

From: Steven Elliott
Sent: Wed, 23 Feb 2022 08:54:53 +0000
To: Sarah Stampalia
Subject: RE: Department of Local Government - Comments on cat local law

Hi Sarah,

My apologies.

- The reference to “clause 2.4” was intended to be a reference to clause 2.1(5) of the draft, which allows the seizing of cats causing a nuisance.
- The reference to “3.3” was supposed to be a reference to clause 2.3 of the draft, which deals with cats in non-public areas.

I’m sorry for any confusion caused.

Kind regards

Steven Elliott

Senior Legislation Officer

Department of Local Government, Sport and Cultural Industries

140 William Street, Perth WA 6000

GPO Box R1250, Perth WA 6844

Web www.dlgsc.wa.gov.au

The Department acknowledges the Aboriginal peoples of Western Australia as the traditional custodians of this land, and we pay our respects to their Elders past and present.

From: Sarah Stampalia <Sarah.Stampalia@kalamunda.wa.gov.au>
Sent: Wednesday, 23 February 2022 4:48 PM
To: Steven Elliott <steven.elliott@dlgsc.wa.gov.au>
Cc: Tim Parry <Tim.Parry@kalamunda.wa.gov.au>; James Wickens <James.Wickens@kalamunda.wa.gov.au>
Subject: RE: Department of Local Government - Comments on cat local law

Hi Steven,

Thank you for your response in regard to the Cat Local Laws.

Just wanted to confirm a couple of recommendations that have been mentioned.

In relation to our Local Law’s, it is mentioned as *City of Kalamunda Keeping and Control of Cats Local Law 2022*- there has been mention of 2021 and Shire, just to confirm the version of the Local Law listed above is the version that was received and reviewed?

Point 2. **Clause 2.4 - Entry into private land**, in the version that has gone out to public consultation there is no mention of this section, can you please advise.

Pont 4. Cat confinement laws mentions section 3.3- is this referring to 2.3 ' Control of cats in places that are not public?

All other typography errors have been noted thank you.

Kind regards,

Sarah Stampalia
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Please consider the environment before you print this e-mail.

From: Steven Elliott <steven.elliott@dlgsc.wa.gov.au>
Sent: Friday, 18 February 2022 4:45 PM
To: Sarah Stampalia <Sarah.Stampalia@kalamunda.wa.gov.au>
Subject: Department of Local Government - Comments on cat local law

Dear Ms Stampalia,

This email is regarding the Shire's proposed cat local law. The Department's comments on the draft are provided below:

Cat Local Law 2021

1. Clause 2.1 - Seizure and return of cat

Clause 2.1 provides that if a cat owner fails to comply with a nuisance abatement notice, the Shire may seize and impound the cat and deal with it pursuant to the Act.

The Department notes that if a cat is impounded under that clause:

- the Shire will need to issue a suitable written notice to the owner in accordance with section 32 of the Cat Act 2011; and
- the cat's owner will be able to reclaim the cat in the usual manner.

2. Clause 2.4 - Entry into private land

Clause 2.1 provides that if a cat owner fails to comply with a nuisance abatement notice, the Shire may seize and impound the cat.

Section 51 of the *Cat Act 2011* provides for entry into private land where:

- a. The landowner gives consent;
- b. The entry is authorized by warrant; or
- c. The landowner fails to object to a notice issued under section 51(2) of the Act.

If the Shire enters private property to seize a cat under clause 2.1, the Shire should ensure that this entry is in accordance with the Cat Act or some other written law. Otherwise, there is a risk that the entry may be found to be unlawful.

3. Seizure of cats

Clause 2.1(5)(b) provides that the Shire can seize a cat which is causing a nuisance, while clause 2.2(2) also provides that the Shire can seize a cat found in a cat-prohibited area.

Currently, the Cat Act 2011 provides that cats can be seized by a local government where:

- It is permitted by court warrant;
- The cat is breaching a section of the Cat Act; or
- The cat is present on private property and the property owner has requested its removal.

Clause 2.1 and 2.2 appears to allow the Shire to seize cats in circumstances where the Act does not explicitly provide for it. As a result, it is possible the Delegated Legislation Committee may raise concerns with this clause.

4. Cat confinement laws

The Delegated Legislation Committee has formed the view that while the Cat Act permits local laws that prohibit cats absolutely from specified areas, it does not contemplate local laws that:

- ban cats from all public areas;
- place conditions on when a cat may be permitted in a public area; or
- has the practical effect of limiting cats in the district to their owner's premises.

Clause 3.3 provides that a cat must not be on any private property without explicit consent from the property owner. The Delegated Legislation Committee has previously objected to similar clauses and requested they be removed.

For this reason, it is suggested that clause 3.3 be deleted along with item 4 of Schedule 2.

It is also suggested that clause 2.2 be amended by deleting the words "unless the owner of the cat has first obtained written authorisation from the local government". The declaration of a cat prohibited area will place an absolute ban on cats in that area and it is unlikely a local law can change this to a conditional ban (i.e. a ban subject to permit).

Further information on the Committee's position and reasoning can be found in the Committee's 78th Report:

[https://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/03D8766212393D9148257DD5001653EF/\\$file/dg.ann.150122.rpf.078.pdf](https://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/03D8766212393D9148257DD5001653EF/$file/dg.ann.150122.rpf.078.pdf)

5. Minor edits

The following minor edits are suggested:

- **Enacting provision:** Change "byall" to "by all".
- **Clause 1.4:**
 - Change all defined terms to bold and italics (e.g. ***Act***).
 - Defined terms only require capitals when they are capitalized in the local law itself (e.g. Act and CEO). The capital can be removed in other cases.

- **Clause 1.5:**
 - In the clause title, change “Repeal” to “Local law amended”.
 - In the text of the clause, change “repeals” to “deletes”.
- **Clause 3.5:** In paragraph (f) insert a space in “localgovernment”.
- **Clause 3.7(1):** Insert a space in “haveregard”. This issue also appears in several subsequent paragraphs.
- **Clause 3.8(1)(b):** Insert a space in “catspermitted”.
- **Clause 3.11(b):** Insert a space in “permitrelates”.
- **Clause 3.13:** Change “3.2(1)(a)” to “3.8(1)(a)”.
- **Schedule 1:** Change the bracket reference from “3.7” to “3.9(1)(e)”.

The Shire should also ensure that all references and cross references are accurate, particularly if any changes are made as a result of the Department’s comments.

Minister’s Directions – pursuant to s 3.12(7) of the Local Government Act 1995

Please note: once the Shire has published a local law in the *Government Gazette*, the Shire must comply with the requirements of the Minister’s *Local Laws Explanatory Memoranda Directions 2010*. The Shire must, within 10 working days of the Gazettal publication date, forward the signed Explanatory Memoranda material to the Committee at the current address:

Committee Clerk
 Joint Standing Committee on Delegated Legislation
 Legislative Council Committee Office
 GPO Box A11
 PERTH WA 6837
 Email: delleg@parliament.wa.gov.au
 Tel: 9222 7404
 Fax: 9222 7805

A copy of the Minister’s Directions and Explanatory Memoranda forms can be downloaded from the Department of Local Government, Sport and Cultural Industries website at www.dlgsc.wa.gov.au. Failure to comply with the Directions may render the local law inoperable.

Please note that my comments:

- have been provided to assist the Shire with drafting matters in relation to the local law;
- do not constitute legal advice;
- have been provided in good faith for the Shire’s consideration; and
- should not be taken as an approval of content.

The Shire should ensure that a detailed editorial analysis of the proposed local law has been undertaken and that the content of the local law is in accordance with the Shire’s policies and objectives.

Regards

Steven Elliott

Senior Legislation Officer
Department of Local Government, Sport and Cultural Industries
140 William Street, Perth WA 6000
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**Local Government, Sport
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