Legislation

Consultation report

Consultation report – Review of the *Local Nuisance and Litter Control Act 2016*

Issued February 2021

EPA 1127/21: This consultation report provides a summary of consultation feedback and recommendations resulting from the release of a discussion paper in 2019 regarding a review of the Local Nuisance and Litter Control Act 2016.

1 Introduction

The *Local Nuisance and Litter Control Act 2016* (LNLC Act) passed Parliament on 18 May 2016 and the Governor in Executive Council gave assent on 26 May 2016. The Act commenced in two parts. The Regulations and all elements of the LNLC Act except for those specific to local nuisance offences commenced on 1 February 2017, and the local nuisance offences commenced on 1 July 2017.

The LNLC Act is for local government and provides the community with a more effective and consistent service for the management of nuisance complaints and heightened deterrence for littering and illegal dumping. The Environment Protection Authority (EPA) does not have a role in administering the LNLC Act and is managing a review of the legislation on behalf of the state government.

The LNLC Act provides a modern legislative scheme for litter control in South Australia including tiered offences depending on the type of litter (small versus large quantities, dangerous and hazardous litter); improvements in the use of surveillance for evidence gathering in the case of illegal dumping (linking an offence to the registered owner of a vehicle); allowing non-government organisations to undertake compliance activities (subject to approval); and for public reporting of littering and illegal dumping.

The second anniversary of the full commencement of the LNLC Act was 1 July 2019. This milestone provided a useful prompt to undertake a review of the operation of the LNLC Act. Feedback from councils, the community, and other stakeholders indicated that there was potential to fine-tune elements of the legislation. The EPA developed a discussion paper outlining issues raised and invited further feedback from stakeholders on issues not covered by the paper.

The discussion paper was released on 9 July 2019 and consultation ran for a period of three months ending on 4 October 2019. Consultation was publicised through an advertisement in *The Advertiser* and media coverage through local media and talkback radio. The consultation program included a public meeting in Adelaide and a meeting with local government representatives hosted by the Local Government Association (LGA).

This report will be submitted to the Minister for Environment and Water, Hon David Speirs MP for his consideration. The EPA will assist the government to progress amendments as a result of this review of the *Local Nuisance and Litter Control Act 2016*.

Government of South Australia

2 Consultation feedback on local nuisance discussion points

The local nuisance provisions of the LNLC Act allow councils to manage various nuisance issues in their community. Nuisances covered by the legislation include environmental nuisances (eg smoke and noise), insanitary conditions and more general amenity nuisances (eg unsightly premises). These nuisances were previously addressed using the *Environment Protection Act 1993* (EP Act), *Local Government Act 1999* or the *South Australian Public Health Act 2011*. Since the commencement of the local nuisance elements of the LNLC Act on 1 July 2017 there have been various issues raised by councils and the public. A number of issues were outlined in the discussion paper seeking comment and feedback. This section summarises responses to those discussion points and provides recommendations as to whether legislative amendments are supported or not.

2.1 What is and is not local nuisance?

The LNLC Act describes the meaning of local nuisance in section 17 with the ability to further refine the definition of what is and is not local nuisance through Schedule 1. The definition was refined following consultation feedback from councils on the draft Bill which had light and heat within the meaning of local nuisance. These were removed to ensure the starting point for regulation of nuisance was manageable by councils and not too broad. Further consideration of the addition of light and heat at a later date once the Act had been implemented was noted in the consultation report for the draft Bill. As an alternative the Act provides the ability to prescribe specific types of nuisance that might include light or heat in the regulations with the agreement of local government to do so. An example of this is 'vibration', prescribed in Part 2 of Schedule 1.

A number of determinations as to what is not local nuisance are also included in Part 3 of Schedule 1. These listings fall within three categories. The first category of listings is where the issue of nuisance is adequately managed under alternative legislation. This is where an activity is approved under other legislation, the approval or conditions of the approval adequately minimise or prevent nuisance impacts, and those conditions are complied with. An example of this is a development authorisation with conditions of approval related to time of operation that effectively limits noise to reasonable business hours as covered by clause 5(d). In this circumstance the noise from the day time operation would need to be considered reasonable for the approved activity. This ensures that the development system takes precedence in determining the appropriateness of a land use for a certain location. By comparison, if an approved development had no relevant noise controls in place through condition of approval or had conditions relating to noise control but these conditions were not being complied with, both the *Development Act 1993* and LNLC Act could be applied to gain compliance.

The second category of listings is where another Act contains a resolution or complaints process for nuisance issues. An example of this is the *Strata Titles Act 1988* that contains remedies for nuisance within a strata management group. A further example of this type, the *Liquor Licensing Act 1997* (LL Act) is discussed in detail below as to whether the provisions of that Act are appropriate to cover all forms of nuisance or are better limited to nuisance from established premises that relates directly to the service of alcohol such as patron and entertainment noise.

The third category of listings is where the nuisance is considered a reasonable feature in the community. These include noise from a school or kindergarten, or emergency vehicle sirens.

2.1.1 Local nuisance management and liquor licensing

The LL Act (section 106) provides a complaints process for most forms of nuisances from licensed premises. So as to avoid conflict between this legislation and the LNLC Act, any form of nuisance that can be dealt with under the LL Act is excluded from being regulated under the LNLC Act through Schedule 1 ('things that are not local nuisance'). As a result, councils have no ability to apply the LNLC Act for most forms of nuisance, and complaints can only be managed by the Office of Liquor and Gambling.

Bricks-and-mortar licensed premises

In the context of bricks-and-mortar licensed premises this means nuisance noise from air conditioners or other plant on the property cannot be addressed under the LNLC Act by councils. While the process under the LL Act can address

nuisances that are not specific to licensed premise, the LNLC Act provides a more timely response in these scenarios. Council officers would be more familiar with addressing them than officers from the Office of Liquor and Gambling, who would generally deal with music and patron noise issues.

Consultation feedback summary

There was a wide variety of views put forward in submissions regarding this issue. Some councils cited lack of resources, after-hours work, and confusion in the community regarding split responsibilities if the LNLC Act was to be amended. However, some other councils, and the LGA, support changes being made to ensure businesses are treated the same with regard to nuisances not related to the service of alcohol. There was also a suggestion from one council that staff of the Liquor Licensing Commission should be authorised under LNLC Act if there were any change. A further submitter noted that if the LNLC Act is changed then the Liquor Licensing Act should also be amended so there is only a single pathway for complainants. The Liquor Licensing Commissioner gave feedback that his office was not set up to deal with nuisance that is not related to the service of alcohol and that such nuisance does not fit within the Objects of the LL Act. The Commissioner indicated a willingness to amend the LL Act to ensure that it was clear that only nuisance related to the service of alcohol was covered.

Response to consultation feedback

The intent of clause 5 of Schedule 1, that declares certain matters not to constitute local nuisance, is to avoid duplication with other legislative controls and to exclude matters considered reasonable elements of community life. The declaration regarding noise from licensed premises was meant in good faith to avoid duplication of process with the provisions of the LL Act. Since the LNLC Act commenced it has become apparent that the types of nuisance envisaged by the LL Act do not align with what is dealt with under the LNLC Act. The misalignment has resulted in a lesser service being available to the community for non-alcohol service related nuisances at licensed premises and councils are unable to address nuisance equally across businesses in their areas.

Recommendation

Both Acts be amended to delineate that regulation of nuisances associated with service of alcohol (music, patron noise and other patron behaviour) is regulated under the LL Act and nuisances not associated with service of alcohol are regulated under the LNLC Act, and that these amendments are made as part of any future project to amend the legislation. So that such amendments are aligned it is suggested that one or the other are made consequentially within the same Bill.

Outdoor events with a liquor licence

There are also issues with the application of the exclusion to the management of outdoor events. Firstly, the application of the exclusion in circumstances where only part of an event space has a liquor license is problematic. The exclusion only applies to the area that is licensed and the remainder of the event to be dealt with under the LNLC Act. This creates problems where council compliance staff are unable to address complaints about nuisances emanating from a licensed area of an event.

A further issue specific to outdoor events is caused because they are inevitably annual or one-off and of a short duration. For outdoor events that are licensed (in part or full), the process under section 106 of the Liquor Licensing Act does not provide for immediate compliance intervention and there is limited deterrence and compliance options in these circumstances. Section 106(3a)(b) provides that no conciliation meeting or other hearing may be held on the complaint until the period of 14 days has elapsed from the day that the licensee is served with a copy of the complaint. This leaves the community with no reasonable avenue to address a nuisance.

Consultation feedback summary

There was feedback from some councils that changes were not necessary as SA Police (SAPOL) would respond to matters associated with a liquor licence. Other councils pointed to controls available under the *Local Government Act 1999* in relation to council land and roads as well as use of the LNLC Act for matters not connected to the liquor licence.

Response to consultation feedback

The EPA agrees that existing mechanisms will deal with the majority of complaints that arise from outdoor events, with or without a liquor licence. These mechanisms would be strengthened with better delineation of nuisance managed under the LL Act and LNLC Act as described in the earlier section.

Recommendation

Nuisance from outdoor events with a liquor licence associated with service of alcohol (music, patron noise and other patron behaviour) continue to be regulated under the LL Act, and nuisances not associated with service of alcohol are regulated under the LNLC Act or preferably through relevant conditions of council permitting, where an event is held on council land. It is noted that the preceding recommendation will support resolution of this issue.

2.1.2 Interaction with other legislation

The LNLC Act sets out a number of exclusions related to different Acts in Part 3 of Schedule 1 where the issue of nuisance is adequately managed under the alternative legislation or where another Act contains a resolution or complaints process for nuisance issues. Comment is sought as to whether the current suite of exemptions related to legislation is sufficient or whether there are other Acts that also address local nuisance issues and should be considered for exclusion.

Consultation feedback summary

There was concern raised by a number of councils regarding the current provision that excludes activities with development approvals and conditions that address nuisance matters as the conditions are generally deficient and enforcement of the conditions is less straightforward than under the LNLC Act. There was also a comment that the current approach is broadly confusing. It was suggested by the LGA that the Act may need to be amended such that conditions of development approval should exclude operation of the LNLC Act or that guidance from the EPA is required to better inform actions of councils. Consideration of the inclusion of the *South Australian Public Health Act 2011* (SAPH Act) as it relates to dealing with squalor was requested and there was also comment made that there was uncertainty how the LNLC Act applies to utilities.

Response to consultation feedback

The way that the LNLC Act currently operates is that the conditions of a development authorisation (or any other authorisation relevant to the activity) must control, minimise or eliminate as far as reasonably practicable nuisance that is likely to result from the activity in order for the LNLC Act to not apply. Further to this, the conditions must be complied with. It is included so that the person undertaking the activity only has obligations under one Act to achieve a reasonable outcome relevant to generation of nuisance. The exclusion does not apply if conditions of an existing authorisation are inadequate to meet the requirement that the nuisance is controlled, minimised or eliminated as far as reasonably practicable. The exclusion also does not apply if the conditions are not being complied with. As such, if a person undertaking an activity (that would potentially satisfy the exclusion) is not complying with a condition of an

a development authorisation in particular, related to the construction phase of a development, that is causing this issue, which is the requirement to supply a construction environment management plan (CEMP). There is an argument from developers that such a condition meets the requirements discussed earlier, whereas councils find that the quality of the CEMP and its implementation will determine whether nuisance is being suitably managed. It may be possible to limit the exclusion to conditions relating to the operational obligations of a development post-construction.

The *Public Health (Severe Domestic Squalor) Policy 2013* defines 'severe domestic squalor' as domestic premises whose conditions of squalor to present a risk of harm to the health of neighbours, residents and visitors. The key difference between this and the controls in the LNLC Act regarding insanitary conditions are that the LNLC Act provides for control of nuisance impacts rather than health impacts. The LNLC Act defines 'insanitary conditions' as being where an authorised officer reasonably believes that the premises are so filthy or neglected that there is a risk of infestation by rodents or other pests; or offensive material or odours are emitted from the premises. Neither of these nuisance impacts may necessarily meet the 'risk to health' threshold of the SAPH Act so to exclude the operation of the LNLC Act for matters of squalor generally would limit council powers to manage such nuisances.

The LNLC Act provides some leeway to utilities in that noise nuisance from public infrastructure works is excluded. Further guidance on the application of the legislation to utilities may be achieved through better definition within the LNLC Act or through provision of advice and fact sheets to local government by the LGA.

Recommendations

- Amendment to Schedule 1 of the LNLC Act to allow for the Act to apply to the construction stage of developments to be included as part of any proposal to amend the LNLC Act, resulting from this review. As part of this, consideration will be given to the role of CEMPs in negating the need for the LNLC Act to apply (where the CEMP is of a suitable quality) and any duplication with exemption obligations under the LNLC Act.
- Further consideration is given to better definition of 'public infrastructure' that is excluded from operation of the LNLC Act to ensure that only infrastructure that requires special dispensation due to urgency or avoidance of impacts on the community is included and that improved guidance to councils on the correct operation of the exclusion is developed.

2.1.3 Animals living in their 'natural' habitat

Noise, odour or waste from animals living in their natural habitat are declared as not being local nuisance under clause 5, Schedule 1 of the LNLC Act with the exception to this being where animals have been actively encouraged, by feeding, to gather in a particular area. The term 'natural' is not defined in the Act and takes its common meaning as '1. existing in or formed by nature; not artificial: a natural bridge' (Macquarie Dictionary).

A query was made by a local government officer to the EPA as to whether this definition may extend to the naturalised habitat of mice, rats and pigeons in human structures. Based on the definition above such naturalised habitat should not be considered the same as natural habitat as mice, rats and pigeons in human structures can be considered a local nuisance. Comment was sought on whether any improvement such as a set definition is necessary.

Consultation feedback summary

Submissions regarding this issue were varied. There were several submissions from councils that indicated the current provisions work well or that there was no need for a specific definition. Other council submissions sought to amend the provision that allows action to be taken where animals are attracted by feeding to also include where nesting sites are provided, where nesting sites are not discouraged, or where vegetation is planted to attract wildlife. Some submitters sought to add buildings and structures to the definition of 'natural habitat' while others sought clarification that the definition did not include such structures.

Response to consultation feedback

The addition of human structures to the exclusion, whether in its own right or as an amendment to 'natural habitat' would mean that little could be done regarding nuisance animals associated with dwellings such as rats, mice and pigeons and would essentially negate the direct provisions in sections 17(1)(b) and 17(2)(a) of the LNLC Act. This would not be a desirable amendment to the legislation.

The suggested reduction in the exclusion such that the Act could apply to nuisance from wild animals where nesting sites were provided or not suitably discouraged may have negative urban biodiversity outcomes, depending on the species of animal, and may have limited effect. With the current exclusion not extending to the built environment such an approach would only address nesting in 'natural habitat'. The suggestion that the provision of, or not discouraging, nesting sites in natural habitat; and the planting of vegetation to attract wild animals could also be considered as a form of causing nuisance needs further information to be provided by councils to allow proper consideration. It would not be appropriate to limit the maintenance or improvement of urban biodiversity through the legislation. However if there were examples of species that did not contribute to urban biodiversity being attracted in this way then there may be reason for further consideration. It would also be inappropriate, as an example, to require the removal of flowering vegetation on account that bees or birds are attracted when the plants are in flower and someone is aggrieved. This would intrude significantly on the rights of landowners to maintain their gardens with flowering plants and should be considered in the category of potential nuisances that are acceptable to the broader community, similar to noise from children at schools.

Recommendation

The current regulatory approach is retained.

2.1.4 Noise from sporting activities – motorsports

Noise or other nuisance from sporting or associated activities at sporting venues is declared as 'not local nuisance' and excluded from regulation under the LNLC Act, on the basis that sports venues are widespread, provide an important community function, and noise, in particular, is incidental to the playing of sport at the venue.

Motorsports is a form of sport that produces considerably more noise than other sports. Motorsports venues, and the noise generated, are mostly already regulated through other legislation (EP Act, *Planning, Development and Infrastructure Act 2016* and *South Australian Motorsport Act 1984*).

All new and upgraded motorsports venues require a development approval to operate and should include conditions to control noise impacts such as limited hours of operation. If a motorsports venue is proposed within 3 km of residential premises not associated with the premises the development application must be referred to the EPA who has the ability to direct refusal or apply conditions to limit impacts. A motorsports venue less than 200 m from a residential premises not associated with the venue will require a licence under Schedule 1, Activity 8(5) of the EP Act.

If motorsports venues were removed from the exclusion for sporting venues, the majority of venues would still not be regulated under the LNLC Act. This is because the Act does not apply to EPA licensed premises or development authorisation approved activities (as discussed earlier) that have conditions to minimise nuisance from the activity (see section 5 and Part 3 of Schedule 1 of the LNLC Act). This reflects the design of the LNLC Act not to apply duplication of regulation on activities effectively regulated for nuisance impacts under other legislation.

The only motorsports venues that would be regulated by the LNLC Act in this scenario is where development authorisations are lacking conditions that minimise noise impacts on neighbouring residents and those older venues with existing land use rights that do not have a relevant approvals or conditions of approval. The LNLC Act could be used to apply similar controls as would be applied to a new or upgraded facility through the development system with the use of a nuisance abatement notice. Currently the EP Act may still be used to regulate such issues.

Consultation feedback summary

The majority of submissions on this matter were not supportive of any change to the legislation to allow the LNLC Act to be applied to motorsports venues that did not have an approval under other legislation. It was generally put that such venues are very uncommon and that the Development Act (or Planning, Development and Infrastructure Act) and the EP Act suitably regulate the majority of motorsports venues and able to regulate any future developments of this kind.

Response to consultation feedback

The EPA agrees that there are very few motorsports venues that are able to operate without a development approval or EPA licence (where needed) and that the potential for nuisance is minimal. The only possible issue that may arise would be if such a venue sought to increase the number of events held however it is noted that such a move may trigger the need for a development approval.

Recommendation

The current regulatory approach is retained.

2.1.5 Possible new 'things that are local nuisance'

There were several general suggestions made that would duplicate controls in place under other legislation or would more suitably be regulated under existing legislation. These included regulation of illuminated signage by businesses and on bus stops (regulated as a form of development in most cases), containment of cats and dogs on owner's property, and car 'burnouts'. Additional suggestions beyond the scope of the discussion paper are considered in section 5 of this report.

Light as an agent of local nuisance

Light and heat were included in the definition of local nuisance when the Bill for the LNLC Act was first consulted on in 2015 but subsequently removed due to feedback from councils that the definition in the Bill was too broad. Since the Act commenced, a number of councils have indicated that being able to deal with light nuisance under the Act would be useful.

Light is considered a statutory form of nuisance under Queensland and ACT legislation, and also in the United Kingdom. Light nuisance in a domestic setting is generally easy to resolve through better screening and redirection of lighting or use of timers. Light from larger sources (eg sporting fields and commercial premises) may prove more difficult but as with all other nuisances regulated by the Act, light nuisance would operate within the due diligence defence provisions in section 27 where reasonability of actions to ameliorate a nuisance is a relevant consideration. For example, it would be unreasonable for a sporting venue to remove its lights but may be reasonable to adjust direction, upgrade to technology with less light spill or apply a curfew on their use.

Consultation feedback summary

The majority of council submissions did not support the inclusion of light on the basis of additional workload, operational difficulties with out-of-hours complaints, and the need for technical capabilities regarding light measurement. There were some council submissions that supported targeted regulation of lighting but warned against the potential for resource impacts if a 'carte blanche' approach was pursued. Community submissions were supportive of including light as an agent of nuisance. The issue was also discussed considerably at the public consultation meeting that was held. The discussion included whether natural light and artificial light should be regulated.

Natural light was raised in the context of glare from roofs and solar panels. The Environmental Defenders Office (EDO) were supportive of including light and outlined the scientific evidence that light pollution can have lasting adverse effects on both human and wildlife health. The EDO submission also outlined the United Kingdom approach to light nuisance including relevant considerations councils should have when assessing such nuisance.

Response to consultation feedback

As noted in the EDO submission, 'given every other sensory nuisance is included it seems prudent to include light considering its ability to interfere with enjoyment of land'. It is acknowledged that the addition of light as an agent of nuisance would increase the responsibilities of the regulator (councils) and its addition would need to be limited by a number of exclusions and transitional approaches in order to reduce any such increase. The increase in responsibilities to councils needs to be considered alongside the benefit to the community of having a resolution path for light nuisance. Provision of controls that are restricted to lighting that does not require development approval would fill a regulatory gap where there is currently no recourse for residents impacted by light nuisance. If light was included it would be assessed using subjective assessment, as with other nuisances.

It is noted that lighting associated with an authorisation under other legislation would be automatically excluded from application of the LNLC Act due to the broad exclusion in clause 5(d). This would exclude more recently approved developments where light spill was a relevant consideration. Lighting that would need to be considered for exclusion from the LNLC Act (in addition to current exclusions that would apply) or at least managed through a mediation approach would include pre-existing lighting associated with activities that would now be dealt with under the development system such as outdoor business (including industry) lighting, illuminated billboards and signage; street lighting; and lighting on public or private land for safe public thoroughfare. Light from sporting venues could be excluded by broadening the current exclusion regarding noise from sporting venues to include light. Consideration would also need to be given regarding application (or exclusion) to temporary installations such as Christmas lights. Consideration would also need to be given to limiting controls to external lighting and any other relevant limitations.

The addition of light as an agent of local nuisance can be achieved through amendment of Schedule 1 via a regulation. It does not require an Act amendment. The ability to include (and amend or remove) through a regulation change would allow for quick changes or repeal should it be trialled and prove unworkable.

Recommendation

Light is included as an agent of local nuisance via regulations, as part of any proposal to amend the LNLC Act resulting from this review and that the EPA further engage with the LGA and councils on the scope of controls that are to be applied.

Noise from vehicles – revving, alarms, off-road motorbikes

The LNLC Act currently excludes noise from vehicles other than vehicles operating within, or entering or leaving, business premises and from waste transport vehicles on roads and road-related areas. This is because it is impractical to apply regulation to general traffic noise, including noisy vehicles on roads, at a specific locality because the vehicles that are causing the noise (and the nuisance) are transiting the location irregularly and cannot, individually, be identified as the source of the nuisance associated with the locality. SAPOL have powers under the *Australian Road Rules* (rule 291) to deal with individual vehicles that are identified on roads as being unreasonably noisy.

Following the implementation of the legislation it is apparent that there are examples where nuisance is emanating from an identifiable individual vehicle at a specific locality that the exclusion may currently apply to. The examples identified to date are revving engines on residential premises, running food refrigeration vehicles overnight, faulty car alarms and recreational use of off-road motorbikes (not associated with primary production activities).

Consultation feedback summary

The general consensus from councils was that the regulation of car alarms and off-road motorbikes should not be included within the legislation although the LGA did support further discussion regarding off-road motorbikes. Issues raised regarding the inclusion of car alarms included the inability for authorised officers to access registration information in the field in a timely manner to determine the offender and a general reluctance to take on additional workload. Issues raised regarding off-road motorbikes included links to anti-social behaviour and that SAPOL are better placed to manage such nuisances.

There were a number of council submissions that indicated support for the inclusion of refrigerated trucks within the ambit of the legislation. It was noted in one submission that running of a refrigerated truck would be similar to running a noisy air conditioner or other form of compressor, and could be easily identified using subjective assessment. A further submission from a council noted that such complaints could be followed up during business hours and would not present after-hours concerns raised elsewhere.

Response to consultation feedback

From submissions received there was little appetite from councils for regulation of car alarms, revving on premises or off-road motorbike use. Some submissions did support their inclusion within the LNLC Act but a number of councils also articulated particular barriers to effective regulation of these matters. There was however support from a number of councils and other submitters for refrigerated trucks to be included. As noted on one of these submissions, the operation of a refrigerated truck at a premises is not dissimilar to the operation of a fixed machine such as an air conditioner or pool pump. Given the potential for such a noise nuisance to be a nightly issue rather than the sporadic nature of other nuisances it is worthy of consideration for inclusion.

Recommendation

Noise from refrigerated vehicles to be specifically included as a form of local nuisance (or that the exclusion related to vehicle noise is clarified), as part of any future project to amend the legislation.

2.1.6 Possible new ‘things that are not local nuisance’

Dust from unsealed roads

Some councils receive complaints regarding dust nuisance generated from unsealed roads. There are tens of thousands of kilometres of unsealed roads throughout South Australia. It is not practical and would be cost prohibitive to seal all roads and maintain them. Councils are able to assist with nuisance dust where the issue is considerable by erecting signage regarding dust nuisance or reducing speed limits in impacted areas. The LNLC Act attributes responsibility for nuisance by applying to a person carrying on an activity that results in nuisance, or through failure to act. To ensure that councils are not deemed responsible for nuisance dust from unsealed roads through a perverse interpretation of ‘failure to act’ as a result of not sealing a road, it is suggested that dust from unsealed roads should be prescribed as ‘not local nuisance’.

Consultation feedback summary

There was general support that dust from public roads should be excluded from the LNLC Act. There was consideration given to extending such an exclusion to private roads in a small number of submissions. One council suggested that private roads should also be considered for exclusion, while another council suggested dust from private roads should be investigated like any other dust contributing to a local nuisance.

Response to consultation feedback

It is agreed that dust from public roads should be excluded from the operation of the LNLC Act. The cause of the nuisance in these circumstances is generally from third party vehicles using the roads in good faith and may be generating nuisance when otherwise using the road in a lawful manner (speed, etc). It would be inappropriate (and pointless) for councils to deal with such a nuisance by pursuing the owners of these vehicles. The other 'cause' of such nuisance may be the material used for the road, which would be a matter for the relevant council. Such issues may be unresolvable or, if they are, would be resolved by the council, and representation to council is available under the *Local Government Act 1999* by aggrieved persons.

Excluding dust from private roads may cause unnecessary complications with enforcement of general dust complaints from private property. While there is merit to treat all unsealed roads, similarly there is potential for confusion as to which part of a private property may be considered a road. It is preferable to apply common sense and the concept of 'reasonable and practicable' as articulated in regulation 4 of the *Local Nuisance and Litter Control Regulations 2017* (LNLC Regulations) when assessing dust nuisance from private property.

Recommendation

Dust from unsealed public roads to be prescribed as 'not local nuisance' under Schedule 1 of the LNLC Act as part of any future project to amend the legislation.

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

Noise from public infrastructure works is prescribed as 'not local nuisance' under Schedule 1 of the LNLC Act so that infrastructure works which benefit the public are not unduly regulated where the nuisance is unavoidable. While dust can be attenuated, noise is often extremely hard to minimise when working on public infrastructure. Examples include evening or overnight roadworks or water infrastructure maintenance where a certain amount of noise is unavoidable and must be carried out overnight to avoid traffic disruption. Under the EP Act, noise includes vibration, while under the LNLC Act noise and vibration are separate agents of nuisance and hence the exclusion relating to noise from public infrastructure does not apply to vibration.

It is evident that public infrastructure earthworks may also result in some level of vibration impact caused by compacting of road base associated with the works. The vibration impact would be minimal in most circumstances and it is proposed to prescribe that vibration from public infrastructure works is not local nuisance. Dilapidation reports (used to assess the state of a building before and after an activity that produces vibration to identify any damage and provide evidence for claiming of damages) may also be available as an alternative to regulation prior to commencement of major public infrastructure projects.

A further issue is the extent of the exemption for noise from public infrastructure. While there are roadworks, water pipe repairs and the like that may need to occur late at night and with limited advance notice to fix an issue and avoid disruption to traffic (as discussed earlier) there are other examples of public infrastructure works that may not necessarily need to be conducted at night or in the early morning other than for convenience. One example is concreting works associated with a public hospital redevelopment. Under the terms of the exclusion there are no limits to the nuisance caused to neighbouring properties from this activity while the same activity on another site would be regulated by the LNLC Act.

The benefit of applying the Act to such scenarios is that where there is a valid need, an exemption (under section 19) can be sought and, as part of that process, neighbours can be informed by the applicant and complaint mechanisms put in place by the applicant such that the council receives less complaints.

Consultation feedback summary

The majority of submissions were supportive of excluding vibration from public infrastructure works from the application of the LNLC Act. Some councils noted that they had not dealt with issues relating to vibration from public works previously.

There were opposing views regarding the proposal to limit the exclusion to situations where nuisance cannot be reasonably avoided or managed. Some submitters supported the proposal and some did not. Two councils submitted that applying a consideration as to whether works were 'reasonably avoidable' would be confusing for the community and should not be included.

Response to consultation feedback

It is acknowledged that vibration is a very uncommon form of nuisance associated with public infrastructure works. Given the exemption for noise from public infrastructure works is based on the urgency and public good, and that vibration is very difficult to limit when it does occur, it would not be unreasonable to extend the exemption to vibration.

The concept of limiting the application of the public infrastructure exclusion to works where it is completely necessary had a mixed response. There are similar inconsistencies within the legislation such as how air conditioner noise might be addressed at a premises that holds a liquor licence versus one that does not (discussed earlier) that this review is seeking to address. The LNLC Act already has a mechanism in place to allow for nuisance where it is necessary to avoid inconvenience to traffic or pedestrians through the considerations for authorised officers outlined in Regulation 4 of the LNLC Regulations. This is a lesser exclusion than is currently applied to public infrastructure works as it does not fully accommodate the public good element of public infrastructure works, however it may be a more appropriate approach to ensure that nuisance in the community is regulated more fairly. Such an approach could be improved for the purpose of public infrastructure by accommodating emergency situations or work to re-establish or repair essential services.

Recommendation

To include the following as part of any future project to amend the legislation:

- the exclusion for public infrastructure works be extended to include vibration
- consideration given to limiting the exclusion for public infrastructure works to works that occur within certain hours or are otherwise of a critical, time dependent, nature.

Early morning concrete pours in hot weather

An occasional source of noise complaints in the community is the early morning commencement of concrete pours associated with construction within residential areas. Early morning pours are done either due to the size of the pour or to accommodate extreme weather conditions that might affect the structural integrity of the concrete. Heat-related issues can be overcome to some extent with curing additives, and sealants applied after the pour. While there are alternative approaches available, this form of nuisance is usually a one-off event, has technical merit and warrants consideration of allowing early starts through some form of exemption where extreme heat is forecast. It would be important to set limits on what constitutes a reasonable early start time and to ensure the forecast temperature is easily verified by compliance staff so that it is not abused by operators over summer months.

Consultation feedback summary

Feedback on this issue was varied. A number of councils suggested that the current exemption provisions of the LNLC Act were sufficient and others suggested these could be made simpler for the purpose of concrete pours. Other councils were supportive of an automatic exemption for concrete pours during hot weather, some stipulated there should be limits regarding the timing of early starts applied to such exemptions, and others suggested there should be an unambiguous and easy way for compliance staff to assess the times against meteorological conditions.

The industry association representing concrete suppliers proposed there should not be time constraints placed on early concrete pours in that they normally occur through technical imperative and also reduces impacts on traffic. It was also noted that temperature may not be the only driver for an early pour and the size of the job is also a relevant consideration in establishing a permanent exemption.

A further suggestion was to issue permits (other than the current exemption) for early morning concrete pours. The LGA was supportive of further discussions with industry on the matter.

Response to consultation feedback

The positive experience of a number of councils effectively utilising the existing exemption provisions to allow for early morning concrete pours indicates there is limited need to provide set exemptions for this activity. More rules would provide less flexibility for councils to administer the legislation to the satisfaction of their communities.

It is further noted that issues other than temperature were identified as possible triggers (size of pour, rain, high winds) for early starts, so to only deal with temperature would make compliance with requirements of the Act less clear for concrete operators. This is because some triggers would require an exemption under the current arrangements, and pours during high temperatures would require assessment by council staff against the terms of any possible exemption provision to confirm compliance if a complaint was made.

Some of the comments received supported more straightforward exemption processes (permitting). The Act already allows for councils to establish shorter assessment timeframes (regulation 6), however there may be opportunities to provide for reduced requirements associated with the application for an exemption particularly regarding content obligations for a site nuisance management plan. Such reduced obligations could be limited to certain activities or at the determination of councils.

Recommendation

Amendments to the exemption provisions to be developed in association with the LGA to allow councils greater discretion as to what they require from applicants and that such amendments to be considered as part of any future project to amend the legislation.

2.2 Waste collection vehicles – application beyond roads and road-related areas [section 5(5)]

The LNLC Act is designed so that the majority of activities licensed by the EPA are excluded as they are already regulated under the EP Act. The exceptions to this are activities associated with a vehicle such as earthworks drainage, dredging and waste transport.

There are two reasons for this arrangement. Firstly, litter from such vehicles is better dealt with under the provisions of the LNLC Act and to exclude these vehicles would make the operation of public litter reporting more difficult as checks would need to be made against a frequently updated list of vehicle registrations associated with the EPA license . The second reason relates to appropriate reporting of other forms of nuisance from these activities, particularly noise. The neighbours of an licensed site would generally report directly to the EPA, while a complainant aggrieved by a nuisance

from a mobile activity would unlikely know that the activity is licensed by the EPA and should have confidence that their local council can deal with all mobile activities, whether EPA licensed or not.

The wording of the current exclusion is limited to 'roads and road-related areas', as defined in the *Road Traffic Act 1961*. While the common meaning of these terms might seem to limit the application to public roads and nearby areas, the definitions extend their meaning to include private property areas that are publicly accessible to pedestrians, bicycles and motor vehicles. The way the exclusion is written means that, in the case of waste transport vehicles, the LNLC Act generally applies to nuisance generated by them except when operating on private property that is not accessible to the public, as noted above. This creates a regulatory arrangement that causes unnecessary difficulty when assessing alleged nuisance from waste transport vehicles.

Consultation feedback summary

Consultation feedback was generally supportive of consistency between how the LNLC Act is applied to waste collection vehicles on public and private land and that councils should be able to regulate equally in all circumstances. A few councils stated that council waste collection should remain exempt or that the 'exemption' should be better articulated in the Act.

Response to consultation feedback

There does not appear to be any policy reason as to why nuisance from waste vehicles when they are operating on private property should be treated differently to every other circumstance. This appears to be an unforeseen issue with the Act.

Council waste collection vehicles are not exempted. Schedule 1 of the LNLC Act has no link to whether that collection is licensed or not. Further, council waste transport vehicles do not require an EPA licence and are not subject to the limitations imposed by section 5 of the LNLC Act. The only limitation is related to EPA-licensed waste transporters that prevents intervention regarding nuisance when they are operating on private property, as discussed above. The Act applies to council waste collection vehicles on public and private land (if such vehicles were to collect waste from private land).

Recommendation

Application of the LNLC Act to EPA-licensed waste collection vehicles to be extended to include private property as part of any future project to amend the legislation.

2.3 Improve subjective assessment of nuisance or introduce objective measures of compliance

Subjective assessment is provided for in section 50 of the LNLC Act to allow authorised officers to assess the presence of nuisance using their own senses. This may include aural assessment of noise, visual assessment of dust or smoke nuisance, and odour assessments. Regulations (regulation 4) under the Act provide guidance on various considerations when making a subjective assessment of the presence of nuisance. The broader experience of the EPA in assisting councils with the implementation and administration of the Act is that subjective assessment will improve with experience, and be further enhanced with training from the EPA.

Sensory evidence, or subjective assessment, is not new when dealing with nuisances throughout Australia. In South Australia it is already provided for under provisions identical to those in the LNLC Act, under section 139(4) of the EP Act. Tasmania, Queensland and Victoria allow subjective assessment by councils of nuisance. Victoria prohibits the use of domestic air conditioners overnight where noise is audible from within a habitable room of another residential premises. Audibility of noise is a very straightforward use of subjective assessment, however determining the reasonability of an audible noise is less so.

While there are provisions both Acts that support subjective assessment, there are no provisions that prevent the taking of objective measurements as part of determining whether there is sufficient evidence that an offence may be occurring.

One issue that may arise is where a subjective determination of noise nuisance is made relating to a complaint where the noise is of a nature that is borderline with regard to causing nuisance and a further objective measurement (taken after the subjective determination by the alleged offender or a third party) may appear contradictory. For this reason, all noise complaints of a borderline nature should be assessed with an element of objective measurement to ensure that compliance requirements are reasonable and effective. Subjective assessment is still useful for very obvious offences and for obviously unreasonable complaints.

Under the EP Act, the *Environment Protection (Noise) Policy 2007* (Noise Policy) provides objective guidance on what is considered to meet the general environmental duty (section 25 – *reasonable and practicable measures*) relating to noise. In essence, this sets noise standards for compliance with the general environmental duty.

The LNLC Act has similar to the general environmental duty under section 27 – *defence of due diligence*. Assessment of noise against the Noise Policy to assist in determining whether the defence of due diligence is likely to be applicable is appropriate in cases where the noise is of a borderline nature. However, a similar approach could be incorporated into the LNLC Act or Regulations to provide clarity around the use of such an approach.

Current guidance to local government could be updated to incorporate a process chart that councils would use for straightforward noise nuisances (high end, low end, and matters of fact/time related), and for making a subjective determination (not limited to subjective assessment) of borderline or other complicated noise nuisance issues that incorporates an objective assessment using the Noise Policy or a similar but simplified scheme established under the Act to provide certainty in assessments. Such a procedure could also be incorporated into the Regulations to build on the guidance provided by regulation 4. It is understood that some council officers use point-in-time noise readings to support their subjective assessments.

There are other options that could be considered to improve the application of the subjective assessment approach within the legislation. Non-legislative approaches include further training of local government staff and the development of a standard operating procedure adopted by councils.

A further legislative option specific to key domestic noise sources, such as air conditioners, would be to apply a similar approach as Victoria where audibility of certain noise sources from habitable rooms of a residential premises during night-time hours, except under exceptional circumstances such as extreme weather, is prohibited.

Consultation feedback summary

A number of councils made submissions that the subjective assessment approach was working well and did not support changes. It was further noted that support and guidelines from the EPA encouraged the appropriate use of subjective assessment. With regard to noise nuisance, a number of councils indicated that the subjective approach does not prevent officers from utilising measurement of noise in borderline or complex situations, when required, to assist forming a subjective view. It was also noted that inclusion of measurement of some description would help ensure proposed compliance requirements are practicable and reasonable and will be effective to reduce the nuisance noise.

One council submission noted that if objective assessment is introduced it will require additional training, practice guidelines, expertise and support, resourcing and the supply of equipment to undertake relevant testing, such as noise meters, vibration detection equipment, dust monitoring devices, etc. The additional cost associated with upskilling and equipment was noted as a negative outcome by many councils.

It was noted in one submission that councils were reluctant to initiate prosecution proceedings relying solely on the subjective assessment of an authorised officer. However, the submission further commented that the economic nature of a subjective assessment would be lost with prescriptive measures and guidelines.

The Environmental Defenders Office pointed out that there were already subjective and objective elements to section 50; the current subjective assessment requires assessment using objective criteria.

A submission from a community member noted that assessment by an officer at one point in time did not provide consistency in application of the legislation, with traffic noise and other noises making the assessment unfair and biased.

There were a number of suggestions made to improve the assessment of local nuisance under the Act:

- remove subjective assessment and allow video/audio evidence
- compulsory mediation for all local nuisance complaints regarding construction
- more guidance for when councils need to take action
- more training for councils on subjective assessment
- out-of-hours assistance from the EPA in noise assessments
- section 50 should be amended to reflect a three-step assessment process: whether the alleged person caused the nuisance; assessment of level, nature and extent of nuisance; and assessment of reasonableness
- the EPA to develop a formal policy or set of guidelines that acknowledges and seeks to reconcile the different thresholds established by the different regulatory frameworks
- agreement that a process chart be developed and/or procedure incorporated into the regulations
- provide further guidance in the Act, regarding the role which objective measurements can play in addressing local nuisance matters
- the EPA to undertake objective assessments to support councils in situations where council officers deem a matter to be ‘borderline’, or where the officer has deemed the matter to be not a nuisance and the complainant is not satisfied with the outcome
- councils have a shared acoustic engineer to provide technical/ scientific data for factual objective results
- residents hire sound measuring equipment from council at a low cost in order to make recordings themselves to support the investigation process
- give local ward councillors an option to become authorised officers so that nuisance may be verified after hours. They may live in close proximity and could work as a backup to council.

Response to consultation feedback

When the LNLC Act was being developed in 2015 there was very clear input from councils that measurement obligations for nuisance were not supported due to the need to maintain equipment and skillsets within the council to undertake the measurements. The majority of council submissions to the discussion paper maintain this view.

It is also acknowledged that objective measurements may support evidence for the purpose of court action and that the main nuisance issue where objective measurements may be useful is that of noise. It is important to note that the Act does not prevent the collection of additional evidence to assist with proving an offence, and the collection of objective measurements of noise to support a subjective determination of nuisance is good practice.

The retention of nuisance type matters within the Noise Policy 2007 also likely causes confusion and will be overcome with the review of the policy currently underway.

Further training or documentation from the LGA, Authorised Persons Association (APA) or the EPA on the proper use of subjective assessment that provides guidance on when and how to use objective measurement as part of a subjective determination may assist council staff with administering the legislation. It may also be appropriate to improve regulation 4 by codifying such guidance.

A number of suggestions related to further EPA involvement in the administration of the Act. It should be noted that the Act is principally to be administered by local government.

Recommendations

- Guidance for the use of objective measurement to support subjective determinations under the LNLC Act to be developed, and whether that guidance should be advisory or codified within the regulations (see regulation 4) to be considered as part of any future project to amend the legislation.
- If objective criteria is included in the LNLC Act as part of any future project to amend the legislation that the Noise Policy is specified as not applicable under the Act.
- The EPA to discuss with the LGA and APA the need for further training of authorised persons and an appropriate delivery approach.

3 Consultation feedback on litter discussion points

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

The LNLC Act does not prevent councils from urgent clean-ups of littered material, however it does not allow for cost recovery in these circumstances. The Act provides that a Litter Abatement Notice may be issued to the person responsible for the litter that requires, among other things, that they clean it up. Such a notice would also include a timeframe for the clean-up to occur. If the notice is not complied with then the council may clean up the material and charge the clean-up cost to the person responsible.

This scenario is fair and reasonable in most situations as it provides procedural fairness to the alleged offender. When there is material littered that causes a hazard, whether a health, environmental or physical hazard (eg in the middle of a road), it may be a reasonable community expectation that the material is cleaned up immediately. This may be carried out by the council even if the offender is not yet known.

The Act provides for the court to order costs be paid for such matters (section 45) only where there is a conviction. The civil penalty provisions of the Act (section 34) do not provide a specific remedy in this regard as the maximum civil penalty is the maximum penalty for the offence plus any illegally obtained economic benefit. It could be argued that part of the penalty applied could be used to offset the cost of clean-up or alternatively, that the clean-up cost was an avoided cost of economic benefit to the alleged offender and recoverable. An option to explore could be a retrospective order of costs for such a scenario where an offender is identified but a conviction, for whatever reason, is not pursued. This could possibly be achieved through an extension to section 48 where councils may currently recoup technical and administrative costs.

Consultation feedback summary

There was unanimous support for the proposed amendment. It was highlighted in one submission that there will be a need for councils to be able to demonstrate a need to act in order to use the provision, should it be added. One submitter suggested that a similar approach to section 105J(9)(a) of the *Fire and Emergency Services Act 2005* where councils may apply the debt as ‘rates in arrears’ would be useful.

Response to consultation feedback

This amendment will be an important tool for councils to have to ensure that clean-ups that are required to remove or prevent a public hazard can be done promptly and costs may still be recovered. It will be important to retain procedural fairness so that councils do not default to using such a power without giving the alleged offender an opportunity to arrange for a clean-up.

Recommendation

An amendment to allow for retrospective cost-recovery orders where an alleged offender is identified after clean-up by a council and the clean-up was reasonably necessary to remove an environmental, health or physical hazard and that appeal rights for such an order to be considered as part of any future project to amend the legislation.

3.2 Bill posting – car parks and expiations

Under the LNLC Act a person must not post a bill on property without the consent of the owner or occupier. This covers posting of bills on buildings, cars and other property but it is unclear where bill posting is occurring on vehicles within a carpark, as to whether the carpark constitutes 'property' or it only applies to the cars. This is important as a carpark owner may be aggrieved by the posting of bills on their land but may not have recourse to deal with it themselves. The ability to address the bill posting would rest with the owner of a car in the carpark. This may need improvement as it is the owner of the carpark that will be responsible for removing the resulting litter and, where offensive material is being distributed, may suffer reputational damage.

The Act currently only provides for a court imposed penalty for persons that authorise bill posting. Court proceedings are a considerable cost to councils and alleged offenders, and an expiation will provide deterrence from reoffending in many instances. An expiation amount for section 23(2) would overcome this issue.

Consultation feedback summary

There was general support for the inclusion of an expiation against the offence of authorising bill posting. There were various views regarding allowing for carpark owners to initiate complaints regarding bill posting on their premises. Some submitters stated that carpark operators should not be able to instigate proceedings against posters of bills on their property while others were supportive of broadening the provision to allow for carpark owners to initiate proceedings for bill posting on their property. There was also a suggestion that expiations should be tiered to address varying degrees of bill posting.

Response to consultation feedback

It may not have been completely clear what amendment was proposed in the discussion paper regarding extension of 'property' to include carparks, as responses tended to focus on carpark owners being able to initiate proceedings for bill posting on their premises. The civil remedy provisions of the Act would be extended to the owner of the carpark but there would also be powers made available to councils. Such an amendment would also allow councils to expiate or prosecute on behalf of a carpark owner.

Recommendation

A further definition of 'property' to include a carpark where bills are posted on vehicles and that the addition of an expiation for the offence of authorising bill posting to be considered as part of any future project to amend the legislation.

3.3 Illegal dumping

Illegal dumping is a considerable issue in the community and the LNLC Act introduced a number of tools to assist councils with compliance and cost recovery. Such initiatives include the following:

- Vehicle owner responsibility provisions that allow for surveillance of illegal dumping hotspots and for reports of vehicles being used for illegal dumping to be better followed up for possible prosecution.
- Higher penalties and expiations for acts of illegal dumping.
- Specific penalties for asbestos dumping.
- Ability to order clean-ups where the offender is known.
- Ability to undertake the clean-up and charge the offender where the offender does not comply with a litter abatement notice.

A very general question was asked in the discussion paper as to whether submitters had any suggested changes to the Act that would assist with tackling illegal dumping.

Consultation feedback summary

There were a number of suggestions made across the submissions:

- Introducing higher expiation amounts for the littering offences in the LNLC Act.
- Adding an expiation for the 'Class A hazardous litter' offence.
- Extending the proposed retrospective cost recovery for emergency situations to illegal dumping situations where the offender is determined after the council cleans up the material.
- Considering 'general litter' as 'Class B hazardous litter' where it is disposed of to waters.
- Considering degradable plastics and other microplastics as 'Class B hazardous litter'.
- Including straws, cutlery and napkins as 'general litter'.
- Allowing abandoned unregistered trailers to be dealt with as illegal dumping rather than an adandoned vehicle.
- Allowing for a charge on land against an offender's property where the illegal dumping did not occur on the property.
- Reintroducing the 'Dob In a Litterer' program.

Providing a reverse burden of proof where an authorised officer forms an opinion as to the source of illegal dumping such that the alleged offender needs to prove that they did not dump the material.

A number of council submissions raised greater use of solid waste levy (the levy applied to waste that is disposed to landfill) funds for waste and recycling infrastructure or for reimbursement of costs associated with illegal dumping clean-ups. There was also a suggestion that the levy could be waived for illegally dumped material.

The EPA also notes from discussions with some councils that there has been some concern as to the interpretation of liquid wastewater being a form of litter and illegal dumping in that there are no examples provided within the definition to give greater clarity.

Response to consultation feedback

A number of the suggested amendments are worthy of further consideration. Higher expiation amounts would need to be informed by an assessment of councils' use of expiations and whether the amounts are not a sufficient deterrent (repeat offenders). An expiation amount for 'Class A hazardous litter' would need to be considerable to align with the maximum penalty under the LNLC Act ($250,000 for a body corporate) and may need to be of such an amount that it would be unlikely Parliament would support such a penalty being imposed at the discretion of an authorised officer.

There is an existing court process available for cost recovery from illegal dumping offenders where they can be identified but it may be appropriate to consider an option for councils to pursue where there is no conviction subject to suitable protections and appeal rights. The ability to apply a charge on land owned by a person found to be illegally dumping on land other than their own may also be suitable but would need further assessment to ensure it could be utilised in a manner that was fair to all parties, including the alleged offender.

There is merit to considering litter to waters as an aggravated form of littering. This is already contemplated in the LNLC Act with dumping of bulky waste such as vehicles to create artificial reefs considered 'Class B hazardous litter'. Equally, degradable plastics and other microplastics may also be considered a higher risk to the environment and could potentially be in a higher bracket of litter. There would however be considerable problems with compliance in that authorised officers would have difficulty determining and proving that an offence involved such material without employing laboratory testing. Straws, cutlery and napkins fall within the current definition of 'general litter' in that they are considered solid domestic or commercial waste.

The LNLC Act does consider vehicles and vehicle parts to be general litter where they do not fall within the ambit of 'abandoned' vehicles under the *Local Government Act 1999*. It may be appropriate to better define the crossover between the two pieces of legislation or provide further guidance to councils on this matter.

The operation of the 'Dob in a Litterer' program is not established by the LNLC Act. The state government discontinued the scheme in September. Similarly, the solid waste levy was not established under the LNLC Act and related matters are determined under the EP Act. Work has been done previously, through the LGA, as to an appropriate methodology for a rebate or exemption from the levy for illegally dumped material, however there has yet to be a proposal developed that overcomes governance and probity issues. The EPA is continuing to work with the LGA on finding possible ways forward.

Provision of a reverse burden of proof should only be considered in situations where natural justice can be maintained. Providing that an authorised officer may form an opinion as to the source of illegal dumping such that the alleged offender needs to prove that they did not dump the material would need to be strictly controlled by providing strict objective criteria for an authorised officer to satisfy in forming their opinion. This may include finding identifying documents, traceable vehicle parts or similar. This could be explored further but it would not be appropriate to provide such a power without including objective criteria.

Recommendation

The suggestions regarding littering and illegal dumping, where appropriate to do so, to be considered as part of any future project to amend the legislation.

3.4 Trolleys

Trolleys that are dumped outside of shopping centres constitute littering under the LNLC Act. The offence applies to the person doing the littering, not the owner of the trolley. Council officers are rarely present to witness the act of littering and there is little in the Act to resolve the problem effectively. The act of littering does not extinguish ownership rights for these articles.

There are a number of approaches that could further assist councils with the management of trolleys in their area. Many of these were raised at a 'Shopping Trolley Summit' hosted by the City of Marion in July 2018. Extension of the litter abatement notice provisions such that they can be issued to the owners of trolleys requiring collection or preventative measures to be implemented is one way that this might be achieved.

The ACT government has a scheme in place to better manage trolleys dumped in the community. It should be noted however that the territory government provides all local government services. In any other state or territory the programs established for trolleys in the ACT would be administered by local government.

The ACT scheme is summarised as the following:

- The creation of offences against the improper use of shopping trolleys including removal of trolleys from shopping centres.
- A retailer must place signage warning people against taking shopping trolleys outside a shopping centre precinct.
- The requirement that retailers keep trolleys on their premises with an exemption from this requirement if a trolley containment system is in place (eg deposit or wheel locks).
- The provision of identification on shopping trolleys to assist their collection if abandoned.
- A proactive trolley collection scheme that allows the government to respond to a trolley problem in a specific area.

Some councils across Australia have introduced local bylaws to manage the issue. For example, Alice Springs Town Council's bylaws allow council officers to fine people caught abandoning trolleys, impound trolleys collected from council land, charge the owner of the trolleys a release fee, require the owner to collect the trolleys, and to dispose of the trolleys if not collected. In the context of this review, such provisions could be written into the LNLC Act as general provisions that councils could utilise at their discretion. Alternatively it could be left to councils to create their own bylaws.

One issue that needs consideration when applying stricter controls on the use of trolleys outside of shopping centres is the potential for social disadvantage for those without a car or the means to buy their own personal trolley to transport shopping to their home. This issue was highlighted in a report by the ACT Human Rights Commissioner in response to the ACT trolley controls. A further issue is whether such changes might promote additional car use, however this impact would be minimal.

Consultation feedback summary

The majority of input to this issue came from councils. The majority of councils consider the current provisions for the management of abandoned trolleys in the LNLC Act are ineffective and statewide provisions were preferable to implementing council bylaws. Some councils hold the view that the various trolley reporting services such as Trolley Tracker rarely respond within a reasonable timeframe. Identifying members of the community who abandon trolleys was problematic and the likelihood of witnessing the act was unlikely. It was further noted by a number of councils that impounding trolleys found away from shopping precincts was also ineffective.

There were some councils that noted that they did not have a significant problem with abandoned trolleys and would be concerned by the impact any legislated restrictions may have on small businesses and council resources if mandatory requirements were applied.

In general, councils would like further powers to deal with abandoned trolleys with particular focus on the responsibility of retailers to better manage the issue. Suggestions for additional powers include:

- Requiring supermarkets to label trolleys with their brand and a reporting hotline to facilitate collection.
- Implementing the ACT scheme (outlined above).
- Specifically including trolleys in the definition of 'general litter' in the legislation.
- Requiring retailers to prepare a shopping trolley management plan.
- Extending the ability to issue litter abatement notices to areas beyond the current 100-m limit and to retailers.
- An express power to enable councils to recover costs from owners for removing trolleys from public spaces.
- Requiring trolleys have coin or wheel locks (geofencing) or an EFT holding mechanism;
- Extending responsibility for abandoned trolleys to owners of trolleys;
- Appropriate fines and penalties should be available for failure to clean up and manage shopping trolleys as 'litter'.

There were submissions made by a few retailers/retail groups. Coles indicated that it was keen to implement more customer and awareness strategies and was also open to potential investments in infrastructure.

To assist socially disadvantaged individuals, it was suggested that revenue generated from trolley deposits not refunded could be used to subsidise a home delivery option or that a reduced fee could be offered to allow socially individuals access to this service upon presentation of a health card or other relevant documentation. One council submitted that social disadvantage and trolley use is not a council matter.

Response to consultation feedback

The EPA acknowledges that some councils have concerns regarding the proliferation of abandoned shopping trolleys in their areas and have asked the government to provide them with better powers to manage the issue. In determining what might be appropriate insofar as new powers it is important to consider the potential costs to both councils and retailers of doing so.

Applying mandatory obligations on all retailers would be a blunt approach and apply unnecessary costs on retailers that manage their trolleys well or do not experience trolley abandonment. Equally, applying the same controls to a small retailer that may have an occasional trolley removed from their premises as to a very large retailer that is losing significant numbers of trolleys to abandonment would apply unreasonable costs, generally be an unfair application of regulation, and cause a significant cost burden to small businesses. Any obligations placed on retailers would also need to be overseen by council regulatory staff to ensure compliance and if controls were applied broadly there would be a community expectation that all retailers complied regardless of their level of trolley abandonment and councils would need to resource that compliance effort. This would result in a significant cost burden to councils.

Improving current tools such as litter abatement notices so that they can be better used to address the causes of abandonment and requiring specific controls from individual retailers would be useful improvements to the legislative scheme and could provide all of the necessary powers to be applied on a case-by-case basis with retailers that have considerable trolley abandonment issues. A further option would be to give councils the power to require a retailer to prepare and implement a shopping trolley management plan. This would allow councils to make an active determination to focus on a problematic area and the retailer(s) in that area rather than a requirement for councils to require such things of all retailers across their entire area.

Recommendations

The following to be considered as part of any future project to amend the legislation:

- trolleys are added to the definition of 'general litter'
- providing councils with further powers, whether through improvements to litter abatement notices or by other means, to require individual retailers to implement strategies to reduce excessive trolley abandonment or for the collection of abandoned trolleys where there is a significant issue of trolley abandonment
- cost recovery mechanisms for recovery of shopping trolleys from outside of shopping precincts

4 Consultation feedback on general discussion points

4.1 Abatement notices – linkage to land

One of the main tools for addressing nuisance from fixed machines such as air conditioners and pool pumps is a nuisance abatement notice. Nuisance from a fixed machine requires ongoing management to avoid further nuisance and controls such as limiting hours of operation or requiring the maintenance of an acoustic barrier may be appropriate elements of a notice. It has been identified by local government that change of ownership of a property with a problematic fixed machine that has controls applied within a notice is not able to be transferred to the new owner of the property and a new regulatory process would need to be undertaken. It has been proposed that the LNLC Act be amended to allow councils to register nuisance abatement notices against land where the source of the nuisance at a property requires ongoing regulation.

Consultation feedback summary

There was general support among submissions on this issue. The majority of submitters on this matter were councils. A few councils put forward an alternative approach of amending the *Land and Business (Sale and Conveyancing) Regulations 2010* such that notices under the LNLC Act would be flagged through the Form 1 process under that legislation during sale or transfer of property.

Response to consultation feedback

The EPA supports a broad toolkit for councils to use to administer the legislation.

Recommendation

The ability for a council to register a nuisance abatement notice onto land to be considered as part of any future amendments to the legislation and that amendment of the Land and Business (Sale and Conveyancing) Regulations 2010 is suggested to the Attorney General's Department (Consumer and Business Services) when that legislation is next revised.

4.2 Improving cost recovery

Cost recovery is an important element of any regulatory function performed by government. The LNLC Act contains a number of cost recovery provisions, generally linked to contraventions of the legislation that are directed at recovering costs from offenders. Where such measures are not being utilised or are not completely effective the residual cost is, by default, recovered through general rates as a service provided for the benefit of the broader community. Advice is sought from stakeholders regarding other potential mechanisms that could be considered to further enhance cost recovery provisions of the Act aimed at the offender.

Consultation feedback summary

There were a number of suggestions made within consultation submissions:

- Using the solid waste levy for reimbursement of clean-up costs for illegally dumped materials and/or to enable a waiver of solid waste levy payments on illegally dumped materials.
- Providing liability for clean-up costs to property managers of rented premises that could then be taken from the rental bond.
- The prescribed scheme should be amended to be a statutory charge where the council does not have to notify the Registrar-General. Instead the council notifies the land owner prior to applying the charge to the Rates Notice for the land.
- Consideration should be given to amending section 48 to enable cost recovery where urgent action is taken by the council to address a contravention of the LNLC Act.
- An automatic charging provision should be added for outstanding costs owed under the LNLC Act to assist in assuring security for councils and alleviate the administrative and cost burden associated with registering a charge.
- Section 33(15) should be amended so that councils can undertake default action and recover costs under section 31 for all manner of orders imposed by the ERD Court.
- Local government to be exempt from having to apply the *Unclaimed Goods Act 1987*.
- The EPA should also provide guidance on how to dispose of items that have been removed from a property. For example, council could sell items to reduce the total cost of a clean-up (eg scrap metal).

Response to consultation feedback

A number of attempts have been made by the EPA and LGA to determine appropriate mechanisms to enable a waiver of solid waste levy payments on illegally dumped materials but there has yet to be an appropriate mechanism established that would allow that to occur in an auditable fashion. The EPA is supportive of such an approach if an appropriate mechanism can be determined.

Attributing liability on third parties for illegally dumped material is an interesting concept but lacks an element of fairness in that the third party should not be held accountable for the actions of others. Feedback regarding amendment to existing provisions to make them easier to apply is very useful and such amendments should be pursued in any revisions to the Act. Section 48 relies on a contravention of the Act having occurred and being proven but may otherwise apply to urgent action as it does non-urgent action. Clarification that the Unclaimed Goods Act does not apply where it is clear that material has been dumped may also be a useful addition to the legislation although interaction with section 297 – *property in rubbish* of the *Local Government Act 1999*, would need to be considered.

Recommendation

The suggested amendments to existing elements of the legislation, and consideration of interactions with the *Unclaimed Goods Act 1987,* to be considered as part of any future project to amend the legislation.

4.3 Which court is best placed to deal with nuisance, litter and illegal dumping

The Environment, Resources and Development (ERD) Court specialises in environment protection and has a greater, and likely more consistent, knowledge of matters such as nuisance, litter and illegal dumping. The ERD Court acts as the Magistrates Court in its criminal jurisdiction, and there is no substantive difference in procedure between the ERD Court and the Magistrates Court. The only minor difference in practice in that the ERD Court tends have more pre-trial listings (ie a pre-trial conference followed by a directions hearing).

At present, in the ERD Court, the matters are heard in a central location. In the Magistrates Court, the matters can be heard either in Adelaide or in a regional court. While there is no requirement that a matter must be heard in a location where the offence took place, considerations of the balance of convenience (including the location most convenient to the defendant) would come in to play. As a result, matters could end up being listed in Port Augusta, Ceduna, Mount Gambier or elsewhere. While this would make use of the legislation by the EPA potentially more costly, it would provide greater access to regional councils to pursue prosecutions.

The Magistrates Court also has the facilities to arrange payment options for fines so offenders can go from the court to the cashier to finalise penalty payments. All metropolitan Magistrates Courts have staff to help direct a person to the court, a duty solicitor and assistance for disability or language issues.

Consultation feedback summary

The majority of feedback provided regarding this issue was in support of retaining jurisdiction with the ERD Court, mostly due to the specialist nature of the Court and better understanding of the subject matter being considered. There were a few submissions that suggested that jurisdiction could be split with minor offences dealt with through the Magistrates Court and more serious offences retained by the ERD Court.

Response to consultation feedback

Court proceedings under the LNLC Act to date in the ERD Court have been handled in a very thorough way. The Court has been very accommodating of self-representation and the judgements have provided useful case law in the application of the Act. The EPA acknowledges that local government is generally supportive of jurisdiction remaining with the ERD Court.

Recommendation

Jurisdiction for the Act to remain with the ERD Court.

4.4 What jurisdiction is best placed to deal with administrative appeals?

The LNLC Act currently allows appeals against litter and nuisance abatement notices to be made to the ERD Court. At the time that the Act was drafted, the South Australian Civil and Administrative Tribunal (SACAT[1]) was still in the process of being fully established and bringing relevant existing legislation under its jurisdiction. SACAT is considered a lower formality and lower-cost jurisdiction for administrative appeals. As a result of the complexity and volume of work being done to implement SACAT at the time it was not appropriate to add the Act to the SACAT jurisdiction. Instead it was determined that appeals under the Act should be dealt with by the ERD Court.

Consultation feedback summary

The majority of feedback on this issue recognised that the ERD Court's expertise in environment protection matters was very useful in hearing appeals under the Act and was helpful is resolving matters on appeal and sought to retain appeals with the jurisdiction of the ERD Court. It was noted in a few submissions that SACAT provides for a faster, simpler and cheaper resolution of matters. One council noted that SACAT has broad oversight on local government matters.

1 SACAT is a state tribunal that helps South Australians resolve issues within specific areas of law, either through agreement at a conference, conciliation or mediation, or through a decision of the tribunal at hearing. SACAT also conducts reviews of government decisions.

Response to consultation feedback

Appeals to date in the ERD Court have been reasonably straightforward and in the absence of any feedback regarding perceived or actual issues with the process the EPA is supportive of maintaining jurisdiction with the ERD Court.

Recommendation

Jurisdiction for appeals to remain with the ERD Court.

4.5 Exemptions from the LNLC Act for causing local nuisance

Persons creating nuisance may apply for an exemption from the LNLC Act (section 18). The process requires the applicant to submit a site nuisance management plan to the satisfaction of the council details sources of the nuisance, the steps being taken to minimise the nuisance and details of a person that can receive complaints regarding the nuisance, among other things. There are some necessary activities in the community that will cause local nuisance which is largely unavoidable and the exemption provision is in place to accommodate these activities.

The provisions in the Act allow for an exemption to last for a maximum of three months. If an activity that causes local nuisance extends beyond this period then a further exemption would need to be applied for, using the same process. The time limit for exemptions is in place to ensure that activities causing nuisance are completed in a timely manner and do not drag on to the detriment of neighbours. One activity that has the potential to cause nuisance over an extended period is large-scale construction which will often last several months and in some cases more than a year. In these circumstances the proponent will need to apply for an exemption every three months. A shorter process for extension or special categories of exemption that facilitate longer-term projects could be considered to reduce the administrative burden on councils and proponents.

Consultation feedback summary

Generally feedback from councils on this issue supports the current exemption process. Some councils would like to be able to grant exemptions for longer periods of time, on an ongoing basis or extend existing exemptions through a lesser process. One council suggested that the regulations prescribe too high a threshold for ‘exceptional circumstances’ and should be reviewed.

Response to consultation feedback

How councils manage exemptions in their community should be as flexible as possible so that the council meets the needs of its community. The EPA supports improvements to the exemption process to make their use more flexible. The term ‘exceptional circumstances’ is not defined in the Regulations.

Recommendation

Amendment of the LNLC Act to allow councils to extend exemptions without the need for a further application and allow councils to determine the appropriate expiry of the exemption to be considered as part of any future project to amend the legislation.

5 Other issues

Additional issues that have been raised through the consultation process not in the discussion paper are listed below under general groupings and a response against each group is provided.

5.1 Service delivery by councils and police

- SAPOL awareness (eg construction times, etc) needs improvement.
- Action advised after a breach through a letter from council should be required to be implemented in a shorter period of time.
- Non-legislative tools should be employed ie updated guidance tools for local councils and further training for local government staff.
- Refresher and ongoing training is required and must continue with EPA and LGA assistance.
- State government to provide ongoing funding to support councils in administering the LNLC Act. The EPA to provide more support to councils for noise and environmental nuisance matters.
- Residents afflicted by air-conditioner use after midnight are told to call police who do not attend and say no crime was committed. Told to call council who say that after-hours service only occurs in 'emergency' situations. Police should give a reference number or a after-hours service should report matters to council, or else how are single people meant to provide verification of noise nuisance.
- Disparity between three suburban councils as to how a specific issue is dealt with.
- Operational and administration aspects from initial council contact (told to ring EPA) through to investigation by council – one person's opinion at one point in time of their choosing and no contact with person raising issue.
- As a priority, there needs to be a public education and awareness campaign to inform the public, tradespersons and stakeholders that this Act exists and local government is responsible authority and not the EPA.

Response to consultation feedback

Further training of SAPOL officers and council staff in the operation of the LNLC Act and provision of guidance materials where of value is supported and will help overcome many of the issues raised above. It is recognised that SAPOL officers have wide ranging responsibilities and matters of local nuisance may not be an operational priority at times of high demand. This constraint needs to be recognised by the community however additional training in responsibilities under the Act would be helpful.

There is the occasional issue with complainants being told by councils to ring the EPA regarding local nuisance matters. The EPA will continue to work through issues to ensure that the issues are resolved.

Recommendations

- The EPA continues to liaise with local government and SAPOL regarding administration of the Act and promotes council membership with the Australasian Environmental Law Enforcement and Regulators neTwork (AELERT) to ensure councils have access to training in modern regulation provided through the network.
- The EPA continues to work with councils that divert complainants to the EPA to overcome any issues.

5.2 Suggested changes or additions related to issues that cause nuisance

- Allowable noise periods should be abolished.
- Illuminated signage by businesses and on bus stops (regulated as a form of development in most cases).
- Containment of cats and dogs on owner's property.
- Car 'burnouts'.
- Enhanced powers for dealing with unsightly premises, construction noise, and non-fixed machinery noise from non-domestic premises with specific reference to noise from council-operated lawnmowers.
- Cleaning of stormwater cleansing devices should be an obligation of the Act.
- Stormwater transgressing property boundaries should be determined as a nuisance.

- Night time noise restrictions should be added to government-run roadworks projects longer than a month near residential areas.
- Delivery of *Messenger* newspapers should be banned and instead distributed from community/retail outlets.
- Legislate maximum decibel rating for reversing vehicle sounds.
- Windfarms should not be approved until more data regarding impacts are available (from a NSW resident).
- Consideration should also be made to nuisance concerns from activity resulting in changes to barometric pressure and the impact on neighbouring premises.
- The definition of 'music' should be addressed so that it is not open to widespread interpretation.
- Grievances with neighbour's amplified music, use of power tools, camera surveillance and use of compactors.
- A new challenge is accounting for new technologies causing nuisance, particularly drones and lightweight aircraft.
- Air conditioners in the residential dwellings and commercial residential interface – no council regulatory requirement for distance or space from adjoining dwellings, bedrooms.
- Solar panel glare – laser beam like effect on adjoining properties at different times, inability to shield or redirect from living areas and outdoor recreational spaces
- Combined clustered multifactorial nuisance – individual residential property impacted from various surrounding sources, not just one individual nuisance, eg air conditioner noise and vibration, and solar panel glare.
- Grievance with neighbour barbequing and the resultant smoke and odour. Barbeques should not be allowed undercover.
- eScooters and share bikes are a problem, specifically illegal use, dumping and helmet sanitation.

Response to consultation feedback

There are a number of issues that occur in the community that may cause nuisance to some people that are difficult to apply sensible regulation. There are also different thresholds of acceptance by individuals for noise and other nuisance matters that impact them. In such circumstances the government needs to determine what is reasonable in a modern community.

New technologies will always need to be assessed if they are generating unacceptable nuisance. eScooters and share bikes are 'approved' under local government permits and as such are not considered nuisance for the purpose of the LNLC Act (see Schedule 1). Aircraft, including model aircraft and drones, are regulated by the Commonwealth and as such are unable to be regulated under South Australian legislation. The Act is designed to easily add new forms of nuisance quickly if they are proving to be problematic in the community.

There were several general suggestions made that would duplicate controls in other legislation or be more suitably regulated under existing legislation. These include regulation of illuminated signage by businesses and on bus stops (regulated as a form of development in most cases), containment of cats and dogs on owner's property, and car 'burnouts'.

There were two suggestions regarding stormwater related nuisances. The first was that the cleaning of stormwater cleansing devices should be an obligation of the Act. This would need to be 'flipped' in that devices that are discharging material or nutrient on account of not being cleaned would need to be captured. The second suggestion was that stormwater transgressing property boundaries should be determined as a nuisance. The cleaning of stormwater cleansing devices is a considerable issue in that stormwater quality devices such as oil seperators are often installed as part of developments such as car parks and petrol stations but there is no obligation regarding their ongoing maintenance. The issue of stormwater transgress across property boundaries can be dealt with under common law and would be burdensome if it were included in statutory law. The issue of reasonability would be difficult for councils to adjudicate on.

There was one further suggestion that night time noise restrictions should be added to government run roadworks projects longer than a month near residential areas. Such projects fall under the public infrastructure exemptions of the Act.

Recommendation

Consideration to be given to an appropriate mechanism within the legislation to allow councils to require stormwater cleansing devices to be cleaned as part of any future project to amend the legislation. No further amendments are proposed regarding the additional issues raised during consultation.

5.3 Expiations

- The expiation fee amount of $500 is not a sufficient deterrent for many local nuisance activities and is seen to be the 'cost of doing business' or it is simply so small compared to the scale of the nuisance that it has no impact.
- The expiation fee to be appropriately scaled and increased to $750 in the case of a natural person and $2,500 in the case of a body corporate, or in the case of construction activities, is scaled to the estimated cost of the project.

Response to consultation feedback

It is acknowledged that the deterrence value of expiations will differ depending on the context of their use. There is a limit to how laws can address this matter as even a $5,000 expiation may be of limited deterrence for a multi-million dollar project. In circumstances where an expiation does not gain compliance there are several provisions in the Act that can be used such as section 30 – *nuisance and litter abatement notices*, section 47 – *continuing offences*, and section 33 – *civil remedies.* There is also the option to not issue an expiation and instead commence court proceedings either for the offence itself or non-compliance with an order. The maximum penalties for these offences are ultimately the upper limit of deterrence offered by the Act and should be applied in circumstances of clear breaches where there is a likelihood of continued or repeat offending.

Recommendation

Consideration to be given to the quantum of expiations and whether differentiation in application of expiations is possible and warranted as part of any future project to amend the legislation.

5.4 Annual reporting

- It would be great if the EPA could prepare a template reporting tool to be used across local government to ensure consistency in reporting and the information compiled in a report to the relevant Minister to reflect the work local government does in this area, providing transparency to the public such as is the case within the Annual Reporting under the Public Health Act.
- The annual reporting requirement for councils is considered unnecessary and it is recommended to be removed from the Act.

Response to consultation feedback

The *South Australian Public Health Act 2011* establishes a hierarchical system of public health management overseen at the state government level whereas the LNLC Act is for local government and dictates that councils are the principal authority for dealing with nuisance and litter in their area. The EPA has been assisting councils with taking on this function since the Act commenced but is not an over-arching authority with regard to the administration of the legislation. The EPA has provided a template for reporting to local government and this is still available to councils.

Annual reporting provides the local community with a better understanding of how the Act is being administered by the councils. It also helps councils understand the types of nuisance that are prevalent in their workload that may assist with identifying proactive measures to reduce nuisance in the community.

Recommendation

No amendments are proposed regarding annual reporting.

5.5 Unsightly conditions

- That the definition of 'unsightly conditions' be revisited. The definition should capture items that have been left on a property for a significant amount of time and cause the conditions to be out of conformity with neighbouring land. Examples include machinery, portaloos, fencing, unmoved/derelict trailers either on private land or public land.
- Give consideration to defining the term 'area' with regard to 'unsightly premises'. Currently it is open to interpretation.

Response to consultation feedback

The LNLC Act provides the framework for dealing with unsightly premises largely through Schedule 1 which describes stockpiled, excessive or unconstrained disused or derelict items or material that a reasonable person would consider to be rubbish or waste in the circumstances to constitute unsightly premises in certain circumstances. It is likely that the examples provided in the submission as noted above could reasonably fit within the definition already for private land. Things left on public land should be reasonably dealt with under legislation that controls the use of such land whether that be the *Local Government Ac*t or *Crown Land Management Act 2009*. The term 'area' is in the context of the surrounding area that is impacted by the unsightly nature of the premises. To define it tightly would limit its applicability to those rigid conditions.

Recommendation

No amendments are proposed regarding unsightly premises

5.6 Property information

- When an owner fails/stalls taking action to minimise air-conditioner noise deemed a nuisance, the property title should have a notation.
- Property information should be made available where households have noise/vibration issues likely to affect peaceful enjoyment of the property (disrupt sleep) so that if sold or rented, new residents are aware of the situation beforehand.

Response to consultation feedback

This issue is largely captured through section 4.1 of this report that considers the ability for nuisance abatement notices to be registered against a property. The proposals are slightly different as there is no mention of linkage to a particular regulatory instrument and may be broader in application and more difficult to apply.

Recommendation

See section 4.1 of this report.

6 Conclusion and next steps

The consultation process has provided the EPA with valuable input and consideration of the issues raised in the discussion paper. It is clear from the feedback provided during consultation that there are a number of improvements that could be made to the legislation to improve community outcomes relating to nuisance and litter but that generally the legislation provides suitable tools to manage nuisance and litter impacts in the community.

This report will be forwarded to Minister David Speirs MP, Minister for the Environment and Water, for his consideration. Should the Minister be supportive of progressing any or all of the recommendations of this report the EPA will assist the Minister and commence a further project or projects to amend the legislation. The EPA will conduct further consultation on the detail of any proposed amendments to the legislation.

Further information

Legislation

Online legislation is freely available. Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet
Adelaide Service SA Centre
108 North Terrace
Adelaide SA 5000

Telephone: 13 23 24
Facsimile: (08) 8204 1909
Website: https://service.sa.gov.au/12-legislation
Email: ServiceSAcustomerservice@sa.gov.au

General information

Environment Protection Authority
GPO Box 2607
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Telephone: (08) 8204 2004
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Appendix 1 List of submitters

Residents

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Mark Heard

Diana Jaquillard

Shona and Tiffanwy Klippel-Cooper

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Andrew Pellen

Elizabeth Petry

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John Rooney

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Barbara Stopp

Councils

Adelaide Hills Council

Adelaide Plains Council

City of Adelaide

City of Burnside

City of Charles Sturt

City of Holdfast Bay

City of Marion

City of Mitcham

City of Norwood, Payneham and St Peters

City of Onkaparinga

City of Playford

City of Port Adelaide Enfield

City of Prospect

City of Salisbury

City of Tea Tree Gully

City of Unley

City of Victor Harbor

City of West Torrens

District Council of Ceduna

Local Government Association (SA)

Mid Murray Council

The Barossa Council

Organisations

Cement Concrete and Aggregates Australia

Coles Supermarkets Australia Pty Ltd

Environmental Defenders Office (SA) Inc

Small Business Commissioner

Stormwater and Infrastructure Asset Management – Andrew Thomas

Yass Earthmovers (NSW) – Andrew Field