30 October 2019

**Music Victoria submission into EPA Noise Regulations Review 2019**

To whom it may concern,

Music Victoria makes this submission to the review of subordinate regulations under the *Environment Protection Amendment Act (2018)* relating to live music.

As the peak body representing over one thousand musicians, festival promoters, live music venues, music fans and other music businesses, Music Victoria has encouraged, supported and participated in the review of SEPP N-2 and the preparation of the new Environment Protection regime.

We commend the EPA on the design of its new framework and confirm that Music Victoria is keen to work with the EPA, councils and live music venues to achieve simplified and streamlined regulation and the provision of best practice guidance to enable venues and promoters to manage music.

Over the past five years, we have put forward many constructive suggestions and have attempted to inform and assist EPA on matters that would improve environmental regulation and better integrate it with other regulatory regimes.

However, we are disappointed that virtually none of Music Victoria’s suggestions have been taken on board.

Instead, EPA has published a proposed environment protection regime which simply translates existing controls into a new tiered structure, but also introduces several key adverse changes and proposed new elements on which we have not been previously consulted.

Some of these changes could have significant, wide-reaching and possibly unintended consequences for our industry, and the broader Victorian community and economy that enjoy the benefits of Victoria’s thriving live music industry, which is worth $1.42 Billion to the Victorian economy¹ (2017).

The reforms will add red tape and make it hard - if not impossible - for some operators to reach compliance, which is contradictory to the State’s acknowledgement of live music as one of the state’s key economic drivers and cultural connectivity.

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We consider that this reflects the unfortunate reality that regulation and management of live music has not been a high priority for the EPA, which now seems out of touch with where industry, the community, local government and the planning and other regulatory systems are all heading:

- The planning system included live music provisions relating to the Agent of Change in 2014 which acknowledges the concept of balancing community and resident interests in the context of increasingly dense living
- The live music industry is now recognised in the Liquor Control Reform Act 1998 through an ‘object’ recognising the contribution of live music, and the State Government committed $26 million between 2014 and 2018 to drive the live music economy.

We have observed that since the introduction of SEPP N-2, EPA has not prepared any further guidance, worked with local government and other regulatory agencies, or even enforced its own regulatory system. We have been put in the position of needing to respond on an informed and rational basis with very little time to consider the potentially wide-reaching impacts on our industry. To the extent practicable, we have consulted across our industry, and sought professional advice to inform this submission.

The structure of our submission is:

- This covering letter, through which we express our dissatisfaction with the draft proposal and its proposed outcomes but confirm our ongoing intention to provide constructive feedback.
- The attached discussion of our ‘top issues’, which we were encouraged to provide at a recent briefing by EPA representatives
- A detailed section by section and where appropriate, clause by clause response on all issues of concern to Music Victoria and its members.

This is the first (and belated) review of the Environment Protection regime relating to live music in many years. We would welcome further engagement from EPA prior to its finalisation of the new Environment Protection provisions.

Live music is important to the culture and vitality of Victoria. We won’t get another chance for a long time to improve the Environment Protection regime, so this is critical to the industry and community that we represent.

Yours sincerely,

Patrick Donovan

CEO Music Victoria
Review of Environment Protection Amendment Act regime – live music entertainment

KEY ISSUES

Enjoyment of live music is no longer recognised as a valid environmental use or policy consideration

The new Environment Protection Regulations and Environmental Reference Standards remove any explicit recognition in the Environment Protection regime that the opportunity for the community to enjoy live music is a valid and valued use of the acoustic environment.

SEPP N-2 included a policy goal of protecting residents from noise ‘while recognizing the community demand for a wide range of musical entertainment’.

This recognition has not been translated into the new Regulations, and Music Victoria is deeply concerned that this could fundamentally change the way that the Environment Protection Amendment Act, Environment Protection Regulations, Environmental Reference Standards and guidance are interpreted and applied, to the detriment of Victoria’s vibrant and valuable live music industry.

Perhaps more than any other environmental segment dealt with by the Environment Protection regime, Music Victoria considers it appropriate to recognise the need to balance competing human uses of the acoustic environment, and for clear guidance be given on achieving the principle of shared responsibility under the Environment Protection Amendment Act.

Music Victoria requests that ‘Enjoyment of Musical and Cultural Sound’ be included and to be protected as an environmental value of the acoustic environment in the Environmental Reference Standards.

If this is not included, EPA will subject live music industry operators to being accused of trying to ‘ignore or avoid the law’. The Music Industry does not want to avoid the law but require the law to recognise competing interests as it does in other legislation.

Introduction of new uses in the definition of noise sensitive areas

Music Victoria strongly objects to the inclusion of new uses in the definition of ‘noise sensitive area’ in the Environment Protection Regulations, that will take the application of the live music noise provisions well beyond the premises previously subject to consideration under SEPP N-2 or currently considered as noise sensitive uses in the planning regime.

The inclusion of new noise sensitive uses puts the EP Act definition at odds with the Planning and Environment Act definition, which focuses on the interaction between venues and residential uses. This will lead to confusion as neither the planning system nor the proposed new EP Act regime give any relevant guidance on the protection of amenity in these new noise sensitive areas. The noise limits and measurement techniques set out in the Environment Protection regime were developed to protect specified beneficial uses in a residential building.

Music Victoria is concerned about the implications of including uses such as child care, kindergarten and schools in the definition. These uses are very unlikely to be operating at the times of evening and night during which most indoor music venues and outdoor music events are operating, yet there is no acknowledgement of this in the noise measurement protocol or anywhere else in the new Environment Protection Regulations. A music venue could be found to be causing unreasonable or
even aggravated noise measured at a childcare centre late at night when no one is present. And how will the Environment Protection Regulations deal with an outdoor event that is being held at a school?

Similarly, Music Victoria is concerned about the implications of including tourist park, caravan park and campground in the definition, especially since these businesses are very likely to be used in support of any nearby outdoor music event. Again, there is no better guidance on how objectives, relevant limits or the calculation and application of noise measurements are to be used in these circumstances.

Many long-standing, valued, and economically valuable outdoor festivals and events will immediately exceed ‘unreasonable noise’ limits at nearby parks, tourist facilities, campgrounds and residences, where they don’t under existing regulations (SEPP N-2). This aspect of the proposed Environment Protection regime is doomed to fail.

Music Victoria is concerned that one complainant over two or three years could force EPA to issue a notice, then enforce that notice, and eventually close down an event. There is no provision anywhere in the proposed regime to balance the broader benefits to the community against one or a few persistent objectors.

We note there has been no consultation with the music industry on the impact of these proposed new inclusions over the five years we have been engaging with EPA over the new regulations. We now have no time to genuinely consider and properly respond to the proposals, apart from our initial thoughts set out above. Better alignment of measurement techniques with the principle of shared responsibility is required.

The proposed Environment Protection regulations do not adequately reflect the principle of shared responsibility under the Environment Protection Act. This principle is better dealt with in other regulatory regimes, which have better responded to the need to balance interests in a much more densely populated city. In particular, the calculation of noise limits in accordance with the Noise Measurement protocol is now unreasonably weighted in favour of residential uses over the operations of indoor music venues.

The Agent of Change:

Music Victoria believes that the EPA attempt at interfacing the Environment Protection Regulations to the Victoria Planning Provisions, in particular the Agent of Change principle described in s53.06, is fundamentally broken. Music Victoria advocates for a simpler method of achieving protection of environmental values, by defining and allocating the shared responsibility of this protection whilst overcoming the complexity of the regulatory interface to the Victoria Planning Provisions. This is achieved by relating the environmental values to be protected to the time period and place of the measurement and assessment of sound. That is, an indoor measurement point’s location in a habitable room is undertaken during the night time period (typically from 11pm to early morning) to protect ‘Sleep during the night’, and an outdoor measurement point is used within the defined ‘noise sensitive area’ (outdoors) during the Day/Evening period to protect ‘Domestic or recreational activities’, ‘Normal conversation’, and ‘Child learning and development’ (although we oppose its inclusion).

Such an approach abandons the fraught use of a proxy - an outdoor noise sensitive area being experientially representative of sleep at night which is exclusively undertaken inside. The danger of
the use of a proxy measurement point for habitable rooms is well articulated in the Marshall Day submission. They state that,

“An outdoor measurement would not be likely to represent the noise exposure within the habitable room, taking into account the noise reduction performance of any relevant building elements”.

This subject is substantially expanded in detail further on in this submission.

Furthermore, a further refinement of the exclusion of balconies and wintergardens from noise sensitive areas would reflect their usages subordinate nature and non-alignment with sentimental values.

**Indicators and objectives for the acoustic environment – Environmental Reference Standards.**

Music Victoria supports the ability to set different environmental objectives for segments of the environment, and for this to be a flexible approach recognising the character and planning intent for an area.

In particular, Music Victoria has advocated for the ability to set relaxed standards for identified activated precincts. For example, where a local authority wishes to identify a ‘24 hour economy area’ to encourage live music and other uses likely to require extended operations such as co-working spaces.

This was a focus of our previous submissions to the review of SEPP N-2, and reflects the reality that Melbourne is, and must become, a more densely populated city. Planning and regulation must deal better with realities of ‘precincts’ and modern planning rather than dealing with live music issues in an outdated manner as ‘point-to-point’ matters.

Music Victoria is deeply concerned about the potential implications of the indicators and objectives for the acoustic environment set out in the draft Environmental Reference Standards (a view shared by Marshal Day Acoustics), particularly as they are tied to planning zones, and how these may end up being applied to the regulation of live music venues.

We note that the preamble to the Environment Protection Regulations states contradictory purposes for the objectives and indicators set out in the Environmental Reference Standards:

- “*The objectives and indicators provide a basis for reporting on environmental conditions*”  
  (We consider this reasonable)
- “*They provide a benchmark for comparing desired outcomes* [our emphasis] *with actual state*”  
  (this implies decision makers should seek to attain these outcomes)
- “*Although it is not a compliance standard*…(the regulations, and by implication the objectives and indicators) *must be considered* by VCAT… and responsible authorities…when making planning decisions…”  
  (this is an internally inconsistent statement)

Then:

*This Environmental Reference Standards seeks to achieve [its] purpose by—*
(a) identifying environmental values that specify the environmental condition to be achieved or maintained in the whole or any part of Victoria; and

(b) specifying indicators and objectives to be used to measure, determine or assess whether those environmental values are being achieved, maintained or threatened.

No guidance is provided anywhere on how these statements relate to the provisions in the Environment Protection regulations that set out how to measure reasonable noise limits from indoor or outdoor venues, based on actual background conditions and venue operations and performance.

Music Victoria notes that the Environmental Reference Standards, if taken into account and applied as mandatory requirements in decisions by relevant authorities, would make many existing venues non-compliant.

Music Victoria was verbally advised at a recent briefing by EPA representatives that the objectives and indicators are not relevant to regulation of live music venues.

However, it is inconceivable that these objectives would not be taken into account in planning decisions, third party objections and potentially, enforcement at VCAT under one of the many regimes that enable action to be taken against live music venues.

Music Victoria will not support the inclusion of these indicators and objectives without clarification in the ERS itself or higher-level instruments as to their intended purposes and application, including confirmation that they are not to be used in decision-making or enforcement under any regulatory regime applying to live music. We will not accept assurances that these clarifications can be provided in lower-level instruments such as guidance.

**Technical inadequacies:**

Music Victoria, its members and our technical advisers have identified a number of technical inadequacies, inconsistencies and vagaries in the proposed Environment Protection regime, which include:

- Undefined terms of consequence
- Inconsistencies about where, when and how noise measurements are to be made to comply with the noise protocol
- Unnecessary inconsistencies between methods of measuring and calculating background noise between ‘Commercial, Industrial and Trade’, and ‘Entertainment Venues’
- Unreasonably (and possibly unintended) strict limits imposed by the use of ‘plain English’ when more deterministic measures are more appropriate
- Insufficient mechanisms to identify and implement exemptions
- Inconsistencies between terms used in the EP regime and other regulatory regimes, which will lead to confusion

Music Victoria has elaborated on these matters in the attached detailed comments, and expects EPA will receive submissions from more technically literate submitters. Music Victoria has read the Marshall Day submission and supports their recommendations as it concurs with this submission.

**Music Victoria response to the Environment Protection Act 2017**

**ENVIRONMENT REFERENCE STANDARD**
Environmental Values

The SEPP N2 Policy goal has not been carried over into the new noise regulations ‘Environmental Values’.

“Policy goal. The goal of this policy is to protect residents from levels of music noise that may affect the beneficial uses made of noise sensitive areas while recognizing the community demand for a wide range of musical entertainment “ – is no longer reflected in the ‘Environment Reference Standard - Statement of environmental values’.

This goal is important as it articulates the value and importance of cultural sound, in particular live music, to the Victorian community. Other aspects of the soundscape have been acknowledged and are reflected by the addition of the ‘Environmental Value’ of ‘Human tranquillity and enjoyment outdoors in natural areas’.

Facilitating the acknowledgement of the importance of cultural sound, in particular live music, to the Victorian community is exactly the same in principle as acknowledging “appreciation and enjoyment of the environment for its natural condition and the restorative benefits of tranquil soundscapes in natural areas” in the Environmental Value of ‘Human tranquillity and enjoyment outdoors in natural’.

We do not accept the EPA’s view that “The Environment Reference Standard is not designed to capture policy goals or regulatory intent in the same way the SEPP’s have in the past”\(^2\). If it is possible to implement the acknowledgement of the importance to community access to geophonic and biophonic sound in the soundscape in ‘Environmental Values’, then it is possible and feasible to acknowledge culturally derived anthropophonics sound (cultural sound that includes live and recorded music).

Furthermore, in the “Indicators and objectives for surface waters” (Table 7), the cultural Values are recognised as the Environmental Values

“Traditional Owner cultural values.

Objectives must be developed in consultation with Traditional Owners and may be informed by the process identified in the ANZG Guidelines for determining cultural and spiritual values.”

Without the new noise regulations ‘Environmental Values’ acknowledging the Victorian communities right to access and participate in music and other cultural and artistic practices that involve a sonic footprint the EPA would not be fulfilling its Human Rights obligations under the Victorian Charter of Human Rights and Responsibilities Act 2006 which requires consideration of freedom of expression “by way of art” (s15.(2)(d)) and also, in consideration of:

Article 27 - UN Universal Declaration of Human Rights

“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in .... its benefits.”

Article 11 - UN Declaration on the Rights of Indigenous Peoples

“The right to maintain, protect and develop the past, present and future manifestations of their cultures ... visual and performing arts and literature.” This includes “moral and material interest”.

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\(^2\) EPA answer to a submitted a Music Victoria question. 8th Oct 2019.
For the EPA to acknowledging one section of the community’s cultural values whilst wilfully ignoring another section of the community’s cultural values would be deeply troubling, a breach of the EPA’s human rights obligation and contrary to the Live Music Accord, signed by the Honourable Tony Robinson, then Minister of Gaming and Consumer Affairs, on behalf the Victoria Government in 2010.

“Importance of Live Music to Victoria.

The parties agree that:

- Live music makes a significant contribution to the cultural well-being of Victorians and makes a significant economic contribution to Victoria.”

The Victorian Government’s acknowledgment that “live music is a significant contribution to the cultural well-being of Victorians” is an acknowledgment of the experience of human health and consistent with the ‘purpose’ of the Environmental Protection Amendment Act 2018.

Furthermore, we note that this would be consistent with the identification of ‘water-based recreation’ as an environmental value to be protected in the Environment Reference Standard’s provisions relating to the ‘water’.

To address the deficiency of the exclusion of the SEPP-N2 policy goal from the Environmental Reference Standard, Music Victoria proposes an addition ‘Environmental Value’.

Musical and Cultural Sound

An outdoor acoustic environment that allows for the appreciation and enjoyment of the environment for its musical, cultural and artistic usage in the soundscape without preventing the Environmental Values of:

- Sleep during the night,
- Domestic or recreational activities,
- Normal conversation, and
- Child learning and development.

Whether cultural sound, such as live and recorded music, is considered of value or as noise, is a value judgement by the person perceiving the sound in the context of the soundscape and their experience. It cannot be characterised by its materiality (Decibels, Hertz, etc). Sound leaves no residue. It only exists in the present. It is the same material as if created by nature, machine or human. Sound can be both a cultural product (music, art) or noise, and its classification as noise is exclusively a cognitive function of the human experience.

As such, Music Victoria asserts that there is a well-established community joint responsibility to different segments of the community as to the protection of noise sensitive uses from cultural sound sources. This is well established and defined under the Victorian Planning provisions³, and also

³ S53.06 of the Victorian Planning Provisions, s21.06-3 of the Hobsons Bay Planning Scheme, s22.06-3 of the Port Phillip Planning Scheme, and s22.05-4 Yarra Planning Scheme.
established in numerous VCAT decisions⁴. Without the Environmental Values acknowledging the principle of shared responsibility for cultural sound, this balance cannot be conceptually established in the Environmental Values and by extension, the Environmental Regulations. In the exposure drafts, music is characterised only as noise and a pollutant, placing the draft environmental regulations and its ‘Environmental Values’ at odds with other areas of Victoria law and the Live Music Accord (2010).

Furthermore, the EPA states⁵ that “Environmental values are qualities of the environment that the community appreciates”. For example, “areas where people can relax and experience the natural soundscape” excludes recognition of the importance of cultural sound (music) and is at odds with the values of 97% of the Australian community that listens to recorded music, the 50% who attend a live music event and the one in 7 Australians who are music-makers⁶.

Music Victoria response to the Environment Protection Regulations


Exposure Draft


Music Victoria is of the opinion that the current exposure draft of the Environment Protection Regulations is excessively complex, impractical and will not work in practice.

The current draft requires that to take a noise measurement to assess whether a Live Music is in excess of what the Environment Protection Act 2018 considers to be Unreasonable or Aggravated Noise, the affected noise sensitive use needs to be determined if it was the “Agent of Change”.

Determining this status is required to determine whether an indoor or an outdoor measurement point is to be used. As planning permits do not document this status, a document search of the planning application documentation at the relevant council would be required by the EPA before any valid acoustic measurement being undertaken.

If measurements were taken without establishing whether the sensitive use is the Agent of Change, these readings would have to be considered to be invalid and defective.

Music Victoria maintains that it is appropriate that the Environment Protection Regulations that cover noise include recognition that the requirement to control the effect of noise and music emissions on sensitive land uses is a shared responsibility with the community.

The Victoria Planning Provisions were updated in 2014 to better reflect principle of shared responsibility but the inclusion of clause 53.06 by the application of what is commonly referred to as the “agent of change” principle.

However, the principle of share responsibility is not new, nor is it the exclusive instance of the application of the principle within Victoria Law.

In 21 May 2004, following the findings and recommendations of the Live Music Taskforce the then-Minister for Planning, Ms Delahunty, expressed the view that “the concept of the ‘agent of change’ is now state policy.”

Further, the proposition that, in appropriate circumstances, new sensitive uses should protect themselves from the adverse effects of existing commerce, industry or cultural activity is a principle that has been regularly endorsed and applied by planning decision makers, in this State especially, but not always, where the existing activity is a significantly beneficial one, and where there is policy support for such an approach.

That this is so is made clear by reference to a significant number of VCAT decisions which have given effect to the principle.

For example, in Macrobuild Pty Ltd v Boroondara City Council [2004] VCAT 1989, the Tribunal imposed conditions on a residential development which required it to protect itself from noise

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7 Live Music Taskforce, Report and Recommendations, Elaine Carbines MLC, Parliamentary Secretary, Environment, 5 December 2003
8 Media release from Minister for Planning and the Arts, Friday 21 May 2004.
emissions from a nearby engineering workshop and a motor garage. In doing so, it made the following observations (at paragraph 52).

“A major issue at the hearing was that of the potential for residents of the proposed development to suffer noise nuisance as a result of the presence of an engineering jobbing workshop (to the west) and a motor garage (to the east). In the event that such nuisance arose, the nature of the relevant SEPP N-1 would put the onus on the adjoining uses to meet the relevant standards for noise emissions, notwithstanding that the residential use was the later arrival. This appears to result from the fact that the guidelines were drafted without any regard to the order of arrival of different activities in a locality. In any case, the effect of the present guidelines is that, if the proposed dwellings are not adequately insulated, the adjoining industrial businesses would be obliged to mitigate the noise effects of their activities, at their own expense. As pointed out by Mr. Growcott, this would be feasible but inordinately expensive and, in the circumstances, unfair.”

The above statement neatly encapsulates the logic that underpins the principle of shared responsibility and was referenced in the 2013 Music Victoria submission\(^9\) to the Victorian Government advocating the formalisation of agent of change principle in the VPP (s53.06).

In *Australian Postal Corporation v Darebin City Council* [2005] VCAT 1454, the Tribunal required a new residential development to protect itself from noise emissions from an existing mail distribution centre.

In *First Delta Group v Yarra City Council* [2009] VCAT 2610, the Tribunal required a new residential development to protect itself from noise emissions from the CUB site nearby.

The same principle has also been applied to intensive residential developments established near existing infrastructure, including railway lines and stations (see, for example, *Richmond Icon Pty Ltd v Yarra City Council* [2011] VCAT 2175).

Further, the principle is already embodied in a number of local planning policies such as:

- Clauses 21.06-3 of the Hobsons Bay Planning Scheme,
- Clause 22.06-3 of the Port Phillip Planning Scheme,
- Clause 22.05-4 Yarra Planning Scheme.

in a number of design and development overlays such as Melbourne Planning Scheme DDO Schedule 26.

The principle of the agent of change clause (sometimes referred to as imposing a “reverse buffer”) was also accepted as a valid planning consideration by the advisory committee into the former Port Phillip Woollen Mills site in Hobsons Bay (published 10 May 2001) which recommended the imposition of planning controls over a residential development to ensure that the development properly protected itself against noise emissions from the nearby Williamstown shipyards.

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\(^9\) THE STATE PLANNING POLICY FRAMEWORK REVIEW ADVISORY COMMITTEE SUBMISSION MADE ON BEHALF OF MUSIC VICTORIA (2013).
A simpler approach

Music Victoria is of the opinion that there is a simpler and more effective way of implementing the well-established principle of shared responsibility (including s53.06 of the VPP) in the Environment Protection Regulations than the current complex, technical and exclusive focus on 53.06 of the Victorian Planning Provisions.

This is by relating the measurement point to the location of the Environmental Value and the appropriate measurement method to the time that the Environmental Value is undertaken.

That is,

Night time period (typically from 11pm to early morning) with an indoor measurement location in a habitable room.

- Sleep during the night

Day/Evening period with an outdoor measurement point defined by the existing definition of a ‘noise sensitive area’.

- Domestic or recreational activities,
- Normal conversation, and
- Child learning and development.

Such an approach avoids the necessity of any reference to specific VPP clauses, disentangling and future proofing the Environment Protection Regulations from future changes to the VPP and to any related VCAT decisions.

The justification for this is that,

- ‘Sleep at night’ is an exclusively indoor activity for residential land-use which is, as stated, conducted at night, and
- Normal conversion, domestic or recreational activities, and child learning and development are activities’ that are all conducted both indoors and outdoors, and conducted during the day and evening.

The definition of Unreasonable noise in the Environment Improvement Amendment Act 2018 includes factors such as “its volume, intensity or duration; character; the time, place and other circumstances in which it is emitted”. Furthermore, if these are deemed to be insufficient, further “prescribed factors” can be implemented.

These factors can facilitate the implementation of the above approach advocated by Music Victoria within the Environment Protection Regulations.
This approach balances the shared responsibility to protect ‘normal conversion, domestic or recreational activities’, and ‘child learning and development are activities’ by placing the responsibility solely on the emitter of music sound but for ‘sleep at night’ where the responsibility is shared between the music sound emitter and receiver. The physical manifestation of the shared responsibility is the built form attenuating the music sound along the sound transmission path. This is comprised of the Live Music Venue’s structure and the sensitive uses’ structure. If either of the building’s attenuation is insufficient that it compromises ‘sleep at night’, then it is the sole responsibility of the Live Music Venue to either lower their emissions, or upgrade the attenuation performance of either the Live Music Venue or the residential building’s fabric to comply to the Environment Protection Regulations for noise.

However, Music Victoria asserts that it is the responsibility of the resident to deploy the sound attenuation infrastructure in the most effective manner. That is, to close their windows if necessary. Music Victoria does not accept that this responsibly is solely derived from whether the Agent of Change principle was applied to the planning assessment of planning permit for the effected sensitive use.

Section 53.06 of the VPP applies to a planning application. It is a set of rules to be applied to the design and construction of a multi-residential building (the sensitive use) based on a site assessment prior to occupancy. Beyond this, it has no binding responsibility on a residential occupant.

Therefore, the draft Environmental Protection Regulations cannot derive a logical rule that dictates that occupants whose residence were designed and constructed in accordance with s53.06 of the VPP would have to have their windows closed when an acoustic measurement is taken, whilst everyone else can have their windows open when determining a music Venues compliance to the Environment Protection Regulations for noise.

Notwithstanding the Music Victoria position on the exposure draft of the Environment Protection Regulations being defective and an overly complex interface to the “Agent of Change” principle, Music Victoria contends that the number of music-related noise complaints resulting in compliance actions does not justify the regulatory impact on the Music Industry.

Figures provided by the City of Yarra indicate that between 1st July 2015 and 31st Jun 2017 of the 645 noise complaints received 104 were recorded as music-related, resulting in four prosecutions.

The City of Melbourne’s Compliance / Planning Enforcement Team stated in an email\(^{10}\) to Music Victoria,

> “Live music makes up a very small number of complaints in the City of Melbourne. There has only been about three issues in the last 12 months involving actual live music, and after an initial breach notice the venues complied immediately.”

These two municipalities cover 60% of the Live Music Venues in Melbourne.

Due to the impact that Music Victoria’s position is likely to have on amending the expose draft for the Environment Protection Regulations for noise, Music Victoria may not have covered all the necessary detail required in our draft amendments to implement the position on the relationship of the expose drafts of the Environment Protection Regulations, Environmental Reference Standards,
and the Victorian Planning Provisions. Music Victoria would welcome future co-operative involvement in the drafting process to assist the EPA.

In summary, Music Victoria advocates that in all cases the entire sound transmission path must be taken into account when acoustic measurements are undertaken when assessing whether a Live Music Venue is exceeding the levels for Unreasonable and Aggravated Noise relating to the protection of ‘sleep at night’, and that windows must be shut when the measurement is taken.
**Clause by Clause Comments**

4. **Definitions**

The extension of definitions of ‘noise sensitive uses’ (a (iii)) to include child-care centres; kindergartens; primary schools and secondary schools will be problematic without a corresponding inclusion in ‘Noise-sensitive residential use’ definition under clause 53.06 of the Victorian Planning Provisions, and also be restricted to their hours of operational use.

Notwithstanding our objection, Music Victoria would also require a timely guarantee of the corresponding amendment to s53.06 of the Victorian Planning Provisions. It is possible that these uses could be weaponised by developers in the application process planning system and at VCAT when developers seeking to build sensitive use developments proximate to Live Music Venues, facilitating avoidance of developers soundproofing responsibilities under s53.05.

Furthermore, existing Live Music Entertainment Venues that are proximate to existing child-care centres; kindergartens; primary schools and secondary schools would need to be excluded from the definition of noise sensitive uses or areas, otherwise unintended cases of non-compliance are likely to arise. A process of identifying and grandfathering these cases is required in order to avoid retrospective compliance actions. Notwithstanding our objection, Music Victoria would require a commitment to such a process from the EPA.

Examples of where this may occur would include:

- The Curtain Hotel
- The Melba Spiegeltent
- Collingwood Arts Precinct
- The Tote Hotel
- The Northcote Social Club
- St Kilda Bowls Club

There has been insufficient time survey possible affected Live Music Venues, so the list is expected to be significantly more extensive.

Music Victoria opposes the inclusion of tourist establishments; campgrounds; and caravan parks in the definitions of noise sensitive uses (b). Many festivals (Meredith Music Festival, Golden Plains Music Festival, Boogie and Evie Music Festivals, Country Rodeos and festivals, etc.) include on-site camping which would not be a compatible use under the draft Environmental Protection Regulations definition of ‘noise sensitive uses’ and likely make the festivals unviable if on-site camping use was subsequently prohibited.

Festival Patrons who camp on site have no expectation that their acoustic environment for sleep is going to be protected from the audibility of music.

Similarly, festivals such as Queenscliff Music Festival and Port Fairy Music Festival and Echuca Riverboats Festival are located in the rural town boundaries, proximate to local campgrounds, caravan parks and tourist accommodation and are almost all patronised by music festival attendees, artists, volunteers or staff for the duration of the event, prior to and immediately after the event.
It is also the case that these stakeholders would have no expectation that their acoustic environment for sleep is going to be protected from the audibility of music.

The inclusion of tourist establishments; campgrounds; and caravan parks in the definitions of noise sensitive uses would likely make music festivals located in rural towns unviable as the festival sites would no longer be fit for purpose.

Music Victoria believes that the inclusion tourist establishments; campgrounds; and caravan parks in the definitions of noise sensitive uses will be a major disruption to many Victoria Music Festivals in Victoria that will result in extensive economic damage to the Music Industry, the rural economy and result in major community concern resulting in possible community protest actions.

The definition of a ‘noise sensitive area’ needs to expressly exclude balconies and winter gardens for all noise sensitive uses. These locations are not used in the same way as gardens in residential apartment buildings. They are typically used to drying of washing, smoking, storage, companion animal toileting and are not used for activities defined in Environmental Values in the Environmental Reference Standards.

The definition of a ‘noise sensitive area’ requires the deletion of the reference to tourist establishments; campgrounds; and caravan parks and also childcare centres; kindergartens; primary schools and secondary schools and exclusion of balconies and winter gardens from all noise sensitive uses.

Clause by clause comments.

28. Noise limits need to be able to be varied by a permit application process, as are operating hours (s128) by an inclusion in s28 and Schedule 1. Prescriptive and inflexible noise limits for Unreasonable Noise for outdoor events will create a situation where many of the well-established longstanding music festivals will become unviable under the new Environmental Protection Regulations.

These would likely include:

- St Kilda Festival
- Falls Festival
- Queenscliff Music Festival
- Port Fairy Folk Festival
- Sydney Road Festival
- Spanish Festival (Johnston St. Fitzroy)
- Meredith and Golden Plains Music Festival
- Any Festival conducted at the Melbourne Show Grounds or Flemington Racecourse.
- Festivals conducted on the St Kilda foreshore (Approximately 30 per year)
- Potentially any Outdoor Festivals or Event held in an urban environment with any close residential land-use.

Music festivals such as Big Day Out and Soundwave, although no longer operating, would not be possible under inflexible limits.
This list is not extensive and only provided as an example.

These music festivals are major economic drivers, major community cultural celebrations and important showcases for Australian musicians and artists. St Kilda Festival alone is estimated to stimulate the economy by $37.4 million.\(^{11}\)

All of these longstanding festivals have operated to date with extensive community support and local council permissions. Local Councils are better suited to decision making relating to: festival and event site suitability, and operating hours through planning decisions informed by the community and local planning policy. The Victorian Planning system is parallel in law to the Environment Protection regulations. The Victorian Planning system should first determine the broader amenity issues. EPA permits should then defer to planning permits in a similar manner as liquor licensing application and variation processes.

Furthermore, EPA permits should respect existing use rights of festival sites under the Section 63.01 of Victorian Planning provisions.

Many existing Music Festival sites are located in urban locations where compliance to a prescriptive noise limit for Unreasonable Noise is simply not possible. For example, the Queenscliff Music Festival has been operating for over 20 years and has a residence located 50m from its main stage, although this festival goes to great effort to lower exposures to the small number of residences affected, the Queenscliff Music Festival’s acoustic advice indicates that compliance to the proposed draft noise regulations will not be possible.

As discussed elsewhere, the principle of community shared responsibly needs to be balanced by site specific permits that account for the various community benefits such as local economic benefit and cultural access, against the extent of the compromise to Environmental Values. The Environmental Protection regulations need to reflect shared community responsibility as it does in other areas of Victorian law (The Victoria Planning Provisions under the Planning and Environment Act and the Liquor Control Reform Act). See also the Music Victoria submission relating to the Environmental Reference standards.

Without the ability for a variation to the noise limits for Unreasonable Noise for Outdoor Events, Music Victoria believes that there will be significant disruption to Victorian Music Festivals that will result in extensive economic damage to the Music Industry, and major community concern resulting in possible community protest actions.

Music Victoria advocates the inclusion of the ability to apply for a permit to vary the noise limit for unreasonable noise for outdoor events. For example, the addition of the following in s28:

\[
(a) \text{ in the case of an application to the Authority for a permit that specifies an activity set out in item XX column 1 reference (LOX—Operation in excess of the noise limit for unreasonable noise for outdoor events) in the Table in Schedule 1—}
\]

\(^{11}\) City of Port Phillip (2019), St Kilda Festival: Economic Impact and Market Research Study, Melbourne: City of Port Phillip.
(i) the effective noise levels in any previous operations engaged in by the applicant; and
(ii) the number of complaints received by the Authority or a council in relation to previous operations engaged in by the applicant; and
(iii) the noise control measures proposed in the noise abatement plan submitted with the application (if applicable); and
(iv) the number of concerts in that location in the previous year (if applicable); and
(v) whether it is in the public interest to grant the permit; and

X is a number in Column 1 in Schedule 1.

122.

Subdivision 2— Indoor entertainment venues

123. Definitions—operating time periods

The time switch from day period and evening period to night period is inconsistent between Sunday (10pm) and all other nights of the week (11pm).

This creates an inconsistent with the “ordinary trading hours” as defined in the Liquor Control Reform Act for General and On-Premises liquor licences that specify a 11pm close on a Sunday Night.

"ordinary trading hours" means—

(a) in relation to a general licence, late night (general) licence, on-premises licence, late night (on-premises) licence or restaurant and cafe licence—

(i) the hours between 7 a.m. and 11 p.m. on each day, other than Sunday, Good Friday or ANZAC Day; and

(ii) the hours between 10 a.m. and 11 p.m. on Sunday; and

(iii) the hours between 12 noon and 11 p.m. on Good Friday and ANZAC Day;

(b) in relation to a club licence—

(i) any time on any day other than Sunday, Good Friday or ANZAC Day; and

(ii) the hours between 10 a.m. and 11 p.m. on Sunday; and

(iii) the hours between 12 noon and 11 p.m. on Good Friday and ANZAC Day;

(c) in relation to a packaged liquor licence or late night (packaged liquor) licence—

(i) the hours between 9 a.m. and 11 p.m. on each day, other than Sunday, Good Friday, ANZAC Day or Christmas Day; and
(ii) the hours between 10 a.m. and 11 p.m. on Sunday; and

(iii) the hours between 12 noon and 11 p.m. on ANZAC Day;”

We understand from an answer from the EPA to Music Victoria questions (8th October 2019) that the reasoning relates to the alignment of the operating times of indoor entertainment venues with “residential regulations for a category five item (musical instrument or stereo) for reasonable exposure to noise”.

As almost all live music venues and nightclubs hold liquor licenses (General or On-premises) and are almost all located in Commercial Zones, Music Victoria advocates that the alignment of operating time periods for entertainment venues and the “ordinary trading hours” as defined in the Liquor Control Reform Act is more logical and practical than the perceived neatness that consistency with the residential noise regulations would provide.

This would mean that the proposed time to change from the day period and evening period to the night period would be consistently 11pm across the board.

Music Victoria is unaware of any evidentiary base that would indicate that the advocated change to the draft regulations would compromise the environmental value of the protection of sleep by an unreasonable exposure to noise.

Subdivision 3—Outdoor entertainment venues and outdoor entertainment events

124. Noise sources that must or must not be taken into account

Music Victoria advocates that a more generalised process of exemption is required for noise sources that have cultural significance. We note that there is an exemption for “a place of worship, the performance or playing of music that is not related to recognised religious observance”. This exception does not specify the process for accessing recognition and specifically excludes secular instances. Music Victoria advocates for a more nuanced, sophisticated and modern regulatory mechanism for exceptions that will satisfy contemporary community expectations.

The recommended solution would be to include the definition of a ‘Soundmark12’ in s4 with the inclusion as a noise source not to be taken into account, in this section (s128).

A Soundmark would consist of a fix location creating cultural sound such as music created by religious observance, community musical instruments, or possesses unique qualities which make it specially regarded or noticed by the people in that community. Furthermore, the Soundmark would have either formal planning permission or existing use rights under the Planning and Environment act 1987 and be of cultural and historical significance that merit preservation and protection.

---

12 A term derived from ‘landmark’ used in Soundscape studies to refer to a community sound which is unique, or possesses qualities which make it specially regarded or noticed by the people in that community. Soundmarks, therefore, are of cultural and historical significance and merit preservation and protection. http://www.sfu.ca/sonic-studio-webdav/handbook/Soundmark.html
Examples would be the Federation Bells, church bells located in de-sanctified churches, a Carillon, a traction engine in a museum or installation art.

128. Definitions—operating time periods

The operating period of 5 hours or less for “outdoor entertainment venues and outdoor entertainment events, is too low and well under the operating times of many of the long-standing annual Victorian Music Festivals such as those outlined in the below table:

<table>
<thead>
<tr>
<th>EVENT NAME</th>
<th>DATE</th>
<th>VENUE/LOCATION</th>
<th>Days</th>
<th>Maximum Daily Hours (noise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoo Twilights</td>
<td>25/1/19-9/3/19</td>
<td>Zoos Victoria</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Hot Dub Wine Machine</td>
<td>March - April 2019</td>
<td>Huon Valley TAS, Hunter Valley NSW, Swan Valley WA, Yarra Valley VIC, Molongolo River ACT</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Electric Gardens</td>
<td>18/01/19-27/01/2019</td>
<td>Centennial Park NSW, Belvoir Parklands WA, Serafino Winery SA, Shed 14 VIC</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Let Go Fest.</td>
<td>2/02/2019</td>
<td>Mornington Racecourse</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>So Frenchy So Chic</td>
<td>11/1/19, 13/1/19, 19/1/19</td>
<td>Pinky Flat SA, Werribe Park VIC, Bicentennial Park Glebe NSW</td>
<td>1</td>
<td>9.75</td>
</tr>
<tr>
<td>FOMO</td>
<td>05/01/19-13/01/2019</td>
<td>Brisbane Riverstage QLD, Elder Park SA, Paramatta Park NS, Flemington Racecourse VIC</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Grapevine Gathering</td>
<td>24/11/18, 1/12/18</td>
<td>Roche Estate NSW, Rochford Wines VIC</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Listen Out</td>
<td>22/09/18-30/09/18</td>
<td>Catani Gardens St Kilda, HBF Arena Perth, Centennial Park Sydney, The Sporting Fields Victoria Park Brisbane</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Macedon Ranges Music Festival</td>
<td>2/03/2019</td>
<td>Gisborne Steam Park</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Good Things</td>
<td>7-9/12/18</td>
<td>Parramatta Park NSW, Flemington Racecourse VIC, Brisbane Showgrounds QLD</td>
<td>1</td>
<td>10.5</td>
</tr>
<tr>
<td>Sugar Mountain</td>
<td>20/01/2019</td>
<td>Victorian College of the Arts, Melbourne</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>Download</td>
<td>9/3/19, 11/3/19</td>
<td>Parramatta Park NSW, Flemington Racecourse VIC</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Event Name</td>
<td>Dates</td>
<td>Locations</td>
<td>Duration</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>---------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>Groovin the Moo</td>
<td>26/04/2019 - 11/05/2019</td>
<td>Wayville Showground SA, Maitland Showground NSW, Exhibition Park CBR, Bendigo VIC, Murry Sports Complex QBR, Bendigo VIC, Bunbury, WA</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Falls Festival</td>
<td>28/12/2018-06/01/2019</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>St Kilda Festival</td>
<td>10/02/2019</td>
<td>St Kilda Beach</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Earthcore</td>
<td>22/11/2018 - 25/11/2018</td>
<td>Pyalong, Victoria</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Rainbow Serpent Festival</td>
<td>25/01/2019 - 28/01/2018</td>
<td>Lexton, Victoria</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Laneway Festival</td>
<td>02/02/2019 - 10/02/2019</td>
<td>Brisbane Showgrounds QLD, Callan Park NSW, Harts Mill SA, Footscray Park VIC, Esplanade Reserve WA</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Merideth Music Festival</td>
<td>7/12/2018 - 9/12/2018</td>
<td>Merideth Supernatural Amphitheatre</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Brunswick Music Festival</td>
<td>3/3/2019 - 17/3/2019</td>
<td>Sydney Road Street, Brunswick</td>
<td>15 days</td>
<td></td>
</tr>
<tr>
<td>Bluestone Blues Festival</td>
<td>31/12/2018 - 1/01/2019</td>
<td>Murgheboluc Recreational Reserve, Hamilton Highway</td>
<td>2 days</td>
<td></td>
</tr>
<tr>
<td>Rainbow Serpent Festival</td>
<td>25/01/2019 - 28/01/2019</td>
<td>Lexton, Victoria</td>
<td>3 days</td>
<td></td>
</tr>
<tr>
<td>Babylon</td>
<td>14/2/2019 - 17/2/2019</td>
<td>Carapooee West</td>
<td>3 days</td>
<td></td>
</tr>
<tr>
<td>Riverboats Music Festival</td>
<td>15/2/2019 - 17/2/2019</td>
<td>Aquatic Reserve, Echuca</td>
<td>3 days</td>
<td></td>
</tr>
<tr>
<td>Strawberry Fields</td>
<td>16/11/2018 - 18/11/2018</td>
<td>australian bush'</td>
<td>3 days</td>
<td></td>
</tr>
<tr>
<td>Boogie</td>
<td>19/4/2019 - 21/4/2019</td>
<td>Our Friend's Farm Tallarook</td>
<td>3 days</td>
<td></td>
</tr>
<tr>
<td>Queenscliff Music Festival</td>
<td>22/11/2019 - 24/11/2019</td>
<td>Bellarine Peninsula</td>
<td>3 days</td>
<td></td>
</tr>
<tr>
<td>Beechworth Music Festival</td>
<td>25/01/2019 - 26/01/2019</td>
<td>Madman's Gully Amphitheatre</td>
<td>3 days</td>
<td></td>
</tr>
<tr>
<td>Festival</td>
<td>Dates</td>
<td>Venue</td>
<td>Days</td>
<td>Notes</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>---------------------</td>
<td>--------------------------------</td>
<td>------</td>
<td>----------------------------</td>
</tr>
<tr>
<td><strong>Newport Folk Festival</strong></td>
<td>28/6/19 - 30/6/19</td>
<td>Various Venues in Newport</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td><strong>Unify Gathering</strong></td>
<td>11/01/19 - 13/01/19</td>
<td>Tarwin Meadows, Tarwin Lower</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td><strong>Port Fairy Spring Music Festival</strong></td>
<td>11/10/18 - 13/10/18</td>
<td>Port Fairy, Victoria</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td><strong>Newstead Live</strong></td>
<td>25/01/19 - 28/01/19</td>
<td>Various Venues, Newstead, Victoria</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td><strong>Falls Festival</strong></td>
<td>28/12/2018-06/01/2019</td>
<td></td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td><strong>Earthcore</strong></td>
<td>22/11/18 - 25/11/18</td>
<td>Pyalong, Victoria</td>
<td>5</td>
<td>12</td>
</tr>
</tbody>
</table>

APRA/AMCOS’ definition of a festival\(^{13}\) is an event with a minimum operating length of 8 hours and The Australian Festival Association have indicated that the “average festival duration for sound amplification in Victoria is just over 10 hours\(^{14}\)”. The festival market has exploded since the standard was set at 5 hours in SEPP N-2 in 1971.

Operating times should not include the time used for sound checks and PA tuning which specifically should be excluded from the definition operating times periods, notwithstanding our advocated position for a permit being only required for the extension of operating times beyond 11pm (below). However, soundcheck times should be limited by being prohibited during the night-time period.

It is a concern that longstanding music festivals will now have to apply for permits for longer operational hours to the EPA, as well as to VCGLR for liquor licensing. As an aside, Music Victoria is urging the Red Tape Commissioner to review the multi-layered process for permit approvals for festivals.

Music Victoria advocates that instead of requiring a permit for hours longer than 5 hours of operation, a permit application only be required if a festival operates beyond 11pm. With a clear objective outline absent in the permit process as to why a permit is necessary for operational hours longer than 5 hours, we see no reason why a permit application is required. However, sleep is a key ‘Environmental Value’ to be protected by the environmental regulations. We acknowledge that it is reasonable that a permit is required beyond 11pm.

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\(^{13}\) A Festival being an event which: 1. occurs on at least one full day (being no less than 8 hours in advertised duration) at an outdoor place requiring a stage to be erected or a specific performance area to be created specifically for the event; and 2. is advertised as a festival, in which the staging of the event and all associated advertising is not dependant on any one or two headline acts; and 3. includes at least six acts. [http://apraamcos.com.au/media/Customers/GCLF_Festival.pdf](http://apraamcos.com.au/media/Customers/GCLF_Festival.pdf).

\(^{14}\) Stated in an email from Julian Robinson, General Manager, Australian Festivals Association to Patrick Donovan, CEP, Music Victoria, dated 25 October 2019 12:51 PM.
Up until now, music festival promoters applied to Councils for their permits. The position advocated by Music Victoria would be that the new permitting system resemble the permit requirements and experience of existing music festivals to date.

130.

See s28 for discussion of permitting of variation of noise limits for unreasonable noise for outdoor events.

130.(1)(b) Unreasonable noise from outdoor entertainment venues or outdoor entertainment events

Audibility is a subjective requirement and not measurable. The use of such a test in a noise sensitive area is therefore ambiguous and therefore susceptible to vexatious abuse. The test should be replaced by a defined limit as is the case in every other noise regulation and excluded soundchecks.

131. Aggravated noise from an outdoor entertainment venue or outdoor entertainment event

The reference to 80dB(A) within this regulation does not specify any statistical measurement method to the measurement such as (A)Leq. We believe this to be an unintentional oversight that needs to be specified in the regulations.

190 and 211.

Requires updating to be compatible with the Music Victoria points relating to item 28 relating to the necessity for permits relating to ‘noise limits for Unreasonable Noise for outdoor events’.
Background Sound

Music Victoria, in its submission to the SEPP N-2 reform process, advocated that there needed to be spatially defined tiered noise levels that reflected the communities understanding and expectation of amenity throughout the urban environment. That is, residential areas should have more stringent noise regulations than commercial and industrial areas, including the capital city zone. A three-tiered regulatory system was advocated. Music Victoria has refined its position in its White Paper (A review into the efficacy of Section 53.06 - Live Music Entertainment Noise of the Victoria Planning Provisions, known colloquially as the "Agent of Change" clause. 3rd March 2019) that the Victoria Planning Provisions zones were not a spatial mechanism for describing these areas, and that an entertainment precincts model based initially on the already defined ‘designated areas’ under the Liquor Control Reform Act represented a good starting point to define ‘Live Music and Entertainment Precincts’ or ‘Night-Time economy areas’ in the form of an overlay in the Victoria Planning Provisions.

However, such a mechanism does not currently exist.

Therefore, a mechanism to adjust background sound levels based on a Live Music Entertainment Venue’s zonal location would represent the next best alternative to reflecting the communities understanding and expectation of amenity throughout the urban environment.

The Commercial, Industrial and Trade noise limit and assessment protocol for the control of noise has such a mechanism.

Music Victoria advocates that this mechanism be extended to cover Indoor Entertainment Venue noise measurement and assessment.

That is, background noise be calculated by half of its value deriving from measurements already defined in the ‘Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues, and half its value deriving from the Land-Use Categories defined in ‘Table 2: Land use categories for noise’, and ‘Table 3: Indicators and objectives for the acoustic environment’ defined in ‘ENVIRONMENT REFERENCE STANDARD exposure draft’.

Such a mechanism would therefore tighten the protection of sensitive uses in residential areas if background levels were unusually higher than defined in the Environmental References Standard and relax noise limits for Live Music Entertainment Venues in Commercial and Industrial zone if the background levels were uncharacteristically low. The latter being overwhelmingly where the vast majority of Live Music Entertainment Venues are located.
Such an approach would also help mitigate the expected strategic risk to the Music Industry by the continuation of the current\(^{15}\) (3dB over 29 years) and expected fall in background sound levels over time due to factors such as:

- The electrification of vehicles with the effect of reducing the number of internal combustion engines in use
- Improvement in vehicle design
- Government policy designed to reduce traffic congestion and density in the inner city such as: a congestion tax, parking restrictions and controls, road tunnels, provision of improved public transport options, car sharing, etc.

In most cases, the effect of tethering 50 percent of the background level value to the Environmental Reference Standard’s Land Use categories for noise would be expected to be negligible if these values are realistic. However, if cases exist where measurements values are either unrepresentative or unusual, the Environment Protection Regulations will function in a fairer manner.

**Clause by Clause Comments.**

**Glossary of Terms**

**Fast time weighting**

This definition should be explicit and include the meaning in addition to the standard which requires looking up.

“Time weighting characteristic of a sound level meter is 125ms as specified in Australian/New Zealand Standard AS IEC 61672.1:2019 Electroacoustics—Sound level meters, Part 1: Specifications.”

\(^{100}\)

Background levels must be taken indoors. If background noise levels are taken outside, an adjustment must be made for the building construction if known or as defined in clause 90. Indoor adjustment.

\(^{102}\) (b)

“For the purpose of determining the background level the noise is measured –

(b) or the night period using the Fast time weighting, and the *linear or C-frequency weighting network*”.

One weighting only must be used and must be consistent with clause 125 b. For example, the application of ‘C-frequency weighting’.

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We concur with Marshall Day Acoustic’s view that clause 90 needs refinement and refer to their submission on ‘Adjustments for measurement position’.

“The noise reduction performance of a solid wall, ceiling or floor is likely to provide better sound insulation than a single-glazed window. We are unsure why single-glazing and solid wall/floor/ceiling elements have been accorded equivalent noise reduction performance.

Nominations of “thick single” and “acoustic glazing” are ambiguous.

We recommend that a specific glazing thickness is noted for single and double-glazed systems.”

4. Agent of Change


103. and 104.
Should apply in all cases.

1.1 Measurement Point.
Also, “any room” should be replace by ‘habitable room’. We concur with Marshal Day Acoustics.

“For the purpose of clause 103 the measurement point may be located inside a habitable room (specifically defined within clause 53.06-3 of the Victoria Planning Provisions) of a noise sensitive residential use with windows and doors closed.”

105.
The measurement point should be outside if before 11PM and inside after 11PM if the measurement is associated with the protection of Environmental Value of Sleep at Night.

106. a (iii) and b (iii)

*** Change to “the measurement is associated with the protection of Environmental Value of Sleep at Night.”

107.
The measurement point needs to be inside in all cases.
“For the night period, the measurement point must be either directly inside a habitable room normally used for the purpose of sleeping”.

118.

This clause does not specify any statistical measurement method to the measurement such as (A)Leq. We believe this to be an unintentional oversight that needs to be specified in the noise protocol.

125. (b)

The weighting must be consistent with clause 102 (b). For example,

“For the purpose of determining the effective noise level the noise is measured –

b. for the night period using the Fast time weighting, and the c-frequency weighting network.”

129 (a)

As discussed elsewhere Indoor measurements should be the default in all cases for indoor venues during the ‘night time period’.

“For the purpose of assessing the effective noise level the noise is measured –

a. assessing music noise from a live music entertainment venue during the night time period; or”

Omissions

For Indoor Entertainment Venues:

Music Victoria proposes that the the following length of time for measurements needs to be added under Indoor Entertainment Venue:

“The measurement must include at least 15 cumulative minutes of music audible at the measurement point.”