Environment Protection Authority


Discussion paper for consultation
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## Abbreviations

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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AS</td>
<td>Australian Standard (published documents from Standards Australia)</td>
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<tr>
<td>AS 1055–1997</td>
<td>Acoustics – Description and measurement of environmental noise</td>
</tr>
<tr>
<td>dB(A)</td>
<td>decibels (using the ‘A’ weighting network of a sound level)</td>
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<tr>
<td>EPA</td>
<td>South Australian Environment Protection Authority</td>
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<tr>
<td>EP Act</td>
<td><em>Environment Protection Act 1993</em></td>
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<td>EPP</td>
<td>environment protection policy</td>
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<td>INL</td>
<td>indicative noise level</td>
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<td>LNLC Act</td>
<td><em>Local Nuisance and Litter Control Act 2016</em></td>
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<tr>
<td>Noise Policy</td>
<td><em>Environment Protection (Noise) Policy 2007</em></td>
</tr>
<tr>
<td>PDI Act</td>
<td><em>Planning Development and Infrastructure Act 2016</em></td>
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<td>WHO</td>
<td>World Health Organization</td>
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Executive summary


The introduction of the Local Nuisance and Litter Control Act 2016 (LNLC Act) and the Planning, Development and Infrastructure Act 2016 (PDI Act) led to changes in the management of noise.

This review of the Noise Policy was prompted by the legislative changes, together with the results of an initial consultation in 2017 and the fact that the current policy has been in operation for 13 years.

The purpose of this discussion paper is to engage with stakeholders on opportunities to improve the Noise Policy. This will inform the development of a revised draft noise policy, to be released for broader consultation.

The EPA invites you to contribute to the review, including responding to the proposals identified in this paper.

You can choose to lodge a written submission or, if you prefer, meet with EPA staff to discuss the policy. A template of all discussion questions with a section for feedback can be found in Appendix 2.

To make a written submission please provide it no later than 5 pm Friday 17 July 2020 and post to:

Noise Policy Review
Environment Protection Authority
GPO Box 2607
Adelaide SA 5001
Attn: Ella Langford

or

Email (preferred): epinfo@sa.gov.au (mark subject as ‘Noise Policy Review’)
1 Background

Prior to the introduction of the Environment Protection Act 1993 (EP Act), noise in South Australia was regulated by the Noise Control Act 1977. With the introduction of the EP Act in 1995, this earlier act was revoked and replaced with two separate regulatory policies:

- Environment Protection (Industrial Noise) Policy 1994

By the late 1990s development commenced on the noise legislation, the aim of which was to replace the two existing policies with one designed to balance the competing interests of those whose legitimate activities inherently caused noise, and the interests of and impacts on, people exposed to it.


An environment protection policy (EPP) is one of a number of legislative tools provided for under the EP Act to address environment protection matters. An EPP can be made for any purpose directed towards securing the objects of the EP Act. This may include setting out requirements or mandatory provisions that will be enforceable.

An EPP:

- has the force of a standard imposed by Parliament
- may impose mandatory provisions with penalties
- is developed for a specific area, eg waste, water, air, noise.

The Noise Policy has been in place for 13 years and a number of opportunities to improve its operation has been identified over time, including as a result of its interaction with the Local Nuisance and Litter Control Act 2016 and the Planning, Development and Infrastructure Act 2016.

![Decibel scale](image)
2 Introduction

Noise is a significant issue identified by the World Health Organization (WHO). Excessive noise can interfere with daily activities at work, home, school and during leisure time. Furthermore noise can significantly disturb sleep. As a result, excessive noise has the ability to seriously harm human health\(^1\).

Short- and long-term health problems as a result of noise can include:

- sleep disturbance
- mental illness
- cardiovascular effects (eg startle and defence reaction leading to potential increase of blood pressure)
- psychophysiological effects (eg headaches, fatigue, irritability)
- poorer work and school performance
- hearing impairment (eg noise-induced hearing loss, aural pain, ear discomfort, tinnitus)
- annoyance (eg feeling of displeasure, with tolerances varying enormously, and noise impulses more annoying than a steady noise)
- interference with speech communication (eg reduction in intelligibility of conversation, radio, music, television and others)\(^2\).

In the WHO European Region for example, noise has become a significant environmental nuisance, with public complaints regarding noise increasing rapidly\(^3\).

There are some groups that are more vulnerable to noise than others. Chronically ill and elderly people are more sensitive to sleep disturbance. Similarly, as children spend more time in bed than adults they can be disproportionately affected by noise. Early childhood development and education can be impaired by noise, resulting in lifelong effects on academic achievement and health. Shift workers, due to their sleep structure being under stress, are also especially vulnerable. People of lower socio-economic status are often less able to live in quiet residential areas or have insulated homes. Noise nuisance at night can cause financial stress due to increased medical visits and drug purchases\(^4\).

The intent of the Noise Policy is to strike a balance between the interests of those whose legitimate activities cause noise, and the interests of those who are exposed and affected by the noise. It also seeks to provide clarity and consistency in environmental noise regulation.

The Noise Policy considers social, economic and environmental matters in the management of noise issues. It achieves this in the following ways:

- Ensuring protection against noise is in accordance with WHO guidance.
- Ensuring the issues that must be considered to inform decisions are clearly articulated.
- Providing for special or unique activities that are not adequately represented by general noise provisions.
- Providing planning authorities with the framework for setting environmental standards.
- Providing a regulatory tool that reduces ambiguity for enforcement authorities, leading to an equitable approach for regulating noise.
- Responding to new and emerging noise issues through a streamlined policy amendment process.

\(^1\) World Health Organization 1999, \textit{Guidelines for Community Noise}, \url{https://apps.who.int/iris/handle/10665/66217}


The Noise Policy was developed to address noise produced from both domestic and non-domestic sources such as:

- air-conditioning units, pool pumps, power tools and lawn mowers
- burglar alarms
- premises associated with primary industry processing such as wineries, abattoirs, dairies and seed processing
- light industry premises such as motor vehicle repair shops
- commercial premises such as shopping centres
- industrial premises such as manufacturing and processing facilities.

An important aspect of the policy is that it is proactive in seeking to minimise noise issues through connections with the development processes and local government planning interests.

The EPA licenses premises and activities that have the potential to cause significant or widespread impact on the environment. Noise emanating from EPA-licenced sites are regulated by licence conditions.

Environmental nuisance issues involving domestic premises and non-licensed sites do not fall into this category. The EPA provides support about these matters to agencies that are able to assist with complaints. In many instances agencies including the EPA work together to help deliver an appropriate outcome.

Since the introduction of the Local Nuisance and Litter Control Act 2016 (LNLC Act), local government has the responsibility for the management of local nuisance issues, such as noise from sources not licensed by the EPA.

The EPA also sets policies and guidelines for industry and the community, and works closely with other organisations such as local councils and police to respond to community concerns about noise.

In 2016, two significant legislative changes occurred that triggered the need to review the Noise Policy:

1. Local Nuisance and Litter Control Act 2016 (LNLC Act) gives local government the responsibility for the management of local nuisance issues, such as noise from sources not licensed by the EPA. This will have a significant impact on the way in which the Noise Policy operates and the management of local noise in South Australia.

2. Planning Development and Infrastructure Act 2016 (PDI Act), which is being incrementally introduced through to June 2020 and intended to replace the existing Development Act 1993. This Act includes a Planning and Design Code component, which will replace the development plans currently used by planning authorities. Development plans link to the Noise Policy through the State Planning Policy, which cites that all noise other than noise from music must comply with the Noise Policy.

In accordance with principles of early engagement, the EPA conducted an initial consultation with key stakeholders in March 2017. This first stage of the review consisted of targeted engagement with 65 stakeholders to assist with framing the scope of the review. A total of 18 written submissions were received, the content of which was used to inform this paper. The stakeholders were drawn from the following list:

- Peak bodies and associations.
- Major mining companies.
- SA and Commonwealth Government.
- Prescribed bodies identified in Regulation 9 (normal procedure for making policies) of the Environment Protection Regulations 2009.

A full list of stakeholders who were invited to participate in the first stage of the review can be found at Appendix 1.

This discussion paper is based on the results of the 2017 initial consultation as well as in response to the introduction of the LNLC Act and PDI Act. It also identifies potential improvements based on experience with applying the Noise Policy since 2007. The links to these drivers are reflected in the summary of consultation questions in Appendix 2.

The consultation questions have been formulated in a way to obtain information regarding the risks and opportunities of the proposed changes.
3 Issues and proposals

3.1 Definitions

Clause 3 of the Noise Policy – Interpretation – provides definitions for important terms used. The following issues were raised in the initial consultation regarding the definitions.

3.1.1 Locality

The definition of ‘locality’ in clause 3 is used to determine a ‘land use category’ from the tables in clause 5(9) of the Noise Policy and is relatively broad. It differs however from the commonly used application of the term by planning authorities. It was raised in consultation that the difference is causing confusion.

Stakeholders recommended that a new term for ‘locality’ be developed, or in the event that the EPA seeks consistency with the development assessment use of the term under the PDI Act, a new definition be considered.

For example, a definition could be ‘a small area surrounding a development site, generally bound by physical or visually linked landscape features’. Another alternative could be to amend the definition to reflect the terms ‘zone’ or ‘sub-zone’ as used in the PDI Act.

The definition of ‘locality’ in the Noise Policy however was designed to deliberately differentiate it from that used within the state planning system because the concept of locality is central to the operation. While the term/name could be amended, changing its definition may be problematic and create confusion with the term used in the planning system.

The term ‘locality’ in the planning system is also central to its operation as it relates to more than just noise; issues such as lighting are also addressed.

Discussion question 1

Is there justification for amending the term ‘locality’ in the Noise Policy and how it is defined? If so, what is the preferred option and the expected risks and opportunities?

3.1.2 Public Infrastructure

The term ‘public infrastructure’ needs clarification where it is used in clause 22 to describe construction activities to which the Noise Policy does not apply. The question arose in relation to whether the construction of hospitals and mobile phone towers are considered to be public infrastructure.

One option would be to amend the Noise Policy to include a definition for ‘public infrastructure’ which has the same meaning as ‘essential infrastructure’ in the PDI Act, the definition of which includes hospitals and mobile phone towers (cited as communications networks and health facilities). This would ensure consistency across state legislation and coincide with the updated state planning system being introduced.

Another option would be to insert a new definition for public infrastructure.

Discussion question 2

In the event that the construction element of Part 6 of the Noise Policy is retained, is there justification for amending the definition of public infrastructure to be consistent with the meaning of ‘essential infrastructure’ in the PDI Act, or should its scope be clarified through a new definition?

Discussion question 21 considers the removal of Part 6 (Special noise control provisions) of the Noise Policy to avoid duplication with identical elements within the LNLC Act. If the construction element of Part 6 is removed then a definition for infrastructure will not be necessary.
3.1.3 Intermittency

Noise intermittency can increase the nuisance resulting from noise when compared to a steady noise. Some Australian states have intermittency included as a noise character that attracts a penalty based on specified characteristics, i.e., modulating, tonal, etc. If a noise source contains one or more characteristics, then a ‘noise penalty’ in the form of decibels [dB(A)] is added to the noise source level. In NSW for example, a penalty is only applied if the intermittency occurs at night, as it is not considered as offensive during other time periods.

There is currently no provision in South Australia to apply a penalty for intermittent noise and in order to do that, intermittency is required to be added to the definition of ‘characteristic’:

**Characteristic**, in relation to noise from a noise source, means a tonal, impulsive, low frequency, **intermittent**, or modulating characteristic of the noise that is determined by the Authority or another administering agency, in accordance with the *Guidelines for the use of the Environment Protection (Noise) Policy 2007* published by the Authority as in force from time to time, to be fundamental to the nature and impact of the noise;

If the definition of characteristic is amended to include intermittent noise, it would be beneficial to include a new definition for ‘intermittency’ in the Noise Policy, for example as defined in NSW *Noise Policy for Industry*:

**Intermittency** – a noise has an intermittent characteristic if the level suddenly drops to that of the background noise several times during the assessment period, with a noticeable change in noise level of at least 5dB.

The Environmental Protection Department in Hong Kong controls noise with the consideration of tonal, impulsive or intermittent characteristics through the application of appropriate noise penalties.

**Discussion question 3**

Is there justification for amending the definition of ‘characteristic’ to include intermittency and including a definition for ‘intermittency’? What are the expected risks and opportunities?

3.1.4 Vibration

The definition of noise in the EP Act includes vibration. To assist with compliance and planning issues the EPA proposes that a new clause (and definition) be added to the Noise Policy relating to ‘vibration’ to quantify what acceptable levels of vibration are, linked to a standard or guideline.

Vibration can be a complex issue and a number of options have been proposed with regard to how it might be managed, including via a standard or guideline.

The NSW guideline covers vibration sources such as construction and excavation equipment, rail and road traffic, and industrial machinery as well as the low-frequency, airborne pressure waves emitted by some heavy vehicles, aircraft and machinery which can also cause vibration in buildings.

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3.2 Land uses and land use categories

Land use and land use categories are used to assist in determining the indicative noise level (INL) for a noise source or the relevant allowable noise level for noise-affected premises. There is significant crossover with planning legislation in that the Noise Policy is referred to in council development plans, and it is important that this reference is maintained with the relevant instruments of the PDI Act.

The following issues were also raised in the initial consultation as areas to consider for revision.

3.2.1 Amend the land use category classification for forestry

Land use categories are used to determine the INL for a noise source or the relevant allowable noise level for noise-affected premises. It was proposed that a land use category with a higher INL be applied to the forestry industry, particularly during harvest times which are short, intensive periods of activity. There is evidence that seasonal industries such as the forestry industry cause less annoyance to the community, presumably related to the presence of a relatively quiet period.¹

Discussion question 5

Is there justification to allocate an INL land use category for forestry? If so, what are the expected risks and opportunities?

It was also proposed that the land use categories in Table 1 of the Noise Policy be reviewed to be more reflective of the zones to be contained in the Planning and Design Code under the PDI Act. For example, ‘Employment Lands’ are cited in the Planning and Design Code, however this would be difficult to allocate as a category within Table 1 of the Noise Policy. Such classification is highly dependent on the primary land uses within a zone, and ‘Employment Lands’ can have multiple land uses.

Discussion question 6

Is there justification to mirror the Planning and Design Code land use categories in the Noise Policy? If so, what are the expected risks and opportunities?

3.2.2 Interfaces between land uses

In the 2017 initial consultation, stakeholders noted that the concept of ‘principally promoted’ land use within the Noise Policy can be problematic because something listed in ‘land uses supported in the zone’ in the relevant development plan is taken to be principally promoted. For instance, while a Residential Zone principally promotes residential development, it also allows other land uses (such as home offices/commercial near arterial roads, etc). Planning authorities generally would not consider such uses as principally promoted, even though the Noise Policy takes this approach.

Where a land use is clearly given precedence above all others in a locality, clause 4(1)(b) of the Noise Policy classes this as the land use being principally promoted. Where a number of land uses are equally promoted to generate a mixed use zone, clause 4(1)(c) of the Noise Policy defines each of the individual land uses as principally promoted. For example, a zone promotes the development of residential and retail land uses to form a mixed zone.

The Noise Policy also makes it clear that the land use category within which a land use principally promoted falls is to be determined by the EPA in accordance with the Guidelines for the use of the Environment Protection (Noise) Policy 2007 (Noise Guidelines). There will continue to be situations where it is not evident which land use category should be

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assigned, in which case consultation with councils is required to determine the appropriate classification. This is often time and resource consuming, and is unlikely to change under the PDI Act.

Historically, planning schemes and planners have sought to deal with incompatible land uses by their separation into different land use zones, and this is reflected in the land use categories referred to in the tables in clause 5(9) of the Noise Policy. However this approach is increasingly recognised as inflexible and unresponsive to current trends, which encourage mixed use zones, developments and performance-based assessment processes.

Due to the advent of these more flexible land use zones, the current clauses 4(2) and 4(4) of the Noise Policy, which deal with uncertainty around land uses and land use categories, are becoming increasingly more relevant. With the development of the new Planning and Design Code, and state planning policies under the PDI Act, it is timely to consider opportunities for forming cohesion between the new planning tools and the Noise Policy. This would reduce ambiguity and uncertainty for the EPA, councils, developers and the community.

One option to achieve greater synergy is to change the terminology of the Noise Policy to align with the new Planning and Design Code. This will depend on timing because the new planning system will be incrementally introduced until 1 July 2020.

Alternatively, the terminology in the Noise Policy can be changed so that it can operate as a standalone document without duplication within the Planning and Design Code. In this case, new processes for categorising areas of conflicting land uses would need to be developed.

### Discussion question 7

Are the current provisions adequate for dealing with the interface between land uses in mixed land use zones? If not, keeping in mind the development of the Planning and Design Code and state planning policies, what are the alternatives? What are the expected risks and opportunities?

### 3.3 Indicative noise levels (INL)

This clause sets the criteria and rules to assist in determining the appropriate INL relevant to a particular land use or land use category.

#### 3.3.1 Industry hours of operation

It was proposed during 2017 initial consultation that consideration be given to providing a greater latitude – possibly a higher dB(A) reading – to the forestry industry in circumstances where a facility can demonstrate that it has been in operation before neighbouring land uses were established. For example, the NSW Noise Policy for Industry recognises industries as being part of the background if they have been operating for more than 10 years. Additionally, the NSW Planning Voluntary Land Acquisition and Mitigation Policy recognises legacy noise issues.

It was also submitted that the forestry industry would benefit from the flexibility of broader INLs – coupled with longer operating hours – and that such amendments would enhance productivity. The current operating hours are based on community expectations.

Stakeholder feedback further proposed that Rural Industry INLs are considered to be too high, and should be reduced. It is not unusual for the background noise levels in rural areas to be significantly less than the INL and much less than background levels in an urban environment.

Rural Industry includes a wide range of activities of varying intensity and requires a degree of latitude to allow for these activities to occur in accordance with community expectations. This is provided currently within the Noise Policy where clause 19 allows flexibility in determining action on a non-compliant noise level.

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Any changes to the INLs for Rural Industry would require careful consideration of social, economic and environmental impacts.

**Discussion questions 8**

Is there justification to decrease INLs in the Rural Industry zone? If so, what are the expected risks and opportunities?

### 3.3.2 Indoor noise amenity

It was proposed during initial consultation that there is a need for setting internal noise levels – for both living and sleeping areas – for use in multi-storey buildings, buildings where there is no outdoor recreation area or where it is not possible to build a noise barrier, and high noise areas where people live exclusively indoors.

In some applications, where the noise-affected premises is a non-residential premises (e.g. commercial office), a residential premises without an outdoor recreation area (e.g. high-rise apartments) or a multi-story residence where a normal 1.8-m boundary wall/fence will not protect upstairs rooms from noise, there is a need to set indoor noise levels rather than outdoor noise levels. This is because the people in the upper level rooms will only receive the noise indoors and not outdoors. Such issues are more easily considered for new buildings.

The indoor sleep disturbance criteria of 30dB(A) in the Noise Policy is recommended by WHO in their *Guidelines for Community Noise* (1995). The Noise Policy includes some consideration of indoor noise levels in residential areas. In NSW for example, 35/40dB(A) is applied in legislations such as the *State Environmental Planning Policy (Infrastructure)* which is in line with recommendations in the Australian Standard.

In 2013 the state government introduced the option to include the ‘Noise and Air Emissions Overlay’ into council development plans as a means to reduce noise and air impacts from road, rail and mixed land use on certain categories of residential (and other sensitive use) developments. The overlay includes a requirement that internal noise level in bedrooms does not exceed 30dB(A) and 35dB(A) in indoor living and sleeping areas. Therefore, there is already some degree of internal noise level consideration given to building design and construction in some areas of the state. It is also expected that the Air and Noise Emission Overlay will be more consistently applied across the state through the Planning and Design Code.

**Discussion question 9**

Is there justification for specifying indoor noise levels for indoor living in addition to sleeping areas within the Noise Policy in circumstances other than where the ‘Noise and Air Emissions Overlay’ applies? If so, what are the expected risks and opportunities?

### 3.3.3 Indicative noise limits for prescribed time periods

Stakeholders during the 2017 initial consultation recommended adoption of indicative noise limits for three different time periods, as used in Victoria. The Victorian *State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade)* has prescribed noise limits based on background noise levels. There are three base noise limits for three different time periods throughout a day: a day period, an evening period and a night period. The day period between 7 am and 6 pm – 45dB(A), the evening period between 6 pm and 10 pm – 40dB(A), and the night period

\[\text{Note that there are now updated guidelines on community noise, however they do not stipulate specific sleep disturbance criteria.}\]
between 10 pm and 7 am – 35dB(A). Having three noise limits for various time periods throughout the day recognises that community expectations on noise levels vary depending on the time of day.

**Discussion question 10**

Is there justification to amend the land use categories, noise goals and time periods in the Noise Policy? If so, what are the alternatives and what are their expected risks and opportunities?

### 3.4 Objects of Policy

This part describes the broad intent and structure of the Noise Policy. It describes what the Noise Policy is designed to do and the manner and method by which the objects might be achieved.

Stakeholders during the initial consultation proposed to amend clause 9 (Objects of Policy) by clearly requiring a triple bottom line regulatory approach that considers environmental, societal and economic impacts. Such a regulatory approach however is already required in the EP Act under section 10 (The Objects of the Act) and section 25 (general environmental duty). As the Noise Policy is subordinate to the EP Act, it must be administered in accordance with the Objects of the Act.

Section 10 (1)(a)(C)(ii) of the EP Act states:

(ii) that proper weight should be given to both long and short term economic, environmental, social and equity considerations in deciding all matters relating to environmental protection, restoration and enhancement;

**Discussion question 11**

Is there justification to explicitly mirror the triple bottom line requirements of the EP Act in the Noise Policy? If so, what are the expected risks and opportunities?

### 3.5 Measurement procedures

This part sets out the general rules for the measurement and assessment of a source noise level (continuous), ambient noise level (continuous), or background noise level related to on-site investigations and generally reflects accepted practice.

#### 3.5.1 Consideration of weather conditions

Stakeholders during the 2017 initial consultation proposed that consideration be given to strengthening measurement procedures by including all known weather conditions that may have a substantial impact on noise levels.

In NSW for example, impacts are assessed under a range of adverse meteorological conditions. For anything more extreme, 5dB(A) is added to the objective.

However most noise issues dealt with under the EP Act occur in circumstances where the noise source and noise receiver properties are less than 100 m away from each other – meaning that weather conditions generally have limited influence on assessment.

Where weather is likely to be an influential factor, clause 13(a)(vi) General Procedures of the Noise Policy requires the EPA to consider any significant meteorological patterns. The Noise Guidelines (page 34) provide assistance as to how this is to be achieved.

**Discussion question 12**

Is there justification to amend measurement procedures with regard to additional consideration of different weather conditions? If so, what are the options and their expected risks and opportunities?
3.5.2 Appropriateness of current character penalties

Existing noise penalties of a total of 5–10dB(A) apply for the presence of single or multiple annoying noise characteristics such as impulsive, tonal, low frequency or modulating character within a noise. During the 2017 initial consultation, stakeholders expressed an opinion that they were too high and that consideration should be given to reduce the noise penalties for tonal characteristics to the range of 3–5dB(A). This would be consistent with Victoria’s penalty range for tonal characteristics of 2–5dB(A). NSW similarly found that a penalty of 5dB(A) was excessive, and a penalty range of 2–5dB(A) was used, however day and night periods were treated differently.

Similarly, the Australian Standard AS 1055–2018 Acoustics – Description and measurement of environmental noise specifies that a 2–3dB(A) penalty should apply if tonal characteristics are just detectable, and a 5–6dB(A) penalty if tonal characteristics are clearly audible.

During consultation, stakeholders also expressed the desire for character-based noise penalties to be considered for both INL and the background noise level approach. It was suggested that the penalties be applied as outlined in the Noise Guidelines (except for tonality). Characteristic noise penalties could also be considered during development authorisation assessments. AS 1055–1997 states however that penalties should not be applied to background noise levels, and so there is little justification to add penalties to a background noise level.

**Discussion question 13**

Is there justification to review current breadth of character-based penalties? If so, what are the options and their risks and opportunities?

3.5.3 Period over which measurements are made

The Noise Guidelines state:

When relying on the background noise level test under section 18(2)(a) [of the Noise Policy] to satisfy the general environmental duty, the lowest background noise level regularly expected at the noise affected premises over a 15-minute period should be used.

During initial consultation it was suggested that this is open to interpretation and does not ensure a consistent approach in determining the criteria to be achieved. It was also suggested that EPA should measure noise levels over a 30-min period rather than 15 minutes.

For reference, the Australian Standard AS 1055–2018 does not provide any recommended measurement periods but simply references existing state regulatory requirements.

While clause 14 of the Noise Policy states that measurement of a noise source must be made over a period of 15-minutes, it also includes a sub-clause which provides the EPA or other administering agency with the ability to take a measurement in accordance with the Noise Guidelines over a different period, if it is determined that such a period would be more or equally representative of the impact of the noise from the noise source. It also means that, if necessary, multiple 15-minute measurements can be made if it is considered that this will achieve a more accurate outcome.

**Discussion question 14**

Is there justification to change the current measurement period? If so, what are the options and their risks and opportunities?

3.5.4 Background noise levels

The Noise Guidelines outline that background noise level is considered the lowest background noise level regularly expected at the noise-affected premises over a
15-minute period. Views from 2017 initial consultation indicated that this approach was open to interpretation and did not ensure a consistent approach has been taken in determining the criteria to be achieved.

A statistical approach using the 10th percentile of the measured LA_{90} was suggested in order to provide consistent application in determining criteria based on background noise levels. This may be useful where it is demonstrated that there is significant variance in background noise levels during different time periods. This is a methodology similar to that employed in Appendix B of the now superseded NSW *Industrial Noise Policy 2000*. This is a complex method which is adequate at the planning stage when done by an acoustical professional, but too onerous for enforcement measurements. The current method may be more practical, particularly for the planning system and local government.

**Discussion question 15**

Is there justification to change the method for determining background noise levels? If so, what are the options and their risks and opportunities?

### 3.5.5 Fast time weighting requirement

Time weightings are a common specification provided on most sound level meters used to measure dB(A). Time weightings were created in order to specify the speed at which the needle on a sound level meter has to move. This ensures that different sound meters can be calibrated to these weightings, making measurements comparable with each other. Fast time weighting is typically the selected weighting for most noise measurements.

With the introduction of updated measurement equipment, modern standards and regulatory practices, it has been suggested that the requirement for fast time weighting be removed from the procedures within the Noise Policy.

**Discussion question 16**

Is there justification to remove the requirement for fast time weighting in the procedures under the Noise Policy? If so, what are the expected risks and opportunities?

### 3.5.6 Method for determining criteria

Stakeholders during initial consultation proposed that development applications and compliance assessments should consider the existing noise environment and use the measured background noise levels to determine the criteria to be achieved at the nearest noise-affected premises. The policy currently does not consider the existing noise environment unless it is higher than the INL.

Some rural areas have very low existing background noise [<30dB(A)]. To base the design criteria on very low background levels would place unrealistic requirements on industry. In some cases it would be normal for the existing background noise levels to be less than the INL. In these cases, noise levels that are in compliance with the current Noise Policy criteria may result in intrusive noise levels. In other cases, noise-affected premises could be subject to high existing ambient noise levels (e.g., adjacent a busy road network), and the existing background noise level may be higher than the INL.

Different scenarios could be addressed by having criteria based on the existing noise environment. The compliance criteria should be the same as the development authorisation design criteria. Currently, the operational compliance criteria are 5dB(A) more than the development authorisation design criteria.

Under this proposal, basing development application assessment design noise criteria on land use zoning, which is a foundation component of the Noise Policy, would be discontinued. The proposal has some merit but will impose costs due to the requirement to physically assess every development proposal individually rather than basing the assessment on existing INLs. It would also lead to a wide variation in the development application assessment design noise criteria in different parts of the state. Further, if a low background level is determined in an area, it would be more difficult for
economic activity to occur in that same zone. Finally, issues may arise if the compliance noise criteria and the development application assessment design criteria were the same, as there would be no account given to the cumulative noise impact of development in an area over time.

Discussion question 17
Is there justification to replace the current INL criteria based on land use zones with a regime based on existing noise levels? If so, what are expected risks and opportunities?

3.6 General noise control provisions

Part 4 of the current Noise Policy describes the circumstances in which a noise source will satisfy the general environmental duty of the EP Act, and as such, the person involved will be under no obligation to take further noise reduction measures.

3.6.1 Emergency standby plants

During the 2017 initial consultation stakeholders proposed that determination of compliance/design criteria for emergency standby plants should be relaxed, as these facilities are generally only used for a short period of time (i.e., approximately 30 minutes per month to be tested) and when their use is required in an emergency situation, noise is not a principal concern.

However, noise from these plants operated for testing for commissioning/maintenance purposes should be subject to control as they are not responding to an emergency. These activities can be planned and scheduled in advance to avoid/minimise the noise impact.

Stakeholders have proposed that the compliance/design criteria should be the current relevant criteria of +5dB(A) as this would be consistent with some states (NSW and Victoria) for emergency standby plants.

Any relaxation of applicable criteria would be subject to the general environmental duty in section 25 of the EP Act whereby a person must take ‘all reasonable and practicable measures to prevent or minimise any resulting environmental harm’.

Discussion question 18
Is there justification to relax the compliance/design criteria for emergency standby plants? If so, what are the expected risks and opportunities?

3.7 Development authorisation applications

Part 5 of the Noise Policy applies to development applications that are referred to the EPA for assessment under the Development Act 1993. This provision will continue to apply upon the introduction of the PDI Act which has resulted in changes to the referral process of development applications. This part is designed to provide for a consistent but more stringent assessment procedure to the general noise provisions in Part 4 of the Noise Policy. Stakeholder response from the initial consultation raised the following issues with regard to development assessment applications.

3.7.1 Unattended measurements

Unattended noise measurements are becoming more and more common for noise assessments. Unattended noise measurements do not require a person to be present throughout the measuring process. They have been used by the EPA in the past for measuring wind farm noise, however they are rarely used to determine background noise level as there is increased opportunity for interference. Modern equipment however can include audio recording to assist with verification of source noise, which can be valuable for planning information regarding background and ambient levels. It was suggested during initial consultation that unattended
measurements be used to determine background and ambient noise level when issuing development assessment authorisations.

An alternative proposal raised was that if unattended measurements could not be carried out to measure background and ambient noise level for development authorisations (due to security risk or other concerns), attended measurements of the existing noise environment should be undertaken which are representative of the expected quietest periods during operation. As a minimum, four 15-minute intervals per period of interest were recommended.

Unattended measurements are generally not accepted as evidence in court due to the potential for interference, and are generally considered only valuable for management purposes. Furthermore, Clause 20 of the Noise Policy that deals with development authorisations only considers ambient noise level, and not background noise level.

**Discussion question 19**

Is there justification for the introduction of the use of unattended noise measurements in the Noise Policy for development assessment, or for any other purposes? If so, in what circumstances, and what are the expected risks and opportunities?

### 3.7.2 Planning authorities assessment of development applications with a noise source

The large majority of development plans from councils incorporate the ‘Interface between land uses’ module from the most recent version of the SA Planning Policy Library (2011), which contains the following principle of development control (PDC):

> Development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant Environment Protection (Noise) Policy criteria when assessed at the nearest existing noise sensitive premises.

Part 5 of the Noise Policy is limited in application to the assessment of development applications referred to the EPA under the Development Act 1993. For development assessments that do not require referral to the EPA, this means that planning authorities are not able to consider the following requirements that would otherwise apply to the EPA assessment of referred development assessments:

- determine the relevant INL less 5dB(A)
- consider whether the noise-affected premises is in a quiet locality
- consider a range of specific additional factors if the relevant INL cannot be achieved

There are many types of development assessments with potential off-site noise impacts that are assessed by planning authorities without the need for referral to the EPA. In these circumstances, guidance for the planning authority is lacking and there is no consistency between assessments by planning authorities and those undertaken by the EPA.

To remedy this, it is suggested that application of what is currently Part 5 of the Noise Policy is broadened to include where reference is made to noise criteria contained in the Noise Policy within planning and development legislation and subordinate instruments. Given the broad inclusion of the Planning and Design Code (to be established under the PDI Act) in development plans from councils, the code will also include a reference to criteria under the Noise Policy.

**Discussion question 20**

Is there justification for broadening the application of Part 5 of the Noise Policy to allow its use by planning authorities where the Planning and Design Code identifies the need for development applications to be assessed against relevant noise criteria contained in the Noise Policy? If so, what are the expected risks and opportunities?
3.8 Special noise control provisions

Part 6 of the Noise Policy (Special Noise Control Provisions) contains special and definitive controls for noise sources generally associated with activities on, or adjacent to, residential land uses. The LNLC Act which commenced in 2017 deals with all noise nuisance issues other than those emanating from sites licensed by the EPA. Local government has the responsibility for the management of local nuisance issues, such as noise from sources not licensed by the EPA. This approach has a significant impact on the way in which the Noise Policy operates and the management of local noise in South Australia.

The Special Noise Provisions in the Noise Policy are no longer required. Construction noise is the only noise under the Special Noise Control Provisions that occurs on EPA licenced sites, and this is managed through EPA licensing.

The LNLC Act generally operates through subjective assessment of complaints and it has been suggested that it could benefit from more objective measures. This is being considered as part of the current review of the LNLC Act.

Discussion question 21

If Part 6 of the Noise Policy is removed to avoid duplication with the LNLC Act are there any unintended consequences that have not been identified?

3.9 Noise excluded from the policy

Schedule 1 of the Noise Policy outlines noise excluded from the policy. Exclusion does not remove such noise from regulation; noise is still regulated in the EP Act through the general environmental duty obligation and under general offence provisions (environmental nuisance, material environmental harm and serious environmental harm), and as a local nuisance under the LNLC Act.

Noise that is excluded from the Noise Policy is generally done so because of the difficulty of measuring that noise via the Noise Policy or the noise is different to noise that the Noise Policy is intended to regulate and requires a different approach. Below are stakeholder proposals related to adding and removing noise from the Noise Policy.

3.9.1 Aircraft noise and noise from aerodromes/helicopter landing facilities

Stakeholders during initial consultation recommended that aircraft noise and noise from aerodromes and helicopter landing facilities be removed from Schedule 1, making them subject to the Noise Policy. It was proposed that a review of the Noise Policy offers an opportunity to take a more strategic and nationally integrated approach to aircraft noise measurement.

An alternative option for controlling the impact of aircraft noise and noise from aerodromes and helicopter landing facilities would be to advocate for the inclusion of a planning overlay in the Planning and Design Code around such facilities. This would ensure proper siting, scale and construction of affected residential and other sensitive uses.

Aircraft noise is regulated under the EP Act only in certain circumstances, when associated with an on-ground facility. Aerodromes and helicopter landing facilities are regulated under EPA licence where they meet certain criteria. Noise from aircraft and from Adelaide and Parafield Airports are Commonwealth responsibilities.

The National Airports Safeguarding Framework aims to minimise development sensitive to aircraft noise near airports and is directed at influencing land-use planning decisions. It is considered that this preventative approach is more likely to yield positive outcomes than attempts to regulate aircraft noise under state noise policies.
Discussion question 22
Is there justification to remove noise emanating from aerodromes and helicopter landing facilities from Schedule 1 of the Noise Policy? If so, how should noise from such sources be regulated and what are the expected risks and opportunities?

3.9.2 Site evacuation and fire (and testing) alarms
Stakeholders during initial consultation recommended that site evacuation and fire alarms (including testing alarms) should be included in Schedule 1 of the Noise Policy, and excluded alarms from regulation through the Noise Policy. Victoria’s Noise Policy for example does not assess ‘noise from audible intruder, emergency or safety alarms’. As site evacuation and fire alarms are a form of safety equipment, it may be useful to exempt them from regulation under the Noise Policy. Such noise would still be regulated through the EP Act, and section 124(1) of the EP Act regarding general defence could allow for a defence of such noise in criminal proceedings:

...if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions of the same or a similar nature.

Discussion question 23
Is there justification not to include site evacuation and fire alarms in Schedule 1 of the Noise Policy, and excluded them from regulation under the policy? If so, how should noise from such sources be regulated and what are the expected risks and opportunities?

3.9.3 Council owned/managed reserves, parks and open spaces
Stakeholders during initial consultation proposed that council owned/managed reserves, parks and open spaces be excluded from the Noise Policy because the use of such spaces for community events and gatherings can be managed through council supervision and bylaws. Furthermore, the LNLC Act now provides an appropriate framework for management of such noise, and noise that is excluded from the Noise Policy is not exempt from all regulation.

Discussion question 24
Is there justification not to include noise emanating from council owned/managed reserves, parks and open spaces in Schedule 1 of the Noise Policy, and excluding them from regulation under the policy?

3.9.4 Provision for exemptions where matters are specifically addressed in licence conditions
Stakeholders during initial consultation proposed that the Noise Policy include a provision for exemptions where matters are specifically addressed in licence conditions. Noise would be regulated simply through licence conditions and the EP Act, and not through the Noise Policy. The EP Act requires that the EPA must have regard to environment protection policies in setting conditions for environmental authorisations and already provides for exemptions from mandatory provisions of environment protection policies. Currently, if there is conflict between the Noise Policy and licence conditions, the Noise Policy takes precedence.

Discussion question 25
Is there justification to exclude noise emanating from EPA-licensed facilities from regulation under the Noise Policy? If so, what are the risks and opportunities?

3.9.5 Schedule 1 Clause 7
Due to the unique characteristics (intermittent, very loud, impulsive or modulating) of the noise produced by aerodromes, helicopter landing facilities, motor racing or testing venues and shooting ranges, such noise is generally excluded from being assessed against the Noise Policy. However, the exclusion is limited to those facilities that are licensed under the
EP Act. This leaves a gap where facilities of these types that are below licensing thresholds are required to be assessed under the Noise Policy. It is proposed to extend the exclusion by removing the text 'as described in clause 8 of Schedule 1 of the Act' from the clause.

Discussion question 26
Is there justification not to exclude noise emanating from the activities described in clause 7 of Schedule 1 of the Noise Policy, and whether they trigger the thresholds for licensing under the EP Act or not?

3.10 Technical proposals

Due to various updated guidelines and standards, as well as a wording error, minor technical changes must be made to the Noise Policy. Such changes would have no effect on the application of the Noise Policy.

Part 3 Measurement procedure


Clause 13(c) – General Measurement Procedures – refers to ‘administering authority’. The clause should refer to ‘administering agency’.

3.11 Part 7 Guidance documents

An important feature of the Noise Policy is the link to relevant guidelines. Part 7 uses guidelines as a means of describing how a person undertaking a particular activity can comply with their general environmental duty. A guideline listed in the policy contains specific requirements, advice, and information, but not offence provisions. While failure to comply with a guideline listed is not an offence, compliance with guideline can be enforced through the issuing of an environment protection order. Currently, there are two guidelines listed in Part 7, Audible Bird Scaring Devices Environmental Noise Guideline 2007 and the Wind Farms Environmental Noise Guidelines 2003. Part 7 can also have additional guidelines included by the Minister (Clause 8) by notice in the Gazette.

The specific requirements in a guideline describe what a person undertaking a particular activity should or should not do in order to comply with the requirements of the Noise Policy (and other environment protection polices as appropriate) and the EP Act. These specific requirements are usually outcome based and not prescriptive. There may be many ways ‘how to do it’ and it may not be appropriate to specify a particular way so long as the outcome is achieved.

Clause 34(1) – Wind Farms – refers to a superseded guideline. This needs to be changed to:

1) If a person or organisation operates a wind farm, the current edition of Wind Farms Environmental Noise Guidelines prepared by the Authority apply.

3.12 Next steps

Once consultation on the proposals contained in this paper is complete, the results will be summarised and considered, and a consultation report drafted. Views and submissions received on the options and questions presented in this paper will be included in the consultation report. A draft revised Noise Policy and an explanatory paper will then be developed and publicly released to facilitate further consultation.

The Guidelines for the use of the Environment Protection (Noise) Policy 2007 (the Noise Guidelines) will also be updated once the new policy is made.

The EPA invites you to provide your views on the Noise Policy by responding to the issues raised in this discussion paper. You are invited to lodge a written submission or, if you prefer, meet with EPA staff to discuss the project. A template of all discussion questions with a section for feedback can be found at Appendix 2.
To make a written submission please provide it no later than 5 pm Friday 17 July 2020 and post to:

Noise Policy Review
Environment Protection Authority
GPO Box 2607
Adelaide SA 5001
Attn: Ella Langford

or

Email: epainfo@sa.gov.au  (mark subject as 'Noise Policy Review')
Appendix 1 Stakeholder list from the 2017 initial consultation

Association of Australian Acoustical Consultants
Australian Acoustical Society
Australian Asphalt Pavement Association
Australian Conservation Foundation Inc
Australian Food and Grocery Council
Australian Forest Products Association
Australian Forestry Contractors Association
Australian Foundry Institute (SA Division)
Australian Industry Group (SA Branch)
Australian Institute of Environmental Health
Business SA
Cement Concrete and Aggregates Australia
Civil Aviation Safety Authority (SA)
Civil Contractors Federation (SA)
Conservation Council of South Australia Inc
Department of Planning, Transport and Infrastructure
Department of State Development (now known as Department for Innovation and Skills)
Environment Business Australia
Environmental Defenders Office (SA) Inc
Field and Game Australia
Forestry SA
Grain Producers SA
Green Triangle Regional Plantation Committee
Hillgrove Resources
Horticulture Coalition of SA
Housing Industry Association (SA)
International Practical Shooting Confederation
Iron Road Limited
Leigh Creek Energy
Livestock SA
Local Government Association of South Australia
Master Builders Association of SA
Motor Cycling South Australia
National Environmental Law Association Limited (SA Branch)
Nature Conservation Society of South Australia
OneSteel Manufacturing
Oz Minerals
Primary Industries and Regions SA
Planning Institute of Australia (SA Division)
Pork SA
Primary Producers SA
Property Council of Australia (SA)
Real Estate Institute of South Australia
Rex Minerals
Rifle SA (SA Rifle Association)
Royal Australian Chemical Institute (SA) Inc
SA Chamber of Mines and Energy Inc
SA Field and Game Association
SA Unions
Shooting Australia
South Australia Police
South Australian Clay Target Association
South Australian Dairy Farmers Assoc
South Australian Fire and Emergency Services Commission
South Australian Revolver and Pistol Association
South Australian Waste Industry Network
South Australian Wine Industry Association Inc
Sporting Shooters Association of Australia (SA)
Target Rifle South Australia
Terramin Australia
The Motor Sport Group
Urban Development Institute of Australia (SA)
Waste Management Association of Australia Inc
Wine Grape Council of SA
## Appendix 2 Summary of discussion questions

<table>
<thead>
<tr>
<th>Questions/proposals</th>
<th>Comment</th>
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<tbody>
<tr>
<td>1 Is there justification for amending the term ‘locality’ in the Noise Policy and how it is defined? If so, what is the preferred option and the expected risks and opportunities?</td>
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<td>2 In the event that the construction element of Part 6 of the Noise Policy is retained, is there justification for amending the definition of public infrastructure to be consistent with the meaning of ‘essential infrastructure’ in the PDI Act, or should its scope be clarified through a new definition?</td>
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<td>4 Is there justification to regulate vibration, and if so, should it be given effect via the Noise Policy or through the general environmental duty in section 25 of the EP Act? What are the expected risks and opportunities?</td>
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<td>5 Is there justification to allocate an INL land use category for forestry? If so, what are the expected risks and opportunities?</td>
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<td>6 Is there justification to mirror the Planning and Design Code land use categories in the Noise Policy? If so, what are the expected risks and opportunities?</td>
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<td>7 Are the current provisions adequate for dealing with the interface between land uses in mixed land use zones? If not, keeping in mind the development of the Planning and Design Code and state planning policies, what are the alternatives? What are the expected risks and opportunities?</td>
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