



# 2013 Changes to the noise regulations

## Purpose

The purpose of this fact sheet is to provide information about the major changes to the *Environmental Protection (Noise) Regulations 1997* (the Regulations), which were gazetted on 5 December 2013. This fact sheet does not detail every change; readers seeking further information concerning the changes should refer to the Regulations.

## Introduction

The Regulations cover a wide range of human activities and are used by the Department of Environment Regulation (DER) and local government to maintain acoustic amenity and health standards.

The Regulations operate as a prescribed standard under the *Environmental Protection Act 1986* (the Act) and set limits on noise emissions. They deal with noise emitted on a premises or public place and received on another premises.

Local governments use the Regulations to deal with domestic, commercial and general industry noise, while DER deals with industries that are prescribed premises under the Act. The police deal with such activities as noisy parties, using the 'unreasonable noise' provisions of the Act, instead of the Regulations.

## Why the amendments?

A statutory review of the Regulations in 1999 highlighted a number of areas where improvements could be made. These improvements were further developed through a series of working groups in 2000 and have guided the development of these amendments.

During 2011 DER undertook public consultation on the proposed amendments initially through public seminars and submissions, and subsequently through ongoing discussions with key stakeholders, in order to develop the final amendments.

The amendments were gazetted on 5 December 2013 with most coming into operation the day after.

Amendments relating to blasting, requirements of sound measuring equipment, classification of premises and determination of the influencing factor came into operation on 5 March 2014.

## The amendments

The amendments enable better management of noise from motor sport and shooting clubs; sporting, cultural and entertainment venues; and waste collection and other (essential) works through specific new regulations.

The regulation of airblast levels from blasting has also been significantly revised, while industry-to-industry noise levels in the Kwinana Industrial Area (KIA) have been relaxed.

Fees are introduced to recoup some of the costs of regulatory activity, and a number of amendments have been made to improve the clarity and enforceability of the Regulations.

The major changes are summarised below.

## 1. The Regulations do not apply to certain noise emissions

### Vessels exempt—Regulation 3

Noise from traffic on roads, trains, aircraft, emergency vehicles, safety warning devices and now vessels (motor and water noise) are exempted from the Regulations, except for vessels on private premises. Noise from an engine, equipment, machinery or plant on a vessel in port is also exempted. As with vehicles on roads, noise emissions from vessels can be managed through other planning and policing means.

## 2. Allowable noise emissions

### Industry-to-industry noise limits relaxed for Kwinana—Regulation 8

The Regulations set assigned levels (noise limits) that provide protection to receivers depending upon the type of premises receiving the noise. Noise sensitive receivers have the greatest protection with low assigned levels, while industrial receivers, which need less protection, have higher assigned levels.

The amendments introduce a new type of receiver—an industrial and utility premise in the KIA—and increase the noise limits for noise received at the boundary of these premises in Area A of the KIA. This change recognises the unique features of the KIA and does not apply in other industrial areas.

There is no change to the allowable levels received at noise sensitive premises in the Kwinana area.

### Airblast limits revised—Regulation 11

Under the amendments, the daytime noise limits set for airblast levels from blasting are reduced by 5dB when received at ‘sensitive sites’ (typically a dwelling and its curtilage), but remain unchanged at the boundary of the receiving premises and at non-sensitive receivers. This approach provides additional protection at the most sensitive point, and aligns with national best practice.

Airblast limits do not apply where the blaster believes on reasonable grounds that no person is present at the time of the blast. This allows the person conducting the blast to minimise impacts and achieve compliance by ensuring that a blast takes place only at times when the blaster believes that no person is present in the affected area.

### Intensive nature of poultry farms recognised—Schedule 3

Under the amendments the noise levels allowed to be emitted from (and received on) rural premises engaged in poultry farming have been relaxed by up to 5dB in view of the intensive nature of this activity.

## 3. Where a standard cannot reasonably be met

### Approvals process streamlined—Regulation 17

If a person is of the opinion that they cannot reasonably or practicably comply with the noise limits under the Regulations they may apply to the Minister to exceed or vary from that standard.

Previously the Minister was required to refer the application to the Environmental Protection Authority (EPA) for assessment. This is still the case where an application is concurrent with an EPA assessment or enquiry under Part IV; however, in all other instances the Minister is to refer the application to the chief executive officer of the Department of Environment Regulation (DER CEO). This is in recognition of the regulatory nature of the assessment role.

After receiving an assessment report from the EPA or the DER CEO the Minister may or may not grant approval.

In order to streamline the process, the Minister is now able to choose not to assess an application under some circumstances. The amendments also clarify the appeals processes.

The DER CEO is now able to charge a fee to cover the cost of assessing of the application (up to \$100,000), and for noise monitoring (up to \$5,000 per year).

The DER CEO also has the power to terminate an assessment if an applicant fails to provide adequate information.

## 4. New provisions to manage special cases

### Motor sport and shooting venues may apply for approval of a noise management plan—Regulations 16A to 16BE

Noise emissions from motor sport venues and shooting clubs often exceed assigned levels during meetings and practice sessions.

The amendments enable a motor sport or shooting venue to apply for approval of a noise management plan (NMP). The application is made to the ‘delegate CEO’—this means either the DER CEO, or the CEO of the local government acting under authority delegated by the DER CEO.

The NMP must show the venue layout, describe the various activities, set out numbers and times of meetings and practice sessions, detail noise control measures, outline requirements for providing community information about activities, and explain how complaints will be handled.

The delegate CEO must consult the community before making a decision on the approval of the NMP, and an appeals process allows for review of the delegate CEO’s decisions by the Minister.

A venue operating under an approved NMP is exempt from the assigned levels as long as the NMP is being complied with.

### Sporting, cultural and entertainment venues may apply for special noise approvals—Regulations 18J to 19G

These provisions allow major venues to apply to the delegate CEO for approval to hold a given number of “notifiable events” per year that exceed the assigned levels.

If a person proposes to hold a notifiable event at an approved venue they must give the delegate CEO notice of the event.

The provisions provide certainty to venues and the community as to the numbers of events that may be held over the year, while streamlining the event approvals process.

The delegate CEO can set an assessment fee (capped at \$15,000) to cover the cost of establishing the venue approval; and can charge a noise monitoring fee for a notifiable event. The approval is decided in consultation with the community, and an appeals process is included to allow for review of the delegate CEO's decisions by the Minister.

### Noise from waste collection and other works to be managed—Regulations 14A and 14B

Under the amendments, works such as waste collection, verge and reserve maintenance, street cleaning and hazard management are not required to meet the assigned levels during daytime, provided they are carried out in the quietest reasonable and practicable manner using the quietest equipment reasonably available.

This provision acknowledges the essential nature of such works and broad acceptance of these works during daytime hours.

The assigned levels do not apply to out-of-hours works if they are carried out in accordance with an NMP approved by the delegate CEO. The delegate CEO must consider public submissions in relation to the plan before approving or refusing to approve the NMP. There is no means of appeal against the delegate CEO's decision in this case, however, the approval is limited to three years' duration.

## 5. Provisions to improve clarity and enforceability

### Ancillary measures and conditions—various regulations

The amendments introduce ancillary measures in relation to the approval of NMPs for motorsport venues, shooting venues, waste collection and other works, and construction works. They also introduce ancillary conditions for approved venues and events, and in relation to Regulation 17 approvals.

Ancillary measures/conditions cannot directly influence the level, duration or time of day of the noise emission. For example, the requirement to distribute flyers advising of an event could be designated as an ancillary condition.

Generally, failure to comply with a condition of approval or a measure in an NMP removes the exemption and the assigned levels then apply. When an ancillary measure/

condition is breached the protection of the exempting regulation remains, but the offender can be prosecuted directly for the breach.

The 'ancillary measures' recognise that often it is desirable to allow an activity to continue operating under an approval or NMP when a breach is of a minor nature and does not affect noise emission directly, but also acknowledges the need for a simple enforcement pathway for such breaches.

Failure to comply with an ancillary measure or condition may result in a direct prosecution with a fine of \$5,000.

### New definitions to improve clarity—Regulations 2 and 8

In general the Regulations provide the highest level of protection to buildings and their immediate surrounds, which are used for a noise sensitive purpose. The amendments clarify what is a 'noise sensitive purpose' and reduce the level of protection for buildings that are inhabited illegally.

For example, a shed in which persons reside without local government approval would not be treated as a 'highly sensitive area' and so receives a lower level of protection than a residence that is occupied.

### Rules for sound level measuring equipment—Schedule 4

The amendments to Schedule 4 clarify and update the requirements for sound level measuring equipment. The Schedule now refers to the most up-to-date and relevant standards with which equipment must comply; and clarifies the requirements for calibration of such equipment.

The amendments also allow a wider range of airblast monitors to be used.

### Disclaimer

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### Legislation

Free electronic copies of the *Environmental Protection Act* and *Environmental Protection (Noise) Regulations 1997* are available from State Law Publisher ([www.slp.wa.gov.au](http://www.slp.wa.gov.au)).

### Contact details

For information on compliance with the *Environmental Protection (Noise) Regulations 1997*, or any other related matter, please contact DER on 6467 5257 or email [info@der.wa.gov.au](mailto:info@der.wa.gov.au).