

Subordinate Legislation Act 1994

DRAFT HUMAN RIGHTS CERTIFICATE

(Section 12A)

Environment Protection (Residential Noise) Regulations 2018

I, Lily D'Ambrosio, Minister for Energy, Environment and Climate Change, and Minister responsible for administering the **Environment Protection Act 1970** certify under section 12A(2) of the **Subordinate Legislation Act 1994** that, in my opinion, the proposed Environment Protection (Residential Noise) Regulations 2018 (Regulations) may limit human rights set out in the **Charter of Human Rights and Responsibilities Act 2006** (Charter) as follows.

The proposed Regulations prescribe items and times during which noise resulting from the use of those items in residential premises is taken to be 'unreasonable' for the purposes of section 48A of the **Environment Protection Act 1970** (and therefore an offence). The proposed Regulations replace and substantially replicate the Environment Protection (Residential Noise) Regulations 2008 (2008 Regulations).

Regulation 6 sets out the prescribed items and the prohibited times that apply to the use of those items. These items include things such as motor vehicles, lawn mowers, certain tools, heating and cooling appliances, instruments and sound systems and certain other electric equipment. The prohibited times that apply to the use of these items vary according to each item and between weekdays and weekends. For example: a lawn mower may not be used before 7am and after 8pm on weekdays or before 9am and after 8pm on weekends and public holidays; and a domestic air conditioner or evaporative cooler may not be used before 7am and after 11pm on weekdays or before 9am and after 11pm on weekends and public holidays (except when a heat health alert is in effect, in which case the prohibited times do not apply).

To the extent that the Regulations restrict some personal freedoms (that is, to use items however people so choose in their homes), the Regulations interfere with some of the human rights protected by the Charter. In particular: the right to privacy under section 13 of the Charter, which provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and freedom of expression under section 15 of the Charter, which provides that a person has the freedom to seek, receive and impart information and ideas of all kinds, whether by way of art or in another medium chosen by them. Some other

rights may also be relevant, such as the right to equality under section 8 of the Charter, to the extent that some of the restrictions may disadvantage people with disabilities (for example, with respect to the use of cooling and heating equipment). The rights to freedom of religion and belief under section 14 of the Charter, and cultural rights under section 19 of the Charter, which both incorporate the freedom to participate in religious and cultural practices, may also be relevant (for example, with respect to the restrictions on the use of instruments and sound systems).

However, in my view these rights are either not limited by the Regulations or, if they are limited, are limited in a reasonable and justifiable way under section 7(2) of the Charter.

The right to privacy is not limited because the restrictions contained in the Regulations are lawful and not arbitrary. The purpose of the prescribed restrictions is to protect people from the adverse health and amenity impacts of being exposed to unreasonable noise in their home (for example, sleep disturbances). These restrictions, which align with other noise management approaches throughout Australia, have been developed in light of comprehensive research, including stakeholder and community consultation, and have been carefully tailored to balance competing rights and needs after the conduct of extensive and transparent cost/benefit assessments. For similar reasons, the right to freedom of expression is not limited because the restrictions are reasonably necessary to protect the rights of other persons and public health more broadly (and therefore falls within the internal qualification on the right to freedom of expression as set out in section 15(3) of the Charter).

To the extent that the rights to equality, freedom of religion, and cultural rights may be limited by the prescribed restrictions, in my view any such limitations are reasonable and justified. As set out above, the purpose of the restrictions is to protect people from the adverse health and amenity impacts of unreasonable residential noise. The restrictions are directly relevant and proportionate to this purpose, and are based on a range of data regarding the nature and scale of the residential noise problem in Victoria, and the effectiveness of the 2008 Regulations at managing residential noise. The community consultation that has been conducted is considered to be representative of the needs, views and experiences of the broader community, and the Regulations have been carefully tailored to reflect those and balance competing interests where they arise (for example, by only applying to certain equipment at specified, relevant times, subject to appropriate exemptions such as with respect to the use of air conditioning equipment).

In my view, the Regulations are therefore compatible with the rights set out in the Charter.

Dated:

[Signature]

Hon Lily D'Ambrosio MP
Minister for Energy, Environment and Climate Change

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