

Queensland



Subordinate Legislation 1999 No. 297

*Environmental Protection Act 1994*

*Justices Act 1886*

**ENVIRONMENTAL PROTECTION  
AMENDMENT REGULATION (No. 2) 1999**

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## **PART 1—PRELIMINARY**

### **Short title**

1. This regulation may be cited as the *Environmental Protection Amendment Regulation (No. 2) 1999*.

### **Commencement**

2. Part 3 commences on 1 February 2000.

## **PART 2—AMENDMENT OF ENVIRONMENTAL PROTECTION REGULATION 1998**

### **Regulation amended in pt 2**

3. This part amends the *Environmental Protection Regulation 1998*.

### **Insertion of new pt 2A**

4. After part 2—

*insert—*

## **‘PART 2A—ENVIRONMENTAL NUISANCE**

### *‘Division 1—Preliminary*

#### *‘Subdivision 1—Object of part and its achievement*

### **‘Object of pt 2A**

‘6B. The object of this part is to help to protect Queensland’s environment from environmental nuisance.

**‘How object is achieved**

‘6C. To achieve the object, this part—

- (a) provides for nuisance abatement notices to control emissions that cause unlawful environmental nuisance; and
- (b) creates offences for specific types of noise of a minor nature.<sup>1</sup>

**‘Subdivision 2—Standard definitions****‘Definitions for pt 2A**

‘6D. In this part—

“**affected building**”, for noise, means any building, or any part of a building, including, for example, the building from which the noise is made, at which the noise can be heard.

“**AS 1055**” means AS 1055—1997 Acoustics—Description and measurement of environmental noise.<sup>2</sup>

“**at**”, a place or premises, includes in or on the place or premises.

“**audible noise**” see section 6E.

“**background noise level**” means the background A-weighted sound pressure level under AS 1055.<sup>3</sup>

“**builder**” means a person who, under the *Queensland Building Services Authority Act 1991*, holds, or who is required to hold, a licence or an owner builder permit.

“**building**” includes a structure of any type and part of a building or structure.

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<sup>1</sup> For the achievement of the object, see also the noise policy, part 2 (Application and object).

<sup>2</sup> A copy of AS 1055 may be inspected, free of charge, at the department’s office at 160 Ann Street, Brisbane.

<sup>3</sup> See AS 1055.1, paragraph 3.7, definition “Background A-weighted sound pressure level”.

**“building contractor”** means a person who is employed or engaged—

- (a) by a builder to carry out building work; or
- (b) by someone else to carry out building work for a builder.

**“building site”** means a place where building work is being, or is about to be, carried out at which a sign must, under the *Queensland Building Services Authority Act 1991*, section 52, be exhibited.

**“building work”** means—

- (a) an activity (a **“building activity”**) as follows—
  - (i) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building;
  - (ii) providing airconditioning, drainage, heating, lighting, sewerage, ventilation or water supply for a building; or
- (b) excavating or filling—
  - (i) for, or incidental to, a building activity; or
  - (ii) that may adversely affect the stability of a building, whether on the land on which the building is situated or on adjoining land; or
- (c) supporting (whether vertically or laterally) land for a building activity.

**“complainant”** means a person who has made a nuisance complaint, for which a rejection notice has not been given.

**“educational institution”** means—

- (a) a State educational institution or a non-State school under the *Education (General Provisions) Act 1989*; or
- (b) a State college under the *Vocational Education, Training and Employment Act 1991*; or
- (c) a university.

**“emission”** means an emission of ash, dust, fumes, light, noise, odour or smoke.

**“general emission criteria”** means the general emission criteria under section 6S.

**“indoor venue”** means a building, other than a licensed premises, used for musical, sporting or other entertainment or for cultural or religious activities.

*Examples of ‘use’ of a building for definition “indoor venue”—*

- 10 pin bowling
- concerts
- indoor cricket
- religious worship
- squash.

**“licensed premises”** means licensed premises under the *Liquor Act 1992*.

**“noise emission criteria”** means the noise emission criteria under section 6T.

**“noise offence”** means an offence against division 4.

**“noise offence exemption”** see section 6ZG(1).

**“nuisance abatement notice”** means a nuisance abatement notice given under division 3.

**“nuisance complaint”** means a complaint made under section 6L for which a rejection notice has not been given.

**“open-air event”** means an open-air activity, competition, concert, display or race.

**“power boat”** means a power driven watercraft, including, for example, a jet ski or other power driven personal watercraft.

**“railway”** means a private or public railway or railway facility.

*Examples of a ‘railway facility’—*

- a railway bridge
- a railway communications system
- a railway marshalling station and yard
- a railway track
- works built for a railway.



**“rejection notice”** see section 6M(3).

**“relevant nuisance complaint”**, for an emission, means a nuisance complaint made about—

- (a) the emission; or
- (b) another emission of the same type if the same person—
  - (i) is, or may have been, a responsible person for both emissions; or
  - (ii) allowed, or may have allowed, both emissions to happen.

**“responsible person”**, for an emission, means—

- (a) a person who makes the emission, causes it to be made or is in control of its cause; or
- (b) if the emission is animal noise—
  - (i) the animal’s owner; or
  - (ii) a person who has care or control of the animal.

**“source noise”** see section 6ZN.

**“unlawful environmental nuisance”** see section 6F.

### *‘Subdivision 3—Meaning of audible noise*

#### **‘Meaning of “audible noise”**

**‘6E.(1) “Audible noise”** means noise that can be heard by any individual who is an occupier of an affected building.

**‘(2)** For subsection (1), the occupier can hear the noise if the occupier can hear it from the part of the building most exposed to the noise.

*Example of ‘audible noise’—*

A occupies unit 1 in a block of units. A makes noise or causes noise to be made from unit 1. B occupies unit 10 in the same block. The most exposed part of unit 10 to the noise is its balcony. B can not hear the noise from unit 10’s bathroom, but can hear it from the balcony. The noise is audible noise.

*‘Subdivision 4—Meaning of unlawful environmental nuisance*

**‘General definition**

**‘6F.** Subject to sections 6G to 6K, “**unlawful environmental nuisance**” means environmental nuisance not authorised to be done or omitted to be done under any of the following—

- (a) an environmental protection policy;
- (b) an environmental management program;
- (c) an environmental protection order;
- (d) an environmental authority;
- (e) a development condition of a development approval.
- (f) an emergency direction.<sup>4</sup>

**‘Animal noise exclusion**

**‘6G.** Animal noise can only be unlawful environmental nuisance if the animal that made the noise is a domestic animal.

**‘Audible traffic signal noise exclusion**

**‘6H.** Noise from an audible traffic signal at pedestrian lights under the Queensland Road Rules is not unlawful environmental nuisance if the signal complies with AS 1742.10—1990 Pedestrian control and protection.<sup>5</sup>

**‘Blasting noise exclusion**

**‘6I.** Noise from blasting is not unlawful environmental nuisance for an affected building if—

- (a) the airblast overpressure is no more than 115 dB (Lin) Peak for 4

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<sup>4</sup> See however, section 119(2) (Unlawful environmental harm) of the Act for defences to a charge of unlawfully causing environmental harm.

<sup>5</sup> A copy of AS 1742.10 may be inspected, free of charge, at the department’s office at 160 Ann Street, Brisbane.

- out of any 5 consecutive blasts; and
- (b) the ground vibration is—
- (i) for vibrations of more than 35 Hz—no more than 25 mm a second ground vibration, peak particle velocity; or
  - (ii) for vibrations of no more than 35 Hz—no more than 10 mm a second ground vibration, peak particle velocity.

### **‘Outdoor shooting range noise exclusion**

**‘6J.(1)** Noise from an outdoor shooting range is not unlawful environmental nuisance for an affected building if the noise is no more than—

- (a) from 6 a.m. to 6 p.m. on any day—
  - (i) for a range that is normally used at least 5 days a week—95 dB (Lin) Peak Hold; or
  - (ii) for a range that is normally used 4 days a week—100 dB (Lin) Peak Hold; or
  - (iii) for a range that is normally used no more than 3 days a week—105 dB (Lin) Peak Hold; or
- (b) from 6 p.m. to 10 p.m. on any day—
  - (i) for a range that is normally used at least 5 evenings a week—85 dB (Lin) Peak Hold; or
  - (ii) for a range that is normally used 4 evenings a week—90 dB (Lin) Peak Hold; or
  - (iii) for a range that is normally used no more than 3 evenings a week—95 dB (Lin) Peak Hold.

**‘(2)** For subsection (1), noise from an outdoor shooting range is measured by working out the arithmetic average of the noise levels of whichever of the following happens first during the measurement period—

- (a) at least 40 individual gunshots;
- (b) at least 20 individual gunshots in any 30 minute period.

**‘(3)** In this section—

**“used”** means used for an activity that includes shooting.

*Examples of a range being ‘used’—*

1. A shooting match conducted at the range.
2. A defence personnel or police officer training session, that includes shooting, conducted at the range.

### **‘Cooking odour exclusion**

**‘6K.** A cooking odour is not unlawful environmental nuisance if the cooking that made the odour happens on land on which a class 1, 2, 3 or 10 building under the Building Code of Australia is constructed.<sup>6</sup>

## *‘Division 2—Investigation of unlawful environmental nuisance*

### *‘Subdivision 1—Nuisance complaints*

### **‘How nuisance complaint may be made**

**‘6L.(1)** If a person believes an emission from a person, place or thing has or is causing unlawful environmental nuisance, the person may complain to the administering authority about the emission.

**‘(2)** The complaint may be written or oral.

**‘(3)** The complaint must include—

- (a) the complainant’s name and residential address; and
- (b) a telephone number at which the complainant can be contacted; and
- (c) enough details of the emission to allow the authority to investigate whether the emission is causing unlawful environmental nuisance.

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<sup>6</sup> For classes of building under the Building Code of Australia, see appendix C (Classification of Buildings and Structures), paragraph C3 (Classifications).

**‘Frivolous, vexatious or mistaken complaints**

**‘6M.(1)** This section applies if, at any time after a nuisance complaint has been made, the administering authority believes, on reasonable grounds, the complaint is frivolous, vexatious or based on a mistaken belief.

**‘(2)** The authority may reject the complaint.

**‘(3)** If the authority rejects the complaint, it must give the person who made the complaint written notice (a **“rejection notice”**) stating the following—

- (a) that the authority has rejected the complaint;
- (b) the reasons for the rejection;
- (c) that the person to whom the notice is given may apply to the authority, within 14 days after receiving the notice, for a review of the authority’s decision to reject the complaint;
- (d) how to apply for a review.

***‘Subdivision 2—Investigations*****‘No investigation without relevant nuisance complaint**

**‘6N.** The administering authority must not investigate an emission unless a relevant nuisance complaint has been made for the emission.

**‘Duty to investigate nuisance complaint**

**‘6O.(1)** The administering authority must investigate a nuisance complaint as soon as practicable after—

- (a) the complaint has been made; and
- (b) the authority has had a reasonable opportunity to consider whether the complaint is frivolous, vexatious or based on a mistaken belief.

**‘(2)** However, subsection (1) ceases to apply if—

- (a) a rejection notice has been given for the complaint; or
- (b) the authority considers the complaint would be more

appropriately dealt with under another law.

*Examples for subsection (2)(b)—*

1. A nuisance complaint is made about noise from licensed premises. The administering authority may consider the complaint would be more appropriately dealt with under the *Liquor Act 1992*.
2. A nuisance complaint is made about domestic animal noise. The administering authority may consider it more appropriate to deal with the complaint under a local law about abating domestic animal noise.

‘(3) If, under subsection (2)(b), the authority does not, or ceases to, investigate the complaint the authority must advise the complainant of the law under which it considers the complaint would be more appropriately dealt with.

#### **‘Discharge of duty to investigate**

‘6P.(1) This section applies only if the administering authority must investigate a nuisance complaint.

‘(2) If the emission the subject of the complaint is noise, the authority must investigate and consider whether a noise offence may have been committed.<sup>7</sup>

‘(3) If the emission is not noise or if the authority does not consider a noise offence has been committed, the authority must investigate and consider whether—

- (a) a nuisance abatement notice should be given; or
- (b) any other action is appropriate.

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<sup>7</sup> See sections 6Q(c) (Conditions for giving nuisance abatement notice) and 6R (Restrictions) and the *Justices Regulation 1993*, section 5 (Authorised person for infringement notice (nominated laws)) and schedule 1, part 14C, section 3 (Relevant nuisance complaint required for noise infringement notice).

***‘Division 3—Nuisance abatement notices******‘Subdivision 1—When nuisance abatement notice may be given*****‘Conditions for giving nuisance abatement notice**

**‘6Q.** The administering authority may give a nuisance abatement notice to a responsible person for an emission only if—

- (a) a relevant nuisance complaint has been made for the emission; and
- (b) the authority reasonably believes the emission is, or has been, causing unlawful environmental nuisance, after considering—
  - (i) the general emission criteria; and
  - (ii) if the emission is noise—the noise emission criteria; and
- (c) a restriction under section 6R does not apply.

**‘Restrictions**

**‘6R.** A nuisance abatement notice must not be given to a person for an emission if—

- (a) the emission, or a matter relating to it is, or may be, a noise offence; or
- (b) the emission was caused by an environmentally relevant activity and the activity was carried out under a development approval or environmental authority.

***‘Subdivision 2—Emission criteria*****‘General emission criteria**

**‘6S.** The general emission criteria are as follows—

- (a) the emission’s characteristics or qualities;
- (b) the emission’s amount and rate;

- (c) the duration and time of the emission;
- (d) whether the emission is continuous or fluctuating;
- (e) the characteristics and qualities of the environment into which the emission is made (the “**receiving environment**”);
- (f) the emission’s impact on the receiving environment;
- (g) the views of each complainant for the emission;
- (h) if another person affected by the emission has given the administering authority a view about the emission—that view;
- (i) the order of occupancy between the responsible person and each complainant.

#### **‘Noise emission criteria**

**‘6T.(1)** For noise other than animal noise, the noise emission criteria are as follows—

- (a) the acoustic quality objective under the noise policy, section 11;
- (b) if a sound pressure level has been measured by the administering authority—the sound pressure level;
- (c) the audibility of the noise;
- (d) whether the noise is continuous at a steady level or whether it has a fluctuating, intermittent, tonal or impulsive nature;
- (e) whether the noise has vibration components.

**‘(2)** For animal noise, the noise emission criteria is whether the noise is excessive in all the circumstances.

**‘(3)** For subsection (2), the administering authority may consider the noise to be excessive in all the circumstances if—

- (a) the noise is made for more than a total of 6 minutes in any hour from 7 a.m. to 10 p.m. on any day; or
- (b) the noise is made for more than a total of 3 minutes in any 30 minute period on any day after 10 p.m. or before 7 a.m..



***‘Subdivision 3—Requirements for nuisance abatement notices*****‘Requirements**

**‘6U.(1)** A nuisance abatement notice must—

- (a) be signed by the administering authority; and
- (b) identify the responsible person to whom it is to be given; and
- (c) describe the emission the subject of the notice; and
- (d) state the following—
  - (i) that the person must stop the emission or control, prevent or reduce it so that it is no longer unlawful environmental nuisance;
  - (ii) a time (the “**compliance time**”) on or before which the person must comply with subparagraph (i);
  - (iii) that the person may apply to the administering authority, within 14 days after receiving the notice, for a review of the decision to give the notice;
  - (iv) how to apply for a review;
  - (v) the maximum penalty for failing to comply with the notice.

**‘(2)** The compliance time must be reasonable having regard to—

- (a) the general emission criteria; and
- (b) if the emission is noise—the noise emission criteria.

***‘Subdivision 4—Compliance with nuisance abatement notices*****‘Failure to comply with nuisance abatement notice**

**‘6V.** A person to whom a nuisance abatement notice has been given must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—

- (a) for an individual—40 penalty units; or
- (b) for a corporation—80 penalty units.

***‘Division 4—Noise offences******‘Subdivision 1—Offences*****‘Building work**

**‘6W.** A builder or building contractor must not carry out building work on a building site in a way that makes or causes audible noise to be made from the building work—

- (a) on a Sunday or public holiday, at any time; or
- (b) on a Saturday or business day, before 6.30 a.m. or after 6.30 p.m..

Maximum penalty—20 penalty units.

**‘Regulated devices**

**‘6X.(1)** This section does not apply to a builder or building contractor who is carrying out building work on a building site.

**‘(2)** A person must not operate a regulated device in a way that makes audible noise or causes audible noise to be made—

- (a) on a Sunday or public holiday, before 8 a.m. or after 7 p.m.; or
- (b) on a Saturday or business day, before 7 a.m. or after 7 p.m..

Maximum penalty—20 penalty units.

**‘(3)** However, subsection (2) does not apply if—

- (a) the regulated device is a grass-cutter or leaf-blower; and
- (b) the person operates the device at a place as follows and is authorised by an occupier of the place to operate the device—
  - (i) a road or route, or part of a road or route, declared under the *Transport Infrastructure Act 1994*, section 23,<sup>8</sup> to be a State-controlled road;

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<sup>8</sup> *Transport Infrastructure Act 1994*, section 23 (Declaration of State-controlled roads)

(ii) a railway.

‘(4) Also, subsection (2)(b) does not apply to audible noise made or caused to be made by the operation of a regulated device by anyone at a manual arts facility at an educational institution from 7 p.m. to 10 p.m..

‘(5) In this section—

“**grass-cutter**” means an electrical or mechanical device a function of which is to cut grass.

*Examples of a ‘grass-cutter’—*

- a brush cutter
- an edge cutter
- a lawn-mower
- a ride-on mower
- a string trimmer.

“**leaf-blower**” means an electrical or mechanical device a function of which is to blow leaves.

“**regulated device**” means any of the following—

- (a) a compressor;
- (b) a ducted vacuuming system;
- (c) a generator;
- (d) a grass-cutter;
- (e) an impacting tool;
- (f) a leaf-blower;
- (g) a mulcher;
- (h) an oxyacetylene burner;
- (i) an electrical, mechanical or pneumatic power tool.

*Examples of a ‘power tool’—*

- a chainsaw
- a drill
- an electric grinder or sander

- an electric welder
- a nail-gun.

### **‘Spa blowers and pool pumps**

**‘6Y.(1)** An occupier of premises at or for which there is a spa blower or a pump for a swimming pool or spa pool must not use or allow the use of the spa blower or the pump—

- (a) before 7 a.m. or after 10 p.m. on any day if it makes audible noise or causes audible noise to be made; or
- (b) from 7 a.m. to 7 p.m. on any day if it makes noise or causes noise to be made of more than 50 dB(A); or
- (c) from 7 p.m. to 10 p.m. on any day if it makes noise or causes noise to be made of more than 5 dB(A) above the background noise level.

Maximum penalty—20 penalty units.

**‘(2)** However, subsection (1)(a) does not apply if—

- (a) the audible noise is made or caused to be made at an educational institution; and
- (b) the noise is no more than 5 dB(A) above the background noise level.

### **‘Airconditioning equipment**

**‘6Z.** An occupier of premises at or for which there is airconditioning equipment must not use or allow the use of the equipment—

- (a) from 7 a.m. to 10 p.m. on any day if it makes noise or causes noise to be made of more than 50 dB(A); or
- (b) before 7 a.m. or after 10 p.m. on any day if it makes noise or causes noise to be made of more than the higher of the following—
  - (i) 40 dB(A);

- (ii) 5 dB(A) above the background noise level.

Maximum penalty—20 penalty units.

### **‘Refrigeration equipment**

**‘6ZA.(1)** This section applies to a person who is—

- (a) an occupier of premises at or for which there is plant or equipment for refrigeration (**“refrigeration equipment”**); or
- (b) an owner of refrigeration equipment that is on or in a vehicle, other than a vehicle used or to be used on a railway.

**‘(2)** The person must not use or allow the use of the refrigeration equipment—

- (a) before 7 a.m. or after 10 p.m. on any day if it makes noise or causes noise to be made of more than the higher of the following—
  - (i) 40 dB(A);
  - (ii) 5 dB(A) above the background noise level; or
- (b) from 7 a.m. to 10 p.m. on any day if it makes noise or causes noise to be made of more than 50 dB(A).

Maximum penalty—20 penalty units.

**‘(3)** In this section—

**“vehicle”** includes a trailer.

### **‘Indoor venues**

**‘6ZB.(1)** An occupier of a building must not use or allow the use of the building as an indoor venue—

- (a) before 7 a.m. on any day if the use causes audible noise; or
- (b) from 7 a.m. to 10 p.m. on any day if the use causes noise of more than 50 dB(A); or
- (c) after 10 p.m. on any day if the use causes noise of more than the lesser of the following—

- (i) 45 dB(A);
- (ii) 10 dB(A) above the background noise level.

Maximum penalty—20 penalty units.

‘(2) However, subsection (1)(b) does not apply if—

- (a) the building is, or is part of, an educational institution; and
- (b) the use of the building as an indoor venue is organised by or for the educational institution for its purposes.

### ‘Open-air events

‘6ZC.(1) An occupier of premises must not use or allow the use of the premises for an open-air event—

- (a) before 7 a.m. on any day if the use causes audible noise; or
- (b) from 7 a.m. to 10 p.m. on any day if the use causes noise of more than 70 dB(A); or
- (c) after 10 p.m. on any day if the use causes noise of more than the lesser of the following—
  - (i) 50 dB(A);
  - (ii) 10 dB(A) above the background noise level.

Maximum penalty—20 penalty units.

‘(2) However, subsection (1)(b) does not apply if—

- (a) the premises is, or is part of, an educational institution; and
- (b) the use of the premises for an open-air event is organised by or for the educational institution for its purposes.

### ‘Amplifier devices, other than at indoor venue or open-air event

‘6ZD.(1) This section applies to a person who operates an amplifier device, other than at an indoor venue or open-air event.

‘(2) The person must not operate the device in a way that makes audible noise or causes audible noise to be made—

- (a) on a Saturday, Sunday or public holiday, before 8 a.m. or after

6 p.m; or

- (b) on a business day, before 7 a.m. or after 10 p.m..

Maximum penalty—20 penalty units.

‘(3) The person must not operate the device in a way that makes noise or causes noise to be made of more than 10 dB(A) above the background noise level—

- (a) on a Saturday, Sunday or public holiday, from 8 a.m. to 6 p.m; or  
(b) on a business day, from 7 a.m. to 10 p.m..

Maximum penalty—20 penalty units.

‘(4) However, subsection (3) does not apply if the noise is made or caused to be made by an amplifier device operated by anyone at an educational institution.

‘(5) In this section—

“**amplifier device**” means any of the following—

- (a) a loudhailer;  
(b) a megaphone;  
(c) a public address system, other than for a railway;  
(d) a remote telephone bell;  
(e) a telephone repeater bell.

#### ‘**Power boat sports in waterway**

‘**6ZE.(1)** This section applies to a person in control of a power boat on any of the following (the “**waterway**”)—

- (a) a creek, river, stream or watercourse;  
(b) an inlet of the sea into which a creek, river, stream or watercourse flows;  
(c) a dam or weir.

‘(2) The person must not use the power boat for a power boat sport if the use makes audible noise for the same affected building for more than a continuous period of 2 minutes—

- (a) on a Sunday or public holiday, before 8 a.m. or after 6.30 p.m.; or
- (b) on a Saturday or business day, before 7 a.m. or after 7 p.m..

Maximum penalty—20 penalty units.

‘(3) Also, the person must not use the power boat for a power boat sport on any day at any time if—

- (a) the use makes audible noise for the same affected building for more than a continuous period of 2 minutes; and
- (b) during the period the noise is also continuously more than 75 dB(A), measured at the shore of the waterway from at least 30 m from where the power boat is being used.

Maximum penalty—20 penalty units.

‘(4) In this section—

“**person in control**”, of a power boat, includes—

- (a) the driver of the boat; and
- (b) the person in command of the boat; and
- (c) the person who appears to be in control or command of the boat.

“**power boat sport**” means—

- (a) a sport in which a person is towed by a line attached to a power boat, including, for example, a person water skiing or riding on a toboggan or tube; or
- (b) operating a jet ski or other power driven personal watercraft, other than for fishing.

‘**Operating power boat engine at premises**

‘6ZF.(1) A person must not at a premises operate a power boat engine in a way that makes audible noise or causes audible noise to be made—

- (a) on a Sunday or public holiday, before 8 a.m. or after 6.30 p.m.; or
- (b) on a Saturday or business day, before 7 a.m. or after 7 p.m..

Maximum penalty—20 penalty units.

‘(2) An occupier of premises must not allow a power boat engine to be



operated at the premises in a way that makes audible noise or causes audible noise to be made during a period mentioned in subsection (1).

Maximum penalty—20 penalty units.

‘(3) In this section—

“operate”, a power boat engine, includes flushing the engine.

### *‘Subdivision 2—Exemptions*

#### **‘Operation of sdiv 2**

‘6ZG.(1) Each section in this subdivision provides an exemption (a “noise offence exemption”) to the offences created under subdivision 1.

‘(2) A noise offence exemption applies for—

- (a) a responsible person for a noise; and
- (b) a person who allows a noise to happen.

‘(3) If a noise offence exemption applies, the person does not commit an offence against subdivision 1 in relation to the noise.

‘(4) The *Justices Act 1886*, section 76,<sup>9</sup> applies to a noise offence exemption.

#### **‘Compliance with general environmental duty**

‘6ZH.(1) It is a noise offence exemption if—

- (a) the noise happened while a lawful activity was being carried out; and
- (b) the general environmental duty was complied with by the person and everyone else who was in control of the cause of the noise when it happened.

‘(2) For subsection (1)(b), the duty may be complied with in the way

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<sup>9</sup> *Justices Act 1886*, section 76 (Proof of negative etc.)

stated in section 36<sup>10</sup> of the Act or by complying with any relevant code of practice.

#### **‘Lawful environmental nuisance**

**‘6ZI.** It is a noise offence exemption if the noise was not unlawful environmental nuisance.

#### **‘Certain environmentally relevant activities**

**‘6ZJ.** It is a noise offence exemption if—

- (a) the noise was caused by an environmentally relevant activity; and
- (b) the activity was carried out under a development approval or environmental authority.

#### **‘Compliance with certain instruments under Act or a local law**

**‘6ZK.(1)** It is a noise offence exemption if an instrument mentioned in section 6F or a local law provides or allows for—

- (a) the noise to be made or caused to be made; or
- (b) the carrying out of an activity in a way that makes the noise or causes it to be made.

*Examples of an ‘activity’—*

- building work
- use of premises for an indoor venue or open-air event.

**‘(2)** However, subsection (1) does not apply if—

- (a) the offence for which the exemption is sought relates to making the noise or causing it to be made during a period; and
- (b) the instrument or local law does not provide or allow for the noise to be made or caused to be made, or for the activity to be carried out, during the period.

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<sup>10</sup> Section 36 (General environmental duty) of the Act.

*‘Subdivision 3—Proceedings for noise offences*

**‘Relevant nuisance complaint required for certain prosecuting parties**

**‘6ZL.(1)** This section applies to a person as follows (the **“prosecutor”**) if the prosecutor proposes to start a proceeding for a noise offence—

- (a) the administering authority;
- (b) the administering executive;
- (c) an authorised person.

**‘(2)** The prosecutor must not start the proceeding unless a relevant nuisance complaint has been made for the noise the subject of the proceeding.

**‘(3)** A statement in either of the following that a relevant nuisance complaint has been made is evidence that a relevant nuisance complaint has been made—

- (a) the complaint starting the proceeding;
- (b) a certificate purporting to be signed by the prosecutor or another person mentioned in subsection (1).

**‘(4)** Subsection (3) does not require the statement or certificate to state any matter for the relevant nuisance complaint mentioned in section 6L(3).<sup>11</sup>

**‘Special evidentiary provisions for audible noise**

**‘6ZM.(1)** This section applies if in a proceeding for a noise offence it is claimed audible noise was made or caused to be made from a person, place or thing (the **“alleged source”**) to an affected building.<sup>12</sup>

**‘(2)** An individual (the **“occupier”**) who was, when the noise was made or caused to be made (the **“relevant time”**), an occupier of the building, may give evidence that—

- (a) the occupier could, at the relevant time, hear the noise at the building; and

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<sup>11</sup> Section 6L (How nuisance complaint may be made)

<sup>12</sup> See also section 6ZT (General evidentiary provision for emissions).

- (b) the occupier formed the opinion, based on the occupier's own senses, that the noise was made or caused to be made from the alleged source and travelled to the building.

‘(3) An authorised person may give evidence of the following if the person was, at the relevant time, present at the building with the occupier and the person could hear the noise at the building—

- (a) that the occupier was, at the relevant time, an occupier of the building;
- (b) that the occupier could, at the relevant time, hear the noise at the building;
- (c) that the person formed the opinion, based on the person's own senses, that the noise was made or caused to be made from the alleged source and travelled to the building.

‘(4) Evidence may be given under subsection (3)—

- (a) without any need to call the occupier; and
- (b) whether or not other audible noise was made or caused to be made to the building from a person, place or thing other than the alleged source.

‘(5) Opinion evidence may be given under this section without any need to call further opinion evidence.

### *Division 5—Measurement of noise*

#### *Subdivision 1—Preliminary*

#### **‘Operation of div 5**

‘6ZN. This division provides for where and how noise from a person, place or thing (“**source noise**”) or the background noise level is to be measured to decide whether—

- (a) a noise emission is unlawful environmental nuisance; or
- (b) source noise is a noise offence or may relate to a noise offence.

**‘No requirement to measure audible noise**

**‘6ZO.(1)** This section applies if in a proceeding for a noise offence it is claimed audible noise was made, caused to be made or allowed to happen.

**‘(2)** Evidence mentioned in section 6ZM or 6ZT may be given about the noise without any requirement for the noise to have been measured.<sup>13</sup>

**‘(3)** If the noise is established as audible noise, the rate of its audibility is not required to be established.

***‘Subdivision 2—Where to measure noise*****‘Source noise**

**‘6ZP.(1)** This section applies for measuring source noise, other than for section 6ZE(3)(b).<sup>14</sup>

**‘(2)** Source noise may be measured only from an affected building for the noise.

**‘(3)** Any part of the building may be used for the measurement.

**‘Background noise level**

**‘6ZQ.(1)** Subject to subsections (3) and (4), the background noise level may be measured only from an affected building for the source noise for which the level is to be measured (the **“relevant noise”**).

**‘(2)** Any part of the building may be used for the measurement.

**‘(3)** Subsection (4) applies if it is impracticable to measure the level from any affected building for the relevant noise.

*Examples for subsection (3)—*

1. The source of the relevant noise is a continuously running swimming pool pump. The background noise level can not be measured at all without stopping the pump. No occupier of the premises at which the pump is

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<sup>13</sup> Sections 6ZM (Special evidentiary provisions for audible noise) and 6ZT (General evidentiary provision for emissions)

<sup>14</sup> Section 6ZE (Power boat sports in waterway)

situated can be found after making reasonable efforts or inquiries.

2. The source of the relevant noise is a continuously running refrigerator at a retail food outlet. The background noise level can not be measured at all without stopping the refrigerator. Stopping the refrigerator may damage perishable goods inside it or unreasonably interrupt the running of the outlet.

‘(4) If this subsection applies, the level may be measured at the nearest point to the source of the relevant noise that could reasonably be expected to have a similar background noise level to any affected building for the relevant noise.

### *‘Subdivision 3—How to measure noise*

#### **‘Measurement procedures**

‘6ZR.(1) Source noise or the background noise level may be measured only by applying—

- (a) the procedure under—
  - (i) AS 1055;<sup>15</sup> or
  - (ii) the *Noise Measurement Manual*, published by the department (the “**manual**”);<sup>16</sup> or
- (b) another appropriate scientific method or procedure for noise measurement.

‘(2) A copy of AS 1055 or of the manual is admissible in evidence in a proceeding under the Act.

‘(3) The chief executive must keep a copy of the manual open for inspection by members of the public during office hours on business days at—

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<sup>15</sup> See AS 1055.1, paragraph 4 (Investigation of specific environmental noise situations).

<sup>16</sup> For other relevant provisions about measuring noise, see section 180 (Evidentiary provisions) of the Act and section 29 (Prescribed instruments—Act, s 180(8)) of the noise policy.

- (a) the department's head office;<sup>17</sup> and
- (b) the other places the chief executive considers appropriate.

### **'Measurement of noises of same type from same premises**

**'6ZS.** If 2 or more noises of the same type happen simultaneously at the same premises, they must be measured as if they are 1 noise of that type happening at the premises.

*Examples—*

1. A number of concerts happen simultaneously at different places at the same premises. A building is affected by noise from more than 1 of the concerts. The noises must be measured as if they were from 1 concert.
2. A premises is used as a stopover depot for trucks with refrigerators. A building is affected by noise from the use of more than 1 of the refrigerators. The noises must be measured as if they were from 1 refrigerator.

### ***'Division 6—Miscellaneous***

#### **'General evidentiary provision for emissions**

**'6ZT.(1)** This section applies to a proceeding for an offence against this part in which it is claimed an emission was made or caused to be made from a person, place or thing (the **"alleged source"**).<sup>18</sup>

**'(2)** An authorised person may give evidence that the person formed the opinion, based on the person's own senses, that—

- (a) the emission was emitted from the alleged source and travelled to another place; and
- (b) the level, nature or extent of the emission within the other place was an unreasonable interference with someone's enjoyment of the other place or with another environmental value.

**'(3)** Evidence may be given under subsection (2) whether or not another

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<sup>17</sup> The department's head office is at 160 Ann Street, Brisbane.

<sup>18</sup> See also section 6ZM (Special evidentiary provisions for audible noise).

emission was made or caused to be made to the other place from a person, place or thing other than the alleged source.

‘(4) The evidence may be given without any need to call further opinion evidence.

### **‘Dispute resolution by agreement not affected**

‘6ZU. This part does not—

- (a) limit the capacity of persons to negotiate, under the *Dispute Resolution Centres Act 1990* or otherwise, a settlement of the subject matter of a nuisance complaint; or
- (b) prevent the administering authority making guidelines to help persons negotiate a settlement of a nuisance complaint.’.

### **Amendment of s 40 (Devolution of powers—other matters)**

5. Section 40, heading, ‘**matters**’—

*omit, insert—*

‘**activities**’.

### **Insertion of new s 40B**

6. Part 4, division 1, after section 40A—

*insert—*

### **‘Devolution of powers—residential land**

‘40B.(1) The administration and enforcement of part 2A in relation to any emission from residential land is devolved to the local government for the area where the land is situated.

‘(2) In this section—

“**relevant building**” means—

- (a) a class 1, 3 or 10 building under the Building Code of Australia; or
- (b) a class 2 building under the code if the building has less than



10 storeys.<sup>19</sup>

**“residential land”** means—

- (a) the part of a lot of land on which a relevant building is constructed and any other part of the lot that—
  - (i) is adjacent to the building; and
  - (ii) has an area of no more than 1 000 m<sup>2</sup>; or
- (b) vacant land not used for agriculture on which a relevant building may lawfully be constructed.’.

### **Amendment of s 62 (Review of decisions and appeal)**

**7.(1)** Section 62(1)—

*insert—*

- ‘(e) a decision of the administering authority to reject a nuisance complaint;
- (f) a decision of the administering authority to give a nuisance abatement notice.’.

**(2)** Section 62(2)—

*insert—*

- ‘(d) for a decision mentioned in subsection (1)(e)—each person who made the complaint; or
- (e) for a decision mentioned in subsection (1)(f)—each person to whom the nuisance abatement notice is given.’.

### **Insertion of new pt 5, div 5A**

**8.** Part 5—

*insert—*

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<sup>19</sup> For classes of building under the Building Code of Australia, see appendix C (Classification of Buildings and Structures), paragraph C3 (Classifications).

***Division 5A—Transitional provision for part 2A and Environmental Protection (Noise) Amendment Policy (No. 1) 1999***

**‘Noise policy applies to existing noise complaints**

‘**82A.(1)** This section applies if, immediately before this section commenced, a complaint was made under the noise policy, section 20.

‘**(2)** The noise policy, part 4 and schedule 4, continue to apply to the noise the subject of the complaint.

‘**(3)** However, subsection (2) does not prevent the person who made the complaint from making a nuisance complaint about noise made on or from the commencement.’.

**Renumbering of pt 5, divs 5A and 6, hdgs**

**9.** Part 5, divisions 5A and 6, headings—

*renumber* as part 5, divisions 6 and 7, headings.

**Amendment of sch 9 (Dictionary)**

**10.(1)** Schedule 9, definition “**facility**”—

*omit.*

**(2)** Schedule 9—

*insert—*

‘ “**affected building**”, for noise, for part 2A, see section 6D.

“**affected person**”, for part 5, division 5, see section 65.

“**annual licence fee**”, for an activity, for part 5, see section 65.

“**AS**” means an Australian Standard published by Standards Australia.

“**AS 1055**”, for part 2A, see section 6D.

“**at**”, a place or premises, for part 2A, see section 6D.

“**audible noise**”, for part 2A, see section 6E.

“**background noise level**”, for part 2A, see section 6D.

**“builder”**, for part 2A, see section 6D.

**“building”**, for part 2A, see section 6D.

**“Building Code of Australia”** means the Building Code of Australia including the Queensland Appendix, made by the Australian Building Codes Board.

**“building contractor”**, for part 2A, see section 6D.

**“building site”**, for part 2A, see section 6D.

**“building work”**, for part 2A, see section 6D.

**“complainant”**, for part 2A, see section 6D.

**“educational institution”**, for part 2A, see section 6D.

**“emission”**, for a substance—

- (a) for part 2A, see section 6D; or
- (b) for part 3A, see section 38B.

**“emission data”**, for a substance, for part 3A, see section 38B.

**“estimation technique”**, for part 3A, see section 38B.

**“facility”** for—

- (a) part 3A, see section 38D; or
- (b) an environmentally relevant activity, means a building or structure or complex of buildings or structures specifically used for the activity, and includes—
  - (i) for schedule 1, item 75—a naturally occurring or constructed hollow or pit, including, for example, a gully, mining shaft or quarry (other than a hollow or pit on a farm used for receiving and disposing of general waste produced on the farm); and
  - (ii) for schedule 1, item 76(a)—a fixed or mobile apparatus for blowing air into a hole in the ground to facilitate the incineration of vegetation.

**“general emission criteria”**, for part 2A, means the general emission criteria under section 6S.

**“indoor venue”**, for part 2A, see section 6D.

**“industry handbook”**, for a facility, for part 3A, see section 38B.

**“licensed premises”**, for part 2A, see section 6D.

**“noise emission criteria”**, for part 2A, means the noise emission criteria under section 6T.

**“noise offence”**, for part 2A, means an offence against part 2A, division 4.

**“noise offence exemption”**, for part 2A, see section 6ZG(1).

**“noise policy”** means the *Environmental Protection (Noise) Policy 1997*.

**“NPIM”**, for part 3A, see section 38B.

**“nuisance abatement notice”**, for part 2A, means a nuisance abatement notice given under part 2A, division 3.

**“nuisance complaint”**, for part 2A, see section 6D.

**“occupier”**, for a facility, for part 3A, see section 38B.

**“offshore facility”**, for part 3A, see section 38E.

**“open-air event”**, for part 2A, see section 6D.

**“power boat”**, for part 2A, see section 6D.

**“prescribed activity”**, for part 5, division 5, see section 65.

**“published”**, for part 3A, see section 38B.

**“railway”**, for part 2A, see section 6D.

**“rejection notice”**, for part 2A, see section 6M(3).

**“relevant nuisance complaint”**, for an emission, for part 2A, see section 6D.

**“repealed regulation”**, for part 5, see section 65.

**“reporting facility”**, for part 3A, see section 38B.

**“reporting period”**, for a facility, for part 3A, see section 38B.

**“reporting requirement”**, for an occupier, for part 3A, see section 38B.

**“responsible person”**, for an emission, for part 2A, see section 6D.

**“source noise”**, for part 2A, see section 6ZN.

**“substance”**, for part 3A, see section 38F.

“**unlawful environmental nuisance**”, for part 2A, see part 2A, division 1, subdivision 4.’.

## **PART 3—AMENDMENT OF JUSTICES REGULATION 1993**

### **Regulation amended in pt 3**

**11.** This part amends the *Justices Regulation 1993*.

### **Amendment of sch 1 (Nominated Laws For Infringement Notice Offences)**

**12.** Schedule 1, parts 14C and 14D—

*omit, insert—*

## **‘PART 14C—ENVIRONMENTAL PROTECTION REGULATION 1998**

### **‘Table of infringement notice offences and penalties**

‘**1.** The following is the table of infringement notice offences and penalties—

|         | <b>Column 1</b>                    | <b>Column 2</b>                                    |
|---------|------------------------------------|--|
|         | <b>Infringement notice offence</b> | <b>Infringement notice penalty (penalty units)</b> |
| s 6V    | For an individual . . . . .        | 4  |
|         | For a corporation . . . . .        | 8  |
| s 6W    | . . . . .                          | 2  |
| s 6X(2) | . . . . .                          | 2  |
| s 6Y(1) | . . . . .                          | 2  |

|                           |   |
|---------------------------|---|
| s 6Z . . . . .            | 2 |
| s 6ZA(2) . . . . .        | 2 |
| s 6ZB(1) . . . . .        | 2 |
| s 6ZC(1) . . . . .        | 2 |
| s 6ZD(2) or (3) . . . . . | 2 |
| s 6ZE(2) or (3) . . . . . | 2 |
| s 6ZF(1) or (2) . . . . . | 2 |
| s 7(1) . . . . .          | 5 |
| s 8(1) . . . . .          | 5 |
| s 9(1) . . . . .          | 5 |
| s 10(1) . . . . .         | 5 |
| s 13 . . . . .            | 5 |
| s 15(4) . . . . .         | 5 |
| s 20(1) . . . . .         | 5 |
| s 22(1) . . . . .         | 5 |
| s 23 . . . . .            | 5 |
| s 25(1) . . . . .         | 5 |
| s 29(1) or (2) . . . . .  | 5 |
| s 31 . . . . .            | 5 |
| s 32 . . . . .            | 5 |
| s 33 . . . . .            | 5 |
| s 34 . . . . .            | 5 |
| s 35 . . . . .            | 5 |
| s 38(2) . . . . .         | 5 |

### **‘Authorised person**

**‘2.** Subject to section 3, an authorised person appointed under the *Environmental Protection Act 1994*, section 128.

### **‘Relevant nuisance complaint required for noise infringement notice**

**‘3.(1)** The authorised person must not serve an infringement notice for a noise offence unless a relevant nuisance complaint has been made.

**‘(2)** In a proceeding under the Act relating to a noise offence, a certificate purporting to be signed by the administering authority or the authorised person stating a relevant nuisance complaint has been made is evidence that a relevant nuisance complaint has been made.

‘(3) Subsection (2) does not require the certificate to state any matter for the relevant nuisance complaint mentioned in the regulation, section 6L(3).<sup>20</sup>

‘(4) In this section—

“**noise offence**” means an offence against any provision of sections 6W to 6ZF of the regulation.

“**regulation**” means the *Environmental Protection Regulation 1998*.

“**relevant nuisance complaint**” means a nuisance complaint under the regulation about—

- (a) the noise the subject of the infringement notice; or
- (b) another noise of the same type—
  - (i) for which the alleged offender is, or may have been, a responsible person under the regulation; or
  - (ii) that the alleged offender has, or may have, allowed to happen.’.

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#### ENDNOTES

1. Made by the Governor in Council on 25 November 1999.
2. Notified in the gazette on 26 November 1999.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Environmental Protection Agency.

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<sup>20</sup> The *Environmental Protection Regulation 1998*, section 6L (How nuisance complaint may be made).