

Local Laws Assessment Guide

Lower cost options for regulating business activities

Executive Summary

Purpose

Standard permitting can be costly

Costs to businesses



Time costs of lost business activity while paying rent or staff while waiting to get their approval



Cost of application fees and consultancies to help complete applications and understand the application process

Costs to councils



Staff time and cost of answering business questions and processing applications



Cost of digital solutions to make the application process simpler to engage with

This Guide sets out alternative approaches to regulation that are lower cost without compromising community outcomes. It provides a framework for deciding between these alternatives depending upon the harm being regulated.

Regulatory options
Mandatory requirements only
Notification
Automatic permitting
No delay permitting
Standard permitting

Framework for choice

- Be **precise on the harm** you are seeking to manage
- Be clear on the **likelihood** of an outcome occurring
- Be clear on the **impact** of the event if it does occur
- Be clear on whether the regulatory tool chosen will address the harm
- Consider timing elements

Issues to consider

- How **effective** will the approach I've taken be in managing the expected outcome?
- What are the **costs to council**, including the cost of ensuring compliance?
- Are the **costs of regulation** to businesses proportionate to the harms being addressed?
- Am I placing my council at a **disadvantage** to other councils unnecessarily because the costs of business undertaking an activity in my council are higher than others?
- What is the risk if my council doesn't approve an activity before it commences?

Comparison of the alternatives

Lowest cost on business and councils		Lowest risk of activity impacting on council or others		Highest cost on business and councils		Highest risk of activity impacting on council or others			
Mandatory requirements only		Notification		Automatic permitting		No delay permitting		Standard permitting	
Business can commence activity immediately: no waiting for approval. <div>✓</div>		Business can commence activity immediately: no waiting for approval. <div>✓</div>		Business can commence activity immediately: no waiting for approval. <div>✓</div>		Businesses can commence the activity when the permit application is made: no waiting for approval. <div>✓</div>		Most costly option for businesses as they must wait for issuance of a permit before commencing the activity. <div>✗</div>	
No contact between the business and council. No permit is issued. No costs for councils to assess applications. <div>✓</div>		No permit is issued. No costs for councils to assess applications. Councils only need to maintain a register of notifications. <div>✓</div>		A permit is issued automatically. No costs for councils to assess applications. Costs for councils to establish automatic permitting systems (requires digital capability). <div>✓</div>		Council has the discretion to issue a permit. Costs for councils to assess permit applications. <div>✗</div>		Council has the discretion to issue a permit. Costs for councils to assess permit applications. <div>✗</div>	
No opportunity for councils to impose a fee. <div>✗</div>		Can charge fees on an ongoing basis (ie with each permit renewal). <div>✓</div>		Can charge fees on an ongoing basis (ie with each permit renewal). <div>✓</div>		Can charge fees on an ongoing basis (ie with each permit renewal). <div>✓</div>		Can charge fees on an ongoing basis (ie with each permit renewal). <div>✓</div>	
Local law would provide power for council to take enforcement action against entities that fail to adhere to requirements.		Local law would provide power for council to take enforcement action against entities that fail to adhere to requirements.		Local law would provide power for council to take enforcement action against entities that fail to adhere to requirements, including revocation of the permit.		Local law would provide power for council to take enforcement action against entities that fail to adhere to requirements, including revocation of the permit.		Local law would provide power for council to take enforcement action against entities that fail to adhere to requirements, including revocation of the permit.	
Suitable for low-risk activities unlikely to have a significant impact on others and where there is low variation in how the activity is performed.		Suitable for low-risk activities, but where council would like to be notified as to who is engaging in the activity so as to assist with compliance enforcement.		Suitable for activities with moderate risk , a high degree of standardisation, and for which council would like to obtain evidence of certain characteristics of the business.		Suitable for activities with moderate to high risk , when there is more discretion as to how the activity is performed, and when automatic permitting is not appropriate or available. Council retains discretion to issue a permit		Suitable for activities with the highest risk , and for which the council would like to retain the power to prevent a business from engaging in an activity before it has made an assessment and given approval.	



**Details in support of the
Executive Summary**

Purpose of this Guide

Councils use local laws (and their associated policies and procedures) to regulate certain business activities. While this regulation is intended to reduce the risk of harms occurring, it also imposes a **regulatory burden** on business activity (as well as councils).

Regulation can be implemented in various ways, with varying levels of regulatory burden. **The optimal regulatory option to use for a given activity is determined by the risk of harms occurring and the severity of the harm.**

A higher level of regulatory burden is justified in areas of activity where there is a higher risk of harms occurring and/or the harm is severe. Similarly, in areas of activity where the risk of harms occurring is lower and/or the harm is not severe, a regulatory option with a lower regulatory burden would be appropriate.

Councils typically adopt a “**permit approval**” (or **permitting**) regulatory approach. This involves businesses submitting an application, which the council assesses. If it is acceptable, the council approves it and issues a permit, which has conditions the business needs to follow. This approach is used across the broad spectrum of activities that councils regulate.

The purpose of this document is to provide councils with a framework for reconsidering how business activities are regulated. It outlines alternative approaches to managing the risks arising from business activity without compromising community outcomes.

Local law requirements and the procedures or policies that supplement them are important tools



ensure business activities align with community expectations



protect the amenity and assets of a local government area

However, they create costs for businesses and their workers

- Takes time and money to understand council requirements and work through application processes, get queries answered and face different interpretations over time of an unchanged requirement.
- This is particularly the case for businesses that operate in multiple councils when local laws are different across councils.

They also impose costs on councils

- Scarce resources are tied up handling business enquiries and feedback, processing application forms and issuing permits

Ensuring the requirements of local laws and their procedures strike the right balance between managing risk and cost is complex, but it is important for ensuring businesses and their customers do not incur unnecessary costs and delays

Only regulating what needs regulating also means local governments free up resources to focus on other council priorities



It also benefits Victoria overall because it increases Victoria's reputation as a place to do business and can create jobs for your council's citizens.



Business insights

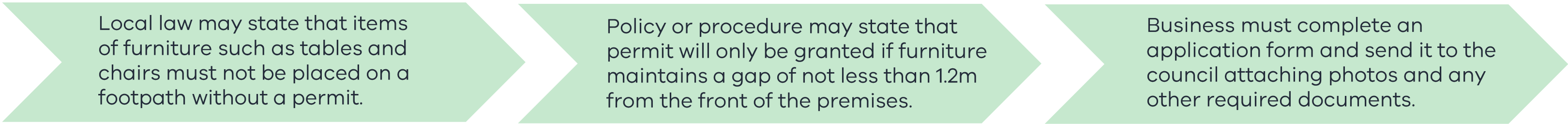
"I feel like sometimes Councils use RFIs as a tactical manoeuvre to 'stop the clock'."

"Please explain and show me the regulations that prohibit me from opening my business."

"I did not expect opening a business to be this difficult and expensive."

Local law requirements, policies and procedures

The conditions or requirements that businesses must observe to be granted a permit are often spelled out in **procedures or policies** that sit alongside local laws



Important for the safety and amenity of a council area and ensuring that one business’s activities do not impact on other businesses or individuals.

However, they also impose **costs**



Lost time and money for the business while their application is assessed

Businesses may be paying a lease on a currently empty café or turning customers away because they don’t have sufficient seating to accommodate demand



Cost of meeting different requirements for same activity across different councils

One council requires \$10 million worth of public liability insurance. Another council requires \$20 million. The business ends up incurring the cost of holding \$20 million in insurance across both councils.

For the purposes of this guide, the term “**local law requirement**” refers to those requirements that place an obligation on a business.

For instance, requiring businesses to get an approval (typically via a permit with fee attached) before beginning an activity in a council area. It can also provide the power for a council to fine the business if the business conducts the activity without that approval.

Local councils can use local laws to manage public liability risk or to address rare events that may be detrimental to the safety, health or amenity of the council’s community, such as someone camping in a council park.

This guide is **not aiming to overturn this** but instead inform council decision-making on local law requirements relating to business activities to optimise the balance between regulatory options, managing risk and minimising costs.

In the 2010 VCEC *Local Government for a Better Victoria: An Inquiry into Streamlining Local Government Regulation* it was estimated that the total cost to Victorian businesses resulting from the regulatory burden of planning and building regulations administered by local government was over **\$600 million per year**.

Proposed regulatory options

Listed below are proposed regulatory options which are alternatives to standard permitting. They are listed in order of increasing regulatory burden. Further details on each option are provided in the [Appendix](#).

Mandatory requirements only: businesses are free to engage in the activity (as long as they adhere to the published mandatory requirements) and do not need to contact the council. For **lowest risk** activities.

Notification: same as mandatory requirements, but businesses are required to notify a council indicating that they will be engaging in the relevant activity. For **low risk** activities.

Automatic permitting: businesses are required to complete an application, agreeing to the terms and conditions, and submit necessary documents. A permit is then automatically issued instantaneously to the business. For **moderate risk** activities.

No delay permitting: same as with automatic permitting, except the permit is not issued automatically but is instead subject to assessment for approval by the council. However, the business can commence engaging in the activity from the time the application is made. For **moderate to high risk** activities.

Standard permitting: this is the traditional form of council regulation where businesses who wish to engage in an activity must submit an application (and provide the necessary documents), often pay a fee, and then wait for approval and issuance of a permit before commencing an activity. For **highest risk** activities.



For all these options, the mandatory requirements (and enforcement actions) related to the activity being regulated are detailed on the council’s website.



None of these options intend to reduce the power of council to engage in enforcement actions for non-compliance.



They are intended to provide options with lower regulatory burden (both for businesses and councils) via eliminating the time spent waiting by businesses for approval to commence the regulated activity.

Choosing between alternative regulatory options

Any form of regulation does not eliminate risk. Rather regulation helps to minimise its occurrence and can also help manage the consequences when it occurs.

Choosing the best regulatory tool involves balancing the benefits of the reduction in potential harm against the cost on businesses and councils to achieve that reduction. It may be appropriate to use different tools for different situations within the same activity, i.e. not every business or situation may warrant the same approach.

Steps to choosing the best regulatory option

1 Be precise on the harm you are seeking to manage

- Be clear on what outcome would occur if a certain event happened.
- For example, a chair leg going beyond the defined space for outdoor dining presents two potential risks – someone trips and hurts themselves or pedestrians can’t get through. In this example, the harm that might need managing is someone hurting themselves or maybe both.

2 Be clear on the likelihood of an outcome occurring and how easy the requirements are to enforce

- For example, the likelihood of someone tripping and hurting themselves will depend on the situation such as how much room exists between the end of the chair leg and the edge of the commercial property. If there is lots of room, then the likelihood of it occurring declines and a less intrusive form of regulation could be considered. Similarly, if it’s easy for council officers to observe and enforce compliance (such as A-frames being correctly placed) then a less onerous form of regulation could be considered.

3 Be clear on the impact of the event if it does occur

- If someone trips the extent of the hurt can range from a bruised ego to serious injury requiring hospitalisation.

4 Be clear on whether the regulatory tool chosen will reduce the likelihood of an event occurring.

- For example, requiring a café to obtain a permit before placing furniture outside does not prevent a customer leaving the chair across the pedestrian passage. The risk is not removed.

5 Consider timing elements

- There may be activities councils regulate where the council needs to know about the activity before it starts due to the inherent risk involved

Questions to consider

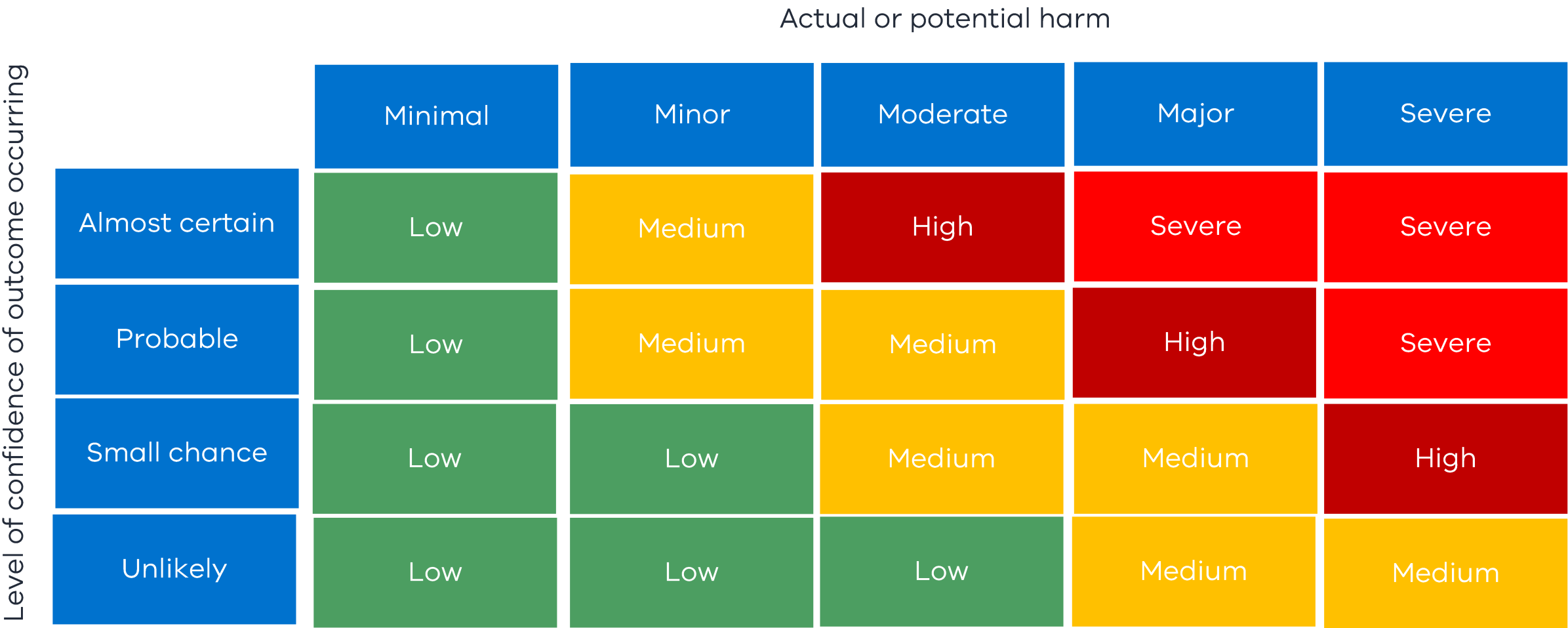
- What harm are you looking to manage?
- Who or what is creating the harm?
- How frequent is the activity that is creating the harm?
- Which businesses have the potential to create the harm, what is their economic significance, what size are they, who are their employees and who are their customers?
- Is it a specific, isolated action that has the potential to cause harm or is the harm inherent in the whole activity a business undertakes?
- What is the likelihood of the event occurring?
- If the event occurs, what degree of harm will occur?
- Who will experience this harm if it occurs?
- How effective will the approach I’ve taken be in managing the expected outcome?
- What are the costs to council, including the cost of ensuring compliance?
- Are the costs of regulation to council more than the cost of an event occurring?
- Am I placing my council at a disadvantage to other councils unnecessarily because the costs of business undertaking an activity in my council are higher than others?
- What is the risk if my council doesn’t approve an activity before it commences?

A heatmap can help think through the best approach

To determine the right regulatory intervention to use:

- Consider the likelihood of an event occurring, and
- The scale of harm that results.

Permitting will be more preferable the higher the level of confidence of an outcome occurring and the more significant the harm that transpires as a result.



The more interventionist the regulatory tool used the higher is the cost to businesses and councils.

Questions to consider

- ✓ Has your council considered alternative responses for regulating risk?
- ✓ What alternatives were considered?
- ✓ Why was the chosen response deemed the most appropriate?
- ✓ Has your council catalogued the types of businesses or individuals that currently require this permit?
- ✓ What thresholds or exemptions were considered that could reduce the entities requiring this permit?

Consideration could be given to treating different businesses differently. For example, there may be a case for not requiring a large hospitality firm with a good compliance record in other council areas to get a permit before commencing an activity. In this situation, guidelines or notification may be a less costly but still effective alternative.

Worked examples

Example 1 – Notification is the best option

Council is considering what the appropriate regulatory model for **footpath trading** is. The potential harm of inappropriately placed items is inconvenience or harm to pedestrians. The likelihood of harms is small if businesses follow the requirements stipulated by council. Many businesses in Victoria have goods on the pavement and no trouble is caused. Council would rather not spend the time assessing individual applications for footpath trading. Council also does not wish to make businesses wait before starting. Footpath trading is also an activity that is standardised in nature, so is amenable to being regulated by description, without any council discretion required. However, the council would like to know who is engaging in footpath trading, to target their compliance enforcement. **Council therefore decides that notification is the best option.**

Example 2 – Automatic permitting is preferable

Council is considering what is the appropriate regulatory model for use of **skip bins**. These are large objects, often placed on roads in parking bays. Poorly placed skip bins have the risk of inconveniencing road users or causing an accident. However, many skip bins are used each year without any harms resulting. Council would rather not spend the time assessing individual applications for footpath trading. Council also does not wish to make businesses wait before starting. Council would like to receive specific information from the business (such as insurance details) and would like to give approval for the current skip bin usage only. Council thus considers a permit to be suitable and decides using an **automatic permitting** system has the lowest cost on businesses and council.

Streamlining and harmonising requirements across councils

The more standardised council requirements are, the simpler they are for businesses to understand and comply with.

Many Victorian businesses operate across LGA boundaries, with at least 60 per cent of building and construction businesses interacting with multiple councils.

The requirements businesses must comply with vary across councils. For example, businesses seeking to trade on the footpath may need to comply with up to 17 different requirements to get a permit in the council areas they wish to trade in.

DTF has worked with councils to develop up better practice guides and standardised provisions for some common local laws:

- Asset protection
- Public protection (temporary structures, eg scaffolding)
- Footpath trading
- Skip bins on council land

Councils are encouraged to use these guides as templates for their own laws

These guides can be found here: [Council and Regulator Toolkit | vic.gov.au](#)

If councils can retain 80% of these harmonised provisions and only modify 20% to account for issues specific to individual council areas, then Victoria as a whole will be a better place for business to invest.

In one council you might need asset protection for the whole block and then over the next street in a different council you don't need it - it is hard to understand.

- Industry Association

*Improving consistency across councils for permissions relating to building and construction working hours, site-fencing, and council asset protection could deliver an annual cost saving to businesses worth between **\$8-\$17 million.***

2010 VCEC Local Government for a Better Victoria: An Inquiry into Streamlining Local Government Regulation



Appendix

Costs associated with regulation

There are different types of costs that regulation can impose on businesses.

Direct costs includes those expenditures or actions the regulations require the business to undertake. For example, footpath dining regulations may require that weighted sandbags be used to secure tables. The cost of the sandbags is a direct cost of the regulation.

Application costs includes application and ongoing fees that the business is required to pay. It also includes the implicit cost of the time taken by a business to understand what it is the regulations allows them to do, and for the business to decide whether to engage in the activity. Application costs also include the cost of the time taken by a business to submit an application and provide the necessary material.

Delay costs refers to the implicit cost of the time taken by council to approve a permit application, and thus allow the business to begin conducting the activity. This also includes the time taken addressing any queries from council regarding the application. For example, a business may end up waiting four weeks for a footpath dining application to be approved. The four weeks of revenue forgone from footpath dining is a cost to business.

Delay costs have been raised by businesses as a significant cost of concern. **Delay costs also represent a cost for councils**, as they reflect the time and resources devoted to processing and assessing permit applications.

This Guide presents **alternative risk-based regulatory options** that councils may wish to consider that **don't involve businesses having to wait for a permit approval** before engaging in the regulated activity. These regulatory options also represent a reduced regulatory burden on councils, compared to the standard permitting regulatory approach.



Business insight

"It took a total of 7-8 months [with objections] to get a permit: we expected 3-4."



Business insight

"I have been paying rent for 1.5 years at \$5,000 a month and we haven't even started operations yet."

Proposed regulatory options

Described below and on the following slides are proposed regulatory options which are alternatives to standard permitting. They are listed in order of increasing regulatory burden.

Note that for all these options, the mandatory requirements (and enforcement actions) related to the activity being regulated are detailed on the council's website.

Mandatory requirements only:

- Businesses are free to engage in the activity (as long as they adhere to the mandatory requirements) and do not need to contact the council. Fees cannot be charged with this option.
- Should council become aware of non-compliance with the requirements (such as from observation by council officers or complaints from the public) they can initiate enforcement action against the business.
- This regulatory option is suitable for activities with the **lowest risk**. An example of such an activity is a fitness trainer who instructs single clients in parks. Another example is the placement of A-frame signage on the footpath outside businesses.

Note that none of these options intend to reduce the power of council to engage in enforcement actions for non-compliance.

They are intended to provide options with lower regulatory burden (both for businesses and councils) via eliminating the time spent waiting by businesses for approval to commence the regulated activity.

Notification:

- Same as mandatory requirements, but businesses are required to notify a council indicating that they will be engaging in the relevant activity.
- Notification provides council with more visibility as to who is engaging in the relevant activity, and thus assists with targeting compliance activities.
- A fee can be made payable when the notification is made. Fees may also be charged on an ongoing basis (such as annually).
- This regulatory option is suitable for activities with **more, but still low, risk**. An example of such an activity is the selling of goods on the footpath outside a business, or (low noise) building work outside of standard hours.

Automatic permitting:

- Businesses are required to complete an application, agreeing to the terms and conditions, and submit necessary documents (like insurance certificates). A permit is then automatically issued instantaneously to the business.
- A fee may be payable with the application for the permit. Permits may be valid for a defined period of time and need to be renewed if the activity continues, and a fee may be payable with renewal.
- Automatic permits may be still be withdrawn as part of enforcement actions for non-compliance.
- This regulatory model is used by some councils for a selection of regulations (like footpath dining, fitness training in parks and skip bins) via the Service Victoria website.
- This regulatory option is suitable for activities: with moderate risk of harms; a high degree of standardisation; and for which council would like to obtain evidence of certain characteristics of the business (like insurance certificates). An example of such an activity is the use of a skip bin.

No delay permitting:

- Same as with automatic permitting above, however the permit is not issued automatically but is instead subject to assessment for approval by the council.
- However, the business can commence engaging in the activity from the time the application is made (ie without having to wait for the approval first) but must adhere to the requirements published by the council. Businesses know at the time of application that they may not receive a permit.
- A fee may be payable with the application for the permit, and as permits are valid for a defined time and need to be renewed if the activity continues, a fee may be payable with renewal.
- Permits may be still be withdrawn as part of enforcement actions for non-compliance.
- This regulatory option is appropriate for activities for which automatic permitting is not suitable or desirable (such as for less standardised activities). This regulatory option is suitable for activities with moderate to high risk, and for which the council would like to retain some discretion in issuing the permit. Suitable for activities which can easily be “undone” in the event of non-approval.

Standard permitting:

- This is the traditional form of council regulation where businesses who wish to engage in an activity must submit an application (and provide the necessary documents), often pay a fee, and then wait for approval and issuance of a permit before commencing an activity.
- Permits are valid for a defined time and need to be renewed if the activity continues, and a fee may be payable with renewal.
- This regulatory option is appropriate for activities with the **highest risk, and for which the council would like to retain the power to prevent a business from engaging in an activity *before* it has made an assessment and given approval.**
- This option is suitable in cases where the council would like to conduct pre-approval checks before the business commences the activity (eg does the applicant have the appropriate qualifications?). An example of such an activity is the selling of food.

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