



# Code of Conduct

## Charter Vessels Operating with Amplified Music Systems

**NSW | MARITIME**  




## DOCUMENT CONTROL

### Document Change History

Version	Date	Author	Reason for change
1.0	4/1998	Sydney Region	Original
2.0	11/2008	Jack Hannan	Update to reflect the <i>Protection of the Environment Operations (Noise Control) Regulation 2008</i>

### Document administrator

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### Document approvals

Version	Date	Position/name
2.0	TBC	Chief Executive/Steve Dunn

### Document review

Scheduled review date
As required.

### Document distribution list

Date	Position/name
	To staff through Legal Branch intranet
	To Sydney Region
	To public through the Internet

### Related documents

File number	Name of document
W96/1976	Code of Conduct Charter Vessels Operating with Amplified Music Systems (previous version)

## 1 Purpose

The purpose of this Code of Conduct is to set out operating guidelines for owners and Masters of charter vessels equipped with amplified music systems. This Code applies to all NSW navigable waters.

This Code recognises a commitment by commercial operators to minimise the impact of noise emanating from amplified music systems on board charter vessels.

## 2 Glossary

In this code:

“**Charter vessel**” means a Class 1 or Class 2 commercial vessel as defined in Clause 5 of the *Commercial Vessels (Permits) Regulations 1986*, regardless of whether the vessel is operating under an Exemption from the *Commercial Vessels Act 1979*.

## 3 Background

The *Protection of the Environment Operations (Noise Control) Regulation 2008* commenced on 1 March 2008. This legislative update has made it necessary to review the earlier (1998) version of the *Code of Conduct - charter vessels operating with amplified music systems*.

The 1998 version of the Code was developed in response to a 1996 Waterways Authority document, *Report on the Control of Noise from Vessels on NSW Waterways*, which specifically recommended that Codes of Conduct be developed to address noise issues relating to vessel use. The 1998 version addressed increasing community complaints regarding music from charter vessels, particularly in the Sydney area, and was developed in consultation with industry stakeholders and local Councils.

## 4 Current Legislation

Environmental noise control requirements for vessels derive from two main pieces of legislation. These are the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Noise Control) Regulation 2008*.

The *Protection of the Environment Operations Act 1997* is the primary piece of Legislation dealing with noise in NSW. It relates to the prevention, minimisation and abatement of noise and vibration from premises – which



includes vessels – and empowers the Department of Environment and Climate Change, NSW Maritime, Courts and Local Government to take a range of actions to achieve these objectives.

The *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*, as they apply to noise from vessels, are based on the subjective concept of “offensive noise”.

“Offensive noise” is defined in the *Protection of the Environment Operations Act 1997* as being noise—

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

In applying the concept of “offensive noise”, courts may attempt to obtain a degree of objectivity by considering what a “reasonable person” would find offensive in particular circumstances. Noise measurements are not normally required in determining that a particular noise is offensive, although such measurements can be used to support the making of a case for “offensive noise”.

Clause 30 of the *Protection of the Environment Operations (Noise Control) Regulation 2008* makes it an offence for a person to cause a vessel to be used on navigable waters in such a way as to emit offensive noise. The source of the noise can be anything on the vessel including engines, generators, rigging on sailing vessels and music sound systems. An assessment of whether offensive noise is being emitted would be based on the definition provided under Paragraph 4.3 above. There are maximum court imposed penalties of \$5,500 for individuals and \$11,000 for corporations.

Clause 33 of the *Protection of the Environment Operations (Noise Control) Regulation 2008* makes it a specific offence for a person to cause or permit any musical instrument or sound system to be used on a vessel in such a

manner that it emits offensive noise. There is no requirement for a warning to have been given, and the offence does not depend on the time of day. There is a maximum court imposed penalty of \$5,500 for individuals and \$11,000 for corporations.

Whilst the Act and Regulation use of the concept of “offensive noise” to control noise from vessels, it is worth noting that the *NSW Government Guidelines for Dance Parties* suggests as a guide for dance party organisers that noise levels of 35dB(A) at any neighbouring residential area would not be considered a nuisance. These guidelines may be appropriate for similar activities staged on the water.

It should be noted that the noise control legislation does not recognise existing use rights. The fact that a vessel might have emitted a particular noise for many years does not necessarily provide that vessel with any right to continue doing so.

## 5 Operating Guidelines

The owners and masters of charter vessels have agreed, in consultation with NSW Maritime, to adhere to these guidelines.

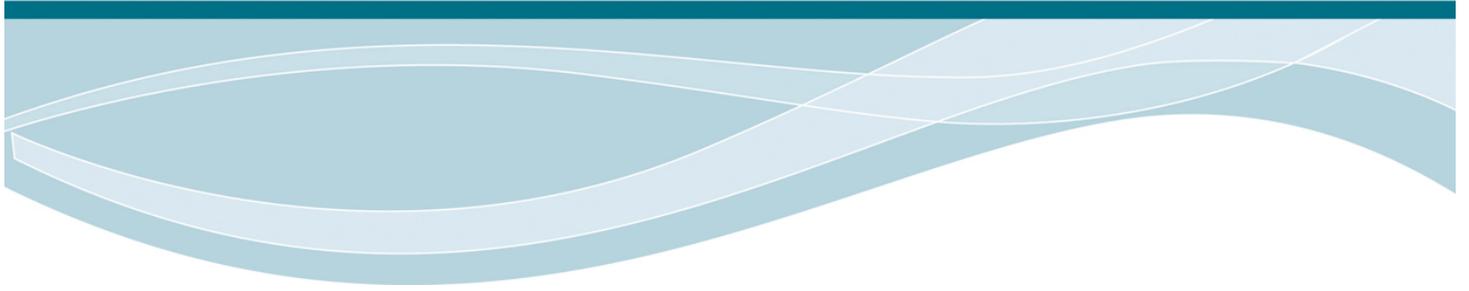
Offensive noise will not be emitted from any charter vessel at any time. To minimise the probability of offensive noise being emitted, the following guidelines should be followed:

In the time period between midnight and 8.00 am, charter vessels operating amplified music systems—

- a) will not anchor;
- b) will remain underway;
- c) will operate at a distance of at least 200 metres from any shore; and
- d) will not operate on Sydney Harbour west of a line between Kirribilli and Bennelong Point.

In the time period between 8.00 am and midnight, charter vessels operating amplified music systems—

- i) will remain underway when operating at a distance of less than 200 metres from any shore; and
- ii) will only anchor at a distance of at least 200 metres from any shore.



## 6 Compliance with this Code

Failure to comply with this Code may be seen by the Courts as evidence of a breach of the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2008* or, in relation to causing nuisance and annoyance, Clause 5 of the *Water Traffic Regulations – NSW*.

## 7 Amendments

Any suggested amendments or variations to this Code should be submitted to NSW Maritime's General Manager Commercial Vessels for consideration.



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