

Conducting state interest checks on proposed local laws

Fact Sheet

Legislative requirements

Section 29A of the *Local Government Act 2009* and section 31 of the *City of Brisbane Act 2010* require local governments to consult with relevant state agencies about the overall state interest in the proposed local law before making a local law. Section 29A clarifies that a state interest check is not required if:

- the proposed local law is a subordinate local law
- a local law incorporates a model local law or part of a model local law. However, a state interest check must be undertaken on any part of the proposed local law that is different from, or additional to, the model local law.

Each local government must consult with those state departments that have portfolio responsibility for the area the local law relates to and obtain their feedback and comments for consideration before a local law is made by resolution.

Minister's power

Careful consideration should be given to the comments provided by state agencies. If, for example, the local law duplicates or contradicts a state law, the local government should either discontinue the local law-making process or make amendments to address the state interest before proceeding.

The Minister for Local Government has powers under section 38AB of the *Local Government Act 2009* and section 42 of the *City of Brisbane Act 2010* to suspend or revoke a local law if it does not satisfactorily deal with the state interest, is contrary to another law or is inconsistent with the local government principles.

It is important to note that while a departure from the fundamental legislative principles may be justifiable in certain circumstances any decision to do so must be based on sound reasoning.

Good practice tips

It is the responsibility of each local government to undertake appropriate state interest checks in relation to proposed local laws and each local government is empowered to determine what process it will undertake.

An essential first step is to identify which state agencies are likely to have an interest in the issue to be addressed by the proposed local law. This will depend on what agencies deal with similar issues at the state level. A useful resource is the overarching [Queensland Government website](#) which contains the Administrative Arrangements Orders (under which the Premier assigns responsibilities to ministers and their portfolios) and provides direct access to state agency websites.

Issues of interest to state agencies might include, but are not limited to, whether:

- there is any inconsistency between the proposed local law and state legislation
- the proposed local law may impact adversely on state policies, strategies or programs
- the proposed law meets appropriate standards (e.g. appropriate format; fundamental legislative principles)
- the use of language and citations is correct and appropriate.

A consistent, systematic, well documented approach will help each local government achieve a transparent and defensible process for seeking, considering and responding to state agency feedback on the potential state interests related to local laws.

Matters a local government might consider in undertaking their state interest checks include:

What is the best way of seeking state agency feedback - formally/informally, structured/unstructured, verbal/written? Possible factors include:

- complexity and scope of the proposed local law
- number of agencies with a potential interest in the proposed local law
- location of relevant agencies (e.g. is there a nearby regional office?)
- feasibility of discussing or workshopping the proposed local law with officers from one or more agencies (e.g. in person or by teleconference).

Who does the local government need to contact in each relevant agency? Possible factors to consider include:

- staff, positions and responsibilities of agencies may change
- advice from the agency's nearest regional office (where there is one)
- different agencies may deal with state interest checks in different ways (e.g. a request may be answered locally or referred to head office).

What is a reasonable timeframe in which to expect feedback from a state agency? Possible factors include:

- Most agencies have internal processes for ensuring that the advice given to local governments (and other clients) is sound, accurate and comprehensive; these will affect their turnaround time.

- Advice from the relevant agency about the time they will need to properly consider and provide feedback on the proposed local law (anything less than four weeks is likely to be unrealistic).

In what format should the state agency be asked to provide their comments? Options to consider include:

- a standard questionnaire
- simply ask for comment and leave it to the agency to determine how it will respond
- a standard template – such as the following example

Title of local law			
Name of responding agency			
LL section	State agency comments	Suggested action	Local government's response to state agency feedback

How will the local government record the state interest comments received and their response (e.g. decision to amend / not amend the local law)?

This is particularly important in cases where a state agency or the Minister for Local Government challenges a local law on the basis that it does not satisfy the state's interests.