



National Transport Commission (Model Law on Engine Brake Noise Limits) Regulations 2009¹

Select Legislative Instrument 2009 No. 294

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Transport Commission Act 2003*.

Dated 29 October 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

ANTHONY ALBANESE
Minister for Infrastructure, Transport, Regional Development
and Local Government

1 Name of Regulations

These Regulations are the *National Transport Commission (Model Law on Engine Brake Noise Limits) Regulations 2009*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Model legislation — *Model Law on Engine Brake Noise Limits*

Under section 7 of the *National Transport Commission Act 2003*, Schedule 1 sets out amendments, in the form of regulations and suggested provisions, to model legislation about engine brake noise limits.

Note 1 These Regulations are not subject to disallowance — see the *Legislative Instruments Act 2003*, subsection 44 (2) (table, item 44) and the *Legislative Instruments Regulations 2004*, regulation 8 and Schedule 2 item 7.

Note 2 These Regulations are not subject to sunseting — see the *Legislative Instruments Act 2003*, subsection 54 (2) (table, item 51) and the *Legislative Instruments Regulations 2004*, regulation 9 and Schedule 3 item 4.

Schedule 1 Model Law on Engine Brake Noise Limits

(regulation 3)

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Model Law on Engine Brake Noise Limits

The following provisions are intended to provide the basis for nationally consistent transport laws on the topics with which they deal. They do not, of themselves, have any legal effect.

1. Name

This is the *Model Law on Engine Brake Noise Limits*.

2. Purpose

The purpose of this Law is –

- (a) to amend the Australian Vehicle Standards Rules and the Vehicle Standards Regulations to impose a limit on the level of noise emitted by engine brake devices; and
- (b) to set out suggested evidentiary provisions to support those amendments.

3. Approval

This Law was approved by the Australian Transport Council on 26 October 2007.

4. Amendment to the Australian Vehicle Standards Rules

After rule 153 of the Australian Vehicle Standards Rules insert –

"153A Limits on engine brake noise

- (1) In this rule –

approved engine brake noise measuring and recording device means a device that measures and records the engine brake noise emitted by a vehicle and that is of a type that has been

approved by the [relevant jurisdictional authority] as suitable for the enforcement of engine brake noise limits;

modulated RMS means the figure that results from applying the method set out in *National In-Service Test Procedures for Engine Brake Noise From Heavy Vehicles* dated August 2007 published by the National Transport Commission, as amended from time to time, to a heavy vehicle's engine brake noise as measured and recorded by an approved engine brake noise measuring and recording device in accordance with the procedures set out in that document.

- (2) An engine brake device fitted to a motor vehicle must not emit noise that has a modulated RMS of more than 1.7.
- (3) For the purposes of sub-rule (2), an engine brake device includes any exhaust outlets of the device, and anything attached to such outlets, including mufflers."

5. Amendment to the Vehicle Standards Regulations

After regulation 14 of the Road Transport Reform (Vehicle Standards) Regulations insert –

"14A. Engine brake devices not complying with Vehicle Standards

If an engine brake device contravenes rule 153A of the Vehicle Standards, the operator of the vehicle to which the device is fitted commits an offence.

Penalty: [local variations]."

[Implementation note: As these provisions are novel, it is intended that the amendments will only be introduced after the intention to introduce them has been well-publicised. It is also intended that first offenders will be dealt with by way of a warning that includes information as to how a repetition of the offence can be prevented.]

6. Suggested supplementary evidentiary provisions

[Drafting note: In most, if not all, jurisdictions, these provisions will need to be enacted as primary legislation.]

"x. Evidence of engine brake noise

A document that has been produced by either an approved engine brake noise measuring and recording device or an approved camera recording device and that shows one or more images of a vehicle together with details purporting to be a modulated RMS and the date, time and place at which the modulated RMS was measured and recorded –

- (a) is admissible in any proceedings; and
- (b) is evidence that the engine brake noise emitted from the engine brake device fitted to that vehicle had that modulated RMS at that date, time and place.

y. Evidence of engine brake noise

A statement in a certificate purporting to have been issued by [relevant jurisdictional authorities/ officers] that, at a specified time or during a specified period –

- (a) a specified device is, or was, an approved engine brake noise measuring and recording device or an approved camera recording device;
- (b) a specified approved engine brake noise measuring and recording device or approved camera recording device was tested or sealed in a specified way;
- (c) a specified approved engine brake noise measuring and recording device or an approved camera recording device was operated in a specified way;
- (d) a specified modulated RMS relates to a specified vehicle – is admissible in any proceedings and is evidence of the matters stated."

[Drafting note: These provisions will need to be supported by definitions of "approved engine brake noise measuring and recording device", "modulated RMS" and the following:

"approved camera recording device means a device approved by [relevant jurisdictional authority] as suitable for the enforcement of engine brake noise limits that is designed to be attached to an approved engine brake noise measuring and recording device for the purpose of producing, in respect of any vehicle that has any noise that it emits measured and

recorded by that device, a document containing one or more images of the vehicle together with details of –

- (a) the modulated RMS of that noise as recorded by that device; and
- (b) the date, time and place the measurement was taken and recorded;

engine brake device includes any exhaust outlets of the device, and anything attached to such outlets, including mufflers."

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.