

Environmental Protection (Noise) Policy 2019

Explanatory notes for SL 2019 No. 154

made under the
Environmental Protection Act 1994

General Outline

Short title

Environmental Protection (Noise) Policy 2019

Authorising law

Sections 26 to 34 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

The *Environmental Protection (Noise) Policy 2019* will replace the *Environmental Protection (Noise) Policy 2008* which is due to expire on 1 September 2019 in accordance with section 54 of the *Statutory Instruments Act 1992*.

A review of the *Environmental Protection (Noise) Policy 2008* confirmed a need for continued regulatory action. The *Environmental Protection (Noise) Policy 2019* is required to provide for the effective operation of the *Environmental Protection Act 1994*. The purpose of the policy is to achieve the object of the *Environmental Protection Act 1994* in relation to the noise environment.

The *Environmental Protection (Noise) Policy 2019* is substantially similar to the existing legislation, with only minor amendments. There have been a number of amendments made to the drafting style to ensure the legislation reflects current drafting practice. Some provisions have been renumbered as a result. Other amendments have been made to clarify the intent of provisions.

Achievement of policy objectives

The policy objective is achieved by making the *Environmental Protection (Noise) Policy 2019* which will replace the *Environmental Protection (Noise) Policy 2008* on 1 September 2019.

The purpose of the policy is achieved by:

- identifying and declaring environmental values of the acoustic environment;
- stating acoustic quality objectives that are directed at enhancing or protecting the environmental values; and
- providing a framework for making consistent, equitable and informed decisions that relate to the acoustic environment.

The *Environmental Protection (Noise) Policy 2019* will provide for the same matters as the expiring legislation. Some changes have been made to update provisions based on current drafting style and to clarify the intent of provisions.

Consistency with policy objectives of authorising law

The *Environmental Protection (Noise) Policy 2019* is consistent with the object of the *Environmental Protection Act 1994*, which is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development).

Inconsistency with policy objectives of other legislation

The *Environmental Protection (Noise) Policy 2019* is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The implementation of the *Environmental Protection (Noise) Policy 2019* is undertaken as part of the administration and enforcement of the *Environmental Protection Act 1994*. There are no costs directly associated with the implementation of the policy.

Consistency with fundamental legislative principles

The *Environmental Protection (Noise) Policy 2019* is considered to be consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

A draft of the *Environmental Protection (Noise) Policy 2019* and summary of changes was emailed directly to key stakeholders, including industry peak bodies, environmental groups, technical consultants and local government, for comment. Broader public consultation was not undertaken because there are no significant policy changes from the *Environmental*

Protection (Noise) Policy 2008. All of the submissions received during consultation were considered, and where appropriate, changes were made to the policy.

A number of concerns raised during consultation related to issues that arise from the implementation and application of the *Environmental Protection (Noise) Policy 2019*. The amendments progressed as part of the remake of the policy aim to clarify some provisions to support consistent application. In addition, these Explanatory Notes provide examples and further details to support the appropriate interpretation of the policy.

Industry representatives requested amendments that would, in effect, limit the application of the *Environmental Protection (Noise) Policy 2019*. The proposed amendments were not adopted as they are inconsistent with the intent of the provisions. However, a clarification has been inserted to confirm that the management intent and management hierarchy should not need to be considered in relation to an activity that involves trivial noise. A reference to background creep in the management intent was also re-inserted in response to the comments received by industry representatives.

In accordance with *The Queensland Government Guide to Better Regulation* (the Guidelines), the Office of Best Practice Regulation (OBPR) was consulted on the Department of Environment and Science's (the department) sunset review of the *Environmental Protection (Noise) Policy 2008*. OBPR was also consulted on changes to the policy to clarify the intent of the management hierarchy and management intent.

In regards to the department's sunset review, OBPR advised that it considered the department had satisfactorily met the objectives for sunset reviews as set out in the Guidelines. OBPR considered that no further regulatory impact analysis of the *Environmental Protection (Noise) Policy 2008* was required prior to its remake.

OBPR advised that the amendments to the policy to clarify the intent of the management hierarchy and management intent were excluded from further regulatory impact analysis under the Guidelines (Category (k)—Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts).

Notes on Provisions

Section 1 Short title

This section states the short title of this legislation is the *Environmental Protection (Noise) Policy 2019*.

Section 2 Commencement

This section states that the commencement date of this policy is 1 September 2019.

Section 3 Definitions

This section states that words in this policy are defined in the dictionary in schedule 2.

Section 4 Application

This section states that the policy applies to the whole of Queensland's acoustic environment. Acoustic environment is defined in the dictionary in schedule 2 as the part of the environment of an area or place characterised by the total amount of noise that may be experienced there. This means that different areas may have different acoustic environments.

The provisions under this policy reflect a general intention for dealings affecting Queensland's acoustic environment.

Section 5 Purpose of policy

The purpose of the policy is to achieve the object of the *Environmental Protection Act 1994* in relation to the acoustic environment. The object of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

The purpose of the policy is achieved by:

- identifying and declaring environmental values of the acoustic environment
- stating acoustic quality objectives for enhancing or protecting the environmental values
- providing a framework for making consistent, equitable and informed decisions about the acoustic environment.

Section 6 Environmental values

An environmental value is defined in section 9 of the *Environmental Protection Act 1994* to be a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety, or another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation. Section 28 of the *Environmental Protection Act 1994* states that an environmental protection policy must identify the environmental values to be enhanced or protected under the policy.

This section identifies the environmental values for the acoustic environment to be enhanced and protected. The environmental values are used to inform a range of decision making including under the *Environmental Protection Act 1994*. For example, the environmental values in this policy are used to inform whether environmental harm under the *Environmental Protection Act 1994* has been caused, as environmental harm is an adverse impact on an environmental value. The concept of environmental harm includes environmental nuisance.

The environmental values may also be considered when considering the standard criteria and must be considered as part of the regulatory requirements for particular decisions under the

Environmental Protection Act 1994. For example, section 36 of the *Environmental Protection Regulation 2019* states that the administering authority must, for making an environmental management decision relating to an activity, consider whether to impose conditions about protecting environmental values.

The environmental values of the acoustic environment to be enhanced or protected under this policy are:

- the qualities of the acoustic environment that are conducive to protecting the health and biodiversity of ecosystems
- the qualities of the acoustic environment that are conducive to human health and wellbeing, including by ensuring a suitable acoustic environment for individuals to do any of the following:
 - sleep
 - study or learn
 - be involved in recreation, including relaxation and conversation
- the qualities of the acoustic environment that are conducive to protecting the amenity of the community.

The environmental values apply across Queensland's acoustic environment.

These environmental values have been unchanged from the *Environmental Protection (Noise) Policy 2008* as they continue to remain appropriate.

Section 7 Acoustic quality objectives for sensitive receptors

The *Environmental Protection Act 1994* states that an environmental protection policy may state the objectives to be achieved and maintained under the policy.

Acoustic quality objective (as defined in the dictionary in schedule 2), for an area or place, means the maximum level of noise that should be experienced in the acoustic environment of the area or place.

The acoustic quality objectives for enhancing or protecting the environmental values are outlined in schedule 1.

Acoustic quality objectives are stated in schedule 1, column 3 for sensitive receptors. Sensitive receptors are in schedule 1, column 1. The acoustic quality objectives are measured for the time of day stated in schedule 1, column 2. The acoustic quality objectives are prescribed for enhancing or protecting the environmental values in schedule 1, column 4.

The acoustic quality objectives are unchanged from the *Environmental Protection (Noise) Policy 2008*. The objectives were informed by the World Health Organization Guideline for Community Noise from 1999. These acoustic quality objectives are still considered relevant. The World Health Organization released new guidelines in 2018, however these guidelines focus on recommendations for noise at the source rather than the receptor. The new guidelines also focus on only a few noise sources (i.e. road traffic noise, railway noise, aircraft noise, wind turbine noise, leisure noise). The new guidelines state that all indoor values and values not covered by the current guideline, such as industrial noise, remain valid.

In some circumstances, due to historical reasons, the acoustic quality objectives at certain sensitive receptors may not be immediately achievable. In these circumstances, it may be reasonable to accept that the acoustic quality objectives will be sought to be achieved over the long term.

The acoustic quality objectives are considered in assessment processes and help inform the decision making process, including any conditions that may be placed on approvals for environmentally relevant activities. The acoustic quality objectives are not individual point source emission standards but are total levels of noise in the surrounding environment. They assist to inform what the point source acoustic emission level as a condition of approval for a particular activity at a site may be.

It is not intended that, as part of achieving the acoustic quality objectives, any part of the existing acoustic environment be allowed to deteriorate. That means in using this policy for making decisions including under the *Environmental Protection Act 1994*, the acoustic quality objectives should not be seen as a noise limit without consideration of whether the acoustic environment is being allowed to deteriorate due to an existing acoustic environment that is better than the acoustic quality objective.

The objectives assist in identifying whether the environmental values are protected.

The acoustic quality objectives do not apply to a noise source mentioned in schedule 1, part 1, section 1 the *Environmental Protection Act 1994*. Noise mentioned in that section of the Act relates to noise from safety or transport noise including noise from a warning signal for a railway crossing, noise from operating a ship, noise from aircraft movement, noise from the ordinary use of a public road or State-controlled road and noise from the ordinary use of a busway, light rail or rail transport infrastructure. For a full list of the matters that relate to this exclusion and definition of terms used refer to the *Environmental Protection Act 1994*.

This provision means the acoustic quality objectives should not be used when assessing a noise in relation to a decision under the *Environmental Protection Act 1994* if the noise is a noise mentioned in schedule 1, part 1, section 1 of the *Environmental Protection Act 1994*. That is in line with the intent of the Act that excludes a noise source specified in schedule 1, part 1, section 1 from an offence of causing environmental nuisance under section 440 and an offence of contravening a noise standard under section 440Q of the *Environmental Protection Act 1994*.

This exclusion was present under the *Environmental Protection (Noise) Policy 2008*. It does not remove the responsibility of a person carrying out an activity from meeting their general environmental duty under the *Environmental Protection Act 1994* or from the need to protect the environmental values under this policy.

The acoustic quality objectives do not apply for a noise that may be experienced within a dwelling or workplace if the noise is made within the dwelling or workplace. Workplace is defined by reference to section 8 of the *Work Health and Safety Act 2011*. Noise produced within the workplace and affecting a workplace are considered to be more appropriately managed under the relevant work health and safety legislation applying to a particular workplace.

Section 8 Management hierarchy for noise

This section sets out the management hierarchy for an activity involving noise that affects, or may affect, an environmental value to be enhanced or protected under this policy. An activity that involves trivial noise that does not affect, or have the potential to affect, any relevant environmental values should not need to consider the management hierarchy.

The management hierarchy is referred to in the *Environmental Protection Regulation 2019* as a matter that must be considered by the administering authority when making an environmental management decision. The management hierarchy will also be considered in a range of other decision making. It is given effect via decisions under the *Environmental Protection Act 1994* or any other legislative or statutory instrument that refers to the management hierarchy from this policy.

The management hierarchy establishes an approach to avoiding, minimising or managing noise. Noise must be dealt with, to the extent it is reasonable to do so, in the following order of preference:

1. avoid—emphasis should be placed on avoiding noise by locating an activity in an area to minimise noise such as locating the activity away from a sensitive receptor
2. minimise in the following order of preference—
 - a. orientate, design and layout of land uses and equipment including placing a part of the activity that makes noise away from a sensitive receptor
 - b. use best available technology
3. manage—operational management measures to avoid or minimise noise impacts (e.g. using heavy machinery only during business hours).

The purpose of the noise management hierarchy is to:

- manage behaviours in the context of protecting the environment and promoting the achievement of ecologically sustainable development
- provide high level principles to guide decision making
- describe preferred pathways in decision making to:
 - enhance the environment
 - protect the environment
 - minimise harm to the environment.

In some circumstances it might not be reasonable to deal with noise in the order stated by the management hierarchy. That might be the case for operations that have historically been effectively managing noise, but not following the management hierarchy.

Section 9 Management intent for noise

This section sets out the management intent for an activity involving noise that affects, or may affect, an environmental value to be enhanced or protected under this policy. An activity that involves trivial noise that does not affect, or have the potential to affect, any relevant environmental values should not need to consider the management intent.

The management intent is referred to in the *Environmental Protection Regulation 2019* as a matter that must be considered by the administering authority when making an environmental management decision. The management intent will also be considered in a range of other

decision making. It is given effect via decisions under the *Environmental Protection Act 1994* or any other legislative or statutory instrument that refers to the management intent from this policy.

This section states that, to the extent it is reasonable to do so, noise must be dealt with in a way that ensures the noise does not have any adverse effect, or potential adverse effect, on an environmental value under this policy. That is consistent with the purpose of the policy as the environmental values are defined as a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety. In order to achieve the purpose of this policy and the object of the *Environmental Protection Act 1994*, the intent is to manage noise so that the environmental values are not adversely affected.

The other factor included under this section is management of background creep. This section states that to the extent it is reasonable to do so, noise must be dealt with in a way that ensures background creep in an area or place is prevented or minimised.

Background creep is defined as a gradual increase in the total amount of background noise in an area or place. The intent is to prevent or minimise background creep so that the background noise does not increase higher and higher over time to a point where it is unreasonable for the area or place. The policy refers to the measurement of background creep with reference to the “Noise measurement manual” published on the department’s website.

In some situations it may be reasonable to allow a greater increase to the background noise in an area or place. That may be the case in an area or place with very low background noise where an activity will increase the background noise levels but only to the extent the environmental values of the area are still protected.

In some situations, noise in a certain area or place might be of a level that does not allow for the acoustic quality objectives at sensitive receptors to be achieved. In these circumstances, to the extent it is reasonable to do so, noise must be dealt with in a way to progressively improve the acoustic environment of the area or place. That is, when reasonable, noise that is contributing to increased background noise is to be dealt in a way to progressively achieve reasonable levels for the area or place.

In some circumstances it may be unreasonable to seek progressive improvement of the acoustic environment of an area or place. This may be the case for noise from the ordinary use of transport infrastructure.

Section 10 Repeal

This section repeals the *Environmental Protection (Noise) Policy 2008*.

Schedule 1 Acoustic quality objectives

The acoustic quality objectives for enhancing or protecting the environmental values are outlined in schedule 1.

Acoustic quality objectives are stated in schedule 1, column 3 for sensitive receptors. Sensitive receptors are in schedule 1, column 1. The acoustic quality objectives are measured

for the time of day stated in schedule 1, column 2. The acoustic quality objectives are prescribed for enhancing or protecting the environmental values in schedule 1, column 4.

An acoustic quality objective stated in schedule 1 is expressed as a measurement of an acoustic descriptor.

The acoustic descriptors must be adjusted for noise characteristics. Noise characteristics include tonality and impulsiveness.

The acoustic quality objectives have been maintained from the *Environmental Protection (Noise) Policy 2008*.

The acoustic quality objective for residence outdoors is for the environmental values outdoor. That is, for example, for the relaxation and conversation at the outdoor area in a residence. The acoustic quality objective for outdoor residence should not be used as an alternative in cases where access to indoor measurement is not possible. The noise measurement manual may support the parameters necessary for modelling of this sort.

Further explanation of the intended application of acoustic quality objectives is outlined above under the notes for section 7.

Schedule 2 Dictionary

Schedule 2 defines certain terms for the purposes of this policy.

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