Noise Guide for Local Government

Part 4  Regulating noise impacts

Part 1  Framework for noise control
Part 2  Noise assessment
Part 3  Noise management principles
Part 4  Regulating noise impacts
Part 5  Appendixes
Part 6  Glossary, Further reading and Index
Part 4  Regulating noise impacts

4.1  Deciding on a course of action
     4.1.1  When notices and directions take effect
     4.1.2  Animal noise
            Case Study 1: Noise from a repeatedly barking dog

4.2  The Protection of the Environment Operations Act 1997
     4.2.1  Noise Control Notices
            Case study 2: Using a Noise Control Notice
     4.2.2  Noise Abatement Directions
            Case study 3: Using a Noise Abatement Direction
     4.2.3  Noise Abatement Orders
            Case study 4: Using a Noise Abatement Order
     4.2.4  Prevention Notices
     4.2.5  Compliance Cost Notices
            Case study 5: Using a Prevention Notice and a Compliance Cost Notice
     4.2.6  Noise pollution from operating plant and handling materials

4.3  The POEO (Noise Control) Regulation 2008
     4.3.1  Miscellaneous articles
            Case study 6: Noise Control Regulation — Time of use provisions
     4.3.2  Alarms
     4.3.3  Motor vehicle noise
     4.3.4  Noise from vessels
     4.3.5  Traffic noise

4.4  Dealing with warnings and offences

4.5  Dealing with offences committed by minors

4.6  References
Part 4 Regulating noise impacts

The key regulatory tools for managing local environmental noise impacts are provided by the Protection of the Environment Operations Act 1997 (POEO Act) and the POEO (Noise Control) Regulation 2008. A range of notices, directions and orders in relation to noise can be issued under the POEO Act. The regulation describes offences and outlines penalties for those offences.

Other legislation that can be used to manage specific noisy situations includes the:

- **Environmental Planning and Assessment Act 1979 (and Regulation 2000)**, which provides for orders for breach of development consent or development consent conditions with a Penalty Notice option
- **Companion Animals Act 1998**, which provides for Nuisance Dog Orders (ss. 21 & 21A) and Nuisance Cat Orders (ss. 31 & 31A) requiring the owner to prevent nuisance behaviour for six months
- **Liquor Act 2007**, which provides for noise control of licensed premises
- **Local Government Act 1993 (s. 124) Order No 18**, which requires an occupier of a premises to keep animals, including birds, in an appropriate manner specified in the order
- **Local Government Act 1993 (s. 125)**, which enables a council to abate a public nuisance, or order a person responsible for a public nuisance to abate it
- **Strata Schemes Management Act 1996**, which provides for various notices, orders for breaches of strata by-laws, and disputes between neighbours in strata title schemes. (See Part 1.4.2)

This Guide focuses on the use of powers under the POEO legislation. The Division of Local Government, Department of Premier and Cabinet may give advice on the appropriate use of other powers.

The decision regarding which of these instruments to use will depend on the circumstances of each noise problem and on the judgement of the officer. It may be helpful for council officers to discuss the statutory options available for addressing noise with a senior manager or council’s legal officer.

4.1 Deciding on a course of action

There are many factors to consider when deciding on the best course of action in response to a specific noise problem.

Issuing a Penalty Notice tends to provide more streamlined enforcement procedures for many common noise problems where a fine may provide an adequate deterrent. For example, the Noise Control Regulation requires that a motor vehicle not be used in any place, other than a road, in a manner that results in offensive noise (cl 13). If the use of trail bikes on private land was emitting offensive noise and a council officer decided to enforce compliance with the regulation, then a Penalty Notice could be issued immediately on a single site visit by an enforcement officer.
**Which notice or direction to use?**

Things to consider when choosing which notice or direction to use:

- Is council the ARA, and is the investigating officer an authorised officer or an enforcement officer?
- If a Penalty Notice is to be issued by an officer, is that officer an enforcement officer who has powers to issue Penalty Notices for that offence?
- Will the fine from a Penalty Notice prevent the noise from continuing?
- Can the problem be easily remedied?  
  For example, reducing the volume on a stereo, or stopping the use of trail bikes.
- Is work required to reduce noise?  
  For example, insulation of a noisy pool pump.
- Does council have the expertise and equipment to take noise measurements?
- Do noise measurements need to be taken or can the officer easily assess the noise as being offensive?
- Is it a complex noise problem? For example, are there several different noise sources on a site?
- Is it possible to set an achievable noise level that should be met?
- Is it more appropriate to require best management practices to be adopted to minimise noise?
- How will council determine compliance with any notice served?
- Does the ARA have enough evidence to act on and to defend any appeal of a notice in court?

If an officer decided to issue a Noise Abatement Direction under the POEO Act, then at least two assessments of the noise are normally needed. The first is to assess whether offensive noise is or was being made. A subsequent assessment would be required to determine whether the direction was being complied with. A Penalty Notice could be issued if offensive noise continued to be made within 28 days in breach of the direction.

There may be situations where the regulation has been applied, but where the problem has escalated or is ongoing. For example, if the trail bikes continued to be used on the private property, despite warnings and Penalty Notices, it may be appropriate for an officer to consider the other regulatory tools provided by the POEO Act. A Prevention Notice or a Noise Control Notice could be served on the trail bike rider or the occupier of the land requiring certain action to be taken or setting a noise limit that must not be exceeded.

### 4.1.1 When notices and directions take effect

The POEO Act provides that Prevention Notices, Noise Control Notices and Noise Abatement Directions can take effect immediately. The reasonableness of when a Noise Control Notice and Prevention Notice takes affect should be considered to ensure that the process meets the requirements of natural justice.

Prior to amendments made to the POEO Act in 2005, a Noise Control Notice and Prevention Notice did not take effect during the appeal period. Therefore issuing of a Noise Abatement Direction in combination with the notice was considered useful to cover the appeal period in situations where a noisemaker continued to make offensive noise during that period.
4.1.2 Animal noise

As there are a range of possible enforcement options available to control noise from animals, it is recommended that individual councils develop and adopt internal procedural guidelines for dealing with noise complaints relating to animals. This allows all complaints relating to a particular animal noise to be treated consistently within local communities.

Councils should also ensure that they have an appropriate standard of evidence to prove a case in court, if required. For example, a council may ask the complainant to keep a diary noting when a dog is barking or council staff may visit a property and collect evidence such as statements from neighbours and/or the dog's owner.

When assessing the available options it is important to remember that each enforcement action has a different cost implication for both council and the person affected.

When choosing to issue an order under the Companion Animals Act 1998 or Local Government Act 1993, it will be necessary to first give notice to the owner of the animal that is causing noise impacts and request that they take action to mitigate the noise within a particular time period specified by legislation. The notice should also outline council's intention to give the order on a specified date, the terms of the proposed order and the owner's right to make representations to the council as to why the order should not be given. It is recommended that the specific provisions in the relevant Acts be referred to for detail prior to issuing any orders.

Regulatory options for dealing with animal noise

- The Companion Animals Act 1998 provides for the service of orders to control nuisance dogs and cats (ss. 21 & 31). The Act assists by defining the characteristics of noise from the animal that would be regarded as a nuisance, including that it unreasonably interferes with a person's 'peace, comfort or convenience'.
- The POEO Act allows for the use of Noise Control Notices and Prevention Notices to control noise from animals.

Note: the definition of ‘activity’ under the POEO Act includes the keeping of an animal. Clause 103 of the POEO (General) Regulation 2009 provides a reduced appeal period of seven days for Noise Control Notices relating to the keeping of an animal.

While councils have powers under ss. 21 & 31 of the Companion Animals Act and limited powers under s. 124 Order 18 of the Local Government Act to control nuisances from animal noise, councils should consider utilising their powers under the POEO Act to control animal noise problems as the POEO Act may be more suited to addressing a range of animal noise problems.

Using a Prevention Notice to manage animal noise

The ARA may issue a Prevention Notice where the ARA ‘reasonably suspects' offensive noise has occurred or is occurring. When collecting evidence the council may, for example, use the steps outlined in the case study presented below.

A Prevention Notice needs to specify what actions are required to ensure that the activity is carried out in an environmentally satisfactory manner. The brochure, Dealing with Barking Dogs (EPA 2012a), includes some examples of action that may be required. For example, the owner must take action such as, but not limited to, the following:

- provide regular food and water, sufficient space and freedom, adequate shelter and appropriate exercise
- cover any direct line of sight between the area used by the dog and other areas that are not on the property and that are used by children and other animals
- provide noise insulation to the kennel
- take the dog to a recognised animal trainer to deal with barking issues
- have the animal checked by a vet to see if it is sick.
If suitable measures to control the noise are not apparent, the Prevention Notice can require the owner to prepare and carry out of a plan of action to control, prevent or minimise offensive noise. The Prevention Notice needs to state the date by when any action required is to be implemented or completed.

An officer may be confident that the owner is capable of developing and implementing an appropriate action plan and it is unnecessary for the officer to issue a notice requiring specific actions. On the other hand, the officer may be very experienced and may decide that since the owner has a limited understanding of the issue it would be very difficult to enforce requirements that are not specific. In this case, the officer may consider that the most efficient and effective approach would be to issue a notice requiring specific actions. Alternatively, an officer may not know exactly what the issue is but may consider that providing guidance on what to do would assist the owner, as the owner has a limited understanding of the issues. In this case, the officer could include a covering letter with guidance and references to other material such as the Barking Dogs brochure (EPA 2012a) as examples on how control the noise.

**Case Study 1: Noise from a repeatedly barking dog**

Council had received several calls from residents complaining about a barking dog kept at a residence on Kent Road. Angus, the council officer involved, had asked each of the two complainants to keep a brief diary for the next two weeks of the times and duration when they were annoyed by the noise.

One of the complainants, Mrs Green, told Angus that the dog only tended to bark while the owner was at work during the day. Mrs Green said that the dog owner had been told about the dog barking when they were absent but didn’t accept that it was a real problem.

After the two-week diary period Angus phoned Mrs Green to confirm whether the dog’s barking was still a problem. Mrs Green confirmed this, saying that the dog barked every day, sometimes continuously for up to half an hour at a time and often several times a day. Angus arranged to visit her house the next day in the hope of witnessing the dog barking and to see the noise diary that Mrs Green had kept. Angus did likewise for the second complainant.

The next day when Angus arrived at Mrs Green’s residence he clearly heard a dog barking before entering the premises. On entering Mrs Green’s house he noted that the noise was clearly audible in the main living area and several other rooms of the house. Angus entered the backyard of the complainant’s house, where the barking was loudest, and clearly established the neighbouring property as where the noise was coming from. Angus collected Mrs Green’s diary, which reflected the barking episodes she had described on the phone. The second complainant’s diary showed a similar record of barking episodes which corresponded with Mrs Green’s diary except for gaps where either of the complainants had been absent from their property.

Angus had established that the animal noise was a problem and was satisfied that the dog was regularly barking for extended periods when the owner was away from the premises.

Angus went to the front door of the Smyth residence, where the dog lived, and confirmed that no one was currently home. When back at the office he was able to leave an answering machine message asking Mrs Smyth to contact him. Mrs Smyth called Angus two days later, and he advised her that he had received complaints about her dog barking during the day when she was absent and that he had verified that the dog was barking on the day he investigated the complaints. He explained that the barking was clearly causing a nuisance and that it needed to cease. He also explained that as a dog owner she had an obligation to prevent her animal causing a nuisance.
Mrs Smyth asked how she was supposed to stop the dog barking. Angus replied that she would need to investigate the options, including animal behaviour training, and that a veterinarian should be able to provide some information. He advised Mrs Smyth that the Companion Animals Act 1998 empowered council to issue a Nuisance Dog Order on the owner of a dog, requiring the owner to prevent the behaviour that was causing the nuisance, which in this case was the continual barking of the dog. He explained that Orders under s. 21 of the Act are in force for six months and that failure to comply with an Order could result in a fine of up to $880 for a first offence and up to $1650 for subsequent offences. Angus explained that before council could issue the Nuisance Dog Order, the Act required that council must first give notice to the dog owner of council’s intention to issue the order. The ‘notice of intention’ to give the order gives the owner 7 days to object to the proposed order. He was careful to explain that the order would be to stop the habitual nuisance barking and would not be breached by the occasional bark. Mrs Smyth agreed to look into her options. Angus confirmed that he would be issuing the notice of intent.

That evening Mrs Smyth searched the internet and found some possible reasons, including boredom and lack of exercise, why her dog might bark when she was away. Mrs Smyth had been very busy with work lately and resolved that she would make sure that she walked the dog every morning, which was something she had recently neglected to do. She also decided that she would buy him some toys to play with in the backyard and try leaving a bone for him to chew throughout the day.

Mrs Smyth implemented these changes promptly, and during the week she asked her neighbours whether her dog had been barking as much. Mrs Green was happy to say that there had been noticeably less barking.

Angus followed up the progress made with Mrs Smyth in the following week. He also spoke to Mrs Green and the other complainant. He considered whether to go ahead with issuing the Order under the Companion Animals Act. As Angus believed the animal’s barking still met the definition of nuisance dog under s. 21 of the Act, and the fact that Mrs Smyth did not object to the order, he decided that issuing the order was still the best course of action, even though it may not need to be enforced.

**Note:** The Division of Local Government, Department of Premier and Cabinet website (www.dlg.nsw.gov.au) provides further information on the provisions of the Companion Animals Act and advice on issuing orders under the Act.

**What if …**

What if Angus thought about issuing a Prevention Notice, which would have allowed him to specify actions to be carried out? For example, if the dog were barking at passing pedestrians or traffic, a condition could specify that the owner investigate ways of blocking the dog’s line of sight from the backyard to the street. In the end, Angus decided that in this case he could make such suggestions verbally if necessary, and that an Order under the Companion Animals Act was preferable because it was specifically designed for the situation.

**Managing barking dog complaints – Ballina Council’s approach**

Like for most councils, barking dogs have always been the most commonly complained noise issue in Ballina Shire. However, due to council implementing a proactive mediation process, complaints about barking dogs have fallen from 137 in 2005 to 26 in 2008. The reduction in barking dog complaints explains the overall decrease in noise complaints shown in the Table 4.1.
### Table 4.1: Ballina Council annual complaint numbers

<table>
<thead>
<tr>
<th>Complaint</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total noise complaints</td>
<td>218</td>
<td>192</td>
<td>107</td>
<td>113</td>
</tr>
<tr>
<td>Noisy dog complaints</td>
<td>137</td>
<td>No data</td>
<td>No data</td>
<td>26</td>
</tr>
<tr>
<td>Total¹</td>
<td>325</td>
<td>285</td>
<td>177</td>
<td>261</td>
</tr>
<tr>
<td>Noise as a percentage of total complaints</td>
<td>67%</td>
<td>67%</td>
<td>60%</td>
<td>43%</td>
</tr>
</tbody>
</table>

¹ Total complaints includes noise, air and water pollution.

The process that council has introduced involves distribution of a barking dog information booklet to all complainants. This booklet asks complainants to complete a barking dog information sheet (which details the incidents of barking), and then to give it to the neighbour who owns the dog, along with the information sheets, *Information for dog owner and Barking prevention and ways to stop nuisance barking* (Ballina Shire Council 2006). The information sheets indicate the steps to be followed by the complainant but encourages the complainant to discuss the matter with the dog owner before any other action is contemplated. Council sees that the information in the booklet can form the basis of a dialogue between neighbours. Only if these step fail does council suggest that council could then become involved.

The steps to follow are:

- completion of the ‘Barking Dog Diary’ and information sheets
- forwarding to council the diary and completed information sheets.

Council’s letter to complainants includes the following proviso:

> If you and other residents affected desire that an order be made (and enforced) under the Companion Animals Act 1998 you and the other residents will need to be prepared to assist the council in the following ways:

- keep accurate records of when the persistent barking incidents occur when called upon to do so (a barking dog diary)
- provide other supporting evidence and records as may be appropriate
- provide affidavits and, if necessary, be prepared to act as witness in a court of law should that become necessary.

> If requesting further action be taken, council will require written confirmation that you are prepared to provide all of the above assistance. It will also need written advice from other affected residents that they also are prepared to assist, inclusive of being a witness for the council in court.

In council’s correspondence to a single complainant (where council did not have independent evidence and other neighbours were not prepared to support the complainant) council’s solicitor advised:

> … taking action under the Companion Animals Act 1998, the standard of proof for a nuisance dog order is the criminal standard of ‘beyond reasonable doubt’. Having assessed the evidence available, it is our considered opinion that council would be unable to meet the standard of proof, given that there are no further independent witnesses and the fact that the other close neighbour has not complained to council.

The barking dog information booklet is on Ballina Council’s website at www.ballina.nsw.gov.au/cmst/ballina004/view_doc.asp?id=606&cat=225
4.2 The Protection of the Environment Operations Act 1997

Table 4.2 summarises enforcement options available under the POEO Act. This may help in deciding which instrument is most appropriate given the specific circumstances of the noise problem. The following subsections detail each relevant enforcement option available under the POEO Act.

These are:

- 4.2.1 Noise Control Notices (POEO Act ss. 263–267B)
- 4.2.2 Noise Abatement Directions (POEO Act ss. 275–279)
- 4.2.3 Noise Abatement Orders (POEO Act ss. 268–274)
- 4.2.4 Prevention Notices (POEO Act ss. 95–100)
- 4.2.5 Compliance Cost Notices (POEO Act s. 104(3) and 104(4))
- 4.2.6 Noise pollution from operating plant and dealing with materials (POEO Act ss. 139–140)

Notes:

1. Maintaining a Public Register — Part 9.5 of the POEO Act requires each council, as a regulatory authority, to maintain a public register with details of instruments the council issues under the POEO Act including each Noise Control Notice, Prevention Notice and Compliance Cost Notice.

2. Notices, Directions and Orders under the POEO Act and sections 130 – 140 of the POEO Act relate to the ‘occupier’ of the premise causing the noise. The POEO Act Dictionary notes that ‘occupier of premises means the person who has the management or control of the premises’. Where the premise is tenanted, the occupier of the premises may be the tenant or the owner of the premises.

4.2.1 Noise Control Notices

A Noise Control Notice is used to prohibit an activity or the use of equipment from emitting noise above a specified noise level (POEO Act ss. 263–267B).

Scope

A Noise Control Notice prohibits noise from an activity or a piece of equipment from being emitted above a specified level when measured at a specified point. A Noise Control Notice can be applied to a wide range of premises, including industrial, commercial and residential sites.

The notice must specify the:

- acceptable noise level
- measurement location(s)
- days and times when noise levels apply
- activity or article that is to be controlled.

Failure to provide an appropriate description of the noise source or measurement location may make the notice difficult to enforce. If the notice does not specify the hours during which the noise limit applies, then the noise limit applies to the whole 24-hour period (POEO Act s. 264).

Limitations

A Noise Control Notice cannot require or specify works, for example, the preparation of an acoustic report on attenuation. In such instances a Prevention Notice is more appropriate.

Using a Noise Control Notice

A Noise Control Notice may be useful when a problem requires work to reduce noise, and where an acceptable noise level can be specified. A Noise Control Notice can also be used before an event occurs by setting an acceptable noise level in advance of when an activity will occur (e.g. a motor sport event or an outdoor concert). A Noise Control Notice remains in force until the ARA revokes it.
Part 4: Regulating noise impacts

Measuring noise at a construction site to prepare a Noise Control Notice. Photo EPA

Specifying a noise level
The noise limit prescribed on a Noise Control Notice, may be based on the concept of intrusive noise (refer to Part 2.2.1. The measuring point selected needs to be representative of the area to be protected. Part 2 provides advice on how to measure noise.

A Noise Control Notice must specify:

1. a noise limit that the activity or equipment must not exceed. When deciding what noise limit to set, it is important that the limit be realistic and achievable. Different noise limits may be set for different periods, for example you might set a lower noise limit at night. Don’t forget to attach an appropriate noise descriptor and measurement period to the set noise limit (e.g. $L_{Aeq\,15\,\text{min}}$). It is better to set an actual noise limit rather than prescribe a level above the background noise level. In the latter case, variations in the background noise level can cause difficulty in proving non-compliance.

2. the location where the specified noise limit(s) must be measured. This is usually at the nearest residential boundary, or if the boundary is a long way from a dwelling, such as in rural areas, at 30 metres from the residence. At night, noise can be assessed at 1 metre from a bedroom window to assess the potential for sleep disturbance. However, it is important to ensure that the measurement location is accessible to whoever receives the notice so they or the issuing officer can check compliance. Where access to check compliance is a problem, a more accessible location to measure compliance can be specified, and the noise level can be adjusted accordingly.

3. the times and/or days when the noise limit(s) applies. If none are specified then the noise limit applies at all times.

4. the noisy activity or article that must be controlled.

### Table 4.2: Summary of statutory instruments for controlling noise under the POEO Act

<table>
<thead>
<tr>
<th>Notice or instrument</th>
<th>Precondition</th>
<th>When to use</th>
<th>Example</th>
<th>Appeal period &amp; time in effect</th>
<th>Maximum penalty for prosecution</th>
<th>Penalty Notice fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noise Control Notice (POEO Act s. 264)</td>
<td>Need to measure noise and establish an acceptable noise level for the article or activity.</td>
<td>Used to specify noise level and measurement point in a formal way.</td>
<td>Noise levels from the pump must not exceed 45 dB(A) $L_{eq}$ 15 min at any time between 7 am and 10 pm on any day when measured at the northern boundary of 45 Smith St.</td>
<td>Notice can take effect immediately or on a later date as specified in the notice. Remains in force until revoked or varied by the ARA. A person served with a notice may, within 21 days of being served (or 7 days for noise from animals), appeal to the Land and Environment Court. The lodging of an appeal will not delay the commencement of the notice unless the Land and Environment Court directs otherwise.</td>
<td>Failure to comply with notice: Corporations $60,000, and for each day offence continues $6,000 Individuals $30,000, and for each day offence continues $600 (POEO Act s. 265)</td>
<td>Failure to comply with notice: Corporation $400 Individual $200</td>
</tr>
<tr>
<td>Prevention Notices (POEO Act s. 96)</td>
<td>Activity is being carried out in an environmentally unsatisfactory manner as defined by s. 95.</td>
<td>Action specified in the notice must be undertaken. (This notice can also address other pollution or waste problems.)</td>
<td>Prepare, by a certain date, an action plan to reduce noise from the site and submit it to the ARA.</td>
<td>Notice can take effect immediately or on a later date as specified in the notice. Remains in force until revoked or varied by the ARA. A person served with a notice may, within 21 days of being served, appeal to the Land and Environment Court. The lodging of an appeal will not delay the commencement of the notice unless the Land and Environment Court directs otherwise.</td>
<td>Failure to comply with notice: Corporation $1,000,000, and for each day offence continues $120,000 Individual $250,000, and for each day offence continues $60,000 (POEO Act s. 97)</td>
<td>Failure to comply with notice: Corporation $1500 Individual $750 Failure to pay admin. fee: Corporation $1000 Individual $500</td>
</tr>
<tr>
<td>Compliance Cost Notice (POEO Act ss. 104 &amp; 267B)</td>
<td>Council incurs costs in ensuring compliance with a Prevention Notice or Noise Control Notice.</td>
<td>Provides for recovery of compliance costs, including monitoring.</td>
<td>Pay $100, being reasonable costs incurred by council in taking listed steps to monitor compliance with a Prevention Notice.</td>
<td>Costs must be paid by due date in notice.</td>
<td>Legal action to recover amount owing.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
### For use by council officers and Police officers

<table>
<thead>
<tr>
<th>Penalty Notice</th>
<th>An offence against the POEO Act or the Noise Control Regulation for which POEO General Regulation says council officers and Police can issue Penalty Notices.</th>
<th>In some cases can be used to fine offender on the spot. In some cases can be used after offender fails to heed a warning.</th>
<th>Equipment used contrary to Noise Abatement Direction.</th>
<th>Penalty must be paid within 28 days of being served unless notice revoked or offender elects to go to court and is prosecuted.</th>
<th>Various</th>
<th>Various</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Noise Abatement Direction</th>
<th>Offensive noise is occurring or has occurred within the last seven days.</th>
<th>Quick response to temporary offensive noise.</th>
<th>Cease making offensive noise from stereo system.</th>
<th>Remains in force for up to 28 days. Can be revoked. No appeal</th>
<th>30 penalty units(^1) (POEO Act s. 277).</th>
<th>Corporation $400 Individual $200</th>
</tr>
</thead>
</table>

### For use by individuals

<table>
<thead>
<tr>
<th>Noise Abatement Order</th>
<th>An occupier of premises is affected by offensive noise.</th>
<th>Allows residents to seek intervention by Local Court (magistrate) without reference to Police or council.</th>
<th>Magistrate satisfied (on balance of probabilities) that offensive noise is being emitted. Order issued to person making the noise directing that offensive noise must not be emitted.</th>
<th>In force immediately or at the time specified in the Order. Lasts until revoked by the Local Court. Option of appeal to Land and Environment Court within 21 days of order being made. The lodging of an appeal will not delay the commencement of the notice unless the Land and Environment Court directs otherwise.</th>
<th>30 penalty units(^1) (POEO Act s. 269).</th>
<th>No provision for Penalty Notice.</th>
</tr>
</thead>
</table>

\(^1\) Section 17 of the *Crimes (Sentencing Procedure) Act 1999* provides that a penalty unit is $110.
Power to issue a Noise Control Notice

An ARA can issue a notice to:

- the occupier of the premises concerned, or
- the person carrying on the activity, or operating the article, or
- the person proposing to carry on the activity or operate the article (POEO Act s. 264).

Councils can issue Noise Control Notices for activities for which they are the ARA under the POEO Act. RMS can issue Noise Control Notices in relation to vessels in navigable waters and premises used in conjunction with vessels and adjacent to, or partly or wholly over, navigable waters (POEO Act s. 263).

Police do not have the power to issue Noise Control Notices.

Appeals and revocation

A Noise Control Notice can be appealed to the Land and Environment Court within 21 days of being served (POEO Act s. 290). Where the notice relates to the keeping of an animal the appeal period is within seven days of the notice being served (cl 103, POEO General Regulation).

A Noise Control Notice can take effect immediately or on a later date as the notice may specify. The lodging of an appeal will not delay the commencement of the notice unless the Land and Environment Court directs otherwise. If the Court directs a delay, the notice will take effect only after the delay date, or when the Court confirms the notice, or if the appeal is withdrawn (POEO Act s. 267).

Offence

It is an offence to contravene a Noise Control Notice. An offence occurs if the activity or article emits noise above the noise limit specified in the notice during the relevant times or days. However, this does not apply where the noise cannot be detected outside the premises without the aid of an instrument (POEO Act s. 265). This means that any noise above the specified level must also be audible.

The ARA may require the person concerned to pay for all or any reasonable costs and expenses it incurred in monitoring and ensuring compliance with the notice (see section below).

Penalties

A breach of a Noise Control Notice can be prosecuted in the Land and Environment Court with a maximum penalty of $60,000 for a corporation and $30,000 for an individual. Daily penalties also apply for each day the offence continues. A maximum penalty of $22,000 can be issued in the Local Court for breach of a notice.

Alternatively, an enforcement officer can issue a Penalty Notice for a breach of a Noise Control Notice. This provides for fines of $200 for an individual and $400 for a corporation, which can be issued ‘on the spot’ where this is practicable (POEO General Regulation). Under s. 694 of the Local Government Act, councils receive the bulk of any fines imposed by the court or by a Penalty Notice.

Administrative fee for a Noise Control Notice

Cost recovery options for a Noise Control Notice include an administrative fee for serving the notice and a separate Compliance Cost Notice for monitoring or ensuring compliance with the notice.
The mandatory administrative fee of $466 is intended to cover the costs of preparing and giving a Noise Control Notice (POEO Act s. 267A). The fee must be paid within 30 days of receiving the notice. Where the Noise Control Notice is appealed, payment of the fee is suspended until the court has decided the appeal. The administration fee is prescribed by cl 99 of the POEO General Regulation.

Appropriate regulatory authorities have discretionary power to waive the administration fee or to extend the period for payment (POEO Act s. 267A).

**Power to issue a Compliance Cost Notice**
A Compliance Cost Notice can be served to recover the costs incurred by the ARA for monitoring and ensuring compliance with a Noise Control Notice (POEO Act s. 267B). This may include such things as travel to the site to do follow-up inspections and any measurements an officer may take to ensure that the conditions of the notice are being complied with. It is issued by the ARA to the person who was issued with the Noise Control Notice.

The notice does not include the cost of preparing and issuing a Noise Control Notice, which is covered by the administrative fee described in the previous section.

The Compliance Cost Notice should specify a time for payment. The notice should also indicate that if the payment is not received by the specified date then the ARA may take steps to recover the unpaid amount. The ARA may recover any unpaid amounts specified in the notice in a court. There is no right of appeal under the POEO Act.

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**Case study 2: Using a Noise Control Notice**

**Noise from a commercial premises affecting residents**

Wylawong Council received a complaint from a resident about noise from the exhaust fan at the Happy Tucker Takeaway. The takeaway operates from 11 am until 1 am, which is consistent with the development consent for the premises. The neighbour has told council that it is the noise of the exhaust fan operating at night that is the main problem.

Helen, the council Environmental Health Officer (EHO), knew that council was the ARA for the premises, even though there had never been any previous problems with the Happy Tucker Takeaway. She visited the site during the day and could see that the exhaust system was very old and sounded pretty loud. The ducting was loose-fitting and rattled, while the exhaust fan had a distinctive whine and was also very noisy. She decided that she needed to measure the noise from the exhaust system. She thought a Noise Control Notice would probably be the most appropriate instrument to use in this situation, as there is only one noise source. There was certainly work that could be done to reduce noise, and it was reasonable to set an acceptable noise limit that needed to be met.

Helen measured the noise from the takeaway shop’s exhaust system during the day, during her initial visit and also late at night, just after midnight, as the complainant had identified night time operation as a particular problem. Helen also took background noise measurements (L_{A90, 15 min}) in the morning just before the exhaust fan was turned on and late at night just after the fan was turned off.

Helen applied an intrusive noise criteria (background plus 5 dB(A) — see subsection 2.2.1 Intrusive noise). She compared the intrusive noise criteria with her readings of the exhaust system operating. Helen’s results are recorded in Table 4.3.

Clearly, noise from the exhaust system was intrusive during the night and marginal during the day. The whine from the fan could also have justified a tonal adjustment to the measured noise levels (see correction factors in Appendix 1), but Helen decided that if the exhaust system was properly repaired the whine would also be fixed. Helen decided that she would include a note regarding tonality in the notice.
The Noise Control Notice she prepared required that:

- noise from the exhaust system at the premises, including ducting and fan, must not exceed the following noise limits when measured at a point on the rear boundary with 15 Currajong Street and 2 metres from the northern boundary:
  - during daytime (7.00 am – 10.00 pm) 52 dB(A) $L_{Aeq}$ 15 min
  - during night time (10.00 pm – 7.00 am) 46 dB(A) $L_{Aeq}$ 15 min

**Note:** When measuring the noise level for compliance purposes, corrections may need to be added to the measured noise level if the noise contains dominant tonal, low-frequency, impulsive or intermittent components as defined in the NSW Industrial Noise Policy (EPA 2000).

Helen advised the complainant of her actions and indicated that the notice would take effect in 14 days. This would give the proprietor sufficient time to reduce the noise from the exhaust system. Helen also advised the complainant that the notice had a 21-day appeal period, but the lodging of an appeal would not delay the commencement of the notice unless the Land and Environment Court directed otherwise.

Helen was contacted by the proprietors shortly after receiving the notice and advised that a contractor would be looking at the system. Helen advised the proprietor that before executing any building works they should consult with council’s planning department to check whether development consent would be required.

An administration fee was charged for preparing and issuing the notice.

**What if ...**

If Helen had decided to use a Prevention Notice instead of a Noise Control Notice she would not have needed to include noise limits (and so could have avoided taking measurements). She could have instead required the owner/operator to engage a consultant and/or specified that the owner/operator investigate options for noise reduction on the basis of what could be achieved using feasible and reasonable mitigation measures. A second part to a Prevention Notice would then have specified that these measures be implemented by a specified time with monitoring to assess whether the measures performed as predicted. Monitoring results or a report about the improvement could also be requested.

After the work was completed, Helen conducted an inspection of the takeaway shop and noted a significant noise reduction at the boundary assessment location. Noise measurements indicated that the noise limit was not exceeded. The complainant also acknowledged a significant noise reduction. Helen then noted the notice as complied with.

### Table 4.3: Noise measurement results — Happy Tucker Takeaway exhaust system

<table>
<thead>
<tr>
<th>Time</th>
<th>Background noise level (without exhaust system)</th>
<th>Noise limit on notice (B/g +5 dB(A))</th>
<th>Noise from exhaust system</th>
<th>Reduction required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Day (11.00 am–10.00 pm)</td>
<td>47 dB(A) $L_{A90}$ 15 min</td>
<td>52 dB(A) $L_{Aeq}$ 15 min</td>
<td>55 dB(A) $L_{Aeq}$ 15 min</td>
<td>3 dB</td>
</tr>
<tr>
<td>Night (10.00 pm–1.00 am)</td>
<td>41 dB(A) $L_{A90}$ 15 min</td>
<td>46 dB(A) $L_{Aeq}$ 15 min</td>
<td>54 dB(A) $L_{Aeq}$ 15 min</td>
<td>8 dB</td>
</tr>
</tbody>
</table>
4.2.2 Noise Abatement Directions

Noise Abatement Directions can be issued if offensive noise:
– is being emitted, or
– has been emitted at any time within the past seven days from any premises.

The direction lasts for up to 28 days (POEO Act ss. 275–279).

Scope

Noise Abatement Directions are useful for quickly dealing with temporary noise problems such as loud music, where the noise can reasonably be reduced or stopped. A direction is an official instruction that offensive noise must cease. A direction can be issued within seven days of the offensive noise occurring and lasts for up to 28 days.

Using a Noise Abatement Direction

A Noise Abatement Direction can be issued if it appears to an authorised person that offensive noise is being made or has been made in the past seven days (POEO Act s. 276). An ‘authorised person’ is an ‘authorised officer’ (i.e. a person appointed by an ARA under s. 187 of the POEO Act) or a Police officer.

Offensive noise is defined in the POEO Act. In deciding whether a particular noise is offensive the authorised person would need to apply the definition of offensive noise from the POEO Act and consider what a reasonable person would find offensive. Determining offensive noise is discussed in detail in Part 2 of this Guide.

The authorised person need not have witnessed the offensive noise before issuing a Noise Abatement Direction. For the direction to be issued, it is sufficient for it to appear to the authorised person that offensive noise occurred in the past seven days. Where an authorised person has not heard the noise, it is preferable to ask witnesses to make a signed statement about the noise and its effect on them.

A template for a Noise Abatement Direction is included as Appendix 2.

Power to issue a Noise Abatement Direction

An authorised person can issue a Noise Abatement Direction to:
• the occupier of the premises concerned, or
• the person making or contributing to the making of the offensive noise.

Section 275 of the POEO Act enables:
• EPA authorised officers to issue a Noise Abatement Direction in ‘any case’
• Council authorised officers and Police officers to issue a Noise Abatement Direction in ‘any case’ other than those detailed in the restrictions noted below
• RMS authorised officers to issue a Noise Abatement Direction in relation to vessels on navigable waters other than as restricted below.

Restrictions

Section 278 of the POEO Act states that a Noise Abatement Direction, other than one given by an EPA authorised officer, may not be directed to the state, a person acting on behalf of the state, a state public authority, or a person acting in the capacity of a member, officer or employee of that authority. It also has no force if it affects:
• any activity carried on, by or for the state or a state public authority
• any activity or work that requires or is subject to an EPA licence (see Schedule 1 of the POEO Act).
Serving a Noise Abatement Direction
A Noise Abatement Direction can be issued verbally or in writing to the person the authorised person believes to be the occupier of the premises from which the offensive noise originates, or to any person the officer believes is making or contributing to the noise, or both. Where further action may be required it is recommended that a written direction be provided so there is clear evidence of its details. This is helpful for both the regulator and the person receiving the direction.

A Noise Abatement Direction should specify the source or type of offensive noise, for example, ‘cease using concrete saw or any other power tools’.

Appeals and revocation
There is no right of appeal against a Noise Abatement Direction under the POEO Act.

A direction may be revoked by the person who gave the direction or by another authorised person (POEO Act s. 279).

Offence
It is an offence to breach a Noise Abatement Direction. This happens if the offensive noise specified in the direction is made again within 28 days of the direction being given (or within a shorter time period if so specified in the notice).

Penalties
Penalty Notices can be issued for failing to comply with a Noise Abatement Direction, with fines of $200 for an individual and $400 for a corporation.

The maximum penalty the Land and Environment Court may impose for not complying with a Noise Abatement Direction is 30 penalty units (at the time of publication $3300 ($110 per penalty unit as set by the Crimes (Sentencing Procedure) Act 1999 s. 17)).

Powers of authorised officers for serving or enforcing Noise Abatement Directions
Authorised officers appointed by ARAs such as councils have powers for serving and enforcing Noise Abatement Directions. These include the power to:

• enter non-residential premises without a warrant (POEO Act s. 196)
• enter residential premises with a warrant (POEO Act s. 197)
• require certain information (name and address) (POEO Act s. 204)
• seize equipment making offensive noise in breach of a Noise Abatement Direction (POEO Act s. 198(2)(h)).

Powers of Police for serving or enforcing Noise Abatement Directions
Police officers have special powers for serving and enforcing Noise Abatement Directions. These include the power to:

• enter premises with a warrant (POEO Act s. 280)
• require certain information (name and address) (POEO Act s. 281)
• seize equipment making offensive noise in breach of a Noise Abatement Direction (POEO Act s. 282).
Warrant to enter premises – authorised officers (POEO Act ss. 196-7)

An authorised officer can enter non-residential premises without a warrant (s. 196) or residential premises with a warrant (s. 197) at any time when offensive noise has been occurring, is occurring, or is likely to occur. Entry can relate to a period prior to issuing a Noise Abatement Direction or when a breach of a Noise Abatement Direction has occurred.

An authorised officer under the POEO Act may apply to an authorised officer within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002 for the issue of a search warrant if they reasonably believe the Act or regulations have been or are being contravened (s. 199).

An authorised officer does not need to be denied entry before seeking a warrant to enter.

Warrant to enter premises – Police (POEO Act s. 280)

A Police officer can enter premises (with a warrant) to give a Noise Abatement Direction or to investigate whether a direction has been contravened (POEO Act s. 280 (1)).

A magistrate can issue a warrant following a complaint by a Police officer (received either directly or indirectly, see POEO Act s. 280 (2) & (3)) if the Police officer:

• has been denied entry to a particular premises
• believes that offensive noise is being or has been emitted from the premises in the past seven days, and
• issues a direction immediately on entering the premises or calls for an investigation to be carried out to see whether a direction has been contravened.

The POEO General Regulation (cl 102 and Schedule 7) provides the prescribed forms for the magistrate and the Police officer to record details of the case and the information that must be provided to the occupier of the premises where the warrant is being executed.

Authorised officer’s powers after entry (POEO Act s. 204(2))

If a person is breaching a Noise Abatement Direction or is issued with a Noise Abatement Direction, an authorised officer can require the person to provide their name and address and to provide proof of that name and address.

It is an offence for a person not to provide their name and address or to give false information with a maximum penalty of $250,000 for an individual and a further maximum penalty of $60,000 for each day the offence occurs (s. 211). Failure to provide proof of name and address is not an offence (s. 204(2)(a).

Police powers after entry by warrant (POEO Act s. 281)

If a person is causing or contributing to offensive noise or has done so within the last seven days then a Police officer can require a person to provide:

• their name and address, or
• the name and address of the occupier of the premises if that person is not the occupier.

The person must first have been warned that they are obliged to provide this information. It is an offence not to provide this information or to give false information, with a maximum penalty of 30 penalty units (POEO Act s. 281(3)).

Authorised officer’s power to seize equipment (POEO Act ss. 198(2)(h) and 198(3)

An authorised officer may seize anything that the authorised officer has reasonable grounds for believing is connected with a breach of a Noise Abatement Direction. This includes items causing the breach and items that will afford evidence of the offence.
**Police power to seize equipment (POEO Act s. 282)**

A Police officer can seize or secure any equipment that is making offensive noise if a Noise Abatement Direction is in force and a person is contravening the direction. The person must be warned that the continued use of the equipment may lead to it being seized. If equipment is seized a receipt needs to be issued to the person. Equipment must be returned or released within 28 days. Other Police powers are not affected (POEO Act s. 283).

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**Case study 3: Using a Noise Abatement Direction**

**A noisy stereo**

On one Friday afternoon council received several calls from residents of Park Street complaining about loud music coming from another house in their street. Steve, the council’s Environment and Health Officer, rang Ms Miller, one of the complainants, and asked her to describe how loud the music was either inside or outside her house. Ms Miller responded that the music was extremely loud everywhere and she couldn’t even hear her favourite daytime TV program. Steve then went to investigate and could hear the loud music as he turned into the street. Steve initially visited Ms Miller’s house to evaluate the noise there. Steve considered the definition of offensive noise in the POEO Act (see the list of offensive noise considerations in subsection 2.1.4 of this Guide). He decided that the music was definitely offensive noise as it was dominating the whole neighbourhood, and was very likely to be interfering unreasonably with the comfort or repose of people in several houses in Park Street.

Steve then visited the premises where the music was coming from. The music was so loud there that the resident, Elton, did not hear Steve’s knock at the door or hear him call out. After eventually gaining Elton’s attention Steve decided to issue a Noise Abatement Direction and explained to Elton that to comply he needed to keep the volume turned down so that it was not loud or annoying to the neighbours. He could check this by having a volume setting that did not dominate over other noise sources when heard at the neighbour’s boundary and that this condition would last for 28 days.

Elton then turned the volume of the sound system down. No sooner had Steve returned to the office than more complaints came in from Park Street. Steve visited again, performed an assessment of the noise and found that the sound system was being played so loudly that it was again offensive and in breach of the Noise Abatement Direction that had been given earlier that day.

Steve decided to issue a Penalty Notice to Elton as the occupier of the premises for the offence of ‘contravening a Noise Abatement Direction’, with an on-the-spot fine of $200. He also warned Elton that if he persisted in playing his sound system so loudly while the direction was in place, he could be issued with another Penalty Notice or be prosecuted. Steve also explained to Elton that under s. 198 of the POEO Act, he could seize Elton’s sound system if he continued to make offensive noise. (Police also have these powers under s. 282 of the POEO Act).

Steve later advised the complainants Ms Miller and Mr Jones about the action he had taken. Ms Miller said that she could still hear the music, although only faintly when it was turned down, and was concerned that even at this reduced level it might interfere with her sleep at night if it continued like that. Steve told her that after midnight on any Friday, Saturday or day before a public holiday cl 51 of the Noise Control Regulation required that all amplified music must not be audible inside a habitable room in her house. On any other day it must not be audible after 10 pm. This additional control was designed to protect against sleep disturbance by preserving a quiet time at night.
What if …

What if council had night ranger patrols, and Steve responded to the initial complaint after midnight? In this case Steve had the option of issuing a warning under the Noise Control Regulation ‘Time limits on the use of certain articles’, cl 51, ‘Musical instruments and sound equipment’, instead of a Noise Abatement Direction. The main difference in using the regulation is that the noise test of audibility is much stricter than the offensive noise test but easier to perform, as the question simply is ‘can the music be heard or not in a habitable room?’ However, this test relates to a location inside the neighbour’s house. Normally a complainant would allow access inside their house, as it is their interest for the test to be properly performed. However, failing this Steve could have made a judgement by standing outside the complainant’s house, observe the noise level and estimate whether the noise would be audible inside the house on the basis that the loudness would drop by about 10 decibels inside).

Before leaving the office that evening and being mindful that council did not have an after hours complaints service, Steve decided the situation was serious enough and the potential for continued noise problems great enough to notify the Police of the situation.

Steve spoke to Constable McGarrett of the local Police to notify him of a potential noise problem. Steve gave Constable McGarrett a summary of his actions during the day and said there was a strong possibility that they may receive further complaints from Park Street that evening. Steve stressed that he considered the noise at the time to be offensive and Elton’s response to date poor. Constable McGarrett thanked Steve for the notification and advised the duty officers of the situation.

As per Steve’s prediction, the Police responded to a complaint at 12:05 am at Elton’s residence. On the basis of his earlier conversation with Steve, Constable McGarrett decided to issue another on-the-spot fine for $200 for an additional breach of the council Noise Abatement Direction and told Elton that, on the basis of his discussions with council earlier that afternoon, if the Police received another complaint he would be taken to court and prosecuted for breaching the direction, and further he would seriously consider seizing the sound system. Elton decided he had pushed his luck far enough and the Police received no further complaints from Park Street.

4.2.3 Noise Abatement Orders

Individuals can seek a Noise Abatement Order independent of any regulatory authority such as a council or the Police.

Noise Abatement Orders can only be made by a Local Court.

The magistrate generally issues the order based on the ‘balance of probabilities’ (POEO Act ss. 268–274).

Scope

Any occupier of premises who believes their occupation of the premises is being affected by offensive noise can seek a Noise Abatement Order without involving a regulatory authority such as council or an enforcement authority such as the Police. This is done by filing an Application Notice which costs $70 to the Local Court seeking a Noise Abatement Order. The Court’s Registrar has to approve the Application Notice to start the legal process. The Court may issue a Noise Abatement Order requiring offensive noise to cease if it is satisfied that the noise was offensive.
Using a Noise Abatement Order
Where council or the Police have decided that no further action is justified for a particular matter, the resident can be advised about the option of seeking a Noise Abatement Order from a Local Court.

The burden of proof required for an order to be issued, which is a civil matter, is less than that required for criminal enforcement action by a regulatory authority (i.e. the magistrate may make a ruling on ‘the balance of probabilities’ based on the evidence presented, rather than having to be convinced beyond reasonable doubt).

Obtaining a Noise Abatement Order
Any person wanting to seek a Noise Abatement Order should make an appointment to discuss their proposed course of action with the registry staff at the Local Court. The following steps are involved in issuing a Noise Abatement Order:

1. The occupier of affected premises should call the registry staff at the local court and discuss the proposed course of action. The registry staff may suggest what evidence the Court may require.

2. The occupier of the premises should then file an application notice with the court registry.

3. The court registrar then assesses the application notice and, if approved, the Court will serve a Court Attendance Notice requiring the defendant to attend court.

4. The magistrate may issue an order if satisfied, on the balance of probabilities, that offensive noise either exists or is likely to recur.

As issuing an order involves court time and possibly the involvement of legal representation, the magistrate will often encourage parties to undertake mediation to prevent this time-consuming and potentially expensive process. This being the case, parties should be encouraged to approach the local Community Justice Centre or seek other mediation opportunities before completing the Application Notice.

It is not necessary to obtain legal advice when seeking an order, although this may be advisable depending on the circumstances. An order takes effect either immediately or at a time specified in the order.

An order may be revoked or varied by a local court.

Appeal
A person against whom a Noise Abatement Order has been made may appeal to the Land and Environment Court within 21 days of the order being made (POEO Act s. 290). The lodging of an appeal will not delay the commencement of the notice unless the Land and Environment Court directs otherwise. If the court directs a delay, the notice will take effect only after the delay date, or when the court confirms the notice, or if the appeal is withdrawn (POEO Act ss. 267 & 290).

Restrictions
Under s. 270 of the POEO Act, a Noise Abatement Order may not be directed to the state, a person acting on behalf of the state, a state public authority or a person in the capacity of a member, officer or employee of the authority. It also has no force if it affects an activity carried on, by or for the state or a state public authority, or an activity that requires or is subject to an EPA licence.

Offence
A person who contravenes the terms of a Noise Abatement Order is guilty of an offence (POEO Act s. 269).
The person who applied for the order can seek to have the person given the order prosecuted for contravening the order. Section 218 of the POEO Act identifies who may initiate a prosecution for a breach of a Noise Abatement Order.

Where an order has been breached, the breach will have to be established according to a criminal standard of proof (i.e. beyond reasonable doubt). This is more onerous than the standard of proof required to obtain an order.

**Penalties**
The maximum penalty for not complying with a Noise Abatement Order is 30 penalty units (at the time of publication $3300 ($110 per unit set by s. 17 of the *Crimes (Sentencing Procedure) Act 1999*)). There is no provision for a Penalty Notice to be issued for a breach of an order.

<table>
<thead>
<tr>
<th>Case study 4: Using a Noise Abatement Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maria has a neighbour called Eric, who is a member of a rock band. Eric practises the guitar at home on most days and sometimes at night until midnight. She tried to negotiate with him to restrict his playing to certain hours and to play in a room that was not facing her house, all to no avail. Council also provided some mediation without result. Both council and the Police at separate times visited Maria to determine whether the noise was offensive. Both authorities concluded that the noise was not offensive at the time of their visit and did not formally warn Eric.</td>
</tr>
<tr>
<td>Maria felt that for her the noise was indeed offensive and required further action. Council advised Maria that although they were not taking any further action she could, as an individual, take the matter further by seeking a Noise Abatement Order from her local court (POEO ss. 268–274). These Orders are served on the person making the offensive noise, requiring that the offensive noise be abated or that the offensive noise be prevented from recurring.</td>
</tr>
<tr>
<td>Maria called her local court to discuss the process of obtaining a Noise Abatement Order. The court registrar advised her on what was needed to proceed with an Application Notice for a Noise Abatement Order, which was:</td>
</tr>
<tr>
<td>• a full description of the alleged noise problem, giving details about the type of noise, its loudness, especially in relation to other noise normally heard, dates, times of day, duration of the noise, whether the noise had annoying characteristics and the number of incidents during the week</td>
</tr>
<tr>
<td>• any action that Maria had already taken to try and resolve the problem</td>
</tr>
<tr>
<td>• name, address and contact details (if known) of the alleged noise maker</td>
</tr>
<tr>
<td>• statements from witnesses supporting Maria’s account of the noise.</td>
</tr>
</tbody>
</table>
| These requirements should be discussed with the court registry staff before making a formal application for a Noise Abatement Order.  

Adequate evidence may include signed statements from two witnesses corroborating Maria’s account (witnesses need not declare that they found the noise offensive too, only confirm that the noise had been emitted at the time stated by Maria.)

Although the burden of proof will be the same in all local courts, different courts may vary as to the nature and type of evidence that the magistrate may request, to assess whether an order should be made.

During the meeting the court registry staff advised Maria of the implications of filing the Application Notice as well as the time required and potential legal costs of proceeding. The legal costs may include her legal representation, the defendant’s legal representation and nominal court costs.
What if … (1)

What if Maria had approached her neighbour about seeking a mediated solution at their local Community Justice Centre (CJC)? CJC offer a free, local mediation service with a 90% success rate in resolving disputes where both parties are willing to negotiate. Court registrars often require this course of action before considering an application to the local court. CJC avoid the time-consuming and potentially expensive legal process. However, attendance at the CJC is voluntary, and both parties must agree to attend the mediation session. It would be futile to require a person to attend mediation if they were unwilling to negotiate a solution to the problem. Local CJC are listed at www.cjc.nsw.gov.au.

Eric did not believe he was causing a noise problem and told Maria he was unwilling to attend a CJC session. Maria decided to pursue the Noise Abatement Order option.

Maria had been noting the details of the offensive noise in her diary and collected the requested evidence and neighbours’ statements. She then called the Local Court and made an appointment with the court registrar. The registrar advised Maria that sufficient evidence had been provided to enable the court to assess the matter. Maria completed the Application Notice and submitted it to the court along with the fee of $70.

What if … (2)

What if Maria had been unable to convince her neighbours to provide statements? Many neighbours are unwilling to become involved in disputes for fear of antagonising other neighbours or damaging established relationships. Also, Eric may have neighbours who state that the noise is acceptable.

The magistrate has to determine that on the evidence presented it is more likely than not that offensive noise occurred; that is, on the balance of probabilities.

Eric was served with a Court Attendance Notice in relation to the offensive noise complaint, and contacted his lawyer. At the hearing of Maria’s application, Eric’s lawyer sought to establish that the noise was not offensive by questioning Maria on her interpretation of offensive noise and argued that his client had played his guitar for over three years without complaint until Maria had recently moved into the area. The magistrate determined that sufficient evidence had been provided to establish that on the balance of probabilities (a civil standard of proof applying to the granting of a Noise Abatement Order) Maria was being adversely affected and that the noise was offensive, having regard to the definition provided in the dictionary of the POEO Act. The magistrate ordered Eric to immediately prevent any recurrence of offensive noise from his playing of the guitar. After the hearing Eric considered appealing but was adviser that an appeal could be heard only by the Land and Environment Court. Considering the high court costs that may result from an appeal, Eric decided simply to ignore the Order.

The Sheriff of the local court served the Order on Eric the next day.

The loud music continued, and Maria continued to be adversely affected. She rang the local court about getting the court to enforce the Order and was advised that she would need to gather evidence so that the court could consider whether the Order had been breached and appropriate action for any breach of the Order. The offence of breaching a Noise Abatement Order is a criminal offence. This means that the proof must be beyond reasonable doubt (and meet a higher standard than the civil standard of balance of probability), so it could be more difficult for Maria to satisfy the Court that an offence has occurred than when she initially applied for the Order.
The court advised Maria that she should obtain statutory declarations from witnesses to the activity, and that the witnesses may need to go to court to furnish their evidence under oath if necessary, as part of establishing her case beyond reasonable doubt. Maria approached her neighbours and received two statutory declarations that the noise had been emitted from Eric’s residence at the time stated by her. In providing evidence to satisfy a criminal standard Maria’s neighbours may be required to give evidence in court as witnesses.

Subsequently the court sent Eric another Court Attendance Notice to appear to answer the charge of breaching the Noise Abatement Order, which carries a maximum fine of $3300.

At the hearing Maria was required to give evidence as a witness. Maria’s neighbours attended the hearing but were not called to the witness box. Eric’s lawyer was unable to convince the court that Maria’s evidence and the two neighbours’ statutory declarations were inaccurate. In supporting his case Eric provided a statutory declaration that he believed he kept the music volume at a reasonable level, and moved his speakers so that they faced away from Maria’s house. However, the court was satisfied beyond reasonable doubt that the Order had been breached. The magistrate fined Eric $1000, required him to seek professional advice about minimising the noise that was created when he played his guitar, and warned Eric that he did not want to see him taking up valuable court time again.

Now Maria occasionally hears Eric’s guitar from the front of her driveway and she believes her time and effort in pursuing the Noise Abatement Order has been worth the reduction in noise in her neighbourhood.

What if … (3)

What if the magistrate was not satisfied beyond reasonable doubt that the noise was offensive and Maria was unsuccessful? In this case the magistrate could award costs to Eric, making Maria liable for up to several thousand dollars. An award of costs generally includes the legal fees incurred by Eric, and certain other expenses related to the matter. This would usually be in addition to Maria’s own costs (legal and otherwise) that had been incurred. Both parties have the option of retaining legal representation, and it is often the case that the defendant will be represented. Other costs may include engaging a specialist noise consultant and the cost of collecting evidence if this is done by the consultant. The time required to collect evidence and statements and to attend court and the possibility of having to pay another party’s legal costs are among a number of things that should be considered before commencing legal action. Additionally, the level of proof required to prove a breach of an order is the criminal level of proof.

What if … (4)

What if Eric continued to be in breach of the Noise Abatement Order by continuing to play his guitar in the same manner as before? The Order continues unless revoked by the court. Maria can collect evidence as before and Eric can be required to appear before the court as before. If found guilty he may be fined the maximum amount imposed by the local court. In addition, as Eric has breached a court order he may be in contempt of court, in which case he is subject to severe penalties.
4.2.4 Prevention Notices

Prevention Notices are used to control activities that are conducted in an ‘environmentally unsatisfactory manner’.

Actions need to be specified in the Prevention Notice (POEO Act ss. 95–100).

Scope

A Prevention Notice can be used to control activities that are conducted in an ‘environmentally unsatisfactory manner’ (as defined in s. 95 of the POEO Act) and should specify the action to be taken to remedy the problem.

Section 96(3) of the POEO Act provides a list of examples of actions that a Prevention Notice can require. This includes requiring an operator to develop an action plan and to supply progress reports on the action required by the Prevention Notice (POEO Act s. 96(5)).

A Prevention Notice can encourage an operator to apply best management practice to an activity. A notice is likely to be appropriate where:

- there is a complex activity with many noise sources, and changes to operational practices are needed
- it may be difficult or unreasonable to specify an acceptable noise level that must be met
- there are a number of environmental issues requiring action, e.g. noise, air, water or waste problems. A single Prevention Notice can be used to manage all these problems for a particular site or activity.

The Prevention Notice is designed to set out actions that are needed for an activity to operate in an environmentally satisfactory manner. It is oriented towards finding solutions that would control the noise and cannot be used to simply ban an activity unless this is the only environmentally satisfactory solution.

Using a Prevention Notice

Before preparing the Prevention Notice you must establish that the activity is being carried out in an environmentally unsatisfactory manner. Section 95 of the POEO Act defines this term. Section 95(c) and (d) contains the most relevant parts of the definition in relation to noise, and states that an activity is being carried out in an ‘environmentally unsatisfactory manner’ if:

- it is not carried on by such practicable means as may be necessary to prevent, control or minimise pollution, the emission of any noise or the generation of waste, or
- it is not carried on in accordance with good environmental practice.

The term ‘practicable means’, as used here, is not defined by the POEO Act, so it is given its natural meaning. The Macquarie Dictionary defines practicable as ‘capable of being put into practice, done or effected especially with the available means or with reason or prudence; feasible.’ If there is action that can be taken to prevent, control or minimise the emission of noise, then a Prevention Notice may be issued.

The dictionary says noise pollution means the ‘emission of offensive noise’. Prevention Notices are generally issued because of the emission of offensive noise. If the ‘emission of any noise’ is used as the trigger for issuing a Prevention Notice, the noise should be the subject of a particular policy, e.g. the NSW Industrial Noise Policy (EPA 2000). An example where this may be appropriate would be where the Industrial Noise Policy indicates the noise level should not exceed the background noise level by more than 5 dB.
A Prevention Notice needs to specify what actions are required to control the noise, for example:

1. The actions the operator should take to ensure that the activity is carried out in an environmentally satisfactory manner. Section 96(3) of the POEO Act lists some of the things that can be required in a Prevention Notice.

2. If suitable measures to control the noise are not apparent, the Prevention Notice can require that an action plan (noise management plan) be developed by the operator as a first step. The operator usually best understands the noise source and may be able to think of innovative solutions with your encouragement.

An action plan could specify the details that council expects the operator to address. For example, the Prevention Notice may require that:

- an action plan be prepared by a suitably qualified and experienced person
- that all potential noise sources be identified
- the subject noise and background noise be measured or monitored
- control measures capable of managing the noise be identified and assessed, such as relocating or enclosing equipment or changing operating times
- recommendations are made to manage the noise as part of the plan.

There could also be a requirement that the plan be submitted to council for approval before being implemented. If a two-stage approach was being followed then a further notice could be issued to implement the approved measures or this requirement could be built into the original notice. Management options that are developed to reduce the noise need to be feasible and reasonable.

3. The date(s) when the action required in the Prevention Notice must be completed. If an action plan has been requested then you need to specify a date(s) for the plan to be submitted and implemented.

Where the Prevention Notice is issued to the occupier, but the occupier is not the person carrying on the activity, the occupier must take all available steps to cause the action to be undertaken (POEO Act s. 96(4)).


Power to issue a Prevention Notice

Only an ARA can issue a Prevention Notice. Police do not have the power to issue Prevention Notices. A notice can be issued to:

- the occupier of the premises concerned, and/or
- the person carrying on the activity (POEO Act s. 96(2)).

The Prevention Notice must be issued in writing.

Appeals

A person given the Prevention Notice may appeal to the Land and Environment Court within 21 days of being served with the Prevention Notice (POEO Act s. 289).

A Prevention Notice operates from the day the notice is given or from a later date as the notice specifies. The lodging of an appeal will not delay the commencement of the notice unless the Land and Environment Court directs otherwise. If the court directs a delay, the notice will take effect only after the delay date, or when the court confirms the notice, or if the appeal is withdrawn (POEO Act ss. 99 & 289).
Offence
A person who fails to comply with the Prevention Notice is guilty of an offence under s. 97 of the POEO Act.

The ARA may require the person concerned to pay for all or any reasonable costs and expenses it incurred in monitoring and ensuring compliance with the notice. See subsection 4.2.5 of this Guide.

If a person has not complied with the Prevention Notice, the ARA itself (or its employees, agents or contractors) can take the action that the Prevention Notice requires (POEO Act s. 98). The ARA may then require the person concerned to pay for all or any reasonable costs and expenses it incurred in taking that action (POEO Act s. 104(4)).

These cost recovery mechanisms are in addition to any prosecution that may be undertaken.

Penalties
A Penalty Notice can be issued for failure to comply with a Prevention Notice with fines of $750 for an individual and $1500 for a corporation.

A breach of a Prevention Notice can be prosecuted in the Land and Environment Court, with maximum fines being $1,000,000 for a corporation or $250,000 for an individual. There are also daily penalties if the offence continues.

Administrative fee for a Prevention Notice
Cost recovery options for Prevention Notices include an administration fee for serving the notice and a separate Compliance Cost Notice for monitoring or ensuring compliance with the notice.

The mandatory administrative fee of $466 is intended to cover the costs of preparing and giving a Prevention Notice (POEO Act s. 100). The fee must be paid within 30 days of receiving the notice. Where the Prevention Notice is appealed, payment of the fee is suspended until the court has decided the appeal. The administration fee is prescribed by cl. 99 of the POEO General Regulation.

Appropriate regulatory authorities have discretionary power to waive the administration fee or extend the period for payment (POEO Act s. 100). Examples of circumstances in which appropriate regulatory authorities might consider waiving the fee include:
- demonstrated cases of financial hardship
- where the Prevention Notice has been issued to a charitable organisation
- where a second follow-up notice is issued.

4.2.5 Compliance Cost Notices
A Compliance Cost Notice allows an appropriate regulatory authority to recover the costs of monitoring or ensuring compliance with a Prevention Notice or a Noise Control Notice.

It is a separate notice which can be served after a Prevention Notice or Noise Control Notice has been given (POEO Act s. 104(3) and 104(4)).

Scope
A Compliance Cost Notice can be served to recover the costs incurred by the ARA for monitoring or ensuring compliance with a Prevention Notice (POEO Act s. 104 (3)) or a Noise Control Notice (POEO Act s. 267B). It is issued to the person who was issued with the notice.

The notice does not include the cost of preparing and issuing a Prevention Notice, which is covered by the administration fee described in the previous section.
Power to issue a Compliance Cost Notice
The ARA that has issued a Prevention Notice or Noise Control Notice to a person may issue a Compliance Cost Notice. A Compliance Cost Notice must be issued in writing.

Using a Compliance Cost Notice
A Compliance Cost Notice is used to recover the costs associated with monitoring and follow-up action taken as a result of issuing a Prevention Notice or Noise Control Notice. This may include such things as travel to the site to do follow-up inspections, time spent on inspection to ensure that conditions of the notice are being complied with, and measurements an officer may take to ensure that the conditions of the notice are being complied with.

Officers need to keep accurate records of the time spent in ensuring compliance with the Prevention Notice or Noise Control Notice. The ARA will need to determine an hourly fee charge for the purpose of issuing Compliance Cost Notices.


Appeals
There is no right to appeal a Compliance Cost Notice under the POEO Act, but the notice must be reasonable and follow natural justice principles. If these principles are not followed a prosecution for non-compliance may be unsuccessful if the notice is not complied with.

Payment method
Compliance Cost Notices should specify a time for payment. The notice should also indicate that if the payment is not received by the specified date then the ARA may take steps to recover the unpaid amount.

Failure to comply
The ARA may recover any unpaid amounts specified in the notice in a court.

Registering Compliance Cost Notices
Compliance Cost Notices may be registered with the Registrar-General, creating a charge over any land owned by the person who is the subject of the notice (POEO Act s. 106). This charge will cease to have effect, either (POEO Act s. 107):
• on payment to the ARA or public authority of the amount concerned, or
• on the sale or other disposition of the property with the written consent of the authority, or
• on the sale of the land to a purchaser in good faith who, at the time of the sale, has no notice of the charge.

Compliance Cost Notices can be registered with the Registrar-General if attempts to recover the costs have not been successful.

Administrative fee for registering Compliance Cost Notices
The ARA may require the person concerned to pay for all or any reasonable costs and expenses it incurred in the lodgement or registration of the notice and any resulting charge, including the costs of discharging the charge. The ARA may also take steps to recover any unpaid amounts specified in the notice in court (POEO Act s. 107(8)).
Case study 5: Using a Prevention Notice and Compliance Cost Notice

Joe’s Cabinetmaking Shop has been operating at the end of a residential street for over ten years. The area is a mixed-use zone with houses on the opposite side to Joe’s Cabinetmaking Shop. Joe’s business has grown progressively, and much of the work is now carried out in the open in what was once a parking area.

Council received a noise complaint from two of the nearest residents. They had a number of issues that were concerning them. The timber storage area had a circular saw which operated on and off throughout the day. Other power tools were also clearly heard in the neighbouring houses. Joe’s dust extraction system was also contributing to complaints, as it had not been well maintained, and rattled away, creating noise that intruded on the surrounding neighbourhood. Joe also listens to the radio while working, as it helps him concentrate. At the time of the complaint Joe had recently received a few big orders and had extended his operating hours. He was now working Monday to Saturday, until 10.00 pm most nights, having started at 7.00 am.

Before visiting the premises, Claudia (the council’s EHO) checked council files and found that Joe’s development consent was quite old and did not contain any conditions regarding hours of operation or noise limits. Claudia then visited the site to investigate the neighbours’ noise complaints. She noted the noise from the dust extraction system, circular saw and the various power tools. All were clearly audible in the neighbours’ properties. She recorded these observations and described the nature of the noise and the locations of the various items of equipment in her notebook. Claudia also decided to take noise measurements at the boundary of the affected premises. The background noise level in the area at 10.30 am was LA90, 15 minute 37 dB(A). This meant that the intrusive noise criteria from the NSW Industrial Noise Policy (EPA 2000) would be L_Aeq, 15 minute 42 dB(A).

Claudia then took several noise measurements during periods when the activities of Joe’s Cabinetmaking Shop were clearly audible and dominating the acoustic environment. Claudia recorded the following measurements and noted the activities in Joe’s premises that were audible: L_Aeq, 15 min 52, 54 and 58 dB(A).

Claudia visited Joe’s Cabinetmaking Shop and told Joe that council had received a complaint about noise from his factory, and that on the basis of her observations and initial noise measurements the noise was unreasonable. Joe was not pleased. She asked him about some of his work practices, such as work being done in the old parking area, use of the circular saw in the open and his operating hours. Joe insisted it was his right to carry on his business whatever way he saw fit. Claudia advised that she would be in touch again to discuss what Joe would need to do to improve the situation.

From previous experience with a similar operation, Claudia formed the opinion that Joe’s activities were not being carried on by such practicable means as may be necessary to prevent, control or minimise the emission of noise. That is, the activities at Joe’s workshop were being carried out in an ‘environmentally unsatisfactory manner’ within the meaning of the POEO Act.

Claudia decided to serve a Prevention Notice on the company to ensure Joe addressed the noise problem. The Prevention Notice was effective immediately and required Joe to prepare an action plan to prevent, minimise or control noise from the activities at the workshop and to submit it to council within four weeks. The Prevention Notice specified that the written action plan should:

- be prepared by a suitably qualified acoustic consultant
- identify possible mitigation measures, including changes to the operating time, location and use of equipment, and the cost effectiveness of installing noise insulation for equipment and recommend appropriate measures
- be completed within four weeks from the date the notice was given.
Claudia considered a Prevention Notice most appropriate in this situation, as there were many noise sources and the noise problem was mostly due to the poor management of the noise impacts. An administration fee was charged for preparing and issuing the notice.

Claudia advised the complainants of her action and let them know that the notice required the proprietor to prepare an action plan to prevent, control and minimise noise and submit the plan to council in 28 days. Claudia revisited Joe’s premises a week after the Prevention Notice was given and inquired about his progress. Joe advised that he had not yet taken any steps to comply with the notice, as he had been busy. Claudia advised Joe that non-compliance with the notice was an offence and that he could be fined if the requirements of the notice were not met by the date specified.

Joe subsequently submitted an action plan that addressed the noise problem through both operational and engineering measures. Claudia then signed off the notice. She then issued a second Prevention Notice requiring the implementation of the action plan recommendations within a three-month timeline she negotiated with Joe.

Claudia subsequently spent considerable time checking compliance with the Prevention Notice in regard to implementation of the action plan, as Joe was slow to respond. She discussed the possibility of serving a Compliance Cost Notice with her manager, as she had kept good records of monitoring and compliance activities. This would require Joe to pay the reasonable costs incurred by council in ensuring that he complied with the notice. Following implementation of the recommendations of the action plan, the impact of the operations of Joe’s business was significantly reduced, as Joe was now taking practicable means to control, prevent and minimise the emission of noise.

The complainants were advised of the result of council action. The complainants also acknowledged a significant noise reduction. Claudia then noted that the notice had been complied with.

**What if ...**

A Noise Control Notice could have been used, but it would have been onerous to specify limits for each of the various activities undertaken and then to determine what mix of sources was likely to make up a total noise level at each receiver location. Compliance for complex sources may be difficult or time consuming to establish compared with establishing compliance for specified activities and noise control measures, which can be easily demonstrated.

### 4.2.6 Noise pollution from operating plant and handling materials

*(POEO Act ss. 139–140)*

There are two general provisions for noise from premises in ss. 139 and 140 of the POEO Act. These relate to the operation of plant and handling of materials, respectively.

**Operation of plant causing noise (POEO Act s. 139)**

In situations where council is the ARA, an authorised council officer can prosecute or issue a Penalty Notice to the occupier of premises where the council officer considers that a noise problem from the premises is being caused by the operation of plant that is poorly maintained or not operated correctly. In other words, the occupier has failed:

- to maintain the plant in an efficient condition, or
- to operate the plant in a proper and efficient manner.

An example is the operation of worn conveyor belts causing noise as the loose belt is drawn through the drivers.
Dealing with materials causing noise (POEO Act s. 140)

In situations where council is the ARA, a council officer, who is authorised by the council to do so, can prosecute or issue a Penalty Notice to the occupier of a premises where the council officer considers that noise is occurring because materials are not being dealt with in a proper or efficient manner by the occupant. For the purposes of this section of the Act:

- ‘deal with’ means process, handle, move, store or dispose of
- ‘materials’ include raw materials, materials in the process of manufacture, manufactured materials, by-products, or waste materials.

An example is the practice of throwing or dumping empty glass bottles into steel drums or containers, thereby making noise.

No warning is required to be given before issuing a Penalty Notice or proceeding with a prosecution where ss. 139 or 140 of the POEO Act is breached.

4.3 The POEO (Noise Control) Regulation 2008

The Noise Control Regulation streamlines the handling of common neighbourhood noise problems by providing more specific controls than the general powers provided under the POEO Act. The provisions of the regulation are aimed at residential activities and equipment, rather than those on commercial or industrial premises. Noise resulting from residential construction is not intended to be covered by the regulation as noise from the construction of a dwelling is dealt with through specific conditions of consent given under planning legislation. The regulation has three main parts relevant to noisy items. These are:

- Part 2, which provides for control of the noise from individual motor vehicles operating on public roads and road-related areas as well as off-road, including on private property, and noise from motor vehicle accessories such as alarms. Police officers and council, EPA and Sydney Harbour Foreshore Authority enforcement/authorised officers have powers in relation to particular provisions.
- Part 3, which deals with noise from marine vessels such as powerboats, personal water craft and sailing vessels. This part applies mainly to RMS and Port Corporations enforcement officers and the Water Police, but council enforcement/authorised officers also have powers in relation to some provisions.
- Part 4, which deals with common neighbourhood noise problems such as the times of use of air conditioners, heat pump water heaters, swimming pool pumps, power tools, building intruder alarms and loud music. This part mainly applies to council enforcement/authorised officers and Police officers, but EPA enforcement/authorised officers also have powers in relation to some provisions.

Details of offences which can be dealt with by issuing a Penalty Notice are listed in Schedule 3 of the regulation. The POEO General Regulation lists the fine and the class of officer that can be authorised to issue a Penalty Notice for a particular offence.

Table 4.4 below summarises the offences under the Noise Control Regulation for which councils and other agencies can issue Penalty Notices. In all cases, council enforcement officers can issue a Penalty Notice where an offence occurs in relation to activities for which council is the ARA and which occur in or in relation to a council's local government area.

The regulation applies different methods of control to different neighbourhood noise problems. These controls are:

- preventing the use of certain articles where they can be heard during noise-sensitive periods (e.g. night time)
- placing limits on how long an article can emit noise (e.g. alarms)
- prohibiting the use of certain articles where they emit offensive noise (e.g. off-road trail bikes).
<table>
<thead>
<tr>
<th>Issue</th>
<th>Offence short title</th>
<th>Regulation clause</th>
<th>Warning required</th>
<th>Enforcement agency</th>
<th>Penalty Notice fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor vehicle causing offensive noise, other than on a road or road-related area</td>
<td>Cause a motor vehicle to emit offensive noise – other than on a road</td>
<td>Cl 13</td>
<td>No</td>
<td>Council Police EPA</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td>Motor vehicle on residential premises causing unnecessary noise during the night or early morning</td>
<td>Cause or permit motor vehicle noise on residential premises</td>
<td>Cl 14(1)</td>
<td>Yes</td>
<td>Council Police EPA</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td>Motor vehicle refrigeration unit can be heard within a residence during the night or early morning</td>
<td>Cause or permit repeated refrigeration unit noise after warning</td>
<td>Cl 15(1)</td>
<td>Yes</td>
<td>Council Police EPA</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td>Motor vehicle sound system emitting offensive noise</td>
<td>Cause offensive noise from motor vehicle sound system</td>
<td>Cl 16</td>
<td>No</td>
<td>Council Police EPA</td>
<td>Individual $150 Corporation $300</td>
</tr>
<tr>
<td>Motor vehicle alarm used while vehicle engine is running or ignition is on</td>
<td>Cause or permit use of motor vehicle intruder alarm with panic/override switch</td>
<td>Cl 23</td>
<td>No</td>
<td>Council Police EPA</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td>Motor vehicle alarm, sounding continuously or intermittently, exceeding permitted time limit</td>
<td>Cause or permit the use of noisy vehicle alarm for up to 4 hours</td>
<td>Cl 24(1)</td>
<td>No</td>
<td>Council Police Sydney Harbour Foreshore Authority EPA</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td></td>
<td>Cause or permit the use of noisy vehicle alarm for more than 4 hours and up to 8 hours</td>
<td></td>
<td></td>
<td></td>
<td>Individual $400 Corporation $800</td>
</tr>
<tr>
<td></td>
<td>Cause or permit the use of noisy vehicle alarm for more than 8 hours</td>
<td></td>
<td></td>
<td></td>
<td>Individual $600 Individual $1200</td>
</tr>
<tr>
<td>Issue</td>
<td>Offence short title</td>
<td>Regulation clause</td>
<td>Warning required</td>
<td>Enforcement agency</td>
<td>Penalty Notice fine</td>
</tr>
<tr>
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</tr>
<tr>
<td>Marine vessel siren sounding for purposes other than navigation</td>
<td>Cause or permit siren/whistle/hooter/fog horn/bell to be sounded</td>
<td>Cl 29</td>
<td>No</td>
<td>Council Police Port Corporations RMS</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td>Marine vessel, including powered and sailing craft, emitting offensive noise</td>
<td>Cause or permit vessel to emit offensive noise on navigable waters</td>
<td>Cl 30</td>
<td>No</td>
<td>Council Police Port Corporations RMS</td>
<td>Individual $300 Corporation $600</td>
</tr>
<tr>
<td>Marine vessel sound system emitting offensive noise</td>
<td>Cause or permit use of musical instruments/sound system on vessel to emit offensive noise</td>
<td>Cl 33</td>
<td>No</td>
<td>Council Police Port Corporations RMS</td>
<td>Individual $300 Corporation $600</td>
</tr>
<tr>
<td>Power tools used on residential premises can be heard at neighbouring residence during the night or early morning (includes powered garden tools, electric power tools, pneumatic power tools, chainsaws, circular saws and gas or air compressors)</td>
<td>Cause or permit a power tool to emit noise unlawfully</td>
<td>Cl 50(1)</td>
<td>Yes</td>
<td>Council Police</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td>Swimming pool and spa pumps used on residential premises can be heard at neighbouring residence during the night or early morning</td>
<td>Cause or permit pool pump to emit noise unlawfully</td>
<td></td>
<td>Yes</td>
<td>Council Police</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td>Musical instruments &amp; electrically amplified sound equipment used on residential premises can be heard at neighbouring residence during the night or early morning (includes, for example, radios, televisions, home entertainment systems, CD &amp; DVD players and PA systems)</td>
<td>Cause or permit musical instrument or amplified sound equipment to be used unlawfully</td>
<td>Cl 51(1)</td>
<td>Yes</td>
<td>Council Police</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td>Issue</td>
<td>Offence short title</td>
<td>Regulation clause</td>
<td>Warning required</td>
<td>Enforcement agency</td>
<td>Penalty Notice fine</td>
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<tr>
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<tr>
<td>Air conditioner or heat pump water heater used on residential premises can be heard at neighbouring residence during the night or early morning</td>
<td>Cause or permit an air conditioner or heat pump water heater to be used unlawfully</td>
<td>Cl 52(1)</td>
<td>Yes</td>
<td>Council Police</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td>Building intruder alarm, sounding continuously or intermittently, exceeding permitted time limit</td>
<td>Cause or permit use of noisy intruder alarm (for up to 4 hours)</td>
<td>Cl 53(1)</td>
<td>No</td>
<td>Council Police EPA</td>
<td>Individual $200 Corporation $400</td>
</tr>
<tr>
<td></td>
<td>Cause or permit use of noisy intruder alarm (for 4 to 8 hours)</td>
<td></td>
<td></td>
<td></td>
<td>Individual $400 Corporation $800</td>
</tr>
<tr>
<td></td>
<td>Cause or permit use of noisy intruder alarm (for more than 8 hours)</td>
<td></td>
<td></td>
<td></td>
<td>Individual $600 Corporation $1200</td>
</tr>
</tbody>
</table>
The following discussion of the regulation groups the noise sources into four areas:

- **miscellaneous articles** (e.g. power tools, amplified music, air conditioners)
- **alarms** (e.g. burglar and car alarms)
- **motor vehicle related** (e.g. trail bikes off-road, vehicle sound systems, truck-mounted refrigeration units)
- **vessels** (e.g. recreational vessels such as sailing boats and power boats).

### 4.3.1 Miscellaneous articles

- Power tools and swimming pool pumps
- Musical instruments and sound systems
- Air conditioners and heat pump water heaters

The Noise Control Regulation identifies times when certain items must not be used in residential premises when they can be heard inside a habitable room of another residence (whether windows and doors are open or not) after a warning has been given. Habitable room means any room other than a garage, storage area, bathroom, laundry, toilet or pantry. Items with restricted times of use include:

- power tools (e.g. powered garden tools, electric power tools, pneumatic power tools, chainsaws and compressors) and swimming or spa pool pumps (cl 50)
- musical instruments and electrically amplified sound equipment (cl 51)
- air conditioners and heat pump water heaters (cl 52).

These provisions provide a means of determining whether noise from one of the listed items of equipment, which is heard in a neighbouring dwelling, may warrant action based on the time of day that the noise is being emitted.

**These provisions do not exclude other courses of action if ‘offensive noise’ is emitted within the permitted times of use. For example, a Noise Abatement Direction or Prevention Notice could be issued if an officer considered that, for example, a musical instrument or leaf blower was causing offensive noise, regardless of the time of day.**

Table 4.5 lists the restricted times of use for each item.

**Table 4.5: Restricted times of use for miscellaneous articles**

<table>
<thead>
<tr>
<th>Type of noise</th>
<th>Times during which restrictions apply</th>
</tr>
</thead>
</table>
| Power tools and swimming/spa pool pumps (cl 50) | Before 8.00 am or after 8.00 pm on Sundays and public holidays  
Before 7.00 am or after 8.00 pm on any other day |
| Musical instruments and electrically-amplified sound equipment (POEO (cl 51) | Before 8.00 am or after midnight on any Friday, Saturday or day immediately before a public holiday  
Before 8.00 am or after 10.00 pm on any other day |
| Air conditioners and heat pump water heaters (cl 52) | Before 8.00 am or after 10.00 pm on weekends or public holidays  
Before 7.00 am or after 10.00 pm on any other day |
What constitutes an offence?

Simply operating an item during restricted hours set out in the regulation is not immediately an offence. A warning needs to be given and contravened before an offence against the ‘time of use’ provisions of the regulation is committed.

Only a council enforcement/authorised officer (or Police officer) can issue the warning. This is to ensure that warnings are issued correctly. A warning can be given verbally or in writing. The warning needs to be given within seven days of the noise occurring. If the item is operated outside hours permitted by the regulation within 28 days of the warning, and the noise can be heard inside a habitable room in another residence, then an offence has been committed.

A warning must be clear and be understood by the person receiving it. Ideally, it should be confirmed in writing. The person receiving the warning should:

• understand that the warning has a legal basis. This could be achieved by referring to the relevant clause in the regulation or by giving the person a copy of the clause
• appreciate what they are required to do. This means understanding that they must not cause or permit the particular noise to be emitted within 28 days of the warning being issued
• understand that they will commit an offence if they do not comply.

Contravention of a time of use provision

A contravention of a ‘time of use’ provision occurs where noise from these items can be heard within a habitable room of any residential premises during restricted hours (regardless of whether any door or window to that room is open).
If an offence has been committed, a council enforcement officer (or Police officer) can issue a Penalty Notice, or council can commence court proceedings, provided there is adequate evidence to support the case. Evidence that may help support enforcement action could include a signed statement from one or more witnesses, identifying the source (if known) and nature of the noise, when and where it was heard, an indication of its volume and its effects on them.

If necessary, a Noise Abatement Direction could be used to control offensive noise, regardless of hours of use, as this provision of the POEO Act applies at all times.

### Case study 6: Noise Control Regulation — Time of use provisions

A swimming pool pump operated until 11.00 pm on most nights during the summer. A neighbour disturbed by the noise had previously asked the pool pump owner (who was also the occupier of the premises) to stop the noise. When that didn’t stop the noise the resident complained to council.

Dave, an authorised officer, visited the site during the day and established that the pump could clearly be heard in the complainant’s home. He reasoned that if it was clearly audible during the day then it certainly would be audible during the restricted times as set out in cl 50 of the Noise Control Regulation. He then gave a warning under the regulation to the owner of the pool pump, as he was satisfied from statements from the complainant that the pump had been audible within a bedroom during restricted hours within the last seven days. He also asked the complainant to make a written record of the date and time when any further occurrences of the noise took place.

Despite the warning given to the owner of the pool pump, council received more complaints from the neighbour. A council ranger visited the neighbour’s premises after 10 pm that evening and, from within the complainant’s bedroom, heard the pump operating. On the basis of the evidence of the ranger, Dave was satisfied that the warning had been breached and served a Penalty Notice on the owner of the pool pump.

The complainant was told what had been done about the problem, and was advised to contact council if the problem persisted.

If a ranger had been unable to attend the premises:

- Dave would have asked the complainant to make a signed statement that the pump was audible inside a habitable room in his home during restricted hours (specifying the dates and times when he heard the pump) and how it was affecting him. The record of times kept by the complainant of when the noise was heard would have helped in making the statement.
- Dave could also have considered whether he had enough evidence to issue a Penalty Notice. To do so, he would have had to assess whether the evidence provided by the complainant was credible and reliable, and whether there was enough evidence to prove that the offence had been committed should the pool pump owner elect to have the matter heard in court. Dave would also need to consider whether the complainant would be willing to give evidence as a witness in court.

### 4.3.2 Alarms

- **Motor vehicle intruder alarms**
- **Building intruder alarms**

The Noise Control Regulation limits the duration for which a building or car intruder alarm may sound. Time limits for alarms manufactured before or after certain dates are presented in Table 4.6.

No warning is required for an offence to occur.
Table 4.6: Restricted duration of noise from alarms

<table>
<thead>
<tr>
<th>Type of noise</th>
<th>Restrictions on the duration of the noise emitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor vehicle intruder alarm (cl 24)</td>
<td>- more than 90 seconds if the vehicle was manufactured before 1 September 1997</td>
</tr>
<tr>
<td></td>
<td>- more than 45 seconds if the vehicle was manufactured on or after 1 September 1997</td>
</tr>
<tr>
<td>Building intruder alarm (cl 53)</td>
<td>Sound is audible in a habitable room of a residential premises and sounds for:</td>
</tr>
<tr>
<td></td>
<td>- more than 10 minutes if the alarm was installed before 1 December 1997</td>
</tr>
<tr>
<td></td>
<td>- more than 5 minutes if the alarm was installed after 1 December 1997</td>
</tr>
</tbody>
</table>

The regulation provides that where an alarm sounds intermittently, it is taken to sound continuously for the purpose of measuring the duration for which it has sounded. For example, a car alarm that sounds for 70 seconds, stops for 60 seconds and sounds again for 70 seconds is taken to have sounded for more than the permitted 90 seconds. This approach applies for both building and car alarms.

What constitutes an offence?
In the case of a building alarm, an offence is committed by an occupier of the premises who causes or permits an alarm to sound for longer than the specified time limit and it is audible inside a habitable room of a dwelling.

In the case of a vehicle alarm, an offence occurs if a person causes or permits an alarm to sound for longer than the specified time limit. However, for vehicles manufactured before 1 March 2009 it is not an offence if the alarm sounds for longer than the specified time limit if the vehicle has been involved in an accident, or has damaged windows or been broken into.

Although the regulation provides different time limits for alarms manufactured (vehicles) or installed (buildings) before and after September and December 1997 respectively, this can often be difficult to determine. If in doubt, the alarm can be assumed to belong to the older category and the greater of the two time periods can be applied for a building or vehicle alarm sounding. If the matter goes to court, however, it will not be sufficient to assume that the alarm was manufactured before September 1997 (vehicles) or installed before December 1997 (buildings) — evidence will need to be given to establish when the alarm was manufactured or installed. For vehicles, the date of manufacture of the vehicle is recorded on the vehicle’s compliance plate, which is located in the engine compartment.

Options for dealing with noisy alarms
When an alarm is sounding for longer than permitted and is causing a disturbance, a council officer has several options, including:
- contacting the owner or occupier of the building or vehicle and asking them to stop the alarm
- issuing a Penalty Notice where an offence has occurred (enforcement officer only).

In certain circumstances (described below), council authorised officers can also enter premises (including vehicles) where an alarm is sounding and disable the alarm (POEO Act, Part 7.4).
Contacting the owner or occupier

The owner of a property may be traced through council’s rates database and other information available to council. Councils may also consider developing a register of building alarms (both monitoring and standalone), with contact details for owners and occupiers in the event that an alarm is activated. This may facilitate disabling an alarm with the help of the person responsible for the property. Real estate agents may also hold spare keys or alarm codes for premises they administer.

The security company that monitors an alarm (as may be displayed on a window sticker) may also provide information about contacting the owner or be able to disable the alarm.

Issuing a Penalty Notice for sounding alarms

Council and EPA enforcement officers and Police officers may issue penalty notices for motor vehicle intruder alarms and building intruder alarms. Sydney Harbour Foreshore Authority enforcement officers may also issue penalty notices for motor vehicle intruder alarms. The Noise Control Regulation provides tiered penalty levels so that a higher penalty is incurred for alarms that sound for longer periods. Where an alarm sounds for more than 4 hours the penalty level is doubled. Where the alarm rings for longer than 8 hours the penalty level is trebled.

A Penalty Notice can be posted or delivered personally to the offender, as provided by s. 224 of the POEO Act. In the case of a building alarm sounding where there is no person available to immediately serve a Penalty Notice to, then posting the notice is appropriate.

Summarising the powers to enter premises by authorised officers and the Police

Authorised officers may enter non residential premises without a warrant where offensive noise has been, is being or is likely to be caused (POEO Act s. 196). In the case of residential premises, authorised officers may enter the land but need to either have the permission of the occupier or hold a warrant in order to enter the dwelling (POEO Act s. 197).

Police need a warrant to enter ANY premises if denied entry to those premises (POEO Act s. 280)

Entering premises

A council officer may believe that the severity of the impact from a sounding alarm is such that taking action to disable the alarm is necessary. This may be the case when an alarm is making offensive noise for a long period (e.g. several hours or days) and where the owner or occupier cannot be contacted.

All other options for contacting the owner or occupier and dealing with a noisy alarm should be evaluated before you decide that entering the premises is necessary to disable the alarm and prevent the offensive noise from being emitted.

Council policy for noise from alarms

It is recommended that councils develop and adopt internal procedural guidelines for dealing with noise complaints relating to alarms. Having a formal procedure in place will allow council officers to know with confidence that they are acting in accordance with council policy when taking action such as seeking a warrant to enter residential premises. Any policy could also be designed to ensure appropriate liaison occurs between the local Police and council on issues related to alarms.
Under Part 7.4 of the POEO Act, a council authorised officer can exercise a power of entry for the purposes set out in s. 184, which provides that the power of entry may be exercised for purposes including:

1. determining whether there has been compliance with or a contravention of the POEO Act or regulations, or a notice or requirement issued or made under that Act (e.g. the offence of causing or permitting the use of a noisy vehicle alarm under cl 24 of the Noise Control Regulation or a noisy building intruder alarm under cl 53 of the Noise Control Regulation)

2. obtaining information or records for purposes connected with the administration of this Act

3. administering the Act and protecting the environment generally.

Council authorised officers can exercise the power of entry only where council is the ARA. Council enforcement officers (i.e. officers with the power to issue Penalty Notices under the POEO Act) can exercise this power of entry if it is being exercised in respect of the officer’s functions as an enforcement officer. (See POEO Act ss. 188(3) & 189A.)

An authorised officer can enter premises (other than residential premises) at any time where the officer reasonably suspects that noise pollution has been, is being or is likely to be caused (POEO Act s. 196(1)(b)).

Premises in the POEO Act is defined to include buildings, land and vehicles. Noise pollution means the emission of offensive noise, that is, the noise made by an alarm must fall within the POEO Act’s definition of ‘offensive noise’ for the entry to be authorised under s. 196(1)(b). If the noise is not offensive noise, then the authorised officer or the enforcement officer could enter the premises at a ‘reasonable time’ relying on s. 196(1)(c). Alternatively, the authorised officer or enforcement officer could enter the premises under s. 196(1)(a) if the officer reasonably suspects that any industrial, agricultural or commercial activities are being carried on at the premises, at any time that those activities are being carried out there.

Authorised officers do not have the power to enter premises used only for residential purposes (apart from crossing residential land to gain access to another dwelling) unless they have the occupier’s permission or a search warrant to enter the premises (s. 197).

The provisions of the Law Enforcement (Powers and Responsibilities) Act 2002 that apply to warrants issued under s. 199 of the POEO Act do not require the premises to be occupied when the warrant is executed. However, the Act does require that an ‘occupier’s notice’ be served on the occupier as soon as practicable after the warrant is executed if there is no-one at the premises who appears to be 18 years or over and to be the occupier.

The magistrate who authorises the warrant must also issue the occupier’s notice, which must contain a summary of the nature of the warrant and the powers conferred by the warrant. An occupier’s notice must specify:

• the name of the person who applied for the warrant
• the name of the authorised justice who issued the warrant
• the date and the time when the warrant was issued
• the address or other description of the premises that is the subject of the warrant.

More details are provided in s. 67 of the Law Enforcement (Powers and Responsibilities) Act 2002. Authorised officers and enforcement officers can use reasonable force to enter premises and can engage the assistance of Police officers and other people capable of helping with exercising functions under the POEO Act.

Section 198A of the POEO Act provides a specific power for authorised officers to switch off or otherwise disable a building intruder alarm or motor vehicle intruder alarm that is sounding in breach of the POEO Act or regulations. However in exercising this power, authorised officers must first determine that they have a lawful right to enter the premises.
Police powers of entry for alarms

Police do not have the power to enter premises for the purpose of disabling an alarm (POEO Act, Part 7.4).

Police officers have the power to enter premises (with a warrant) only to serve a Noise Abatement Direction or to investigate whether the direction has been breached (POEO Act s. 280). However, Police could seize or secure a sounding alarm under s. 282 of the POEO Act, but only if the alarm is being used to contravene a Noise Abatement Direction and the person in charge of the alarm has been warned that its continued use may lead to its seizure (POEO Act ss. 275–279). See subsection 4.2.2 of this Guide.

Liability for damages

Council could be liable to pay compensation for any damage caused by the authorised officer or enforcement officer in exercising a power of entry, unless the occupier obstructed or hindered the officer in the exercise of that power (POEO Act s. 202).

It is also possible that compensation may be payable for any damage caused by the officer in exercising other powers while at the premises (e.g. in relation to switching off or seizing the alarm). Council should obtain its own legal advice if it is concerned that damage may be caused by its actions.

Before using a power to seize or switch off an alarm, councils and council officers should consider issues such as:

- the continued security of any premises that have been legally and forcibly entered. Consider arranging for a locksmith to assist in entering the premises and securing it on leaving (e.g. installing new locks)
- technical difficulties that may be encountered in disarming sophisticated alarm or security systems. Arranging for an alarm specialist to attend may be beneficial for quickly disabling and avoiding damage to the alarm system
- damage that may occur to the occupier’s or owner’s property as a result of disarming the alarm (e.g. if the power is switched off or the alarm system is damaged)
- the question of whether compensation will be payable to the occupier or owner for any damage caused by the actions of a council officer.

4.3.3 Motor vehicle noise

Noise Control Regulation provisions enforced by council and Police related to the way vehicles are operated include:

- vehicles operating in places other than roads and road-related areas, e.g. trail bikes (cl 13)
- use of motor vehicles on residential premises (cl 14)
- refrigeration units fitted to motor vehicles (cl 15)
- motor vehicle sound systems (cl 16 and 17).

These provisions manage vehicle noise in two ways, discussed in detail below:

- restricted times for vehicles on residential premises and for refrigeration units fitted to vehicles (Table 4.7)
- offensive noise provisions for vehicles used off-road and for vehicle sound systems.
The EPA and the Police administer other provisions within the regulation that relate to vehicle engine noise and the maximum prescribed noise levels permitted from vehicle exhausts. The Police can also issue on-the-spot fines for breaches of the NSW Road Rules 2008 (applied under the Road Transport (Safety and Traffic Management) Act 1999).

- Rule 291 – makes it an offence to start or drive a vehicle in a way that makes unnecessary noise (three licence demerit points also apply to this offence).
- Rule 291–1 – requires that the engine of a stationary vehicle be turned off to prevent noise, other than for stoppages in traffic or examinations due to engine malfunction.
- Rule 224 – requires that the horn is not used unless it is necessary to warn other road users or animals of the vehicle’s approach, or if it is being used as an anti theft device.

**Motor vehicles on residential premises**

A vehicle must not be operated on residential premises so that it can be heard in a habitable room of another residential premises within the restricted times, apart from when the vehicle is entering or leaving the premises. An offence will be committed where the required warning has been issued and a person causes or permits the vehicle to be used in such a manner within 28 days of the warning. An example of where this clause would apply is where a vehicle at a residential premises is being revved or the engine is left running for an extended period. As a guide, an extended period might be longer than 5 to 10 minutes.

**Table 4.7: Restricted times of use for vehicles**

<table>
<thead>
<tr>
<th>Type of noise</th>
<th>Times for which restrictions apply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor vehicle used on residential premises (except when entering or leaving)</td>
<td>Before 8.00 am or after 8.00 pm on any Saturday, Sunday or public holiday</td>
</tr>
<tr>
<td>Refrigeration unit fitted to a motor vehicle</td>
<td>Before 7.00 am or after 8.00 pm on any other day</td>
</tr>
<tr>
<td></td>
<td>The operation of a vehicle on residential premises should not cause offensive noise to a neighbour at any time of day.</td>
</tr>
</tbody>
</table>

**Refrigeration units on motor vehicles**

Clause 15 of the Noise Control Regulation is intended to apply to vehicles fitted with refrigeration units used to keep freight cold. An example might be frozen food delivery trucks parked with their refrigeration units left running for extended periods.

Conditions under which restricted times of use apply, including the provision of warnings, the definition of ‘habitable room’ and the noise test applied are the same as described in subsection 4.3.1 of this Guide.

**Vehicles operating in places other than roads or road-related areas**

‘Places other than roads or road-related areas’ means places other than an area open to the public, or used by the public, which was developed for, or has as one of its main uses, the driving or riding of motor vehicles.
The Road Transport (General) Act 2005 defines ‘road-related area’ as:

(a) an area that divides a road, or
(b) a footpath or nature strip adjacent to a road, or
(c) an area that is open to the public and is designated for use by cyclists or animals, or
(d) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles, or
(e) any other area that is open to or used by the public and that has been declared to be an area under section 15 to be an area to which specific provisions of this Act or its regulations apply.

Examples of vehicles being used in places other then roads or road-related areas where cl 13 of the Noise Control Regulation applies, include the use of trail bikes, four-wheel-drive vehicles and dune buggies operating in places such as private or public land, fire trails, bushland and recreation areas.

The regulation makes it an offence for vehicles operating in off-road locations to cause offensive noise. This could include noise affecting neighbours, people enjoying passive recreation on adjoining parks, or pedestrians.

**Sound systems in motor vehicles**

Offensive noise can result from motor vehicle sound systems operated at high volume. Often the music played in motor vehicle sound systems may have most of its energy in the lower frequencies. Such noise can travel further and is less attenuated by building facades.

Clause 16 of the Noise Control Regulation makes it an offence for ‘a person to cause or permit the sound system of a motor vehicle to be used in such a manner that it emits offensive noise’.

Clause 17 makes it an offence for a person to drive or use a motor vehicle on a road or road-related area if the sound system of the motor vehicle emits offensive noise. Under this clause:

- only the driver of the vehicle can be guilty of an offence, and 2 demerit points will be recorded against the licence of a driver who is fined
- as the vehicle must be pulled over to issue a fine, only Police officers and EPA authorised officers can enforce this clause
- the motor vehicle must be driven or used on a road or road-related area, whereas cl 16 does not contain any limitations regarding the location where the motor vehicle is being used.

No general noise limits apply to situations covered by offensive noise requirements. Part 2 provides details on how to assess whether noise is offensive.

**Penalties**

Where an offence has occurred under cl 13 or 16 of the Noise Control Regulation, both the driver and the owner of the vehicle are taken to be guilty of the offence (see cl 20). This means that if a council enforcement officer wishes to issue a Penalty Notice, then it can be posted to the owner of the vehicle. The owner will not be liable if the owner was not in the vehicle at the time and provides a written statement nominating the driver at the time of the offence.

**Equity in penalties**

Clause 20 of the Noise Control Regulation allows the owner of a vehicle issued with a Penalty Notice for offensive noise under cl 13 or 16 to nominate the driver as the offender when the owner was not in the vehicle at the time of the offence. This means that the person
responsible for causing the offensive noise would be responsible for paying any fine. The Penalty Notice issued to the owner must be withdrawn and new one must be issued to the driver.

A similar system applies in relation to noise from vessels (see cl 31), littering from motor vehicles (see POEO Act s. 146), and for speeding and parking offences under the road transport legislation.

### 4.3.4 Noise from vessels

Section 6 of the POEO Act and clauses 84 and 86 of the POEO General Regulation 2009 result in the following ARA arrangements for vessels:

- The EPA is the ARA for any vessels covered by an environment protection licence for a port facility, and any vessel related to activities carried out by the state or a public authority. (Note some licences cover the vessel and some do not.)
- The Marine Parks Authority is the ARA for any vessel in a marine park other than those for which the EPA is the ARA.
- RMS is the ARA for all vessels outside of designated ports within three nautical miles of the coast and for non-pilotage vessels within designated ports, other than those for which the EPA and Marine Parks Authority are the ARA.
- Councils are the ARA for pilotage vessels within their local government areas within designated ports other than those for which the EPA and Marine Parks Authority are the ARA.

#### Notes:

1. Designated ports include Sydney Harbour, Botany Bay, Newcastle Port, Port Kembla, Yamba and Eden.
2. Non-pilotage vessels include, for example, any vessel outside of designated ports and recreational vessels, vessels less than 30 metres, sea planes and vessels over 30 metres exempt from the pilotage requirements (such as large harbour cruise vessels that do not leave the harbour) within designated ports.

In the POEO Act, ‘vessel’ is defined as ‘any vessel used in navigation’ and includes motor boats, sailing vessels, barges and float planes while on the water. It does not include model boats. ‘Navigable waters’ is defined as ‘all waters that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a fee or otherwise, but does not include flood waters that have temporarily flowed over the established bank of a watercourse’.

The Water Traffic Regulations administered by RMS provides for exclusion zones for ‘personal water craft’ (which includes jet skis) in certain areas including Sydney Harbour.

Section 263 of the POEO Act makes RMS the ARA for the purposes of issuing Noise Control Notices in relation to any vessel.

The ARA may issue a Prevention Notice and RMS, Police, councils, Marine Parks Authority and EPA may issue Noise Abatement Directions in relation to vessels. Under section 206 of the POEO Act, RMS, Police Marine Parks Authority and EPA also have powers to stop test and inspect vessels. Refer to Vessels in Table 1.3.

Under clauses 28 and 34 of the Noise Control Regulation, RMS, Police, Marine Parks Authority, council and EPA may issue a Defective Vessel Notice where a vessel has no, appropriate, or defective, noise control equipment. Refer to Vessels in Table 1.3.
Aquatic events – council involvement
For racing vessels, the generally accepted maximum noise level for engines is 95 dB at 30 metres. For a significant international or national event, RMS may make it a condition of an aquatic licence that a particular race or meeting may exceed the maximum noise levels, but only if the relevant local council or councils have provided the race organiser with their written approval for this to occur.

Offences
RMS, Port Corporations, council and Police officers can issue an on-the-spot fine under the Noise Control Regulation for the following:

- offensive noise from any vessel (cl 30)
- vessel siren/horn used for purposes other than navigation (cl 29)
- vessel sound system emitting offensive noise (cl 33).

In applying the offensive noise test for vessels (see Part 2) the location of the vessel in relation to other vessels and land-based residences needs to be considered. A situation may occur where a high level of noise is being emitted from a vessel but it may not be offensive because the vessel is remote from any receivers.

RMS, Port Corporations and Police officers can also issue on-the-spot fines under the Noise Control Regulation for the following:

- vessel noise control equipment is not properly maintained (cl 32)
- using a vessel that is subject to a defective vessel notice (cl 34)
- removing/obscuring a defective vessel label or knowingly using a vessel with the defective vessel notice removed/obscured (cl 35).

The EPA may initiate court proceedings in any case related to a vessel, or the Marine Parks Authority where it is the ARA. Where councils or RMS are the ARA, section 218 of the POEO Act provides that RMS, but not councils, may initiate court proceedings for a noise pollution offence related to a vessel.

4.3.5 Traffic noise
Through road transport legislation, councils can impose vehicle weight restrictions and speed limits on certain roads, which can affect the level of noise generated by traffic on local roads. The design and location of traffic management structures (roundabouts, speed humps, chicanes etc.) can also affect traffic noise generation (sometimes adversely at the location where the devices are installed). Consideration of noise impacts should be made when planning traffic management measures, particularly in residential streets.

Councils may wish to refer to the NSW Road Noise Policy (DECCW 2011) to assist in their assessment of road traffic noise impacts. (RMS is preparing a series of practice notes to provide guidance on implementing the Road Noise Policy that will incrementally supersede the Environmental Noise Management Manual.)

4.4 Dealing with warnings and offences
For the following clauses in the Noise Control Regulation, a properly given warning needs to be issued to the noise maker before an offence can occur. It is an offence if the noise occurs within 28 days following the issue of a warning. These clauses are:

- 14–Use of motor vehicle on residential premises
- 15–Use of refrigeration units fitted to motor vehicles
- 50–Power tools and equipment
- 51–Musical instruments and sound equipment
- 52–Air conditioners and heat pump water heaters.
Similarly, a Noise Abatement Direction issued under the POEO Act s. 276 is a warning in the same way.

It is in the interests of the Police and council to foster a good relationship in relation to noise matters (see 3.4.4 Memorandum of Understanding). Therefore, cooperation between Police and council regarding Noise Abatement Directions and warnings under the Noise Control Regulation is encouraged as an effective approach to managing noise issues. Under the POEO General Regulation, the EPA, councils, Sydney Harbour Foreshore Authority, RMS, Sydney Ports Corporation and the Police have powers to issue Penalty Notices for the offences committed under the clauses listed above. Where a Noise Abatement Direction is given by one agency then another agency may be able to issue a Penalty Notice relating to that Direction. Case Study 3 (subsection 4.2.2) describes a situation where this happens. **This is not a recommended routine course of action as it is more effective for council or Police to follow up their own Directions.** However, it is good practice for council officers to inform local Police about Noise Abatement Directions that council has issued, especially where it is likely that the problem will re-occur at night when council staff are off duty.

Offences under the POEO Act and Noise Control Regulation can be prosecuted in a court. Alternatively, Penalty Notices can be issued. **The choice of taking either prosecution or Penalty Notice proceedings is available for all offences that are enforced by councils.**

Prosecutions for offences against the POEO Act and the Noise Control Regulation are criminal offences and must be proved beyond reasonable doubt. Sections 217, 218, 219, and 221 of the POEO Act identify who may institute criminal proceedings and for which offences.

Maximum fines for a prosecution of an offence against the POEO Act or regulations are generally listed with the relevant section or clause.

The *EPA Prosecution Guidelines* (EPA 2012b) provide guidance on deciding when to prosecute or issue a Penalty Notice when an offence has been committed. The guide may be accessed at: www.epa.nsw.gov.au/legislation/prosguid.htm Some of the things to consider when deciding whether to prosecute or issue a Penalty Notice for a breach of the POEO Act or regulations are listed in Table 4.8.

Once a particular occurrence of an offence has been dealt with by issuing a Penalty Notice, it is not possible to proceed with a prosecution of the same occurrence of the offence. However, where a Penalty Notice has been issued and it becomes apparent that the offence is too serious to be dealt with by Penalty Notice, the notice can be withdrawn within 28 days of being served (even if the penalty required by the notice has been paid) and a prosecution can proceed (see POEO Act s. 228).

Although councils and other ARAs may institute court proceedings for contravention of a Noise Abatement Direction or a warning related to a clause of the Noise Control Regulation, the Police may only institute court proceedings for contravention of a Noise Abatement Direction.
### Table 4.8: When to prosecute or issue a Penalty Notice

<table>
<thead>
<tr>
<th>Prosecution</th>
<th>Penalty Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious breach of the Act or regulations.</td>
<td>Minor breach of the Act or regulations.</td>
</tr>
<tr>
<td>The facts are obvious.</td>
<td></td>
</tr>
<tr>
<td>Problem is a continuing situation where previous enforcement action has</td>
<td>Problem is a one-off situation and can be remedied easily. Up to two Penalty</td>
</tr>
<tr>
<td>been unsuccessful.</td>
<td>Notices may be reasonable for the same type of offence.</td>
</tr>
<tr>
<td>Education and other enforcement actions have failed to change behaviour.</td>
<td>A Penalty Notice is likely to be a viable deterrent. Opportunity to educate</td>
</tr>
<tr>
<td>More important to address the serious breach.</td>
<td>the noisemaker given that Penalty Notice is immediate.</td>
</tr>
<tr>
<td>Want to deter similar offences – successful prosecution may help change</td>
<td></td>
</tr>
<tr>
<td>others’ behaviour.</td>
<td></td>
</tr>
<tr>
<td>Larger penalty more suitable for the nature of the offence.</td>
<td>Smaller fine is suitable for the nature of the offence.</td>
</tr>
</tbody>
</table>

### 4.5 Dealing with offences committed by minors

Issuing Penalty Notices to people under 18 (minors) can be complex. In many cases it will be more appropriate to issue a warning, because special procedures apply when interviewing, issuing Penalty Notices or taking court action against children.

Where it is deemed appropriate to issue a Penalty Notice to a young person, seek legal advice.

- For children less than 10 years of age, it is not possible to issue a Penalty Notice, as they are presumed incapable of being guilty of an offence. In addition, the *Fines Act 1996* specifically excludes children under 10 years old from being fined.
- Children aged 10 to 14 years can be issued with a Penalty Notice. However, if the matter was referred to the court for consideration then the prosecutor (e.g. council) would need to show that the child knew that what they were doing was wrong. The matter would be heard in the Children’s Court and lower penalties would apply.
- Young people aged 15 to 17 years old can be issued with a Penalty Notice. If the Penalty Notice is referred to court it would be heard in the Children’s Court and lower penalties would apply.

### 4.6 References


