



Regulation 17: Approval to allow emission of noise to exceed or vary from standard

May 2021



Purpose

This fact sheet provides guidance for users of the Environmental Protection (Noise) Regulations 1997 (Noise Regulations) in relation to Division 6 – where prescribed standards cannot reasonably be met.

The Noise Regulations set assigned (allowable) noise levels for noise received at various types of premises. However, they create a number of special cases where noise emissions may not be required to meet these assigned levels.

Division 6 provides a Ministerial approval process that allows noise emissions to exceed or vary from the assigned noise levels in the Noise Regulations. The Division 6 process is often simply referred to as Regulation 17.

Introduction

There are some noise emitters whose noise emission levels cannot reasonably or practicably comply with the assigned noise levels.

Any person who is of the opinion that their noise emissions cannot reasonably or practicably comply with the prescribed standard can apply for the approval of the Minister for Environment (the Minister) under regulation 17 to exceed or vary from the standard.

Regulation 17 has been used in situations where there is a history of noise emissions which predate the Noise Regulations. Approvals have been sought by large industry such as power generation facilities, mines and ports which undertake significant investment in noise amelioration, including noise insulation for buildings on noise-affected land, and, in some instances, purchase of noise-affected land by the noise emitter.

How the regulation 17 process works

Applications for approval to exceed or vary from the assigned noise levels under regulation 17 are made to the Minister.

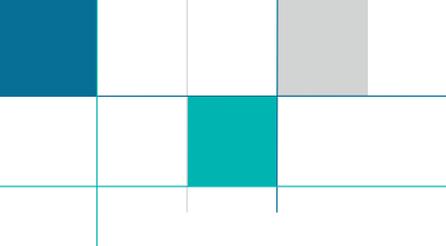
Where an application is associated with a proposal that is to be assessed under Part IV of the *Environmental Protection Act 1986*, the Minister refers the application to the Environmental Protection Authority (EPA) for assessment.

In all other circumstances, the Minister refers the application to the Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation for assessment.

Upon referral, the CEO may advise the Minister that the application should not be assessed because either:

- the emission will not exceed or vary from the assigned levels
- the emission is capable of complying with the assigned levels
- an approval under regulation 17 is not an appropriate means of regulating the emission of noise.





If the CEO determines that an application should be assessed, they will determine the assessment fee (up to \$100,000) and advise the applicant. Once the fee is received, the CEO commences the assessment.

The application

There is no formal application form or template for an application to be made under regulation 17; however, applicants must provide evidence to support their application, usually in the form of an acoustic assessment and a report evaluating the reasonability and practicability of complying, including the cost effectiveness of attenuation measures. Evidence also needs to be provided to show all the measures that have been undertaken to date to comply with the Noise Regulations.

Once the decision to assess the application has been made and the application fee has been paid, the applicant is required to make the following information available for assessment:

- modelled and/or measured noise emission levels which clearly demonstrate the noise non-compliance with the prescribed standards
- evidence and reasoning as to why the noise emission levels cannot practicably be reduced to comply with the prescribed standard
- what variations over the prescribed noise standards the applicant is seeking, and their justifications
- what the applicant proposes in order to mitigate the noise impact on the affected community, such as relocating the affected residents during the time that the noise emission level is excessively high, or providing the affected residents with acoustic treatment of their residences
- how any noise-affected community members view the elevated noise emission levels from the applicant's operation (a community survey report)
- what noise management and monitoring measures the applicant proposes to implement to ensure the noise emissions will comply with the approval, if granted.

Further information may also be requested during the assessment.

Note that payment of the assessment fee and submission of supporting information does not ensure approval.

If you are considering applying for approval under regulation 17, it is recommended that you first discuss your proposal with Department of Water and Environmental Regulation's noise officers.

Decision by the Minister

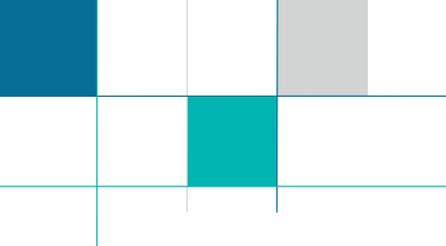
After receiving the report of the EPA or the CEO, the Minister may grant or refuse to grant the approval.

Where an approval is granted, it may have effect for a specified time and be subject to conditions.

Approvals granted under regulation 17 are also subject to annual \$5,000 noise monitoring fees.

Notice of an approval (or amendment or revocation of an approval) will be published in the Western Australian Government Gazette.





Appeals

Appeals against decisions under Division 6 are prescribed in regulation 18H.

Any person, either the applicant or another person, who disagrees with the Minister's decision may appeal within 21 days of the date that the decision is published or on receipt of the decision notice, depending on the type of appeal.

Appeals may relate to the grant of approval, conditions on an approval, amendment or revocation of an approval or the refusal to assess an application, grant or amend an approval.

Further information regarding appeals under regulation 18H can be found on the Office of the [Appeals Convenor's website](#).

More information

For further information, please contact the Environmental Noise Branch at the Department of Water and Environmental Regulation via email (info@dwer.wa.gov.au) or phone (08 6364 7000).

Legislation

This document is provided for guidance only. It should not be relied upon to address every aspect of the relevant legislation. Please refer to the Department of Justice, [Western Australian Legislation website](#) for copies of the relevant legislation.

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