

Response to submissions on the draft Noise Regulation

Addendum to the Regulatory Impact Statement for
the Protection of the Environment Operations
(Noise Control) Regulation 2017

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The EPA placed the draft Protection of the Environment Operations (Noise Control) Regulation 2017, the Regulatory Impact Statement and *Approved Methods for testing noise emissions* out for public consultation for four weeks (9 June–7 July 2017) to seek feedback from the community, industry, councils and other agencies.

The EPA received 35 written submissions from individuals, government agencies, councils and Local Government NSW, industry members and acoustic consultants.

A summary of the feedback and the EPA's responses to the issues raised through consultation is provided in Table 1.

All submissions are provided until the end of September 2017.

1 Changes to the proposed Regulation from public consultation

The following changes have been made in response to issues raised through consultation:

- an update to the definition of emergency vehicles to include Roads and Maritime Service vehicles
- simplification of clauses governing defective motor vehicle noise control equipment such as mufflers technical changes in the shooting method relating to sound measurement.

Councils largely supported the proposed Regulation. Several councils requested that updated support material and training be provided by the EPA to assist with implementing the proposed Regulation. The EPA will meet these needs in collaboration with councils and Local Government NSW.

Some comments raised were outside the scope of the Regulation. These included:

- tightening noise limits for motorcycles, which is regulated by the Australian Government
- issues that had been adequately dealt with by current provisions, such as allowing people to carry out genuine but potentially noisy activities while protecting amenity.

2 About the proposed Noise Regulation

The proposed Protection of the Environment Operations (Noise Control) Regulation 2017 remakes, with some changes, the Protection of the Environment Operations (Noise Control) Regulation 2008.

The proposed Regulation:

- makes it easier for industry to comply with the labelling and limit provisions for noisy equipment by aligning with European Union requirements
- updates provisions relating to heavy vehicles that are now regulated under the Heavy Vehicle National Law
- removes technical procedures and places them in a separate document entitled *Approved methods for testing noise emissions*
- improves clarity by making minor amendments to definitions
- formalises existing assessment procedures for noise from shooting ranges.

Table 2 sets out the main changes between the Protection of the Environment Operations (Noise Control) Regulation 2008 and the proposed Protection of the Environment Operations (Noise Control) Regulation 2017, including the changes made following public exhibition.

**Table 1 - Summary of issues raised from public exhibition and EPA responses
Protection of the Environment Operations (Noise Control) Regulation 2017**

Issue	Raised by	EPA Response
General		
Overall support for the regulation and proposed changes. The regulation provides an appropriate balance between individual amenity and the right to carry out some noisy activities.	Several councils and community member	Noted.
Disagrees that the regulation strikes right balance between right to peace and to carry out noisy activities. The time of use restrictions assumes everyone has the same lifestyle and sleep patterns which is not the case, for example, for shift workers, people with illness. Suggest start time of 9 am for noisy equipment.	Community member	Noted. The time of use provisions are a practical approach that balances protecting as many members of the community as possible with the reasonable use of noisy articles. The <i>Protection of the Environment Operations Act 1997</i> also includes provisions that allow councils to address offensive noise at any time of day.
Motor vehicles		
Would like speed humps installed in street to prevent speeding and noise from cars.	Community member	This issue is outside the scope of the Regulation.
Deliberately offensive noisy vehicles are not being controlled.	Community member	Noted. The EPA continues to work with the Roads and Maritime Service and NSW Police to deal with noisy vehicles.

Issue	Raised by	EPA Response
Noise monitors that include a camera should be used for compliance with motor vehicle noise emissions.	Community member	Noted. The EPA continues to work with the Roads and Maritime Service and NSW Police to deal with noisy vehicles.
Noise requirements and provisions should be enforced.	Community members	Noted. The EPA continues to work with the Roads and Maritime Service and NSW Police to deal with noisy vehicles.
Proposed changes supported.	Councils	Noted.
There is an insufficient focus on enforcement and education. Noise requirements should be included in Government tenders for buses.	Community member	Noted. Matters such as education and tendering requirements are outside the scope of the Regulation.
The offence for sale of noisy horns should be retained.	Community member	Regulating the sale of horns is no longer considered practically enforceable due to potential interstate and international purchases. The existing clause controlling the misuse of horns is considered an adequate control.
The EPA's reporting app should be modified as it is difficult to record all the information needed as the noisy vehicles will be in motion.	Community member	This issue is outside the scope of the Regulation. The app includes minimum legal mandatory requirements to identify the noisy vehicle.
Mandatory annual noise tests should be considered before registration.	Community member	This is outside the scope of the Regulation. Registration of vehicles is regulated through the <i>Road Transport Act 2013</i> .
Garbage trucks/ bottle collection and reversing beepers are overly noisy.	Community member	Noted. The EPA advises councils on minimising noise impacts from various sources including noise from garbage trucks in the <i>Noise guide for local government</i> . Reversing beepers are a safety issue and the EPA encourages the use of alternative, less intrusive safety mechanisms where possible such as 'quackers' and reversing cameras.

Issue	Raised by	EPA Response
Remove wording in clauses 10, 11 and 12 regarding the reference to defective noise control equipment that 'has been removed and not replaced'.	Industry	Agreed. Subclause b in clauses 10, 11 and 12 has been removed. The intent of the clauses is to ensure noise is not increased by having defective noise control equipment. This is already achieved by subclause a in each clause.
Simplify the definition of 'defective noise control equipment' and clarify that the clause will prevent defective noise control equipment from increasing noise rather than a visual change triggering regulatory action.	Industry	The definition as set out in the Regulation provides an appropriate legal basis for enforcement. The EPA will provide further explanatory text on the clause on its website.
Does not support the EPA being removed as an enforcement agency.	Community member	Noted. The changes reflect the EPA's role in noise management.
Consider restrictions on night time use of emergency vehicle sirens – i.e. no use between 10 pm and 7 am.	Community member	The use of emergency vehicles is a safety issue.
Request that the list of emergency vehicles exempted from clauses 27 and 28 under clause 29 includes 'Vehicles used by Roads and Maritime Services, Transport for NSW and the National Heavy Vehicle Regulator and for emergency, traffic control or enforcement purposes'	Roads and Maritime Service	Agreed. An amendment has been made as requested.
Motorcycles and motorbikes		
Strengthen the requirements for motorbikes or the level of noise that motorbikes can make in urban areas.	Several community members	The requirements for motorcycle noise are implemented by the Australian Government using Australian Design Rules and testing procedures, and are reflected in the regulation through the prescribed stationary noise limits set out in

Issue	Raised by	EPA Response
		Schedule 1. The EPA continues to work with the Roads and Maritime Service and NSW Police to enforce noise provisions for motorcycles.
Give authority to police to test any motorbike and issue defective vehicle notices on any bike that has an exhaust system that fails to control motor noise.	Community member	Police have the power to require motorbikes to attend noise testing stations and issue defective vehicle notices. The Police, EPA and Roads and Maritime Service carry out regular operations targeting noisy vehicles and motorcycles.
Miscellaneous articles		
The requirement for inaudibility at night for equipment such as air conditioners and heat pumps is not consistent with the Industrial Noise Policy and is overly stringent compared to commercial air conditioners.	Consultant	The inaudibility criteria were developed after detailed consideration as a practical assessment that can be used by council officers in response to complaints relating to neighbourhood noise. Note that the requirement applies inside a habitable room, not outside, and is therefore different to Industrial Noise Policy criteria which apply outside.
Proposed changes to labelling supported.	Council and community member	Noted.
More should be done about ride-on mowers and hedge trimmers. Suggest limits on noise levels and use, even during the day.	Community member	Councils can use offensive noise provisions available under the <i>Protection of the Environment Operations Act 1997</i> (POEO Act) to manage this noise. Individuals can also seek noise abatement orders through local courts under the provisions set out in the POEO Act.
Wood chippers and chainsaws are inadequately regulated.	Community member	Councils can use offensive noise provisions available under the <i>Protection of the Environment Operations Act 1997</i> (POEO Act) to manage this noise. Individuals can also seek noise abatement orders through local courts under the provisions set out in the POEO Act.

Issue	Raised by	EPA Response
Concern over a shift to noisy LPG ride-on mowers.	Community member	All mowers are subject to the noise limits set out in the regulation regardless of whether they are fuelled by LPG or petrol.
Supports the removal of the term 'habitable room' in time of use provisions as a means of making the regulation more concise. Suggests including an audibility test/ definition that requires noise monitoring and removes systematic judgement. Change 'can be heard' to 'audible' for offence.	Council	The current approach is designed for practical and easy implementation by council officers. Wording in the regulation is carefully drafted for enforceability.
More equipment and articles should be included in the Regulation.	Community member	Not all equipment has local or international standards for noise that can be readily adopted as limits. The Regulation includes the most common sources of noise relevant to neighbourhood noise. Time of use restrictions cover most potentially noisy equipment. The <i>Protection of the Environment Operations Act 1997</i> includes offensive noise provisions that can be used to address other less common sources of noise.
Ban/greater control of leaf blowers.	Community members	There are no local or international noise standards for leaf blowers that can be readily adopted. Time of use restrictions do, however, apply to the use of leaf blowers. The EPA will continue to liaise with the Australian Government on a national approach for managing outdoor power equipment.
Introduce silent Sundays.	Community member	The regulation includes time of use provisions that aim to achieve a balance between the rights of individuals to lawfully carry out certain activities and the rights of neighbours to amenity. The <i>Protection of the Environment</i>

Issue	Raised by	EPA Response
		<i>Operations Act 1997</i> includes offensive noise provisions that can be used if noise is excessive.
Support broadening the definition of pumps and power tools included under the Regulation.	Council	Noted.
Agree with the policy to harmonise labelling with EU requirements.	Industry	Noted.
Do not support changing the metric from noise pressure level (LpA) to sound power level (LwA) by the regulatory harmonisation with European Union regulation if it strengthens the requirements, in which case a 2-year transition is inadequate.	Industry	The metric used to measure noise for these articles is being changed to reduce confusion for consumers and reduce labelling requirements for industry. The EPA has clarified that the limits or requirements of the regulation are not being tightened or increased.
The conversion factor for converting from sound pressure to sound power is based on a correlation that is not transferable in all cases and depends on the original testing method. If so, a 2-year transition is inadequate. Please consider the difference between both test methods fully and review it by the end of August 2019.	Industry	Noted. The adjustments in the regulation limits are relative. The figures on the labels are for comparison purposes and do not change the level that an individual would perceive – only the way it is measured. The EPA has clarified that the conversion factor is by necessity a simplification of the relationship between noise pressure and noise power.
Support the point that products conforming to European Union (EU) regulations and having labels meeting noise requirements of EU regulation can be launched and sold in NSW market as is.	Industry	Noted.

Issue	Raised by	EPA Response
Allow manufacturers to continue to use current NSW requirements and test methods beyond August 2019.	Industry	Equipment already tested and labelled in accordance with the 2015 Regulation will not require re-testing. Test results using the NSW requirements can be used for items already in production. From 2019, manufacturers will only need to change the labels to include the sound power level.
Wait for the results of the European Commission's full review of the European Union noise regulation (as noise limits, test methods and noise labels may change) before amending the Regulation.	Industry	The Regulation must be reviewed every 5 years under NSW legislation. The expected date of the European Commission's review is approximately 2021 or 2022 and will inform the next review of the Noise Control Regulation.
Approved methods		
Supported.	Council and community member	Noted.
Testing method for shooting ranges		
Supported.	Councils, community member, shooting stakeholders	Noted.
Part 7(b) does not include provision to monitor at an alternative location for assessment if a resident denies access.	Shooting stakeholder	The Regulation allows measurement to be taken on or within the boundary, and access to a residential property is not necessary.
Information provided in Appendix A of the current guidelines (decibels to range use times) is missing.	Shooting stakeholder	The Regulation is limited to the method used to measure noise pollution from a shooting range for the purposes of a requirement under the <i>Protection of the Environment Operations Act 1997</i> . The information referred to does not relate to noise measurement. The EPA will review the current guidelines.

Issue	Raised by	EPA Response
There is no recognition of the legitimate need for sound suppressors/silencers to reduce noise from ranges.	Shooting stakeholder	The Regulation is limited to the method used to measure noise pollution from a shooting range for the purposes of a requirement under the <i>Protection of the Environment Operations Act 1997</i> . Matters related to the use of sound suppressors/silencers are outside the scope of the Regulation and are controlled under other legislation.
The two methods in the Regulation could result in different results due to higher sampling rates in some instruments that could be used in post processing which could then be exploited by choice of instruments. A note should be included that the 'manual method' is preferred.	Shooting stakeholder	The regulation has been amended to address this concern. The two methods that have been developed are both considered to meet an appropriate level of performance.
The definition of the linear unweighted peak is incorrect.	Shooting stakeholder	Noted. The Regulation has been amended to clarify this matter by removing reference to the linear unweighted peak and referring to the LZ peak level.
If no shots are detected, then no level can be determined even though 50 shots have been fired on the range. A requirement should be in place requiring the range to be operated so 50 shots are fired that represent the firearms being tested for compliance.	Shooting stakeholder	The method measures the level of noise pollution. If no shots are detected there is no noise pollution. No change.
Construction sites		
There should be more control over unnecessary noise emanating from building sites such as loud music, shouting and swearing.	Community member	Noise limits for building works are regulated under planning legislation. Other works that do not require development consent are subject to the time of use restrictions and offensive noise provisions of the <i>Protection of the Environment Operations Act 1997</i> .

Issue	Raised by	EPA Response
All DAs should have a clause reminding builders that there are surrounding residents.	Community member	Noise limits for building works are regulated under planning legislation. Other works that do not require development consent are subject to time of use restrictions and offensive noise provisions of the <i>Protection of the Environment Operations Act 1997</i> .
Noise limits and duration for all building works.	Community	Noise limits for building works are regulated under planning legislation. Other works that do not require development consent are subject to time of use restrictions and offensive noise provisions of the <i>Protection of the Environment Operations Act 1997</i> .
Roads and Maritime Service		
Consider including time of use provisions for running boat engines on residential premises.	Council	Noted. Council officers can continue to use the offensive noise provisions under the <i>Protection of the Environment Operations Act 1997</i> . EPA will monitor the issue, liaise with councils and discuss this matter with the boating industry for the next review of the regulation.
Need to develop/adopt prescribed noise levels for vessels and testing procedures. Include an international standard for prescribed noise levels from vessels and an international standard for testing.	Roads and Maritime Service	Noted. This issue will require further investigation of options and the costs and benefits of regulation to determine an appropriate approach. EPA will liaise further with the Roads and Maritime Service.
Other		
The location of bird scare guns should be controlled under the Regulation.	Community member	Councils can use existing offensive noise provisions available under the <i>Protection of the Environment Operations Act 1997</i> . Individuals can also seek noise abatement orders through local courts.

Issue	Raised by	EPA Response
Noise can cause impacts at low levels and it can be difficult to collect the evidence for complaints.	Community member/Council	Councils can use existing offensive noise provisions available under the <i>Protection of the Environment Operations Act 1997</i> . Individuals can also seek noise abatement orders through local courts.
The requirement for background plus 5dB should apply in rural areas and should not have an assumed base background noise level of 30dB to ensure that rural amenity is protected.	Community member	This is outside the scope of this Regulation.
Require background noise plus 5dB for existing noise emitting premises and monitoring should occur at nearest residence regardless of complaints.	Community member	This is outside the scope of the Regulation and is controlled through planning legislation or environment protection licences.
Noise consultants adjust reports and there should be an EPA Ombudsman to keep consultants honest.	Community member	This is outside the scope of the Regulation.
Consideration needs to be given to the cumulative impact on councils of increasing their regulatory burden by changes to legislation.	Council	The changes to the Regulation do not increase the regulatory burden on councils. This concern is noted and has been considered by the EPA during the review processes. The EPA will work with councils and Local Government NSW on how it can further support councils through training and guidance.
The EPA have aimed to include feedback from council consultation.	Council	Noted
Request EPA provide additional training before the draft Regulation commences and print	Councils	The EPA will update the <i>Noise guide for local government</i> and training material to ensure changes to policy and the

Issue	Raised by	EPA Response
more resources for councils and update the materials to reflect the changes to the Regulation.		regulation are reflected and that resources are appropriate, updated and available for implementation.
Penalties should be increased.	Council	Fines were reviewed and updated under the Protection of the Environment Operations (General Regulation) 2009 in 2014 and some fines in the Noise Control Regulation were increased to be consistent with similar offences under other legislation.
Control of unauthorised industrial activity occurring in a residential block.	Community member	This is a planning matter and councils can also use existing offensive noise provisions available under the <i>Protection of the Environment Operations Act 1997</i> . Individuals can also seek noise abatement orders through local courts.
Request a list of issues be addressed in tandem with the Regulation including 1) guidance for councils, 2) standard kit of legal notices, 3) updated information for the community on what their rights and responsibilities are 4) greater accessibility for training for council staff.	Local Government NSW	Noted. EPA will work with councils and Local Government NSW to update the EPA's <i>Noise guide for local government</i> and review training as part of implementation.
Recommend that the offence period for recurrence of non-compliant noise be increased from 28 days to 60 days.	Local Government NSW	Noted. At this stage the EPA considers the current requirement to be an appropriate balance between the offence period and the potential for non-compliance. The EPA will continue to work with Local Government NSW and councils to assess the significance of the issue before considering a future change.
The limitation of the 28-day offence period following an initial warning leads to additional resources needing to be used if ongoing non-	Local council	Noted. At this stage the EPA considers the current requirement to be an appropriate balance between the offence period and the potential for non-compliance. The

Issue	Raised by	EPA Response
compliance needs to be established for further action to be taken. Support extending the 28-day period until a change in occupier.		EPA will continue to work with Local Government NSW and councils to assess the significance of the issue. Regulatory action can be taken on a single re-occurrence.
Recommend including the ability for local councils to issue on-the-spot fines for specific circumstances.	Local Government NSW	The EPA will collect further information and data to consider the need for a specific offence and the benefits and costs of such a change in the next review.
Recommend a clear description of sound power and sound pressure (like that in the Regulatory Impact Statement) be consistent on the EPA website/in the authorised officers' manual/in material for the community on the Regulation, to reduce confusion.	Local Government NSW	EPA will update the website and relevant information for the community and authorised officers.
Local Government NSW seeks confirmation that the determination of noise levels for unlisted equipment can be referred to the EPA.	Local Government NSW	The reference to the Approved methods from clause 69 relates to specific scheduled articles that are subject to noise limits and/or labelling requirements. The other listed items are dealt with through time of use provisions and an audibility test and therefore do not require noise level testing.
Recommend that training be provided for councils that have shooting ranges in their area.	Local Government NSW	The EPA will look at ways of increasing capacity of council staff with shooting ranges in their areas.
Communication between enforcement agencies could be improved, especially between councils and NSW Police.	Local council	Noted. This is outside the scope of the Regulation. The EPA will update the <i>Noise guide for local government</i> and education material to improve communication.

Issue	Raised by	EPA Response
Regulation should refer to or incorporate distance requirements in planning legislation for installation of equipment such as air conditioning units or pumps.	Local council	Noted. This is outside the scope of the Regulation.
More guidance is required for dealing with noise matters that cannot be categorised. Develop guidelines for dealing with these and other noise issues.	Local council	The EPA will update the <i>Noise guide for local government</i> and education material. The <i>Protection of the Environment Operations Act 1997</i> provisions around offensive noise can be implemented by councils for dealing with a range of unique noise sources.
Changes are cosmetic.	Community member.	Noted. The EPA has carried out extensive consultation with community, enforcement agencies, industry and stakeholders. The amendments refine previous versions of the Regulation to reflect changes to legal frameworks, understanding of enforcement history and community needs and expectations.

Table 2. Summary of changes between the Protection of the Environment Operations (Noise Control) Regulation 2008 and the proposed Protection of the Environment Operations (Noise Control) Regulation 2017

Change from 2008 Regulation to 2017 Regulation	Explanation	Stakeholder analysis/ changes following consultation
Preliminary		
Definitions of temporary noise reduction devices amended – remove ‘riveted’ from definition.	Requires that temporary noise reductions have baffles that are permanently affixed.	Supported.
Updated and added list of emergency vehicles exempt from restrictions on noisy horns.	Updated to reflect agency name changes for Australian Customs and Australian Border Force. Additional emergency vehicles from Roads and Maritime Service included.	Commonwealth agencies supported this. Roads and Maritime Service requested the inclusion of extra vehicle types – definition has been changed.
Motor vehicles and motor vehicle accessories		
Removed clauses regulating the sale of noisy horns.	Regulating the sale of noisy horns is unlikely to be enforceable because of online and interstate purchases. The proposed Regulation retains the clause regulating their use.	Generally supported. (One individual disagreed.)
Removed clauses relating to heavy vehicles	The regulation of heavy vehicles is now carried out under the Heavy Vehicle National Law via the Heavy Vehicle (Vehicle Standards) National Regulation (NSW). The change removes overlap and potential inconsistency.	Supported.
Improved clauses regulating temporary noise reduction packing.	This removes the ability to temporarily alter non-compliant exhausts by temporarily affixing baffles or other material to reduce noise and thus avoid detection in noise testing.	Supported.
Removed unnecessary subclauses defining defective noise control equipment.	The intent is that motor vehicles are not sold, used, modified or repaired if this results in defective exhausts that cause noise above the original noise levels for that vehicle. The amended Regulation removes unnecessarily prescriptive subclauses about how	Supported. Change was requested by industry and updated in the Regulation.

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Change from 2008 Regulation to 2017 Regulation	Explanation	Stakeholder analysis/ changes following consultation
	exhausts are affixed but retains the outcome of preventing extra noise.	
Removed clause for authorised officers to affix labels to defective vehicles.	Removed a redundant clause to reflect current practice.	Supported.
Removed obsolete clauses from the previous Regulation.	Removed obsolete clauses that provided a transition period of 6 months following the commencement of the previous Regulation in 2008.	Supported.
Removed the EPA as an enforcement agency for clauses 14 and 15 of the Regulation.	These clauses were removed as these clauses are enforced by the NSW Police and councils.	Supported.
Miscellaneous noisy articles		
Simplified the labelling requirements to allow European Union approved items to be compliant for NSW requirements.	The simplification of the labelling requirements benefits industry by reducing the regulatory burden associated with dual labelling requirements. It also benefits the community by simplifying the noise labels.	Supported.
Changed the metric for the maximum noise levels of noisy articles (grass-cutting machines, chainsaws, mobile air compressors, pavement breakers and mobile garbage compactors.)	<p>This change requires industry to change the noise metric displayed on noise labels for noisy articles from sound pressure (noise heard) to sound power (noise generated). This does not change the sound level emitted but puts it in the same metric used for items sold in countries under the European Union, and used in the regulation of other articles.</p> <p>Noisy articles will be able to be imported without additional labelling. The change will give industry flexibility to continue using NSW labels with a 2-year adjustment period to simply change the metric used on the label. No new noise testing is required to implement the change. The change also makes the metric used consistent with sound levels for air conditioners.</p>	Supported.

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Change from 2008 Regulation to 2017 Regulation	Explanation	Stakeholder analysis/ changes following consultation
Broadened the scope of items covered in the restrictions on noise power tools and pumps.	This change reflects the intent of managing noise from noisy tools by broadening the definition to cover similar noisy articles that were excluded through definition.	Supported. Some community members /councils sought additional items to be covered but this is not currently practical.
Approved methods		
Placed technical details in <i>Approved methods for testing noise emissions</i> .	This approach simplifies the Regulation by removing much of the technical detail to a separate technical reference document.	Generally supported. No changes necessary. One industry representative raised some concerns which have been addressed through clarification. They also questioned the correlation between sound pressure and sound power. This is outside the scope of the Regulation and the EPA has considered it as part of the finalisation of <i>Approved methods for testing noise emissions</i> .
Noise from shooting ranges		
Included the method for determining noise from shooting ranges.	This change formalises an EPA method developed to assess compliance of noise from shooting ranges. The method in the proposed Regulation represents thorough consultation and feedback from stakeholders and their acoustic consultants.	Generally supported. No significant change following consultation – minor changes made on technical matters raised by stakeholders. Two issues raised had been raised previously and were not accommodated as they were outside the scope of the Regulation or could compromise compliance monitoring.