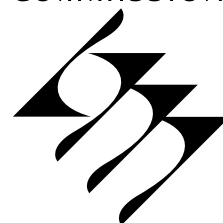


SOUND ADVICE

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

April 2010

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

CMC vision:

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

CMC mission:

To combat crime and improve public sector integrity.

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The Honourable Reginald John Mickel MP
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Speaker

In accordance with section 808(4) of the *Police Powers and Responsibilities Act 2000*, the Crime and Misconduct Commission hereby furnishes to you its report, *Sound advice: a review of the effectiveness of police powers in reducing excessive noise from off-road motorbikes*.

The Commission has adopted the report.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Martin Moynihan', written over a light grey rectangular background.

MARTIN MOYNIHAN AO QC
Chairperson

FOREWORD

The management of any type of noise is difficult and off-road motorbike noise is no exception. In 2006, new noise laws were introduced in Queensland to provide police with greater enforcement powers to target nuisance off-road motorbike riders. The Crime and Misconduct Commission (CMC) was required by law to review these new laws.

At the commencement of our review we had little knowledge of the emotive and contentious nature of this issue in affected communities. We soon discovered that off-road motorbike noise is a widespread concern which has significant impacts on both riding enthusiasts and people affected by it. Our review attracted more public interest than any previous CMC review, with more than 400 submissions received.

It is our view that responses to noise problems need to acknowledge the interests of legitimate recreational and competitive riding enthusiasts who lawfully participate in the activity, as opposed to those riders who show flagrant disregard for the laws and the impact the activity has on others in the community. The interests of lawful riders also need to be balanced with those of the greater community who are entitled to enjoy public and private space without being subject to noise nuisances. Achieving this balance is difficult but not insurmountable. This review provided us with an opportunity to not only review the new noise laws, but also to consider what other steps might be undertaken to contribute to the effective management of excessive noise from off-road motorbikes.

Although police have long had the responsibility of responding to off-road motorbike noise complaints, in looking forward we have gone beyond policing or punitive measures to identify holistic responses that aim to provide long-term sustainable reform for the management of excessive noise from off-road motorbikes. Rather than amending the existing laws or increasing police powers, we have made recommendations that seek to prevent off-road motorbike noise from becoming a problem in the first place, and when it does, recommending efficient and effective strategies to provide relief to those affected.

Nevertheless, there are no simple solutions. Our recommendations need to work in unison, and their success or failure will depend on the degree to which they are adopted, promoted, reviewed and strengthened; and the level of compromise and commitment of time and money on the part of all stakeholders — the state government, local governments, the off-road motorbike industry, riding enthusiasts and the community.

Dr Margot Legosz

Director, Research and Prevention

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We are particularly grateful to the many members of the public and special interest groups who contacted us to share their experiences and views relating to excessive noise from off-road motorbikes. These comments provided us with valuable information and we thank those involved for taking the time to contribute to our review.

Nadine Seifert was the project manager for the review and the primary author of the report, and was supported by Dr Michael Briody, Sally Lohrisch and Katherine Pike.

The report was prepared for publication by the Communications Unit.

LIST OF ABBREVIATIONS

ADR	Australian Design Rules
CAD	Computer Aided Dispatch
CARRS-Q	Centre for Accident Research and Road Safety Queensland
CMC	Crime and Misconduct Commission
dB(A)	decibel adjusted
DIP	Department of Infrastructure and Planning
DoC(SRS)	Department of Communities (Sport and Recreation Services) (previously Department of Sport and Recreation)
DERM	Department of Environment and Resource Management (previously Environmental Protection Agency)
DTMR	Department of Transport and Main Roads (previously Queensland Transport)
FCAI	Federal Chamber of Automotive Industries
IMS	Information Management System
IRG	Industry Reference Group
ITBWG	Interdepartmental Trail Bike Working Group
MQ	Motorcycling Queensland
NTA	Notice to Appear
OPM	Queensland Police Service <i>Operational Procedures Manual</i>
PCC	Police Communication Centre
PPRA	<i>Police Powers and Responsibilities Act 2000</i> (Qld)
OLP	Online Learning Product
QCAT	Queensland Civil and Administrative Tribunal
QLA	Queensland Legislative Assembly
QPRIME	Queensland Police Records and Information Management Exchange
QPS	Queensland Police Service
RSSDISU	Road Safety Strategic Development and Intelligence Support Unit (of the State Traffic Support Branch of the Queensland Police Service)
SEQ	South East Queensland
SEQT BAG	South East Queensland Trail Bike Action Group (previously the Trail Bike Action Group)
SEQTBMF	South East Queensland Trail Bike Management Forum
SPA	<i>Sustainable Planning Act 2009</i> (Qld)
TORUM	<i>Transport Operations (Road Use Management) Act 1995</i> (Qld)

SUMMARY

On 1 July 2006, new noise laws were introduced into the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) to target nuisance motorbike riders who create excessive noise when riding in off-road areas. These new laws sought to provide a balance between the community's ability to enjoy public and private areas and a person's right to ride a motorbike in lawful areas.

The new noise laws introduced a three-stage enforcement strategy that built on the existing powers that police had to respond to off-road motorbike noise complaints. The first stage temporarily stops the noise (for a period of 48 hours) by the issuing of a noise abatement direction by the police. The second stage restricts the riding of 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.

With the introduction of the new noise laws also came a legal requirement that the Crime and Misconduct Commission (CMC) review the laws' effectiveness in mitigating excessive noise from motorbikes being ridden off-road.¹

Context of the review

We sought to determine whether the new noise laws, and the role police play in enacting them, have been effective in achieving their primary objective of reducing excessive noise from off-road motorbikes.

In addition to determining how the laws have been applied by the police, we also considered whether the new noise laws strike the right balance between the interests of those involved in off-road motorbike riding and the interests of those affected by the excessive noise. It also became apparent when conducting the review that the regulation of noise from off-road motorbike riding is difficult to achieve without consideration of the management of the activity as a whole. Therefore, we also sought to determine what other steps might be undertaken to contribute to the effective management of off-road motorbike riding.

To answer these questions, we considered a broad range of material, including:

- a legal analysis of the new noise laws and other relevant legislation
- relevant research, policy and off-road motorbike industry literature
- Queensland Police Service (QPS) policy and procedures surrounding the new noise laws
- QPS and council off-road motorbike noise complaint data and data about police enforcement of the new noise laws
- information from key stakeholders, special interest groups and members of the public.

We assessed this information to determine the scope of the problem in the community, the impact that the greater police powers have had in affected communities and how the situation could be improved.

1 This review was undertaken by research officers from the CMC's Research and Prevention Unit. The unit undertakes independent research to support the functions of the CMC, as well as research into other matters relating to the administration of criminal justice or misconduct as referred to the CMC (by special referral from government or as a consequence of provisions of legislation) (s. 52 *Crime and Misconduct Act 2001* (Qld)).

Review findings

Overall, we found that the new noise laws have not provided police with effective law enforcement powers for regulating excessive noise from off-road motorbikes. In the two years that followed the introduction of the laws, there were a high number of complaints to police statewide about excessive noise from off-road motorbikes (on average 360 complaints per month), very limited application of the new noise laws by police (13 noise abatement directions were issued in this period) and considerable community disquiet about off-road motorbike noise. Only the first stage of the new noise laws has been applied, and it has been applied by a select few officers in specific areas and at limited times. The second and third enforcement stages have not been applied.

We found there to be numerous factors that have contributed to the new noise laws being an inefficient and ineffective enforcement tool for police. At the core is that the legislation and the enforcement scheme are not responsive to the characteristics of the problem. The scheme is overly complex, contains legal ambiguities, onerous investigative requirements and numerous administrative processes. Police are provided with limited guidance in how to interpret the laws and are faced with difficulties in intercepting riders, and in dealing with competing policing priorities and staff availability. With policing resources stretched in some areas, responding to off-road motorbike noise complaints is often not a policing priority.

For those affected by off-road motorbike noise in the community, the issue has a significant negative impact, and comments made in submissions and consultations suggest that the introduction of the new noise laws has had very little positive impact. Some riding enthusiasts described the new noise laws as biased in favour of the complainant and expressed the view that they were being unfairly targeted and victimised when lawfully riding. On the other hand, the majority of people adversely affected by excessive noise described increased frustration and a sense of powerlessness to do anything to stop the noise, a situation that the introduction of the new noise laws has done nothing to change.

These views, together with complaint and enforcement data, show that the new noise laws have failed to provide a circuit-breaker to the cycle of repeat off-road motorbike noise complaints and the need for a police response. They have also failed to strike a balance between the competing interests of off-road motorbike riders and the wider community.

Problems of excessive noise from off-road motorbikes are not new and appear to be increasing. It is likely that the growth in the popularity of the activity, a decrease in riding areas and the growth in Queensland's urban development will continue to compound the problem unless long-term, sustainable solutions are found. The burden of resolving this problem has long been left to police and there has been prolonged inaction in responding to the underlying causes that contribute to off-road motorbike noise becoming a problem. The off-road motorbike industry is largely unregulated. Off-road motorbikes of all types are readily available and there is little control over their design standards, in particular the level of noise they emit. With few restrictions on the use of motorbikes in off-road areas, the problem of noise will continue to flourish unless broader solutions are implemented.

In formulating our recommendations, we have sought to go beyond punitive measures to provide a holistic response to the issues associated with excessive noise from off-road motorbikes.

Our recommendations are underpinned by the following key principles:

- Emphasis must be placed on the 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 directed at 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 the noise their motorbikes emit and their riding behaviour.

Our recommendations do not stand alone; they aim to work in unison. At the forefront, the objective must be to prevent off-road motorbike noise becoming a problem; where it does become a problem, efficient and effective strategies need to be available to provide relief. In identifying these strategies, consideration must be given to the characteristics of the activity, in particular where the riding occurs. A 'one size fits all' approach, as exhibited by the current noise laws, will be ineffective. Our recommendations seek to provide transparent and simplified processes that place responsibility on those best positioned to provide preventative measures or responsive solutions. The rationale for each recommendation is discussed in detail in Chapter 10 of this report.

Recommendations

Recommendation 1

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

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 existing Interdepartmental Trail Bike Working Group and 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

That state government develop and implement a long-term, statewide strategy that 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

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

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 after-market exhausts in Queensland.

Recommendation 6

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

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

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 regularly undertaken through collaborative joint operations between enforcement agencies.

Recommendation 9

That an off-road motorbike trail guide be established identifying recreational riding areas in Queensland. The guide should provide information such as 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

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

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

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

Structure of the report

This report is presented in ten chapters:

Chapter 1: Introduction. This chapter explains why a review of police powers relating to excessive noise from off-road motorbikes was undertaken and the scope of our review.

Chapter 2: Methodology. This chapter explains the methods used to gather information for the review and the limitations of the data received.

Chapter 3: The history of off-road motor vehicle noise laws in Queensland. This chapter discusses the noise laws that existed prior to the introduction of the new noise laws, why the new noise laws were introduced and the changes they brought about. It also discusses the parliamentary intention for the use of the new laws.

Chapter 4: The legal framework of the off-road motorbike noise laws. This chapter presents the new noise laws and describes how they operate. It also describes other laws that were introduced to assist with the application of the new noise laws. It provides a critical legal analysis of the new noise laws and highlights some of the legal technical issues associated with them.

Chapter 5: How the Queensland Police Service has operationalised the new noise laws. This chapter discusses how the QPS has translated the noise laws into a practical policing context, and outlines the guidance given to officers in interpreting and applying the laws. It also considers the enforcement issues police face when applying the noise laws, as well as other, non-legislative strategies used by police to respond to off-road motorbike noise complaints.

Chapter 6: How the off-road motorbike noise laws have been applied in response to complaints. This chapter presents relevant police and council complaint data, as well as police enforcement data of the new noise laws. It also considers the infringement data issued for unlawful riding and identifies some areas where excessive noise from off-road motorbikes is an issue.

Chapter 7: Other responses to off-road motorbike noise issues. This chapter identifies local and state government non-legislative solutions to off-road motorbike noise, and considers the current regulations that apply to off-road motorbikes and motorbike riding in Queensland.

Chapter 8: Other jurisdictions' responses to complaints about excessive noise from off-road motorbikes. This chapter discusses some of the laws used in other Australian states and territories to respond to off-road motorbike noise complaints.

Chapter 9: Community feedback about off-road motorbike riding and the impact of noise. This chapter summarises the key issues raised in public submissions to the CMC and in consultations conducted with the public and various interest groups.

Chapter 10: Discussion and recommendations. This chapter discusses the overall findings of the review and presents our recommendations.

INTRODUCTION

This chapter explains why a review of the police powers relating to the regulation of excessive noise from off-road motorbikes was undertaken and the scope of our review.

Context of the review

On 1 July 2006, new noise laws were introduced into the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) to target motorbike riders who create excessive noise when riding in off-road areas. These new noise laws provide police and the courts with greater enforcement powers by introducing a three-stage enforcement strategy. This enforcement strategy built on the existing powers the police had to respond to off-road motorbike noise complaints:

1. The first stage of the legislation aims to temporarily stop the noise for a period of 48 hours by the issuing of a noise abatement direction to the rider.
2. The second stage restricts the riding of the motorbike for a period of up to two years by a noise abatement order obtained from the Magistrates Court.
3. The third stage removes the motorbike from the rider either for a three-month period or permanently through forfeiture.

Section 808 of the PPRA directs the Crime and Misconduct Commission (CMC) to ‘review the effectiveness of the motorbike noise provisions in mitigating the emission of excessive noise from motorbikes being driven on places other than roads and prepare a report on the review’. These laws are found in Chapter 4 and Chapter 19 Part 3 of the PPRA and are referred to throughout this review as the ‘new noise laws’. The legislation does not provide any further guidance about Queensland Parliament’s expectations of the review except that the review be undertaken as soon as practicable one year after the commencement of the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005* (Qld).²

Scope of the review

The focus of the review has been to determine whether the new noise laws as presently drafted, and the role that police play in enacting them, have been effective in achieving their primary goal of reducing excessive noise from off-road motorbikes.

To determine this, we considered:

- whether the new noise laws provide effective law enforcement powers to achieve the desired outcome of reducing excessive noise from off-road motorbikes
- how the new noise laws have been applied by police and the courts
- whether the new noise laws are being used as they were intended
- what impact the new noise laws have had on the community.

² This Act commenced on 1 July 2006.

The new noise laws sought to balance the rights of riders who ride lawfully in a public place or on private property with those of the community seeking peace and quiet. Therefore, we also set out to determine:

- whether the new noise laws strike the right balance between the interests of those involved in off-road motorbike riding and those affected by excessive noise.

It also became apparent when conducting the review that the regulation of excessive noise created by motorbikes being used off-road is difficult to achieve without consideration of the management of the activity of off-road motorbike riding as a whole. Therefore, we also considered:

- what other steps might be undertaken to ensure the effective management of excessive noise from off-road motorbikes.

Limitations of the scope of the review

Our review was limited to the consideration of off-road motorbike riding issues only in so far as they relate to the management of excessive noise. In conducting the review, a number of other issues associated with off-road motorbike riding were highlighted. For example, many submissions referred to the dust and the environmental degradation created by the activity, and rider and non-rider safety concerns. These are important issues, but are beyond the scope of this review.

METHODOLOGY

This chapter explains the methods used to gather information for the review and discusses the limitations of the data.

How we conducted the review

The review brings together information obtained from:

- an assessment of the relevant research, policy and off-road motorbike industry literature
- an evaluation of the relevant legislation, in particular the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA)
- analysis of information obtained from public submissions to the review
- analysis of information obtained during consultations with key stakeholders and interest groups
- analysis of quantitative data, including:
 - complaints, noise abatement direction notices and infringement data recorded by the Queensland Police Service (QPS)
 - the number of new off-road motorbike sales in Queensland between 2004 and 2008 recorded by the Federal Chamber of Automotive Industries
 - the number of identified licence numbers for events sanctioned by Motorcycling Queensland between 2004 and 2008
 - the number of motorbikes conditionally registered in Queensland by the Department of Transport and Main Roads between 2004 and 2008
 - local government complaint information.

A description of each follows.

An assessment of the relevant literature

We reviewed literature relating to:

- off-road motorbike riding, particularly in Queensland
- the impact of excessive noise on the community
- information pertaining to noise laws.

This information was obtained from a variety of sources, including local and state government reports, non-government reports, media reports, journal articles and off-road motorbike riding magazines such as *Australasian Dirt Bike*, *Australian Trailrider* and *Trailzone*. The review was limited, however, by the lack of Australian literature relating specifically to excessive noise caused by the riding of motorbikes off-road. Most research has focused on the environmental issues associated with off-road motorbike riding and land planning requirements.

An evaluation of the relevant legislation

In addition to reviewing the PPRA, we considered other relevant legislation, including:

- *Environmental Protection Act 1994* (Qld)
- *Juvenile Justice Act 1992* (Qld)
- *Noise Abatement Act 1978* (Qld) (repealed)
- *Peace and Good Behaviour Act 1982* (Qld)
- *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005* (Qld)
- *Summary Offences Act 2005* (Qld)
- *Sustainable Planning Act 2009* (Qld)
- *Transport Operations (Road Use Management) Act 1995* (Qld).

We also considered a number of Regulations, including:

- Fair Trading Regulation 2001 (Qld)
- Summary Offences Regulation 2006 (Qld)
- Transport Operations (Road Use Management – Road Rules) Regulation 2009 (Qld)
- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999 (Qld).

We examined the history of Queensland's off-road motor vehicle noise laws to identify how they have changed over time and what impact the changes have had. We explored why the new noise laws were introduced and the parliamentary intention behind their creation.

In addition, we:

- described the new noise laws and how they work
- identified the technical legal difficulties with the new noise laws
- identified the practical policing difficulties associated with applying the new noise laws
- considered the law enforcement strategies used to respond to complaints about excessive noise from off-road motorbikes in other jurisdictions.

Our legal analysis of the new noise laws was undertaken through a review of the laws themselves. At the time of the review, many of the new noise laws had not been applied by police, nor had any cases involving the new laws proceeded to court. Therefore, the application and interpretation of the laws has not been tested in court and there is no judicial interpretation to assist the analysis.

Public submissions

In June 2008, we released an issues paper titled *The CMC Review of Queensland's Off-road Motorbike Noise Laws*, which provides a brief description of the new noise laws and the nature of our review (see <www.cmc.qld.gov.au/asp/index.asp?pgid=10887>). We requested submissions from the public to:

- find out whether the new noise laws have helped resolve or reduce any problems in areas affected by excessive noise from off-road motorbikes
- determine whether the new noise laws have affected the capacity of off-road motorbike users to pursue their activity.

The submissions also gave the community an opportunity to provide additional comments relevant to the review.

We advertised the review and the call for submissions in a variety of ways including:

- advertising in the media in regional and metropolitan areas throughout Queensland
- writing to motorbike industry stakeholders, relevant government departments, all Queensland local government councils and members of state Parliament advising them of the review and seeking their comments
- asking local members of Parliament to notify people in their community of the review
- emailing all contact people for clubs and tracks affiliated with Motorcycling Queensland, advising them of the review, seeking their comments, and encouraging them to let their members know about the review.

The call for submissions prompted considerable media interest. The review was referred to in a number of local and regional newspaper articles discussing off-road motorbike riding issues,³ and we also participated in a number of media interviews.⁴ Details of the review were posted on an internet motorbike forum website at <www.dirtbikeworld.net>, which generated discussion among forum contributors. We monitored the discussion threads.

Over 400 submissions were received, the largest number of submissions the CMC has received for any review. They came from private citizens, councils, government agencies and departments, state and local government members and interest groups. For a detailed list of these submissions, see Appendix 1.

Submissions from the community provided a rich source of information, including:

- maps of neighbourhoods, highlighting where riding takes place
- photographs of neighbourhood motorbike tracks
- digital recordings of rider activity
- newspaper and catalogue clippings
- diaries recording in detail when the noise occurred
- copies of letters that people had sent to local and state government members and police
- copies of minutes from meetings of community groups and local government discussing off-road motorbike noise issues
- neighbourhood petitions.

This information, however, needs to be interpreted cautiously. We cannot estimate the actual prevalence of excessive off-road motorbike noise by either public submissions, or police or court data. Nor can we determine to what extent the submissions made to us were representative of the community. Many individuals or organisations may not have been aware of the request for submissions, and hence the viewpoints of those people cannot be known.

3 For example: *Beaudesert Times* 6 August 2008, p. 15; 13 August 2008, p. 7; 20 August 2008, p. 7; *Cairns Sun* 6 August 2008, p. 6; *Fassifern Guardian* 13 August 2008, p. 3; *Catton Lockyer Brisbane Valley Star* 16 July 2008, p. 3; *Gladstone Observer* 26 July 2008, p. 5; *Ipswich Advertiser* 23 July 2008, p. 3; *Kilcoy Sentinel* 7 August 2008, p. 10; *Noosa Journal* 7 August 2008, p. 5; *Pittsworth Sentinel* 6 August 2008, p. 4; *Range News* 10 July 2008, p. 29; *Southern Free Times* 7 August 2008, p. 12; *Tamborine Times* 7 August 2008, p. 6; *Toowoomba Chronicle* 5 August 2008, p. 2; *Western Cape Bulletin* 13 August 2008, p. 4; *Western Times* 7 August 2008, p. 8.

4 For example: ABC Southern Queensland (Toowoomba), ABC Sunshine Coast and Cooloola Coasts, ABC Western Queensland (Longreach), ABC 612 (Brisbane), 4BC Brisbane, Hot FM 91.1 (Sunshine Coast), MIX 92.7 Maryborough.

Consultations

During the course of the review, we conducted a range of consultations, either face to face or by telephone, with representatives of various interest groups, including:

- local councils:
 - Redland Bay City Council
 - Logan City Council
 - Sunshine Coast Regional Council
 - Longreach City Council
- state government:
 - Department of Communities (Sport and Recreation Services) (DoC(SRS))
 - Department of Infrastructure and Planning (DIP)
 - Department of Environment and Resource Management (DERM)
- police officers and civilian staff from the Metropolitan South, North Coast and South Eastern QPS regions, as well as Operations Support Command
- the South East Queensland Council of Mayors
- Motorcycling Queensland
- Yamaha Motor Australia
- the South East Queensland Trail Bike Action Group (SEQT BAG) (previously the Trail Bike Action Group)
- off-road motorbike riders, including some riders at a trail bike adventure day ride hosted by Australian Dirt Bike Adventures at Wyaralong near Beaudesert, in South East Queensland
- the Centre for Accident Research and Road Safety Queensland (CARRS-Q)
- Frankston City Council, Victoria.

By law, we were also required to meet with the Minister for Police, Corrective Services and Emergency Services, the Hon. Neil Roberts, which we did on 28 May 2009 to summarise the progress of the review and to seek his verbal submission to it.

We also attended the South East Queensland Trail Bikes and Off-Road Vehicles Program funding launch on 22 August 2008 and consulted with a range of individuals, including private operators and people seeking to establish their own off-road motorbike riding facility.

We consulted with some of the above-mentioned to either clarify information they had provided to us in their submissions or to explore issues specific to the particular representative. We analysed this information together with other sources of information such as complaints and infringement data recorded by the QPS.

During the consultation period we also made requests through the DoC(SRS) to attend an Interdepartmental Trail Bike Working Group (ITBWG) meeting, but our request was declined.

In finalising the report and recommendations, we provided a copy of the draft report to several government departments for comment:

- Department of Communities (Sport and Recreation Services)
- Department of Infrastructure and Planning
- Department of Justice and Attorney General (Queensland Civil and Administrative Tribunal)
- Department of Transport and Main Roads
- Local Government Association of Queensland
- Queensland Police Service.

Quantitative data

Police data

We requested complaints, enforcement and infringement data relevant to the new noise laws from the QPS.⁵ This request was processed by the Road Safety Strategic Development and Intelligence Support Unit (RSSDISU) of the State Traffic Support Branch of the QPS. The RSSDISU obtained data from various Queensland Police Communication Centres (PCCs) and from the Queensland Police Records and Information Management Exchange (QPRIME). See Appendix 2 for further information on how police record complaint information.

Complaint data

Prior to 1 July 2006, the QPS did not record off-road motorbike noise complaints in a manner that allowed these complaints to be distinguished from other types of noise complaints. The QPS advised us that the complaints may have been recorded by the PCC under any one of the following codes:

- *code 311: Noise Complaint.* This code was used for noise such as amplified music, loud parties, and other motor vehicle noise on a road or in a public place.
- *code 214: Traffic Offence.* This code was used for all on-road traffic offences.
- *code 319: Noise Complaint Vehicle.* This code was used for amplified music from a motor vehicle; however, advice from the QPS indicates that this code was often mistakenly used for general noise complaints relating to vehicles.

Because of the limitations of these data, we are unable to report the number of complaints made to police about off-road motorbike noise prior to the introduction of the new noise laws.

After 1 July 2006, the QPS created a specific code to record off-road motorbike noise complaints at the PCCs:

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

Although the previous codes (214, 311 and 319) remained, specific complaints about excessive noise from off-road motorbikes should be recorded under code 331.

5 For the period 1 July 2004 to 31 August 2008 we requested the number of:

- off-road motorbike noise complaints/calls for service made by members of the public
- off-road motorbike noise incidents recorded by police in the absence of a complaint/call for service by a member of the public (police-initiated action, if any)
- off-road motorbike noise complaints (incidents) attended by police
- off-road motorbike noise complaints (incidents) resulting in police taking action against one or more riders
- motorbike noise direction notices issued by police
- persons charged with a motorbike noise direction offence
- motorbike noise abatement order applications made by police
- persons charged with a motorbike noise abatement order offence
- impoundment applications for motorbikes made by police
- motorbikes impounded by police
- forfeiture applications made by police for motorbikes.

In addition to specific complaints about excessive noise from off-road motorbikes, from June 2007 complaints about off-road motorbike use in general may be recorded on QPRIME as:

- *code 1429: Traffic Complaint (Trail Bike)*. This code might include complaints about riding unregistered bikes on the road, bikes playing 'chicken' with pedestrians, trail bikes hooning, riding 'pocket rockets' in a park, youths on trail bikes on vacant land and in nearby parks, and may also include reference to noise.⁶

We requested QPS complaint data for codes 331 and 1429 for each police region. The latter was to give us some idea of how many complaints are recorded by police about off-road motorbike use generally.

However, as noted above, complaints to police about excessive noise from off-road motorbikes were not recorded separately until 1 July 2006. Therefore, we cannot provide any information about complaint numbers before this time, nor can we make any pre- and post-legislation comparisons regarding the number of noise complaints made to police.

For the period 1 July 2006 to 31 July 2008, we received recorded complaints data for code 331 for two regions, the Metropolitan North Region and the Metropolitan South Region. Recorded complaints for the remaining six regions⁷ for code 331 could not be provided by the QPS due to operational issues (staffing and high workload) and an inability to access information at certain PCCs, particularly those using the Information Management System (IMS). There were also missing numbers for some of the QPS districts and unknown time periods for the complaint data provided.

For these reasons, we present the regional analysis of recorded police complaints data for code 331 for three areas: Metropolitan North, Metropolitan South, and a combination of all other regions, including 'unknowns'.

QPS complaints data, as with other forms of recorded crime data, should be treated with caution. Recorded complaints do not reflect the actual level of activity occurring in the community; not all concerning activity is reported to police, as the public may deem the conduct too trivial to report or doubt that the police will take action (QPS 2008). In addition, the QPS complaints data are limited in their ability to describe:

- whether there has been an increase or a decrease in off-road motorbike noise complaints since the introduction of the new noise laws
- whether complaints made to police are repeat complaints, either by the same complainant or about the same offenders
- whether complaints are associated with one or more complainants
- whether problems of noise are associated with one rider or several
- the actions taken by police in response to specific complaints.

Enforcement data

Police have had the power to issue noise abatement directions since 1978. We requested the number and details of all noise abatement directions issued by Queensland police officers for the period 1 July 2004 to 30 June 2008 to determine whether the new noise laws had had any impact on the number of directions given by police.

The QPS provided a spreadsheet of 20 292 directions issued between April 1998 and 12 November 2008. This spreadsheet included only 35 recorded directions for excessive off-road motorbike noise. The others were move-on directions, eviction notices, exclusions from public areas, and other noise directions, such as for domestic stereos.

6 Code 1429 operates on the QPRIME system and is accessible by all officers. Code 331 is used only by operators in PCCs to record complaints on the Computer Aided Despatch and Information Management System which are different systems from QPRIME.

7 The QPS divides its operations into eight geographical policing regions: Metropolitan North, Metropolitan South, South Eastern, Southern, North Coast, Central, Northern and Far Northern. These regions are further divided into districts. See Appendix 3 for a map of Queensland's police regions.

Infringement notices

At the same time as the new noise laws were introduced, Parliament introduced a specific offence of unlawfully riding a motorbike on public land. We requested QPS data to determine how often this offence had been used since its introduction on 1 July 2006.

We received the total number of infringement notices issued in the 2006–07 financial year (1 July 2006 to 30 June 2007) and for part of the 2007–08 financial year (1 July 2007 to 29 February 2008). The infringement data were provided by type of offence as defined by the Summary Offences Act and by each QPS region (the location where the infringement notice was issued).

Local council complaint data and other information

In June 2008, we wrote to 73 local councils seeking information about:

- complaints made to them about excessive off-road motorbike noise
- any local laws relating to the riding of off-road motorbikes and public or private noise activities.

We also offered to assist with the collation and analysis of material if required. Only 16 councils responded to our request and the information provided about complaints was anecdotal at best. Nevertheless, some councils gave us unique insights into the efforts they had made to address this problem.

At the time of our request, local councils had gone through an amalgamation process that reduced the number of local councils from 157 to 73, which may have affected their ability to retrieve complaint and other information.

Federal Chamber of Automotive Industries data

To give us some indication of the number of off-road motorbikes in the community, we requested Federal Chamber of Automotive Industries (FCAI) data about new off-road motorbike sales in Queensland between 1 January 2004 and 31 December 2008. (We were not seeking information about sales of used off-road motorbikes.) We received information about the total number of sales of:

- new Australian Design Rules (ADR)-compliant road-registrable off-road motorbikes
- new non-ADR compliant off-road motorbikes
- new non-ADR compliant mini-bikes (for children aged 6–12 years)
- new non-ADR compliant all-terrain vehicles (competition and agricultural categories).

Motorcycling Queensland data

To determine the level of participation and popularity of off-road riding events sanctioned by Motorcycling Queensland (MQ), we requested MQ's licensing numbers for the period 1 July 2004 to 30 June 2008. We received data on the number and type of off-road licences issued for the last nine years, from 1999 to 2008, but only licensing data from the last five years were examined for this review.

Department of Transport and Main Roads data

In May 2003 the Department of Transport and Main Roads (DTMR) introduced a conditional registration scheme to allow vehicles that do not meet on-road registration standards to be temporarily used on roads. We requested data from DTMR to identify how many off-road motorbikes are conditionally registered in Queensland.

DTMR provided details of the number of motorbikes and all-terrain vehicles that were conditionally registered for the period 1 July 2004 to 31 October 2008, but, again, only data up to 30 June 2008 were examined.

THE HISTORY OF OFF-ROAD MOTOR VEHICLE NOISE LAWS IN QUEENSLAND

This chapter discusses:

- legislation relevant to the law enforcement of excessive noise from off-road motorbikes that existed prior to the introduction of the new noise laws
- why the new noise laws were introduced and the parliamentary intention for their use
- the changes introduced by the new noise laws.

The old noise laws

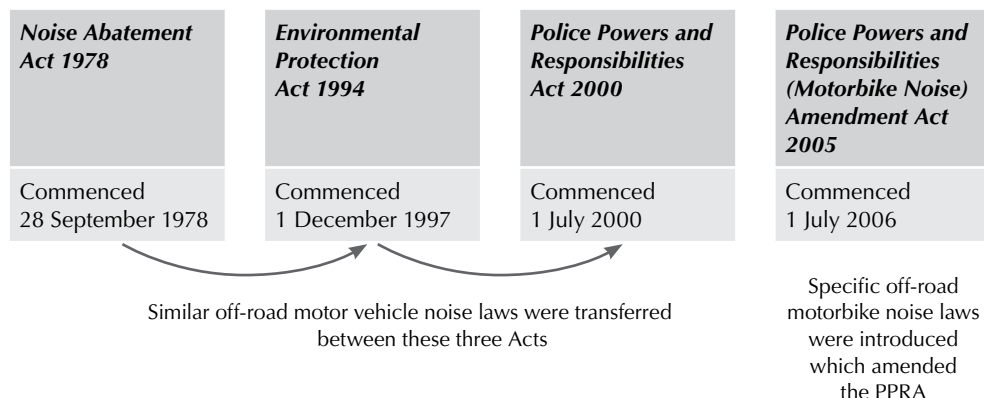
The QPS has had enforcement powers to respond to complaints about excessive noise from off-road motorbikes since at least 1978.⁸ The old noise laws applied to motor vehicles, including motorbikes, that were used off-road, and until 2006 the substance of these laws relevant to off-road motorbike noise changed little and the laws were simply transferred between the following Acts:

- the *Noise Abatement Act 1978* (Qld)⁹ (repealed)
- the *Environmental Protection Act 1994* (Qld)¹⁰
- the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA).

On 1 July 2006 significant amendments were made to the off-road motor vehicle noise laws with the introduction of the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005* (Qld). This amending Act introduced the new off-road motorbike noise laws into the PPRA and provided the requirement for the CMC to undertake this review.

Figure 3.1 demonstrates how the off-road motor vehicle noise laws were transferred between the various Acts. Appendix 4 describes how the laws changed over time between the Acts.

Figure 3.1: How the off-road motor vehicle noise laws were transferred between various Acts



⁸ Powers may have existed pre-1978, but we have considered legislation only after 1978.

⁹ The reference to the *Noise Abatement Act 1978* in this part is Reprint 1A as in force 3 April 1997.

¹⁰ The reference to the *Environmental Protection Act 1994* in this part is Reprint 3B as in force 4 January 2000. The noise laws in the 1994 version of the Environmental Protection Act did not commence until 1 December 1997 (see 1997 Environmental Protection Act Subordinate Legislation no. 343).

Why the new noise laws were introduced

During the parliamentary debates for the on-road anti-hooning laws in 2002,¹¹ several members of Parliament raised the issue of nuisance off-road motorbikes in their electorates. It was suggested that the on-road anti-hoon laws be extended to cover off-road motorbikes.

Comments were made about young people who ‘disturb the peace and quiet of communities’ and the need to ‘consider confiscating those machines when they are being used on either public or private property and are unregistered and/or unlicensed’ (QLA (Pitt) 2002, p. 2765). Another member commented:

There are people in semi-rural areas who live next door to somebody on a four or five acre block whose Sunday afternoon delight is to get on a trail bike with their mates and ride the border of those properties. In some parts of my electorate, after school people are on trail bikes going up the road to the parks. It is over in a blinding flash as they whiz past people’s places, but if one is a shift worker or Sunday or Saturday is one’s special day, one’s tolerance to people on a trail bike is very much less after one has suffered hours and hours of that activity ... It is one issue that the department will have to watch, because people who live next door to people in rural or semi-residential and/or rural areas are increasingly getting fed up with it. (QLA (Mickel) 2002, p. 2752)

In response to these concerns, the then Minister for Police and Corrective Services, the Hon. Tony McGrady, stated that existing noise abatement legislation was sufficient to respond to noisy trail bikes. He said:

Members have referred to trail bikes operating in a noisy manner. I agree that they can become an overbearing nuisance. I point out that the noise abatement legislation contained within a number of Acts already covers noisy trail bikes operating on private property. Should the bike be used on a road, then excessive noise provisions of the Transport Operations (Road Use Management) Act apply. (QLA (McGrady) 2002, p. 2807)

Nevertheless, the Minister proceeded to establish a parliamentary subcommittee, the Police and Corrective Services Portfolio Subcommittee on Trail Bikes (the Subcommittee), ‘to examine the issues concerning the misuse of trail bikes and to advise the Minister for Police and Corrective Services of appropriate legislative and other responses to address the issue’ (Police and Corrective Services Portfolio Subcommittee 2003, p. 6).

Another group, the South East Queensland Trail Bike Management Forum (SEQTBMF), comprising government and non-government representatives, had been established in 1999 to respond to the problems associated with off-road motorbike use.¹² The SEQTBMF submitted a report to the Subcommittee in 2003 outlining the problems associated with off-road motorbike riding that it had identified, including excessive noise. The SEQTBMF noted:

- a need for clarity in the powers and responsibilities of police and local governments in enforcing noise laws
- the multitude of laws and agencies that apply to the regulation of off-road motorbike riding.

11 The *Police Powers and Responsibilities and Another Act Amendment Act 2002* (Qld) introduced on-road ‘anti-hoon’ laws in Queensland. The Police Powers and Responsibilities and Another Act Amendment Bill 2002 was introduced on 8 May 2002. The Bill was passed on 16 August 2002 and the new laws commenced on 4 November 2002. The anti-hoon legislation targeted on-road street activities such as drag racing, burn-outs and street lapping, which often involved excessive noise from stereo systems.

12 Representatives of the SEQTBMF included state government departments such as the QPS, Queensland Transport and Main Roads, Queensland Parks and Wildlife and the Department of Communities (Sport and Recreation Services), local governments from South East Queensland and representatives of trail bike riders, retailers and manufacturers.

In its report the SEQTBMF proposed a number of solutions, including:

- regulatory reform¹³
- the provision of places to ride
- frameworks for cooperation, consultation and collaboration.

According to a representative of the SEQTBMF, the Forum still exists but has not been active in the last few years and little, if anything, has been done by it (consultation 29 October 2008).

The Police and Corrective Services Portfolio Subcommittee on Trail Bikes

The Subcommittee comprised eight members of Parliament and its report was released in August 2003.¹⁴ The issue of greatest concern identified by the Subcommittee was the excessive noise caused by trail bikes (Police and Corrective Services Portfolio Subcommittee 2003, p. 9).¹⁵ The Subcommittee identified some of the limitations and difficulties with the existing law enforcement powers and the community's frustration with the existing laws.¹⁶ It noted that there were a number of complaints received about trail bikes, many of them repeat complaints, highlighting the inability of the current legislation to deal effectively with off-road motorbike noise complaints (Police and Corrective Services Portfolio Subcommittee 2003, p. 11).

The Subcommittee proposed a number of legislative and non-legislative solutions specific to the management of noise and in particular legal amendments to the existing noise laws to create a three-stage enforcement process. In response to some of the recommendations made by the Subcommittee, in July 2006 the Queensland Government introduced new noise laws through the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005* (Qld).

13 The solutions for regulatory reform included:

- identifying and addressing inconsistencies, unintended overlaps and gaps, including jurisdictional responsibilities in laws associated with trail bike riding
- clearly defining the various statutory powers, legislative obligations, jurisdictions and responsibilities of all agencies with responsibilities for regulating trail bike riding
- ensuring there is a comprehensive set of reliable statutory mechanisms for regulating all aspects of trail bike riding and developing legal provisions to allow riders under licensable age to ride lawfully in defined areas and/or circumstance (SEQTBMF 2003, p. 5).

14 The report was a collation of information gathered from motorcycle clubs and their members, manufacturers, industry stakeholders, Queensland police and local and state government agencies.

15 In addition to the significant problem of noise, the Subcommittee identified a number of other problems associated with trail bike riding, including dust, soil erosion, trespass, property damage, safety of riders and non-riders, litigation concerns of land-holders, incompatibility with other recreational and non-recreational land users, and the costs and difficulty of regulation and remedial works (Police and Corrective Services Portfolio Subcommittee 2003, p. 9). Some of these concerns were highlighted in the SEQTBMF submission to the Subcommittee and have also been echoed in numerous other government and non-government reports (see also CPR Group 2005; Dixon 2007; Hibbins 2002; Myerson and Zgrajewski (no date); Strategic Leisure Pty Ltd 2005).

16 The limitations of police powers that were identified included:

- that police must first receive a complaint and attend the complainant's place to hear the noise
- the inability of police to charge riders with trespass if no complaint has been made
- the lack of any police powers to charge a rider with environmental damage (Police and Corrective Services Portfolio Subcommittee 2003, p. 11).

Queensland Parliament's intention for the new noise laws

The main objectives of the new noise laws were to provide law enforcement powers that:

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

The new noise laws were:

... an extension of the existing anti-hoon legislation for motorists which we introduced almost three years ago ... These laws are designed to crack down on those trail bike riders who are noisy, selfish and irresponsible, and who are a source of complaint from people whose peaceful way of life has been totally disrupted. Nuisance trail bike riders give the majority of recreational riders, who are responsible, a bad name. Under these new laws, repeat offenders could lose their bikes permanently. (Spence 2005)

The new noise laws sought to provide a balance between community enjoyment of an area and a person's right to ride a motorbike in a public place or land and on private property (QLA (Spence) 2005, p. 3182). The laws did not aim to stop trail bike riding for recreational purposes; rather, their aims were to encourage a responsible attitude in riders and to reduce unnecessary noise levels (Beattie 2004a; QLA (Spence) 2005, p. 3182).

Through the introduction of the second and third enforcement stages of the legislation,¹⁷ Parliament sought to 'break the complaint/response cycle' (Police Powers and Responsibilities (Motorbike Noise) Amendment Bill 2005 Explanatory Notes, p. 25) and overcome the problems of police being 'bombarded for years by complaints by residents living near parks and urban bushland about noise caused by trail bike riders' (Australian Labor Party 2004). This was to be achieved through the imposition of a noise abatement order which would control the motorbike riding so that it did not continue to be a nuisance. If a motorbike continued to cause a nuisance, it could be impounded for a longer period or eventually forfeited to the state.

The Police Powers and Responsibilities (Motorbike Noise) Amendment Bill 2005 was presented on 4 October 2005 by the then Minister for Police and Corrective Services, the Hon. Judy Spence. It was assented to on 28 November 2005 and the laws commenced on 1 July 2006. The new noise laws were promoted as part of the Labor government's 2004 election campaign,¹⁸ following in the footsteps of the campaign for on-road anti-hoon laws to curb dangerous and antisocial activities of hoons, and the government was confident that the laws for trail bikes would be just as effective (Australian Labor Party 2004; Beattie 2004a; Beattie 2004b; QLA (Spence) 2005, pp. 3180).

The existing on-road anti-hoon laws and the solutions proposed by the Subcommittee¹⁹ guided the development of the new noise laws. Much of the new laws' impounding powers were modelled on the on-road anti-hoon impounding laws (Police Powers and Responsibilities (Motorbike Noise) Amendment Bill 2005 Explanatory Notes, p. 6).

17 Stage 2 of the legislation restricts riding of the motorbike for a period of up to two years through a noise abatement order obtained from the Magistrates Court. Stage 3 removes the motorbike from the rider for a three-month period or permanently through forfeiture. See Chapter 4 for more details.

18 Queensland state elections were held on 7 February 2004 and the Labor government was re-elected.

19 The Subcommittee made the following legal recommendations specific to noise issues:

- Allow the complainant to remain anonymous and do not require police to attend the complainant's place to determine if the noise is excessive.
- Police should be able to act on a reasonable suspicion that the noise has caused, or is likely to cause, a nuisance.
- A noise abatement direction should apply for seven days.
- If a rider breaches a noise abatement direction, the police officer may impound the motorbike for seven days and the court may order a noise abatement order and that the motorbike be impounded for up to six months.
- If a noise abatement order is breached, the court may order the motorbike to be forfeited to the state.

The introduction of the Bill attracted little debate or controversy among members of Parliament or in the community and subsequently received bipartisan support. Reference was made to the recommendations made by the Subcommittee but only a few of its solutions were adopted in the Bill.

A consultation process during the drafting of the new noise laws sought comment from a range of government departments and motorcycle industry stakeholders.²⁰ According to Motorcycling Queensland (MQ), it provided comments on the Bill that highlighted a number of concerns. These included the lack of an objective form of noise measurement, the imprecise wording of the Bill, whether organised motorcycle sporting events were covered by the Bill and the requirement for coordination with local government authorities (submission MQ 15 August 2008; MQ consultation 29 October 2008).

Little comment was made by the Scrutiny of Legislation Committee²¹ about the proposed new noise laws, although the Committee had previously commented on similar on-road anti-hoon laws. In its review of the Bill, the Committee noted that:

... the broadened provisions will obviously have a significant potential impact upon the rights and liberties of the relevant motorbike riders and others associated with them. However, the rights of these persons must be balanced against those of residents affected by the relevant activities, and those of the general public. (Scrutiny of Legislation Committee 2005, p. 9)

In response, the Hon. J Spence advised the Committee that 'the powers within this Bill are reasonable, legitimate and provide a balanced extension of the law to an area of growing community concern' (Correspondence to Scrutiny of Legislation Committee 2005).

Change introduced by the new noise laws

Prior to the introduction of the new noise laws, police had limited enforcement powers to respond to off-road motorbike noise complaints. These powers were complaint-driven, and on receiving a complaint police had to hear the noise and make a subjective determination that it was excessive in the circumstances. If the noise was found to be excessive, police could issue a direction to the rider, either orally or in writing, to stop the noise for a period of 12 hours.

If the person failed to comply with the direction, police could charge the person with breaching a police direction and take action to prevent the use of the motorbike for a period of 12 hours.

The new noise laws increased some of the existing powers and also introduced a range of new powers, to create a three-stage enforcement process. The second and third stages specifically sought to control repeat noise nuisances. At each stage, a number of procedures were introduced which created a more complicated, technical and onerous enforcement process. An analysis of the difficulties associated with the new noise laws from a legal and practical policing perspective is provided in Chapters 4 and 5 of this report.

20 Industry stakeholders included Queensland Outdoor Recreation Federation Inc, Motorcycling Queensland, Federation of Off Highway Vehicles Australia, Dual Sport Motorcycle Rider's Association and Treadlightly Australia (Police Powers and Responsibilities (Motorbike Noise) Amendment Bill Explanatory Notes p. 9).

21 The Scrutiny of Legislation Committee is a standing parliamentary committee that reviews all introduced Bills and comments on their compliance with fundamental legislative principles, which include the rights and liberties of individuals, the principles of natural justice and that the proposed laws allow the appropriate delegation of power.

Although the new noise laws are premised on some of the legal solutions identified by the Police and Corrective Services Portfolio Subcommittee, there are some differences between the proposed solutions and the laws subsequently adopted. For example, the proposed length of time a direction or order should apply was enacted quite differently. Other proposed solutions that were also rejected included:

- that police should be enabled to act on a 'reasonable suspicion that the level of noise created by an off-road motorbike is such that it has, is, or may cause a future nuisance', thereby removing the onerous requirement that police hear the noise before being able to take action (Police and Corrective Services Portfolio Subcommittee 2003, p. 17)
- that the complainant's identity should remain anonymous, by not requiring police to attend the complainant's home to determine if the noise is excessive, which would alleviate some of the fears of retribution expressed by complainants (Police and Corrective Services Portfolio Subcommittee 2003, p. 17).

Overall, the main changes that the new noise laws introduced were:

- an increase in the noise abatement direction period from 12 to 48 hours
- a specific motorbike noise direction offence attracting a maximum fine of 10 penalty units (\$1000)²²
- a requirement that a noise abatement direction be in writing
- 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
- court powers to issue a noise abatement order restricting the riding of a motorbike for a period of up to two years where a person had breached a noise abatement direction or been issued with two noise abatement directions in a one-month period
- a new offence called a 'motorbike noise order offence' that attracted a maximum fine of 40 penalty units (\$4000)
- court powers to order that the motorbike be impounded for a three-month period under an impoundment order if a person breached a noise abatement order
- court powers to order that the motorbike be forfeited to the state for sale or disposal if a person repeatedly breached a noise abatement order
- court powers to order up to 240 hours community service instead of the forfeiture of a motorbike
- a specific exemption of the applicability of the off-road motorbike noise laws where a place is being used by motorbikes under a permit under law
- 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
- an initial motorbike impoundment period of 48 hours where a rider breaches a direction or fails to comply with a court order
- specific laws relating to the costs of impounding and storage of the motorbike, including making a parent or guardian liable for costs incurred by their child
- protection for third-party interests in a motorbike subject to a forfeiture application
- additional offences of unlawfully removing an impounded vehicle from a holding yard, and modifying, selling or disposing of a motor vehicle (including a motorbike) that is subject to an impounding or forfeiture application.

22 At the time of publication, one penalty unit is \$100 (s. 5 *Penalties and Sentences Act 1992* (Qld)).

Summary

Law enforcement powers to respond to complaints about excessive noise from off-road motorbikes in Queensland remained constant for nearly 30 years. However, in 2003 community concerns about excessive noise led to the establishment of a parliamentary subcommittee to examine the issue and subsequently to the introduction of the new noise laws in 2006. The new legislation added two further enforcement stages to existing police noise abatement powers. These stages targeted repeat noise nuisances; the second stage placed restrictions on the riding of the motorbike through a court order, and the third stage removed the motorbike from the rider for a three-month period or permanently.

The main objectives of the new noise laws were:

- to provide a better circuit-breaker to the cycle of repeat off-road noise complaints and the need for a police response
- to strike a balance between the competing interests of off-road motorbike riders and the wider community to deal with off-road motorbike noise nuisances
- to encourage a responsible attitude in riders and to target nuisance riders.

The new noise laws introduced a considerable range of law enforcement powers that were premised on the existing on-road hoon laws, yet a range of previously identified problems associated with excessive noise from off-road motorbikes and the police powers to respond to it were not addressed. The next chapter examines the legal framework of the new noise laws in depth.

THE LEGAL FRAMEWORK OF THE OFF-ROAD MOTORBIKE NOISE LAWS

During our review it became apparent that most stakeholders, including police officers and the community, did not properly understand the new noise laws.

Therefore, this chapter provides a detailed description of the new noise laws and how they operate. It also describes the other laws that were introduced to assist with the application of the new noise laws. As much as possible, the interpretation of the new noise laws has been simplified by breaking down each enforcement stage and identifying the processes and procedures that must be satisfied.

The aim of the chapter is to provide readers with a solid foundation for the concerns about the new noise laws raised later in the report.

After outlining the basics, we provide a critical analysis of the new noise laws. The findings are important, as they have significant implications for the application of the legislation by police in Queensland.

What are the new noise laws?

The new noise laws provide a three-stage enforcement process:

- The first stage aims to temporarily stop the noise for a 48-hour period by police issuing the rider with a noise abatement direction.
- The second stage restricts the riding of 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 period or permanently through forfeiture.

A simple flow chart of the enforcement stages is provided in Figure 4.1, and more detailed flow charts are provided later in the chapter.

References to all laws in this chapter are to the PPRA unless otherwise specified.

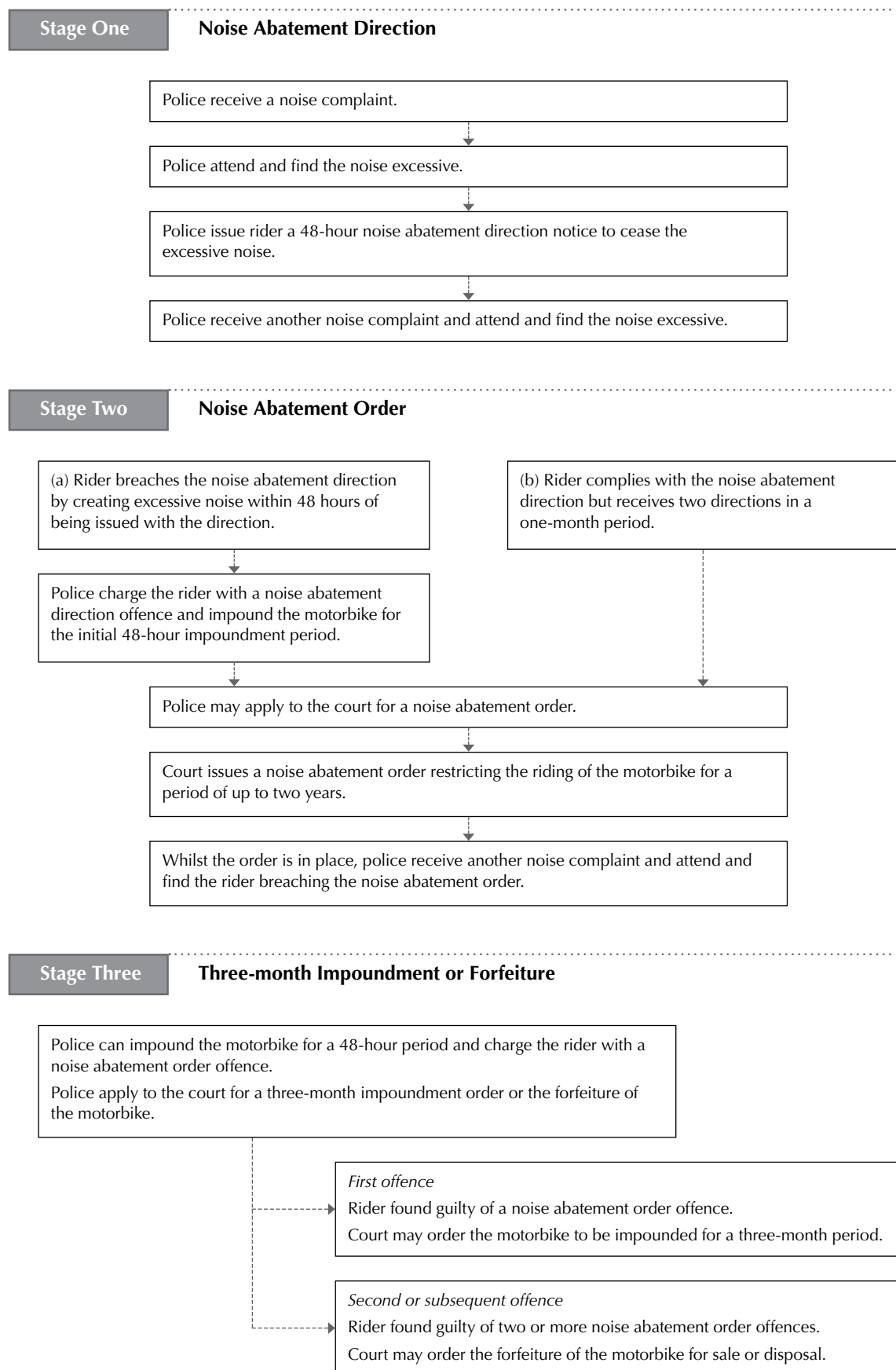
Basic definitions

What is a 'motorbike'?

The new noise laws apply to certain types of vehicles referred to under the term 'motorbike'. To be classified as a motorbike, the vehicle must:

- have an engine
- have either two, three or four wheels
- if the vehicle has three or four wheels, be ridden in the same way as a two-wheel motorbike (Schedule 6 PPRA and Schedule 4 *Transport Operation (Road Use Management) Act 1995* (Qld)).

Figure 4.1: An overview of the enforcement stages of the new noise laws



The new noise laws apply to all motorbikes that fall under this definition irrespective of the bike type, the engine capacity, the size or whether or not it complies with any Australian Design Rules (ADR).

What is 'off-road'?

The new noise laws apply only when the motorbike is being ridden on a place that is not a road (ss. 576 & 579).

Whether or not the area on which the motorbike is being ridden is a legal road is guided by the definition of a road. A 'road' includes:²³

- areas dedicated as roads
- areas open to, or used by, the public for driving or riding.²⁴

The definition of a 'road' is discussed further on page 33.

An exemption to the new noise laws

The new noise laws do not apply to a place where off-road motorbikes are being used under a permit under law (s. 576(2)(c)).

Enforcement stages

Before being able to take action against a rider causing excessive noise, police must first receive a complaint about it (s. 579(1)). After receiving a complaint, police have a duty to investigate it as soon as practicable (s. 577).

Stage 1: A 48-hour motorbike noise abatement direction

When responding to a motorbike noise complaint, the attending police officer must hear the noise and be reasonably satisfied that the noise is clearly audible at or near the complainant's place (s. 579). A complainant's place can be residential or commercial premises. To determine whether the noise is excessive, police may have regard to any 'relevant matters', including:

- the nature of the area, for example whether it is a residential or an industrial area
- the degree of interference the noise is causing, or is likely to cause, to activities ordinarily carried out in the area (s. 579(2)).

If the police officer finds the noise to be excessive, he or she may enter the place where the noise is coming from to take enforcement action (s. 581).²⁵ A warrant is not needed. Action under the new noise laws involves issuing a written noise abatement direction to cease the excessive noise for a period of 48 hours (ss. 581 & 582). The direction can apply to the whole area on which the motorbike is being ridden, or police have the discretion to identify a certain part of the area to which the direction will apply (s. 581(7) & (8)).

Figure 4.2 outlines the processes involved in applying stage one of the enforcement powers.

How is a noise abatement direction issued by police?

The noise abatement direction must be given to the person responsible for the noise (s. 581(6)).²⁶ If the rider is a juvenile (a person not yet 17 years of age) and it is reasonably practicable, a copy of the direction must be given to the juvenile's parent or guardian (s. 581(4)).

23 The PPRA refers to the Transport Operations (Road Use Management) Act, Schedule 4 for the definition of a road.

24 This does not include an area declared not to be a road under a regulation.

25 Police already have a broad general enforcement power to enter a place in certain circumstances, to make inquiries and investigations and to serve documents pursuant to s. 19.

26 This is unlike the other noise abatement directions that can be issued under Chapter 19 Part 3 of the PPRA. Where a noise abatement direction is issued about excessive noise coming from a place (e.g. a gathering of people), it may be issued to the person apparently in charge of the place or the person who permits the noise to occur (s. 581(5)).

Unlike the other noise laws, the off-road motorbike noise laws are very prescriptive as to how a noise abatement direction is to be given to a rider, and it must be by a notice in the approved form (ss. 581(3)(b) & (6)). The QPS has a standard form for this purpose – ‘Form 95 Noise Abatement Direction (Motorbike)’.

The noise abatement direction must include the following details:

- the time the notice is given
- the name and other identifying particulars of the person given the direction
- the particulars necessary to properly identify the motorbike, for example the registration number and state, make, model, colour, engine number and vehicle identification number or frame number
- a general description of the area, or part of an area, to which the direction relates (s. 581(6)).

Form 95 does not indicate that the direction applies for a 48-hour period; it requires only the date and the start time of the direction period. A police officer would have to verbally advise a rider that the direction applies for 48 hours.

Current QPS processes require an officer issuing a direction to manually fill in two copies of Form 95, one copy being given to the rider and one copy retained by police. If a direction is issued to a juvenile and it is reasonably practicable to provide a copy of the direction to the juvenile’s parent or guardian, police must fill out a third copy of Form 95.

What happens if a person fails to comply with a noise abatement direction?

A person breaches a noise abatement direction by failing to adhere to the requirements of the direction. If a breach occurs, the person may be charged with a motorbike noise direction offence (s. 582) and police may take impounding action. This is a summary offence and attracts a maximum penalty of a fine of 10 penalty units (\$1000). Proceedings for this offence begin with a notice to appear (NTA) or an arrest.

Juvenile riders

When dealing with juvenile riders, police have special legal obligations and are required to first consider alternatives to charging the rider (s. 11 *Juvenile Justice Act 1992* (Qld)). Such alternatives include:

- taking no formal action and adopting the least intrusive method of dealing with the offence, by talking to the juvenile or a parent or guardian²⁷
- administering a caution (see Part 2 Division 2 *Juvenile Justice Act*)²⁸
- referring the juvenile to a community conference (also known as a ‘youth justice conference’) (see Part 3 *Juvenile Justice Act*).²⁹

27 Schedule 1 subsection 5 *Juvenile Justice Act*, Charter of Juvenile Justice Principles: ‘If a child commits an offence, the child should be treated in a way that diverts the child from the courts’ criminal justice system, unless the nature of the offence and the child’s criminal history indicate that a proceeding for the offence should be started.’

28 Where appropriate, juvenile offenders should be cautioned for their first offence and/or subsequent offences, depending on the seriousness and the circumstances of their conduct. Police may administer a caution where they have a prima facie case and the juvenile admits to committing the offence and consents to being cautioned (s. 16 *Juvenile Justice Act*).

29 Police may be able to refer a juvenile to a conference if the juvenile admits that he or she committed an offence. Conferencing brings together the juvenile, any victims of the offence and other concerned persons, to reach a mediated outcome.

In considering what action is appropriate, police must take into account:

- the circumstances of the offence
- the juvenile's criminal history, if any
- any previous cautions administered to the juvenile
- the juvenile's previous dealings with the criminal justice system, if any (s. 11 Juvenile Justice Act).

Impounding action for a motorbike noise direction offence

When police charge a person with a motorbike noise direction offence, they have the discretion to impound the motorbike for an initial period of 48 hours (s. 583). Usually this is conditional on police first charging the rider with the offence. However, in the case of a juvenile, police may take initial impounding action if they suspect that the juvenile has committed a motorbike noise direction offence, even though no charges have been laid (s. 74(3)(b)(i)).

What do police have to do if they take impounding action?

The new noise laws require police to personally provide a written impounding notice in a specific form (ss. 79 & 82) to:

- the rider of the motorbike
- if the rider is not the owner, to the owner
- if the rider is a juvenile, to the parent or guardian.

The contents of the written impounding notice vary and depend on the reason for the impounding. The QPS currently uses Form 103 'Impounding Notice (Motorbike Noise Direction Offence)' to record this information.

If a motorbike is impounded for a motorbike noise direction offence, the impounding notice must contain the following details:

- that the motorbike is impounded for 48 hours
- prescribed impoundment information³⁰
- that an application will be made for a noise abatement order within 48 hours after the end of the impoundment period (s. 82).

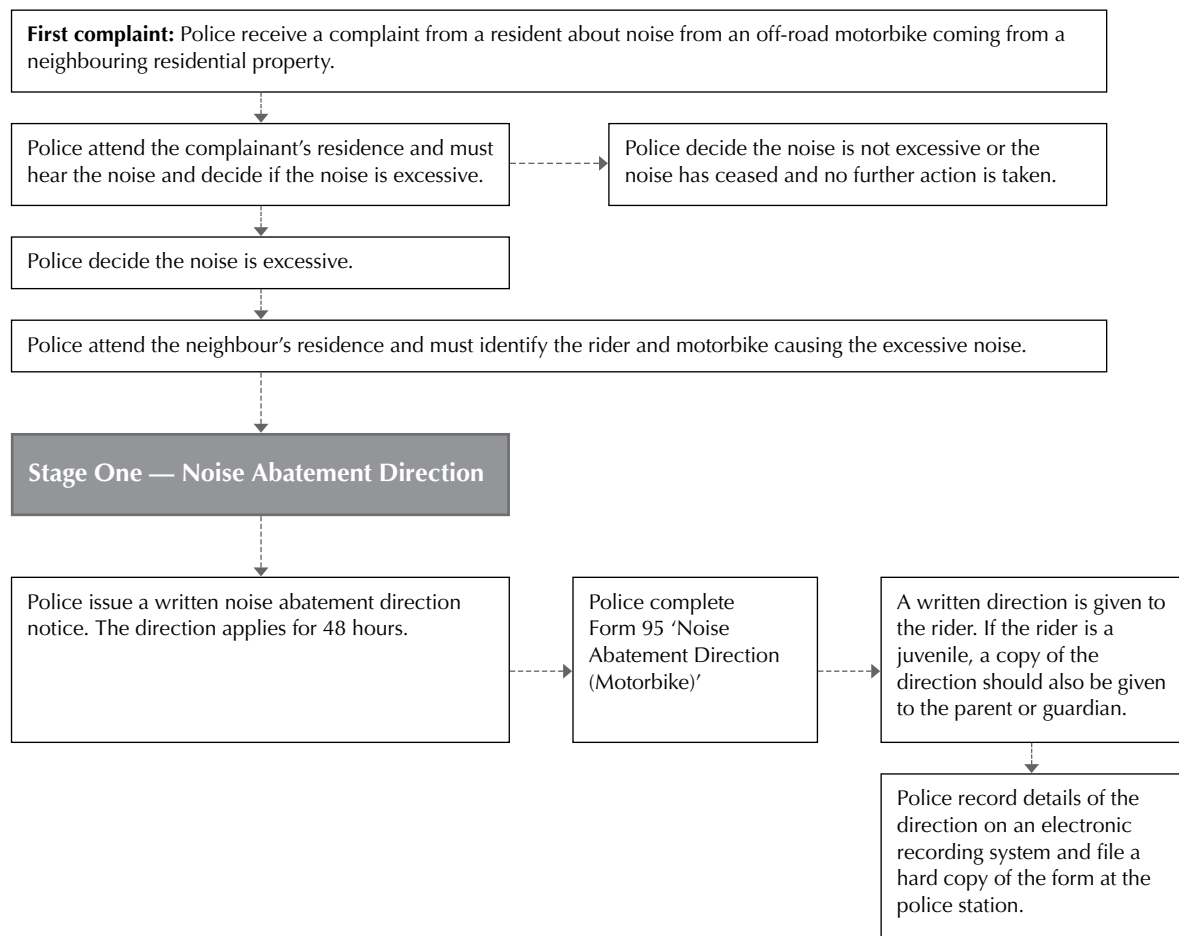
If an impounding notice is provided to a juvenile rider, police must also provide a Form 156 'Statement of Explanation'.

Where a person is found to have contravened a noise abatement direction or has been issued with two directions in a one-month period regarding the riding of the motorbike at the same place, police can take the next enforcement step to restrict the riding of the motorbike, by applying to the court for a noise abatement order (s. 589).

If a person has been issued with two noise abatement directions in a one-month period, at the time of issuing the second direction, police cannot impound the motorbike for 48 hours (as this initial impoundment action is dependent on a person being charged with a motorbike noise direction offence or a motorbike noise order offence s. 74).

30 Prescribed impoundment information provides a range of information about the impounding of motorbikes, including how the vehicle may be recovered (see s. 69). Appendix 5 outlines prescribed impoundment information.

Figure 4.2: The processes involved in applying stage one of the enforcement powers



Stage 2: Restricting riding of the motorbike

The new noise laws provide police with the power to apply to the Magistrates Court³¹ for a noise abatement order (s. 589) to target repeat noise nuisances. The purpose of a noise abatement order is to restrict how a rider may use a motorbike for a period of up to two years (s. 590). An application may be made if a rider has either:

- contravened a noise abatement direction, or
- been given two noise abatement directions in a one-month period about riding the motorbike at the same off-road place (s. 589).

Figure 4.3 outlines the processes involved in applying stage two of the enforcement powers.

What do police have to do when applying for a noise abatement order?

Police must make an application to the court for a noise abatement order within 48 hours after:

- a rider has contravened a noise abatement direction (ss. 589(1)(a) & (3)(a)), or
- a rider has been issued with a second noise abatement direction within one month of receiving the first direction (ss. 589(1)(b) & (3)(b)).

To do this, police must complete Form 96 'Application for a Noise Abatement Order (Motorbike)'.

31 Or where the respondent is a juvenile, a Children's Court constituted by a Magistrate (s. 589(9)).

Once the application has been filed with the court and a hearing date has been set, police must provide notice of the hearing date and the application to:

- the rider against whom the order is sought
- if the rider is not the owner of the motorbike, the owner of the motorbike
- if the rider is a juvenile, the juvenile's parent or guardian (if practicable)
- the owner of the land on which the contravention occurred, if the owner is not already a person mentioned in the above (s. 589(6)).

To provide this notice, police use Form 97 'Notice of Application for a Noise Abatement Order (Motorbike)'. The following information must be included in the notice of application (s. 589(7)):

- the name of the rider against whom the order is sought, and other identifying information
- sufficient details to identify the motorbike
- a description of the land on which the contravention occurred, including the name of the landowner
- the restrictions police are seeking to be placed on riding the motorbike
- when and where the application is to be heard
- advice that, if the rider fails to appear, the matter may be heard and determined in the rider's absence.

If police are seeking a noise abatement order because a rider has been charged with a motorbike noise direction offence, the rider must be found guilty of this offence before the application for the noise abatement order can be heard (s. 590(2)). The prosecution of the rider and the application for the noise abatement order can be heard during the same court hearing.

When preparing for the prosecution of the rider, police must prepare a brief of evidence and obtain statements or affidavits from any appropriate witnesses, whether they are corroborative, conflicting or negative in nature (*Operational Procedures Manual (OPM)* 13.34.4).

If a rider has been found guilty of a motorbike noise direction offence or has been given two direction offences within a one-month period, the court may issue a noise abatement order (using Form 98 'Noise Abatement Order (Motorbike)') if certain administrative requirements have been fulfilled (ss. 589 & 590).³²

When making a noise abatement order, the court can impose any conditions on the rider that it considers appropriate. Such conditions can include, but are not limited to (ss. 590(3)(e) & (4)):

- the hours of the day during which the rider may ride the motorbike on private property
- the maximum length of time the rider may use the motorbike at any one time during those hours
- any particular areas on private property that must be avoided by the rider when riding the motorbike
- any particular riding manoeuvres that must not be performed by the rider.

The effect of the order is that it restricts how the rider may ride the motorbike identified in the order. However, the order does not prohibit the rider riding another motorbike in the place referred to in the order, or riding the motorbike referred to in the order in a different place.

If a noise abatement order has been made, the rider may appeal against the order to the District Court (or the Children's Court if the rider is a juvenile) within 28 days of the order being made and the matter will be reheard (s. 591). If the rider is still not satisfied, an appeal may be made to the Court of Appeal.

³² These are the requirements set out in s. 589 and refer to the processes involved in making the application for the order. They include the timeframe for when the application must be made, the relevant court where the application must be filed, the individuals who must give a notice of application and the contents that must be included in the notice.

What happens if a person fails to comply with a noise abatement order?

There are two ways a person can breach a noise abatement order:

- if the person against whom the order is made contravenes any part of the order (s. 590(5))
- if an owner of a motorbike knowingly allows a rider against whom an order has been made to contravene any part of the order (s. 590(6)).

A person who breaches a noise abatement order may be charged with a motorbike noise order offence. A motorbike noise order offence is a summary offence that attracts a maximum penalty of 40 penalty units (\$4000) (ss. 590(5) & (6)). Again, proceedings are begun by issuing a notice to appear or arresting the person.³³

In certain circumstances police may take action to immediately impound the motorbike. If a rider has been charged with a motorbike noise order offence, police have the discretion to impound the motorbike for the initial impoundment period of 48 hours (s. 74(3)(a)(ii)). If the rider is a juvenile and is suspected of having committed a motorbike noise order offence, the police may impound the motorbike for a 48-hour period without charging the juvenile (s. 74(3)(b)(ii)). Again, police have to apply their special legal obligations when dealing with juvenile riders and must consider alternatives to charging.

A breach of a noise abatement order invokes the third stage of enforcement, where police may seek a three-month impoundment order or the forfeiture of the motorbike. The action police can take depends on how often a rider has breached the noise abatement order.

The new noise laws do not allow police to take further impounding or forfeiture action against a juvenile rider if the juvenile has not been prosecuted for a motorbike noise order offence. Unlike the specific references made in section 74³⁴ and section 82,³⁵ there are no references relating to long-term impounding or forfeiture. This results in a conflict between the intention behind the legislation and juvenile justice principles, which require police to consider alternatives to instituting formal proceedings³⁶ against a juvenile, and the need for appropriate enforcement action to be taken to prevent riders causing repeated noise nuisances.

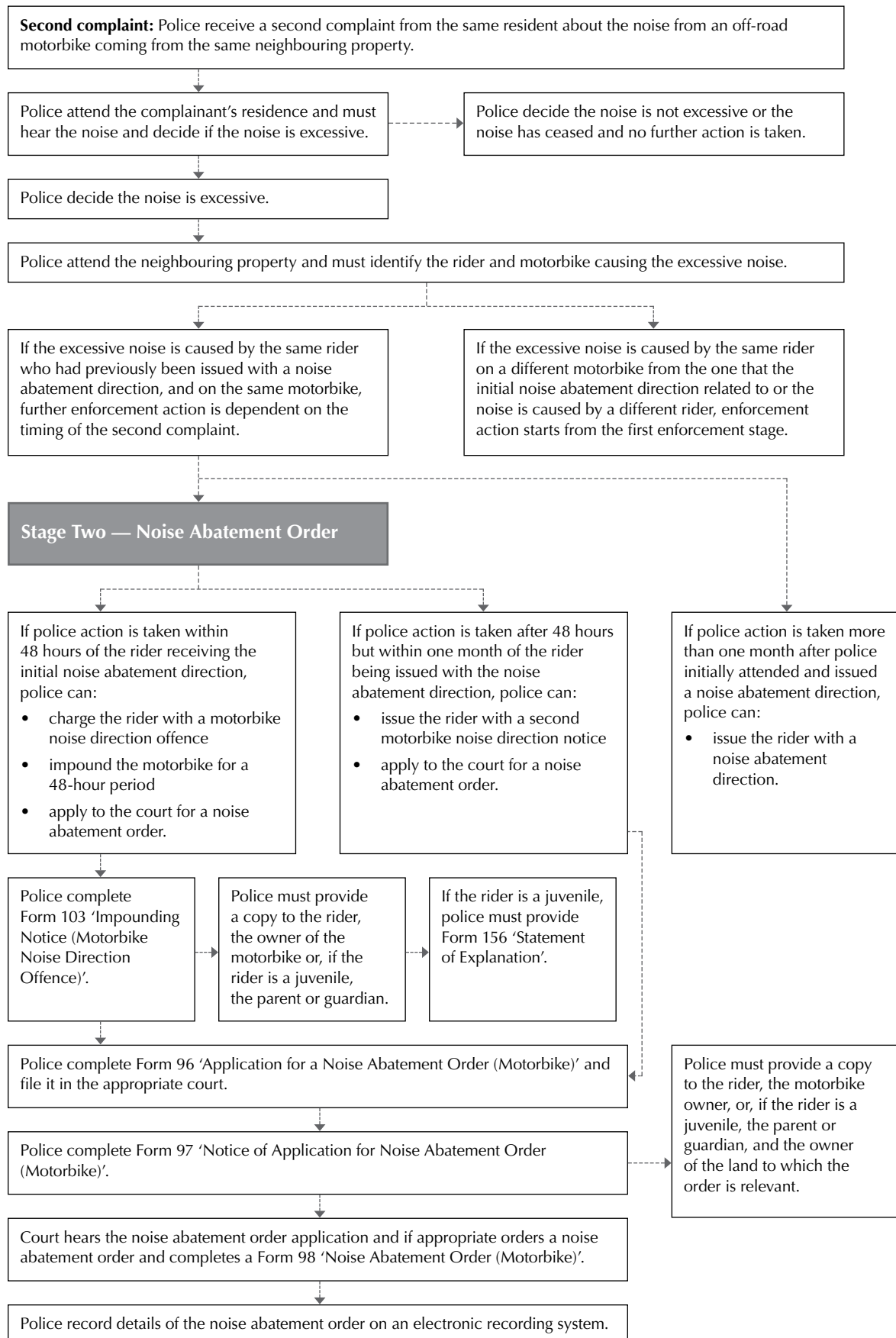
33 A person is deemed to be charged with a motorbike noise order offence when a notice to appear is issued and served on a person or the person is arrested (s. 71).

34 Which allows police to take initial impounding action in instances where police 'reasonably suspect' that a juvenile has committed a motorbike noise direction offence or a motorbike noise order offence but the juvenile has not been charged.

35 Which also refers to when a police officer 'reasonably suspects' a rider has committed a motorbike noise direction offence.

36 Namely, charging a juvenile with an offence.

Figure 4.3: The processes involved in applying stage two of the enforcement powers



Stage 3: Removing the motorbike from the rider

After charging the rider and impounding the motorbike for the initial 48-hour impoundment period, police must make an application to the court for further action to be taken about the rider. This action may involve the impounding of the motorbike for a three-month period or forfeiture of the motorbike to the state.

The application for long-term impounding or forfeiture is dependent on whether it is the rider's first, or second or subsequent motorbike noise order offence.

If it is the rider's first motorbike noise order offence, police can ask the court to impound the motorbike for a period of three months. If it is the rider's second or subsequent offence, police can ask the court to order the forfeiture of the motorbike to the state.

This further action can only be applied if the person being charged is the rider named in the noise abatement order. If the person being charged is the owner and not the rider named in the order, police cannot take action to impound or seek the forfeiture of the motorbike. This is because the laws specifically refer to the 'driver' of the motorbike. (In the report we refer to the 'driver' of the motorbike as the 'rider'.)

When impounding the motorbike for the initial 48-hour period, police must provide a written notice in an approved form (s. 79). The contents of the impounding notice are dependent on whether the impoundment relates to the first (s. 83), or second or subsequent (s. 84) motorbike noise order charge (s. 79).

Figure 4.4 outlines the processes involved in applying stage three of the enforcement powers.

First motorbike noise order offence: obtaining a three-month impounding order

If a rider has been found guilty of a first motorbike noise order offence, the court can make an impounding order to impound the motorbike for a period of three months (s. 100). Alternatively, the court has the discretion to order that the rider perform community service in instances where the impoundment of the motorbike would cause severe financial or physical hardship to the owner or usual rider of the motorbike (ss. 100(3) & 102).

What do police have to do to seek a three-month impounding order?

Within 48 hours of charging the rider, police must make an impoundment application to the Magistrates Court³⁷ requesting that the motorbike be impounded for a period of not more than three months (s. 86). This application will be adjourned for a hearing date and the court cannot make the order until the rider has been found guilty of the motorbike noise order offence (s. 88).

The current form for the impoundment application is Form 106 'Application for Impounding Order (Motorbike Noise Order Offence)'. The new noise laws do not specify the details that must be included in the application.

Police must give written notice of the hearing date to the rider, and, if the rider is not the owner of the motorbike, notice must also be given to the motorbike's owner (ss. 79 & 89(1)). If the rider or owner is a juvenile, notice must also be given to the juvenile's parent or guardian (s. 89(2)). The form used by police for this impounding notice is Form 104 'Impounding Notice (First Motorbike Noise Order Offence)' and the specific details that must be included are (s. 83):

- that the motorbike is impounded for the initial 48-hour impoundment period
- the prescribed impoundment information
- that an application will be made to the court that the motorbike be impounded for three months if the rider is found guilty of the motorbike noise order offence.

If an impounding notice is given to a juvenile rider, police must also provide a Form 156 'Statement of Explanation'.

37 Or where the rider is a juvenile, a Children's Court constituted by a Magistrate.

The QPS OPM states that police must also complete a Form 046 'Affidavit' (OPM 13.35.8).

In preparation for the hearing, the police officer must compile a brief of evidence for the prosecuting officer containing all material relevant to the prosecution of the rider and the impoundment application (OPM 13.35.10):

- a copy of Form 104 'Impounding Notice (First Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice
- a copy of Form 106 'Application for Impounding Order (Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice
- all statements/affidavits taken from witnesses, including the applicant police officer
- a certified copy of the noise abatement order to which the application relates
- the criminal and traffic histories of the rider
- a Form QP0681 'Impounding Order (Motorbike Noise Order Offence)' or Form QP0682 'Impounding Order (Motorbike Noise Order Offence – Not Decided)'.

The legislation does not make it clear whether the court has the discretion to determine the length of the impoundment period. One section refers to 'a period of not more than three months (impounding order)' (s. 86), while another refers to 'order that the motorbike be impounded for three months' (s. 100). The definition section states that 'impounding order' refers to 'a period of not more than three months (impounding order)' (s. 69). Form QP0681, which is used by the magistrate to insert the impoundment time period (days/weeks/months), states only that the period must not be more than three months.

If impounding the motorbike is likely to cause severe financial or physical hardship to an owner or the usual rider of the motorbike, the court may order the rider to perform up to 240 hours community service instead (ss. 100 & 102).

Second or subsequent motorbike noise order offence — the forfeiture of the motorbike

The forfeiture of a motorbike is dependent on a rider being found guilty of two or more motorbike noise order offences. These offences must involve the same motorbike that is referred to in the noise abatement order. For example, if a rider has two noise abatement orders against him or her in relation to two different motorbikes and is found guilty of an offence against each order, these two convictions will not allow the court to order the forfeiture of a motorbike.

The powers associated with forfeiture are divided into two situations, and different powers apply depending on which situation has given rise to the forfeiture application:

- where the rider has been previously found guilty of one motorbike noise order offence and has been charged with a second offence
- where the rider has been charged with two motorbike noise order offences and neither of these charges has been finalised (s. 91(1)).

If the rider is found guilty of two motorbike noise order offences, the court may order that:

- the motorbike be impounded for a period of not more than three months, or
- the motorbike be forfeited to the state, or
- the rider perform up to 240 hours of community service if forfeiture or impounding would cause severe financial or physical hardship to the owner or usual rider of the motorbike.

The offences must have occurred within the period of the noise abatement order and specifically relate to one order.

Where the rider has been charged with two motorbike noise order offences and the court deals with both offences at the same time, the court may order a three-month impounding order if the rider is found not guilty of one offence, or one offence is discontinued and the motorbike has not previously been subject to a three-month impoundment order for either of the offences that are the subject of the forfeiture application (s. 97). However, this may occur only if the

motorbike has not been previously impounded for a motorbike noise order offence committed within the relevant period specific to the application for an impounding order.

What do police have to do to apply for a forfeiture order?

If police have charged a rider with a second motorbike noise order offence and impounded the motorbike for the initial 48-hour period, police must make a forfeiture order application to the Magistrates Court within 48 hours after charging the rider (s. 91(2)). The new noise laws do not specify the information that must be included in this application.³⁸ The forfeiture order application will be adjourned for a hearing date and police must give notice of the hearing date to the rider and the owner/s of the motorbike. If the rider or owner is a juvenile, notice must also be given to the juvenile's parent or guardian if it is practicable to do so (s. 94).

When impounding the motorbike for a 48-hour period, police must issue a written impounding notice in a particular form. The specific details that must be included on the impounding notice (s. 84) are:

- that the motorbike is impounded for the initial 48-hour impoundment period
- the prescribed impoundment information
- that an application will be made to the court for the forfeiture of the motorbike if either of the following apply:
 - the rider of the motorbike has been previously found guilty of a motorbike noise order offence in relation to the same motorbike
 - the rider of the motorbike has been charged with having committed a motorbike noise order offence relating to the same motorbike on at least two previous occasions and the charges have not yet been decided.

The current form of this impounding notice is Form 105 'Impounding Notice (Second or Subsequent Motorbike Noise Order Offence)'.

If an impounding notice is given to a juvenile rider, police must also provide a Form 156 'Statement of Explanation'.

In preparing for the hearing, the police officer must compile a brief of evidence for the prosecuting officer containing all material relevant to the prosecution of the rider and the forfeiture application (OPM 13.35.12), including:

- a Form 105 'Impounding Notice (Second or Subsequent Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice
- a Form 107 'Application for Forfeiture Order (Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice
- an affidavit by the applicant officer outlining the grounds for the application
- all statements/affidavits taken from witnesses
- a certified copy of the noise abatement order to which the application relates
- the criminal and traffic histories of the rider
- a Form QP0683 'Forfeiture Order (Motorbike Noise Order Offence)'.

If a rider has been previously found guilty of one motorbike noise order offence and is charged with a second offence that has not been finalised, before hearing the forfeiture application the court may order a three-month impoundment order. This may occur only if the order is needed to prevent the commission of another motorbike noise order offence (ss. 93(3) & (4)). A three-month impoundment order can be made even if the motorbike has previously been subject to a three-month impoundment order for a motorbike noise order offence that forms part of the forfeiture application (s. 101(2)).

³⁸ The current approved form of the forfeiture application is Form 107 'Application for Forfeiture Order (Motorbike Noise Order Offence)'.

If the forfeiture order application is based on two motorbike noise order offences that have not yet been finalised, section 93(2) outlines the procedure the court must follow. The wording of this section is poor and its purpose unclear. One interpretation is that, where a rider has been charged with two motorbike noise order offences and the charges have not yet been finalised, the court must adjourn the forfeiture order application hearing until the charges have been finalised. Another difficulty with the interpretation is that a prescribed period is defined as the motorbike noise order period, and any period from the expiration of the noise order period to the day the forfeiture application is heard and decided (ss. 69 & 93(2)). The effect of this definition is that the court has the power to adjourn a forfeiture application past the expiration date of the noise abatement order, yet keep the order in force.

If the court makes a forfeiture order, the motorbike becomes the property of the state and the state may sell or dispose of it in an appropriate way (s. 101(6)). The new noise laws also allow an owner to voluntarily transfer ownership of the motorbike to the state (s. 119).

Release of the motorbike after a not guilty finding

If a motorbike has been impounded and the motorbike noise order offence is discontinued or the rider is found not guilty, the motorbike must be released to the owner as soon as practicable (s. 117).

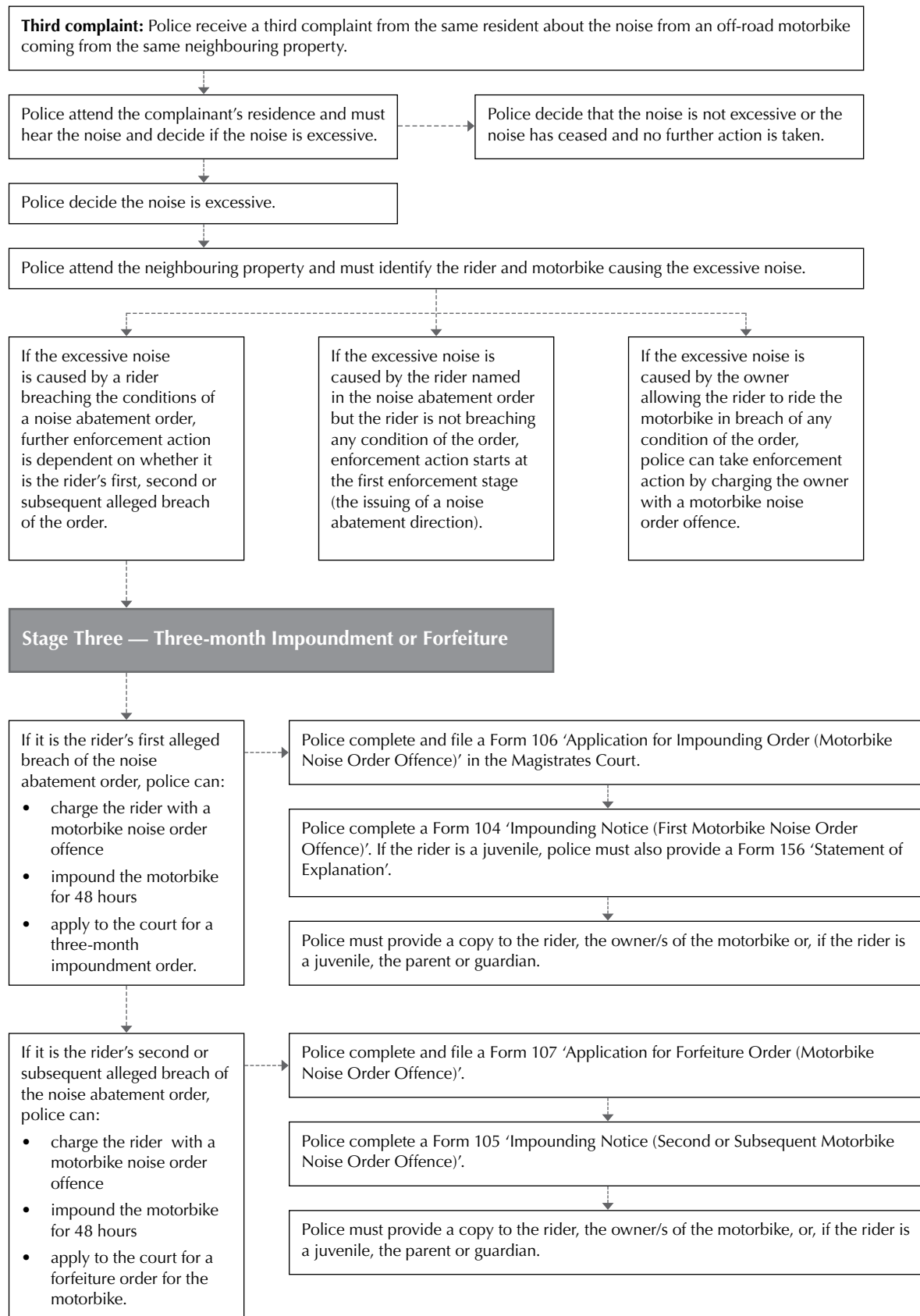
Other laws introduced to assist the application of the new noise laws

A number of associated laws were introduced with the new noise laws to assist police to apply the new noise laws and to provide some protection to persons who are at risk of having their motorbike impounded or forfeited through no fault of their own.

These laws include:

- A defence to prevent the impoundment or forfeiture of a motorbike. If a rider who is not the owner of the motorbike is charged with a motorbike noise offence (either a motorbike noise direction offence or a noise order offence), the owner may prevent the impoundment or forfeiture of the motorbike and have it returned if he or she can show that (ss. 100(4), 101(5) & 107):
 - he or she was not the rider
 - the offence occurred without the owner's knowledge or consent.
- Community service instead of impoundment or forfeiture. The court may order the rider to perform community service instead of impounding or forfeiting the motorbike (s. 102). A community service order may be made only for an adult rider (17 years or older at the time of the offence). To be eligible for a community service order, either the owner or the usual rider must demonstrate to the magistrate that the impounding or forfeiture of the motorbike will cause severe financial or physical hardship. Up to 240 hours community service can be ordered by the court.
- Police powers when impounding a motorbike. Police are provided with certain powers and duties associated with the practical task of impounding the motorbike and are protected from liability for damage, loss or depreciation if the officer was acting in good faith and without negligence (ss. 75, 77 & 110). Liability will be attached to the state instead (s. 122).
- Third-party interests in the motorbike and protection from a forfeiture order (ss. 73, 101(6), 121 & 123).
- Costs associated with impounding and forfeiture (ss. 103, 111, 112, 113 & 116). The responsibility for the costs associated with the impoundment, storage and forfeiture vary depending on the stage of the proceedings and whether:
 - the rider is an adult or a juvenile
 - the rider has been found guilty of any motorbike noise offence (either a noise direction offence or a noise order offence).

Figure 4.4: The processes involved in applying stage three of the enforcement powers



A parent or guardian may be liable for the costs associated with the impoundment of their child's motorbike. Where a motorbike is not recovered after the expiration of the impoundment period, the responsibility for costs varies (s. 114).

- Related offences that a rider or an associated person may be charged with. The new noise laws provide for two offences specific to the handling and control of the motorbike once police have taken impounding action:³⁹
 - An offence to unlawfully remove an impounded vehicle from a holding yard (s. 105). This is a summary offence that attracts a maximum fine of 40 penalty units (\$4000).
 - An offence to modify, sell or dispose of any motor vehicle that is subject to an impounding or forfeiture application (s. 106). 'To modify' the vehicle includes removing the engine or gearbox from the vehicle (s. 69). This is a summary offence that attracts a maximum fine of 40 penalty units (\$4000).
- A requirement to provide information to police. If police reasonably suspect that a motorbike noise direction offence or a motorbike noise order offence has been committed, they can require any person to answer questions about the alleged offence (s. 588). A failure to comply may result in a fine of up to 40 penalty units (\$4000) (s. 791).

Difficulties with the new noise laws

In the process of interpreting and describing the new noise laws, we found a number of ambiguities and therefore undertook a detailed legal analysis to determine how workable the new noise laws actually are. The analysis relates to the three enforcement stages of the new noise laws (and not the associated laws).

In conducting the analysis we considered the legislative intent of the new noise laws and the history of their development (e.g. we refer to the Police Powers and Responsibilities (Motorbike Noise) Amendment Bill's Explanatory Notes as well as comments made by the then Minister for Police, the Hon. J Spence, who presented the Bill to Parliament). We also undertook a textual analysis of the laws based on their plain meaning and, where available, the definitions provided in the legislation.

At the time of our review, many of the new noise laws had not yet been applied; therefore, their application and interpretation had not been tested in a court of law and there is no judicial interpretation to assist our understanding of the laws.

To be effective and workable, laws must be unambiguous, as accurate and precise as possible, and understandable to those affected by them, and to those who have to administer them.

There are three primary causes of incomprehensible legislation:

1. defective language
2. defective organisation of material
3. defective layout and formatting (Victorian Law Reform Commission 1990).

We found the new noise laws to be marred by these defects.

In relation to the language of the new noise laws, some of the definitions used are not only ambiguous but they also limit the ability of the laws to respond to noise problems. This confounds the intention of the legislation.

In relation to the organisation of the laws within the PPRA, to determine which laws apply and when, a great deal of navigation is required through the provisions of Chapter 4 and Chapter 19 Part 3 PPRA. Chapter 4 contains a variety of laws associated with motor vehicle impounding for a range of offences specific to on-road vehicle use. Chapter 19 contains laws specific to other noise issues such as noisy parties and excessive noise emitted from on-road

³⁹ Reference to a motor vehicle includes a motorbike (s. 70 PPRA).

vehicle stereos. Police are provided with various powers and different procedures to be followed in responding to different noise complaints.

We found that, despite the new noise 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 undertaken by police but others do not.

Some of these difficulties relate to the situations in which the new noise laws apply; for example:

- The specific definition of ‘motorbike’ excludes the application of the new noise laws to other vehicles used off-road.
- The use of the words ‘place that is not a road’ is a complicating feature, as it excludes the application of the new laws to certain areas where off-road motorbike riding occurs and causes confusion about which noise laws apply in different locations.
- The definition of ‘a place being used by motorbikes under permit under a law’ is unclear.

Other concerns relate to the technical features of the new noise 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
- ambiguities in some of the definitions used, specifically ‘relevant period’ and ‘prescribed period’.

These difficulties are explained in detail below.

Exclusion of other vehicles used off-road

The new noise laws provide a specific definition of ‘motorbike’ which excludes their application to other vehicles used off-road, such as four-wheel drive vehicles, dune buggies, side-by-side vehicles or similar vehicles. Yet the activities associated with these types of vehicles are akin to those associated with off-road motorbike riding.

Different off-road noise laws apply to these non-motorbike vehicles and there are some significant differences in those laws:

- They allow for a shorter noise abatement direction period, of only 12 hours. (ss. 578 & 581)
- There are minimal procedural requirements imposed on police when issuing a direction.
- There is a difference in the capacity of police to give a direction either orally or in writing. (s. 581(3)(a))
- Police have different powers to respond to a breach of a direction (s. 583), including making the vehicle inoperable by locking, sealing or otherwise dealing with it to prevent its use, or seizing it or removing it from the place or removing any parts from it to prevent its use. (s. 583(2)(b))
- There are no further impounding powers or enforcement powers for repeated breaches. The laws relating to noise abatement orders specifically refer to ‘a motorbike’ and the impounding and forfeiture laws are limited in their application to a ‘vehicle related offence’ or a ‘prescribed offence’, neither of which refers to a breach of a noise abatement direction.

The differences in noise laws applying to other vehicles used off-road create unnecessary confusion and complexity for police when taking enforcement action against noise nuisances.

The definition of a 'road'

Before police can apply the new noise laws, the riding must be occurring 'on a place that is not a road'. The effect of this definition means that the laws will not apply to all settings where riding takes place.

The settings where most off-road motorbike riding occurs are:

- suburban residential neighbourhoods, where noise is caused by riders who ride along the footpaths, on vacant blocks and through council parks and easements
- private residential properties, where residents ride trail bikes on their own property
- open-space areas, including undeveloped land, state forests, national parks and beaches, which may be public or private land
- at established motorbike clubs.

Where motorbikes are ridden through open spaces such as beaches, state forests or private freehold land, the tracks within these areas may be classified as roads. Some areas will be easily identifiable as off-road, whereas others may be more difficult to characterise, and each situation will be dependent on the particular circumstances, making effective enforcement difficult and complex.

A 'road'⁴⁰ includes an area that:

- is open to or used by the public⁴¹
- is developed for, or has as one of its uses, the driving or riding of motor vehicles (this may be on payment of a fee or otherwise)
- is dedicated to public use as a road (the tenure of the land can be identified by obtaining the Registered Plan of the area from the Land Titles Registry⁴²).

Areas that are considered to be 'roads' include bridges, cattle grids, culverts, ferries, fords, railway crossings, shopping centre car parks, tunnels or viaducts.

There is no simple way to determine whether a track is, or is not, a road. The presence or absence of signs, barriers or gates is relevant to determining whether the area is open to or used by the public and can be used for riding motorbikes. However, this will not be the sole or principal factor in determining if an area is a road (Brown 2006, p. 28). Consideration should be given to the content of the sign or the positioning of the barriers or gates, how they control access to the area, and the level of control the owner or person responsible for the area has over entry to the area.

The difficulty can be seen in the example of state forests. State forests are promoted as riding areas for licensed riders on registered motorbikes,⁴³ yet the tracks the riders use may or may not be a road. The determination of this may be found in the definition of a road provided for in the Transport Operations (Road Use Management) Act or in the *Forestry Act 1959* (Qld).⁴⁴

40 See Schedule 4 Transport Operations (Road Use Management) Act.

41 The leading case on the interpretation of the expression 'open to or used by the public' is that of *Schubert v Lee* (1946) 71 CLR 589. The High Court of Australia held that 'the words "open to or used by the public" were apt to describe a factual condition consisting in any real use of the place by the public as the public – as distinct from use by licence of a particular person or only casual or occasional use' (p. 592).

42 A road may be dedicated in state land pursuant to s. 94 *Land Act 1994* (Qld) or in freehold land pursuant to s. 51 *Land Title Act 1994*.

43 Regulations 21 and 22 of Forestry Regulations 1998 (Qld) provide the licensing and registration requirements. The Department of Communities (Sport and Recreation Services) promotes state forests, forest reserves, national parks and plantation forests on its website as locations for trail bike riding, see <www.srq.qld.gov.au>, viewed 1 September 2008.

44 See Forestry Act s. 32, 'land for tourist purposes or use as a road'; s. 34D, which states that the chief executive will provide roads and paths for the purposes of enabling persons generally to travel to, within and from a state forest park; and s. 34F, which states that the chief executive will provide forest drives as roads.

The topic of land tenure and the laws applying to motorbike riding was discussed by the South East Queensland Trail Bike Management Forum (SEQTBMF) in 2003.⁴⁵ This discussion highlights the complexities associated with the regulation of areas where off-road motorbikes are ridden, and whether the area would be considered to be a road, and who is responsible for the area. SEQTBMF highlighted these issues in its submission to the Police and Corrective Services Portfolio Subcommittee. The Subcommittee also noted in its report that 'it is imperative that the definition of road be clarified' (Police and Corrective Services Portfolio Subcommittee 2003, p. 13).

The definition of a 'permit under law'

The new noise laws do not apply 'while a place is being used by motor vehicles under a permit under law' (s. 576(2)(c)). However, there is no definition of what a 'permit under law' is and the Explanatory Notes are silent on this issue. Advice provided by the Hon. J Spence states that the new noise laws do not apply to *approved* trail bike parks (advice from Hon. J Spence 13 October 2008).

Our main concerns about this part of the new noise laws are:

- how the definition of a 'permit' relates to certain off-road riding areas
- whether it makes any difference if the facility is affiliated with Motorcycling Queensland (MQ) (and holds an MQ permit, or riders must have an MQ licence)
- how the exemption interacts with a motorbike access authority that allows for lawful riding on motorbike control land.⁴⁶

As noted above, off-road motorbike riding may occur at established tracks and clubs and at organised day rides in various locations (e.g. on state government land or private property); these riding areas may or may not be approved trail bike parks.

Ambiguity surrounds riding that occurs at organised day rides in different venues, for example on privately held land or on state government land. An organiser of off-road motorbike adventure day rides in South East Queensland advised us that he was not required by council to obtain any permits for such rides, although riders had to hold a MQ licence. These rides have occurred on state government land and also on private property (consultation 25 June 2008 and 11 August 2009). Based on this advice, organised day rides would not fall under the permit exemption.

In many cases, the club facility or organised day ride is affiliated with MQ and operates under an MQ permit and riders must have an MQ licence. In MQ's feedback on the then proposed Police Powers and Responsibilities (Motorbike Noise) Amendment Bill, and in comments to the authors of this review, MQ noted their concerns whether organised motorbike events sanctioned by it were covered by this exemption (MQ consultation 29 September 2008). Motorcycling Australia's *Manual of Motorcycle Sport* outlines the rules and regulations associated with riding at events affiliated with MQ; however, these are through self-regulation and not according to law, so the permits or licences issued by MQ would not fall within the definition of a 'permit under a law'.

45 The analysis undertaken by the SEQTBMF in 2003 can be found as a trail bike riding reference source on the Queensland Outdoor Recreation Federation Inc website <www.outdoorsqueensland.com.au/01_cms/details.asp?ID=741>.

46 Motorbike control land is public land controlled or managed by the state where riders holding a necessary authority can lawfully ride. We discuss motorbike control land further in Chapter 7.

A further complicating feature of the permit exemption provisions arises if a motorbike riding area has been declared 'motorbike control land' according to the Summary Offences Regulation 2006 and a person holds a 'motorbike access authority'. It is unclear whether this falls within the classification of a permit and therefore provides an exemption from the application of the noise laws. We sought advice from the Hon. J Spence on this issue and were advised that 'the relationship of a motorbike access authority provided under the Regulation and a permit under law provided in the PPRA are both considered a document granting authority to do something which is not allowable without such authority' (advice received 9 March 2009).

The requirement that police hear the noise before being able to use enforcement powers

The new noise laws require police to have received a complaint, to attend at, or near, the complainant's residence to hear the noise and then to make a subjective determination as to whether the noise is excessive. Concerns about such requirements were identified by the Police and Corrective Services Portfolio Subcommittee (2003, p. 11) before the new noise laws came into effect.

Nearly all the comments received during our review highlighted the problematic nature of these requirements. Complainants feared retribution and retaliation from riders, riders simply switched off their motorbikes before the police arrived, or riders simply rode through an area and were gone before the police could get there, leaving the police powerless to take enforcement action.

There are also differences between the new noise laws and other noise laws under the PPRA which are also contained in Chapter 19 Part 3 PPRA. For example, police are not required to have received a complaint before enforcing laws in relation to excessive noise from a motor vehicle on a road or in a public place (s. 577).

Lack of clarity about how a noise abatement direction may be breached

The new noise laws are unclear as to the conduct that amounts to a breach of a noise abatement direction and who may be liable. There are a number of ambiguities relating to what amounts to breaching conduct according to sections 582 and 583.

Does the breach involve the same motorbike or the same place or both?

The use of the words 'same place or the same motor vehicle' in section 583(1) creates confusion. A noise abatement direction is a direction given to a rider about a specific motorbike in a specific area. The specific nature of the direction conflicts with the use of the words 'same place or the same motor vehicle' in section 583(1)(b). The Bill's Explanatory Notes (p. 3) provide that further enforcement action may be taken 'if a second noise complaint is received about the same motorbike at the same place within the 48 hours ...'

How does a person 'contribute' to a breach?

In regards to compliance with a noise abatement direction, there are two parts to section 582. The first requires the person to whom the direction is given to refrain from the emission of excessive noise or from contributing to the emission (s. 582(1)). The second applies to a person who knows that a direction has been given, and that person must refrain from the emission of excessive noise or from contributing to the emission (s. 582(2)). Given the prescriptive requirements when issuing a direction to a rider, it is unclear what 'contributing to the emission' means. For example, if police issue directions to two motorbike riders and the riders then swap motorbikes, could each rider be liable for contributing to the emission by riding the other's motorbike?

How does liability apply to a person who knows a direction was issued?

The other ambiguity surrounds the liability of a secondary person who is aware that a noise abatement direction has been issued. Section 582(2) provides that 'a person who knows a noise abatement direction has been given must refrain from the emission, or contributing to the emission ...'

One example is if a parent or guardian of a juvenile is aware that the juvenile has been issued with a direction, s. 582(2) indicates that the parent or guardian may be liable for a breach of the direction if the juvenile fails to comply. A parent or guardian should be provided with a copy of a noise abatement direction and the parent or guardian may be liable for the costs associated with impoundment. The objective of this requirement is to extend liability to a parent or guardian for their child's conduct.

Another example is how liability could extend to a property owner who knows that a noise abatement direction has been issued against a rider on the property but continues to allow that rider to use the specified motorbike at the place to which the direction relates.

What is noise of a different nature?

The compliance provision provides that, when determining if a person has breached a noise abatement direction, 'it does not matter that the noise emitted from the place in contravention of the subsection is not of the same level or nature of the excessive noise for which the noise abatement direction was given' (s. 582(3)). It is unclear what the words 'same nature' mean and how broad the application of this can be.

The difficulties with the noise abatement order laws

When must police apply to the court for a noise abatement order?

The laws are ambiguous as to whether police must make a noise abatement order application and contain conflicting information about the timeframe in which to make it. At the time a breach has been committed and police take action to impound the motorbike:

- Section 82 applies if a motorbike has been impounded, and outlines what an impounding notice must state; it states that the application must occur within 96 hours after the contravention or the second direction has been given.
- Section 589 states that the application must occur within a 48-hour period.

The QPS OPM orders police to make the application within 48 hours after the contravention (OPM 13.34.4).

A further uncertainty is whether police have the discretion to make an application for a noise abatement order. According to section 589(2), if a person has either contravened a noise abatement direction or been issued with a second direction in a one-month period, police may apply for a noise abatement order, whereas section 589(3) states that an application must be made. However, if, at the time of the contravention or when police issue the second direction, police exercise their discretion to impound the motorbike for the initial 48-hour impoundment period, the contents of the impounding notice must state that police *will* be making a noise abatement order application (s. 82(2)(c)).

Another difficulty is the requirement that, in order to take further action against a rider for repeated excessive noise, the rider must be issued with two noise abatement directions within a period of one month (s. 589(1)(b)).⁴⁷ If a rider is issued with the first direction on 15 March and the second direction on 21 April, the one-month period has expired and an

⁴⁷ The *Acts Interpretation Act 1954* (Qld) states that a calendar month means a period starting at the beginning of any day of one of the 12 named months and ending (a) immediately before the beginning of the corresponding day of the next named month, or (b) if there is no corresponding day, at the end of the next named month (s. 36 *Acts Interpretation Act 1954*).

application for a noise abatement order could not be made, thereby defeating the intention of the legislation — to target repeat noise nuisances (in particular noise emanating repeatedly from the same property).

Do two noise abatement directions in the one month need to be for the same motorbike in the same place?

Where a noise abatement order application is based on a rider having been issued with two noise abatement directions in a one-month period, the laws fail to specify whether the two directions must relate to the same motorbike being ridden in the same place.

Section 589(1)(b) states that ‘the directions both relate to the driving of *the* motorbike on the same place which is not a road’; no specific reference is made to whether it must be the same motorbike. The Bill’s Explanatory Notes (p. 3) state that ‘a motorbike noise abatement order may also be made if the person is given 2 noise abatement directions within a period of 1 month in relation to excessive noise emitted by a motorbike and the directions both relate to the driving of *the* motorbike on the same place which is not a road’.

Ambiguities with the definition of ‘relevant period’, ‘prescribed period’ and ‘prescribed offence’

In relation to the interpretation of section 101(2)(b), reference is made to ‘within the relevant period’. The specific definition of ‘relevant period’ in section 69 does not include any reference to a motorbike noise offence.

The definition of ‘prescribed period’ in section 69 applies to an application for an impoundment or a forfeiture order. The effect of the definition is to extend the period of a motorbike noise order past the expiry date as ordered by the court.

In relation to section 71, the definition of ‘prescribed offence’ does not include a motorbike noise direction offence, therefore omitting the application of section 71 to a motorbike noise direction offence.

Summary

This chapter provides a detailed legal account of the new noise laws and how they operate. The analysis of the enforcement stages highlights the numerous requirements placed on police when applying the new noise laws, as well as the difficulties surrounding the timing of police action.

Overall, applying all three enforcement stages to one rider who repeatedly caused excessive noise would involve:

- Police receiving at least four noise complaints and visiting the complainant’s residence, hearing the noise and identifying the rider and motorbike each time.
- Police completing a minimum eight forms, and:
 - where the rider is not the owner, additional forms must be served on the owner
 - where the rider is a juvenile, additional forms must be served on the parent or guardian
 - additional paperwork is required for the prosecution of a rider.
- Police taking initial 48-hour impounding action against the motorbike at least three times and impounding the motorbike for a three-month impoundment period at least once.
- The rider being charged and found guilty of one motorbike noise direction offence.
- The rider being charged and found guilty of one motorbike noise order offence or being charged with two motorbike order offences.
- At least three court hearings for each of the enforcement stages and the prosecution of the rider before a forfeiture order can be made.

In addition to the numerous procedural requirements, the chapter also identified:

- some difficulties with the laws, such as limitations on:
 - the types of vehicles the laws apply to
 - where the new noise laws apply
- serious implications for the capacity of police to apply the legislation.

Overall, the new noise laws are complex and have some defective language and poor organisation. In addition to the substantial navigation that is required through the PPRA, a large number of administrative requirements must be complied with at each stage of the proceedings, creating a time-consuming enforcement process. These views are echoed by comments made to us throughout the review by many police officers who have attempted to apply the new noise laws and by members of the public. Some of their comments are presented in later chapters of this report.

The economic and social consequences of these difficulties are quite apparent in the following chapters, which discuss how the laws have been operationalised and applied by police and the impact that off-road motorbike noise problems have on those affected.

HOW THE QUEENSLAND POLICE SERVICE OPERATIONALISED THE OFF-ROAD MOTORBIKE NOISE LAWS

This chapter outlines how the QPS has operationalised the legislation, and discusses some concerns raised during the consultation phase of our review about the application of the law by police.

Interpretation of the new noise laws into QPS policy and procedure

Officers are given some guidance in the application of the new noise laws through:

- basic training using the Online Learning Product
- the *Operational Procedures Manual*
- the *First Response Handbook*.

Basic training: Online Learning Product

In educating officers about new laws, the QPS uses an Online Learning Product (OLP), the objective of which is to assist officers to acquire the necessary knowledge to demonstrate competence in the workplace.⁴⁸ In mid-2006, the QPS introduced an OLP specific to a number of amendments introduced into the PPRA; these amendments included the new noise laws as well as a number of other new police powers and laws. All sworn officers were required to complete mandatory training using the OLP on these amendments by 31 December 2007.

We reviewed the OLP specific to the new noise laws, which comprised one module containing 14 activities. We were able to complete the module in approximately 10 minutes.⁴⁹ Overall we found that the OLP provided very scant information on the laws. Each activity had a scenario example that focused on a different enforcement stage, but the examples were narrow and overly simplistic. In completing each activity, minimal links were provided to the new noise laws and in one instance we found an incorrect reference to the laws. The usefulness of the OLP was limited by the lack of information on the processes police are required to undertake or the forms they are required to use. One activity actually gave misleading guidance in the application of the new noise laws.

⁴⁸ OLPs were introduced by the QPS in 1996 and the majority of QPS training is now delivered using them. OLPs provide individualised training, which allows learners to integrate training into their own schedules; alternatively, they can be used by trainers in workshops. OLPs contain modules specific to a topic, and each module has a series of activities. Police officers are provided with scenario examples, links to the legislation and other information, and are required to answer questions at the end of each activity. These answers are officially submitted. Officers can work at their own pace, focus on training that is most relevant to their needs and bypass training that is not relevant to their operational focus or is already known (QPS consultation 23 June 2009).

⁴⁹ However, consideration must be given to the researchers' existing knowledge of the new noise laws.

Operational Procedures Manual

The QPS *Operational Procedures Manual* (OPM) is a handbook of operational policy guidelines for police to use in the performance of their duties. It provides enforcement policies⁵⁰ and orders.⁵¹

The OPM separates the responsibilities that police have when enforcing the new noise laws into two parts. The first part relates to responding to noise complaints and is divided into enforcement stages, while the second part provides guidance about impounding powers.

The new noise laws are contained within the OPM among the guidelines about responding to other types of noise complaints;⁵² there is no separate part specifically related to the enforcement of the new noise laws. Much of the guidance provided for the enforcement of the new noise laws is a reproduction of the legal provisions, presented without simplification and thereby retaining the legal complexity. The OPM does, however, provide three flow charts showing the relevant processes to be followed when responding to different types of noise complaints. One of the flow charts briefly outlines the new noise laws, but, again, it offers limited guidance for officers on how to interpret and apply the laws. See Appendix 6 for a copy of this flow chart.

One order instructs a police officer to investigate a noise complaint or cause it to be investigated as soon as practicable after receiving the complaint, unless police believe the complaint to be frivolous or vexatious (OPM 13.34.1). This reflects the investigative requirement of section 577 PPRA.

One of the policies instructs an officer to first contact the local Police Communication Centre (PCC) to ascertain whether there is any record of a noise abatement direction or noise abatement order relating to the place from which the noise is coming. If police have previously issued a noise abatement direction or obtained a noise abatement order from the court, the specific conditions of these will be recorded on Queensland Police Records and Information Management Exchange (QPRIME) as a flag against a person and will alert the PCC to the person's details. One of the difficulties police have in determining whether any noise abatement directions or orders relate to the place where the noise is coming from is that details of any direction or order are recorded against a person's name, and not the place. Through various QPRIME searches police can find the names of people associated with an identifiable property (e.g. a property that has a defined street address) and from there determine whether any directions or orders exist. However, when riding occurs in an area that does not have a defined street address, accessing such information via the address can be near to impossible.

As the noise laws are based on a series of graduated responses, it is important for police to be able to easily identify riders who are, or have been, subject to noise abatement directions or orders, and QPRIME is used to record such details.

Where an officer is despatched to investigate a complaint and a current noise abatement direction is not in force, the attending officer has to be reasonably satisfied that the noise complained of is clearly audible at, or near, the complainant's residential or commercial premises prior to taking any further action (OPM 13.34.1). It is unclear why reference is made to a current noise abatement direction not being in force, as at each stage of enforcement of the new noise laws police need to determine that excessive noise is occurring.

50 A policy outlines the attitude of the QPS regarding a specific subject and must be complied with under ordinary circumstances. Policy may only be departed from if there are good and sufficient reasons for doing so and a police officer may be required to justify a decision to depart from it.

51 An order requires compliance with the course of action specified. Orders are not to be departed from.

52 Including complaints related to excessive noise from house parties or on-road motor vehicle stereos.

In determining what constitutes excessive noise, the OPM repeats the wording of section 579 PPRA. If police determine that the noise is excessive, they may issue a noise abatement direction using a Form 95.

After issuing a noise abatement direction, the OPM policy states that the police officer is to record any necessary information in his or her official police notebook, file the station copy of Form 95, notify the local PCC that a direction has been issued and provide details of the direction as well as his or her own officer information.

Officers in charge of the PCC are required to keep a register of any noise abatement directions issued and ensure that the details are electronically recorded on QPRIME as a flag against the person.

If a second noise complaint is received, the OPM replicates section 583 PPRA on further procedures that police can take (OPM 13.34.2). No policies or orders are specified.

The OPM provides some guidance to police in applying the laws associated with obtaining a noise abatement order; however, the accuracy of some of the content is questionable. The OPM policy is that police may apply to the court for a noise abatement order if a rider contravenes a noise abatement direction or is issued with two directions within one month in relation to the riding of the motorbike at the same off-road place (OPM 13.34.4). If an officer decides to make an application, the OPM orders that it must be made (i) within 48 hours after the contravention of a direction, or (ii) if two directions have been given in a one-month period, within 48 hours after the contravention of the second direction (OPM 13.34.4). This second limb is incorrect, as the issuing of a second direction invokes the police power to seek a noise abatement order; there does not have to be a contravention of the second direction.

The OPM further details how an application is to be brought and which forms are to be used. However, there is a lack of detail about the associated impounding powers, in particular the power of police to impound the motorbike for the initial 48-hour impoundment period.

In addition to the requirements of police according to the legislation, the OPM highlights the additional administrative obligations placed on police when applying the new noise laws. In pursuing a noise abatement order, in addition to the three forms police must complete under the new noise laws, police must also provide copies of the existing noise abatement directions given to the rider, as well as statements/affidavits by the applicant officer and others that have been taken from witnesses, whether of a corroborative, a conflicting or a negative nature (OPM 13.34.4).

As noted above, the impounding powers are found in a separate part of the OPM and the explanations are somewhat confusing. Where a police officer arranges for an impounded vehicle to be towed to a holding yard, the officer is to complete and serve a Form 157 'Impounding Notice (Vehicle related offence)' on the driver of the vehicle and the owner of the vehicle (OPM 13.35.1). Another form, QP0907 'Towing authority for impounded vehicles', must also be completed and served to the driver of the vehicle and the tow truck operator.

The OPM provides specific policies for impounding motorbikes that are the subject of motorbike noise direction or noise order offences, but there is a lack of guidance as to what police are required to do at each stage of the proceedings. Impounding enforcement guidelines are divided into different sections. For example, where a rider is alleged to have committed a motorbike noise direction offence or a motorbike noise order offence, some forms that need to be completed are noted in one section and some in another, yet they all relate to the same proceeding (OPM 13.35.5, 13.35.6, 13.35.7).

The current OPM lacks clarity and creates confusion by mixing the new noise laws with other noise laws subject to different police powers. It is our view that, despite the technical complexity of these laws, the OPM could be simplified to provide better guidance for their application. It is also important that all of the information contained in the OPM is accurate.

The First Response Handbook

Another source of information for QPS general duties officers is the pocket-sized *First Response Handbook*, which supplements the OPM. The Handbook is a handy reference for operational police and is divided into two parts. Part 1 provides a summary of essential policing powers, while Part 2 outlines the first response actions for a number of operational situations. There are references to the OPM and applicable legislation throughout the Handbook.

Part 2.23 of the Handbook devotes five pages to the different types of noise complaints and begins by referring officers to section 13.34 of the OPM and to Chapter 19 Part 3 of the PPRA. It reminds officers to investigate noise complaints as soon as possible, and to check with their local PCC for records of any noise abatement directions. Reference is then made to the appropriate flow chart for an explanation of the options and powers available to police depending on the circumstances. This is the same flow chart as found in the OPM. Scant details of the impounding powers available to police are found in the Handbook.

Enforcement issues

During our consultations police identified many problems in the application of the new noise laws. In one hot-spot area in South East Queensland, two police officers spent many weekends during a three-month period responding to off-road motorbike noise complaints, but despite this allocation of resources they had had very little success in mitigating the problem (QPS consultation 12 November 2008). In brief, the police we spoke with:

- found the laws to be onerous
- had great difficulty in intercepting riders
- had difficulty responding to complaints about excessive noise because of competing policing priorities and staff availability.

Many of the issues raised by police were also highlighted by the public in their submissions to our review.

The onerous requirements of the new noise laws

One of the greatest frustrations expressed to us related to the legal requirements of the new noise laws, which were seen as onerous because of:

- the complexity of the laws
- the stringent initial investigative requirements imposed on police
- the numerous administrative processes to be undertaken in applying the laws.

The complexity of the new noise laws

The complexities and legal ambiguities of the new noise laws and the limited guidance of the OPM have already been noted. One officer told us that the new laws were ‘horrible’ and the OPM ‘difficult to use’ (QPS consultation 12 November 2008). Another officer in a hot-spot area advised us that he had spent several days trying to work out the laws and had created his own guide to how they operate (QPS consultation 21 November 2008). Many officers acknowledged a lack of understanding of the laws and a lack of confidence in applying them, and stated that these factors contributed to what they perceived to be minimal enforcement of the laws (QPS consultation 21 November 2008).⁵³

⁵³ Chapter 6 provides police complaint and enforcement data.

This lack of understanding was echoed in comments by the public through their written submissions. Many had sought police assistance only to be discouraged as the responding police appeared to have either limited or no knowledge of the new noise laws. For example, one submission stated: 'in the past we have been told by ... police who answered our call that he didn't know what he was able to do about the issue' (individual submission 101; comments were also made in individual submissions 56, 59, 86, 101, 122, 130, 138, 146, 148, 149, 159). Others indicated that police could not, or did not, respond effectively.

The initial investigative requirements imposed on police

The initial investigative process requires police to receive a complaint, hear the noise and make a subjective determination that the noise is excessive. We were told that some of these requirements allow riders to adopt relatively simple tactics to avoid action being taken against them. For example:

- Riders are often aware of the approach of police or where and when police blitzes are being conducted. Riders assume that if police conduct a blitz on one weekend, they are unlikely to conduct another the following weekend (QPS consultation 21 November 2008; QPS consultation 25 November 2008; individual submissions 20, 21, 42, 55, 66, 72, 76).
- Riders switch off the motorbike so that police are unable to determine if the noise is excessive (QPS submission 11 December 2008; QPS consultation 21 November 2008).
- Where riding occurs in an open area, riders can simply ride away from the area before police arrive.
- Where multiple bikes are in use, police have the difficult task of determining which of the motorbikes is causing the excessive noise. Police must issue each rider with an individual direction, or issue none at all if they cannot determine the source of the excessive noise.
- Riders can swap bikes after being issued with a direction, which confounds the intention of the legislation.
- Complainants and police may disagree as to whether the noise is excessive. For example, one submission stated: 'one of the bikes that a police officer ... deemed not noisy registered a dB level of 105dB' (individual submission 110). Police, on the other hand, told us of situations where complainants felt that any level of noise was excessive, and were faced with ongoing arguments with complainants about the noise (QPS consultation 12 November 2008).

The administrative requirements of applying the laws

The new noise laws are very prescriptive about the administrative requirements to be fulfilled when taking action against a rider. Police are required to carry with them copies of the approved noise abatement direction form. In applying the second and third enforcement tiers, there are a number of further administrative requirements that must be adhered to in addition to the preparation of a police brief of evidence if a rider is charged with a motorbike noise direction offence or a motorbike noise order offence. While this may be considered a minor point, some police advised that the level of paperwork associated with issuing a direction was a time-consuming and discouraging aspect of the law (QPS consultation 21 November 2008).

Difficulties intercepting riders

When motorbike riding occurs in open areas, police often have difficulty intercepting riders, for two reasons:

- The road patrol vehicles commonly driven by police⁵⁴ are incompatible with the type of terrain favoured by riders, such as bushland; even in suburban and semi-rural areas, riders were reported to have escaped police patrols by fleeing down easements, walkways and narrow laneways.
- Restrictions imposed by the QPS pursuit policy prevent police officers from pursuing off-road motorbike riders:

The QPS pursuit policy therefore effectively, but justifiably, precludes police officers from engaging in the pursuit of a noisy off-road motorbike. However, this policy does create an understandable degree of frustration on the part of the members of the public who complain to the police about noisy off-road motorbikes only to discover that police cannot pursue the offending rider (QPS submission 5 December 2008).

... trail bike riders know that police officers are subjected to a mandatory no-chase policy especially when it involves juvenile riders ... When police encounter trail bikers on restricted reserves ... the riders routinely evade police patrols or simply turn around and drive off in the opposite direction ... The recreational trail bike community is well aware of this legal loophole and therefore no longer reacts to the presence of police patrols ... (individual submission 104).

If a rider has been identified and police have attempted to give a direction to stop the motorbike and the rider has failed to do so, the offence of 'evading police' may apply (s. 754 PPRA;⁵⁵ QPS submission 5 December 2008). The primary difficulty for police in such a situation, however, is gaining enough information to identify the rider or the motorbike in order to serve an evasion notice on the owner of the motorbike. Most riders wear helmets that mask their appearance, and motorbikes ridden off-road are not required to be registered and often do not have registration plates.⁵⁶

Competing policing priorities and staff availability

A high incidence of off-road motorbike riding occurs in semi-rural and rural areas and often at weekends. Many submissions expressed frustration that police stations in semi-rural and rural areas are not fully staffed and that complaints are often diverted to other police stations. For example, one submission stated:

When we ring the police about the noise, we have to wait for a car to be sent from another area as Nerang Police Station is closed over the weekend. This can take several hours, by which time it may be getting dark and the riders have stopped ... (individual submission 101).

As with any complaint, police must prioritise their response in relation to all other calls, and often off-road motorbike noise complaints are 'a fair way down the list [in priority]' (QPS consultation 25 June 2008). Subsequently, the police response may occur several hours after the complaint has been made and the noise may no longer be occurring.

54 The QPS currently has 57 two-wheel off-road motorbikes for policing purposes throughout Queensland and eight for support services (QPS advice 29 September 2008). These off-road motorbikes are used for a variety of different purposes, including rider training and off-road property searches (e.g. for drug crops). The QPS also offers a trail bike riding course for experienced police motorbike riders. However, this course is designed to enhance the off-road skills of officers involved in the Stock and Rural Crime Investigation Squad or officers involved in searching bushland and rough terrain, and does not include specific reference to enforcement of off-road motorbike noise laws (QPS Course Gazette 30 May 2008; QPS consultation 17 November 2008).

55 The penalty for the offence of evading police is a fine of 200 penalty units (\$20 000) or three years imprisonment.

56 If the motorbike is registered, it will have only one number plate attached to the rear of the vehicle (r. 23(2)(a) & r. 24(2)(b) Transport Operations (Road Use Management – Vehicle Registration) Regulation 1999).

Other strategies used by police to respond to off-road motorbike noise

We were told that police apply a range of other strategies to respond to complaints about excessive noise from off-road motorbikes, including:

- Conducting joint operations with rangers and local government officers in hot-spot areas to deter riders from illegal riding on public land and issuing infringement notices for unlawful riding on public land:

The responsibility of policing off-road bikes is shared by police and council ...

Councils are dependent on police to assist local law officers to resolve trail bike issues and similarly, the police are dependent on Council assisting them with signage, fencing and use of local laws (Moreton Bay Regional Council submission 6 August 2008).

As previously noted, with the introduction of the new noise laws, Parliament also introduced a specific offence of unlawfully riding a motorbike on public land, which may be an offence under the *Summary Offences Act 2005* (Qld) or a local law.⁵⁷ The results of the application of this legislation are discussed in the next chapter.

- Using informal verbal directions to stop the noise (QPS correspondence 16 February 2009).
- Directing riders to move to other areas by issuing formal or informal move-on directions (QPS correspondence 16 February 2009).
- Resolving conflict between neighbours about noise by helping them reach an amicable agreement on riding times (QPS consultation 25 November 2008).
- Prohibiting parking areas or issuing traffic infringement notices to deter riders from unloading their motorbikes and riding within short distances of parking/unloading areas that are near residential properties (QPS consultation 21 November 2008).

What the community said about the police response

Overall, the majority of comments received from the community expressed the sentiment that police have been ineffective in stopping off-road motorbike noise problems in their community. All of the enforcement issues highlighted above were echoed by members of the public. Many also expressed the view that police should not be responsible for policing off-road motorbike noise. They believed that it was a waste of already overloaded police resources, and that police had more important priorities to deal with.

However, we did receive several positive comments about police involvement in stopping noise problems. These comments were largely associated with the participation of the police in the dispute resolution process to resolve neighbourhood noise conflicts. This is discussed further in Chapter 9.

Summary

This chapter has demonstrated some of the difficulties associated with the enforcement of the new noise laws. In brief:

- It seems that the *Operational Procedures Manual* has not dealt well with the complexities of the new noise laws and the OPM provides little guidance to police officers in how to interpret and apply the new noise laws.
- Police report significant operational and enforcement difficulties with the legislation, making it difficult for them to have a meaningful impact on the problems associated with excessive motorbike noise and exacerbating the frustrations expressed by the community.

Chapter 6 provides information about the number of complaints made to police and local councils about excessive off-road motorbike noise, as well as information about the extent to which the three stages of the new noise laws have been applied.

⁵⁷ See the discussion of these laws in Chapter 6.

HOW THE OFF-ROAD MOTORBIKE NOISE LAWS HAVE BEEN APPLIED IN RESPONSE TO COMPLAINTS

This chapter presents police and council complaint data about excessive noise from off-road motorbikes, as well as police enforcement data of the new noise laws.

The focus of our review is to evaluate whether the new noise laws have been effective in responding to excessive noise problems from off-road motorbikes. As police are responsible for receiving and responding to complaints about off-road motorbike noise, police data were examined to determine how the new noise laws are being applied by police and to assess whether the new laws are providing an effective tool for responding to off-road motorbike noise complaints.

Complaints to police about excessive noise from off-road motorbikes

Before police can apply the new noise laws, they must first receive a complaint from the public about off-road motorbike noise. After receiving a complaint from the public, the complaint information will be despatched to an officer. When a job is ‘despatched’ by a PCC it means that details of the complaint are communicated to a police officer or a police team, and they are allocated to attend the job. However, despatching an officer or a police team does not necessarily mean that the job will be immediately attended to; other more urgent work priorities may intervene.⁵⁸

As discussed in Chapter 2, the QPS provided us with complete complaint information for off-road motorbike noise complaints (code 331) for two police regions – Metropolitan North and Metropolitan South – for the period immediately following the enactment of the noise laws, 1 July 2006 to 30 June 2008. The QPS was able to provide only partial or incomplete complaint information for the remaining six police regions (the Southern, North Coast, South Eastern, Central, Northern and Far Northern regions).

None of the data provided enabled us to determine:

- the proportion of repeat complaints, either by the same complainant or against the same rider
- whether the complaints were associated with one or more complainants
- whether the complaints were associated with one rider or several
- the actions taken by police in response to the complaints.

Table 6.1 presents the number of recorded complaints made to police about excessive noise from off-road motorbikes between the financial years 2006–07 and 2007–08, after the introduction of the new noise laws.

⁵⁸ See Appendix 2 for a description of the way the QPS records complaints.

Table 6.1: Complaints made to the QPS about excessive motorbike noise (code 331*), 2006–07 to 2007–08 (all regions)

Financial year	Metropolitan North Region	Metropolitan South Region	South Eastern, Southern, North Coast, Central, Northern and Far Northern regions [†]
2006–07	508	494	6705
2007–08	496	441	
Total 2006–07 to 2007–08	1004	935	6705

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.

A statewide total of 8644 complaints to the QPS about excessive noise from off-road motorbikes during a two-year period is substantial – an average of more than 360 complaints per month. As we had access to only partial data for most of the state, coupled with the fact that off-road motorbike noise problems may be recorded under a different code, it is probably safe to assume that these figures underestimate the true number of complaints made to police about excessive noise from off-road motorbikes during this period.

Unfortunately, we are unable to extract many of the details about these complaints. However, we examine in detail the complaints made to the Metropolitan North and Metropolitan South police regions below to ascertain whether there are any hot-spots that attract more complaints than other areas, as well as the police response to those complaints.

Metropolitan North Region

In the 12 months immediately following the introduction of the new noise laws, 508 complaints about excessive noise from off-road motorbikes were made to PCCs in the Metropolitan North Region:

- Most calls for service originated from the Pine Rivers (65%, $n = 328$) and North Brisbane districts (23%, $n = 116$).
- The majority of calls (80%, $n = 408$) resulted in a police unit being despatched to respond to the complaint.
- Less than 10 per cent of complaints resulted in some form of action being taken against the offending rider (8%, $n = 42$).⁵⁹

In the next 12-month period, 496 complaints about excessive off-road motorbike noise were received by Metropolitan North PCCs and a consistent pattern emerged:

- Most calls came from the Pine Rivers (71%, $n = 353$) and North Brisbane districts (19%, $n = 95$).
- Just over 80 per cent (81%, $n = 401$) of complaints resulted in a police unit being despatched to respond to the complaint.
- Four per cent ($n = 20$) of complaints resulted in some form of action being taken against the offending rider.

⁵⁹ Given the limitations of the data, we are unable to specify what actions were taken.

Table 6.2 shows the number of complaints recorded in the four Metropolitan North police districts during the two years following the introduction of the new noise laws. It also shows the number of times police were despatched to attend the calls and the number of times they took action in response to those calls.

Table 6.2: Complaints, despatches and actions taken in Metropolitan North police districts, 2006–07 to 2007–08

Financial year	Brisbane Central District			Brisbane West District		
	Complaints made	Police despatched	Action taken	Complaints made	Police despatched	Action taken
2006–07	4	0	0	60	42	8
2007–08	2	2	0	46	37	3
Total 2006–07 to 2007–08	6	2	0	106	79	11

Financial year	North Brisbane District			Pine Rivers District		
	Complaints made	Police despatched	Action taken	Complaints made	Police despatched	Action taken
2006–07	116	99	9	328	267	25
2007–08	95	78	5	353	284	12
Total 2006–07 to 2007–08	211	177	14	681	551	37

Source: QPS, 2008.

Table 6.3 shows that, during the two-year period, there was:

- a very slight decrease in the number of complaints made in the Metropolitan North region, from 508 complaints in 2006–07 to 496 complaints in 2007–08 (a 2.3% change)
- a similar proportion of despatches to calls for service in both years (80.3% in 2006–07; 80.8% in 2007–08)
- a slight drop (4.3%) in the proportion of actions taken for calls for service (8.3% in 2006–07; 4.0% in 2007–08), even though the actual number of overall actions taken dropped from 42 in 2006–07 to only 20 in 2007–08.

Table 6.3: Total number of complaints, despatches and action taken in Metropolitan North Region, 2006–07 to 2007–08

Financial year	Complaints	Despatches <i>n</i> % of complaints	Actions taken <i>n</i> % of complaints
2006–07	508	408 (80.3)	42 (8.3)
2007–08	496	401 (80.8)	20 (4.0)
Change 2006–07 to 2007–08 <i>n</i> (%)	–12 (–2.3)	–7 (+0.5)	–22 (–4.3)

Source: QPS, 2008.

The Metropolitan South Region

In the 12-month period following the introduction of the new noise laws, 494 complaints about excessive off-road motorbike noise were made to the PCCs in the Metropolitan South Region:

- Most complaints originated from the Wynnum District (51%, $n = 253$).
- Nearly three-quarters of the complaints resulted in a police unit being despatched to respond to the complaint (74%, $n = 364$).
- Only a small number of complaints resulted in some form of action being taken (8%, $n = 38$).⁶⁰

In the following year, 441 complaints about excessive off-road motorbike noise were made in the Metropolitan South Region. As was the case in the Metropolitan North Region, a consistent pattern emerged:

- Over half of the complaints originated from the Wynnum District (58%, $n = 255$).
- The vast majority of complaints resulted in a police unit being despatched to respond to the complaint (73%, $n = 322$).
- Five per cent ($n = 23$) of complaints resulted in some form of action being taken ($n = 23$).

Table 6.4 provides a breakdown of complaints, despatches and action taken in the police districts in the Metropolitan South Region.

Table 6.4: Complaints, despatches and actions taken in Metropolitan South police districts, 2006–07 to 2007–08

Financial year	South Brisbane District			Wynnum District			Oxley District		
	Complaints made	Police despatched	Action taken	Complaints made	Police despatched	Action taken	Complaints made	Police despatched	Action taken
2006–07	128	90	10	253	184	14	113	90	14
2007–08	72	55	9	255	185	7	114	82	7
Total 2006–07 to 2007–08	200	145	19	508	369	21	227	172	21

Source: QPS, 2008.

Table 6.5 shows that during the two-year period there was:

- a decrease in the number of complaints made to the police, from 494 complaints in 2006–07 to 441 in 2007–08 (an 11% change)
- a similar proportion of despatches to calls for service in both years (73.7% in 2006–07; 73.0% in 2007–08)
- a slight drop (2.5%) in the proportion of actions taken for calls for service (7.7% in 2006–07; 5.2% in 2007–08), even though the actual number of overall actions taken dropped from 38 in 2006–07 to 23 in 2007–08.

⁶⁰ Again, given the nature of the data we are unable to specify the actions taken.

Table 6.5: Total number of complaints, despatches and actions taken in Metropolitan South Region, 2006–07 to 2007–08

Financial year	Complaints	Despatches <i>n</i> % of complaints	Actions taken <i>n</i> % of complaints
2006–07	494	364 (73.7)	38 (7.7)
2007–08	441	322 (73)	23 (5.2)
Change 2006–07 to 2007–08 <i>n</i> (%)	–53 (–10.7)	–42 (–0.7)	–15 (–2.5)

Source: QPS, 2008.

Police enforcement data

Stage One: Noise abatement directions

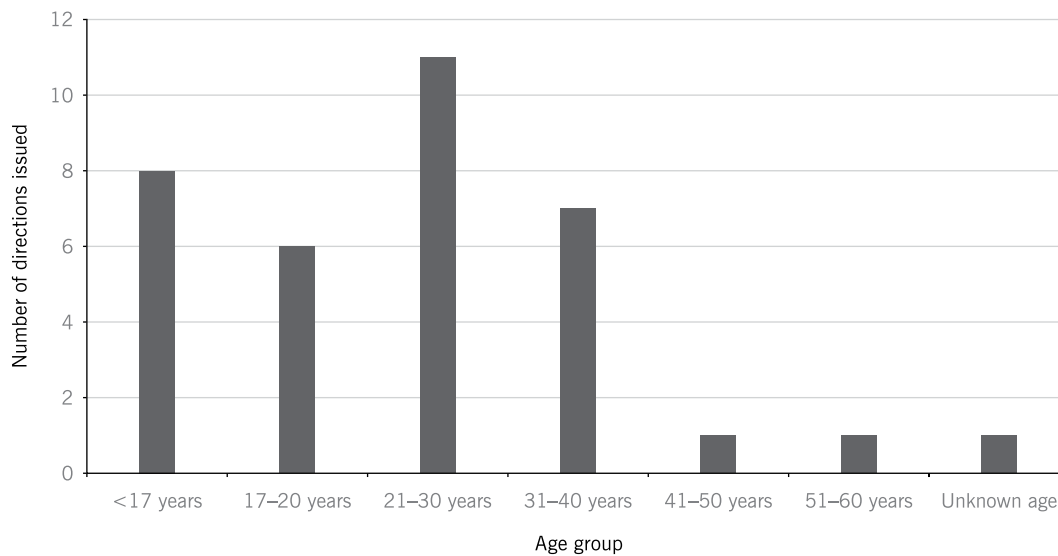
The enforcement data provided to us by the QPS (2008) indicate the following:

- Before the new noise laws were enacted (7 April 1998 to 30 June 2006), no noise abatement directions for off-road motorbike noise had been issued.
- Since the new laws were introduced, they have been issued sparingly and only by a small number of officers in a few regions throughout Queensland:
 - Between 1 July 2006 and 30 June 2008 a total of 13 noise abatement directions were issued, 10 in the North Coast Region, two in the South Eastern Region and one in the Southern Region.
 - A further 22 noise abatement directions were issued in the following five-month period (1 July 2008 to 30 November 2008) in Metropolitan South (*n* = 16), South Eastern (*n* = 5) and Southern (*n* = 1) regions. These directions were applied during our review period and may have been the result of increased police awareness of the issue due to our review activities. This level of activity may not be sustainable over time.

We received hard copies of 28 of these 35 noise abatement direction notices and for the remaining seven we were able to obtain limited details about the rider and the direction from QPRIME. While it is difficult to draw firm conclusions from the small number of directions issued, we found the following:

- Most directions had been issued by the same police officers in the same areas; for example:
 - 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.
- The majority of directions were given to riders creating excessive noise in a public area (*n* = 23); few were riding on private land (*n* = 5).
- The majority were issued over a weekend (*n* = 24) and in some instances appear to be associated with a police blitz in an area; for example:
 - On 26 July 2008, nine directions were issued for riding in the same area and eight of these were issued within a 40-minute period.
- Only one direction was given to a female.
- The majority of directions were issued to riders aged 21–30 years (*n* = 11), but a relatively large number (*n* = 8) were also issued to juveniles. See Figure 6.1.

Figure 6.1: Number of noise abatement directions given by police, by the age group of the riders, 1 July 2006 to 30 November 2008



Source: QPS, 2008.

- Of the juvenile riders, the youngest was 8 years old, two were 12, two were 14, one was 15 and two were 16.⁶¹
- Of the eight directions issued to juvenile riders, nearly all involved riding in a public area ($n = 7$) and in most instances ($n = 7$) a copy of the direction was provided to the juvenile's parent or guardian; in two cases the parent or guardian was issued with his or her own directions.

The QPS advised that since the introduction of the new noise laws (1 July 2006 to 30 November 2008):

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

Stage Two: noise abatement orders, and Stage Three: three-month impoundment or forfeiture

We were informed that there have been no noise abatement orders 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. Therefore, no further action pursuant to stage three of the new noise laws has occurred.

This advice contradicts the representation made by the Hon. J Spence one month after the new laws were introduced, when she stated:

Already, the latest statistics from police show that in the first month that the new trail bike laws were in effect, two trail bikes have been confiscated and no second or third offences have been detected. (Spence 2006)

The QPS was unable to account for the discrepancy between the information released by the then Minister for Police and Corrective Services and the data provided to us (QPS advice 2008).

⁶¹ A person under the age of 10 years is not criminally responsible for any act or omission. A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission the person had the capacity to know that what they were doing was wrong (s. 29 *Criminal Code 1899* (Qld)).

Other off-road motorbike complaints to police

In addition to complaints about off-road motorbike noise, we obtained QPS data about the number of complaints made about off-road motorbike use in general. This is recorded by the QPS as a 'Traffic Complaint – Trail Bike' (QPRIME offence code 1429). Such use may include riding an unregistered motorbike, the dangerous use of a motorbike, hooning and the unlawful riding of a motorbike. It may also include complaints about noise.

The data suggest that about 250 of these complaints are received per year statewide. Table 6.6 gives a breakdown of these complaints by police region and year.

Compared with the number of specific complaints made to police about off-road motorbike noise (which exceed 360 per month) (illustrated in the previous section), other trail bike complaints are relatively few. The comparative data help to emphasise where the primary concerns about off-road motorbikes lie in the community; without a doubt, excessive noise is the principal issue of concern.

Table 6.6: Number of other motorbike complaints to police (not excessive noise), 2006–07 to 2007–2008 (all regions)

Region	Financial year	
	2006–07	2007–08
Metropolitan North	39	24
Metropolitan South	34	42
South Eastern	52	58
Southern	26	44
North Coast	31	36
Central	33	42
Northern	8	16
Far Northern	18	10
Total	241	272

Source: QPS, 2008.

Police infringement notices for unlawful riding

The QPS also provided us with the number of infringement notices issued to riders under the *Summary Offences Act 2005* (Qld) for unlawful riding on public land.⁶²

Between 1 July 2006 and 29 February 2008, 254 infringement notices were issued. On average, approximately 13 infringement notices were issued per month during this period. The majority (64%) were issued for the offence of driving a motorbike on public land in contravention of a Queensland regulation without reasonable excuse (code 2651) (see Table 6.7), and most were issued in the Metropolitan South Region (20%, $n = 22$). As no state land has been declared motorbike control land where riders can lawfully ride if they hold a motorbike access authority, and as no councils advised our review of lawful public riding areas in their community, it is unclear why infringements notices have been issued for codes 2653, 2654 or 2655.

Table 6.8 indicates the breakdown of these notices by police region. Again, there are relatively few infringement notices issued under the Summary Offences Act, and the number is minor in comparison to the number of complaints made about excessive noise emanating from off-road motorbikes.

Table 6.7: Number and percentage of offences motorbike riders have been charged with under the Summary Offences Act, 1 July 2006 to 29 February 2008

Codes	Offence	Notices issued n (%)
code 2651	Driving a motorbike on public land in contravention of a regulation without reasonable excuse	163 (64)
code 2652	Driving a motorbike on public land in contravention of a local law that regulates access by motorbikes without reasonable excuse	44 (17)
code 2653	Driving a motorbike on public land when not in possession of authority as required by a local law	26 (10)
code 2654	Driving a motorbike on public land when not in possession of authority as required by a local law	19 (7)
code 2655	Failing to produce a stated authority when found driving a motorbike on public land in contravention of a regulation	2 (1)
code 2656	Failing to produce a stated authority when found driving a motorbike on public land in contravention of a local law that regulates access by motorbikes	0 (0)
Total		254

Source: QPS, 2008.

⁶² These data are not representative of all persons charged with unlawfully riding a motorbike on public land, as a rider may be charged under a local law.

Table 6.8: Number of infringement notices issued under the Summary Offences Act, by police region, 1 July 2006 to 29 February 2008*

Region	Financial year	
	2006–07	2007–08
Metropolitan North	7	5
Metropolitan South	17	22
South Eastern	10	12
Southern	20	18
North Coast	26	15
Central	22	19
Northern	5	2
Far Northern	20	4
Total	141	113
Region unknown	14	16

Source: QPS, 2008.

* In 30 instances, the police region where the infringement notice was issued was not specified.

Complaints to local councils about excessive noise from off-road motorbikes

Many individual submissions to our review indicated that residents had repeatedly contacted their local council for assistance in dealing with off-road motorbike noise issues in their community.

Unfortunately, only 16 of the 73 local councils we contacted (22%) responded to our request for submissions. We do note that, for some councils, off-road motorbike noise is not a problem in their community.

Some councils stated that they believed that problems of excessive noise from off-road motorbikes were a policing issue, and they referred all noise complaints on to police for action (Cairns Regional Council submission 9 July 2008; Charters Towers Regional Council submission 11 July 2008; Ipswich Regional Council submission 5 August 2008; Redland City Council Meeting 9 July 2008; South Burnett Regional Council submission 5 August 2008; Whitsunday Regional Council submission 10 July 2008).

We requested specific complaint information from councils, but most were unable to provide us with any such data; therefore, we cannot assume that the views expressed by those who did respond are representative of all councils in Queensland, nor that the numbers provided are typical of complaints made to local councils about motorbike noise statewide.⁶³

Some councils did provide us with complaint information:

- Logan City Council (submission 12 August 2008) advised that it receives 'several complaints a day referring to excessive noise from off-road motorbikes' but was unable to provide specific complaint numbers; it also said that approximately half of the riders stopped and questioned by Council's Park Rangers are under the age of 17.
- Moreton Bay Regional Council (submission 6 August 2008) advised that 'each district receives numerous complaints relating to off-road bikes in parks, reserves and private property'.
- Brisbane City Council (submission 18 August 2008) noted that council officers often respond to 'a larger number of complaints on the north side of Brisbane than police do' and that the majority of complaints are caused by juvenile riders.
- Cairns Regional Council (submission 9 July 2008) commented that it had received 33 complaints since July 2006.
- Ipswich City Council (submission 5 August 2008) noted that 'residents regularly contact Ipswich City Council with complaints regarding noise from off-road motorbikes'.
- Redlands City Council (correspondence 15 August 2008) advised that, in the period 1 July 2007 to 30 June 2008, 168 complaints were received about motorbikes being ridden in council parks and reserves, causing noise and safety issues.
- Scenic Rim Regional Council (submission 15 August 2008) referred only to the Beaudesert Shire portion of the Scenic Rim Regional Council, noting that 'the bulk of complaints received by the former Beaudesert Shire Council were related to ... off-road motorbike noise'; the council also said that since 12 March 2008 four complaints had been received.
- South Burnett Regional Council (submission 5 August 2008) noted that in the past three years there had been four complaints regarding the misuse of off-road motorbikes.
- Whitsunday Regional Council (submission 10 July 2008) commented that it 'received limited complaints regarding off-road motorbike noise'.

⁶³ We received responses from the following councils: Brisbane City, Cairns Regional, Charters Towers Regional, Fraser Coast, Hinchinbrook, Ipswich, Kowanyama Aboriginal Shire, Logan City, McKinlay Shire, Northern Peninsula Area Regional, Quilpie Shire, Scenic Rim Regional, South Burnett Regional, Tablelands Regional, Toowoomba Regional and Whitsunday Regional. Of these, only a few highlighted off-road motorbike noise as a problem in their community.

Where is off-road motorbike noise an issue?

It is clear from the submissions, consultations and the QPS and council complaint information that off-road motorbike noise is a fairly widespread concern.

The QPS data identify hot-spots in Pine Rivers, North Brisbane and Wynnum districts, but people living in many parts of Queensland expressed concern, including North Queensland, the Sunshine Coast, Brisbane City, Logan City and the Gold Coast. In particular, the submissions identified problems in the following areas:⁶⁴

- Ipswich
- Logan
- Jimboomba, Beaudesert
- Mt Taylor Park, Kingston
- Gaven electorate, particularly areas near the Nerang State Forest, as well as large areas of vacant land in the Pacific Pines and Maudsland areas, and interregional transport corridors in the area
- Arundel, with noise issues in this area resulting in the closure of the local motocross club, the Mike Hatcher Junior Motorcycle Club
- Pine Rivers
- Lytton
- Forest Lake
- Capalaba, Cleveland, Redland area
- Heathwood
- Caloundra
- Narangba
- Redcliffe, Caboolture
- Dingo Beach, Repulse Beach and Ball Bay
- Slade Point, Mackay
- Cunggulla, Oonoonba, Bohle, Deeragun, Mt Low, Bushland Beach, Forest Beach.

It is also worth noting that the majority of submissions identified concerns with off-road motorbike noise on private residential properties, rather than in public spaces. We received complaints about excessive noise emanating from private properties that ranged in size from small neighbourhood blocks to acreage of various sizes (from just over one acre to more than 200 acres). The problems of off-road motorbike noise are not specific to any type of land or topography. Managing noise emanating from private residential property is particularly difficult, as in such cases it is unclear how the noise can be managed effectively to ensure fairness to both riders and neighbouring residents. Nevertheless, some local councils and state members do appear to have tried various strategies to alleviate these concerns (see Chapter 7).

⁶⁴ It is not suggested that this is an exhaustive list of where off-road motorbike noise problems occur in Queensland.

Summary

This chapter has demonstrated that there are a high number of complaints made to police statewide about excessive noise from off-road motorbikes (more than 360 per month on average).⁶⁵ When compared with other types of trail bike complaints (non-noise related), which are relatively few, excessive noise is clearly the primary issue of concern about trail bikes.

However, the data also illustrate that very limited actions have been taken by police against riders causing the noise. Less than 10 per cent of complaints result in some form of action against the rider, and this proportion appears to have decreased over time.

Enforcement data also illustrate the very limited success that police have had in pursuing the elements of the new noise laws that aim to reduce excessive noise by off-road motorbikes. Where the first stage of the new noise laws has been applied, it has been by a select few officers in specific areas and at limited times. Most noise abatement directions were issued for riding in public areas, where enforcement is very difficult. Several directions were issued to juvenile riders under the age of 14 years, and one rider was only eight years old; this raises the question of whether the new noise laws can be responsive to riders causing excessive noise when, due to their age, they may not be criminally liable for their conduct.

The council complaint data provided to us are limited in their usefulness; but they do indicate the extensive gap between the number of complaints made to police about excessive noise from off-road motorbikes and those reported by the few councils that responded to our invitation to participate in this review. However, in the council responses that we did receive, many indicated that excessive noise from off-road motorbikes was a problem in their community. The legislation clearly places the responsibility on police to respond to complaints about excessive noise from off-road motorbikes, and this is the response the community and local councils expect.

The previous chapter identified significant problems with the capacity of police to apply the law. The concerns raised about the complexity of the legislation and the difficulties police encounter in operationalising it appear to be reflected in the data reported in this chapter. The data suggest that the legislation is not functioning as it had been intended, yet community concern about excessive noise from off-road motorbikes remains high.

The following chapter illustrates some of the other types of responses to the problem of off-road motorbike noise.

65 As with all types of offences, the information provided by police is limited to matters received and recorded by them. The consultations and submissions received during the review suggest that concerns about off-road motorbike noise are more widespread and serious than represented in the official data.

OTHER RESPONSES BY STATE AND LOCAL GOVERNMENTS TO OFF-ROAD MOTORBIKE NOISE ISSUES

This chapter discusses other approaches that local governments and the state government have taken to respond to off-road motorbike riding and noise problems including:

- additional laws to declare lawful riding areas and associated trespass offences
- the creation of working groups and taskforces
- various reports and other activities commissioned at local and state government levels
- local area enforcement strategies targeting nuisance riding and noise
- regulation of land use for off-road motorbikes.

It also considers how off-road motorbike riding is regulated in Queensland and highlights the lack of restrictions on the sale and use of off-road motorbikes.

Other legislative responses

In addition to passing the new noise laws, the state government took further legislative measures to regulate off-road motorbike riding on public land through the creation of new laws:

- Laws were introduced to allow for public land that is controlled or managed by the state⁶⁶ 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.⁶⁷ The motorbike control land laws were introduced into the Summary Offences Regulation 2006 (Qld).

During the introduction of these laws, the Hon. J Spence noted: 'I intend writing to the Local Government Association of Queensland and to all members of parliament for them to nominate public land that could be included in the regulation' (QLA (Spence) 2005, p. 3181). We have been advised that no applications have been made for any area of land to be declared motorbike control land in Queensland (advice from Hon. J Spence 9 March 2009).

- A specific trespass offence for unlawful driving of a motorbike on public land was introduced into the *Summary Offences Act 2005* (Qld) (s. 11A). This law provides that a rider may be charged for unlawfully driving a motorbike on public land controlled or managed by the state in contravention of the Summary Offences Act or Summary Offences Regulation,⁶⁸

66 See Schedule Dictionary, Summary Offences Regulation.

67 The exemption is provided by s. 576(2)(c) PPRA. The new noise laws do not apply when a place is being used by motorbikes under a permit under a law; see the discussion in Chapter 4 of what a permit under a law means.

68 These offence sections also provide for liability where a rider drives on motorbike control land without the appropriate authority or fails to produce the necessary authority when required by police.

or under a local law that regulates access of motorbikes to land controlled by a local government.⁶⁹

In relation to the enforcement of these trespass laws, where riding occurs on state land, police have the power to charge a person under the Summary Offences Act. Where it occurs on local government land, police or an authorised officer have the power to issue an infringement notice.

When presenting these new laws to Parliament, the Hon. J Spence noted that 'if people take photographs or videotape a person in the act of illegal riding and this material is presented to police, as long as the police can identify the offender and prove the circumstances of the offence then they can commence proceedings and take action against the trail bike rider' (QLA (Spence) 2005, p. 3181). See Chapter 6 for details of the number of infringement notices that have been issued by police under these new powers.

Non-legislative responses

The state government further recognised that 'simply developing punitive measures to use against trail bike riders who cause nuisance problems is not a complete solution to the problem. Broader solutions are required' (QLA (Spence) 2005, p. 3181). This has led to the creation of several groups at the state and local government levels, whose objective is to consider non-legislative responses:

- In 2006, as a state government initiative, the Interdepartmental Trail Bike Working Group (ITBWG) was established as a result of a recommendation made by the Police and Corrective Services Portfolio Subcommittee. The group consists of representatives from various government departments, including the Department of Communities (Sport and Recreation Services) (DoC(SRS)), the Department of Premier and Cabinet (Environment and Resources Policy division, and Economic Policy division), the Queensland Police Service, the Department of Employment, Economic Development and Innovation, the Department of Transport and Main Roads, the Department of Infrastructure and Planning, the Department of Environment and Resource Management, and Forestry Plantations Queensland. The purpose of the group was to provide 'a comprehensive report and recommendations to cabinet that outlines a range of potential non-legislative strategies (QLA (Spence) 2005, p. 3181). Potential strategies included providing places to ride and establishing frameworks for cooperation, consultation and collaboration between organisations in the motorcycling industry and government (Police Powers and Responsibilities (Motorbike Noise) Amendment Bill Explanatory Notes 2005, p. 5; QLA (Spence) 2005, p. 3181).
- In 2008, the Industry Reference Group (IRG) was created as an initiative of the ITBWG to 'improve collaboration and build partnerships' (DoC(SRS) presentation 22 August 2008). It consists of government and motorcycling industry representatives.

69 If a rider is charged under the Summary Offences Act or the Summary Offences Regulation, the penalty for any offence is a fine of a maximum of 20 penalty units (\$2000). If a rider is charged under a local law, he or she may be issued with an infringement notice. The penalty under an infringement notice varies according to the local law. For example, Brisbane City Council advises that the penalty is \$25 (correspondence 18 August 2008) under the current parks laws; Logan City Council advises that the penalty is \$375 (submission 12 August 2008).

Under a local law that regulates access by motorbikes to public land, a rider may be issued with an infringement notice by an authorised officer. An authorised officer includes a person appointed by a local government and a police officer (Schedule 5 State Penalties Enforcement Regulation 2000; s. 1084 *Local Government Act 1993* (Qld)).

It appears that the distinguishing factor in determining how a rider is charged for unlawfully riding on public land is dependent on the type of land. This is because of the different definitions of public land provided in the Summary Offences Act and the Summary Offences Regulation. If the land is state government land, the laws of the Summary Offences Act and the Summary Offences Regulation apply; if the land is local government land, the local laws apply.

- In 2008, the South East Queensland Council of Mayors Trail Bike Taskforce was formed to identify suitable locations for recreational trail bike riding, because of the lack of progress made by the state government in finding riding places (Council of Mayors 2008).⁷⁰
- In 2009, the Gold Coast City Council established a 'Motor Sports Taskforce' to investigate potential relocation options for affected Gold Coast motor sport clubs, including off-road motorbike clubs (Gold Coast City Council 2009).

These groups and taskforces have similar objectives and some representatives sit across several of them. The DoC(SRS) is the lead agency for managing off-road motorbike activities and is represented on three of the groups (SEQTBMF, ITBWG and IRG). However, in our consultations with representatives from the DoC(SRS), we found it difficult to obtain specific information about any of the group's achievements, current projects and long-term planning. Our request to attend an ITBWG meeting was declined. We were advised that the ITBWG had been 'largely inactive until about mid-2007' (consultation DoC(SRS) 16 June 2008) and that 'the issues were complex' and that things were happening but it was 'in confidence'. The DoC(SRS) was unable to advise us of what these 'things' were or of any future projects (consultation DoC(SRS) 5 November 2008).

One of the key broader solutions to off-road motorbike noise problems is providing lawful places to ride that will provide riders with an enjoyable and challenging experience and where the noise emissions will not become a nuisance to other members of the community. The DoC(SRS) advised that, in trying to identify suitable riding areas, it has many criteria to meet and has frequently encountered obstacles, including the development application process, native title and environmental impact issues, and differences in land ownership, resulting in an inability to locate suitable areas (consultation DoC(SRS) 5 November 2008).

Various reports and other activities have been commissioned at a local and state government level seeking to identify the needs of off-road motorbike riding, although the majority have been targeted at issues relevant only to South East Queensland:

- In July 2009, the South East Queensland Council of Mayors Trail Bike Taskforce commissioned a trail bike rider survey to investigate providing trail bike riding areas in South East Queensland.⁷¹
- In April 2009, a Queensland Parliament e-petition on 'saving the safe and legal areas for dirt bike riders to enjoy their sport' was posted.⁷²
- A Queensland Parliamentary Library Research Brief was prepared in 2007 on trail bike issues and challenges (Dixon 2007).
- A background paper was prepared in 2007 for the Sunshine Coast Council, consolidating research and known information regarding noisy and hard-to-locate sports.⁷³
- A Regional Trail Bike Facilities Needs Plan⁷⁴ was developed in 2005 by the then Pine Rivers Shire Council, Caboolture Shire Council, Redcliffe City Council, Kilcoy Shire Council and the DoC(SRS).

70 The South East Queensland Council of Mayors consists of the mayors of Brisbane City, Gold Coast City, Ipswich City, Logan City, Lockyer Valley Regional, Redland City, Scenic Rim Regional, Somerset Regional, Sunshine Coast Regional and Toowoomba Regional councils.

71 See <www.councilofmayorsseq.qld.gov.au/content/AboutUs.asp>, viewed 18 August 2009.

72 This e-petition was active from 22/04/2009 to 30/06/2009 and attracted 1977 signatures. See <www.parliament.qld.gov.au/view/EPetitions_QLD/ClosedEPetition.aspx?PetNum=1210&Index=-1>, viewed 3 July 2009.

73 This paper was prepared in response to the growth in the Sunshine Coast Region of noisy and hard-to-locate sports, which have become constrained and challenged by urban growth and industry development. Reference is made to the needs of off-road motorbike riding in this paper.

74 This plan was prepared solely for the purpose of identifying sites in these local government areas that had the potential for off-road trail bike riding.

- A Regional Trail Bike Site Survey was commissioned in 2004 by the then Redland Shire Council, Brisbane City Council, Beaudesert Shire Council and Logan City Council, to identify potential off-road motorbike riding areas in the Redland, Logan, Beaudesert and Brisbane local government areas.
- A framework environmental management plan was prepared in 2002 for off-road motorcycle facilities by the Gold Coast City Council.
- A study was undertaken of the needs of underage, unlicensed and unregistered trail bike riders in South East Queensland (see Hibbins 2002).

In August 2008, the state government released funding of \$250 000 to assist private operators to improve facilities at their off-road riding venues. The scheme was part of the government's policy to encourage Queenslanders to live a healthy lifestyle through the support and development of outdoor recreation activities, including off-road motorbike riding. One of the desired outcomes of the funding program was to relocate off-road motorbike riding facilities from metropolitan areas in South East Queensland to private land outside urban areas. However, only existing facilities that had appropriate local government development approval were eligible for this funding and funding could not be used to assist in the development approval process. Trail Bike Management Australia (2007, p. 120) noted that 'given the size of the issue and range of solutions needed this [off-road funding program] appears to be a token gesture only'.

In June 2009, a joint funding initiative of the South East Queensland Council of Mayors and the Queensland Government was launched, with each providing \$50 000 per annum over the next three years to identify and establish new trail bike riding sites in South East Queensland (Council of Mayors 2009). In late November 2009, the state government, in collaboration with the South East Queensland Council of Mayors, announced that the first major trail bike facility for South East Queensland was to be established at Wyaralong near Beaudesert (Bligh & Reeves 2009).

We found limited educational and reference material regarding off-road motorbike riding, in particular very little information about the new noise laws and lawful recreational open-space riding venues. Some of the available information included:

- The DoC(SRS) website promotes riding places and the message 'ride smart, ride safe, ride in the right place'.⁷⁵
- Logan City Council promotes responsible riding and lawful riding areas (none of which are located in the local area) and provides limited information about the new noise laws through its website.⁷⁶
- Moreton Bay Regional Council lists riding areas on its website, and gives some information on noise control.⁷⁷

Local area enforcement initiatives

Some councils and state members of Parliament provided us with examples of local area enforcement initiatives that they have undertaken to control and deter riding in certain areas and to manage noise complaints. These include:

- the installation of barriers or fencing to prevent access to unlawful riding areas, and signage to deter riding in prohibited areas (Charters Towers Regional Council submission 11 July 2008; Moreton Bay Regional Council submission 6 August 2008)
- a council trail bike email address to alert council staff to hot-spots (Logan City Council submission 12 August 2008)

⁷⁵ See <www.sportrec.qld.gov.au/Recreation/TrailbikeridinginQueensland.aspx>.

⁷⁶ See <www.logan.qld.gov.au/lcc/logan/parks/trailbikes.htm>.

⁷⁷ See <www.moretonbay.qld.gov.au/discover.aspx?id=20967>.

- the referral of complaints made to Logan Council to the Logan District Police Communications Centre (Logan City Council submission 12 August 2008)
- the provision of trail bikes to police for patrolling bushland (Moreton Bay Regional Council submission 6 August 2008)
- material about the motorbike laws and areas where motorbikes can be legally ridden, which is given to riders caught unlawfully riding in parks by council officers (Logan City Council submission 12 August 2008)
- informal mapping of the locations subject to complaints, in order to advise police of hot-spots (Logan City Council submission 12 August 2008)
- community workshops bringing together police, national parks and wildlife officers, local law compliance officers, representatives of local motor sport groups and residents, and the development of recommendations for change (Phil Gray former MP submission 24 July 2008)
- regular patrols of hot-spots by council officers to deter riders from using certain areas (Redland City Council submission 15 August 2008)
- if a bike track has been created on private property, investigating whether it is for a commercial purpose and if so requiring further development approval for a material change of use (Whitsunday Regional Council submission 10 July 2008).

In its report, the Police and Corrective Services Portfolio Subcommittee noted:

Because they [the government] do not have the resources (funding, land, skilled staff etc) or the legislative mandate, no single Government agency can successfully resolve the issues associated with trail bike riding in isolation. Each agency requires effective cooperation and collaboration from all other agencies. (Police and Corrective Services Portfolio Subcommittee 2003, p. 15)

Overall, we found pockets of activity dealing with off-road motorbike issues at the state and local government level. However, there appears to be:

- a lack of collaboration and cooperation between local governments and the state government, and, at times a duplication of objectives and resources
- little or no publicly available information from the state government or local governments about what is being done to address the problems of off-road motorbike noise and the management of riding in local communities
- no proposed long-term solutions for the better management of off-road motorbike riding in Queensland
- limited funding and a lack of commitment to provide off-road motorbike facilities.

The regulation of off-road motorbike riding

There is very limited regulation of off-road motorbike riding in Queensland. Many comments received during our review highlighted the lack of regulation of the sale of off-road motorbikes and the use of them on private property. These issues are discussed below.

The regulation of off-road motorbikes

There are no prohibitions on any type of motorbike (e.g. motorbikes commonly referred to as 'pocket rockets', 'monkey bikes' and 'pit bikes') being imported, assembled and sold in Australia, nor are they required to meet any Australian Design Rules (ADR).⁷⁸ Many stakeholders affiliated with the off-road motorbike industry, as well as members of the public, expressed frustration at this complete lack of regulation. Cheap, poor quality off-road

⁷⁸ ADR are administered by the federal Department of Infrastructure, Transport, Regional Development and Local Government. They apply only to complete vehicles and deal only with the issuing of compliance plates once vehicles that are intended to meet ADR are fully assembled.

motorbikes are widely available and may be lawfully purchased in Queensland through a variety of sources irrespective of their mechanical standard or the level of noise they emit. The only restrictions that apply are those imposed on their distribution by the Fair Trading Safety Standards⁷⁹ of each state. In Queensland, these standards emphasise safety standards and there are no standards for noise emissions (see r. 13F and Schedule 5A Fair Trading Regulation 2001 (Qld)).

For on-road use, motorbikes must comply with ADR to be road-registrable, which includes the imposition of exhaust decibel emission levels that vary between 75dB(A) and 86dB(A), depending on the manufacture date and engine cylinder capacity.⁸⁰ These decibel standards apply only when the bikes are used on-road and the decibel level is measured when the motorbike (or motortrike) is stationary.

As previously mentioned, off-road motorbike noise is a problem in some areas where the area is classified as a road. Enforcement of noise problems in on-road areas is through the application of one of the following:

- Transport Operations (Road Use Management – Road Rules) Regulation 2009 (Qld)
- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999 (Qld)
- *Forestry Act 1959* (Qld).

The other vehicle noise laws that are located in Chapter 19 Part 3 PPRA relate only to excessive noise from vehicle stereo systems when they are used on-road (s. 580).

If the track is deemed to be a road, the rider must be licensed and the motorbike must be registered; therefore, decibel emission standards will apply. The Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation states that vehicles must comply with certain vehicle standards (r. 5).⁸¹ Schedule 1, Part 9, Division 3 of this Regulation provides for standards of noise emissions and the measurement of stationary noise levels. It also states that it is an offence to modify the vehicle's silencing device (r. 9).⁸² An example of a modification that falls within this offence is the removal of the cylindrical removable baffle from the tip of the exhaust.

79 Fair Trading in Queensland is part of the Queensland Department of Employment, Economic Development and Innovation.

80 See Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation. For motorbikes or motortrikes not certified to ADR and built after February 1985, the applicable decibel level is 94dB(A); for any other motorbike or motortrike the level is 100dB(A) (r. 136C & 136D Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation). See Appendix 7 for motorbike noise decibel emission standards under the ADR. These levels are the maximum drive-by level as per the ADR requirements.

81 The penalty for failing to comply with vehicle standards is a maximum fine of 20 penalty units (\$2000) (r. 5 Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation).

82 The maximum penalty for this offence is a fine of 20 penalty units (\$2000) and a person may be liable if either (i) the silencing device (exhaust) has been modified to reduce or to be likely to reduce the effectiveness of the device, or (ii) the modification reduces or is likely to reduce the effectiveness of the device. However, regulation 9(3) provides that a person will not be liable pursuant to (ii) if the person reasonably believes that the vehicle is not to be used on a road.

A vehicle may be deemed defective if the silencing device fails to perform its intended function or has deteriorated to the extent that it can no longer perform its intended function (r. 13 Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation). If the vehicle is deemed defective, a defect notice may be issued to the owner or rider, requiring the owner to rectify the defect (r. 14 Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation).⁸³ These laws can be enforced by an authorised officer (which includes a police officer).⁸⁴ A person may also be charged with making unnecessary noise under r. 291 Transport Operations (Road Use Management – Road Rules) Regulation.⁸⁵

Where riding occurs in a forestry area, the Forestry Act provides that a rider must not cause annoyance to any person. This is a summary offence attracting a fine of 100 penalty units (\$10 000) for the first offence, or 200 penalty units (\$20 000) for a second or subsequent offence (ss. 34G(4)(b) and 88 Forestry Act). A forestry officer may direct a person who has committed an offence, or who the officer suspects on reasonable grounds of having committed or attempted to commit an offence, to leave the area (s. 84A Forestry Act). The enforcement of these laws may be undertaken by forestry officers or other officers appointed by the chief executive (s. 17 Forestry Act).

Motorbikes used off-road are not legally required to adhere to any design standards, including exhaust decibel standards. An exception to this is when motorbikes are ridden off-road at a club or at a riding event sanctioned by Motorcycling Queensland (MQ). At these events, motorbikes must be fitted with an appropriate silencer and comply with set decibel noise emission levels; generally this is 96dB(A) for a two-stroke engine and 94dB(A) for a four-stroke engine.⁸⁶ Although this is not a legal requirement, a failure to comply with the decibel requirements will prohibit the motorbike being ridden at the club or participating in the riding event.

There are over 100 off-road motorbike clubs and tracks affiliated with MQ.⁸⁷ However, it has been suggested that approximately 85–90 per cent of recreational riders do not belong to a club or ride on specific tracks, as ‘they don’t want to be restricted by time or place’ (Trail Bike Management Australia 2007, p. 17).

One of the simplest ways to limit noise emission is through a motorbike’s exhaust or its silencing system, which will alter the tone of the motorbike’s exhaust note.⁸⁸ Currently, import regulations do not apply to motorbike parts such as after-market exhausts, as they are component parts and are not required to meet ADR standards for noise emissions. Some off-road motorbike retailers did advise us that most of the after-market exhausts they offer for sale accord with Motorcycling Australia decibel emission standards, but they were not restricted in what they could sell (retailer consultations 17 September 2009).

83 A failure to comply with a defect notice without reasonable excuse may result in a fine of a maximum of 30 penalty units (r. 14(4) Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation).

84 An authorised officer may be a police officer or an officer or employee of the public service who is appointed by the chief executive of the Department of Transport and Main Roads or a person prescribed under a regulation (s. 20 *Transport Operations (Road Use Management) Act 1995* (Qld)).

85 A person must not start or drive a vehicle in a way that makes unnecessary noise or drive a vehicle that has a noisy instrument attached to or on which a noisy instrument is used. This offence attracts a maximum fine of 20 (\$2000) penalty units.

86 See Appendix 7 for a table of Motorcycling Australia noise emission decibel levels for riding discipline events. These levels vary between 75dB(A) and 102dB(A) and are dependent on the riding discipline and motorbike engine type (Motorcycling Australia 2009, p. 98). The decibel levels are similar to those from a major road where a person is standing 10 metres away, the noise of city traffic or an electric saw. See Appendix 8 for other decibel emissions examples.

87 See MQ at <www.mqld.gov.au/ab_contact_club.html#classicclubs>, viewed 27 March 2009.

88 The combustion cycle of a two-stroke engine causes the motorbike to have increased exhaust emissions, and these motorbikes are said to be ‘louder in close proximity and have a higher pitch tone like a chainsaw’; four-stroke engines are more commonly used and have a less offensive exhaust note, but the noise is said to travel further than a two-stroke engine (Trail Bike Management Australia 2007, p. 67).

The installation of a quietening exhaust system will limit decibel emission levels but may also affect the power output of the motorbike. This is a common reason given by riders as to why they modify their exhaust systems from the quieter market standards.⁸⁹ However, others argue that exhaust modifications do not equate with increased performance: one rider said that 'what annoys me is the clowns who change their exhausts or remove the baffles thinking their machines will go better, which indeed is not the case most of the time' (individual submission 17). Comments from contributors on <www.dirtbikeworld.net> indicate that this is a contentious issue frequently debated among off-road motorbike enthusiasts.⁹⁰ Some riders also argue that increased exhaust noise provides them with greater safety as others can hear the motorbike approaching.⁹¹ Little research is available on the circumstances surrounding off-road motorbike accidents and whether this is a valid assertion (Condon 2004; Sheehan et al. 2008).

Nevertheless, imposing legally required decibel levels for off-road motorbikes will not prevent how the noise travels to surrounding areas, nor the level of irritation it causes to others. However, the creation of a decibel standard would provide a foundation on which other strategies could be built. In the creation of a standard, consideration must be given to not only the distribution and sale of off-road motorbikes but also the after-market exhaust sales. Fairness must be provided to riders who purchase after-market exhausts from overseas manufacturers who use decibel testing methods that may not accord with ADR.⁹²

Land use regulation for off-road motorbike riding

Importantly, there are relatively few rules or regulations that govern the use of motorbikes on private property (residential properties in particular) and to some extent off-road riding facilities. In his findings into the deaths that had occurred at an off-road recreational motorcycling and four-wheel drive facility, Black Duck Valley, Coroner Michael Barnes noted:

Witnesses who gave evidence, including the operators of the park, seemed to have a philosophical objection to the activities of the park being regulated. They espoused views redolent of primordial liberalism to the effect that if individuals want to engage in dangerous activities they should be allowed to do so, free from government intervention, even if it results in their being killed or injured. (Transcript of Proceedings, Coroner's Court, Brisbane, p. 17)

The use of off-road motorbikes, particularly on private land, is directly associated with Queensland's planning and development laws. These laws are complex and necessarily diverse, as the nature of land and its uses is different in different parts of the state. The *Sustainable Planning Act 2009* (Qld) (SPA) provides the general framework for Queensland's planning and development assessment system. The SPA is designed to coordinate state, regional and local planning considerations under a single process.

89 See <www.exhaust-notes.com/motorcycle-exhaust-buyers-guide.html>, viewed 18 December 2008. For example, four-stroke engines are said to gain greater power output from freer-flowing exhausts (which have limited or no baffles inserted in them), such as a sports exhaust which is often purchased after-market. Noise emissions in an exhaust system are controlled by the baffles, which restrict the engine emissions; or an exhaust can be packed, for example with steel wool, which will temporarily muffle the noise, but the wool will eventually disintegrate.

90 For example, see thread discussions titled 'Noisy bikes lead to closures – Why have one?', 'How can we attack the noise issue' and 'Noisy off road motorcycles' at <www.dirtbikeworld.net>.

91 For example, one submission stated:
My personal experience with noisier than standard production exhaust systems is that this is sometimes the only forewarning that you as a rider may get that traffic is approaching, permitting the avoidance of an accident or potential fatality (individual submission 43).

92 ADR apply the drive-by testing method, Motorcycling Australia uses a static method derived from European Standards, and the American Motorcycle Association uses a static method derived from the Society of Automotive Engineers (Trail Bike Management Australia 2007, p. 35).

Under planning law in Queensland, each local government is required to develop its own planning schemes, detailing its intentions for the development of its particular jurisdiction. An important feature of local planning schemes is the determination of how land can be used and land zoning. This provides local governments with the ability to determine and regulate how land is used within their jurisdiction.

Development and land planning schemes need to respond to off-road motorbike riding that occurs lawfully:

- at organised day rides, where riding may occur once or on an irregular basis
- at off-road motorbike clubs where regular riding occurs
- on private residential properties.

Development processes will be subject to local government and state government requirements and it is beyond the scope of this review to provide an analysis of these. However, we highlight this issue in order to provide long-term sustainable solutions to the management of off-road motorbike riding and also respond to problems of off-road motorbike noise. Local and state land planning must be a priority. More open and transparent guidelines are needed.

If a private off-road riding facility is established for a commercial purpose, a number of development approvals (including noise testing) specific to local government requirements will need to be obtained, at considerable expense to the applicant. A number of individuals at the South East Queensland Trail Bikes and Off-Road Vehicles Program funding launch expressed frustration at the costs and complexities associated with these development processes and in particular the measurement of, and restrictions placed on, noise emissions. The South East Queensland Council of Mayors has acknowledged the 'inconsistent and unclear planning scheme provisions for trail bike facilities and one-off trail bike events' as a significant barrier to providing legal trail bike riding sites in South East Queensland (Council of Mayors 2009).

We found no information about the development or planning processes that must be met for organised day rides. One organiser of recreational rides advised us that he has not been required to obtain any permits or other forms of development or planning approvals for rides held in South East Queensland (rides have occurred on state-held land as well as on private property). The only regulation of the rides has been through MQ, which sanctions the events, and riders must comply with its requirements. The South East Queensland Council of Mayors has agreed 'to develop a consistent and transparent approach to Councils' planning and development processes to approve one-off trail bike events' (Councils of Mayors 2009). The DoC(SRS) advises that it is currently working with the Council of Mayors on this issue (advice 11 September 2009).

One of the most common issues highlighted to us was the noise caused by off-road motorbikes used in residential backyards for private use and the lack and uncertainty of local government laws to manage them. Examples were provided of excessive noise occurring on parcels of land ranging in size from one acre to over 200 acres. Some off-road motorbike riding enthusiasts seek large parcels of land for off-road motorbike riding, and neighbouring residents may then be affected by noise and dust. The new noise laws apply to private residential properties, but their application fails to provide long-term solutions regarding the overall use of off-road motorbikes and the building of tracks and jumps on private domestic property. Nor do they provide an effective means for dispute resolution when neighbourhood conflict occurs over the use of off-road motorbikes.

Responses from councils indicate that their involvement will hinge on whether the motorbike track is used for a commercial purpose or not. If a motorbike track is used for commercial purposes, local government may intervene and require a Material Change of Use application to be submitted to obtain development approval. However, most comments received from councils indicate that, where motorbikes are being used on private property for personal use, the enforcement of associated noise problems is a police, not a council, issue.

Summary

Overall, we found various pockets of activity at a local and state government level that sought to provide broad responses to off-road motorbike riding. Further legislative measures were taken with laws passed allowing the state government to declare motorbike control land, yet no land has been declared. Greater punitive measures were also provided through additional trespass offences for unlawfully riding on public land. Local area enforcement initiatives identified various methods used to target illegal riding through non-punitive measures.

Since 2006, several working groups and taskforces have been established to respond to off-road motorbike riding needs. Many of the groups have similar objectives and some representatives sit on several of them. Various reports and other activities have been commissioned to identify off-road motorbike riding needs, most of which have focused on the South East Queensland region. In some areas there appears to be a lack of collaboration and cooperation between local governments and the state government, as well as little publicly available information about what is being done to respond to community concerns. We were unable to identify any long-term strategic planning initiatives to deal with off-road motorbike riding needs.

There is little regulation of the sale and distribution of off-road motorbikes and after-market exhausts. In some riding settings, decibel emission standards and associated enforcement powers apply; however, where motorbikes are ridden on private residential property there is little regulation guiding their use or the creation of tracks and jumps. Development processes for commercial facilities are complex and onerous, an issue that is recognised and addressed by some local councils.

OTHER JURISDICTIONS' RESPONSES TO COMPLAINTS ABOUT EXCESSIVE NOISE FROM OFF-ROAD MOTORBIKES

To place Queensland's laws into context, we explored alternative legislative approaches and strategies used in other Australian states and territories to respond to off-road motorbike noise.

Every state and territory in Australia has laws for responding to excessive off-road motorbike noise but the enforcement strategies vary. Unlike Queensland, where off-road motorbike noise laws are specifically associated with police powers, almost all the other states categorise off-road motorbike noise as an environmental nuisance and have relevant laws contained in legislation associated with environmental protection laws. The Northern Territory and Western Australia are the exceptions. The Northern Territory provides policing powers to deal with off-road motorbike noise under the *Summary Offences Act* (NT), while Western Australia is the only state to have specific off-road vehicle legislation, in the *Control of Vehicles (Off-road Areas) Act 1978* (WA). For a detailed description of the off-road motorbike noise laws in other states and territories, see Appendix 9.

Various definitions of excessive noise are provided across Australian jurisdictions. For example, in New South Wales and Tasmania, the definition of 'excessive' is made by reference to the level, intensity, time, place, character and quality of the noise. In Victoria, excessive noise is determined by whether the sound is audible in a habitable room in a residential place.

Enforcement strategies include:

- on-the-spot infringement notices for creating excessive noise
- decibel limits on off-road motorbikes
- time restrictions on when noise can be made and specific times when the emission of noise is prohibited
- land noise zoning with associated decibel emission levels
- distance restrictions prohibiting the use of a vehicle for sport or recreation from domestic premises
- specific offences relating to the failure to fit an appropriate exhaust system or adhere to decibel emission levels.

Penalties for causing excessive noise or breaching a direction differ extensively. For example, infringement notices incur fines from \$50 to over \$500; offence fines range from \$200 to over \$30 000 and can be issued to individuals and/or corporations.

The laws can be enforced by police or other authorised officers, including environmental protection officers and local government officers.

Some states and territories also allow for responsibility to go beyond that of the rider and include the person responsible for the vehicle and/or the person responsible for the land on which the motorbike is being ridden. For example, in Western Australia and New South Wales, not only is the rider liable for causing excessive noise but so too is any other person who is responsible for the vehicle.

In addition to the way in which states and territories respond to excessive off-road motorbike noise complaints, we found a specific case of a local government in Victoria, Frankston City Council,⁹³ which has taken a proactive initiative to combat nuisance unregistered motorbikes⁹⁴ in the community. As well as addressing noise issues they also target hooning behaviour and were developed in response to the inadequacies of state legislation to deal with the problem.

The council created:

- a hoon hotline for locals to report complaints
- local laws⁹⁵ to allow authorised officers⁹⁶ to fine and impound illegally used⁹⁷ motorbikes
- powers allowing the council to destroy the impounded motorbike if the impounding fee is not paid within seven days of receiving a penalty notice
- (in conjunction with state government), lawful riding facilities.

For a first offence, the motorbike will be impounded for six months, and in addition to a \$200 fine for illegal riding, the owner is required to pay \$550 in impounding fees. For a second or subsequent offence, the motorbike will be impounded for 12 months, and in addition to a \$500 fine for illegal riding, the owner is required to pay \$850 in impounding fees.

The local laws also provide an extension of liability for an offence to a parent or guardian where the rider is under the age of 17 years, unless the motorbike was being used without the knowledge or consent of the parent or guardian.

In creating the new local laws, the council took a very strong stand and worked closely with the community and local police to combat what was perceived as a long-running problem (Frankston City Council 2007). The laws were promoted through notices displayed in shopping centres, public places and petrol stations. Frankston Council emphasised that police support has been critical to the implementation and success of the laws as well as the provision of an alternative lawful riding facility.

Since the local laws were introduced on 1 October 2007 (Frankston City Council consultation 2 April 2009):

- 81 motorbikes have been impounded
- 54 motorbikes have been destroyed
- 17 motorbikes have been claimed by the owner
- \$13 840.50 in impoundment fees have been paid
- complaint numbers are now minimal and nearly all recent actions had been initiated by patrolling police rather than as a result of complaints.⁹⁸

93 Frankston City is a suburban community situated on the eastern shores of Port Phillip Bay approximately 40 kilometres south of Melbourne, with an estimated resident population in 2009 of 126 284.

94 A motorbike is defined as any wheeled conveyance powered by a liquid-fuel driven motor and not registered under the provisions of the *Road Safety Act 1986* (Vic.) (see General (Amendment) Local Law 2007 No. 12).

95 *General Local Law 2003 No. 7* and *Frankston City Council General (Amendment) Local Law No. 12* (Motor Cycles) (Vic).

96 The legislation defines an authorised officer as 'a person appointed by Council under section 224 of the *Local Government Act 1989* (Vic.)'; this includes police officers.

97 Illegal use involves the riding of an unregistered motorbike on roads and in public places such as nature reserves in the municipality.

98 In the *Frankston Independent* (2007), police reported that 'complaints about mini and monkey bikes had dropped from about 40 a weekend to none in the weeks following the council's adoption of a local law'.

Another example of a proactive initiative to respond to off-road motorbike issues is the Western Australia State Trail Bike Strategy (Trail Bike Management Australia 2007). The strategy 'proposes a framework for planning and managing recreational trail bike riding on public and private lands and for coordinating cooperation between relevant State Government agencies, local communities, local government and recreational trail bike riders' (Trail Bike Management Australia 2007, p. 9). The strategy proposes a trail bike sustainability model that involves key focus areas, which include responding to issues of: governance, resourcing, funding, trail and venue facilities, registration, licensing and enforcement, insurance, liability, risk management and rider education.

Summary

This chapter has identified the various legislative approaches to excessive motorbike noise in other jurisdictions in Australia, some of which offer:

- on-the-spot infringement notices for creating excessive noise
- decibel emission limits for off-road motorbikes
- responsibility that extends beyond the rider (including the individual responsible for the motorbike and/or the land on which it is being ridden)
- restrictions about when noise can be made and specific times when the emission of noise is prohibited
- land noise zoning, with associated decibel emission levels
- land distance restrictions prohibiting the use of a vehicle for sport or recreation within a certain distance from domestic premises
- specific offences relating to the failure to fit an appropriate exhaust system or to adhere to decibel emission levels.

The example of Frankston Council in Victoria highlights a proactive initiative between local government and police to respond to the problem of noise and unlawful motorbike riding, which provides for increased punitive measures. Western Australia has initiated a statewide trail bike strategy to develop an overall vision for the management of off-road motorbike riding.

COMMUNITY FEEDBACK ABOUT OFF-ROAD MOTORBIKE RIDING AND THE IMPACT OF NOISE

This chapter describes what the community told us about off-road motorbike riding and the impact of excessive noise from off-road motorbikes. It summarises the key issues raised in the submissions and through our consultations with the public and other key stakeholders.

One of the main objectives of the new noise laws is to provide a balance between the competing interests of a person's right to use a motorbike on private or public land and the right of others to enjoy peace and quiet in their community. The complaint data previously presented, the content of the submissions and our consultations with key groups and members of the community would suggest that this outcome is yet to be achieved.

What the community said about off-road motorbike riding

The comments made in submissions and during consultations made it clear that for some people in the community off-road motorbike riding is an emotional and passionate matter. The issue of noise has had a serious impact on two main interest groups: residents adversely affected by noise; and riders seeking to pursue their interest, often on their own property.

Both groups detailed their frustration and often anger about how off-road motorbike riding is managed in the community and how the problem of noise is dealt with. The dichotomy of views expressed by the two groups highlights the complexities associated with responding to noise problems, particularly in residential areas where the issue of noise has fuelled serious neighbourhood disputes.

We received over 400 written and verbal submissions from people who had been affected by noise, riding enthusiasts, local government councils and councillors, state government members of Parliament, state government bodies and motorcycling interest groups.

The overwhelming majority of submissions were from residents affected by noise (76.8%, $n = 312$), but a number came from off-road motorbike riders and people affiliated with the off-road motorbike industry (14.3%, $n = 58$).⁹⁹

⁹⁹ These figures were taken from an analysis of 406 submissions. We continued to receive submissions after the closing date for our call for public comment as well as additional comments from people who had already made a submission to our review. In the preparation of this report, we considered the views expressed in the additional submissions received.

Most submissions referred specifically to trail bike riding in their area, while a few commented on the use of other off-road vehicles such as quad bikes. There was a prevailing negative perception of off-road motorbike riding, and many submissions detailed descriptions of antisocial behaviour by riders who were described as ‘hoons’, ‘thugs’ or ‘an absolute menace’. As well as noise concerns, many submissions emphasised:

- the environmental degradation and damage to flora and fauna caused by off-road motorbike riding
- safety issues for riders and pedestrians
- trespassing on private property
- vandalism and damage to property (e.g. fences being cut by riders)
- motorbike rider behaviour that was seen as frightening and threatening by other off-road area users, such as bushwalkers, mountain bike riders and horse riders.

We also received positive comments from people who did not find the activity or noise problematic. These comments were not just from people affiliated with riding but also from residents in areas where riding occurs. The comments focused on the benefits of the activity such as the examples below:

- Keeping riders, particularly children, fit and healthy.
- Improving balance and coordination, as riders are required to coordinate hand and foot controls and operate independent foot and rear brakes.
- Developing cognitive and perception skills, which contribute towards better on-road driving skills.
- Allowing riders to form friendships with other people and providing a social activity.
- Providing an outdoor activity. (In particular, many comments were made about keeping children away from the television and computer games.)
- Providing a family activity and participation helps to strengthen familial relationships.
- Wearing out teenagers after a day of riding, thus keeping them off the streets and out of trouble.
- Teaching children discipline. (Several examples were provided of children who had to save to purchase their first motorbike.)
- Providing children with a safe outdoor environment in which to enjoy their sport.

Participation in off-road motorbike riding varies from riders who spend considerable amounts of money, own top-of-the-range motorbikes and safety equipment, have appropriate motorbike transportation and ride at lawful riding venues; to those who have less expensive, poorly maintained and sometimes unsafe motorbikes, with limited or no safety equipment, and who ride spontaneously and unlawfully through their local environment.

Many adult riders and parents commented on the considerable expense associated with the activity, which includes the cost not only of the motorbike but also of appropriate safety equipment and transportation to lawful riding venues. They also highlighted the positive impact of riding on their own and their children’s behaviour. For example, ‘it’s better having them out there in the fresh air rather than inside’ (individual submission 15), and ‘my wife and two kids and I think that doing a sport we can all do together is good for our kids and it gives them something to do instead of roaming the streets unsupervised and getting into trouble’ (individual submission 213). Another parent wrote:

[the sport at club level] promotes a safe and social atmosphere ... where children learn their responsibilities for the safe operation for a trail bike. These skills have a flow on effect when it comes time for them to get behind the wheel of a motor vehicle. (individual submission 53)

Some organised recreational riding events brought social and financial benefits. For example, we were told about a riding and camping event held regularly in Woodenbong, a township 10 kilometres south of the Queensland border and attended largely by Queensland riders.¹⁰⁰ Many local community members, such as the Rural Fire Service, support the event and a large proportion of the funds raised is returned back to the community (submission Woodenbong Progress Association 11 November 2008). In 2008 a grant was made to the Woodenbong Rural Fire Service to assist with a new training room and other fire service facilities. Other donations have been made to the Woodenbong Pre-School and Central School, the local swimming and tennis clubs, the showground trust and individual local businesses (submission Woodenbong Progress Association 11 November 2008).

What about the noise?

The majority of submissions made reference to the noise being irritating and annoying; others likened it to 'the sounds of a race track' (individual submission 114) and 'akin to having a chainsaw in your ear' (individual submission 79) or a 'whipper snipper going for hours' (individual submission 1). In some submissions, the noise was described as so penetrating and continuous that it impinged on a person's ability to hear other sounds within the home, such as the television or telephone. The noise was said to 'drown out our TV and even the vacuum cleaner' (individual submission 336), and 'even with all the doors and windows closed and the television on high ... [we] still can't drown out the noise' (individual submission 124). One resident even noted: 'I cannot sit out by our pool and garden and relax. I am a prisoner in my own home or have to hop in my car and go out to escape the noise' (individual submission 1).

A music teacher told us:

The noise can happen at any time, stop and start; Sunday afternoons when it is pleasant to have a nap are prime times, Christmas Day, Boxing Day, Good Friday ... One very hot summery day I had an overseas examiner examining students in my music studio. We had to shut the door because three young men were leaping through the air on motorbikes across from my studio and the noise, dust and fumes were unbelievable ... the examiner was very understanding but the day's heat made it very stressful for us all and I felt embarrassed and helpless. (individual submission 269)

Trail Bike Management Australia (2007, p. 36) suggests that whether the noise is continuous (e.g. riding around and around a backyard circuit) or intermittent (e.g. sporadic noise from riding past a residence) the key irritant is the persistent nature of the noise. Furthermore, it says that once an individual is sensitised to a noise, it becomes more noticeable and may have a greater impact (p. 35). Stansfield (1992) writes that noise-sensitive people attend more to noises, discriminate between noises, react to and find more noises threatening, and adapt to noises more slowly than less noise-sensitive people. This will contribute to the impact that off-road motorbike noise has on a hearer.

Many submissions described a steady increase in the frequency of off-road motorbike noise in their area over time:

We have lived in this rural address for 20 years. It adjoins State forest so consequently we accepted that there would be significant off-road activity, however it increased to the point that all weekend became a nightmare [with] up to 30, yes, 30 bikes with open exhausts. (individual submission 56)

... we sought a peaceful lifestyle on the edge of the national park. Over the past 10 years, this has become impossible due to the excessive noise from trail bikes ... over the past two years, the frequency of trail bikes and 4WDs has escalated considerably. Whereas the activity used to be infrequent, it is now usual ... to have groups of up to 13 trail bikes at a time in a convoy ... (individual submission 79)

¹⁰⁰ There are few suitable riding facilities in Queensland where similar events can be held (consultation Australian Dirt Bike Adventures 21 September 2008).

Most of the comments described regular noise that had taken place over a prolonged period of time. Others identified peak periods such as weekends and school holidays as problematic; for example:

I purchased my home close to the beachfront with dreams of a peaceful lifestyle away from the noise of the city, only to have thoughtless people racing their bikes up and down the beach most weekends. (individual submission 1)

I have three neighbours who annoy me with bike noise, they all choose to ride their bikes at different times ... the noise is spread over a considerable time frame. (individual submission 73)

Often there will be three or four different off-road motorbikes roaring around one or more properties. Sometimes, it goes on for 20 minutes and then at other times it goes for an hour. (individual submission 323)

Some submissions highlighted extreme cases of the noise occurring both day and night, with examples of riders being heard throughout the evening: 'I have seen the old couple across the street terrorised at 2 am in the morning' (individual submission 30); another described riders 'riding up the river at 2 am for hours making it impossible to sleep' (individual submission 39).

We were told of the impact of the noise on residents' mental health. One submission stated: 'our nerves are constantly on edge waiting for the first crackle of a motorbike engine that will be the harbinger of 20 more' (individual submission 331). Some provided examples of sleep disturbances and heart problems, stress and fear. Some stated that stress and fear accumulated simply by knowing that the motorbike is nearby and that it was going to create some noise in the future. One resident stated: 'as soon as I hear the trail bikes start up I tense up and become quite agitated' (individual submission 124).

In instances where the noise was the result of a neighbour's continuous riding over prolonged periods, the impact appeared to be significantly greater than regular intermittent noise from an unknown rider or riders traversing through an area. One resident said that he 'found the stress had compounded to the point of sickness and depression' and he felt 'powerless and helpless' after a new neighbour moved in and built a riding track on a five-acre parcel of land (individual submission 302).

On the other hand, examples were provided of riding enthusiasts taking active steps to limit the noise, such as riding only at certain times of the day and limiting the length of time they ride, yet still being met with opposition from neighbours:

Yes we are aware that our neighbours do not share our passion for motorcycles so as a compromise we allowed our children an hour only of riding straight after school. Usually between the hours of 3.30 and 4.30 most residents are still at work but recently retirees moved across the road and no sooner do the kids start the bikes that these neighbours are on the phone to police. (individual submission 24)

A strain on community and neighbourhood relations

A major concern raised with us was the effect of excessive noise from off-road motorbikes on neighbourhood relations and its contribution to serious neighbourhood disputes. According to Coghlan (2007, p. 9), when noise emanates from a neighbour, it may symbolise a lack of consideration for others and heighten sensitivity and negative reactions in those who live nearby, which may intensify the impact of the noise. The difference between the views expressed by residents adversely affected by noise and the views of riding enthusiasts who actively sought to reside on large parcels of land on which they could ride highlights the complexity associated with the management of neighbourhood conflict.

Many examples were provided of off-road motorbike noise disputes fuelling neighbourhood conflict, and many examples were given of antisocial behaviour of riders. A number of residents also indicated a reluctance to make complaints to police because of the fear of reprisal and concern about the impact on their relationship with their neighbours.

Examples of antisocial behaviour included verbal abuse and threats, rubbish being strewn on lawns, lawns and gardens being torn up by motorbikes, letterboxes being damaged or destroyed and fences being cut. One resident described the nature of retaliation after complaining about the noise:

... for the past two and half years we have had: our letter box smashed on a regular basis (it was even chainsawed off at ground level once), metal spikes buried in our driveway to slash our vehicles tyres and those of visitors, visitors harassed and abused to the point we now rarely get visitors anymore, rubbish bins frequently tipped all over the road, late night noisy 'burn outs' performed on the road in front of our house and in our driveway, family members being stalked, [and] our family's cars have been followed with attempted running off the road incidents. (individual submission 123)

One resident who wrote on behalf of her elderly parents stated that 'numerous phone calls to police resulted in one visit leaving my parents feeling intimidated, threatened and scared by a group of young bike riders' (individual submission 322). Another described being 'run off the road regularly' and that their 'driveway got ripped up after heavy rain' by neighbouring trail bike riders after they had made complaints to police (individual submission 82). There were numerous examples of retaliation after complaints had been made to police:

... the next morning the largest bike they owned was ridden up and down our fence with the rider yelling out I'll give you noise ... world war 3 was declared that day ... it was now after 7 am [and] they could make all the noise they wanted. (individual submission 122)

Police intervention has not helped us at all. The harassment begins soon after. Revving of bikes, standing and staring from the side fence, rocks on the roof at night, front lawn torn up at night and we had to install screens to try and block this guy from staring. (individual submission 315)

I don't complain, write letters, approach the thugs or even have eye contact anymore as this is seen as a threat by them and they retaliate against us. Since just putting up with the dust and noise on a daily basis, I have no more attacks on me by rocks (large ones) or fruit and our home is no longer under attack from illegal fire rockets, bottles, broken glass, rocks, eggs, rotten fruit and potatoes. The verbal abuse has also stopped. (individual submission 67)

Several submissions told us about their inability to entertain friends at home because of the motorbike noise in their area, one stating that 'we cannot entertain our friends on our back patio for the excessive noise which you can also hear in every room of our house and even over the TV or radio' (individual submission 246). Another stated:

For years the boys (and their dad and uncles at times) would start riding their noisy bikes etc from 4.05 pm until dark every weekday and from 7.00 am till dark every weekend, public holiday and school holidays ... The last BBQ party we attempted ... was a disaster – all food covered in thick layers of dust, noise so bad no one could hear themselves speak and so it went, on and on and on ... (individual submission 83)

For some community members, the impact of neighbouring motorbike riding was so oppressive that they expressed a desire to relocate to another area. One resident commented that she is selling her home because she is 'sick of the noise, dust and stench' (individual submission 193), while another couple commented that motorbike noise is encroaching on their standard of living to such an extent that, despite only recently moving from the city to the rural residential neighbourhood, they find themselves wanting to move back to the city for peace and quiet (individual submission 408). In one hot-spot area, residents expressed concern that the impact of off-road motorbike noise has 'devalued our area' (individual submission 29). Such sentiments were echoed in a number of submissions:

Our house overlooks the river and as we have invested not only in what we thought was peace and quiet, but an environmentally friendly house to allow for air to ventilate through the house, this won't happen if the dust is kicked up from the riverbed, not to mention the noise. (individual submission 35)

The riders – who police tell us come from as far as Wymnum and Warwick – leave rubbish and tyres in the area and have turned our once peaceful suburb into a horrible place to live on weekends. The roads are a mess and the issue has devalued our area ... (individual submission 29)

Every weekend, public holiday and most Friday afternoons there will be up to 40 cars parked along Johnson Road with as many motorbike riders as young as five loitering ... the whole area is an eyesore with rubbish littered all over the area they are using ... Three houses have sold with two more up for sale due to this weekly nuisance ... A lot of money has been invested in this neighbourhood and we feel this is devaluing the area. (individual submission 23)

... within a week truckloads of dirt were brought in and bobcats and diggers and soon we had a trail bike track right beside us less than 50 metres from our back veranda ... After it became clear that no one was going to stop our neighbours, we decided to sell but after speaking with a local real estate agent it was clear that we would lose a lot of money because the track was easily seen from our property ... (individual submission 122)

I have attempted to place our house on the market and sell it. However, every time an agent brought prospective clients to inspect our property, these neighbours would go out of their way to have every bike running as loudly as possible ... so that no one was interested in purchasing. Real Estate Agents have now refused to list our property claiming it is 'unsaleable because of excessive trail bike noise and associated adverse activity'. (individual submission 123)

On the other hand, riders also described how neighbourhood relationships affected their ability to ride on their own property. One riding family stated: 'it is killing us not to be able to ride our bikes, [as] this is why we bought this property' (individual submission 222). And further:

My son and I went to the closest neighbour to talk about the issue. We have stopped riding until we get feedback ... None of the neighbours came to tell us that there was a problem with us riding our bikes, we would have cut the hours down, as they didn't talk to us we thought they didn't have a problem until the police turned up. (individual submission 222)

I own a five acre block of land and my kids in the past have ridden their dirt bikes on our land under instruction from me and I would keep each ride to a twenty minute period ... the day hooning law came into effect was the day the police made their first visit ... one neighbour is okay, the other isn't. (individual submission 80)

We made a small track on an acre of land so that our kids could ride in the safety of our own property... no sooner do the kids start the bikes ... these neighbours are on the phone to the police ... we invested all our money and ongoing weekly income on three and half acres of rural/residential land. (individual submission 24)

We were informed that these problems had led some neighbours to participate in informal neighbourhood dispute resolution processes, such as mediation, in order to resolve the conflict.

Successful mediation can allow neighbours to express their views and work to achieve an amicable resolution, for example suitable riding times. Mixed views were expressed in our consultations about the success of mediation. Some police indicated that they had tried to facilitate mediation between disputing neighbours without success (QPS consultation 12 November 2008). However, one resident told us of a highly successful outcome, which he attributed to the police officer's direct involvement. The resident said: 'I wouldn't have had a hope in hell if it wasn't for the police officer assisting in the mediation process' (individual submission 103). Indeed, one officer told us that mediation had been the most successful strategy he had ever used to deal with off-road motorbike neighbourhood noise disputes. In one example, the officer explained that he had spoken to the parties separately and negotiated riding times that were acceptable to both (QPS consultation 25 November 2008).

An amicable solution through mediation is essentially the same as can be achieved via a court-ordered noise abatement order: the riding of the motorbike is restricted. The new noise laws allow only the police to apply for such an order and a number of enforcement stages must first be satisfied. The main benefit of mediation is that both parties have input into the outcome. However, there is evidence that the number of neighbours willing to engage in mediation is low; this is largely due to (1) the fear of reprisal, (2) a lack of skills, confidence or the mental or physical capacity to successfully mediate the dispute, or (3) a preference for court or tribunal action as the decision will be final and legally binding (Queensland Government 2008, p. 6).¹⁰¹

The other way in which neighbourhood disputes have been resolved is through the complainant obtaining a peace and good behaviour order against a noise-causing neighbour. However, the purpose of such an order is not to target the noise caused by the neighbour but to curtail any threatening conduct directed towards the applicant or the applicant's property. The order requires the respondent to keep the peace and be of good behaviour for the period of time specified in the order, and the court may impose any other conditions that it sees fit (such as restricting the riding of the motorbike) (s. 6 *Peace and Good Behaviour Act 1982* (Qld)).¹⁰²

Concerns about excessive noise from off-road motorbikes in Beaudesert and Logan led to the formation in early 2006 of a community group, the South East Queensland Trail Bike Action Group (SEQT BAG). Residents claimed they were:

... fed up with having to endure constant noise, environmental pollution and in some cases physical attacks on our person and property by the out of control pestilence of trail bike riders. (SEQT BAG submission 15 March 2007)

SEQT BAG aims to 'fight for members' legal rights to live in a peaceful and quiet neighbourhood'. Since its informal creation by a group of local residents, interest in the group has grown and the group now provides assistance to residents throughout South East Queensland, including in Toowoomba, the Lockyer Valley, the Gold Coast and Redlands.

SEQT BAG was unable to provide us with exact figures of the number of people it has assisted. However, in the Logan area alone it has over 50 families on its mailing list. The group noted that when people contact them they 'are at the extreme end' of dealing with off-road motorbike noise problems (SEQT BAG consultation 15 October 2008).

The group provides assistance through:

- lobbying councils and state members of Parliament to respond to the issue
- liaising and working with local police to target hot-spot areas
- providing support for residents by visiting them to better understand the noise problem and advising them of their rights and providing assistance in taking action to resolve the problem, for example through the drafting of letters (SEQT BAG consultation 15 October 2008).

The group advised us that it has had a measure of success in some problem areas and noted that this is largely because of the work of the local police officers (SEQT BAG consultation 15 October 2008).

101 The Queensland Department of Justice and Attorney General provides a free neighbourhood mediation kit to assist neighbours to resolve conflicts (see <www.justice.qld.gov.au>). It can also provide free mediation services throughout the various dispute resolution centres around Queensland. Participating in this service is voluntary; participants may withdraw from the process at any time, and the responsibility for reaching an agreement lies with the participants; the agreement is not legally binding.

102 The Queensland Law Reform Commission undertook a review of the *Peace and Good Behaviour Act 1982* and recommended that this Act be repealed and replaced by new legislation, the Personal Protection Bill 2007. At the time of writing, the *Peace and Good Behaviour Act 1982* was still in force, and the status, if any, of its repeal and the presentation of the Personal Protection Bill was yet to be determined.

Some of the frustrations experienced by the group are the result of:

- the lack of suitable laws to respond to noise complaints
- the inability of the group to be represented on or participate in any working groups and taskforces formed to respond to off-road motorbike riding issues
- the poor attitude of local governments in response to the problem, and the lack of local laws
- a lack of police resources to respond to complaints
- the role of real estate agents who advertise properties as suitable for trail bike riding (SEQTBAG consultation 15 October 2008).

What the community said about the new noise laws

Most of the comments received expressed dissatisfaction with the new noise laws. Residents affected by noise suggested that the laws were too cumbersome and useless to police and that their introduction had made no difference to the noise problems.

Some riding enthusiasts felt that the laws were biased in favour of the complainant because of the subjective assessment of whether the noise was excessive, and they believed that the laws failed to take into account the interests of the rider.

Only a small minority of comments indicated that the new noise laws were providing an effective tool to respond to noise problems and providing a deterrent to nuisance riders.

In addition to the large amount of criticism directed towards the ineffectiveness of the new noise laws, many suggestions were made about how the problem of noise could be better managed. It appears that there is a strong desire for change and action towards off-road motorbike riding and, in particular, the management of noise problems. The desire for change, while particularly strong among residents affected by noise, was also expressed by riding enthusiasts, state government bodies and local councils.

Many suggestions were made about what could be done to improve the situation and/or prevent the problems of motorbike noise, and these can be summarised as follows:

- Provide more legal riding places.
- Increase the funding from local and state government.
- Require all motorbikes to have appropriate silencing exhaust systems, and make it an offence to remove baffles.
- Impose decibel emission levels for all off-road motorbikes.
- Increase the existing penalties and impose lengthier impoundment periods or immediate impoundment.
- Increase police powers to issue on-the-spot infringement notices to riders.
- Set up a registration scheme for all off-road motorbikes.
- Set up a licensing scheme for all off-road motorbike riders.
- Place greater responsibility on distributors and retailers to restrict the sale of off-road motorbikes.
- Make it the responsibility of property owners to control the use of motorbikes.
- Increase parental responsibility; make parents liable for their children's behaviour.
- Ban the use of off-road motorbikes on private property unless it is an approved off-road riding facility.
- Prohibit riding on certain properties depending on size.
- Impose times when motorbikes can be ridden.
- Install barriers and signage in problem areas.
- Educate riders about responsible riding.
- Increase industry self-regulation and positive promotion of the activity.

Summary

The new noise laws sought to provide a balance between the competing interests of a person's right to use a motorbike on public or private land and the right of others to enjoy peace and quiet in their community. The views expressed by riding enthusiasts and persons affected by noise indicate that the new noise laws have failed to achieve this balance.

Off-road motorbike riding is a legitimate activity that attracts a diverse range of riders who pursue the interest on a recreational or competitive basis. It provides a family activity and a social environment for riders of all ages; not all riding enthusiasts are 'hoons'. There are a number of individual, social and financial benefits associated with off-road motorbike riding. Some riders invest considerable time and money in the activity and ride lawfully. However, the majority of comments we received indicated a negative perception of off-road motorbike riding; riders were often described as 'thugs'.

The new noise laws were introduced to target noisy, selfish and irresponsible riders; however, submissions and consultations indicate that their impact has been indiscriminate. Riders and, in particular, riding families complained of being unfairly targeted and victimised, especially when riding on their own property.

The majority of community comments expressed the view that the new noise laws were ineffective in dealing with the problems of noise in their area. It is clear from consultations with key stakeholders and the submissions to our review that the impact of off-road motorbike noise in affected communities is considerable. The level of impact depended on the frequency with which the noise occurred as well as the duration for which it was heard.

Many detailed examples were provided of noise problems contributing to:

- neighbourhood disputes
- actual violence and threats of violence
- property damage
- physical and/or mental health problems
- changes in property valuations
- deterioration in social relationships.

Some examples were provided of other methods used to resolve neighbourhood noise conflicts, such as mediation and obtaining a peace and good behaviour order. The community also provided a number of suggestions about how to alleviate or prevent off-road motorbike noise problems. Some of the concepts are discussed further in the final chapter.

DISCUSSION AND RECOMMENDATIONS

This chapter collates the findings of our review and proposes a series of recommendations for consideration by government.

The review

The overall objective of our review was to determine whether the new noise laws, as presently drafted and implemented by the QPS under the PPRA, have been effective in achieving their primary goal of reducing excessive noise from off-road motorbikes. In making this determination, we considered:

- whether the new noise laws provide effective law enforcement powers to achieve their desired outcome of reducing excessive noise from off-road motorbikes
- how the new noise laws have been applied by police and the courts
- whether the new noise laws are being used as they were intended
- what impact the new noise 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 involved in off-road motorbike riding and those affected by excessive noise
- 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 new noise laws and how they work
- the parliamentary intention for the use of the new laws
- how the legislation has been operationalised by the QPS
- QPS and local council off-road motorbike noise complaint information
- how the new noise laws have been applied by police and the courts
- the views expressed about the new noise laws and their associated police powers via public submissions and consultations with key stakeholders.

Key findings

We found that the new noise laws have not provided effective law enforcement powers to reduce excessive noise from off-road motorbikes. This conclusion is supported by our significant concerns about the legislation itself, a high number of complaints to police about off-road motorbike noise statewide and considerable community disquiet about excessive motorbike noise as expressed in their submissions to this review. Only the first stage of the new noise laws has been applied, by a select few officers in specific areas, and at limited times. The second and third enforcement stages have yet to be applied.

Overall, 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. Police are provided with limited guidance in how to interpret the laws and are faced with difficulties intercepting riders, competing policing priorities and limitations of staff availability. With policing resources being stretched in some communities, excessive noise from off-road motorbikes is not a policing priority.

The community, through consultations and submissions, told us that off-road motorbike noise is a fairly widespread concern, that it has significant negative impacts and that the introduction of the new noise laws has done little to change the situation. 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 off-road motorbike riders and the wider community.

The overwhelming majority of off-road motorbike noise problems are associated with recreational riding activities. Many comments and submissions identified a failure of local governments and the state government to provide sufficient regulation of the activity, or to provide support and funding for the activity, particularly in the provision of places to ride. One key example is that no state government land has been declared motorbike control land. The state government did initiate a funding scheme for commercial facilities, but it applied only to existing approved facilities or proposed new facilities if the applicant had obtained development approval.

In addition, in many ways 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 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 residential property.

In the effort to develop 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.

In 2003, the Police and Corrective Services Portfolio Subcommittee on Trail Bikes noted comments made by the South East Queensland Trail Bike Management Forum in its submission:

The problems associated with trail bikes will not simply go away. Trail bikes do cause impacts (especially noise, dust and erosion). Trail bike noise continues to be a major issue that councils and police are required to deal with throughout Queensland ... In practical terms, trail bike riding is impossible to successfully suppress on a regional basis. Government at all levels and the community have failed to address the land use planning, site management, social and legal issues associated with trail bike riding since 1969, when mass sales began. (Police and Corrective Services Portfolio Subcommittee Report 2003. p. 8)

Several years later, we find that this view continues to reflect the situation of off-road motorbike riding and noise issues in the community.

The consequences of inaction

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

- the increase in the popularity of the activity
- the decrease in riding areas
- the growth in Queensland's urban development and population.¹⁰³

Long-term sustainable solutions need to be responsive to these issues. In undertaking this review, 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 man traps for off-road motorbike riders,¹⁰⁴ where wooden spikes and wire had been laid across riding tracks, with the aim of hurting or decapitating riders (Dickson 2008; McMahon 2009; *Southern Star* 1 October 2008).

Although the nature of off-road motorbike riding makes it difficult to accurately estimate the popularity of the activity,¹⁰⁵ there is some evidence that its popularity is increasing:

- A South East Queensland regional recreation study identified a growth in participation numbers and an increase in the frequency of participation despite a reduction in places to ride (Department of Tourism, Leisure, Hotel and Sport Management, Griffith University 2007).
- The South East Queensland Council of Mayors claims that 'there are over 230 000 people riding trail bikes in the region and there is a huge demand for places where people can ride' (Council of Mayors 2009)
- A private operator of off-road riding events advised that participation numbers at organised rides are steadily increasing (Australian Dirt Bike Adventures consultation 21 September 2008): approximately 140 riders of all ages attended an organised recreational ride at Wyaralong near Beaudesert, many of whom were riding families.
- Motorcycling Queensland licence figures show a steady growth in the number of licences issued for participation at events sanctioned by Motorcycling Queensland.¹⁰⁶

103 Queensland's population has reached over 4 million people and seven of the top ten local government areas by population size are located in the SEQ region (Queensland Government 2009).

104 Such behaviour is a criminal offence pursuant to s. 327 *Criminal Code 1899* (Qld) 'Setting mantraps' which attracts a maximum penalty of three years' imprisonment.

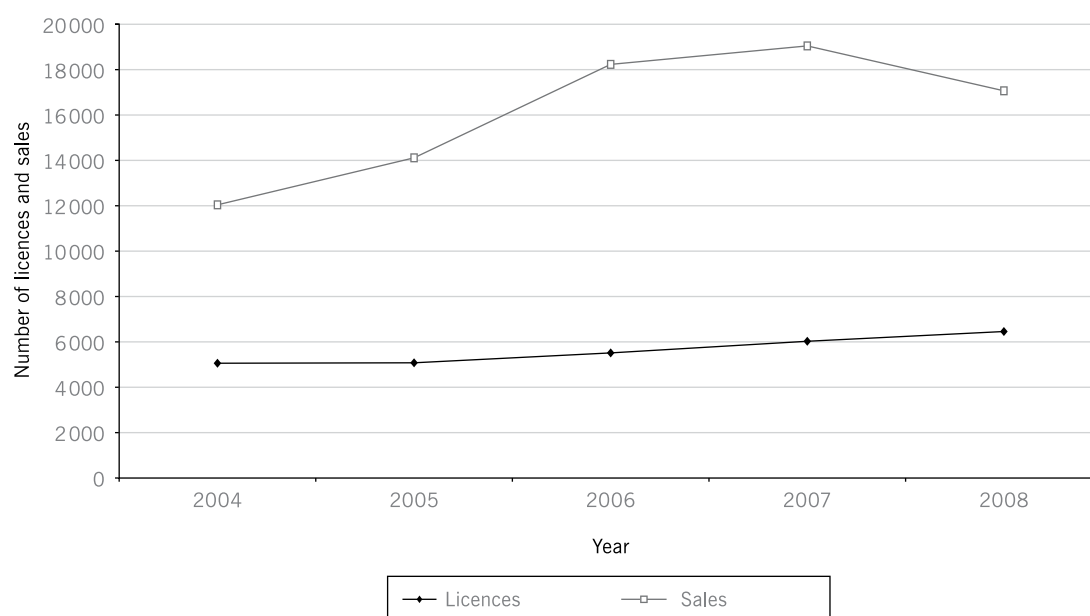
105 For example, it occurs in private and remote settings, motorbikes are not required to be registered and riders do not need to be licensed.

106 Between 2004 and 2008, there was an increase in most of the types of licences issued by Motorcycling Queensland. The largest increase was for senior national licences, which increased by 38.7 per cent during this period. See Appendix 11 for a breakdown of the number and type of licences issued.

- The Queensland Federal Chamber of Automotive Industries sales figures indicate that there was a substantial increase (41.7%) in the number of new off-road motorbikes sold between 2004 and 2008.¹⁰⁷
- The Department of Transport and Main Roads conditional registration figures for off-road motorbikes (including quad bikes and motortrikes) indicate a moderate increase (17.6%) in the number of conditional registrations for these vehicles between 2004 and 2008.¹⁰⁸

We also found quite a discrepancy in the growth rates of the total number of off-road motorbike sales ($n = 80\,499$) and the number of Motorcycling Queensland licences ($n = 28\,135$) in the period 2004–2008 (see Figure 10.1).¹⁰⁹ If a large proportion of the new off-road bikes are not being used at events sanctioned by Motorcycling Queensland, it is likely that they are being used on other private or public land without the safeguards or regulation that Motorcycling Queensland events provide. In particular, we draw attention to the fact that 16 841 new children’s mini-bikes were sold between 2004 and 2008, and for the same period, only 13 309 Motorcycling Queensland licences for children aged 4 to 15 years were issued.¹¹⁰

Figure 10.1: Growth rates in off-road motorbike sales and Motorcycling Queensland licence numbers between 2004 and 2008



Sources: Motorcycling Qld 2009 (Licences)
Federal Chamber of Automotive Industries, 2009 (Sales).

At the same time that popularity of the activity is increasing, riders drew our attention to increasing closures or threats of closure of lawful riding areas, in particular established off-road motorbike clubs (individual submissions 2, 9, 19, 21, 24, 25, 31, 32, 40, 50, 54). The impact of the reduction of riding places is substantial on unlicensed riders with unregistered motorbikes who are limited in where they can lawfully ride.

¹⁰⁷ This figure represents only mainstream off-road motorbikes (such as Honda, Yamaha, Suzuki and Kawasaki) and does not take into account the number of Chinese imports or used off-road motorbikes sold. See Appendix 10 for more detailed information about off-road motorbike sales and the categories of those sales.

¹⁰⁸ Such conditional registrations may include those for farming and agricultural purposes, and those allowing for recreational off-road motorbikes to traverse across roads. See Appendix 12 for further information.

¹⁰⁹ From these figures we are unable to identify or exclude off-road motorbikes purchased for non-recreational purposes or multiple bikes purchased for recreational use.

¹¹⁰ This is a conservative number, as we note that some riders within this age bracket may not be riding a mini-bike.

Many riding enthusiasts also expressed their frustration at the lack of support and funding for the activity by local and state government. One parent wrote:

I have been trying so desperately hard here in Townsville, working with Council, parliamentarians, other clubs and Queensland Sport & Recreation to try and locate some land for our unlicensed riders to ride on ... We are being squeezed out of regions at a very rapid rate due to residential estates/developers and thus the young kids are taking greater risks of riding across roads, and in areas which not only put themselves at risk, but pose themselves as nuisances to residential communities ... at this stage I get plenty of lip, very little action and plenty of 'too hard basket' attitude ... when in fact it is very simple ... with very little infrastructure involved, plenty of grants available for decent clubs to generate funding for rider education programs and plenty of available community support and sponsorship to establish facilities and generate funding towards insurance. (individual submission 78)

Others commented:

We are the parents of a motorbike mad son. When he was a teenager, we purchased 200 acres of land ... for him to ride his motorbike as there were no legal tracks for him to ride near our area. (individual submission 145)

Due to having nowhere to pursue our chosen sport the bikes were sold ... since selling the bikes we have had numerous issues with both my sons' behaviour with alcohol abuse, drink driving ... I believe kids in their teenage years need to be able to challenge themselves and learn their limits, whilst we had the motorbikes they had an outlet for this in a safer environment and whilst I don't think we would have avoided problems we have had ... I believe the problems would have been lessened. (individual submission 77)

Another rider wrote:

Dirt bikes are a major part of my life ... until recently I was able to ride for three hours once a week with a group of business men believe it or not ... But it has become impossible because of more and more areas being restricted to us. As a result in the past couple of months I have put on quite a bit of weight. (individual submission 403)

A forestry officer expressed concern that state forests and plantation areas had become 'de facto trail bike parks' due to the failure to provide any motorbike control land (consultation 25 November 2008). Some riders commented on the overcrowding (in the South East Queensland region), and said that the lack of regulation or any type of enforcement in these areas has resulted in riders on all types of motorbikes (including those that would not be roadworthy) frequenting the areas (consultation 17 September 2009).

We also heard about the threat of closure of several clubs in South East Queensland. One such club is the Albert and District Motocross Club in Yatala, which leases land from the Gold Coast City Council. The club has been at its current site since 1976 and has more than 800 members, aged from 4 years to over 60 years. It is open most weekends for practice riding and holds approximately 8 to 12 race days per year, on Sundays. In recent years the club has faced increasing noise complaints from neighbouring residents, which threatens its continued existence. The club conducts regular noise testing, provides information to its members through monthly newsletters on the negative impacts of excessive noise, and has taken measures to provide noise buffers through the installation of a sound wall behind the start gates, the construction of an earth wall and tree plantings (Stanmore MX submission 29 June 2008).

In July 2009, a South East Queensland community group lobbying for 'A Place to Race' for all types of motor sport activities, including off-road motorbike riding, was established.¹¹¹

111 See <www.placetorace.com.au/index.html>.

The way forward

While the focus of our review was the effectiveness of the new noise laws, it became quite 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. We believe that, although a law enforcement response may provide some relief from noise nuisances, it will not provide a long-term, sustainable solution.

The problems associated with off-road motorbike noise have long been left to compound and solutions will not be achieved overnight. However, given the increase in the popularity of the activity, as well as the lack of appropriate riding tracks and regulation of the activity, the consequences of inaction are likely to be quite damaging. If ignored, the problems associated with off-road motorbike riding will not disappear and will probably increase. Failing to take action to address these concerns or making only a half-hearted attempt will continue to have economic, social, environmental and political consequences (Trail Bike Management Australia 2007, p. 249). 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, and 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 lawfully participate 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, the members of which are entitled to enjoy public and private space without being subjected to noise nuisances. Achieving this balance will be complex. Simply developing punitive responses to stop the noise will not solve the problem; the riding behaviour needs to be addressed.

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

- Emphasis must be placed on the long-term sustainable management of recreational 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.

Noise problems are a by-product of where riding occurs. 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.

In formulating our recommendations, we sought to go beyond punitive measures to a holistic framework that is responsive to the issues associated with off-road motorbike noise. Problems of excessive noise are largely attributed to the poor planning and management of off-road motorbike riding, as well as a lack of regulation.

The Police and Corrective Services Portfolio Subcommittee noted in 2003:

Effective management of trail bike riding (including enforcement and regulation of illegal and nuisance riding) requires cooperation and coordination between:

- the various State agencies and Local Government responsible for regulating the activities of trail bike riders
- the various State agencies and Local Government responsible for managing places where trail bike riding occurs
- the private landholders who provide places for trail bike riding, either commercially or otherwise
- the various State agencies and Local Government responsible for land use planning
- the motorcycle industry (retailers, wholesalers, manufacturers, training providers)
- all components of the trail bike riding community, and
- non-government organisations representing trail bike riding interests. (Police and Corrective Services Portfolio Subcommittee 2003, p. 15)

We endorse these comments.

Our recommendations propose a framework for addressing excessive noise from off-road motorbikes from several aspects. At the forefront, the objective must be to prevent off-road motorbike noise becoming a problem in the various settings in which it occurs; where it does become a problem, efficient and effective strategies need to be available to provide relief. Our strategies do not sit in isolation; rather, they seek to work in unison to respond to the issue of excessive noise.

In identifying appropriate strategies, 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 where riding may be occurring legally or illegally¹¹²
- established off-road motorbike clubs.

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.

In order to attain results, the state government needs to provide a strong governance structure with the necessary authority and leadership to prompt change in the management of off-road motorbike riding. There is a need for a long-term, statewide strategy that seeks to provide for the sustainable management of off-road motorbike riding in Queensland. The statewide strategy should seek to further the recommendations made in this report, as well as address the issues that are beyond the scope of this review. The objective of the strategy should be to promote a coordinated approach rather than allow a series of disconnected strategies to continue. Guidance should be taken from the Western Australia state trail bike strategy as noted on page 70.

¹¹² '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 suggest that, within the strategy, the following key areas be addressed:

- There needs to be regulatory control on the sale and distribution of off-road motorbikes and after-market exhausts. Standards need to be established to regulate the market and target the noise at its source, as without any formal regulation there will be no accountability, responsibility or liability. Unregulated, the industry will continue to flourish, and there will be an increase in the sale of cheap, poor-quality motorbikes (which are often purchased on impulse), as well as after-market exhausts that do not meet decibel requirements.
- Where riding occurs on private residential property (non-commercial facilities), land planning and development guidelines should regulate the use of motorbikes on such land. In the creation of land planning and development guidelines, consideration must be given to the land size and the topography. Where riding is permitted and conflict over noise occurs, an easily accessible conflict resolution process should be available to manage neighbourhood noise disputes and provide control mechanisms for the emission of future noise.
- Where riding occurs in open-space areas, it will involve either legal or illegal riding.
 - If riders are lawfully riding in these areas on legal motorbikes and noise is an issue, the riding areas need to be better managed; riders acting lawfully should not be punitively targeted. The management of lawful riding areas needs to focus on preventing noise becoming a problem, and where it does become a problem an appropriate complaint mechanism needs to be in place to allow members of the community to report the problem. The onus to respond to noise complaints should be on those who have responsibility for the area.
 - If the riding behaviour is illegal and causes excessive noise and/or associated antisocial behaviour, local area enforcement strategies and local laws should be used to target the rider. Antisocial behaviour should be dealt with by appropriate policing and by criminal sanctions. Local governments have the ability to create punitive measures for illegal riding that are responsive to local area needs, and are able to work with police and other agencies to enforce these measures.
- Long-term land planning should be undertaken for the relocation of existing off-road motorbike facilities and the creation of new ones. Noise problems associated with off-road motorbike clubs and tracks can be attributed to the lack of long-term planning for the relocation of clubs when urban encroachment results in neighbourhood noise problems. In addition to off-road motorbike clubs, recreational riding could be supported through the provision of regional rotational riding sites, which could be used on a regular basis for riding events.

We do not suggest that our recommendations provide an exhaustive list of the factors that need to be considered when looking for ways to resolve the problems associated with off-road motorbike riding. Nor will our recommendations provide instant relief. Rather, our recommendations point to holistic, long-term, sustainable reform to provide more effective responses to excessive noise from off-road motorbikes. 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:

- 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
- 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

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.

Rationale

The existing off-road motorbike noise laws provide a homogenous approach that has failed to provide an effective and efficient response to off-road motorbike noise problems in the situations in which it occurs throughout Queensland. The QPS is not the organisation best positioned to provide preventative measures or responsive solutions to noise problems.

Recommendation 2

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.

Rationale

In conducting our review, we found a prevailing attitude that resolving off-road motorbike noise problems fell into 'a too hard basket'; few positive outcomes from previous strategies were apparent and future directions unclear. There is a range of applicable legislation and policy, and many government departments and agencies are involved in regulating or managing elements of off-road motorbike riding activities.

Queensland lacks any strong governance on the issue, and the various working groups that have been established appear to be limited in strength, management, achievements and long-term planning. Overall, there appears to be:

- a lack of a coordinated and cooperative approach at both state government and local government level
- duplication of objectives and resources
- no long-term proposed strategies for the better management of off-road motorbike riding
- little publicly available information.

Recommendation 3

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.

Rationale

Many of the matters mentioned in our report have been previously raised in government and non-government reports. The objective of the strategy should be to promote a coordinated approach and a future direction rather than allow a series of disconnected strategies to continue. Guidance should be taken from the Western Australia State Trail Bike Strategy, which encompasses land planning, legislative, social, environmental, management, compliance, enforcement and education factors (Trail Bike Management Australia 2007, p.11).

The strategy should identify key target areas, determine priority issues, set up accountability structures, formalise an implementation plan and be publicly available; it should also further the recommendations made in this report.

Recommendation 4

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.

Rationale

By repealing the existing noise laws, the QPS will be removed as the central agency for receiving off-road motorbike noise complaints. However, there is a need to provide the community with an alternative complaint service, as well as a mechanism to monitor complaint numbers and identify hot-spot areas. The dissemination of complaint information to the advisory committee and state and local government agencies will allow them to create proactive responses to target riding behaviour in an area, for example to guide local area enforcement strategies.

Recommendation 5

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.

Rationale

The objective of a regulatory scheme is to control the off-road motorbike retail industry by providing standards for all vehicles that are motorised and used in off-road settings. After creating standards, punitive measures can then be put in place for:

- distributors who fail to comply with the standards
- individuals who modify their motorbike in such a way that it no longer complies with the standards.

We could not find any regulation applying to the sale of after-market motorbike exhausts. Import regulations do not apply to after-market exhausts as they are component parts and are not required to meet Australian Design Rules (ADR). Decibel emission testing methods vary in different countries and we found no information on how overseas decibel ratings translate into ADR decibel emission standards.

Greater regulation of the off-road motorbike industry needs to be undertaken. We suggest that this regulatory scheme include all types of vehicles primarily designed for non-road use. This includes children's motorised, toy two-wheel motorbikes and four-wheel vehicles through to larger two-wheel motorbikes, motortrikes, quad bikes and other four-wheel vehicles that are not ridden in the same manner as a motorbike. This recommendation could be implemented through a staged process, first targeting two-wheel motorbikes and later targeting motortrikes, quad bikes and other four-wheel vehicles.

When purchasing after-market exhausts, riders need to be aware of the decibel emission output that their motorbike will have with a modified exhaust. The person responsible for making the noise has a responsibility to control the noise, and greater emphasis needs to be placed on targeting the noise at its source. The distributors of after-market exhausts should be responsible for informing riders of the range of decibel emission levels associated with exhaust modifications.

We suggest that an exhaust decibel emission rating scheme similar to that of the energy labelling scheme be established, whereby exhausts would be given a noise rating that will enable the consumer to determine the suitability of the exhaust. This scheme will not stop some riders from obtaining exhausts from other jurisdictions, so stricter punitive measures need to be established for riders who modify their exhausts and fail to comply with decibel emission standards. The development of an exhaust decibel emission rating scheme could be extended to include after-market exhausts for all types of vehicles.

This recommendation seeks to address an aspect of the off-road motorbike industry that has long been left unregulated. There is little accountability associated with the distribution and sale of off-road motorbikes, which has resulted in an unregulated market where motorbikes and after-market exhausts of all price ranges and standards are widely available.

A failure to regulate the distribution and sale of these motorbikes and exhausts will result in the continued growth of motorbike numbers within the community, particularly the cheap and poor-quality types, and increased noise problems.

In implementing this recommendation, the appropriate government agency or agencies will need to assume responsibility and accountability for its development and enforcement. As this recommendation introduces a new regulatory scheme that does not clearly fall within the jurisdiction of existing administrative agencies, the ministerial taskforce and the advisory committee will need to determine which government department or agency would be responsible for enforcement. Regulation and enforcement will need to be directed at two distinct areas: distributors and riders, with emphasis placed on achieving voluntary and proactive compliance.

Recommendation 6

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

Rationale

The use of off-road motorbikes on private residential properties raised significant issues about the conflicts of interest of land use on these properties, particularly if the properties have been purchased specifically to allow for private off-road motorbike use. There is a need for clarification about the permissible use of off-road motorbikes on private residential property (that is, residents riding on their own property, not where the area is used for a commercial facility).

Given the lack of legal riding places, particularly for underage and/or unlicensed riders and unregistered bikes, a blanket prohibition on the recreational use of motorbikes on private residential property would not be appropriate. However, their use needs to be controlled, given the carriage of noise and dust to surrounding properties and the impact this has on neighbouring residents.

The objective of providing regulatory reform is to create guidelines for the use of off-road motorbikes on private property. Land-holders will then be aware of any restrictions, such as the distance the riding area must be from neighbouring residential homes, the need for noise buffers and the control of dust.

Recommendation 7

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).

Rationale

The objective of this recommendation is to provide a civil remedy for people who are affected by excessive noise emanating from a neighbouring residence that is economical, easily accessible, fair and timely. This recommendation is guided by the concept of the existing noise abatement order scheme found in Chapter 19 Part 3 PPRA. However, we recommend a process that is more streamlined and simplified, whereby the scope of persons who may bring an application is broadened and the onerous, tiered enforcement processes are removed. In most instances, off-road motorbike use on private residential property is a continuing issue. Surrounding residents are unaware of when the noise will start or stop or how often it will occur, and this exacerbates the problem, as they feel powerless to do anything about it.

A noise abatement order civil regulatory scheme aims to provide a dispute resolution process that allows residents to contribute towards the long-term management of the problem in their neighbourhood.

Residents can seek their own relief and file an application with the QCAT seeking an order that will restrict the riding of motorbikes on a neighbouring property in order to control the level of noise emissions. Persons who may bring an application should not be limited to residents but should also include police and local government officers; particularly in instances where there has been a prolonged history of conflict between the parties. However, given that it is a residential dispute, the identity of the noise-affected neighbours cannot remain anonymous; the noise-affected neighbours will need to inform the authorities that they feel the noise is excessive and outline the impact it has had on them.

The noise abatement order scheme should be a tiered process where mediation is encouraged as the first step, followed by a tribunal hearing.

The referral to mediation will allow the conflicting parties to work towards reaching an amicable agreement. The mediation process should involve local government officers and, in instances where there has been antisocial behaviour, police could also be called to participate. If an agreement is reached during mediation, this should be presented to the tribunal so the particulars of the agreement can be formalised by way of an order. In instances where mediation fails or the parties refuse to participate, a tribunal hearing should be listed during which both parties can present evidence and the tribunal will make the final determination and impose an order as it sees appropriate.

In hearing a matter, the parties can present their evidence to the tribunal by way of noise diaries, sound recordings, photographs and any other information that is relevant. Riders may provide information on what steps they have taken to control the noise. Local government officers may also be called to provide information on land planning guidelines associated with the use of motorbikes on private land.

In resolving the dispute, the tribunal may impose a noise abatement order. The noise abatement order should be directed at the person responsible for the property and conditions may include:

- the number of motorbikes that may be ridden at any one time
- the time of the day the motorbike/s may be ridden
- the length of time the motorbike/s may be ridden
- particular areas on the property where motorbike/s should not be ridden
- particular riding manoeuvres that must not be performed by the rider/s
- a requirement to minimise the noise by modifying the motorbike's exhaust or by creating noise buffers on the property, and could include requiring riders to have their motorbike sound-tested
- any other condition the tribunal thinks appropriate.

The aim is to provide a process whereby conflicting parties can each present their case and an appropriate resolution can be reached which seeks to balance the interests of all parties involved. If a party fails to comply with the order, appropriate penalties should be imposed.

The Department of Justice and Attorney General should develop a kit to assist people to make an application. The noise abatement order regulatory scheme need not be specific to off-road motorbike noise disputes and may later be applied to other noise conflicts that occur between neighbours. QCAT should be appropriately resourced to respond to applications.

Recommendation 8

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 regularly undertaken through collaborative joint operations between enforcement agencies.

Rationale

Balanced measures need to be adopted when dealing with noise caused by motorbikes being lawfully ridden in these areas. The areas are lawful riding places and riders who are licensed and riding registered motorbikes (that adhere to vehicle standards) are riding legally. We suggest that greater joint enforcement initiatives should be undertaken in these areas to enforce the existing laws, for example where decibel emission standards are not being adhered to, or where the motorbike's silencing device has been modified.

With the Queensland Government's proposed asset sale and the likelihood of the privatisation of forestry areas, the accessibility of such areas for off-road motorbike riding may change, and there may be an impact on enforcement strategies.

Recommendation 9

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.

Rationale

There is no centralised source of information about the location of lawful recreational riding trails in Queensland. The Department of Communities (Sport and Recreation Services) website promotes state forests, forest reserves, national parks and plantation forests as locations for trail bike riding, but specific details of where these are and the characteristics of the trails are not included.

Providing recreational riders with information about lawful riding areas will encourage them to ride in areas where noise does not encroach on neighbouring residents. With information about the characteristics of the trail riders will be able to choose trails that match their skill level and interest. Further, in the event of an accident, greater specificity of the location of the rider may allow for prompt medical or other assistance.

Also, recreational trails need to be designated, managed, maintained and improved to provide meaningful riding experiences that will encourage riders to use them, and to prevent the creation of user-created trails.

Recommendation 10

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.

Rationale

Currently, recreational riding in areas such as state forests, national parks and forestry plantations is free. However, there needs to be a balance between accessibility to these areas, the impacts of off-road motorbikes and a cost-recovery scheme to maintain and improve existing riding areas, or to create new ones.

A previous 'permit to traverse' system conducted by the Department of Environment and Resource Management and Forestry Plantations Queensland was removed due to the administrative cost; however, we understand that permits under that system were free.

The Interdepartmental Trail Bike Working Group is currently considering the effectiveness of a conditional off-road motorbike registration scheme. This could be a source of revenue to develop more riding sites, a mechanism to collate rider information and potentially incorporate compulsory third-party insurance cover (DoC(SRS) 24 November 2009). It is noted that the Department of Transport and Main Roads does not support any registration policy for off-road motorbikes (DTMR consultation 2 December 2009). This issue needs to be further investigated as part of the statewide strategy.

Recommendation 11

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.

Rationale

We found that many examples of off-road motorbike noise problems in communities were associated with unlawful riding, intimidation and sometimes criminal behaviour (e.g. riding along footpaths, on vacant blocks and through local parks and easements, damaging property, and violent and threatening behaviour). Emphasis should be placed on targeting the unlawful riding and antisocial behaviour, as noise is a by-product of these activities. We also found that off-road motorbike noise is not a problem in all communities.

We suggest that, where off-road motorbike noise is a problem, local governments are better placed to provide solutions than blanket statewide laws, which have to date proven to be ineffective. The aim is to move the issue away from an emphasis on the use of policing to the use of combined resources that provide a multi-agency strategic approach, through local area enforcement strategies. These strategies can be tailored to suit the communities' needs and are aimed at supporting the way government and local partnerships can work together to create stronger and safer communities.

In addition to the existing laws that prohibit unlicensed riding and unregistered vehicles, local governments can use their local law-making powers to create punitive measures against illegal riding. Chapter 8 provided the example of Frankston City Council in Victoria, which took the initiative and worked closely with police to combat a long-running problem with the unlawful use of off-road motorbikes in the community. Power to enforce such local laws could be delegated to include not only local law officers but also police. There is a need to develop local solutions to the problem, not a 'one size fits all' approach.

Recommendation 12

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

Rationale

Noise problems associated with off-road motorbike clubs and tracks can be attributed to the lack of long-term planning for the relocation of clubs when urban encroachment results in neighbourhood noise problems. Long-term land planning should be undertaken for the relocation of off-road motorbike facilities, the creation of new facilities and also the provision of recreational day rides. Off-road motorbike clubs and recreational riding areas need to be planned, developed and maintained not only to attract riders but also to ensure minimal environmental and community impacts (Trail Bike Management Australia 2007, p. 19).

One strategy to provide riding opportunities for recreational riders is to identify a series of sites within a region which could be used on a rotational basis. Such sites may traverse across state, local government or privately held land. In conducting our review, we found examples of successful day rides that had been undertaken on land held by the state government as well as on privately owned land, and regulation was in accordance with Motorcycling Queensland requirements.

APPENDIX 1:

Submissions to the review

Due to the interest in the review, the closing date for our call for public comment was extended by one month, and we continued to receive submissions even after this date. All of the submissions that were received throughout the review period were read, but the figures below are from our examination of the 406 submissions that were received by the extended closing date.

Most of the submissions were received via email (52.2%, $n = 212$) and mail or fax (35.2%, $n = 143$), while a smaller number were received verbally through telephone calls (9.4%, $n = 38$). Some members of the public contacted us on multiple occasions, for example by providing both an oral and a written submission, these were counted as only one submission (3.2%, $n = 13$).

We received submissions from private citizens, councils, government agencies and departments, state and local government members, and interest groups and stakeholders.

1. Private citizens

We received 366 submissions from private citizens, including residents, riders and riding families.¹¹³ Most of the submissions were received via email (53.6%, $n = 196$) and mail or fax (33.9%, $n = 124$), while a smaller number were received verbally through phone calls (10.1%, $n = 37$). A small number of citizens contacted us several times, such as by telephone and fax (2.5%, $n = 9$).

2. Councils

We received 16 submissions from local councils. These councils were:

Brisbane City Council	Moreton Bay Regional Council
Cairns Regional Council	Quilpie Shire Council
Charters Towers Regional Council	Redlands City Council
Fraser Coast Regional Council	Scenic Rim Regional Council
Hinchinbrook Shire Council	South Burnett Regional Council
Ipswich City Council	Tablelands Regional Council
Logan City Council	Toowoomba Regional Council
McKinlay Shire Council	Whitsunday Regional Council

¹¹³ The details of private residents have not been included in this report for confidentiality reasons.

3. Government agencies and departments

We received six submissions from government agencies and departments. These agencies were:

Department of Infrastructure and Planning

Department of Local Government, Sport and Recreation – now known as Department of Communities (Sport and Recreation Services)

Department of Primary Industries and Fisheries – now known as the Department of Employment, Economic Development and Innovation (Queensland Primary Industries and Fisheries)

Environmental Protection Agency – now known as Department of Environment and Resource Management

Forestry Plantations Queensland

Queensland Police Service

4. State and local government members

We received submissions from the following local and state government members:

Howard Hobbs MP (Member for Warrego)

Mark McArdle MP (Member for Caloundra)

Dorothy Pratt MP (Member for Nanango)

Ian Rickuss MP (Member for Lockyer)

Wayne Wendt MP (Member for Ipswich West)

Former state Member for Gaven – Phil Gray

Graham Able (Councillor for Logan City)

Andrew Antoniolli (Councillor for Ipswich City)

Angela Owen-Taylor (Councillor for Parkinson Ward)

5. Interest groups and stakeholders

We received submissions from interest groups in the community, which included:

Albert District Motorcycle Club

Caloundra City Ratepayers and Residents Association

Crestmead Neighbourhood Watch Group

Friends of the Reserve – Slade Point Association

Glasshouse Mountains Advancement Network Inc

Gold Coast Motorcycle Club

Maleny Trail Riders Club

Motorcycling Queensland

Neighbourhood Watch Group LC5 – Logan Central

Pine Rivers Koala Care Association Inc

Police Community Consultative Committee

Queensland Recreation Federation Inc

Saltwater Creek Greenway Group

Sandy Creek Wildlife Protection Group

South East Queensland Trail Bike Action Group

All of the contributors in this group have not been identified due to requests for confidentiality.

APPENDIX 2: Queensland Police Service complaint information

How do the police collect and record complaints?

There are two main ways that members of the public can make a complaint about excessive noise from off-road motorbikes: either directly to an individual police station or via a call to a Police Communications Centre (PCC).

When complaints are made to the PCC, the operator will record the details of the complaint on the police recording system. Depending on which PCC receives the complaint, the information will be recorded on either the Computer Aided Despatch (CAD) recording system or the Information Management System (IMS) recording system. The recording system used will depend on the location of the PCC.¹¹⁴ CAD and IMS record data in a similar manner.¹¹⁵ However, the details of any specific action taken in relation to complaints about excessive noise from off-road motorbikes, other than a direction given, are not always recorded on CAD.

How do police code off-road motorbike noise complaints?

The PCCs have four main codes under which off-road motorbike noise complaints may be recorded:

- code 331: *Noise Complaint – Motorcycle (other than on a road) unless otherwise specified:* This code covers complaints of undue noise from motorcycles being ridden in public places (other than on a road), or within private property.
- code 214: *Traffic Offence:* This code encompasses all traffic offences from parking to the dangerous operation of a motor vehicle.
- code 311: *Noise Complaint:* This code is used for noise such as amplified music, loud voices or parties and the revving of engines and other motor vehicle noise on the road or in a public place (other than motorcycles not in a public place, which is defined by code 331, and also excluding car sound systems as defined below).
- code 319: *Noise Complaint Vehicle:* This code relates specifically to amplified music emanating from vehicles. There are instances where this code is mistakenly used for general noise complaints relating to vehicles (engine noise etc.). As this can happen, the code is searched and manually checked when preparing information regarding traffic complaints related to noise. By including all possible codes, even codes used incorrectly, a comprehensive and accurate representation of the matter being investigated can be obtained.

114 CAD is used at five PCCs: Brisbane, Townsville, Cairns, Beenleigh (Logan) and the Gold Coast (Broadbeach); while IMS is the system used in the remaining PCCs in Queensland: Bundaberg, Charleville, Gladstone, Gympie, Innisfail, Longreach, Mackay, Mareeba, Maroochydore, Maryborough, Mount Isa, Redcliffe, Rockhampton, Roma, Toowoomba and Yamanto (Ipswich). Although they are not fully functional communications centres, both the Dalby and the Warwick police stations have an IMS terminal.

115 However, with IMS there may be some regional differences in the finalisation data and with information about specific actions taken.

With the exception of code 331, which was introduced in August 2006 as a result of the new noise laws, the QPS has used these codes for several decades. From time to time, codes are amended or added under the direction of the QPS Deputy Commissioner in order to keep pace with legislative changes. Although the PCC initially allocates the relevant offence code, the police investigating the matter are responsible for verifying the code, and providing details of any noise abatement directions issued.

How do police record what action they took in response to a complaint?

The action taken by police in relation to a specific complaint may be traced through the related CAD or IMS entry. Additionally, police maintain records of their investigations in QPRIME, through station activity logs, and in individual officers' official police notebooks.

In response to our request for detailed complaint and response information from CAD and IMS, QPS were only able to provide limited details which are provided in Chapter 6.

How does the QPS store information?

At intervals, the data collected by the QPS are archived into a storage base. Once the data have been archived, they are not immediately retrievable by general users. However, if required, they can be retrieved by administrators. CAD data are stored indefinitely and cannot be removed or altered. The system records modifications to data by way of additions, but information in the original entry remains. IMS data can be altered and may be found to have changed over time.

Data dumping (archiving) is controlled by time factors, and in the case of CAD it can be several months to years before archiving is necessary. On the other hand, IMS is dependent on the available memory space and data will be removed to storage as required.

How does the QPS track the outcomes of complaints?

Police can track the outcome of complaints through QPRIME. When a person makes a complaint to police, an occurrence is recorded on the system. The complainant's name is linked to the occurrence as an 'involved person'. The names, where known, of any other involved persons (such as riders) are also linked to the occurrence. Also included are details of the location of the complaint. A general report describing the actions taken by officers can be included in the occurrence, as can the descriptions of any motorbikes involved.

If a rider is issued with a noise abatement direction, a 'flag' that expires after the 48-hour noise abatement period is entered against the rider's name. However, QPRIME users can recall expired flags against a person by the use of a filter.

If a person is interested in the outcome of an off-road motorbike complaint, police can search the system using the person's name, view all occurrences associated with the person, and select the one in question based on the type and knowledge of the approximate date. Any report on the incident and police actions entered in the occurrence will be available to system users.

Off-road motorbike noise enforcement information

When a job is 'despatched', it means that details of the complaint are communicated by the PCC to a police officer allocated to attend the job. However, 'despatching' an officer or a patrol car does not necessarily mean that the officer or the patrol car is able to attend the particular job; other more urgent work priorities may intervene.

When police do attend a job, they decide what action(s) should be taken. Action against riders creating excessive noise on off-road motorbikes can only be taken if police can intercept the riders. If they apply the new noise laws and, for example, issue a noise abatement direction notice, they must then advise the PCC of any direction(s) they issue. In relation to CAD, entries are updated following reports from officers, and details showing the finalisation of the job will indicate that police attended, but not necessarily describe the specific enforcement actions taken. QPRIME, however, has the capability of recording details about what followed from complaints and this is outlined below.

Issuing Noise Abatement Directions

If police issue a noise abatement direction for off-road motorbike noise, they must update this information on QPRIME. QPRIME records personal information, and when a noise abatement direction is issued, a 'flag' will be added against the name of the person subject to the direction. A 'flag' is a device or icon used in QPRIME that can be placed against a person's name to ensure that an officer searching the system for an individual will become immediately aware of any important and relevant information (such as outstanding warrants, possession of firearms and so on). If a person does not exist on QPRIME, a new entry for that person must be created.

It is from this QPRIME system that the PCC will be able to provide an officer with information regarding the presence of any relevant and current off-road motorbike noise directions or orders. A QPRIME flag against a person's name for a motorbike noise abatement direction expires after the 48-hour period for which the direction applies. This 'flag' feature was functional from when QPRIME was introduced in February 2006: that is, before mid-2006 when the off-road motorbike noise legislation was enacted. Noise abatement directions are issued via QPS Form 95. The original form is retained by the relevant police station. When police obtain a noise abatement order, this information must be recorded in the same manner on QPRIME.

APPENDIX 3: Map of Queensland Police Service regions

Queensland Police Service Regions Districts and Stations



APPENDIX 4:

The historical development of off-road motor vehicle noise legislation in Queensland

	Noise Abatement Act 1978 ¹¹⁶	Environmental Protection Act 1994 (EPA) ¹¹⁷	Police Powers and Responsibilities Act 2000 ¹¹⁸	Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005
Commencement date	Part 4 – Abatement and regulation of excessive noise affecting residential or commercial premises Division 2 – Excessive noise from musical instruments or rowdy premises 28 September 1978	Chapter 4 Part 4 – Special environmental protection provisions for certain noise	Chapter 19 Part 3 – Powers relating to noise	This Act amended the PPRA.
What did the laws apply to?	Excessive noise emitted from a motor vehicle other than upon a road. A ‘motor vehicle’ included a motorbike and any vehicle propelled or designed for propulsion wholly or partly by gas, motor spirit, oil, electricity, steam or any other mechanical power. The definition of ‘road’ was very lengthy and broad. It included reference to any road, street, highway, alley, avenue, land, thoroughfare, track, carriageway, footpath or subway, whether surveyed or unsurveyed (and all bridges, viaducts, culverts, grids, approaches, crossings and other appurtenant thereto) open to or used by the public or to which the public have or are permitted to have access whether on payment of a fee or otherwise and also includes –	Noise laws were in the 1994 version of the EPA but they did not commence until 1 December 1997 (see 1997 Subordinate Legislation No 343). The laws continued to apply to excessive noise emitted from a motor vehicle other than a motor vehicle on a road. The definition of ‘motor vehicle’ remained the same. The definition of ‘road’ was simplified in its meaning and broadened to include ‘where the area is developed for or has as one of its uses the driving or riding of motor vehicles’.	1 July 2000 The laws continued to apply to excessive noise emitted from a place by a motor vehicle other than a motor vehicle on a road. The definition of ‘motor vehicle’ changed and was divided into two parts (i) motor vehicle and (ii) vehicle. A ‘motor vehicle’ was defined to mean any vehicle propelled by a motor that forms part of the vehicle, and includes a trailer attached to the vehicle. A ‘vehicle’ included any type of transport that moves on wheels and a hovercraft but does not include a train or tram. A specific definition of ‘motorbike’ was provided which fell under the definition of motor vehicle; however, this definition specifically referred to two- or three-wheeled vehicles.	1 July 2006 Specific laws were created for noise emitted by a motorbike being driven on a place that is not a road. A specific definition of ‘motorbike’ was provided to mean a two-wheeled motor vehicle, whether or not a sidecar is attached to it; and a three- or four-wheeled motor vehicle that is ridden in the same way as a two-wheeled motorbike. The definition of ‘road’ remained the same and no specific definition of ‘off-road’ was provided.

¹¹⁶ Reprint 1A as in force 3 April 1997.

¹¹⁷ Reprint 3B as in force 4 January 2000.

¹¹⁸ Reprint No. 2A as in force 15 January 2002.

	<i>Noise Abatement Act 1978</i>	<i>Environmental Protection Act 1994</i> (EPA)	<i>Police Powers and Responsibilities Act 2000</i>	<i>Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005</i>
	Part 4 – Abatement and regulation of excessive noise affecting residential or commercial premises Division 2 – Excessive noise from musical instruments or rowdy premises	Chapter 4 Part 4 – Special environmental protection provisions for certain noise	Chapter 19 Part 3 – Powers relating to noise	This Act amended the PPRA.
	(a) any road, street, footpath, track or highway dedicated to the public or declared or proclaimed to be a road, street, footway, track or highway under any Act and any ferry or ford; and (c) any place declared by regulation to be a road for the purposes this Act. Example of paragraph (c) – Under a regulation, a public parking area at a specified type of shopping centre may be declared to be a road for the purposes of part 6A.		The definition of ‘road’ largely remained the same and was defined to include: (a) a busway under the Transport Infrastructure Act 1994; and (b) an area that is: (i) open to or used by the public and is developed for, or has as one of its uses, the driving or riding of motor vehicles, whether on payment of a fee or otherwise; or (ii) dedicated to public use as a road; but (c) does not include an area declared under a regulation not to be a road. Examples of an area that is a road: a bridge, cattle grid, culvert, ferry, ford, railway crossing, shopping centre car park, tunnel or viaduct.	
How was noise defined?	‘Noise’ was defined to include: ‘any sound capable of prejudicially affecting the health of or occasioning annoyance, distress or irritation to any person’. ‘Excessive noise’ was defined as: (a) any noise that is prescribed under this Act to be excessive noise or, where not so prescribed either at all or in respect of a particular noise, that is considered to be excessive noise in the opinion of any person authorised by or under this Act to form such an opinion, either by reason of the level of such noise or the nature thereof;	The definition of ‘noise’ changed to include any vibration of any frequency, whether emitted through the air or another medium. No definition of excessive noise was provided; however, in determining whether the noise was excessive, police may have regard to: <ul style="list-style-type: none"> the degree of interference that the noise is causing or is likely to cause to the conduct of activities ordinarily carried out in the neighbourhood of the place from which the noise is being emitted 	No definition of ‘noise’ is included in this Act.	No definition of ‘noise’ is included in this Act.

	Noise Abatement Act 1978	Environmental Protection Act 1994 (EPA)	Police Powers and Responsibilities Act 2000	Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005
	Part 4 – Abatement and regulation of excessive noise affecting residential or commercial premises Division 2 – Excessive noise from musical instruments or rowdy premises and (b) in relation to noise of a description such that its abatement or regulation, when excessive, is by this Act entrusted to local governments – any noise that is prescribed by a local law of a local government to be excessive noise or, where not so prescribed either at all or in respect of a particular noise, that is considered to be excessive in the opinion of any person authorised by a local law of a local government to form such an opinion, either by reason of the level of such or the nature thereof.	Chapter 4 Part 4 – Special environmental protection provisions for certain noise	Chapter 19 Part 3 – Powers relating to noise	This Act amended the PPRA.
What was the police duty?	Police had a duty to investigate a complaint.	<ul style="list-style-type: none"> the nature of the lawful uses permitted for premises in the neighbourhood of the place from which the noise is being emitted. 	The duty to investigate continued.	The duty to investigate continued.
	Police had to hear the noise and be satisfied that the noise complained of was: <ul style="list-style-type: none"> excessive in the circumstances clearly audible within part of the residential or commercial premises of the complainant that the complainant would be reasonably expected to use. 	Much of the same criteria remained as in the previous Act; however, reference to hearing the noise in an area that the complainant would reasonably use was removed.	The same requirements to hear the noise and determine it was excessive continued.	The same requirements to hear the noise and determine it was excessive continued.

	Noise Abatement Act 1978	Environmental Protection Act 1994 (EPA)	Police Powers and Responsibilities Act 2000	Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005
Police powers	Part 4 – Abatement and regulation of excessive noise affecting residential or commercial premises Division 2 – Excessive noise from musical instruments or rowdy premises To enter the premises from where the noise is coming and direct the occupier or other person causing the noise or permitting the noise to be caused to abate the noise. ‘Abate’ was defined to include: ‘prevent, reduce, eliminate and control including control by a method designed to minimise the effects of noise’.	Chapter 4 Part 4 – Special environmental protection provisions for certain noise To enter the place from where the noise is coming and direct the occupier of the place and any other persons who appear to be responsible for the noise or permitting the noise to occur to immediately abate the noise. The definition of ‘abate’ was simplified to include: prevent, reduce, eliminate and control the noise.	Chapter 19 Part 3 – Powers relating to noise To enter the place from which the noise is being emitted and direct the occupier of the place and any other persons who appear to be responsible for the noise or permitting the noise to occur to immediately abate the noise. The definition of ‘abate’ remained the same.	This Act amended the PPRA. To enter the place without a warrant and issue a noise abatement direction notice. The definition of ‘abate’ remained the same.
How do police issue a noise abatement direction?	Issue the direction either orally or in writing at the discretion of the police officer.	Issue the direction either orally or by written notice.	Issue the direction either orally or by written notice.	A noise abatement direction must be issued in writing in a specific form which must contain particular details and, if issued to a child, a copy of the notice must be given to the child's parent or guardian.
Time period of direction	12 hours	12 hours	12 hours	The period increased to 48 hours.
Who had to comply with the direction?	Person who had been given the direction and persons who knew the direction had been given.	Person who had been given the direction and persons who knew the direction had been given.	Person who had been given the direction and persons who knew the direction had been given.	The specific person mentioned in the direction.
What happens on a breach of a direction?	The person could be charged with breaching a police direction. This was a summary offence and the penalty ranged from: <ul style="list-style-type: none"> first offence \$2500 and, if the offence is continuing, a further penalty of \$150 for each day during which the offence has continued after conviction 	The person could be charged with breaching a direction. This remained a summary offence; however, the penalty changed. The penalty was decreased to one fine amount of 10 penalty units (\$750) irrespective of whether it was the first, second or subsequent offence.	The person could be charged with breaching a direction. This remained a summary offence and the penalty remained the same.	The person could be charged with a specific noise abatement offence. This remained a summary offence and the penalty remained the same at 10 penalty units (\$1000). ¹¹⁹ Noise abatement orders were introduced.

¹¹⁹ The difference in the monetary amount is a result of an increase in a penalty unit from \$75 to \$100.

	<i>Noise Abatement Act 1978</i>	<i>Environmental Protection Act 1994 (EPA)</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005</i>
	Part 4 – Abatement and regulation of excessive noise affecting residential or commercial premises Division 2 – Excessive noise from musical instruments or rowdy premises	Chapter 4 Part 4 – Special environmental protection provisions for certain noise	Chapter 19 Part 3 – Powers relating to noise	This Act amended the PPRA.
	<ul style="list-style-type: none"> second offence or subsequent \$5000 and, where the offence is a continuing one, a further penalty of \$300 for each day during which the offence has continued after conviction. <p>If three noise abatement directions had been issued within a six-month period, police could make an application to a magistrate that the offender be required to pay \$500 to the chief executive; the respondent is in a show cause situation.</p>			<p>Initial impoundment powers were introduced allowing police to impound the motorbike for a period of 48 hours if a breach had been committed. Police could then apply to the court for a noise abatement order to restrict the riding of the motorbike.</p> <p>If a person had been given two noise abatement directions in a one-month period, police could also apply for a noise abatement order.</p>
Available impounding action	<p>Upon a breach of a noise abatement order, police could take action against property causing or contributing to the noise for a period of 12 hours by:</p> <ul style="list-style-type: none"> seizing or removing it from the premises rendering it inoperable by removing or seizing its parts or parts thereof locking, sealing or masking the property so it could not be used. 	The same powers applied; however, the time period increased to 24 hours.	The same powers applied.	<p>Specific impoundment powers were created depending on the stage of the proceedings:</p> <ul style="list-style-type: none"> 48-hour initial impoundment period a three-month impoundment period. <p>Forfeiture laws were also created.</p>

APPENDIX 5:

Prescribed impoundment information

When police take any impounding action under the new noise laws, they must provide an impounding notice to certain people. Such people will include the rider of the motorbike, the owner of the motorbike, and, if the impounding action involves a juvenile rider, the parent or guardian of the juvenile.

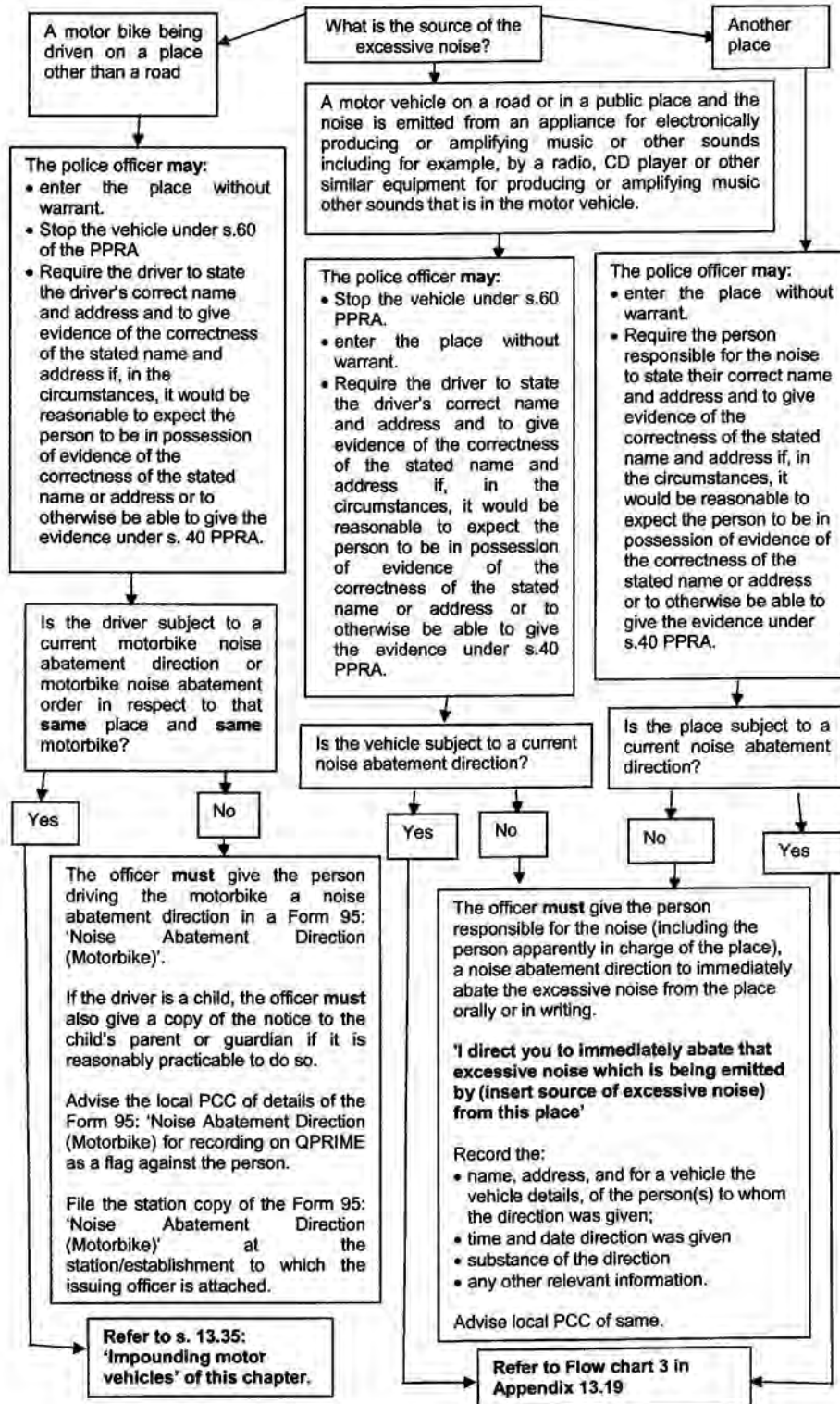
The impounding notice must be given to the rider of a motorbike or driver of a motor vehicle where the vehicle is involved in impoundment proceedings. The notice must include certain 'prescribed impoundment information', which means (s. 69 PPRA):

- a. information about how the owner of the motor vehicle¹²⁰ impounded under this law may recover the motor vehicle
- b. a statement that, before the motor vehicle can be recovered, the owner may be required to produce satisfactory evidence of the ownership of the vehicle
- c. a statement that, if the driver is an adult, the driver will be required to pay the costs of removing and keeping the motor vehicle
- d. a statement that, if the driver is a child and the child is found guilty of the offence for which the motor vehicle was impounded, the court may order the child or the child's parent or guardian to pay the costs of removing and keeping the motor vehicle
- e. a statement that, if the owner of a motor vehicle fails to recover the motor vehicle after the period of impounding ends, and the owner was the driver of the motor vehicle when it was impounded, the owner is liable to pay the costs of keeping the motor vehicle for each day after the period of impounding ends, whether or not the driver is found guilty of the offence for which the motor vehicle is impounded
- f. a statement that, if the owner of the motor vehicle fails to recover the motor vehicle after the period of impounding ends, and the owner was the driver of the motor vehicle when it was impounded, the owner is liable to pay the costs of keeping the motor vehicle for each day after the period of impoundment ends that is more than two business days after the owner is given the impounding notice
- g. the penalty for unlawfully removing the motor vehicle from the place at which it is held.

¹²⁰ Reference to 'motor vehicle' includes motorbikes (s. 70 PPRA).

APPENDIX 6: Queensland Police Service Operational Procedures Manual new noise laws flow chart

Environmental nuisance caused by noise — Flow Chart 2



Source: QPS OPM Appendix 13.18.

APPENDIX 7:

Australian Design Rules and Motorcycling Australia decibel emission standards

Table 1: Australian Design Rules noise emission dB(A) levels

Motorcycle manufacture date	Engine cylinder capacity (cc)	Maximum 'drive by' level dB(A)	Maximum stationary level dB(A)
2005 – current Pursuant to Australian Design Rule 83/00 ¹²¹ (registered motorcycles)	<80	75	n/a
	80–175	77	n/a
	>175	80	n/a
March 1985 – 2000 (registered motorcycles)	<80	77	94
	80–175	80	94
	>175	82	94
Prior to 1 March 1985 (registered motorcycles)	<125	82	100
	125–500	84	100
	>500	86	100

Source: Vehicle Standard (Australian Design Rule 83/00 – External Noise) 2005 (made under s. 7(1) of the *Motor Vehicle Standards Act 1989* (Cth)).

Table 2: Motorcycling Australia noise emission dB(A) levels for riding disciplines events

Riding discipline	Decibel limit dB(A)
Road Racing	102
Historic Road Racing	102
Motorcross and Supercross	94–96
Classic MX and Dirt Track	96
Speedway	98
Dirt Track	94–96
Track	98
Quads	94–96
Moto-Trials	96
Supermoto	94–96
Enduro & Reliability Trials	94
Minikhana	95
Record Attempts	no limit

Source: Motorcycling Australia, 2009.

¹²¹ Australian Design Rule 83/00 does not have a stationary noise level.

APPENDIX 8:

Other sound decibel emissions

Decibels	Type of sound
130	artillery fire at close range
120	amplified rock music; near jet engine
110	loud orchestral music, in audience; jackhammer at 1 metre distance
105	jet aircraft at 250 metres
100	electric saw
90	city traffic
85–90	bus or truck interior
80	automobile interior major road at 10 metres away distance
70	average street noise; loud telephone bell
65	truck at 50 km/hr at 100 metres
60–65	normal conversation
55	car at 65km/hr at 100 metres
50	quiet restaurant; private office
40	quiet room in home
35–45	busy road 5 kilometres away
30	quiet lecture hall
20–40	rural night-time background
20	radio, television or recording studio
10	soundproof room
0	absolute silence

Source: Sustainable Energy Australia Pty Ltd (no date).

APPENDIX 9: Legislation used in other jurisdictions to deal with excessive noise from off-road motorbikes

WESTERN AUSTRALIA	
Principal legislation ¹²²	<ul style="list-style-type: none"> • <i>Control of Vehicles (Off-road Areas) Act 1978</i> (WA) <p>In addition to noise laws, this Act provides for a range of laws relating to the use of vehicles¹²³ in off-road areas, including:</p> <ul style="list-style-type: none"> • prohibiting the use of vehicles in certain places • providing areas where off-road vehicles are permitted • the registration of off-road vehicles • dangerous vehicles • seat-belt use • helmet use • underage drivers.
How is off-road motorbike noise dealt with?	<p>The Act provides for an offence of driving an off-road vehicle on any land:</p> <ul style="list-style-type: none"> • creating undue or excessive noise (s. 6(4)(a)) • without a securely fitted efficient silencing device (s. 6(4)(b)) • failing to comply with any prescribed requirement for the control of noise (s. 6(4)(c)). <p>No definition is provided for undue or excessive noise.</p> <p>There are two different enforcement strategies:</p> <ol style="list-style-type: none"> 1. issuing an infringement notice; the penalty is a fine of \$50¹²⁴ (s. 37) 2. being charged with an offence; the penalty is a fine of \$200 (s. 6(4)). <p>Limited impoundment powers are provided, but these largely relate to defective vehicles.</p>

¹²² Unless noted, all references to ‘the Act’ or ‘the Regulation’ in this table are to the relevant principal state or territory legislation.

¹²³ An ‘off-road vehicle’ means a vehicle that is not licensed, deemed to be licensed, or the subject of a permit granted under the *Road Traffic Act 1974* (WA). A ‘vehicle’ is defined as propelled by an engine or other mechanical source of power (s. 3).

¹²⁴ This constitutes the modified penalty if an infringement notice is issued for an offence against ss. 6(4)(a) or (b). See the Control of Vehicles (Off-road Areas) Regulations 1979 (WA), r. 35 and fifth schedule, items 3 and 4.

Who enforces the noise law?	<ul style="list-style-type: none"> • An infringement notice may be issued by an authorised officer, which includes a police officer, a person appointed by the Minister for Local Government or an authorised local government officer (s. 38). • A police officer may charge a person with an offence.
Who can be liable for the noise?	<p>Not only may the driver of the off-road vehicle be liable for causing the noise, but liability may also attach to any other person deemed responsible for the vehicle (s. 37).¹²⁵</p> <p>The Act allows for the formal declaration of an area as prohibited or permitted for the use of off-road vehicles. The declaration of such areas is important, as the Act provides for a number of offences associated with the appropriate use of the land. For example, it is an offence to use an off-road vehicle in any area without a permit other than (i) on private land with consent, or (ii) on permitted land (s. 6(1)). The noise restrictions, however, are still applicable to such riding.</p> <p>Private property can be declared as prohibited for riding if it is in the public interest by reason of:</p> <ul style="list-style-type: none"> • the proximity of any land used for residential purposes, or for purposes unlikely to be compatible with the use of vehicles in the vicinity • environmental factors including the protection of flora and fauna • the provisions of any local planning scheme (ss. 16(1) & (5)). <p>The Act also establishes an Advisory Committee that has a general duty to advise the Minister on any matters relating to the use of land by off-road vehicles (s. 17).</p> <p>In addition to specific off-road vehicle legislation, the Western Australian Government has taken a proactive and holistic approach to the sustainability and management of recreational trail bike riding and has funded the development of a State Trail Bike Strategy, which has been publicly released.¹²⁶ The strategy promotes a framework for the coordinated approach to the planning and management of recreational trail bike riding on public and private land between relevant state government agencies, local communities, local government and recreational trail bike riders (Trail Bike Management Australia 2007, p. 9).</p>
NEW SOUTH WALES	
Principal legislation	<ul style="list-style-type: none"> • Protection of the Environment Operations (Noise Control) Regulation 2008 (NSW)
How is off-road motorbike noise dealt with?	<p>The Regulation provides for a range of strategies to respond to off-road vehicle noise, including:</p> <ul style="list-style-type: none"> • a decibel emission standard of 100 dB(A) for motorcycles used off-road (Schedule 1) • an offence to cause, or permit, a motor vehicle to emit offensive noise on a place other than a road (r. 13) • prohibiting times when motor vehicles can be used at residential premises (r. 14).

¹²⁵ See s. 5A *Road Traffic Act 1974* (WA) for the definition of 'person responsible for a vehicle'; this includes the person who is entitled to the immediate possession of the vehicle or, if there are several persons entitled to its immediate possession, the person whose entitlement is paramount.

¹²⁶ See <www.tbma.com.au/sbbs>.

	<p>'Offensive noise' is described as noise that by its level, nature, character or quality is harmful to, or unreasonably interferes with, a person outside the premises (see Dictionary, <i>Protection of the Environment Operations Act 1997</i> (NSW)).</p> <p>The Regulation also prohibits motor vehicles being used on residential premises at certain times. Specifically, it is prohibited to emit vehicle noise from a residential premises that can be heard within a habitable room in any other residential premises either:</p> <ul style="list-style-type: none"> • before 8 am or after 8 pm on any Saturday, Sunday or public holiday, or • before 7 am or after 8 pm on any other day (r. 14). <p>Before a person can be charged with creating offensive noise, the person must have been previously cautioned and have repeated the conduct within 28 days of this warning (r. 14(2)).</p>
Who enforces the law?	<p>Offences are enforced by local authority officers, Department of Environment and Climate Change and Water officers and police officers.¹²⁷</p> <p>A person may be dealt with by way of being:</p> <ul style="list-style-type: none"> • issued with a penalty notice • charged with an offence. <p>If a penalty notice fine is issued, an individual may be fined \$200 and a corporation may be fined \$400 (Schedule 6, Protection of the Environment Operations (General) Regulation 2009). If a person is charged with an offence and is not dealt with by way of a penalty notice, the fine amount for an individual is 50 penalty units (\$5500) or for a corporation 100 penalty units (\$11 000).¹²⁸</p>
Who can be liable for the noise?	<p>The driver and the owner of the motor vehicle or the occupier of the residential premises may be liable for an offence (rr. 14 & 20).</p>
Other initiatives	<p>Pursuant to the <i>Protection of Environment Operations Act 1997</i> (NSW), a noise abatement direction and a noise abatement order can be used to control offensive noise. A noise abatement direction may be issued by an enforcement officer if the officer believes that offensive noise is being emitted, or has been emitted at any time within the past seven days, and the direction will apply for a period of up to 28 days (s. 276 <i>Protection of Environment Operations Act 1997</i> (NSW)).</p> <p>If a person contravenes a noise abatement direction, he or she may be issued with a penalty notice that attracts a fine of \$200 for an individual or \$400 for a corporation (s. 277 <i>Protection of Environment Operations Act 1997</i> (NSW) & Schedule 6 Protection of the Environment Operations (General) Regulation 2009 (NSW)). Alternatively, the person may be charged with an offence and this attracts a maximum penalty of 30 penalty units (\$3300). A police officer may also take action against any equipment used in the contravention and seize it for 28 days (s. 282 <i>Protection of the Environment Operations Act 1997</i> (NSW)).</p> <p>The procedure for obtaining a noise abatement order differs from the Queensland process, as an occupier of a premises can apply to a local court for a noise abatement order if the premises is being affected by offensive noise (s. 268 Protection of the <i>Environment Operations Act 1997</i> (NSW)).</p>

¹²⁷ See rr. 80–81 & Schedule 6 of the Environment Operations (General) Regulation 2009 (NSW). These enforcement officers are specifically applicable to the offences at r. 13 ('Use of motor vehicles in places other than on road or related area') and r. 14 ('Use of motor vehicles on residential premises') of the Protection of the Environment Operations (Noise Control) Regulation 2008 (NSW).

¹²⁸ The value of a penalty unit in New South Wales is \$110 (s. 17 *Crimes (Sentencing Procedure) Act 1999* (NSW)).

	<p>The court may make a noise abatement order if it is satisfied on the balance of probabilities that the alleged noise exists and is likely to reoccur and order the person causing the noise to either:</p> <ul style="list-style-type: none"> • abate the noise within certain times as specified in the order, or • prevent the noise reoccurring. <p>It is an offence to contravene a noise abatement order and this offence attracts a fine of 30 penalty units (\$3300) (s. 269 <i>Protection of the Environment Operations Act 1997</i> (NSW)).</p>
VICTORIA	
Principal legislation	<ul style="list-style-type: none"> • <i>Environment Protection Act 1970</i> (Vic.) • Environment Protection (Residential Noise) Regulations 2008 (Vic.)
How is off-road motorbike noise dealt with?	<p>The Act and Regulations provide for a range of strategies to respond to off-road vehicle noise from residential premises, including:</p> <ul style="list-style-type: none"> • the issuing of a noise abatement direction to abate the noise or prevent it reoccurring • an offence to create unreasonable noise from a residential premises including large rural allotments • prohibiting times at which noise can be emitted. <p>To determine if the noise is unreasonable, its volume, intensity and duration, as well as the time, place and other circumstances in which it is being emitted, will be considered (s. 48A(4)).</p> <p>The Regulations provide for prohibited times for noise to be emitted from motor vehicles (including recreational vehicles, mini-bikes and trail bikes):</p> <ul style="list-style-type: none"> • Monday to Friday before 7 am and after 8 pm • weekends and public holidays before 9 am and after 8 pm. <p>If vehicle noise is created during these prohibited times and the noise is audible in any habitable room in any other residential premises regardless of whether any door or window is open, it will be deemed to be unreasonable (s. 48A(5)).</p>

Who enforces the law?	<p>If a police officer or council officer suspects that unreasonable noise has occurred, the officer may issue a direction to abate the noise or prevent it from reoccurring. The direction will apply for a period of 12 hours (ss. 48A(6) & (7)).</p> <p>A person who contravenes a direction can be dealt with by way of:</p> <ul style="list-style-type: none"> • an on-the-spot infringement notice of 5 penalty units¹²⁹ (\$584.10) (s. 63B & schedule A of the Act) • an offence that attracts a maximum penalty of a fine of 120 penalty units (\$14 018.40). If the offence continues, the penalty can include a fine of not more than 30 penalty units (\$3504.60) for each day it continues.
Who can be liable for the noise?	<p>A direction can be given to:</p> <ul style="list-style-type: none"> • the person suspected of committing the offence • any person apparently in charge of the premises on which the offence is occurring (s. 48A(6)).
Other initiatives	<p>The Victorian Government has also launched a trail bike initiative that aims to improve the management of trail bikes on public land in the state. The aims of the initiative include the improvement of legal compliance in respect of licence/registration/noise and off-track riding through increased compliance operations on weekends.¹³⁰</p>
TASMANIA	
Principal legislation	<ul style="list-style-type: none"> • <i>Environmental Management and Pollution Control Act 1994</i> (Tas.) • Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004 (Tas.)
How is off-road motorbike noise dealt with?	<p>The Act and Regulations provides for a range of strategies to respond to off-road vehicle noise, including:</p> <ul style="list-style-type: none"> • decibel emission levels • a distance requirement from domestic premises where motor vehicles can be operated • an offence of creating an environmental nuisance by noise. <p>A person must not, without permission,¹³¹ operate a motor vehicle in an off-street area if the vehicle emits a noise greater than:</p> <ul style="list-style-type: none"> • 94 decibels (for motorbikes manufactured on or after 1 March 1985) • 100 decibels (for motorbikes manufactured before 1 March 1985) (r. 5 & Schedule 1 of the Regulations).

¹²⁹ The current value of a penalty unit in Victoria is \$116.82 for the financial year 2009–10 (see *Monetary Units Act 2004* (Vic.)). Penalty units in Victoria are indexed annually.

¹³⁰ See Victorian Department of Sustainability and Environment, 'Trail Bike Riding Initiative', at <www.dse.vic.gov.au>, for more information.

¹³¹ Under r. 26 of the Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004 (Tas.), the Director of the Tasmanian Environmental Protection Authority may approve the emission of certain otherwise prohibited noises.

	<p>A person may be dealt with for exceeding the decibel limit by being:</p> <ul style="list-style-type: none"> • issued with an environmental infringement notice; this attracts a penalty amount of 2 penalty units¹³² (\$240) (see r. 5 & Part 2, Environmental Management and Pollution Control (Environmental Infringement Notices) Regulations 2006) • charged with an offence; the maximum fine for this offence is 50 penalty units (\$6000) and if the offence continues an additional maximum penalty of 5 penalty units (\$600) added for each day the offence continues (r. 5). <p>A person must not operate a motor vehicle for sport or recreation within 500 metres of domestic premises unless with the consent of the occupier of the premises (r. 15).¹³³ However, there are exceptions to this, which include:</p> <ul style="list-style-type: none"> • driving on a public street¹³⁴ • driving directly to or from a public street • driving to or from a place that is further than 500 metres from the premises • driving directly to or from a place for cleaning, maintenance, refuelling or repairs, or • if a permit has been issued under the Regulations. <p>The penalty for this offence is the same as that of exceeding the stated decibel limit and an environmental infringement notice may alternatively be issued for this offence with a penalty amount of 2 penalty units (\$240) (see Part 2, Environmental Management and Pollution Control (Environmental Infringement Notices) Regulations 2006).</p> <p>Furthermore, off-road motorbike noise may be dealt with as an environmental nuisance if it interferes with a person's enjoyment of an environment and consideration will be given to factors such as the volume, intensity, duration, time and place of the noise (ss. 3 & 53). This will involve a subjective determination on the part of the relevant officer as to whether a nuisance is being caused (s. 53A).</p> <p>If a person is deemed to be causing an environmental nuisance he or she may be charged with an offence, the maximum penalty for which is either 300 penalty units (\$36,000) for the commission of an intentional environmental nuisance (s. 53(1)), or 100 penalty units (\$12,000) for the commission of an environmental nuisance without intent (s. 53(2)). If the offence is non-intentional, it may also be dealt with by way of an infringement notice with a penalty amount of 2 penalty units (\$240) (see Part 1, Division 2 Environmental Management and Pollution Control (Environmental Infringement Notices) Regulations 2006).</p> <p>The enforcement of both the Act and the Regulations can be undertaken by a council officer or an authorised officer, which includes a police officer or an officer appointed by the Director of the Tasmanian Environmental Protection Authority (ss. 20–21). In certain circumstances, authorised officers will also have powers to seize property used in an offence (s. 92) or issue environment protection notices requiring a person to undertake certain measures specified in the notice (s. 44).</p>
Who enforces the law?	

¹³² The value of a penalty unit in Tasmania is \$120 for the year 1 July 2009 to 30 June 2010. Under the *Penalty Units and Other Penalties Act 1987* (Tas.), the value of a penalty unit in Tasmania is annually indexed according to the Consumer Price Index.

¹³³ These noise restrictions do not apply to certain racing events or riding at recreational facilities. See rr. 16–17 of the Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004 (Tas.).

¹³⁴ A 'public street' is defined as any street, road, lane, thoroughfare, footpath, bridge, or place open to or used by the public, or to which the public have or are permitted to have access, whether on payment of a fee or otherwise (see definition under s. 3(1) of the *Traffic Act 1925* (Tas.)).

Who can be liable for the noise?	If the identity of the person causing the noise can not be ascertained, an environmental infringement notice can be served on the occupier or person in charge of the place or vehicle (s. 67).
Other initiatives	Nil
NORTHERN TERRITORY	
Principal legislation	<ul style="list-style-type: none"> • <i>Summary Offences Act</i> (NT) • <i>Waste Management and Pollution Control Act</i> (NT)
How is off-road motorbike noise dealt with?	<p>The Acts provide for a range of strategies to respond to off-road vehicle noise, including:</p> <ul style="list-style-type: none"> • the issuing of a noise/pollution abatement direction to stop the noise • the offences of contravening a direction or causing an environmental nuisance • a court-ordered noise abatement order. <p>Police can issue a noise abatement direction for up to 48 hours if they receive a complaint about noise emitted from a premises (s. 53B <i>Summary Offences Act</i> (NT)).¹³⁵ If a person fails to comply with this direction, police can:</p> <ul style="list-style-type: none"> • charge the person with contravening a direction, which attracts a maximum fine of \$2000 (s. 53B <i>Summary Offences Act</i> (NT)) • issue an infringement notice which attracts a penalty of \$400 (s. 4A <i>Summary Offences Regulations</i> (NT)). <p>A person affected by noise may bring an application in court for a noise abatement order if there is a concern that the noise may reoccur (s. 53D <i>Summary Offences Act</i> (NT)). If the court is satisfied that the noise is not justified in the circumstances or that it is likely to recur, it may issue the noise abatement order (s. 53D <i>Summary Offences Act</i> (NT)). If a person contravenes an order, he or she may be fined \$2000 (s. 53D <i>Summary Offences Act</i> (NT)).</p> <p>Off-road motorbike noise may be declared an environmental nuisance if it creates an adverse effect on an area which unreasonably interferes with the enjoyment of it (ss. 4 & 83(5) <i>Waste Management and Pollution Control Act</i> (NT)). An offence of creating an environmental nuisance may, for an individual, be dealt with by way of:</p> <ul style="list-style-type: none"> • an infringement notice, which attracts a fine of \$100 (s. 8 <i>Environmental Offences and Penalties Act</i> 1996 (NT)) • charging with an offence, which attracts a maximum fine of \$5000 (s. 7 <i>Environmental Offences and Penalties Act</i> 1996 (NT)). <p>A pollution abatement notice may also be issued requiring a person to stop the environmental nuisance (ss. 77–79 <i>Waste Management and Pollution Control Act</i> (NT)). It is an offence to contravene such a notice, with the penalties:</p> <ul style="list-style-type: none"> • for an intentional contravention by an individual: <ul style="list-style-type: none"> – \$200 if served with an infringement notice (s. 8 <i>Environmental Offences and Penalties Act</i> 1996 (NT)) – in the range of \$5000–\$50 000 if charged with an offence (s. 6 <i>Environmental Offences and Penalties Act</i> 1996 (NT))

¹³⁵ The 'undue noise provisions' under the *Summary Offences Act* (NT) are predominantly used for licensing or antisocial issues; however, they can be applied to off-road motorbike noise.

	<ul style="list-style-type: none"> • for a non-intentional contravention by an individual: <ul style="list-style-type: none"> – \$100 if served with an infringement notice (s. 8 <i>Environmental Offences and Penalties Act 1996</i> (NT)) – a maximum of \$5000 if charged with an offence (s. 7 <i>Environmental Offences and Penalties Act 1996</i> (NT)).
Who enforces the law?	<ul style="list-style-type: none"> • Police are responsible for the enforcement of the <i>Summary Offences Act</i> (NT). • Enforcement of <i>Waste Management and Pollution Control Act</i> (NT) is by an authorised officer.¹³⁶
Who can be liable for the noise?	<p>A noise abatement direction may be issued to a person making, causing or permitting the noise to be made or to the person in charge of the premises at the time (s. 53B <i>Summary Offences Act</i> (NT)).</p> <p>A noise abatement order may also be issued to a person making, causing or permitting the noise to be made or to the person in charge of the premises at the time (s. 53D <i>Summary Offences Act</i> (NT)).</p>
Other initiatives	Authorised officers will, in certain circumstances, have additional powers such as seizure under s. 72 <i>Waste Management and Pollution Control Act</i> (NT).
AUSTRALIAN CAPITAL TERRITORY	
Principal legislation	<ul style="list-style-type: none"> • <i>Environment Protection Act 1997</i> (ACT) • <i>Environment Protection Regulation 2005</i> (ACT)
How is off-road motorbike noise dealt with?	<p>The Regulation provides for a range of strategies to respond to off-road vehicle noise, including:</p> <ul style="list-style-type: none"> • noise zones • decibel emission levels. <p>Noise zones are based on land uses and decibel emission levels are imposed for the different noise zones.¹³⁷ The noise standard is most stringent for residential areas:</p> <ul style="list-style-type: none"> • daily 7 am – 10 pm (exception 8 am – 10 pm Sunday and public holidays): 45 dB(A) • daily 10 pm – 7 am (exception 10 pm – 8 am Sunday and public holidays): 35 dB(A). <p>If a person makes noise louder than the relevant noise standard for that place, they will be deemed to have caused environmental harm (r. 25(1)).¹³⁸ Such noise is an offence under the Regulation (r. 39) and decibel readings will be taken to ascertain the noise level (r. 31).¹³⁹ It is likely, however, that prior to an offence being charged, an authorised officer will liaise with the parties to resolve the issue informally.</p>

¹³⁶ An 'authorised officer' under the *Waste Management and Pollution Control Act* (NT) is someone appointed under section 70 of the Act.

¹³⁷ See Schedule 2, *Environment Protection Regulation 2005* (ACT) for more information on noise zones and standards.

¹³⁸ There are exceptions to whether noise will constitute 'environmental harm' in the *Environment Protection Regulation 2005* (ACT). See, for example, rr. 26–29.

¹³⁹ See Division 3.3 *Environment Protection Regulation 2005* (ACT) for more information on the relevant noise measurement for this jurisdiction.

	<p>If a person breaches the noise standard the person may be:</p> <ul style="list-style-type: none"> issued an on-the-spot infringement fine of \$200, which if paid will not result in the person being prosecuted (Schedule 1, Part 1.2, Magistrates Court (Environment Protection Infringement Notices) Regulation 2005) charged with the offence, attracting a maximum fine of 10 penalty units, which is \$1000.¹⁴⁰ <p>Furthermore, under the <i>Environment Protection Act 1997</i> (ACT) an environmental protection order (EPO) may be made in certain circumstances to restrict a specific activity (s. 125). An EPO may be issued in writing by the Environment Protection Authority and may include any reasonable requirement for the cessation of an activity causing environmental harm (s. 125). It is an offence to contravene an EPO, with the penalty being a maximum fine of \$20000 (s. 126).</p> <p>Authorised officers enforce these laws; an authorised officer is an Environmental Protection Authority officer or a specifically appointed public servant (s. 14).</p>
Who enforces the law?	In the ACT, the person causing the noise will be liable for the noise (see r. 39).
Who can be liable for the noise?	An authorised officer may also, in certain circumstances, seize anything used in connection to an offence against the Act (s. 108).
Other initiatives	
SOUTH AUSTRALIA	
Principal legislation	<ul style="list-style-type: none"> <i>Environment Protection Act 1993</i> (SA)
How is off-road motorbike noise dealt with?	<p>This Act provides for the following strategies to respond to off-road vehicle noise:</p> <ul style="list-style-type: none"> the offence of causing an environmental nuisance (s. 82)¹⁴¹ the issuing of an environmental protection order against a person to stop the noise (s. 93). <p>The definition of an environmental nuisance is broad and includes:</p> <ul style="list-style-type: none"> noise pollution that causes either an adverse effect on the amenity of an area, or an offensive condition that interferes with the enjoyment of the area (s. 3).

¹⁴⁰ In the ACT, the value of a penalty unit is \$100 if the person charged is an individual or \$500 if the charge relates to a corporation (s. 133 *Legislation Act 2001* (ACT)).

¹⁴¹ Section 82 *Environment Protection Act 1993* (SA) creates two offence subsections for 'environmental nuisance'. Subsection (1) has a requirement for intent or recklessness with knowledge that an environmental nuisance might occur; however, subsection (2) is what is known as a 'strict liability offence', where there is no need to prove intent or knowledge; rather, the simple commission of the offence is enough to be found guilty.

	<p>An individual can be charged with causing an environmental nuisance and the offence (s. 82) attracts the following possible fines:</p> <ul style="list-style-type: none"> • if caused intentionally or recklessly <ul style="list-style-type: none"> – a maximum of \$30 000 • if there is no intent or recklessness, then either: <ul style="list-style-type: none"> – a maximum of \$4000 if charged with an offence, or – an expiation fee¹⁴² of \$300. <p>To determine if the noise constitutes an environmental nuisance, a police officer is required to make a subjective determination and decide if the noise is audible at another location and whether the level, nature or extent of the noise causes an unreasonable interference with a person's enjoyment of a place (s. 139).</p> <p>Where the noise is caused by a repeat offender, an authorised officer may issue an 'environment protection order' which will contain certain conditions, such as requiring a person to discontinue a specified activity (s. 93).</p>
Who enforces the law?	The Act is enforced by authorised officers, who include police officers or persons appointed by a local council or the South Australian Environmental Protection Agency (s. 85). However, police are the primary enforcement group in relation to environmental nuisances caused by off-road motorbike noise.
Who can be liable for the noise?	There is some indication that an 'environmental protection order' may be issued to a person responsible for a premises from which noise is being emitted (see s. 93).
Other initiatives	Authorised officers also have powers of seizure available to them in certain circumstances (s. 87).

142 An expiation fee is similar to an infringement notice in that it is not an admission of guilt or civil liability, and if paid, will avoid formal prosecution (see *Expiation of Offences Act 1996* (SA)).

APPENDIX 10: Off-road motorbike sales

We requested data from the Federal Chamber of Automotive Industries on the number of new off-road motorbikes that had been sold in Queensland between 1 January 2004 and 31 December 2008. The sales data that we received were broken down into four categories: off-road compliant Australian Design Rules (ADR) road-registrable, off-road non-compliant ADR, mini-bike non-compliant ADR and ATV (quads) non-compliant ADR. The table below shows the sales figures for each of these categories.

Number of off-road motorbike sales in Queensland, 1 January 2004 to 31 December 2008

Year	Off-road	Off-road	Mini-bike	ATV (quads)	Total sales all motorbikes
	Off-road compliant ADR and road- registrable	Off-road non-compliant ADR	Mini-bike non-compliant ADR	ATV (quads) non-compliant ADR	
2004	2 998	2 682	2 969	3 392	12 041
2005	3 436	3 270	3 385	4 022	14 113
2006	5 894	4 096	3 503	4 739	18 232
2007	5 914	4 536	3 374	5 222	19 046
2008	5 471	2 453	3 610	5 533	17 067
Total number of sales 2004–2008	23 713	17 037	16 841	22 908	80 499
% change between 2004 and 2008	82.49	-8.54	21.59	63.12	

Source: Federal Chamber of Automotive Industries, 2009.

APPENDIX 11:

Motorcycling Queensland licence information

We requested data from Motorcycling Queensland (MQ) on the numbers of licences issued for the period 1 January 2004 to 31 December 2008. We received data on the number and type of off-road licences issued for the last nine years, from 1999 to 2008. MQ provides for seven different categories of licences, which are based on age and also type of riding:

- Senior National (16+ years)
- Restricted (16+ years)
- Senior club (16+ years)
- Junior national (7–15 years)
- Junior club (7–15 years)
- Nipper (4–7 years)
- Recreational (4+ years).

For the purposes of this research, licensing data from the last five years were examined.

The table below shows the breakdown of the number of licences issued by MQ the period 1 January 2004 to 31 December 2008 per licence category.

Total number and type of licences issued in Queensland between 2004 and 2008

Year	Senior national (16 yrs+)	Restricted (16 yrs+)	Senior club (16 yrs+)	Junior national (7–15 yrs)	Junior club (7–15 yrs)	Nipper (4–7 yrs)	Recreational (4 yrs+)	Total
2004	2 144	–	402	979	323	271	940	5 059
2005	2 367	–	309	1 071	269	229	833	5 078
2006	2 368	216	352	1 116	297	234	931	5 514
2007	2 668	212	311	1 154	306	303	1 073	6 027
2008	2 973	152	352	1 238	316	293	1 133	6 457
Total 2004– 2008	12 520	580	1 726	5 558	1 511	1 330	4 910	28 135

Source: Federal Chamber of Automotive Industries, 2009.

APPENDIX 12:

Department of Transport and Main Roads conditional registration information

We requested data from the Department of Transport and Main Roads (DTMR) on the number of off-road bikes that had been registered between 2004 and 2008. DTMR advised us that, when motorcycles are registered for on-road use, it is not recorded whether the vehicle has an off-road or an on-road configuration. However, DTMR was able to provide us with data on the number of conditional registrations for off-road motorbikes (including quad bikes and motortrikes) for the period 1 July 2004 to 31 October 2008. For the purposes of this research, we considered data to 30 June 2008.

What is conditional registration?

Conditional registration was introduced in May 2003 and allows for the registration of special vehicles, both light and heavy, that do not comply with the standard regulations for registration or that have a genuine need to access the road network.

DTMR supplied data for conditionally registered off-road motorbikes, quads and motortrikes. Two types of registration apply to these vehicles, Limited Access and Zone Access. Limited Access conditional registration restricts vehicles to operating in a defined worksite or designated area, such as a resort or car park. All conditionally registered vehicles can take advantage of this option. Zone Access provides various levels of access to the road depending on the area of operation. Distance restrictions of 20, 40 and 80 kilometres apply depending on the size of the zone of operation.

The table below shows the number and type of conditionally registered off-road vehicles in Queensland between 1 July 2004 and 30 June 2008.

Number of conditionally registered vehicles, 2004–05 to 2007–08

Financial Year	Off-road bike	Off-road bike	Off-road bike	Trike/quad bike	Trike/quad bike	Trike/quad bike	Total
	Limited Access	Zone Access	Total	Limited Access	Zone Access	Total	All
2004–05	109	71	180	233	47	280	460
2005–06	81	52	133	254	46	300	433
2006–07	90	49	139	273	37	310	449
2007–08	125	49	174	326	41	367	541
% change between 2004–05 and 2007–08	14.68	–30.99	–3.33	39.91	–12.77	31.07	17.6

Source: Department of Transport and Main Roads, 2009.

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