

South Australia

Local Nuisance and Litter Control Regulations 2016

under the *Local Nuisance and Litter Control Act 2016*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Local Nuisance and Litter Control Regulations 2016*.

2—Commencement

These regulations will come into operation on the day on which the *Local Nuisance and Litter Control Act 2016* comes into operation.

3—Interpretation

- (1) In these regulations, unless the contrary intention appears—
- Act* means the *Local Nuisance and Litter Control Act 2016*;
- domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;
- spouse*—a person is the spouse of another if they are legally married.
- (2) For the purposes of these regulations, a person is an *associate* of another if—
- they are partners; or
 - 1 is a spouse, domestic partner, parent or child of another; or
 - they are both trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
 - 1 is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
 - 1 is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate or other entity; or
 - they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - a chain of relationships can be traced between them under any 1 or more of the above paragraphs.

Part 2—Administration

4—Functions of councils—guidelines

- (1) For the purposes of section 7(3) of the Act, the following guidelines are prescribed for councils:
- the guidelines for managing unreasonable complainant conduct are—
 - to the extent to which the conduct is covered by a council's own guidelines—those guidelines; or

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- (ii) in any other case—the guidelines set out in *Managing Unreasonable Complainant Conduct Practice Manual*, 2nd edition, published by the NSW Ombudsman, May 2012 (to be found at: http://www.ombudsman.sa.gov.au/wp-content/uploads/unreasonable_conduct_manual_2012.pdf);
 - (b) in performing its functions under the Act in relation to local nuisance (including in determining what should be the conditions of a nuisance abatement notice) a council must take into account—
 - (i) the sensitivity of the affected premises; and
 - (ii) the land use categories of the source premises and the affected premises; and
 - (iii) whether the local nuisance was avoidable; and
 - (iv) whether, in the case of local nuisance generated by an activity outside of normal business hours, the timing of the activity is intended to avoid inconvenience to traffic or pedestrians during normal business hours (for example, in the case of early morning rubbish collection, or late night construction works in populated areas); and
 - (v) whether all reasonable measures have been taken at the source premises to prevent or minimise the local nuisance; and
 - (vi) whether, in the case of local nuisance generated by an activity carried out under an authorisation within the meaning of the *Development Act 1993*, the activity is being carried out in accordance with the authorisation.

(2) In this regulation—

affected premises means the premises affected by the local nuisance other than the source premises;

source premises means the premises on which the local nuisance is generated.

5—Annual reports by councils

For the purposes of section 8 of the Act, a council's annual report should include details of—

- (a) the number of complaints of local nuisance or littering received by the council; and
- (b) the number and nature of—
 - (i) offences under the Act that were expiated; and
 - (ii) offences under the Act that were prosecuted; and
 - (iii) nuisance abatement notices or litter abatement notices issued; and
 - (iv) civil penalties negotiated under section 34 of the Act; and
 - (v) applications by the council to the Court for orders for civil penalties under section 34 of the Act and the number of orders made by the Court on those applications; and

- (c) any other functions performed by the council under the Act.

Part 3—Offences

Division 1—Local nuisance

6—Exemptions from application of section 18

- (1) For the purposes of section 19(2) of the Act—
- (a) an application for a declaration in relation to an activity—
 - (i) must be in writing and be given to the relevant council by post, fax or email; and
 - (ii) must contain the following details:
 - (A) the name and contact details of the applicant;
 - (B) the name and contact details of the responsible person in relation to the activity;
 - (C) the exceptional circumstances for which the declaration is sought;
 - (D) the nature of the activity;
 - (E) the anticipated sources and kinds of local nuisance generated by the activity;
 - (F) the period for which the declaration is sought;
 - (G) the times of day or periods of time during which the activity is proposed to be carried on; and
 - (b) the fee for the application is the fee (if any) fixed by the relevant council in accordance with section 188(1)(g) of the *Local Government Act 1999*.
- (2) For the purposes of section 19(2)(a) of the Act, the prescribed details to be contained in a site nuisance management plan relating to an activity are as follows (and such details must be provided to the extent relevant to the activity and required by the relevant council):
- (a) an assessment of the potential for local nuisance and the number of residential and commercial premises occupied by persons likely to be affected by the local nuisance (*potentially affected persons*);
 - (b) a map showing—
 - (i) the proposed location of the activity and the likely fixed sources of local nuisance (for example, in the case of a concert, the location and orientation of stages and speakers); and
 - (ii) the location of premises occupied by potentially affected persons and the distance of the premises from those sources;
 - (c) the name and contact details of the responsible person in relation to the activity;

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- (d) the proposed strategy for minimising, managing and monitoring the effects of the local nuisance on potentially affected persons;
 - (e) the proposed communication strategy for communicating with potentially affected persons;
 - (f) a copy of the notice (forming part of the communication strategy) proposed to be given to those persons to notify them of the activity, which must include the following details:
 - (i) the nature of the proposed activity; and
 - (ii) the start and finish dates for the activity; and
 - (iii) the daily start and finish times for the activity; and
 - (iv) the anticipated sources of local nuisance generated by the activity; and
 - (v) the proposed measures to be implemented to minimise the local nuisance; and
 - (vi) the name and contact details of the person who may be contacted by potentially affected persons regarding concerns or complaints in relation to the activity; and
 - (vii) such other details as the relevant council may require;
 - (g) the proposed communication strategy with the relevant council, including reporting by the exempt person on progress of the activity and the site nuisance management plan and any unforeseen incidents;
 - (h) the proposed process for recording details about complaints, including—
 - (i) contact details for each complainant; and
 - (ii) the date and time of the complaint; and
 - (iii) a description of the complaint; and
 - (iv) the nature of the activity giving rise to the complaint; and
 - (v) any action taken to address the complaint.
- (3) Despite subregulation (2), a plan prepared in accordance with the guidelines entitled *Construction environmental management plans (2016)* published by the Environment Protection Authority as in force from time to time may, subject to any requirements of the relevant council, have effect as if it were a site nuisance management plan for the purposes of section 19(2)(a) of the Act in relation to an activity comprised of construction or demolition works.
- (4) In this regulation—
- relevant council**, in relation to an application, means the council for the area in which the activity the subject of the application is to take place;
- exempt person**, in relation to an activity, means the person declared to be exempt from the application of section 18 of the Act in respect of the activity by notice under section 19(1) of the Act;

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Part 3—Offences

Division 1—Local nuisance

responsible person, in relation to an activity, means the person designated by the exempt person—

- (a) to be present on the premises at which the activity is being conducted; and
- (b) to receive and deal with complaints about any local nuisance generated by the activity and to inform or direct persons accordingly.

7—Measurement procedures for determining presence of local nuisance

For the purposes of section 21(d) of the Act, if, in determining the presence of local nuisance, section 17(1) of the Act (including a provision referred to by that section) requires an authorised officer to form an opinion about a matter, the officer may form the opinion based on the officer's own senses.

Drafting note—

The regulation making power enabling evidentiary provisions to be made by regulation (s 51(4)(e)) only refers to breaches of the regulations. So unfortunately we can't proceed with reg 9. There are 2 options:

- (a) rely on section 50(4)(d);
- (b) amend section 50(1) of the Act by striking out "(a) or section 17(1)(b)" in the lead-in words to that subsection. Could this be done as part of Simplify/Repeal day?

Division 2—Litter control**8—Disposing of litter—exemption**

A person who places an artificial reef into waters in accordance with—

- (a) an approval by the Minister responsible for the administration of the *Fisheries Management Act 2007*; and
- (b) a development authorisation within the meaning of the *Development Act 1993*,

is exempted from the application of section 22 of the Act in relation to that activity.

9—Bill posting

For the purposes of the definition of **bill** in section 23(5) of the Act, a moveable sign within the meaning of the *Local Government Act 1999* that is placed or maintained on a road other than in a manner authorised under section 226 of *Local Government Act 1999* is declared to be a bill.

10—Citizen's notification

For the purposes of section 25 of the Act, the prescribed details for a citizen's notification are—

- (a) for a notification of littering—the details set out in the form in Schedule 1 clause 1; or
- (b) for a notification of bill posting—the details set out in the form in Schedule 1 clause 2,

(verified by the notifier's signature or in a manner approved by the Minister).

Division 3—Miscellaneous**11—Notification to EPA of serious or material environmental harm**

For the purposes of section 29 of the Act, notifications by a council to the Environment Protection Authority should include—

- (a) as many of the following details as may be in the possession of the council:
 - (i) any investigation statements from authorised officers, witnesses or suspects;
 - (ii) copies of relevant evidence (for example, images, photographs, video or audio recordings or transcripts, maps, reports of analyses, tests or samples, file notes, exhibit management records and any certificates under section 50 of the Act or other relevant documents, orders, notes or information); and
- (b) details as to any limitation of time for prosecution or expiation of offences under the Act; and
- (c) details of the application of any relevant prescribed period within the meaning of section 16 of the Act in relation to a substance, material or thing seized under Part 3 Division 3 of the Act.

Note—

Section 29 of the Act requires the council to provide this information to the Environment Protection Authority *as soon as practicable* after becoming aware of the actual or potential material or serious environmental harm.

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

- (1) For the purposes of section 31(6) of the Act, the prescribed rate of interest is the cash advance debenture rate for the financial year in which the period fixed under that subsection for payment of the recoverable amount expires.
- (2) For the purposes of section 31(7) of the Act, the following scheme is prescribed:
 - (a) for the purposes of creating the charge on land, the Minister or council may give the Registrar-General a notice, in a form determined by the Minister or council on the recommendation or with the approval of the Registrar-General—
 - (i) setting out the amount recoverable under section 31 of the Act; and
 - (ii) setting out the land in relation to which the relevant action was taken; and
 - (iii) requesting the Registrar-General to make a notation under this regulation in relation to the relevant land;

Local Nuisance and Litter Control Regulations 2016

Part 4—Nuisance abatement notices and litter abatement notices

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- (b) on receipt of a such a notice, the Registrar-General must, in relation to the land referred to in the notice, enter an appropriate notation in the Register Book or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land in the General Registry Office;
 - (c) when an entry is made under paragraph (b), a charge over real property is created;
 - (d) the charge—
 - (i) subject to subparagraph (ii)—
 - (A) in the case of a charge in favour of the Minister—will correspond to a mortgage in favour of the Crown over the relevant land that ranks ahead of any mortgage, encumbrance or charge registered after the charge is noted under this regulation; and
 - (B) in the case of a charge in favour of the council—will be the same as a charge created under section 177 of the *Local Government Act 1999*; and
 - (ii) will have priority over any prior charge imposed on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land;
 - (e) in a case where paragraph (d)(i)(A) applies, the Minister will have the same powers of sale of the relevant land as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in the payment of principal (and a sale by the Minister is, for the purposes of that Act, to be treated as if it were such a sale by a mortgagee);
 - (f) in a case where paragraph (d)(i)(B) applies, the council will be able to recover the amount as if it were a rate constituting a charge on land under section 144(2) of the *Local Government Act 1999*;
 - (g) if the amount to which the charge relates is paid, the Minister or council must, by further notice to the Registrar-General (being a notice in a form determined by the Minister on the recommendation or with the approval of the Registrar-General), cancel the charge.
- (3) Any costs or expenses incurred by a council in relation to creating a charge over land or cancelling such a charge under this regulation are recoverable by the council from the owner of the land in accordance with section 144 of the *Local Government Act 1999*.
 - (4) In subregulation (1)—

cash advance debenture rate has the same meaning as in the *Local Government Act 1999*.

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

For the purposes of section 34(3)(a) of the Act, the prescribed form is as set out in Schedule 2.

Part 6—Miscellaneous

14—Payment of fees by instalments

- (1) The Minister or a council may, in allowing the payment of a fee under the Act or these regulations by instalments, add to each amount payable as an instalment a charge by way of interest, or an administrative fee, determined by the Minister or council (as the case may be).
- (2) If the Minister or council allows a fee to be paid by instalments, the total amount payable is the sum of—
 - (a) the amount of the fee; and
 - (b) the amount payable under subregulation (1); and
 - (c) for each instalment that is not paid by the date for payment—\$300 or 5% of the instalment (whichever is higher) for each month (or part of a month) for which the default continues.

15—Waiver or refund of fees

The Minister or a council may waive or refund a fee or other amount (or part of a fee or other amount) payable under the Act or these regulations if satisfied that it is appropriate to do so in a particular case.

Drafting note—

For consideration. This reg appears in the Aquaculture Regulations 2016 and will be useful.

16—Recovery of fees

The Minister or a council may recover a fee or other amount payable by a person under the Act or these regulations as a debt by action in a court of competent jurisdiction.

Schedule 1—Form of citizen's notification

1—Form of citizen's notification—littering (regulation 10)

Form 1—Section 25 of *Local Nuisance and Litter Control Act 2016*

Details of suspected littering

Include the following details of the person making the notification (*notifier*):

Full name of notifier:

Date of birth:

Residential address:

Phone number (landline or mobile):

Email address:

Include the following details of the littering (to the extent known by the notifier):

Method of littering (eg blown, discarded, dumped):

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Schedule 1—Form of citizen's notification

Type of litter:

Location of littering:

Time of littering:

Description of the person or persons who did the littering:

If littering occurred from vehicle—

- (a) vehicle type (eg sedan, station wagon, SUV, truck, trailer, motorbike, boat):
- (b) vehicle make (eg Holden, Ford, Cruisecraft):
- (c) vehicle colour:
- (d) vehicle registration number:
- (e) vehicle registration State or territory:
- (f) who did the littering—driver or passenger?:

Names and contact details of any other witnesses:

Does the notifier agree to attend court if required? [state *yes or no*]:

Photographic, video or other evidence:

Does the notifier have any photographic evidence of the littering? [state *yes or no*]:

Does the notifier have any video evidence of the littering? [state *yes or no*]:

Does the notifier have the GPS co-ordinates of the location of the littering? [state *yes or no*]:

Does the notifier have the item or material littered (or part of such item or material) or anything else that may constitute evidence of the littering? [state *yes or no*]:

Note—

If the notifier answers "yes" to having such evidence, the evidence should be provided to the Minister or council. If using the citizen's notification app or the citizen's notification website to make the citizen's notification, any photographic or video evidence or GPS coordinates may be uploaded at the prompts.

Signature of notifier:

Date of making citizen's notification:

Method of giving citizen's notification

This notice was given to the Minister or the council by
[Tick 1 box]

- personally handing it to the Minister/council
- mailing it to the Minister/council
- faxing or emailing it to the Minister/council
- the citizen's notification website
- the citizen's notification app
- other [please specify]

2—Form of citizen's notification—bill posting (regulation 10)

Form 2—Citizen's notification—Section 25 of *Local Nuisance and Litter Control Act 2016*

Details of suspected bill posting

Include the following details of the person making the notification (*notifier*):

Full name of person making the notification (the *notifier*):

Date of birth:

Residential address:

Phone number (landline or mobile):

Email address:

Include the following details of the bill posting (to the extent known by the notifier):

Description of bill (eg flyer, brochure, poster):

Message on the bill (eg advertisement, slogan, preaching):

Identity of distributor of bill or person or body authorising distribution:

Description of the person or persons who did the bill posting:

Location of posted bill:

Time of bill posting:

If bill posting occurred from vehicle—

- (a) vehicle type (eg sedan, station wagon, SUV, truck, trailer, motorbike, boat):
- (b) vehicle make (eg Holden, Ford, Cruisecraft):
- (c) vehicle colour:
- (d) vehicle registration number:
- (e) vehicle registration State or territory:
- (f) who did the bill posting—driver or passenger?:

Names and contact details of any other witnesses:

Does the notifier agree to attend court if required? [state *yes or no*]:

Photographic, video or other evidence:

Does the notifier have any photographic evidence of the littering? [state *yes or no*]:

Does the notifier have any video evidence of the littering? [state *yes or no*]:

Does the notifier have the GPS co-ordinates of the location of the littering? [state *yes or no*]:

Does the notifier have the bill that was posted or anything else that may constitute evidence of the bill posting? [state *yes or no*]:

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Schedule 1—Form of citizen's notification

Note—

If the notifier answers "yes" to having such evidence, the evidence should be provided to the Minister or council. If using the citizen's notification app or the citizen's notification website to make the citizen's notification, any photographic or video evidence or GPS coordinates may be uploaded at the prompts.

Signature of notifier:

Date of making citizen's notification:

Method of giving citizen's notification

This notice was given to the Minister or the council by

[Tick 1 box]

- personally handing it to the Minister/council
- mailing it to the Minister/council
- faxing or emailing it to the Minister/council
- the citizen's notification website
- the citizen's notification app
- other *[please specify]*

Schedule 2—Form of notice of right to elect to be prosecuted**1—Form of notice of right to elect to be prosecuted (regulation 13)****Civil penalty for contravention—notice of right to elect to be prosecuted for contravention***Local Nuisance and Litter Control Act 2016—section 34(3)*

File Number:

Issued by:

Date:

To: *[insert title (Mr/Mrs/Ms) and full name, company name (if applicable), postal address and any other information relevant for service of the notice]*

Notice to alleged offender

- 1 The Minister or council is satisfied that you have committed an offence by contravening a provision of the *Local Nuisance and Litter Control Act 2016* as follows:
 Provision contravened:
 Address or location of contravention:
 Details of contravention:
- 2 The purpose of this notice is to advise you that you may, by written notice to the Minister or council, elect to be prosecuted for the contravention (see section 34(3) of the Act).

If you do not elect to be prosecuted, the Minister or council may commence civil penalty proceedings under section 34 of the Act for the purpose of obtaining an order from the Court that you pay an amount as a civil penalty in respect of the contravention.

In these civil proceedings, any contravention of the Act would only need to be proved on the balance of probabilities.

3 **If you elect to be prosecuted, rather than negotiating a civil penalty with the Minister or council or facing civil penalty proceedings, you must serve a written notice on the Minister or council within 21 days after service of this notice.**

4 The following matters are relevant to the provision of a notice of election to the Minister or council:

- (1) The notice must be addressed to the Minister or council as follows:
[insert relevant information]
- (2) You may choose to use the Attachment (below) or you may inform the Minister or council by your own letter, quoting your name and the File Number shown at the top of this document.
- (3) Section 34 of the Act may be found at www.legislation.sa.gov.au and additional information about the Act can be obtained from www.epa.sa.gov.au. Information concerning this notice can also be obtained by telephoning *[insert relevant contact person and telephone number]*.

Drafting note—

Please supply details

- (4) If you do not, within 21 days after service of this notice, give notice to the Minister or council of election to be prosecuted, proceedings may be commenced to recover a civil penalty in the Environment, Resources and Development Court.

Attachment—Notice to Minister or council of election to be prosecuted

To: Minister or council
[insert address]

File number of notice under section 34(3) of the *Local Nuisance and Litter Control Act 2016*
[insert file number]

*** Individual**

I elect to be prosecuted for the alleged contravention specified in the notice of the file number set out above.

Name in full:

Contact details:

Date:

Signed:

*** Company**

I, having authority to act for and on behalf of the company in this matter, give notice that the company elects to be prosecuted for the alleged contravention specified in the notice of the file number set out above.

Name of company:

Name in full of person with authority to act:

Contact details:

Date:

Signed:

**Strike out whichever is inapplicable*

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council

on

No of 2016