

# Protection of the Environment Operations (Noise Control) Regulation 2008

## ***New provisions affecting motor vehicles***

This information sheet summarises changes to the way noise from motor vehicles will be regulated under the Protection of the Environment Operations (Noise Control) Regulation 2008 (the 'Regulation'). The new Regulation generally commences on 1 March 2008, except where otherwise specified.

The Department of Environment and Climate Change (DECC) received a total of 227 submissions on the draft Regulation, the vast majority of which supported the proposed changes. However some additional amendments have been made as a result of the comments received.

For more information on the changes, visit DECC's website at [www.environment.nsw.gov.au/noise/index.htm](http://www.environment.nsw.gov.au/noise/index.htm)

### *Summary of new provisions*

#### **Incorporating Australian Design Rule 83/00 (clauses 4 and 12)**

To align NSW with recent changes to national vehicle design requirements, the new Regulation requires motor vehicles certified as meeting Australian Design Rule (ADR) 83/00 to comply with the signature exhaust noise limit established for the vehicle when the model is certified. ADR 83/00 prescribes a drive-by noise test that all vehicles, including motorcycles, must satisfy to gain certification, as well as a model-specific stationary exhaust noise test, which is used to determine the vehicle's in-service 'signature' exhaust noise level limit.

The prescribed maximum stationary exhaust noise limits for vehicles manufactured to earlier ADRs, provided in Schedule 1 of the Regulation, have not changed. The new Regulation provides that the maximum permitted exhaust noise level for vehicles certified to ADR 83/00 is:

- for vehicles with identification plate dates up to and including 1 March 2010 – the higher of either the ADR 83/00 signature level plus 5 decibels (dB(A)) or the Schedule 1 level, or
- for vehicles with an identification plate date after 1 March 2010 – the ADR 83/00 signature level plus 5 dB(A).

It has been agreed nationally that a 5 dB(A) allowance should be permitted in relation to the in-service signature exhaust noise level limit to allow for variations between vehicles and 'wear and tear' and the Regulation provides for this.

The staged commencement of ADR 83/00 was requested by industry to take account of those vehicles certified to the new standard from 2005 which had been modified. This staged introduction will also allow time for the federal Department of Infrastructure, Transport, Regional Development and Local Government to publish a workable list of the signature levels on its website and aftermarket muffler manufacturers to alter their manufacturing processes to provide systems that can meet the new noise levels.

The drive-by test for the new ADR is indicative of the actual noise levels vehicles emit on the road which will be 2-3 dB(A) lower than currently for all vehicles. The new level for cars is 74 dB(A), down from 77 dB(A). The level for motorcycles over 250 cc is 80 dB(A), a reduction of 2 dB(A). Heavy vehicle levels depend on the gross vehicle mass and fuel type.

### **Opinion of an authorised officer must be reasonable (clauses 5 and 18)**

The new Regulation enables police and DECC officers to conduct a simple visual test and aural check to determine if a vehicle's noise control equipment is defective. This provides a practical enforcement mechanism which avoids the cost and time associated with formal noise testing where it is not strictly needed. The Regulation provides that the opinion of an 'authorised or enforcement officer' must be 'reasonable' when determining whether noise control equipment on vehicles is defective. This will assist in ensuring a balanced and fair approach is taken by officers when making these tests and checks.

A total of 86% of the 49 submissions that commented on this issue during the public consultation supported the change.

### **Difference between requirements of clauses 5, 12 and 18 (clauses 5 and 18)**

Concerns were previously raised about the subjective nature of the provisions in the former Regulation's clause 5 (regarding the sale of vehicles) and clause 18 (regarding the use of vehicles) that required a vehicle's engine and exhaust noise levels to be no greater than they were originally. Meanwhile, clause 12 required that a vehicle's exhaust noise must not exceed the prescribed noise levels. DECC uses clause 12 to enforce the prescribed noise limits in its roadside operations at key locations. Sound level meters are always used by DECC officers to determine if exhaust noise exceeds the prescribed noise limits. However, in many other areas of the state, exhaust noise from vehicles is controlled by the NSW Police using clause 18 of the Regulation.

Clauses 5 and 18 now require that exhaust noise does not exceed the prescribed limits, meaning an offence would only occur if an officer reasonably believed that the motor vehicle was capable of emitting exhaust noise at a level above the prescribed noise level for that type of motor vehicle.

### **Road-related areas (clause 12)**

Modified (and therefore generally noisy) vehicles are often used on road-related areas, such as public car parks located in noise-sensitive neighbourhoods. Noise from these vehicles can cause significant impacts, particularly when they are used on the weekend and at night. In the past the maximum noise level limits only applied to motor vehicles used on roads, but this has been extended to road-related areas in the new Regulation.

Of the 49 submissions that commented on this issue during the public consultation, 92% supported the change.

DECC has also agreed to industry suggestions that the Regulation provide a defence for vehicles that are being used on roads or road-related areas that are a part of an authorised motor sport event.

### **Statutory warnings (clauses 14 and 15)**

For noise related to vehicles being used on residential premises and refrigeration units fitted to vehicles, statutory warnings are required to be given to those responsible for the noise. It is an offence if the noise re-occurs within 28 days of the warning being given. The former Regulation allowed council and police officers and members of the public to issue these warnings. In practice, regulators tended not to rely on statutory warnings by members of the public as they might not have been made in a clear and understandable manner. As a result, the new Regulation removes the ability for members of the public to issue statutory warnings.

A total of 95% of the 44 submissions that commented on this issue during the public consultation supported the change.

### **Noise control equipment to be securely in place (clause 18)**

Between 5% and 10% of vehicles tested by DECC have been temporarily modified in order to pass the noise test. The former Regulation required noise control equipment to be 'securely in

place'. This is retained in the new Regulation which is extended to make it an offence to use 'temporary noise reduction devices, packing or valves' on motor vehicles that are used on roads and related areas.

The new terms are defined in the Regulation and cover items that are contained within or introduced into the exhaust system that are not substantially welded or riveted into place or are adjustable. The new provisions do not take effect until 1 September 2008 to give vehicle owners sufficient notice to rectify equipment if necessary and provide a reasonable period for importers and manufacturers to supply retailers with appropriate aftermarket stock. A defence is provided for:

- any vehicle that had baffles that were not substantially welded or riveted into place or an adjustable device fitted at the time of manufacture
- any motorcycle that has baffles that are bolted or otherwise securely fastened in place rather than substantially welded or riveted into place.

The defence for removable baffles for all motorcycles has been provided because a significant number of standard original and standard aftermarket exhaust systems have baffles that are bolted or otherwise securely fastened in place. However all motorcycles are still subject to the provisions of clause 18 which makes it an offence to remove noise control equipment from a vehicle and not replace it.

#### **Defective noise control equipment (clause 18)**

The former Regulation prohibited the replacement of a muffler system with a system that contained fewer mufflers than originally fitted by the vehicle manufacturer. However, control of vehicle noise relates more to the design of the muffler system than the number of mufflers and the requirement on the number of mufflers has been removed.

Of the 75 submissions that commented on this issue during the public consultation, 87% supported the change.

#### **Excessive sounding of motor vehicle intruder alarms (clause 24)**

Police and council records indicate that a significant number of complaints are made about vehicle alarms. Alarms that sound for excessive periods can cause sleep disturbance and have a considerable impact on community amenity. The new Regulation requires that a person must not cause or permit a vehicle intruder alarm to sound for more than 90 seconds for vehicles manufactured before 1 September 1997 or 45 seconds for vehicles manufactured on or after that date.

The former Regulation provided a defence which allowed these limits to be exceeded in cases of attempted theft, accident or vandalism. This was problematic to enforce as there is evidence that many products sold in NSW are prone to false alarms forcing councils and the police to establish what had caused an alarm to sound before taking regulatory action. The defence provision has been removed for vehicles that will be manufactured after 1 March 2009.

This 12-month period will provide manufacturers with time to adjust to the change and ensure that alarms are designed to sound for no more than 45 seconds (whether continuously or intermittently) no matter what activates them. This will discourage the use of poor quality car alarms and prompt exploration of other more effective ways of reducing vehicle theft, such as engine immobilisers. The removal of the defence provision makes the requirements for motor vehicle alarms consistent with those for building alarms. Where a genuine loss has been suffered because of a vehicle break-in and an alarm sounds for an excessive period, council and police may still exercise discretion as to whether to impose a fine for a faulty alarm.

A total of 94% of the 48 submissions that commented on this issue during the public consultation supported the change.

### **Penalties associated with excessive sounding of vehicle alarms (clause 24)**

Although alarms in vehicles manufactured before 1 September 1997 must not sound for more than 90 seconds or 45 seconds for vehicles manufactured on or after this date, they often sound for much longer. To prevent this, a tiered system of penalties applies, with the penalty level linked to the time the alarm sounds beyond the permitted time. The former tiered system was introduced in 1997 but the police and councils continued to receive a large number of complaints about long-sounding alarms. The new Regulation has reduced the time an alarm may sound before a higher penalty is incurred. This aims to provide an incentive to car owners to correct faulty systems and better reflects the level of nuisance caused during the sounding period.

The following table shows the former and new time periods associated with the tiered penalties:

<b>Penalty Notice (for individuals)</b>	<b>Time periods for which alarm sounds beyond the permitted time limit</b>	
	<b>Former time periods</b>	<b>New time periods</b>
\$200	Up to 24 hours	Up to 4 hours
\$400	More than 24 hours and up to 48 hours	More than 4 hours and up to 8 hours
\$600	More than 48 hours	More than 8 hours

Of the 48 submissions that commented on this issue during the public consultation, 96% supported the change.

### **Noise testing procedures (clause 54)**

The motor vehicle testing procedures in the Regulation have been replaced with the *National stationary exhaust noise testing procedures for in-service motor vehicles*. This is to meet obligations to apply national standards for motor vehicles, wherever possible.

Forty-four submissions commented on this issue during the public consultation and 93% of them supported the change.