

# Local Nuisance and Litter Control Act 2016

## Factsheet 16 – Civil Remedies

Section 33 of the *Local Nuisance and Litter Control Act 2016* (the Act) contains provisions that enable a person to make application to the Environment, Resources and Development Court (ERD Court) for a civil remedy (resolution) to a particular issue or event and also for a council to recover specified costs and expenses incurred in the administration of the Act.

### What is a Civil Remedy?

An application for a section 33 civil remedy can be made by any person whose interests are affected by the alleged conduct, or by any other person with the permission of the ERD Court. Further, section 33 of the Act provides the ERD Court with wide ranging powers to address disputes regarding local nuisances and littering.

Civil remedies are also available to councils and the Minister as an alternative to criminal proceedings.

### What is the Environment, Resources and Development (ERD) Court?

The ERD Court is a specialist court in South Australia that deals with disputes, and the enforcement of laws relating to the development and management of land, the natural and built environment, and natural resources. Many people who appear in the ERD Court – which is committed to making sure that people can access its services - are self-represented.

The Act allows for applications to be made to the ERD Court for various orders, including orders requiring specific actions or restraining a person from specific conduct. The ERD Court can also order the payment of costs or expenses, compensation, or damages for loss resulting from a contravention of the Act.

### What sort of orders can the ERD Court make to enforce the Act under section 33?

Under section 33 of the Act, the ERD Court may make one or more of the following types of orders:

- restraining a person from engaging in conduct in contravention of the Act and, if the ERD Court considers it appropriate to do so, requiring the person to take any specified action
- requiring a person who has refused or failed or is refusing or failing to take action required by the Act to take that action (including but not limited to requiring a person to take action that they failed to take when issued with a nuisance abatement notice or a litter abatement notice)

- requiring a person who has caused damage to property by contravention of the Act to take specified action to make good the damage and, if appropriate, to take specified action to prevent or mitigate further damage
- requiring a person who has committed a contravention that has resulted in the Minister or a council incurring costs or expenses in taking action to prevent or mitigate damage caused by the contravention to make payment of the reasonable costs and expenses incurred by the Minister or a council in taking that action;
- an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action, where a person has suffered injury or loss or damage to property as a result of a contravention of this Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage
- where a person who has been issued with a nuisance abatement notice or litter abatement notice has incurred costs and expenses in carrying out the requirements of the order or reimbursing the Minister or a council for action taken in pursuance of the order, the ERD Court may order payment of the whole or a portion of the costs and expenses, as the ERD Court considers appropriate, against 1 or more other persons who were liable for the costs and expenses;
- where the ERD Court considers it appropriate to do so, an order may be made requiring a person who has contravened the Act to make a payment in the nature of exemplary damages to either the Consolidated Account (where an application has been commenced by the Minister), or to a council (where an application has been commenced by a council).

## Who can apply to the ERD Court for a Civil Remedy

An application under section 33 of the Act may be made by:

- The Minister or a council
- Any person whose interests are affected by the subject matter of the application
- Any other person with the permission of the ERD Court
- An application may be made in a representative capacity where the consent of all persons on whose behalf the application is made is obtained

## Time periods for commencing an application for a Civil Remedy

An application for a civil remedy based on a contravention of the Act, must be commenced within three years of the date of the alleged contravention.

## Costs

A person applying for an order under section 33 of the Act will ordinarily be required to meet their own legal costs and court fees.

Additionally, you may be personally financially liable if:

- The ERD Court finds that the respondent has not contravened the Act and has suffered loss or damage as result of your actions, if it is appropriate in the circumstances the ERD Court may order that you compensate the respondent for any loss or damage they have suffered; and/or
- The ERD Court may also make an order in relation to the costs of the proceedings in accordance with the Act or the *Environment Resources and Development Court Act 1993 (SA)*.
- The ERD Court retains a broad power to make such orders in relation to the costs of the proceedings as it thinks just and reasonable in the circumstances.

## Informing the Minister and the relevant council of the application

If an application for a Civil Remedy is made by a person other than the Minister (i.e. a council or a private citizen) a copy of the application must be served on the Minister within 3 days after filing the application with the ERD Court.

Similarly, if an application for a Civil Remedy is made by a person other than the relevant council, a copy of the application must be served on the relevant council within 3 days after filing the application with the ERD Court.

Further, if proceedings are commenced under section 33 of the Act by a person other than the Minister or a council, the Minister and also the relevant council may apply to be joined as a party to the proceedings.

## Where can I find information relating to the ERD Court and the processes needed to make an application for a Civil Remedy?

Information regarding the ERD Court including contact details is available on the [Courts Administration Authority of SA](#) website.

## 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.*