

# Noise SEPPs review discussion paper submission template

## Submitter details

<i>For organisations and businesses with an interest in noise</i>	
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<b>Industry sector</b>	Local Government
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<b>Would you like your submission to remain anonymous?<sup>1</sup></b>	Please contact City of Melbourne prior to any publication to seek permission.
<b>Would you like to be kept updated about the noise SEPPs review?</b>	Yes

## Question template notes

- The heading structure and numbering in this template is the same as in the discussion paper, available at: [epa.vic.gov.au/our-work/setting-standards/environmental-standards-reform/noise](http://epa.vic.gov.au/our-work/setting-standards/environmental-standards-reform/noise).
- Please feel free to make comments on any or all sections of the discussion paper.
- To assist us to consider your comments, we would appreciate if you kept the heading structure and numbering as per the discussion paper.

## General comments section

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<sup>1</sup> We still require your name and email address, however we will not publish any of your details, or provide those details to anyone else.

## 1 Introduction

### PART ONE

## 2 Regulating noise

What activities (or 'beneficial uses') should be protected from noise?

'Noise sensitive areas' should be extended to include child care centres, libraries, parks, playgrounds, sports grounds, kindergartens, educational facilities, and consideration should be given to include commercial premises.

The beneficial uses protected from noise should be extended to include:

- the same standard applied to normal domestic activities applied to child care centres;
- passive and active recreation or leisure activities at libraries, parks, playgrounds and sportsgrounds; and
- learning in kindergartens and educational facilities.

Should the level of protection from noise vary based on location – for example, in inner-city Melbourne compared with residential suburbs or regional areas?

The level of protection from noise should not vary based on location in principle. However, whilst the background noise level assessment methodology in the SEPPs *does* effectively vary the level of protection for different areas, this is still considered to be appropriate as it ensures that the expectations of those affected by noise are reasonable and in keeping with their surrounding environment.

## 3 Costs and benefits of regulating noise

If you are *directly* or *indirectly* affected by noise SEPPs, we want to know:

- who you represent - e.g. yourself, a business (and if so, what type), a state government agency, a council, a planning, environmental or design company, etc.
- what costs and/or benefits you experience because of the current noise SEPPs?
- how could we increase the benefits or reduce the costs of noise regulation for you?

As a frontline regulator of noise, the City of Melbourne considers it imperative to have tangible, objective noise limits specified, such as those outlined in the existing noise SEPPs. There is scope to simplify both the assessment methods and the interpretation of the noise SEPPs so that the noise-control obligations of businesses are more transparent and accessible.

The existing noise SEPPs are currently utilised within Melbourne City Council largely by two regulatory branches – Planning and Health Services.

The inclusion of conditions to comply with the noise SEPPs within Planning Permits issued by Council is an important and effective means to ensure that new developments comply with their noise obligations and as such, impose a minimum noise impact on the community.

Health Services refers to the noise SEPPs in the investigation and enforcement of noise nuisances pursuant to the Public Health and Wellbeing Act. It is generally considered that if a business can

formally demonstrate compliance with the noise SEPPs, they are therefore acting reasonably in the operation of their respective business and as such, unlikely to be causing a nuisance.

Whilst compliance with the noise SEPPs is not a legal defence to an allegation of a statutory nuisance under the Public Health and Wellbeing Act, it is considered that there would be a low prospect of success in prosecuting an alleged offence of nuisance if a business can demonstrate compliance with their legal obligations under the noise SEPPs.

As such, Health Services relies on the noise SEPPs to provide a level of objectivity in investigating allegations of statutory nuisance caused by noise.

The benefits of utilising the noise SEPPs as outlined above is countered by the expense in engaging expert acoustic consultants to conduct noise assessments to determine compliance with the SEPPs.

The benefits of the current noise SEPPs could be increased if the methodology was simplified and prescribed so as to enable council officers to undertake assessments. The costs borne by councils in engaging expert acoustic consultants could be decreased through EPA funding, or indeed eliminated by increasing EPA resources so as to enable EPA officers to conduct noise assessments when called upon by councils.

#### **4 The types of noise covered by the noise SEPPs**

Are the types of premises currently covered by SEPP N-1 and SEPP N-2 appropriate?

The types of premises currently covered by the noise SEPPs is considered appropriate, however consideration should be given to include noise from footpaths or other areas associated with a business, such as on-street dining areas on footpaths outside cafes.

##### **4.2 Where in Victoria do the noise SEPPs apply?**

Should a SEPP for commercial and industrial noise cover the whole state – even if this would need to include different methods for setting noise limits in different areas of the State? Or is the flexibility provided by only having a guideline for noise in regional Victoria (like NIRV) more appropriate for rural and regional areas?

Is the current boundary for SEPP N-1 appropriate?

For Melbourne City Council purposes, the current boundary is appropriate.

Are the current types of noise that are excluded from SEPP N-1 appropriate?

Should the noise SEPPs or some other instrument apply to other sources of noise? If so, what methods and/or controls could be used for these sources? For an overview of the types of controls available to control noise, please see section 7 of this discussion paper.

Noise from crowds and voices or 'patron noise' should be included. This noise has become more prevalent with outdoor areas now being a significant feature of licensed premises and food businesses.

With reference to 2.4 on page 8 of the Discussion Paper, it is there asserted that business operators cannot easily control the maximum noise levels from a crowd of people, and this is used as

justification for not controlling this type of noise in the SEPPs (or by other similar noise regulation). Business operators *can* control noise levels from crowds by limiting the number of patrons in specific areas (eg. outdoor areas), or indeed within their entire premises. Neighbours should not be unreasonably affected by noise associated with a business, regardless of the source or type of noise and this should therefore be captured within the SEPPs or similar regulatory instrument.

#### 4.3.2 SEPP N-2 (music noise)

Recognising that music can have special social significance, should a SEPP for music noise operate differently from other noise laws? If so, do you have any suggestions as to how?

Music noise should remain captured within the noise SEPPs as it currently applies.

#### 4.3.3 Noise not covered by SEPP N-2

Should a noise SEPP apply to patron noise or any other types of noise associated with public premises? If so, in what circumstances should it apply (e.g. only for premises that serve alcohol)?

Patron noise should certainly be captured within noise SEPPs or similar regulatory instrument and should apply widely to all commercial premises – not just to licensed premises.

Is the exemption for religious services music in SEPP N-2 appropriate?

See below.

Should there be any other exemptions from public premises required to comply with SEPP N-2?

All commercial (non-domestic) premises should be included unless adequate justification is provided.

## 5 Compliance and enforcement

### 5.1 Who enforces the noise SEPPs?

Is the current compliance and enforcement framework for commercial, industrial and music noise effective? How could it be improved?

There is room for improvement in the compliance and enforcement framework. EPA resources should be increased to a level so that councils may be able to call upon them to conduct noise assessments and provide expert technical advice.

EPA should increase their involvement in noise enforcement to at least the same level as the monitoring and control of other pollution such as air and water pollution. EPA can currently enforce the noise SEPPs through Pollution Abatement Notices as is mentioned in the Discussion Paper. EPA can also directly prosecute breaches of the SEPPs through the offence provided at section 46 of the EP Act: "The emission of noise shall at all times be in accordance with State environment protection policy specifying acceptable conditions for emitting noise and shall comply with any standards or limitations prescribed therefor under this Act." Section 67 then provides for a general penalty and states that "Any person who is guilty of an offence against this Act for which no penalty is expressly provided shall be liable to a penalty of not more than 120 penalty units.

For the avoidance of any doubt that this offence is enforceable by EPA, this should be rectified through legislative amendment.

What experiences have you had responding to noise complaints (for businesses) or making a noise complaint (for individuals)? Was the compliance and enforcement process handled effectively? If not, do you have any ideas about how the process could have been handled better?

What are the advantages and disadvantages in having subjective and objective tests to determine what noise is acceptable?

The disadvantages of subjective assessments are well-articulated in the Discussion Paper at 5.2. In addition, subjective tests can be difficult to enforce. It is also difficult to instruct noise emitters as to how they can comply without an objective baseline to reduce the noise level to. This can lead to protracted investigations and enforcement actions.

Objective testing is much more favourable and provides transparency to businesses as to their legal obligations.

## 6 Encroachment

Should compliance be assessed from inside a noise sensitive building and, if so, under what circumstances?

The assessment method outside sensitive buildings is considered to be appropriate. However for *new* sensitive use buildings near existing music venues, compliance should be assessed from inside the building. Such assessments should be conducted prior to occupancy when the construction of the residential building has been completed. This would require new residential buildings to incorporate better noise attenuation into the design and would reduce the need for expensive retrofitting. It would remove the onus from music venues for additional noise attenuation when the noise complaint is due to encroachment.

### 6.4 Agent of change

What changes could be made to the noise SEPPs to complement an 'agent of change' principle?

An agent-of-change principle should be considered for inclusion within the SEPPs. With reference to the example provided at 6.4, it would be likely that legislative change would be required to provide a power to instruct developers to bear the cost of noise mitigation. The impact of such noise also may not become apparent until well after the property is developed, sold and inhabited, with the developer long gone. Developers of noise sensitive use buildings should have a legal obligation to ensure that new buildings are sufficiently protected from previously compliant noise emitters.

## PART TWO

Part Two discusses more technical issues relating to noise assessment methods, the use of noise SEPPs in design and planning and accessibility. Part Two is particularly relevant to readers who use the noise SEPPs in their work, for example council planning and health officers and design professionals including acoustic consultants.

### 7 Noise limits

The zone method used in SEPP N-1 provides different protection from noise depending on the type of neighbourhood where noise is received.

One idea underpinning this approach is the view that people living near commercial or industrial areas, or near major roads, expect more noise than a person living in a wholly residential area. Do you think this reasoning is reasonable?

**This reasoning is considered to be appropriate and reasonable.**

#### 7.2.2 Background noise methods

Do you think the use of background noise in the current noise SEPPs is appropriate? **Yes**

Are there other opportunities to use background noise levels as the basis of setting noise limits in SEPPs?

**Modern technology should be explored for EPA to undertake extensive noise mapping exercises to determine background levels throughout Melbourne and the State.**

#### 7.2.3 Single limit methods

Do you think the use of single limits (for outdoor venues and in the Melbourne Docklands area) in SEPP N-2 is appropriate?

**Due to the unique nature of the Melbourne Docklands and its development, the current SEPP N2 criteria is considered appropriate.**

Are there any other situations where single limits could be used?

**Consideration should be given to either removing or adjusting the single limit for outdoor venues so that the impact of noise from such venues in predominantly residential areas can be reduced. This would require an assessment of the particular area of each outdoor venue to take into consideration the characteristics of the area and perhaps background noise levels assessed.**

#### 7.2.4 Control of activities

In what circumstances is the control of noise-producing activities appropriate?

**The existing noise SEPPs are considered appropriate in this respect.**

#### 7.3.2 A-weighting

Is the current use of overall A-weighted levels in SEPP N-1 and SEPP N-2 appropriate?

Are there opportunities to use other measures such as octave band limits?

Expert acousticians should be sought for advice in relation to these issues.

### 7.3.3 Character adjustments

Are the character adjustments in SEPP N-1 appropriate?

Expert acousticians should be sought for input in relation to this issue.

Are any additional adjustments needed, for example, for noise that contains sporadic crashes and bangs, significant low frequency components, or other annoying characteristics?

Sporadic crashes and bangs have a particularly detrimental impact upon sleep and should therefore be given appropriate weight.

Are any character adjustments required for music venue noise?

Repetitive low bass 'doof doof' seems to have a particularly significant impact upon those affected by such noise and should also be given appropriate weight.

### 7.3.4 Average, percentile and maximum level parameters

Is a maximum single event level ( $L_{max}$ ) noise limit needed in either SEPP N-1 or SEPP N-2?

Are the current assessment intervals in the noise SEPPs appropriate (30 minutes for SEPP N-1 and 15 minutes for SEPP N-2)?

Maximum single event level ( $L_{max}$ ) noise limits should be included in both noise SEPPs as the World Health Organisation evidence indicates that it is a better indicator of sleep disturbance than average levels as referred to in the Discussion Paper.

## 8 Application of SEPPs in design and planning

What is needed to help businesses, regulators and design professionals deal with noise better in planning and design?

Are the current triggers in regulatory approval processes adequate to identify future noise issues?

There could be some helpful design principles included in the SEPPs (or in associated guides) so that building designers can understand how to position rooms, windows etc so as to reduce noise impacts.

## 9 Accessibility

Are simpler assessment methods than currently used in the SEPPs needed? And if so, considering the broad approaches outlined in Section 7, do you have ideas about what methods would be better?

Do you have any other suggestions about how to improve the accessibility of noise SEPPs?

Clear diagrams showing basic principles and ideas of acoustic attenuation would be very useful.