

14 December 2015

Scheduled Premises Regulations Review
c/ Policy and Regulation Unit
EPA Victoria
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By email: scheduled.premises@epa.vic.gov.au

Scheduled Premises Review – response to Discussion Paper

Thank you for the opportunity to respond to the Scheduled Premises Regulations Review Discussion Paper dated November 2015.

We offer the following brief submissions:

1. We consider that any proposal to amend the Scheduled Premises Regulations is premature given the current Inquiry into Environmental Protection in Victoria.

While we understand that this review is being driven by the impending sunseting of the regulations, and while we agree that regular regulatory activities should not be suspended pending the Review, the system of designating scheduled premises is a central element of the current regulatory regime and changes ought to be deferred pending the outcome of the Inquiry. At the very least, we strongly recommend that any revision of the scheduled premises regulations clearly proceeds on the basis that the review may need to be revisited once the Ministerial Advisory Committee delivers its report.

2. We note with concern the continuing significant reduction in the number of scheduled premises in Victoria. We recognise that this may in part reflect the transformation of the Victorian economy and the change in structure and composition of Victorian industry, however these changes should not be used to deflect greater scrutiny of the decline in the number of scheduled premises in Victoria. The decline in the number of scheduled premises may in part be explained by the transformation of the economy and the move away from polluting industries, however it may also reflect a failure of the regulatory system to keep up with the emergence of new economic activity (such as some waste disposal and recycling activities) or to keep pace with community expectations in relation to certain industries (such as intensive agriculture).

While there is no ideal threshold or number of sites or businesses when it comes to designating scheduled premises, we believe that there does need to be greater clarity as to the criteria that will be used to determine whether premises ought to be designated as scheduled premises. It is not clear, for instance, what the common characteristics are of the activities listed in the discussion paper such as to justify their cover under the regulations and the exclusion of other activities. Without greater clarity with

respect to these criteria the process lacks transparency and credibility and risks falling behind community expectations when it comes to the EPA being able to exercise regulatory oversight. We strongly recommend that the EPA and government develop and publish generally applicable criteria to guide and explain the regulatory coverage. In a similar vein, while we do not oppose seeking community views as to which industries or types of operations ought to be covered (and recognise that some people will want to engage in relation to a particular industry of concern), this approach seems ad hoc and risks missing industries and premises that are not well known or understood but ought to be covered.

Finally, we believe that there are several questions that we believe should be addressed in developing the draft regulations and the Regulatory Impact Statement:

- a. What are the reasons for the decline in the number of scheduled premises? To be meaningful this needs to be explained in terms of both changes in business activities but also changes in the scheduled premises regulations themselves in cases where the business activity has continued but regulation has been withdrawn.
 - b. How does the coverage of the Victorian regulatory system compare with that in other states such as NSW and Queensland?
3. The Discussion Paper raises the possibility of site-based Tiered Licensing and license fees set in proportion to the regulatory effort required of the EPA. We are cautiously supportive of this approach – any regulatory innovation that delivers the same or greater returns for less cost to regulator and industry is a good thing.

However we consider that these site-level, risk-based approaches to regulation should not be considered in isolation from the risk-based assessment that it seems already informs whether premises ought to be scheduled premises in the first place. These are separate questions but do need to be considered together and an appropriate balance struck between bringing premises within the regulatory net in the first place and then providing flexibility informed by risk assessments at the site level. It's not clear from the discussion paper that this has been done and in fact it seems that an already greatly diminished coverage under the regulatory regime will be further reduced by justifying further lack of regulatory scrutiny using a risk-based approach at the site level.

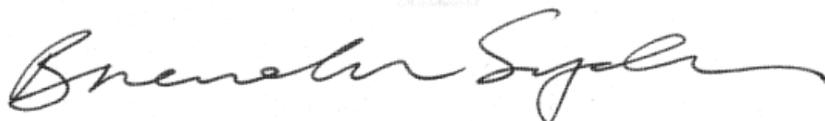
In our view an integrated approach to these two levels of regulatory application necessitates consideration of a significantly expanded number of premises being captured under the scheduled premises regulations on the basis that better performing sites can then be rewarded with some relief from both the compliance burden and license fees through the tiered licensing system and sliding licence fees.

In conclusion, we are concerned at the continuing trend away from bringing polluting activities unequivocally within the net of the Environment Protection Act through the scheduled premises regulations and associated works approvals and licensing, and financial reassurance regimes. This is particularly the case in the context of the lack of a general duty not to pollute or any other preventative mechanism of substance in the Act. For all intents and purposes, many potential or actual polluting activities in Victoria (including carbon pollution) are effectively unregulated. This situation may change as a result of the current Inquiry, but until it does we believe

that the current trajectory of decreasing regulatory coverage needs much greater scrutiny and much clearer justification.

Please do not hesitate to contact me if you have any questions in relation to this submission.

Yours faithfully

A handwritten signature in black ink, reading "Brendan Sydes". The signature is written in a cursive, flowing style with a long horizontal tail stroke.

Brendan Sydes
CEO/lawyer
Environmental Justice Australia