

# An Environmental Justice Strategy for Victoria

## Introduction

The [Victorian Government has committed](#) to developing a whole-of-government Environmental Justice Strategy, as part of its response to recommendations from the EPA Inquiry.

The concept of ‘environmental justice’ can be used in different ways by communities, academics, and sometimes governments. One way to define it, which comes from its United States origins, is to say that environmental justice is an important part of social justice. This is because the environment, how it is used, and who gets access to it affects the health and quality of life of all human beings. For example, if someone has a toxic waste dump in their neighbourhood, their health may be harmed by the pollution. Generally, the people who are most at risk from environmental harms are already socially disadvantaged – for example, by being poor or isolated, or subject to racial discrimination.

Environmental justice demands that this unfair burden is recognised and addressed. It then requires mechanisms so that all people, including disadvantaged communities, can influence decisions and enforce their right to a safe and healthy environment.

It is important that Victoria does not end up with an environmental justice strategy that just sits on the shelf as a statement of ambiguous high level commitments. Instead it should encourage real discussion of what the concept of environmental justice means for Victoria, and contain concrete actions that the Victorian Government will take to remove environmental injustice in Victoria. The process of developing the strategy must be as inclusive and participatory as possible – after all, as outlined below, that is consistent with any meaningful environmental justice model.

The resulting strategy must then be able to be practically implemented. This will require a plan for rolling out a whole-of-government approach, detailing the specific and concrete commitments that will be put into action.

Environmental Justice Australia (EJA) is currently working on our own environmental justice strategy, but we have produced this outline to assist communities and individuals who want to begin to engage with the Victorian Government, and who may attend the consultations being run in April by the Department of Environment, Land, Water and Planning. The points below indicate what an environmental justice model could contain, and give some preliminary suggestions about a few specific commitments (in italics) that could be made by the Victorian Government.

## What could environmental justice in Victoria look like?

There are four important elements of environmental justice: recognition, and distributive justice, procedural justice and substantive justice. We explain each of these below.

### Recognition

All of us, including future generations – and especially those communities and individuals most likely to suffer disadvantage and environmental harm – deserve to have our rights and aspirations in relation to the environment respected. This includes not only everyone being protected as much as possible from environmental harms, but being able to enjoy ‘nature’.

*What the Victorian Government could do -*

*Formally (including legally) recognise the connections of Victoria’s traditional owners to their lands and waters, and their right to joint and co-management of our natural places.*

*Consider the further implications for Victoria (following the Yarra River Protection (Wilip-gin Birrarung murrong) Act<sup>1</sup>), given the increasing international recognition of non-humans as legal persons for the purposes of environmental protection, such as rivers and animals.*

### Distributive justice

Distributive justice follows from Recognition. The specific details of Victoria’s uneven distribution of environmental harms and risks – as well as environmental benefits – need to be identified before they can be addressed.

For example, residents of Melbourne’s western suburbs bear the brunt of Melbourne’s waste, with hazardous waste dumps and huge landfills, together with dust and emissions from heavy trucks and a legacy of industrial contamination.<sup>2</sup> In relation to landfills, the first step might be to address the inequity of funnelling increasing amounts of waste from the rest of Melbourne to the west. In the short term, that may require new small and localised landfills around the Melbourne metropolitan area, but with the priority being ramping up waste avoidance and resource recovery strategies to attain an outcome that approaches zero waste for Victoria.

*What the Victorian Government could do -*

*Implement formal requirements on decision-makers to avoid, as a matter of priority, increasing environmental burdens on disadvantaged communities, with the overall goal of avoiding environmental harm to all Victorians.*

As another illustration, many urban Victorians do not have easy access to natural spaces. They are also forced to rely on cars – or curtail their activities if they have a mobility disability – because public transport is poor or non-existent. This reliance on cars is a distributive injustice because it means that those communities cannot play their part in reducing our reliance on fossil fuels and carbon emissions.

*What the Victorian Government could do -*

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<sup>1</sup> <https://theconversation.com/new-law-finally-gives-voice-to-the-yarra-rivers-traditional-owners-83307>

<sup>2</sup> See eg *Raising a Stink: Communities from Melbourne’s west struggle for environmental justice* <https://www.envirojustice.org.au/projects/western-suburbs-residents-feel-ignored-and-brushed-off/>

*Implement an 'equity in public transport' plan.*

Assessment of distributive justice must include an examination of existing and planned strategies to protect the environment. For example, most low income Victorians and home renters cannot access affordable renewable energy.

*What the Victorian Government could do -*

*Government policy should facilitate 'energy democracy' in energy transition plans.*

## **Procedural justice**

Procedural justice puts the Recognition and Distributive Justice elements into action. All Victorians, and particularly members of communities who suffer or risk environmental harm, should be able to participate meaningfully in decisions that affect the environment.

In EJA's experience, people overwhelmingly experience their engagement with environmental decision making, whether via a local Council, Ministers, the Environment Protection Authority or mining regulators, as not meaningful. Communities feel that their input into the process is not as valuable, or treated with the same seriousness, as developers, mining companies, or polluters.

In order for environmental justice to be done, communities must be treated seriously as equal and key stakeholders in environmental matters. They should be able to engage in the entire life-cycle of a development, polluting event, or industry that impacts adversely on people's health and the environment – not just towards the end of the process when the decision has effectively already been made.

*What the Victorian Government could do –*

*Implement a participatory environmental democracy plan which will underpin whole-of-government approaches to environmental justice.*

A crucial aspect of meaningful community participation is the right to access information about the environment in a timely, accurate way. Victorians have inadequate access to a range of essential environmental information, including on pollution of air and water, land contamination and threatened species.<sup>3</sup>

Procedural justice means that people should have easy access to the information held by both regulators and industry about relevant impacts on the environment. To ensure genuine community participation, environmental decision making also needs to be transparent and accountable.

*What the Victorian Government could do -*

*The EPA, industry, and other government departments that gather information about impacts to the environment should make this information easily accessible to the public, modelled on the NSW Air Quality Data website.<sup>4</sup>*

*Reform Victorian environment and planning legislation to require the publication of timely and detailed reasons for all environmental decisions, subject to regular independent audits.*

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<sup>3</sup> See eg *Toxic and Terminal: How the regulation of coal-fired power stations fails Australian communities* <https://www.envirojustice.org.au/powerstations/>

<sup>4</sup> <http://www.environment.nsw.gov.au/AQMS/search.htm>.

It is particularly important that all Victorians have access to legal mechanisms that they can use to seek environmental justice, and that provide them with appropriate remedies. At present there are yawning gaps in available mechanisms, some of which are actually widening. For example, in addition to the considerable discretion that already exists in Ministerial decision making, many planning permit applications are now increasingly being fast tracked via VicSmart, meaning that residents with environmental concerns have no right to object.

Similarly, there are very few available legal avenues for communities to seek review of decisions to expand landfills, especially given a recent trend for long-term works approvals. Where there is a legal right to seek review or to appeal, community applicants must sometimes pass difficult and complex tests concerning their standing before their arguments can even be heard.

*What the Victorian Government could do -*

*The Victorian Law Reform Commission should review the law of standing in Victorian environmental matters.*

Another gap in procedural justice concerns enforcement. Unlike New South Wales, Victorian law does not allow a person to take action against a polluter at VCAT or in court in order to try to stop the pollution from causing further damage. It has been shown in other parts of Australia that enabling the community to enforce the law when the regulators do not is a valuable safeguard against environmental harm.

*What the Victorian Government could do -*

*Amend the Environment Protection Act to allow people to take legal action against a polluter or concerning a pollution event where the EPA does not.*

## **Substantive justice**

Substantive justice follows from procedural justice. It is not enough to have legal and other participatory avenues if in practice not everyone can actually use them meaningfully. For example, VCAT fees for environmental matters have increased to such an extent that communities may be priced out of seeking review of environmental decisions if their case is deemed to be complex and requires several days to be heard.

Substantive justice means not only identifying the gaps and practical obstacles in existing procedural justice avenues, but also developing more effective ways to achieve environmental justice, such as restorative justice where acceptable to the community or individual.

*What the Victorian Government could do -*

*Introduce a non-profit organisation tier of hearing fees for complex VCAT cases.*

*Amend the Victorian Charter of Human Rights and Responsibilities Act 2006 to include the right to a healthy and safe environment.*

*Consult with disadvantaged communities with experience of environmental justice to consider developing a pilot restorative justice model.*

*Instigate as soon as practicable, consultation with environmental NGOs and other community organisations in order to collaborate on the implementation of Government commitments and to further identify and address gaps in procedural and substantive access to environmental justice.*