Please provide your name and address and details of your organisation (if relevant)

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Questions from the discussion paper

CHAPTER 2: HOW STATUTORY POLICY WORKS

Question 1: In your experience, what has worked well with statutory policy? What has not worked well?

Works well:

A combination of the prescriptive nature (prescribed limits/exemptions) and reviews/updates of Policy Documents maintain a current and functioning enforcement tool that is able to adapt with technological or business growth changes, when compared with Acts or Regulations.

A secondary effect includes a level of certainty to all stakeholders.

Opportunities:

Private enterprise often expresses frustration at determining and interpreting the relevant Policy Document that applies to their circumstances. Small to medium enterprises are generally adverse or reluctant to engage independent (expert) advice due to associated costs.

Similarly, Local Government is often left with the costs of measurement, resolution process and enforcement, despite not having sufficient Statutory Authority under the Act or Policy Documents.

Ambiguity within policy often results in varying or misaligned expectations amongst stakeholders. This also allows for points of argument by counsel who act on behalf of applicants at VCAT hearings. VCAT personnel have on occasions been known to act as application moderators, often where there is not necessarily middle ground. This can in turn result in a less than desired outcome.

The secondary effect usually results in lay people reading the SEPP themselves in order to reduce costs resulting in a flow on effect of misinterpretation of the Policy Document or may result in inconsistent enforcement throughout Local Government.

Question 2: How well do you think the features and obligations in statutory policy are understood? Are some parts better understood than others?
(We would welcome some examples).

Understanding of Policy Documents (SEPP's particularly) vary dependent upon experience and level of exposure. Whilst some Policy Documents are simpler (AAQ or AQM), I have yet to meet an operator / proprietor who understands their obligations under SEPP N-1 or SEPP N-2.

Examples:

A pet crematorium and waste recycling sorting station were able to access AQM and refer to Schedule A and/or B in order to establish their operating rights and community obligations.

Yet, an interstate truck depot, various fast food outlets, automated car wash premises, restaurants, and small manufacturers cannot establish operating hours without spending circa $5000.00 on a SEPP N-1 impact report.

These examples show an unequal playing field for different community sectors; a situation that this review ought to address.

Question 3: Are there critical issues, risks or relevant processes (e.g. upcoming reviews, strategic planning processes) that should be considered in prioritising individual policy reviews?

None, other than the (non) identification of whom is the lead agency for decontamination of premises used for methamphetamine manufacture. There still appears to be confusion as to who is to take a lead role in their decontamination. I understand that the Dept of Health have not released Policy Documents or Guiding Principles in this regard.

CHAPTER 4: CRITICAL CHALLENGES FOR STATUTORY POLICY

Question 4: What do you think are the main challenges for statutory policy? Are there other challenges not presented in the discussion paper?

Challenges:

- Inter Agency (Department) Roles & Responsibilities.

The discussion paper clearly and correctly identifies a need for inter-agency partnerships to exist to review, produce and implement Statutory Policy.

It is my opinion that in doing so, each policy ought to clearly articulate the roles and responsibilities of each agency/department and hence determine who the 'Responsible Authority is at various stages within the policy framework. This removes ambiguity and provides some accountability to the relevant agency. Secondary effects might include collaborative approaches with the reduction of inter agency animosity.

A current example of Roles & Responsibilities failure might include the insistence by EPA Vic that alleged contraventions of SEPP N-1 is a Planning matter and ought to be resolved at Local Government level. Ironically, the vast majority of Industry has 'as of right use' on industrial land where a Planning Permit is not required therefore no Planning enforcement measures can be imposed. At the present time Council Officers are not authorised under s46 of the EP Act 1970,and subsequently results in having to refer the matter back to EPA, who in turn refers the matter back to Local Government. As can be seen on EPA website
http://www.epa.vic.gov.au/noise/industry_noise.asp

The implementation of Roles & Responsibilities within Policy Documents is highly desirable and can only be effective if done in agreement with all relevant agencies, and where appropriate authorisation under relevant sections of the Act and/or Regulations is delegated.

- Special Interest & Government Lobbying

No doubt consideration has been given to the 'ease' of change when dealing with a less rigid Policy document. Conversely, a risk exists where EPA Victoria (or any other Responsible Authority) may be subject to increased political or special interest lobbying pressures calling for review and amendment to better suit popular views of the day.

Expedited review or amendment processes will likely impact upon longer term objectives or strategies.

Question 5: In your work, which instruments or documents under the Environment Protection Act do you (or your organisation) use most often? The Environment Protection Act, Regulations, statutory policies or guidance?

Current use by my organisations primarily consists of the EP Act, Res Reg's and SEPP N-1 in equal measure.

The Noise Control Guidelines, Septic Tank Code of Practise and SEPP AQM are used to a lesser degree.

Guidelines such as Use of Reclaimed Water may be referred to infrequently.

CHAPTER 5: APPROACHES TO STANDARD SETTING

Question 6: What types of measures or provisions in the 'attainment programs' of statutory policy do you find most useful?

Do you think these need to stay in statutory policy or may be better placed in other regulatory instruments or guidance?

I find that **mandatory obligations and requirements** are essential tools in determining whether or not a practise is unreasonable / unlawful. These requirements generally denote at what stage a permitted activity becomes prohibited.

However when discussing environmental issues more broadly, I form an ideological opinion that **ambient standards** provide a better level of protection to the community and the environment. For these reasons I support a careful blend of both mandatory requirements and ambient levels.

I do not support the trend (as seen in Occupational Health documents) that use broad and evolving terms such as "best practice" or "continuous improvement" where **principles of 'General Duties**" apply. Ultimately this leads to ambiguity, distorted interpretation and increased emphasis on legal opinions, posturing etc. It is my opinion this approach will create greater adversarial interactions

and remove the potential for collaborative approaches within the enforcement scope.

Question 7: How well do you think statutory policies perform their standard-setting role? Would specific types of standards be better placed in other regulatory instruments or guidance?

I regard SEPP N-1, SEPP N-2 and SEPP (AQM) to be effective documents (not without their individual problems) in providing a standard for compliance.

This being said, section 18(c) of AQM states *"apply best practice to the management of their emissions or, if they emit Class 3 indicators, reduce those emissions to the maximum extent achievable;"* which I'm sure most will agree is a subjective requirement (as is all of s18 and s19). A far higher standard is set if the sections were preceded with "To the satisfaction of the Responsible Authority, EPA Victoria, the operator shall …….".

Question 8: Has including the roles and responsibilities of agencies — which often set out how agencies will jointly tackle particular issues — in statutory policy been valuable? Why/why not?

Yes – A suitable comparison may be made with the Tobacco Act 1987 and Tobacco Regulations 2007. A crossover exists with Tobacco related offences between WorkSafe Officers, Environmental Health Officers, Authorised Transit Officers and Police Officers.

For example, adequate training, MOU's and literature is in place that specifies Police involvement when smoking in motor vehicles in the company of minors, WorkSafe will attend to workplace complaints if an Environmental Health Officer or authorised officer has been unsuccessful on three attempts. Council authorised officers will deal with alleged 'point of sale' and 'smoking in enclosed spaces' breaches; the exception being smoking at bus stops or on train platforms. In these situations, authorised Transit Officers will enforce those provisions.

This example demonstrates an integrated inter-agency approach (even in complex and unpopular situations); where the scope and role of the relevant agency is clearly set out and defined. However, where ambiguity, doubt and a lack of specific information (such as commercial noise complaints) exist, I find the agencies at employee level have a tendency to work against each other.

Question 9: In your experience, are there features in other fields of regulation that would be useful in the Victorian environment protection framework?

I would suggest that you consider researching the inter-agency collaboration exercised in the execution of the Tobacco Act 1987. This may assist in achieving a similar 'joint' approach under any new role out of EPA Statutory Policy.

Similarly, I find the way WorkSafe rollout of their 'Codes of Practice' and 'Compliance Codes' an interesting development in addressing Statutory Policy and information dissemination.

Question 10: In your experience, what features of statutory policy in other states or overseas work well?

I have found that where specific requirements are widely known amongst the wider community (such as tobacco laws – with large public campaigns), or where an adverse commercial consequence such as publicly naming offenders occurs (as seen in interstate food premises conviction registers), most operators tend to be pro-active in maintaining compliance in order to maintain positive business image and avoid the potential embarrassment.

However, if the matter is out of sight (out of mind), and confusion exists as to what is, and is not, permitted, then generally speaking not as much effort will be put into compliance, regardless of the penalty size.

CHAPTER 6: POTENTIAL MODELS FOR REFORM

Question 11: Which, if any, of the model(s) do you think may work well? Why?

When undertaking enforcement measures I strongly advocate that **mandatory obligations and requirements** be used as these clearly prescribe what is acceptable, unacceptable and the differential between current operations and required operations.

This being said, the WorkSafe Occupational Health and Safety Act 2004, subsequent Regulations, Codes of Practice and Compliance Codes look to be an effective compromise. The Codes of Practice promote collaboration rather than opposition, are informative to the lay person. They act in a guidance capacity, but have the ability to be enforced if necessary. Similarly, the Compliance Codes, Regulations and Act clearly communicate the requirement to comply.

Without having any industry or a working knowledge of the latter, I do consider a hybrid of SEPPs & WMP's being introduced as Compliance Codes, and/or Codes of Practice, as being a viable option.

Question 12: Are there other models that should be considered?

I am unaware of international methods, and only a basic understanding of interstate models, so I feel unable to provide an informed response on this question.

CHAPTER 6 (CONT'D): SPECIFIC SUGGESTIONS FOR REFORM

Question 13: What do you think of the specific suggestions for reform (on pages 25-26)?

All specific suggestions make perfect sense, but none indicate the regulatory overhaul I anticipated.

I consider the suggestions that include "Confirming EPA, DSE and others' roles" and "Improving Linkages with other statutory systems and agencies", as being the most valuable, and therefore require a stronger language. E.G. 1 - Specifying EPA, DSE and others roles. E.G. 2- Facilitating agreements through MOU's……..

I think that developing, implementing and publishing a plain language users guide and/or information fact sheets that tackle the complexity of SEPP's will prove to be an effective tool in breaking down barriers between small enterprise and the 'Cloak of Mystery' they call EPA requirements.

Question 14: What else should be done to make statutory policy more responsive, accessible and easier to apply?

Policy complexity can be reduced by writing them in plain language. For example WorkSafe Codes of Practise, along with prolonged media campaign have seemingly turned complex issues and interpretations into relatively simple, easy to follow step by step guides and checklists.

From an outsider's perspective, perhaps the Statutory Policy content does not seem as daunting when broken down into smaller lots that collectively combine to form their entirety.

The Code of Practice for Building and Construction Workplaces, along with The Code of Practice for the Storage and Handling of Dangerous Goods, provide reasonable examples to the same effect.

Question 15: How could the links between statutory policy, catchment planning, statutory planning and other frameworks be improved?

What may initially seem resource intensive, successful delivery of relevant education programs to key stakeholders such as Water Authorities, Local Government etc, a sequential checklist or checklists that have 'triggers' may be used as a safe guard.

The advantage of using this method provides ownership of responsibility upon a person/agency. An example could include the **rezoning of potentially contaminated** land. Generally, EPA has an involvement in contaminated land and a property owner is generally held accountable for the condition of the land. However, where there is an application to re-zone the land for sensitive use, the Local Government Authority are aware that they are entirely accountable for that decision. It has been my experience that a 'trigger' is activated where it is almost certain a Site Assessment or Environmental Audit will be required, regardless of historical use.

A similar example might be found using Tobacco laws, where educational material prescribes

duties of the various relevant authorities.

Question 16: Do you have any other suggestions for reforms to the statutory policy framework?

An all agency/stakeholder inclusive approach is recommended. Pro-actively invite responses from government agencies, government institutions, training institutions, Institute of Onsite Environmental Management, industry associations, active lobby groups etc. in order to avoid criticism and reluctance to adopt new policy upon its implementation.

Despite our close involvement with industry and government agencies throughout the region, only one pro-active opinion has been sought.