

## Public comment on the Environmental Protection (Noise) Amendment Regulations 2009 (Draft 6)

We invite you to make a submission on any or all aspects of the proposed amendments to the Environmental Protection (Noise) Regulations 1997.

Public comment period closes on 23 May 2011.

### Your details:

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### Comments:

**I would like to comment on amendment regulation reference: 14A**

### Comment:

#### 1. ***Noise Management Plans***

Local Government representatives have raised a number of concerns in regard to the development of noise management plans (NMP). Firstly, **the new responsibilities imposed on Local Governments, in particular the requirement to regulate NMPs represents a shift in regulatory burden**, the impact of which does not seem to have been assessed by the DEC. The new responsibilities outlined in the amendments will require more work for Local Governments, many of which do not have qualified noise officers or the expensive noise monitoring machines required to undertake these tasks.

Secondly, the **potential impact on Local Government** of developing NMPs has not been fully explored. Many Local Governments may not have the finances or capacity to develop NMPs to the necessary standard. A number of Local Governments have commented that the requirements for NMPs are too prescriptive and will involve more work than necessary for Local Governments to both develop and approve NMPs. The requirement for all Local Governments to develop a **NMP for "Class 1" works**, for example, is excessive, and would appear unnecessary considering that these works are already taking place and are within the 7am-7pm period. WALGA does not support the requirement for NMP for "Class 1" works for this reason.

WALGA commends the DEC on the proposed development of a template and guidelines to assist Local Governments in the development of NMPs, but question whether this will be enough to address concerns regarding capacity to develop NMPs and to undertake the work that results. It has been suggested **that this template should be adequately road-tested** before being released, in both metropolitan and non-metropolitan Local Governments. This will ensure that all possible scenarios can be covered by the NMP. Local Government operations vary considerably state-wide. It has also been suggested that the template include a checklist to assist Local Governments address all their responsibilities in regard to the development of their NMP.

Another issue raised is the **potential consequences for Local Government of approving NMPs for their own services**. Some Local Governments are concerned that this may leave them open to complaints if there is no external review mechanism for the Plans. One Local Government has indicated that they will be employing a consultant to develop their NMP in order to make these assessments more independent. This avenue, however, is not available to all Local Governments.

There is also a concern regarding the proposed inclusion of the following in NMPs:

*(a) details of vehicle or equipment evaluation and purchase policies adopted to select, on a reasonable and practicable basis, the quietest vehicle or equipment available; and*

The **requirement to include purchasing policies that demand “the quietest vehicle or equipment available” may not be practical** for all Local Governments. A number of issues are considered when Local Government makes purchasing decisions, including cost, environmental and social impact. The noise of the vehicle is likely to be only one input into the purchasing decision. Some Local Governments will utilise their vehicles for long periods of time, and may find at the implementation of these amendments that they have only just purchased vehicles that they intend to use for another seven years or so.

The term **“quietest vehicle or equipment available” is open to interpretation**, and requires further clarification within the amendments. It has been suggested that this section, or the NMP template/guidelines provide more details, such as new equipment to be fitted with white noise reversing beepers (retrofit options), for example.

Finally, the amendments mention the **inclusion of community information** in a Local Government NMP, although community consultation is not necessary to approve a NMP. Some clarification is needed on this issue.

## **2. “Class 2” Works**

Local Governments are concerned **about the proposed exclusion of services that start before 7am from “Class 1” works**. Many Local Governments, particularly in the Metropolitan area, undertake kerbside waste and recycling collections that start at 6am (or earlier), the purpose of which is to avoid contributing to the traffic issues around school drop-off and pick-up times, and during peak hour. Many Local Governments also start at this time in order to stagger the times that their trucks leave the depot. If Local Governments could not start these services until after 7am, all trucks would have to leave at the same time causing havoc to traffic and ultimately delaying service delivery. This delay will impact the delivery of other services as well, as a number of other trucks and vehicles leave the depot throughout the day (for example, street cleaners). The common practice of staggering truck release time from Local Government depots also means that trucks will not become part of a back-log, waiting to access cleaning services (‘wash houses’) or to drop off rubbish at waste and recycling management facilities. Delaying the start time for waste collection, consequently, will impact on the delivery of these important services to the community.

Many Local Governments have enterprise bargaining agreements (EBAs) in place with their drivers which have agreed start times and total shift length. Pushing back waste collection rounds to after 7am means the length of time to complete a collection round will be increased due to traffic congestion. This will have **significant impacts on working conditions and EBAs**, which are the product of lengthy negotiations, and bind Local Government to these conditions.

A query was raised from Local Government about **waste management operations being undertaken on public holidays**. Many Local Governments undertake kerbside waste collections on public holidays, and many landfills are open throughout the year. WALGA seeks confirmation from the DEC that the definition of “Class 1 works” carried out between 7am-7pm Monday to Saturday inclusive also covers services delivered on public holidays.

There is an expectation from Local Government that exclusion from “Class 2” works will be made for **clean ups after an emergency**, as well as waste collections undertaken in preparation of severe weather or emergency events. WALGA acknowledges that Section 75 in the *Environmental Protection Act 1986* includes the following:

(1) *The CEO may, if there is, or is about to be, an emission from any premises for the purposes of —*

(a) *meeting a temporary emergency...*

*on his own initiative or at the instance of another person exempt the occupier of those premises from compliance with this Part for such period not exceeding 14 days, and subject to such conditions, as he specifies in that exemption.*

WALGA suggests that this provision is included or referred to in the NMP template to ensure that Local Governments are aware of the process that covers the operation of waste and disposal services both after an emergency, and in preparation of an emergency event.

The proposed amendments are not clear on **the process involved for non-Local Government service providers** who deliver services covered in the “specified works” definition. For example, Main Roads (WA) is responsible for cleaning/clearing their assets. Who will be required to approve their NMP? Are they aware that they will be required to develop a NMP? This question also relates to private contractors who undertake “specified works”, including the collection of trade/ commercial waste. This needs to be clarified, as it is potentially significant regulatory burden to Local Government to approve and enforce NMP’s for all of these operators. There are a large range and number of private contractors providing services to trade/ commercial businesses and households. It is not clear whether they have been consulted or are aware of the potential requirement to complete NMPs.

The general omission of references to managing noise around trade/ commercial waste is symptomatic of **an over-regulation of Local Government waste management services by State Government**. For example, the *Waste Avoidance and Resource Recovery (WARR) Act 2007*, outlines the responsibilities for Local Government in regard to managing Local Government waste, but fails to acknowledge where the responsibility lies for the management of construction and demolition (C&D) and commercial and industrial (C&I) waste. In regard to the proposed amendments, the DEC need to explore the impact on Local Governments of having to approve and monitor the multiple NMP required for private contractors (for example, public schools in Western Australia use private contractors to collect their waste). At the moment the potential impact is not acknowledged.

### 3. **Terminology**

The definition of “specified works” does not adequately cover the range of waste management services delivered to the community:

- (a) *the collection of putrescible waste; or*
- (b) *the cleaning of a road or the drains for a road; or*
- (c) *the maintenance of road verges and public open space (including the collection of rubbish and the planting, trimming or removal of trees); or*
- (d) *the periodic collection of rubbish placed on street verges by residents for the purpose of such a collection.*

Listing approved tasks in the Regulations increases the possibility that certain aspects of these services would not be included. . For example, **non-putrescible waste and recycling is not included in the definition of “specified works”**. The collection of recyclable material is a major part of the waste services offered by many Local Governments. Recyclable material collection may be noisier due to the nature of the material collected (for example glass containers). WALGA strongly recommends the inclusion of recyclables in the definition of “specified works”. In the *Environmental Protection (Noise) Regulations 1997*, the noise generated by vehicles is covered, but the noise generated by the material in the rubbish bins (the make-up of which are out of Local Government control), is not covered in the Regulations or the proposed amendments. The inclusion of “recyclables” should go some way to address this oversight.

Local Government in Western Australia support **the introduction of Container Deposit Systems**. The introduction of such a system has the potential to impact on container litter and waste generally. A potential side benefit is the reduction in noise of recycling collections – as materials such as glass containers are largely removed from the kerbside recycling collections.

WALGA would also like confirmation from the DEC that **the cleaning of beaches, streets, footpaths and car parks** (on both public and private property) is covered by the term “public open space” used in the definition of “specified works”. Many Local Governments are responsible for delivering these services, and want to ensure these activities are covered.

## **I would also like to comment on amendment regulation reference: 16**

### **Comment:**

#### **1. Noise Management Plans**

WALGA has received comments from Local Government concerning the onerous nature of the NMP required for shooting venues. Local Government is concerned that the process is **excessive and will prove expensive for smaller community groups**.

#### **2. Fee Setting**

WALGA is supportive of the provision allowing a Local Government to cover costs brought about by assessing these applications, although the process suggested appears complicated. Local Government would prefer **a system consistent with other fee setting processes** that reflects the true costs for Local Government, and acknowledges that costs may be different across Local Governments. The structure outlined in the *Local Government Act 1995*, for example, provides a structure that Local Governments are familiar with.

The amendments outline that the Local Government can charge an annual noise monitoring fee “of not more than \$1000”. Later on (Section 18) it is stated that the CEO of the DEC is “*to assess the fee payable for conducting the assessment but any fee assessed is not to exceed the cost of conducting the assessment or \$100 000, whichever is the lesser*”. Local Government has expressed an interest in having clarified the reasons behind this significant discrepancy.

#### **3. Monitoring undertaken by third party**

16A and 16B (8) outline that a person whose NMP has been approved

*is to pay the local government for the district in which the venue is situated, within 2 weeks of the approval of the plan and before each anniversary of the approval while the plan has effect, an annual noise monitoring fee of not more than \$1 000 (reduced pro rata if the approval is for a part of the year) assessed by the CEO as the cost of monitoring noise emitted from the venue...*

This amendment does not allow for **the possibility of monitoring being undertaken by a third party**.

## I would also like to comment on amendment regulation reference: 19

### Comment:

#### 1. ***Fee Setting***

As mentioned above (amendment regulation 16), the process described in regard to cost recovery seem inappropriate and suggest requirements similar to those in the *Local Government Act 1995*.

This amendment also outlines that

*Each of the following persons must ensure that an ancillary condition relating to a notifiable event at an approved venue is implemented —*

*(a) the occupier of the venue;*

*(b) the person who holds the event at the venue.*

*Penalty: a fine of \$5 000.*

The comment has been made that **the \$5000 is not high enough** to act as a suitable deterrent.

#### 2. ***Impact on Local Government***

There is a concern that any breaches of conditions agreed in a NMP will need to be followed up by Local Government officers. **Enforcing conditions set out in a NMP could potentially be technically difficult and time consuming** for Local Government. **Prosecuting breaches are also time consuming and often not successful.** The impact of these activities on Local Governments needs to be assessed.

### General Comments on the amendment regulations

Overall WALGA is concerned by the regulatory shift proposed by the amendments, from State Government to Local Government, the full impact of which has not been assessed. Although there may be a perception that by putting the approval of waste management and event NMPs in the hands of Local Government, the officers with the most knowledge about these operations are involved in assessing their value, there is a strong possibility that these new responsibilities will result in increased costs for Local Government.

There is a concern within Local Government regarding the continuing trend of giving Local Government responsibility for duties that have traditionally sat with State Government. To Local Government, it appears as though the decline in resourcing DEC regional offices has resulted in Local Government taking on more of their duties. It has been suggested that the splitting of these functions will result in an overall dilution of the Legislation and potentially put Local Governments in a position where they cannot fulfil the obligations which have been delegated to them. State Government agencies need to be adequately resourced to undertake regulatory functions.

As the proposed regulations, as currently drafted, place a significant additional regulatory burden on both Local Government and the private it is expected that a a regulatory impact statement will be undertaken. Without an adequate assessment the full impact of these amendments will not be known.

### General comments on existing noise regulations:

There is a concern that there are a number of existing regulations that have not been considered in the proposed amendments. The comments below have been submitted to us from the Shire of Serpentine Jarrahdale. It is suggested that the DEC contact the Shire directly in order to address their concerns.

The Shire of Serpentine Jarrahdale is seeking some clarification in regard to the use of “*specified equipment*” as defined in Regulation 14. Currently “*residential premises*” are not defined in the Regulations or the Act and this has resulted in some confusion with respect to

the application on Regulation 14. There are no specific provisions within the Regulations relating to the use of "*specified equipment*" on other than residential premises. This appears to be at odds with the intent of the Regulations, which are drafted in order to enable certain activities, for limited duration, to occur on residential properties without applying the levels associated with Regulations 7 and 8.

This is particularly problematic for outer metropolitan Local Governments where small rural landholdings have been purchased with the intent of undertaking certain activities such as home workshops, hobby activities using power tools, trail bike riding and the use of off road vehicles. As the Regulations currently stand, unless an activity is undertaken by a farming vehicle (as defined in Regulation 12) all noise levels emanating from small rural lots would appear to have to comply with the noise emission requirements stipulated in Regulation 7 and the assigned levels in Regulation 8. From a Local Government perspective the administration of the regulations, relating to hobby activities, lawn mowing, garden and power tools, off road vehicles and motorbikes on small rural premises, would be greatly simplified if the provisions of Regulation 14 were clearly applicable to all noise sensitive premises.

The regulations also state that "*Regulation 7 does not apply to noise emitted from a farming vehicle on rural premises at any time between sunrise and sunset ...*". Some clarification and simplification of the application of this provision is proposed with the amendments and these are generally supported. It is however clear that these provisions do not relate to the use of "*specified equipment*" on other than residential premises.

Regulation 14 relating to equipment used on residential premises refers to "*specified equipment*", as any item of equipment which requires the constant presence of an operator for normal use. In practical terms this has meant power tools, lawnmowers and motorised garden tools, musical instruments and more recently small (50cc or similar) motor bikes when used on residential premises.