

THE RIGHT TO PLAY



M.M.D.C.
The Melbourne Musos Drumset Curriculum

Case Studies raising concerns with Council treatment
toward Music Students practising in regard to
their well-being and Working with Children Laws.

by Chris Quinlan f.dip.a
4th April 2005 updated 24th September 2009

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16th September 2009

Dear Sir/ Madam

My name is Chris Quinlan (f.dip.a), I have been teaching guitar and drums since 1978 and am also the creator of the Melbourne Musos Drumset Curriculum and Books, used throughout Australia, New Zealand and South East Asia; I also produce the television show "Melbourne Musos" for Community Television C31, now in its 15th year of production.

This discussion paper is a "second edition" updated in September 2009, based on continuing concerns regarding continuing Council policies regarding Music Students and the Teaching Practices that teach them being labelled "Noise Nuisances" in light of new laws being put into place since 2005 in regard to "Working with Children" Cards and Checks and the ensuing related issues for Music Teachers in private practice, students practising, their parents, complainants who carry out surveillance on students practising and the legal ramifications and responsibilities for Councils if they are found to be acting on or condoning surveillance if records are then found to be inaccurate, fraudulent or vexatious.

This paper also deals with the subsequent issues of Privacy, the possible perception of Council condoned surveillance and the possibility of grounds for harassment in regard to what the Department of Justice refers to as a possible "Course of Conduct" in cases where Councils procedures advise complainants to keep "Log books" of perceived cases of sound emanating from a property.

On Monday 4th April 2005, Mayor Renee Caruana of the Hobsons Bay City Council and Council Planning Liaison Officer Michelle Rowe visited my home based Studio to discuss ways and means to streamline current Council procedures in regard to young musical students receiving "noise nuisance" letters from their local Council and the warning of hefty fines as well as similar procedures towards home based music teachers. We agreed the meeting was positive and forward thinking.

Topics discussed were:

Complainants contacting their Council to make a formal complaint towards music students practising before any attempt to make amicable arrangements with the student, thereby involving Council's time and money, that cost inherently being passed on to the neighbourhood ratepayer.

The negative influence and impact caused to young students by receiving a "noise nuisance" letter in its current state i.e. the strong official wording and the warning of hefty fines as a **first resort rather than last**.

The clear distinction between music students practising music (i.e. homework) and "general neighbourhood noise" (construction, mowing, traffic noise).

Music Students practising well within all given Time Restrictions **still** receiving "noise nuisance" letters based on a clause in Home Occupation Guidelines considered by many as "**unenforceable**" that states to the effect ...

... *"the sound must not be heard from any habitable room
(whether windows and doors are open or closed).*

The clause “*the sound must not be heard from any habitable room (whether windows and doors are open or closed)*” being considered “**untenable**” and “**contrary**” to current Council building requirements and policies of multi-floor apartments with the ensuing construction noise and then close proximity of occupants in small apartments on small streets combined with pro-active greening policies that then require constant maintenance such as high decibel lawn mowing, line trimming, sawing and landscaping.

“First Occupancy Rights” in the case of a long standing home based business receiving complaints from new neighbours in new and close proximity residential developments.

The ways in which procedures dealing with these situations can be streamlined using some methods currently suggested by the Environment Protection Authority, the Department of Justice, with advice from the Victorian Privacy Commissioner (in regards to written “noise” records being kept by Complainants).

Ways in which to foster a community awareness and understanding for the music student’s need for regular practice in a supportive environment, especially when the instrument is one with sound that projects at times i.e. trumpet, drumset etc.

For many years, I have counselled students in regard to receiving “noise nuisance” letters and have advised ways and means to practice the Drumset without causing undue stress for family and neighbours.

Nevertheless, the receiving of a “noise nuisance” letter in its current form is one that has created stress, family quarrels, neighbourhood disputes and in so many cases the young student simply giving up the instrument.

I am sending you the the following booklet as prepared for Mayor Caruana (revised September 2009) in the hope that you can lend support for the reforming of what is perceived to be a “Standard Process” of sending “Form Letters” to music students simply “doing their homework” and the divisive and negative impact these types of procedures cause the student, their family and the resulting deterioration of neighbour and community relations.

It is my hope that widespread support for these reforms and a spirit of collective teamwork from the music teaching community will bring better understanding and a community awareness of the needs of young students who are learning a musical instrument.

Young music students need encouragement, understanding and a respect by those around them to the right to practice their chosen instrument, especially if that instrument is one that has sound that projects beyond the boundary of the practice room at times.

I intend to make available information, case studies, tips and advice on my website and am currently waiting for material from the City of Hobsons Bay to incorporate on upcoming episodes of “Melbourne Musos”. (Melbourne Musos episode 287 aired 2005)

I also would appreciate receiving any case studies of your own experiences and the passing on of this booklet to any relevant local organisation. Your help and support would be greatly appreciated.

In closing, I also attach here a letter I have sent to the Councillors of Hobsons Bay City Council raising the ongoing issues and concern of Council procedures in regard to Music Student's Rights to practice and the Teachers rights to teach them.

Yours Sincerely

Chris Quinlan f.dip.a
Creator/Author MMDC Drumset Curriculum and Books
Producer Melbourne Musos TV Show (musical education program)

For attention:
The Honourable Councillors
Hobsons Bay City Council
Po Box 21 Altona 3018

Dear Honourable Councillors

My name is Chris Quinlan (f.dip.a), I have been a Music Teacher since 1978, teaching Drums and Guitar in Secondary Schools and also in my Home Based Teaching Studio in Seabrook since 1996. I am also the producer of the Channel 31 Community TV Show "Melbourne Musos".

I am writing to you in regard to ongoing concerns of Council procedure towards noise complaints in regards to Music Students practising their Instruments, Home Based Music Teaching Practices and the way in which issues with neighbourhood sounds are dealt with by Councils.

I have recently received a letter from your Environmental Investigations Officer in regard to complaints about sound emanating from my Studio. It deeply concerned and upset me.

My reply to this letter raises issues that I find particularly concerning for all.
These issues are:

- 1) Factual inaccuracies.
- 2) Surveillance and Privacy Issues
- 3) Home Based Businesses continually being re-evaluated by Council to the point of Harassment.
- 4) The continual demand to upgrade despite all efforts to naturally insulate and attenuate the premises (inside and out) over 13 years of occupancy, with screening hedges and trees being destroyed by new neighbours.
- 5) Legal ramifications for the Council if actions are taken on claims proven to be inaccurate or past claims now proven to be false are again referred to as a reason for further investigation.

6) Moral and Legal Ramifications if “*Site Visits*” undertaken by Council Officers and “*Log Books*” kept by Complainants breach the privacy of the Child and Parent present in the Music Lesson, this, when the teaching practice has abided by all “Working with Children” requirements in regard to personal record checks and “open plan” studio design.

7) Legal Implications that would decide a “**Course of Conduct**” if Council encourage complainants to “keep log books” of neighbour activity, contributing to what the Department of Justice refer to as “*loitering, surveillance, the frequency of these incidents and the overall effect of the behaviour*”.

To be bluntly short, the perception of Council condoned stalking and harassment.

I believe Council practices being used at present are still fraught with legal implications when Council “Noise Complaint” letters are sent to young students practising what is usually “homework”, and in this particular case, the repeated sending of letters to established Homed Based Businesses that have proven to be abiding by all regulations from the local Council officer to the Mayor, yet still come under scrutiny if a new and sometimes vexatious neighbour decides to complain about a distant musical sound that had not been a cause for complaint in the past by other neighbours. (i.e. First Occupancy Rights)

I also attach a paper I wrote in 2005 called “**The Right to Play**” which was written with consultation from Hobsons Bay Planning Liaison officer Michelle Rowe before being presented to Mayor Renee Caruana when they both visited my Studio and Home to discuss ways and means to streamline Council procedures towards noise complaints. We agreed that meeting was positive and forward thinking.

I hope this letter serves to raise awareness that, four years on, there are still serious issues that need to be resolved in this area.

I personally believe that any area of concern that may come from Children playing Music and the Teachers who teach them should be handled in a completely different way with a completely different Department rather than just bundling everything and everyone considered a “*Noise Nuisance*” into the same complaint folder as a Hoon doing donuts around Cherry Lake or a Brick Cutter churning away on the back of his ute at 6am trying to make his deadline to avoid a non-completion penalty.

There may well come a day that the parents of a music student who regularly practised their instrument until a Council Noise Nuisance Letter destroyed their confidence, will take legal action and win. For everyone’s sake, I pray that never happens; we only need to remind ourselves that to enter Hobsons Bay from the City, we have to now drive past newly installed razor wire on the Westgate Bridge do I have to remind anyone as to why that was installed?

I intend to raise further awareness of these issues through my television show in the coming weeks as I have done in the past with Mayor Caruana and Michelle Rowe’s acknowledged help. (i.e. Melbourne Musos episode 287 May 2005)

Yours sincerely
Chris Quinlan f.dip.a

ANNOYED BY NOISE?

A critique of the EPA Victoria pamphlet "Annoyed by Noise?"

EPA Publication 406.3 released October 2008



The EPA Victoria pamphlet "Annoyed by Noise?" provides many helpful tips and advice regarding typical neighbourhood sounds such as factory noise and domestic noise such as lawn mowers, power drills, vacuum cleaners, air conditioners and the like.

It also provides a list of decibel levels of everyday life from breathing (10db), normal conversation (60db) to a jet aircraft taking off (140db) as well as many helpful tips regarding amicable resolutions between neighbours in regard to any concern relating to sound.

Whilst "Annoyed by Noise?" is a professionally produced and helpful pamphlet released by EPA Victoria; the pamphlet does not make any distinction between the typical daily sounds of a Community and the sound of Music Students practising an Instrument.

This failure in distinction is the pamphlet's most serious flaw, both with its advice and the concerns of the **legality** of that advice when applied to music students practising and the music teachers who teach children in a home based business.

"Annoyed by Noise?" does not address any situation regarding music students practising and whether that student is under the age of 18 which would then involve legal areas within the criteria of "Working with Children" laws as set out by the Department of Justice. Neither does the pamphlet refer at any point to music students taking lessons with home based music teachers and that teachers home based business.

All areas are simply referred to as "NOISE". There is no distinction made between "NOISE" or "SOUND". To use the word "NOISE" is often seen as a grave insult when referring to someone playing a musical instrument and especially if used towards young music students, could well be considered abusive and an offence if seen as a breach of current "Working with Children" criteria.

The entire pamphlet takes a view entirely from the perspective of the person who is "annoyed". Whilst this view is delivered in a reasonable manner, the pamphlet fails to address issues such as complaints that could be deemed "vexatious" or "pernicious" based on guidelines set out by the Dept. of Justice.

Neither does the pamphlet take into account that advice given on page 5 “*Help from police or council*” referring to “keeping diaries” of neighbours activities, could have *serious legal implications* which have raised concerns both with the Department of Justice and the Office of the Victorian Privacy Commissioner in relation to what could be considered a “*Course of Conduct*” in regard to Stalking and Harassment, especially when it is diaries being kept of children practising music.

The keeping of “*Noise Nuisance Diaries*” commonly has the effect of complainants focusing on “*any musical sound at all*” coming from a source thought of as annoying by that person whether it would be considered a nuisance or not.

To summarise, “Annoyed by Noise?” fails to take into account the legal ramifications of the following:

- 1) If the “noise” is actually a music student practising a musical instrument, which could then fall into criteria set out by “Working with Children” as defined in the Working with Children Act 2005; the one act of law “*Annoyed by Noise?*” **does not quote from** or even cites as a reference.
- 2) The reference on page 4 citing that “*Residential noise may be unreasonable at any time of the day*” is considered by many as being “*unenforceable*” and “*contrary*” to current Council building requirements and policies of multi-floor apartments et al. and is also prone to sometimes vexatious and pernicious complainants.
- 3) To call a music student’s efforts as “Noise” being considered abusive based on “Working with Children” criteria if used by teachers in any Primary or Secondary School.
- 4) “*Noise Nuisance Diaries*” and subsequent Council action based on these Diaries create serious legal implications that could be considered a “*Course of Conduct*” by a Magistrate in regard to stalking, harassment and the overall effect of the behaviour, especially if it is a child under 18 being surveilled.
- 5) Legal ramifications for the Council if actions are taken based on claims later proven to be inaccurate, fraudulent, vexatious or pernicious.
- 6) Legal ramifications for complainants and councils if actions such as diary entries, letters warning of fines containing strong legal language pertaining to music students practising breach Working with Children guidelines and legal requirements.

Whilst “Annoyed by Noise?” is helpful in areas pertaining to typical community sounds such as lawn mowers, construction noise, factories and home handymen using power tools; the complete absence of any distinction between these sounds and students practising music and the music teachers who teach them serve to make many areas of the pamphlet fraught with legal implications.

Any council deciding to deem music teaching and music homework a “noise nuisance” based on a complainants “*Noise Nuisance Diary*” could well be construed as breaching various privacy laws pertaining to Stalking and Harassment based on current “Working with Children” criteria as set by the Department of Justice and legal tenets set by the Office of the Victorian Privacy Commissioner.

“Annoyed by Noise?” quotes many sections of law applicable to Environment Protection as applied to “noise”.

**Nowhere, does it quote from the
Working with Children Act 2005 or the Child Well-being and Safety Act 2005.**

It does not refer at any point to the use of strong legal language when applied to children (noise, noxious, nuisance etc), the subsequent effect of this type of language used toward children which would be considered abusive when applied in any other situation, especially in an educational environment.

In conclusion, the legal implications for the EPA and any Council using criteria set out by the pamphlet “Annoyed by Noise?” without first addressing its use as applied to children and the Working with Children Act 2005 face legal implications at their own peril.

For the EPA and Councils to deem children studying a musical instrument and the teachers who teach them as noise nuisances in the same manner as lawn mowers, construction sites and barking dogs creates a perception of a **lack of moral responsibility**.

To quote from many legal sources yet completely disregard the most important acts of law pertaining to music students (**Working with Children Act 2005 and the Child Well-being and Safety Act 2005**) is a critical flaw of “Annoyed by Noise?” and as such, the EPA has a responsibility to immediately amend this document according to guidelines set by the Department of Justice, especially when councils act on suggestions advising complainants to keep “noise nuisance diaries” and use legal jargon in letters that would be considered abusive when aimed at any child simply pursuing musical studies.

Chris Quinlan f.dip.a
23rd September 2009

DECIBEL LEVELS (DB)

Decibels are units in which to measure sound from soft to loud; The “Annoyed by Noise?” pamphlet provides a graph on the 2nd page in relation to everyday sounds from the threshold of hearing (0db) to a Jet Aircraft taking off (140db). The following is a reprint of page 2 of “Annoyed by Noise?”;

140 - JET AIRCRAFT TAKING OFF
130 - THRESHOLD OF PAIN
120 - AMBULANCE SIREN
110 - CHAINSAW
100 - JACKHAMMER
90 - LAWNMOWER
80 - POWER DRILL
70 - VACUUM CLEANER
60 - NORMAL CONVERSATION
50 - QUIET CONVERSATION
40 - REFRIGERATOR
30 - QUIET BEDROOM
20 - STILL COUNTRY DAY
10 - BREATHING
0 - THRESHOLD OF HEARING

Whilst the EPA deem the above information important enough to place the graph on page 2 of its pamphlet; In the 35+ years I have been playing and teaching the Drumset, I have never once seen or have been told of a Council Officer arriving on the site of a Noise Complaint with a decibel level meter to responsibly gauge the sound level of an unamplified musical instrument that “projects”, such as a trumpet, saxophone or drumset.

All findings are seemingly based on the perceptions of the attending council officer, forming or basing Council actions on personal opinions and as at that time, unsubstantiated “Noise Nuisance Diaries” provided by the complainant.

Based on advice researched and received from the Department of Justice and the Office of the Victorian Privacy Commissioner, this process is fraught with legal complications and susceptible to bias, abuse and prejudice.

When these actions impact on music students under the age of 18; the legal ramifications for Council and the Officers representing them can be serious if letters are sent with the aforementioned wording as well as denying the parents of the child any right of reply or defence, this situation then creating serious social and further legal issues in regard to moral and social responsibility, which would be considered well beyond the scope of any perceived concern about sound emanating from a music student’s instrument.

DECIBEL LEVELS AS APPLIED TO A MUSICAL INSTRUMENT THE DRUMSET

The following decibel level measurements were taken by Chris Quinlan at his studio between 3 and 3.15pm Tuesday 22nd September 2009.

Chris Quinlan's student Melissa Lowndes was attending a drum lesson and practising her studies at Grade Eight Drumset level (tertiary level). Melissa played at a normal drumming level throughout the readings and signed and dated the original copy.

Chris Quinlan's studio is his normal workplace environment, as seen on the "Melbourne Musos" TV Show. The Studio is 6m x 6m and conforms to all Council regulations as to the building and its use. It is an "open plan" studio with parents of students openly invited to sit in with chairs, magazines provided.

The studio would be used by other occupants as a "Rumpus" or "Theatre" room. It could also be seen as a double garage, the design and materials are as used by Real Estate Agents as the office walk through when viewing Display Homes albeit with extra soundproofing.

Many lessons are on practice pads, implements other than the typical drumsticks are used to soften sound such as wire brushes and felt mallets. Much of any music lesson is the writing and explaining of material by the teacher and the majority of lessons are accompanied with the parents reading a magazine in the open plan studio which is now all but a legal requirement when working with children.

The sound volume of the drums is rarely louder than a teachers voice in a lesson. When it is, it is always within the prescribed time restrictions and the reason when the Drums **are** louder than the teacher's voice (but not loud enough for a parent to leave) is that a student is either playing a final performance before an assessment or preparing for a music examination which is now an expectation of most secondary schools if a student wishes to pursue VCE music or further tertiary studies.

Reference decibel level:

Average human speaking voice = 60-70 decibels

Readings for Drumset:

Indoor Readings:

At Drumset: 84 db

Next room, study door open: 70 db

Living Room, doors open: 60db

Front room (opposite end of house), doors open: 54db

Outdoor Readings:

Studio Windows and Doors closed:

Directly behind Studio window where drums are situated: 68db

At fence pointing toward Studio Door: 62db

Other side of Studio at Brick Wall: 58db

Standing at fence opposite next door kitchen window:

negligible readings peaking at 50 db; meter unable to read at lower levels,

passing traffic registered higher at 70+db.

Summary

The above results plainly show that the drumset played at a “normal” level **does not exceed** the decibel level of the human voice based on readings outside the confines of the studio and within the perimeters of the property. The sound of a drumset outside of the studio door is equivalent to two people having a conversation in a courtyard according to Decibel levels provided by the EPA.

Add to this the distance from the bordering fence to any adjoining property and the perception of “noise” would be further negligible; with the addition of any natural insulation such as screening hedges, trees and shrubbery as suggested in various Council pamphlets in regard to Houses situated on busy roads etc; any cause for complaint would be rendered either inconsequential or “spurious” (legal term for “not genuine”).

Therefore, based on these findings, some complaints and perceptions of music students practising may well fall into the category of **prejudice**.

THE DRUMMER

Probably the most common misconception of the music student who plays the drumset is that he or she resembles some kind of Neanderthal resembling “Animal” on the The Muppets TV Show. “Drummer Jokes” are as common in the Music Industry as “Irish Jokes” are in general society.

In 1997, whilst writing for a national Music Magazine, Music publishers “Koala Publications” released a book of “Drummer Jokes”; each page had an illustration of a Gorilla with mucous coming out of its nose along with some lame joke referring to drummers as idiots or less than human.

These jokes whilst initially a bit of fun, eventually became so pervasive that it served to erode the confidence of many colleagues and students and often caused friction in bands and ensembles; the detrimental effect of the release of this book escalated to the point that I simply posed a question in my monthly column of Mixdown Monthly

Would this book be published if the word DRUMMER was replaced by the word “BLACK”?

The perception of “living next door to a drummer”, I believe, is based more on social folklore, social stigma and prejudice rather than any perceived problem with sound. I have often stopped to wonder if drummers and the perception of drummers are victim to some kind of pervading “social racism” or “ostracism” when once reading through a “Noise Nuisance Diary” kept of my teaching practice by an unknown complainant some years ago.

Entries such as “*Loud drumming - Wednesday 3pm*”, knowing full well that the particular day was a warm spring Melbourne afternoon, teaching a young student while three lawn mowers were in full swing nearby, my next door neighbour’s two daughters were splashing and screaming in their pool and all the mums were picking up their kids from the local primary school around the corner on the busy main road.

These kinds of entries, and the subsequent actions by Councils, quoting various by-laws without first taking accurate decibel readings (at any stage) nor collecting all sides of a story when dealing with neighbourhood disputes (as is basic procedure for the police), only serves to confirm a clear perception of some kind of underlying “course of conduct” as to the treatment of music students and a culture of behaviour which could be perceived as endemically prejudicial throughout local government.

THE COUNCIL LETTER IN REGARD TO MUSIC PRACTISE

The following letter had been sent by The City of Hobsons Bay in 2005.

Confirmation that letters similar in content and tone were sent by all Councils in relation to the case studies on the following pages. These letters were sent without any confirmation or regard to the age of the music student in question.

During research undertaken in 2005, whilst in discussion with a Council officer of the City of Hobsons Bay in relation to the appropriateness of sending letters like the following to children, the officer simply replied that the Council sent them to the parents, and in that regard, the Council was seen to abiding by legal requirements.

I informed the Council officer that if wording contained in the Council letter were used in the profession of teaching, such as in a class, school report or assessment in a musical examination, whether it be directed to *“anyone”* in relation to the student, that letter would be considered a breach of all existing regulations in regard to child welfare as applied to any educational environment, whether it be a primary or secondary school or any assessment body providing musical examinations.

The council officer did not respond to this. I make comment here that the officer's silence was the loudest part of the discussion and the most telling to this writer.

In a subsequent meeting with Mayor Renee Caruana of the City of Hobsons Bay in 2005, Mayor Caruana agreed with this position and immediately ordered a rewriting of Council form letters dealing with this issue.

It is not known if other Councils have followed suit or subsequent changes in Hobsons Bay Council and personnel and procedure have acknowledged and/or applied revisions to procedures as Mayor Caruana plainly saw as a concern and requirement in 2005.

It is not known if the City of Hobsons Bay contacted “Ombudsman Victoria” in regard to Mayor Caruana's instruction to amend Council Policy, or in relation to government agencies and their role in the process of Council letters being sent to Students playing a Musical Instrument.



Hobsons Bay
CITY COUNCIL

Dear Sir/Madam:

ALLEGED NOISE NUISANCE

Council's Public Health Unit has received further complaints regarding excessive noise emissions due to drums being played from the above premises causing a disturbance to the complainant.

As you are aware Section 48A of the Environment Protection Act 1970 makes it an offence to create unreasonable noise on residential premises at any time of the day. Noise is defined as being unreasonable if it becomes audible in a habitable room of a neighbouring house during the prohibited times as prescribed under Environment Protection (Residential Noise) Regulations 1987.

The Health Act 1958 also makes it an offence for a person to cause a nuisance or to knowingly allow or suffer a nuisance to exist or emanate from any land owned or occupied by that person. The Act defines a nuisance as any noise or emission, which is, or is liable to be dangerous to health or offensive. Offensive means noxious, annoying or injurious to personal comfort, which may be liable to heavy penalties.

The complainants have been requested to keep a written record of the noise and how it affects them and to submit the record to this Unit for assessment.

Should you be creating unreasonable noise you are required to ensure that in future no noise nuisance is caused or emitted, otherwise Council may take further action.

If you require any further information or wish to discuss the matter please contact

Yours sincerely

Team Leader Health and Environment

LEGAL TERMS USED IN THE COUNCIL LETTER

**NOISE
NUISANCE
COMPLAINTS
EXCESSIVE
DISTURBANCE
OFFENCE
UNREASONABLE
PROHIBITED
SUFFER
DANGEROUS
OFFENSIVE
NOXIOUS
ANNOYING
INJURIOUS
HEAVY PENALTIES
WRITTEN RECORDS WILL BE KEPT
COUNCIL MAY TAKE FURTHER ACTION**

WORKING WITH CHILDREN CARD AND CHECKS

A requirement for all people dealing with children.

The following is sourced from the relevant quoted government websites detailing current requirements by people whose work involves dealing with Children; their legal responsibilities and requirements.

Working with Children Check Website

source: Department of Justice website: <http://www.justice.vic.gov.au>

The Working with Children (WWC) Check is an initiative of the Victorian Government and is administered by the Department of Justice. The WWC Check helps to protect children from sexual or physical harm by checking a person's criminal history for serious sexual, serious violence or serious drug offences and the persons history with specific professional disciplinary bodies for certain findings. The introduction of the WWC Check creates a mandatory minimum checking standard across Victoria for adults to engage in child-related work as defined in the *Working with Children Act 2005*.

Children

The Working with Children Check is one of a range of government initiatives designed to assist to protect Victoria's children. For other information about child safety initiatives, visit the Victorian Government's SAFETYvictoria website and the Child Safety Commissioner's website.

The government's SAFETYvictoria website covers a range of important topics relating to children and safety, including:

- safety around animals
- safety during hot and cold weather
- safety in the car
- **safety around the home**
- safety and water
- safety on the street
- **dealing with a child's emotional well-being**
- preventing injuries
- information about Sudden Infant Death Syndrome (SIDS).

Photos and Surveillance

source: <http://www.privacy.gov.au/topics/surveillance>

There are Commonwealth, State and Territory laws that relate to taking and using images of a person without their permission, or recording their conversations or movements.

Which law applies will depend on the circumstances, in particular:

- where the surveillance occurred or the photos were taken
- what was being monitored or photographed
- who was responsible for the surveillance or images.

Education and child care

Most child care centres, private tertiary institutions and private schools are subject to the Privacy Act.

CHILD WELL-BEING AND SAFETY ACT 2005

source: <http://www.legislation.vic.gov.au>

excerpt from ... **Part 2—Principles for Children** Child Well-being and Safety Act 2005

... No. 83 of 2005

..... (d) to promote continuous improvement in the quality of those services, based on the best available knowledge of the needs of children and their stages of development.

(3) The providers of services to children and families should—

(a) protect the rights of children and families and, to the greatest extent possible, encourage their participation in any decision-making that affects their lives;

(b) acknowledge and be respectful of the child's individual identity, circumstances and cultural identity and be responsive to the particular needs of the child;

PART 2—PRINCIPLES FOR CHILDREN

(1) The development and provision of services for children and families should be based upon the fundamental principles that—

(a) society as a whole shares responsibility for promoting the well-being and safety of children;

(b) all children should be given the opportunity to reach their full potential and participate in society irrespective of their family circumstances and background;

(c) those who develop and provide services, as well as parents, should give the highest priority to the promotion and protection of a child's safety, health, development, education and well-being.

CASE STUDIES OF COUNCIL ACTIONS TOWARDS MUSIC STUDENTS

All Case studies are true and verifiable, either written by the Student themselves or related to the author.

Case Study One

John S - inner Melbourne suburb

Dear Chris

I am writing this letter to inform you about my experience with my local council regarding playing drums.

The first time my local council contacted me about playing drums due to "noise pollution" was via a letter. In this letter, they informed me that someone in my neighbourhood had made a formal complaint about how loud I was playing. If I continued to play the drums at the same intensity, I would face and have to pay a ten thousand dollar fine, (\$10 000). I found this to be completely outrageous.

When I received this letter I rang my council and asked them a simple question: "Has anybody from the council conducted any noise pollution tests to see at what level I was playing?" Their response was, "No". My next question was, "Then how can the council send a letter about fining me with no evidence?"

As a result of this, a time was organised for someone from the council to conduct a suitable noise pollution study. I thought this was fantastic. The council to complete an actual study on "noise pollution."

However, when a council worker came to my home, he did not have any equipment with him. All he asked of me was to simply play the drums and he will listen and judge himself if the musical volume was within reason. Then he would either give me a green light to continue playing at that level, or I would have to adapt and make some changes to my musical instrument.

This test was completed in a total of 1 minute, and I was able to continue playing at the same normal volume. The problem that I had with this process was, I was sent an incredibly nasty letter from the council. But when I made an inquiry about it, it seemed as though their letter was a simple threat designed to make this type of situation go away.

Regards
John S

Case Study Two

Dominic and Charlie - Melbourne western suburb

Dominic and Charlie, young teenage students who learnt drums and guitar respectively, were sent a Council letter warning of hefty fines in the thousands of dollars, if the “noise nuisance” from their house did not stop.

The family were shocked and angry as no-one had knocked on their door or contacted them at any time regarding their practising; the complainant had simply contacted the council and they in turn sent a form letter warning of heavy fines into the thousands of dollars.

Their parents (English being their second language) became deeply upset, due to the difficulty in understanding the official tone of the letter, only the hefty fines stated. This letter caused friction with the family with the two young lads having to fight to continue practising.

More confusing was the fact that the family knew of two other drummers in the street and found neither had received any complaint. They thought maybe it was a case of “mistaken identity”, but the Council continued sending letters, despite the fact that their practice times were well within the time guidelines stated by the council (mostly Saturday afternoons).

The boy's father then canvassed the street to try to find the complainant and a solution, he found that the complainant was the next door neighbour whom they thought a friend having invited he and his family for dinner and barbecues.

The complainant was a motor mechanic who would often work on cars late into the night in his driveway, right next to Charlie's bedroom window, infringing Council approval, nothing had ever been said by Dominic and Charlie's family. A long argument developed and the threat of informing the Council of the complainant working on cars until midnight most weeknights quickly stopped the complaints.

The Council did not at any time come to Dominic and Charlie's house to verify the complaint or check the mechanics breaching of Council guidelines as regard to his mechanical work on cars and trucks.

Case Study Three

Robert - northern Melbourne suburb

Robert, a gifted guitar student learning the instrument at a prominent North Suburban College, involved in the school rock band program and school big band, would practice in the family garage converted into a small music space and sound insulated by his father.

When the family received Council Letters warning of thousand dollar plus fines, Robert asked his Guitar Teacher for a "reference" stating that his practice was needed for his school studies as he was preparing for an upcoming Music examination; his teacher was happy to support him.

Robert's guitar teacher sought Council information whilst drafting the letter; When ringing the Council office concerned and introducing himself as "seeking information about times for music practice"; the Council officer said words to the effect of ...

"... If you can tell us the address of the kid playing music, we'll send a letter and that usually shuts them up".

When the guitar teacher stated that he was Robert's tutor seeking the relevant Council By-laws, the Council officer's tone changed dramatically.

Robert's father used the letter and information gained to petition the street in an effort to find an amicable solution and suitable practice times for his son. Most of the street found no problem with Robert's practice times and signed the petition; Robert's father then sent the letter and petition to the Council.

A few weeks later, the guitar teacher received a phone call from the complainant; a long argument ensued where the complainant became abusive and racial slurs were used against the Robert and his family; it became clear that the complainant simply started complaining to Police and Council about any "neighbourhood sound", be it a dog barking, a lawn mower or a car warming up. The teacher said he was sorry that he didn't use stronger wording in the reference he wrote for Robert. The guitar teacher duly reported this incident to the College and Robert's father who then informed Council. The Council stopped sending letters.

Twelve months later the teacher received a phone call from a Senior Sergeant of the Internal Affairs Department of the Victorian Police. The complainant had been charged with assaulting Police as they were attempting to resolve another spurious noise complaint; The Senior Sergeant was building a case on behalf of the Officers involved.

The following cases concern home-based teaching practices.

Case Study Four

Chris - Western Melbourne suburb

2001 - Chris is sent a letter by a Council officer regarding loud drumming, the letter warning of hefty fines and legal proceedings. Chris is surprised at receiving the letter as nobody had come to him personally and his teaching practice conformed well within approved council times; He rang the Council Officer concerned for clarification.

During the course of the phone conversation it was found that the time the drumming was alleged to have been a nuisance occurred when Chris was not at home.

Subsequent enquiries found that the complainant was selling his house in the nearby court. Evidence gained, suggested that the Complainant or his Real Estate Agent may well have made a false report in order to "shut the drummer up" while selling his property.

Both Chris and the Council officer discussed the possibility that this situation may well constitute a fraud toward the Council and harassment toward Chris. It is unknown as to whether charges/fines were laid upon the complainant making a false complaint and wasting Council's time and money.

Chris' teaching practice was deemed to be abiding by Council guidelines upon inspection by two Council officers.

Case Study Five

A Council Officer contacted a local home based music teacher to inform him that complaints had been received in regard to “loud drumming” on his premises. No complainant had ever contacted the teacher directly regarding his teaching practice.

Upon visiting the home studio, the attending Council officer confirmed that the teaching practice conformed to Council guidelines; she informed the teacher that “records” were being kept of “noise” and would forward them on when received.

Before receiving these records of alleged times of noise nuisance from the complainant, a second letter was sent to the teacher stating that he had failed to meet the requirements of clause 52.11 - Home Occupation.

The letter went on to say that the implementation of measures to reduce noise emissions must take place within 28 days with a suggestion of relocating the home business with the threat of fines (\$1000 for business) and the inclusion of the following: ... *“Prosecution in the Magistrates Court, where a maximum penalty of \$120,000 with provision for a continuing daily penalty of \$6000 per day if the breach continues after conviction.”*

The teacher urgently sought the records of alleged times he was expecting instead of this second letter. The teacher also expressed his extreme disappointment at receiving this type of letter without any verification of times or right of defence.

The records kept by the complainant, when compared to the teacher’s diaries of student times, contained many inaccuracies and misleading entries, the teacher was not at home for one recorded entry.

A meeting was then organised between the Teacher, the Council Officer and the Councillor in charge of his particular Council Ward in an effort to improve the current situation of letters arbitrarily sent without first mediating or verifying any alleged times of perceived “nuisance” by complainants.

The meeting was seen as a success, the original complainant finally contacted the teacher only by the urging of the Council and after lengthy discussion, the teacher agreed to fit insulation supplied by the complainant, with an understanding that this fitting would settle the matter. All parties believed the solution an amicable one.

Case Study Six

A Council noise nuisance letter, sent to a music teacher, the letter being delivered without mediation or verification of factual evidence. No complainant had come forward to directly contact the teacher.

The teacher immediately contacted the Council to express his dismay at the invasion of privacy with regard to “Noise Nuisance Diaries” being kept and his legal right to conduct a home based business when he had complied with all Council requirements.

During this phone conversation, the Council Officer used words to the affect “The Council has to be seen to be doing something” ... the teacher expressed his deep concern that what is actually happening is an infringement on rights to privacy i.e. Council-condoned-surveillance by a complainant and infringements to rights to conduct a home based business.

The teacher contacted a Board member of the Victorian Privacy Commissioner’s office who expressed concern over the situation, citing areas such as a) Privacy of personal behaviour b) Workplace surveillance c) Home Intrusion.

The next week, the teacher was contacted by the Council to arrange a meeting at his home with a Councillor and a Council Officer.

The teacher then contacted the Council for the written records that were being kept on his activities as stated in the Council letter; The teacher was eventually contacted by the Council’s Information Officer.

The Officer informed him that the records of the noise complainants log of drumming times were not available to him unless he filled out a “Freedom of Information Request”.

The teacher arranged to meet the Information Officer at Council Offices to obtain the relevant forms and seek clarification for this new situation of

..... a Local Resident having to fill out a Freedom of Information Request for a log of times of activity in his own house, being kept by an unknown noise complainant all seemingly with Council approval.

During this discussion at the front desk of the Council offices, the Officer in charge of Planning Liaison and Investigations entered and joined the discussion, agreeing with the teacher that it was his legal right to see these logs (if they existed)

The Information Officer later contacted Mr Quinlan to say that no logs of the said period of time had been received by the Council's Health and Environment Department, therefore it was seen that Council acted simply on a phone call from a complainant sending a letter warning of hefty penalties without waiting for any log book of times which the complainant failed to keep or deliver.

The teacher noted that if the Officer in charge of Planning Liaison and Investigations did not join the discussion, the Council would be in an untenable situation of ...

... not giving the teacher access to written records taken by an unknown complainant; Council then acting on unverified and unseen records being kept by the complainant, sending letters and fines to the teacher who would not be allowed to defend the allegations made against him.

This position seems indefensible.

Summary

In all of the above case studies, the following becomes immediately clear.

- 1) No complainant in any of the above case studies has attempted to simply knock on the neighbours door in an attempt for an amicable arrangement ... as suggested in the first paragraph on the Environment Protection Agency's (EPA) website article "Residential Noise" and the Department of Justice's "Tips for better Communication".
- 2) A "form letter" is immediately sent detailing Section 48a of the Environment Protection Act without any regard to the persons age, occupation or study requirements, these letters including warnings of hefty fines as a first resort rather than last; the fines themselves varying from Council to Council and an appearance that they are simply "made up" despite the letter's officious tone.
- 3) The form letter itself is not clear as to the exact wording of the clause nor makes clear the rights of the individual as applied to that clause.
- 4) Little or no attempt is made to verify the accuracy of the reported nuisance or to the complaint being "vexatious or pernicious". In many cases, letters being sent before any "Noise Nuisance Diaries" are received.
- 5) There is no guarantee that letters, fines and spurious complaints will stop despite the music student or teacher being the "Agent of Change" (i.e. being the person who implements sound control measures at his/her own cost).
- 6) Little regard is paid to who actually receives these letters detailing alleged breaches of noise emissions and the threat of hefty fines; in the majority of cases, young students of musical instruments usually playing within prescribed time limits.
- 7) There are currently no legal rights recognised in regard to "first occupancy rights" in cases where there has not been any "noise" issues in a suburban street until a new neighbour moves in nearby and immediately starts complaining.
- 8) Upon examination, Case Studies shown supports the belief that current procedures creates divisive situations with families and neighbours; with the current process also being possibly interpreted as a "**Course of Conduct**" as described by the Department of Justice.

Course of Conduct

When deciding “a course of conduct”, a magistrate looks at the evidence to determine if the following type of behaviour has occurred on numerous occasions:

Telephoning

Sending messages

Loitering near your house or workplace

Keeping you under surveillance

When deciding if this forms a course of conduct, a magistrate may take into account:

The seriousness of each incident

The frequency of the incidents

The overall intended effect of the behaviour

(Information supplied by Department of Justice/Dispute Settlement Centre of Victoria)

... as applied to Noise Complaint procedures:

If a noise complaint is made and letters threatening fines and “records being kept” are sent without first verifying the complaint and attempting to mediate an amicable solution; the following type of behaviour could be seen as “a Course of Conduct” sending messages, surveillance, frequency and overall intended effect of the behaviour.

These being areas a Magistrate would take into account if a claim is made by the victim of a vexatious or pernicious complaint if the Council proceeds with action without due rights of defence being given to the victim of these complaints.

In all of the case studies, the musical instruments were being played well within the prescribed times of 7am to 10pm. The main source of complaint being that the instrument could be heard in a “habitable room”.

The fact that on any given afternoon in a habitable room, you can hear lawn mowers mowing, cars passing by, children playing in their backyard, nearby residential development construction, a son or daughters stereo in their bedroom, leads to a conclusion that there is a perceived prejudice toward the playing of musical instruments, especially those that have sound that projects at times, such as the trumpet, the saxophone and the drumset.

Council zoning and residential plans also add ever closer proximity between neighbouring properties all adding to less privacy and more general noise; this is not a criticism within itself, however, there is a definite case of "buyer beware" if somebody moves into a property situated on a busy street or next to a popular local hotel and expects the same peace and quiet to be found on a country acreage.

Issues for Discussion

First Occupancy Rights

In the case of Chris in 1996, his studio rear window gave a clear view to a nearby Creek, parkland and the Melbourne city skyline. The court now situated behind him did not exist; In 2005, he is surrounded by two-story houses.

The years from 1997-2000 were taken up with constant construction of these dwellings; Chris, working “afternoon shift” teaching hours made no complaints of their construction noise constantly interrupting his work, sleep and leisure times during this four year period.

The closest neighbours to the side and directly behind Chris have never found a problem with any noise emanating from his property, indeed it is acknowledged by one neighbour that “my children playing in the swimming pool are louder than Chris”.

Problems only arose upon the construction of the two-story buildings that now completely overshadow the rear of Chris’ property.

Written Records

If Chris did not have detailed records of student times and his own music practice and television show production, he would not have been able to mount any defence against the complainant’s allegations; he would have faced Council fines and the possible closure of his home based business. When Council tells complainants to keep a log book of times; this creates a perception that **any sound at all** coming from the site will be logged, destroying any possibility of civil relations.

Mistaken Identity

When there is more than one sound source (example: two musicians living in close proximity) ... Complaints may well be made toward an innocent party.

During Chris’ 2001 incident, he made the Council officer involved aware that he was not at home during the alleged noise nuisance; also bringing it to his attention that there was another drum teacher in close proximity; Mr. Quinlan made it clear he would be defending the allegations strongly; it is not known if this new information was investigated.

In the case study of Dominic and Charlie, two other drummers and one other guitarist lived in the same street, in the same block why were the two young lads singled out?

One has to wonder in how many cases has a fine been imposed on an innocent party because that party didn't keep records of practice times?

In how many cases has a music student given up his or her instrument because of the stress of noise complaints and pressure from neighbours?

How much time, stress and money would be saved by all parties if the complainant simply knocked on the neighbour's door in an attempt for an amicable arrangement?

Sound Insulation

Sound travels in various ways and is subject to many conditions including weather/wind conditions. House Insulation (walls, curtains, etc) Outer Insulation (walls, trees, foliage, hedges) all help to attenuate noise; however, they can also cause confusion as to the source of the noise.

The first drumset frequencies to disappear through insulation and distance are the higher sounds of the cymbals and higher pitched drums. What is left is the lower frequency sounds, usually the bass drum. A distant "oomph-oomph" may not be the drummer two doors down, it could be the other drummer four houses up across the street; or the loud stereo in the house situated in the next court.

It is a well known fact that during the Melbourne Formula One Grand Prix, sound seems to come from different directions to where the race is held due to the bouncing of sound from city buildings. If a complainant is told that written records should be kept, then the complainant hears a distant musical sound on a mid-Wednesday afternoon amongst the sound of lawnmowers and peak hour local traffic (as was one entry recorded in Mr. Quinlan's case study) how can an accurate record be possible?

The current approach of making complaints without first attempting an amicable solution and the sending of letters without proper investigation sends a clear perception to the community of a lack of awareness and respect of people's rights and in the case of young children and teenagers studying music ...

.... a clear lack of moral responsibility.

A typical drum student's story

When a young student decides on studying drums; it is often quite a job to convince parents to have a drumset in the house; more so than any other instrument. An early test of persistence and patience on behalf of the drum student.

Having convinced the parents to arrange drum lessons; the first months are usually spent practising on a rubber practice pad. Using this type of pad usually renders any hand exercises inaudible outside the practice room. The drumset is the only instrument you can practice without actually having one, however, after approximately six months, a drumset is needed for continuing study.

By this time, the family knows whether learning is a passing fad or a serious commitment. Money is saved for a basic drumset; the parents want to make sure practice is regular and their teacher advises them on a good quality drumset.

The drumset is purchased and the student can now put into action the routines learnt on the "silent" rubber practice pad. It is at this point the neighbours are usually aware that they have a drum student in the neighbourhood.

Quiet Practice Routines

The teacher will advise the student of various practice routines to minimise not only sound "emanating from a property" but also ways in which to practice at safe decibel levels for their own hearing protection.

The use of brushes or felt mallets are advised when practising "around the drums"; rudiments are practised on a rubber practice pad and "full practice" with sticks at an agreed prearranged period and time ... **at this point the story can take two paths.**

Happy Path

Neighbours recognise that the young student is bettering themselves by learning music and in so many cases, encourage and nurture their young neighbour and enjoy hearing their progress.

If there is a problem with practising at inappropriate times, there is a simple knock on the door or a chat over the fence and an arrangement is made to practice at specific times or perhaps some insulation is installed.

Most people understand that to succeed in music or sport you need to practice at least thirty to sixty minutes every day.

Sad Path

Neighbours hear drums in the distance, it is annoying and decide to make a complaint to the Council, the Council sends a typical form letter detailing the noise is to stop under penalty of fines into the thousands of dollars.

Sometimes the neighbours approach the student and family in a confronting way, immediately causing friction and a breakdown in communication, then ringing the Council.

The quickest way to demoralise a young student is to call something they love to do, rubbish or noise. In the case study of Robert, the complainant was eventually charged for assaulting Police, he was abusive and violent to all concerned.

First paragraph of a Council Form letter

(note that this is a first contact letter, no neighbour had come forward to attempt an amicable arrangement; no Council officer had come to the area to first investigate the validity of the noise nuisance claim.)

“Alleged Noise Nuisance at (insert address here)”

Council’s Public Health Unit has received complaints regarding excessive noise emissions due to drums being played causing a disturbance to the complainant.”

*.... the remainder of the letter uses the words
noise, nuisance, offensive, noxious,
annoying, injurious, heavy penalties, unreasonable,
written records will be kept ... may take further action.*

.... signed “Team Leader Health and Environment”

In another context, if any parent heard those words used toward their son or daughter in a neighbourhood street or in a school report

What consequences would there be towards the person making those remarks?

School teachers, Music Examiners and any Child Carer are fully briefed in approaches toward a student's studies; the tone of a typical Council noise nuisance letter in the case of the recipient being under the age of eighteen would be seen as completely inappropriate.

The officious tone of the letter also gives a clear perception of attacking the person, not the problem.

Working toward a Solution

There is a consensus that there is no inherent problem with Section 48a of the Environment Protection Act and the Prohibited times as stated by the EPA. However there are **widespread concerns of the current handling of these disputes.**

Current procedures have seemed to only exacerbate the dispute into a nasty neighbourhood conflict with "nasty letters" being sent to young students as a first resort rather than last.

Although there has been talk of sound measurements being taken in the Case studies provided, **no decibel level readings** have been taken at any time before letters have been sent. In all of the case studies, **procedures by Council are perceived "to be escalating the disputes" by all parties involved.**

The first paragraph of the Environment Protection Agency (EPA) booklet entitled "Residential Noise" is ... quote

"The best approach for dealing with noisy neighbours is to talk to them and work together on a solution to settle the problem."

This approach is also the first piece of advice on the Department of Justice' "Tips for Better Communication" Information Sheet.

In so many cases, this has seen to be the best and most amicable solution.

New Procedures for discussion

A standard worksheet is developed, detailing procedures and Information Booklet/Website with relevant information from EPA, The Department of Justice and the Victorian Privacy Commissioner concerning legal rights and obligations.

- 1) The complainant required to initiate amicable and reasonable contact and a possible amicable arrangement before any Council can become involved (saving much time and rate payer's money)
- 2) If unsuccessful, a second step to initiate a meeting with a Qualified Council Mediator present.
- 3) The Council's representative thoroughly checks the complaints for possible inaccuracies, vexatious or pernicious claims in accordance with the legal rights of all parties concerned.
- 4) Record keeping of alleged noise nuisance times only being requested by a Council after due process is unsuccessful, with reportage by a complainant accompanied with a statutory declaration ... and subject to a complete legal check and consultation with the Victorian Privacy Commissioner regarding Invasion of Privacy and Harassment Issues.
- 5) The protection of a student's right to practice a musical instrument and the Home-based business' right to continue operation without continuing harassment if found not to be a nuisance.
(The issuing of an official letter to the student or business.)
- 6) Letters warning of fines only sent as a last resort after continuing noise nuisance is proven with decibel reading meters operated by a qualified representative.
- 7) Fines to be reviewed and musical students under 18 years not to be treated in the same manner as "business noise" i.e. The clear distinction between "noise" and "music practice", and relevant changes in procedures as to this distinction.
- 8) "First Occupancy Rights" recognised as applied to Music students and Home based Business Operators.

Conclusion

Measures to implement rational and effective solutions to neighbourhood noise is not a hard task. Adopting an approach utilising existing procedures used by the EPA and the Department of Justice would be a major step forward in amicably resolving disputes as well as advice from the Victorian Privacy Commissioner in regard to any "record keeping".

The implementation of mediational rather than adversarial measures would do a lot to change the perception of a "divisive" process to one that is "fair and impartial".

Information of procedures in these type of disputes can be made easily available via the Council website; booklets and worksheets can be made available, with clear and easy to understand procedures detailing fair, impartial and professional dealings with the parties involved.

The implementation of these measures will go a long way to restoring community faith in the current process; the Council is seen to be taking major positive steps in what is a divisive and sometimes offensive neighbourhood issue.

It simply needs to be done
Yours Sincerely

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