

Submission on Guideline: Assessment of Environmental Noise Emissions

September 2021



Status of this Submission

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of WALGA, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management) as well as a number of Local Government representatives. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate.

This Submission therefore represents the consolidated view of Western Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

This Submission will be considered by MWAC on Wednesday, 25 August.

Introduction

The Western Australian Local Government Association (Association) welcomes the opportunity to comment on the *Guideline: Assessment of Environmental Noise Emissions* on how the Department interprets and applies the legislation it administers.

In 2016, the Department released a Draft *Guideline on Environmental Noise for Prescribed Premises*, this document was not finalised. In the Submission on the 2016 Draft Guideline, WALGA identified that:

- *Clarification is required as to why noise from construction activities is addressed in the EPA Guideline, but not the draft DER Guideline.* This issue has been addressed in the 2021 Draft Guideline.
- *The draft DER Guidance Statement: Separation Distances is used as the main threshold to determine whether a full scale noise assessment will be required. The draft distances that have been proposed by DER are much greater than those used previously for land use planning purposes. The majority of existing facilities will fail to meet these distances and will require a higher level of assessment. Those facilities with a noise receptor within their specified separation distance, will need to complete more detailed screening and potentially need assistance from an acoustic consultant.* This issue has not been addressed and the Separation Distances are still used to determine if an assessment is required.
- *The draft Guideline identified noise is affected by a complex range of factors and does not necessarily progress in a linear fashion. Given this, it is difficult for Local Government to understand why a separation distance, that has a limited scientific or evidence base, is a pass/fail consideration on whether detailed screening is required.* This issue has not been addressed in the new Draft Guidelines.

The 2016 Guideline was 27 pages long, the new Draft Guideline is 61 pages in length.

This Submission comments on the application of the Guideline and where further clarification is required.

Application of the Guideline

The Guideline will inform the works approval or licence risk assessment conducted by DWER in accordance with its regulatory risk assessment framework. However, it is unclear whether proponents will be required to apply this Guideline in circumstances where noise emissions have already been assessed and approved under Part IV of the Environmental Protection Act 1986 (EP Act). Where noise emissions have been assessed and approved under Part IV of the EP Act, the re-assessment of noise emissions should not be required for a works approval or licence.

The Guideline also states noise “is commonly recognised as an emission of sound but may also include ground or structure-borne vibration”. Vibrational impacts are also listed in the Guideline as a factor

influencing the impact of noise emissions. The Noise Regulations do not address vibration and therefore, it is difficult for applicants to determine how to assess, monitor and address vibrational impacts. Further, the Guideline does not include any detail on how to assess vibrational impacts within Section 10: Detailed Noise Emission Assessments. Given vibration is not currently addressed by the Noise Regulations, the Guidelines would create a new requirement.

The Guideline asks if “the screening tool in Appendix A is effective in identifying when low level noise emissions do not require detailed assessment”. WALGA considers the screening tool does not provide sufficient clarity to identify when low level noise emission/s do not require a detailed assessment because the guideline states that “where screening analysis indicates noise emissions are likely to be low level, the department may still request additional information or a detailed analysis in the following cases:

- Past experience of the department regulating similar premises;
- Known changes of receptor proximity in future; or
- Insufficient supporting information provided to the department.”

So even if a proponent determines that their facility produces low level noise emissions the Department may still request additional information or detailed analysis and the basis of this determination may not be available to the proponent as they would not know, for example, past experiences of the Department regulating similar premises. The Departments 2015 Guidance Statement: Regulatory Principles states that “The department will use the information we already have, and ask applicants to provide any technical and general information we need, to support our assessment of the risks of the proposed activity and to conduct our regulatory functions. We make informed decisions and judgments based on the best-available information, noting that the available evidence can often have limitations.”

In relation to screening noise emissions – the guideline states that “separation distances are used as a trigger for detailed analysis and are not interpreted by the department to indicate a buffer distance that must be met in all cases. If the distance between the prescribed premises and the nearest noise sensitive area is within the relevant distance, a detailed noise emission report is required. If the site lies beyond the separation distance, the applicant needs to complete the remainder of the screening form, to identify if there are other noise emissions that trigger the need for a detailed noise emission report.” The Guideline predominately relies on screening distances to determine if detailed noise analysis is required. It makes very little reference to other factors that influence the risk of noise emissions. This has the potential to significantly increase the regulatory burden on facilities where noise is only a minor (and managed) risk.

The Guideline further states that “An exemption may also be provided by the department for a detailed analysis if the applicant considers the risk from emissions to be low even though the separation distance is not met.” However, the guideline does not discuss how the department assesses the risk of noise emission impacts for the proposed activity using the applicant’s information instead it states “The department will follow its regulatory risk assessment framework to assess the proposal and provide a decision report.”

Further Clarification Required

The Draft Guideline states that noise modelling must be done by a ‘competent person’ but does not identify what defines a competent person. During the online question and answer session on 2 August 2021 this was queried and the response from DWER was that ‘the Acoustic Society would need to define the criteria as to what a competent person is, the department wouldn’t be in a position to do that’. On this basis DWER needs to liaise with the Acoustic Society to incorporate a definition in to the Guidelines so that all parties involved in modelling and assessment are clear on their roles and responsibilities. Also to ensure that there are people with the relevant qualifications available to undertake these assessment.

Further clarification is needed regarding what is referred to in Section 5: Environmental objectives “other standards or noise levels set out in this guideline for noise emissions not set out in the Noise Regulations”.

The Guideline specifies the EP Act defines noise to include “vibration of any frequency, whether transmitted through air or any other physical medium”. However, the Environmental Protection (Noise) Regulations 1997 (Noise Regulations) specifies it does not apply to certain noise emissions (Part 1, r.3), including noise emissions from trains. It is unclear whether the exemptions outlined in the Noise Regulations are also included in the definition of noise in the Guideline.

The Guideline states that “department guidelines are not mandatory considerations, rather their purpose is to assist applicants to provide information in a manner that ensures efficient and effective assessment of

their application.” However, the Guideline further states that “the guideline will not generally be used retrospectively, outside the department’s normal licensing processes, to reassess existing facilities. However, in situations where there is evidence of unacceptable noise impacts from existing premises, the department may initiate a review of the licence, informed by this guideline, and new controls may be applied through licence conditions.”

There may be instances where application of this Guideline for all renewals involving noise emissions may not be practicable. For example, an application for a renewal with no changes to the facility/activities and therefore, no change to noise emissions. The requirement to re-assess noise emissions would be excessive, especially in circumstances where a licence is renewed on an annual basis. During the online Q&A session on 2 August 2021 WALGA queried if the Guideline will be used retrospectively to re-assess existing facilities. The response from DWER representative was that ‘where a prescribed premises has noise conditions in their licence and they are having noise related issues the principles of the guidelines will apply but would be assessed on a case by case basis’. This has the potential to put very costly and onerous conditions on existing facilities.