

Model Local Law No.7 (Indigenous Community Land Management) 2010

Version 1.1

GUIDANCE NOTES

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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.

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 provisions and template subordinate

Model Local Law No. 7 (Indigenous Community Land Management) 2010 (ICLM Model) and *Subordinate Local Law No.7 (Indigenous Community Land Management) 2010 (ICLM Subordinate)* have been drafted to assist indigenous local governments in regulating the use of

trust areas over which they exercise jurisdiction under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other matters) Act 1984*. The ICLM Model specifically provides for:

- the authorisation of persons to enter, be in or live in the trust area
- the regulation of scientific research within the trust area
- the designation and management of camping sites within the trust area
- the designation and regulation of the use of parks and reserves within the local government area.

The ICLM Model succeeds a local law that was developed for indigenous local governments by the former administering department, the Department of Aboriginal and Torres Strait Islander Policy (DATSIP), to accommodate the special tenure arrangements that apply in Deed of Grant in Trust communities. The local law was adopted as By-law No.6 (Land and Natural Resource Management) by a number of councils as part of a set of 'model by-laws' developed by DATSIP in 2001. However, the ICLM Model does not include the 'sacred site' provisions from the previous local law, as the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* now provide for the management of cultural heritage sites.

The Administration Model, in conjunction with the LGA, provides the necessary general enforcement powers for the new models. The Administration Model provides that local government approval is necessary for undertaking specified activities (prescribed activities). Section 5(a) of the Administration Model specifies that an activity is a prescribed activity if it is listed in Schedule 2 of the Administration Model.

The following matters for which an indigenous local government may issue an approval under the ICLM Model through section 5(b) of the Administration Model are deemed to be prescribed activities for the purposes of the Administration Model and are regulated under the model:

- to enter, be in or live in the trust area
- conduct scientific research within the trust area
- camping within a camping site in a trust area.

The process for obtaining an approval, imposing conditions on approvals and a range of other approval issues including enforcing compliance with approvals for the above prescribed activities are specified in the Administration Model.

See Appendix 2 for a summary of the offences and corresponding penalties in the ICLM Model.

Part 1—Preliminary

The ICLM Model has been specifically developed for use by indigenous local governments and provides for the regulation of specific activities in trust areas, within the meaning of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (ATSIC (JLOM) Act). The ICLM Model is therefore the most appropriate regulatory regime for indigenous local governments wishing to regulate local government areas that are trust areas and should be used instead of Model Local Law No.4 (Local Government Controlled Areas, Facilities and Roads) 2010.

S2. Purpose and how it is to be achieved

The ICLM Model enables local governments to regulate the use of trust areas as the trustees under the ATSI (JLOM) Act by providing for:

- the authorisation of persons to enter, be in or live in the local government's trust area
- the regulation of scientific research
- the designation and management of camping sites within trust areas
- the designation and regulation of the use of parks and reserves within the local government's 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 models:

- 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 law 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 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 ICLM Model operates in conjunction with the LGA and several other key state and commonwealth legislative instruments including:

- *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*
- *Aboriginal Land Act 1991*
- *Torres Strait Islander Land Act 1991*
- *Aboriginal Cultural Heritage Act 2003*
- *Torres Strait Islander Cultural Heritage Act 2003*
- *Native Title Act 1993 (Commonwealth)*
- *Native Title (Queensland) Act 1993*
- *Recreation Areas Management Act 2006*
- *Wild Rivers Act 2005*

Note: The state and Commonwealth legislation listed is current as at June 2010. Local governments should refer to the Office of the Queensland Parliamentary Counsel's website at www.legislation.qld.gov.au for a complete list of all current legislation.

Part 2—Authority to enter trust area

S5. Authorisation of classes of persons

This provision empowers local governments to authorise particular classes or categories of persons to enter and be in the trust area by listing them in a subordinate local law. This means that longer-term commerce and tourism activities can be undertaken within the trust area, without the burden of requiring separate entry approvals for each employee or tourist. For example, a subordinate local law may state that customers of a particular tourism operator or the employees of a particular construction company are authorised to enter and be in the entire or specific part of the trust area.

Under this provision, local governments may also specify conditions on this authorisation, such as a requirement to be accompanied by a tour operator or to follow any direction given by an authorised person. This is achieved by filling in the relevant columns of Schedule 1 of the ICLM Subordinate template. Section 5(4) also creates an offence for failing to comply with any such conditions on authorisation.

It should also be noted that section 53(2) of the ATSIC (JLOM) Act requires the local government to obtain the written consent of the grantees of the trust area before making a subordinate local law authorising entry to the trust area.

S6. Authorisation of individuals

Indigenous local governments may also grant an approval to authorise particular individuals to enter, be in and/or live in the trust area. This provision makes entry to the trust area a prescribed activity under the Administration Model, using the approval processes of that model. Section 5(b) of the Administration Model provides that a prescribed activity includes an activity for which a Local Government Act, including another local law, authorises the local government to grant an approval, but does not make any other provision about the process for the local government to grant the approval. Such an approval for an individual to enter, be or live in the trust area must therefore be obtained under Part 2 of the Administration Model. Section 6 of the Administration Model further creates an offence for undertaking a prescribed activity without a current approval granted by the local government.

In addition, the local government must specify by subordinate local law, the parts of the trust area to which such approvals may apply. This is achieved by specifying in section 6 of the ICLM Subordinate template whether such approvals apply to the whole of the trust area, or by naming only the specific parts of the trust area to which such approvals may apply. In addition, local governments require the written consent of the grantees of the trust area before making this subordinate local law, in accordance with section 53(2) of the ATSIC (JLOM) Act, which means that the grantees of the trust area must specify the areas to which the local government may grant entry approvals.

Part 3—Scientific research

S7. Approval required to undertake scientific research

This provision makes the conduct of scientific research within the trust area a prescribed activity requiring, by virtue of section 5(b) of the Administration Model, an approval under Part 2 of the Administration Model. Section 6 of that model also creates an offence for undertaking a prescribed activity without a current approval granted by the local government.

Section 7(2) sets out the exceptions to this requirement for an approval to undertake scientific research, which include:

- a person conducting research or assisting another person to conduct research in the course of performing a function or exercising a power under an Act. For example, this would include government officers or contractors engaged by government agencies conducting research authorised by an Act (such as data collection and evaluation of government strategies) and census information collectors
- a person mentioned in section 54 of the ATSI (JLOM) Act conducting research in relation to their purpose for entry to the trust area. For example, this includes heads of government; people bringing medical aid; members of the Legislative Assembly of Queensland or Commonwealth Parliament; or a person assisting any of these people while they are in the trust area.

Part 4—Camping sites

S8. Designation of camping sites

A local government may, by resolution, designate a part of its area as a camping site. However, it may only designate it as camping site land if it has previously declared it under section 50(1)(b) of the ATSI (JLOM) Act to be an 'accessible place'. This means a place for which non-residents of the trust area may have access. The designation of an accessible place under this legislation also requires the written consent of the grantees of the land if it is Aboriginal or Torres Strait Islander land.

A three-step process is therefore required for local governments wanting to open up a part of the trust area to camping:

1. get written consent of the grantees of the land to make the area accessible by non-residents of the trust area
2. resolve to make the area an 'accessible place' under s50(1)(b) ATSI (JLOM) Act
3. designate the area a camping site under s8 of this local law.

S9. Approval required for camping

This provision makes camping at a camping site within the trust area a prescribed activity, requiring through section 5(b) of the Administration Model, an approval under Part 2 of the Administration Model. Section 6 of that model makes it an offence to undertake a prescribed activity without a current approval granted by the local government.

This provision applies to residents and non-residents of the Deed of Grant in Trust and may therefore appear to be contrary to s 53(1)(a) ATSI(CJLOM) Act, which provides that a resident of the DOGIT may enter, be in and live in a trust area. However, section 9 of this local law does not restrict a resident's presence in the trust area, it merely restricts a specific activity (i.e. camping at a designated camping site). The permit system must apply to residents to ensure local governments can effectively manage their camping sites. For example, the local government would not know how many camping sites were being used on a certain night, if residents were able to use a camping site without a permit.

S10. Conditions on use of camping site

Local governments may also prescribe conditions on the use of a camping site by subordinate local law. This is achieved by listing in section 7 of the ICLM Subordinate template, any conditions the local government wants to apply to approvals to camp at a camping site issued under the Administration Model. There are numerous examples cited in the ICLM Subordinate template for local governments to consider whether these are appropriate for their circumstances such as:

- removal of all rubbish or placement of rubbish in receptacles
- camping site left clean and tidy
- fires not be lit except in fireplaces provided
- total fire bans imposed by authorised persons must be observed
- dogs, cats or other domestic animals must not be brought into a camping site
- plants, animals and natural and cultural resources must not be disturbed or damaged
- any directions given by an authorised person must be complied with
- watercourses must not be polluted with shampoos, soaps, detergents, sunscreens or other harmful substances.

This provision also allows local governments to apply conditions that have regard to the traditional and cultural uses of the residents of the trust area or persons who have a particular connection to the camping site under Aboriginal tradition or Island custom. For example, local governments may prescribe as a condition on a camping site that camping permit holders may not disturb, remove or damage any natural or cultural resources (see example above).

It should be noted that there are two different ways in which local governments can condition the use of camping sites:

- applying general conditions on the use of camping sites by listing them in the ICLM Subordinate
- applying additional specific conditions to an individual camping permit via the approval process under the Administration Model.

The general conditions on using a camping site established under section 10 of the ICLM Model are those that are intended to apply generally across all camping sites in the local government area. These are likely to be the types of conditions or rules that might also be included on signage at the camping site.

Additional conditions that might be included on an individual approval to camp may include:

- a requirement to stay out of specific parts of the camping site that may be closed for rejuvenation or cultural purposes

- a specific fire ban or other seasonal condition that might apply at the time of the particular approval.

This provision also creates a penalty for breaching any of the general conditions prescribed by subordinate local law under section 10(1) of the ICLM Model.

S11. Fee for camping approval

To remove doubt, the local law states that the local government may fix different fees for residents and non-residents of the area. This gives local governments the flexibility not to charge residents for camping, which may infringe on their rights to use and enjoy the trust area. They are still required to have a permit, however, to ensure the local government knows how many other permits it may approve to non-residents of the trust area, based on the capacity of the camping site.

S12. Temporary closures

This provision empowers local governments to temporarily close camping sites due to danger or risk of harm, the observance of traditional practices or maintenance.

An approval holder denied use of a camping site due to a temporary closure is, subject to availability, entitled to use the approval at another site or at another time.

Part 5—Parks and reserves

S13. Application to Aboriginal or Torres Strait Islander land

This provision requires that the designation of land as a park or reserve must have the written consent of the grantees of the land if it is Aboriginal or Torres Strait Islander land.

S14. Designation of parks and reserves

This provision enables local governments to designate land, by subordinate local law, as a park or reserve. Section 8 of the ICLM Subordinate makes provision for this designation.

It should be noted that if a local government designates land as a park, it becomes accessible land (open to non-residents of the trust area) under the ATSIC (JLOM) Act. This is because the definition of “accessible place” in s50(7) of that Act includes a ‘park’.

S15. Prohibited and restricted activities

Under this provision local governments can declare, by subordinate local law, restricted and prohibited activities (that warrant the use of the enforcement powers under the Administration Model). Schedule 2 of the ICLM Subordinate provides a framework for specifying those activities that a local government may wish to prohibit in a local government controlled area or road. Similarly, Schedule 3 provides for the listing of restricted activities and a description of the extent of those restrictions. This may be done for example by specifying areas with clearly identified boundaries or particular times or certain occasions when restrictions apply. As noted, it is important that these powers are used only where necessary, appropriate and justifiable.

The ICLM Model ensures activities or behaviours may be regulated in all or part of an area. This gives local governments flexibility to determine when and where restrictions and prohibitions might apply. For example, a local government may determine that:

- the cleaning of fish is not allowed on certain or all boat ramps
- restrictions apply to the use of all or some transfer stations by members of the public.

The model local laws provide options for local governments wishing to prohibit or restrict certain activities that also constitute prescribed activities. For example, if the local government wished to regulate the use of a road area to grow sugar cane, it has the option of specifying by subordinate local law (ICLM Model) that this is a prohibited activity or it can opt to regulate it as a prescribed activity (commercial use of roads) under section 5 of the Administration Model (and Schedule 8 of the Administration Subordinate).

The ICLM Model requires a local government to take reasonable steps to give notice to members of the public about declared prohibited or restricted activities. Local governments may determine what constitutes reasonable steps depending on the size and nature of the place to which the restrictions apply. The ICLM Model provides that reasonable steps may include the display of a notice at a prominent place within the area about the prohibitions or restrictions where this is appropriate and practical.

In certain circumstances, a local government may determine that the display of a notice is not sufficient and may implement additional measures to inform its community. For example this could include the use of public notices, mail outs, advertising or any other means the local government considers appropriate. It is important to give appropriate notice as a penalty may be imposed for a breach under section 15(4). It is necessary, fair and accords with natural justice principles to ensure that members of the public are fully informed.

Note, that there are no provisions about opening hours or closures of parks and reserves, as this would restrict the rights of residents to enter all parts of the trust area and would therefore be contrary to s53(1) ATSI(JLOM) Act.

S16. Motor vehicle access to parks and reserves

Section 16 provides for the regulation of motor vehicle access to parks and reserves. Regulation of motor vehicle access may be necessary to protect the health and safety of persons using the park or reserve or to preserve features of the natural and built environment and other aspects of the amenity of a park or reserve. The ICLM Model therefore provides that motor vehicles are only allowed in motor vehicle access areas. There are two ways to identify motor vehicle access areas. In some instances it will be obvious motor vehicles are allowed full use of the park or reserve. For example, bringing a vehicle onto a camping area may be necessary to allow full use of the area. Such areas are deemed to be a motor vehicle access area unless there is a sign or traffic control device indicating otherwise.

Local governments also have the option of declaring, by subordinate local law, an area as a motor vehicle access area. Schedule 4 in the ICLM Subordinate provides a template for declaring motor vehicle access areas. Local governments can use the schedule to set out a clear description of the motor vehicle access area and its

boundaries so that it's clear to members of the public. Local governments must take reasonable steps to provide notice to members of the public regarding declared motor vehicle access areas. This includes, as a minimum, the display of a notice at a prominent place within each declared motor vehicle access area.

If someone wants to temporarily bring a motor vehicle into an area that isn't a motor vehicle access area, then an approval under section 7 of the Administration Model is required.

Bringing a motor vehicle into or driving a motor vehicle on any part of a park or reserve that is not a motor vehicle access area is a prescribed activity under section 5(b) of the Administration Model. Temporary access may be required to enable participation in activities such as ceremonies, festivals, competitions or other events.

Schedule 25 of the Administration Subordinate provides a template for setting out the requirements and criteria for approvals to bring or drive a motor vehicle anywhere within a park or reserve and not within a motor vehicle access area.

Section 16(3) of the ICLM Model provides a local government may, by subordinate local law, declare a specific type of motor vehicle (a prohibited vehicle) to be prohibited in a specified motor vehicle access area. This allows local governments to provide for the exclusion of certain vehicles from a motor vehicle access area to protect the health and safety of persons using the area or to preserve environmental features or the amenity of an area. A local government may consider that a certain type of vehicle, for example, trucks over a certain weight or 4x4 vehicles, should be prohibited from a particular park or reserve because they are more likely to cause environmental harm than smaller vehicles. Local governments may consider that trail bikes should be excluded from camping areas or on foreshores as there may be a health and safety risk to persons using the area.

Schedule 4 in the ICLM Subordinate provides a template that can be used for detailing the types of vehicles prohibited and where the prohibition applies.

Permission to bring a prohibited vehicle onto a park or reserved may be obtained by seeking approval from the local government under the Administration Model. This allows for circumstances when temporary access of a prohibited vehicle is required for a one-off event—for example, to hold a trail bike competition. Bringing or driving a prohibited vehicle into a local government controlled area is a prescribed activity under section 5(b) of the Administration Model. Schedule 26 of the Administration Subordinate provides a template for setting out the requirements, conditions and criteria for approvals to undertake this prescribed activity.

It is up to each local government to determine how detailed or streamlined an approval process for a particular prescribed activity needs to be. For example, if a written application is required and if so the range of information that should be included within the application.

Local governments should consider the potential for dealing with two approvals for a related activity simultaneously to mitigate administrative requirements. For example, it may be appropriate to simultaneously deal with an approval for temporary vehicle access where that vehicle is a prohibited vehicle for which an approval is required.

Section 6(3) of the Administration Model provides an option for a local government to declare, by subordinate local law that an approval is not required for a prescribed activity or a particular activity that is within the category of a prescribed activity. For

example, access to a park or reserve by an authorised contractor for the purposes of repairing or maintaining a local government facility may not require an approval by some local governments.

A local government must take reasonable steps to provide notice to members of the public about any declarations of motor vehicle access areas or prohibited vehicles. Please note that notice is deemed to be provided in parks or reserves that are clearly marked as a carpark or roadway. Reasonable steps include, as a minimum, the display of a notice at a prominent place within each declared motor vehicle access area, stating a description of the declared motor vehicle access areas, a description of prohibited vehicles for the area and in general terms, the provisions of section 16(2) and section 16(4) of the ICLM Model.

Emergency vehicles, as defined in the model local law, are not covered by this provision and can access an area that is not a motor vehicle access area as necessary.

Part 6—Miscellaneous

S17. Approval to be produced on request

This provision provides for a local government nominated person to be authorised to request a person provide a local government approval, should the authorised local government representative reasonably believe ought to have an approval they can produce. Refusal or failure to produce a relevant approval is an offence.

S18. Subordinate local laws

Local governments are empowered to make subordinate local laws under sections 5(1), 6(3), 10(1), s14(1), s14(2), 15(1) and 16(3) in relation to the following matters:

- declaring the categories and classes of persons that are authorised to enter, be or live in parts of the trust area
- declaring the parts of the trust area to which an approval granted under s6(3) of the authorising law applies
- conditions prescribed for the use of camping sites
- designation of parks and reserves
- declaration of prohibited and restricted activities in parks and reserves
- declaration of motor vehicle access areas
- declaration of motor vehicles prohibited in specified motor vehicle access areas.

However a local government may choose not to regulate one or more of these matters. This can be achieved by not making a subordinate local law on the matter.

Commentary on the content of the ICLM Subordinate is outlined in these guidance notes under each of the relevant authorising provisions of the ICLM Model. Local governments should refer to relevant state legislation when making a subordinate local law under the ICLM Model to ensure consistency and operational efficiency.

Schedule—Dictionary

This schedule ensures all relevant words used in the model are defined in the dictionary.

In particular, the term ‘trust area’ is defined to include Deed of Grant in Trust land held by the local government as trustee and Aboriginal land trust land held by Aboriginal trustees (usually traditional owners). This provides for circumstances where the trustees of Aboriginal or Torres Strait Islander trust land ask the local government to manage camping facilities on that land on behalf of the trustees.

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, Facilities and Roads) 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—Summary of offence provisions and maximum applicable penalty

Provision number	Offence	Maximum penalty (in penalty units)
S 5(4)	Failure to comply with the specified conditions of the authorisation of a class of persons to enter, be in or live in the trust area	35
S 10(2)	Breach of conditions prescribed by subordinate local law on use of a camping site	20
S 12 (2)	Camping in a camping site or part of a camping site that is temporarily closed.	20
S 15(4)	Engaging in a prohibited or restricted activity in a park or reserve	20
S 17(2)	Failure to comply with a request by an authorised person to produce an approval for inspection	40