

Draft Amendments to the Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004

and

Regulatory Impact Statement

**Department of Environment, Parks, Heritage and the Arts
Environment Division
March 2009**



Draft Amendments
to the
Environmental Management and
Pollution Control (Miscellaneous
Noise) Regulations 2004
and
Regulatory Impact Statement

It is proposed that the draft amendment regulations will amend the *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004*. The accompanying Regulatory Impact Statement has been prepared in accordance with Schedule 2 of the *Subordinate Legislation Act 1992*.

Department of Environment, Parks, Heritage and the Arts
Environment Division
March 2009



DRAFT AMENDMENTS
TO THE ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL
(MISCELLANEOUS NOISE) REGULATIONS 2004

and

REGULATORY IMPACT STATEMENT

Environment Division
Department of Environment, Parks, Heritage and the Arts
GPO Box 1751
HOBART TAS 7001

March 2009

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SUBMISSIONS

Submissions are invited on any aspect of the draft amendments to the 2004 Regulations and accompanying Regulatory Impact Statement. Comment is especially invited on the potential costs and benefits of the proposed regulations for particular industries and other sectors of the community.

Submissions will be considered before the regulations are made, and copies will be provided to the Subordinate Legislation Review Committee of the Tasmanian Parliament. Submissions must be in writing and forwarded to:

The Secretary
Department of Environment, Parks, Heritage and the Arts
GPO Box 1751
Hobart, Tas 7001

Submissions may also be emailed to:

EnvironmentEnquiries@environment.tas.gov.au

Submissions must be received by **5.00 p.m., Friday 8 May 2009.**

If you have any queries about these documents, or if you require a copy of the proposed regulations, please contact:

Environmental Policy Section
Environment Division
Department of Environment, Parks, Heritage and the Arts
Telephone: (03) 6233 4028
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Please Note

Respondents are advised that the contents of submissions will not be treated as confidential unless they are marked 'confidential' and are capable of being classified as such in accordance with the *Freedom of Information Act 1991*.

Respondents are also advised that personal information in submissions will be treated as public information unless the submissions are marked 'confidential', in which case the information will be handled in accordance with the principles of the *Personal Information Protection Act 2004*.

This public consultation is not intended to be an opportunity to raise personal grievances about individual noise pollution sources. Any such complaints should be lodged with the relevant local council or the Department of Environment, Parks, Heritage and the Arts. Contact details are in the telephone directory.

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TABLE OF CONTENTS

PART A - DRAFT AMENDMENTS TO THE ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL (MISCELLANEOUS NOISE) REGULATIONS 2004.....	1
PART B - REGULATORY IMPACT STATEMENT FOR THE ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL (MISCELLANEOUS NOISE) AMENDMENT REGULATIONS 2009.....	19
1. INTRODUCTION	21
1.1 THE PURPOSE OF THIS DOCUMENT	21
1.2 BACKGROUND TO THE PROPOSED AMENDMENTS	21
1.3 REASONS AND OBJECTIVES FOR THE PROPOSED AMENDMENTS.....	22
1.4 SCOPE OF THE PROPOSED AMENDMENTS.....	22
1.5 IMPEDIMENTS TO ACOUSTIC ENVIRONMENTAL QUALITY	23
1.6 IMPLEMENTATION OF THE AMENDED REGULATIONS	24
1.7 CONSULTATION	24
1.8 ASSESSMENT OF COSTS AND BENEFITS	25
2. EXPLANATION OF MINOR AMENDMENTS	26
2.1 INTRODUCTION.....	26
2.2 SHORT TITLE (REGULATION 1)	26
2.3 INTERPRETATION (REGULATION 3).....	26
2.4 NOISE EMITTED FROM CERTAIN PORTABLE APPARATUS (REGULATION 10), NOISE EMITTED FROM AIR CONDITIONERS (REGULATION 13) & OPERATION OF MOTOR VEHICLES AND MOTOR VESSELS NEAR RESIDENTIAL PREMISES (REGULATION 15)	26
3. PROPOSED MAJOR AMENDMENTS REQUIRING AN ASSESSMENT OF COSTS AND BENEFITS.....	27
3.1 INTRODUCTION.....	27
3.2 GENERAL BENEFITS AND COSTS FOR THE COMMUNITY	27
3.3 GENERAL BENEFITS AND COSTS FOR INDUSTRY.....	30
3.4 GENERAL BENEFITS AND COSTS FOR STATE GOVERNMENT	30
3.5 GENERAL BENEFITS AND COSTS FOR LOCAL GOVERNMENT	30
3.6 OPERATION OF CHAINSAWS (REGULATION 18).....	32
3.7 OPERATION OF INTRUDER ALARM SYSTEMS (REGULATION 18B)	38
3.8 HOURS OF USE (SCHEDULE 7)	41
4. OTHER SIGNIFICANT AMENDMENTS	46
4.1 HOURS OF USE OF CERTAIN ITEMS ON ANY DOMESTIC PREMISES (REGULATION 14)	46
4.2 OPERATION OF VEHICLE SECURITY ALARMS (REGULATION 18A)	49
4.3 MEASUREMENT OF NOISE (REGULATION 4) AND NOISE MEASUREMENT PROCEDURES MANUAL (REGULATION 25)	52
5. ALTERNATIVES TO THE PROPOSED AMENDMENTS	56
5.1 MAINTAIN THE STATUS QUO AND RELY ON THE GENERAL PROVISIONS OF PRIMARY LEGISLATION ..	56
5.2 DEVELOP NON-MANDATORY GUIDELINES.....	56
5.3 SELF REGULATION	57
5.4 ECONOMIC MECHANISMS	57
6. GREATEST NET BENEFIT/LEAST COST.....	59
7. REFERENCES	60

PART A

DRAFT AMENDMENTS

to the

ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL (MISCELLANEOUS NOISE) AMENDMENT REGULATIONS 2004

March 2009

TASMANIA

**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL (MISCELLANEOUS
NOISE) AMENDMENT REGULATIONS 2009**

STATUTORY RULES 2009, No.

CONTENTS

1. Short title
2. Commencement
3. Principal Regulations
4. Regulation 3 amended (Interpretation)
5. Regulation 4 substituted
 4. Measurement of noise
6. Regulation 10 amended (Noise emitted from certain portable apparatus)
7. Regulation 13 amended (Noise emitted from airconditioners)
8. Regulation 14 substituted
 14. Prohibited hours of use of specified things
9. Regulation 15 amended (Operation of motor vehicles and motor vessels near domestic premises)
10. Regulation 18 substituted
 18. Operation of chainsaws
 - 18A. Operation of vehicle security alarms
 - 18B. Operation of intruder alarm systems
11. Regulation 19 amended (Application for permits)
12. Part 5 rescinded

13. Schedule 7 substituted
Schedule 7 – Prohibited hours of use of specified things

Draft

**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL (MISCELLANEOUS
NOISE) AMENDMENT REGULATIONS 2009**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Environmental Management and Pollution Control Act 1994*.

Dated 200 .

By His Excellency's Command, Governor
Minister for Environment, Parks, Heritage and the Arts

1. Short title

These regulations may be cited as the *Environmental Management and Pollution Control (Miscellaneous Noise) Amendment Regulations 2009*.

2. Commencement

These regulations take effect on the day on which their making is notified in the *Gazette*.

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 3

3. Principal Regulations

In these regulations, the *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004** are referred to as the Principal Regulations.

4. Regulation 3 amended (Interpretation)

Regulation 3(1) of the Principal Regulations is amended as follows:

- (a) by omitting the definition of “domestic premises”;
- (b) by omitting the definition of “manual” and substituting the following definitions:

“habitable room” means any room in residential premises other than a storage area, bathroom, laundry, toilet or pantry;

“intruder alarm system” means an alarm system installed in premises that is designed to detect and audibly signal the presence of, or the entry or attempted entry into the premises by, an intruder;

*S.R. 2004, No. 50

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 5

- (c) by inserting the following definition after the definition of “recreational facility”:

“residential premises” means –

- (a) any building or part of a building lawfully used as, or for the purposes of, a residence; and
- (b) the land within the boundaries of the area of land on which the building is situated;
- (d) by inserting the following definition after the definition of “shop”:

“vehicle security alarm” means an alarm system installed in a motor vehicle that is designed to detect and audibly signal any, or any attempted, intrusion into, or interference with, the motor vehicle by an intruder;

5. Regulation 4 substituted

Regulation 4 of the Principal Regulations is rescinded and the following regulation is substituted:

4. Measurement of noise

For the purposes of these regulations –

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 6

- (a) any measurement of noise or any test of a noise source must be carried out in accordance with the “Noise Measurement Procedures Manual” notified in the Gazette on 11 August 2004, as amended on 13 July 2005; and
- (b) the level of any noise is taken to be the A-weighted sound pressure level of that noise expressed in dB(A).

6. Regulation 10 amended (Noise emitted from certain portable apparatus)

Regulation 10 of the Principal Regulations is amended as follows:

- (a) by omitting from subregulation (2) “domestic premises” and substituting “residential premises”;
- (b) by omitting from subregulation (3) “domestic premises” and substituting “residential premises”.

7. Regulation 13 amended (Noise emitted from airconditioners)

Regulation 13 of the Principal Regulations is amended as follows:

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 7

- (a) by omitting from subregulation (1)(a)(i) “domestic premises” and substituting “residential premises”;
- (b) by omitting from subregulation (1)(a)(ii) “domestic premises” and substituting “residential premises”;
- (c) by omitting from subregulation (1)(a)(iii) “domestic premises” and substituting “residential premises”;
- (d) by omitting from subregulation (1)(b)(i) “domestic premises” and substituting “residential premises”;
- (e) by omitting from subregulation (1)(b)(ii) “domestic premises” and substituting “residential premises”;
- (f) by omitting from subregulation (1)(b)(iii) “domestic premises” and substituting “residential premises”;
- (g) by omitting from subregulation (2)(a) “domestic premises” and substituting “residential premises”;
- (h) by omitting from subregulation (2)(b) “domestic premises” and substituting “residential premises”.

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 8

8. Regulation 14 substituted

Regulation 14 of the Principal Regulations is rescinded and the following regulation is substituted:

14. Prohibited hours of use of specified things

- (1) A person must not operate any thing specified in Column 1 of Schedule 7 on the days and during the hours specified in relation to that thing in Columns 2 and 3 of that Schedule on any residential premises, or on any site where residential premises are being constructed, if the noise emitted by the thing is, or is likely to be, audible in a habitable room in any other residential premises (regardless of whether or not all windows and doors to that habitable room are shut).

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (2) Subregulation (1) does not apply to the operation, on the days and during the hours specified in Column 2 and 3 of Schedule 7, of any mobile machinery if a permit has been issued under Part 4 in respect of that mobile machinery.

9. Regulation 15 amended (Operation of motor vehicles and motor vessels near domestic premises)

Regulation 15 of the Principal Regulations is amended by omitting “domestic premises” and substituting “residential premises”.

10. Regulation 18 substituted

Regulation 18 of the Principal Regulations is rescinded and the following regulations are substituted:

18. Operation of chainsaws

(1) In this regulation –

“approved” means approved in accordance with any one or more of the following:

- (a) a permit issued and in force under Part 4 of these regulations;
- (b) a permit issued and in force under the *Land Use Planning and Approvals Act 1993* for a level 1 activity or level 2 activity;
- (c) an environment protection notice issued, or caused to be issued, by the Director under section 27 or 44 of the Act;

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 10

- (d) an environment protection notice issued by a council officer under section 44 of the Act;
 - (e) an emergency authorization.
- (2) A person on premises, other than residential premises, must not operate a chainsaw powered by an internal combustion engine within 300 metres of residential premises unless –
- (a) the operation of the chainsaw is approved and occurs during the following hours:
 - (i) Monday to Saturday (inclusive), from 7 a.m. until 6 p.m.;
 - (ii) Sundays and statutory holidays as defined in the *Statutory Holidays Act 2000*, from 10 a.m. until 6 p.m.; or
 - (b) the chainsaw is operated by or with the consent of the occupier of the residential premises; or
 - (c) the occupier of the residential premises owns the premises on which the chainsaw is being operated.

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 10

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(3) A person on residential premises must not operate a chainsaw powered by an internal combustion engine within 300 metres of other residential premises unless –

(a) the chainsaw is operated for the purpose of domestic garden maintenance on only one day in any 7-day period and during the following hours:

(i) Monday to Friday (inclusive), from 7 a.m. until 6 p.m.;

(ii) Saturday, from 9 a.m. until 6 p.m.;

(iii) Sundays and statutory holidays as defined in the *Statutory Holidays Act 2000*, from 10 a.m. until 6 p.m.; or

(b) the operation of the chainsaw is approved; or

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 10

- (c) the chainsaw is operated by or with the consent of the occupier of the other residential premises; or
- (d) the occupier of the other residential premises owns the residential premises on which the chainsaw is being operated.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

18A. Operation of vehicle security alarms

(1) For the purpose of this regulation –

- (a) a person is taken to cause or permit a vehicle security alarm to be sounded if the person leaves a motor vehicle unattended while the vehicle security alarm is turned on and it subsequently sounds; and
- (b) a vehicle security alarm that sounds intermittently is taken to sound continuously for the purpose of measuring the period of time for which it sounds.

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 10

(2) A person must not cause or permit a vehicle security alarm to be continuously sounded –

(a) in the case of a vehicle security alarm installed in a motor vehicle manufactured before 1 September 1997, for more than 90 seconds after it first sounds; or

(b) in the case of a vehicle security alarm installed in a motor vehicle manufactured on or after 1 September 1997, for more than 45 seconds after it first sounds.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(3) A person must not use or permit the use of a vehicle security alarm installed in a motor vehicle manufactured on or after 1 September 1997 if the noise emitted by the vehicle security alarm exceeds 115 dB(A).

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 10

each day during which the
offence continues.

- (4) A person must not cause or permit a vehicle security alarm to be sounded while the engine of the motor vehicle in which the alarm is installed is running or the ignition of the motor vehicle is turned on.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (5) This regulation does not apply to the sounding of a vehicle security alarm in an emergency or accident.

18B. Operation of intruder alarm systems

- (1) For the purpose of this regulation, an intruder alarm system that sounds intermittently is taken to sound continuously for the purpose of measuring the period of time for which it sounds.
- (2) A person must not use or permit the use of an intruder alarm system if the intruder alarm system emits a continuous noise for more than 5 minutes after it first sounds.

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 11

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (3) This regulation does not apply to the sounding of an intruder alarm system in an emergency.

11. Regulation 19 amended (Application for permits)

Regulation 19(1) of the Principal Regulations is amended by omitting “or regulation 18(2)(A)”.

12. Part 5 rescinded

Part 5 of the Principal Regulations is rescinded.

13. Schedule 7 substituted

Schedule 7 to the Principal Regulations is rescinded and the following Schedule is substituted:

SCHEDULE 7 – PROHIBITED HOURS OF USE OF SPECIFIED THINGS

Regulation 14		
Column 1	Column 2	Column 3
<hr/>		

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 13

Things	Days	Hours
1. Mobile machinery, forklift trucks and industrial motor vehicles referred to in Schedules 2 and 3	Monday to Friday	Before 7 a.m. and after 6 p.m.
	Saturday	Before 8 a.m. and after 6 p.m.
	Sundays and statutory holidays as defined in the <i>Statutory Holidays Act 2000</i>	Before 10 a.m. and after 6 p.m.
2. Portable apparatus referred to in Schedule 4	Monday to Friday	Before 7 a.m. and after 6 p.m.
	Saturday	Before 9 a.m. and after 6 p.m.
	Sundays and statutory holidays as defined in the <i>Statutory Holidays Act 2000</i>	Before 10 a.m. and after 6 p.m.
3. Power lawnmowers referred to in Schedule 5	Monday to Friday	Before 7 a.m. and after 8 p.m.
	Saturday	Before 8 a.m. and after 8 p.m.
	Sundays and statutory holidays as defined in the <i>Statutory Holidays Act 2000</i>	Before 10 a.m. and after 8 p.m.
4. Musical instruments and sound amplifying equipment	Monday to Thursday	Before 7 a.m. and after 10 p.m.

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

r. 13

Column 1	Column 2	Column 3
Things	Days	Hours
	Friday	Before 7 a.m. and after midnight
	Saturday	Before 9 a.m. and after midnight
	Sundays and statutory holidays as defined in the <i>Statutory Holidays Act 2000</i>	Before 10 a.m. and after 10 p.m.
5. Motor vehicles, motor vessels and outboard motors (unless the motor vehicle or motor vessel is moving into or out of residential premises)	Monday to Friday	Before 7 a.m. and after 6 p.m.
	Saturday	Before 9 a.m. and after 6 p.m.
	Sundays and statutory holidays as defined in the <i>Statutory Holidays Act 2000</i>	Before 10 a.m. and after 6 p.m.

*Environmental Management and Pollution Control
(Miscellaneous Noise) Amendment Regulations 2009
Statutory Rules 2009, No.*

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 200 .

These regulations are administered in the Department of Environment, Parks, Heritage and the Arts.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations amend the *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004* by –

- (a) making further provision in relation to the days and hours during which certain things may not be used near a residence; and
- (b) prohibiting a person from allowing an intruder alarm in a building or in a vehicle to sound for longer than the prescribed time; and
- (c) prohibiting a person from allowing an intruder alarm in a vehicle to sound while the vehicle's engine is running; and
- (d) removing the power of the Director to issue a Noise Management Procedures Manual and revising certain phrases.

PART B

REGULATORY IMPACT STATEMENT

for the

ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL (MISCELLANEOUS NOISE) AMENDMENT REGULATIONS 2009

March 2009

1. INTRODUCTION

1.1 The purpose of this document

The purpose of this regulatory impact statement (RIS) is to explain proposed amendments to the *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004*, and describe their likely impact on various sectors.

The *Subordinate Legislation Act 1992* (SLA) requires all subordinate legislation be assessed before its introduction. This is to demonstrate that it is in the public interest and will yield a net benefit to the community.

The SLA also requires a RIS to be prepared for new subordinate legislation that imposes a significant cost, burden or disadvantage on any sector of the community.

The Secretary of the Department of Treasury and Finance has given preliminary advice that the following proposed amendments would impose a significant cost, burden or disadvantage on the community and therefore require public interest justification:

- restrictions on the use of chainsaws on residential premises;
- restrictions on the use of chainsaws on non-residential premises;
- restrictions on the use of musical instruments or amplified sound equipment;
- restrictions on the use of motor vehicles, motor vessels and outboard motors; and
- restrictions on the use of intruder (home) alarm systems.

The Secretary has also advised that a number of the proposed amendments are of a minor nature and do not require full consideration in the RIS. These are outlined in Parts 2 and 4.

The RIS has been prepared by the Department of Environment, Parks, Heritage and the Arts (DEPHA), which has developed the proposed amendments and is also responsible for administering the legislation under which they will be made. The RIS:

- outlines the objectives of the proposed regulations;
- describes the scope of each amendment, and, where appropriate, explains the existing regulation that relates to a particular activity;
- outlines the general costs and benefits of the significant amendments and the specific costs and benefits of each amendment;
- explains general and specific alternatives to the proposed amendments;
- assesses the impact of the proposed regulations on competition; and
- demonstrates that the regulations provide the greatest net benefit/least cost and are in the public interest.

1.2 Background to the proposed amendments

Australia has no national regulatory framework for noise control, and national regulations and guidelines cover only a few aspects of the noise environment. In the absence of national provisions the responsibility falls on individual states and territories to develop standards and regulations where appropriate. The matters covered by the proposed amendments are not covered by any Commonwealth or national instrument.

There are also more general reasons for reviewing noise legislation. The World Health Organisation (Berglund et.al., 1999) has published a report on community noise which expresses concern at the deteriorating noise environment in many countries and urges governments to take action.

In Tasmania, it is recognised that the Government has an ongoing responsibility to review and update noise legislation in line with new information and evolving community requirements. Where appropriate, such reviews may involve discussion with other jurisdictions to ensure that recent developments in noise management are considered.

The *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004* support the provisions of the *Environmental Management and Pollution Control Act 1994* (EMPCA) by specifying how noise from various activities and sources is to be managed and controlled. They are generally implemented by local government and Tasmania Police.

1.3 Reasons and objectives for the proposed amendments

The overarching policy objective for the proposed amendments is to achieve, in conjunction with other legislation, the objectives of EMPCA (see Part 2 of Schedule 1) in relation to Tasmania's acoustic environment.

Most of the proposed amendments were included in Part 7 of the Draft Environment Protection Policy (EPP) that was released for public consultation in January 2003. The Draft EPP was withdrawn by the Minister for Environment and Planning in July 2004 when it became apparent that the document required a major revision to satisfy the concerns of stakeholders and the EPP Review Panel.

The Department subsequently made a decision to:

- **prepare a new draft EPP** with a focus on high-level objectives and values;
- **amend the existing regulations** to improve current provisions that deal with neighbourhood noise sources, and introduce new regulations to cover other significant neighbourhood noise sources that were identified in the 2003 Draft EPP (see Part 1.1 above); and
- **amend section 53 of EMPCA**, which deals with the offence of causing environmental nuisance.

These three items have been developed concurrently by the Department to ensure that their provisions are consistent.

1.4 Scope of the proposed amendments

It is proposed to amend eight regulations and one schedule, rescind one regulation and introduce two new regulations, as follows:

Amendments are proposed to:

- Short title (regulation 1);
- Interpretation (regulation 3);
- Measurement of noise (regulation 4);

- Noise emitted from certain portable apparatus (regulation 10);
- Noise emitted from air conditioners (regulation 13);
- Hours of use of certain items (regulation 14);
- Operation of motor vehicles and motor vessels near residential premises (regulation 15);
- Operation of chainsaws (regulation 18); and
- Operation of certain items on residential premises (Schedule 7).

It is proposed to rescind the following regulation:

- Noise Measurement Procedures Manual (regulation 25).

It is proposed to add 2 new regulations:

- Operation of vehicle security alarms (regulation 18A); and
- Operation of intruder alarm systems (regulation 18B).

Minor, consequential amendments are explained in Part 2 of the RIS.

The amendments that seek to restrict or further restrict the operation of chainsaws on residential and non-residential premises, musical instruments or amplified sound equipment, motor vehicles, motor vessels and outboard motors, and intruder (home) alarm systems have been assessed by the Department of Treasury and Finance to be significant and therefore require discussion in the RIS. These amendments are explained and assessed in Part 3 of the RIS.

Amendments relating to hours of use, vehicle security alarms and the measurement of noise have been assessed by the Department of Treasury and Finance as being complementary with legislation of another jurisdiction, and not requiring detailed assessment. They are explained and discussed in Part 4 of the RIS.

The proposed amendments do not address noise from major activities such as industry, commerce and infrastructure, except to the extent that the articles covered by the Regulations may be operated in the course of such activities.

The proposed amendments also do not cover several significant noise sources such as barking dogs, aircraft and on-road motor vehicles, which some people may regard as neighbourhood sources. Noise from these sources is controlled through other legislation and regulatory frameworks. Inclusion of provisions on these sources in the regulations would create needless duplication, and in the case of aircraft the provisions may be unenforceable as they may conflict with Commonwealth legislation.

1.5 Impediments to acoustic environmental quality

Tasmania, with its relatively small population, sparse major industrial facilities and low traffic levels, has the potential for excellent acoustic environmental quality in terms of ambient noise level. Nonetheless, noise levels of particular sources may be a substantial margin above the background level because of the prevalent low background levels; a very difficult problem to overcome in some situations. In addition, noise problems cannot be readily quantified as they may be caused by dominant or intrusive characteristics.

Examples of this are repetitive musical or industrial sounds which may have a low volume but still cause significant annoyance or stress.

Public complaints about noise to the relevant authorities are an indicator of where problems lie. This is because an unsatisfactory acoustic environment often results in annoyance, and annoyance leads to complaints. Based on the results of a survey of public complaints carried out by the then Department of Primary, Industries, Water and Environment during development of the 2003 Draft EPP, the main impediments to a satisfactory acoustic environment are (in order of significance) excessive noise from:

- domestic dogs;
- other domestic sources (parties, workshops, heat pumps, etc);
- secondary industry; and
- motor vehicles and traffic.

A wide range of other sources give rise to public complaints, including building construction, chainsaws and security alarms.

It is notable that neighbourhood noise sources are very significant in terms of public complaints. The 2004 Regulations deal with many of the sources which give rise to complaints, and the proposed amendments will continue this. Further comment on the scope of the proposed amendments may be found in Parts 3 and 4.

1.6 Implementation of the amended regulations

Implementation of the amended regulations will primarily be the responsibility of local government and Tasmania Police.

Enforcement action will be in accordance with the enforcement policies of individual agencies. Local councils have their own enforcement policies and practices and it is likely that the type and level of enforcement by councils will vary to suit the particular community. Various means of enforcing the regulations are available, the main ones being the issue of environmental infringement notices, prosecution under the regulations and the issue of environment protection notices under section 44 of EMPCA. Informal warnings, mediation and education will often be a first step.

1.7 Consultation

Overview of prior consultation

A preliminary workshop was held in July 2005 to discuss the proposed scope of the amendments with local government officers, the Local Government Association of Tasmania (LGAT) and Tasmania Police.

Development of the amendments has since been guided by a Steering Committee with representatives from the Department, Tasmania Police, LGAT, the Department of Health and Human Services and the Department of Primary Industries and Water.

Discussions have also taken place with the Forest Industries Association of Tasmania (FIAT) and the Tasmanian Farmers and Graziers Association (TFGA) in relation to the clauses covering chainsaw usage, and with the community organisation Noise Tasmania Inc. in relation to the general scope of the amendments.

Program for consultation on the proposed amendments

This Regulatory Impact Statement (RIS) and the draft regulations will be released for a six week consultation period. The release of the RIS will be advertised in the State's daily Tasmanian newspapers and in the *Government Gazette*, as required by section 5(2)(a) of the SLA.

The RIS will also be sent directly to councils and other key stakeholders to fulfil the requirements of section 5(2)(b) of the SLA. All comments and submissions received will be considered in accordance with section 5(2)(c).

Submissions will be received at the address shown on the front of this document.

1.8 Assessment of costs and benefits

It is not feasible to quantify costs and benefits for most of the provisions of the proposed regulations, except those relating to residential chainsaw usage where there are permit records which indicate potential savings to government. Local government officers will respond to most enquiries and investigations arising from the amendments and it would be entirely speculative to quantify the numbers and types of investigations, or the dollar benefits and costs of these.

Similarly, it is not possible to quantify the costs and benefits to the community in most instances, even where bureaucratic requirements are likely to be reduced, such as in the case of residential chainsaw use that formerly required a permit. Each person will place their own value on the time they require to deal with government requirements.

Discussion of costs and benefits in the RIS is therefore mostly qualitative, and justification of preferred options is in turn qualitative.

Comment is invited on the potential costs and benefits of the proposed regulations.

2. EXPLANATION OF MINOR AMENDMENTS

2.1 Introduction

This part of the RIS describes the amendments that are consequential to other more significant changes discussed in Part 3. They are as follows:

- Short title (regulation 1) – title to be updated;
- Interpretation (regulation 3) – several definitions will be changed to reflect significant changes to other regulations; and
- Regulations 10, 13 and 15 – replace the term “domestic premises” with “residential premises”.

An assessment under the SLA of the costs and benefits of these amendments is not required.

2.2 Short title (regulation 1)

The title of the regulations will be changed to the *Environmental Management and Pollution Control (Miscellaneous Noise) Amendment Regulations 2009*.

2.3 Interpretation (regulation 3)

It is proposed to make the following changes to the definitions in regulation 3.

- Omit the definition of “domestic premises” and replace it with a definition of “residential premises”. The latter term has been used in proposed changes to regulations 10, 13 and 15 to make the wording consistent with recent amendments to section 53 of EMPCA (see part 2.4).
- Omit the definition of “manual”.
- Insert a definition of “habitable room” to support the proposed change in wording to regulation 14 (see part 4.1).
- Insert definitions of “intruder alarm system” and “vehicle security alarm” to support the proposed new regulations 18A and 18B (see parts 4.2 and 3.7, respectively).

2.4 Noise emitted from certain portable apparatus (regulation 10), Noise emitted from air conditioners (regulation 13) & Operation of motor vehicles and motor vessels near residential premises (regulation 15)

It is proposed to replace the term “domestic premises” with “residential premises” to make the wording of regulations 10, 13 and 15 consistent with recent amendments to section 53 of EMPCA.

3. PROPOSED MAJOR AMENDMENTS REQUIRING AN ASSESSMENT OF COSTS AND BENEFITS

3.1 Introduction

This part of the RIS discusses proposed major amendments to the regulations. The general benefits and costs and of the proposals to the community, industry, state government and local government are described in Parts 3.2 to 3.5.

The amendments that seek to restrict or further restrict the operation of chainsaws on residential and non-residential premises, musical instruments or amplified sound equipment, motor vehicles, motor vessels and outboard motors, and intruder (home) alarm systems have been assessed by the Department of Treasury and Finance to be significant and therefore require detailed discussion in the RIS. These amendments are explained and assessed in Parts 3.6, 3.7 and 3.8.

Part 3 includes material drawn from the RIS for the first draft EPP on Noise and the RIS for the *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004* (Department of Primary Industries, Water and Environment, 2003 & 2004). It includes (where applicable) a description of the current regulation covering the particular activity, an explanation of the preferred option, and a discussion of the costs and benefits relating to each preferred option. Part 3.8 also contains discussion on a specific alternative to the permissible hour restrictions under Schedule 7 of the regulations.

Five general alternative options to the proposed amendments are outlined in Part 5 of the RIS. These are:

- maintain the status quo and rely on the general provisions of primary legislation;
- develop non-mandatory guidelines;
- provide a more powerful general nuisance provision under EMPCA;
- self regulation; and
- economic mechanisms.

3.2 General benefits and costs for the community

Non-auditory health costs of noise

International research now suggests that community noise may pose a general public health risk. Population groups most exposed to noise by virtue of where they live, work and recreate, and those most sensitive to its impacts, may face even greater risks. These groups include infants and the young, shift workers, the elderly, the blind, and those suffering hearing impairment, sleep disorders and other physical and mental health conditions. Potential non-auditory health impacts are summarised below (Commonwealth of Australia, 2004).

Background noise containing sound energies at frequencies similar to those of the spoken voice may mask speech at these and resonant frequencies, depending on the characteristics of the noise and location. The inability to understand speech under normal

conditions is a social handicap that can result in social isolation and withdrawal. Stress reactions as well as difficulties with concentration, fatigue, lack of self-confidence and decreased working capacity, miscommunication and irritation have been reported. Increasing environmental noise will significantly hamper persons with hearing impairments in their ability to interact with the rest of society.

Noise may interfere with sleep in a number of ways:

- causing the sleeper to awaken repeatedly, resulting in poor sleep quality as well as other impacts;
- causing sleep to change from heavier to lighter sleep;
- reducing the percentage and total time in rapid eye movement (REM) sleep;
- increasing body movement;
- changed cardiovascular responses; and
- affecting mood and reducing performance the following day.

In guidelines on environmental noise published in 1980, WHO defined annoyance as “a feeling of displeasure evoked by a noise”. Research has shown that people have widely varying reactions to noise. Individual reactions depend on the characteristics of the noise, the noise source and the individual’s attitude to the noise and its source. In many instances the individual’s reaction is linked with individual beliefs about the effects the noise may have on them as well as other concerns relating to the source such as safety and air pollution. General characteristics of noise which have been found to generate a higher level of annoyance include increasing intensity, higher frequencies and intermittent, irregular, tonal, pulsing and rhythmic noise.

Unexpected noise can distract from social or auditory cues that are important in the workplace and other settings. Studies on school children exposed to excessive noise have shown impacts on memory, reading, motivation, language and speech, annoyance and psychological quality of life. In occupationally exposed populations, tasks requiring auditory signals may be masked or interfered with by noise and this may affect performance. The situation is less clear in regard to non-auditory tasks.

Noise, acting as a stressor, is thought to have an impact on the cardiovascular system through certain stress response mechanisms such as the release of cortisol, adrenalin and noradrenalin which have cascade effects including raising blood pressure and increasing vasoconstriction. Studies of people in occupationally exposed situations have demonstrated that there is epidemiological evidence to suggest that sustained exposure to excessive noise over 5 to 30 years has an impact on the cardiovascular system. The evidence from research on the effects of environmental noise on cardiovascular parameters is not yet conclusive. Some studies have indicated a link between noise and hypertension (increased blood pressure), but the results are not conclusive. There seems to be greater evidence of ischaemic heart disease risk among those exposed to excessive noise levels.

Other health costs of noise

It appears there is a close relationship between noise sensitivity and the propensity to develop or suffer from psychiatric symptoms; however the relationship between noise exposure and mental health remains unclear. Some research suggests sensitivity to noise and annoyance from noise appears to be related to certain types of mental disorder such as depression. Noise as a stressor may produce a range of effects in addition to the cardiovascular effects mentioned above. It has been reported that sudden or impulsive

noise bursts result in stress reactions that included changes in cardiovascular blood pressure and volume, breathing, pulse rate, gastrointestinal motility, endocrine gland excretions and neural activity changes. Psychological effects that have been reported include fear, depression, frustration, irritation, anger, helplessness, sorrow and disappointment. Behavioural examples include aggression, social isolation and substance abuse. Exposure to infrasound or low frequency sound has been found to elicit stress reactions and in some instances resonance responses in vocal cords and internal organs, however additional research is required.

Benefits of the amendments to individual and community health

Taking this discussion of the potential health effects of noise into account, the primary benefit to the community in amending the regulations is expected to be an overall improvement in community health. There is an important caveat to be made in relation to this conclusion. Problem noise tends to be a transient phenomenon which is very difficult to quantify beyond specific, monitored events. This means that at present there is no cost-effective means of measuring and quantifying the overall changes to noise levels that the amendments are expected to bring. There is a similar level of difficulty in separating the health effects of noise in an individual, much less in a community, from the health effects of a multitude of other environmental factors. It is therefore not possible at present to quantify the likely health benefits of the proposed amendments. Nevertheless, it is considered to be a valid conclusion that any reduction in problem noise must have some form of health benefit in terms of reducing the physiological effects on persons who are directly affected by that noise.

For example, if a person suffers sleep deprivation as a result of a neighbour's faulty alarm (see proposed regulation 18B), there must be a positive effect on their health and well-being if the alarm is replaced with one that operates properly. In a similar fashion, if the occupants of a residence or community are deprived of a peaceful night's sleep or an evening's relaxation by a neighbour revving their car, cleaning their outboard motor, using a chainsaw, playing a musical instrument or operating an amplified sound system at inappropriate times (see proposed changes to hours and other conditions in schedule 7 and regulation 18), then the inclusion of these noise sources in the amendments provides a clear means of ameliorating their effects and improving the health of affected citizens.

Other benefits and costs to the community

Apart from the regulatory powers that they will provide, the proposed amendments will also be a useful educational resource for citizens seeking guidance on appropriate times and operating conditions for a range of commonly used equipment.

There may be some limited economic costs incurred in instances where items must be purchased or repaired to comply with the provisions; for example where a new house alarm or car alarm needs to be purchased. As the restrictions are based on accepted modern technology they should not be difficult to comply with using standard equipment.

Changes to hours of usage will clearly benefit some members of the community, and adversely affect others. The aim of the amendments is to define hours of usage that establish a balance between the convenience of individuals and the comfort of the general community. It is considered that the hours which have been selected provide that balance and are in accord with the community's lifestyle. Any hours of usage that are proposed will inevitably have an element of subjectivity and are likely to generate some

disagreement and debate. One of the purposes of the RIS is to draw out that debate and establish whether the proposed hours are, in fact, generally acceptable.

3.3 General benefits and costs for industry

Some of the proposed amendments may restrict the operation of industrial or commercial items of equipment or increase the cost of using them. Nonetheless, the provisions would provide a general benefit by creating a consistent assessment framework for commercial and industrial users of the equipment.

3.4 General benefits and costs for State government

Police share responsibility with local government for enforcement of the regulations, mainly outside of business hours. The Department of Environment, Parks, Heritage and the Arts (Environment Division) is occasionally called upon to provide technical assistance to councils in the investigation of individual public complaints, and it also provides advice on interpretation and application of the regulations. Primarily, though, the Department is responsible for management of Level 2 and Level 3 activities under EMPCA. In the longer term, these responsibilities and the associated workload would remain about the same.

In the short to medium term there is likely to be an increase in workload for the Department. As the public becomes aware of the changes, complaints to councils are also likely to increase and council requirements for advice and assistance from the Department would increase in turn.

State government agencies and government business enterprises are subject to the provisions of the regulations and any amendments. Any costs associated with compliance would ultimately be a cost to the taxpayers of the State.

The State government derives revenue from the issue by authorised officers (mainly police officers) of environmental infringement notices against breaches of the regulations. Revenue is paid into the Environment Protection Fund in accordance with section 71(2) of the Act. Revenue from infringement notices is not expected to change significantly under the proposed changes.

3.5 General benefits and costs for local government

Local government is responsible for enforcement of the provisions of the 2004 Regulations and would be responsible for enforcement of the amendments as they relate to premises/activities regulated by local government. Local government incurs considerable costs in the investigation of neighbourhood noise complaints and enforcement of the regulations. Councils may take the following actions in regard to noise complaints, at associated cost:

- initial receipt and assessment of complaints;
- site inspection(s);
- noise measurements by council officers;
- engagement and briefing of a consultant to take measurements, and evaluation of the consultant's report;
- negotiation with the perpetrator regarding noise abatement measures; and

- issue and enforcement of notices specifying noise abatement requirements.

Additional costs associated with enforcement of the regulations may include:

- the issuing of infringement notices;
- obtaining legal advice on prosecutions;
- preparing evidence for prosecutions; and
- staff appearances in court.

This pattern would not change with the proposed amendments. Councils derive negligible revenue from the issue of environmental infringement notices against breaches of the regulations, and councils have rarely prosecuted breaches of the regulations. Revenue from this source is not expected to change significantly.

3.6 Operation of chainsaws (regulation 18)

Existing provisions

The main provisions for chainsaw usage are regulation 18 and schedule 7, as follows:

Operation of chainsaws

18 (1) A person must not, within 300 metres of domestic premises, operate a chainsaw powered by an internal combustion engine if the person who is in occupation of the premises at the time the chainsaw is being operated does not own the land on which the chainsaw is being operated.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(2) Subregulation (1) does not apply if –

- (a) a permit has been issued under Part 4 in respect of the operation of the chainsaw; or
- (b) the chainsaw is operated by or with the consent of the occupier of the domestic premises.

SCHEDULE 7 - Hours of use (excerpt relating to chainsaw usage)

Regulation 14

Column 1	Column 2	Column 3
Type of apparatus, equipment or motor vehicle	Days	Permissible hours of use
4. Chainsaws referred to in Schedule 6	Monday to Friday	7 a.m. until 6 p.m.
	Saturday	9 a.m. until 6 p.m.
	Sunday, Good Friday and Christmas Day	10 a.m. until 6 p.m.

Proposed amendments

It is proposed to amend regulation 18 so that it defines and prescribes two categories of chainsaw usage within 300 metres of a residential premises. The first category (covered in proposed subregulation 18(2)) deals with chainsaw usage on non-residential premises such as sawmills or wood yards. The second category (covered in proposed subregulation 18(3)) covers chainsaw usage on residential premises.

The proposed new subregulation for non-residential usage is as follows:

18 (2) A person on premises, other than residential premises, must not operate a chainsaw powered by an internal combustion engine within 300 metres of residential premises unless –

(a) the operation of the chainsaw is approved and occurs during the following hours:

(i) Monday to Saturday (inclusive), from 7 a.m. until 6 p.m.;

(ii) Sundays and statutory holidays as defined in the *Statutory Holidays Act 2000*, from 10 a.m. until 6 p.m.; or

(b) the chainsaw is operated by or with the consent of the occupier of the residential premises; or

(c) the occupier of the residential premises owns the premises on which the chainsaw is being operated.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

The proposed new regulation for residential usage is as follows:

18 (3) A person on residential premises must not operate a chainsaw powered by an internal combustion engine within 300 metres of other residential premises unless –

(a) the chainsaw is operated for the purpose of domestic garden maintenance on only one day in any 7-day period and during the following hours:

(i) Monday to Friday (inclusive), from 7 a.m. until 6 p.m.;

(ii) Saturday, from 9 a.m. until 6 p.m.;

(iii) Sundays and statutory holidays as defined in the *Statutory Holidays Act 2000*, from 10 a.m. until 6 p.m.; or

(b) the operation of the chainsaw is approved; or

(c) the chainsaw is operated by or with the consent of the occupier of the other residential premises; or

(d) the occupier of the other residential premises owns the residential premises on which the chainsaw is being operated.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

In addition to these two categories of usage, proposed subregulation 18 (1) defines what “approved” means in subregulations 18(2) and 18(3):

18 (1) In this regulation –

“**approved**” means approved in accordance with any one or more of the following:

(a) a permit issued and in force under Part 4 of these regulations;

(b) a permit issued and in force under the *Land Use Planning and Approvals Act 1993* for a level 1 activity or level 2 activity;

(c) an environment protection notice issued, or caused to be issued, by the Director under section 27 or 44 of the Act;

(d) an environment protection notice issued by a council officer under section 44 of the Act;

(e) an emergency authorization.

Objectives of the proposed amendments

The objectives of the proposed amendments to regulation 18 are to:

1. Recognise the different requirements and noise impacts of residential and non-residential chainsaw usage;
2. Make the regulation easier to interpret by placing the amended hours of usage in regulation 18 instead of schedule 7;
3. Simplify how the regulation is applied by allowing chainsaw usage for the purposes of garden maintenance without the need to obtain formal approval or the consent of neighbours;
4. Update the permissible hours of usage on Saturdays and public holidays for non-residential users;
5. Make the hours of usage more consistent by including all statutory holidays, not just Good Friday and Christmas Day;
6. Clarify what “approved” chainsaw usage means.

Specific reasons for the proposed amendments

Chainsaw usage on residential properties usually involves occasional routine garden maintenance, but may occasionally extend to more significant activities such as cutting up a truckload of firewood logs. Non-residential usage includes log trimming and cutting by sawmills and commercial firewood suppliers. Routine garden maintenance and commercial log cutting are clearly quite different in terms of their character and potential noise impacts. It is therefore proposed to create a subregulation for each type of usage (18(2) and 18(3)) so that the rules are activity-specific (*refer to Objective 1*).

In order to make it easier to interpret the amended regulation 18, it is also proposed to place the 'hours of usage' in regulation 18 instead of schedule 7 (*refer to Objective 2*).

A person within 300m of a domestic premises currently needs to gain formal approval or consent to use a chainsaw, regardless of whether they wish to use it for a brief period to trim dead branches from a tree in their garden, cut up a truckload of firewood logs in their backyard over a period of several days, or use it on a regular basis as part of their business. This is despite the fact that the community is generally more accepting of the occasional noise produced during garden maintenance than of more frequent and prolonged chainsaw noise resulting from someone cutting up a large quantity of firewood for their own use, or from a business operating in a densely populated residential area.

It is therefore proposed under the conditions described in subregulation 18(3) to remove the need to obtain approval or the consent of neighbours if a chainsaw is to be used for occasional garden maintenance, as this places an unnecessary administrative burden on applicants and regulators (*refer to Objective 3*).

The community also recognises that some businesses have a legitimate requirement to use chainsaws for longer periods; for example, the hours of usage for business on Saturday are typically accepted as being slightly longer than those for non-commercial activity (*refer to Objective 4*).

There are also two significant difficulties with the way hours of usage are described and defined under the current regulations. The first is that they are included in schedule 7, meaning that a person who is referring to regulation 18 has to switch between two locations in the printed version to get a full appreciation of how these two aspects interact. The second is that schedule 7 only refers to Good Friday and Christmas Day, meaning that the other statutory holidays do not have any specific regulatory coverage. The other holidays, as defined under the *Statutory Holidays Act 2000*, are New Year's Day, Australia Day, Labour Day, Easter Monday and Tuesday, Anzac Day, the Queen's Birthday and Boxing Day. These need to be included in the regulation so that there is no misunderstanding about the intent of 'holiday' usage (*refer to Objective 5*).

Explanation of the proposed amendments

Subregulation 18(1) defines what gaining an "approval" for chainsaw usage means.

Subregulation 18(2) makes it an offence to use a chainsaw on non-residential premises within 300 metres of a residential premises, unless the usage is approved and within the specified hours; or consent of the resident has been obtained; or the resident owns the premises on which the chainsaw is being used.

Subregulation 18(3) makes it an offence to use a chainsaw on residential premises within 300 metres of other residential premises, unless the usage occurs on only one day in seven within the specified hours and is for domestic garden maintenance; or it has been approved; or consent of the resident has been obtained; or the resident owns the premises on which the chainsaw is being used.

It should be noted that subregulation 18(3) does not include a definition of “domestic garden maintenance”, as it is not feasible to provide a single definition that includes every conceivable situation. However, the intention of the amendments is that domestic garden maintenance would include relatively low-key activities such as trimming dead branches from trees or large shrubs, which can only be done on site. It would not include cutting up a load of firewood logs, which would be highly intrusive in most suburban situations and possibly unnecessary in the sense that there is an alternative option of purchasing pre-cut firewood. If a person wished to undertake such an activity and was unable to gain the consent of their neighbours, it would be more appropriate for them to seek formal approval in accordance with subregulation 18(1).

The offences under subregulations 18(2) and 18(3) carry a maximum penalty of 50 fee units (currently approximately \$6,000) and a further maximum penalty of 5 fee units (approximately \$600) for each day during which the offence continues.

Benefits and costs for the community

The approval and consent requirements in the current regulation 18 place an unnecessary constraint on people wishing to undertake occasional domestic garden maintenance. For example, if there are, say, 30 residences within a 300 metre radius of a property whose owner wishes to use a chainsaw, then consent must be obtained from all occupiers of those residences. Alternatively, a permit must be obtained from the Director of the Environment Protection Authority. The former option is usually impractical under such circumstances, and it would only take one dissenting resident to prevent the chainsaw being used, regardless of the intended duration or nature of that usage. The alternative option of seeking any approval is time-consuming and unnecessarily bureaucratic in many instances.

Those who wish to undertake garden maintenance will therefore gain a significant benefit from proposed subregulation 18(3) which will allow limited chainsaw usage (on one day in seven) as they will no longer need to apply for a permit from the Director of Environmental Management, or seek the consent of neighbours.

There will be a direct, unquantifiable cost to neighbours who object to such usage as they will no longer have any direct input into the consent process, and will have to request their local council to make a determination in contentious cases. However it is not anticipated that the relaxation of usage conditions outlined in subregulation 18(3) will lead to any increase in the level or incidence of chainsaw noise, as the subregulation simply recognises that some types of chainsaw usage do not warrant formal approval.

In relation to proposed subregulation 18(2), residents who live within 300 m of businesses which use chainsaws will potentially be inconvenienced by the earlier allowable starting time of 7am on Saturdays, instead of 9am. It should be noted that the prescribed hours of usage only apply to businesses with an approval to use a chainsaw, and most existing businesses will already have an approval covering weekend activity.

Benefits and costs for industry

The costs and benefits to industry only relate to the provisions for non-residential usage. In summary, there will be minor changes to the permissible hours of chainsaw usage by businesses which use chainsaws within 300 metres of a residential premises.

The extension to the permissible hours on Saturdays is likely to have a slight beneficial effect on these businesses, although it may reduce the amenity of nearby residential properties. The effects would need to be assessed by local or state government as part of any approval process relating to chainsaw operation. Specifying the hours of usage on public holidays other than Good Friday and Christmas Day (10am to 6pm) may have a minor negative effect on business, although in practice many businesses either do not operate on public holidays or already have restricted hours of operation.

Businesses that use chainsaws near residential properties will benefit administratively from a clarification of the available approval options. These include obtaining a permit under the *Land Use Planning and Approvals Act 1993*, an EPN issued under EMPCA, or an emergency authorization issued under EPMCA.

It is not anticipated that there will be any direct costs to industry as a result of the proposed changes to chainsaw usage on residential properties (see regulation 18(3)). Garden maintenance contractors will, however, benefit from the convenience of being able to undertake their work without formal approval in most instances.

Benefits and costs for government

State government will benefit from the introduction of a practical provision allowing limited chainsaw usage for residential garden maintenance without the need for processing permits. As a consequence there should be a reduction in administrative costs and improved relations with the community. It is estimated that the saving would be approximately \$1,000 to \$2,000 per year in assessment time, based on the number of permit applications that have been received in the past year.

In the short term, however, there may be an increase in the number of complaints to councils from residents who are unaware of the relaxation in approval conditions.

There are unlikely to be any significant costs or benefits for government as a result of the relatively minor changes to non-residential chainsaw usage.

Restrictions on competition

The minor changes to permissible hours of usage for non-residential users will apply to all businesses within the State. This means that there will not be any restriction in competition associated with the proposed amendment.

The proposed changes to residential usage do not relate to business activities and will therefore not have any implications for business competition.

Alternative options

General alternative options to the proposed amendments are discussed in Part 5 of the RIS.

3.7 Operation of intruder alarm systems (regulation 18B)

Existing provisions

The current regulations do not contain any provisions to manage intruder alarm systems.

Proposed amendment

The proposed new regulation for intruder alarm systems is as follows:

18B. (1) For the purpose of this regulation, an intruder alarm system that sounds intermittently is taken to sound continuously for the purpose of measuring the period of time for which it sounds.

(2) A person must not use or permit the use of an intruder alarm system if the intruder alarm system emits a continuous noise for more than 5 minutes after it first sounds.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(3) This regulation does not apply to the sounding of an intruder alarm system in an emergency.

Objective of the proposed amendment

The main objective of the proposed new regulation is to reduce the 'noise nuisance' of intruder alarms by limiting the period of time over which an alarm may sound.

Specific reason for the proposed amendment

The specific reason for the new regulation is that complaints to councils about excessive noise from intruder alarms have increased in recent years. This information is derived from a survey undertaken by the then Department of Primary Industries, Water and Environment in 2003 and from subsequent anecdotal evidence provided by local government officers. It is currently not possible to quantify the increase in complaints or the costs of dealing with them because councils deal with a wide range of environmental issues and generally do not keep detailed records of the number of complaints received in relation to each issue. However, in an environment where home security is increasingly valued, it is important to introduce practical rules for operation of intruder alarms in order to minimise the potential for noise nuisance.

Explanation of the proposed amendment

Proposed subregulation 18B (2) makes it an offence for an intruder alarm system to emit a continuous noise for more than 5 minutes after it first sounds. The penalty for a breach of this regulation may attract a maximum penalty of \$6,000 and up to \$600 for each day during which the offence continues (note that one penalty unit is currently equivalent to \$120).

Proposed subregulation 18B (3) provides an exemption in the event of an emergency.

The proposed regulation is based on regulation 53 of the NSW *Protection of the Environment Operations (Noise Control) Regulation 2000*, and is consistent with the 1998 *Australian Standard 2201.1 for Intruder Alarm Systems (Part 1; Systems installed in client's premises)*. The third and latest edition of AS2201.1, which includes a time limit of 5 minutes for a sounding alarm, was published in August 1998.

For practical reasons the proposed regulation specifies a time limit for alarm operation; however, the regulation is not intended to be used as a means of forcing property owners to replace all alarms that do not comply with AS 2201.1. Rather, it is aimed at making it an offence to operate an alarm in a clearly unreasonable manner; for example by repeatedly letting an alarm sound for periods greater than 5 minutes without demonstrating any intention to fix or replace the alarm, or being unable to show that such usage was due to an emergency.

Property owners will also be able to use the regulation to determine whether their alarm is compliant, and to guide them in purchasing a replacement alarm, if required.

An example of an emergency situation would be where a house alarm is deliberately triggered by a resident to attract attention after they have injured themselves, or where their personal safety is under threat from an intruder. Attending police or council officers would be responsible for making a 'common sense' assessment of each individual situation to determine whether an alarm is being used properly.

Benefits and costs for the community

The community will benefit from the establishment of simple, enforceable rules for alarm operation, as opposed to relying on the more general provisions of EMPCA that do not specifically mention intruder alarms. Property owners in particular will benefit from a having a practical means of determining whether an alarm they wish to purchase is compliant in terms of the duration of the sound that it will make during operation.

There will be an improvement in environmental amenity as 'problem' alarms are gradually replaced as a result of the new regulation.

Property owners who are required to replace faulty or non-compliant alarms will have to bear the cost of replacement and installation. A compliant alarm system will cost upwards of several hundred dollars to purchase and install, depending on its technical complexity and whether it is linked to any external monitoring system.

Benefits and costs for industry

Intruder alarms installed after August 1998 should be compliant with AS 2201.1 and therefore of a sufficient standard to comply with the proposed 5 minute time limit in subregulation 18B(2). Alarm manufacturers, suppliers and installers will gain a minor financial benefit in situations where non-compliant alarms (either pre or post August 1998) are replaced as a result of the new regulation. This is only likely to occur after a complaint about a faulty alarm has been investigated and upheld.

There should not be any direct cost to industry as a result of the proposed new regulation.

Benefits and costs for government

Government will benefit from a consistent assessment and compliance framework for dealing with nuisance intruder alarms. Regulatory officers will be able to clearly identify and deal with 'problem' alarms under the proposed regulation by assessing any complaints with reference to the 5 minute time limit for a sounding alarm, without needing to physically enter a property and inspect the alarm in question.

There will be an additional burden to government (mainly local government) arising from processing noise complaints. This will be offset to some extent by the collection of any penalties. It is not possible to quantify the cost of dealing with each complaint as the level of intervention and assessment will vary according to each situation. However, since the time required to deal with a complaint could range from several hours to several days or more in difficult cases, the real costs to government are likely to range from several hundred to several thousand dollars per assessment. These costs would probably be subsumed within existing budgets.

Restrictions on competition

No significant cost impact or restriction on competition is anticipated.

Alternative options

General alternative options to the proposed amendment are:

- Maintain the status quo and rely on the general provisions of primary legislation
- Develop non-mandatory guidelines
- Provide a more powerful general nuisance provision under EMPCA
- Self regulation

These options are discussed in Part 5 of the RIS.

3.8 Hours of use (Schedule 7)

Existing provisions

Schedule 7 in the existing regulations specifies the permissible hours of use for a range of items on domestic premises. The schedule in its present form (see below) does not include amplified sound equipment or vehicles and motors:

SCHEDULE 7 - Hours of use		
Column 1	Column 2	(Regulation 14) Column 3
Type of apparatus, equipment or motor vehicle	Days	Permissible hours of use
1. Mobile machinery, forklift trucks and industrial motor vehicles referred to in Schedules 2 and 3	Monday to Friday	7 a.m. until 6 p.m.
	Saturday	8 a.m. until 6 p.m.
	Sunday, Good Friday and Christmas Day	10 a.m. until 6 p.m.
2. Portable apparatus referred to in Schedule 4	Monday to Friday	7 a.m. until 6 p.m.
	Saturday	9 a.m. until 6 p.m.
	Sunday, Good Friday and Christmas Day	10 a.m. until 6 p.m.
3. Power lawnmowers referred to in Schedule 5	Monday to Friday	7 a.m. until 8 p.m.
	Saturday	8 a.m. until 8 p.m.
	Sunday, Good Friday and Christmas Day	10 a.m. until 8 p.m.
4. Chainsaws referred to in Schedule 6	Monday to Friday	7 a.m. until 6 p.m.
	Saturday	9 a.m. until 6 p.m.
	Sunday, Good Friday and Christmas Day	10 a.m. until 6 p.m.

Proposed amendments

It is proposed to add the following categories of equipment to Schedule 7:

- musical instrument or amplified sound equipment; and
- motor vehicles, motor vessels and outboard motors (unless the motor vehicle or motor vessel is moving into or out of residential premises).

These changes have been assessed as significant by the Secretary of the Department of Treasury and Finance.

It is also proposed to make several relatively minor changes to Schedule 7. These are consequential to amendments discussed in Part 3 of the RIS, and have been assessed as not significant by the Secretary of the Department of Treasury and Finance. The amendments are as follows:

- Instead of 'permissible hours of use', Schedule 7 will specify the hours during which certain items must not be used on residential premises, subject to the amended audibility criterion in regulation 14 (see Part 4.1).
- The amended Schedule 7 will clarify that the time limitations for Sunday will also apply to all statutory public holidays (as defined in the *Statutory Holidays Act 2000*), in addition to Good Friday and Christmas Day. This is consistent with the proposed changes to chainsaw usage in regulation 18.
- Chainsaws will be removed from the Schedule because hours of usage will be defined in the proposed new regulation 18 (see part 3.6).

Objective of amendments assessed as significant

The main objective of the amendments is to make the regulations more comprehensive and effective by incorporating the two additional categories of equipment that have a high potential to cause 'nuisance' noise. The combined aim of Schedule 7 and r14 (see Part 4.1 of the RIS) is to reduce 'neighbourhood' noise to acceptable levels during the late evening, night time and early morning.

Specific reason for the amendments

These categories of equipment were originally included in the regulatory section of the 2003 Draft Environment Protection Policy (EPP) on Noise which was being prepared at approximately the same time as the current (2004) regulations. The EPP was formally withdrawn by the then Minister for Primary Industries, Water and Environment in November 2004. As a consequence the equipment in question remained without any specific regulatory coverage.

Explanation of amendments assessed as significant

The prevalence and power rating of electrically amplified sound equipment (stereo equipment, television sets, radio sets and the like) have both increased considerably in recent years, and the level of complaints about noise from these sources has also risen.

Similarly, complaints about vehicle noise on residential premises have increased in recent years, in line with higher levels of vehicle ownership. The complaints centre on the annoyance caused by revving motors; for example, when they are being tuned in a driveway. It is presently not cost-effective to quantify the number of such complaints or the costs of dealing with them, because local government and police officers have to divide their time between a very wide range of matters and their resources generally do not allow for detailed record-keeping and categorisation of complaints received.

The revised schedule 7, used in conjunction with the amended regulation 14, would allow musical instruments and electrically amplified sound equipment to be used at higher volumes until 10.00pm on Monday – Thursday and Sunday, and until midnight on Friday and Saturday.

Similarly, noise from motor vehicles, motor vessels and outboard motors on residential premises will be allowable at higher than audible levels (as assessed on other residential premises) between 7am and 6pm Monday to Friday, between 9am to 6pm on Saturday and 10am and 6pm on Sunday and public holidays.

The inclusion of motor vehicles, motor vessels and outboard motors in Schedule 7 is not aimed at vehicle movements in and out of a residence, unless the accompanying noise is clearly excessive and intentional. It would restrict audible usage of this equipment to between 7am and 6pm (Monday to Friday), between 9am and 6pm on Saturday and between 10am and 6pm on all other days.

These time ranges have been chosen because they are consistent with restrictions on the use of most other items in Schedule 7, and are considered to represent a reasonable balance between community needs and individual needs.

Note that the change from 'permissible hours of use' to prohibited hours is a wording change that does not alter the actual hours during which particular pieces of equipment currently listed in Schedule 7 may be used (subject to regulation 14).

Amplified music and 'revving' motor vehicles (e.g. while a car is being tuned in a driveway) are two of the most common sources of noise complaints and stress in the community, particularly when they occur late at night or early in the morning. The proposed restrictions on hours of usage (used in conjunction with the audibility criterion in regulation 14) provide a reasonable balance between the varying social needs of the community. They will not have a discernible economic impact as they will only apply to residential situations.

Benefits and costs for the community

The changes to Schedule 7 directly address community concerns about increasing instances and levels of neighbourhood noise, particularly during times that are generally accepted as periods of sleep and rest. Those who do not agree that these hours provide a reasonable time range for audibility that is consistent with the use of other items in Schedule 7 may be disadvantaged by the proposal. However, it is considered that the overall health and well-being of the majority of the population will benefit from the proposed night-time restrictions on loud music and vehicle noise. In situations where all neighbours who could be affected do not object to 'out of hours' noise, the regulations are highly unlikely to be enforced as there will not be a complainant to trigger action.

There may be a social cost attached to an effective prohibition on loud night-time music and vehicle noise, particularly in areas of high-density housing. For example, it would not be possible to flush the engine on an outboard motor after 6pm if the resultant noise was audible in a neighbouring residence. Nevertheless the community generally expects its members to adjust their activities, including noise output, to suit their living circumstances and the proximity of neighbours. The amendments would still allow reasonable scope for evening enjoyment of music, television, etc. After these times the music or amplified sound must not be audible within another residence, which would still permit normal television viewing and low volume operation of stereo equipment in most cases.

The proposed changes are also consistent with social expectations of limited business activity in residential areas on public holidays and other 'out of hours' periods, and would generally improve the quality of life in residential communities.

Benefits and costs for industry

The changes to Schedule 7 relate to equipment that is used on residential premises during the late evening, night time and early morning. The demand for such equipment is unlikely to be reduced by its inclusion in the schedule and it is therefore considered unlikely that there will be an adverse effect on equipment sales.

The amendment to the schedule would only apply to industry on sites where residential premises are being constructed. The amendment will have no effect during the range of working hours that the community generally accepts as 'daytime' (see Schedule 7) as it is aimed at maintaining low noise levels in the early morning, evening and night time. During these 'out of hours' times there may be a very minor restriction on building – related activity; for example, where equipment such as forklifts is being used onsite for unloading building materials. This would be more likely to occur in closely built up areas where there is little or no opportunity for noise attenuation. It should be noted that the amendment will not apply to vehicles moving into or out of residential premises.

Industry will gain a minor benefit from clarification that business activity in residential areas should not occur outside the hours specified in Schedule 7, unless it is very clear that any noise generated cannot be heard in neighbouring residences.

Benefits and costs for government

There may be an increase in the number of complaints received by local government and police as the community becomes aware that there are enforceable hours of usage for the new categories of equipment. Councils and the police will, however, benefit from having a much clearer standard by which to assess whether a noise from such equipment is acceptable or not. This has the potential to reduce government costs as it should take less time to make a determination in many cases.

Restrictions on competition

It is considered that the amendment will not place any restrictions on competition.

Alternative options

Music or amplified sound within the permissible hours may be audible within a residence but may be dealt with under section 53 or other general provisions of EMPCA where it causes a nuisance.

If the new provision were not introduced, music, amplified sound or vehicle noise which is audible inside neighbouring premises at night would continue to be dealt with under section 53 or other general provisions of the Act where it causes a nuisance. The introduction of the new provisions would support the general provisions of the Act by providing a single, clear criterion in relation to nuisance and should therefore provide a much greater degree of amenity protection at night.

More stringent 'permissible hours' provisions could be introduced; for example the permissible hours could end at 6.00 pm instead of 10.00 pm. This could unreasonably restrict evening social activities such as parties and outdoor activities in warmer weather.

It would be difficult to determine an appropriate noise limit for domestic music noise, amplified or otherwise, and measurement may be difficult in some circumstances. This option can be given consideration at a later stage if the permissible hours provision proves inadequate.

Non-mandatory provisions would result in less uniformity and certainty than mandatory provisions, and would afford less protection from nuisance.

These alternative options to the proposed amendments are discussed in more detail in Part 5 of the RIS.

4. OTHER SIGNIFICANT AMENDMENTS

The Secretary of the Department of Treasury and Finance has issued preliminary advice that the following proposed amendments to regulations 14, 18A, 4 and 25 are substantially uniform or complementary with legislation of the Commonwealth or another state or territory and are therefore exempt from complying with sections 4 and 5 of the SLA in accordance with clause 3 of Part 1 of Schedule 3.

Explanations and discussion of these amendments are nevertheless provided in the following sections to assist stakeholders in assessing the merits of each proposal.

4.1 Hours of use of certain items on any domestic premises (regulation 14)

Existing provisions

Regulation 14 is used in conjunction with Schedule 7. The current version of this regulation is as follows:

14. Hours of use of certain items

(1) Except for the days and periods specified in Column 2 and 3 of Schedule 7, a person must not operate any item specified in Column 1 of that Schedule on any domestic premises, or on any site where domestic premises are being constructed, if the noise emitted from the item exceeds 45dB(A) when measured on any other domestic premises.

Penalty:

Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(2) Subregulation (1) does not apply to the operation, outside the days and hours specified in Column 2 and 3 of Schedule 7, of any mobile machinery if a permit has been issued under Part 4 in respect of that mobile machinery.

Proposed amendments

The proposed new version of regulation 14 is as follows:

14. Prohibited hours of use of specified things

(1) A person must not operate anything specified in Column 1 of Schedule 7 during the days and hours specified in relation to that thing in Columns 2 and 3 of that Schedule on any residential premises, or on any site where residential premises are being constructed, if the noise emitted by the thing is, or is likely to be, audible in a habitable room in any other residential premises (regardless of whether or not all windows and doors to that habitable room are shut).

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(2) Subregulation (1) does not apply to the operation, during the days and hours specified in Column 2 and 3 of Schedule 7, of any mobile machinery if a permit has been issued under Part 4 in respect of that mobile machinery.

Objective of the proposed amendments

The main objective of the amendment is to define a practical means of establishing whether a noise is audible inside a residence.

Specific reasons for the proposed amendments

The current regulation effectively means that a regulatory officer has to use a sound level meter to determine whether a noise is audible inside a residence (i.e. greater than 45dB(A)). In many instances this is impractical and may also expose the complainant or regulatory officer to retribution from the person creating the noise.

Explanation of the proposed amendments

It is proposed to remove the numerical sound level limit in regulation 14 and replace it with a subjective assessment by a council officer or authorized officer as to whether a particular sound is, or is likely to be, audible in a habitable room in any other domestic premises. This test would apply regardless of whether or not a door or window to that habitable room is open. Note that the term 'habitable room' has been added to clarify which rooms in a residential premises may be assessed in terms of noise effects. The proposed amendment is compatible with, and supports the new evidentiary provisions for 'environmental nuisance' that are given in section 53A of the amended EMPCA.

Benefits and costs for the community

The community will benefit from the shift to a subjective 'audibility' criterion in regulation 14, as a technical measurement will no longer be needed, making noise level assessments quicker and more cost effective. The community indirectly pays for the costs of any technical measurements required to deal with a noise complaint, either through taxes or rates, and will therefore gain an indirect economic benefit from the use of a subjective noise level assessment. The amendment will also help to protect the identity of complainants by removing the need for an officer to enter a complainant's premises when making an assessment.

Benefits and costs for industry

Industry will not gain any direct benefit from the amended regulation. Home based businesses which produce noise that can be heard on other residential properties may be subject to more scrutiny as it will be easier to make an assessment of audibility than is currently the case. Examples of such businesses would include those that do woodworking, welding or vehicle repairs. However, it should be noted that the intent of regulation 14 (used in conjunction with schedule 7) will remain unchanged; i.e. noise from one residential property should not be audible inside a residence outside specified hours.

Benefits and costs for government

Compliance with the noise level limit currently requires measurement with a sound level meter, which is a potentially restrictive and unwieldy method of assessing noise nuisance. Sound level meters are not available to all council officers involved in noise complaints, and in any case require specialised training and regular calibration if meaningful results are to be obtained. In practice, this has made this part of the regulations very difficult to enforce.

The amended regulation 14 provides a more practical approach to the assessment of 'nuisance' noise from a residential premises as it removes the need for a council officer or authorized officer to use an expensive and time-consuming technical method of measurement when dealing with a noise complaint. In such situations there will be a reduction in costs by the introduction of a subjective appraisal of noise nuisance.

Local Government will therefore benefit from an improved definition of usage conditions, although there may be a short term increase in complaints and hence compliance costs as the community becomes aware of the changes to regulation 14.

Restrictions on competition

It is considered that the amendment will not place any restrictions on competition.

Alternative options

General alternative options to the proposed amendment are:

- Maintain the status quo and rely on the general provisions of primary legislation
- Develop non-mandatory guidelines
- Provide a more powerful general nuisance provision under EMPCA
- Self regulation

These options are discussed in Part 5 of the RIS.

4.2 Operation of vehicle security alarms (regulation 18A)

Existing provisions

The current regulations do not contain any provisions to manage vehicle security alarms.

Proposed new regulation

The proposed new regulation for vehicle security alarms is as follows:

18A. Operation of vehicle security alarms

(1) For the purpose of this regulation –

(a) a person is taken to cause or permit a vehicle security alarm to be sounded if the person leaves a motor vehicle unattended while the vehicle security alarm is turned on and it subsequently sounds; and

(b) a vehicle security alarm that sounds intermittently is taken to sound continuously for the purpose of measuring the period of time for which it sounds.

(2) A person must not cause or permit a vehicle security alarm to be continuously sounded –

(a) in the case of a vehicle security alarm installed in a motor vehicle manufactured before 1 September 1997, for more than 90 seconds after it first sounds; or

(b) in the case of a vehicle security alarm installed in a motor vehicle manufactured on or after 1 September 1997, for more than 45 seconds after it first sounds.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(3) A person must not use or permit the use of a vehicle security alarm installed in a motor vehicle manufactured on or after 1 September 1997 if the noise emitted by the vehicle security alarm exceeds 115dB(A).

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(4) A person must not cause or permit a vehicle security alarm to be sounded while the engine of the motor vehicle in which the alarm is installed is running or the ignition of the motor vehicle is turned on.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

Objective of the proposed new regulation

The main objective of the proposed new regulation is to reduce the 'noise nuisance' of intruder alarms.

Specific reason for the proposed new regulation

Complaints to councils about excessive noise from vehicle security alarms have increased in recent years. This is based on recent anecdotal information from council officers as well as a 2003 survey conducted by the then Department of Primary Industries, Water and Environment. It is not feasible to quantify changes in the number of complaints as most councils do not store specific data on each category of environmental complaint, such as noise, or on the costs of dealing with complaints. As older vehicles are phased out, the proportion of vehicles with security alarms will increase, and noise nuisance may become even more prevalent.

Explanation of the proposed new regulation

A new regulation is proposed to cover the operation of security alarms in unattended vehicles. They would not apply when an alarm operates for the proper purpose; i.e. when a vehicle is broken into, or in the case of an emergency situation such as a vehicle accident, or accidental window breakage. They are directed at penalising unwarranted or faulty operation. Attending police or council officers will be responsible for making a 'common sense' assessment of each individual situation to determine whether the alarm is being used properly. The provisions are based on those used in the *NSW Protection of the Environment Operations (Noise Control) Regulations 2000* - regulations 23, 24 and 25.

The Secretary of the Department of Treasury and Finance has issued preliminary advice that the proposal to regulate vehicle security alarms is substantially uniform or complementary with NSW legislation and is therefore exempt from complying with sections 4 and 5 of the SLA in accordance with clause 3 of Part 1 of Schedule 3. Nevertheless, discussion of the likely impacts of this proposal has been included in this part as the new regulation represents a significant change to the current situation.

In summary, the new regulation would require that:

- For vehicles manufactured before 1 September 1997, an alarm must not sound continuously for more than 90 seconds;
- For vehicles manufactured on or after 1 September 1997, an alarm must not sound continuously for more than 45 seconds, and the sound level must not exceed 115 dB(A); and
- Vehicle security alarms not be sounded while the engine of a motor vehicle is running or the ignition is turned on.

The decrease in allowable duration of a sounding alarm from 90 seconds for early model vehicles to 45 seconds for late model vehicles reflects changes in vehicle design and manufacture in the mid-1990s. This provision is particularly appropriate for security alarms as the duration of noise is the dominant nuisance factor.

The proposed maximum sound level of 115dB(A) for vehicles manufactured on or after 1 September 1997 is consistent with the requirements of Australian Standard / New Zealand Standard 3749.1:2003 (Intruder alarm systems – road vehicles, Part 1 – performance requirements).

The penalty for a breach of this regulation will be a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues. Note that one penalty unit is currently equivalent to \$120.

Benefits and costs for the community

The community as a whole will benefit from the introduction of clear rules for controlling faulty or malfunctioning alarms, particularly those that cause a nuisance during the night. As a consequence there is likely to be an overall improvement in environmental amenity, as well as an improvement in the way complaints about noise alarms are dealt with. It should be noted that isolated breaches of the regulations are unlikely to result in a financial penalty if the alarm owner takes prompt action to address the situation. The community will also benefit from the proposed qualification that 'proper' usage of an alarm, including emergency usage, will not be subject to the proposed regulation.

Persons with faulty alarms will have to bear the cost of repair or replacement. It is considered that this is a reasonable requirement which would fall under the category of vehicle maintenance.

Benefits and costs for industry

The provisions are consistent with vehicle manufacturing standards and should not place any additional burden on vehicle manufacturers. They have been in place in NSW for some 10 years and were negotiated with vehicle manufacturers in the mid 1990s.

There may be some economic benefit to alarm manufacturers and installers who are called upon to repair or replace faulty or non-compliant systems.

Benefits and costs for government

Government will benefit from a consistent assessment and compliance framework for dealing with nuisance vehicle alarms. There will be an additional burden arising from processing noise complaints; however this should be offset by the collection of any penalties.

Restrictions on competition

The provisions represent accepted modern technology and should not be difficult to comply with nor unduly restrict competition. In addition, the provisions are generally consistent with restrictions in other Australian jurisdictions, and therefore represent no special disadvantage in relation to Tasmania as far as the manufacture or sale of articles is concerned.

Alternative options

General alternative options to the proposed amendment are:

- Maintain the status quo and rely on the general provisions of primary legislation
- Develop non-mandatory guidelines
- Provide a more powerful general nuisance provision under EMPCA
- Self regulation

These are discussed in Part 5 of the RIS.

4.3 Measurement of Noise (regulation 4) and Noise Measurement Procedures Manual (regulation 25)

Existing provisions

The current regulations dealing with the measurement of noise are as follows:

4. Measurement of noise

For the purposes of these regulations, but subject to regulation 25(6) –

- (a) any measurement of noise or any test of a noise source must be carried out in accordance with the manual; and
- (b) the level of any noise is taken to be the sound pressure level of that noise expressed in dB(A).

25. Noise Measurement Procedures Manual

(1) The Director is to prepare and issue a Noise Measurement Procedures Manual to regulate the carrying out of any measurement of noise or any test of a noise source for the purposes of these regulations.

(2) The manual may include or refer to any code, standard, guideline, rule or other document relating to the measurement of noise that the Director considers appropriate.

(3) The Director may amend the manual as he or she considers appropriate.

(4) In subregulation (3), “amend” means –

- (a) omit any matter; and
- (b) insert any matter; and
- (c) omit any matter and substitute any other matter.

(5) The Director is to notify the issue and any amendment of the manual in the *Gazette*.

(6) The Director may require or authorise a measurement of noise or a test of a noise source to be carried out otherwise than in accordance with the manual, for a specific purpose, if the Director considers it appropriate in the circumstances.

Proposed amendments

It is proposed to delete regulation 25 and amend regulation 4 so that it reads as follows:

4. Measurement of noise

For the purposes of these regulations –

(a) any measurement of noise or any test of a noise source must be carried out in accordance with the “Noise Measurement Procedures Manual” issued by the Director in July 2004 and as amended in July 2005; and

(b) the level of any noise is taken to be the A-weighted sound pressure level of that noise expressed in dB(A).

Objectives of the proposed amendments

The main objective of the amendments is to remove the power of the Director Environment Protection Authority (formerly the Director of Environmental Management) to issue and amend the manual by notice in the Gazette without seeking stakeholder input.

Specific reasons for the proposed amendments

The Director’s power to amend the manual was put forward as a specific concern of the forestry industry during preliminary consultation on the amendments.

Explanation of the proposed amendments

The current regulations specify noise levels for numerous activities and sources. It is often necessary for regulatory authorities to take measurements in the field to check compliance with the noise levels, or to require the person responsible for an activity or source to arrange for measurements to be taken. It is therefore necessary to specify the manner in which measurements are to be taken and the locations and conditions under which it is to be done.

Measurements must be accurate, comparable and consistent and instrumentation must comply with the Commonwealth’s *National Measurement Act 1960*, so that measurements may be legally defensible in tribunals and courts. Similarly, it is necessary to specify requirements for calculations and estimates of noise level where those are required for assessment purposes.

Regulation 4 currently requires that any measurement, calculation or estimate of noise or noise test for the purposes of the regulations must be made in accordance with the *Noise Measurement Procedures Manual*. The manual was issued by the then Department of Primary Industries, Water and Environment in July 2004 and amended in July 2005. The manual provides methods for measuring, estimating and assessing sound pressure levels. Regulation 4 also defines the level of any noise to be the sound pressure level of that noise expressed in dB(A). Its provisions are drawn from various Australian Standards and similar documents, and from the measurement documents of other jurisdictions.

The manual is for use by any of the following persons:

- scientific/technical officers in the Environment Division of DEPHA;
- scientific/technical officers in other government agencies;
- council environmental health officers;
- scientific/technical officers in industry; and
- specialist consultants.

Regulation 25 mainly outlines the powers of the Director in relation to issuing and amending the manual. It has been recognised that the Director could potentially amend the manual without seeking input or comments from stakeholders, and that this may lead to changes which do not take their concerns into account.

The proposed new version of regulation 4 requires any noise measurement or test to be carried out in accordance with the current edition of the manual. The definition of “manual” is therefore no longer required in regulation 3, as discussed in part 2.3 of the RIS. Note that this amendment is linked to the proposed rescission of regulation 25 (see explanation below).

In addition, it is proposed to substitute the term “sound pressure level” in regulation 4 with the more technically precise “A-weighted sound pressure level”.

It is also proposed to remove the power of the Director Environment Protection Authority to issue and amend the manual by notice in the Gazette without seeking stakeholder input. As a consequence, any future revision of the manual will require an amendment to the regulations, including a formal review process to which stakeholders can contribute. The most practical means of achieving this is to rescind regulation 25.

Regulation 4 must therefore be amended so that it refers to a specific edition of the manual, which is currently the 2004 version (as amended in July 2005).

Benefits and costs for the community and government

The main benefit to community and government will be in having a clearly defined consultation requirement when changes to the manual are being considered. However, there will be a significant cost to the community and government associated with any future, non-trivial revision of the manual as each revision will also require an amendment to the Regulations. This is a time-consuming and costly process that must be undertaken in accordance with the requirements of the *Environmental Management and Pollution Control Act 1994* and the *Subordinate Legislation Act 1992*.

Benefits and costs for industry

Most businesses in the State will not be directly affected by the proposed amendments as they relate to technical measurement of noise sources.

The industrial sector does, however, have a direct interest in the amendments as its operations are occasionally subject to noise measurement for the purposes of government permitting and compliance with environmental legislation and the regulations. This sector will benefit from having a statutory right to contribute to any future revisions of the manual, although it will have to bear its own administrative costs resulting from any involvement.

Restrictions on competition

There will not be any restriction in competition associated with the proposed amendment.

Alternative options

An alternative option is to maintain regulations 4 and 25 in their current form. This is not considered to be a viable option because of industry concerns that the current regulations allow the Director Environment Protection Authority to amend the manual without industry consultation.

General alternative options are discussed in Part 5.

5. ALTERNATIVES TO THE PROPOSED AMENDMENTS

5.1 Maintain the status quo and rely on the general provisions of primary legislation

The general provisions of primary legislation could be relied upon to address neighbourhood noise issues on a case-by-case basis. These include the general provisions of EMPCA, in particular the recently amended section 53 (environmental nuisance offences) and section 44 (environment protection notices). For example, section 53 now provides authorised officers and council officers with greater individual discretion to deem a noise to be an environmental nuisance and take appropriate action. The opinion of an authorised officer or council officer is deemed sufficient evidence to secure a prosecution, seize items or issue notices. The advantages of this approach are removal of the need to take noise measurements in some instances, simplification of the assessment procedure where there is doubt about the reasonableness of a complaint and simplification of noise control generally. The greater administrative efficiency may provide significant cost savings. In general, however, it is considered that the EMPCA amendments will be required in addition to the regulation amendments, rather than as a separate option.

The nuisance provisions of the *Local Government Act 1993* may also be used by councils. Noise control conditions relating to specific activities may be included in permits issued under the *Land Use Planning and Approvals Act 1993*. Other approval instruments such as place of assembly licenses and liquor licenses and permits may include noise control conditions.

For sources which have a small potential for nuisance, special regulatory provisions are unnecessary and the general provisions of EMPCA and other legislation should suffice to address occasional problems. Where no nuisance exists then general provisions can remain unutilised; an appropriate response where there is no benefit in government intervention.

For those sources which have significant potential for nuisance, some government intervention beyond primary legislation is necessary to minimise nuisance. A case-by-case approach using the general provisions of EMPCA or other legislation would be administratively and technically inefficient for neighbourhood noise sources, given the very large number of such sources. Appropriate criteria would need to be established and implemented in each and every case. Guidelines could be issued, but it is unlikely that they would be applied consistently by the various councils and the Police. This would result in inequities and inconsistent protection of the acoustic environment.

5.2 Develop non-mandatory guidelines

As would be the case in using the general provisions of EMPCA or other legislation, developing non-mandatory guidelines for each type of noise source covered by the proposed major amendments would be inefficient and take considerably longer to research and develop than regulations.

Furthermore, it is unlikely that they would be applied consistently by the various councils and the Police. This would result in inequities and inconsistent protection of the acoustic environment. As there would be no compunction to comply with the guidelines, persistent or blatant noise offences would be likely to continue, and public confidence in the

regulatory abilities of government would be undermined. It should also be noted that most other Australian jurisdictions have mandatory requirements covering noise sources.

Individual guidelines would, however, have the benefit of focussing directly on specific activities and items of equipment.

5.3 Self regulation

Self-regulation is an approach whereby businesses and individuals are given a degree of freedom to determine the means by which they will meet established standards. Because of this freedom, persons may face increased penalties for breaches of generally applicable standards which are specified in legislation. Self-regulation allows for reduced inspections by regulators, with resources being redirected to prosecutions and policy development.

To promote satisfactory environmental performance, businesses may be required to acquire certification to ISO14001 or equivalent quality assurance standards for environmental management systems. Self-regulation will sometimes be supported and steered by regulatory authorities through the provision of guidelines, public education and information and financial incentives.

A variant of self-regulation is co-regulation, whereby there is formal provision for cooperative decision making between regulatory authorities and businesses or individuals on environmental standards or case-specific requirements.

The advantages of self-regulation include greater freedom of action by businesses and individuals, greater internalisation of costs by polluters, and potential reductions in costs to government. The disadvantages include greater uncertainty, greater likelihood of litigation, substantial expense for quality assurance certification (a particular burden on small business and individuals) and reduction of the regulatory authority role to a strictly reactive one (potentially allowing serious environmental harm or nuisance to occur as a result of negligence or cost cutting).

Self-regulation would not seem to be a practical option for the control of neighbourhood noise sources, because of the very large number of sources and the high probability of breaches occurring, and because of the incapacity of many operators to adequately self-regulate.

5.4 Economic mechanisms

There is a recent trend to structure environmental regulation so as to provide economic incentives to polluters to reduce pollution, to allocate pollution abatement resources more efficiently and to properly reflect the 'polluter pays' principle. The two main instruments for achieving this are emission charges and tradeable emission permits.

Emission charges place a tax on each unit of pollution or on each unit produced above a certain threshold, to provide an incentive to reduce the total amount of pollution in a cost-effective manner.

Tradeable emission permits attempt to create a market by establishing and enforcing pollution property rights through a permit quota system. A regulatory authority determines

the aggregate emission level and issues permits which will achieve the desired aggregate level. Ownership of permits allows an industrial operator to emit pollution to the extent of the permits held. Expansion necessitates the purchase of additional permits or implementation of better pollution control, and surplus permits may be sold.

The advantages of economic mechanisms are:

- they are self-regulatory to a degree, allowing polluters to determine the type and extent of pollution control in a cost-efficient manner;
- they allow the regulator to manipulate the level of pollution by changing the emission charges or the aggregate emission levels; and
- there can be a strong incentive for polluters to take advantage of the latest available abatement technology or to develop their own.

The disadvantages of economic mechanisms, generally speaking, are the:

- potential for emission charges to be set too low, with polluters preferring to pay the charge rather than control the pollution;
- potential for emission charges to be set too high, with polluters being forced to reduce production because of the high marginal cost of production or in extreme cases to cease production;
- complexity of planning and implementation;
- need for high level, costly, detailed and difficult to obtain information on pollution sources and ambient pollution levels (regulatory costs are usually much higher than for conventional regulation);
- tendency for point source emissions to be concentrated among a few sources, particularly major industries, causing localised pollution problems; and
- necessity for a viable market in the case of tradeable permits.

As far as can be determined, pollution taxes and tradeable permit schemes have been used exclusively for the reduction of air and water pollution and nowhere have they been applied to the reduction of noise pollution (with the exception of an aircraft noise emission charge scheme at British airports).

It is doubtful that it would be feasible to apply economic mechanisms to the control of noise in Tasmania at present. Because of the highly variable nature of noise emissions and transmission, continuous or frequent monitoring of sources and averaging in accordance with specified formulas would be necessary. A large amount of research would be required to determine the relative contributions of the various sources. This may be an expensive, lengthy and ground-breaking exercise, with no guarantee of success.

This approach is particularly inappropriate for the minor neighbourhood sources which are the subject of the proposed regulations, operated as they are by a very large number of private households and small businesses. Localised noise pollution would be particularly severe in some situations, and the cost of taxes or permits may have unacceptable social or economic consequences. Administration costs for regulatory authorities would be extremely high, given the very large number of sources that would need to be registered and monitored and the relative difficulty of gaining access to them.

6. GREATEST NET BENEFIT/LEAST COST

The main benefits of the proposed amendments will be:

- Practical rules governing sound levels, hours of operation and measurement of significant neighbourhood noise sources that are consistent with current community expectations;
- A freeing up of restrictions on chainsaw usage for limited garden maintenance;
- Improved public confidence in the ability of government to manage neighbourhood noise;
- Improved environmental amenity and human health given the potential reductions in noise pollution; and
- Mandatory consultation when the *Noise Measurement Procedures Manual* is revised.

The main costs associated with the proposed amendments will be:

- the requirement for people to change their behaviour in accordance with the proposed new hours of use provisions;
- potentially increased costs in the short term to local government and police due to a potential increase in complaints;
- Minor reductions in the allowable hours of audible commercial vehicle and chainsaw usage in residential areas;
- Potential penalties related to breaches of the amended regulations;
- Potential costs to repair or replace faulty vehicle and intruder alarms; and
- Increased government and industry administrative costs associated with future reviews of the *Noise Measurement Procedures Manual*, as these will require an amendment to the regulations.

It is considered that the listed benefits, supported by the more detailed discussion in Parts 3 and of the RIS, are likely to outweigh the identified costs and will provide a net public benefit. It is therefore recommended that the 2004 Regulations are amended as proposed.

7. REFERENCES

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