

Response to comments: Environment Protection (Residential Noise) Regulations 2018



Environment
Protection
Authority Victoria

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Response to comments

Overview

On 10 May 2018, EPA released the regulatory impact statement ('RIS') for the Environment Protection (Residential Noise) Regulations 2018 ('proposed regulations') and a copy of the exposure draft.

EPA invited public submissions on the proposed changes, either via email or an online platform. There were seven optional questions to prompt feedback (see Appendix 1). Submitters could choose to answer the questions directly using the online form, or write their own response.

The consultation period ran for 39 days, until 18 June 2018. EPA received 133 submissions on the RIS and exposure draft from local councils and members of the public. Not all questions were answered by all submitters. EPA has analysed the feedback based on the total number of responses to particular questions, as well as the total number of submitters.

This document summarises the feedback received through the submissions, and outlines EPA's responses to each key point.

Background

The Environment Protection (Residential Noise) Regulations 2008 ('current regulations') are the primary tool for managing residential noise in Victoria. The current regulations specify times when the use of certain types of equipment is prohibited, if the item can be heard from another residence. This helps to clarify what is unreasonable noise for the use of common household items.

The current regulations are due to expire on 14 October 2018.

Environment Protection Authority (EPA) staff have reviewed the current regulations and recommend that the proposed regulations be made to replace the current regulations.

Consideration of feedback and EPA's response

EPA has considered all submissions received. Some submitters suggested changes to the proposed regulations. The following sections detail a summary of the submissions made, and EPA's responses to them.

Proposal to remake Regulations

- There was strong support amongst the public to remake the regulations; 85% of those who responded to the question agreed with making the regulations (15% disagreed). This is equivalent to 67% of the total submitters, with 12% of total submitters disagreeing.
- Key reasons raised in support of the proposed regulations included a desire to protect quiet time in the evenings, and that the regulations provide useful guidance for local councils, who are responsible for responding to noise complaints.

Proposal to make minor extensions to air conditioner usage

The RIS detailed a proposal to extend the time air conditioners can be used as shown in Table 1, plus grant an exemption when the Chief Health Officer declared a Heat Health Alert.

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Table 1: exposure draft changes to air conditioner use

Prescribed items	Prohibited times	
	Current regulations	Exposure draft
Air conditioners.	<ul style="list-style-type: none"> Monday to Friday: before 7 am and after 10 pm. Weekends and public holidays: before 9 am and after 10 pm. 	<ul style="list-style-type: none"> Monday to Friday: before 7 am and after 11 pm. Weekends and public holidays: before 9 am and after 11 pm. Exception: If a Heat Health Alert is in effect in the weather forecast district in which the residential premises is located, there are no prohibited times.

NOTE: A Heat Health Alert is declared by the Chief Health Officer for regions in Victoria where heatwave conditions, which are likely to impact human health, are forecast to occur.

- The first proposal to extend the time allowable for usage from 10 pm to 11 pm had support from the general community with 58% of those who responded to the question, agreeing with the proposal, and 40% disagreeing. As a percentage of all submitters, this was equivalent to 49% agreeing and 34% disagreeing.
- The second proposal to remove all time restrictions on days when a Heat Health Alert is declared was very popular with the community. Almost three-quarters (74%) of those responding to the question agreed (61% of all submitters) and 25% disagreed (21% of all submitters).
- Table 2 shows a summary of the comments received regarding these proposals.

Table 2: comments about proposed air conditioner changes, and EPA's responses

Topic	Submission	EPA response
Air conditioners – proposal to extend usage.	Some submitters opposed the proposal and raised concerns that instead of turning their air conditioner off at 11 pm, people would continue to use it until midnight or later.	<p>EPA is satisfied that most people that are aware of the regulations regarding air conditioner noise will comply whether the time is 10 pm or 11 pm.</p> <p>Changing the time to 11 pm provides additional comfort for residents on hot nights, which is especially an issue in some apartments where there is no feasible alternative, and decreases the enforcement effort for council over time.</p> <p>EPA will communicate this change through a range of channels to ensure there is public awareness of the revised times.</p>
	Two submissions wanted the Government to remove restrictions on heaters and air conditioners altogether.	<p>As mentioned in table 7 of the regulatory impact statement ('RIS'), air conditioners are the third most complained about item from residential premises in Victoria. As such, it is not feasible to completely remove restrictions.</p> <p>Setting a prohibited time after which noise should not be heard is a good balance between minimising noise impacts and allowing people the comfort of using air conditioners at night.</p> <p>EPA stresses that the regulations focus on managing unreasonable noise, not on banning appliances altogether. This means, residents can continue to use their heaters and air conditioners outside the prohibited times, as long as they cannot be heard in a neighbouring property. Options to reduce noise include sound covers, proper siting/location, or the use of internal appliances such as convection heaters.</p>

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	<p>Several submissions suggested prohibited times should be removed from the regulations, and replaced with a maximum dB level (e.g. 5 dB above background noise, or a maximum value).</p>	<p>EPA acknowledges this method is used in some other jurisdictions, to provide an objective and measurable compliance standard.</p> <p>However, this approach can be technical and difficult for the public to judge whether they, or their neighbours, are in breach of their obligations. If this approach was adopted in Victoria, Council and Police Officers would need to access new noise measurement equipment, and be trained to use it.</p>
	<p>Two submissions suggested that air conditioners should never be heard inside another house, and that better sound proofing, or sound covers, should be required.</p>	<p>EPA considers that a requirement that all fixed domestic plant be inaudible at all times may not be practicable, and that the general test for unreasonable noise under section 48A(3) of the EP Act is appropriate for day and evening noise.</p>
	<p>Several suggested that there should be siting and location rules for air conditioners (e.g. setting a minimum distance from neighbouring properties) instead of, or in addition to, noise regulations.</p>	<p>The intent of section 48A(5) of the EP Act, is to regulate the overall sound levels. Specifying the location of appliances is a relatively blunt approach. For example, a noisy unit at 5 m may be more annoying than a quieter unit at 4 m.</p> <p><i>Cool air – quietly and efficiently (EPA publication 1176)</i> is existing EPA guidance that assists in this area. As per the guidance, local councils have the power to direct the air conditioners to be relocated, or switched off, if they are creating unreasonable noise.</p>
	<p>Two submissions mentioned they would like clarity in definition:</p> <ul style="list-style-type: none"> • One suggested there could be a confusion when split system units can both heat and cool. • One submission mentioned confusion regarding refrigerated and evaporative systems in the RIS. 	<p>EPA accepts these comments.</p> <p>To improve clarity, EPA has amended the wording in:</p> <ul style="list-style-type: none"> • Group 3 to state: 'Heating equipment (including central heating, a hot water system, or a heat pump, air conditioner or split system used for heating)'. • Group 4 to state: 'An air conditioner, evaporative cooler or split system used for cooling'. <p>The revised wording of group 4 also removes confusion between refrigerated and evaporative systems.</p>
	<p>Several submissions wanted more specific regulations.</p> <ul style="list-style-type: none"> • Two submissions suggested that evaporative cooling units on top of roofs should be treated differently to refrigerated units as: <ul style="list-style-type: none"> ○ evaporative units are noisier ○ their placement on top of a roof makes more of an impact. • One submission suggested different rules for apartments and houses. • One submission mentioned large industrial-sized units in residential areas which need to be treated differently to regular household air conditioners. 	<p>EPA notes that various systems may make have different levels of noise, or have different characteristics and impacts depending on their siting, or on the type of building they are in.</p> <p>However, EPA believes that differing regulations based on these factors would make it more difficult for the public to judge whether they, or their neighbours, are in breach of their obligations and that this is not a practical option. EPA believes that the test of whether the item can be heard in a neighbouring residence or not, is the simplest and fairest method.</p> <p>Regarding 'industrial-sized' units, EPA has removed the adjective 'domestic' when describing air conditioners in group 4, so that all air conditioners are included.</p>

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		For a similar reason, EPA has deliberately omitted the adjective 'domestic' when describing heaters and vacuum cleaners in group 3.
	<p>Several submissions wanted greater public awareness of residential noise issues and regulations:</p> <ul style="list-style-type: none"> • One submission suggested that the regulations are currently not well known. • Some asked for education of quieter models, better construction standards or promotion of options other than air conditioning. 	<p>EPA agrees that public awareness of the regulations will help to support compliance. EPA will continue to promote the regulations through a range of channels, including by working with local councils and the police.</p> <p>EPA also has guidance to help educate people about quieter cooling methods: <i>Cool air – quietly and efficiently</i> (EPA publication 1176).</p>
Air conditioners – exceptions during Heat Health Alert days.	One submission asked for a specific temperature rather than a heat health alert while another cited potential confusion on what an 'extremely hot day' is.	<p>EPA understands that it is not temperature alone that causes heat-related health issues. Other factors, such as humidity, also play a role. This is beyond EPA's area of expertise, which is why we defer to the Chief Health Officer's determination on when Heat Health Alerts are in place.</p> <p>This information is publicly available and hence minimises any confusion.</p>
	Several submissions did not have an issue with the time used, but asked for specific sound level limits.	<p>EPA acknowledges this method is used in some other jurisdictions, to provide an objective and measurable compliance standard.</p> <p>However, this approach can be technical and difficult for the public to judge whether they, or their neighbours, are in breach of their obligations. If this approach was adopted in Victoria, council and police officers would need to access new noise measurement equipment, and be trained to use it.</p>
	One submission asked for heating to be given the same treatment, i.e. removing restrictions on really cold days.	EPA stresses that the regulations focus on managing unreasonable noise, not on banning appliances altogether. This means, residents can continue to use their heaters outside the prohibited times, as long as they cannot be heard in a neighbouring property. Options to reduce noise include sound covers, proper siting/location, or the use of quieter appliances such as convection, or radiant heaters.

Concrete pours

During earlier stakeholder consultation, EPA was asked to change the prohibited time for concrete pours, and allow them to begin earlier than the current 7 am, particularly in summer. EPA reviewed this feedback and proposed not to make any changes to prohibited hours for concrete pours.

- This proposal was strongly supported, with 81% of respondents to the question agreeing, and 16% disagreeing. This is equivalent to 62% of total submitters agreeing, and 23% disagreeing.
- Table 3 lists a range of other issues raised during the submissions, and EPA's response to them. These issues are broadly within the scope of the proposed regulations.

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Table 3: submissions to concrete pouring, and EPA's responses

Topic	Submission	EPA response
Concrete pours.	<p>The majority supported EPA keeping the status quo, though:</p> <ul style="list-style-type: none"> • Several submissions supported an earlier start as it would be a one-off noise and therefore less disruptive. • Some submissions thought 7 am was already too early, and wanted concrete pours to be prohibited until later in the morning. • One submission suggested a method whereby concrete pouring could begin earlier on the approval of local neighbours. 	<p>EPA acknowledges the submissions supporting an earlier start. However, as explained in section 8 of the RIS, EPA cannot find sufficient quantitative evidence that the benefits of this change would outweigh the costs to justify this change. The proposal to retain the current rules was broadly supported by the public through consultation, with over 80% of respondents preferring no change.</p> <p>Regarding the proposal for approval from neighbours to start early, it may be the case that neighbours will agree to an early start. As enforcement of the regulations is usually triggered by a complaint, if agreement is reached and no one contacts authorities then there will not be a complaint to resolve. However, formalising this would have considerable risks and costs. To be enforceable and legally binding, such processes need to allow those affected by noise to give genuine informed consent and to prove consent has been given.</p> <p>This may increase the need for dispute resolution processes and require further protections to prevent misunderstandings and people being coerced or misled, particularly among vulnerable or disadvantaged communities. As such, EPA believes this would be impractical.</p>
	<p>One submission noted that allowing concrete pouring to commence at 7 am means noise begins even earlier as the crew arrive and start getting ready.</p>	<p>Section 48A of the EP Act, under which these Regulations are made, is limited to prescribing noisy items and, therefore, general site activities such as unloading of equipment or preparation of materials cannot be included. Such activities are covered under the general unreasonable noise provisions of section 48A(3), which EPA considers appropriate.</p> <p>It is recognised that general preparation of a residential construction site will, by its nature, generate some more noise than general domestic activities on residential premises. However, such noise is likely to only be unreasonable if it disturbs sleep, or is excessively intrusive in the circumstances.</p>
	<p>One submission stated that better notice and communication should be required before construction work, so neighbours can work around it. Another submission advocated for greater rights for existing residents during construction activities.</p>	<p>Residential noise issues can often be avoided or resolved by communication between neighbours.</p> <p>Construction management plans are managed by local government and require the construction manager to detail their proposed management of issues such as public safety and amenity, noise and vibration, air and dust etc. The plan requires consultation with neighbours and the local community. Construction plans are not always required though; sometimes it is up to the council's discretion.</p>

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Prescribed items and prohibited times

EPA asked the public whether the proposed list of prescribed items and prohibited times reflected community expectations.

- The public supported the current list with 69% of respondents to the question agreeing, and 26% disagreeing. This was equivalent to 50% of all submitters agreeing and 29% disagreeing.
- When further asked if they would prefer that the prohibited hours were made uniform on all days, 83% of respondents to the question disagreed, and only 17% agreed. This is equivalent to 60% of all submitters disagreeing, and 12% agreeing.
- Table 4 shows the submissions received about the list of prescribed items and prohibited times.

Table 4: submissions to prescribed items and prohibited times, and EPA's responses

Topic	Submission	EPA response
List of prescribed items and prohibited times.	Several submissions wanted consistency between heaters and air conditioners (i.e. heater usage to be extended to 11 pm).	EPA has decided to extend the time of air conditioners as there are no equivalent substitutes. This is not the case with heating, as there are several other options for heating, which do not cause audible noise in neighbouring residences. EPA stresses that the regulations focus on managing unreasonable noise, not on banning appliances altogether. This means, residents can continue to use their heaters outside the prohibited times, as long as they cannot be heard in a neighbouring property. Options to reduce noise include sound covers, proper siting/location, or the use of quieter appliances such as convection, or radiant heaters.
	One submission suggested lawnmowers should be allowed earlier in summer so people can avoid the midday heat.	Under the Regulations, lawnmowers are permitted after 9 am. EPA believes this is sufficiently early enough to avoid the peak of the day's heat, while balancing the protection of sleep for the community. Additionally, lawnmowing is a discretionary activity and not urgent. With weather predictions being reasonably accurate and easily accessible, EPA believes one can plan around hot weather events.
	One submission mentioned the loud use of power tools outside of prohibited hours was a nuisance.	It is not practical to have large scale bans of power tools due to their importance in construction and demolition, EPA accepts that there are cases when usage can be classified as unreasonable under 48(A)3 of the EP Act. EPA has several guidelines which may assist Councils and Police in determining what is unreasonable on a case-by-case basis. These include: <i>Noise control guidelines</i> (EPA publication 1254), <i>Noise from large residential subdivision or urban development sites</i> (EPA publication 1264) and <i>Environment guidelines for major constructions sites</i> (EPA publication 480).
	One submission suggested no noisy tools allowed before 12 pm on Saturdays, and a complete ban on Sundays.	EPA does not believe this to be practical. Saturday morning is a key time for the construction industry. Similarly, members of the public often only have the weekend to work on home renovations, and thus banning on the weekends will be impractical.

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	<p>One submission suggested combining group 4 (air conditioners) with either groups 1 (motor vehicles), 2 (power tools) or 5 (music).</p>	<p>EPA deliberately separated air conditioners, evaporative coolers and split systems used for cooling to reflect their special case. EPA considers their usage to be more essential than the items in groups 1 or 2, with different characteristics to group 5. As such, we believe it is warranted to have a specific grouping for themselves.</p>
	<p>Other specific items mentioned were:</p> <ul style="list-style-type: none"> • leaf blowers • brick cutting machine • instantaneous hot water units • motorbikes (i.e. leaving loudly at 5.30 am) • performance cars • helicopters • garbage collection trucks • trucks and freight trains • solar panel inverters. 	<p>The following are already included:</p> <ul style="list-style-type: none"> • leaf blowers (either group 1 or 6 depending on petrol or electric) • brick cutting machine (group 2) • hot water units (group 3). <p>The following are out of scope of these residential regulations and are managed elsewhere:</p> <ul style="list-style-type: none"> • motorbikes and cars - <i>Environment Protection (Vehicle emissions) Regulations 2013</i> • helicopters – set by the Commonwealth government via the <i>Air Navigation (Aircraft Noise) Regulations 2018</i> • garbage collection trucks – managed mainly by local councils • trucks – managed by the Commonwealth government through the Heavy Vehicle National Law and Regulations • freight trains – managed by EPA SEPP N1 when in a siding, or in a marshalling or maintenance yard. Responsibility while travelling lies with Transport for Victoria. <p>Also, the EPA's <i>Noise control guidelines</i> (EPA publication 1254) provides further practical information on their use in Victoria. EPA currently does not have enough evidence regarding the sound caused by solar panel inverters, but will monitor for future reviews.</p>
<p>Intruder alarms</p>	<p>Two submissions were concerned about disturbance caused by burglar alarms, particularly where houses are in close proximity to each other. One of these submissions requested regulation of noise level, length of signal time and number of repeat signals.</p>	<p>Intruder alarms are not prescribed by these regulations, but are covered under the general unreasonable noise provisions of section 48A(3) of the EP Act. Additionally, several councils address intruder alarms through their by-laws.</p>
<p>Pool pumps</p>	<p>Several submissions indicated that ill-positioned pool pumps caused disturbances including unacceptably high levels of noise which limited home recreational activities. A lack of council enforcement in regulating the disturbance was also mentioned.</p> <p>One submission questioned the veracity of the requirement that the sound 'can be heard from a habitable room' as they were disturbed by neighbouring pool pumps when they were trying to enjoy time outdoors.</p>	<p>Permitted pool pump operating hours are covered in group 3. Specifying the permitted location of pool pumps is a relatively blunt approach. For example, a noisy unit at 5 m may be more annoying than a quieter unit at 4 m. EPA believes the fairest method is whether it is audible in a neighbouring residence. Councils have the power to direct the pool pumps to be relocated, or switched off, if they are creating unreasonable noise and EPA's existing guidance: <i>Noise control guidelines</i> (EPA publication 1254) assists in this regard.</p> <p>The requirement that the sound must be able to be heard 'in a habitable room in any other residential premises' is set out in section 48A(5) of the EP Act. 'Habitable room' and 'residential premises' are defined in section 48A(1). As these conditions are set in the Act, they are outside the scope of these Regulations.</p>

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Sanitary pumps	<p>One submission mentioned the use of sanitary pumps for use in grey water/rainwater systems. They requested an exemption for their use as they were used for flushing toilets.</p>	<p>Permitted water pump operating hours are set out in group 3. The time for using pumps was extended until 10 pm in 2008 to reflect the fact that rain/grey water is now used in connection with core functions of the house such as toilet flushing, washing machines or garden watering.</p> <p>EPA supports the use of alternative water sources. Since 2008, the times for water pumps have been aligned with summer dusk watering times and are at parity with times for other devices linked to normal awake-activities such as vacuum cleaners and heaters.</p> <p>Note, that toilet flushing after 10 pm is not prevented. With proper installation and noise attenuation, pumps for this purpose can be used after 10 pm without being audible in a neighbour's house.</p>
Sporting Equipment	<p>Several submissions mentioned sporting and gym equipment like basketballs being bounced, basketball hoops, treadmills, and sporting and recreation facilities like sports clubs, and gyms in multi-use buildings as being annoying sounds. Some asked for EPA to regulate them.</p> <p>One submission suggested that the definition of residential premises should be changed to include noise produced in a residential area by non-residential premises (like sports clubs). Also, to broaden the definition of unreasonable noise to include persistent noise.</p>	<p>EPA does not have enough evidence of individual sports equipment being an issue but will monitor for future work.</p> <p>Sports clubs are not considered residential premises and so are out of scope for this review. Local councils will be better placed to deal with this issue.</p> <p>'Residential premises' and 'unreasonable noise' are both defined in the EP Act 1970 and so are out of scope for this review.</p> <p>The definition of 'unreasonable noise' currently includes 'duration' which is similar to 'persistent noise'.</p>
Emerging issues	<p>One submission asked for better consideration of emerging noises like car stackers and grey water systems.</p> <p>One submission recommended that drones (remotely powered air craft) be included in the regulations as they are becoming more common.</p>	<p>EPA considered car stackers as a potential emerging noise but decided that at the present there was not enough evidence of this being a problem.</p> <p>EPA expects that systems which need to operate at any time during the day, such as grey water or sanitary systems, should be installed such that they are inaudible in neighbouring premises.</p> <p>Drones are regulated by the Civil Aviation Safety Authority. Under these rules, recreational drones are only allowed to be flown during daylight hours. This means they are already prohibited during the hours EPA seeks to protect from unreasonable noise.</p> <p>While commercial drones can be flown at night, there is currently not a lot of evidence of them being a problem. EPA will monitor this issue for future work.</p>

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Musical instruments and amplified music

EPA asked the public if they were satisfied with the current restrictions on musical instruments and amplified music, as there were no changes proposed.

- There was strong support to leave the times as they are, with 73% of respondents to the question agreeing to maintain the status quo, and 27% wanting change. This is equivalent to 56% of all submitters agreeing, and 21% disagreeing.
- Table 5 shows people's comments regarding musical instruments and amplified music.

Table 5: submissions to musical instruments and amplified music and EPA's responses

Topic	Submission	EPA response
Musical instruments and amplified music.	<p>While the majority agreed with EPA's proposals to make no changes to musical instruments and amplified music:</p> <ul style="list-style-type: none"> • one submission asked for different rules for different instruments • one specified subwoofers, while another specified low frequency bass music as being particularly hard to block out • a few submissions asked for minor changes in the hours, with two asking to delay the prohibited times to start at 12 am on Saturday, Sunday and public holiday nights • several submissions stated instruments or music should not be heard at any time inside the house. 	<p>EPA believes that having one rule for all amplified music and musical instruments is fair, practical and easier to enforce.</p> <p>It means that all types of music, including those of low or high frequency, or from a subwoofer, are treated in the same objective manner.</p> <p>The current timings were broadly supported through the submissions process, with under 20% of all responses wanting the times changed.</p> <p>Some submitters did want an extension to the time for music.</p> <p>EPA would like to note that for irregular one-off events, it may be easier to notify neighbours and have an informal agreement to allow it to proceed, than changing the regulations for everyone.</p> <p>EPA considers that a requirement that no music be audible at all times will not be practicable.</p>
	One submission requested TV and PA systems to be included.	Televisions and public address systems are included in the current regulations (group 4), and the proposed Regulations (group 5).
	Three submissions mentioned the nuisance caused by the constant, or repetitive nature, of recorded noises or instruments outside of prohibited hours.	These recorded sounds or instruments during non-prohibited hours are subject to the general unreasonable noise provisions of section 48A(3). This is enforced by local councils.
	One submission mentioned music from entertainment venues.	Noise from entertainment venues is out of scope for these regulations. These are covered by section 48AB of the EP Act and <i>SEPP N-2 Control of music noise from public premises</i> .
	Several submissions considered that radios played by builders and tradespeople at building sites cause a great deal of disturbance, especially on vulnerable people such as the sick, mothers with infants or shift workers. One recommended that builders be prohibited from using radios on site while another recommended that builders be fined for inconsiderate use of radios on site. One submission requested further non-regulatory guidance regarding assessment of noise from builders' radios being considered unreasonable outside of prohibited times.	Radio usage during construction is usually during non-prohibited hours and is subject to the general unreasonable noise provisions of section 48A(3).

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Other comments in scope

- Table 6 lists a range of other comments received by EPA which were in scope for this review.

Table 6: submissions in scope and EPA's responses

Topic	Submission	EPA response
Exemptions	<p>One council submission mentioned the current wording of group 3 does not make it clear whether domestic heating and domestic vacuum cleaners were included, or excluded.</p> <p><i>'A heat pump, swimming pool pump, spa pump, water pump (other than a pump being used to fill a header tank), domestic heating equipment (including central heating and hot water systems) and a domestic vacuum cleaner.'</i></p>	<p>EPA accepts this and will change the wording in group 3 to avoid confusion as follows:</p> <p><i>'Heating equipment (including central heating, a hot water system or a heat pump, air conditioner or split system used for heating), a vacuum cleaner, swimming pool pump, spa pump, and water pump (other than a pump being used to fill a header tank).'</i></p>
	<p>The same submission also mentioned potential confusion in the wording of group 6 of the exposure draft, particularly in the section excluding certain appliances:</p> <p><i>'Any electric equipment or appliance that does not fall within Groups 2 to 5, including electric gardening equipment, other than electric equipment or appliances for personal care or grooming or equipment for heating, refrigeration or preparation of food.'</i></p>	<p>EPA is comfortable with this drafting. The intention is that all electric equipment not already mentioned is group 6, with the exception of appliances used for personal care or grooming, or food preparation, heating or refrigeration.</p>
Businesses in residential areas	<p>One submission mentioned the nuisance caused by home businesses and hobbyists using power tools.</p>	<p>The regulations apply to prescribed items used either in home occupation or home businesses.</p> <p>EPA considers that some degree of audible noise fits within normal amenity characteristics of a residential environment. If a home occupation creates noise at levels or durations outside what is normal for residential uses, then this might be considered unreasonable under s48A(3) of the EP Act.</p> <p>EPA notes that the <i>State Planning Policy Framework</i> (Clause 52-11-1) states that a home occupation must not adversely affect the amenity of the neighbourhood in any way. This is enforced by local councils.</p>
	<p>One submission mentioned a neighbour running a yoga studio in their house and asking neighbours to be quiet.</p>	<p>EPA notes that the <i>State Planning Policy Framework</i> (Clause 52-11-1) states that a home occupation must not adversely affect the amenity of the neighbourhood in any way. This is enforced by local councils.</p>
Rural issues	<p>One submission requested regulation of industrial generators and large machinery in rural areas. Another submission requested that more attention be given to noise guidelines for rural areas, particularly regarding items such as frost fans and scare guns.</p>	<p>EPA has already several guidelines in place that address these issues. These include: <i>Noise from Industry in regional Victoria</i> ('NIRV' – EPA publication 1411), <i>Noise control guidelines</i> (EPA publication 1254) for scare guns, and <i>Noise from frost fans</i> (EPA publication 1043) for frost fans.</p>
Shift workers	<p>Two submissions indicated that shift workers are not considered in determination of prohibited hours in the Regulations, and mentioned the growing number of shift workers in society.</p>	<p>EPA accepts that many people in society are shift workers who do not have the opportunity to sleep between the hours of 10 pm and 7 am. However, EPA has to balance this regard with the vast majority of people who are awake during the day,</p>

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		and that some degree of audible noise will occur within a normal residential environment. Shift workers still have the protection under the general unreasonable noise provisions of section 48A(3), though it is recognised that, by its nature, there will be more noise during the day when the majority of the population is awake.
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Other comments out of scope

- Table 7 lists a range of other comments received by EPA which were out of scope for this review.

Table 7: Submissions out of scope and EPA's responses

Topic	Submission	EPA response
Animals	Several submissions referred to noise disturbance caused by barking dogs. One of these submissions requested regulation of barking dogs particularly in the early mornings and evenings, and on weekends.	The EP Act 1970 gives EPA the power to regulate the noise from 'items'. This power does not extend to the regulation of animals and thus is out of scope for this review. Animal noise is managed by the <i>Domestic Animals Act 1994</i> and should be reported to local council.
Building design	One submission suggested that bad building design is the cause of a lot of noise complaints, another suggested a scheme of soundproofing older apartments, while another suggested better soundproofing should be a requirement of new buildings.	While soundproofing all buildings would assist in reducing the transfer of noise from one property to another, it is beyond the scope of these Regulations.
Enforcement	<p>Several submissions raised concerns about enforcement of the regulations, including:</p> <ul style="list-style-type: none"> • a lack of knowledge, resources, or speciality in detecting and calibrating noises within councils • the low priority placed on noise issues by police • the limited availability of enforcement staff late at night or early in the morning, when residential noise issues occur • the lack of clarity between the roles of council and police and the frequent referral from one to the other • the difficulty in prosecution of one-off events, such as parties (especially at short term rentals), and construction work, due to the requirement of the 72 hour wait between the initial warning and prosecution • the method of driving by the front of the house used by councils and police, which is not necessarily representative of the sound heard within the house. <p>These submissions also suggested solutions such as:</p> <ul style="list-style-type: none"> • allowing officers to prosecute at their discretion • frequent spot checks of construction sites • imposing progressively larger fines on repeat offenders. 	<p>The methods available for enforcement are out of scope for this review as they are defined in the EP Act 1970 rather than the regulations.</p> <p>EPA can advise other organisations (i.e. police and local councils) on role responsibilities to ensure greater clarity and avoid inter-agency referrals.</p> <p>The recently introduced Officers for the Protection of the Local Environment (OPLE) pilot program, linking Councils with EPA, should also assist in clarity of role responsibilities. OPLEs can assist with noise measurement and provide technical assistance to Council.</p> <p>Note that currently the OPLE project is a pilot and not all Councils are involved. Further information on the OPLE program can be found on EPA's website: https://www.epa.vic.gov.au/our-work/programs/ople-pilot.</p>

Response to comments

	<p>One submission questioned what steps they could follow up with, if council refused to act.</p>	<p>Councils often have an internal complaints process, to help resolve these types of issues.</p> <p>EPA suggests talking to the council in the first instance. If this proves unsuccessful, the matter can be referred to the Ombudsman via https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint</p> <p>Note, the EP Act allows aggrieved people to take civil legal action for noise violations at their own cost.</p>
	<p>Several submissions mentioned they wanted improvements to the current regulations and guidelines including:</p> <ul style="list-style-type: none"> • the difficulty with unenforceable guidelines • better guidance for the public and councils, including an interpretation of 'unreasonable' • streamlining of several noise regulations into one clear regulation • removal of the false hope given by EPA's '<i>Annoyed by noise</i>' brochure. 	<p>EPA acknowledges this feedback. Once the regulations are finalised, EPA will update the relevant guidance.</p>
	<p>One submission mentioned the unsuitability of the current <i>State Environment Protection Policy</i> (SEPP) standards for low level noise.</p>	<p>This comment is outside the scope of this current review, though the comments have been referred to the SEPP review.</p>
	<p>One submission queried the application of regulations 6 to 8 to noise from preparatory construction work on new residential subdivisions.</p>	<p>Based on advice sought by EPA, there are different legal perspectives about the definition of 'residential premises' in section 48A of the EP Act. A conservative interpretation could affect the application of regulations 6 to 8 in limited circumstances (e.g. noise from road construction in a residential subdivision before building permits are issued), although they would continue to apply in other circumstances.</p>
Owners corporations	<p>One submission questioned the right of owners corporations to set their own time restrictions.</p>	<p>Owners corporations (formerly called bodies corporate) derive their power to set restrictions through the <i>Owners Corporations Act 2006</i>. As such, it is out of scope for this review.</p>
Human voices	<p>One submission suggested that human voices should not be regulated as noise.</p>	<p>The current EP Act 1970 already prevents EPA from regulating human voices.</p>
	<p>Several submissions considered noise from human sources (e.g. parties, arguments and conversations, children screaming, mobile phone calls, and public sporting activities) to be disturbing to peace, with one submission recommending that prohibited times be set. One submission suggested 6 pm as a suitable time.</p>	<p>The EP Act 1970 gives EPA the power to regulate the noise from 'items'. This power does not extend to the regulation of human voices.</p>

Response to comments

Appendix 1

Questions in the online platform:

1. Do you agree with the proposal to remake the regulations to continue managing residential noise in Victoria?

- Yes
 No

2a. Air conditioners – general use

Currently, you cannot use your air conditioner after 10 pm if your neighbours can hear it inside their houses.

Do you agree with EPA's proposal to change this to 11 pm (see section 7)?

- Yes
 No
 Other (please specify)

2b. Air conditioners on extremely hot days

Do you agree with EPA's proposal to provide an exemption for air conditions on extremely hot days (see section 7) – i.e. to allow the use of air conditioners at all times, on days and in regions where an official heat health alert is in place?

- Yes
 No
 Other (please specify)

3. Concrete pours

Currently, renovations cannot start before 7 am on weekdays. Some stakeholders have asked EPA to change this to allow concrete pours to start earlier, particularly in summer. EPA has reviewed this feedback and is proposing not to make any changes to prohibited hours for concrete pours.

Do you agree with EPA's proposal (see section 8)?

- Yes
 No
 Other (please specify)

4. Do you agree with the list of prescribed items and prohibited times (see regulation 6 in Appendix 1)?

- Yes
 No
 Other (please specify)

5. Do you think the prohibited times should be made the same for all days (i.e. weekdays and weekends – see regulation 6 in Appendix 1)?

- Yes
 No

6. Musical instruments and amplified music

Currently, you cannot play musical instruments or amplified music at the following times, if your neighbours can hear it inside their house (see regulation 6 in Appendix 1):

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- **before 7 am and after 10 pm on Mondays–Thursdays**
- **before 7 am and after 11 pm on Fridays**
- **before 9 am and after 11 pm on Saturdays and public holidays**
- **before 9 am and after 10 pm on Sundays.**

EPA is not proposing any changes to these times. Do you agree with these times?

- Yes
- No

7. Do you have any other comments?