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This document is based on the full report of *Sound advice*.

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## Report summary

# Sound advice

A review of the effectiveness of police powers in reducing excessive noise from off-road motorbikes

*New noise laws providing police with greater enforcement powers to target nuisance motorbike riders who create excessive noise when riding in off-road areas were introduced into the Police Powers and Responsibilities Act 2000 (Qld) (PPRA) on 1 July 2006. The Crime and Misconduct Commission (CMC) was required by law to review these new noise laws.*

## The new noise laws

The new laws introduced a three-stage enforcement strategy which built on existing law enforcement powers that police had to respond to complaints about excessive noise from off-road motorbikes:

- the first stage temporarily stops the noise (for a period of 48 hours) by the issuing of a noise abatement direction to the rider by police
- the second stage restricts how the rider may use the motorbike for a period of up to two years by a noise abatement order obtained from the Magistrates Court
- the third stage removes the motorbike from the rider either for a three-month impoundment period or permanently through forfeiture.

## Scope of the review

Our review sought to determine whether the new noise laws have been effective in reducing excessive noise from off-road motorbikes. In making this determination, we considered:

- whether the new laws provide effective law enforcement powers
- how the new laws have been applied by police and the courts
- whether the new laws are being used as they were intended
- what impact the new laws have had on the community.

We also sought to determine:

- whether the new noise laws strike the right balance between the interests of those affected by excessive noise and those involved in off-road motorbike riding
- what other steps might be undertaken to ensure the effective management of excessive noise from off-road motorbikes.

To answer these questions we examined:

- the operation of the new laws (as well as other relevant legislation)
- the parliamentary intention for the use of the new laws
- the integration of the new laws into the policies and procedures of the Queensland Police Service (QPS)
- QPS and local council off-road motorbike noise complaint information
- the application of the new laws by police and the courts
- the views expressed about the new laws, off-road motorbike riding and noise management, in over 400 submissions and through consultations with stakeholders.

## Why the new noise laws were introduced

A parliamentary subcommittee, the Police and Corrective Services Portfolio Subcommittee on Trail Bikes, was formed in 2003 to examine the issues and problems surrounding the misuse of off-road motorbikes and provide advice on potential legislative reform and other responses.

The subcommittee identified excessive noise as the greatest community concern, and highlighted a number of limitations and difficulties with existing police powers to respond to noise complaints.

In response to the recommendations made by the subcommittee and continuing community concern, new noise laws were introduced. Their objectives were to:

- provide a circuit-breaker to the cycle of repeat noise complaints and the need for a police response
- strike a balance between the community's right to enjoy public and private areas and a person's right to ride a motorbike in lawful areas
- encourage a responsible attitude in riders and to target nuisance riders.

## The changes to the noise laws

The new noise laws increased some of the existing law enforcement powers and introduced a range of powers to create a three-stage enforcement process. The second and third stages were introduced specifically to control repeat noise nuisances. The key elements are:

### *Stage One: A 48-hour noise abatement direction*

- an increase in the noise abatement direction period from 12 hours to 48 hours
- a new requirement that a noise abatement direction be in writing
- a specific offence called a 'motorbike noise direction offence' for breaching a noise abatement direction, which attracts a maximum fine of 10 penalty units (\$1000)

### *Stage Two: Restricting the riding of the motorbike*

- a noise abatement order scheme which allows police to apply to the Magistrates (or Childrens) Court for a noise abatement order to restrict the riding of a motorbike for a period of up to two years if a person has breached a noise abatement direction or been issued with two noise abatement directions in a one-month period
- a specific offence called a 'motorbike noise order offence' for breaching a condition of a noise abatement order, which attracts a maximum fine of 40 penalty units (\$4000)

### *Stage Three: Removing the motorbike from the rider*

- court powers to order that a motorbike be impounded for a three-month period if a person has committed a motorbike noise order offence
- court powers to order the forfeiture of a motorbike to the state for sale or disposal if a person has repeatedly breached a noise abatement order.

## Other key changes

The new noise laws also introduced:

- a number of administrative requirements when applying any of the new noise laws such as the introduction of approved forms and notices which must be served on a range of persons and contain particular information
- impounding powers to impound a motorbike for a 48-hour period if a rider breaches a noise abatement direction or noise abatement order
- specific obligations on police when they are dealing with a rider under the age of 17 years, which include providing a copy of a noise abatement direction to a parent or guardian
- specific laws relating to the costs of impounding and storage of a motorbike, including making a parent or guardian liable for costs incurred by their child
- an exemption of the applicability of the new noise laws when a place is being used by motorbikes under a permit under a law.

Figure 1 provides a flowchart of the new enforcement stages introduced in July 2006.

## How the new noise laws have been applied in response to complaints

We obtained off-road motorbike noise complaint information and enforcement data for the new noise laws from the QPS for the two-year period 1 July 2006 to 30 June 2008.

Within this period QPS received 8644 complaints statewide, an average of more than 360 complaints per month.

### *Enforcement of Stage One: noise abatement directions*

In response to the large number of complaints made in the two-year period noted above, limited enforcement actions were taken. Only 13 noise abatement directions were issued. An additional 22 directions were issued in the subsequent five-month period.

Of the 35 noise abatement directions issued in the period 1 July 2006 to 30 November 2008, an analysis revealed:

- most were issued by the same police officers in the same areas<sup>1</sup>
- the majority were given to riders creating excessive noise in a public area ( $n = 23$ )
- the majority were issued over a weekend period ( $n = 24$ ) and in some instances appear to be associated with a police blitz in the area<sup>2</sup>
- only one was issued to a female
- the majority were issued to riders aged 21–30 years ( $n = 11$ ), but a relatively large number ( $n = 8$ ) were also issued to juveniles.<sup>3</sup>

QPS advised that in the same period:

- no person has been charged with a motorbike noise direction offence for breaching a direction
- no motorbikes had been impounded for the initial 48-hour impoundment period.

1 e.g. in September 2007, six directions were issued by the same officer in the North Coast region. In July 2008, 11 directions were issued by the same officer in the Metropolitan South region. In September 2008, four directions were issued by the same officer in the South Eastern region.

2 e.g. on 26 July 2008, nine directions were issued for riding in the same area and eight of these were issued in a 40 minute period.

3 A juvenile is a person under 17 years of age. The youngest rider issued with a direction was eight years old, followed by two 12-year-old riders, two 14-year-old riders, one 15-year-old rider and two 16-year old-riders. Of the total of eight directions issued to juveniles, seven involved riding in a public area and copies of the directions were provided to the rider's parent/guardian. In two cases, the parent/guardian was also given their own direction.

### **Enforcement of Stage Two: noise abatement orders, and Stage Three: three-month impoundment or forfeiture**

QPS further advised that during the same period:

- no noise abatement orders were applied for by police under the second enforcement stage (for either breaching a noise abatement direction or receiving two noise abatement directions in a one-month period)
- no impoundment or forfeiture action has been taken pursuant to the third enforcement stage.

### **The review findings**

We found that the new noise laws have not provided effective law enforcement powers for regulating excessive noise from off-road motorbikes.

The enforcement data illustrates that in response to complaints, very limited actions have been taken by police against riders. The new noise laws have been used sparingly and only by a select few officers in a few regions throughout Queensland.

We found there to be numerous factors that have contributed to the ineffectiveness of the new noise laws to provide police with the necessary powers to respond to noise nuisances. At the core is an enforcement scheme that is not responsive to the characteristics of the problem. The scheme is overly complex, flawed by legal ambiguities, and has onerous investigative requirements and numerous administrative processes.

Our legal analysis of the new laws identified a number of issues of concern. Some of the language of the new laws and definitions used are ambiguous; some also limit the applicability of the laws to particular off-road vehicle noise problems.

**Table 1: Complaints made to the QPS about excessive motorbike noise (code 331)\* and number of noise abatement directions (NADs) issued, 2006–07 to 2007–08 (all police regions)**

Financial year, complaints and NADs	Metropolitan North Region	Metropolitan South Region	South Eastern, Southern, North Coast, Central, Northern and Far Northern Regions <sup>†</sup>
Complaints 2006–07	508	494	6705
Complaints 2007–08	496	441	
Total number of complaints, 2006–08	1004	935	6705
Total number of NADs issued 2006–08	0	0	13

Source: QPS, 2008.

\* Code 331: Noise Complaint – Motorcycle (other than on a road) unless otherwise specified specifically covers complaints of excessive noise from motorcycles being ridden in public places (other than on a road), or within private property.

† Note that the data for these regions are incomplete.

The new noise laws are found throughout Chapter 4 and Chapter 19 Part 3 of the PPRA. A great deal of navigation is required to determine which laws apply and when they apply. Chapter 4 contains a variety of other laws associated with vehicle impounding for offences specific to on-road vehicle use and Chapter 19 Part 3 contains other noise laws. Police are provided with different powers and procedures to be followed when responding to different types of noise complaints.

We found that, despite the new laws being built on a three-stage enforcement process, the stages are poorly linked to one another, not only in where they are located within the PPRA, but also in the wording of the laws. Furthermore, some sections specify the administrative steps to be taken by police, but others do not.

Other concerns that we have with the legislation relate to the technical features of the new laws; for example:

- the requirement that police hear the noise before they are able to apply any of the laws
- how a noise abatement direction is actually breached and who is liable for a breach
- ambiguities in the noise abatement order provisions, including when police must apply to the court for a noise abatement order.

Police are provided with limited guidance in how to interpret the laws. When the new laws were introduced, police were provided with a self-education online learning product. The usefulness of the online learning product was limited by the lack of information on the processes and procedures police are required to undertake when applying the laws.

Police are provided further information through the QPS *Operational Procedures Manual*, which outlines operational policy and procedures for police in the performance of their duties. Much of the guidance provided in the manual for the enforcement of the new laws is a reproduction of the legal provisions, presented without simplification and therefore retaining the legal complexity.

Our consultations with police highlighted the problems they face in the application of the new laws. The police we spoke with:

- found the laws to be onerous due to:
  - the complexity of the laws
  - the stringent initial investigative requirements imposed
  - the numerous administrative processes to be undertaken in applying the laws
- had great difficulty intercepting riders due to:
  - the incompatibility of most police patrol vehicles with off-road terrain
  - the restrictions of the QPS pursuit policy that prevents officers pursuing riders

- had difficulty responding to noise complaints because of competing policing priorities and staff availability.

Overall, if all three enforcement stages were applied to one rider who repeatedly caused off-road motorbike excessive noise, enforcement action would include:

- police receiving at least four noise complaints and attending the complainant's residence, hearing the noise and identifying the rider and motorbike each time
- police completing a minimum of eight forms as well as compiling a brief of evidence for the prosecution of the rider for a motorbike noise direction offence and/or a motorbike noise order offence
- 48-hour impounding action being taken against the motorbike at least three times and the motorbike being impounded for a three-month period at least once
- the rider being charged and found guilty of either one motorbike noise direction offence, and/or two motorbike noise order offences
- three court hearings and the successful prosecution of the rider before a forfeiture order can be made.

The enforcement issues highlighted by police were echoed by many members of the public, who also expressed the view that police should not be responsible for policing off-road motorbike noise. We did receive a few positive comments about how police involvement has stopped neighbourhood noise problems through their assistance in the mediation process, however, nearly all comments made to our review describe continued frustration at how off-road motorbike noise problems are dealt with. Many examples were provided of the negative impact of the noise, the antisocial behaviour of some riders and the lack of police response to complaints. On the other hand, many riding enthusiasts described the new noise laws as being biased in favour of the complainants and expressed feelings of being unfairly targeted and victimised when riding lawfully.

These views, together with complaint and enforcement data, show that the new noise laws have failed to achieve their objectives of:

- providing a circuit-breaker to the cycle of repeat off-road motorbike noise complaints and the need for a police response
- striking a balance between the competing interests of the wider community and off-road motorbike riders.

In addition to the inadequacies of the new laws, there are a number of other contributing factors. Many comments identified a failure to provide sufficient regulation of the activity. The off-road motorbike riding industry is largely unregulated; off-road motorbikes of all types are readily available, as are after-market exhausts. There is also little control of off-road motorbike design standards, in particular

the level of their noise emissions. There is little restriction on the use of off-road motorbikes on private property.

Comments further identified a failure by local governments and the state government to provide support and funding for the activity, particularly in failing to provide places to ride (one key example is that no land has been declared 'motorbike control land'<sup>4</sup>).

In developing broad solutions to the needs of off-road motorbike riding, several government and non-government working groups have been formed and various reports and other activities have been commissioned at the local government and state government level. However, we were provided with little information indicating that these broad solutions have achieved their aims, or what positive impacts, if any, they have had on resolving the problems associated with off-road motorbike riding and noise. On the contrary, we were provided with information about a lack of collaboration and cooperation between local governments and the state government and, in some instances, a duplication of objectives and resources. We also found it difficult to obtain specific information about future projects and long-term planning initiatives. Where activity has occurred, it has primarily been in the South East Queensland region, with few statewide initiatives.

## The consequences of inaction

It is important to note that the consequences of inaction about excessive motorbike noise may be significant, particularly due to:

1. the increase in the popularity of the activity
2. the decrease in riding areas
3. the growth in Queensland's urban development and population.

Long-term sustainable solutions need to be responsive to these issues. We found that the problems associated with off-road motorbike noise are not new and appear to be increasing. Indeed, community frustration in some areas has led to serious criminal and vigilante-style behaviour, such as setting mantraps for off-road motorbike riders, where wooden spikes and wire had been laid across riding tracks, with the aim of injuring riders.

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4 At the same time the new noise laws were introduced, so too were laws allowing for public land that is controlled or managed by the state to be declared 'motorbike control land', where riders holding the necessary authority can lawfully ride and be exempt from liability under the new noise laws.

## The way forward

While the focus of our review was the effectiveness of the new noise laws, it became apparent that, in order to deal with the problem of off-road motorbike noise, the overall management of off-road motorbike riding needs to be addressed.

The problems associated with off-road motorbike noise have compounded over a long period of time and solutions will not be achieved overnight. If ignored, the problems will not disappear and will probably increase. Strategies and policies need to be designed for the enforcement of different aspects of the activity, and a collaborative and cooperative approach needs to be adopted by government agencies, the off-road motorbike industry and the community.

The burden of resolving noise problems has long been left to police. We believe that any further amendments of policing powers in regards to this issue will provide only a 'bandaid' approach and will fail to address the underlying causes of the problem. If the matter is left as a policing responsibility, the community will expect police to resolve the problems. We suggest that police involvement ought to be a last resort.

Responses need to acknowledge the interests of legitimate recreational and competitive riding enthusiasts who participate lawfully in the activity, and these riders need to be differentiated from those who show flagrant disregard for the laws. The interests of the lawful riders need to be merged with those of the greater community, whose members are entitled to enjoy public and private space without being subjected to noise nuisances. Achieving this balance will be complex. Consideration must be given to the characteristics of the activity, in particular where the riding occurs. In this regard, complaints about off-road motorbike noise fall into one of three location categories:

- private residential property where residents ride on their own property
- 'open-space riding'<sup>5</sup> where riding may be occurring legally or illegally
- established off-road motorbike clubs.

Noise problems are a by-product of the location where the riding occurs. Simply developing punitive responses to stop the noise will not solve the problem; the riding behaviour needs to be addressed. Where riding occurs lawfully, land use and noise disputes need to be managed effectively. When riding occurs unlawfully, causing noise and other neighbourhood problems, the unlawful riding behaviour should be dealt with. Any antisocial behaviour should be targeted with appropriate police and criminal sanctions.

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5 'Open space riding' refers to open land areas where recreational riders gather, and includes beaches, forestry areas, national parks, neighbourhood parks, footpaths, council parks, vacant blocks and fire trails.

We believe that the following key principles ought to guide action:

- Emphasis must be placed on the recreational and long-term sustainable management of off-road motorbike riding.
- The issue needs to be addressed by all levels of government, using a coordinated and cooperative approach rather than a series of disconnected strategies.
- The underlying factors that contribute to noise becoming excessive need to be addressed.
- Solutions need to be tailored to the characteristics of the problem and the settings in which off-road motorbike riding occurs.
- Greater emphasis should be given to preventing noise becoming a problem.
- Where noise is problematic, resolution processes must be easily accessible to those adversely affected.
- Greater onus should be placed on riders to take responsibility for their riding behaviour and the noise their motorbike emits.

In formulating our recommendations, we sought to go beyond punitive measures to a holistic framework aimed at long-term sustainable reform that is responsive to the issues associated with off-road motorbike noise. Our recommendations address several aspects and seek to work in unison.

A 'one size fits all' approach, as currently exhibited by the new noise laws, has proved to be ineffective. Responsibility should be placed on those best positioned to provide preventative measures and responsive solutions.

The success or failure of the recommendations will depend on the degree to which they are adopted, promoted, reviewed and strengthened. This will involve compromise and a commitment of time and money on the part of all players — the state government and local governments, the off-road motorbike industry, riding enthusiasts and the community.

Following our recommendation to repeal the existing noise laws, the remainder of our recommendations fall into two key areas:

1. The creation of an appropriate governance structure to provide the necessary authority and leadership to initiate change in the management of off-road motorbike issues.
2. The development of a statewide strategy for the long-term management and sustainability of off-road motorbike riding in Queensland, which includes preventative strategies and responsive solutions for the management of off-road motorbike noise.

## Recommendations

### Recommendation 1

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That the off-road motorbike noise laws found in Chapter 4 and Chapter 19 Part 3 *Police Powers and Responsibilities Act 2000* (Qld) be repealed and replaced with a series of enforcement strategies that are responsive to the characteristics of off-road motorbike noise problems in specific locations.

### Recommendation 2

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That the state government establish a strong governance structure to create and implement a long-term, statewide strategy for a coordinated and accountable whole-of-government approach to the management and sustainability of off-road motorbike riding in Queensland. The Interdepartmental Trail Bike Working Group and the Industry Reference Group should be abolished.

The governance structure should include:

- a ministerial taskforce or similar high-level enabling body to provide the authority, leadership and mandate for government agencies to provide the resources and personnel to support and oversee the implementation of the strategy
- an advisory committee comprising representatives from state government agencies, local government and off-road motorbike interest groups to implement the strategy, increase interagency and key stakeholder cooperation, drive the strategy initiatives and advise the taskforce or similar body.

Formalised agreements should be established to identify legislative responsibilities, demarcation, reporting structures and a commitment to creating and maintaining constructive and cooperative working relationships, for example through memoranda of understanding or other agreements. These agreements should be created and endorsed within the ministerial taskforce and advisory committee.

### Recommendation 3

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That the state government develop and implement a long-term, statewide strategy, which is publicly available and provides for a coordinated and accountable whole-of-government approach to the management and sustainability of off-road motorbike riding in Queensland.

#### Recommendation 4

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That a centralised 1800 (free) hotline number (available seven days a week) be established where people can report illegal and nuisance off-road motorbike activity as well as noise concerns. This centralised complaint information system would identify localities where complaints are concentrated. Call information should be disseminated to the advisory committee as well as the state or local government authorities responsible for the area where the riding is occurring.

#### Recommendation 5

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That a regulatory scheme to provide for decibel emission standards be established for all:

- off-road motorbikes, including any type of motorised two-, three- or four-wheel vehicle that is primarily designed for off-road use
- after-market exhausts.

The scheme should regulate the distribution and sale of off-road motorbikes and exhausts in Queensland.

#### Recommendation 6

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That local governments provide regulatory reform through land planning and development guidelines for the use of off-road motorbikes on private residential property.

#### Recommendation 7

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That a civil regulatory scheme be created that allows people who are subject to excessive noise emanating from a nearby property to apply for a noise abatement order against the person responsible for the noise. The scope of persons who may bring an application should include private individuals as well as police and local government officers. The jurisdiction to determine the matter should be the Queensland Civil and Administrative Tribunal (QCAT).

#### Recommendation 8

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That existing laws relating to the lawful riding by licensed riders on registered motorbikes in lawful open-space areas (e.g. state forests) remain. These areas should be clearly identified if they are deemed to be roads, and enforcement of existing laws should be undertaken regularly through collaborative joint operations between enforcement agencies.

#### Recommendation 9

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That an off-road motorbike trail guide be established identifying recreational riding areas in Queensland. The guide should provide information such as the trail name, location, details (e.g. car parking and motorbike off-loading areas), closest towns, trail length, difficulty of the trail and any other activities that occur on the trail (e.g. four-wheel driving or horse riding). The guide could also be used to warn riders of noise and other concerns in specific areas. Preference should be given to an online reference source, as a hard copy would quickly become dated.

Consideration should be given to broadening the trail guide to include information about other trail activities such as four-wheel driving, horse riding, mountain bike riding, and so on.

#### Recommendation 10

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That a user-pays system be established for recreational off-road motorbike riding and that the resulting funds be used to maintain and improve the riding area.

#### Recommendation 11

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That local governments in collaboration with other agencies develop local area enforcement strategies to target illegal off-road motorbike riding and associated antisocial behaviour problems in the community.

Consideration should be given to the use of local laws to provide stronger punitive measures to respond to problem riding behaviour; these laws can be specific to local area needs.

#### Recommendation 12

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That appropriate long-term future land planning be undertaken to manage the conflict between urban development and existing off-road motorbike clubs, and to provide for the creation of new clubs and recreational riding areas.

### Abbreviations

CMC	Crime and Misconduct Commission
NADs	Noise Abatement Directions
PPRA	<i>Police Powers and Responsibilities Act 2000</i> (Qld)
QCAT	Queensland Civil and Administrative Tribunal
QPS	Queensland Police Service

**Figure 1: An overview of the enforcement stages of the new noise laws**

