

Australian Capital Territory

Litter (Amenity Impact) Code of Practice 2020 (No 1)

Disallowable instrument DI2020-287

made under the

Litter Act 2004, section 24ZA (Codes of practice)

1 Name of instrument

This instrument is the *Litter (Amenity Impact) Code of Practice 2020 (No 1)*

2 Commencement

This instrument commences on the day after it is notified.

3 Approval

I approve the Code of Practice for Amenity Impact, attached to this instrument, as a mandatory code of practice under the *Litter Act 2004*.

Chris Steel MLA
Minister for City Services

9 September 2020

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1 Introduction

This Amenity Impact Code of Practice (this Code) is made under the *Litter Act 2004* (the Litter Act) and provides a framework for the ACT Government to respond to instances of significant littering at an open private place (property) causing an amenity impact.

The objects of the Litter Act include to protect and enhance the amenity of the ACT, including the wellbeing of its people. This recognises that the build-up of litter on a property can have a significant impact on both the people residing at the property and those living at adjoining properties.

An amenity impact can occur for a variety of reasons or through a variety of circumstances. One reason for this can be due to a mental disorder or mental illness that causes a person to exhibit hoarding like behaviour which leads to the amenity impact. Where there is evidence that the amenity impact is wholly or in part due to a mental disorder or mental illness, the person causing the amenity impact may be unaware of the issue or unable to correct the behaviour without intervention. These cases need to be treated with particular care and sensitivity.

The framework set out in the Litter Act provides a regulatory pathway for the government to take when managing cases of amenity impact. However, best practice says that social solutions that build trust with the person responsible and encourage behavioural change over time is preferable to regulatory action.

This Code provides guidance for persons authorised under the Litter Act when investigating complaints of amenity impact, particularly where the amenity impact is likely caused by a mental disorder or mental illness. This Code also provides the Transport Canberra and City Services Directorate (TCCS) with referral pathways to support services where appropriate, including referral to a multidisciplinary group of government representatives specialising in the management of hoarding and hoarding like behaviour.

The legislative framework set out in the Litter Act allows the government to seek a court ordered abatement order to clean the property to remove the amenity impact. It must be stressed that this is only intended as a last resort where all other steps to resolve the problem have been unsuccessful.

This Code provides a flexible pathway of social and regulatory approaches to ensure that cases of amenity impact are managed in the least restrictive way in accordance with the *Human Rights Act 2004*.

This Code of Practice has been developed in consultation with relevant government and non-government bodies, and with regard to best-practice approaches used in other Australian jurisdictions.

2 Scope

This Code is made under section 24ZA of the Litter Act and provides general guidance to the Director-General of TCCS or a delegate (DG or delegate) in relation to the management of amenity impact circumstances, caused by hoarding, in a manner that recognises all parties fundamental human rights.

To remove any doubt, this Code does not provide advice to the DG or delegate about the management of ‘hoarding disorder’ as a recognised mental disorder. TCCS is responsible for managing the municipal response to amenity impact circumstances and this Code is limited to providing advice on the best practice management of these circumstances, which may include referral to necessary services where appropriate or taking regulatory action.

This Code also supports communication and collaboration between relevant government agencies to regularly review cases where they have been referred by utilising existing services or by establishing a group made up of representatives from government agencies and support services.

A reference to ‘a person’ in this Code with respect to an amenity impact may refer to one or several people.

2.1 What is an amenity impact?

Under the Litter Act, an amenity impact occurs when litter is deposited at an open private place and the depositing of the litter has or is likely to have a significant adverse impact on the amenity, use or enjoyment of an entity’s adjoining land. When determining if an amenity impact is occurring the quantity and nature of the litter must be considered as well as the amount of time over which the impact is or has been occurring.

The Litter Act does not specify a certain time period over which an amenity impact must occur. Once TCCS has been contacted about a potential amenity impact, the underlying cause will likely be quite advanced, however, the earlier the problem is addressed, the more likely that a positive outcome will be achieved.

2.2 When does an amenity impact occur?

An amenity impact circumstance would be considered to occur when litter, or items that a reasonable person would consider to be litter, build up at an open private place to such extent that it is beyond what should be reasonably stored on a residential property and is detracting from the desirability, attractiveness or use of the surrounding areas or properties.

The Litter Act uses the example of numerous vehicles in a deteriorated state in a person’s yard where there is no indication of any ongoing repair work or that the vehicles are valued; they are simply being left to rust. In this situation an amenity impact circumstance exists because the person is treating the yard as a scrap yard which is not desirable in a residential setting. The yard is unsightly and significantly effects the neighbour’s enjoyment of their land. Situations like these may involve a mental disorder or mental illness similar to that seen in hoarding disorder or ‘hoarding like behaviour’.

Where a complaint about an amenity impact circumstance is investigated, the determination of whether an amenity impact is occurring will be taken on a case by case basis considering the unique circumstance of each complaint. To be clear, these provisions are not intended to regulate everyday activities or limit the use of a person’s property. For example, an unsightly yard either during or immediately after building or renovations, overgrown lawn or vegetation, garden ornaments or excessive Christmas lights would not be considered an amenity impact for the purpose of the Litter Act.

2.3 What is hoarding?

Hoarding is a recognised mental disorder characterised by ‘persistent difficulty discarding or parting with possessions regardless of their actual value. This difficulty is due to a perceived need to save the items and/or the distress associated with discarding them. The difficulty discarding possessions results in the accumulation of possessions that congest and clutter active living areas and substantially compromises their intended use¹.’ This includes spaces external to a main residence.

¹ American Psychiatric Association (2013), Diagnostic and Statistical Manual of Mental Disorders (DSM-5)

A diagnosis of hoarding is often made where:

- ‘the hoarding is not attributable to another medical condition (e.g., brain injury, cerebrovascular disease, Prader-Willi syndrome); or
- the hoarding is not better explained by the symptoms of another mental disorder (e.g., obsessions in obsessive-compulsive disorder, etc)¹.’

By this definition, a person who hoards, does not necessarily have hoarding disorder.

The role of an authorised person under the Litter Act is to determine if an amenity impact is occurring, not to diagnose whether a person has a mental illness. For the purpose of this Code, an authorised person investigating an amenity impact complaint must be aware that where hoarding has led to the circumstance occurring, it may be due to an underlying mental disorder or mental illness. In these cases, the person involved will likely attach significant value to the items on the property regardless of their perceived value.

3 List of Key Principles

When managing cases of amenity impact, the following principles must be taken into account:

- a. a person with a mental disorder or mental illness has the same rights and responsibilities as other members of the community and is to be supported to exercise those rights and responsibilities without discrimination;
- b. a person with a mental disorder or mental illness has the right to be assumed to have decision making capacity, unless it is established by a professional that the person does not have decision making capacity;
- c. a person’s will should be considered when determining the best course of action;
- d. the human rights of individuals are respected, and cases of amenity impact are treated in the least restrictive way; and
- e. amenity impact caused by the build-up of significant amounts of litter on a property can have an impact on the mental health and wellbeing of neighbours.

4 List of Objectives

The objectives of this code are to:

- support the DG, delegate and authorised persons to fulfil the objectives of the Litter Act, as listed in section 6, including the protection and enhancement of the amenity of the ACT, including the wellbeing of its people;
- encourage best practice measures for the management of amenity impact;
- promote a coordinated approach in the management of amenity impact through the establishment of a group comprising of representatives from government and non-government agencies and support services to advise the DG in relation to the management of amenity impact;
- outline the review process for a regulatory decision; and
- outline the circumstances in which a person causing an amenity impact may be referred to a government or non-government agency or support service.

5 Investigating Amenity Impacts

Complaints concerning amenity impact circumstances are often received by TCCS from neighbours who are concerned or are being impacted by the build-up of litter and the related consequences. Other government and non-government agencies may also be notified of, or discover, amenity impacts resulting from hoarding like behaviour involving their clients and notify TCCS.

The Litter Act provides that complaints of amenity impact may be made in writing, however complaints received through other means such as verbally via Access Canberra, will also be investigated.

An investigation to determine if an amenity impact circumstance exists may include collaborating with other agencies to establish if they are involved in the matter, seeking further information from the complainant, contacting the person to whom the complaint relates, or visiting the property to determine if an amenity impact exists.

To assist community awareness and certainty with respect to the management of amenity impacts, the outcome of an alleged amenity impact investigation will be advised to the complainant having regard to the privacy rights of the occupier. It is acknowledged that there is no express provision in the Litter Act to notify a complainant other than when an authorised person decides not to issue an abatement notice. If appropriate, the complainant may also be provided with information about any available methods for settling the matter privately. This must be provided if the authorised officer decides not to issue an abatement notice after the investigation.

5.1 Property visit and assessment

For the purposes of investigating a complaint about an amenity impact circumstance, an authorised person may visit the property to determine if an amenity impact is present and assess the circumstance.

When investigating an amenity impact complaint, the authorised person investigating the complaint should first observe the property from the public domain, before making contact with the occupier. If it can be seen that either an amenity impact circumstance is likely to exist or it cannot be determined if an amenity impact exists, it is likely that an inspection of the property will be necessary. If a property inspection is necessary, it may be prudent to use information gathered from the public domain and information provided by the complainant or other agencies to assess the situation before organising the property visit.

Where possible, a property visit should be done at a reasonable time and with consent of the occupier. It is not always practicable to provide notice of a visit to an occupier (e.g. an authorised officer receives a complaint but is unable to obtain contact details for the occupier and thus must attend a property to engage the occupier). When conducting a property visit, authorised officers must have regard to sections 18 and 19 of the Litter Act concerning the entry to premises and consent to entry. The Litter Act does not allow entry into parts of the premises used for residential purposes at any time.

When undertaking a property visit, it is important to be mindful that the nature of any contact made with the occupier is extremely important. It can have significant bearing on the person's acceptance of help. Whilst it is important that authorised persons be mindful to approach the occupier with sensitivity and respect, as a regulator they are not best placed to provide support services. As such, the occupier should be provided with the opportunity to involve support or advocacy services where practicable.

If the authorised person determines that an amenity impact exists, depending on the severity and evidence present, a decision to take regulatory action beyond providing information and education to the person should not be made immediately. Due to the possible involvement of a mental disorder or mental illness and the complex nature of these cases, the best course of action to resolve the situation may not necessarily be regulatory. Cases should be referred to a Regulatory Advisory Committee (RAC) or the Hoarding Case Management Group (HCMG) for consideration to determine the most appropriate course of action. The HCMG is administered by Health Protection Services within the ACT Health Directorate. The HCMG is a specialist working group made up of members experienced in managing hoarding cases and has members from relevant areas of Government and community services. Subsequent property visits may be required.

5.2 Referral to an interagency group

In many cases where an amenity impact is identified, especially where the circumstance may have developed due to an underlying mental disorder or mental illness, City Services in isolation may not have the necessary skills to recognise the complexities of a case and respond appropriately.

Best practice management of cases involving complex competing mental disorders or mental illness and social issues requires a coordinated approach between government and non-government services. The use of a multidisciplinary team to guide a cross sector approach to achieve the best outcomes is recommended.

The ACT Government and non-government organisations have a range of services and resources which can complement each other to manage amenity impact cases. A multi-agency approach is therefore considered beneficial to the long-term successful management of hoarding like behaviours that may cause an amenity impact.

To facilitate finding optimal solutions to complex amenity impact circumstances, cases being investigated by TCCS may be referred to the HCMG. The HCMG may, by referral or on its own initiative, provide advice to the DG or a delegate about matters associated with the circumstances of amenity impact such as the need for referral outside of TCCS or a regulatory response.

5.3 Complementary legislation

The ACT does not have legislation specifically for the management of hoarding, however there are several pieces of legislation that relate to hoarding and may apply depending on the circumstances of a case. A list of the legislation used in managing and treating hoarding is included at Appendix A.

6 Referral to Support Services

When managing a case of amenity impact, referring a person to a support or advocacy service may be preferable to taking regulatory action. In most cases finding social solutions, such as engaging support services, in the first instance, is the best approach. Only where a person responsible for an amenity impact refuses to genuinely cooperate with support services should the regulatory pathway be pursued.

The DG or a delegate may refer a case concerning an amenity impact circumstance where hoarding is involved to other government departments, for example to ACT Mental Health or to support or advocacy services where it has been determined that regulatory action is not the best course of action. Referral will be with the prior consent of the person where this is practicable, or otherwise in accordance with the *Information Privacy Act 2014* and the *Health Records (Privacy and Access) Act 1997*. The DG or a delegate should consult with the HCMG prior to referring a case to another department or service. Depending on the frequency of meeting, referrals can be made outside of the formal meeting process. Consultation with the new agency or support service must occur and a record of the referral must be documented.

Where there is evidence that the hoarding issues are also present inside the residence and there is a risk to the occupier or other vulnerable people appropriate services should be notified. Where an authorised person believes or suspects that a child or young person living at the property is at risk of being neglected or abused it should be reported to Child and Youth Protection Services. Authorised persons under the Litter Act are not mandatory reporters under the *Children and Young People Act 2008* and may use their judgement in decide whether to report. In any case where an authorised officer reports, or considers reporting vulnerable people they should notify their senior manager.

Where TCCS refers a case to another Directorate, department or organisation, TCCS should remain involved and regularly review the case. TCCS may provide regulatory support if required or

requested by the referred service. If the referred service is not proving an effective response within a reasonable timeframe the case should be reviewed for possible alternative solutions including regulatory action. Where a person is not genuinely cooperating with the referral service to remove the amenity impact, the case should be referred back to TCCS to begin or continue regulatory action.

7 The Regulatory Approach

Cases of amenity impact where hoarding is involved can be complex. There is no single regulatory approach that will resolve all circumstances that may arise from hoarding and result in amenity impacts. In managing an amenity impact, the DG or a delegate will use the least restrictive means reasonably available and must weigh any decision to undertake regulatory action against the rights of the individual, community concerns, public health and the parameters of the law. In the first instance, this should include an educative approach whereby the person is requested to voluntarily address the circumstance occurring at the property. This approach is favoured and should be employed as soon as practicable such as during initial property visit or investigation into an alleged amenity impact.

Where an educative or positive intervention approach is ineffective or inappropriate, the DG or a delegate may take regulatory action to manage the amenity impact. A regulatory response may be warranted when:

- an amenity impact circumstance is identified; and
- the person is not willing to genuinely cooperate to rectify the circumstance causing the amenity impact (including accepting support and positive intervention where necessary).

This section provides details of the recommended regulatory pathway for managing an amenity impact circumstance where hoarding is involved. The regulatory pathway provides a flexible framework to allow the DG or a delegate and authorised officers to better respond to cases of amenity impact. The DG or a delegate has responsibility and discretion to manage amenity impact under the Litter Act in accordance with his or her professional judgement, the circumstances of the case, subject to other legal obligations and any recommendations from a RAC or the HCMG.

7.1 The regulatory pathway

Where regulatory action is required to address an amenity impact circumstance, the DG, a delegate or authorised person should, in the first instance seek to follow the regulatory pathway outlined below as detailed by Subdivision 4.3.3 of the Litter Act.

A regulatory approach should only be taken when a person does not genuinely cooperate to remove the amenity impact or with support or advocacy services. If at any point along the regulatory path the person voluntarily engages with support services and actively works to remove the amenity impact, regulatory action should be suspended.

7.2 Suggested regulatory pathway

Investigation

A complaint of an amenity impact should be investigated to confirm what, if any, action is necessary and the extent of the impact on neighbouring properties or the public. Before taking any action, the authorised officers must consider the least restrictive option available to resolve the situation.

Where a property visit is necessary, consideration should be given to how the person is contacted or approached including whether the person has had previous interaction with government regulators or support services, if this information is available. If necessary, the authorised person may be accompanied on the visit by a support person if a person with an existing relationship is known.

Engagement, education and referral

An educative approach should be taken to engage the person and to request they take reasonable steps to remove a specified amenity impact. Information regarding support or advocacy agencies will be provided and referrals made to support positive intervention where appropriate. If the person is believed to be at risk due to insanitary conditions caused by hoarding and squalor, appropriate services should be notified. Notification to Child and Youth Protection Services should be made if there are children or young people at the property and the authorised person suspects they are at risk of neglect or abuse.

Show cause notice

A notification (show cause notice) about a proposed abatement notice is the next stage of regulatory action. It should be used where an authorised person under the Litter Act has determined that an amenity impact exists at a property and previous attempts to encourage the person to remove the amenity impact or engage with support or advocacy services have failed. A show cause notice is an opportunity for the person to state why they should not be issued an abatement notice in relation to the amenity impact and to present evidence about their situation and how the amenity impact came about. This evidence must be considered when determining if an abatement notice will be issued or not issued.

A show cause notice should only be issued after consideration by a RAC with a final decision made by the DG or a delegate who is independent of the investigation. The RAC may be composed primarily of TCCS staff, however it should contain people with the required expertise appropriate to the circumstance for each matter. The RAC must have representation from someone advocating for the person and a person experienced in mental health or hoarding. Decisions of the RAC must be fully documented.

The Litter Act allows a person issued with a show cause notice to give a written submission to the authorised person who issued the notice. Producing a written statement may be impractical for some people. While a written submission is preferred, where possible, the regulating agency should consider verbal evidence or other forms of submission when considering whether to progress the regulatory process to issuing an abatement notice.

Abatement notice

After consideration of any information gathered after issuing a show cause notice, it is not necessary for TCCS to reconvene the RAC. TCCS may decide to suspend regulatory action or proceed to issuing an abatement notice. If a person is issued with a show cause notice, and continues not to genuinely engage to remove the amenity impact, after considering any submission from the person in response to the show cause notice and all other available evidence, the authorised person may issue an abatement notice after consultation with the HCMG and the DG or delegate.

An abatement notice must state the amenity impact which is required to be abated and the period within which the amenity impact is to be abated. An abatement notice is in force until revoked in accordance with section 24GB of the Litter Act, however it can be extended or revoked at any time by the DG or a delegate or by application from the person issued the notice to the DG or a delegate.

Abatement order – Issue

If a person fails to comply with an abatement notice, the DG or a delegate may apply to the Magistrates Court for an abatement order to guarantee compliance with an abatement notice.

A decision to apply for, or implement, an abatement order should only be considered as a last resort measure and when in the public interest. The HCMG may advise the DG or a delegate whether to apply for, or implement, an abatement order. The Litter Act does not state a specific period for

which an abatement order should apply, however, an abatement order should be applied for as long as necessary to ensure the amenity impact does not re-occur, this can include an ongoing order. A Court is the only authority that may issue an abatement order.

Abatement Order – Implementation

If a person is issued an abatement order and fails to comply with the order, an authorised person may, after the expiration of the compliance period, enter a property to implement the abatement order. The person must be given written notice stating the proposed time and date with least 7 days in advance.

How an abatement order is implemented is very important. If the DG or delegate decides to implement an abatement order, careful planning must be undertaken before the day to ensure that the process is undertaken efficiently and reducing stress for the person as much as possible. It must be clear what action is being taken and who is responsible for it. For example, the officer should ask questions like: who will be removing the amenity impact and how? What other cleaning services are necessary?

Consideration should also be given to what additional services will need to be present on the day. The person must have the opportunity to access to a support person while the order is being implemented to provide support and advocate for the person's rights. This may be a family member, community service or social worker or a representative from the public advocate.

Depending on the nature of the case, other services may also be required such as mental health, fire and rescue or the police.

Non-compliance with a Court ordered abatement order may also attract a criminal penalty.

7.3 Review process

The DG or a delegate and the HCMG will regularly review the circumstances that give rise to the issue of an abatement notice or abatement order to ensure ongoing alignment with the rights of the affected person, the interests of the community in maintaining the amenity of the ACT and the safety of the community.

There are also several provisions within the Litter Act that permit a person to request a review regarding a regulatory decision. Such options are available to a person at each stage of the regulatory pathway as described below.

Issuing of an abatement notice

The person to whom the notice was issued under section 24BD of the Litter Act may write to the DG or a delegate requesting a review of the decision to issue the abatement notice. The person can also apply to the ACAT to have the decision reviewed.

Extension or revocation of an abatement notice

The person to whom the notice was issued may apply to the DG or a delegate requesting an extension on the compliance period specified in the abatement notice (section 24BF of the Litter Act) or a revocation of the abatement notice (Section 24BG of the Litter Act). An extension request should be granted in circumstances where the person is genuinely cooperating or has extenuating circumstances that justify the extension. If an extension to the compliance period or revocation of the notice is not granted, the reasons for the decision must be provided in writing to the person. The person can also apply to the ACAT to have the decision reviewed.

Appeal of an abatement order

A person subject to an abatement order may apply to the Magistrates Court to revoke an abatement order. The Magistrates Court may revoke the order if satisfied the order has been complied with and there is no reasonable likelihood of the circumstance giving rise to it happening again.

Section 24Z of the Litter Act provides that a person may appeal to the Supreme Court in relation to abatement orders made by Magistrates Court or orders to dismiss an application for the revocation of an abatement order under section 24Z of the Litter Act.

8 Code of Practice Review

The operation of the Code will be reviewed by TCCS after the end of its third year of operation and may be reviewed at any other time considered necessary. The review will consider whether the Code is operating to fulfil its own objectives and those of the Litter Act. The Code will be amended as appropriate based on the outcomes of the review.

Appendix A - ACT Legislation Relating to Hoarding

Act	Administering Directorate/Body
<u>Building Act 2004 (ACT)</u>	Environment, Planning and Sustainable Development Directorate
<u>Children and Young People Act 2008 (ACT)</u>	Community Safety Directorate /Education Directorate
<u>Emergencies Act 2004 (ACT)</u>	Justice and Community Safety Directorate
<u>Housing Assistance Act 2007 (ACT)</u>	Community Safety Directorate
<u>Human Rights Act 2004 (ACT)</u>	Justice and Community Safety Directorate
<u>Information Privacy Act 2014 (ACT)</u>	Justice and Community Safety Directorate
<u>Litter Act 2004 (ACT)</u>	Transport Canberra and City Services Directorate
<u>Mental Health Act 2015 (ACT)</u>	ACT Health Directorate / Canberra Health Services / Justice and Community Safety Directorate
<u>Planning and Development Act 2007 (ACT)</u>	Environment, Planning and Sustainable Development Directorate
<u>Public Health Act 1997 (ACT)</u>	ACT Health Directorate / Canberra Health Services
<u>Public Trustee and Guardian Act 1985 (ACT)</u>	Justice and Community Safety Directorate
<u>Residential Tenancies Act 1997 (ACT)</u>	Justice and Community Safety Directorate
<u>Waste Management and Resource Recovery Act 2016 (ACT)</u>	Transport Canberra and City Services Directorate
<u>Work Health and Safety Act 2011 (ACT)</u>	Chief Minister, Treasury and Economic Development Directorate