



## ***An introduction to Noise***

*The environmental noise caused by traffic, industrial, agricultural and recreational activities is a common local environmental problem and the source of a number of complaints from the public. In addition to its impacts on humans, noise can disturb the eating, sleeping and breeding patterns of wildlife.*

*This fact sheet concentrates on the general provisions regulating noise in the Environmental Protection Act 1986 (WA) and associated regulations, which define unreasonable noise and set out the circumstances in which unreasonable noise may be permitted.*

## **What is noise?**

The term "noise" is commonly used to refer to unwanted sound. Noise is broadly defined in the *Environmental Protection Act 1986* ("the EP Act") as a vibration of any frequency, whether transmitted through air or any other physical medium.

## **Noise offences**

The EP Act contains a number of offences relating to unreasonable noise, resulting in a range of penalties. There are harsher penalties for intentional or criminally negligent conduct. It is an offence to:

- emit an unreasonable emission of noise;
- cause pollution (including noise pollution);
- use equipment on any premises in such a way as to emit an unreasonable noise;
- own or drive a vehicle or vessel that does not comply with the prescribed noise standard for that class of vehicle;
- own or install any equipment that, when operated, can exceed the noise limit; or
- manufacture, sell, supply, assemble, distribute or store any equipment or vehicle which, when operated under prescribed test conditions, exceeds the relevant noise limit for that equipment or vehicle.

Note that some of these offences are not only associated with the use of equipment in such a way as to exceed the noise limit, but are linked to the *capability* of the equipment to exceed the limit.

### **Important disclaimer:**

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## When is noise unreasonable?

For the purposes of the EP Act, noise is defined as unreasonable if:

- it is emitted in contravention of the EP Act or any regulations made under the EP Act, such as the *Environmental Protection (Noise) Regulations 1997 (WA)* (the "Noise Regulations"), or if it is emitted in contravention of any other requirement or permission made or given under the EP Act;
- the noise unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person, having regard to the nature and duration of the noise, the frequency of similar noise emissions from the same source and the time of day at which the noise is emitted; or
- it is prescribed to be unreasonable by the Noise Regulations.

## Noise prescribed to be unreasonable under the Noise Regulations

As mentioned above, one way that noise is considered to be unreasonable is if it is emitted in contravention of the standards prescribed in regulation 7 of the Noise Regulations.

Under regulation 7, a noise emission, when received at other premises, must not cause or significantly contribute to a level of noise which exceeds the assigned level for premises of that kind, and must be free of tonality, impulsiveness and modulation.

The assigned levels referred to in regulation 7 are as follows:

Type of premises receiving noise	Time of day	Assigned level (dB)		
		$L_{A10}$	$L_{A1}$	$L_{Amax}$
Noise sensitive premises at locations within 15 metres of a building directly associated with a noise sensitive use	0700 to 1900 hours Monday to Saturday	45 + influencing factor	55 + influencing factor	65 + influencing factor
	0900 to 1900 hours Sunday and public holidays	40 + influencing factor	50 + influencing factor	65 + influencing factor
	1900 to 2200 hours all days	40 + influencing factor	50 + influencing factor	55 + influencing factor
	2200 hours on any day to 0700 hours Monday to Saturday and 0900 hours Sunday and public holidays	35 + influencing factor	45 + influencing factor	55 + influencing factor

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Type of premises receiving noise	Time of day	Assigned level (dB)		
		L <sub>A10</sub>	L <sub>A1</sub>	L <sub>Amax</sub>
Noise sensitive premises at locations further than 15 metres from a building directly associated with a noise sensitive use	All hours	60	75	80
Commercial premises	All hours	60	75	80
Industrial and utility premises	All hours	65	80	90

The level of permissible noise depends on the nature of the premises receiving the noise, as is evident from the table above. The term “noise sensitive premises” means any rural premises, or any premises used solely or mainly for residential or accommodation purposes. It also includes places such as schools, camping grounds and hospitals.

A noise emission is deemed to “significantly contribute” to a level of noise received at noise sensitive premises if the noise source alone produces a noise level 5dB below the prescribed standard level at the point of reception.

If characteristics of tonality, modulation or impulsiveness are present in the noise, the following adjustments must be made to the assigned levels:

Adjustment where noise emission is not music. These adjustments are cumulative to a maximum of 15 dB.			Adjustment where noise emission is music	
Where tonality is present	Where modulation is present	Where impulsiveness is present	Where impulsiveness is not present	Where impulsiveness is present
+5 dB	+5 dB	+10 dB	+10 dB	+15 dB

### Can the prescribed standards in the Noise Regulations be exceeded?

Some types of noise are exempt from complying with the prescribed standards set out in the Noise Regulations. Regulation 7 does not apply to noise emitted from the following sources:

- some farm vehicles;
- construction sites, at certain times of the day;
- equipment operated on residential premises (including musical instruments) at certain times of the day;

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- bell-ringing and calls to worship at certain times of the day; and
- community activities including:
  - spectators at organised sporting activities;
  - public meetings and processions;
  - religious activities;
  - recreational and educational activities associated with schools and other premises used for educational purposes; and
  - agricultural shows, fairs, fetes, exhibitions and like events.

Even if a type of noise is not required to comply with the standards set out in regulation 7, the noise may still be unreasonable under the EP Act if it can be shown that it unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person, having regard to the nature and duration of the noise, the frequency of similar noise emissions from the same source and the time of day at which the noise is emitted.

In addition to there being certain types of noise which are not required to comply with regulation 7, the Noise Regulations allow the Department of Environment and Conservation ("DEC") to approve sporting, cultural and entertainment events that would exceed the permitted noise levels. This allows concerts and sporting events to be held at venues close to residential areas. The event must be such that it would "lose its character or usefulness" if it were not permitted to exceed the usual noise limits. DEC cannot approve more than 2 such events at any one venue within a 12 month period unless satisfied that the majority of occupiers who would be affected by the noise would have no objections. DEC cannot issue an approval unless the relevant local government authority agrees to any conditions DEC proposes to impose on the approval.

## Regulation 17 variation

The Minister can also approve an exemption or variation to the prescribed standards for premises that do not comply with the noise standards under the Noise Regulations. The Minister must refer any proposed approval to the Environmental Protection Authority for assessment. The approval process takes approximately two years and assesses whether it is reasonably and practicably possible for the premises to comply with the prescribed standards.

## Special controls on "prescribed premises"

Certain premises are associated with activities which typically have a high environmental impact (which may include higher emissions of noise). These premises are "prescribed premises" for the purposes of the EP Act and are listed in Schedule 1 of the *Environmental Protection Regulations 1987 (WA)*. Any works that might cause an emission or alter the nature or volume of an emission on these premises require a works approval. The regular emission of noise from prescribed premises must be in accordance with a licence. Where noise is being produced by industrial and mining activities it may be worth checking whether they are prescribed premises. If they are, they may have special noise control conditions imposed on their operations.

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## Environmental Impact Assessment

Major new development proposals and significant changes to existing developments may be subject to environmental impact assessment, including the assessment of noise impacts. If the noise of the development is expected to exceed the prescribed standards, the developer may be required to submit an application for a regulation 17 variation for concurrent assessment with the environmental impact assessment (see [Fact Sheet 5: Environmental Impact Assessment in WA](#)).

## Enforcement personnel

Environmental Health Officers of local government authorities are authorised persons to enforce provisions of the Act, and can therefore investigate and take action in response to noise complaints. Local government officers will usually only be available during normal office hours and do not have some of the technical resources available to DEC. However, in many cases they will still be the most appropriate people to whom you can complain. The police are also authorised to act upon complaints about unreasonable noise from premises.

## Noise Abatement Direction

Where an authorised person or police officer believes that an unreasonable noise is being emitted from any premises he or she can issue a noise abatement direction to the occupier of the premises (and anybody making or contributing to the noise) to stop the noisy activity. Failure to comply with a noise abatement direction is an offence. Failure to comply with a direction also entitles the authorised person or police officer to seize the equipment that is causing the noise. To assist in the exercise of these powers, authorised persons are entitled to enter any property and demand of any person the name and address of the occupier of the premises.

## Prosecution

Where an offence is committed against the Act, a prosecution may be commenced by the CEO of DEC, or for lesser offences, by an authorised person.

Unreasonable noise caused by equipment (see above) may also be challenged through a private prosecution. Usually this requires three occupiers of premises directly affected by the noise to commence proceedings together. Less than three people may start an action where less than three occupiers were affected, the other occupiers are unwilling to participate in the action or the person who is bringing the action was affected to a significantly greater degree than were other occupiers.

If a prosecution is successful, the EP Act authorises the court to make a range of orders beyond merely awarding damages. The court may order the forfeiture of any equipment used in the offence, and can also make orders to prevent recurrence of the offence.

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## Environmental Protection Notice

The CEO of DEC (or his or her delegate) has the power to issue an Environmental Protection Notice if he or she suspects on reasonable grounds that there is an emission or likely to be an emission of noise from the premises that does not comply with, or would not comply with a standard prescribed in the regulations. An Environmental Protection Notice may require a person to:

- investigate the noise;
- prepare and implement a plan for the prevention, control and abatement of the noise;
- take measures that CEO considers necessary to control or abate the noise or comply with the standard;
- ensure that the noise does not exceed the limit specified in the notice;
- monitor the effectiveness of any of the above actions; and/or
- report on any action taken and its outcome.

Failure to comply with an Environmental Protection Notice is an offence.

## The common law

In addition to the remedies available under the EP Act, it may also be possible to bring a common law action to prevent noise pollution or seek compensation. Noise may give rise to a common law action for nuisance if it is an interference with your right to use and enjoy your own land. The interference must be both substantial and unreasonable.

If a nuisance is found to have occurred, the court can award damages and, in appropriate cases, an injunction to stop the respondent from continuing to make noise. In *Cohen v City of Perth*, for example, a Perth resident brought an action against the local government because of noise from garbage trucks collecting garbage from the lane behind his apartment. He was awarded both damages and an injunction to limit the times at which garbage was collected.

## Opportunities for public involvement

If you believe that you are affected by noise or will be affected by a project that will emit noise, there are a number of things that you can do:

- you can monitor Environmental Protection Authority notices in the newspaper and make submissions on the potential effect of noise on your property from projects that are currently being assessed;
- if you notice that an industrial operation near you is making an application for a regulation 17 variation the prescribed noise standards, you can make a submission to the Environmental Protection Authority about the effects of the noise on your community;
- if you are being affected by noise, you can lodge complaints about unreasonable noise with the police, local government officers or with DEC; or
- in some situations, you may be able to challenge unreasonable noise with a private prosecution or under a common law action in nuisance, however you should seek legal advice first.

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## Contacts and further information

Department of Environment and Conservation, Tel: 6467 5000, [www.dec.wa.gov.au](http://www.dec.wa.gov.au)

Environmental Protection Authority, Tel: 6467 5600, [www.epa.wa.gov.au](http://www.epa.wa.gov.au)

For copies of legislation (including regulations) visit: [www.slp.wa.gov.au](http://www.slp.wa.gov.au) (WA legislation only).

### The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- to provide community groups and individuals with legal advice and representation to help protect the environment;
- to promote law reform that improves environmental protection; and
- to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal and State Attorney-General's Departments.

However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

Environmental Defender's Office WA (Inc)

Suite 4, 544 Hay Street, Perth WA 6000

Tel: (08) 9221 3030

Fax: (08) 9221 3070

Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

Email: [edowa@edowa.org.au](mailto:edowa@edowa.org.au)

## Thank you to our donors

The EDO is grateful for the funding provided by the following organisations to create and maintain these fact sheets.



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