



ENVIRONMENTAL DEFENDER'S OFFICE (ACT)

Noise pollution law

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Noise pollution in the ACT is regulated by the *Environment Protection Act 1997*. Regulations under the Act set specific noise pollution requirements. In addition there are three Environment Protection Policies covering noise generally as well as motor sport noise and concert noise.

What legal controls are there on noise pollution?

Pollution in the ACT is regulated by the *Environment Protection Act 1997* (ACT) and its accompanying *Environment Protection Regulation 2005*. These are enforced by the Environment Protection Authority (EPA), a statutory office located within the Department of the Environment, Climate Change, Energy and Water.

The Act and regulations are supplemented by Environment Protection Policies. There are three EPPs which deal with noise:

- general noise;
- motor sport noise; and
- outdoor concert noise.

The Environment Protection Policies are designed to provide guidance to the EPA in making decisions. The EPA is required to take any relevant EPP into account when making certain decisions relating to environmental authorisations, including a decision to grant an environmental authorisation [s.61(c)]. An environmental authorisation is essentially a permit to allow a person to undertake a certain activity that may have an environmental impact. Certain specified activities ('Class A' activities), including racing events and large outdoor concerts, require environmental authorisation (s.42 and Schedule 1).

What noises are not covered by the Act?

The Act does not cover noise from trains, aeroplanes, animals and cars on the road (although it can cover car engines being warmed up in the driveway). In addition the Act does not cover noise from people where it only involves the person's body, for example a person shouting or singing. However, it does cover noise by people using other things, for example drumming [s.8].

Aircraft noise is regulated under the Commonwealth *Air Navigation Act 1920*. Generally civil aircraft operating in Australia must comply with the Airports Act and meet noise standards specified in the *Air Navigation (Aircraft Noise) Regulations 1984* (Cth). Concerns about aircraft noise are lodged with Airservices Australia.

Noise disturbances from dogs, such as excessive barking, are regulated under the *Domestic Animals Act 2000*. Noise complaints about dogs can be reported to domestic animal services (a unit within the Department of Territory and Municipal Services).

Complaints about noisy motor vehicles (on road), can be made to Road User Services (a unit within the Department of Territory and Municipal Services). Complaints about noise made by people eg shouting, can be made to the police. In addition if the noise is made in the course of protecting life or property [Reg s.26] or is preventing, minimising or remedying another environmental harm (for example noise from pumps clearing a spill) then it is taken not to be causing environmental harm [Reg s.27].

The holder of an environmental authorisation or other approval is also allowed to emit noise within the terms of the authorisation they have been granted [Reg s.28]. Outdoor concerts and motor racing events require environmental authorisations [s.42(1); Schedule One].



What are the restrictions on noise?

Noise is considered to cause 'environmental harm' if it exceeds certain limits set out in the regulations [s.5(a); Reg 25(1); Schedule Two].

The relevant limit depends on what time the noise is being made and where it is. Noise levels are set for daytime noise (between 7am and 10 pm on Mondays to Saturdays or 8am to 10pm on Sundays and public holidays) and nighttime noise (between 10pm and 7am for Mondays to Saturdays or 10pm to 8am Sundays and public holidays).

In addition the ACT is divided into seven zones for the purposes of acceptable noise. Broadly the zones are for: industrial areas (Zone A), city centres and town centres (eg Civic) (Zone B), group centres (eg Dickson and Kingston shopping centres), office areas and the Central National Area, which includes the Parliamentary Triangle (Zone C), commercial areas (Zone D), broadacre or recreation areas (Zone E), leisure and accommodation areas (Zone F) and residential and all other areas (Zone G). The precise areas are the zones set out in the Territory Plan.

The acceptable noise levels for each zone (referred to as the noise standards) are set out in a table in the Environment Protection Regulation [Part 2.2 of Schedule 2]. The acceptable noise levels are highest for industrial areas and lowest for residential areas.

Daytime (ie between 7am and 10 pm for Mondays to Saturdays or 8am to 10pm on Sundays and public holidays) noise levels are:

- for industrial areas (Zone A) – 65dBA
- for city and town centres (Zone B) – 60 dBA
- for group centres, office areas and the Parliamentary triangle (Zone C) – 55 dBA
- for commercial areas (Zone D) and broadacre and recreation areas (Zone E) – 50 dBA
- for residential and all other areas (Zone G) – 45 dBA.

For Zone F the noise level is the same as for the adjoining zone with the loudest acceptable daytime noise level.

Nighttime (ie between 10pm and 7am for Mondays to Saturdays or 10pm to 8am Sundays and public holidays) noise levels are generally 10dBA lower than the daytime levels except for commercial areas (Zone D) where the acceptable nighttime level is 15dBA lower than the daytime level. They are:

- for industrial areas (Zone A) – 55dBA
- for city and town centres (Zone B) – 50 dBA
- for group centres, office areas and the Parliamentary triangle (Zone C) – 45 dBA
- for commercial areas (Zone D) – 35dBA
- for broadacre and recreation areas (Zone E) – 40 dBA
- for residential and all other areas (Zone G) – 35 dBA.

The thresholds are less for noise from adjoining units in a block and duplexes (ie common walled properties) where a complainant is located in the same block of units. In these cases they are 5dBA lower than the noise standard that would otherwise apply. For example the acceptable daytime noise level for a unit in a residential zone (where the complainant is in the same block) is 40dBA (as compared to 45dBA for other houses in a residential zone).

Where is the noise measured from?

The noise is measured from what is referred to as the 'compliance point' of the place where the noise is coming from [Reg 25]. Generally this is the boundary of the land from where the noise is coming from [Reg 32]. For units and common wall properties it can be anywhere in any of the other units or attached property.

This means that noise from a neighbour's property is measured from the neighbour's boundary for stand alone houses. For noise from a neighbouring unit (or unit in the same block) the noise is measured from anywhere in any of the other units in the block, or as near to the unit plan boundary as practicable [Reg 38].

How do I measure the noise?

The Environment Protection Authority has produced an information sheet titled 'Noise in Residential Area'. This contains a useful guide on the types of noises which equate to particular decibel levels.

The Noise Measurement Manual (September 2009) sets out procedures and instruments for measuring noise [Reg 29A].

How does it apply to neighbouring NSW?

a) What if I live in the ACT and my neighbours in NSW are making noise?

The Act only covers noise made in the ACT. Noise made in NSW may be covered by NSW legislation (check the NSW EDO website for further information).

b) What if I live in NSW and my neighbours in the ACT are making noise?

The Act and regulations apply to noise made in the ACT regardless of whether the person affected by the noise is inside or outside the ACT [Reg 22, 25 and 39]. The noise zones include land in the Queanbeyan City industrial zone (Zone A), land in Queanbeyan city business zone (Zone B), land in Queanbeyan city special uses zone (Zone F) and all other NSW land in Zone G. So a person in NSW could make a complaint about noise being made in the ACT.



Can these levels be exceeded?

There are a number of activities which are allowed to exceed these levels, if the given requirements are complied with [Reg 29 and Schedule 2, table 2.3]. For example, building work can exceed noise limits within specified working hours so long as it complies with the noise reduction requirements of Australian Standard 2436. Building work generally must start no earlier than between 6am and 8am and finishing between 6pm and 8pm. The allowable starting and finishing times depend on the type of work and the day of the week.

Likewise, garden work, maintenance or repair work (so long as it is no longer than 40 hours in any 8 week period) and work on non-arterial roads is allowed between 7am and 8pm (or until 10pm for gardening on non residential land), except on Sundays and public holidays, when it can not start until 8am. To come within this exception any equipment must be used in accordance with relevant instructions. There are no conditions on noise emitted in the course of constructing or maintaining a major road.

Other exceptions apply to noise relating to primary production, managing reserves, building and car alarms, new year's eve parties, warming up car engines, mobile selling, religious services, portable loud speakers, commercial waste collection and maintaining a utility service. Where noise complies with conditions set out for the particular activity there is no limit to the noise levels [Reg 29].

What happens if noise restrictions are ignored?

Where noise limits have been exceeded, and there is no relevant exception that has been complied with, there has been a breach of the legislation [Reg 39].

The EPA may issue an infringement notice with an on-the-spot fine (currently \$220) [Reg 7, Schedule 1 *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005*]. If the fine is not paid after a final notice is given, the EPA may take the offender to court to be prosecuted. In this case a maximum penalty of 10 penalty units applies (currently \$1,100 for an individual or \$5,500 for a corporation) [Reg 39].

It is also an offence to cause an 'environmental nuisance' which is defined to include noise disturbance where it is an unreasonable interference with someone's enjoyment of a place or area [s.141]. A maximum penalty of 50 penalty units applies (currently \$5,500 for an individual or \$27,500 for a corporation).

In addition a person may take a common law action for nuisance [s.9]. Private nuisance occurs when someone substantially and unreasonably interferes with or disturbs someone else's ordinary and reasonable use of the land they own or occupy.

Nuisance may be used to address some environmental concerns, including interference with enjoyment of property caused by noise. The question of whether or not the interference amounts to nuisance is one of degree and will depend on the circumstances of the case. The Court will apply a balancing act with the reasons for the noise against the detriment suffered by the individual. In determining whether the nuisance has occurred, the Court may consider:

- the frequency, extent and nature of the interference. For example, in the case of nuisance

caused by noise, noise in the middle of the night or at other quiet times will be more likely to be found to be a nuisance;

- the ordinary use of land in the area;
- whether the use of the land causing the nuisance was ordinary and reasonable.

What controls are placed on motor sports noise?

Motor sport events require environmental authorisations (s.42(1) and Schedule 1). Part 8 of the Environment Protection Act deals with the granting of environmental authorisations including public consultation requirements before authorising an event. Substantial penalties of up to 200 penalty units (currently \$22,000 for an individual and \$110,000 for a corporation) apply for failing to get an environmental authorisation, or contravening it.

The *Motor Sport Noise Environment Protection Policy (2002)* deals with how environmental authorisations are granted to the organisers of motor sport events. It aims to balance the need to provide adequate protection to neighbouring residents from the noise with the rights of motor sports enthusiasts to participate in their sport.

The policy sets out a number of methods which limit the adverse environmental impact, while allowing motor sports to continue such as by regulating noise volume, time, regularity, frequency and prior notification of events. Key aspects include:

- no event is allowed to exceed 65dB(A) at the agreed compliance point;
- event organizers are allowed to exceed noise zone standards by 2.5dB(A) for each 0.5 event credit they forego (Fairbain Park Cluster is supplied with 27 event credits each year and Stromlo Forest (including Pipeline) 7 credits). However, event credits can only be used up to 65dB(A);
- events can be held between 9am and 10pm. But, if an event is running at 5pm and is longer than 5 hours, it is deemed to be two events, and hence event credits have to be used for both the events;
- event organisers are encouraged to hold more than one event at a time by limiting the regularity of events. Events are only allowed on: two weekends of any month, two consecutive weekends and two consecutive days; and
- event organisers must give the EPA 10 week's notice of an event and 8 weeks prior to the event the EPA will advertise the date and event credits used for the event in a relevant newspaper. There are allowances made for poor weather. Also, if an event is cancelled due to uncontrollable factors, event credits can be retained if there is one week's notice, in a relevant newspaper.

EDO (ACT)

The Environmental Defender's Office is a non-profit community legal centre based in Canberra, advising on environmental and planning law with an aim of increasing public awareness of environmental laws and remedies.

We advise on questions of Commonwealth and Australian Capital Territory law.

We offer a free telephone advice service on environmental law questions. Appointments with our solicitor are also available.

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Disclaimer

The law described in this Fact Sheet is current at 31 March 2010.

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