

The Principles of Making Animal Management Local Laws

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The aim of this paper is to provide guidance on the general process and thinking patterns for making local laws, but most importantly to encourage participation and ownership of the process by all involved in animal management. While the legal process for making laws varies in each jurisdiction, the concepts explained here are transferable across all states and the overall general policy making process.

There are only one or two people in each local government who run the process for making the council's animal management local laws, yet the outcome of those laws affect every person involved in animal management and most if not all of the community (those who keep domestic animals, those who live beside or near where animals are kept and those who use footpaths, parks and other public areas). In particular the laws have their greatest affect on those whose role lies within animal management. As such, you are encouraged to be strongly involved in the development of laws that relate to animal management, to ensure the laws are worthwhile, beneficial, meet community needs and expectations, logical and most importantly practical.

The impetus for new local laws or amendments to local laws can initiate from a number of sources:

- Local law review requirements under a controlling act;
- New and emerging issues; *
- Changes to other legislation;
- Issues and/or improvements identified by Councillors;
- Issues and/or improvements identified by officers;
- Issues and/or improvements identified by the community.

It is expected that Council's laws are required and that the making and subsequent enforcement of the laws is the best option for the good rule and government of the area. When looking at the development of new laws, a number of questions should first be answered:

- What is the problem?
- What is the desired outcome?
- How does this matter fit under the Corporate Plan?
- Does council need a new law to cover this matter, or can it be dealt with another way?
 - Is it covered under existing laws?
 - Is it covered under the planning scheme?
 - Can it be covered under the planning scheme?
 - Can it be covered under a Council policy and/or guideline?
 - Would community education be a better alternative? and
 - Is it covered under a state law?
- What are the risks associated with introducing the law?

- What are the risks associated with not introducing the law?
- For existing laws, which team in Council enforces the law?
- For existing laws, is the law currently enforced?
- For new laws, which team in Council would enforce the law?
- For new laws, is the law enforceable? and
- How is enforcement to be resourced?
 - Additional resources to cover this role;
 - Reduction in existing roles;
 - Limited enforcement (e.g. complaint only or first action is a letter); and
 - No enforcement.

Once it is determined that a new law is the best way forward, the next step is to determine what the draft new provisions should be. This should not be done in isolation, with thorough research the key to this part of the process. In most cases, you will not be inventing the wheel. Information is out there and it is up to you to find it. In particular, search for information and views that go against the concept of your proposal. It is so much easier to hear the views of those who support the new provisions, than those who are against them. From here you will find the potential legal and operational pitfalls of your ideas and whether you may not have the community's, special interest groups' and political backing to make the new law successful. You will then be in a good position to determine if your planned direction is the best way to go, destined for failure, or requires modification; and how you need to communicate this message.

In conducting the research for the proposed laws, you should:

- Talk with those who enforce the laws,
- Look up other Council's laws,
- Talk with other Councils about their laws,
- Search the internet,
- Talk with experts, and
- Meet with interested groups/associations.

Gauge issues from stakeholders early in the law reform process, particularly from those most affected by the law; with the main aim being for all concerned to be part of the process and to have ownership of the final outcome.

Be careful in determining how expansive the law needs to be. There are some who believe that new laws should cover every conceivable situation and as such, spend much time examining to the minute detail, how the proposed law will achieve this objective. In meeting this goal, there is the potential that the law could become so expansive that it becomes unpalatable, both to the community and politically.

You will then need to determine what process is best suited to the desired outcome:

- Make new local law and/or subordinate local law; or
- Amend existing local law and/or subordinate local law; and/or
- Repeal existing local law and/or subordinate local law.

Each state has its own requirements on how laws are made and drafted. For the drafting process for the law, use a specialist drafting solicitor who has the appropriate experience and fully understands the legal requirements. The solicitor will need drafting instructions to prepare the laws. In preparing drafting instructions for the drafting solicitor:

- Explain what you wish to achieve;
- Explain what you want; and
- Provide example wording from other laws if available.

The more information you can provide for the drafting solicitor, the better job they can do to achieve your desired outcomes. When the solicitor prepares the proposed law, make sure you proofread and check it, to ensure it is what you have asked for and is what you actually want. Remember that legal terminology may read differently to common language.

In Queensland the fundamental legislative principles are applied to the drafting of legislation and local laws. These principles protect the rights and liberties of individuals and the institution of Parliament. These include but are not limited to, the following:

- consistency with natural justice principles;
- reversal of onus of proof;
- judicial warrant required for entry, search and seizure;
- protection against forced self incrimination;
- retrospectivity;
- Aboriginal tradition and Island custom;
- clarity, precision and no ambiguity;
- justification required to abrogate common law rights;
- inappropriate imposition of responsibility;
- undue restriction of ordinary activities;
- proportionality for offences;
- appropriate defences; and
- use of extraordinary powers only in urgent circumstances.

Under the National Competition Policy, you will need to check to see if there are provisions which place restrictions to entering a market (business environment) or place requirements on a business (e.g. requirement to have a licence and licence conditions). An evaluation process will need to be conducted to determine if the public benefit of the law outweighs the potential restriction on business.

The process will usually involve a number of reports to Council to obtain Council's agreement. You will need to ensure your Council obtains copies of the laws and all other documents associated with the process.

You are also encouraged to provide all details of the process (warts and all), eg.

- The need and purpose for the laws;
- The process;
- Estimated timeframes;
- Pros and cons;
- Alternatives;
- Costings;
- Community engagement; and
- Council resolutions to meet the legal process.

Honesty never goes unrewarded. Another important piece of advice at this point is not to be too precious of the process and contents of the proposed laws. While officers are employed to provide the best advice to Council, their view is only one aspect of the process and does not sit in isolation. The making of laws is affected by politics, community views, the media, timing, cost of implementation and many other factors. While these can be sometimes personally frustrating, they are important factors in the process and outcome.

One of the most important steps in the local law making process is community engagement. Laws are meant to reflect the needs and wants of a society at a particular time. To ensure the proposed laws reflects the communities views, community engagement must:

- Meet minimum law making requirements;
- Be meaningful and appropriate;
- Be focused on those most affected;
- Encourage submissions;
- Make it easy for people to understand what's happening and streamline the submission process;
- Clearly articulate what the law is going to look like in real terms (as well as supplying the mandated legal jargon);
- Accept that people have a right to their views and to express them; and
- Accept that many people will have trouble articulating their views.

Community engagement is also informing. Early consultation flags upcoming change, which then fits into the change management process. This has the opportunity to create ownership and acceptance of what's going to happen. As things are not illegal until there is a law to stop it, early engagement provides the opportunity to bring potential "wrong doers" into the fold – making implementation easier.

A good local law making process should include an implementation process. There is little point making a new law, if the implementation process is non-existent, flawed, not resourced, not understood or not supported (politically, by management, by the community and most importantly by those whose role it is to enforce the law).

The last piece of advice is to be meticulous in attention to detail throughout the whole process. To make a mistake in the process has the potential to result in a law which is unlawful and has no affect, considerable costs to council, repetition of steps, legal issues (in particular when fines are issued or matters taken to court) and embarrassment and loss of reputation to both council and the officer who ran the process.

Therefore while you may not be directly responsible for making laws, you are encouraged to be strongly involved in the development of your agency's laws, to ensure the laws are worthwhile, beneficial, meet community needs and expectations, logical, practical and owned by all that they relate to.

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