

Noise abatement direction

«AcctPartyName»

«AcctPartyTradingName» AcctPartyABN» if relevant

«AcctPartyACN» if relevant

«PostalAddressStreet»

«PostalAddressSuburb» «PostalAddressState» «PostalAddressPostcode»

Attention: <insert contact name>

By <insert method of service e.g. Registered Post, Email>

Direction Number «NoticeNumber»

File Number «File Number»

Date «NoticeIssueDate»

Why is the <insert regulatory authority name> writing to you?

It appears to an authorised person of the <insert appropriate authority name> that offensive noise is being, or has in the past 7 days been, emitted from «LocationAddress» (**Premises**). Further information is set out below.

What are you required to do?

Please read this direction carefully and follow the directions specified. If you have any queries about this matter, please contact <insert name of officer> on <insert phone number>.

Directions should be drafted in the following manner:

- give general overview sentence about the regulatory authority's role
 - introduce the person the authorised officer believes is the occupier of the premises/person causing or contributing to the offensive noise who the direction is issued to, the Premises, and explain the factual basis for it appearing to the authorised officer that offensive noise is or has been emitted that is the subject of this direction
 - set out chronologically the regulatory authority's relevant involvement, including any inspections and what was observed
 - set out the relevant legislative provisions
 - direct:
 - the person who you as an authorised officer believes to be the occupier of the premises to cause the emission of the offensive noise, to cease, or
 - the person who you as an authorised officer believes to be making or contributing to making of the noise, to cease making or contributing to the making of the offensive noise
- or both.

Please note that authorised officers, other than EPA authorised officers, must consider the limitations under section 278 in relation to issuing a noise abatement direction. Section 278 details limitations on issuing noise abatement directions to the State, public authorities and in relation to specified activities

Background

- A. The <insert regulatory authority name> has responsibility for enforcement of the Protection of the Environment Operations Act 1997 (POEO Act).
- B. The <insert regulatory authority name> is the appropriate regulatory authority (ARA) for <set out why the authority is the ARA. This may require an explanation stepping through the relevant legislation. Delete this paragraph if the authorised person is an officer of an authority that is not the ARA, such as the police>.
- C. The POEO Act enables authorised persons to issue noise abatement directions if it appears to an authorised person that offensive noise is being, or has at any time within the past 7 days been, emitted from any premises. For the purposes of issuing a noise abatement direction <in relation to vessels in navigable waters (delete if authorised person is not an officer of the marine authority)>, an authorised person includes an <insert as appropriate, authorised officer of the regulatory authority / a police officer/ an officer or employee of the marine authority authorised by the marine authority for the purposes of Division 3 of Part 8.6 of the POEO Act (an authorised officer or employee of the marine authority)>.
- D. **Insert whichever is applicable:**
An authorised person, <insert authorised officer name>, is an authorised officer of the <insert regulatory authority name / or police officer / or an authorised officer or employee of the marine authority> and believes «AcctPartyName» is the occupier of the Premises from which offensive noise is being, or has within the past 7 days been, emitted. <insert relevant facts that are the basis of the officer’s belief about why the notice recipient is believed to be the occupier of the Premises. If the accountable party is using a business or trading name, include those details for context, but make sure that the entity specified as the accountable party is either a person or a corporation >.
OR
An authorised person, <insert authorised officer name>, is an authorised officer of the <insert regulatory authority name / or police officer / or an authorised officer or employee of the marine authority> and believes «AcctPartyName» is making or contributing to the making of offensive noise that is being, or has at any time within the past 7 days been, emitted from the Premises. <insert relevant facts that are the basis of the officer’s belief about why the notice recipient is believed to be the person making or contributing to the making of offensive noise. If the accountable party is using a business or trading name, include those details for context, but make sure that the entity specified as the accountable party is either a person or a corporation>.
- E. <Set out the relevant background that demonstrates why the direction needs to be issued i.e. the facts causing the offensive noise that has been or is being emitted from the Premises. These should support the part of the definition of offensive noise that is being relied upon as the basis for this direction. For example, it should be clear what the offensive noise is and when it occurred, “On <date> the <insert authorised officer name> <set out what the authorised officer has observed or understands...>”.

Environment Protection Law

- F. Section 275 of the POEO Act defines “authorised person” as:
- a. In any case – an authorised officer or a police officer, or

- b. In relation to vessels in navigable waters – an officer or employee of the marine authority authorised by the marine authority for the purposes of Division 3 of Part 8.6.
- G. Section 276 of the POEO Act allows for the issue of noise abatement directions. Under section 276, if it appears to an authorised person that offensive noise is being, or has at any time within the past 7 days been, emitted from any premises, the authorised person may:
- a. direct the person whom the authorised person believes to be the occupier of the premises to cause the emission of offensive noise, to cease, or
 - b. direct any person making, whom the authorised person believes to be making or contributing to the making of offensive noise to cease making or contributing to the making of offensive noise
- or both.
- H. The Dictionary to the POEO Act defines:
- a. "marine authority" as – the Minister administering the *Ports and Maritime Administration Act 1995* or Transport for NSW. Delete if direction is not issued by authorised person of the marine authority
 - b. "noise" as – noise includes sound and vibration.
 - c. "occupier" as – occupier of premises means the person who has management or control of the premises.
 - d. "offensive noise" as noise –
 - (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances—
 - i. is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - ii. interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
 - (b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.
- I. It appears to an authorised person, being <insert authorised officer name>, that offensive noise is being or has at any time within the past 7 days been, emitted from the Premises, on the basis that: <apply the law to the facts to demonstrate that it appears to the officer that offensive noise is being or has been emitted from the Premises within the relevant time period>.

Noise abatement direction

1. <Insert authorised person's name>, an authorised person of <insert regulatory authority name as appropriate> directs: Insert whichever is applicable –
 - «AcctPartyName», who the authorised person believes to be the occupier of the Premises to cause the emission of the offensive noise <by or from> <specify the offensive noise concerned e.g. use of a pneumatic drill at the Premises> to cease.

OR

 - «AcctPartyName», who the authorised person believes to be a person making or contributing to the making of the noise, to cease making or contributing to the making of the offensive noise <by or from> <specify the offensive noise concerned e.g. use of a pneumatic drill at the Premises>.
2. This direction remains in force until <insert expiry date and time>. Note the maximum period is 28 days from the date of issue.

.....

«NoticeAuthorisingOfficer»

«NoticeAuthorisingOfficerTitle»

«NoticeAuthorisingOfficerSection»

(by Authorisation)

Warnings and information about this noise abatement direction

- This direction is issued under section 276 of the POEO Act.
- Under section 277 of the POEO Act, unless you have a reasonable excuse, it is an offence for you to: <delete whichever of the following offence provisions is not applicable>
 - fail to cause the emission of the offensive noise to cease promptly; or
 - cause or permit offensive noise to be emitted from the Premises at any time while this direction remains in force.
- OR
 - fail to promptly cease making or contributing to the making of the offensive noise; or
 - make or contribute to the making of offensive noise that is emitted from the Premises while this direction remains in force.
- A noise abatement direction does not prevent the emission of noise that is not offensive noise.

Penalty for not complying with this direction

The maximum penalty a court may impose for not complying with this direction is \$3,300.

When this direction begins to operate

This direction operates immediately from the day it is given.

Revocation of this direction

The requirements of this direction may only be revoked by the person who gave (or could have given) the direction.

Restrictions on noise abatement directions

- A noise abatement direction (other than a direction given by an authorised officer appointed by the EPA) has no force insofar as it is directed to:
 - the State of a person acting on behalf of the State, or
 - a public authority or a person in the capacity of a member, officer or employee of a public authority, or
 - a person or body prescribed by the regulations for the purpose of this paragraph.
- A noise abatement direction (other than a direction given by an authorised officer appointed by the EPA) has no force insofar as it would have the result of affecting:
 - any activity carried on by or for the State or a public authority, or
 - any activity carried on by an authorised network operator, or
 - any scheduled activity, or any other activity or work that is the subject of an environment protection licence, or
 - any activity of a class or description prescribed by the regulations for the purpose of this paragraph.

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