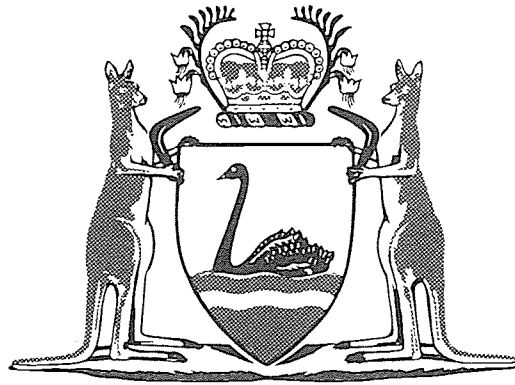


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NOISE ABATEMENT ACT 1972

NOISE ABATEMENT (NEIGHBOURHOOD ANNOYANCE) REGULATIONS 1979

Reprinted under the *Reprints Act*
1984 as at 10 September 1986.

WESTERN AUSTRALIA

NOISE ABATEMENT ACT 1972

**NOISE ABATEMENT
(NEIGHBOURHOOD ANNOYANCE)
REGULATIONS 1979**

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NOTES

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WESTERN AUSTRALIA

NOISE ABATEMENT ACT 1972

**NOISE ABATEMENT
(NEIGHBOURHOOD ANNOYANCE)
REGULATIONS 1979**

Citation

1. These regulations may be cited as the *Noise Abatement (Neighbourhood Annoyance) Regulations 1979*¹.

Interpretation

2. In these regulations—

“approved” means approved by the Permanent Head;

“dB(A)” means the reading in decibels on a sound level meter or other sound level measuring equipment using the A-weighting network specified for sound level meters in Part I or Part II, whichever is applicable to the measuring equipment in question, of Australian Standard AS 1259 of 1976;

“field calibration” means a check on the laboratory calibration of the sound level measuring equipment at a reference frequency;

“laboratory calibration” means an evaluation of sound level measuring equipment by—

- (a) a laboratory of a department of the Public Service of the State having facilities for calibrating sound level measuring equipment; or
- (b) a laboratory registered with the National Association of Testing Authorities, Australia,

for the purpose of calibrating that equipment;

“noise” means an airborne vibration within the frequency range 20-20 000 Hz;

“premises” includes any land, building or place;

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“Requirements” means the publication published by the Minister entitled “Requirements for the measurement of noise for the purposes of the Noise Abatement Act”;

“section” means a section of the Act;

“standard sound source” means a device provided for field calibration of sound measuring equipment in compliance with clause 11.1(xi) of Australian Standard 1259 of 1976 Part II, or approved by the Permanent Head for such purpose;

“Table” means a table appearing in the Schedule.

[Regulation 2 amended in Gazettes 16 July 1982 p. 2728; 29 June 1984 p. 1783; 21 June 1985 p. 2203.]

Persons who may bring proceedings

3. Proceedings under the Act may be brought—

- (a) in respect of an offence, by an inspector or other person authorized by the Minister pursuant to section 46; or
- (b) in respect of a nuisance on any premises, by the local authority pursuant to section 27 or by a person or persons pursuant to section 33.

Evidence of noise level

4. In any proceedings (whether proceedings under the Act or under any other Act or law) where the evidentiary provisions of the Act are relevant, the methods of noise measurement set out in these regulations do not constitute the only manner in which evidence of a noise level may be given, and a court may be satisfied as to the nature and effect of a noise on evidence other than proof of a measured or calculated noise level.

Order of Local Court to local authority

5. Where the Local Court—

- (a) serves on a local authority a nuisance order pursuant to section 27 (4); or
- (b) pursuant to section 33 (1) directs the local authority to abate a nuisance,

that local authority shall be deemed to have been satisfied as to the existence of the nuisance and shall as soon as is practicable thereafter (and whether or not any abatement notice is served) exercise such of the powers conferred by section 26 (2) (b), section 27 (4), and section 28 (2) as may be appropriate.

Person may request local authority to act

6. (1) Where proceedings pursuant to section 33 are not taken by the complainants in person, a person who alleges that a noise which emanates on more than one occasion from any premises is injurious or dangerous to health, or occurs or continues to such a degree and extent that it has a disturbing effect on his physical, mental or social well-being when he is carrying on normal activities, may lodge with the local authority in the district of which the place at which he hears the noise is situate a complaint in Form A requesting that local authority to take action on his behalf.

(2) A complaint may be made to a local authority otherwise than in the manner provided for by subregulation (1), but in any such case the action to be taken thereon shall be at the discretion of the local authority and the provisions of regulation 7 shall not apply to that complaint.

Powers of local authority following request

7. As soon as is practicable after receipt of a notice in Form A the local authority shall cause inquiries and investigations to be made and, unless the allegation appears to be of a frivolous, vexatious or unreasonable nature, the local authority shall as soon as practi-

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cable thereafter notify the person appearing to be responsible for the noise that a complaint has been lodged with the local authority in respect of the noise, and may require that the alleged nuisance be abated; and the local authority shall thereafter notify the person who lodged the complaint of the result of the inquiries and investigations, whether or not the local authority required the alleged nuisance to be abated, and of any response thereto.

Local authority to notify determination

8. (1) Where—

(a) a local authority determines that—

(i) a notice under section 26; or

(ii) proceedings for an offence pursuant to these regulations, shall, or shall not, be issued; or

(b) a finding or calculation is made as to an alleged noise by an inspector pursuant to these regulations,

the nature of that determination, finding or calculation shall be made known as soon as is practicable by the local authority to the person who lodged the complaint to which it relates and to the person who is, in the opinion of the local authority, responsible for the alleged noise.

(2) Where an inspector is of the opinion that the alleged noise does not constitute a nuisance he may, without measuring that noise or undertaking any calculation for the purpose of these regulations, so inform the local authority which shall thereupon notify the person who lodged the complaint as to that finding.

(3) Subject to the provisions of regulation 5 and of regulation 11 a local authority may, but is not required to, serve an abatement notice under section 26 and thereafter institute and conduct proceedings relating thereto, but may make it a condition of the consent to take such action that any person making a complaint attend and give evidence at the proceedings.

Nuisance where noise level not exceeded

9. Where an inspector is of the opinion that, although by measurement or calculation a noise does not exceed the level prescribed by these regulations, in the circumstances of the case the noise nevertheless constitutes a nuisance the local authority may accept that opinion as sufficient grounds for the issue of an abatement notice.

Discretion of local authority

10. Where an inspector ascertains that, although the level of noise emanating from any premises exceeds (at the place of measurement and after adjustment in accordance with regulation 15) the level shown in Table 1 as being the assigned outdoor neighbourhood noise level applicable to the relevant circumstances, the ascertained level does not exceed that assigned level by more than 5 dB (A) then the provisions of section 8 (3) (a) shall apply and it shall be for the local authority to decide whether or not to issue an abatement notice, although the local authority may be satisfied that sufficient grounds exist for the issue of an abatement notice.

When local authority must issue notice

11. Where an inspector ascertains that the level of noise emanating from any premises exceeds (at the place of measurement and after adjustment in accordance with regulation 15) the level shown in Table 1 as being the assigned outdoor neighbourhood noise level applicable to the relevant circumstances and that the ascertained level exceeds the assigned level by more than 5 dB (A), then the provisions of section 8 (3) (b) apply and the local authority shall issue and enforce an abatement notice.

Criteria for bringing locality within a neighbourhood

12. (1) In order to bring a locality within the description of a neighbourhood under these regulations it may be shown that the nature of the locality approximates more nearly to one of the kinds described in Table 1 than to any other kind there described, and for the purposes of any proceedings under the Act what is comprised in a locality is a question of fact but may be taken to be the general environs within a radius of 200 metres of the place where the measurement is made.

(2) The kind of neighbourhood and the assigned outdoor neighbourhood noise level applicable to the relevant circumstances may be determined from Table 1 in the following manner—

- (a) the use of the premises at the place of reception of the noise, current while the noise is alleged to give rise to complaint, shall be decided in accordance with the first column;
- (b) a description of the neighbourhood for the purposes of these regulations shall be decided in accordance with the second column;
- (c) depending on the time at which the noise is alleged to give rise to complaint, the assigned outdoor neighbourhood noise level in dB (A) applicable to the relevant circumstances shall be that given in the corresponding third, fourth, or fifth column for that use and neighbourhood.

Where a locality cannot be brought within a neighbourhood

13. (1) Where the description of a locality cannot be brought within that of a neighbourhood of a kind described in Table 1, or the assigned outdoor neighbourhood noise levels set out in Table 1 are inappropriate in the circumstances, the background noise shall be measured in the absence of the noise alleged to be offending, where possible, and used as the assigned outdoor neighbourhood noise level; and where this measurement is less than the lowest values indicated in Table 1, the lowest value for the appropriate time period in Table 1 is to be used as the assigned level.

(2) The measurement of background noise shall be carried out and recorded in accordance with the Requirements.

(3) Where the noise complained of occurs during the measuring period the noise level then recorded at the time of occurrence shall be excluded from the calculation of the background noise for the measured period.

(4) The measurement of the sample of background noise shall be made in dB (A) over a continuous period as close as is practicable to the time at which the noise alleged to give rise to complaint occurs, but subject to subregulation (3) may extend either side of that time.

[Regulation 13 amended in Gazette 16 July 1982 p. 2729.]

Place and length of measurement

14. (1) For the purpose of these regulations a noise shall be measured as nearly as is reasonably practicable to where the complainant is alleged to have heard it, indoors and out, or both, as is relevant and practicable in the circumstances in relation to which the cause of complaint occurs, and with any windows, doors or other openings in a configuration appropriate to those circumstances.

(2) The measurement of the noise alleged to give rise to complaint shall be made in dB (A) over a sufficiently long period to be representative of the annoying effect at a time during which that noise is occurring in the manner alleged to give rise to the complaint.

Adjustment of measurement

15. (1) For the purpose of making a comparison with indoor measurement of any noise alleged to give rise to complaint the level assigned shall be adjusted in accordance with Table 2.

(2) If a noise, having been measured for the purposes of these regulations, is found to have any of the characteristics set out in—

- (a) Table 3, that measurement shall; or
- (b) Table 4, that measurement shall, if in the opinion of the inspector who made that measurement any such characteristic is present to such an extent that it increases the annoying effect of the noise,

be adjusted as indicated in that Table according to the circumstances and characteristics applicable to the noise, and the level of noise as so measured and adjusted is the calculation or finding for the purposes of these regulations.

(3) If a noise, having been measured for the purposes of these regulations, is found to have any of the characteristics set out in both Table 3 and Table 4—

- (a) that measurement shall be adjusted as indicated in Table 3; and
- (b) that measurement as adjusted under paragraph (a) shall, if in the opinion of the inspector who made that measurement any characteristic of Table 4 is present to such an extent that it increases the annoying effect of the noise, be adjusted as indicated in Table 4,

according to the circumstances and characteristics applicable to the noise, and the level of noise as so measured and adjusted is the calculation or finding for the purposes of these regulations.

[Regulation 15 substituted in Gazette 16 July 1982 p. 2729; amended in Gazette 14 December 1984 pp. 4126-27; erratum in Gazette 15 February 1985 p. 589.]

Provisions applicable to measurement

16. (1) The following provisions apply to the measurement of noise for the purposes of these regulations—

- (a) measurement shall be carried out using equipment which complies with the relevant requirements of Part I or Part II of Australian Standard AS 1259 of 1976;
- (b) except in special circumstances as specified by the Minister, sound level measuring equipment shall be set on A-weighting and slow response;
- (c) the measurement shall be carried out and recorded substantially in accordance with the appropriate procedure set out in the Requirements;
- (d) in the case of tape recorders and other equipment to which Australian Standard AS 1259 of 1976 is inappropriate, that equipment shall have a measurement accuracy not less than that which could be obtained by using a sound level meter which complies with the relevant requirements of Part I of Australian Standard AS 1259 of 1976;
- (e) if a sampling method is used to determine a noise level, the rate at which the noise level is sampled shall be such that significant noise level data are not excluded from the result of that sampling.

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(2) Measurements of a level of noise by sound level measuring equipment shall not be used for the purposes of these regulations unless—

- (a) the sound measuring equipment and the standard sound source used in connection with it have been calibrated by a laboratory referred to in paragraph (a) or (b) of the definition of "laboratory calibration" in regulation 2 within the 12 months immediately preceding those measurements or within such other period immediately preceding those measurements as is approved;
- (aa) the laboratory referred to in paragraph (a) of this subregulation has issued a certificate—
 - (i) valid for 12 months from the date of issue;
 - (ii) giving the results of the calibration concerned; and
 - (iii) certifying that the sound measuring equipment is accurate for the purposes of these regulations and that it complies with the relevant requirements referred to in subregulation (1) (a);
- (b) the sound measuring equipment has been field calibrated, as nearly as is practicable immediately prior to and as soon as practicable after the measurement has been made, at a reference frequency within the range of 200 to 1 000 Hz by a standard sound source; and
- (c) the accuracy of the equipment at the reference frequency, including errors due to free field approximation and electro-acoustical measurements, is within 1dB.

[Regulation 16 amended in Gazettes 16 July 1982 p. 2729; 21 June 1985 p. 2203.]

Unavoidable noise from trade or business

17. (1) In any proceedings where for the purposes of section 7 it falls to be determined whether or not a level of sound was unavoidable in connection with a trade or business, a level of sound shall be taken to be reasonable if it does not exceed the level prescribed pursuant to section 48 (2) (i) or if it is shown that all practicable means have been taken to prevent that level of sound occurring and to prevent it from causing annoyance in any premises other than the premises at which it occurs.

(2) For the purposes of this regulation—

- (a) the test of "practicable means" is to apply only so far as compatible with—
 - (i) any duty imposed by law;
 - (ii) safety and safe working conditions; and
 - (iii) the exigencies of any emergency or unforeseeable circumstances;
- (b) "practicable means" include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and noise attenuating devices or structures; and
- (c) "practicable" means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications.

(3) Where it is found that a level of sound is reasonable having regard to the provisions of subregulation (1), that level of sound shall be deemed to be unavoidable in the absence of proof to the contrary.

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Schedule

Table 1

ASSIGNED OUTDOOR NEIGHBOURHOOD NOISE LEVELS
dB(A)

Category	Use of premises at place of reception	Description of neighbourhood in which place of reception is situated	Monday-Friday 0700-1900 hrs	Monday-Friday 1900-2200 hrs Weekends and Public Holidays 0700-2200 hrs	Always 2200-0700 hrs
A	Residential, domestic or private recreational	1. Only or predominantly country, with negligible transportation	40	35	30
		2. Only or predominantly residences with infrequent transportation	45	40	35
B	Residential, educational, hospital or the like	1. Other residences with schools, hospitals and the like or with medium density transportation	50	45	40
		2. Other residences with some commerce or some light industry, or with some places of entertainment or public assembly, or with dense transportation	55	50	45
		3. Predominantly commerce or light industry or places of entertainment or public assembly or with very dense transportation	60	55	50
		4. Predominantly industry, or with extremely dense transportation	65	60	55
C	Commercial, entertainment or public assembly	1. Predominantly residential or with schools, hospitals and the like, or with medium density transportation	50	45	40
		2. Some other commerce or some light industry, or with places of entertainment or public assembly, or with dense transportation	55	50	45
		3. Predominantly commerce or light industry with very dense transportation	60 at any time		
		4. Predominantly industry, or with extremely dense transportation	65 at any time		
D	Industrial	1. Predominantly residential or with schools, hospitals and the like, or with medium density transportation	55	50	45
		2. Predominantly commerce or other light industry, or places of entertainment or public assembly, or with dense transportation	60	55	50
		3. Predominantly other comparable industry, or with very dense transportation	65 at any time		
		4. Predominantly heavy industry	70 at any time		

Table 2

ADJUSTMENT TO ASSIGNED OUTDOOR NEIGHBOURHOOD
NOISE LEVEL FOR INDOOR MEASUREMENTS

State of windows, doors or other comparable openings in any wall in the transmission path between the source of the noise alleged to be annoying and the place of reception of that noise	Adjustments dB(A)
Any opening open	— 10
Every opening shut where any window is a single-glazed window	— 15
Every opening shut where every window is a double-glazed fixed window	— 20

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Table 3

ADJUSTMENT TO MEASURED NOISE LEVEL FOR INTERMITTENT NOISE

Cumulative period for which noise measured is present in any hour	Adjustment dB(A)
More than 15 minutes	± 0
Exceeding 5 minutes but not exceeding 15 minutes	- 5
Exceeding 1 minute but not exceeding 5 minutes	- 10
Not exceeding 1 minute	- 15

This Schedule is for the calculation from its duration of the potential annoyance level where any noise which is present and measured is intermittent and is not measured by a statistical method.

These duration adjustments may not be appropriate if the noise being assessed includes discrete noise impulses or consists of repetitive noise with an impulsive character, e.g. hammering or riveting.

Table 4

ADJUSTMENTS TO MEASURED NOISE LEVEL
FOR SPECIAL CHARACTERISTICS

Characteristics	Adjustment dB(A)
Impulses	+ 10
Tonal Components	+ 5
Amplitude or frequency modulations	+ 5

NOTE: The sum of adjustments made in accordance with this Table shall not exceed 15 dB(A).

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Form A

COMPLAINT AS TO A NOISE

Pursuant to the *Noise Abatement (Neighbourhood Annoyance) Regulations 1979*

Date of complaint: Local Authority:

Name and address of complainant:

.....

Telephone number:

Nature of complaint:

.....

Source of offending noise (if identifiable):

.....

Time of day when noise occurs:

Further remarks:

.....

Signature of

Complainant:

[Schedule amended in Gazette 16 July 1982 p. 2730.]

NOTES

¹ This reprint is a compilation as at 10 September 1986 of the *Noise Abatement (Neighbourhood Annoyance) Regulations 1979* and includes all amendments effected by the other regulations referred to in the following Table.

Table of Regulations

Regulations	Gazettal	Commencement
<i>Noise Abatement (Neighbourhood Annoyance) Regulations 1979</i>	29 August 1980 pp. 3023-27	29 August 1980
<i>Noise Abatement (Neighbourhood Annoyance) Amendment Regulations 1982</i>	16 July 1982 pp. 2728-30	16 July 1982
<i>Health Legislation Amendment Regulations 1984</i>	29 June 1984 p. 1783	1 July 1984
<i>Noise Abatement (Neighbourhood Annoyance) Amendment Regulations 1984</i> [Erratum published in Gazette 15 February 1985, p. 589.]	14 December 1984 pp. 4126-27	14 December 1984
<i>Noise Abatement (Administration) Amendment Regulations 1985</i>	21 June 1985 p. 2202-3	21 June 1985