

Seeking **noise** **abatement orders**



Department of **Environment & Climate Change** NSW



Seeking noise abatement orders to stop offensive noise

This brochure tells you how you can seek a noise abatement order if you decide to take action independently of the local council or other regulator to stop offensive noise from neighbours.



When neighbours are noisy

Often people are unaware that their activities may be causing a problem and are usually happy to work with you to solve the problem. Try to solve the problem amicably by talking to whoever is causing the noise.

If the problem persists discuss the issue with an independent mediator. Community Justice Centres (CJCs) offer this professional service. This can only work where your neighbour volunteers to participate. The mediation process involves no cost to you or your neighbour and has a high success rate. For contact information on your nearest CJC, visit www.cjc.nsw.gov.au or phone 1800 990 777.

Your local council and the police have powers to stop offensive noise. The police may issue noise abatement directions to deal with one-off urgent noise problems such as late night parties. Where the noise is a continuing problem the council may issue noise control notices or prevention notices. The Department of Environment and Climate Change (DECC) brochure *Dealing with neighbourhood noise* further explains these measures and outlines the steps you can take to prevent noise being an issue for you.

If you are dissatisfied with the response from your local council or the police, you have the option of seeking a noise abatement order. Seeking an order should be considered only when all other avenues have failed to solve the problem.

Noise abatement orders

This is a court order issued to stop offensive noise or to prevent offensive noise from recurring. Under the *Protection of the Environment Operations Act 1997* (POEO Act) a resident or a person in a commercial or industrial premises who is affected by offensive noise can seek a noise abatement order.

What is offensive noise?

The definition appearing in the POEO Act is noise:

- (a) *that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:*
 - (i) *is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or*
 - (ii) *interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or*
- (b) *that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.*



How to seek a noise abatement order?

Your local court can tell you what information the court needs for them to consider issuing an order. Contact details for your local court are in the *White Pages* under 'Local Courts' or on the internet at www.lawlink.nsw.gov.au. The court registry staff can explain the process to you. This generally means:

(1) You may be required to provide evidence that offensive noise has occurred and is likely to recur. Ask your local court what its requirements are. For example, the local court may require signed statements from at least two witnesses corroborating that the noise occurred and recurred. The witnesses may or may not have considered that the noise was offensive to them.

(2) There may be costs associated with obtaining an order. The order is typically granted after a court hearing where both parties are required to attend. A strong case that establishes the presence of offensive noise, its duration and the effects on you and your neighbours will help the court in making a decision. Both sides can be represented by lawyers. If you lose your case you may have to pay the legal costs of the other side as well as your own.

(3) The court process – when you have gathered all the evidence and details that the court requires, lodge an application notice with the court. A fee of \$70 applies to lodge an application. The court will provide advice on how application notices are to be made. As an individual you will need the court registrar's approval to register the application notice and begin the legal process. The court may require you to consider, as an initial step, seeking mediation at a Community Justice Centre with the view that the court would only proceed if mediation failed.

When will my case be heard?

Once your application notice is registered and served, your case is listed for mention and could be heard in a few weeks or sooner depending on how busy the local court is. You can ask the court registry staff for more details of what happens at the hearing and how you can prepare your case.

What happens if the order is issued?

The court will issue the order requiring your neighbour to stop making the offensive noise. The Sheriff will serve a copy of the order on your neighbour. A service fee of \$50 applies.

You can also ask the magistrate for a costs order if the noise abatement order is issued. That is, if you are successful in obtaining the order, the magistrate can require the respondent to cover some or all of the costs you incurred.

However the order can be appealed to the Land and Environment Court within 21 days of making the order.

What will the order say?

It requires your neighbour not to make offensive noise (of the type specified in the order). They must comply.

What happens if I lose?

You could seek legal advice about alternatives. A costs order may be made against you by the court.

What happens if my neighbour ignores the order?

Continuing to make offensive noise after an order has been issued is a breach of the court order and this is a criminal offence. Contact the police and show them a copy of the court order. Breaching a court order can also lead to contempt of court charges.

Who enforces a breach of the order?

The local court, at a court hearing, will consider whether a breach has occurred. You need evidence to support your case that a breach has occurred. As this is a criminal offence, the evidence requested is of the criminal standard, that is, it needs to establish 'beyond reasonable doubt' that a breach has occurred.

What evidence do I need to establish 'beyond reasonable doubt' that the breach has occurred?

This is likely to be more comprehensive than the initial evidence gathered when the application for the noise abatement order was first made.

Check with your local court as to their requirements. You may obtain legal advice from LawAccess, a legal information and assistance service, by telephoning 1300 888 529. As a guide, the court may need statutory declarations from witnesses who would need to be prepared to go to court to give their evidence.

What happens if the court decides that a breach has occurred?

The court may impose heavy penalties both for the breach and possibly also for contempt of court. In addition, a costs order that may cover court and/or professional costs may be made against the defendant at this time.

Contacts

Community Justice Centre

Phone: 1800 990 777, 8688
7455 or 4925 0333
Fax: 8688-9615 or 4925 0300
Email: cjc_northern@agd.nsw.gov.au
Website: www.cjc.nsw.gov.au
TTY: 1800 671 964
Address: Level 5, Parramatta
Justice Precinct
160 Marsden Street Parramatta
NSW 2150

Councils

Contact details for all NSW Councils can be found on the *Local Government Directory* page of the Department of Local Government's website www.dlg.nsw.gov.au

Police

NSW Police Assistance Line
phone: 131 444
Police stations are listed under 'police' in the Business and Government edition of the White Pages.

Local courts

A directory of all local courts in NSW is at www.lawlink.nsw.gov.au
phone: 1300 888 529

Published by:

Department of Environment and Climate Change NSW

59–61 Goulburn Street
PO Box A290
Sydney South 1232
Phone: (02) 9995 5000
(switchboard)
Phone: 131 555
(environment information
and publications requests)
Phone: 1300 361 967
(national parks information
and publications requests)
Fax: (02) 9995 5999
TTY: (02) 9211 4723
Email: info@environment.nsw.gov.au
Website: www.environment.nsw.gov.au

ISBN 978 1 74232 014 4
DECC 2008/558
October 2008

Printed on paper manufactured from sustainable resources