



Submission to the National Environment Protection Council

Proposed variation to the National Environment Protection (Ambient Air Quality) Measure standards for sulphur dioxide, nitrogen dioxide and ozone

Victorian Environmental Law Student Network

7 August 2019

We acknowledge the Traditional Custodians of the land on which we work and live, and recognise their continuing connection to land, water and community. This submission was developed and written on the stolen lands of the Wurundjeri people of the Kulin Nations. Sovereignty was never ceded.

Victorian Environmental Law Student Network

**Submission to the National Environment Protection Council
Department of the Environment and Energy**

**Adam Carlon
NEPC Executive Officer
National Environment Protection Council**

07 August 2019

Dear Mr. Carlon,

RE: Variation to the National Environment Protection (Ambient Air Quality) Measure

Thank you for the opportunity to submit our views on the upcoming variation to the National Environment Protection (Ambient Air Quality) Measure ('NEPM') standards for nitrogen dioxide (NO₂), sulphur dioxide (SO₂) and ozone (O₃).

The Victorian Environmental Law Student Network ('VELSN') is a student-run organisation based at Melbourne Law School. VELSN aims to connect law students who are interested in law and the environment by providing a platform for students to engage with present and developing environmental issues.

Our Concerns

Australia's air quality standards are inadequate, currently allowing for far higher levels of pollution than those recommended by the World Health Organisation. Compared to standards in other developed jurisdictions, Australia lags significantly. Our standards are not effective in preventing significant harms to health caused by pollutants — harms that disproportionately affect children, pregnant women, elderly people and people with chronic disease. For this reason, we strongly support lower thresholds equivalent to those recommended by Environmental Justice Australia.

As students of law, we are particularly concerned about Australia's pollution equity problem — air pollution is distributed highly unequally between different regions of the country. For this reason, it is critical that our laws prioritise environmental justice by ensuring that all people are treated fairly and meaningfully involved in the development, implementation and enforcement of our air pollution laws. As a student network, we believe it is particularly important to integrate youth perspectives on this issue.

Despite this need, the NEPM currently provides unequal protection from air pollution and lacks meaningful obligations that would ensure compliance with the standards.

Our Submission

This submission is designed to assist policy and law makers in reviewing the NEPM. It will address two broad issues underlying Australia's current air pollution standards: a poor monitoring system and the absence of enforcement mechanisms.

Our submission makes five overall recommendations for the NEPM variation:

1. The network of NEPM compliance monitors should be expanded to reflect particular risks from widespread source emissions, such as major roadways.
2. Remove exemptions for small population centers from monitoring and reporting obligations and enforce requirements for monitoring in communities at risk of air pollution.
3. Air pollution monitoring data must be made publicly available through a coordinated national website.
4. Air pollution standards must include compliance obligations and enforcement mechanisms.
5. Australia's broken air pollution regulatory scheme should be replaced with a national Clean Air Act.

Please do not hesitate in contacting VELSN should you require further information.

Yours sincerely,

Tom Allen

President, Victorian Environmental Law Student Network
(On behalf of VELSN members and the Executive Committee)

MONITORING

Recommendation 1: The network of NEPM compliance monitors should be expanded to reflect particular risks from widespread source emissions, such as major roadways.

The 2011 NEPM review states that the objective of the NEPM should be to ‘minimise the risk from adverse health impacts from exposure to air pollution for all people wherever they may live’. The current network of NEPM compliance monitoring does not adequately accomplish this goal, as air quality monitors are located only in central, densely-populated areas, leaving much of rural Victoria unchecked.¹ This is a pressing environmental justice issue and demonstrates an instance of the law providing unequal protection to different groups within society based on geographic location and socioeconomic status.² Given the health risks associated with air pollution, this is not acceptable.

In order to better protect the health of the public, the NEPM monitoring network should be expanded, with an increased number of locations capable of reading *all* of the key pollutants, including SO_x and NO_x, to better evaluate the exposure of populations living near major sources of air pollution, including and especially those living in rural areas near coal-fired power stations and major roadways.

Recommendation 2: Remove exemptions for small population centres from monitoring and reporting obligations and enforce requirements for monitoring in communities at risk of air pollution.

As a corollary to the previous recommendation, monitoring and reporting exemptions for small population centres must be removed in order to protect Victorians living in areas at risk of air pollution and enable them to access pertinent information about local ambient air quality.

The NEPM currently exempts smaller population centres from monitoring and reporting obligations. Air quality is currently only monitored for population centres with more than 25,000 people. This exemption is arbitrary and unacceptable. It removes communities from the scope of the NEPM by virtue

¹ Environmental Justice Australia, ‘Local Air Pollution Monitoring,’ accessed online at <<https://www.envirojustice.org.au/our-work/community/air-pollution/local-air-pollution-monitoring/>> 4 August 2019.

² B Dobbie and D Greene, ‘Australians are not equally protected from industrial air pollution’ (2015) *Environmental Research Letters*, accessed online at <<https://iopscience.iop.org/article/10.1088/1748-9326/10/5/055001/pdf>> on 4 August 2019.

of their population size. The negative effects of pollution in remote areas with small populations has been studied in relation to Mount Isa in Queensland, and Port Pirie, South Australia.³ These studies provide valuable hindsight for improvements that must be made with this review.

Air pollution knows no borders. Its airborne nature means that remote and vulnerable towns and communities beyond the reach of the current monitors could be at risk of exposure to harmful levels of SO_x and NO_x. The exemption threshold is an obstacle to setting monitoring requirements in many areas of low population that are also significant point sources of pollution, such as smelters and mining facilities. The exemptions should be removed.

Recommendation 3: Air pollution monitoring data must be made clearly and concisely available through an updated national website.

Despite the national scope of the NEPM, Australia's disjointed regulatory framework for air pollution has resulted in disparate monitoring and reporting quality across the states and territories.⁴

Victoria is among the states with the most outdated reporting systems.⁵ The Victorian Environmental Protection Authority (EPA) publishes some hourly data from its 16 monitoring stations on its website, but monthly and yearly aggregate data can take years to become public (the most recent report being from 2017). This data is haphazardly organised, dating as far back as 2006, and often in a format not easily understood by the public.⁶ Additionally, resources on how to interpret the data are not easily accessible through hyperlinks from the page containing the data itself.

In comparison, New South Wales possesses Australia's most comprehensive and up-to-date air pollution monitoring, made available online. The NSW Office of Environment and Heritage website provides hourly pollutant concentrations, a 24-hour summary, and Air Quality Index (AQI) for each monitoring site, in an easy-to-use, interactive map format.⁷ A toolbar on the same page containing resources to

³ Ibid, 7–8.

⁴ Ibid.

⁵ See, e.g. Western Australia's Department of Water and Environmental Regulation website: <<https://der.wa.gov.au/your-environment/air/air-quality-index>>.

⁶ See, eg, <<https://www.epa.vic.gov.au/our-work/monitoring-the-environment/monitoring-victorias-air>>.

⁷ See, eg, <<https://www.environment.nsw.gov.au/topics/air/monitoring-air-quality/sydney/monitoring-stations>>.

assist the public with understanding the information provided is key to the clarity of the NSW website.⁸ VELSN strongly endorses Environmental Justice Australia's recommendation to revise and coordinate a national website using NSW as a model.

VELSN's primary concern regarding the Victorian EPA's inadequate disclosure of environmental risks is a democratic one, and governed by the principles of freedom of access to information and of participation in the political process.⁹ Communities have a right to understand the quality of the air they are breathing, and are prevented from holding high-polluting industries or government regulators to account because this information is either unavailable, or poorly publicised. We firmly believe that the government must improve transparency over this issue, which is of pressing concern to public health and safety, by ensuring that the public are educated and thus well-equipped to understand the risks they might face on a daily basis.

ENFORCEMENT

Recommendation 4: The NEPM must include compliance obligations and enforcement mechanisms.

Currently, the NEPM does not provide a sufficient regulatory framework to ensure that state governments monitor and enforce compliance with air pollution standards. The lack of any enforcement mechanisms behind the standards is a primary weakness. It means that certain communities — typically smaller rural and regional communities that are particularly vulnerable to long-term air pollution exposure and the resultant health impacts — are disproportionately affected. The NEPM is therefore failing its own objectives of providing adequate measures for the protection of all people from air pollution.

This system could be improved in two ways. First, through the creation of a national regulatory body to enforce state compliance with binding air pollution standards that cannot be exceeded. Second, through the establishment of a penalty regime through which the regulatory body can subject the states to

⁸ See, eg, <<https://www.environment.nsw.gov.au/topics/air/understanding-air-quality-data/air-quality-index>>.

⁹ Though not a signatory to the UNECE *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, Australia must not ignore the international legal movement toward greater public access to, and participation in environmental decision-making. See, eg, Articles 1, 4, 5, at <<https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>>.

significant and escalating penalties in the event of non-compliance. Such penalties must be large enough to operate as a legitimate deterrent to states. A primary example is the United States Environmental Protection Agency, which ensures that national standards are complied with by the states under the *Clean Air Act 1970* (US). The EPA can intervene at a federal level in the event of non-compliance through issuing orders to comply, penalties and by initiating legal action.¹⁰ These measures would also provide a system through which members of the community could take action when adversely affected by air pollution.

Recommendation 5: Replace Australia’s current air pollution regulatory scheme with a national Clean Air Act.

The current air pollution regulatory scheme is fragmented and inefficient; state and territory governments regulate air pollution through distinct policies, legislation and strategies, with varying degrees of effectiveness and enforceability.

In order for Australia to take a strong, proactive approach to air pollution regulation and management, we must utilise the strengths of our federal system. The Commonwealth Government must take responsibility through the implementation of a national Clean Air Act. Within this framework, state governments would retain responsibility for the practical implementation of nationally legislated standards in a manner that best reflects the needs and circumstances of that jurisdiction. Legislation enacted by the United States provides a model structure;¹¹ as stated above, air quality standards are administered through the federal EPA in coordination with state and local governments, with the stated objective of protecting and enhancing air quality ‘*so as to promote public health and welfare*’.¹²

Accountability for the enforcement of these standards by state governments should be maintained through annual self-reporting. These reports should then be cross-referenced with the monitoring undertaken by the proposed national regulatory body for consistency and compliance.

¹⁰ *Clean Air Act 1970*, 42 USC, §§ 7410, 7413.

¹¹ *Ibid.*

¹² *Ibid* 42 USC § 7401.

VELSN strongly recommend that NEPC consider a stronger role for the Commonwealth in legislating on air pollution. A Clean Air Act should include:

- Recognition of a right to clean air;
- Recognition of a right to public access to air pollution information;
- A triple bottom line that prioritises environmental and social outcomes over economic concerns;¹³
- An imposition of binding legal duties on State and/or local government bodies to enforce the national standards.¹⁴

¹³ See, eg, *Environment Protection Act 1970* (Vic) s 1B.

¹⁴ See, eg, *Resource Management Act 1991* (NZ) s 44A(5), (7)–(8); *Environment Act 1995* (UK), Pt IV; *Air Quality Standards Regulations 2010* (UK), s 17; *Clean Air Act 1970*, 42 USC.