

Local Nuisance and Litter Control Act 2016

Factsheet 12 – Nuisance (Smoke)

Airborne pollution such as dust, mists, smoke, odours and fumes, are collectively known as aerosols, any one of which (or a combination of more than one), can cause local nuisance to neighbours and/or the wider community. Furthermore, aerosol nuisance can do more than just interfere with normal daily activities – if severe enough, it has the potential to cause damage to property and impact negatively upon a person's health.

What is smoke nuisance?

Smoke is a collection of tiny solid, liquid and gas particles and - depending upon the source - can contain hundreds of different chemicals and fumes. When complete combustion occurs, just water and the colourless, odourless gas carbon dioxide are produced as by-products. However, when there is incomplete combustion (i.e. when there is not enough oxygen to burn the fuel completely), smoke is produced.

Whilst smoke can be generated by a number of different sources and activities from within a community, the most common activities that lead to complaints are backyard burning, open wood fires and solid fuel (combustion) heaters.

Can smoke nuisance affect the community?

Smoke is made of coarse and fine particles and can affect the quality of both indoor and outdoor air. It can impact on the enjoyment of an area by impact on the visual amenity, present an odour nuisance and have health impacts. When breathed in, smoke particles settle in the lungs and narrow airways and can cause irritation of the eyes, throat and nose, coughing, difficulty breathing and aggravated asthma.

More information on the health impacts of smoke, including longer term public health issues, can be found at:

http://www.epa.sa.gov.au/environmental_info/air_quality/learning_and_resources#air

How can smoke nuisance be reduced or mitigated?

Using wood-burning heaters incorrectly causes the emission of more pollutants and inefficiently uses up expensive fuel. There are some simple guidelines that will help you get the most efficient results from your heater:

- Use only a solid fuel heater that bears a compliance plate showing that it meets the Australian Standard for emissions (AS/NZS 4013:2014) and efficiency (AS/NZS 4012:2014) and that it is also installed according to Australian Standard (AS/NZS 2918:2001).
- Use only dry, seasoned timber to maximise heat release during combustion (these logs normally 'crack' when you hit one against the other as opposed to the dull 'thud' you get from freshly cut logs).



- Good wood storage – wood should be stacked loosely off the ground and stored under a roof in a ventilated area to keep it dry – ideally freshly cut wood should be stored for about 18 months before use so that it is properly seasoned.
- Use only kindling wood, paper or firelighters to start a fire and never use gasoline, kerosene, charcoal starters or propane torches.
- Add larger pieces of wood once a bed of red-hot coals has been established.
- Keep the wood heater air vents open for 20 mins after lighting the fire.
- Don't pack the fire and leave it on a low setting.
- Check the flue outside – if after 20 mins there is still smoke coming from the flue, the fuel or air vents may need adjusting to improve the fire.
- Hardwoods such as mallee and redgum are preferable to softwoods such as pine. Softwoods contain more resins, which create smoke, odour and deposits in chimneys.
- Don't burn garbage, painted timber, treated timber (such as permapine) or particle board. Toxic fumes are released when burnt.

If burning in the open is permitted by the *Environment Protection (Air Quality) Policy 2016* and the *Fire and Emergency Services Act 2005* then consideration should be given to weather conditions. Cold and windy conditions are more likely to cause smoke nuisance.

What is the law with regard to smoke nuisance?

It is an offence under the *Local Nuisance and Litter Control Act 2016* (the Act) to cause a smoke nuisance and penalties apply. If a matter is ongoing, councils can issue the person causing the nuisance with a Nuisance Abatement Notice, which specifies a certain period within which the offender must rectify the problem. Such notices may also be issued orally in the first instance if the matter is considered severe enough. Councils also have the power to expiate an offence by way of an on-the-spot-fine. A council's enforcement approach, such as issuing of expiations, warnings, requests to cease an activity, will depend on the circumstances and the council's enforcement policy.

If a nuisance is emanating from an industrial premises, it may be a site that is licensed by the Environment Protection Authority (EPA) and therefore not within a council's jurisdiction. These matters can be referred directly to the EPA.

When should a smoke nuisance be reported?

In the first instance a person should try and discuss concerns with the people (e.g. neighbours) from where the nuisance is emanating from, as they may not be aware that they are causing a nuisance. Concerns should be raised and discussed, and suggestions provided to resolve problems - simple solutions can often be found that satisfy everyone.

Generally, councils will only become involved if an issue within the community (e.g. between neighbours) cannot be resolved or if the nuisance is a broad-scale issue involving multiple parties.

What are the penalties related to causing a smoke nuisance?

A person who carries on an activity intentionally or recklessly and with the knowledge that local nuisance will result is guilty of an offence.

- Body corporate - Maximum penalty: \$60,000
- Natural person - Maximum penalty: \$30,000

A person who carries on an activity that results in local nuisance is guilty of an offence:

- Body corporate - Maximum penalty: \$20,000
- Natural person - Maximum penalty: \$10,000
- Expiation fee: \$500.

Penalties may also be applied in circumstances where a person refuses to comply with the direction of an authorised officer or provides a false report about a matter.

What does a council consider when investigating a smoke nuisance?

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

- the smoke has travelled to neighbouring premises; and
- the nature, extent, colour, smell or density of the smoke is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises; and
- for solid fuel heaters, a visible plume of smoke extends into the air above neighbouring premises from the flue or chimney of the heater more than 15 minutes after the heater is lit.

Are there any exemptions to local nuisance laws?

The Act allows councils to consider the granting of an exemption from local nuisance-causing activities upon application. Applications must, however, be accompanied by a nuisance management plan describing the steps that will be taken to prevent, minimise or address any adverse effects on the amenity value of the area concerned and also describing that exceptional circumstances exist to justify the granting on an exemption.

Exemptions may be reasonable for short-term activities - such as festivals, events or major construction activities - where some level of smoke or other local nuisance is likely to be unavoidable. Councils can apply strict conditions to ensure that an applicant does everything reasonable to minimise the impact of the nuisance. All exemptions are published on the council's website. See Factsheet 19 for more information.

More information

This fact sheet is one of a range designed to increase your awareness and understanding of the requirements of the *Local Nuisance and Litter Control Act 2016*. Please see other fact sheets for further information about the Act.

Disclaimer

This publication is a guide only and will not necessarily provide adequate information relevant to every situation. Whilst it seeks to explain your possible obligations in a helpful and accessible way, it is likely that some detail may not be captured. It is important, therefore, that where necessary you make your own determination as to whether you should seek legal advice.