

Local Nuisance and Litter Control Act 2016

Factsheet 10 – Nuisance (Odours)

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 are odours and where do they come from?

Odours are the properties of a substance that we are able to detect by smell and, because they can travel through the air over long distances, they have the potential to affect a large number of people within a community, cause significant impact on people's lives and adversely affect the amenity of an area.

Odours can emanate from a range of domestic and commercial/industrial sources.

Domestic sources of odours include:

- insanitary conditions
- dirty or poorly maintained rubbish bins and waste receptacles
- uncovered compost heaps
- rotting vegetation or food scraps (particularly sea-food)
- storage of petrochemicals (oils, degreasers, kerosene)

There are several factors – known as the FIDOL factors - that can determine the potential for nuisance, annoyance and complaint.

- frequency
- intensity
- duration
- offensiveness
- location

Generally the greater the frequency, intensity, duration, or offensiveness of an odour, the more likely it is to cause annoyance to people and result in complaints.

Can odour nuisance affect the community?

Reactions to fumes can be very subjective. A smell may be pleasant to one person yet unpleasant to someone else, which can make the objective assessment of odours difficult to achieve. The degree to which *odour* nuisance affects people depends on the sensitivity of their sense of smell and their tolerance of the odours in question.

Whilst the main effect of environmental odour is nuisance, stronger or persistent odours can lead to feelings of nausea, headaches, loss of sleep and other symptoms of stress. Repeated exposure to nuisance levels of odour can lead to a high level of annoyance and while some people may become acclimatised or adjusted to certain odours, others may become sensitised to them. An individual's response to odour may also be influenced by a variety of factors including:

- the state of their health
- previous experience with the odour
- relationship to the enterprise generating the odour (if a person's livelihood is dependent, directly or indirectly, on the operation, the perception may not be as severe if the person has had negative experiences with the operation).

How can odour nuisance be reduced or mitigated?

From a commercial or industrial perspective, odour impacts can be mitigated by good design, good management, and by adequately separating odour sources from people or communities (often called sensitive receptors or receivers) which may be adversely affected by the odour.

Domestically, there are many ways to reduce the likelihood of producing an odour nuisance, such as:

- Minimise rubbish on a premises
- Ensure composting and mulching is done properly to avoid smells
- Clean waste bins regularly to get rid of any accumulated or smelly waste
- Ensure waste bins are collected regularly
- Place meat and seafood scraps in the freezer and wait until the night before bin collection day to put them in the bin
- Rinse containers before placing them in the bin to get rid of any remaining residues or substances that are likely to become putrid and cause odour
- Be careful when storing and using chemicals, paints and other products, which may cause strong and offensive odours

When undertaking activities, a person should consider and observe weather conditions as this can contribute to causing an odour nuisance. Other strategies to reduce likelihood of causing an odour nuisance include use of physical barriers, and the use of water (such as on fertilizer to quicken absorption into the topsoil).

What is the law with regard to odour nuisance?

It is an offence under the *Local Nuisance and Litter Control Act 2016* (the Act) to cause an odour nuisance and penalties apply. If a matter is ongoing, councils 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 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.

What are the penalties related to causing an odour 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.

When should I report an odour 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 does a council consider when investigating an odour nuisance?

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

- the odour has travelled to neighbouring premises; and

- the nature, intensity or extent of the odour 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 the 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 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 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.