

Local Nuisance and Litter Control Act 2016

Factsheet 9 – Nuisance (Dust)

Airborne pollution such as dust, smoke, odours, are collectively known as aerosols, any one of which (or a combination of more than one), can cause a local nuisance to the community. Furthermore, aerosols can do more than just interfere with normal daily activities – if severe enough, they have the potential to cause damage to property and impact negatively upon a person's health.

What is dust and where does it come from?

Dust is fine, dry powder consisting of tiny particles comprised of earth and/or other matter.

Dust particles vary in size from visible to invisible and the smaller the particle, the longer it is likely to remain in the air and the further it is likely to travel. Larger dust particles generally fall out of the air relatively close to where they are generated and form the dust layers that may create a visible film on items such as furniture, furnishings, motor vehicles and other possessions.

Dust is generated by many different sources and activities within a community, such as:

- Arid land and/or land clearing (exposed surfaces)
- Construction, building and/or demolition work
- Roadworks
- Activities carried on around a home

Can dust nuisance affect the community?

As well as being potentially unsightly and creating a requirement to clean items, dust nuisance may also cause irritation of the eyes, coughing, sneezing, hay fever and asthma attacks.

Larger dust particles have a tendency to be trapped in the nose and mouth when breathed in although they are generally readily expelled by coughing or sneezing or sometimes even harmlessly swallowed. However, this is not necessarily the case with invisible and much smaller, fine particles. These particles are more likely to penetrate deeply into the lungs while ultrafine particles may be absorbed directly into the blood stream.

Many variables influence the nature of dust nuisance:

- Size of the particles
- Chemical make-up of the dust
- Duration of exposure

External and away from home dust nuisance can also affect the amenity of an area and reduce the ability of people to enjoy the outdoor environment.

How can dust nuisance be reduced or mitigated?

- *Observe weather conditions* – If possible, consider the weather conditions before starting work that will generate dust. Try to schedule work when the weather is fine rather than in gusty or strong winds.
- *Retain vegetation* – Retain as much vegetation on a site as possible. Grass can act as dust barriers to neighbouring properties. Even low or small amounts of vegetation can significantly lower wind speed and reduce the amount of dust leaving a site.
- *Vehicles* – Controlling vehicle speeds and covering truck loads will reduce dust on local roads.
- *Physical Barriers* – Physical barriers such as fences can be very effective when used properly and material such as shade cloth can be erected as a dust fence around a commercial work area.
- *Water* – Spraying water onto topsoil can be very effective in reducing dust from commercial or private residences. Equally, spraying water onto poorly maintained lawns will also reduce the amount of dust that is generated.
- *Hydromulch products* – For larger areas, product such as hydromulch is also useful for reducing dust generation. Hydromulch consists of recycled pulp newspaper that has been mixed with water and can be sprayed onto the ground to form a protective layer.

What is the law with regard to dust nuisance?

It is an offence under the *Local Nuisance and Litter Control Act 2016* (the Act) to cause a dust nuisance and penalties apply. If a matter is ongoing, a council can issue the person causing the nuisance with a Nuisance Abatement Notice, which specifies a certain period within which the offender must rectify the problem. Such notices may also be issued orally in the first instance if the matter is considered severe enough. Councils also have the power to expiate an offence by way of an on-the-spot-fine. A council's enforcement approach, such as issuing of expiations, warnings, requests to cease an activity, will depend on the circumstances and the council's enforcement policy.

If a dust nuisance is emanating from an industrial premises, it may be a site that is licensed by the Environment Protection Authority (EPA) and therefore not within the council's jurisdiction. These matters can be referred directly to the EPA.

When should I report dust nuisance?

In the first instance a person should try and discuss concerns with the people (e.g. neighbours) from where the nuisance is emanating from, as they may not be aware that they are causing a nuisance. Concerns should be raised and discussed, and suggestions provided to resolve problems - simple solutions can often be found that satisfy everyone.

Generally, councils will only become involved if an issue within the community (e.g. between neighbours) cannot be resolved or if the nuisance is a broad-scale issue involving multiple parties.

What are the penalties related to causing a dust nuisance?

A person who carries on an activity intentionally or recklessly and with the knowledge that local nuisance will result is guilty of an offence.

- Body corporate - Maximum penalty: \$60,000
- Natural person - Maximum penalty: \$30,000

A person who carries on an activity that results in local nuisance is guilty of an offence:

- Body corporate - Maximum penalty: \$20,000
- Natural person - Maximum penalty: \$10,000
- Expiation fee: \$500.

Penalties may also be applied in circumstances where a person refuses to comply with the direction of an authorised officer or provides a false report about a matter.

What does a council consider when investigating a dust nuisance?

An authorised officer when determining whether dust is a nuisance must, in forming their opinion, take into account whether:

- the dust has travelled to neighbouring premises; and
- the nature, extent, smell, density or texture of the dust is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises.

Are there any exemptions to local nuisance laws?

The Act allows councils to consider the granting of an exemption from local nuisance-causing activities upon application. Applications must, however, be accompanied by a nuisance management plan describing the steps that will be taken to prevent, minimise or address any adverse effects on the amenity value of the area concerned and also describing that exceptional circumstances exist to justify the granting on an exemption.

Exemptions may be reasonable for short-term activities - such as festivals, events or major construction activities - where some level of nuisance is likely to be unavoidable. Councils can apply strict conditions to ensure that an applicant does everything reasonable to minimise the impact of the nuisance. All exemptions are published on the council's website. See Factsheet 19 for more information.

More information

This fact sheet is one of a range designed to increase your awareness and understanding of the requirements of the *Local Nuisance and Litter Control Act 2016*. Please see other fact sheets for further information about the Act.

Disclaimer

This publication is a guide only and will not necessarily provide adequate information relevant to every situation. Whilst it seeks to explain your possible obligations in a helpful and accessible way, it is likely that some detail may not be captured. It is important, therefore, that where necessary you make your own determination as to whether you should seek legal advice.