

Local Nuisance and Litter Control Act 2016

Factsheet 4 – Local Nuisance

The Local Nuisance and Litter Control Act 2016 (the Act) was developed to support and enhance local amenity values by strengthening local nuisance and litter management services within South Australian communities.

What is Local Nuisance?

Local nuisance is described in the Act as being any adverse impact on the amenity value of an area, which unreasonably interferes with, or is likely to unreasonably interfere with, the enjoyment of that area by people in that area.

Some common examples of activities that may be considered a local nuisance include:

- Noise emanating from fixed and non-fixed domestic machines such as air conditioner compressor, swimming pool pumps, lawnmowers and power tools
- Dust and activity noise from development and construction sites
- Smoky wood heaters

Local nuisance within the community can also be caused by insanitary conditions such as filthy or neglected premises that present a risk of rodent infestation or emit offensive odours or material. It can also be caused by unsightly conditions on premises caused by human activity or a failure to act on those type of conditions such as:

- Excessive or unconstrained rubbish, waste or vegetation
- stockpiled, excessive or unconstrained disused or derelict items or material
- a building on the premises having been left partially demolished or in a state of disrepair, dilapidation or damage

What is Amenity?

Amenity value is defined in the Act as including any quality or condition of an area that is conducive to its enjoyment. This can refer to a wide range of qualities, characteristics and attributes about a place or area that people value and which contributes to their experience of a good quality of life. Whilst the amenity values that individuals seek to appreciate vary according to each person's own principles, there is a wide range of common ideals that are generally accepted as being key elements relative to the amenity value of a community.

What are a person's obligations with regard to local nuisance?

A person's activities should not unreasonably interfere with the well-being or enjoyment of an area by others. This includes not only the indoor and outdoor spaces of a person's own property but public and community areas such as parks, other places of public recreation, and commercial precincts. The community should all be mindful of the degree of potential local nuisance that can be generated by things such as unwarranted smoke, excessive noise, nuisance dust or unkempt properties and always seek to minimise such impacts as much as possible.

What does Council consider when investigating Local Nuisance?

Councils - or any other administering body authorised under the Act - have access to a wide range of specifically developed compliance standards - established via regulation – designed to provide evidentiary guidance for assessing potential offences. Along with internally developed guidelines to assist the process, authorised officers will follow a set procedure when investigating matters.

The Act does however contain clauses that allow for the defence of due diligence if a person can demonstrate that all reasonable precautions had been taken and that they exercised all due diligence to prevent or avoid causing an offence of local nuisance under the Act.

Councils are not responsible for sites that are licensed by the Environment Protection Authority (EPA) nor do they manage situations where there is potential for serious or material environmental harm as defined in the *Environment Protection Act 1993*. In circumstances where a complaint relates to a nuisance that is considered to be of high impact or on a wide scale, involves actual or potential harm to the health or safety of human beings, councils will refer this directly to the EPA. Nuisances related to party noise or music should always be referred the Police. Councils are also not responsible for nuisances emanating from establishments licenced under the *Liquor Licencing Act 1997*. Schedule 1 of the Act also lists a number of circumstances that are not considered to be local nuisance.

Can I get an exemption for an activity that might cause local nuisance?

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 noise, dust, odour or other local 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 further information.

When should I report 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. 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 relating to local 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

Further, a person must, on request by an authorised officer, cease an activity, or remove the source of the local local nuisance. Failure to comply with an instruction is an offence.

- Maximum penalty: \$5 000
- Expiation fee: \$210

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.

A council may also issue a written Nuisance Abatement Notice to a person causing a nuisance. Such notices impose certain requirements upon a person in order to rectify a situation and secure compliance.

Failure to comply with an abatement notice is an offence:

- Body corporate - Maximum penalty: \$60,000
- Natural person - Maximum penalty: \$30,000
- Expiation fee: \$500

It should be noted that if an activity relating in local nuisance is carried on, in, at or from a vehicle, or in connection with the use of a vehicle, rather than a place, the owner of the vehicle is, under Section 29 of the Act, taken to have committed an offence. See Factsheet 6 for further 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.