



RESPONSE TO COMMENTS: RESIDENTIAL NOISE REGULATIONS 2008

Publication 1260 October 2008

INTRODUCTION

Noise from residential neighbours is an important environmental issue. Fifteen percent of Victorians say they were significantly annoyed by residential noise in the past 12 months.

It is an offence under the *Environment Protection Act 1970* (EP Act) to cause unreasonable noise from any residential premises, including premises under construction. Residential noise may be unreasonable at any time of the day, depending on its volume, intensity, duration, time, place and other circumstances.

Following an extensive consultation program, EPA has released the *Environment Protection (Residential Noise) Regulations 2008* (the Regulations). The Regulations list specific types of equipment and times when their use is prohibited (if they can be heard from another residence). This helps to clarify what is unreasonable noise for the use of common household items.

The Regulations replace the *Environment Protection (Residential Noise) Regulations 1997*, and include key changes in management of noise from water pumps and large-scale residential construction.

These changes were proposed in a draft of the Regulations in June 2008. The options were assessed in a regulatory impact statement (EPA publication 1230) and were outlined in an information bulletin (EPA publication 1236), released with the exposure draft.

This document outlines submissions made during the public comments period, which ran from June to August 2008.

SUBMISSIONS

EPA received 38 written submissions on the draft Regulations and RIS. Local government was most heavily represented, with some submissions from private citizens and the construction industry. A full list is provided below. For privacy reasons, personal details have been withheld.

1. Mansfield Shire Council
2. City of Wodonga
3. Brimbank City Council
4. City of Whitehorse

5. City of Greater Dandenong
6. Colac Shire Council
7. City of Melbourne
8. City of Casey
9. Maribyrnong City Council
10. Glen Eira City Council
11. Manningham City Council
12. Nillumbik Shire Council
13. Bayside City Council
14. Indigo Shire Council
15. City of Greater Geelong
16. City of Yarra
17. Moreland City Council
18. Victoria Police
19. Department of Planning and Community Development
20. Department of Human Services
21. Consumer Affairs Victoria
22. NSW Department of Environment and Climate Change
23. Housing Industry Association (HIA)
24. Civil Contractors Federation (CCF)
25. Council Officer 1
26. Council Officer 2
27. Owners Corporations Victoria
28. Coalition of Residents and Business Corporations – Melbourne
29. Private Citizen 1
30. Private Citizen 2
31. Private Citizen 3
32. Private Citizen 4
33. Private Citizen 5
34. Private Citizen 6
35. Private Citizen 7
36. Private Citizen 8
37. Private Citizen 9
38. Private Citizen 10

The majority of government and local government submissions supported the continuation of the regulatory regime and supported the large-scale residential construction changes as proposed.

Government and local government submissions also supported the consultation program, including the focus on impacts of noise and further guidance needs.

A number of local government submissions focused on implementation and enforcement concerns, legal questions and the need for guidance. Concerns with enforcement powers under the EP Act were also raised, but are outside of the scope of the review.

Industry submissions were supportive of the proposals.

Individual submissions focused on water pumps, air conditioner noise and concerns or disagreement with the proposals regarding large-scale residential construction.

EPA has carefully reviewed the comments made in all submissions, and has amended the proposed approach set out in the Regulations where appropriate:

- minor changes to the items and times in regulation 6 to more appropriately cover residential noise sources

- changes to the definitions used in regulation 7–8 to bring better clarity and consistency for fringe residential subdivision
- addition of a note within regulation 9 to provide a stronger link to EPA guidance for large-scale residential construction.

EPA notes that, following release of the Regulations, we will work with local government and police to develop a *Residential noise handbook* to assist investigation and enforcement of residential noise. This will address many of the guidance issues raised.

RESPONSE TO COMMENTS

The following table sets out EPA’s response to the comments received in public submissions about the draft Regulations.

Summary of submissions

Topic	Submission	EPA response
<p>Regulation 6 – Items and times</p> <p>Items or assessment approaches not within the Regulations</p>	<p>One submission was concerned about the impact of high-frequency animal deterrent devices on sensitive groups such as children, and requested that these devices be included in the Regulations.</p> <p>Three submissions noted that the Regulations do not take into account all residential noise sources, with one submission recommending that voices be included in the Regulations.</p> <p>One submission considered it desirable to put a decibel limit on the noise that comes from premises at the property boundary, and that this would assist in controlling noise from ongoing noise makers.</p> <p>One submission requested an additional category for any noise created from a home occupation, as recognised under the planning scheme, to be inaudible at all times. Clause 52-11-1 of the State Planning Policy Framework states that a home occupation must not adversely affect the amenity of the neighbourhood in any way.</p>	<p>Review of the operating frequency of these devices indicates minimal risk of exposure to unreasonable noise, as they operate outside the normal frequency range of human hearing and are directional in their sound pattern. Further, it is noted that, as the Regulations prohibit items from being audible during prohibited times, and these devices are not audible to the majority of the population, the Regulations would not be the best mechanism for their control. The general unreasonable noise provisions of s48A(3) of the EP Act could be applied in cases of unreasonable noise.</p> <p>The automatically unreasonable noise test under s48A(5) of the EP Act is limited to items, so some types of residential noise, such as voice, that cannot be covered. Other than broadening the range of items for home heating and cooling, consultation did not identify any new items to be included and the general provisions of s48A(3) of the EP Act may still be applied to any residential noise source.</p> <p>Under current EPA guidance, decibel measurements can assist in assessment of noise under s48A(3) of the EP Act for some continuous noise sources with a fixed location, such as domestic air conditioners and pool pumps used during the day/evening. However, a noise measurement by itself does not take into account all the factors of noise impact. Assessment based on noise measurement is not considered appropriate for other noise sources such as stereos or construction equipment, as other factors such as duration and circumstance may be more significant. Proper measurement of such sources would also be complex and require expertise beyond that readily available for resolution of noise from general domestic activities. See RIS section C.2.4, p.27 for general discussion on noise measurement as a regulatory option.</p> <p>The Regulations apply to equipment used in home occupation. EPA considers that some degree of audible noise fits within normal amenity characteristics of a residential environment. Where 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. This is an issue EPA will consider in its review of guidance.</p>

Topic	Submission	EPA response
<p>Regulation 6 – Items and times</p> <p>Times</p>	<p>One submission requested that any musical instrument be considered within the Regulations, not just amplified musical equipment.</p> <p>One submission recommended that miscellaneous construction site activities be included as a category within the Regulations. The response cited issues of noisy site preparation from 6 am causing equivalent impact to that of noise from prescribed items.</p> <p>One residential submission recommended that no construction work be permitted on Sundays or public holidays.</p> <p>The submission also recommended that, within a local area, only one construction site be allowed to operate at a time.</p> <p>The submission considered that the (1997) prohibited times were too liberal and did not take into account the cumulative impact of multiple noise sources, particularly for shift workers exposed to daytime noise.</p>	<p>Both the 1997 and 2008 Regulations apply to any musical instrument.</p> <p>The provisions of the EP Act limit the Regulations to consider 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 s48A(3).</p> <p>EPA considers that the general test is appropriate for site preparation, as there are cases where it could be carried out at an audible, but low and unobtrusive noise level. 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 be unreasonable if it disturbs sleep, or is excessively intrusive in the circumstances.</p> <p>Discretionary or controllable activities of an equivalent noise level to that from prescribed items would be considered unreasonable if conducted within the prohibited times. Preparatory or work activities within prohibited times would most likely be unreasonable if they were loud enough to wake nearby residents or were of such duration or recurrence that they prevented resumption of sleep. Any assessment of reasonableness would need to consider all the factors under s48A(3), recognising the impact on neighbours, the duration and level of the noise, and whether the activities were necessary or done for site or supplier convenience.</p> <p>The Regulations set times when use of equipment, including construction equipment, is considered to be automatically unreasonable if audible to neighbours. The Regulations therefore do not distinguish between domestic use of equipment and home construction activity undertaken by a builder. It is not considered to be automatically unreasonable where residents use such equipment over the weekend. However, where residential construction features intensive work on a Sunday, this noise might be considered unreasonable noise under section 48A(3) of the EP Act. Examples of this may include where it denies a period of respite from ongoing noise that has carried on for many days, or a builder/contractor routinely conducts noisy work on a Sunday primarily because of opportunity or to compensate for project delivery failures.</p> <p>The Regulations do not offer scope to enact controls of this nature. It also is noted that, by having concurrent projects, the total time for which noise occurs can be reduced.</p> <p>The Regulations do not have capacity to consider cumulative impact from multiple noise sources. Although there is risk of noise being generated throughout the day because of multiple residential noise sources and premises, EPA does not consider that the use of prohibited times is an appropriate tool to address this issue. Individual sources of unreasonable noise should be resolved by residents and local authorities, and by other controls such as improved design of noisy equipment. An investigating police or council officer can consider multiple noise sources emitted from one premises in a judgement of unreasonable noise under s48A(3) of the EP Act.</p>

Topic	Submission	EPA response
<p>Regulation 6 – Items and times</p> <p>Routinely used items of low noise risk</p> <p>Air conditioners and fixed domestic plant</p> <p>Water pumps and water noise</p>	<p>EPA received feedback from the Department of Justice raising concerns that, under the 1997 and draft Regulations, noise from items such as electric toothbrushes, hairdryers, refrigerators and microwaves would be deemed to be unreasonable noise during prohibited times.</p> <p>One submission recommended that fixed domestic plant should be inaudible to neighbours at all times.</p> <p>One submission recommended establishment of a new administrative system to ensure appropriate installation of air-conditioning systems, and to check compliance of existing systems. The proposal was for EPA to check installations and for an independent system to be in place for disputes.</p> <p>One submission recommended that EPA could undertake the following to reduce noise impacts from fixed domestic plant:</p> <ul style="list-style-type: none"> - provision of training or accreditation for installers of swimming pools and air conditioners - setting general standards consistent with current noise-based criteria used by AIRAH - development of guidance and training for local government officers in effective installation and enforcement of these issues. <p>The submission from the NSW Department of Environment and Climate Change recommended that heat pump water heaters be included in the Regulations.</p> <p>One submission was concerned that the extension of times until 10 pm encroaches into a time when residents could reasonably expect a level of noise that will not disrupt sleep.</p>	<p>In typical house or apartment living, it is not expected that these items would be audible to neighbours. However, in some apartment designs (such as commercial refurbishments) there may be a minor risk of such devices being audible. EPA considers that, as this would largely be a product of apartment design, and the items may be used as part of normal day-to-day activities, it is not appropriate for the automatic test of unreasonable noise under s48A(5) to apply. EPA has removed such items from the Regulations. Excessive use of such equipment could still be assessed as unreasonable noise under s48A(3).</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 s48A(3) of the EP Act is appropriate for day and evening noise. However, EPA recognises a need for revision of its existing guidance for technical noise assessment to better support the application this general test.</p> <p>In the RIS, EPA considered what systems would be necessary to facilitate air-conditioner installations to meet a set noise standard. EPA's analysis showed that there were no changes that could be made within the 2008 Regulations that would be effective and practical to apply (RIS section C.5, p.34).</p> <p>EPA analysed industry training requirements in section C.5 of the RIS. EPA will continue to discuss this matter with AIRAH. EPA considers that, before standards are set in this area, industry training on current AIRAH guidance would need to be progressed.</p> <p>EPA's guide <i>Cool air – quietly and efficiently</i> (publication 1176) provides accessible information for local government and residents on installation of air conditioners and can assist with other plant noise. EPA will consider this issue further in the <i>Residential noise handbook</i>.</p> <p>EPA has added heat pumps to the same category as for air conditioners and other fixed domestic plant.</p> <p>The change in times puts general water pumps into the same time category as for fixed domestic plant and swimming pool/spa pumps. EPA considers that this category is appropriate for use until 10 pm as items might be used in association with normal waking activities, which can reasonably be expected to continue until 10 pm.</p> <p>Use of these devices may be more continuous in nature, and the noise level generated is more predictable than other items such as stereos. Accordingly, they should be located so as (if audible during the day and evening) to not be at an unreasonable level for a neighbour who wishes to sleep before this time.</p>

Topic	Submission	EPA response
<p>Regulation 6 – Items and times</p> <p>Water pumps and water noise</p>	<p>Two submissions said it was unclear what restrictions applied to water pumps connected to sanitary fixtures.</p> <p>One submission requested an earlier end to the prohibited time for water pumps on weekend mornings to allow for sanitary uses during this time.</p> <p>One submission suggested that, on small blocks, a pump position that does not cause noise impacts may not be possible, and that this will need to be considered if authorities mandate use of water pumps.</p> <p>One submission requested the development of standards for water tank-connected pump noise.</p> <p>One submission sought clarity on the times permitted for water noise from pools and spas.</p>	<p>Under the 1997 Regulations, water pumps were not separately defined. They were therefore classified as general electrical equipment, with prohibited times (if audible) starting at 8 pm. Spa and swimming pool pumps were given a specific 10 pm prohibited time. In the 2008 Regulations, all water pumps have the prohibited time of 10 pm. Noise outside the prohibited times might still be considered unreasonable in some circumstances. Where water pumps are connected to sanitary fixtures that may be used 24 hours a day, they should be installed so that they are inaudible in a neighbouring property during the prohibited times.</p> <p>The change to the evening prohibited time allows greater flexibility for the range of domestic activities that may use a grey or rainwater pump, such as watering a garden, in a laundry or with sanitary fixtures. EPA expects that pumps serving sanitary systems can be used at any time, because routine installation should make them inaudible. If a pump is audible because of inappropriate location or installation, then the Regulations provide a trigger to remedy the noise issue. This gives flexibility for the pump owner and protects others from unreasonable noise disturbance.</p> <p>EPA agrees that noise should be part of site planning. EPA considers the inaudibility should be achieved if noise is a routine consideration in fixed infrastructure installations of this type.</p> <p>EPA's <i>Noise control guidelines</i> (EPA publication 1254) can be used to assess noise from water pumps. EPA guidance on noise reduction from equipment such as air conditioners is also relevant to pump installation. EPA does not currently see a need for more specialist information relating to noise reduction from water pumps.</p> <p>Typically the problem in these cases is noise from the pump, rather than the water itself. Running water noise is not a prescribed item and therefore automatic prohibited times do not apply. Where noise from a semi-continuous or continuous noise source such as a water feature or spa causes a problem, a general assessment of unreasonable noise under s48A(3) of the EP Act may be taken. The prohibited times might be used as a guide, and the <i>Noise control guidelines</i>, publication 1254, may also assist in this decision.</p>
<p>Regulation 7-8 – Subdivisions</p>	<p>One local government and one residential submission objected to the proposal on the basis of increased noise impacts for residents.</p> <p>The residential submission objected to allowing works between 35 and 200 m from the property boundary, as 35 m was not considered to be a sufficient distance to reduce the impact of construction noise.</p> <p>The residential submission did not accept that this would have any benefit to construction industry, but carries unreasonable impacts on residents, who value this time for sleep.</p>	<p>EPA acknowledges that, in some cases, there may be an increase in noise at earlier times as a result of these changes, but considers that these would be reasonable given the scale of works and the designation of certain areas for development. Any increase in noise may also be relatively minor given the existing requirements have not been consistently applied.</p> <p>EPA recognises that there will still be noise impacts from land preparation on residential subdivisions at this distance, but that these are not considered unreasonable given industry constraints and the restricted circumstances in which the exemption applies. The buffer distances have been developed to ensure excessive noise impacts are appropriately managed and noisy work is not conducted immediately adjacent to homes at inappropriate times.</p> <p>EPA recognises that Saturday mornings are a sensitive time period for residents, and has restricted the application of this exemption to fringe subdivision, where impacts are minimised, and priority growth areas. EPA considers the stated benefits to industry and development to be valid. (See RIS sections C.3.2, 5.4 and appendix).</p>

Topic	Submission	EPA response
<p>Regulation 7-8 – Subdivisions</p>	<p>Two local government submissions were concerned about the enforceability and enforcement costs of the proposed changes. One submission stated that the definitions for fringe residential subdivisions were convoluted, unclear and impractical, and that this would be difficult to enforce as well as to educate the general public.</p> <p>There were concerns about the factors to be taken into account in assessing subdivision sites. These concerns indicated confusion regarding the separation between regulations 7-8 and regulation 9.</p> <p>There were concerns that the proposed exemption would most likely increase the costs to Councils of monitoring building sites as they would require an enforcement officer to be at the construction site at 7 am on Saturdays to ensure that all relevant criteria are being met so that the site can commence at 7 am rather than the usual 9 am start.</p> <p>One submission stated that, if the definition was not revised to include fringe councils outside of state-designated urban growth areas, the provisions will likely be impractical and will not be adhered to by construction companies.</p> <p>The submission from the Civil Contractors Federation supported the proposal, stating that it addresses a long-standing concern of its members regarding weekend work restrictions and their impact on workplace and industrial relations restrictions, and associated cost impacts on lot development.</p> <p>One submission noted the importance of providing a limited time period for the subdivision exemption.</p> <p>The submission from the Department of Human Services was concerned that giving greater allowance for work adjacent to residential areas between 7 and 9 am on Saturdays would interfere with recreation and rest, increasing potential public health risks.</p>	<p>Although a degree of regulatory complexity is required to limit the application to appropriate sites, EPA has recognised concerns about definitions and has made changes (see below). It is expected that the requirements will be understandable to industry and apparent to residents/local government; for example, restrictions on use of impacting equipment/rock breakers. Other areas, although detailed, are designed to operate with minimal need for assessment, as they are based on commonly understood planning and land-use principles. In most cases, it will be straightforward to verify whether the development project qualifies for an early start time based on the scale of project and the land on which is carried out, and EPA will also produce guidance to support this.</p> <p>In practice, subdivision infrastructure work and large-scale residential construction are recognised as distinct stages of development, with minimal risk of confusion. Guidance accompanying the Regulations will support this. The Regulations and guidance can be used in proactive discussion between the developer and council, reducing need for detailed assessment by enforcement officers.</p> <p>The conditions have been developed to be workable and reasonable for industry, and thus should be able to be largely self-managed. Council officers should be able to continue to work in a manner similar to how they do currently. Officers would only need to attend in the instance of a complaint. EPA recognises that, in these cases, this would carry a level of assessment that was previously not required, and dialogue between the enforcing officer and subdivision approver may be needed. However, these new obligations are considered commensurate with the benefits of new residential growth and reflect the limited number and large scale of the sites.</p> <p>EPA agrees and has made appropriate revisions, better aligning the definitions to recognised planning principles.</p> <p>EPA considers this to be an important part of the Regulations, as it prevents very long periods of noise within 200 m of residential premises but enables ongoing work outside this distance.</p> <p>EPA understands this risk, but notes that 7 am is a well-recognised delineator of normal sleep and awake hours. The standard 9 am prohibited time for residential activities recognises that, during the weekend, residents in traditional residential areas have greater expectations for amenity protection, including scope for further rest or recreation. In the limited areas to which an earlier start time applies, it is considered that, while there may be increased noise impacts, these are not unreasonable in the context and health impacts are kept to a minimum by protecting a necessary period for sleep.</p>

Topic	Submission	EPA response
<p>Regulation 7-8 – Subdivisions</p>	<p>The submission from HIA strongly disagreed with the RIS assessment that time restraints are not a significant consideration in the management of domestic projects (such as single houses) and that individual home constructions are less affected by the costs of lack of flexibility. HIA recommended that domestic and residential construction within fringe development areas be exempt from the 9 am prohibited time on Saturday, where appropriate buffering exists, with the following reasons cited:</p> <ul style="list-style-type: none"> - The domestic and residential construction sectors are a significant aspect of the construction industry and there would be significant cost and time savings for industry and the community, with positive impacts on housing affordability. - These projects typically carry on for less time than the land preparation parts of residential subdivision (16–18 weeks compared with 16–20 weeks). - People living in fringe areas are generally tolerant of residential construction noise and, with noise buffers, are unlikely to be impacted by widespread, unreasonable noise. - Broadening of the exemption to include housing construction will minimise confusion within industry regarding what is permitted in fringe locations. <p>One submission recommended that guidance and advocacy for developers and the construction industry is required to ensure that simple tools are available for developers to identify where the exemptions will apply.</p> <p>One submission considered it necessary to provide guidance for local government on implementation, investigation of complaints and enforcement of the Regulations.</p>	<p>EPA has considered relevant economic and amenity costs and benefits in making this decision. This includes consideration of the logistical pressures on different kinds of sites and how this affects industry flexibility, as well as residential expectations of environmental management.</p> <p>EPA considers that, although individual projects may last for this time, there may be a multitude of projects carried out in succession, leading to prolonged noise impact. These would also be carried out after initial land preparation works, adding to total noise exposure. Anecdotal advice from growth and fringe area councils indicates that residential complaints tend to focus on early starts on individual home construction, rather than land preparation works.</p> <p>With the prolonged duration of many individual home constructions, the overall exposure to noise is likely to be widespread. People are less likely to consider these impacts reasonable, because the work is not perceived to be large in scale, which carries commercial and logistical constraints and limitations.</p> <p>As residential subdivision is not necessarily conducted by one developer throughout the entire project and individual homes may be constructed independently, EPA does not agree that extending the provisions to home construction would improve clarity. Also, the provisions of regulation 7–8 clearly apply to only one stage of works, which are generally perceived by the public to be of a ‘commercial scale’ and distinct from home construction. When this type of work is carried out on other non-residential sites, similar flexibilities apply. EPA believes it would add further confusion to allow for home construction to be allowed greater flexibility in subdivision sites, as other similar home construction is carried out across Victoria, and this would not gain the same exemption.</p> <p>EPA agrees and has developed guidance to assist developers and council. EPA is also working with the Civil Contractors Federation to facilitate incorporation of the regulatory requirements within work plans.</p> <p>The construction related changes will be communicated within the guidance. Boarder guidance on assessment of construction noise will be considered in development of the <i>Residential Noise Handbook</i>.</p>

Topic	Submission	EPA response
<p>Regulation 9 – Large residential developments in non-residential zones</p> <p>Application and enforceability concerns</p>	<p>One submission recommended that examples of non-residential zones in regulation 9 include the capital city zone (CCZ), to eliminate any doubt.</p> <p>Three local government and three public/residential submissions did not support the changes.</p> <p>Four of these submissions suggested that, where residents live in or adjacent to non-residential areas, they will still have the same amenity expectations as residents living in traditional residential areas. Three of these submissions considered that these expectations are reasonable, irrespective of proximity to non-residential uses, with one citing that residential uses are as-of-right under the planning scheme in many non-residential zones. These submissions considered that regulation 9 would cause inequitable impacts to residents.</p> <p>Three of these submissions concerned a loss in protection to residents through the change; they considered that residents are already unreasonably impacted by noise in these areas and are looking for greater protection, and that EPA was not properly considering this in making the changes.</p> <p>One submission considered it immaterial whether a development is residential or commercial in nature and the amenity impacts on residents from a large development should be the fundamental concern. The submission disagreed with the exemptions for large-scale residential development and further suggested that the prohibited times be applied to all types of building construction (including both large residential and commercial development), given the significant impacts they may cause.</p>	<p>EPA will communicate this in related guidance.</p> <p>EPA disagrees with this assessment as, although residential uses in a non-residential zone may be permitted, residents should have different amenity expectations if living in these areas, because of the different land-use intent. The submission from the Department of Planning and Community Development supported the draft Regulations and found the proposals for construction 'will facilitate housing construction in these areas while maintaining reasonable amenity safeguards'.</p> <p>EPA acknowledges that there may be a minor increase in noise at earlier times as a result of these changes, but believes that these would be reasonable, given the commercial development and activity purposes of the targeted zones. Developments of this type will now be able to be treated in the same way that equivalent scale non-residential development is currently.</p> <p>The previous requirements precluded work continuing in prohibited times – sometimes logistical constraints for projects of this size mean that work is required within the prohibited times, or conducting certain works (e.g., a crane jump) during prohibited times would create less disruption for the community than if the work occurred during the day. EPA guidance addresses noise management in greater detail than the Regulations and provides noise control practices, including decibel levels for work outside of normal hours. EPA is considering how these can be further developed and communicated as part of its ongoing program.</p> <p>EPA recognises that large-scale development can carry significant noise risks but notes that noise regulation needs to account for noise emissions as well as the nature of and location of the noise source. What is reasonable noise will depend on reasonable amenity expectations, given the nature of the area and the source of noise, with the community generally recognising that it is not appropriate to have inflexible provisions for commercial activities, given the practical constraints they may encounter. In view of the logistical and cost restrictions encountered on large residential construction sites, the revised regulatory approach is considered appropriate.</p>

Topic	Submission	EPA response
<p>Regulation 9 – Large residential developments in non-residential zones</p> <p>Application and enforceability concerns</p>	<p>One submission supported the exemption but wanted it to be extended to Mixed Use Zones (MUZs), which are a residential type. This was to standardise the policy approach to construction for these areas, where large-scale, non-residential construction may occur. It was advised that reasonable amenity expectations in these areas should accommodate these impacts.</p> <p>One submission was concerned that the removal of the Regulations as an enforcement tool for local government will make resolution of noise issues more complex, time-consuming and potentially more litigious.</p> <p>One submission was concerned that, by exempting sites from some of the provisions of the Regulations, councils must rely on court prosecution under s48A(3), not a PIN.</p> <p>One submission was concerned about the removal of a certain test of audibility under the Regulations. They were concerned that removal of the audibility test magnified the evidentiary burden on councils, who would need to gather witness statements and make more complex considerations. It was stated that this would lead to councils not having confidence to issue a direction to cease noise under s48A(6), removing any quick remedies to noise and increasing reliance on s48A(3) for court prosecution.</p> <p>The submission considered that the exemption will create angst between local government and developers, as it will be necessary for local planning permit conditions to regulate the construction times rather than state-wide legislation. This has potential to propagate misconceptions that local government is anti-development and obstructionist.</p> <p>The submission was also concerned that the exemption may further exacerbate residents' frustration with local government as detailed in publication 1235, <i>Residents' noise stories</i>.</p>	<p>While EPA agrees that residents living in an MUZ should have different expectations than those living in other residential-type zones, given the potential mix of uses, EPA notes that the MUZ falls within the Residential Zones category in the Victoria Planning Provisions. It is appropriate that, given this residential category and that this zone could still primarily be used for traditional residential purposes, the additional flexibility is not warranted.</p> <p>As the automatically unreasonable test under s48A(5) has been removed, enforcement of noise from these sites will require consideration of all the factors under s48A(4) to determine whether the noise is unreasonable. However, EPA guidance (EPA publication 1254) sets recommended work hours that should be followed in general cases. These guidelines are well recognised and can be referred to in enforcement decisions. It is considered that, for large-scale development with complex logistical considerations, an inflexible test of audibility is not reasonable or appropriate. Fixed requirements, such as requiring inaudibility at certain times, may have unintended impacts, such as requiring some works to be completed at a time which causes greater impacts on the community.</p> <p>The change under the Regulations does not affect any of the existing enforcement provisions of the EP Act, although the test for determining unreasonable noise would be different.</p> <p>EPA recognises this as a risk generated through the amendment, but believes that, for these sites, a more considered assessment should be made. However, EPA recognises that councils require a level of certainty in taking enforcement action, especially in having confidence to issue a direction to abate noise. Accordingly, EPA added a note to the Regulation giving stronger linkage to EPA guidance and will produce additional guidance to give greater certainty about general assessments under s48A(3) for residential construction sites.</p> <p>Local laws would not be required to regulate hours of operation, as EPA guidance can be referred to. If a council wishes, it can make local laws to be consistent with EPA guidance, which would not be considered to be more restrictive to development. If, because of local considerations, a council wishes to set more restrictive times than under EPA guidance, then a local law or local law permit condition could also be used.</p> <p>Many existing residential frustrations come from confusion about how the law applies to these sites. EPA will be communicating the changes and highlighting the fact that, unless exempt under regulation 9, all residential construction is covered by the 2008 Regulations. Working through the practical considerations for these sites and applying targeted exemptions should result in a more workable, consistent and understandable system. Other issues of process and communication will also be addressed through guidance.</p>

Topic	Submission	EPA response
<p>Regulation 9 – Large residential developments in non-residential zones</p> <p>Application and enforceability concerns</p>	<p>Victoria Police was concerned that the changes will create challenges for police members, who tend to respond to out-of-hours complaints (late night or early morning). The submission sought further clarification on the role Victoria Police officers have in enforcing these provisions, which require more specific knowledge than is currently required.</p> <p>One submission stated that the intention of EPA to move towards local councils setting work times for particular locations and proposals will contribute to inconsistencies across councils.</p> <p>Two submissions were concerned with the interaction between regulation 9 and council local laws. It was questioned whether it was possible for councils to apply work-hour times under local laws to these sites exempted by the Regulations. Further clarification was requested to ensure that setting of local laws is consistent with existing state legislation and would not be overridden through any legal or prosecution process.</p> <p>The submission from the NSW Department of Environment and Climate Change considered that having variable operating times dependent on site situation or building type may lead to some confusion within the construction industry, with potential for non-compliance.</p>	<p>Given that these issues primarily relate to development, it is expected that, in the first instance, council would lead any assessment and enforcement. As it can be unclear at the time of construction what purpose a development is intended for, its number of storeys or land zoning, it would not be reasonable to expect Victoria Police to know whether a large-scale site is covered by s48A of the EP Act, the residential noise Regulations or other local law requirements for commercial sites. Problems with any identified sites that may require police assistance should be communicated by council to the local police station as part of a coordinated approach to problem premises.</p> <p>There is currently variation in the time set for construction across councils, some of which is inconsistent with state regulation. EPA recognises that this is due in part to lack of clarity about how the law should apply to residential construction of a large scale. The new Regulations create a more workable regime. Councils are encouraged to follow EPA guidance for managing noise from larger sites exempted under regulation 9. Local laws may differ from EPA guidance to reflect local needs. However, action under the EP Act would not be able to consider the local law provisions.</p> <p>Regulation 9 clarifies that no general statewide test for automatically unreasonable noise should be applied under the EP Act to these sites. Action under s48A(3) may be taken for these sites, and EPA's <i>Noise control guidelines</i> (EPA publication 1254) would assist in a decision. A local law may put in place work hours for such sites (which might consider noise as well as other local amenity impacts such as traffic) to reflect local needs.</p> <p>EPA understands that there continue to be risks of some confusion about the times that apply to various construction activities. Guidance will be used to clarify this. A mechanism that allows for some flexibility is needed because some events need to occur at unusual hours, either due to logistics or to minimise impacts on the local community.</p> <p>EPA believes that the distinction between 'commercial'-type works and residential or domestic activities is generally well recognised by the building industry, with points of confusion around large-scale residential development being addressed by the changes.</p> <p>In making distinctions between different construction sites through regulations 7-9, EPA has considered that, in purely residential areas, the weekend amenity expectations of the local community are of more significance than drivers for more flexibility in hours.</p>
<p>Regulation option tested in RIS</p> <p>Exemptions for crucial events</p>	<p>One submission recommended that residential construction work be permitted within the prohibited times, if it is otherwise impracticable. It was suggested that the South Australian regulatory regime permits this and it appears to be utilised appropriately.</p> <p>One submission considered that an exemption for specific works such as early concrete pours on hot days should have been included within the Regulations.</p>	<p>For larger projects in non-residential areas, a mechanism for such flexibility was developed under regulation 9. Given the nature of small to medium-scale residential construction, EPA did not identify events that would necessitate such an exemption. A general exemption for all sites would carry risk of unreasonable impacts for the wider community. See RIS sections C3.5-8, pp.31-33.</p> <p>EPA considered and rejected this option on the basis of administrative complexity, and the limited days per year when there was a legitimate engineering requirement to start early pours on smaller sites. See RIS section C.3.5.</p>

Topic	Submission	EPA response
<p>EP Act</p> <p>Comments on s48A (outside of scope of regulatory review)</p>	<p>The submission from Victoria Police considered the current enforcement regime insufficient for deterring breaches of law by larger companies. It recommended that, as the regulatory changes result in more flexibility for large-scale residential development, the infringement penalties under the EP Act should be increased for corporations. It was suggested that increased penalties may be more beneficial than court processes, because they avoid the expense of litigation and may be effective at preventing larger companies from abusing the Regulations.</p> <p>One submission recommended introduction of a penalty infringement under the EP Act for the offence of unreasonable noise, rather than failure to follow a direction.</p> <p>Two submissions requested further guidance or legislative controls to deal with house alarms where the owner is away, as the current provisions do not serve to abate ongoing alarm noise in these cases.</p> <p>One residential submission suggested legislative change to define any audible noise as unreasonable.</p>	
<p>General</p> <p>Comments on residential noise framework</p>	<p>Three submissions requested guidance for local government and Victoria Police to promote and improve consistency in the investigation, management and enforcement of noise issues.</p> <p>One submission recommended that, prior to the Regulations coming into operation, non-statutory guidance for noise reduction and reducing impacts will be required for local councils, developers and the construction industry.</p> <p>Two submissions concerned existing construction noise impacts in the Southbank area, with one noting ongoing impacts from multiple construction projects, noisy work carried out on a Sunday with a rostered day off taken on the following Monday, and weekend work which does not follow the noise reduction guidelines established by EPA.</p> <p>Two submissions suggested that the previous Regulations were not followed in high-density, mixed-use areas.</p>	<p>EPA recognises that, in some cases, there are existing issues in how unreasonable noise is assessed. The extensive consultation with local government, police and the community in development of the Regulations will contribute to EPA's <i>Residential noise handbook</i>.</p> <p>After completion of the <i>Residential noise handbook</i>, any further guidance needs for construction noise will be considered.</p> <p>While construction of this scale in non-residential areas can carry noise impacts, a mechanism for taking action in relation to 'unreasonable noise' is available. There is scope to clarify what may be potentially unreasonable residential construction noise, such as sustained, noisy weekend work, in any future review of construction noise guidance.</p> <p>EPA has recognised that large-scale residential construction in high-density, mixed-use areas carries constraints and difficulties equal to commercial developments, and that the previous regulatory regime did not adequately reflect this. The lack of flexibility meant it could be impractical to follow at times. The changes, including general noise management expectations for larger sites, will be communicated to all key stakeholders.</p>

Topic	Submission	EPA response
<p>General</p> <p>Comments on residential noise framework</p> <p>Comments on promotion and consultation of the Regulations</p> <p>Comments on enforcement roles</p>	<p>One submission was concerned about excessive noise from construction site transistor radios.</p> <p>Two submissions requested further guidance or legislative controls to deal with people talking loudly or shouting, singing, swearing etc in their backyards.</p> <p>Two submissions requested further guidance or legislative controls to deal with owners of trucks warming up their engines in the morning (during prohibited times).</p> <p>One residential submission was concerned that their local police did not attend to assess noise outside of the prohibited times.</p> <p>One submission was concerned with how the Regulations interact with rules put in place by bodies corporate.</p> <p>A number of submissions focused on the need for promotion of the Regulations to residents and the construction industry. A broad media campaign was suggested in two submissions, and others highlighted the need to liaise with peak local government and planning bodies.</p> <p>One submission suggested that EPA had not consulted extensively in development of the Regulations, as local residents and business groups had not been involved.</p> <p>Two responses concerned the resource capacity and roles of councils and police, and difficulties in how cases are referred between agencies. One issue described was where police referred cases of noise generated over the weekend to the local council, who are unable to take enforcement action after the event has occurred. Also mentioned were the limited resources of councils to attend to nighttime or weekend noise complaints, and associated safety concerns.</p> <p>One residential submission from a high-density residential area was concerned that neither EPA nor council enforce noise impacts from development.</p>	<p>Use of site radios might be unreasonable noise in some cases, if they are too loud or continue for too long. This issue will be considered in any future review of construction noise guidance.</p> <p>This type of noise can be assessed under the general unreasonable noise provisions of s48A(3) of the EP Act.</p> <p>The 1997 and 2008 Regulations both prescribe motor vehicles, with an exemption for vehicles moving in or out of premises. This exemption does not apply to the extended warm-up period needed for some vehicles, as they are not moving in or out of premises when the warming up or powering of air brakes occurs. Use of a commercial vehicle in association with residential premises must not cause unreasonable noise impacts for neighbours, and should be located appropriately to avoid these impacts.</p> <p>EPA recognises that, in some areas, there has been a lack of clarity about the general offence of unreasonable noise outside the prohibited times. This will be addressed through improved guidance.</p> <p>Rules put in place by a body corporate would be invalid where they permit noise from items during times when noise is prohibited under the Regulations.</p> <p>EPA recognises the importance of communicating the new regulations and they application to residents and the construction industry. A communication plan is currently being prepared.</p> <p>While the early period of general consultation was focused on broader noise issues (See EPA publication 1235, <i>Residents' noise stories</i>), the public comments period was open to all parties to submit their views on the proposal. EPA thanks all parties who took the time to submit their assessment of the Regulations.</p> <p>EPA is considering how it can support improved coordination and understanding of roles between councils and police on residential noise matters..</p> <p>Enforcement powers for residential development are given to councils and police under the EP Act. Such powers are not given to EPA. This is an area where EPA sees the need for further clarity through revision to existing guidance.</p>

Topic	Submission	EPA response
<p>General</p> <p>Comments on non-residential noise</p>	<p>A number of submissions concerned non-residential noise sources outside of the scope of the regulatory review. These included recommendations that:</p> <ul style="list-style-type: none"> - the Regulations provide controls regarding noise emissions from industrial areas - the current Regulations regarding residential construction noise be amended to include all types of construction noise that can be heard from residential premises, no matter what the intended purpose - EPA conduct a wider review of noise controls for all sources, and these be consolidated within one specific legislative instrument. <p>Two submissions recommended that EPA review and clarify the roles of EPA, police and local government for all noise sources (residential, entertainment, commercial and industrial).</p> <p>One submission recommended that a dedicated unit be available within EPA to assist local government and provide guidance in relation to all noise issues.</p>	<p>These recommendations are noted; however, they are not within the scope of the review of the Regulations and legislation. A range of statutory instruments and guidelines provide the policy and guidance framework for the control of noise in Victoria. This includes control of noise from industrial premises and from non-residential construction activities.</p> <p>EPA does not have enforcement powers for residential noise. As part of its review of residential noise guidance, EPA is considering how it can support improved coordination between councils and police on residential noise matters. EPA will consider development of further information on roles for other noise sources as part of future guidance.</p> <p>This suggestion is noted but is outside of the scope of the review.</p>