

Order Making

DOCUMENT CONTROL

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Contact person: Byron Gough	Date approved: 14 February 2013	Status: Current
Contact number: 8648 5970	Next review date: February 2014	Objective ID: A1600881

REVISION RECORD

Date	Version	Revision description
14 February 2013	1	Policy adopted.
30 November 2012	Draft	Draft policy released for consultation.
9 November 2012	Draft	OCA considers draft.

1. ADOPTION

This policy was adopted by the Outback Communities Authority (OCA) on 14 February 2013.

2. TITLE

OCA Order Making.

3. POLICY STATEMENT

The OCA is committed to using the order making powers available to it under the *Outback Communities (Administration and Management) Act 2009*¹ in such a way as to facilitate a safe and healthy environment and to improve amenities within the OCA's area of jurisdiction.

4. PURPOSE

The purpose of this Policy is to provide guidance to the OCA in exercising its legislative functions in making orders in the interest of outback residents.

5. SCOPE

Subject to clause 6.1 this Policy will apply when circumstances set out in column 2 of the table in section 254 of the *Local Government Act 1999* (and replicated in appendix 1 of this policy) exist.

6. POLICY DETAILS

6.1 Implementation

6.1.1 This policy will be implemented where;

- a Community Contribution Scheme has been introduced for an area,
- the OCA is satisfied that the health and / or safety of a community is at risk or
- at the OCA's discretion when a community has specifically requested that the policy be implemented for that community.

6.2 Use of Order Making Powers

6.2.1 Sections 23 of the *Outback Communities (Administration and Management) Act 2009* enables the OCA to order a person to do or to refrain from doing certain things (refer to Appendix 1). In deciding whether to making an Order each case will be considered on its merits. Factors that the OCA will consider include;

- Severity of the incident.
- Hazard/danger posed to the community.
- Risk to health/safety of the community.
- Detraction from the amenity of the locality.
- The unique character of the area.

¹ Section 22 and 23 of the *Outback Communities (Administration and Management) Act 2009* and Chapter 11, Part 3 and Chapter 12, Part 2 of the *Local Government Act 1999*.

- Repeated occurrence of the activity/incident (eg duration, previous offences).
- Impact of any previous actions to overcome the problem.
- The available evidence.

6.2.2 Except in cases described in clause **Error! Reference source not found.**, non-regulatory measures will be taken prior to making an order. These include;

- Giving the person to whom an order is being considered a notice in writing stating the:
 - the intention to issue an order and the reasons why
 - terms of the proposed order (eg what it requires the person to do or refrain from doing)
 - period within which compliance with the order will be required
 - penalties for non-compliance
 - reasons for the proposed action
 - advising the person notified of the opportunity within a specified time to rectify the situation or give reason/s why the proposed action should not be taken.

6.2.3 The OCA will take reasonable steps, within available resources, to resolve cases of local nuisance by negotiation and agreement before considering issuing an order, except in cases where:

- The OCA considers the circumstance or activity constitutes, or is likely to constitute;
 - a threat to life
 - an immediate threat to public health or public safety
 - an emergency situation.

6.3 Review Rights

Pursuant to section 256 of the *Local Government Act 1999* any person to whom an order is issued has a right to appeal against the order. Any such appeal must be lodged within 14 days of that person's receipt of the order. The OCA will ensure that reference to this right of review is included in any order issued.

6.4 Non-compliance with an Order

If an order is not complied with within the time fixed for compliance (or if there is an application for review, within 14 days after the determination of the review) the OCA may (subject to the outcome of any review) take the action required by the order.

Reasonable costs and expenses incurred by the OCA in taking action under this section may be recovered by the OCA as a debt from the person who failed to comply with the requirements of the order.

Where an amount is recoverable by the OCA, the OCA may by notice in writing to the person fix a period, being not less than 28 days from the date of the notice within which the amount must be paid. If the amount is not paid by the person within that period the person is liable to pay interest and the OCA may impose a charge over the land for the unpaid amount together with interest in accordance with section 257(5) of the *Local Government Act 1999*.

6.5 Penalties

6.5.1 If the OCA has deemed that a person or persons has committed an offence under section 23 of the *Outback Communities (Administration and Management) Act 2009* and Chapter 12, Part 2 of the *Local Government Act 1999* a maximum penalty of \$750.00 and an Expiation fee of \$105.00 may apply.

6.5.2 Anti-nuisance Measures are set out in Appendix 1

6.6 Responsibilities and Delegations

This policy will be enforced by Authorised Persons who have been appointed (in writing) by the OCA under section 260 of the *Local Government Act 1999*².

The OCA may also choose to delegate the power to issue orders under section 254 of the Act to OCA staff.

7. AVAILABILITY OF THE POLICY

Members of the public may obtain a copy of the policy, without charge, at the offices of the OCA during office hours. The policy is also available from the OCA's website: www.oca.sa.gov.au.

8. REVIEW OF THE POLICY

The effectiveness of the policy will be reviewed on an annual basis.

Any future amendment or alteration to the Policy, or substitution of a new policy will be subject to the OCA's Community Engagement – Our Commitment Policy unless the alteration has only minor significance and is likely to attract little or no community interest.

9. OCA CONTACT PERSON

Mr Byron Gough, Governance Manager. Telephone: (08) 8648 5970.

² Authorised Persons have powers under section 261 of the *Local Government Act 1999* to enforce breach of orders by way of expiation.

Appendix 1 – Interpretation of provisions of the Outback Communities (Administration and Management) Act 2009.

Anti-nuisance Measures

Section 23 *Outback Communities (Administration and Management) Act 2009*. Chapter 12, Part 2, of the *Local Government Act 1999* applies as if it formed part of this Part, subject to the following modifications:

- (a) a reference to a Council is to be read as a reference to the Authority.
- (b) A reference to the area of a Council is to be read as a reference to the outback.
- (c) a reference to this Act (meaning the *Local Government Act 1999*) or this Part (meaning Chapter 12 Part 2 of the *Local Government Act 1999*) is to be read as a reference to this Act or Part, respectively;
- (d) section 257 is to be read as if subsections (4) and (7) were deleted;
- (e) any other modifications prescribed by regulation.

Division 1 : Power to make orders

The OCA may order a person to do or to refrain from doing a thing specified in Column 1 of the following table if in the opinion of the OCA the circumstances specified opposite it in Column 2 of the table exist and the person comes within the description opposite it in Column 3 of the table.

* A reference in the table to an animal or animals includes birds and insects.

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<p>1. Unsightly condition of land. To take action considered by the OCA to be necessary to ameliorate an unsightly condition.</p>	<p>Land, or a structure or object on land, is unsightly and detracts significantly from the amenity of the locality in which the land is situated.</p>	<p>The owner or occupier of the land.</p>
<p>2. Hazards on lands adjoining a public place. a) To fence, empty, drain fill or cover land (including land on which there is a building or other structure). b) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree. c) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place. d) Where the public place is a road-to take action necessary to protect the road or to remove a hazard to</p>	<p>a) A hazard exists that is, or is likely to become, a danger to the public. b) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place. c) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place. d) A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</p>	<p>a) The owner or occupier of the land. b) The owner or occupier of the land. c) The owner or occupier of the land. d) The owner or occupier of the land.</p>

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<p>road users.</p> <p><i>Examples</i></p> <p>~ To fill an excavation, or to prevent drainage of water across the road.</p> <p>~ To construct a retaining wall or to remove or modify a fence.</p> <p>~ To fence land to prevent the escape of animals.</p> <p>~To remove a structure or vegetation near an intersection.</p>		
<p>3. Animals that may cause a nuisance or hazard.</p> <p>To do or to refrain from doing the thing specified in the order in order to abate a nuisance or a hazard to health or safety associated with a live or dead animal or animals, or otherwise to deal with an animal or animals.</p>	<p>A person is keeping or dealing with (or failing to deal with) an animal or animals (whether the animal or animals are alive or dead) so as to cause, or to be likely to cause, a nuisance or a hazard to health or safety.</p> <p>A person is the owner or occupier of land where an animal or animals are located which may cause, or be likely to cause, a nuisance or a hazard to health or safety, or otherwise to become a pest.</p> <p><i>Examples</i></p> <p>~ The slaughtering of animals in a town or urban situation.</p> <p>~ Keeping an excessive number of insects, birds or other animals.</p> <p>~ Keeping animals so as to generate excessive noise, dust or odours, or to attract pests or vermin.</p> <p>~ Keeping an aggressive animal, or keeping an animal in a situation where it cannot be adequately contained or may cause danger to the public.</p> <p>~ Failing to deal with a wasp's nest.</p>	<p>The owner or occupier of land or any person apparently engaged in promoting or conducting an activity.</p>

Column 1 To do or to refrain from doing what?	Column 2 In what circumstances?	Column 3 To whom?
<p>4. Inappropriate use of vehicle. To refrain from using a caravan or vehicle as a place of habitation.</p>	<p>A person is using a caravan or vehicle as a place of habitation in circumstances that:</p> <ul style="list-style-type: none"> a) present a risk to the health or safety of an occupant; or b) cause a threat of damage to the environment; or c) detract significantly from the amenity of the locality. 	<p>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</p>