

MEMORANDUM OF UNDERSTANDING

BETWEEN

**NATIONAL ENVIRONMENT PROTECTION
COUNCIL**

AND

NATIONAL TRANSPORT COMMISSION

**This Memorandum of Understanding has been agreed by the
National Environment Protection Council
and
National Transport Commission**

On 30 April 2004

GLOSSARY

ATC	Australian Transport Council.
DOTARS	Department of Transport and Regional Services (Commonwealth).
EPHC	Environment Protection and Heritage Council.
LTEC	Land Transport Environment Committee.
MVEC	Motor Vehicle Environment Committee established by the Memorandum of Understanding between NEPC and NRTC dated July 2000.
NEPC	National Environment Protection Council established under the <i>National Environment Protection Council Act 1994</i> (Commonwealth).
NRTC	National Road Transport Commission, the precursor organisation to NTC.
NTC	National Transport Commission established under the <i>National Transport Commission Act 2003</i> (Commonwealth).
TELG	Transport Emissions Liaison Group.

MEMORANDUM OF UNDERSTANDING

Between the National Environment Protection Council and the National Transport Commission

PART A. PRELIMINARY

1. Purpose

Through this Memorandum of Understanding the National Environment Protection Council (NEPC) and the National Transport Commission (NTC) agree to co-operate with each other in the development of national laws and other measures to control emissions and noise from all categories of road transport, rail transport and intermodal transport. In doing so, the parties seek to harmoniously achieve their statutory objectives.

This Memorandum of Understanding is intended to provide a framework for co-ordination and consultation between NEPC and NTC, and to assist them in fulfilling their respective statutory functions and obligations, and should be read accordingly.

2. Background

This Memorandum of Understanding replaces the Memorandum of Understanding between the NEPC and the National Road Transport Commission (NRTC) dated 7 July 2000.

The need for the replacement stems from:

- a) the Commonwealth Parliament passing the *National Transport Commission Act 2003* and the *National Transport Commission (Consequential Amendments and Transitional Provisions) Act 2003*. The effect of these Acts is to replace the NRTC with the NTC from January 2004. The *National Transport Commission Act 2003* provides for an extension of NTC's role beyond road transport to include rail and intermodal transport;
- b) the Inter-Governmental Agreement for Regulatory and Operation Reform in Road, Rail and Intermodal Transport, which supplements and supports the *National Transport Commission Act 2003*;
- c) a letter from the Commonwealth Minister for Transport, as chair of the Australian Transport Council (ATC), to the Chairman of NRTC dated 17 January 2003 stating that the ATC had agreed that:

The role (and name) of the Motor Vehicle Environment Committee should be expanded to cover rail and other modes of transport targeted for regulatory reform.

- d) a decision of Motor Vehicle Environment Committee of 5 December 2002 which agreed that:

Subject to NRTC and NEPC endorsement, MVEC should be renamed the Land Transport Environment Committee and the Memorandum of Understanding revised accordingly.

It should also be noted that Environment Protection and Heritage Council (EPHC) was established by the Council of Australian Governments in June 2001. The EPHC incorporates the NEPC, the environmental protection components of the Australian New Zealand Environment and Conservation Council and the Heritage Ministers' Meetings. The statutory functions of NEPC continue under the umbrella of the EPHC.

PART B. PARTIES TO THE MEMORANDUM

3. National Environment Protection Council

NEPC is established under complementary and uniform National Environment Protection Council Acts in the Commonwealth, States and Territories. Its functions are described in Part 3 of the Act and include establishing National Environment Protection Measures for the protection of the environment for the benefit of the people of Australia for:

- ambient air quality;
- ambient marine, estuarine and fresh water quality;
- noise related to protecting amenity where variations in measures would have an adverse effect on national markets for goods and services;
- general guidelines for the assessment of site contamination;
- the environmental impacts associated with hazardous waste;
- the re-use and recycling of used materials; and
- motor vehicle noise and emissions.

NEPC is also required to assess and report on the implementation and effectiveness of National Environment Protection Measures.

4. National Transport Commission

NTC is established under the *National Transport Commission Act 2003*. The Inter-Governmental Agreement for Regulatory Reform in Road, Rail and Intermodal Transport specifies the functions of the NTC, which include:

- developing uniform or nationally consistent regulatory and operational arrangements for road, rail and intermodal transport, including recommending proposed reforms and amendments to agreed reforms;
- developing proposed reforms in relation to heavy vehicle road use charges;
- recommending to the ATC matters that will promote the objectives of the inter-governmental agreement; and
- monitoring, maintaining and reviewing reforms.

In carrying out these functions and progressing reforms, NTC is required to:

ensure that there is appropriate consultation with the Environment Protection and Heritage Council and/or the National Environment Protection Council regarding Proposed Reforms that specifically deal with environmental matters or Proposed Reforms that may have a material impact on the environment. (cl 11.3)

5. National Environment Protection Council's objectives

Section 3 of the *National Environment Protection Council Act 1994* provides that the object of the Act is to ensure that:

- (a) people enjoy the benefit of equivalent protection from air, water or soil pollution and from noise, wherever they live in Australia; and
- (b) decisions of the business community are not distorted, and markets are not fragmented, by variations between participating jurisdictions in relation to the adoption or implementation of major environment protection measures.

6. National Transport Commission's objectives

Clause 2 of the Inter-Governmental Agreement for Regulatory and Operation Reform in Road, Rail and Intermodal Transport provides that:

The parties (*to the Agreement*) affirm their commitment to improving transport productivity, efficiency, safety and environmental performance and regulatory efficiency in a uniform or nationally consistent manner.

7. Legislative framework

Section 14(2) of the *National Environment Protection Council Act 1994* provides that in the making of national environment protection measures by NEPC, noise and emission standards relating to the design, construction and technical characteristics of new and in-service motor vehicles may only:

- (a) be developed and agreed in conjunction with NTC; and
- (b) be determined in accordance with the *National Transport Commission Act 2003* and, where appropriate, the *Motor Vehicle Standards Act 1989*.

Section 10 of the *National Transport Commission Act 2003* provides that:

If the Commission is involved in the development of a noise or emission standard relating to the design, construction or technical characteristics of new or in-service motor vehicles, the standard may only be developed in conjunction with the National Environment Protection Council.

PART C AGREEMENT

8. Instruments

8.1 NEPC, through the NEPC Committee, and NTC agree to work co-operatively in fulfilling their respective statutory functions relating to the development of regulatory and other instruments to control road transport, rail transport and intermodal transport emissions and noise.

8.2 Instruments to be developed may include:

- (a) National Environment Protection Measures under the *National Environment Protection Council Act 1994*; and
 - (b) model legislation under the *National Transport Commission Act 2003*.
- 8.3 NEPC and NTC may make use of other appropriate instruments such as Australian Design Rules administered by the Commonwealth Minister for Transport and Regional Services under the *Motor Vehicle Standards Act 1989*.
- 8.4 In each case, NEPC and NTC will agree which instrument or combination of instruments is most appropriate.
- 8.5 Where new vehicle standards made under the *Motor Vehicle Standards Act 1989* are identified as an appropriate instrument, NTC, NEPC Committee and the Department of Transport and Regional Services (DOTARS) will all be parties in the consultation process which leads to the development of that instrument.
- 8.6 NEPC agrees that it will not act unilaterally in the development or adoption of national environment protection measures relating to road transport, rail transport and intermodal transport. Similarly, NTC agrees that it will not act unilaterally in the development or adoption of instruments relating to environment protection.
- 8.7 NTC and NEPC Committee will consult each other in relation to the development of strategic policy relating to road transport, rail transport and intermodal transport environment issues. In this context, both NTC and NEPC recognise the role of DOTARS in the development and administration of national road transport standards pursuant to the *Motor Vehicle Standards Act 1989*. NEPC acknowledges that NTC will enter into a Memorandum of Understanding with DOTARS through which NTC and DOTARS will enter arrangements relating to clause 19 of the Inter-Governmental Agreement for Regulatory Reform in Road, Rail and Intermodal Transport.

9. Process for the Development of Instruments

- 9.1 The process which will be used for developing any instrument will be agreed by NTC and NEPC Committee. The process will depend on the legal requirements which must be fulfilled for the particular instrument being developed. Matters to be agreed on include:
 - (a) whether to develop issues through NEPC or NTC processes. In some instances it may be necessary to develop issues through both processes and in this case they must be complementary;
 - (b) methodology for assessing impacts;
 - (c) the form of impact statements;
 - (d) time periods for the consultative process; and
 - (e) funding of joint projects.

- 9.2 To the extent that an instrument involves the development or amendment of standards made under the *Motor Vehicle Standards Act 1989*, NTC, NEPC Committee and DOTARS will jointly agree on the process to be used.
- 9.3 During the development of policies and instruments pursuant to this memorandum, both parties will aim to ensure all obligations arising from:
- (a) inter-governmental agreements entered into by the Commonwealth, the States and Territories; and
 - (b) international agreements to which Australia is a party;
- are fulfilled.

10. Land Transport Environment Committee

- 10.1 The Land Transport Environment Committee (LTEC) will be established by NTC and NEPC and will report to NTC and NEPC Committee.
- 10.2 LTEC will deal with matters referred to it by NTC and NEPC Committee, or proposals it develops, subject to agreement by both parties. Tasks to be undertaken by LTEC include:
- (a) preparing joint work programme proposals and budgets as directed and transmitting them to NTC and NEPC for consideration;
 - (b) preparing draft instruments and policies as directed and transmitting them to NTC and NEPC for consideration;
 - (c) consulting with Australian government, industry, the community and Non-government organisations (including the Transport Emissions Liaison Group (TELG), as described in Appendix A) in the development of joint work programmes, policies, instruments and projects; and
 - (d) carrying out projects under the joint work programme and reporting annually or as agreed on their progress.
- 10.3 LTEC will comprise four members appointed by NTC (including the Chief Executive or delegate of NTC, and a senior executive or delegate of DOTARS) and four members (including the Executive Officer of NEPC and a Commonwealth representative) appointed by NEPC Committee. The NEPC Executive Officer and the Chief Executive or delegate of NTC will, in rotation, provide the Chair and Secretarial support for LTEC and may attend all meetings.
- 10.4 LTEC will meet at least once every twelve months.

11. Dispute Resolution

Where there is a dispute between NTC and NEPC Committee on an issue which is to be recommended to the respective Ministerial Councils, the Chief Executive of the NTC and the chair of NEPC Committee will meet to discuss the issue, and will use

their best endeavours to negotiate a mutually acceptable outcome. Where this meeting is unable to reach an agreement, NTC and NEPC Committee will refer the issue to ATC and NEPC respectively, noting the areas of disagreement.

12. Review of this Memorandum

This Memorandum of Understanding is subject to joint review by NTC and NEPC every five years or at any shorter interval agreed by both parties.

Signed:

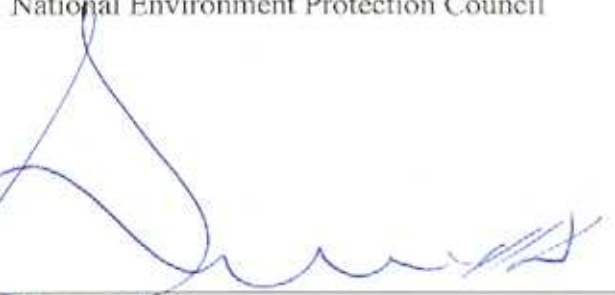

The Hon David Kemp

Dated:

16/4/04

Chairperson
National Environment Protection Council

Signed:



Dated:

30/04/04

Mr Stuart Hicks
Chairman
National Transport Commission

TRANSPORT EMISSIONS LIAISON GROUP TERMS OF REFERENCE

Role

The prime role of the TELG is to provide a forum and network to offer and facilitate advice, through LTEC, to NEPC and NTC on joint work program projects relating to development of technical standards, protocols and guidelines for the control of emissions of pollutants and noise from new and in-service road transport, rail transport and intermodal transport.

Membership and Reporting

The group will comprise representatives from:

- the National Environment Protection Council Service Corporation;
- the National Transport Commission;
- each of the Commonwealth, State and Territory departments that have a responsibility for transport;
- each of the Commonwealth, State and Territory departments responsible for protection of the environment;
- the Commonwealth Department(s) responsible for the vehicle and petroleum/energy industries;
- the Australian Greenhouse Office;
- the Australian Automobile Association;
- the Australian Trucking Association;
- the Australasian Rail Association;
- the Truck Industry Council;
- the Federal Chamber of Automotive Industries;
- the National Environment Consultative Forum;
- the Australian Motorcycle Council;
- the National Health and Medical Research Council;
- Health Council;
- the Australian Institute of Petroleum;
- the Independent Petroleum Group; and
- any other person or group as agreed by the Chair of LTEC.

The Chair of LTEC will chair each meeting of TELG.

Functions

The functions of TELG are as follows:

1. to provide a forum and network to facilitate advice;
2. to comment on the NEPC/NTC joint work program;
3. to advise on policy aspects and priorities of proposed new or amended National Environment Protection Measures or other instruments to control emissions of pollutants and noise from new and in-service motor vehicles;
4. to advise on the balance between the effect of emissions on the environment and people and the cost effectiveness and practicality of proposed new or amended national environment protection measures or other instruments to control emissions;
5. to advise on representation on single issue working groups;
6. to provide a forum to allow canvassing of new initiatives; and
7. to be a source of information on:
 - international developments;
 - types of emissions likely to effect the environment;
 - trends in various emission products;
 - effectiveness of emission control measures;
 - effect of various pollutants on the environment and people;
 - emission control standards and test procedures.

Frequency of Meetings

The TELG should meet as required and at least once per calendar year.