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SOLGM Legal Compliance Programme



SOLGM
NZ SOCIETY OF LOCAL GOVERNMENT MANAGERS



LOCAL
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AUSTRALIA

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**ICMA International Best Practices 2004
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Local Government Data

The New Zealand system of local government comprises 86 local authorities, 74 of which are territorial authorities, and 12 that are regional councils. All territorial authority districts also fall within the region of a regional council. Four territorial authorities, referred to as “unitary authorities” also undertake the responsibilities of a regional council.

Under the Local Government Act 2002 both types of local authority have the same general purpose (to promote the social, economic, environmental and cultural wellbeing of communities) and the same general powers. A range of other legislation confers particular responsibilities and powers on local authorities. Regional councils specific responsibilities are largely focused on natural resource management. Territorial authorities have a wider range of regulatory roles, such as liquor licensing and dog control, control local roads, and have traditionally undertaken a wider range of service delivery activities.

Overall the system of local government contributes 3.5% of GDP, has an annual operating expenditure of \$3 billion, and capital expenditure of \$800 million. It employs around 40,000 people, has assets of \$32.5 billion, and community equity of \$31.5 billion.

The main source of revenue is rates (local authority land tax). Some local authorities have significant investment and trading income. Generally, relatively little funding is obtained from central government, although in rural area where roading is a major focus, road funding from central government is also important.

The circumstances of individual local authorities of both types vary widely. Auckland City has a population of 402,000 people in an area 63,000 ha. It has 1,700 staff, operating expenditure of \$432 million and capital expenditure of \$274 million. Mackenzie District has a population of 3,700 in an area of 745,500 ha. Auckland region has 1.1 million people while Southland Region has only population of 91,000.

Currency Exchange Rates

	1,000 Australian dollars =	1,000 Indian rupees =	1,000 New Zealand dollars =	1,000 South African rand =	1,000 US dollars =
Australian dollars	1,000	31	871	204	1,353
Indian rupees	32,237	1,000	28,064	6,562	43,611
New Zealand dollars	1,149	36	1,000	234	1,554
South African rand	4,912	152	4,276	1,000	6,646
US dollars	739	23	643	150	1,000
Other currencies (per 1,000 Australian dollars)					
	410	British pounds			
	996	Canadian dollars			
	620	European euro			
	6,361,510	Indonesian rupiahs			
	80,507	Japanese yen			
	54,365	Nepalese rupees			
	39,843	Philippine pesos			
	29,132	Thai baht			
	11,642,896	Vietnamese dong			

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Executive Summary

New Zealand local authorities operate under statute. They are obliged to comply with a wide range of statutory requirements. Accordingly two of the eternal questions are: “How can assurance be provided that the manner in which local authorities undertake their activities complies with the relevant legal requirements?” and; “How can a high level of legal compliance be promoted across a system comprising many local authorities?” The SOLGM Legal Compliance Programme is as a response to these questions.

The programme has a number of distinctive features. These are that:

- The modules developed by the programme have been designed for web-delivery. They are not paper-based tools that are then made available through a website;
- The modules are developed based on local authority business processes, rather than as legislation-based check lists;
- A generic process is followed for developing and maintaining each module. This works by pooling the expertise that exists within local authorities, using facilitated working and peer review groups to develop and provide quality assurance on modules;
- Participation in the programme by local authorities is voluntary. It involves a willingness to contribute staff to the work of the programme, and payment of a financial contribution towards its costs; and
- The oversight of the programme is provided by a working group of local authority representatives and other key stakeholders.

The programme was initiated in 1999 as an initiative of the Top of the South Branch of SOLGM. Since that time it has developed a set of 12 modules, each dealing with a different function or activity. These are delivered through the website www.solgm.co.nz. 83 of the 86 local authorities in New Zealand currently participate. Governance and management has recently been brought within SOLGM National Office.

The Programme remains a work in progress. Modules have been developed and published on most of the highest risk areas of local authority activity from a legal compliance perspective. The development of additional modules, and maintaining and enhancing existing modules, are both continuing.

It is difficult to make an unequivocal assessment of the impact of the programme on its overall goals. Stakeholder opinion supports our assessment that it has developed a quality product the full potential of which is yet to be exploited.

The issues currently facing the programme include:

- The need for periodic upgrade of the website to ensure an appropriate platform is maintained for the future;
- The need for ongoing marketing and promotion within local authorities to maintain and improve levels of awareness of the programme, and use of the modules by local authority staff “at the coal face”.
- The opportunity to develop the programme as a “hub” around which access to a wider range of good practice material can be made provided. In the longer term there is the potential to provide a degree of coordination in the development and delivery of good practice material relating to local authority activity, where this is being undertaken by multiple organizations and agencies; and,
- Exploration of the opportunities for making access to modules available to broader range of potential users than the core of contributing local authorities.

Key aspects of the programme are seen as potentially transferable to local authorities in other jurisdictions. The first is the design of best practice material specifically for delivery on the web. The second is the facilitated working group methodology that has been used to develop the modules, by drawing on the knowledge and expertise that already resides within local authorities. These are both seen as applicable not just to material about legal compliance but to a wide range of guidance material. SOLGM’s experience also highlights a number of issues that will be of interest to others who may look to develop similar programmes.

Problem Assessment/Initial Policy Environment

Statutory Basis of Local Government

The New Zealand system of local government is created by statute. Local authorities get their general role and powers under the Local Government Act 2002. A wide range of other statutes prescribe additional powers, and responsibilities in relation to particular functions and activities. These include resource management, building consents, road transport and animal control. In addition, local authorities have to comply with the general law covering such matters as employment and occupational health and safety.

The range of law with which local authorities are required to comply is extremely large and in some areas highly complex. Compliance is the responsibility of the elected council that is the governing body of each local authority. The actions of local authorities are open to challenge through the Courts. Local authorities are also subject to scrutiny by the Auditor-General and Ombudsman, both of whom are independent Officers of Parliament. Auditing of most local authorities on behalf of the Auditor-General (OAG) is undertaken by Audit New Zealand (AuditNZ).

Assurance of Legal Compliance

Legal compliance is a subset of risk management. The concept of “legal compliance assurance” first achieved a profile as one related to the private sector, where it focused on the maintenance of the necessary systems to assure compliance in areas such as tax.

The issue of legal compliance in local authorities became topical in New Zealand during 1999. On the one hand, the Auditor-General had begun commenting in the management reports that were prepared following each local government audit round about the need for systems to provide assurance of legal compliance.

At the same time, local authorities’ insurers were highlighting the risks and costs from legal challenges against local authorities’ actions. They were also signaling the need for an investment to be made in promoting assurance of legal compliance as a means of reducing these risks and costs.

The challenge was to identify the means of providing greater assurance of legal compliance with a wide range of statutes, across 86 local authorities.

Initiation of the Programme

The initiative taken was, in the first instance, a regional one. In early 2000 the Top of the South Branch of SOLGM established the SOLGM Legal Compliance Programme. It took the approach that the most effective way of developing “good practice” legal compliance processes and procedures was a cooperative approach using the existing knowledge base within local authorities.

A steering committee was set up to manage the programme. This comprised SOLGM Branch members, with participation from AuditNZ and Risk Pool (a group of insurers for local authorities). Participating local authorities agreed to contribute the time of their staff, and to share other costs. Project administration was provided by the Marlborough District Council and project management was undertaken by Audit NZ.

Key decisions taken at the time set the direction in which the programme has developed since. These included that:

- Individual modules would be developed by specialist working groups;
- Modules would be developed on a function/activity basis rather than as legislation-based check lists;
- The product would be a set of plain-English guides for staff to work with; and
- The product would be designed and delivered primarily as a web-based, rather than a paper-based tool.

In the first year a budget of \$75,000 was agreed to develop a general framework and develop two pilot modules. Risk Pool provided an analysis of the areas of highest legal

compliance risk based on current and historic claims data. The two pilot modules chosen were:

- Building consent processes; and
- Property sales and purchases.

The Business Strategy Group (BSG) was engaged as consultants to facilitate the process of developing the modules.

By 2003 the programme had developed to the point where it was decided to transfer its management to SOLGM National Office as a national programme. By that time the number of local authorities which had joined the programme had grown to 83. Seven modules had been developed and published on the website.

Project Description/Changes Implemented

Objectives

The objective of the programme is to assist local authorities in identifying and meeting their legal obligations through:

- Developing a legal compliance framework for local authorities, upon which specific legal compliance programmes can be developed; and
- Developing a series of specific legal compliance programmes across the range of local government activity.

The full terms of reference are appended.

The Platform

The legal compliance framework and associated programmes is an web-based system with its own website – www.solgm.co.nz. Each participating local authority has its own password for access to the modules. Some local authorities provide access to the legal compliance site through intranets.

The use of web-based delivery overcomes two major issues posed by the use of paper-based good practice materials. The first is how to effectively distribute the material that has been developed nationwide. The second is the question of revision and version control. It is difficult for staff to know whether paper-based materials held in the office are the latest version and have been appropriately updated. They can have a high degree of confidence in the currency of the material accessed through the website, is the current version. Appropriate warning can be given where the currency of material has been affected by recent legislative change.

The Product/Content

The site currently provides access to eleven separate modules. These deal with:

- Building Consents;
- Health and Safety;
- Land Information Memoranda (L.I.M.s);
- Local Government Official Information and Meetings Act (LGOIMA);
- Property Sales and Acquisitions;
- Resource Consents;
- Tendering and Procurement;
- Enforcement;
- The Privacy Act;
- Liquor Licensing; and
- Employment.

Development of a new module on Dog Control is nearly complete. This and a set of revisions and enhancements to the existing modules are due to be loaded onto the site by 30 June 2004

Each module consists of a linked set of flow diagrams dealing with the function or activity concerned. The number of diagrams varies from module to module according to the subject matter but most fall within the range 12 to 15. Behind each flow diagram sits additional text material providing a “definition and analysis” of each “box” in the diagram. This is accessed by simply clicking the “box”. Additional links identify the specific “legal compliance requirements” that are relevant, and an additional suite of best practice “hot tips”. Each of these is accessed by clicking a signature icon.

The task of updating modules is an ongoing one. Changes to legislation that affect the currency of material are not infrequent. During 2001 and 2002 new Local Government Local Electoral, and Local Government (Rating) Acts, necessitated a major review of most of the existing programme modules.

The Process

The process for the development and review of modules was designed in 2000 and for the past 4 years has been facilitated by consultants contracted to the programme, the Business Strategy Group. For each project a working group is convened. The membership of each working group comprises 6 to 8 staff from participating local authorities with particular expertise in the function or activity concerned, together with other key stakeholders such as AuditNZ. Care is taken to ensure, so far as is practicable, that a cross section of local authorities is represented. This is to ensure that the experiences and perspectives of metropolitan, town and rural authorities are incorporated.

The process of developing a module involves three distinct steps:

- Preparation and investigation;
- Framework development; and then,
- Detailed development of the module content.

Each involves one or more facilitated workshops of the development team. The facilitated working group methodology has allowed subject area specialists of diverse backgrounds and experience, and representing various types and sizes of organizations, to collectively agree on good practice processes.

Quality assurance is provided through peer review and specific vetting procedures. Separate peer review working groups are established and reviewers are asked:

- To confirm the technical content of the module;
- To identify anything in it that might place a local authority at risk; and
- To pass an opinion on the usefulness of the module to potential users.

In addition, draft modules are legally vetted, with advice contracted in from major law firms that specialize in local government law. They are also reviewed by AuditNZ. Completed material is then loaded onto the website. The process of developing a module typically extends over about 20 weeks.

Governance and Participation

The programme is overseen by the Legal Compliance Working Group. The membership comprises officers from 4 participating local authorities, a representative of AuditNZ, a member of the SOLGM Executive Committee. This includes a core of members of the original Working Group convened by the Top of the South Branch.

There are currently 83 member local authorities, out of a total of 86 in New Zealand. Of the three local authorities that do not participate, two are relatively small territorial authorities with limited financial capacity. The voluntary nature of participation is itself seen as a valuable element of programme. It ensures that the focus remains on the delivery of value to the participating authorities in order to maintain their participation and support.

Costs/Savings/Fiscal Impact

The lifetime cost of the programme will by the end of 2003/04, stand at approximately \$725,000. This spans the years from 1999/2000 to 2003/04. This cost has been met by participating local authorities. This figure does not include the cost of time contributed by local authority staff either through membership of working and peer review groups, or in governance roles through membership of the working party. These costs are met by the local authorities concerned.

The significant areas of costs have been:

- Set up costs;
- Facilitation of the process of module development;
- Project management and administration;
- Costs associated with the establishment and operation of the website (including enhancements and current migration of the website to a new platform) and,
- Legal and Audit vetting.

Experience has shown that the cost of developing a new module is approximately \$35,000, depending on size and complexity. This covers the costs of convening the working and peer review groups, the actual development of the module, legal and AuditNZ vetting, and loading onto the website. Earlier modules were relatively more costly, as the methodology was being developed.

It has also become apparent that as the number of modules increases the cost of maintaining and revising existing modules also increases. This is particularly the case when, as has happened in recent years, the relevant legislation is reviewed or significantly amended.

For 2003/04 the participating local authorities each contributed \$2,500. This provides an annual budget baseline for the programme of \$205,000. Each year the work programme is developed within this baseline including allocations for new module development, enhancements to existing modules, module maintenance, promotional activities and website costs.

Results Achieved

The aim of the programme is to assist local authorities in identifying and meeting their legal obligations. There is an underpinning expectation that through time achieving the aim of the programme would make a positive difference in terms of the degree of legal compliance across the local government sector.

In practice, it is difficult to directly quantify how far these aims are being achieved. Firstly, it is not possible to accurately measure levels of compliance and non-compliance. Secondly, even if the evidence may suggest some improvement in compliance, there are problems about establishing causality. The programme is likely to be only one of a number of factors impacting on the situation.

Accordingly, the indicators of the results of the programme that are available are both indirect and incomplete. The best indicators that are available at this point are:

- The rates of voluntary membership of the programme by local authorities, and of use by local authority staff; and,
- The views of other key stakeholders.

Local Authority Participation and Use

The fact that participation in the programme has grown to now include 83 of 86 local authorities, shows a high level of ongoing commitment to the programme at senior management level. It does not in itself demonstrate that the modules that have been developed are being used by the relevant local authority staff.

One of the shortcomings of the current website arrangements is that the capacity to obtain data on usage of the site is limited. This reflects the age and structure of the current site and, is one of the issues that is being addressed as part of the new website. What we know is that the total number of visits to the site is modest – on average about 135 a week or 560-570 a month. Of these not all are sourced within New Zealand, and some access the site from search engines, suggesting that a significant minority of visitors are coming from outside the member local authorities.

Stakeholder Views

Views on the impact of the programme have been sought from insurers, AuditNZ, and the Office of the Auditor-General. The views expressed are generally positive, but qualified.

Insurers advise that over the period since the programme has been running, the rates of claims against local authorities have fallen in most but not all of the highest risk areas. It is not possible, however, to attribute this change wholly to the impact of the programme. A number of other factors may also have played a role. These include the development of other good practice programmes targeting the same or related areas of activity that have been initiated by other organisations. It is also possible that in some areas the ongoing process of practitioners gaining experience and familiarity with legislation as it ‘beds down’ over time, may also have played a role.

The exception to the declining rates of claims has been in relation to building consents. This has, however, been impacted by a high profile nationwide issue about the weather-tightness of homes built under the current regulatory regime. The scale of this issue has been such that a complete new statute is currently before Parliament.

AuditNZ has indicated that it believes the programme is sound and delivers strong benefits to local authorities that utilize its guidance. It describes the programme methodology as extremely robust and as having a sound level of quality assurance built into it. It notes, however, that the penetration of the programme within local authorities is patchy. Staff “at the coal face” are often unaware of the programme, and even if they are, may not be using it. The content of the modules has not to date been used by AuditNZ to benchmark individual local authorities in a formal way, although there is a possibility that this might be done in the future.

The Office of the Auditor-General concurs that, as a programme built around the sector-wide understanding of good practice, the programme should allow local authorities using its guidance to feel confident about their compliance with legislative requirements. The

Office also sees that there are opportunities for its auditors to use the programme in audit testing of council systems for compliance with key statutory requirements and expects to consider how this could be built into audit work in future years.

The overall assessment at this time is that the programme has developed a tool that is regarded by both the local authority participants, and key stakeholders as a quality product capable of having a significant positive impact. At this stage, however, it appears that uptake and use of the modules by local authority staff may not have reached a sufficient level for the programme's potential to have been fully realized.

Current Issues and Future Opportunities

We regard the programme as having reached the stage where it has "proven the concept", both in terms of the use of the web-based delivery tool, and the "technology" that has been developed for generating quality module material. There is an immediate challenge in moving to maximize the use of the modules by the staff of participating local authorities. At the same time there are a number of opportunities that need to be assessed.

Delivery of Modules

The Website

The technology for the on-line delivery of information is fast developing, and also ages rapidly. Although the current website was only established in 2000, we have run up against the fact that the current website and the software it runs on is out of date. We are currently migrating the site to a new provider and substantially rebuilding it. Realistically it has to be accepted that the use of the web as a delivery mechanism is going to require regular cyclical reinvestment in updating the technology at intervals of, at most, 5 years. This will be a recurring task and expense.

Promotion

The web-site has been successful as a means of providing access to up-to-date good practice material throughout local authorities nationwide. The fact that a local authority participates in the programme does not, however, mean that all staff within the local authority who can benefit from the content of the modules are aware of, or make use of them. Web-based delivery ensures that access to material is available, but it does not ensure its use. A range of factors from the effect of staff turnover, to management and individual attitudes will all come into play.

The website needs to be supported by marketing, promotional and other initiatives, that make use of other media and channels of communication. This is to be a major focus for the programme in 2004/05. Several initiatives are planned or are in train.

- We are actively encouraging those local authorities that have intranet to make access to the programme available to staff through the intranet as a means of maximizing its visibility and availability within the local authority.
- We have identified “champions” within each local authority to promote use of the programme within their councils. These “champions” are primarily individuals from within a local authority who have had some involvement in the process for the development of modules. Early next year a seminar will be held for these champions where they will be familiarized with promotional material prepared for them to use among the peers. In addition, a listerv (email-based electronic discussion forum) is being established to allow these champions to share ideas and experiences.

The Product/Content

At this stage a core of material has been developed in the form of the current modules. The maintenance and enhancement of this core will remain a key priority. However, the current stage of the development of the programme presents a variety of opportunities that need to be carefully assessed over the coming year. These include opportunities for:

- Development of the website as a “hub” around which access to a broader range of best practice material can be provided.
- Joint work with other organizations and agencies with an interest in the development of legal compliance and good practice in particular areas;
- Broadening the audience for the modules beyond the current local authority membership.

The “Hub”

There is the potential to develop the Legal Compliance website as a hub through which other good practice material is made available. Opportunities to start doing this have begun to emerge. SOLGM has been approached by the Ministry for the Environment about establishing links between their good practice material on resource consents and ours. We have also had preliminary discussions with other organisations who will be interested in the development of good practice guidance material following the enactment of new Building legislation that is currently before Parliament.

The provision of access to a greater range of good practice material through the website adds to the value of site to users. It not only provides access to the new material being added, but raises the profile and the likely use of the material already housed on the site. In the longer term there is the opportunity to develop the site as the preferred point of access for good practice material for local authorities. Ultimately there should be advantages to all organisations involved in developing good practice material, in the development of such a “hub”.

At present there can be a range of sources of good practice guidance about a particular area activity, with central government policy and operational agencies, and professional

organizations as well as local government sector organisations like SOLGM and Local Government New Zealand, all potentially making material available separately.

Joint Work

Similarly scope is emerging around the Legal Compliance Programme for joint work in the development in good practice materials. The new module on dog control has been jointly developed with Local Government New Zealand. It may prove possible for similar joint arrangements in developing material for the new Building legislation.

The emergence of joint work in developing good practice material also offers the prospect of gains for both users and providers. It is not uncommon that with multiple organisations with an interest in an area of local authority activity to each act independently in deciding what material to develop and how to deliver it. This can result in duplication of effort, in gaps in the coverage of material across the subject area, or even in difference providers offering contradictory advice. Building on the opportunities for joint work brings with it a means of coordinating and rationalizing the efforts of different providers. It appears to offer advantages to both users and providers.

Other Users

To date the modules have been developed for a local authority audience. There are, however, a range of potential additional users. These include companies that act as contractors to local authorities, and provide legal advice and other services to them. There may be potential for access to be made to this broader audience, on a commercial basis.

Applicability to Other Local Government Jurisdictions

We believe that there are three aspects of the programme that potentially transferable to other local government jurisdictions. These are:

- The specific focus on legal compliance as a key component of good practice;
- The development of good practice guidance material specifically for web delivery, rather than as paper-based documents subsequently made available through a website; and
- The development of good practice material by distilling the knowledge already available within local authorities using facilitated working group and peer review methodology.

Neither of these is specific to the focus of the website on legal compliance, and both appear readily applicable to the delivery of a broader range of guidance on policies and procedures.