

Exposure to Wood Heater Emissions: Legal Remedies

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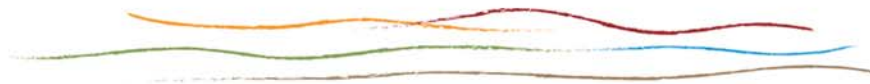
because the environment matters



Legal Remedies for exposure to wood smoke

Exposure may amount to

- An insanitary condition (Public & Environmental Health Act 1987)
- An environmental nuisance (Environment Protection Act 1993)
- A breach of an Environment Protection Policy
- A “nuisance” as defined by common law.



The Public health approach – an insanitary condition





THAT CITY-SLAUGHTERING QUESTION.

Miasmatic views of disease gave additional focus to air quality

Public & Environmental Health Act 1997 - causing an insanitary condition (order or offence)

Premises are in an insanitary condition if—

- (a) the condition of the premises *gives rise to a risk to health*;
- (b) the premises are so filthy or neglected that there is a risk of infestation by rodents or other pests;
- (c) the condition of the premises is such as to *cause justified offence* to the owner of any land in the vicinity;
- (d) *offensive material or odours are emitted* from the premises;
- (e) the premises are for some other reason justifiably declared by the authority to be in an insanitary condition



The health issue must be justifiable - it cannot be assumed from the condition

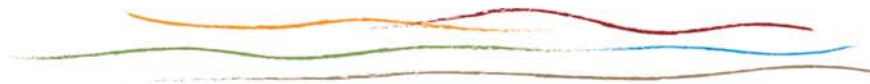
Tavitian v City of Playford (2003) SA District Court



Under a new public health approach

A general duty to prevent a risk to public health

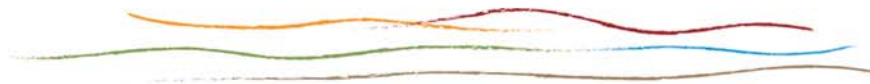
- A person must not undertake an activity, that could amount to a risk to public health unless the person takes all reasonable and practicable measures to eliminate the possibility of that harm occurring.



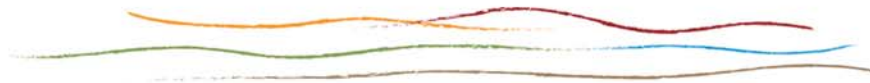
And exposure to wood smoke is a risk to public health

- Australian and international epidemiological studies have been used to estimate the health impact of extra winter air pollution from wood smoke. This suggests that air pollution from wood heaters and open fireplaces accounts in Perth for:
 - 16 premature deaths each year;
 - 4 extra cases of lung cancer;
 - 905 extra hospital admissions; and
 - 73,000 extra 'reduced activity days'.

Cost-Benefit Analysis of Wood Smoke Reduction in Perth, 2005
p13



Environment Protection Act 1993



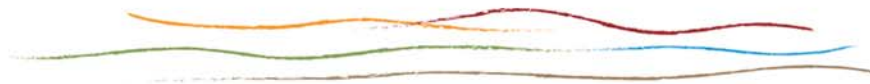
S82 Environment Protection Act

causing an environmental nuisance by polluting the environment is an offence

environmental nuisance means—

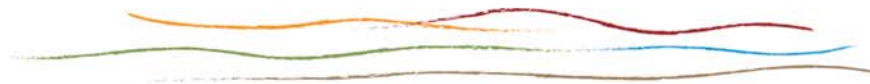
- (a) any adverse effect on an amenity value of an area that—
 - (i) is caused by pollution; and
 - (ii) unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or

- (b) any unsightly or offensive condition caused by pollution;



Environment Protection Policy

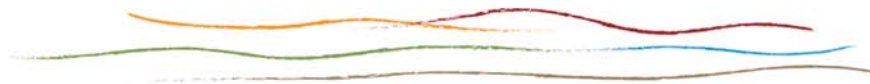
- The Environment Protection Act allows the preparation of policies for specified components of the environment (air, noise, water, waste)
- Policies can
 - create offences
 - call up standards or protocols and
 - allow environment protection orders to enforce the policy



A general air quality policy

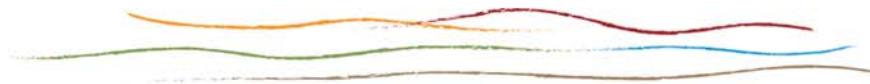
Could do any of the following:

- Impose standards for heaters made or sold in SA
- Impose emission standards
- Establish protocols for testing of emissions
- Impose obligations on users of heaters



Common Law Nuisances

- acts or omissions generally connected with the use or occupation of land which cause damage to another person in connection with that other's user of land or interference with the enjoyment of land or of some right connected with the land
- The interference must be *unreasonable*
- The location (existing land use) in which the interference occurs is relevant



Nuisance at its simplest



To summarise - in specific cases

Wood smoke from domestic heaters

- can be regulated as a public health issue (either as an insanitary condition or as a risk to public health)
- may amount to an environmental nuisance under the Environment Protection Act 1993
- may be the subject of an Environment Protection Policy regulating heaters generally or specific users
- may, if all else fails, be the subject of a common law action in nuisance

