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31 October 2019

EPA Victoria
Attention: Director of Policy and Regulation
GPO Box 4395
MELBOURNE VIC, 3001

Dear Director

**FEEDBACK ON PROPOSED ENVIRONMENT PROTECTION AMENDMENT ACT 2019
REGULATIONS AND ENVIRONMENT REFERENCE STANDARDS**

The City of Port Phillip (CoPP) welcomes the opportunity to provide feedback on the proposed Environment Protection Regulations and Environment Reference Standards (**subordinate legislation**) developed to support the Environment Protection Amendment Act 2018 (EPA Act).

Our local government organisation, located in inner-metropolitan Melbourne, is Victoria's most densely populated council area, and is expected to double its population by 2050.

The City of Port Phillip Council Plan 2017-2027 recognises the major challenges we face into the future, including climate change, having recently declared a Climate Emergency, population growth, and densification. These are exacerbated and strained by the issues created by various types of land and water pollution, site contamination from legacy and present land uses and waste management.

In our growing municipality, we must ensure we work with Environment Protection Authority Victorian (EPA) to ensure the safety and wellbeing of our residents so they can continue to reside in an enjoyable and liveable city.

CoPP therefore, has a keen interest in a strong, enforceable EPA Act that is effective in preventing and reducing environmental harm, and in a well-resourced environmental regulator that can support Victorians to achieve compliance.

We trust our feedback will be valuable in informing the subordinate legislation to strengthen the EPA Act, and we also note here of our support for the submission made by the Municipal Association of Victoria.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Damian Dewar'.

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CITY OF PORT PHILLIP FEEDBACK ON PROPOSED ENVIRONMENT PROTECTION AMENDMENT ACT 2019 REGULATIONS AND ENVIRONMENT REFERENCE STANDARDS

In this submission, CoPP is making comments on three documents included in the consultation:

- Environment Protection Regulations.
- Regulatory Impact Statement.
- Impact Assessment.

Feedback has been provided about proposed actions that directly affect CoPP operations, or that indirectly affect CoPP stakeholders.

We also broadly support the submission and recommendations of the Municipal Association of Victoria on this matter.

It is noted here, gaining compliance with the new regulations will have a significant cost impact on local governments, and that assistance packages, training in use and impacts stemming from the introduction of the subordinate legislation will be required to ease this burden.

It is also recommended that EPA issue local governments with points of contacts for specific areas, e.g. noise, contaminated land, where EPA officers can be reached quickly to assist with enquiries.

Environment Protection Regulations

We have reviewed the proposed Environment Protection Regulations, and provide feedback about definitions, operating licenses, noise, penalties, priority waste, used packaging materials and the plastic shopping bag ban.

Broadly, we support the proposed Accredited Consigner delegations to ensure improved industry compliance with the EPA Act. The Accredited Consigner role is a more transparent system to ensure effective reporting to EPA, and this will improve protection of our communities and the environment.

1.1 – 4 Definitions

Tyres

Changes to the definition of waste tyres is recommended, to include 'partial' so that the scope for waste tyres is not narrowed, and that damaged tyres cannot exist as a loophole within the Act, e.g.: Waste tyres means whole or *partial* rubber tyres which are considered waste for the purposes of the Act.

Music

This definition is broad and includes anything from a live band to a speaker providing background music. When coupled with the proposed restrictions, most CoPP events would not be able to progress without an EPA exemption, as most have some form of music associated with the event (usually low level background music). We recommend changes to the definition to avoid a large and unnecessary administrative burden on events.

Concert

This definition would also include a lot of other events which were not considered concerts. The 55 dB(A) limit would pick up triathlons, markets, community house open days, school fetes and food & wine events.

It is recommended that the definition includes something about the primary purpose or focus of the event being music. Council has a definition for a Category 1 event (music festival) which includes in the definition continuously programmed large audio, a focus on music and estimated attendance of 4000+.

The recording site for the noise level also needs to be clarified in the regulations as to whether it is the event boundary, residential property or otherwise.

3 – General

3.2 – 23 Circumstances in which operating license must be refused

Further clarification to the reference 'negligible quantities' of e-waste is required as the current wording indicates that a violation of the e-waste landfill ban is permissible if done in consistent and small quantities.

This has potential to pose significant environmental harm, and weaken the existing Victorian e-waste ban to landfill legislation.

There are multiple references to 'negligible quantities' of e-waste in the Environment Protection Regulations that need clarification and amendment.

3.7 Additional or alternative penalty for prohibited persons

Clarification to remove ambiguity is required for the note on Clause 53: 'A person who engages in a prescribed permission activity may be liable to a penalty of 2 years imprisonment in addition to, or in place of, the penalty set out in section 45 of the Act'.

4 – Waste

4.2 Industrial waste, priority waste, and reportable priority waste

Local governments may have trouble in recording, providing and retaining transaction details in full with relation to the receipt of reportable priority waste (4.2 – 77 (3, 4) at transfer stations.

Waste dropped off by residents to transfer stations is often in small quantities, and quick interactions, and private details are not recorded, therefore, Council cannot always account for who has brought a prescribed waste product into the transfer station.

We request that local government, and potentially other transfer station operators, be exempt from the reporting requirement to record and provide transaction details of individuals who deliver prescribed waste to transfer stations.

Further to this, it is unclear what the reporting requirements will be for waste and recyclables collected at kerbside, and where the responsibility ends for Council as a collector and transporter of waste.

4.3 Used Packaging Materials

We support the 'requirements to recover, re-use and recycle materials and review packaging design'. This demonstrates strong leadership to maximise resource recovery opportunities in Victoria.

The only difficulty will be in monitoring and enforcement, particularly if producers do not operate within Victoria but rather sell products that circulate within Victoria. Additionally, proposed data requirements are not reliable as data is based on an honesty system which limits accuracy, efficacy and transparency.

5 Environmental management

5.3 Noise

Division 2—Unreasonable and aggravated noise from residential premises

Residential Noise

The Environment Protection (Residential Noise) Regulations 2018 were substantially reviewed in 2017. These regulations are now to be incorporated into the Environment Protection Regulations 2019 with some minor changes. The new regulations describe the operating hours for prescribed types of equipment, e.g. amplified music, swimming pool pump, air-conditioners. No change to the equipment or hours for use from 2018 however unreasonable noise relating to the use of an item at a prohibited time is an infringement penalty carrying 2 penalty units for a natural person (10 for a body corporate). Failure to comply with an improvement notice or an unreasonable noise direction both carry a penalty of 5 penalty units as an infringement offence for a natural person (25 for a body corporate).

The introduction of infringements and the ability to issue an improvement notice for unreasonable noise are useful changes for Council.

The new regulations provide no real clarity around the role or intersecting responsibilities for Council with the EPA and Police.

Most of these prohibited times affect the use of the equipment well after normal working hours. Council does not generally commit resources to an afterhours response to complaints in this area. Council relies upon the Police for the primary complaint experienced of amplified music noise (party noise) for response. It seems unlikely that this will change however Council may have more options when it comes to working with Police to respond to regular ongoing sites with music noise, or responding to the occasional case for other prohibited noise sources.

The MAV has called for an "Officer Handbook" to assist Council and other stakeholders in understanding their role in residential noise regulation and EPA should consider this.

Residential Construction Noise

Residential construction noise (except for maintenance or repair of an existing dwelling) has been excluded from the definition of residential premises noise. As a result, the offences available to councils and police will not be available to address unreasonable noise emanating from residential construction. Instead, this noise appears to be addressed through the General Environmental Duty – or an expectation for Council to implement a local law.

The EPA wishes to explore delegating to Councils the power to regulate residential construction noise through the GED. This would require careful consideration from Councils, as this enforcement would be substantially different from either current or proposed management of residential noise. There would be resource implications if the GED was delegated to Council and a source of funding would be required.

Subdivision 3 – Outdoor entertainment venues and outdoor entertainment events

128 Definitions – operating time periods

We have reviewed this section and as the definitions and restrictions stand, CoPP would either be no longer able to hold 50% of our events or would be asking for over 100 exemptions per year.

So, whilst CoPP supports restrictions on times, those proposed in the subordinate legislation would significantly impact a variety of events which are traditionally low impact in CoPP with regards to noise - e.g. fun runs, triathlons, food and wine events and markets.

To identify different types of events, CoPP suggest an inclusion of a provision for:

- Fun runs or triathlons. To allow a certain level of music to play during the event, to create ambience. CoPP has current restrictions for these events which have been working well, this includes conditions which allow the use of background music played at prescriptive levels at a set distance from the speaker so that it cannot be heard outside of the parkland prior to 8am. These events usually finish by 12noon.
- Food and wine events. These events traditionally try to capture the lunch-time and dinner crowds so hours between 10am and 10pm are usual.
- Markets. A variety of markets will run from 8am until 3pm, they will often have some form of background or ambient music to create some atmosphere.
- Community events which will often have background music and would run anytime between 9am – 8pm. These could be a school fete, an open day at a community centre or a community Christmas festival.
- Sporting events, such as beach netball and beach rugby have background music for ambience and PA systems for safety announcements and commentary. These events could be held anytime between 9am and 5pm.
- Festivals and music events. Currently all our events in this category run from 11am to 10pm. We restrict the numbers of these types of events at each site and have strict noise controls in place. Changes to the current restrictions to reflect this would decrease the amount of exemptions we would need to request.

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

It needs to be made clear here, that this measure is for a noise sensitive area. Currently, this point reads that noise must not exceed 80dB(A) at any time, which could be interpreted as on the event site in front of a speaker.

The set level of 80dB(A) is also not set across the usual 15Leq range. As a single point of sound, rather than a range, this will be hard not to breach as a lot of activities will include bursts of sound e.g. horns and sirens at sports events, traffic noise and music peaks. Therefore, we suggest that the 15Leq65dB(A) is a better measure, as it considers peaks and troughs.

Part 3.3 Permits

(f) – L05 – Operation outside hours & (g) – L06 – conducting more than six outdoor concerts Point (ii) and (iii) respectively.

- The number of complaints would be better defined as substantiated noise complaints. Without defining these as noise complaints, they could end up including other complaints which should not be relevant to the EPA's decision, for example complaints relating to the theme or content of an event, rather than direct amenity impact.
- Also, if the noise complaints are not substantiated then noise complaints could be made just because they do not support the event, not because the noise is an issue.

5.5 Plastic shopping bag ban

We support the inclusion of the plastic shopping bag ban of both free and paid for shopping plastic bags, and support for penalties for the 'provision of false or misleading information' of composition, banned or exempt plastic bag information.

Additionally, we recommend that EPA visibly increase its engagement with retailers and community about how to comply with the ban.

It is concerning that at the time of drafting the submission, less than one week from entry into force of the ban, there has been little, if any, promotion or community education about the ban.

Over recent years it has largely been left to councils to educate their communities about waste and recycling-related matters, despite the landfill levy providing a ready source of revenue to fund community education.

The EPA will have a significant role to play informing and educating both retailers and the community about how to comply with the ban and the penalties for failing to do so. CoPP would require support in the form of additional funding and resources if we were to play a significant role in managing the community response to the ban.

We also request clarity on who will undertake compliance and enforcement action in relation to the ban? It needs to be clarified whether there is an expectation for local government to play a role and if so we would require funding and resources to provide this additional service.

Regulatory Impact Statement

We have reviewed the Regulatory Impact Statement (RIS) and provided comments on the topics waste, litter, plastics bags, and air. For waste, this includes comments on the discussion of lawful place, priority waste and reportable priority waste and the Waste Levy.

8 Contaminated land

CoPP welcomes the new duty to manage contaminated land and notification requirements for areas of significant contamination. This will offer certainty and greater consistency to duty holders with respect to compliance with contaminated land duties under the EPA Act.

Compliance however, will be a costly exercise for local governments who own and manage land which has legacy contamination from previous industrial activity. Incomplete data and information on land parcels is a key gap for land owners and managers and will require significant resources to enable compliance.

It is recommended that where a previous land-owner was the cause of contamination, they can be held liable for assisting the current land manager to gain compliance. As such assessing whether a contaminated land management response is reasonable and practicable should include the efforts taken by the land owner to identify and obtain a funding from the polluter. This maintains the principles of 'polluter pays' and 'intergenerational equity' in contaminated land management.

Further, there needs to be greater clarity in the RIS of responsibility of land managers to notify contractors or other workers working on land which may be contaminated, e.g. duty to define the level of contamination prior to authorising works. As a public land manager Council has many other organisations that operate on our land, with limited control or oversight from Council. For example a utility company installing or repairing a service within a Council road reserve -Council should not be required to have defined the contamination risk where there was no prior opportunity to conduct sampling (i.e. under the road), nor control how potentially contaminated material is managed or removed from site during the utility works.

In relation to the options for duty to manage contaminated land, CoPP prefers Option 2. A prescription mechanism to determine background levels of contaminants, as well as clean-up and removal of NAPL, will offer duty holders greater clarity about how to achieve compliance and the levels to which this will need to occur. Further, this option notes the potential for greatest reduction in human health and environmental harm.

It is noted here that Option 2 will have the highest financial impact to duty holders, and as such, CoPP would like to see funding packages made available to support development of management plans, data collection and site testing, and activities to gain compliance, such as remediation works.

In relation to the options for duty holders to notify of contaminated land, CoPP prefers Option 2. This option appears to offer a greater opportunity to reduce residual risk, as well as risks to human health and the environment.

9 Waste

CoPP requests that the online application system for EPA waste transport certificates be given more resources to improve the efficiency and time spent in completing transport applications.

CoPP runs a transfer station and therefore has movements of trucks weekly which requires completing these forms regularly. To improve efficiency of reporting under the Act, these systems will need to be improved, including user experience of online systems.

Data reporting requirements must remain reasonable for Councils that manage the drop-off and transfer of recyclable materials through transfer stations. Transfer stations typically have limited

staff, with a high intake of small quantities of materials from residents which makes it difficult to record every product coming through.

Reporting on tonnages is also difficult in the absence of a weighbridge. If a weighbridge is required to gain compliance, funding support will be required for Councils.

9.4.1 Lawful place

We support the requirement to include a definition of lawful place as this will strictly define what will and will not constitute illegal dumping and reduce problems with stockpiling.

9.9 Priority waste and reportable priority waste

We support Option 3 as the best, most practicable and effective option to ensure hazardous risk reduction to the environment, while maximising resource recovery.

9.12 Waste levy

We believe that the document: *Calculating the landfill levy and recycling rebates 2015* must be reviewed alongside the finalisation of the subordinate legislation. Further information is required for stakeholders to understand some of the proposed levy fees.

This information would assist local governments that are subject to higher waste levy fees (52 of the Environment Protection Regulations Exposure Draft). As such, CoPP supports Option 2 under the Waste Levy implementation options proposed within the RIS.

Additionally, we request that the EPA consider including an exemption of the waste levy within the subordinate legislation for conditions like the challenges experienced in the recycling industry in 2018 and 2019, and in emergency situations.

Due to challenges with recycling processing facilities, local governments have absorbed unexpected and additional costs by paying a waste levy for products diverted from recycling facilities. Under these conditions, a waste levy exemption should be applied for Council recycling where market failure has led to it needing to be sent to landfill.

With respect to the waste levy rebate, the subordinate legislation should provide a list of products eligible for the rebate. Currently, the subordinate legislation is vague about what items are eligible for the rebate.

10 Litter

We support that local governments should be given a stronger role in litter enforcement, consistent with the reasoning listed in the RIS. This enforcement role can be undertaken by local government authorised officers who already undertake similar tasks and are currently tasked to the assessment and investigation of litter within the community. We note here however, that full responsibility for enforcing the litter provisions not be left solely to local government, and that EPA is resourced to undertake this role.

CoPP supports that the General Environmental Duty be extended to all persons, including those not littering under the actions of business activity. Non-business sources of litter are a problem for local councils with a difficulty to enforce, penalise and thus deter repeat offenders.

As such, CoPP supports the Option 1 scenario, which is a transition of the provisions from the EP Act 1970 into the new regulations.

11 Plastic bags

We support Option 3 under the provided scenarios. The consistent evidence that plastic bags contribute to litter in Victoria justifies the banning of all plastic bags.

Reducing the large volume of plastic bags is vital to reduce litter in Victoria and strong plastic bag legislation, with accompanying enforcement instruments, is essential to supporting the plastic bag ban.

This is consistent with Outcome 1 of CoPPs Waste Management Strategy, A City that reduces waste, and within that, Action 4: We will advocate to government to ban use of single-use plastics, and all unnecessary plastic packaging.

We feel stronger wording is required under Option 3 to define what constitutes a plastic bag and what does not (for example, re-usable shopping bags which can be made from recycled plastics should be exempt from the definition). Council supports the comment that the Federal Government should consider a national excise on plastic bags to affect action where Councils do not have legislative capacity.

12 Air

We seek to emphasise the point made by Deloitte that most Victorian particulate emissions (93%) are from naturally-occurring events such as bushfires and dust storms.

Air pollution represents risks to sensitive sections of the population including, as stated in the RIS, children, elderly people; unborn babies and individuals with underlying health conditions. As climate-related events will increase with climate change, the EPA must effectively include reference to such events in the subordinate legislation.

12.5.1 Options

CoPP's community have expressed interest in air quality monitoring to be published and accessible to the public. Council supports Option 1 under 'Reporting pollution to the National Pollutant Inventory' made within the RIS that businesses that exceed pollution thresholds must report to the National Pollutant Inventory for the public to access information that may constitute a serious health threat to residents.

EPA has a role in implementing and enforcing the NPI NEPM in Victoria and Council requests that EPA take mandatory reporting under excessive pollution events seriously.

Additionally, the NPI could be establish a maximum baseline for each relevant metric with the data reported through the system.

Impact Assessment

We have reviewed the Impact Assessment document and provide the following comments.

3 ERS standards for noise

8 Land use categories

Under the land use categories Public Parks are included under Category III. This category restricts noise levels to 40dB(A) and 50dB(A). As most events are held in parklands this will be a significant impact on the event industry, as previously the levels were set at 65dB(A).

As an inner-city municipality, it would be very restrictive to have event noise levels set so low. Particularly since most of our reserves are bordered by major roads which have an average of 75dB(A) noise levels.

It is suggested that these categories are reconsidered with regards to events and the surrounding land use.

Air

We support the recognition within the ERS on the significant impact that climate change will have on the community with the likelihood of increased ozone formation. We also support the inclusion of proposed changes to review objectives in applications to use certain locations based on minimising the various risks and impacts of climate change.

Council advocates that the role of the EPA must be strengthened, requiring increased monitoring of air quality by independent officers and increased transparency by publishing this information to the public, and when needed, remediation is to occur to gain swift compliance.

4 ERS standards for air

We support Recommendation 6 made by the Chief Environment Scientists that 'current standards for ozone, nitrogen dioxide and sulphur dioxide are being reviewed and that numeric values agreed to via the NEPM process are automatically adopted in the ERS.' We support this recommendation on behalf of residents who express ongoing concern for the need for sulphur dioxide monitoring.