

NEIGHBOURHOOD NUISANCES – NOISE, POLLUTION & SURVEILLANCE: *Information Sheet*

Noise

In Tasmania, what legislation governs neighbourhood noise issues?

In Tasmania, noise concerns are primarily governed by:

- (a) the *Environmental Management and Pollution Control Act 1994*; and
- (b) the *Environmental Management and Pollution Control (Noise) Regulations 1996*

The main objective of the above legislation is to mitigate community noise levels within residential areas by delineating restricted time periods for typical noise emitting sources. This includes off-road motor vehicles, motorised watercraft, household appliances, power tools, lawn mowers and garden maintenance equipment, heating and cooling systems, pumps, chainsaws, audio systems, and musical instruments.

Are there certain hours where noises can be emitted?

Yes!

Schedule 1 of the *Environmental Management and Pollution Control (Noise) Regulations 1996* provides a table of “Prohibited Hours of Use” for certain items that are sound emitting. That table is replicated below.

Equipment	Day of operation	Prohibited hours of use
1.	Chainsaw powered by internal combustion engine operated within 300 metres of residential premises	
	(a) Monday to Friday	Before 7 a.m. and after 6 p.m.
	(b) Saturday	Before 9 a.m. and after 6 p.m.
	(c) Sunday or public holiday	Before 10 a.m. and after 6 p.m.
2.	Mobile machinery, forklift truck or portable equipment	
	(a) Monday to Friday	Before 7 a.m. and after 6 p.m.

	(b) Saturday	Before 8 a.m. and after 6 p.m.
	(c) Sunday or public holiday	Before 10 a.m. and after 6 p.m.
3.	Motor vehicle, motor vessel or outboard motor (unless the vehicle, vessel or motor is being operated to move into or out of residential premises or a construction or demolition site)	
	(a) Monday to Friday	Before 7 a.m. and after 6 p.m.
	(b) Saturday	Before 9 a.m. and after 6 p.m.
	(c) Sunday or public holiday	Before 10 a.m. and after 6 p.m.
4.	Musical instrument or sound-amplifying equipment	
	(a) Monday to Thursday	Before 7 a.m. and after 10 p.m.
	(b) Friday	Before 7 a.m.
	(c) Saturday	Before 9 a.m.
	(d) Sunday or public holiday	Before 10 a.m. and after 10 p.m.
5.	Power lawn mower and other garden maintenance equipment powered by an engine	
	(a) Monday to Friday	Before 7 a.m. and after 8 p.m.
	(b) Saturday	Before 9 a.m. and after 8 p.m.
	(c) Sunday or public holiday	Before 10 a.m. and after 8 p.m.

If someone is operating equipment within the permissible hours of use, does that mean it's legal no matter how much noise is being emitted?

No! Noise occurring at any time, including within the permissible hours of use, can still be determined to be unreasonable, as can noise from equipment not listed in the Regulations.

Section 53 of the *Environmental Management and Pollution Control Act 1994* allows for the following factors to be considered when assessing whether a residential noise is unreasonable:

- Its volume, intensity or duration;

- The time, place and other circumstances in which it is emitted; and
- Whether it is, or is likely to be, audible in a habitable room in any other residential premises.

Similarly, if the noise emitting equipment is not within the Table within Schedule 1 of the Regulations, the considerations under s53 of the Act apply.

Are there exceptions to the Prohibited Hours of Use table?

Yes. There are several exceptions. Some of those include:

1. The Regulations do not apply to noise that is emitted by the operation of any equipment or machine carrying out work that is required for the following purposes:
 - (a) public health and safety;
 - (b) the provision of emergency services by emergency services personnel in emergency situations; or
 - (c) the safety or security of plant and equipment in emergency situations.
2. If the noise emitted by the equipment is not audible or likely to be audible in a habitable room in any neighbouring residential premises (whether your neighbours' doors are opened or not) then you are lawfully allowed to operate the above-mentioned equipment during those prohibited hours of use.
3. Noise that is emitted from:
 - (a) A primary industry activity;
 - (b) That area of land from which the noise is emanating is farmland within Council zoning which permits primary industry to take place; and
 - (c) The activity is not being improperly or negligently carried out.

If I have a concern regarding noise, who do I contact?

<u>Activity</u>	<u>Contact</u>
Agricultural Activities, Dogs, Heat Pumps, Air Conditioners, Chainsaws, Lawnmowers, Construction sites, Music, Parties, Concerts, Festivals, Recreational off road vehicles, Other general noises on residential property	Local Council
Road Construction	<i>Department of State Growth</i>
Trains	<i>Tas Rail</i>
Recreations Marine Vessels (boats, jet skis etc)	<i>Marine and Safety Tasmania</i>

Note: If your noise concern occurs outside of business hours and your contact to one of the above offices goes unanswered, you may contact *Tasmania Police* using the police assistance line for non-emergencies - Ph: 131 444

Pollution

I want to have a fire in my back yard, what are the rules around this?

Backyard burning is considered to be the burning of piled-up or standing vegetation or vegetative waste as well as certain other material on urban blocks and rural-residential properties. Barbecues, outdoor fireplaces and small fires solely for cooking or heating are NOT considered backyard burning.

Smoke emissions are captured by Section 53 of the *Environmental Management and Pollution Control Act 1994* ("EMPCA"). This mandates that such emissions should not cause an "environmental nuisance".

In Tasmania, the primary rules which govern backyard burning are outlined in Part 4 of the *Environmental Management and Pollution Control (Smoke) Regulations 2019*. These regulations establish sensible and practical limits to mitigate environmental impact and minimise disturbances to neighbours.

Pursuant to Regulation 9, It is an offence to undertake backyard burning of the type described above, if the area of land the burning is carried out on is under 2000m², UNLESS:

- (a) The person uses all practicable means as are necessary to prevent or minimise air pollution;
- (b) If a permit is required under the *Fire Service Act 1979*, that one has issued and is complied with;
- (c) Any applicable Council by laws are complied with under the *Local Government Act 1993*; and
- (d) If a valid *Environmental Protection Notice* is issued, the burn off is carried out in compliance with this notice.

What is meant by "The person uses all practicable means as are necessary to prevent or minimise air pollution"?

This requires the person to take into account:

- (a) wind direction and wind speed;
- (b) weather conditions;
- (c) the length of time that the vegetation or vegetative waste being burnt is likely to burn; and
- (d) the proximity of any habitable building.

It also requires the person to take reasonable measures to ensure that:

- (i) only dry vegetation or vegetative waste is burnt; and
- (ii) only vegetation or vegetative waste that is suitable for disposal by burning is burnt.

What can't I burn in my backyard?

Regulation 3 defines prohibited waste to mean any one or more of the following:

- (a) asbestos;
- (b) tyres;
- (c) coated wire;
- (d) paint containers and residues;
- (e) chemical containers and residues;
- (f) timber treated with copper chrome arsenate (CCA), pentachlorophenol (PCP), oil or any other chemical;
- (g) rubber;
- (h) painted wood;
- (i) plastic;
- (j) oil;
- (k) household waste;
- (l) linen;
- (m) foam rubber; and
- (n) polystyrene;

When do I need a fire permit?

Only if there's an active Fire Permit period. If uncertain, refer to the *Tasmania Fire Service* website. You must adhere to the conditions specified in any applicable Permit. According to section 66 of the *Fire Service Act 1979*, individuals who ignite and manage fires in compliance with the conditions of a permit granted under that section are exempt from EMPCA provisions. Nonetheless, it's important to prioritise public health and enjoyment by minimising smoke generation.

Who do I contact if I have a concern in regard to a backyard burn?

Contact should be considered in the following order:

1. Contact the neighbour or business directly.
2. Your Local Council.
3. *Tasmania Police* (using the police assistance line for non-emergencies 131 444 or 000 in the event of urgent assistance due to imminent risk to persons or property).
4. *Environment Protection Authority*

Surveillance

What governs surveillance law in Tasmania?

The *Privacy Act 1988 (Cth)* covers Australian Government agencies and organisations with an annual turnover of more than \$3 million. Such an organisation or agency must:

- tell you that your image may be captured before you're recorded; and
- make sure recorded personal information is secure and destroyed or de-identified when it is no longer needed

For all other scenarios, state and territory laws apply. In Tasmania (outside of legislation relevant to *Tasmania Police* and law enforcement) that is primarily the *Listening Devices Act 1991 (Tas)*.

What is considered a listening device and does the legislation treat listening devices and CCTV cameras differently?

A "listening device" is defined to mean any instrument, apparatus, equipment or device capable of being used to record or listen to a private conversation simultaneously with its taking place.

The *Listening Devices Act 1991* is strict in its application to audio recording devices or devices capable of recording audio. This means even if the device used is not recording sound, so long as it is capable of recording sound, it is a "listening device". HOWEVER, the Act does not specifically cover devices **only** capable of creating "video recordings" such as traditional CCTV.

This does not mean it is always lawful to have CCTV recording. Neighbourhood issues that arise include surveillance across and into a neighbour's property. Depending on where the camera is pointed and the rationale behind it, it may give rise to:

- (a) The ability for the other party to seek a restraint order; and/or
- (b) The ability for police to lay criminal charges (examples include CCTV focused on looking into bathrooms or habitable rooms).

Is it an offence to use a listening device to record conversations?

It is an offence for a person to use, or cause or permit to be used, a listening device to record or listen to a private conversation, whether or not that person is a party to the conversation. It is also an offence for a person to record a private conversation to which the person is a party.

A listening device can be used where the conversation is **not** private.

Are there any exceptions where a listening device can be used to record a private conversation?

Yes. Those exceptions include:

- A. It is legal if you unintentionally hear a private conversation through a listening device.
- B. It is legal if a party to a private conversation uses a listening device to record the conversation and all of the principal parties to the conversation expressly or impliedly consent to the listening device being used.
- C. It is legal to use a listening device to obtain evidence or information in connection with an imminent threat of serious violence to persons or of substantial damage to property.
- D. It is legal to use a listening device to record a conversation if a principal party to the conversation consents to the listening device being used, and:
 - (i) The recording of the conversation is reasonably necessary for the protection of their lawful interests; or
 - (ii) The recording of the conversation is not made for the purpose of communicating or publishing the conversation, or a report of the conversation, to persons who are not parties to the conversation.

What if someone gives me a recording of a private conversation?

It is illegal to possess a copy of a private conversation recording unless the recording is not of a private conversation or it has otherwise been obtained in a circumstance that gives rise to one of the exceptions noted above.

What are the penalties for breaching the legislation?

You can be charged and prosecuted in the *Magistrates Court of Tasmania*. You will face a fine of up to 40 penalty units (which at the time of publication equates to \$7,800.00) or up to 2 years imprisonment or both. In the case of a corporation, the maximum fine is 500 penalty units (which at the time of publication equates to \$97,500.00).

Other Helpful Resources

Noise

Environmental Management and Pollution Control Act 1994

Environmental Management and Pollution Control (Noise) Regulations 1996

Environment Protection Authority (Tas) - <https://epa.tas.gov.au/environment/noise/noise-management/>

Pollution

Environmental Management and Pollution Control Act 1994

Environmental Management and Pollution Control (Smoke) Regulations 2019

Tasmania Fire Service - <https://www.fire.tas.gov.au/Show?pageId=colNonPermit>

Surveillance

Privacy Act 1988 (Cth)

Listening Devices Act 1991

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