

Local Nuisance and Litter Control Act 2016

Factsheet 14 – Defence of Due Diligence

The defence of due diligence under the *Local Nuisance and Litter Control Act 2016* (the Act) is a process whereby – in court proceedings against a person for an offence – the person has a valid defence if they can prove to the court that they took all reasonable precautions and exercised all due diligence (care) to prevent the offence occurring.

What circumstances does the defence of due diligence apply?

The defence of due diligence exists in relation to proceedings against a person for an offence under section 18 (causing local nuisance) or 22 (disposing of litter) of the Act. It is a defence to prove that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.

This means that a contravention of the Act by persons involved in any of these activities would be required to prove that they;

- took all reasonable steps to prevent or avoid the circumstances that gave rise to the offence including putting in place any systems or safeguards that might reasonably be expected to be in place
- complied with the requirements of any notice issued under the Act (i.e. nuisance of litter abatement notice)
- as soon as becoming aware of the circumstances that gave rise to the offence they;
 - reported the circumstances to the Minister, administering body or relevant council
 - took all reasonable steps necessary to prevent or reduce those circumstances.

It is not sufficient however just to state such claims with the expectation that they will automatically mitigate the circumstances of the offence; any claims must be proven in order for them to be accepted as a defence.

A person should not misconstrue a defence of due diligence as being an automatic excuse for proceedings relating to an alleged offence.

Note: *The defence of due diligence is not available in circumstances where an allegation of contravention concerns a body corporate. Section 46 (Offences by bodies corporate) of the Act should be referred to instead.*

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.