



# Statutory Disturbance Complaints

## Fact Sheet



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### Introduction

Liquor & Gaming NSW (L&GNSW) handles two distinct types of disturbance complaints: noise complaints and statutory disturbance complaints lodged under the *Liquor Act 2007* (the Act). We deal with these complaints differently and will not investigate every complaint we receive.

A statutory disturbance complaint is one made pursuant to section 79B of the Act which sets out specific requirements that must be met before a complaint can be lodged and upheld by L&GNSW. These types of complaints follow a formal process set out within the Act and can take some time to resolve.

If the criteria to make a statutory disturbance complaint is not met, you may submit a noise complaint to L&GNSW instead. When dealing with this noise complaints, L&GNSW places a focus on education, support, and remedial engagement in the first instance.

**We deal with statutory disturbance complaints differently to noise complaints. For more information on noise complaints, refer to the [Fact Sheet: Noise Complaints](#).**

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### When can a statutory disturbance complaint be made?

A statutory disturbance complaint may be made when the quiet and good order of the neighbourhood of a licensed venue is being unduly disturbed, or unreasonably and seriously disturbed, because of the manner in which the business is being conducted, or the behaviour of persons after they leave the venue (including, but not limited to, instances of anti-social behaviour or alcohol-related violence).

A statutory disturbance complaint may only be made by the following persons:

- Five or more persons who live or work in the neighbourhood who are not part of the same household/business and have attempted to address the complaint directly with the venue.
- NSW Police
- A person or entity that satisfies L&GNSW that because of the nature or gravity of the complaint, the person should be entitled to make the complaint, or where it is otherwise in the public interest (evidence must be supplied to L&GNSW to support these considerations).

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## What must a statutory disturbance complaint include?

A statutory disturbance complaint must be made in writing to L&GNSW and be verified or made by a statutory declaration. It must include:

- Written authorisation of four or more other persons who live or work in the neighbourhood (unless it is a complaint lodged by the Commissioner of Police or if a complaint is lodged by another person due to the nature or gravity of the complaint, or otherwise in the public interest).
- Specific times and dates of the alleged disturbance. A complainant may wish to keep a diary or log of noise and disturbance issues to better record details about each instance of disturbance.
- Details about the type of alleged disturbance, for example live music or amplified entertainment, patron noise or anti-social behaviour from patrons when leaving the venue.
- Information relating to the frequency and duration of the disturbance.
- Whether there have been any substantial changes in the operations or activities carried on at the venue (this does not include the provision of live music between midday – 10pm when held inside, and between midday - 6pm when held outside).
- Details about any previous contact made with the venue, NSW Police or local council about the alleged disturbance. The complaint should include details of the person spoken to and their response or any action taken.
- Evidence that demonstrates the complainant has attempted to resolve the issues directly with the licensee or venue operator. This may include phone calls and/or meeting with the licensee to discuss possible solutions to disturbance issues, and any resulting actions or steps that occurred.

- Details as to what an acceptable solution might be or what the complainants would like to see happen to reduce the disturbance.

There is information at the end of this fact sheet regarding how to submit a statutory disturbance complaint.

**You may submit video files, audio files or sound readings taken from mobile device applications in support of your complaint. However, these files will not be used as evidence to support regulatory or enforcement action.**

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## How we deal with statutory disturbance complaints

When a statutory disturbance complaint is received, an initial assessment is conducted to ensure that it meets all the criteria to be dealt with under the disturbance complaint provisions in the Act.

We may determine to not deal with the complaint under these provisions but instead address the allegations raised in the complaint through other methods. This may include focused remedial engagement with the venue providing education and support; this provides the venue with an opportunity to implement measures to mitigate any noise impact and may result in a timely resolution.

The assessment of the complaint will consider relevant factors such as:

- Whether attempts have been made to resolve the complaint directly with the licensee or venue operator.
- The nature and context of the complaint, including the type, frequency, seriousness, and timing of the alleged disturbance.
- The venue's compliance history, including any previous engagements with L&GNSW or noise complaints.
- Whether there is evidence, or a history of ongoing noise disturbance associated with the venue.

- Whether the venue’s development consent allows for use of areas for entertainment purposes (where the consent is available for review).

**We will not accept a statutory disturbance complaint in circumstances where:**

- **No attempt has been made to resolve the complaint directly with the licensee or venue operator.**
- **A report of disturbance about the venue has not previously been lodged with L&GNSW. This supports a graduated compliance approach in the management and informal resolution of noise complaints.**
- **There are existing noise-related conditions on the venue’s liquor licence, and we consider it more appropriate for these conditions to be enforced.**

If we determine to accept the statutory disturbance complaint and deal with it under the disturbance provisions in the Act, the details of the complaint are prepared for distribution and redacted to protect the privacy of the complainant and authorising persons (where requested).

In dealing with a complaint, a conference may be convened by L&GNSW to hear submissions in relation to the complaint, or written submissions may be invited from parties relevant to the complaint. All parties will be given a fair and reasonable opportunity to be heard and the principles of natural justice and due process are observed.

### Conferences

If a conference is convened, notice of the time and place of the conference will be given to all parties to the complaint, including the venue licensee/approved manager and complainant/s. Attendance at the conference is voluntary, however, to assist in facilitating a timely and effective resolution, it is encouraged that all parties attend.

The complainant and the licensee will be the main parties in the conference process, however an invitation may be extended for

other persons, such as NSW Police and the relevant local council, if appropriate. A conference is intended to be an informal and interactive process and does not follow rules of evidence like a court hearing; however, it is open for all parties to have legal representation during the conference should they choose.

The objective of a conference is to identify, and if possible, narrow the issues in dispute with a view to achieving resolution between the parties. L&GNSW may adjourn the conference subject to the implementation and continuation of undertakings given by the licensee.

### Submissions

L&GNSW may invite written submissions from the licensee of the venue to which the disturbance complaint relates, and from other persons as appropriate, such as the business owner or premises owner. NSW Police and the relevant local council will also be invited to make written submissions in response to the complaint.

Where submissions are sought, parties are given an opportunity to put their position forward and reply to issues raised on at least one occasion. This process also provides an opportunity for the licensee to arrange for independent acoustic testing, if appropriate, or to undertake remedial works or implement changes to mitigate noise impacts. This process may take time and is likely to extend the submission process, however, it is a positive step in seeking a resolution.

If acoustic testing is commissioned and remedial works are completed at the venue, further submissions may be invited from all parties to determine whether there have been any improvements in noise emissions.

L&GNSW inspectors may also undertake inspections of the venue to make observations regarding the operation of the venue and conduct compliance testing with any applicable licence conditions, including acoustic testing, where appropriate.

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## Grounds to uphold a statutory disturbance complaints

A key consideration in determining the threshold for upholding a disturbance complaint is 'order of occupancy'. The threshold or level of disturbance that must be established to uphold a complaint will differ depending upon the order of occupancy.

**'Order of occupancy' refers to the order in which the complainant and licensed venue first began to occupy or operate their premises, and favours the party established first.**

For the order of occupancy to be in favour of the licensed venue, several factors must be satisfied, including:

- The venue must have been operating as a licensed premises longer than the complainant has resided or worked at their residence or place of business, and
- There must have been no substantial change to the operations carried on at the venue since the complainant began residing or working at their residence or place of business. This excludes the provision of live music between midday and 10pm when held inside the venue, and between midday and 6pm when held outside.

### Thresholds of disturbance

There is a higher threshold that applies before a disturbance complaint can be upheld when the order of occupancy is in favour of the venue. This acknowledges that venues which host live music and entertainment may be prone to noise complaints and sets expectations about the types of activities and threshold for disturbance that may be reasonably foreseeable.

If the order of occupancy is in favour of the complainant, a disturbance complaint may be upheld if the quiet and good order of the neighbourhood in which the licensed venue is located has been '**unduly disturbed**'.

If the order of occupancy is in favour of the venue, a disturbance complaint may be upheld if:

- The quiet and good order of the neighbourhood in which the licensed venue is located has been '**unreasonably and seriously disturbed**',
- The alleged disturbance was not reasonably foreseeable by the complainant when they began residing or working in the area.

**However, a complaint will not be upheld in these circumstances if the complainant could have taken reasonable steps to mitigate the impact of the disturbance but did not take the steps.**

If a venue subject of a statutory disturbance complaint is located within a Special Entertainment Precinct, the complaint may be upheld if, after having regard to the precinct management plan, it is established that the venue has caused a disturbance that is '**unreasonable**'.

For further information on the statutory disturbance complaint framework and factors considered when determining a disturbance complaint, refer to the Disturbance Complaint Guidelines.

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## Decision

After a statutory disturbance complaint has been accepted and all evidence and submissions assessed, a written decision will outline whether there is sufficient evidence to uphold the disturbance complaint and make a finding whether the level of disturbance meets the relevant threshold in the circumstances.

Detailed reasoning of these findings and the appropriate regulatory outcome will be set out in the decision.

A disturbance complaint may result in the following outcomes:

- No further action taken in relation to the complaint.



- The licensee being issued a warning.
- An existing condition on the liquor licence may be varied or revoked.
- If a conference has been convened – the conference may be adjourned subject to implementation and continuation of undertakings given by the licensee.
- One or more conditions may be imposed on the liquor licence, including but not limited to, conditions relating to:
  - Noise abatement.
  - Requirement to install a noise limiter.
  - Restrictions on the sale and supply of liquor.
  - Security requirements.
  - Plan of Management.
  - Requirement to participate in, and to comply with, a local liquor accord.
  - Restricting the trading hours of, and public access to, the licensed venue.

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## Notification and publication of decision

Once the matter has been determined, all parties to the complaint will receive a copy of the decision. The decision is then published on the L&GNSW website, with any personal information removed prior to publication.

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## Timeframe for resolving a statutory disturbance complaint

There is no set timeframe for determining a statutory disturbance complaint, however L&GNSW endeavours to resolve and finalise all disturbance complaints as quickly as possible. Due to the number of parties involved in a complaint, and the overriding need to afford all parties procedural fairness, the process may take a number of months to finalise.

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## Review of the decision

A person who is aggrieved by a disturbance decision can request a review of the decision by the Independent Liquor & Gaming Authority (the Authority). Further information about the review process is set out in the Authority Guideline 2, published [here](#).

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## Make a statutory disturbance complaint

1. Lodge your statutory disturbance complaint [here](#).
2. Ensure the complaint is appropriately authorised, where required, and you meet all legislative requirements.
3. The complaint must be supported by a statutory declaration.

If you are unable to submit a complaint online, please contact L&GNSW at [sound.enforcement@liquorandgaming.nsw.gov.au](mailto:sound.enforcement@liquorandgaming.nsw.gov.au) to discuss alternative options.