

**Submission to: The Victorian Government inquiry
into the Environment Protection
Authority Victoria**

By: Andrew Laird

1. I am a Melbourne based barrister and have had a significant amount of involvement with the Environment Protection Authority Victoria **(EPA)** through my involvement in the Anglesea based community group Surf Coast Air Action Inc. **(SCAA)**. SCAA actively campaigned for the clean up or closure of the former Anglesea coal mine and plant.

2. I prepared SCAA's written submission to the inquiry dated 28 October 2015, which also reflects my personal views. I therefore adopt the SCAA submission, a further copy of which is submitted with my submission.

3. I wish to add that I had extensive dealings with senior EPA officers including CEO Nial Finegan and Advisor Strategic Partnerships [REDACTED] during the Anglesea coal campaign. I always found them to be accessible, courteous and very fair and believe that this should be publicly acknowledged.

28 October 2015

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By: Surf Coast Air Action Inc.

1. Surf Coast Air Action Inc. (**SCAA**) is a group of Surf Coast residents and homeowners who are concerned about the damage to our health, environment and local economy caused by fossil fuel extraction and combustion.

2. We believe that there are a number of key issues that should be addressed as part of the current inquiry into the Environment Protection Authority Victoria (**EPA**). Those issues are identified below. We also make some comments about the issues, where appropriate.

3. As a starting point SCAA believes that the fundamental goal of delivering environmental justice must be enshrined in legislation and be a core function of the EPA. Clean air, soil and water are basic human rights and must be nonnegotiable. We believe that the best way of addressing this would be to make the delivery of environmental justice an express purpose and objective of a modernised and beefed up *Environment Protection Act* (**EPA Act**).

4. Next we believe that the default position must be that there is a general duty not to pollute and breaching that duty should be considered a serious contravention of the EPA Act. While there will of course be exceptions (for example where businesses are expressly licensed by the EPA to emit pollutants that cannot be prevented and which do not harm human health or the environment), the default position should plainly be that polluting our precious environment is prohibited.

5. There must also be a clear role for the EPA on issues that impact health and wellbeing. It is wrong for example for the EPA to be constrained by inadequate and outdated National Environment Protection Measures (**NEPMs**) where current medical science has demonstrated that lesser levels of exposure to pollution are harmful to human health. All the more so where there are proven pollution mitigation technologies readily available that the EPA could and should direct polluters to install. A good example is mandating the installation of sulphur dioxide scrubbing technology on Victoria's aging and polluting coal plants. This would provide very significant health and environmental benefits and polluters should not be able to avoid installing such critical pollution reduction technology by arguing that they are complying with outdated NEPMs which do not adequately protect health and the environment.
6. The EPA Act also needs to be updated to deal with the issue of carbon pollution given the dire threat that climate change poses to a livable environment. In this respect the EPA needs to be vested with the power to ensure that carbon emissions from industry are restricted to levels that are consistent with maintaining a livable environment based on the best science available.
7. Detailed information about the pollution regulated by the EPA needs to be collected and made freely available to the public in an accessible manner. Again this needs to be the default position, with the only exemptions permitted being where there is a compelling reason to grant an exemption based on exceptional circumstances. In this respect getting meaningful information about the levels of pollution emitted by Alcoa from time to time at the Anglesea coal mine and plant was one of the key problems that SCAA encountered in the successful campaign to clean up or close the redundant facility. This can easily be addressed if polluters licensed by the EPA are required to make all data available to the EPA so that the public can access the data. Moreover, given modern technology, there is no good

reason why this should not include real time data so that the vulnerable in the community can take immediate steps to protect themselves from pollution.

8. While the EPA must be resourced appropriately to discharge its functions and to enforce the law, impacted individuals and communities also need the right to take action in relation to decisions that affect them. This must include the right for impacted communities and individuals to apply to the Courts or VCAT to enforce non-compliance with laws and license conditions. Further, such applications should be exempt from adverse cost consequences provided that they are brought for bona fide reasons in order to prevent unscrupulous polluters from stifling such public interest litigation by threatening to make applications for costs.
9. The EPA also needs to play a central role in industrial land use and planning decisions. There should be a legislative requirement that the EPA is to be consulted as a referral authority on all industrial land use and planning applications to ensure that appropriate conditions are placed on both new proposals and existing developments. This would enable the EPA to impose conditions requiring that pollution is either avoided where possible or is limited to levels that do not harm human health or the environment where pollution mitigation technology is unavailable.
10. Australia is pockmarked with un-rehabilitated and toxic mines. The solution is to vest responsibility for regulating mine rehabilitation in a strong, independent EPA rather than the government department that is responsible for promoting mining. The current regulation of mine rehabilitation in Victoria represents a clear conflict of interest and is not delivering good outcomes for the community or the environment. A high standard of mine rehabilitation should also be mandated that requires mined land to be returned to as near to its natural state as

possible unless there is a suitable alternative use that is acceptable to the local community and meets stringent environmental standards.

11. Finally, in order to properly discharge its modernised mandate, the EPA needs to be strong, accountable, independent and well funded. In this respect the EPA's funding must be severed from any source that could create either an actual or perceived conflict of interest and the authority must be resourced to undertake major prosecutions where appropriate without compromising its day-to-day operations.
12. SCAA submits that the above steps are the bare minimum that is needed to take Victoria's system of environmental regulation into the 21st century and to properly protect health and the environment.
13. We would be happy to expand upon or clarify any of these written submissions should that assist the inquiry

28 October 2015

Surf Coast Air Action Inc.

