

Review of noise policies in Victoria

Simon Howe¹

¹Senior Policy Officer, Environment Protection Authority Victoria, Melbourne, Australia

ABSTRACT

Environment Protection Authority Victoria (EPA) and the Department of Environment, Land, Water and Planning (DELWP) are currently reviewing the [Victorian] State Environment Protection Policies (SEPPs) for noise; *State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) No. N-1* (SEPP N-1) and *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* (SEPP N-2). The process of revising these SEPPs (which have not been materially revised since the late 1980s) has presented a number of challenges. With increasing urbanisation, consolidation of major industries and the emergence of new noise sources and sound technologies the noise landscape in Victoria has changed significantly over the last few decades; the review of the SEPPs has taken into account these changes and has also considered likely future developments. Community expectations have also changed over time and the review has attempted to balance the expectation of protection from unreasonable noise with the setting of clear, realistic and achievable standards to support business to meet its obligations. A key part of the SEPPs review has been to address the issue of regulatory responsibility between state and local government bodies in managing noise issues. The overlap of regulatory powers between government agencies associated with the existing SEPPs has created uncertainty for businesses and the community, particularly related to compliance and enforcement. The review has sought to clarify these roles and in doing so improve the effectiveness and accessibility of these policies.

1. INTRODUCTION

In 2014 Environment Protection Authority Victoria (EPA) and the Department of Environment, Land, Water and Planning (DELWP) commenced a review of the two [Victorian] State Environment Protection Policies for noise (the noise SEPPs):

- *State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) No. N-1* (SEPP N-1)
- *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* (SEPP N-2).

The review also considered the non-statutory EPA guideline *Noise from Industry in Regional Victoria* (NIRV) (EPA Publication 1411). NIRV provides guidelines for industry noise outside the Melbourne Metropolitan Area (as defined in SEPP N-1).

The noise SEPPs were published in 1989 and other than some minor amendments have remained unchanged since that time. Section 19 of the *Environment Protection Act 1970* (EP Act—the legislation that established EPA and set out legislation for environmental protection in Victoria) mandates a review of these policies; this is the basis for the current review of the noise SEPPs.

The first stage of the noise SEPPs review was the publication of a consultation paper inviting feedback on all aspects of the existing policies. This was followed by a series of public consultation workshops covering industry, regulatory and community stakeholders. An external reference group was established and workshops conducted with this group examined the main themes that emerged during consultation. To supplement this engagement work EPA also engaged external consultants to undertake a literature review, a socio-acoustic survey, noise mapping and analysis of noise impacts and regulation on community and business.

The feedback received by EPA has demonstrated that there are strong views on the future of noise regulation in Victoria, particularly in terms of what types of noise sources should be covered and which regulatory body is best placed to deal with noise issues. The challenge for EPA is to develop statutory policy which takes into account these competing views without losing sight of the overall project objectives, including the need to balance community protection from noise and support for economic growth and business viability.

2. CURRENT NOISE REGULATION IN VICTORIA

There are a number of legislative and non-legislative instruments that address the management of noise in Victoria. However, certain types of noise are generally excluded from specific 'regulation/legislation', including road traffic noise and passenger train/tram noise—noise sources which often cause the greatest annoyance. Road traffic noise (noise from vehicles on public roads) is managed by VicRoads, the State roads and traffic authority. VicRoads has the *Traffic Noise Reduction Policy*, which is currently under review, as well as a non-mandatory guideline—*A Guide to the Reduction of Traffic Noise*. For passenger trains and trams, section 251B of the *Transport (Compliance and Miscellaneous) Act 1983*, provides that noise from rolling stock (including trams) cannot constitute a nuisance. The Department of Economic Development, Jobs, Transport and Resources (DEDJTR) has the *Passenger Rail Infrastructure Noise Policy*, which is designed to be applied by Victorian transport bodies and planning authorities.

The complexity of modern living relies on comprehensive access to and use of motor vehicle and train/tram transport; this goes some way to explaining why these significant noise sources remain largely outside of direct regulation.

Other noise sources in Victoria are covered by a mixture of acts, regulations, local laws, policies and guidelines. This is expanded upon below.

2.1 Acts

Section 31A of the EP Act allows EPA to issue a Pollution Abatement Notice (PAN) in a range of circumstances including for unreasonable noise.

The *Public Health and Wellbeing Act 2008* (PH&W Act) creates a common law offence of nuisance, including noise, for nuisance which 'is, or is liable to be, dangerous to health or offensive'. Councils most commonly take action relating to nuisance.

The *Liquor Control Reform Act 1998* (LCR Act) requires that supply of liquor must contribute to, and not detract from, the amenity of community life. Noise levels from a premises may be taken into account in determining whether a licence grant, variation or relocation would detract from amenity and conditions attached to the licence often include noise management practices. This Act therefore provides a means to enforce noise limits, through the potential to rescind or amend a licence. Local councils, Victoria Police or the Victorian Commission for Gaming and Liquor Regulation (VCGLR) are responsible for enforcement of the LCR Act.

The *Planning and Environment Act 1987* provides the guiding framework for integrating controls for land use and development and associated environmental and social protection, including from excessive noise. Victorian Planning Provisions (VPPs), made under this Act, provide standard provisions for all Victorian planning schemes, which authorities must have regard to when preparing or amending these schemes. Developments likely to cause noise must identify the likely effects of noise emissions and planning authorities must consider these when deciding whether to approve a development. Planning permit requirements may specify noise management or limit requirements and can therefore give effect to SEPP or guideline requirements.

2.2 Local laws

Local councils may have local laws to control and prohibit noise. These vary from council to council.

2.3 Regulations

The main regulation that applies to noise in Victoria is the *Environment Protection (Residential Noise) Regulations 2008* (the Residential Noise Regulations). These regulations, which deal exclusively with residential noise and are not within the scope of the noise SEPPs review, are administered by local councils. For motor vehicle noise, the *Environment Protection (Vehicle Emissions) Regulations 2013* provide standards and test methods for motor vehicle noise emissions and are usually enforced by EPA and police.

2.4 State Environment Protection Policies (SEPPs)

SEPPs, a form of subordinate legislation, establish the basis for environmental management for specific environmental segments including air, water and noise.

There are two SEPPs which cover noise in Victoria: SEPP N-1 (noise from commerce/industry) and SEPP N-2 (music noise from public premises). The assessment of noise emissions under SEPP N-1 is based on the calculation of a noise limit at a receiver position, taking into account the land use in the surrounding area and the ambient noise level. Under SEPP N-1 the noise limit is the maximum allowable level of noise emitted from the commercial, industrial or trade premise in a 'noise-sensitive area' (as defined by the policy). For SEPP N-2 the noise limit depends

on whether the venue is indoors or outdoors. For indoor venues, the noise level standards are set relative to the background level: during the daytime and evening periods, the limit is set as the $L_{A90} + 5$ dB(A) and in the night period, the limit is $L_{OCT90} + 8$ dB. For outdoor venues, the noise limit is a fixed limit of 65 dB(A) measured outdoors or 55 dB(A) measured indoors and is assessed as a L_{Aeq} .

SEPPs are not directly enforceable but instead are applied indirectly through other instruments such as licence and works approval conditions that specify the obligation to comply with SEPPs. They are also applied by co-regulators such as local government through their own instruments such as planning permit applications. EPA can also use other provisions of the EP Act, such as PANs and other remedial or sanction tools, to enforce provisions in a SEPP.

2.5 Guidelines

EPA publishes a range of non-statutory guidelines which cover various noise issues. The most significant guidelines are NIRV and EPA's *Noise Control Guidelines* (EPA Publication 1254). NIRV covers noise from commerce, industry and trade premises in regional Victoria and is broadly equivalent to SEPP N-1 in those areas (although it only sets recommended noise levels rather than mandatory noise limits). The Noise Control Guidelines are intended for use by councils and provide guidance on specific noise sources, such as retail deliveries, scareguns and construction/demolition.

There are no specific EPA guidelines for noise from wind turbines; instead noise from wind farms is regulated via the Victorian planning system, which adopts noise limits and assessment procedures provided in New Zealand Standard NZS6808:2010, *Acoustics – Wind Farm Noise*. Reference to the New Zealand Standard is included in the 2012 publication by the [Victorian] Department of Planning and Community *Developments Policy and planning guidelines for development of wind energy facilities in Victoria*.

2.6 Enforcement of the noise SEPPs and NIRV

Several Victorian agencies have legislative powers to enforce the noise SEPPs and NIRV: EPA, Victoria Police, VCGLR and local government. These legislative powers apply in a range of different situations and in some circumstances overlap. Although EPA has powers to respond to all noise complaints, it generally investigates noise from large industries, EPA-licensed sites and large outdoor music events, while complaints about noise from indoor music venues, shops and other smaller commercial activities are usually handled by councils.

3. THE PROBLEM WITH NOISE IN VICTORIA



Figure 1: Typical heavy vehicle traffic on Melbourne's roads (Source: EPA 2016)

3.1 The scale and extent of the noise problem in Victoria

Victoria has some unique characteristics which impact on the issue of noise. With the obvious exception of the Australian Capital Territory, Victoria has the most urbanised population of any Australian state or territory (77.08% of its population) (Australian Bureau of Statistics 2016). Urbanisation is set to increase in Victoria, with Melbourne growing faster than regional areas (Infrastructure Victoria 2015). Melbourne also had the largest growth

of all Australian capital cities in the year to 2015 (an increase of 91,600 people—2.1%) (Australian Bureau of Statistics 2016).

Victoria is Australia’s fastest growing state, with a population of just under six million living in a state comprising just 3% of the total Australian land mass (the sixth smallest state or territory) (Geoscience Australia 2004). There has been a particular increase in population growth in the outer suburbs: Cranbourne East, located in the south-eastern outskirts of Melbourne, had the largest growth in Australia in 2014-15, increasing by 32% over the period 2014-2015 (Australian Bureau of Statistics 2016).

Noise has a high community profile in Victoria and accounts for the majority of EPA publication and advice enquiries. It is also one of the most common EPA pollution reporting categories. Research undertaken by EPA shows that noise levels increase with human activity, urbanisation and industrialisation and generally follow the pattern of motor vehicle use throughout the day and week. For example, noise levels increase during the morning and afternoon peak hours and gradually reduce through the evening and into the night (reaching levels of around 34 dB(A)). Weekend mornings (6 am to 12 noon) are significantly quieter than weekday mornings. However, the few hours after midnight on weekends are louder than during the week (Figure 2) (EPA 2007). The noise profile in Figure 2 is typical of an urban traffic-noise dominated site.

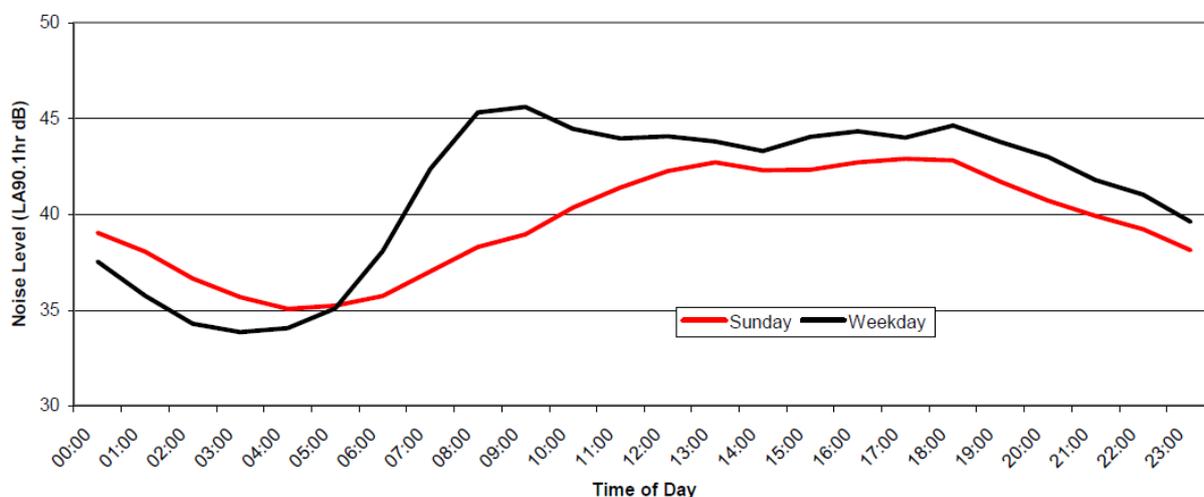


Figure 2: Average noise level for each hour of the day

A 2007 EPA study found that, each year, around half of Victorians are annoyed or bothered by environmental noise in their homes and about one quarter reported that noise disturbs their sleep (EPA 2007). Road traffic, neighbours, alarms and construction activity were listed as the most disturbing noise sources.

EPA’s 2012 social survey tells a similar story, with noise from busy roads, individual vehicles, residential neighbours and construction sites disturbing the most people (EPA 2012). This study found that approximately 1.8 million Victorians are severely affected by noise from at least one source. More recent data from EPA’s 2014 social survey showed an increase in noise issues involving residential neighbours, as well as noise from aircraft and farming activities (EPA 2014).

EPA’s 2007 and 2012 surveys show that impacts from industrial noise in Victoria are relatively insignificant compared to road traffic noise. The results of the 2014 socio-acoustic survey commissioned by EPA show that just under half (46%) of all respondents indicated they were annoyed by industrial noise (EPA 2015). However, industries located near dwellings can dominate the noise experienced, particularly at night, and can impact significantly on those local residents. For industrial noise, disturbance can be extremely intrusive and is often continual.

The 2014 socio-acoustic survey also showed relatively low levels of annoyance with music noise. However, in areas where respondents did report high levels of music noise annoyance this was despite the fact that generally no exceedances of the SEPP limit were measured or predicted at their locations (EPA 2015). This suggests that certain characteristics of music noise that cause annoyance, for example low frequency components, are not adequately addressed by the current policy criteria.

The responses to EPA's 2014 noise SEPPs consultation paper showed that the main concerns were about noise from amplified music (48%), industry (19%), hospitals (11%) and race tracks/airfields (7% each) (EPA 2015). It should be noted, however, that these results are reflective of the organisations and individuals that made written submissions to the EPA consultation paper and do not necessarily indicate overall community, industry or regulator views.

3.2 Future noise problem projections

EPA noise measurement data from 2007 showed that noise levels measured across Melbourne are similar to those measured in the past (1976), despite growth in traffic volumes and increased urbanisation (EPA 2007 and EPA 1976). It is likely this trend will continue and absolute noise levels will remain relatively static.

Despite this, the experience of noise in Victoria is projected to change significantly in the future. The factors behind this change include:

- Population growth
- Population density
- Land planning changes
- Building requirements
- Advances in technology that may increase or reduce the incidence of noise (for example, use of drones).

Changes to how we spend home and leisure time, economic growth and urban expansion are increasing the potential for Victorians to be affected by noise. For example, more housing is being constructed in closer proximity to transport routes and industrial, commercial and entertainment premises. Increased traffic creates more noise for people living close to major roads.

3.3 Themes raised in consultation

There were three main themes that arose during consultation on the noise SEPPs:

- Additional provisions in the SEPPs
- Noise measurement procedures
- Compliance and enforcement.

3.3.1 Additional provisions in the SEPPs

Respondents indicated that one of the main concerns with the existing SEPPs is that they do not address the issue of encroachment—when a new noise sensitive area is constructed or occupied, or when a change of use occurs, close to an existing music venue or commercial/industrial premises. The encroaching party in these circumstances is referred to as the 'agent of change'.

Residential encroachment is consistently raised by industry stakeholders as a major concern that affects business viability. It can also result in significant impacts on residents in new developments. Increasing urbanisation in Victoria means this issue is becoming more prevalent.

There was also support for including additional types of premises or sources of noise in the SEPPs, such as patron noise and early morning fitness classes conducted with amplified music on public land.

3.3.2 Noise measurement procedures

EPA's 2013 Statutory Policy Review identified a need to improve the accessibility of the SEPPs by simplifying some of their technical aspects (EPA & Department of Environment and Primary Industries 2013).

Among stakeholders there is near-universal agreement that the current noise measurement and assessment procedures in the SEPPs are confusing, complex and difficult to apply. Suggestions were made on how to best simplify and clarify these. In addition, respondents called for the inclusion of additional noise character adjustments in the SEPPs, reflecting the features of typical modern noise.

3.3.3 Compliance and enforcement

Most respondents put forward the view that the current compliance and enforcement framework is

ineffective and there is a lack of clarity over which regulatory agency has the authority to act in any given circumstances. Various suggestions were made for improving the structure of compliance and enforcement across all regulatory agencies.

4. CO-REGULATORY RESPONSIBILITIES

Several agencies have legislative powers to enforce noise SEPPs and NIRV and there is frequently crossover between these separate agencies. There are also gaps in the range of regulatory tools to enforce SEPPs; for example, local government has a duty to investigate and remedy noise nuisances under the PH&W Act but there is no direct regulatory tool to enforce SEPPs using the same Act.

Roles and responsibilities between regulators have not been clearly articulated and agreed and there is currently no formal arrangement about which agency investigates each type of noise complaint. This can create uncertainty for businesses and the community as to which agency they should contact to resolve their noise problem.

While EPA has the technical ability and legislative powers to respond to all non-residential noise complaints, it does not have sufficient resources to manage all aspects of noise compliance in Victoria. Councils have a local presence where noise issues arise but many councils lack noise expertise and will often need to engage acoustic consultants to resolve noise complaints. Councils are generally reliant on enforcement of SEPPs via secondary means, such as the Planning Scheme and planning permits.

The uncertainty in the current arrangements is a significant impediment to effective compliance and enforcement activities. This can also lead to frustration for industry and the community, with reporters often being passed between regulators without effective resolution of their matter.

Various suggestions have been put forward to address the issues around co-regulatory responsibilities. These include providing supplementary guidance or explanatory material clearly setting out roles and responsibilities between regulators, entering into formal agreements or Memorandums of Understanding or amending the EP Act to provide appropriate role definition.

5. CONCLUSIONS

The challenge in developing effective noise policies for Victoria is compounded by the fact that the current policies are over 25 years old and much has changed in the noise space in that time. In common with other parts of Australia, and in line with many other developed nations, Victoria's population is increasing and becoming more urbanised. This means that a greater proportion of the population are living closer to each other, closer to music venues and closer to industry and retail operations. Even in rural and regional areas land use changes are impacting on community exposure to noise; residential developments are increasingly being built on what was previously land zoned for farming or agricultural use. While effective planning measures can do much to reduce exposure to unreasonable levels of noise, it is likely that noise issues will become more prevalent in Victoria.

Stakeholder feedback has told EPA that, in the areas of noise where EPA can intervene, communities and business are most concerned with encroachment (industrial noise and music noise), regulatory responsibilities and new and emerging noise sources. The review of the noise SEPPs provides EPA with the opportunity to design and implement policies which address these concerns, are reflective of the current Victorian environment and take account of emerging trends in the ever-evolving area of noise.

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