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Office of International Activities  
Environmental Protection Agency  
November, 1976

## PREFACE

This is a brief report on the organization and management of environmental activities on the national level in Australia. Reports on Japan, Luxemburg, Belgium, Great Britain, the Netherlands and Spain have already been distributed. Similar reports on other countries will be available soon. These reports, which are background papers for EPA staff involved in international activities, are not for distribution outside the Agency.

Emphasis is on policy and regulatory functions of national environmental agencies. Research and development, often under the auspices of other departments, for example, science and technology, are not covered in these reports.

Source documents for the reports, received under the International Documents Exchange, are available in the EPA Headquarters Library. English summaries of the foreign documents are published in the monthly bulletin "Summaries of Foreign Government Environmental Reports."

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# E N V I R O N M E N T A L   C O N T R O L   I N   A U S T R A L I A

## I.   National Organization for Environmental Control overall governmental structure

The government of the Commonwealth of Australia is a federal system in which the respective jurisdictions of the Commonwealth government in Canberra and the six States are defined by the Commonwealth of Australia Constitution Act of 1900. As a member of the British Commonwealth, Australia pays allegiance to the Queen of England, and the Governor-General appointed by this monarch is, at least officially, the chief Australian executive. The powers of this Office are limited, however, and real executive powers are vested in the Prime Minister, who is chosen by the majority party (or coalition) in the Parliament and who appoints the cabinet from among the members of that body. The Parliament consists of a House of Representatives, whose members are drawn from the States, according to their population, and a Senate, with equal representation from each State. Federal judicial power is vested in the High Court of Australia, in the federal courts created by the Parliament, and in the State courts invested by Parliament with federal jurisdiction.

Under the Constitution, certain powers are specifically assigned to the Commonwealth government and others are held concurrently by both the Commonwealth and State governments with Commonwealth legislation prevailing in those instances where conflicts between Commonwealth and State powers occur. Powers not specifically assigned in the Constitution remain with the States. This is the case with most aspects of environmental protection, especially with respect to regulatory control functions involving the operation of State instrumentalities, municipal matters, industrial enterprises, and the environmental conduct of individuals. The Commonwealth government has powers in those environmental protection matters involving international relations, overseas trade, federal finance, territories, and the

environmental impact of Commonwealth government activities.<sup>1\*</sup>

national environmental agency

On the Commonwealth level, the chief governmental office with environmental responsibilities is the Department of Environment, Housing and Community Development, which was established in December 1975 following the election of a new Liberal-Country Party Government. The new Department was formed by an amalgamation of the Department of Environment and the Department of Urban and Regional Development and of sections of the Department of Tourism and Recreation and the Department of Housing and Construction. The organization and aims of this Department are currently being reviewed by the government.

The House of Representative's Standing Committee on Environment and Conservation is to be reconstituted. The Committee has in the past undertaken a wide range of inquiries including one on land-use pressures in areas of high scenic value near major cities and another into the feasibility of establishing minimum deposits on beverage containers.<sup>2</sup>

state environmental activities

As indicated above, the individual Australian States are constitutionally responsible for the bulk of the environmental control and management activities, and all six States have, in fact, set up environmental ministries or agencies for this purpose;<sup>3</sup> however, only the organizations in New South Wales and Victoria, the most populous States, will be considered here.

In New South Wales, the most populated and industrialized State, principal responsibility for environmental control rests with the State Pollution Control Commission, which was established by statute in 1970 and which in April 1974 became the major environmental agency, assuming most of the functions earlier belonging to

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\*All reference notes will be found beginning on page 31.

Authority, the Fisheries and Wildlife Division, the Land Conservation Council, the National Parks Service, the Port Phillip Authority, the Soil Conservation Authority, and Archaeological and Aboriginal Relics.

The work of these agencies is now assisted by a central coordinating group developed since the Ministry was created. The special responsibilities of this group include environment impact assessments, information and extension, conservation planning, and broad-scale multidisciplinary studies of those regions of Victoria where major development is likely to occur.

Three major regional environmental study programs underway in Victoria have put the State in the forefront of environmental research. The Westernport Bay Regional Study in particular has achieved widespread notice, since it is the first in the world begun before major development took place: elsewhere, such studies have usually been undertaken to try to solve problems caused by injudicious development.

The State Minister for Conservation, advised by the Director of Conservation and his staff, is responsible for promoting the objectives of the Ministry for Conservation Act 1972, which are: a) the protection and preservation of the environment, and b) the proper management and utilization of the land and living aquatic resources of Victoria.

Pollution control in Victoria is the specific responsibility of the three-man Environment Protection Authority and its staff. As the agency responsible for administration of the Environment Protection Act 1970, the E.P.A. has overall management and control of all wastes discharged into the environment--into the air, into water or onto land--plus the control and prevention of pollution and the control of environmental noise and litter. Some of the licensing and enforcement functions provided for in the Act are carried out by other government agencies under the

E.P.A.'s direction. The Authority is advised by a 17-member Environment Protection Council consisting of representatives of other government agencies, municipalities, industry, the universities and the general public.

The E.P.A. is divided into several branches, including: Water Quality, which is responsible for the quality of Victoria's streams and waterways; Air Quality, which administers those licensing provisions of the Environment Protection Act applying to air emissions and also monitors ambient air quality throughout Victoria; Noise Control, which formulates policies and drafts regulations, carries out noise surveys, either general or specific, and conducts research on particular environmental noise problems; Land Waste Management, which is concerned primarily with the prevention of pollution caused by the deposit of waste material, either solid or liquid, onto land; and Investigations, which polices licensed discharges, detects unlicensed discharges and detects pollution generally.

#### federal-state relationships

In order to coordinate State and Commonwealth efforts in the environmental area, a number of councils comprised of State and Commonwealth representatives at the ministerial level have been established. One of the most prominent of these is the Australian Environment Council, set up in 1972 for the purpose of providing consultation and coordination between the Commonwealth and State governments on appropriate environmental matters. Funded jointly by the Commonwealth and State governments and supported by a standing committee of State and Commonwealth officers, the Council is empowered to set up ad hoc working groups to examine within a specified period specific tasks assigned to them. An example of this is the working group established to investigate the question of a uniform deposit scheme for beverage containers. The secretariat for the Australian Environment Council as well as for several other similar councils, is provided by the Department of

Environment, Housing and Community Development.

Another Commonwealth-State body with important environmental functions is the National Health and Medical Research Council, which is served by a large number of advisory committees and subcommittees, many of which are concerned with aspects of environmental health.<sup>6</sup> The Council has endorsed draft model asbestos regulations and recommended a national design for control of asbestos emissions into the atmosphere from industrial sources, has made recommendations regarding exhaust emissions from new motor vehicles, and has recommended that measures be adopted to ensure that emissions of lead from motor vehicles are not increased.<sup>7</sup>

Other Commonwealth-State ministerial councils are: the Australian Water Resources Council, whose purpose is to provide a comprehensive assessment on a continuing basis of Australia's water resources and the extension of measurement and research so that future planning can be carried out on a sound scientific basis; the Australian Transport Advisory Council, which has been involved in efforts aimed at the adoption of uniform motor vehicle exhaust control standards; the Council of Nature Conservation Ministers; the Agricultural Council; and the Fisheries Council.<sup>8</sup>

In addition, there has been Commonwealth-State cooperation in the development of regional growth centers and in efforts to relocate certain industries away from major industrial areas, as well as in the establishment of a national plan to deal with oil spillage from both ships and land-based sources.<sup>9</sup>

#### local governments and pollution control

Local governments as found in districts, municipalities, shires, towns and cities are usually run by elected local councils. Created and governed by state legislation and usually headed by a mayor or shire president, such councils may pass or amend legislation within areas allowed by State governments and are



rimarily concerned with matters such as road construction and maintenance, building regulations, garbage collection and disposal, sanitation, and noxious weeds. In New South Wales, local councils are assigned functions under various environmental legislation, including the Clean Air Act, the Clean Waters Act, the Noxious Trades Act, and the Public Health Act.<sup>10</sup> The Clean Waters Act, for example, gives local councils the authority to take action to remove pollutants from waters and further provides that State authorities may require local councils to take such action. The Clean Air Act gives to local authorities the control of those less significant polluting installations not required to obtain licenses from the State Pollution Control Commission.

In addition to other environmentally related functions, local councils in Victoria have specific responsibilities under the new Environment Protection (Noise Control) Act 1975. Current regulations under the Act are concerned with domestic noise and give additional strength to local council by-laws relating to noise.

## II. Environmental Laws legislative system

The Australian national legislative body is the Federal Parliament, consisting of the House of Representatives and the Senate, both elected by universal adult franchise. Although legislation, with some exceptions, may originate in either the House or Senate, it is in fact almost exclusively developed by a minister, his department and the Cabinet and submitted to the legislature only for discussion and amendment. Although the Constitution allows the Governor-General, as representative of the Queen, to reject legislation passed by the Parliament, modern political developments within Australia have practically abolished this power.

State legislative systems parallel, for the most part, that of the Commonwealth Government. Each State has a popularly elected lower house called either the Legislative Assembly or House of Assembly, and, with the exception of Queensland, which has a unicameral legislature, each state has an upper house called the Legislative Council.

Much legislation on both the Federal and State levels is loosely drafted, leaving to the ministries the task of filling in important details through "delegated legislation" in the form of regulations. This applies, for example, to both the New South Wales Clean Waters Act and the Clean Air Act, both of which are supplemented by extensive regulations. Although subject to some parliamentary review, this practice of delegated legislation has the effect of permitting the amendment and extension of controls within broad guidelines set by Parliament.

In Victoria, however, legislation tends to be more tightly drafted, with all significant details embodied in the act. Even regulations are coming increasingly under parliamentary control; for instance, the new Environment Protection (Noise Control) Act 1975 requires that proposed regulations under the Act be tabled in both Houses of Parliament for 14 sitting days.

## highlights of environmental laws

### general

Since legislative powers in areas affecting the environment are constitutionally granted to the States, most significant regulation in the environmental sphere is contained in State legislation. There are, for example, no Commonwealth laws dealing with air pollution, and those dealing with water pollution concern chiefly those coastal waters over which the Commonwealth Government rather than the State Governments have control.

However, a number of Acts of Parliament have been passed which deal with the environment.

The Environment Protection (Impact of Proposals) Act 1974 requires submission of environmental impact statements for proposals which are likely to have significant impact and which involve any arm of the Commonwealth Government. The Act also contains extensive provisions for public participation in the decision-making process.

Several pieces of Commonwealth legislation provide for national funding of State environmental activities. Under the State Grants (Nature Conservation) Act 1974 funds are provided to the States to acquire and reserve land for national parks and nature reserves. \$1.8m was appropriated in 1975-76 for this purpose.

The States Grants (Soil Conservation) Act 1974 provides \$2.5m for the period ending June 1976 for an interim program of financial assistance to the States for soil conservation, while the States Grants (Water Resources Assessment) Act 1974 provides for the payment of \$15.9m by June 1976 to assist the States in assessing both water quantity and quality.

The National Parks and Wildlife Conservation Act 1975 establishes a professional service to enable the Commonwealth Government to bring a coordinated approach to the management of nature conservation resources in the areas under its direct control.

The Great Barrier Reef Marine Park Act 1975 provides for the establishment of an authority to examine the entire Barrier Reef region, to determine which sections should be proclaimed as part of the Great Barrier Reef Marine Park and decide appropriate uses for its various sections. The Marine Park will be managed by the National Parks and Wildlife Service.

The Australian Heritage Commission Act 1975 provides for the establishment of a Commission to advise the Government on action to conserve, improve and present the National Estate.

commonwealth water legislation

The Beaches, Fishing Grounds and Sea Routes Protection Act of 1932, most recently amended in 1966, provides that no garbage, rubbish, ashes or organic refuse may be discharged into the sea from a vessel in any prohibited area in Australian waters, except with the permission in writing of the Director of the Quarantine Office. Regulations made under the act specify those areas in which vessels may be sunk and in which garbage and other wastes may be discharged from ships.<sup>11</sup>

Further protection for waters is provided for by the Navigation Act No. 2, 1970, which makes provisions for preventing and dealing with the effects of pollution by oil of the Australian coast, coastal waters, and reefs.<sup>12</sup> Under this act, the Minister for Transport is given the power to require the owner of a ship to take action to avert or to clean up pollution at his own expense, and, if necessary, to have the Government take such steps at the owner's expense. Provisions dealing with pollution of the sea by oil are also contained in the Petroleum (Submerged Lands) Act of 1967, which empowers the Governor-General to make regulations concerning, among other things, the prevention of pollution resulting from offshore drilling, as well as in the Pollution of the Sea by Oil Act of 1970 and its pursuant regulations, which give effect in Australia to the International Convention for the

vention of Pollution of the Sea by Oil, 1954.<sup>13</sup>

The Australian Institute of Marine Science Act 1972-73 establishes the Australian Institute of Marine Science. The functions of the Institute, which is the responsibility of the Minister for Science, are to carry out investigations in the field of marine science (including the effects of pollution) and to publish their findings.

To provide comprehensive legislation that draws together, as far as practicable, all the Commonwealth Government responsibilities that exist to protect the marine environment, a new bill, the Environment Protection (Marine) Bill, has been prepared. The Bill, which is expected to be presented to the Parliament during the latter part of 1976, is intended to give the Commonwealth Government power to act to prevent and control the major man-made sources of pollution, especially dumping or discharge from ships and to implement a number of international conventions relating to oil spillage and other toxic chemicals.

national legislation: other areas

Commonwealth Government level provisions for the control of noise pollution are contained in the regulations made pursuant to the Air Navigation Act of 1920. These stipulate noise abatement procedures to be followed by aircraft using major Australian airports.<sup>14</sup>

In addition to those laws dealing directly with protection of the environment, there is other legislation only marginally dealing with the environment. For example, the National Health Act of 1953 authorizes research and the establishment of research facilities which would be utilized, among other things, for research into matters dealing with the environment and pollution.<sup>15</sup>

state environmental legislation: general

All Australian States have passed major environmental legislation. In some states, such as Tasmania, broad environmental areas are covered in a comprehensive

environmental law. In others, such as New South Wales and Queensland, there is a rate legislation covering air and water pollution. In addition, the various States have also enacted laws such as the New South Wales State Pollution Control Commission Act of 1970, which creates the mechanism for coordinating the various environmental programs.<sup>16</sup> Although there are some differences in approach found in the legislation of the individual States, some indication of the nature of Australian State environmental legislation can be obtained by examining the laws of the most populated and industrialized States, New South Wales and Victoria.

N.S.W. environmental legislation: water

The chief New South Wales water pollution legislation is the Clean Waters Act of 1970,<sup>17</sup> which provides for the classification of State waters, the prescription of standards in relation to these classifications, the licensing of drains discharging pollutants into classified waters, and the prohibition from polluting waters other than in accordance with conditions contained in a license. The Regulations provide that where pollutants are being discharged from premises the occupants may be ordered to install apparatus or equipment to control or prevent water pollution. Circumstances are also specified under which any statutory or local authority may be directed to remove, disperse, destroy or mitigate pollution caused by any person. Furthermore, the Minister for Planning and Environment, who administers the Act, may, in emergency circumstances, authorize or prohibit the discharge of pollutants into any waters and may impose conditions on such discharges. The Clean Waters Act supersedes or overrides all previous New South Wales legislation dealing with water pollution, with the exception of the Prevention of Oil Pollution of Navigable Waters Act of 1960, which covers the control of oil pollution from vessels and from land installations located within navigable waters of New South Wales.<sup>18</sup>

N.S.W. legislation: air

The New South Wales Clean Air Act of 1961,<sup>19</sup> as most recently amended in 1974

provides for the licensing of major polluting premises, such as chemical manufacturing works and oil refineries, scheduled in the appendix to the Act. Fees may be charged for licenses, and conditions may be imposed on licenses with regard to pollution control equipment, fuel burning equipment and industrial facilities. Approval is required for all new industrial plants. It is also stipulated that certain work within scheduled premises may not be carried out without approval, that the occupiers may be required to carry out work as directed, that emission standards for air impurities may be prescribed, and that where such standards are not prescribed, the "best practicable means" are to be used to prevent or minimize pollution. The Minister for Planning and Environment may prohibit the use of fuel, fuel burning equipment or industrial plants in certain areas and may order the cessation of any operation which is, or is likely to be, injurious to public health or to cause discomfort or inconvenience to persons. The Minister may also issue orders to prohibit burning by open fire. Provisions are also made for control of air pollution from premises other than those scheduled in the Act itself.

As amended in 1970, the Clean Air Act now prohibits the sale or use of motor vehicles that emit excessive air impurities and permits the making of regulations requiring that motor vehicles be fitted with anti-pollution devices; it also prohibits the sale and distribution of motor vehicle fuels of specified types.<sup>20</sup>

#### N.S.W. legislation: noise

The New South Wales Noise Control Act, 1975, which is administered by the State Pollution Control Commission, provides a means of preventing, minimizing and abating "community" noise, that is, noise that affects members of the community outside factories and occupational situations. Noise in factories and other occupational situations is covered by other legislation.

The Act's operation is based on five fundamental controls: the licensing of premises on which large volumes of noise are likely to be created; the prohibition

of the sale of articles which emit noise in excess of prescribed standards; the issue of noise control notices by the State Pollution Control Commission and local authorities to limit the level of noise being emitted from premises or the times at which noisy activities may be conducted; the issue by the courts of orders to require noise to be abated; and verbal directions to be issued by the police and other authorized persons to require the immediate cessation of offensive noise.

#### N.S.W. legislation: other areas

New South Wales legislation covering areas other than water and air pollution includes: the Radioactive Substances Act of 1957, which provides for regulating the disposal of radioactive substances and for ensuring the safe disposal of radioactive waste products;<sup>21</sup> the Pest Destroyers Act of 1945, which regulates the sale of and the prevention of the adulteration of pesticides;<sup>22</sup> and the Waste Disposal Act of 1970, which regulates the disposal of wastes in the Metropolitan Waste Disposal Region (Sydney).<sup>23</sup>

#### environmental legislation in Victoria

Victoria's environmental legislation is of two types: wide-ranging "overview" provisions such as the Ministry for Conservation Act 1972 and the Environment Protection Act 1970, together with a number of acts dealing with specific aspects of environmental management.

The Environment Protection Act 1970 covers air, water, land and noise pollution. The Act introduced to Australia a pollution control approach based on an initial assessment of the air or water quality or ambient noise levels required to meet the general needs of the community as a whole.

The levels are to be achieved through the declaration of a State Environment Protection Policy for each segment of the environment. The first of these policies, for the waters of Port Phillip Bay, was proclaimed on April 10, 1975. This policy divides the Bay up into a number of segments based on the differing



beneficial uses of water - for instance, bathing, fish conservation, industrial water supply and navigation, and stipulates appropriate water quality criteria to maintain these uses. The policy also sets out an attainment program and a target date by which time it is anticipated adequate water quality will be achieved. Community input to policies at the drafting stage ensures that the policies represent the views of as wide a section of the public as possible.

A number of other policies are in an advanced stage of preparation. It is the Authority's intention that all sections of Victoria will ultimately be covered by Environment Protection Policies, so that in addition to policies for bays, rivers and lakes, there will also be policies for air-sheds setting out desired air quality criteria, and noise policies laying down maximum noise levels for different areas at various periods during the day or night.

There are several acts dealing with specific aspects of environmental management in Victoria.

The Port Phillip Authority Act 1966 gives that Authority responsibility for the well-being and maintenance of Victoria's most important bay.

The updated and expanded Fisheries Act 1975 makes important changes in the management of commercial fisheries in Victoria.

The new Wildlife Act 1975, which replaces the essentially prohibitive Game Act 1958, provides for the present needs of wildlife conservation and a flexible framework to cater for future needs.

The National Parks Act 1975 allows the National Parks Service to manage other types of parks to meet differing community needs.

The Soil Conservation and Land Utilization Act 1958 and associated legislation give responsibility to the Soil Conservation Authority to achieve the best possible use of the State's land resources and to ensure sustained yields of high quality water from Victoria's catchment areas.

The Land Conservation Act 1970 replaces the Land Utilization Advisory Council established in 1950 under the Soil Conservation and Land Utilization Act. It enables the Land Conservation Council to carry out investigations and make recommendations to the Minister for Conservation on the balanced use of public land throughout the State.

sources for text of laws and ordinances

Commonwealth Government legislation is published in Commonwealth Acts, while State legislation appears in the law compilations of the individual Australian States. Commonwealth regulations are initially published in the Commonwealth of Australia Gazette and later collected in Commonwealth Statutory Rules. State regulations are published in the individual State gazettes.

## II. Standards

### water standards

All Australian States have legal provisions for the setting of water standards. Although individual States are under no constraint to adopt particular standards, there have been efforts to ensure that standards of different States will be based on essentially the same criteria. The Australian Water Resources Council has been especially instrumental in coordinating efforts in this area and in developing national-level guidelines on which States are encouraged to base their own standards.<sup>24</sup>

In New South Wales, water standards are contained in regulations issued pursuant to the Clean Waters Act of 1970.<sup>25</sup> These regulations set up a six-level classification of waters, ranging from Specially Protected Waters, into which no wastes are to be discharged, to Class 0 (Ocean Outfall Waters), which are less restricted with regard to effluents discharged into them. For each class of waters there are general standards, which take into account factors such as the presence of organic wastes, grease, oil, solids and discoloration harmful to aquatic life, and the pH value of the wastes. In addition, for certain classes of waters there is a list of restricted substances which may not be present in effluents in excess of the amount listed in the schedule appended to the regulations. These include: arsenic (0.05 mg/l); barium (1.0 mg/l); boron (1.0 mg/l); cadmium (0.01 mg/l); chloride (250 mg/l); hexavalent chromium (0.05 mg/l); copper (1.0 mg/l); cyanide (0.05 mg/l); fluoride (1.5 mg/l); filtrable iron (0.3 mg/l); lead (0.05 mg/l); filtrable manganese (0.05 mg/l); mercury (0.001 mg/l); methylene blue active substances (0.5 mg/l); nitrogen in ammonia (0.5 mg/l) and in nitrates plus nitrites (10.0 mg/l); phenolic compounds (0.001 mg/l); selenium (0.01 mg/l);

silver (0.05 mg/l); sulfate (250 mg/l); uranyl ion (5.0 mg/l); and zinc (5.0 mg/l). Also listed are effluent levels for a group of pesticides and weedkillers, as well as limitations on the gross alpha and beta activity of radioactive substances.

The regulations also prescribe the methods by which effluents are to be analyzed for the presence of these restricted substances as well as for bacteria, oil and grease and for the determination of the pH level.

#### air standards

Binding standards for dealing with air pollution are issued only by State authorities; however, national guidelines for emission standards for a variety of substances, including acid gases, antimony, arsenic, cadmium, fluorine and its compounds, hydrogen sulfide, lead, mercury, nickel, nitric acid, nitrogen oxides, sulfuric acid and sulfur trioxide in effluent gas from stationary sources, have been developed by the Commonwealth-State National Health and Medical Research Council. The Council has also issued recommendations on exhaust emissions from new motor vehicles, on the lead content of gasoline, and on asbestos emissions from industrial sources. National guidelines of this nature also exist for smoke and soot.<sup>26</sup>

Emission standards for a range of major pollutants have been established in New South Wales, Queensland and Victoria; however, none of the States has established ambient air quality standards.

Emission standards for New South Wales cover 16 major pollutants. Expressed mostly in grams per cubic foot, these standards limit the rate at which pollutants can be emitted but not their total quantity.<sup>27</sup> Emission standards for specific pollutants in effluent air or gas from stationary sources cover: acid gases, antimony, arsenic, cadmium, chlorine, fluorine, fluorine-inorganic compounds, hydrogen chloride, hydrofluoric acid, hydrogen sulfide, lead, mercury, nitric acid, nitrogen oxides, sulfuric acid, and sulfur trioxide

For some substances, standards differ depending on whether new or old installations are involved. In addition to the above, standards have also been set for particulate matter in effluent air from, among other things, fuel combustion, incineration of refuse and from metallurgical processes. Standards for visible emissions of smoke from stationary sources as well as for soot from boilers or furnaces burning oil or gas have also been laid down.<sup>28</sup>

The New South Wales Clean Air Act also allows for the regulation of the height of chimneys and smoke stacks, and this power has been used to order the construction of taller stacks.<sup>29</sup>

Where standards for particular pollutants have not been specified in regulations, the New South Wales Clean Air Act states that the occupier of either scheduled or unscheduled premises "shall conduct any trade, industry or process, or operate any fuel burning equipment or industrial plant, in or on such premises by such practicable means as may be necessary to prevent or minimize air pollution." This general standard is known as the "best practicable means" standard.<sup>30</sup>

With regard to emissions from mobile sources, the National Health and Medical Research Council has recommended that exhaust emissions from new motor vehicles, manufactured on or after January 1, 1976, should not exceed the following levels when tested in accordance with the 1973 U.S. Federal Test Cycle CVS-C and the 1973 U.S. Test Methods:

hydrocarbons: 2.1 grams per vehicle kilometer;  
carbon monoxide: 2.42 grams per vehicle kilometer;  
oxides of nitrogen: 1.9 grams per vehicle kilometer.<sup>31</sup>

#### IV. Enforcement Procedures

##### overall court system

The judicial power of the Australian Commonwealth is vested in the High Court of Australia and other federal courts such as the Commonwealth Industrial Court and the Commonwealth Bankruptcy Court. State courts may also be invested to deal with offenses in breach of federal statutes.

The High Court has original jurisdiction in such matters as treaties affecting representatives of other countries, disputes between States or citizens of different States, and matters involving the Constitution or its interpretation, while its appellate jurisdiction applies to appeals arising from decisions made by the High Court in its capacity as a court of original jurisdiction or from other federal courts or State courts exercising federal jurisdiction.

State judicial systems vary somewhat from State to State. In general, however, States have a superior court known as the Supreme Court, which has a broad original and appellate jurisdiction. In contrast to criminal cases, which are always heard before a judge and jury, civil cases in such courts are usually heard by a single judge without jury. Appeal from decisions is to the Full Court of the Supreme Court, which is made up of three judges. Inferior courts generally fall into two groups: the Courts of Petty Session, which, presided over by a magistrate acting without jury, handle the bulk of minor criminal offenses, and the inferior civil courts, which are restricted with regard to the kinds of cases they may hear as well as to the amount of money which may be claimed before them.

##### enforcement mechanisms: New South Wales

The air, water and environmental protection acts of the various Australian States detail the mechanisms by which environmental damage is to be brought under control.

The basic enforcement device for the control of water pollution in New South Wales is the licensing system provided for in the Clean Waters Act of 1970 and its pursuant regulations.<sup>32</sup> This legislation stipulates that licenses must be obtained from the State Pollution Control Commission for drains (including any drain, line of pipes, sewers, stormwater channel, or artificial watercourse) through which discharges are made into waters classified under the Act. In order for a license application to be approved, effluents must meet the standards laid down in the regulations, as well as any other conditions imposed by the SPCC. Such licenses are issued for one year periods and subject to revocation or the imposition of new conditions. License fees of up to \$3,000 may be charged. The amount of the fee depends on the type of drain and amount of pollutants likely to be discharged on a daily basis. Provisions are made for appeals against conditions placed on licenses, as well as against classification of waters.

Permission from the SPCC is required for the installation, construction or modification of any apparatus or equipment for the discharge of effluents into any waters.

In emergency situations, the New South Wales Minister of Environment and Planning is authorized to allow the discharge of pollutants ordinarily forbidden by the provisions of the Act or, conversely, to forbid the discharge of pollutants or place conditions upon their discharge. Failure to comply with the latter conditions is considered an offense. In cases where waters are polluted, local authorities or statutory authorities (water boards, electric authorities, etc.) may direct the polluter to act to remove or mitigate the pollution and may recover all costs and expenses incurred by the authority in connection with the removal of the pollution. Such authorities may be ordered to act by the State Pollution Control Commission.<sup>33</sup>

To facilitate enforcement activities, the Clean Waters Act authorizes the State Pollution Control Commission to require the occupier of any premises to furnish information on the manufacturing processes carried on there or on discharges likely to be issued. Authorized officers may (1) enter premises in which trade or industrial activities are being performed and from which it is believed that pollutants may be discharged in order to examine the apparatus used in this connection; (2) take and remove samples of any wastes that are being or are likely to be discharged from the premises; (3) test those samples to ascertain if they comply to conditions laid down in the license; (4) take any photographs necessary; and (5) request in writing the submission of books, plans, maps or documents relating to discharges.<sup>34</sup>

Proceedings for an offense against the act or its regulations may be held before a Court of Petty Sessions presided over by a magistrate sitting alone or before the State Supreme Court sitting without jury.

The New South Wales Clean Air Act provides for a licensing system under which the occupier of scheduled premises must hold a license for the operation of such premises.<sup>35</sup> Scheduled under the act are installations such as: cement works; chemical works; coke works; ferrous and non-ferrous metal works; gas works; grinding and milling works; oil refineries; pre-mix bitumen plants; primary metallurgical works; scrap metal recovery works; and those premises on which there are boilers, incinerators or furnaces consuming or capable of consuming either alone or in aggregate more than one ton of combustible material per hour. Licenses are valid for a one year period, and conditions placed upon them may, among other things, require the holder to install and operate control equipment; to repair, alter or replace control equipment; to erect chimneys or alter their height; and may prohibit the licensee from altering or replacing control equipment without permission of the State Pollution Control Commission. Fees ranging up to \$3,000 may be charged for



licenses, depending on such factors as the class of the scheduled premise, its location and the number of employees.

In the case of unscheduled premises, which do not require licenses from the State Pollution Control Commission, local authorities may require operators to install and operate control equipment, to repair such equipment or to erect chimneys or alter their height.

In order to gather information necessary for enforcing the law, the State Pollution Control Commission (in the case of scheduled premises) or the local authorities (in the case of unscheduled premises) may require the submission of information on fuel burning equipment, on industrial processes, or on fuels or wastes being burned on the premises. Authorized officers may also enter premises to examine and inspect any pollution control equipment, fuel burning equipment or industrial facility and may make those examinations or tests considered necessary to ascertain if conditions as laid down in the license are being adhered to.

The Act also empowers the Minister of Environment and Planning to issue orders prohibiting the use of specific fuels, fuel burning equipment or industrial facilities. Furthermore, when the Air Pollution Advisory Committee of the State Pollution Control Commission reports that the emission of air impurities from any premises is or may be injurious to public health or cause discomfort or inconvenience to persons, this Minister may direct the occupier of the premises to cease the offending activity for a specified period of time.

Proceedings for offenses against the New South Wales Clean Air Act are to be held in a Court of Petty Sessions before a magistrate or two justices without jury or the Supreme Court in its summary jurisdiction.

The New South Wales Noise Control Act provides for a licensing system under which the occupier of scheduled premises, i.e. premises from which a large volume of noise may be emitted because of the activities conducted therein, must

hold a license in respect of those premises. Licenses are valid for a one-year period and conditions placed upon them may, among other things, set maximum permissible noise levels. License fees of up to \$3,000 may be charged. The State Pollution Control Commission may issue notices to require control equipment, noise barriers or equipment to be installed or erected on scheduled premises and may prohibit specified activities from being carried out on premises or articles being used or operated thereon. Where it sets maximum noise levels for specific premises, the State Pollution Control Commission may nominate any point either inside or outside the premises where it shall measure the noise being emitted.

In the case of unscheduled premises, local authorities may issue notices to require noise control equipment, noise barriers or other work to be installed, erected or carried out. The local authorities do not have the power to fix noise levels and they must show that the noise emitted from premises constitutes offensive noise before an occupier of premises may be convicted of an offense under the Act. Local authorities and the State Pollution Control Commission may also issue notices to restrict the times during which trades, industries and processes may be carried out on unscheduled premises. The Maritime Services Board has similar powers in relation to the use and operation of vessels in navigable waters.

Maximum permissible noise levels may be set by regulation for any class of article, and it is an offense for any person to sell an article which emits noise in excess of the set level. Where an article is required to be fitted with noise control equipment it is an offense to sell an article which is not so fitted.

The Act provides that the occupier of any premises may make a complaint to a court alleging that his occupation of the premises is affected by offensive noise, and the Court may summon the person responsible to appear before it. The Court may make an order directing the noise to be abated or prohibiting its recurrence, and it is an offense to disobey such an order.

Noise abatement orders may be issued by the police and authorized officers of the State Pollution Control Commission and local authorities and are intended to enable prompt effective action to be taken in relation to noisy parties and similar activities. The directions may be issued verbally to the occupier of premises or any person contributing to the making of noise. They remain in force for six hours, and it is an offense to continue offensive noise after a direction is issued.

enforcement mechanisms: Victoria

As mentioned above, the Victoria Environment Protection Act 1970 provides for the setting of a State Environment Protection Policy for each segment of the environment (see page 14). Once such a policy has set out a rationale for pollution control, taking into consideration the high cost to the community of a clean environment, the Act enables pollution to be controlled in three ways: (1) by taking legal proceedings against those who pollute the environment either willfully or through negligence; (2) by regulatory control, for example, through regulations restricting the manufacture, sale or use of equipment or materials which cause pollution; and (3) by limiting the discharge of waste by means of a licensing system.

In Victoria, any person who discharges, emits or deposits waste into the environment must apply for and be granted a license to do so unless the waste has been specifically exempted. This obligation applies to State and local government agencies, as well as to industry and commerce generally and to private persons. The Environment Protection Act 1970 defines waste as including: "Any matter prescribed to be waste and any matter, whether liquid, solid, gaseous or radioactive which is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration of the environment." Licenses are not necessary, however, if wastes are discharged directly into a sewage collection and treatment system.

Licenses are not automatically granted. License applications are assessed

according to the effect the proposed discharge would have on the receiving environment. Applications may be refused if the discharge would be too damaging, or it may be granted with conditions governing the characteristics of the discharge, for example, its volume, composition and temperature or the period during which a discharge may be made. The license may also contain a requirement for the holder to monitor the discharge. License conditions remain in force in perpetuity unless the license is amended or revoked. Breaches of conditions result in heavy penalties.

An applicant or licensee can appeal against licensing decisions. A dissatisfied applicant or licensee can appeal within 30 days to the three-man Environment Protection Appeal Board, which is completely independent of the Environment Protection Authority. Final recourse on matters of law is to the Supreme Court.

Licenses, if granted, cost from \$5 to \$5,000 a year; a fee schedule can be obtained from the Environment Protection Authority, Victoria, or its delegated agencies. Money from licenses goes into the Consolidated Fund of the State of Victoria, not to the Environment Protection Authority. Revenue from licensing is equivalent to about a quarter of the costs of the Environment Protection Authority's operations.

Anyone affected by a waste discharge has the right of appeal within 30 days against the granting, amendment or removal of a suspension of a waste discharge license.

#### penalties

In all Australian States, penalties can be incurred for offenses against the provisions of environmental legislation. In New South Wales, penalties for offenses against the Clean Waters Act may range as high as \$10,000 for an initial offense with a further penalty as high as \$5,000 for each day the offense continues. Penalties for offenses against regulations made under the Act may run as high as \$5,000 plus \$2,000 for each day the offense continues.<sup>36</sup> Under the New South Wales

Clean Air Act, penalties are not to exceed \$10,000, with an additional penalty of \$2,000 for each day the offense continues. Penalties against the Clean Air Regulations may not exceed \$5,000 initially, with an additional \$1,000 per day fine for continuing offenses.<sup>37</sup> The maximum penalties under the Noise Control Act are \$5,000 with daily penalties of \$1,000.

In Victoria, penalties up to \$5,000 for a single offense and \$2,000 a day for a continuing offense can be imposed for causing pollution, and penalties of up to \$500 for a first offense, \$5,000 for a subsequent offense and \$2,000 a day for a continuing offense can be imposed for breaches of license conditions or an unlicensed discharge.<sup>38</sup>

V. Interrelationships Between Government and Industry  
major industries in Australia

The mineral industry has always played an important part in the Australian economy, and discoveries over the last twenty years of a large number of major deposits of minerals such as coal, bauxite, iron ore, nickel, manganese, oil and natural gas have contributed to the upsurge experienced by Australian manufacturing industries during that same period. Manufacturing, concentrated chiefly in New South Wales and Victoria, now accounts for more than 28 percent of the gross national product and employs more than a quarter of the work force (1.3 million workers), better than half of which are engaged in metal working and the production of metal products. The oil refining industry has increased significantly since 1950, leading to a corresponding growth in production of industrial and heavy chemical products. Automobile manufacturing plays a particularly important role in the economy, and shipbuilding and production of plastics and construction materials are also of significance.

industrial monitoring systems

Under the Victoria Environment Protection Act the holder of a license may be compelled at his own expense to conduct a monitoring program designed to provide the Environment Protection Authority or concerned agencies with information concerning the characteristics, volume and effects of the discharge, emission or deposit proceeding from an industrial plant as well as on the characteristics of the receiving environment. The data arising from this monitoring would then be submitted to the Authority at times specified in the license.<sup>39</sup> In addition, extensive monitoring is carried out by the Authority itself.<sup>40</sup> New South Wales also has legal provisions for forcing companies to conduct monitoring of their discharges. Provisions are made for monitoring by State officials as well, and industry is expected to make facilities available for inspection by such authorities.<sup>41</sup>

### policy on who pays cost of cleanup

The principle that polluting industries must pay the cost of pollution abatement and control is embodied in provisions of the environmental legislation of several States. Under the provisions of both the New South Wales Clean Air Act and Clean Waters Act, for example, offending industries are expected to install and operate appropriate pollution control equipment. In this regard, industry is expected to have spent \$80 million on air pollution control equipment for the period 1963-1975 for scheduled premises in New South Wales, and B.H.P., Australia's largest steel company, has estimated its expenses at its four major plants throughout the country at \$44,740,000 for the 15-year period 1960-1975.<sup>42</sup>

License fees provided for in the environmental legislation of Victoria, Queensland and New South Wales serve to encourage industries to reduce polluting activities, since these are based on the amount and type of pollutants emitted. In New South Wales such fees have helped to pay a substantial portion of the budget of the pollution controlling bodies.<sup>43</sup>

### cooperation between industry and government

Cooperation between industry and Government has played an important part in environmental protection efforts in Australia. In New South Wales, industry and the State air pollution control authorities have worked together in solving pollution control problems. For example, the determination of what constitutes "best practicable means" in cases where standards for particular pollutants have not been formally established is usually made by negotiations between the government and the company concerned, whereby the economic feasibility of possible solutions is given particular consideration.<sup>44</sup> In Western Australia cooperation between government and industry is particularly significant, the Environmental Protection Authority preferring policy of case-by-case consideration of environmental problems to one in which industries are forced to adhere to "rigid guidelines."<sup>45</sup>

In all States, industrial representatives serve on advisory boards instrumental in developing pollution control policies. Of the twelve members of the Air Pollution Advisory Committee established by the New South Wales Clean Air Act, one is to be a representative of the Chamber of Manufacturers and one is to represent the Metal Trades Employers' Association. Similarly, the fifteen-member Clean Waters Advisory Committee established under the Clean Waters Act is to have one representative from primary industry and one from secondary industry. In addition, the New South Wales Pollution Control Commission has representatives from primary industry, secondary industry and commerce among its eleven members.

In Victoria the 17-member Environment Protection Council, which is advisory to the Environment Protection Authority, includes representatives from industry, local councils, the universities, other government departments, the Trades Hall and the general public.



## Reference Notes

Numbers in brackets following entries are the identification numbers assigned to documents which have been abstracted for the Foreign Exchange Documents Program of the E.P.A. Office of International Activities. Copies of documents are filed under these numbers at the E.P.A. Headquarters Library in Washington, D.C.

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