



ENVIRONMENTAL DEFENDER'S OFFICE (ACT)

Noise Pollution in the ACT

*Frequently asked questions about dealing with noise pollution
in the ACT*

The law in this booklet is current as at 30 July 2010

About the Environmental Defender's Office (ACT) Inc.

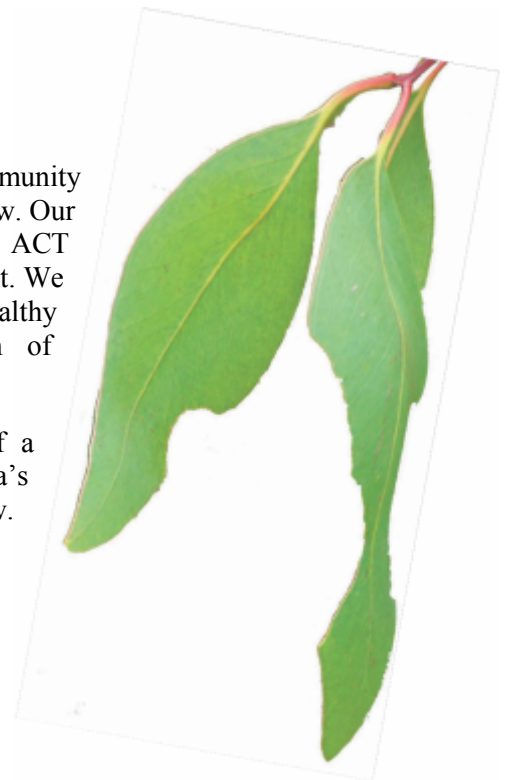
The Environmental Defender's Office (ACT) Inc ('EDO') is a Community Legal Centre practising public interest planning and environment law. Our mission is to support and empower individuals and groups in the ACT who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, and advice.

In addition to ACT-based activities, the EDO is a member of a national network of EDOs working collectively to protect Australia's environment through public interest planning and environmental law.

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SEEK LEGAL ADVICE REGARDING SPECIFIC CASES

While all care has been taken in preparing this publication, it is not a substitute for legal advice in individual cases. For any specific questions, seek legal advice.

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1.0 Introduction

1.1 *How is noise pollution regulated in the ACT?*

Generally, noise pollution is regulated by the *Environment Protection Act 1997* ('the Act') and the *Environment Protection Regulation 2005* ('the Regulations'). However, certain types of noise are excluded from this scheme, such as noise from aircraft or people (see below at paragraph 1.2).

Noise at certain levels is taken to be a pollutant (see regulation 25 and section 5 of the Act). It is an offence for someone to make a noise in the ACT that causes environmental harm, where an affected person has made a complaint about that noise, and where the noise emitted is louder than the noise standard [Regs. 25 and 39 and ss. 137 to 139 of the Act]. See below at paragraph 1.3 for further detail.

The Environment Protection Authority (EPA), a statutory office within the ACT government Department of the Environment, Climate Change, Energy and Water, is responsible for regulating noise in the ACT.

1.2 *What types of noise pollution are covered by the environmental protection legislation?*

The environment protection legislation prohibits noise at levels set out in the Regulations (see below at paragraph 1.3), subject to certain exceptions. The environment protection legislation does not apply to noise generated by:

- trains
- aircraft
- hot air balloons
- cars on public roads (although it can cover car engines being warmed up in a driveway)
- animals
- people (where it only involves the person's body, for example, rowdy behaviour, although it does cover noise from people using other things, for example, drumming).

For complaints about any of these types of noises, you will need to contact agencies other than the EPA (see below at Part 5 for more information).

The following activities are exempt from the noise standards:

- noise emitted in the course of protecting life or property, for example, a fire emergency
- noise emitted in the course of preventing, minimising or remedying another environmental harm, for example, noise from pumps required to clean up a spill [Regs. 26 and 27]
- noise emitted by an activity for which approval, such as an environmental authorisation, has been granted (for example, an environmental authorisation may be granted for a motor sports event or outdoor concert)
- certain types of noise set out in Schedule 2, table 2.3 of the Regulations, where relevant conditions are met (for example, noise is made within specified times). These exclusions include noise emitted by primary production, warming up a car engine, approved building works, car or building alarms, commercial waste collection, maintaining gardens, and carrying out maintenance or repair (see below at Part 4 for more information).

1.3 What are the relevant noise standards?

Noise standards are prescribed in the Regulations and set the acceptable noise levels. If the noise is louder than the prescribed standard, it is taken to cause environmental harm, and is an offence under the environment protection legislation. The applicable noise standard will depend on the zone in which you are located and the time at which the noise occurs.

Location	7am-10pm (8am-10pm Sunday & Public Holidays)	10pm-7am (10pm-8am Sunday & Public Holidays)
ZONE A: Industrial areas	65 dB(A)	55 dB(A)
ZONE B: Civic centre and other major town centres (Belconnen, Gungahlin, Woden & Tuggeranong) and land in Central National Area (City)	60 dB(A)	50 dB(A)
ZONE C: Group centres and office areas such as Dickson and Kingston, and land in Central National Area	55 dB(A)	45 dB(A)
ZONE D: Commercial areas - smaller local centres such as Griffith and Lyneham	50 dB(A)	35 dB(A)
ZONE E: land in a restricted access, recreation zone or a broadacre zone	50 dB(A)	40 dB(A)
ZONE F: land in a commercial CZ5 zone, a TSZ2 services zone, a community facility zone or a leisure and accommodation zone	same as the noise standard for the adjoining noise zone with the loudest noise standard for the time period	
ZONE G: Residential Areas and all other areas	45 dB(A)	35 dB(A)

There are a number of circumstances (detailed above at paragraph 1.2) where noise levels can be above these standards.

1.4 How do I know what zone I am in?

Schedule 2, Part 2.1 of the Regulations provide a more detailed description of the noise zones (legislation is available online at the ACT legislation register). The noise zones are based on the equivalent zones set out in the ACT Territory Plan. Maps of ACT planning zones, which are referenced in the Regulations, are also available at the ACT Legislation Register.

- 1.5 What if I live in an apartment or townhouse complex?** If you live in a unit, the applicable noise standard in relation to noise emitted from another unit within the block is 5dB(a) below the noise standard that would otherwise apply. This lower threshold also applies where there is a common wall between your premises and the premises from which the noise is emitted [Reg. 24].
- 1.6 Can I make a complaint about noise coming from the ACT if I live in NSW?** The Act and regulations apply to noise made in the ACT regardless of whether the person affected by the noise is inside or outside the ACT [Reg. 22, 25 and 39]. Therefore, a person in NSW can make a complaint about noise being made in the ACT. The noise zones include land in the Queanbeyan City industrial zone (Zone A), land in Queanbeyan city business zone (Zone B), land in Queanbeyan city special uses zone (Zone F) and all other NSW land in Zone G.
- 1.7 What can I do if the noise being made is in NSW and I live in the ACT?** The Act only covers noise made in the ACT. Noise made in NSW may be covered by NSW legislation. Check the NSW EDO website for further information (edo.org.au/edonsw).
- 1.8 What can I do about excessive noise?** Once you have identified the source of the noise, if possible, talk to the person or persons responsible first to see if you can find a solution. In some cases, they may not even realise that they are disturbing anyone else, or a compromise may be possible. Legal avenues to address noise pollution can be time consuming and the process can be long. The ACT noise pollution website has tips on talking to your neighbour about noise. The Conflict Resolution Service may also be able to assist in the resolution of the dispute (see Part 5 below for contact details).
- If it is not possible to talk to the person responsible or an attempt does not solve the problem, lodge a complaint with the relevant authority.

2.0 Making a complaint

2.1 Can anyone make a complaint? A complaint about noise covered by the Environment Protection Act (see paragraph 1.2) can only be made by an ‘affected person’ as defined under the Act. This is the occupier of a place that is affected by noise being emitted from a place in the ACT (see the definitions of ‘affected person’ and ‘affected place’ under regulation 21). An occupier includes someone who rents or owns a place.

2.2 Who can I make a complaint to? Complaints in relation to noise regulated by the environment protection legislation (see paragraph 1.2) can be made to the Environment Protection Authority, an office within the ACT Department of the Environment, Climate Change, Energy and Water.

The contact details for the Department are:

Postal Address: Department of Environment, Climate Change,
Energy and Water
GPO Box 158
Canberra City ACT 2601

Street Address: Levels 2 and 3
Macarther House Annex
12 Wattle Street
Lyneham ACT

Phone: 13 22 81

Facsimile: (02) 6207 6084

Email: environment@act.gov.au

2.3 What type of evidence do I need? Before making a complaint, you must identify the source of the noise and preferably the address from where the noise is coming from. You do not need to provide evidence of the specific noise level. If you do wish to try and measure the noise to determine whether the prescribed noise standards (see paragraph 1.3) have been exceeded you may be able to measure the noise levels with a sound level meter. Alternatively, the EPA’s information sheet title ‘noise in residential area’ available on the Noise website contains a useful guide on the types of noises which equate to particular decibel levels.

**2.4 *How do I
measure the
noise?***

Noise must be measured from the ‘compliance point’ for the place from where the noise is coming from [Reg. 30]. This point will depend on the type of land and activity. Generally, it is any point as near as practical to the boundary of the land from where the noise is coming [Reg. 32] or, for unleased land, any point as near as practical at least 5 metres from the source of the noise. However, if the activity has some form of approval, the compliance point may be stated in this approval [Regs. 34 and 35]. Compliance points may vary where the noise is emitted from a different noise zone [Reg. 37].

Where the noise is coming from a unit you measure the noise from any point in any of the other units or as near as practical to the boundary of the unit’s land. Similarly, if the noise is from a premises with a common wall, the compliance point is anywhere in the second premises [Reg. 38].

Noise measurements must be taken in a certain way (see regulation 31). You may be able to measure the noise levels with a sound level meter. Measurements must also be made in accordance with the ACT Noise Measurement Manual, available at legislation [act.gov.au/di/2009-234/current/pdf/2009-234.pdf](https://www.legislation.act.gov.au/di/2009-234/current/pdf/2009-234.pdf). Alternatively, the EPA’s information sheet title ‘noise in residential area’ contains a useful guide on the types of noises which equate to particular decibel levels.

3.0 Once the complaint is made

- 3.1 What does the EPA do with my complaint?** Once the EPA receives a complaint, it will usually write to the person allegedly making the noise, advising them of their responsibilities under the legislation and inviting them to discuss the issue. If the matter is not resolved at this stage and the noise continues, you should make another complaint. On receipt of this second complaint, the EPA will usually visit your property or the affected place, and take noise measurements to confirm if the noise is in breach of the legislation.
- If the noise is found to be above the prescribed levels, the EPA may issue a warning letter, on-the-spot fine or an Environmental Protection Order. Breach of such an order is a serious offence.
- 3.2 What options are available to the EPA to deal with the noise?** It is an offence to make noise louder than the noise standard as it is deemed to cause environmental harm [Regs. 25 and 39]. This could cover, for example, playing a musical instrument and using a vacuum cleaner. It is also an offence for the occupier of a place to allow noise louder than the noise standard to be emitted from a thing in the place [Regs. 25 and 39]. This could include, for example, a swimming pool pump or an air conditioner.
- Some activities that are acceptable to the community may be permitted above the noise standards so long as certain conditions are satisfied, for example times at which the noise occurs [see paragraph 1.2 above].
- If a person is found to have committed one of these offences, the EPA may issue an infringement notice with an on the spot fine (currently \$200) [Reg. 7, Schedule 1 *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005*]. If the fine is not paid after a final notice is given, the EPA may take the offender to court to be prosecuted. In this case a maximum penalty of 10 penalty units applies (currently \$1 100 for an individual or \$5 500 for a corporation) [Reg. 39].
- 3.3 How long will it take to find out the outcome of my complaint?** No time limits are specified for the investigation and resolution of complaints under the Act.
- 3.4 Can I appeal a decision?** Decisions to issue an EPO, one form of legislative option available to the EPA to deal with noise complaints, can be appealed [s.136B].

3.5 *What if the noise continues?*

If the noise continues after a complaint is made and a warning letter or on-the-spot fine is issued, you can make a second complaint to the EPA. The EPA may issue an EPO based on a continuing contravention of the Act or contravention of an environmental authorisation, if one exists. The EPO will specify details of the alleged contravention of the Act (nature, day, time, place). The EPO may impose reasonable requirements on the person including to stop a particular activity or to take specified action. It is an offence to contravene an EPO. If the EPO relates to emitting noise louder than the noise standard, the maximum penalty is 10 penalty units (currently \$1 100 for an individual or \$5 500 for a corporation) [s. 126 and Reg. 39].

It is also an offence to cause an 'environmental nuisance' which is defined to include noise disturbance where it is an unreasonable interference with someone's enjoyment of a place or area [s.141]. A maximum penalty of 50 penalty units applies (currently \$5 500 for an individual or \$27 500 for a corporation).

In addition a person may take a common law action for nuisance [s.9]. If you are considering legal action you should seek legal advice.

Private nuisance occurs when someone substantially and unreasonably interferes with or disturbs someone else's ordinary and reasonable use of the land they own or occupy.

Nuisance may be used to address some environmental concerns, including interference with enjoyment of property caused by noise. The question of whether or not the interference amounts to nuisance is one of degree and will depend on the circumstances of the case. The Court will apply a balancing act with the reasons for the noise against the detriment suffered by the individual. In determining whether the nuisance has occurred, the Court may consider:

- the frequency, extent and nature of the interference. For example, in the case of nuisance caused by noise, noise in the middle of the night or at other quiet times will be more likely to be found to be a nuisance;
- the ordinary use of land in the area;
- whether the use of the land causing the nuisance was ordinary and reasonable.

4.0 Common noise complaints

- 4.1 Air Conditioners** The Act regulates noise from air conditioners and these should operate within the prescribed noise standards (see paragraph 1.3 above). The EPA's information sheet on Air Conditioner Noise in Residential Areas provides useful information (available at noise.act.gov.au/more.htm).
- 4.2 Aircraft noise** Aircraft noise is regulated under the *Commonwealth Air Navigation Act 1920*.
- Generally civil aircraft operating in Australia must comply with the *Commonwealth Airports Act 1996* and meet noise standards specified in the *Air Navigation (Aircraft Noise) Regulations 1984* (Cth). You can lodge concerns about aircraft noise with Airservices Australia (National Noise Enquiry Line on 1800 802 584 or online form available at airservicesaustralia.com).
- 4.3 Barking dogs** Noise disturbances from dogs, such as excessive barking, are regulated under the *Domestic Animals Act 2000*. Noise complaints about dogs can be reported to Domestic Animal Services (a unit within the Department of Territory and Municipal Services). You can contact them on 13 22 81. Information on this unit is available at tams.act.gov.au/live/pets/domestic_animal_services.
- 4.4 Car noises (next door or passing on the street)** Excessive and frequent revving of cars on your next door neighbour's property may be covered by the environment protection legislation. However, vehicles may exceed the applicable noise standard for up to 5 minutes to warm up the engine. It can be longer than this if the vehicle operating manual specifies a longer period.
- Complaints about noisy motor vehicles on the road can be made to Road User Services (a unit within the Department of Territory and Municipal Services). You can contact them on 13 22 81.
- 4.5 Construction work** Approved building work can exceed the prescribed noise levels, if specified requirements are complied with [Reg. 29 and Schedule 2, table 2.3 of the Regulations]. For example, building work can exceed noise limits within specified hours so long as it is complies with the noise reduction requirements of Australian Standard 2436. Generally, construction work must start no earlier than between 6am and 8am and finish by 8pm. The allowable times depend on the work type and day of week [Schedule 2, table 2.3, item 5].
- Maintenance or repair work (so long as it is no longer than 40 hours in any 8 week period) and work on non-arterial roads is allowed between 7am and 8pm, except on Sundays and public holidays, when it can not start until 8am. To come within this exception any equipment must be used in accordance with relevant instructions. There are no conditions on noise emitted in the course of constructing or maintaining a major road.

- 4.6 Garbage collection** Commercial waste collection must be undertaken in accordance with an accredited code of practice under the Act [Schedule 2, table 2.3, item 18 of the Regulations]. The EPA's Sound in the City information sheet (available at noise.act.gov.au/more.htm) states that city and town centre collection is allowed from 2am to 10pm, and from 5am to 10pm in Manuka and Kingston group centres.
- 4.7 Neighbour lawn mowing** Garden work, including lawn mowing, is allowed between 7am and 8pm (or until 10pm for gardening on non-residential land). On Sundays and public holidays garden work cannot start until 8am [Schedule 2, table 2.3, items 3 and 4 of the Regulations].
- 4.8 Neighbours using motorbikes on their property** The Act applies to motorbike noise on a neighbouring property if the noise exceeds the prescribed noise limits for that zone.
- 4.9 Nightclub noise** Nightclubs are located in centres with varying noise limits prescribed under the regulations depending on where they are located (see paragraph 1.3 above). Noise from nightclub music is covered by the Act. A complaint can be made to the EPA if the noise exceeds these prescribed limits.
- For unreasonable noise from patrons you can contact the police or the Office of Regulatory Services on (02) 6207 0562.
- Further information is available from the EPA's Live Music & Entertainment Noise fact sheet (available at noise.act.gov.au/more.htm).
- 4.10 Noisy neighbours** The environment protection legislation does not apply to noise made by a person using only his or her body (for example, shouting). Contact your local police station regarding complaints about this type of noise.
- The Act does apply to noise made by people using items such as musical instruments or stereos. In these cases you can contact the EPA (see paragraph 2.1 above).
- 4.11 Outdoor concerts** Large outdoor concerts require an environmental authorisation, issued under the Act [s.42(1) and Schedule 1 to the Act]. The concert noise must be in line with the issued environmental authorisation, which may specify higher noise standards than those specified under the Regulations.
- Smaller concerts do not require an authorisation but must comply with noise standards.
- The Environment Protection Policy on Outdoor Concert Noise guides how the EPA issues environmental authorisations for outdoor concerts under the Act. This policy is available on the ACT government noise pollution website (see Part 5 below).

4.12 *Sporting events*

Motor racing events require environmental authorisations, issued under the Act [S.42(1) and Schedule 1 to the Act]. The event noise must be in line with the issued environmental authorisation, which may specify a higher noise standards than those specified under the Regulations.

The Environment Protection Policy on Motor Sport Noise guides how the EPA issues environmental authorisations for motor racing sporting events under the Act. This policy is available on the ACT government noise pollution website (see Part 5 below).

5.0 Useful information

5.1 *Where can I go for more information?*

ACT Civil and Administrative Tribunal ('ACAT')

Website: acat.act.gov.au

ACT Commissioner for Sustainability and the Environment

Phone: (02) 6207 2626
 Email: EnvComm@act.gov.au
 Website: environmentcommissioner.act.gov.au

ACT Department of the Environment, Climate Change, Energy and Water

Postal Address: Department of the Environment, Climate Change,
 Energy and Water
 GPO Box 158
 Canberra City ACT 2601
 Street Address: Levels 2 and 3
 Macarther House Annex
 12 Wattle Street
 Lyneham ACT
 Phone: 13 22 81
 Website: environment.act.gov.au
 Email: environment@act.gov.au

ACT Department of the Territory and Municipal Services ('TAMS')

Phone: 13 22 81
 Website: tams.act.gov.au

ACT Government Noise Pollution

Website: noise.act.gov.au

ACT Ombudsman

Phone: 1300 362 072
 Website: ombudsman.act.gov.au

Conflict Resolution Service

Website: crs.org.au
 Phone: (02) 6162 4050

Environmental Defender's Office (ACT) ('EDO')

Street Address: Level 1/14 Childers Street
 Canberra City ACT 2601
 Phone: (02) 6243 3460
 Website: edo.org.au/edoact

5.2 *Legal advice*

LEGAL ADVICE SHOULD BE SOUGHT IN SPECIFIC CASES

While all care has been taken in the preparation of this publication, it is not a substitute for legal advice in individual cases. For any specific questions you should seek legal advice.

6.0 Dictionary

ACAT	ACT Civil and Administrative Tribunal
Act	<i>Environment Protection Act 1997</i>
EPA	Environment Protection Authority
EDO	Environmental Defender's Office (ACT) Inc
EPO	Environment Protection Order
Minister	ACT Minister for the Environment, Climate Change, Energy and Water, currently Simon Corbell
Regulations	<i>Environment Protection Regulation 2005</i>