforcement provisions. It also means that a local government needs to adopt the Administration Model to enable any other model local law adopted to have effect.

There are a number of overarching principles upon which all model local laws are based. These include a requirement that a model local law should not duplicate state legislation and it should be necessary and enforceable. A full list of the principles upon which all model local laws are based are set out in the guidance notes for the Administration Model.

Template subordinate local laws 2010

A template subordinate local law is available for each model local law as an additional support tool for local governments adopting the model local laws. These templates are available on the department's website at www.dilgp.qld.gov.au.

Subordinate local laws are essential to the successful implementation of the model local laws. In recognition of the diversity of local governments throughout the state, and to avoid limiting the application of the model local laws, subordinate local laws provide the

means for local governments to specify the details of regulatory requirements that meet their particular needs.

It is intended local governments use the templates as a guide when developing subordinate local laws appropriate for their areas for each model local law adopted. The templates provide a subordinate local law structure that is consistent with the heads of power provided in the model local law. While the templates include examples and suggestions for subordinate local law content in italicised text, this text is not intended to provide an exhaustive list of matters for inclusion.

Commentary on model local law provisions and template subordinate

Model Local Law No.5 (Parking) 2010 (the Parking Model) should be read in conjunction with the Administration Model as that model provides the procedural framework for all of the other model local laws. The Administration Model sets out common approval processes for undertaking specific prescribed activities.

The Parking Model includes two activities that local governments may regulate through an approval system and are deemed prescribed activities for the purposes of the Administration Model. These are:

- 1) parking contrary to an indication on an official traffic sign regulating parking by time or payment of a fee
- 2) parking in a loading zone by displaying a commercial vehicle identification label.

The objective of section 5(b) within the Administration Model is to capture any other approvals that a local government is required to grant under law but for which there is no approval process provided.

An activity is a prescribed activity if a Local Government Act authorises the local government to grant an approval but does not make any provision, except provision that is consistent with Part 2 of the Administration Model, about the process for the local government to grant the approval.

It should be noted a 'Local Government Act' is defined very broadly by the *Local Government Act 2009* as 'a law under which a local government performs the local government's responsibilities', which includes other state legislation and local laws.'

The provisions in the *Transport Operations (Road Use Management) Act 1995* (TORUM) about the issuing of parking permits (excluding disability permits) and commercial vehicle identification labels are examples of this. TORUM permits a local government to issue such approvals but does not prescribe a process for this. Section 7 of the Administration Model provides that an approval required for a prescribed activity must be obtained under Part 2 of that model. Linking the approval process for parking permits and commercial vehicle identification labels to the Administration Model avoids unnecessary duplication in the Parking Model of separate approval provisions.

Under section 74(1) of TORUM it is an offence to park in contravention of an official traffic sign. The provisions of TORUM, and not the Administration Model, should be used to enforce parking offences through the issue of penalty infringement notices. However the Administration Model applies to other aspects of approvals such as transfer, renewal, suspension or cancellation.

The process for obtaining a parking permit and commercial vehicle identification label and how these activities link to the Administration Model is more detailed under Part 3 of the commentary on model provisions.

For further information and advice on the application or operation of TORUM contact the Department of Transport and Main Roads.

Part 1—Preliminary

S2. Purpose and how it is to be achieved

TORUM is the primary legislation dealing with road use and the regulation of parking. It provides a specific head of power for local governments to regulate parking in their area. The Parking Model has been designed so that it does not duplicate the regulated parking provisions in Chapter 5 Part 6 of TORUM. The model local law is intended to complement TORUM by providing for the exercise of specific local government powers authorised under that Act. Local governments therefore need to use TORUM, the Parking Model and the Administration Model to comprehensively regulate parking matters in their area.

S3. Definitions—the dictionary

The dictionary defines all relevant words used in the model and is designed to be consistent with state legislation. Definitions are included based on the following approach for all the model local laws:

- where a term is used in only one section of the model local law it is defined in that section and not repeated in the dictionary
- where a term is defined in the Administration Model and also used with the same meaning in another model local law, the definition is not repeated in the dictionaries of the other model local laws. Instead the term will be signposted in the other model local laws' dictionaries to refer the reader to the definition in the Administration Model
- generally where a term is defined in the LGA it is not replicated in the model local law dictionaries. The first instance of the term's use in the model local law is footnoted to alert readers to refer to the LGA for its definition
- where a term is defined in another Act and the model local laws rely on the meaning given to the term in that Act specific reference is made to this effect in the model local law.

S4. Relationship with other laws

The relevant provisions of TORUM on parking, and the ability of local governments to make local laws about parking, are contained in Chapter 5 Part 6 sections 101–111. Sections 101– 104 of TORUM specify how a local government may regulate parking. On some occasions, these provisions specifically authorise the making of local laws—for example:

- section 102 (3)(a) allowing local governments to make local laws for the boundaries of a traffic area
- section 103 (4) allowing local governments to make local laws about parking contrary to a sign
- section 103 (5) allowing local governments to make local laws about commercial vehicles

- section 103 (6) allowing local governments to make local laws about parking fees
- section 104 (1) allowing local governments to specify off-street parking areas by local laws
- section 108 allowing a local government to prescribe by local law, an amount as an infringement notice penalty.

In other TORUM provisions ‘regulating’ may be by means other than by local laws—for example:

- section 102 (1) provides for local governments to regulate parking by installing official traffic signs
- section 102 (2) provides that the regulation of parking by local governments may include specifying the times when a vehicle may or must not be parked and requiring the payment of a fee for a vehicle to be parked
- section 103 lists examples of how parking may be regulated and states what official traffic signs may define or indicate.

The Parking Model provides for the regulation of parking where TORUM specifically authorises the making of a local law for:

- establishment of traffic areas and off-street regulated parking areas
- issuing of parking permits
- issuing of commercial vehicle identification labels
- prescribing of infringement notice penalties for minor traffic offences.

See Appendix 3 for a list of legislation relevant to the Parking Model and Parking Subordinate.

Part 2—Declaration of parking areas for TORUM Act

S5. Declaration of traffic areas

Under section 101 of TORUM a local government may regulate parking in its area on a road, other than a declared road, or on a declared road with the chief executive’s written agreement or on an off-street regulated parking area. Section 102 of TORUM specifies this regulation may be undertaken by local governments installing official traffic signs indicating how parking is regulated. Under TORUM an official traffic sign may apply to parking throughout an area consisting of the whole or part of the local government’s area. Local governments may install an official traffic sign applying to parking throughout a traffic area only if the boundaries of the traffic area have been defined under a local law. The Parking Model’s section 5 therefore provides a head of power for the declaration of traffic areas by subordinate local law. The Parking Subordinate local law (Parking Subordinate) must define the boundaries of the traffic area.

Schedule 1 in the Parking Subordinate suggests a local government may define the boundaries of a traffic area by including a map or plan indicating the traffic areas. This is offered as an example only. It is a matter for each local government to determine its regulated traffic areas and how these are defined. The department maintains a database of all local government local laws and there are many examples within existing local laws that demonstrate how local governments define traffic areas using maps and plans. The database is available for reference on the department’s website at www.dilgp.qld.gov.au.

For further information on the regulation of parking by installing official traffic signs, including information on the scope of official traffic signs, see TORUM. As these matters are already set out under section 102(4) of TORUM they are not duplicated in the model local law.

S6. Declaration of off-street regulated parking areas

Section 101 of TORUM allows local governments to regulate parking on an off-street regulated parking area. Consistent with section 104 of TORUM, section 6 of the Parking Model provides local governments with the head of power to declare, by subordinate local law, an area of land controlled by the local government including structures on the land, as an off-street regulated parking area. This could be an area of land in a park or reserve for example, or land near a shopping district or community facilities.

Land controlled by a local government includes land which the local government controls under an arrangement with the landowner (or the person with an interest in the land). As an example, this may include where a local government has an agreement with a land owner to regulate parking at a shopping centre car park. As noted, the boundaries of off-street regulated parking areas must be defined by subordinate local law. The Parking Subordinate provides a specific schedule (Schedule 2) for local governments to use when defining declared off-street regulated parking areas. This could be done by inserting a map or plan indicating the relevant areas, a similar approach to that used for declaring traffic areas under section 5 of the Parking Model.

Part 3—Parking contrary to parking restriction

S7. Parking permits

Section 102 (4) of TORUM sets out the matters that may be indicated by an official traffic sign applying to parking throughout a traffic area. This includes:

- the times when a person may only park for a maximum specified time
- the times when a person may only park by paid parking at a place where the local government has provided for paid parking
- the types of vehicle a person may park.

TORUM also provides that an official traffic sign installed within a traffic area may allow a longer or shorter parking time than that allowed by the official traffic sign for the entire traffic area. Generally, it is an offence under section 74 of TORUM to contravene an official traffic sign. However TORUM provides that a local government may, by local law, permit parking contrary to a parking restriction under certain circumstances. A vehicle may be parked contrary to an indication on an official traffic sign regulating parking by time or payment of a fee if the vehicle displays either of:

- a parking permit for people with disabilities
- a permit issued by the local government.

Parking permits for people with disabilities are issued under section 111 of TORUM by the chief executive of the department administering TORUM so this matter is not included in the Parking Model. Other permits issued by the local government are included in the Parking Model.

Persons issued with a permit

Under TORUM a local government that wishes to issue parking permits must make a local law enabling the issue of permits and define the persons that may be issued with a permit. The Parking Model therefore provides a head of power for local governments to issue a permit and prescribe, by subordinate local law, persons that may be issued with a permit. It is a matter for local governments to define the relevant persons that may be issued with a parking permit. The Parking Subordinate suggests a format for defining categories of persons and includes examples such as:

- Persons who reside in a particular area for which a permit is granted.
A local government may issue permits to a defined category of residents in an area, such as people living in a particular street or complex where parking is otherwise regulated.
- Persons who have been granted approval under another local law.
A local government may consider it appropriate to issue a permit to someone who has obtained approval under the Administration Model to undertake a regulated activity on a local government controlled area or road. It may be necessary to allow temporary parking rights so an individual can carry out the regulated activity. If someone has obtained an approval under the Administration Model to deposit goods or materials on a local government controlled road for example, it may be necessary to issue a parking permit to give full effect to such an approval.
- Persons who have been granted approval under another local law for the commercial use of a local government controlled area, where the permit is necessary to undertake this commercial use.

If an approval has been obtained under the Administration Model to supply food or drink on a local government road it may be necessary to issue a parking permit in that instance.

Local governments should consider the most effective way of dealing with circumstances where two approvals are required for an activity such as in the above examples. Local governments may consider managing two related approvals simultaneously to reduce costs and administrative burdens.

Approval process for parking permits

The process for applying for and issuing a parking permit is contained within the Administration Model as the framework model for all the model local laws. That model local law provides the approval process for all prescribed activities within all the model local laws and parking contrary to an indication on an official traffic sign is a prescribed activity. It becomes a prescribed activity by virtue of the provision made in section 5(b) of the Administration Model. Section 7 of the Parking Model authorises local governments to issue parking permits under a local law but does not stipulate a specific process for this.

Schedule 28 of the Administration Subordinate provides a template local governments can use to prescribe specific details for an approval to park contrary to an indication on an official traffic sign. The templates for all prescribed activities follow a standard format but can be modified by local governments as appropriate and sub sections removed or added if necessary. For example, local governments do not need to retain the section in Schedule 28 of the Administration Subordinate on third party certification if it is not relevant for parking permits. Setting out the types of documents and materials that must accompany applications for an approval or criteria for determining applications however may be more relevant and appropriate to retain. Local governments should only use the sections of the subordinate template that are relevant for the particular prescribed activity. It is a matter for local governments to determine how detailed or streamlined an approval process for a particular prescribed activity needs to be. The Administration Model is intended to be sufficiently flexible to allow local governments to tailor, by subordinate local law, the necessary level of complexity for an approval for a prescribed activity.

Section 6(3) of the Administration Model provides local governments with a power to declare that a prescribed activity, or a category of a prescribed activity, does not require an approval. This is intended to give local governments the choice and flexibility to opt out of requiring an approval for certain activities. However, the power to opt out does not apply in this case because TORUM dictates that parking contrary to an official traffic sign is only allowed when a parking permit is issued by a local government under a local law.

As stated, section 74 of TORUM creates an offence for contravening an official traffic sign with a maximum penalty of 40 penalty units or six months imprisonment applying. If a person does not display a permit, does not comply with the conditions of a permit or if the permit has expired for example, they do not have a valid permit and may be parking in contravention of an official traffic sign. This is an offence under TORUM and is enforceable under that legislation.

S8. Commercial vehicle identification labels

Under section 103(5) of TORUM a local government that wishes to issue a commercial vehicle identification label must make a local law enabling the issue of labels and define the vehicles that may be issued with a label. The Parking Model provides the head of power for local governments to issue a commercial vehicle identification label and prescribe the vehicles that may be issued with a label.

TORUM's Schedule 4 dictionary already defines certain vehicles designed for the carriage of goods as commercial vehicles without further identification being required. These vehicles include:

- any horse drawn vehicle constructed, fitted or equipped for the carriage of goods
- any motor vehicle (excluding any car or motorbike) constructed, fitted or equipped for the carriage of goods.

Section 103(5) of TORUM, together with the Parking Model, enables the local government to issue commercial vehicle identification labels for additional types of motor vehicle, other than those automatically covered by TORUM, to lawfully park in a loading zone. Local governments can define by subordinate local law, vehicles that may be issued with a

commercial identification label (of the type specified by the Manual of Uniform Traffic Control Devices).

For further information on the rules about stopping in a loading zone see section 179 of the Transport Operations (Road Use Management- Road Rules) Regulation 2009 (the Road Rules Regulation). The Road Rules Regulation prescribes rules about the general use of loading zones. For example it provides that a driver can stop in a loading zone if the driver is driving a bus that is dropping off, or picking up passengers, or is driving a truck that is dropping off, or picking up, passengers or goods. In these circumstances a driver cannot stay in the loading zone for longer than 30 minutes or for longer than the indicated time on the loading zone sign. Section 179 of the Road Rules Regulation also permits a driver driving another motor vehicle that is dropping off or picking up goods to stop in a loading zone for no longer than 20 minutes and a driver dropping off or picking up passengers to stop for no longer than two minutes.

Approval process for commercial vehicle identification labels

As is the case for parking permits, the process for applying for and issuing commercial vehicle identification labels is contained within the Administration Model as parking in a loading zone is a prescribed activity under section 5(b) of the Administration Model.

As for parking permits, local governments cannot declare the prescribed activity of parking in a loading zone as an activity that does not require an approval as the requirement for vehicles (not automatically covered by TORUM) to display a commercial vehicle identification label for parking in a loading zone is established in TORUM. It is an offence, enforceable under TORUM, to unlawfully park in a loading zone. Section 74 of TORUM makes it an offence to contravene an official traffic sign. A maximum penalty of 40 penalty units or six months imprisonment applies. Also, under section 179 of the Road Rules Regulation a maximum penalty of 20 penalty units applies for the offence of stopping unlawfully in a loading zone.

The TORUM provision covers a broad range of conduct and the Road Rules Regulation covers a more specific act. It is possible for circumstances to give rise to more than one offence. It is a matter of discretion for the local government as to which offence provision it engages or whether it engages both.

Local governments should refer to TORUM for further details on regulated parking offences and enforcement of such offences.

Part 4—Minor traffic infringement notice penalties

S9. Minor traffic offence infringement notice penalty amounts

A minor traffic offence is an infringement notice offence under the *State Penalties Enforcement Act 1999*. TORUM permits local governments to prescribe by local law an amount as the infringement notice penalty for a minor traffic offence committed in the local government's area.

A minor traffic offence is defined in section 108(4) of TORUM to mean either of:

- an offence against Chapter 5 Part 6 of TORUM

- an offence, prescribed under a regulation, that relates to the parking or stopping of a vehicle
- an offence against section 74 that is a contravention of an indication given by an official traffic sign installed by a local government under Chapter 5 Part 6.

Under section 9 of the Parking Model a local government may prescribe, by subordinate local law, an amount (in penalty units) not greater than five penalty units as the penalty infringement notice for a minor traffic offence. The penalty is set at five penalty units to safeguard against a potential breach of the fundamental legislative principle which states a law should contain only matter appropriate to that level of legislation. As the penalty infringement notice amounts for a minor traffic offence are set in subordinate legislation, a reasonable limit of five penalty units has been applied to avoid any potential breach. The penalty amount is described in penalty units rather than a dollar amount to ensure it has longevity and is flexible enough to deal with any amendments to the value of the penalty under the *State Penalties Enforcement Act 1999*.

Under TORUM, if the local government prescribes a penalty for a minor traffic offence the penalty applies to the exclusion of another penalty infringement notice under the *State Penalties Enforcement Act 1999* for the minor traffic offence committed in its area. Local governments therefore have the option of prescribing a penalty for a minor traffic offence under the local law pursuant to its power to do so under section 108 of TORUM or alternatively relying on persons authorised under TORUM to issue infringement notices for minor traffic offences listed under Part 12 of the Road Rules Regulation. Local governments using the Parking Subordinate template that do not wish to prescribe infringement notice penalty amounts can omit Schedule 3 from their subordinate local law.

Part 5—Miscellaneous

S10. Subordinate local laws

Part 5 section 10 summarises the subordinate local law making powers available to local governments under the Parking Model. This includes:

- declaration of traffic areas
- declaration of off-street regulated parking areas
- persons who may be issued with a permit to park a vehicle contrary to an indication on an official traffic sign
- vehicles that may be issued with a commercial vehicle identification label
- infringement notice penalty amounts that apply for minor traffic offences.

The Parking Subordinate provides further detail on each of these matters and aims to assist local governments develop a subordinate local law that best meets the needs of that local government and the community. Each provision contains examples set out in italics as prompts for local governments to review and consider when developing appropriate content for a Parking Subordinate. The template is provided for reference only. A local government may wish to develop its own style and approach within the parameters set by the head of power in the Parking Model. It is suggested that local governments use intentional blanks for schedules where a local government does not wish to regulate a matter rather than changing the numbering of the schedules.

Schedule—Dictionary

The dictionary, located in the model local law schedule, defines all relevant words used in the model local law. The Parking Model should be read in conjunction with TORUM and the definitions set out in that legislation.

Appendix 1—Model local laws gazetted in 2010

Title	Date of gazettal notice
Model Local Law No. 1 (Administration) 2010	25 June 2010
Model Local Law No.2 (Animal Management) 2010	25 June 2010
Model Local Law No. 3 (Community and Environmental Management) 2010	25 June 2010
Model Local Law No.4 (Local Government Controlled Areas, Roads and Facilities) 2010	25 June 2010
Model Local Law No.5 (Parking) 2010	25 June 2010
Model Local Law No. 6 (Bathing Reserves) 2010	25 June 2010
Model Local Law No. 7 (Indigenous Community Land Management) 2010	25 June 2010

Appendix 2—State legislation relevant to the Parking Model

Title of state legislation	Part of model local law (affected)
<i>State Penalties Enforcement Act 1999</i>	Part 4
State Penalties Enforcement Regulation 2000	Part 4
<i>Transport Operations (Road Use Management Act) 1995</i>	All Parts
Transport Operations (Road Use Management- Road Rules) Regulation 2009	Part 3

Note: The state legislation listed in Appendix 2 is current as at June 2010. Local governments should refer to www.legislation.qld.gov.au or a complete list of all current legislation.