



Law Council  
OF AUSTRALIA

*Legal Practice Section*

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Mr Adam Carlon  
NEPC Executive Officer  
National Environment Protection Council  
Department of the Environment and Energy  
GPO Box 787  
CANBERRA ACT 2601

By email: [nepc@environment.gov.au](mailto:nepc@environment.gov.au)

Dear Mr Carlon

**Proposed variation to the National Environment Protection (Ambient Air Quality) Measure standards for ozone, nitrogen dioxide and sulfur dioxide**

**Introduction**

1. This submission was prepared by the Australian Environment and Planning Law Group (**AEPLG**) from the Law Council of Australia's Legal Practice Section. The AEPLG's primary objectives are: to be a national focus group for environmental and planning law; to represent members of the profession working in the areas of environmental and planning law; to advise the Law Council on issues of environmental and planning law; and to lobby Federal and State Government to implement "best practice" in environmental and planning law.
2. Notice of Public Consultation on Variation to the National Environment Protection (Ambient Air Quality) Measure (**the Notice**) invited submissions on the NEPC Impact Statement (**Impact Statement**), draft varied NEPM (**Proposed NEPM**) and supporting technical documents. The Notice states that the **existing** Ambient Air Quality NEPM (**AAQ NEPM**) is designed to:
  - Improve national consistency in environment protection outcomes; and
  - Provide a national framework for monitoring and reporting on exposure to common ambient air pollutants.
3. The desired environmental outcome stipulated in clause 5 of the existing AAQ NEPM is "ambient air quality that allows for the adequate protection of human health and well-being".
4. The desired environmental outcome recommended in the Interim Report and adopted in clause 5 of the Proposed NEPM is "ambient air quality that minimises the risk of adverse health impacts from exposure to air pollution for all people, wherever they may live in Australia".
5. The AEPLG supports goals to improve national consistency in environment protection outcomes and a national framework for monitoring and reporting on ambient air

pollutant exposure. It supports the proposed variation to the desired health and well-being environmental outcome as set out clause 5 of the Proposed NEPM.

### The Significance of Air Quality

6. Scientific research since 1998 supports the conclusion that ambient air pollution is a hazard to health, and supports efforts to quantify the health impacts of exposure to ambient air pollution (e.g., short-term exposure to daily maximum 8-hour running mean ozone, or long-term exposure to NO<sub>2</sub>). The Impact Statement (at pages viii and ix) found:
- There are health effects arising from exposure to O<sub>3</sub>, NO<sub>2</sub> and SO<sub>2</sub> in Australian cities at their current concentrations;
  - When considering the full [cost-benefit analysis], the application of the different [concentration-response function] groups did not change the overall outcome, which was a negative net present value (NPV) to society; and
  - There are material health benefits associated with meeting the standards that have been proposed for this review.

### The Proposed Changes

7. The Proposed NEPM includes the following changes:
- (a) Introduction of the concept of '**high risk areas**' which may require additional performance monitoring stations. These areas to be determined by the jurisdictions and are areas where there is a high likelihood of adverse health effects from air pollution (e.g., where there are sensitive land uses, large populations at risk, or communities with a relative disadvantage);
  - (b) Introduction of a definition of '**population at risk**' being populations at risk of being harmed by air pollution based on the number of adverse health effects from air pollution exposure over a specific period of time or the rate of adverse health effects from air pollution exposure;
  - (c) Determination of the requisite number of '**performance monitoring stations**' to be made by:
    - (i) reference to 'the potential population at risk' (s14(1)); and
    - (ii) using benchmarking of the number of performance monitoring stations in areas with population greater than 25,000 (s14(4)), and
    - (iii) by providing exception 'where it can be demonstrated that pollutant measures are reasonably expected to be consistently lower than the standards' specified in the measure (s14(3)).
  - (d) Variation to national environment protection goals for pollutants, including removal of maximum allowable exceedances and reduction in maximum concentration standards, for:
    1. **Nitrogen dioxide** – from 0.12ppm to .09 ppm for a 1 hour averaging period, and from 0.03ppm to 0.019ppm for a 1-year averaging period;

2. **Photochemical oxidants (as ozone)** – from 0.08 to 0.65ppm for a 8 hour averaging period (and removal of the 1 hour averaging period);
3. **Sulfur dioxide** – from 0.2ppm to 0.1ppm for a 1 hour averaging period and from 0.08 to 0.02ppm for a 1 day averaging period (and removal of the 1-year averaging period); and
4. Introduction of standards for Nitrogen dioxide and sulfur dioxide from 2025, and variation of the wording of the goal for PM2.5.

### Effect of Proposed Changes

8. The Executive Summary (page ix) and Conclusion (page 104) of the Impact Statement iterate that:

*Air quality modelling has shown that some of these standards can be met by 2040. There will be challenges to meet some of the strictest proposed standards for O3 in many jurisdictions.*

9. Pages 32 and 33 of the Impact Statement refer to a package of additional measures to achieve further reduction in concentrations of SO<sub>2</sub>, NO<sub>2</sub> and O<sub>3</sub>. These were referred to as the ‘Abatement Package’ in the Impact Statement. The Cost-Benefit Analysis (page 103), Executive Summary (page ix) and Conclusion (page 104) of the Impact Statement state that:
  - The Abatement Package scenario modelled as part of this review has been shown to not be cost-effective in achieving reductions in pollutant levels.
  - Consideration should be given to alternative abatements that may achieve a larger impact across whole populations such as those associated with motor vehicles and transport options.
10. The growing awareness of the causal linkages between ambient air quality and materially adverse health effects – demonstrated generally in the Impact Statement, but likely also to be reflected in the work of both the Air Quality Working Group and the Air Quality Technical Advisory Group – raises a potential basis upon which the requisite factual connection between an emissions source and personal injury could be found by a court.
11. Given the limited cost-efficiency of the current Abatement Package scenario (para 9 above), and the foreseeable difficulty in meeting both the most stringent of the AAQ NEPM and PV NEPM standards, consideration must be given to the reasonableness of the overall policy in relation to the stated desired environmental outcome in clause 5 of the Proposed NEPM.

### Sustainability Issues

12. Sustainability issues, including the broader impacts of trioxxygen levels as a contributing factor in anthropogenic climate change, emerged during the consultation process for the 2011 NEPM Review Report (**the Review Report**), which NEPC at that time noted “require[d] further investigation and data collection to assess whether they need to be addressed through the NEPM”.

13. Although the Review Report noted the influence of “sustainability issues” on government approaches to environmental management, it observed that they were not explicitly addressed by the Commonwealth at the time the NEPM was created in 1998:

*perhaps because consideration of sustainability may best be viewed as imperative at a jurisdictional level when developing implementation strategies. (Review Report, p.48)*

14. For the purpose of the Review Report, NEPC agreed that it would assess the impact of NEPM on “sustainability objectives” by considering:
- (i) Its capacity to lead to cleaner air and reductions in health risk;
  - (ii) Natural resource issues (e.g. fuel, wood) and their subsequent impact on air quality; and
  - (iii) Social and economic factors.
15. NEPC made four recommendations relating to future research and emerging issues, which it suggested “should be considered and prioritised” by the EPHC Air Quality Working Group:
- (i) Evaluate the options to assess ozone and secondary particle precursors;
  - (ii) Initiate research into the composition of particles in Australia and associated health impacts;
  - (iii) Initiate health research on the impact of air pollution (in particular, particles) in regional areas; and
  - (iv) Monitor and report coarse particle fraction.
16. These recommendations were not considered in the Impact Statement, because, as that document noted (at page 11) consideration of those recommendations “will occur under projects led by the National Air Quality Technical Advisory Group.”
17. Given the very significant importance of sustainability principles and appropriate government approaches adopting such in environmental management, the Law Council considers that the four recommendations as detailed in paragraph above ought be considered at this time and prioritised to form part of the Proposed NEPM.
18. The AEPLG would welcome the opportunity to discuss the submission further. Please contact Robyn Glindemann, Chair, Australian Environmental and Planning Law Group at [robyn.glindemann@lantegy.com.au](mailto:robyn.glindemann@lantegy.com.au) in the first instance.

Yours sincerely



**Jonathan Smithers**  
**Chief Executive Officer**