



STATUTORY POLICY REVIEW - DISCUSSION PAPER

Template for written submissions

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?

Strengths:

SEPPs

- combine community consensus on what we value in the environment and wish to protect, with scientifically-based environmental quality standards which, if achieved, will protect those values
- establish environmental monitoring regimes that enable empirical assessment of environmental condition and trends
- clearly assign responsibility for action and reporting and, in particular, establish the broad parameters and priorities within which the Authority will operate
- provide a clear long-term statement regarding goals and approaches that will be employed by the Authority and other protection agencies, affording certainty to a broad range of interested parties (private sector, government agencies, local government, etc.)
- provide guidance to VCAT in relation to long term community goals and accepted approaches to environment protection
- provide a mechanism for applying National Environment Protection Standards and Protocols

Waste Management Policies

- provide a comprehensive framework for setting out the community's expectations in relation to the prevention, recovery, treatment and disposal of various forms of waste (including standards and approaches to management)
- provide for more detailed requirements to be specified via regulation

Weaknesses

- Despite the very extensive consultation involved in establishing SEPPs (including consultation needed to get agreement in Cabinet), all too often SEPPs are seen by other government agencies and by local government as "EPA policies". This is an area that needs ongoing input by EPA to inform and engage other protection agencies (including local government) in productive partnerships.
- Historically EPA has not devoted sufficient resources to following through on key elements of Policy Attainment Programs (including monitoring and publicly reporting on key aspects of implementation both on its own and in concert with other parties). More recently this area of performance has improved somewhat as a result of the requirements to report on implementation of National Environment Protection Measures

- Reviewing and amending or replacing a major SEPP such as Waters of Victoria or the SEPP (Air Quality Management) is a significant exercise involving extensive public consultation and scientific study. For this reason, I believe that in recent years EPA has tended to defer some policy reviews longer than is desirable.
- Having said that, it needs to be remembered that SEPPs can and increasingly are framed in such a way to reflect changes in technology or responsibilities within government through reference to subsidiary documents. In addition, should an urgent need arise to amend or create a new Waste Management Policy, this can be done under section 18 B of the EP Act

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).

I think the purpose and specific elements of SEPPs and WMPs are generally poorly understood by both the public and the private sector (and also I suspect by some EPA staff).

The ambient standards are probably the aspects best understood, while aspects of the Attainment Program are often conveniently overlooked by other government agencies and by local government.

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 that I'm aware of, though the current review of landuse in the green wedges will have long term implications for air and water quality and decisions in this area should be informed by the requirements of the key SEPPs such as WoV.

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

- Ensuring that they continue to reflect the community's environmental quality aspirations and current scientific understanding.
- Securing adequate resourcing to ensure timely reviews of existing policies and to enable implementation of key aspects of policy Attainment Programs (by EPA and other protection agencies).

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?

Apart from the Act itself, in order of priority: statutory policies, guidance documents and regulations.

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?

- Clear specifications as to responsibility for implementing and reporting on attainment measures.
- Clear statements as to the Authority’s priorities and approaches to implementing policy.

Attainment Programs essentially set out the preferred approaches to achieving policy goals and assign responsibility for implementing and reporting on achievements. While they are likely to contain broad statements to guide or limit the action of private sector bodies, their main thrust is in relation to the action of government agencies and local government. As such they are totally unsuited to being framed as regulations. Where the Attainment Program needs to incorporate a body of detailed guidance (that may be subject to change within the expected lifetime of the policy), policies already call up such subsidiary documents. By their nature, guidance documents are vehicles for the provision of detail rather than setting out the type of broad statutorily-based roadmap described in a policy Attainment Program.

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?

The standards established in the key SEPPs that deal with ambient environmental quality (e.g. WoV and SEPP Ambient Air Quality) are firmly grounded in science and provide reliable benchmarks against which progress in achieving agreed environmental quality goals can be assessed.

Such standards are best placed in an integrated statutory framework that includes clear statements of environmental values to be protected, goals, monitoring regimes and attainment programs. Regulations are suited to setting up precisely specified standards and requirements rather than providing a comprehensive framework of objectives and means framed in everyday language as are SEPPs.

Question 8: Has including the roles and responsibilities of agencies — which often sets out how agencies will jointly tackle particular issues — in statutory policy been valuable?

Why/why not?

It has been valuable in some instances, giving leverage to other protection agencies to engage with EPA in cooperative programs under the auspices of a policy Attainment Program (e.g. the program that EPA, Melbourne Water and local government were able to implement in relation to stormwater planning).

However, as noted in earlier responses, such opportunities are not always recognised or, if recognised, may not be taken up because of varying agency priorities, budgetary constraints or agencies' natural tendency to protect their bureaucratic territories.

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

None that comes to mind, though I note that the Authority has begun to employ civil penalties (as an alternative in some cases to criminal proceedings) and is also employing enforceable undertakings – approaches that have been widely applied in other fields of regulation.

I think it is also worth noting that the EP Act has often led the way in developing new and highly innovative approaches to what could be loosely termed regulation. Often however, the potential of these innovations has been overlooked or only partially explored. One that comes to mind is Neighbourhood Environment Improvement Plans.

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

I'm aware that statutory environmental policy employed in other jurisdictions (Qld, SA, WA and Tasmania) owes much to the original SEPP model as framed in the 1970 Victorian Act, but I'm not sufficiently up-to-date with the application of statutory policy in these jurisdictions to comment.

CHAPTER 6: POTENTIAL MODELS FOR REFORM

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

Of the four models, only the first has any prospect of improving rather than undermining the significant strengths of the present system.

I am firmly of the view that the Discussion Paper has presented no coherent well substantiated argument in support of any of the other models.

Model 2 – this would destroy the holistic and integrated nature of SEPPs. It assumes that ambient standards can simply be transposed into regulatory form and fails to indicate what advantage there would be in doing this. The Discussion Paper advocates combining some policies (e.g. a single water policy or noise policy). There are sound reasons for the present separation between N1 and N2 and for dealing separately with surface and ground water protection issues and any such amalgamations need to be very carefully considered and justified.

Model 3 - “use policy to drive regional or local approaches” – ignores the fact that SEPPs can already do this e.g. the regional/catchment related provisions of WoV and its catchment specific schedules.

Model 4 - Effectively destroys the foundation on which the Act was built. None of the key components of SEPPs is appropriate for transfer to the Act, nor has any convincing case been presented for shifting environmental quality standards (much less other elements of SEPPs) into the inflexible format of regulations.

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

The above four appear cover the main possibilities.

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

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

Improving Accessibility

Contrary to what's stated, most businesses and members of the community have little interest in or need to access SEPPs. SEPP and WMP provisions are unlikely to have direct effect on non-scheduled activities unless problems arise at a premises that warrant EPA intervention via a statutory notice or other form of enforcement action.

Publishing consolidated versions of policy incorporating variations - agree

Repetition – the only example of repetition cited in the Discussion Paper is the listing of the principles of environment protection in each policy as well as in the Act. I disagree with the suggestion simply to reference the principles in policies and to include only a pointer to the section of the Act where they are set out. The principles provide the broad context and rationale for much of what is in policies and, together with the Policy Intent, make statutory policies easier for the lay reader to comprehend than most other statutory instruments (in particular, regulations).

Replace beneficial use with environmental value – I agree

Consolidate the number of policies - Apart from a general assertion about the number of policies being confusing, there is no real argument made to support this proposition and I do not believe that the candidates for merging cited in the text stand up to close scrutiny.

Publish a users guide – a good idea

Improve flexibly while maintaining scrutiny

The discussion of this point throughout the document is fundamentally flawed. The science underpinning our understanding of the key factors affecting ambient environmental quality changes over years not over weeks or months. So it is very difficult to envisage a situation where a sudden, urgent and unforeseen need would arise requiring an amendment to a SEPP. There are however two areas where such a need could arise. The first is in relation to a particular waste product/stream and its management. The second is in relation to a particular immediate and major threat arising in relation to some chemical, material or product. In the first case, a WMP could be created (or an existing one amended) under section 18 B of the Act. In the second case, a notifiable chemical order under section 30 D could be established. In either case, the necessary instrument could be established in a day or two (the only limiting factor being how long it took to convene a meeting of the Governor in Council).

Improving accountability management and coordination

Confirming EPA, DSE and others' roles - The EP Act (Section 13 (1) (c)) sets out EPA's role and responsibilities in relation to statutory environmental policy quite clearly and explicitly. DSE is clearly a "protection agency" under the act (as are most other government agencies and local government authorities). The role of protection agencies in relation to SEPPs is co-operate with EPA in their development and implementation.

Improving linkages with other statutory systems and agencies There is nothing new here. MOUs and environmental planning requirements have long been used to give effect to statutory policy and there is no need to tinker with the SEPP framework to enable such approaches.

Improving policy management and reporting - I agree this is an area which the Authority has not always handled well over the years. There are two elements to this suggestion. The first relates to more active management of statutory policies and the third level documents they refer to. What is needed is for all policies to be available on the web in consolidated form with embedded links to up-to-date versions of all third level documents. The second relates to monitoring and assessing the effectiveness of policy. This is an area to which EPA should devote more attention, employing mechanisms such as schedules and registers of specific actions and outcomes set out in individual policies and specifically reporting against these in the Authority's annual reports. To an extent, this already happens via annual reporting on implementation of NEPMs, but my feeling is that there is

room here for improvement.

Improving reporting on policy implementation and drive accountability – This overlaps very strongly with the previous suggestion, so my comment above applies. In relation to which agency should be responsible for co-ordinating and publishing statutory policy implementation reports, I believe this is clearly the responsibility of the Authority. (As with any other agency of State, the Authority's performance in this area would be subject to review by the Auditor General.)

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

As with a number of other questions, this assumes that the case has been made out that the existing policy framework and approach is lacking in responsiveness and accessibility and needs to be easier to apply. Having read the Discussion Paper closely I do not believe that such a case has been made.

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

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