



Submissions in relation to Air Pollution

in response to

the Independent Inquiry Into the Victorian Environment Protection Authority

prepared by

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## **About Environmental Justice Australia**

Environmental Justice Australia (formerly the Environment Defenders Office, Victoria) is a not-for-profit public interest legal practice. Funded by donations and independent of government and corporate funding, our legal team combines a passion for justice with technical expertise and a practical understanding of the legal system to protect our environment.

We act as advisers and legal representatives to the environment movement, pursuing court cases to protect our shared environment. We work with community-based environment groups, regional and state environmental organisations, and larger environmental NGOs. We also provide strategic and legal support to their campaigns to address climate change, protect nature and defend the rights of communities to a healthy environment.

While we seek to give the community a powerful voice in court, we also recognise that court cases alone will not be enough. That's why we campaign to improve our legal system. We defend existing, hard-won environmental protections from attack. At the same time, we pursue new and innovative solutions to fill the gaps and fix the failures in our legal system to clear a path for a more just and sustainable world.

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# Australian Clean Air Action Network<sup>1</sup>

## Submission to the Victorian EPA Inquiry

On

## Better Air Pollution Standards and Enforcement

### Recommendations

1. That the Victorian Government be a champion for the development and implementation of uniform national laws which support:
  - standards for major pollutants that meet world's best practice and World Health Organization guidelines, including regular review periods;
  - an exposure reduction framework that ensures pollution levels will continue to improve over time below the standards;
  - particular standards for known harmful activities, for example coal trains, vehicle emissions and other mining or industrial processes, to be harmonised with world's best practice (e.g. Euro 6, or current US standards);
  - specific reduction targets for higher-risk communities such as those that live near a major pollution source;
  - improved implementation requirements at both Federal and State/Territory level to ensure that air quality standards are properly implemented at the state, regional and point source level;
  - a requirement that existing pollution sources that contribute to breaching the standard be brought within standard within three years;
  - improved monitoring of PM pollution including monitoring at all major population centres and near known PM pollution sources, both urban and rural;
  - compliance and enforcement mechanisms that include incentives and sufficiently deterring penalties, including innovative penalties for non-point source pollution to ensure States comply; and
  - a right to citizen enforcement of the laws so that communities affected by pollution laws can take polluters to court to enforce the law if regulators refuse to.

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<sup>1</sup> A project of Environmental Justice Australia (EJA), to be formally launched on 14 November 2015. These submissions have been prepared prior to the formal launch of the Network, and represent the views of EJA. The Network comprises representatives of health, environmental, community and academic groups from across Australia that are working together to improve the regulation of air pollution.

2. That Victoria recognise any national standards as a baseline requirement, and adopt higher Victorian standards for permitted concentrations of major pollutants, based on independent established research, and which are the subject of expert and public consultation processes.
3. That the EPA improve access to air pollution monitoring data that supports real-time web-access to consistent monitoring data of all known pollutant categories, including PM<sub>2.5</sub> and PM<sub>10</sub>.
4. That the EPA adopt an exposure reduction framework and actively manage the Victorian air environment to continuously reduce pollution levels.
5. That the EPA establish permanent air quality monitoring in locations that are known or suspected to have elevated levels of pollution.
6. That the EPA develop enhanced methods of public access to information about licensed polluters to enable improved assessment and monitoring of licensed polluters' performance.

## **1. Better Air Pollution Standards and Enforcement**

### **1.1 Overview**

Each year, it is estimated that more than 3000 Australians die prematurely as a result of urban air pollution.<sup>2</sup> This is nearly twice the national road toll.<sup>3</sup> Government estimates have put the health cost of air pollution at over \$8 billion per year for the Greater Sydney area alone.<sup>4</sup> Air pollution

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<sup>2</sup> Begg, Vos, Barker, Stevenson, Stanley & Lopez, *The burden of disease and injury in Australia 2003*, Australian Institute of Health and Welfare, Cat. no. PHE 82, Canberra (2007), p234,

accessed at <http://www.aihw.gov.au/publication-detail/?id=6442467990>.

<sup>3</sup> Bureau of Infrastructure, Transport and Regional Economics, accessed at: [https://bitre.gov.au/publications/ongoing/road\\_deaths\\_australia\\_annual\\_summaries.aspx](https://bitre.gov.au/publications/ongoing/road_deaths_australia_annual_summaries.aspx)

<sup>4</sup> NSW Department of Environment and Conservation, *Air Pollution Economics - Health Costs of Air Pollution in the Greater Sydney Metropolitan Region*, 2005, p.43.

health impacts are experienced in some communities in Australia much worse than others, depending on proximity to air pollution sources.

EJA strongly argues that regulation of air pollution should be significantly improved at a national level. EJA has proposed the development of a Commonwealth Air Pollution Prevention Act and the creation of a national regulator that may delegate its powers to state regulators.<sup>5</sup> The air pollution standards upon which that scheme is based should represent worlds best practice. The current process for developing national air pollution standards is deeply flawed and the mechanisms for regulation of air pollution regulation are ineffective in many air pollution hot spots in Australia.

However, until the creation of an effective national regulator, Victoria ought not be bound by ineffective national agreements and low standards. Victoria should adopt its own air pollution standards and enforcement mechanisms that can protect Victorians from the deadly health risks of air pollution.

To fulfil its charter, the EPA's approach to air pollution regulation and management needs to be significantly strengthened. The discussion paper prepared for this Inquiry indicates that 64% of complaints received by the EPA in 2013-14 relate to air (odour, dust and smoke), and there are predictions that air pollution will increase.

## **1.2 National Solution for a National Problem<sup>6</sup>**

### **1.2.1 Introduction**

Effective regulation of air pollution is critical to ensuring the public are safe from air pollution. Individuals cannot readily control the extent to which they are exposed to harmful air-borne pollutants. Communities that live in close proximity to mines, power stations, transport corridors and other industrial zones are impacted most severely. These communities, in particular, need the law to protect them.<sup>7</sup>

The Australian Medical Association has stated:

*Current air quality standards in Australia lag behind international standards and have failed to keep pace with scientific evidence. Insufficient monitoring and poor compliance*

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<sup>5</sup> Environmental Justice Australia, *Clearing the Air: Why Australia urgently needs effective national air pollution laws*, 2014, available at: <https://envirojustice.org.au/major-reports/clearing-the-air-why-australia-urgently-needs-effective-national-air-pollution-laws>

<sup>6</sup> This section is an adaptation of sections of *Clearing the Air: Why Australia urgently needs effective national air pollution laws*, 2014, see fn.5.

<sup>7</sup> Australian Network of Environmental Defenders Officers, Submission no 85 to Senate Community Affairs References Committee, Parliament of Australia, *Impacts on health of air quality in Australia*, 2013.

*mechanisms, fragmentation between different sectors and tiers of government, and the lack of exposure targets are but some of the areas requiring review and reform.*<sup>8</sup>

The problems with the way air pollution is currently regulated in Australia are many and complex. Some relate to the way in which air pollution is regulated via the NEPM process, some relate to inadequacies in the standards themselves, and some relate to major issues with monitoring and enforcement. We will outline some of the most significant regulatory issues.

The two critical elements that are currently lacking in our regulatory system are: strong Commonwealth government leadership on standard setting to break the current regulatory logjam, and mechanisms to ensure implementation of the national standards occurs at state, regional and pollution-source levels.

Two examples of how these failures have played out in practice are that –

- 1) despite clear evidence and government recognition of the high level of harm currently occurring from PM<sub>2.5</sub>, there is still no standard for PM<sub>2.5</sub>, and
- 2) communities who are the most vulnerable – those who live in close proximity to major pollution sources, and those who are at highest risk from exposure including the elderly, children, pregnant women and people with medical conditions that are exacerbated by air pollution – are not adequately protected by our laws.

These issues are explored further below.

### **1.2.2 The current process for setting standards has failed**

The NEPMs have become an inefficient and ineffective way of dealing with air pollution. When the Air NEPM was first made in 1998 it was a useful first step in understanding Australia's air pollution levels and beginning to address this problem as a national issue. However the science, technology, and needs of the community have moved far beyond what was required at that time and the NEPMs have failed to keep pace. The NEPM process is no longer a useful tool in reducing harmful levels of air pollution in Australia.

NEPMs require input and negotiation from nine separate governments to develop standards, and then two-thirds majority agreement to make them. This process has to be repeated each time a NEPM is revised.

The processes can be slow, as shown by the sixteen years of failure to make a compliance standard for PM<sub>2.5</sub>

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<sup>8</sup> Australian Medical Association, submission to Senate Community Affairs References Committee, Parliament of Australia, *Impacts on health of air quality in Australia*, 2013, p2.

- In 1998, ministers first discussed making a PM<sub>2.5</sub> standard, but determined that there was not enough data to set an appropriate standard.
- In 2001, ministers committed to a review to consider setting a standard.
- In 2003, ministers concluded there was not enough data to make a compliance standard, so made a reporting standard instead.<sup>9</sup>
- In 2007, 2011 and 2014, ministers again considered the need for a compliance standard but have failed to make one on each occasion, despite over a decade of overwhelming evidence of serious health impacts.
- Despite monitoring and reporting of PM<sub>2.5</sub> being compulsory since 2004, there remains no compliance standard. In contrast, the United States and Canada have had compulsory PM<sub>2.5</sub> standards in place for over 14 years.<sup>10</sup>

The most recent review of the Ambient Air Quality NEPM was completed in 2011, and found significant problems, gaps and failures of the NEPM. 23 recommendations were made to improve it but none have yet been implemented. The Commonwealth Environment Minister Greg Hunt stated that the reform process would be delayed another two years until 2016.<sup>11</sup> Many of the recommendations that were made by the National Environmental Protection Council would be a valuable improvement to the NEPM, but they are of little use if the process for making them is so flawed that they cannot be implemented.

### 1.2.3 The standards we have are inadequate

In 2011, the National Environmental Protection Council stated:

*Overall, the results of the health reviews show that there are significant health effects at current levels of air pollution in Australian cities. These findings indicate that the current standards are not meeting the requirement for adequate protection of human health. There is evidence that these standards should be revised to minimise the impact of air pollution on the health of the Australian population.<sup>12</sup>*

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<sup>9</sup> National Environmental Protection Council, *Review of the National Environment Protection (Ambient Air Quality) Measure, Issues Scoping Paper* October 2005.

<sup>10</sup> *National Ambient Air Quality Standards for Particulate Matter*, 40 CFR Part 50 (1997).

<sup>11</sup> The Hon Greg Hunt MP, Inaugural Alan Hunt Oration, Speech to the Urban Development Institute of Australia 7 March 2014 <http://www.environment.gov.au/minister/hunt/2014/sp20140307.html>.

<sup>12</sup> National Environmental Protection Council, *Ambient Air Quality NEPM Review*, Adelaide, 2011, p28 available at <http://www.scew.gov.au/resource/national-environment-protection-ambient-air-quality-measure-review-review-report>.

Australia has no nationally binding standard for PM<sub>2.5</sub> pollution, despite the fact that it is now recognised that PM<sub>2.5</sub> is causing a significant health burden on Australians.<sup>13</sup> As noted above, the National Environmental Protection Council has been considering implementing PM<sub>2.5</sub> as a mandatory standard for over a decade, but has failed to act. In July this year, environment ministers yet again failed to set a standard for PM<sub>2.5</sub>, and instead decided to continue with monitoring only.<sup>14</sup>

While the standards for other pollutants meet or are similar to international standards, they could be improved. The current air pollution standards have been in place for more than 15 years and do not reflect the latest thinking. In 2006 the World Health Organization significantly lowered their recommended standards, particularly for nitrogen dioxide, ozone and sulfur dioxide.<sup>15</sup>

Australia's standards fall short of these recommended standards. There is no reason why Australia should not adopt world's best practice. This means not just adopting standards for the pollutants but also properly assessing whether in fact these are currently the pollutants that present the greatest risk to the community. Chemicals such as arsenic or cadmium are not currently regulated by the national standards, but have a significant impact on communities through mining activities.<sup>16</sup>

A key issue with current standards is that their thresholds of acceptable pollution levels are set for ambient air, which means the average air quality in a region. Ambient thresholds can't address the real risks to communities who suffer the most exposure. An objective of the NEPMs is to provide equivalent protection from air pollution 'wherever they live in Australia'.<sup>17</sup> However, people who live close to major roads, mines or industrial activity are exposed to sustained levels of increased pollution and continue to have their health compromised.

The Air NEPM explicitly states that monitoring stations 'must be located in a manner such that they contribute to obtaining a representative measure of the air quality likely to be experienced by the general population in the region',<sup>18</sup> and only in population centres with over 25,000 people.<sup>19</sup>

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<sup>13</sup> National Environmental Protection Council, *Ambient Air Quality NEPM Review*, Adelaide, 2011, p28 available at <http://www.scew.gov.au/resource/national-environment-protection-ambient-air-quality-measure-review-review-report>.

<sup>14</sup> The Hon Greg Hunt MP, *Agreed Statement, Environment Ministers Meeting 29 April 2014* available at [http://www.environment.gov.au/minister/hunt/2014/mr20140429.html?utm\\_source=mins&utm\\_medium=rss&utm\\_campaign=feed](http://www.environment.gov.au/minister/hunt/2014/mr20140429.html?utm_source=mins&utm_medium=rss&utm_campaign=feed).

<sup>15</sup> World Health Organization, *WHO challenges world to improve air quality*, Media Release, 5 October 2006, available at <http://www.who.int/mediacentre/news/releases/2006/pr52/en/>; WHO, *Air quality guidelines for particulate matter, ozone, nitrogen dioxide and sulfur dioxide - Global update 2005 - Summary of risk assessment*, available at [http://whqlibdoc.who.int/hq/2006/WHO\\_SDE\\_PHE\\_OEH\\_06.02\\_eng.pdf?ua=1](http://whqlibdoc.who.int/hq/2006/WHO_SDE_PHE_OEH_06.02_eng.pdf?ua=1).

<sup>16</sup> Senate Community Affairs References Committee, Parliament of Australia, *Impacts on health of air quality in Australia*, 2013, p23.

<sup>17</sup> *National Environment Protection Council Act 1994* (Cth) s3.

<sup>18</sup> *National Environment Protection (Ambient Air Quality) Measure 2003* cl 13.

Monitoring under the NEPM can therefore only occur away from sources of pollution, and does not occur at all in smaller communities. In the Hunter Valley in NSW for example, this means that communities frequently suffering the breaking of the pollution limits in the PM<sub>10</sub> and PM<sub>2.5</sub> standard have no regulatory protection.<sup>20</sup>

Government has repeatedly failed to resolve this failure of the NEPM system. Communities have no rights to demand monitoring of the pollution affecting them, or to stop the pollution from occurring. In order to deal adequately with these issues the system needs to be more responsive to the particular sources of emissions and the people who are exposed to those emissions.<sup>21</sup>

Problems also arise from the way the NEPM standards are categorised. For example, the Air NEPM currently allows five 'exceedence' days each year, being days where pollution exceeds the standard's limit. Under this approach large polluting industries are not encouraged to lower particulate emissions as there appears to be an assumption that any exceedences can simply be absorbed by these allowed pollution days. A better approach would be to make 'not to be exceeded' standards with exceptions made for 'natural events'.

There is also a fundamental question about whether having single standard is sufficient to deal with the problem. There is no 'safe' level of exposure to air pollutants. Available evidence suggests that, at least for particulate pollution and for NO<sub>2</sub>, further health gains can be achieved by further reduction in pollutant levels. However the current model of air pollution regulation does not encourage emission reductions that would achieve these health gains.<sup>22</sup> The standards are currently often viewed as a benchmark for best practice, when instead they should be viewed as a ceiling for pollution concentrations. Ambient concentrations of harmful pollutants should be minimised to levels well below the NEPM standards. Every tonne of pollution that is avoided translates to immediate health and cost benefits.

The fact that there is no threshold below which no adverse health impacts occur means that the focus should be on continuous improvement and reducing pollution levels as much as possible rather than simply staying under a single standard.

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<sup>19</sup> *National Environment Protection (Ambient Air Quality) Measure 2003* cl 14.

<sup>20</sup> In 2013, PM<sub>10</sub> levels exceeded the NEPM standards on 171 occasions in locations in Newcastle and the Hunter Valley. Hunter Community Environment Centre, *Premier urged to control air pollution in 2014: 50% increase in air pollution breaches in Newcastle and the Hunter*, Media Release (28 December 2013) available at [http://www.hcec.org.au/20140119/premier-urged-control-air-pollution-2014-50-increase-air-pollution-breaches-newcastle-and\\_the\\_hunter](http://www.hcec.org.au/20140119/premier-urged-control-air-pollution-2014-50-increase-air-pollution-breaches-newcastle-and_the_hunter)

<sup>21</sup> For more general information on appropriate air quality standard setting see National Health and Medical Research Council, *Ambient air quality standards setting: an approach to health based hazard assessment*, Canberra (2006) available at <http://www.nhmrc.gov.au/files/nhmrc/publications/attachments/eh40.pdf>.

<sup>22</sup> Centre for Air Quality & Health Research and Evaluation, submission no 29 to Senate Community Affairs References Committee, Parliament of Australia, *Impacts on Health of Air Quality in Australia*, 2013 p5.

## 1.2.4 Monitoring and enforcement is weak or non-existent

Another significant problem with the way NEPMs operate is that there is no penalty if States and Territories don't comply with them. Jurisdictions are required to report to the National Environmental Protection Council each year on their implementation of NEPMs, but there are no consequences from a failure to meet the standards.

The NEPMs are designed to set national standards and encourage jurisdictions to work towards them, rather than result in any consequences for the States and Territories themselves if standards are not met or monitoring is not properly conducted.

Monitoring under the Air NEPM is designed to capture data on the average air quality in a region in order to understand the general impacts on the population.<sup>23</sup> Monitoring stations are therefore located away from major pollution sources such as roads, industrial areas and mines. There is strong criticism from many sectors that this type of monitoring hides the true levels of air pollution many communities are exposed to.<sup>24</sup> For example, motor vehicles cause about 30 per cent of PM pollution in Melbourne. A study from the EPA has confirmed that the PM standards are not met near some busy roads in Melbourne.<sup>25</sup> It is clear that there are many communities who are exposed to much higher levels of harmful pollutants on a much more frequent basis than the NEPM data reveals.<sup>26</sup> Indeed some communities experience air quality exceeding NEPM standards on an almost daily basis.<sup>27</sup>

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<sup>23</sup> National Environment Protection (Ambient Air Quality) Measure (Cth) clause 11; see also EPA NSW submission in response to Hunter Community Environment Centre submission no 5 to Senate Community Affairs References Committee, Parliament of Australia, *Impacts on health of air quality in Australia*, 2013 for an illustration of the effect of this shortcoming in practice.

<sup>24</sup> See for example submissions discussed in the Senate Community Affairs References Committee, Parliament of Australia, *Impacts on health of air quality in Australia*, 2013.

<sup>25</sup> EPA Victoria (2006). *Review of air quality near major roads*. Publication 1025. February 2006. Environment Protection Authority Victoria.

<sup>26</sup> Senate Community Affairs References Committee, Parliament of Australia, *Impacts on health of air quality in Australia*, 2013.

<sup>27</sup> For example in the Lower Hunter where monitoring over a one month period showed the PM10 standard exceed by more than 50% every day. Hunter Community Environment Centre submission no 5 (Supplementary submission) to the Senate Community Affairs References Committee, Parliament of Australia, *Impacts on health of air quality in Australia*, 2013.

Similarly, some pollutants are measured over a period of time such as 24 hours that allows the levels to be averaged out, hiding any spikes in emissions. This ignores the fact that short-term exposure to some pollutants can be very damaging to health.<sup>28</sup>

Monitoring of known pollution sources such as industrial sites usually occurs as a result of State Government requirements on individual polluters as part of their operating licence. This type of monitoring has also been criticised as being inaccurate and very difficult for the community to access. For example in Victoria, it took years for the local community exposed to particulate pollution from the Alcoa coal mine to access air pollution data collected by the company.<sup>29</sup> Inaccuracies can result from poorly written licences which do not require monitoring at sites that will accurately record community exposure.<sup>30</sup>

Enforcement of air pollution is also a significant problem. Over 3000 pollution licence breaches were recorded in NSW between 2000 and 2008 but only six were taken to court<sup>31</sup> and in Victoria the EPA has only taken companies to court for air pollution offences five times in the last five years.<sup>32</sup>

### **1.2.5 Promises to fix the system are repeatedly broken or delayed**

COAG has recognised that current air quality laws are deficient and in 2011 agreed to the development of a new National Plan for Clean Air to be completed by the end of 2014.<sup>33</sup> COAG have now extended this time to the end of 2015. The future of the National Plan for Clean Air is now in doubt.

Despite COAG working on this reform since 2011, the Commonwealth Environment Minister announced that development of the Plan would be delayed for another two years, until July 2016.<sup>34</sup>

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<sup>28</sup> Coal Terminal Action Group, *Coal train signature study*, (2013) p.6, available at <http://www.hcec.org.au/sites/default/files/CoalTrainSignatureReportAug2013.pdf#overlay-context=node/103>.

<sup>29</sup> Evidence to Senate Community Affairs References Committee, Parliament of Australia, Canberra 17 May 2013, 54 (Dr Merryn Redenbach, Quit Coal).

<sup>30</sup> ANEDO submission no 85 to Senate Community Affairs References Committee, *Impacts on health of air quality in Australia*, 2013.

<sup>31</sup> Australian Network of Environmental Defenders Officers, Submission no 85 to Senate Community Affairs References Committee, Parliament of Australia, *Impacts on health of air quality in Australia*, 2013.

<sup>32</sup> EPA Victoria prosecutions database available at <http://www.epa.vic.gov.au/our-work/compliance-and-enforcement/epa-sanctions/prosecutions>.

<sup>33</sup> COAG Standing Council on Environment and Water, *Public Statement on the Development of the National Plan for Clean Air* (31 May 2012) available at [www.scew.gov.au/system/files/pages/eabd6720-1c40-4f73-a326-acafa51cd799/files/national-plan-clean-air-public-statement.pdf](http://www.scew.gov.au/system/files/pages/eabd6720-1c40-4f73-a326-acafa51cd799/files/national-plan-clean-air-public-statement.pdf).

<sup>34</sup> The Hon Greg Hunt MP, Inaugural Alan Hunt Oration, Speech to the Urban Development Institute of Australia 7 March 2014 <http://www.environment.gov.au/minister/hunt/2014/sp20140307.html>.

Even this date seems unlikely after the Commonwealth Government abolished the Standing Council on Environment and Water which was tasked with developing the plan.

In addition the commitment has recently been weakened further with Minister Hunt stating that rather than presenting their Plan to COAG by 2016, Ministers now 'agreed to *consider working towards* finalising an agreement' by July 2016.<sup>35</sup> COAG processes are notoriously slow even when a commitment has been made and a standing committee has carriage of the reform.

Ministers also declined once again to consider making a binding PM<sub>2.5</sub> standard, instead stating they would take the entirely ineffective step of reducing the reporting standard.<sup>36</sup> After 16 years of the National Environmental Protection Council considering PM<sub>2.5</sub> standards, it remains unregulated.

A further issue is that the National Plan for Clean Air is only a *plan*. It will be presented to COAG for further discussion and negotiation amongst all States and Territories before jurisdictions decide what concrete actions they will take. Based on past performance, it is likely to take many years for States and Territories to achieve actual reform and then implementation of laws.

The Commonwealth Environment Minister himself has stated that around 3000 people in Australia die each year from air pollution-related illnesses.<sup>37</sup> That's more than twice our national road toll.<sup>38</sup> Each year that national air pollution laws are not made represents thousands of preventable deaths. The Commonwealth Government should take action now.

## 1.2.6 The solutions we need

It is clear that the current laws and the proposed process for developing new national standards are failing. Left to COAG, it is unlikely national laws will be achieved for many years, if at all. With 3000 people dying each year from air pollution-related illness, governments cannot afford to wait any longer.

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<sup>35</sup> The Hon Greg Hunt MP, *Agreed Statement, Environment Ministers Meeting 29 April 2014* available at [http://www.environment.gov.au/minister/hunt/2014/mr20140429.html?utm\\_source=mins&utm\\_medium=rss&utm\\_campaign=feed](http://www.environment.gov.au/minister/hunt/2014/mr20140429.html?utm_source=mins&utm_medium=rss&utm_campaign=feed).

<sup>36</sup> The Hon Greg Hunt MP, *Agreed Statement, Environment Ministers Meeting 29 April 2014* available at [http://www.environment.gov.au/minister/hunt/2014/mr20140429.html?utm\\_source=mins&utm\\_medium=rss&utm\\_campaign=feed](http://www.environment.gov.au/minister/hunt/2014/mr20140429.html?utm_source=mins&utm_medium=rss&utm_campaign=feed).

<sup>37</sup> The Hon Greg Hunt MP, Inaugural Alan Hunt Oration, Speech to the Urban Development Institute of Australia 7 March 2014 <http://www.environment.gov.au/minister/hunt/2014/sp20140307.html>.

<sup>38</sup> Department of Infrastructure, Transport & Regional Economics [http://www.bitre.gov.au/publications/ongoing/road\\_deaths\\_australia\\_monthly\\_bulletins.aspx](http://www.bitre.gov.au/publications/ongoing/road_deaths_australia_monthly_bulletins.aspx).

Pollution doesn't respect state borders and the large industries that cause the most air pollution often operate across Australia. The Commonwealth Government needs to exercise leadership and break the current logjam.

The National Plan for Clean Air should not be delayed until 2016. The Commonwealth Government should take responsibility for ensuring the Plan is developed as a priority. However it should also be highlighted that a plan is not regulation. Governments should not imply that a plan can solve the problems faced by the community. In order to effectively and appropriately regulate air pollution, the Commonwealth should commit to implementing the framework for a national air pollution regulatory system through Commonwealth legislation.

### **1.2.7 The Air Pollution Prevention Act**

The Commonwealth Government must recognise its responsibility for achieving clean air across Australia by implementing a national scheme for air pollution that is binding on States and Territories – the Air Pollution Prevention Act.

Nationally significant problems that cause thousands of deaths and severe health problems in communities across Australia warrant national regulation. Other activities that cause death and significant impacts on human health, such as smoking, speeding on our roads, drug use and alcohol for minors, are all heavily and directly regulated. Air pollution warrants similar controls to protect community health.

A single national regulation that clearly articulates pollution standards would ensure a consistent national approach that applies in every community across Australia. The Air Pollution Prevention Act would be standalone Commonwealth legislation that does not rely on agreement from States and Territories. It could be in place much quicker than a COAG-negotiated outcome because it would remove years of negotiation on appropriate standards between the States and Territories. It would set standards at levels needed for the benefit of all Australians, rather than a 'race to the bottom' between States. It would replace the current air pollution NEPMs.

The States and Territories would then be required to implement the laws in each jurisdiction in a way that works best in that jurisdiction. The Air Pollution Prevention Act should include a strict timeframe by when each jurisdiction must have their implementation laws in place.

The purpose of the Air Pollution Prevention Act should be to achieve continuous improvement in air quality and compliance with national standards. It must apply to all Australians wherever they live. The current practice of exempting smaller communities and those that happen to be close to point sources must be discontinued.

## 1.2.8 A national Air Pollution Regulator

An Air Pollution Regulator should be established as a Commonwealth government agency with responsibility for implementing, monitoring and enforcing the Air Pollution Prevention Act. The Regulator would be responsible for ensuring States and Territories are complying with the standards, investigating community complaints of breaches, and taking enforcement action against States and Territories.

A high level of scrutiny, accountability and consequences for State governments and their regulators is critical to ensuring a national system of air pollution laws is actually implemented. The Regulator should publish an annual report on air quality in each State, the locations and causes of non-compliance, and the State's response to non-compliance. The Regulator should have responsibility for ensuring there is consistency in monitoring and reporting arrangements by States, and advising the Commonwealth on States' non-compliance.

## 1.2.9 State and Territory action

State and Territory governments are best placed to implement air pollution legislation and to manage the day to day operation of air pollution laws. They have experience in pollution control and have specific responsibility for the majority of regulatory approvals that impact on air pollution.

Under the Air Pollution Prevention Act, States and Territories would be responsible for achieving the standards in the Act and for enforcing local breaches of the Act. They would need to develop implementation plans and develop criteria for the regulation of polluting activities to ensure that the standards are met. The standards and specific activity restrictions could be implemented via a combination of industrial pollution laws, planning laws and direct regulation of certain polluting activities. They would be required to report to the Regulator annually on implementation, monitoring and enforcement of the Act.

# 2. Recommendations

## Development of an Air Pollution Prevention Act (Cth)

**Recommendation 1:** *That the Victorian Government be a champion for the development and implementation of uniform national laws which support:*

- *standards for major pollutants that meet world's best practice and World Health Organization guidelines, including regular review periods*
- *an exposure reduction framework that ensures pollution levels will continue to improve over time below the standards*

- *particular standards for known harmful activities, for example coal trains, vehicle emissions and other mining or industrial processes, to be harmonised with world's best practice (eg. Euro 6, or current US standards)*
- *specific reduction targets for higher-risk communities such as those that live near a major pollution source*
- *improved implementation requirements at both Federal and State/Territory level to ensure that air quality standards are properly implemented at the state, regional and point source level*
- *a requirement that existing pollution sources that contribute to breaching the standard be brought within standard within three years*
- *improved monitoring of PM pollution including monitoring at all major population centres and near known PM pollution sources both urban and rural*
- *compliance and enforcement mechanisms that include incentives and sufficiently deterring penalties, including innovative penalties for non-point source pollution to ensure States comply*
- *a right to citizen enforcement of the laws so that communities affected by pollution laws can take polluters to court to enforce the law if regulators refuse to.*

## **Victoria treats any national standards as a baseline**

***Recommendation 2:*** *That Victoria recognise any national standards as a baseline requirement, and adopt higher Victorian standards for permitted concentrations of major pollutants, based on independent established research, and which are the subject of expert and public consultation processes.*

In December this year, the Commonwealth, state and territory environment ministers plan to meet to decide on a proposed variation of the National Environment Protection Measure for Ambient Air Quality. The proposed variation process has been the subject of detailed consideration and analysis, in terms of the impact and efficacy of a number of options for strengthening the standards. The process has seen the preparation of various reports on behalf of the ministers, which are dominated by considerations that relate to the strengthening of the standards for PM<sub>2.5</sub> and PM<sub>10</sub>.

EJA have received correspondence from state ministers indicating that some alternate proposals are being considered, outside of the reporting and consultation processes that have proceeded to date. These concerning proposals are:

- The proposed “phasing-in” over ten years of higher standards for PM<sub>2.5</sub> of 7 micrograms (daily) and 20 micrograms (annual)/cubic metre.
- The proposed adoption by some states of PM<sub>2.5</sub> standards that do not meet the World Health Organisation guidelines.

EJA are concerned that the forthcoming national Clean Air Agreement may lock Victoria into a standard which is lower than what the Victorian Minister has already indicated she would accept.<sup>39</sup>

## Access to air pollution monitoring data

**Recommendation 3:** *That the EPA improve access to air pollution monitoring data that supports real-time web-access to consistent monitoring data, of all known pollutant categories including PM<sub>2.5</sub> and PM<sub>10</sub>.*

Air pollution monitoring data must be readily accessible to community members. The EPA website does not currently enable ready access to data.

The NSW EPA website illustrates best practice: <http://www.environment.nsw.gov.au/AQMS/search.htm> The NSW website allows community members to download data for any period of time (hours, days or years) from any or all of the state's 45 monitoring sites.

By contrast, the Victorian website is out of date and does not include up-to-date data: <http://www.epa.vic.gov.au/our-work/monitoring-the-environment/monitoring-victorias-air/monitoring-results> The VEPA takes several months to upload data. To access monitoring data, it is necessary to liaise directly with EPA staff.

If the Victorian EPA air pollution website had the same functionality as the NSW site, residents in the Latrobe Valley would have had a comprehensive picture of air pollution throughout the Hazelwood mine fire. They would have been able to compare pollution concentrations to historic trends and to monitoring sites in other parts of the state.

In the Latrobe Valley, most air pollution monitoring is undertaken by industry rather than the EPA. The data from this monitoring is not readily available. This data should be integrated with the EPA monitoring data and made available through the same interface (the EPA website). There is no reason why this data should not be readily accessible.

EJA has experienced significant delays of several months in accessing pollution data and from industry sources.

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<sup>39</sup>An annual average of 20 micrograms/metre<sup>3</sup> for PM<sub>10</sub> as indicated by the Minister on social media on 16 July 2015, (the day after the last meeting of environment ministers). This was subsequently confirmed in correspondence.

## Continual improvement in air quality

**Recommendation 4:** *That the EPA adopt an exposure reduction framework and actively manage the Victorian air environment to continuously reduce pollution levels.*

For many pollutants, including fine particle pollution, there is no threshold below which there are no adverse health impacts. Even where pollution concentrations are below the relevant state or national standard, there is a direct benefit of further reducing pollution levels. Reducing short-term exposure to PM<sub>10</sub>, for instance, would reduce hospital admissions for childhood respiratory disease and pneumonia/bronchitis in people aged 65 and above by as much as 65% (Reference: Draft Variation to the National Environment Protection (Ambient Air Quality) Measure Impact Statement, p.xviii). Reducing exposure to PM<sub>2.5</sub> to the proposed standard of 6 micrograms per cubic metre would prevent 530 deaths in Melbourne, Brisbane, Sydney and Perth.

The current pollution management regime provides little impetus for polluters to reduce emissions. Pollution licences should be reviewed on an annual basis, with stricter conditions imposed wherever they are achievable.

Adopting stricter pollution standards is an important measure to motivate pollution reduction. Australia's nine environment ministers are currently considering new standards for particle pollution (PM<sub>10</sub> and PM<sub>2.5</sub>). The impact statement prepared to assess options for the new standards presents a compelling case for adopting the strictest standards, but there is pressure from some states (especially New South Wales) to adopt the least strict standards. Victorian Environment Minister Lisa Neville has expressed support for stricter standards. One option is for Victoria to adopt standards that are stricter than those adopted in New South Wales.

## Hotspot pollution monitoring

**Recommendation 5:** *That the EPA establish permanent air quality monitoring stations in locations that are known or suspected to have elevated levels of pollution.*

The Victorian EPA monitors should routinely monitor in locations that are known or suspected to have elevated levels of air pollution. Community members are concerned about pollution along major motorways and in residential areas near industry, but there is no ongoing monitoring in these locations. The burden of air pollution is often distributed unfairly. Locations for the state's permanent monitoring stations are selected to measure pollution concentrations in 'background' locations, far removed from known pollution sources. This does not provide an accurate or representative picture

of the state's air environment and no information about local air pollution for those community members living with the highest levels of pollution.

The EPA should expand the state's permanent air pollution monitoring network, adding locations that are identified by community groups and other stakeholders as pollution hotspots.

## **Accessible polluter reports**

***Recommendation 6:** That the EPA develop enhanced methods of public access to information about licensed polluters to enable improved assessment and monitoring of licensed polluter's performance.*

Major polluters are licenced by the EPA and submit compliance reports annually. Licences and compliance reports are available on the EPA's Interaction Portal <https://portal.epa.vic.gov.au/irj/portal>. While this level of transparency is valued, it does not meaningfully facilitate performance monitoring. With modest changes and the right level of staffing, this portal could provide profiles for the state's major polluters, showing their track record of non-compliance with their licence conditions and identifying the measures they have taken to address non-compliance and to minimise emissions. Ideally, this should be integrated with the National Pollutant Inventory (NPI), where companies describe measures they have taken to reduce emissions.

A significant shortcoming of the NPI is that it does not require the Latrobe Valley's energy companies to report on particle emissions from their open cut coal mines. An NPI technicality allows them, instead, to report on the combined emissions of their power stations and mines. Both the power stations and coal mines are significant sources of pollution, so this anomaly should be corrected.