



Environment and Energy

STATUTORY POLICY REVIEW

Australian Industry Group Submission

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AUSTRALIAN INDUSTRY GROUP

**Australian Industry Group**

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## CONTENTS

1. Introduction .....	4
2. Key issues .....	4
2.1 Addressing the lack of clarity .....	4
2.1.1 <i>Standards</i> .....	5
2.1.2 <i>Terminology</i> .....	6
2.1.3 <i>Improving accessibility</i> .....	6
2.2 Prescriptive approach v outcomes focus.....	6
2.2.1 <i>Improving guidance</i> .....	7
2.3 Options to improve and reform statutory policy .....	7
2.3.1 <i>Harmonisation</i> .....	8
2.3.2 <i>Achieving Improved Compliance</i> .....	8
3. Next steps.....	9

## 1. Introduction

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other industries. The businesses which we represent employ more than 1 million employees. Ai Group has some 4,000 members in Victoria.

Ai Group members operate small, medium and large businesses across a range of industries.

Ai Group consulted with member companies in the course of preparing this response. In addition we co-hosted with the EPA two industry consultation sessions on Friday 22 July and Friday 5 August.

## 2. Key issues

Statutory policies provide a useful framework for defining ambient standards and setting medium to longer term broad environmental objectives. However, member businesses consulted by Ai Group have expressed a range of concerns in relation to statutory policies. These can be broadly summarised as follows:

- The complexity of State Environment Protection Policies (SEPPs) and inconsistencies between SEPPs, combined with lack of clarity around the ‘hierarchy’ of the various policy and regulatory instruments results in businesses experiencing difficulty in determining their obligations;
- SEPPs are overly prescriptive and do not allow for implementation of innovative responses to environmental priorities;
- SEPPs are reviewed infrequently and therefore are limited in their ability to keep pace with developments with the result that they rapidly get out of date;
- Insufficient guidance is provided on how competing environmental objectives should be assessed and addressed; and
- There is a lack of coordination of the respective decision making responsibilities of relevant government agencies.

### 2.1 Addressing the lack of clarity

A constant theme in Ai Group’s consultations with members and the industry consultation sessions is the confusion that exists in relation to standards, outcomes and obligations as set out in SEPPs. This is consistent with the report on the review of EPA Compliance and Enforcement (Krapan report) which identified considerable concern amongst business that SEPPs are complex documents which are difficult to navigate, and that in some cases the policies and clauses of the policies are inconsistent or ambiguous.

The failure to use plain English in SEPPs means that they are generally not well understood by industry. Industry also experiences difficulties in understanding regulations - the Scheduled Premises Regulations are a prime example. Uncertainties around the requirements of statutory policies impose increased costs for businesses and can act as a barrier to the uptake of new technologies by encouraging conservative approaches.

Ai Group supports the Krpan report findings regarding the need for:

- A clear framework for statutory and non-statutory guidance produced by EPA which clearly and simply defines each type of guidance document and its purpose;
- A consistent naming convention for guidance documents so that duty-holders understand the legal status of the guidance, whether it is mandatory and whether, for instance, it is admissible as evidence in a court to demonstrate accepted standards.

Clarification is also required of the roles and responsibilities of all stakeholders - business and government. Uncertainties relating to which government agency is responsible for implementation and monitoring combined with inconsistent in practices encourages industry to adopt conservative approaches to environmental management.

It is not well understood that SEPPs are Victorian Policies not specifically EPA policies, and that other organizations such as Local Government, Catchment Management Authorities and the Departments of Planning and Primary Industry are also responsible for their implementation. An example of this is continued poor land use planning which impacts on industry. Industry is concerned that Local Governments rarely take into consideration the Noise SEPP N1 when rezoning land or issuing planning permits for sensitive use (residential) near Industrial zones. The impact on Industry can be significant and result in businesses having to relocate or being unable to further invest on their site. It is important that all agencies with responsibilities to implement SEPPs monitor and report on progress in implementing these obligations.

### **2.1.1 Standards**

The Krpan review further identified that many of the terms used and standards included in the policies are subjective in nature and that there is a resultant heavy reliance on consultants and auditors to interpret the standard required to meet compliance. In addition, a number of the policies refer to extraneous material that is now superseded, no longer available, or still in draft.

For example, Note 9 of Schedule A of the SEPP AQM makes reference to “Integrated set of criteria for Intensive animal industries”, but then references industry performance standards approved by the relevant authorities. Unfortunately there is little up to date guidance for this industry sector e.g. Piggery Code still under review by the Department of Primary Industries after 5 years’ consultation.

Businesses consulted by Ai Group support provision of improved guidance on the underlying assumptions on which the SEPP numbers are derived. In addition, businesses seek greater transparency in how the standards are set, including transparency of the data available to support standards setting processes. Businesses also advise that there is need for a clear hierarchy for selection of relevant standards where there is no standard cited.

In the years since SEPPs were introduced, we have seen improvements in environmental quality through the control of point source emissions. The remaining challenge is management of diffuse emissions which are not readily managed under the current SEPPs.

Ai Group members advocate a more integrated approach to policy setting. When setting standards there needs to be a greater understanding of the costs of achieving that standard (both financial and environmental). There was broad support for moving detailed standards out of the SEPPs and into guidelines and guidance material. This is dealt with further below.

### **2.1.2 Terminology**

Businesses consulted by Ai Group stressed the need for improved clarification of key terminology in statutory policies.

For example, there was strong criticism of the lack of clarity of what constitutes ‘best practice’ and what the difference is between ‘best practice’ and ‘maximum extent achievable’. Businesses also call for clarification of the term ‘beneficial use’, particularly in relation to specific land use. Members consulted by Ai Group did not consider that the term ‘protected environmental value’ cited in the discussion paper was necessarily a more easily understood phrase. These terms need to be better defined, including by sector and size of company.

Participants in the consultation sessions co-hosted by Ai Group with the EPA also highlighted the subjective nature of the term ‘clean up to the extent practicable’ (in relation to contaminated land). Specific concerns raised by businesses related to lack of certainty about when a clean up is considered completed and the triggers for this decision to be revised. Reference was made to the system existing in some US states under which companies undertaking remediation are provided with a notice by the relevant authority that no further action/remediation decision is required. Ai Group considers that this concept should be considered by the EPA.

Increased guidance is also required by businesses when assessing net environmental gain in instances where there are multiple environmental objectives/outcomes.

EPA is guided by precedence in its decision making processes. Businesses support regular updates in guidance as practice is refined, including publication by EPA of the rationale behind decisions on the above matters.

### **2.1.3 Improving accessibility**

In addition to addressing the lack of clarity around statutory policies, including through adoption of consistency in the look and structure and naming conventions of policies and guidance material, it is essential that the EPA acts to improve accessibility of compliance requirements to businesses. At its most basic level, businesses have noted that use of the term ‘Policy’ is in itself confusing as it does not necessarily convey the impression that it is equivalent to law.

The EPA must also embrace advances in communications technology to better manage dissemination of information. Businesses should be able to readily identify and access from the EPA website clear and concise information on all relevant environmental obligations and supporting guidance. For example, each SEPP should be supported by a ‘quick reference guide’ which summarises the broad objectives and the specific obligations on each party and provides direct links to the most appropriate guidance. Where standards are referenced, the EPA must make these readily accessible. Ai Group further advocates the development of an integrated search function which enables industry to readily identify all legislation, policies, regulations and guidance documents relevant to their operations.

The issue of accessibility is addressed further below.

## **2.2 Prescriptive approach v outcomes focus**

Ai Group member companies have expressed concern that statutory policies are highly prescriptive and many were supportive of a move to an outcomes focus which affords industry greater flexibility in achieving environmental objectives. During consultations

undertaken in the course of preparing this submission, it was frequently raised by business that the prescriptive nature of SEPPs acts as a barrier to innovation. As was noted by an industry representative at the 22 July consultation session, “*Industry is being directed to adhere to the SEPP and it is difficult to get innovative solutions over the line.*”

As identified in the discussion paper, the statutory policy framework must have flexibility to respond to emerging environmental challenges and changes in government priorities and community expectations – but mindful of potential business impacts, legal obligations also need to be certain and transparent. The statutory policy framework requires reform to improve its responsiveness to changing science and technological innovation.

For this approach to be successful, the issue of internal EPA resourcing to assess and respond to the science and to ensure that the decision making process is undertaken in a timely manner needs to be addressed. There is a critical need for the EPA to clarify how innovative approaches will be considered and how EPA staff will be supported in their consideration and assessment.

Businesses consulted by Ai Group also identified the cost impact of compliance with SEPPs as a particular issue. For example, a business attending the 5 August consultation session noted that significant time and resources can be directed to assessing beneficial use of water under the Waters of Victoria policy, when the majority of the beneficial uses do not apply in metropolitan Melbourne where the business operates.

Ai Group supports modification to statutory policies to define key objectives while allowing industry flexibility on how to achieve this. However, a key challenge is inherent in such an approach is ensuring that businesses, particularly small businesses, are provided with certainty around what constitutes compliance.

### **2.2.1 Improving guidance**

As identified in the Ai Group/Sustainability Victoria survey on Environmental Sustainable Practices 2007 – *Road to a Sustainable Future*, companies lack internal management resources with environmental expertise. The survey identified that 54% of firms had no staff with environment responsibilities. The lack of environment skills within a company severely limits its ability to undertake risk assessments and identify and implement opportunities for improved environmental management.

Therefore statutory policies must be underpinned by practical guidance tailored to particular industries and size of business which allows flexibility to businesses to elect to follow prescriptive or risk based approaches.

Businesses consulted by Ai Group also noted that once Statutory Policies are issued, there is not much follow up guidance that is provided. Ai Group advocates that guidance be progressively updated and publicised as issues are clarified. For example, guidance must be provided on what constitutes acceptable standards/technology. This guidance needs to be supported by initiatives to encourage small and medium businesses to accelerate understanding and uptake of new technology. The issue of achieving improved compliance is addressed further below in section 2.3.2.

## **2.3 Options to improve and reform statutory policy**

As stated above, policies provide a useful framework for defining ‘ambient’ standards and setting medium to longer term broad environmental objectives. Ai Group supports locating in regulation mandatory obligations or minimum standards for undertaking a particular activity. Ai Group understands that guidelines can more readily be amended in line with

developments in science, standards and technology, while still being subjected to close scrutiny. Therefore those parts of statutory policy which do not require legal force should be moved into supporting, non-statutory guidance, codes, etc.

The discussion paper puts forward a number of specific suggestions to improve the accessibility, flexibility and management of statutory policy.

Ai Group considers many of these to be common sense initiatives which should be incorporated into the package of reforms, including:

- Publication of a consolidated version of each policy;
- Avoiding repetition by including explanatory notes only where they add value;
- Consolidation in the number of statutory policies to remove overlaps;
- Develop a clearer hierarchy of the EP Act, Regulations, statutory policies and guidelines;
- Publication of user guides – these should include quick reference guide to relevant regulations and guidance;
- Clarification of the roles of respective government agencies;
- Implementation of a more integrated approach to policy setting by improving coordination of policy settings and implementation across agencies;
- Improvements in the measurement and monitoring of the effectiveness of statutory policies in achieving stated objectives; and
- Improving the currency of guidance materials.

### **2.3.1 Harmonisation**

For those businesses operating across state boundaries, inconsistent environmental regulation and duplication in reporting requirements can present a considerable cost to business and divert scarce resources away from the main objective which is implementation of sustainable environmental management practices. Participants at the 5 August consultation session further noted that inconsistency in state and federal environmental regulation increases business uncertainty and acts as a barrier to investment in new technologies.

Therefore, Ai Group recommends that as part of the reform of statutory policies, an explicit requirement should be introduced that policy reviews include assessment of best practice in other Australian jurisdictions and opportunities to harmonise Victorian practice with those in other jurisdictions.

Further, the SEPP review process needs to be aligned with the NEPM review process and be undertaken in a consistent and timely manner.

### **2.3.2 Achieving Improved Compliance**

It is essential that in addition to initiatives to improve clarity and certainty around environmental obligations and increase the ability to respond to scientific and technological developments that the EPA provides positive assistance to businesses to understand and comply with their obligations and implement ongoing improvements in sustainable business practices. This is consistent with an important finding of the Krpan report that EPA Victoria should broaden its reach beyond sites that it licences putting more effort into educating the community and business. A key aspect of this framework is providing “support to comply”.

### **3. Next steps**

Ai Group remains very keen to work closely with the EPA and the Department of Sustainability and Environment in the refinement and implementation of reforms to Statutory Policy and in development of guidance documentation.