

# Local Nuisance and Litter Control Act 2016

## Factsheet 17 – Civil Penalties

Section 34 of the *Local Nuisance and Litter Control Act 2016* (the Act) contains provisions that enable a council to recover from an alleged offender (by negotiation or by application to the Environment Resources and Development Court), an amount as a civil penalty in respect of certain contraventions of the Act.

### What is a Civil Penalty?

Developed as an alternative to criminal prosecution, civil penalties are a regulatory tool to enable regulators to respond to less serious contraventions of an Act in circumstances where it concerns strict liability<sup>1</sup> offences.

The civil penalty system empowers the relevant council to negotiate a civil penalty in respect of a contravention of the Act directly with a person with whom it is satisfied has committed the offence – this is known as a negotiated civil penalty. Alternatively, application can be made to the Environment Resources and Development (ERD) Court for an order that a person pay to the Minister or a relevant council an amount as a civil penalty (known as a court imposed civil penalty).

The civil penalty system is voluntary, requiring both the council and the person in alleged contravention of the Act to agree to the process. A person may choose not to negotiate a civil penalty. Furthermore, in the event that a council wishes to apply to the ERD Court for a civil penalty, a person may elect to be prosecuted under the higher criminal burden of proof rather than be heard in the civil jurisdiction of the court.

The level of civil penalty will be determined by negotiations on a case-by-case basis. A person who contravenes the Act and receives a civil penalty - either through negotiation or court order - will not incur a criminal conviction.

Criminal prosecution continues to be used to deal with more serious or recurring offences.

### What is the Environment Resources and Development Court?

The ERD Court is a specialist court in South Australia that deals with disputes and the enforcement of laws relating to the development and management of land, the natural and built environment, and natural resources. Many people who appear in the court - which is committed to making sure that people can access its services - are self-represented.

The Act allows for applications to be made to the ERD Court for various measures such as civil penalties, as well as orders requiring specific actions or restraining a person from specific conduct. The Court can also order the payment of costs or expenses, compensations, or damages for loss resulting from a breach of the Act. In order to minimise the risk of frivolous or vexatious actions the Act also provides for the Court to award costs against an appellant.

<sup>1</sup> A strict liability offence is an offence which only requires the commission of the prohibited conduct for an offence to arise - liability is incurred regardless of fault or ignorance of the law. Some examples are offences for speeding, driving unregistered, failing to wear a seatbelt.

## Who can apply to the ERD Court to commence a Civil Penalty process?

An application under Section 34 of the Act may be made by:

- The Minister or a council

## Where can I find information relating to the ERD Court and the processes needed to make an application for a Civil Penalty?

Information regarding the ERD Court including contact details is available on the [Courts Administration Authority of SA](#) website.

### 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.*