

Amendment By-Law FAQ's

1. What are the proposed changes?

Council reviewed its By-Laws during 2022 with current suite of By-Laws being adopted on 9 August 2022 and they remain in effect until 1 January 2030.

By-Laws are required to be approved by the Legislative Review Committee.

Since Adoption of the current by-laws, the Legislative Review Committee have developed a State-wide position and preference in relation to certain aspects of all Council's By-Laws with the two main considerations highlighted by the Legislative Review Committee when considering By-Laws including:

- gender neutral language in by-laws
- the text of council by-laws to explicitly require an opinion, request or direction of an authorised person to be reasonable.

Detailed below are the proposed changes to Council's By-Laws as a result of the comments and preferences of the Legislative Review Committee.

Opinions and Directions of Authorised Officers

The Legislative Review Committee preference is for Council's by-laws to explicitly require an opinion or direction of an authorised person to be reasonable.

2. How will this impact on our current By-Laws?

The Legislative Review Committee want to ensure that authorised officers that enforce and administer the By-Laws act reasonably and form opinions and provide directions to members of the community in a manner that is reasonable.

This will also aim to ensure that officers do not overstep the use of their powers and responsibilities and ensure that dealings with the public are considered based on a reasonable approach and consideration.

Gender neutral language in Council by-laws

The Legislative Review Committees preference is for By-Laws to use gender neutral language rather than gender specific language. The Committee's preference is to avoid the use of gender specific language.

3. How will this impact on our current By-Laws?

The Legislative Review Committee highlighted general concerns with the phrases that some councils include in by-laws that refer to 'the opposite sex' and 'that other sex' as the use of this language may unduly trespass on personal rights and liberties.

The current By-Laws of the City of Mitcham do not refer to the terms opposite sex, however there is reference to the opposite gender, and his and her (such as in By-Law 7 – Waste Management) therefore the amendment By-Law will aim to bring the use of

gender-neutral language in line with the Legislative Review Committees preferences and recommendations.

An example of this would be in relation to Section 7 of By-Law 7 – Waste Management. Section 7.1 of this By-Law currently has reference to his or her in it, as detailed below:

- 7.1 An occupier of premises must keep on his or her premises a Domestic Waste Container and Recyclables Container and, if directed by the Council in writing, a Green Organics Container.

This would be amended to reflect gender neutral language with an example being:

- 7.1 An occupier of premises must keep on their premises a Domestic Waste Container and Recyclables Container and, if directed by the Council in writing, a Green Organics Container.

Public Conveniences on Local Government land

The Legislative Review Committee tabled a report in both Houses of Parliament on 28 September 2022 entitled 'Inquiry into Local Government Land By-laws – Public Conveniences'.

The Legislative Review Committee report addresses concern for clauses that make a child's age the determiner of when a clause restricting entry into public conveniences would not apply. The Commissioner for Children and Young People, in evidence before the Committee, regarded age as too arbitrary and favoured the term 'vulnerable'.

The preference for the term 'vulnerable' is because 'capability and capacity' is more appropriate basis to distinguish a person than the person's age.

The Legislative Review Committee acknowledged that Council did not have a benefit nor hindsight of this information and the Committee's report, before finalising and adopting our current By-Laws. Nevertheless, the Legislative Review Committee asks Council to consider modernising the language of clause 10.12 of the Council's Local Government land By-Law consistent with the model clauses provided to Council through the abovementioned report.

4. How will this impact on our current By-Law?

The current City of Mitcham Local Government Land By-law No. 3 contains a clause in relation to toilets which sets out:

- 10.12 Toilets

In any public convenience on Local Government land:

- 10.12.1 urinate other than in a urinal or toilet or defecate other than in a toilet set apart for that purpose;
- 10.12.2 smoke tobacco or any other substance;
- 10.12.3 deposit anything in a toilet, urinal or drain which is likely to cause a blockage;
- 10.12.4 use it for a purpose for which it was not designed or constructed;
- 10.12.5 subject to the Equal Opportunity Act 1984; enter a toilet that is set aside for use of the opposite gender except:
 - 10.12.5.1 where a child under the age of eight years is accompanied by a parent or adult guardian of that gender;
 - 10.12.5.2 to provide assistance to a person with a disability; or

- 10.12.5.3 in the case of a genuine emergency

In its consideration in relation to this matter, the Legislative Review Committee have highlighted that they recognise the importance of amending the language used by councils in their By-Laws in such a way that allows children to be safe and protected, and does not discriminate against a person that identifies as transgender, intersex or gender diverse. This will also assist Council not being at risk of a discrimination claim.

Therefore, Council has proposed to amend clause 10.12 of the current by-law by deleting the above clause and substituting it with the following new clause:

- 10.12 Toilets

In any public convenience on Local Government land:

- 10.12.1 urinate other than in a urinal or toilet or defecate other than in a toilet set apart for that purpose;
- 10.12.2 smoke tobacco or any other substance;
- 10.12.3 deposit anything in a toilet, urinal or drain which is likely to cause a blockage;
- 10.12.4 use it for a purpose for which it was not designed or constructed;
- 10.12.5 enter any public convenience unless the person is of the gender indicated in writing or on a sign located on that facility except:
 - 10.12.5.1 in the case of a genuine emergency; or
 - 10.12.5.2 where a vulnerable person is being assisted by the vulnerable person's caregiver, parent or guardian; or
 - 10.12.5.3 if the person is intersex, transgender or gender diverse; or
 - 10.12.5.4 if the person is a person with a disability; or
 - 10.12.5.5 if the person is assisting a person with a disability.

5. How can I provide comment? – To get involved and have your say:

To learn more about the proposed amending by-law and to provide feedback or view a copy of the proposed by-laws, visit: www.mitchamcouncil.sa.gov.au.

A hard copy of the proposed by-law is also available for inspection, free of charge, during business hours at Council's Civic Centre at 131 Belair Road, Torrens Park SA 5062.

You can contact Mark Austin, Manager Environmental Services and Community Safety on (08) 8372 8817 to discuss the proposed amendment by-law, or visit the Council Civic Centre at 131 Belair Road, Torrens Park to discuss in person.

Submissions may be lodged in one of three ways:

- Online by completing the on online survey submission form below; or
- Email to mitcham@mitchamcouncil.sa.gov.au and clearly mark as '*Attention Mark Austin - Feedback – Draft Amendment By-Law – Submission*'
- Post to Attn: Mark Austin, Acting Manager, Environmental Health and Community Safety, City of Mitcham, PO Box 21, Mitcham Shopping Centre, Torrens Park SA 5062