

# Managing Local Nuisance Complaints

## 1. Purpose and Scope

The information in this document details the City of Holdfast Bay (the Council) approach to the management of complaints received under the Local Nuisance and Litter Control Act 2016 (the Act).

### 1.1 Relevant Legislation

- *Local Nuisance and Litter Control Act 2016 (the Act)*
- *Local Nuisance and Litter Control Regulations 2017 (the Regulations)*

Once a complaint has been validated as being the responsibility of Council and a possible non-compliance with the Act the following process becomes relevant.

The Act provides a variety of regulatory tools and the ability to exercise discretion to determine which tool is appropriate for particular circumstances. These tools are used at the discretion of the Authorised Officer (AO) and in accordance with Council's Compliance and Enforcement Policy.

## 2. Core Complaint Management Responsibilities

**In managing complaints, it is the Council's responsibility to:**

- Deal with the complaint professionally, efficiently and impartially.
- Keep complainants informed of the progress and outcome of the complaint.
- Provide clear reasons for decisions.
- Treat complainants and alleged offenders with courtesy and respect.
- Identify whether the Council is the appropriate authority to manage the complaint. If not, then the Council will redirect the complainant to the relevant authority as soon as practicable.

**It is the complainant's responsibility to:**

- Clearly identify the issues of the complaint and provide the Council with all available information about the complaint.
- Clearly state what your expectations are.
- Cooperate with the Council's enquiries or investigations, including maintaining a Nuisance Diary within the specified timeframe as determined by the AO and upon completion of the Nuisance Diary provide the Nuisance Diary to the AO after the specified timeframe.
- Cooperate with the Council's enquiries in relation to any other request/direction made to you by the AO in relation to the matter.
- Permit access to AOs to conduct an on-site inspection to undertake an assessment and to form an opinion in order to determine a nuisance.
- Treat the Council's staff with courtesy and respect.

If complainants do not meet their responsibilities, the Council may set limits or conditions on the handling of the complaint, or may decline to take any action on that complaint.

### Anonymous Complaints

The Act specifies that a nuisance must have an adverse effect on the amenity value of an area and unreasonably interferes with the enjoyment of the area by persons occupying a place within, or lawfully resorting to the area.

AOs are required to undertake an assessment at the effected premises in order to form an opinion to determine whether the activity unreasonably interferes with the enjoyment of the area by persons occupying a place within, and to determine whether the activity is in fact a local nuisance. This is unable to be achieved if the complainant wishes to remain anonymous.

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## RESPONSE PROCESS

The process below assumes that the complainant identifies themselves when making a complaint.

### Stage 1 – Initial Contact with Complainant

#### Goals/Purpose:

- Formally acknowledge receipt of the complaint.
- Obtain further information on the complaint.
- Provide education and advice regarding the legislation and possible complaint resolution.
- Provide possible opportunities for the complaint to be resolved without the need for regulatory action. It is encouraged and for the sake of good neighbourly relations, the complainant resolves the issue in the first instance with the occupants of the source premises without the need for regulatory action.

#### Actions:

1. The complaint is assigned to an AO.
2. Correspondence is sent to the alleged offender informing them of the complaint and their legislative responsibilities and, encouraging them to modify any behaviour that may be generating the complaint within a specified timeframe (e.g. 14 or 21 days or as required by the AO).
3. The complainant may be required to complete a Nuisance Diary for a period of time (e.g. 14 or 21 days or as required by the AO). The Nuisance Diary is used to assist in determining the extent of the offending and any patterns of behaviour which can then be used to assist in determining dates/times for targeted inspections/assessments, should Stage 2 of the process be required to commence.

#### *Triggers for the complaint to be closed during Stage 1:*

- The complainant advises there is no longer an issue.
- The complainant does not make contact with Council within 30 days of the initial receipt of the complaint.

### Stage 2 – Authorised Officers Investigation

The complaint progresses to Stage 2 if the same complainant advises that the same activity is still being carried out by the same alleged offender as referred to in Stage 1.

#### Goals/Purpose:

- The AO will review and corroborate the evidence gathered by the complainant.
- A regulatory plan of action will be developed and implemented, and at the discretion of the AO, may include an assessment to be undertaken at the effected premises to establish whether the activity is unreasonable and is a local nuisance as deemed by the AO.
- The AO may commence an investigation of the incident.

#### Actions:

After a review and corroboration of the evidence gathered by the complainant has been undertaken, the AO will begin to gather evidence in order to formulate a regulatory plan of action. This should also involve a site inspection at the effected premises to collect and corroborate the evidence.

#### *Triggers for the complaint to be closed during Stage 2:*

- The complainant advises there is no longer an issue.
- The complainant does not return the Nuisance Diary or make contact with Council within 3 months.
- If an Environmental Nuisance exists, the AO will make a referral to the EPA as required under the Act.

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## Stage 3 – Authorised Officer Decision

### Goals/Purpose:

1. The AO will assess the information gathered in Stages 1 and 2 and confirm if an offence under the Act has occurred.
2. If the AO decides a complaint should be closed because an offence under the Act has not occurred, contact will be made with the complainant:
  - Detailing the extent of investigation undertaken to date.
  - Providing justification for the matter being closed.
  - Encourage the complainant to utilise Mediation Services or advising the complainant that under Section 33- Civil Remedies of the Act they are entitled to make application to the Environment, Resources and Development Court (ERD) to have the matter heard.

### Triggers for the complaint to be closed during Stage 3:

- The complainant advises there is no longer an issue.
- After investigation, the AO decides that an offence under the Act has not occurred.
- If an Environmental Nuisance exists, the AO will make a referral to the EPA as required under the Act.

## Stage 4 – Regulatory Action

The complaint will escalate to Stage 4 if there is confirmation of an offence occurring during Stage 3.

### Goals/purpose

- Regulatory action.

Confirmation of an offence will lead to regulatory action. This is at the discretion of the AO and may include an expiation (fine), Abatement Notice or prosecution. It is important to note that the purpose of regulatory action is to secure compliance with the Act.

### Actions:

1. Correspondence will be sent to the offender advising that a complaint has been made, that Council deems that they have committed an offence under the Act and that regulatory action is required to make them compliant with the Act.
2. The AO will contact the complainant outlining the outcomes of the investigation and the regulatory action that the Council is taking with their complaint.
3. The AO will have regard to the benefits of enforcement versus burden and cost of compliance, taking into account the following when taking regulatory action: the significance of the problem, the actual/potential impacts, the likelihood of reoccurrence, the number of people effected, the costs associated with compliance, reasonableness and likely effectiveness.

## Complaint Closure

The Council will seek to close all complaints in a timely manner. Complaints will be closed when:

- The complainant advises the Council the matter has been resolved.
- The matter has been resolved to the satisfaction of the Council.
- The matter does not justify the invocation of the Act.
- No evidence of non-compliance with the Act has been observed by the AO.
- The matter is deemed to be vexatious.
- The matter is outside of the responsibility of the Act, and has subsequently been referred to another agency.
- Complainants fail to proactively participate in the complaint resolution process, including failure to return the Nuisance Diary or have not been in contact with Council for 3 months.
- The complaint has been lodged anonymously, and the Council has been unable to validate the issue.
- Complainants are abusive toward or have threatened or intimidated staff.

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## 3.5 Referral to another Agency

During an investigation by an AO it may be determined that an incident is outside of the scope of the Act. The AO will:

- Make a referral to the EPA as required under the Act, if the activity is deemed an Environmental Nuisance.
- Refer issues that are better managed under another piece of legislation to the appropriate authority administering that legislation.

## 3.6 Complainant unsatisfied with Outcome

There will be times that complaints have not been resolved to the satisfaction of the complainant. This may occur if the matter is deemed outside of the scope of the Act or evidence of non-compliance with the Act has not been found.

Where complainants are dissatisfied with the manner or outcome in which their complaint was managed by the Council, the complainant is entitled to a request that council conduct an internal review.

Future correspondence and reports received on closed matters will only be investigated by the Council if significant new information is provided.