

Regulations under the *Local Nuisance and Litter Control Act 2016* – explanatory report

Issued October 2016

1 Introduction

Littering and activities that cause nuisance such as noise, smoke and dust impact on our enjoyment of local areas. The *Local Nuisance and Litter Control Act 2016* (the Act) is important legislation that will improve local nuisance and litter management services to the community. The legislation will result in improved amenity, particularly reduced littering and illegal dumping, for towns, regions and cities throughout the state.

There is considerable confusion within the community about state and local government roles and responsibilities related to local nuisance issues. Local government is better placed to respond quickly and effectively to local nuisance issues as they have a local presence, and community expectation of local government with regard to policing environment protection matters is very high. A community survey undertaken by the Local Government Association in 2006 indicated 66% of respondents considered local councils as best placed to manage these issues. South Australia is the only state where local government responsibility in this area is not legislated to some extent.

The Act has been proclaimed to commence in two parts. The litter related elements of the Act will commence on 1 February 2017 and the local nuisance related elements will commence on 1 July 2017.

Regulations under the Act have been developed with the assistance of a local government reference group consisting of representatives from City of Salisbury, City of Adelaide, City of West Torrens, Light Regional Council, Port Adelaide Enfield Council, the Local Government Association of South Australia, and KESAB. There are two sets of draft regulations that your feedback is sought on. They are set out as follows:

- ***Local Nuisance and Litter Control (Amendment of Act, Schedule 1) Regulations 2016*** –these regulations will amend Schedule 1 of the Act and will serve no further role in administration of the legislation once the changes are affected.
- ***Local Nuisance and Litter Control Regulations 2016*** – these are the primary regulations that will support the administration of the Act.

Comments on regulations under the Act are sought **by COB Friday, 2 December 2016**.

Comments may be forwarded by mail or e-mail to:

Local Nuisance and Litter Control Regulations project
Environment Protection Authority
GPO Box 2607
ADELAIDE SA 5001

Email: epainfo@sa.gov.au (mark subject as 'Local Nuisance and Litter Control Regulations project')

Emailed submissions are preferred.

All submissions received by the EPA during the consultation period will be acknowledged and treated as public documents unless marked as 'confidential', subject to the requirements of the *Freedom of Information Act 1991*, and may be quoted in EPA reports.

2 Key elements of the Regulations under the *Local Nuisance and Litter Control Act 2016*

The regulations generally provide for administrative arrangements to support the Act. However, a few of the regulations that will be of particular interest to councils and the public are discussed briefly here as well as being discussed in greater detail where they appear within the clause by clause explanations of the regulations.

2.1 Compliance standards

Guidance has been included in the regulations to assist with standardising the approach to assessment of nuisance issues across the state. The standards identify the necessary considerations of authorised officers for various forms of nuisance when determining if an offence has occurred and provide guidance on determining an appropriate compliance response. They have been implemented in the regulations in two parts, firstly by reference to what constitutes local nuisance for certain forms of nuisance through specification in amendments made to schedule 1 of the Act, and further through regulation 4 of the general regulations in describing considerations in determining an appropriate compliance response.

2.2 Improved controls for moveable signs

Moveable signs, including election signage, which is non-compliant with existing local government controls will be considered a 'Bill' for the purpose of the Act. This will give better control for local government to deal with non-compliant signs that are considered a 'Bill' under the Act. The main improvement will be that the Act applies responsibility to a person who authorised distribution of the 'Bill' as well as the person placing the 'Bill'. This provision can be found as regulation 9 of the general regulations.

2.3 Declaration of what constitutes unsightly conditions on premises

The regulations declare what constitutes unsightly conditions on premises for the purposes of section 17(1)(c) of the Act. This provision is to provide better controls for 'junkyard properties and dilapidated buildings. Reform of this nature has been sought by numerous councils. The consultation provides an excellent opportunity to test the draft regulation and finesse it as necessary. This provision can be found as regulation 4 of the regulations that vary Schedule 1 of the Act.

3 Clause by clause explanation of the draft *Local Nuisance and Litter Control (Amendment of Act, Schedule 1) Regulations 2016*

Below is a clause by clause explanation of the draft *Local Nuisance and Litter Control (Amendment of Act, Schedule 1) Regulations 2016*.

Part 1–Preliminary

Regulation 1: Short title

Regulation 1 names the regulations.

Regulation 2: Commencement

Regulation 2 provides that the regulations will come into operation on the day that the Act commences, being 1 February 2017.

Regulation 3: Amendment provisions

Regulation 3 provides that where a provision under a heading referring to the amendment of specified regulations varies the regulations so specified.

Regulation 4: Amendment of Schedule 1 – Meaning of local nuisance (section 17)

Regulation 4 contains a number of amendments to Schedule 1 of the Act. There are four forms of amendments that are included in these regulations.

The first form of amendment is for the purpose of declaring agents that are known to cause an adverse effect on an amenity value of an area. This form of amendment is made pursuant to section 17(1)(a)(i)(C) of the Act. The only amendment proposed to be made by the regulations is the addition of 'vibration'. The purpose of this addition is to align the Act with considerations of noise nuisance under the *Environment Protection Act 1993*. Under the *Environment Protection Act 1993*, there is a specific definition of 'noise' that includes vibration whereas under this Act 'noise' takes its ordinary meaning.

The second form of amendment is for the purpose of declaring what constitutes unsightly conditions on premises. This form of amendment is made pursuant to section 17(1)(c) of the Act. The declaration of 'unsightly conditions on premises' has considered issues raised by local government with the existing provisions within section 254 of the *Local Government Act 1999* and has also considered legislative mechanisms used internationally to deal with unsightly premises. Consideration was also given to the application of the *Housing Improvement Act 2016* and severe domestic squalor guidance provided through SA Health.

The third form of amendment is for the purpose of declaring things that constitute forms of local nuisance. This form of amendment is made pursuant to section 17(1)(e) of the Act. The provisions listed for inclusion here are already within the broader definition of local nuisance. However, they have been listed here with greater detail as to what constitutes each form of nuisance to assist with subjective assessment by compliance staff. Those that are noise related are generally aligned to forms of noise nuisance currently regulated under the *Environment Protection (Noise) Policy 2007* for consistency.

The final form of amendment is for declaring things that are not to be considered local nuisance within the legislation. The regulations introduce one new declaration for this purpose, being noise, odour or waste from wild animals unless they have been actively encouraged to gather in a particular area by feeding.

The remainder of the regulations amend provisions of schedule 1 that were in place when the Bill was passed by Parliament. The amendments are for the purpose of further clarifying the intent of those provisions as follows:

- Amend schedule 1, clause 5(1)(d) of the current Act to clarify that only nuisances from approved or authorised activities where the approval or authorisation include controls relating to nuisance are excluded from the Act. The original provision was not clear with regard to its intent and may have resulted in the Act not applying in basic situations such as on residential premises, approved under the *Development Act 1993*.
- Amend schedule 1, clause 5(1)(f) of the current Act to clarify that the exclusion from nuisance provisions is limited to sporting events at sporting venues. As currently written it could be argued that music concerts at sporting venues were excluded from the application of the Act.
- Amend schedule 1, clause 5(1)(h) of the current Act to remove 'other nuisance' from 'public infrastructure works' because other forms of nuisance are more readily able to be minimised through active management and should therefore not be excluded.
- Amend schedule 1, clause 5(1)(m) of the current Act to remove the word 'unamplified' from the provision relating to music and voices from domestic premises. This is in order to align with the *Environment Protection (Noise) Policy 2007*.

4 Clause-by-clause explanation of the draft *Local Nuisance and Litter Control Regulations 2016*

Below is a clause-by-clause explanation of the draft *Local Nuisance and Litter Control Regulations 2016*.

Part 1–Preliminary

Regulation 1: Short title

Regulation 1 names the regulations.

Regulation 2: Commencement

Regulation 2 provides that the regulations will come into operation on the day that the Act commences, being 1 February 2017.

Regulation 3: Interpretation

Regulation 3 provides specific interpretations as necessary for the proper interpretation of the legislation.

Part 2 – Administration

Regulation 4: Functions of councils – Guidelines

This regulation prescribes Ombudsman guidelines for managing unreasonable complainant conduct where councils do not have their own policies in place. As such, it acts as a default guideline for councils. The purpose of this is to ensure a consistent approach to managing difficult complainants that is satisfactory to the Ombudsman and provides a pathway for councils to resolve difficult or vexatious complaints that can use up considerable council resources.

The second part of the regulation is a component of the compliance standards approach taken within the legislation. The regulation provides guidance to authorised officers on what needs to be considered when assessing a complaint. It also serves an educational role for complainants and alleged offenders as to considerations given by an authorised officer in assessing a complaint which may lead to reduced complaints or faster resolution of a complaint.

Regulation 5: Annual reports by councils

This regulation provides details that can be provided in annual reports by councils. These elements are non-mandatory as the Act is considered to have ‘spoken’ in section 8 of the Act.

Part 3 – Offences

Division 1 – Local nuisance

Regulation 6: Exemptions from application of section 18

This regulation provides the requirements for an application for exemption under the section 18 of the Act. Specifically, the regulation provides details of the application itself, that fees are to be determined as per the *Local Government Act 1999*, and the requirements of a site nuisance management plan. There are similar documents countenanced by the EPA and to ensure there is no need for arbitrary duplication of work by applicants, the provision allows a construction environmental management plan developed under the *Environment Protection Act 1993* to be considered a site nuisance management plan for the purposes of this Act.

Regulation 7: Measurement procedures for determining presence of local nuisance

This regulation applies the evidentiary provisions of sensory subjective assessment for local nuisances that are within the scope of section 17(1) of the Act and its sub-sections. Some of these forms of nuisance are added to schedule 1 of the Act through the accompanying variation regulations and include particular reference to use of sensory observations in determining an offence.

Division 2 – Litter control**Regulation 8: Disposing of litter – exemption**

This regulation allows for the lawful building of artificial reefs where approved by the Minister and under the *Development Act 1993*. The Act otherwise prohibits reef building as it involves disposing of waste materials in the ocean in a haphazard and unregulated manner.

Regulation 9: Bill posting

This is the regulation that will assist in compliance for signs (or 'Bills') erected in contravention of section 226 of the *Local Government Act 1999*, including election signage. This Act operates more effectively than the *Local Government Act 1999* as it applies responsibility to the person who authorised the placement of the signs, in addition to the individual who places them.

Regulation 10: Citizen's notification

This regulation sets out that the prescribed details for a citizen's notification are located in the forms in schedule 1 of these regulations. Under section 25 of the *Acts Interpretation Act 1915*, the form under the Dob In A Litterer app or website can deviate from the forms set out in the Schedule provided that they are not calculated to mislead. In this regard the need for a written signature can be replaced with an electronic acknowledgement if the Minister approves such a method (included for clarity within the regulation). It is this same provision of the *Acts Interpretation Act 1915* that allows councils to put their own letterheads on prescribed forms as necessary.

Division 3 – Miscellaneous**Regulation 11: Notification to EPA of serious or material environmental harm**

This regulation sets out the information to be provided to the EPA when a notification of serious or material environmental harm is made by a council. The elements listed are non-mandatory as the Act is considered to have 'spoken' in section 29 of the Act but reflects what is necessary to ensure a smooth handover of a complaint.

Part 4 – Nuisance abatement notices and litter abatement notices**Regulation 12: Action on non-compliance with notice**

This regulation prescribes the rate of interest and the scheme for applying a charge on land for the purposes of section 31 of the Act. This regulation has been designed to align as closely as possible to provisions for the same purpose within the *Local Government Act 1999*.

Part 5 – Civil remedies and penalties**Regulation 13: Minister or council may recover civil penalty in respect of contravention**

This regulation prescribes the form set out in schedule 2 as being for the purposes of section 34(3)(a) of the Act. This section of the Act relates to negotiated and court imposed civil penalties. The section prevents the Minister or council from applying to the court for a civil penalty unless a form, prescribed by

this regulation, advising that the alleged offender may elect to be prosecuted, has been served on the alleged offender. This does not apply where the alleged offender serves written notice on the council or Minister of the same prior.

Part 6 – Miscellaneous

Regulation 14: Payment of fees by instalments

This regulation establishes a scheme to allow for the payment of fees by instalment.

Regulation 15: Waiver or refund of fees

This regulation provides for the waiver or refund of fees.

Regulation 16: Recovery of fees

This regulation allows the recovery of fees as a debt by action in a court of competent jurisdiction. **Schedule1 –**

Form of citizen’s notification

Schedule 1 includes forms for the purpose of citizen’s notifications and is discussed at regulation 10.

Schedule 2 – Form of notice of right to elect to be prosecuted

Schedule 2 includes a form for a notice of the right to be prosecuted for the purpose of section 34(3) and is discussed at regulation 13.

Further information

Legislation

Legislation may be viewed on the Internet at: <www.legislation.sa.gov.au>

Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet	Telephone:	13 23 24
Adelaide Service SA Centre	Facsimile:	(08) 8204 1909
108 North Terrace	Website:	< https://service.sa.gov.au/12-legislation >
Adelaide SA 5000	Email:	< ServiceSAcustomerservice@sa.gov.au >

For general information please contact:

Manager – Legislation and Policy Reform	Telephone:	(08) 8204 2105
Environment Protection Authority	Facsimile:	(08) 8124 4670
GPO Box 2607	Freecall (country):	1800 623 445
Adelaide SA 5001	Website:	< www.epa.sa.gov.au >
	Email:	< epainfo@epa.sa.gov.au >
