

Review of the Local Nuisance and Litter Control Act 2016

LGA Response

February 2023

Table of contents

Introduction	4
About the Local Government Association of South Australia	4
Review of the Local Nuisance and Litter Control Act and Regulations	4
Local government's role in the review process	4
LGA policy position	5
Background	6
Local government's role in local nuisance and litter control	6
LGA Response	6
1. General amendments	7
1.1 Waste collection vehicles – application beyond roads and road related areas	7
1.2 Exemptions from the LNLC Act for causing local nuisance	7
1.3 Allowing councils to clean up and recover costs after if a hazard exists	7
1.4 Bill posting – car parks and expiations	7
1.5 Expiations	7
2. Trolley related amendments	8
2.1 Shopping trolleys as definition of general litter	8
2.2 Trolley identification	8
2.3 General duty	8
2.4 Litter abatement notices	8
2.5 Trolley management plan to satisfaction of council	8
3. Stormwater management systems	9
4. New provisions	9
4.1 Abatement notices – linkage to land	9
4.2 Improving cost recovery	9
4.3 New offence provision – installation of external lights or air conditioners that cause local nuisance	10
5. Consequential amendments	10
5.1 <i>Liquor Licensing Act 1997</i>	10
6. Variation regulations	11
6.1 Light as an agent of local nuisance	11
6.2 Clause 5 of Schedule 1 amendments	12

6.2.1 Construction activities	12
6.2.2 Noise from public infrastructure – application to vibration and extent of the exclusion	12
6.2.3 Residential Tenancies Act 1995.....	13
6.2.4 Dust from unsealed roads.....	13
6.2.5 Noise from refrigerated vehicles	14
6.3 Public infrastructure works	14
6.4 Hyperlink in regulation 4.....	14
Conclusion	14
Contact	14

Introduction

About the Local Government Association of South Australia

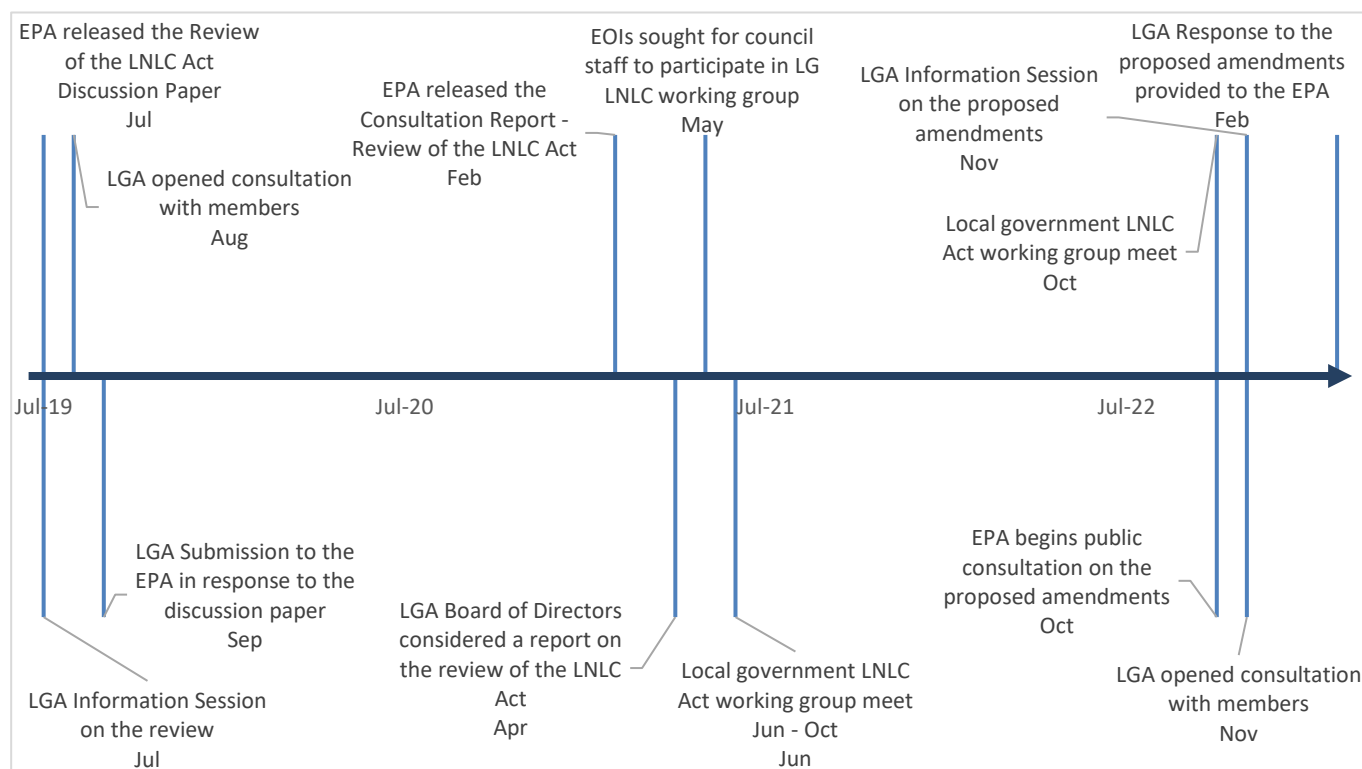
The LGA is the voice of local government in South Australia, representing all 68 councils across the state and the Anangu Pitjantjatjara Yankunytjatjara. The South Australian *Local Government Act 1999* recognises the LGA as a public authority for the purpose of promoting and advancing the interests of local government. The LGA is also recognised in and has prescribed functions in 29 other South Australian Acts of Parliament. The LGA provides leadership, support, representation, and advocacy relevant to the needs of our member councils.

The LGA is a strong advocate for policies that achieve better outcomes for councils and the communities they represent. As such, the LGA welcomes the opportunity to provide a response to the proposed amendments to the *Local Nuisance and Litter Control Act 2016* (“LNLC Act”) and the *Local Nuisance and Litter Control Regulations 2017*.

Review of the Local Nuisance and Litter Control Act and Regulations

Local government’s role in the review process

The key actions undertaken in the consultation process are outlined in the timeline below:



The review of the LNLC Act commenced in 2019 with the release of the South Australian Environment Protection Authority's (EPA) "*Review of the Local Nuisance and Litter Control Act 2016 Discussion Paper*." The LGA's response to the EPA on this discussion paper¹ was informed by discussion at an information session the LGA held for members and written feedback received from members.

The LGA acknowledges that the timeline for this review was impacted by the COVID-19 pandemic and State Government elections.

Following the EPA's release of the Consultation Report in 2021 the LGA, the EPA and leading council officers formed the Local Government LNLC Act Working Group ("LG Working Group"). The LG Working Group informed the development of the proposed amendments to the LNLC Act and Regulations.

The LGA held an information session on 3 November 2022 where the EPA presented to councils on the proposed amendments to the LNLC Act, as articulated in the EPA's "*Local Nuisance and Litter Control Act 2016: Explanatory Report for Reforms*."²

The LGA welcomes this opportunity to respond to the proposed amendments to the LNLC Act and LNLC Regulations and appreciates the collaborative approach the State Government has taken in consulting with local government in relation to this review.

This submission has been informed by discussion and feedback received from the LG Working Group, discussion from the council information session held on 3 November 2022 and written feedback and comments received by member councils. Previous feedback from councils and research commissioned by the LGA undertaken over the course of this four year review process was also considered in the development of this response.

The LGA thanks councils for the ongoing collaboration, advice and information shared throughout this process.

LGA policy position

Together with its member councils, the LGA developed a Policy Manual³ based on research and evidence, to recognise the roles of local government and identify how local government can be an important partner in government.

The LGA's policy 3.2.5 in relation to Local Nuisance and Litter Control states as follows:

Local government recognises its statutory obligations under the *Local Nuisance and Litter Control Act 2016* and the necessity for clean and high amenity communities. Councils, through the LGA, shall continue to lobby to secure ongoing financial assistance from the EPA for support to discharge these obligations.

¹ LGA Submission, *Review of the Local Nuisance and Litter Control Act 2016* (September 2019).

² https://www.epa.sa.gov.au/files/15424_lnlc_reforms_explanatory_report_2022_final.pdf

³ LGA, *Policy Manual* < <https://www.lga.sa.gov.au/about-lga/overview-of-the-lga/corporate-documents/lga-policy-manual> >.

Background

Local government's role in local nuisance and litter control

Prior to the introduction of the LNLC Act, local government was responsible for managing some nuisance and litter issues through specific provisions of the *Local Government Act 1999* (in particular, in relation to illegal dumping, bill posting and unsightly conditions). The implementation of the LNLC Act significantly expanded the role of local government in responding to nuisance issues in the community. Local government is now responsible for responding to community complaints relating to noise, smoke, dust and odour. Previously, the EPA was responsible for responding to complaints of this nature.

In 2020, the LGA commissioned an independent report to better understand the benefits and to quantify the cost imposts of the LNLC Act to the local government sector.⁴

Data from this report indicates that, since the introduction of the LNLC Act, there has been a large increase in reported litter and nuisance activity when compared to the level of activity that was previously being managed by the EPA. It was reported that this increase in activity is the result of a greater level of awareness in the community of council's compliance responsibilities and that councils are more accessible (than perhaps State Government) in terms of reporting and responding to complaints.

The report identified that the major challenge for councils in relation to the LNLC Act relates to resourcing and the requirement to deploy additional resources or reduce service levels in other areas to respond to the level of activity required. This has come at a direct cost to ratepayers.

This report estimates that the annual cost to local government across South Australia to administer the LNLC Act is in the range of \$6.5 million to \$8.5million.⁵

To support the cost impost, councils surveyed as part of the report identified that the community is receiving a higher level of service under the LNLC Act.

Finally, the report demonstrated that councils' experiences administering the LNLC Act vary depending on the nature of the council area. Broadly, the LNLC Act appears to have a proportionally greater impact on metropolitan councils, particularly outer metropolitan councils, than it does in regional areas. Density of living is a key variable in determining the impact, and level of cost impost, of the LNLC Act.

LGA Response

Councils are committed to providing a high level of service to their community. Noting that, for many councils, their expanded role in responding to nuisance issues in the community has required significant additional resourcing, the key principle that underpins the LGA's considerations in relation to the proposed amendments to the LNLC Act is:

Cost recovery is an important element of any regulatory function performed by government. Cost shifting or increased responsibility should not be placed on local government without commensurate ongoing financial and other support from the state government.

⁴ BRM Advisory, *Local Nuisance and Litter Control Act 2016 – Understanding the Benefits and Cost Imposts to Local Government* (July 2020).

⁵ A range was provided

This response below has been structured to reflect the EPA's 2022 *Local Nuisance and Litter Control Act 2016: Explanatory Report for Reforms*.⁶

1. General amendments

1.1 Waste collection vehicles – application beyond roads and road related areas

The LGA supports this proposed amendment as it intends to clarify that nuisance issues from waste transport vehicles operating on private property, are enforceable under the LNLC Act.

The LGA seeks further clarification regarding the interaction between the proposed new amendment (s 5(5)) and Schedule 1, Part 3 – Things that are not local nuisance (for the purposes of s17(1)). Schedule 1, Part 3, clause 5(i) currently reads,

- (i) *Subject to Part 2 clause 4(a)(i)(D) and (DA), noise from vehicles (other than vehicles operating within, or entering or leaving, business premises)*

Given the intent of the amendment is to ensure that nuisance issues arising from waste transport vehicles operating on private property are enforceable under the LNLC Act, the LGA submits that the above clause should be reviewed to include the proposed new amendment, s5(5).

1.2 Exemptions from the LNLC Act for causing local nuisance

The LGA supports the proposed amendments that seeks to provide councils with the discretion to waive the requirement for a site nuisance management plan and to determine the length of time for which an exemption will apply.

1.3 Allowing councils to clean up and recover costs after if a hazard exists

The LGA strongly supports this amendment to the LNLC Act. This proposed amendment will enable councils to take urgent action to clean up hazardous litter where the offender is not known and then recover the associated costs which are incurred by a council from the offender if the offender is later identified, without the need for civil proceedings.

1.4 Bill posting – car parks and expiations

The LGA is supportive of this amendment as a less resource intensive enforcement tool for councils. It is also seen that this amendment will act as a useful deterrent to prevent future offences.

1.5 Expiations

The LGA supports the proposed amendments to expiation values, so they differentiate depending on the context of their use (natural persons and bodies corporate).

Feedback from membership has indicated that the current expiation fee structure is not a sufficient deterrent for causing a local nuisance in certain circumstances. For example, in the context of a multi-million-dollar construction project, a \$210 or \$500 expiation fee could be considered by business as a small expense of little concern, doubling these fees for bodies corporate will marginally assist in deterring these types of offences in this context.

⁶ https://www.epa.sa.gov.au/files/15424_lnlc_reforms_explanatory_report_2022_final.pdf

2. Trolley related amendments

The LGA notes that trolley litter impacts councils across the state differently. Feedback from membership (including councils who do not have significant issues with trolley litter) demonstrates clear sector support for amendments that will enable councils to manage and respond to trolley litter within the community more effectively.

2.1 Shopping trolleys as definition of general litter

The LGA is supportive of amending s 22(5) to include shopping trolleys within the definition of general litter.

2.2 Trolley identification

The LGA is supportive of the proposed amendment (s24A) requiring shopping trolleys to be clearly branded or marked to enable identification.

The LGA suggests the below changes (in red) to s24A(b) to align with recent shopping trolley identification requirements interstate⁷:

b) a contact telephone number ~~or QR code~~ and email address that may be used for the reporting of trolleys left in a place outside the business premises of the business;

A requirement of a clear contact phone number and email address is consistent with approaches across the country⁸ and provides consistency for businesses. The above proposed change does not prevent a QR code or other information from being included on the trolley for identification, rather it sets the minimum identification standard for businesses.

The LGA also encourages the identification requirements to include store location or address to reduce confusion in situations where there are multiple stores belonging to the same retailer within close proximity to one another.

2.3 General duty

The LGA supports the inclusion of the proposed Section 21A which seeks to impose a general duty on persons carrying on a business to take all responsible and practicable measures to prevent or minimise littering associated with the carrying on of that business.

2.4 Litter abatement notices

The LGA is supportive of proposed amendments to s 30(2)(f)(ii) to better allow for this section to be used as a trolley compliance tool.

2.5 Trolley management plan to satisfaction of council

The LGA is supportive of the proposed amendment to allow a council to require a plan of action in relation to shopping trolleys.

This approach is seen to strike an appropriate balance for councils and businesses in that it enables those impacted by significant trolley litter issues to take appropriate and necessary action through a plan of action, without requiring all councils and businesses to do so.

⁷ NSW Government, *Code of Practice for Class 2 Items - Shopping Trolleys and other Sharing Service Items* (November 2022) page 6.

⁸ Above n1.

The LGA encourages the EPA to lead conversations between the local government sector and businesses to assist in the development of a document outlining standard considerations for these types of plans so there can be consistency across the state.

3. Stormwater management systems

The LGA acknowledges that there is currently a legislative gap in relation to the effective management of litter in stormwater.

The LGA also recognises that there is a “*wide array of legislative responsibilities in relation to stormwater management, shared across organisations that contributes to the current lack of leadership, coordination and cohesive approach to stormwater management in South Australia.*”⁹

The State Government has been proactive in response to these challenges and has formed the Stormwater Expert Panel that is currently reviewing and developing options for stormwater governance and reform. The Stormwater Management Authority has also recently released new “Stormwater Management Planning Priorities for South Australia”.¹⁰

The LGA considers this proposed amendment to the LNLC Act as out of step with the significant work and pending reform in relation to stormwater. As such the LGA recommends reconsidering this proposed amendment to the LNLC Act as part of the broader suite of reforms to stormwater management across the state.

4. New provisions

4.1 Abatement notices – linkage to land

The LGA supports the ability for councils to register a Nuisance Abatement Notice onto land, as a means of alerting prospective purchasers of unresolved local nuisance matters.

The LGA notes that the proposed amendment, the insertion of section 30A, limits the registration of Abatement Notices on land to nuisance abatement notices and there would be benefit to expand this to also include linking litter abatement notices to land.

Given the proposed amendments to s21A (general duty to prevent or minimise litter), the LGA sees benefit in amendments to s 30A to also include the ability to register litter abatement notices against land. To the extent that a business owner is required to comply with a plan of action provided in response to a litter abatement notice (eg. shopping trolley management plan, a plan to prevent litter escaping from a stormwater management system etc) the LGA believes these obligations should be carried across to new business owners (where applicable) without the need for a new litter abatement notice being issued and a new plan of action being prepared in response.

4.2 Improving cost recovery

The LGA is supportive of the proposed inclusion of subsections 31(8)(9) and (10) to enable improved cost recovery options for councils.

The proposed amendments clarify and simplify the process to recover costs which are incurred because of action taken in respect to non-compliance with an abatement notice.

⁹ LGA of SA, *Submission to the Inquiry into the Stormwater Management Authority* (2021) page 4.

¹⁰ Government of South Australia: Stormwater Management Authority, *Stormwater Management Planning Priorities for South Australia* (2022).

4.3 New offence provision – installation of external lights or air conditioners that cause local nuisance

The LGA is supportive of the intent of this proposed amendment to the LNLC Act and the amendment insofar as it relates to air conditioners (the LGA is not supportive of the inclusion of light as an agent of local nuisance, which is explored further below).

The intent behind this provision is to redirect liability to the installer (rather than the user of that device) for causing local nuisance where a designated device has been installed in a position where it could have been foreseen that it would be likely to cause a local nuisance.

This proposed amendment is welcomed as it supports and upholds good design and planning principles and supports end-users who may not be fully informed on where the unit should be installed.

To ensure the success of this proposed amendment, State Government should engage with relevant industry to ensure they are aware of their responsibilities under the LNLC Act.

To further the intent of the proposed amendment, which is to prevent nuisance issues from occurring in the first place, the LGA recommends the State Government through the State Planning Commission explore complementary amendments to instruments (Planning Direction) under the *Planning, Development and Infrastructure Act 2016* (SA) (“PDI Act”). Specifically, the LGA recommends exploring amendments to the Deemed Planning Consent Standard Conditions 2020 (“Deemed to Satisfy Conditions”).¹¹

The Deemed to Satisfy Conditions currently provide requirements to minimise noise nuisance in relation to swimming pool pumps.¹² Given the prevalence of air-conditioners in the community, the Deemed to Satisfy Conditions should include, for example, requirements to minimise air-conditioner nuisance as part of the “standard conditions”.

5. Consequential amendments

5.1 *Liquor Licensing Act 1997*

The LGA recognises the intent of the proposed amendments to Schedule 1, Part 3 clause (5)(k) of the LNLC Act, is to better delineate the regulatory responsibility for nuisance issues relating to licensed premises.

The LGA considers that nuisance issues arising from licensed premises that directly relate to the service of alcohol or associated entertainment should remain the responsibility of the Commissioner, as provided for under the *Liquor Licensing Act 1997* (LL Act). The LGA notes the LL Act (and individual liquor licences granted pursuant to the LL Act) regulate the behaviour of liquor licensees. Liquor licence conditions are very often imposed after consultation with (and after legal proceedings initiated by) neighbours and local communities. The LGA predicts that significant resources would be required to transfer nuisance-related obligations of liquor licensees to an alternate statutory regime. These costs likely far outweigh any benefit derived from such a change.

¹¹ Government of South Australia, State Planning Commission, *Practice Direction 11: Deemed Planning Consent Standard Conditions* (2020).

¹² *Ibid*, Attachment 1: Standard Conditions, page 2, row 4, column 2.

Other nuisance issues (eg. air conditioning noise) arising from licensed premises are best addressed and enforced through the LNLC Act as the current requirements for lodging a noise nuisance complaint within the provisions of the LL Act are considered as too onerous.¹³

Although the proposed delineation of regulatory responsibility in this area is welcomed by the LGA and our member councils, the LGA cannot support the proposed amendments to the LNLC Act without complementary amendments to the LL Act.

Complementary amendments to the LL Act clearly articulating that the regulatory responsibility for nuisance issues arising from the service of alcohol, entertainment, music and behaviour of patrons remains with the Commissioner is necessary to ensure the effective delineation of regulatory responsibilities.

The LGA notes that the LL Act is currently silent on light nuisance. Given the State Government (as part of this review) is considering expanding the LNLC Act to include light nuisance and the proposed exclusions listed under Schedule 1, Part 3 clause 5(t) do not include light nuisance arising from a licensed venue, there is a potential misalignment of regulatory responsibility where light nuisance arising from a licensed premises from an entertainment activity could become the responsibility of councils.

The LGA welcomes further discussions on this matter and is supportive of complementary amendments to both the LNLC Act and LL Act that enable the effective management of nuisance issues emanating from licensed premises through a clear delineation of responsibilities between councils and the Commissioner.

6. Variation regulations

6.1 Light as an agent of local nuisance

The LGA does not support the proposed expansion of the Act to include light as an agent of local nuisance.

The challenges of increased workload, operational difficulties with out of hours complaints and the need for technical capabilities regarding light measurement are key issues for councils in relation to this proposed amendment.

Feedback from councils noted that, based on their experience with the introduction of the LNLC Act, they expect to experience an increase in light nuisance complaints when compared to the level of activity that is currently being managed by the EPA.

The LGA has consistently advocated that no amendments should be made to the LNLC Act, that increase the role and responsibility of local government in responding to litter and nuisance complaints, unless there is a commitment from the State Government to adequately compensate or appropriately resource councils to undertake the additional responsibilities.¹⁴

The LGA is prepared to discuss with State Government compensation and resourcing arrangements in relation to this proposed amendment.

¹³ *Liquor Licensing Act 1997* (SA) s 106(3)(a) – the requirement of 10 complainants to lodge a noise nuisance complaint (eg. arising from an air conditioner) is onerous when the nuisance only impacts directly adjoining properties (ie. Impacts only one or two neighbours).

¹⁴ LGA Submission, *Review of the Local Nuisance and Litter Control Act 2016* (September 2019) page 3.

In addition to compensation arrangements, some resourcing opportunities that State Government could undertake to support councils with this proposed expansion of responsibility are:

- the development of guidance, templates and other resources;
- assistance with technical light measurement; and
- an amendment to the LNLC Regulations¹⁵ to enable the use of photographic or video evidence to support an “*authorised officer to form an opinion about a matter...*”¹⁶ This would reduce the imposition on local government resources and costs that will be involved with out of hours inspections relating to light nuisance issues.

While the LGA appreciates that the proposed amendment has attempted to reduce the regulatory burden by providing a list of exclusions for light nuisance, the LGA recommends the following additions to Schedule 1 (5)(t):

(t) light emitted by or from the following:...

- (xix) a licensed premises relating to the service of alcohol or entertainment; and*
- (xx) Local government facilities (including “temporary” facilities).*

Further discussion exploring the delineation of regulatory responsibility for licensed venues and the rationale for the exclusion of light nuisance arising from licensed premises (relating to the service of alcohol or entertainment) is explored above at 5.1.

The LGA considers it is appropriate for “local government facilities” such as playgrounds, sporting ovals, grounds, and complexes as well as local government offices, swimming pools, libraries and town halls as well as “temporary facilities” such as a country fair, festival or event (noting this is not an exhaustive list) to be included in the list of light sources that are excluded under Schedule 1(5)(t).

Councils have an existing responsibility to manage nuisance issues relating to their own assets. Feedback from our member councils indicates that considering, responding and minimising the risk of light nuisance arising from their own assets is part of general business practice.

6.2 Clause 5 of Schedule 1 amendments

6.2.1 Construction activities

The LGA supports the proposed amendment to clause 5(d) of Schedule 1 of the LNLC Act.

This amendment provides clarity to the industry that approvals under something like a *Construction Environment Management Plan* (or similar) is a guide only and does not prevent and cannot be used as a defence to further action being taken should a nuisance result from construction work being undertaken.

The LGA understands that councils have encountered challenges when developers/builders causing nuisance have fallen back on an inadequate plan that was approved as part of a development approval.

6.2.2 Noise from public infrastructure – application to vibration and extent of the exclusion

The LGA is supportive of this proposed amendment. This is a sensible amendment that complements and aligns with other exclusions relating to public infrastructure works in the LNLC Act.

¹⁵ *Local Nuisance and Litter Control Regulations 2017* (SA) regulation 7- Measurement procedures for determining presence of local nuisance.

¹⁶ *Ibid.*

6.2.3 Residential Tenancies Act 1995

Clause 5(j) of Schedule 1 of the LNLC Act provides an exemption for local nuisance arising from tenanted properties, whereby issues of local nuisance arising from tenanted properties are managed and regulated through the *Residential Tenancies Act 1995* (SA) ("RT Act").

The proposed amendment stands to remove this exemption and shift responsibility for the management of nuisance issues arising from tenanted properties from State Government to local government.

No complementary commitment from State Government to compensate local government for the increased resourcing required to manage the increased regulatory responsibility has been provided in the proposal from State Government.

The current framework and delineation of responsibilities for the management of nuisance issues is confusing for the community, where nuisance issues arising from owner-occupied properties are managed by councils through the LNLC Act and nuisance issues arising from tenanted properties are managed through the process provided for in the RT Act (eg. South Australian Civil and Administrative Tribunal).

Despite the current exemption, some councils become involved in nuisance issues which are generated by tenants. Unfortunately, not all complaints can be resolved and so complainants can be left frustrated and often confused by the inability of councils to take the matter further. Additionally, landlords are not always willing to resolve the matter with their tenant, given the remedy under the RT Act may include eviction, which can be considered as disproportionate to the offence.

An effective regulatory framework would see the individual responsible for causing the nuisance issue held responsible – for example a landlord would be responsible for nuisance issue arising from a noisy air conditioner unit and a tenant would be responsible for a nuisance issue arising from a noisy bird aviary.

Feedback from membership recognises both opportunities and challenges associated with the proposed amendment to delete the RT Act from the LNLC Act.

The opportunity for councils and the community is consistency and clarity for the regulation of nuisance issues, arising from both owner-occupied and tenanted properties.

The key challenge is the increased workload and resourcing requirements for councils.

The LGA recognises that the opportunities articulated above, can only be realised if councils are adequately resourced to respond to the increased workload.

The LGA is open to discussions with State Government regarding compensation and resourcing arrangements to ensure the opportunities associated with this proposed amendment can be realised.

6.2.4 Dust from unsealed roads

The LGA is supportive of the proposed amendment to include dust from unsealed roads to clause 5 of Schedule 1 as a further declaration of what is not nuisance for the purposes of the LNLC Act. This is a sensible and practical approach that will support many councils (particularly regional councils).

6.2.5 Noise from refrigerated vehicles

The LGA supports the intent of the proposed amendment to clause 5(i) of Schedule 1 of the LNLC Act.

The similarities in the noise emitted from refrigeration equipment on/in a vehicle to that of an air conditioner or pool pump is noted so the proposed amendment does align with other elements of the LNLC Act.

Any amendments made to the LNLC Act in relation to refrigeration equipment on/in a vehicle should consider the interaction with the LL Act as it is commonplace for these types of vehicles to be operated at a licensed venue/ used in association with a liquor-licensed event.

As such, the LGA recommends further consideration to be given to the language of the proposed amendment in Schedule 1 clause 4(a)(i)(DA) to ensure that noise emitted from refrigerated equipment on/in a vehicle associated with the operation of a licensed venue/liquor-licensed event is excluded.

6.3 Public infrastructure works

The LGA is supportive of this addition to the definition of “*public infrastructure works*”.

6.4 Hyperlink in regulation 4

The LGA is supportive of this administrative amendment to update the hyperlink.

Conclusion

The LGA welcomes the opportunity to respond to the discussion paper and is pleased to continue to work as partners in government to inform this process and help improve the response to litter and nuisance issues through the *Local Nuisance and Litter Control Act and Regulations* for the benefit of the South Australian community.

Contact

Please direct any queries about this submission to [Brianna McGee](#), Senior Policy Officer.

148 Frome St
Adelaide SA 5000

GPO Box 2693
Adelaide SA 5001

T (08) 8224 2000

E lgasa@lga.sa.gov.au

www.lga.sa.gov.au