

State Implementation of National Environment Protection Measures

Introduction

On 15 September 1995 uniform and complementary Acts to establish the National Environment Protection Council (NEPC) were proclaimed by participating governments. This heralds the long awaited establishment of a statutory, national environment protection body for Australia.

NEPC is a creature of the renewed push for co-operative federalism across Australia. It has been developed under the 1992 InterGovernmental Agreement on the Environment, and represents a unique model suited to Australia's social, political and environmental conditions.

NEPC is fundamentally about co-operation. States, Territories and the Commonwealth will sit as equal partners to establish national environment protection measures (NEPMs) and to report on their implementation and effectiveness.

However, I believe NEPC will also foster a healthy degree of competition in implementation of NEPMs.

The nature and impact of the NEPC and the measures it sets will emerge over time. It has already had a difficult birth. Today, I would like to discuss a Victorian view of the nature of NEPMs, particularly how they will be implemented 'on the ground', and finally to make some points about the implications for other NEPC members of the need to implement national measures.

National Environment Protection Measures

In order to discuss implementation of national environment protection measures within States, it is necessary to have some shared understanding of the intended nature of such measures, and the meaning of terms such as implementation and enforcement in this context. First, it is important to recognise that Schedule 4 of the IGAE and subsequent legislation provide agreed, specific definitions for the components of NEPMs - goals, standards, guidelines and protocols.

Goals are defined as "a desired environmental outcome adopted to guide the formulation of strategies for the management of human activities which may affect the environment". As desired outcomes, goals may not be immediately attainable, but represent the aspirations of Australians, e.g. to protect human health, ecosystems or particular uses of the environment.

Standards are defined as "quantifiable characteristics of the environment against which environmental quality is assessed". Standards reduce objectives to something that can be measured which provides an indication of environmental quality. Standards are intended to show whether a particular environmental value is being protected, including whether a goal is being achieved. They can be simple numbers (e.g. pH in the range 7-8), or relative numbers (e.g. pH must not vary from background ± 1) or more complex (e.g. species diversity index >10).

Under the IGAE, adoption of standards is mandatory. This means all jurisdictions must adopt them as law; implementation programs must be designed to meet the standard and agreed protocols must be used to monitor their achievement.

Standards have little meaning in isolation. The complexity of natural environments means that most scientific measurements can only provide part of the picture. In many cases, tests measure only what is defined in the test method, and not directly the health of an element of the environment. It is therefore important that compliance with standards is assessed using agreed protocols. Protocols are defined in the IGAE as "the description of a process to be followed in measuring environmental characteristics to determine whether a standard or goal is being achieved or the extent of the differential between the measured characteristic and a standard or goal."

Nationally uniform standards and protocols will allow comparison of 'apples with apples' in discussing environmental trends, relative environmental quality and success or otherwise of environment protection programs. This will be done, in part, through NEPC annual reporting requirements.

Finally, guidelines are defined as providing "guidance on possible means of meeting desired environmental outcomes". Guidelines might address how a goal or standard might be achieved (e.g. a nutrient management strategy) or how a specific environmental problem might be addressed (e.g. contaminated sites). They are by their nature non-mandatory. However, if they represent a best practice approach to environment management and regulation, they should help foster harmonised approaches to environment protection across Australia. This model allows both sharing of resources and experience in developing environment management strategies, without stifling opportunities for jurisdictions to experiment or take alternative approaches suited to local conditions.

NEPMs, consisting singly or in combination of goals, standards, guidelines and protocols, may be established for:

- * ambient air quality
- * ambient marine, estuarine and freshwater quality
- * noise where national markets are affected
- * general guidelines for the assessment of site contamination
- * environmental impacts associated with hazardous wastes
- * motor vehicle emissions (in conjunction with the National Road Transport Commission)
- * the reuse and recycling of used material.

Under the IGAE, as well as legislation to establish the NEPC, each NEPC member is required to introduce or amend environment protection legislation to ensure that agreed NEPMs are adopted as a matter of law within their jurisdiction.

Once NEPMs are agreed, it will remain the responsibility of each NEPC member to adopt, implement, enforce and report annually on achievement of measures.

The IGAE also permits members to maintain or introduce more stringent measures in consultation with NEPC.

Scope also remains to develop regional and locally appropriate approaches within the IGAE framework. For example, one could envisage a water NEPM which adopts the current eco-regional approach being developed under the National Water Quality Management Strategy developed by ANZECC and ARMCANZ.

The Victorian Framework

I now wish to turn specifically to how Victoria intends to approach implementation of NEPMs. For more than 25 years, Victoria has controlled air, land, water and noise pollution and waste problems through a single umbrella *Environment Protection Act 1970*. Over this period, this Act has evolved to reflect new knowledge and innovative approaches to environment protection. One constant in the Victorian approach is its focus on outcomes. Statutory State Environment Protection Policies (SEPPs) are established to clearly set out the way in which Victorians wish to use their environment, and the environmental quality needed to maintain these uses. While description of the elements of SEPPs differs from NEPMs, the basic concepts remain the same.

By law, a SEPP sets out a part of the environment, beneficial uses to be protected, environmental quality objectives and associated indicators. These beneficial uses and objectives are broadly equivalent to NEPM goals and standards. A SEPP may contain a program outlining how the Policy objectives are to be attained and sustained, broadly equivalent to NEPM guidelines. EPA is empowered to set protocols for monitoring environmental quality and compliance with SEPPs.

SEPP are subordinate legislative instruments placing a duty on all Victorians but especially on government and key stakeholders to work together to achieve and maintain the environmental quality objectives. How individual SEPP are implemented varies greatly depending on factors such as the area in question and the nature of environmental risks. SEPP are typically implemented through a range of statutory and non-statutory programs

(see Diagram 1 attached). Most legal enforcement action relates to either a particular pollution event or breach of a specific mechanism, e.g. breach of a licence.

In passing its NEPC establishment Act, Victoria simultaneously amended the *Environment Protection Act 1970* to automatically adopt agreed NEPM as SEPP. In such a case, national public processes, impact assessment and Parliamentary scrutiny will substitute for State practices. For Victoria, NEPM effectively become a new source of State Environment Protection Policies (see Diagram 2 attached).

I will now outline an example of how an ambient air NEPM, adopted as SEPP might be translated into on the ground action in Victoria.

Ambient Air Quality - An Example

Victoria established a *State Environment Protection Policy (The Air Environment)* in 1981, and has amended it a number of times. The SEPP is currently undergoing a major review which may well be overtaken by an NEPM for ambient air quality.

The air SEPP defines the beneficial uses of the air environment including: the health of humans, animals and vegetation; the useful life and appearance of buildings and other structures; aesthetic enjoyment and local amenity.

To protect these beneficial uses, it prescribes three classes of ambient air quality indicators:

- * class 1 - widespread indicators of air quality, e.g. CO₂, ozone, SO₂, lead
- * class 2 - other contaminants associated with local sources, e.g. ammonia, methyl acrylate, phenol
- * class 3 - carcinogens, highly toxic or persistent substances, e.g. benzene, vinyl chloride.

The air SEPP lists acceptable and detrimental levels of class 1 indicators and provides the means of establishing acceptable discharge levels for others. A standard dispersion model, Ausplume, is specified for use in determining the likely worst case impact of emissions from a particular source.

A multi-faceted attainment program provides strategic guidance on how the policy objectives are to be achieved. This includes the requirement to consider the SEPP in development of State planning, energy and transportation policies and programs, requirements for air emissions controls from stationary sources, e.g. iron foundries, textile mills, concrete plants and the control of mobile and non-point sources. Provision is also made for areas of special significance. These latter requirements are currently being redeveloped in co-operation with industry as Best Practice Environment Management Guidelines.

Premises with the potential for significant environmental impact (scheduled in regulations), including impact on air quality, are required to obtain works approval before construction and a licence for their ongoing operation. They are subject to monitoring, inspection and enforcement. Non-scheduled premises are still required to comply with Policy and may be controlled directly through instruments such as Pollution Abatement Notices. Breach of the air SEPP objectives constitutes air pollution and may be subject to prosecution. These requirements apply to public and private entities and to corporations and individuals.

Victoria would expect to adopt an agreed air NEPM within its air SEPP as new or amended air quality objectives, indicators and, potentially, attainment approaches where existing measures are not more stringent. As outlined above, once the ambient air measures are set, they are given effect to through a range of programs aimed at addressing emissions from identified sources of pollution.

Mobile sources of air pollution such as motor vehicle emissions are also key contributors to local, regional and global pollution, particularly in urban environments. Across Australia, emission requirements for new vehicles are developed through the Australian Design Rule (ADR) system. Victoria contributes to ADRs through ANZECC and the Transport Ministers Council. The Advisory Committee on Vehicle Emissions and Noise (ACVEN) is the main technical advisory body and reports to ANZECC and to the National Road Transport Commission. ADRs apply to prototype vehicles and are given legal force by the Commonwealth Minister for Land Transport, and enforced by the Australian Department of Transport and the Federal Office of Road Safety.

Setting and enforcing in-service vehicle emission requirements has been the responsibility of the EPA. Victorian requirements for vehicle emissions and associated issues such as petrol constituents are set out in the Environment Protection (Vehicle Emissions) Regulations as amended from time to time. These requirements seek to protect beneficial uses of the environment defined in SEPP. Enforcement, information gathering programs and modelling are important components in achieving compliance and predicting future trends. EPA operates a vehicle emissions testing station, which is used to test in-service vehicles, and non-conventional or modified vehicles seeking registration. EPA also conducts smoky vehicle enforcement campaigns, roadside checks and inspections of dealers premises.

Under relevant intergovernmental agreements and associated legislation, the National Road Transport Commission and the NEPC are now empowered to work together, with relevant advisory bodies such as ACVEN, to develop national standards for new and in-service vehicle emissions and noise. Within Victoria, such national in-service emission standards are likely to be adopted and enforced through amendment to the motor vehicle regulations and any overall strategy reflected in the air SEPP.

General monitoring of compliance with the ambient objectives set in the air Policy occurs through an air monitoring network. EPA uses these air monitoring data, vehicle emission testing data, periodic inventories of all air emissions and modelling capabilities to determine trends with respect to the objectives of the air SEPP, review their relevance and assess the effectiveness of the attainment program. The ambient air monitoring network has a capital investment of approximately \$5 million and recurrent annual operating costs of \$1.5 million. The experience gained with this system helping other jurisdictions to develop a similar capability for use in other capital cities. Having a common approach will make NEPM compliance monitoring much easier to implement on a national basis.

Implementation In Other Jurisdictions

States and Territories will use various legal and administrative mechanisms to adopt and implement NEPMs depending on their legal and administrative frameworks and on their resources. However, no matter what legal instruments are used, all States and Territories have environment protection regimes in place which apply to public and private activities in their jurisdiction. This is not yet the case for the Commonwealth. Traditionally the environmental impact of Commonwealth activities have been the responsibility of the line agency or department and performance has been very mixed. The Commonwealth remains for all practical purposes exempt from State planning and environment law as do certain corporations such as those in the telecommunications industry. Commonwealth tenants, however, do not enjoy the same shield of the Crown as was shown recently when EPA successfully prosecuted an FAC tenant in Melbourne.

Since Commonwealth lands are geographically largely within State or Territory boundaries this presents the States with a significant problem. The States will be accountable for meeting NEPMs within their jurisdictions but the political boundaries between Commonwealth and State controlled lands will not be a barrier to pollution. The implementation regime for NEPMs adopted by the Commonwealth is of vital interest to the States.

The Commonwealth has indicated its preference to make use of State and Territory regimes to avoid setting up duplicate systems. In the words of the Prime Minister (in a letter to the Victorian Premier), "to assist the development of more harmonised environment protection regimes across Australia, and to facilitate consistency in national standards, the Commonwealth has chosen to adopt and be bound by State and Territory legislation for its activities in the States and Territories, rather than developing a separate Commonwealth regime."

This common sense approach has been welcomed by the States. However, giving effect to it appears to be proving difficult for the Commonwealth. Since environmental management programs are now highly integrated it is not practicable to isolate only those elements that are, in a narrow sense directly related to NEPM compliance. This presents major policy issues for the Commonwealth. We believe there are two basic choices: to stick with the Prime Minister's commitment and make Commonwealth activities subject to complete environment protection regime in each jurisdiction; or to stick with direct Commonwealth responsibility for compliance supplemented by an administrative agreement with the States and Territories to comply with State requirements. The latter approach, while an advance on the current situation by being transparent, would create the perception of two sets of rules and weaken the concept of a truly national co-operative approach. It could also be seen as sending mixed messages about the commitment to competition policy.

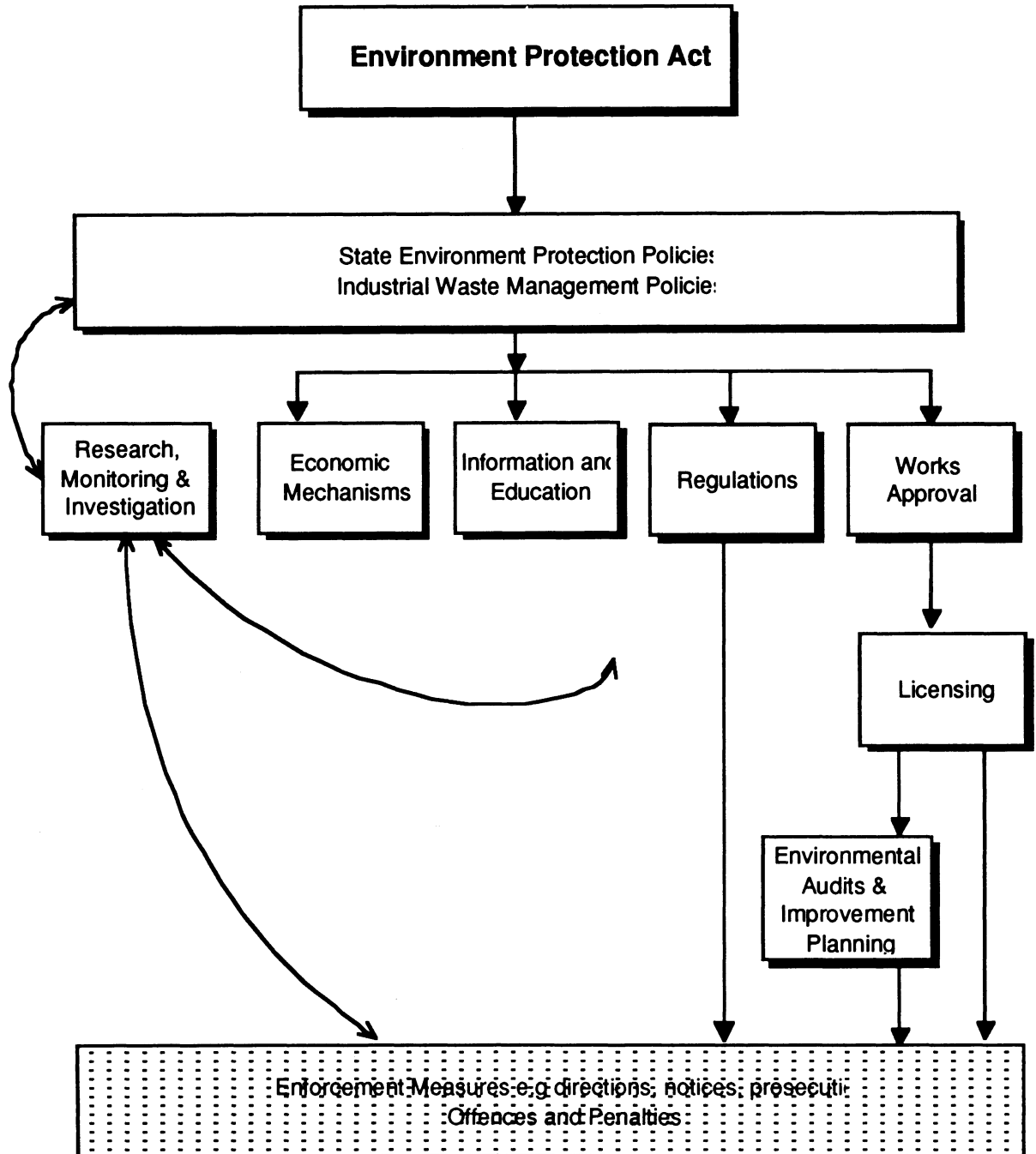


Diagram 1: SEPPs are implemented through a range of statutory and non-statutory programs

Conclusions

In Victoria, we are fortunate that our environment protection policy legislation is consistent with the new national system allowing NEPMs to be readily adopted as statutory policy. I trust that our long experience in setting and measuring our achievement against environmental outcomes will make Victorians (whether government, industry or other community groups) active and effective participants in the rigorous and public NEPM development process. In conclusion, the objective of the IGAE is to deliver an equivalent level of environment protection to all Australians, not to tell each jurisdiction how to do this. National environment protection measures containing goals and standards will be framed in terms of outcomes.

The NEPC model recognises the diversity of the Australian environment and this will be reflected in the regional aspects of NEPMs. This is the right model for Australia at this time in our history. The alternative of shoe-

forming a uniform national implementation regime into often long standing, but still evolving, State frameworks would have led to poorer, not improved environmental outcomes.

This is the first time anywhere in the world where this approach has been taken. National environmental standards elsewhere are generally lists of somewhat artificially derived numbers. We are proposing a system that recognises that the environment is variable and dynamic natural system. I encourage you to work with us to make this uniquely Australian model work in practice.

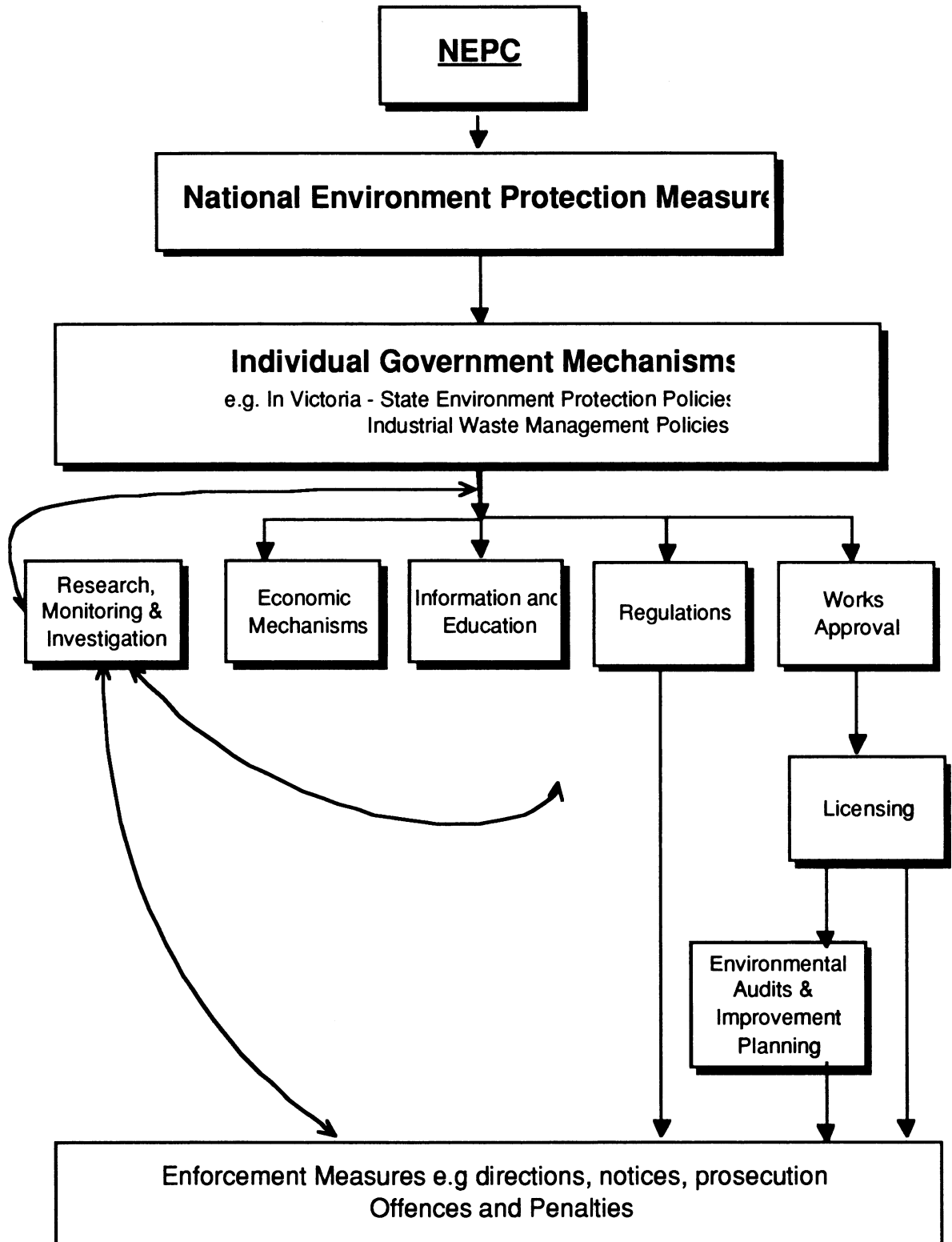


Diagram 2: NEPMs become a new source of SEPPs

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