

Disturbance complaints



Trade & Investment
Office of Liquor, Gaming & Racing

The NSW liquor laws allow local communities to take action against licensed premises that have an adverse impact on local neighbourhoods.

Local resolution of neighbourhood disturbance issues involving licensed premises is encouraged as a first step in dealing with problems.

The simplest and most straightforward way to deal with a neighbourhood disturbance concern is to speak or write to the manager of the licensed premises as soon as possible.

A guide is available to help residents work with venue managers to resolve local disturbance concerns (including noise and anti-social behaviour, parking or litter problems). Download the Guide at www.olgr.nsw.gov.au/liquor_disturbance_complaints.asp

However, where local resolution is not possible, there is a more formal disturbance complaints process available.

Under the *Liquor Act 2007*, police, local councils and residents can make a disturbance complaint to the Director General, NSW Trade & Investment. The Director General has a range of statutory powers and enforcement functions under the liquor laws, including the power to deal with disturbance complaints against licensed premises.

This fact sheet outlines how a disturbance complaint can be made against a licensed premises, and the potential outcomes.

What is a disturbance complaint?

A disturbance complaint can be made to the Director General when the quiet and good order of a neighbourhood is unduly disturbed by:

- The manner in which the business of the licensed premises is conducted; and/or
- The behaviour of patrons after leaving the licensed premises (such as anti-social behaviour and alcohol related violence).

Who can make a disturbance complaint?

A disturbance complaint can be made by:

- Local residents (three or more residents are required), as either:
 - One resident, authorised by two other residents; or
 - A third party, authorised by three residents
- Police
- A local council
- A person who satisfies the Director General that their financial or other interests are adversely affected by the licensed premises (eg. another business operator in the neighbourhood).

A disturbance complaint must be supported by a statutory declaration which is available from the NSW Office of Liquor, Gaming & Racing at www.olgr.nsw.gov/liquor_home.asp

A disturbance complaint can relate to more than one licensed premises if the complainant believes multiple licensed premises are contributing

to the disturbance (eg. the migration of patrons between nearby licensed premises late at night).

How are disturbance complaints handled?

After receiving a complaint, the Director General will consider the best means of addressing the issues raised by the complainant. This could include any of the following:

- encouraging the complainant and licensee(s) to resolve the issues between themselves
- mediation between the complainant and the licensee(s)
- seeking voluntary undertakings by the licensee(s)
- using regulatory powers under the Liquor Act to impose conditions on a licence and/or issuing directions to the licensee(s) and/or staff
- dealing with the complaint based on the evidence provided by the complainant and submissions from the licensee(s) involved; or
- convening a conference to obtain further information from the complainant and give the licensee an opportunity to respond.

Other stakeholders, such as police and council representatives, may also be invited to provide their view and contribute to measures to address the issues raised in the complaint. This may include attending a conference or providing relevant data to assist the Director General at the conference.

The Director General will provide all parties with a fair opportunity to be heard in resolving a complaint. The principles of natural justice and due process must be observed.

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The disturbance complaint process is outlined in the flowchart on page 3.

What action can the Director General take in response to a complaint?

The Director General can decide to utilise different regulatory tools in resolving a disturbance complaint. This can lead to a range of outcomes which can be tailored to the particular circumstances of the complaint.

Where a complaint is determined under the disturbance complaint provisions of the Liquor Act, the Director General can:

- impose a condition on the liquor licence
- vary or revoke an existing condition on the liquor licensee
- adjourn a complaint conference (if held) to enable the licensee to implement any undertakings given to the Director General to address the complainant's concerns and to enable the effectiveness of those undertakings to be reviewed
- issue a warning
- take no further action.

The types of conditions that can be imposed on a liquor licence include but are not limited to:

- noise emission restrictions
- trading restrictions including lockouts/curfews
- restrictions on the sale/supply of liquor
- requiring security, or additional security patrols, in and around a licensed premises venue
- requiring a licensee to participate in a local liquor accord.

What issues will the Director General take into account?

The Director General will determine if the neighbourhood is being unduly disturbed and how. Information from police, the local council, residents, and the licensee is crucial in establishing the level of disturbance, and what measures may be necessary to address it. The complaint process operates more efficiently and outcomes are more effective where information is precise and complete.

Before making a decision under the disturbance complaint provisions of the Liquor Act, the Director General must consider the order of occupancy between the licensed premises and the complainant. Changes to the licensed premises and the complainant's premises – including structural changes – will be considered.

The Director General must also take into consideration any changes in the activities conducted on the licensed premises over a period of time (eg. the pattern of trading hours).

These order of occupancy provisions do not apply to complaints made only by police or the local council.

Can the Director General's decision be reviewed?

Yes. Depending on how a complaint is resolved, it may be possible to request the Director General's decision be reviewed by the Independent Liquor & Gaming Authority.

Should I approach the licensee about my concerns before lodging a disturbance complaint?

Yes. Concerns by residents about the operation of a licensed venue premises may be adequately addressed by the licensee without the need for a formal complaint to be lodged. The local council or police may also be able to assist. If the matter cannot be resolved, residents can lodge a complaint with the Director General.

If I lodge a disturbance complaint do I need to go to court?

No. Disturbance complaints are dealt with under an administrative-based system with informal procedures. Complainants do not need to attend court or be represented by a lawyer.

Where a conference is convened by the Director General, it is in the interests of a complainant, or a representative, to attend.

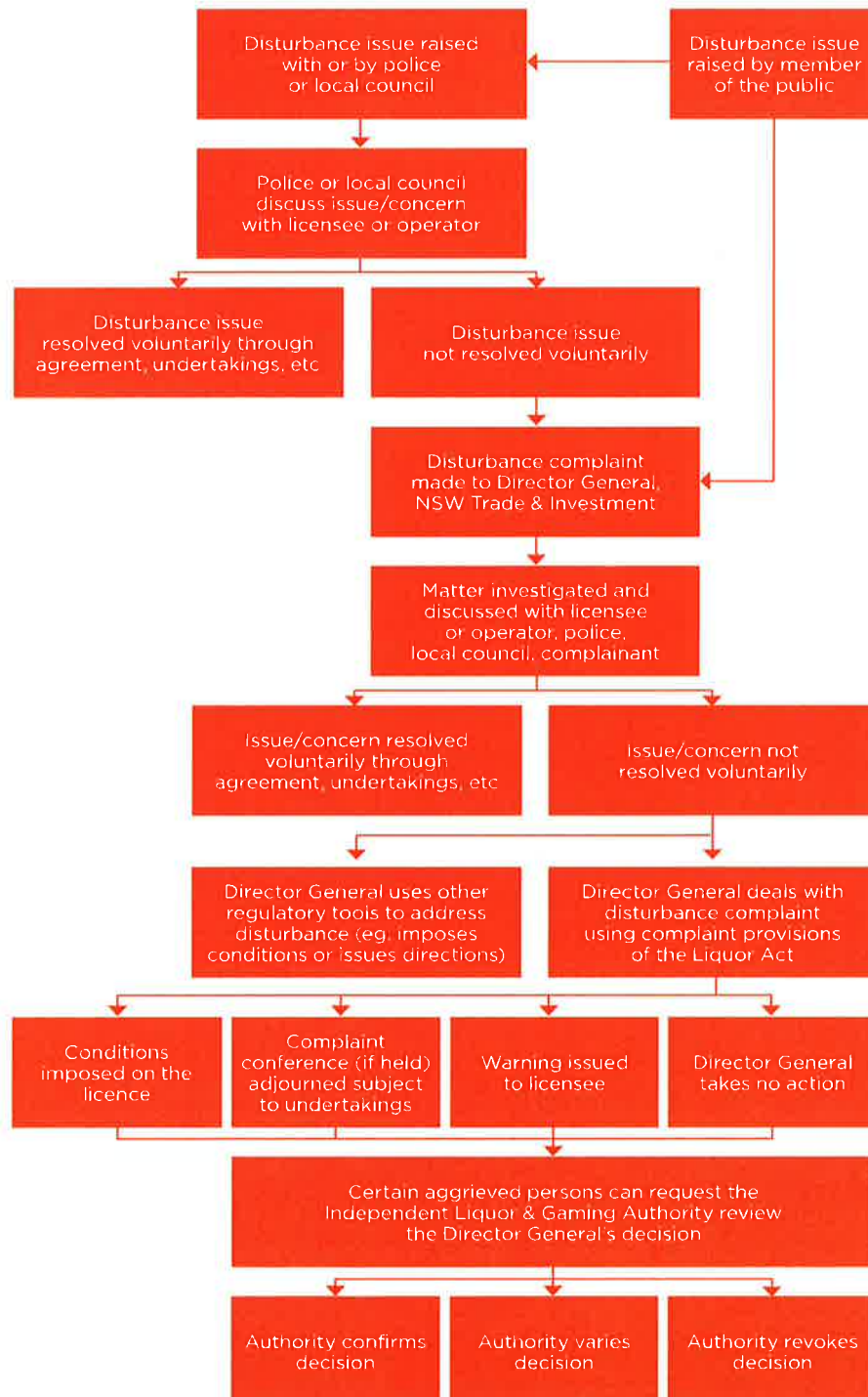
How long do disturbance complaints take to resolve?

There is no set time and it will depend on the number of issues and parties involved in the complaint. However, the range of regulatory tools available to the Director General under the liquor laws means that action can be taken quickly, if necessary.

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Flowchart: Step by step disturbance complaint process



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FAQs

I want to make a disturbance complaint about a licensed premises which was operating before our home/apartment was built. Can we still make a complaint, given the 'order of occupancy' provisions?

Yes. The order of occupancy provisions do not stop a person lodging a disturbance complaint. However, the Director General must consider order of occupancy issues when dealing with the complaint under the disturbance complaint provisions of the liquor laws. In all circumstances, licensed premises are required to operate in a responsible manner that does not unduly disturb the quiet and good order of the neighbourhood.

How do I lodge a disturbance complaint?

A complaint form is available at www.olgr.nsw.gov.au/liquor_home.asp. This form must be completed, declared before a Justice of the Peace or solicitor, and posted to: Disturbance Complaints, Director General, GPO Box 7060, Sydney 2001 NSW.

There is no fee for lodging a disturbance complaint.

I want to make a disturbance complaint about more than one local licensed premises because there are problems when their patrons move between premises late at night. Can one complaint be made in respect of multiple licensed premises?

Yes. The liquor laws enable the Director General to include other licensed premises in a disturbance complaint if they are contributing to the disturbance, or if any action taken by the Director General will be ineffective unless it also applies to other licensed premises.

What if my complaint against a licensed premises is not about disturbance to the neighbourhood?

If your complaint is about other matters such as apparent breaches of the liquor, gaming and club laws, please complete our online complaint form available at www.olgr.nsw.gov.au/website_complaints_form.asp

Need more information?

For further information please visit www.olgr.nsw.gov.au, call us on 02 9995 0715 or email us at complaints@olgr.nsw.gov.au