Submission Writing for Policy and Law Reform

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Environmental Defender’s Office NSW (EDO)

- A community legal centre specialising in public interest environmental law
- Mission: The EDO's mission is to promote the public interest and improve environmental outcomes through the informed use of the law.
- Part of a network of 9 EDOs across Australia
- Non-government, not for profit
Environmental Defender’s Office

- Initial focus on litigation and legal advice
- Now a multi-disciplinary office with over 20 staff
- Functions:
  - Legal Advice and Representation
  - Scientific Assessment and Advice
  - Policy and Law Reform
  - Community Education
- International program established 10 years ago
- Capacity-building in the Pacific and Asia across all functions
Outline of workshop

- Introduction to ‘policy and law reform’
- The value of submission writing
- Tips for effective submission writing
  - Preparation: research and consultation
  - Drafting the submission
  - Post-submission follow up
  - EDO example
Engaging in Policy and Law Reform Processes

- What do we mean by ‘policy and law reform’?
  - A ‘policy’ can be defined as:
    - ‘a purposive course of action to deliver a positive impact on the community’
    - ‘a course or line of action adopted and pursued by a government, ruler, political party or the like’
  - For our purposes, ‘policy and law reform’ refers to proposals for legislation, regulations and other guidelines put in place by government to prescribe a course of conduct
  - Policy ‘tools’ include law, regulations, standards, incentives, funding programs, market mechanisms etc
Engaging in Policy and Law Reform Processes

- The policy development process
  - A comprehensive process is necessary to ensure that a policy achieves its objectives

- Key steps include:
  1. Recognising and defining the problem or issue
  2. Identifying possible solutions: gathering and analysing information, consulting with stakeholders
  3. Choosing the best solution
  4. Implementing the policy
  5. Evaluating the policy

- Each step likely to be complex
Policy development process
Stakeholder engagement in the policy process

- Stakeholders include NGOs, community members, other government bodies, media, technical experts
- Where do stakeholders fit?
  - At all stages, especially 1 - 3
  - Most input will probably occur at stage 2 (consultation processes)
  - Early engagement with policy makers is vital
  - Stakeholder consultation can include: public forums, surveys, public information campaigns, interdepartmental committees, focus groups, inviting written submissions
  - Important to maintain an ongoing working relationship
EDO policy & law reform program

- The EDO is a specialist legal centre in NSW
- We do not campaign or lobby
- However, we frequently put forward policy proposals suggesting ways that the law or a policy can be improved
- We currently work across 6 ‘priority areas’
- We utilise guidelines to help us decide what policy work to take on
EDO policy & law reform program

- Main areas of EDO policy and law reform work:
  - Preparing submissions on draft legislation and regulations, and proposed policies
  - ‘Proactive’ work: discussion papers, roundtable discussions, letters to government agencies, ministers etc
  - Advice to clients on law reform and policy issues
  - “Key stakeholder” role eg advisory committees
Deciding which policy work to do

Some matters you could consider:
- Does the matter accord with identified priority areas?
- Does the matter raise legal or policy issues that are within your field of expertise?
- Is matter is of international, national, or state/provincial significance?
- Does the matter have nation-wide implications (such as a pilot or the first application of a new policy or instrument)?
- Does the matter raise issues that extend the reach of environmental law, and the ways of thinking about the environment and the legal framework?
- Does the matter provide opportunities for working in partnership with other environmental and non-environmental organisations?
- Consider areas outside of your traditional ‘sphere’ eg. Tax law reform can have an environmental angle
Value of policy & law reform work

- If you don’t engage, who else will represent your views?
- Governments listen because stakeholders:
  - have practical knowledge, experience and expertise
  - alert policy makers to less obvious issues
  - transparency and accountability in process
  - help to predict responses to a policy and possible problems with implementation
Value of written submissions

- Written submissions are effective:
  - On the public record
  - Can contain well-ordered, considered and researched opinions
- Ongoing/recurrent nature of environmental policy issues: enables a body of work on an issue to be established
- Provide a good resource for new governments
Preparing a submission

Outline:
- Preparation: research
- Preparation: consultation
- Drafting the submission
- Post-submission
- EDO Example
Preparing a submission

- Research steps include:
  - Read the policy document, discussion paper
  - Read proposed legislation and analyse legislation, if applicable
  - Research relevant case law, if applicable
  - Read any previous submissions made by your organization on the topic
  - Research relevant journal articles and text books (‘literature review’)
  - Research information on government websites, eg data and statistical information, research papers
  - Research ‘best practice’ examples from other states/provinces or international jurisdictions
  - General internet searching
Preparing a submission

Consultation steps include:

- Consult internally, eg with solicitors involved in relevant litigation
- Consult with other interested organizations or groups
- Consult with other experts if necessary eg specialist lawyers or non-lawyers (economists, scientists etc).
- Request meeting if possible with government body proposing the changes to discuss rationale of proposal
- Participate in any forums or attend meetings that are part of the consultation process
Drafting an effective submission

General tips:

- Avoid emotional language: objective argument can be more persuasive
- Use inter-state and/or international examples
- Focus on key issues, rather than minor or technical issues or errors
- If the timeframe is short, it may be worthwhile asking for an extension
Drafting an effective submission

- General drafting tips:
  - Introductory paragraph: explain your organisation and your interest in the topic, and on whose behalf your submission is written eg. from landowner/ client perspective
  - For long submissions (over 10 pages), an executive summary and a contents page are preferable
  - Clearly state your recommendations for amendment throughout the document, and in a summary format (executive summary or conclusion)
  - Use case studies and factual examples of how the proposal will impact on community/environment, to put issues in practical context, eg litigation experience
Drafting an effective submission

- Submissions on legislative amendments:
  - Use precedents from other jurisdictions - this can help persuade governments if your suggestion has been implemented elsewhere
  - State proposed amendments clearly, and in a way that could be logically included in existing legislation
  - Check whether key issues in ‘legislative checklist’ have been addressed
  - Support proposed amendments with objective scientific and factual data
  - Check how proposed amendments will affect other parts of the Bill or other legislation
Drafting an effective submission

- Submissions on discussion papers and policy documents:
  - Clearly state any recommended changes you propose
  - Make it clear the Terms of Reference you are addressing in your submission
  - Use case studies and comparative examples, where possible
  - Use objective scientific and factual data to support submission
  - Check key issues (legislative checklist) are addressed, as applicable
Drafting an effective submission

- Formatting and language:
  - Use frequent headings
  - Use bullet points
  - Write clearly and concisely in plain language
  - Spell check, and get someone else to read it
  - Long quotations, and sections of legislation, should be indented
  - Make sure legislation and regulations are in *italics* and provide a date
  - Ensure title, date and contact person are correct, preferably on a cover page
  - Ensure any abbreviations and acronyms are properly defined
  - Make sure you meet any formal requirements
“Post submission” follow up

- Confirm receipt of your submission
- Make publicly available eg on website and in your newsletter or bulletin
- Consider whether community education workshop would be useful
- Consider whether material could be utilised for newspaper opinion or journal article
- Monitor outcome of the policy or law reform proposal or project
- Record any references to your submission
EDO Example – National Human Rights Consultation

- Independent committee appointed by Government
- EDO process: advertised in weekly bulletin; consulted internally; prepared discussion paper to stimulate public interest and engagement; drafted submission
- Submission:
  - Executive summary & dot point recommendations
  - Introduction to the EDO; our interest in the topic; the perspective we write from
  - Body of submission: Each part contains discussion of issue/option, analysis, EDO opinion
- Post submission activities: presented at a conference; presented at televised public forum
- Committee presented report; Government is now deciding how to respond
Contact Us

- For more information on the EDO’s policy work and copies of all written submissions, see our website:

- We welcome requests for assistance.

- If you would like help or more information from the EDO, contact us:
  - email me at [gillian.duggin@edo.org.au](mailto:gillian.duggin@edo.org.au)
  - call +61 2 9262 6989
Thank you

Any questions?