

VACC Submission

Independent Inquiry into the EPA

30 October 2015



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About VACC

Since 1918, the Victorian Automobile Chamber of Commerce (VACC) has represented the interest of small and medium businesses in the automotive industry. Currently, its 5,200 members employ approximately 50,000 people and provide key services in the repair, services and retail sectors of the motor industry.

VACC represents some 29 different sectors in the industry. Some of the various divisions in the retail motor industry are mechanical repair, body repair (including spray painting), automotive dealers, used car traders, auto electrical, engine re-conditioners, tyre dealers, radiator services, farm machinery, motorcycle dealers, service stations and convenience stores and towing operators.

VACC provides comprehensive advice and assistance to help members run their businesses more effectively. VACC, on behalf of its members, tenders this submission in response to the discussion paper 'Examining the future task of Victoria's Environment Protection Authority' that is due Saturday 31 October 2015.

The views expressed in this submission have been developed through a number of avenues:

- VACC's Occupational Health, Safety and Environment Department which have extensive experience in the practical application of Occupational Health and Safety (OHS) legislation, Environmental Protection legislation, Dangerous Goods legislation, and its interaction with industrial instruments and other legislative provisions regulating the employment relationship in the retail motor industry;
- Views of members expressed through day-to-day contact who use VACC's advice, training and consultation services; and
- Discussions with other key stakeholders.

Terms of Reference

Scope of the Inquiry

The Terms of Reference for the independent Inquiry into the EPA were established by the Minister for Environment, Climate Change and Water.

The Terms of Reference specify the scope of the Inquiry by reference to the following seven matters, listed in order of priority:

1. the EPA's appropriate role in relation to public health issues, including at least: community concerns such as exposure to asbestos, chemicals and other pollutants; the prevention and management of site contamination, air quality, and water quality in rivers and other waterways;
2. the Victorian community's and industry's expectations of the EPA as its environmental regulator;
3. the EPA's appropriate role in protecting the environment;
4. the ability of the EPA to ensure that the principle of environmental justice is adhered to, the environment is protected for the benefit of the community, and members of the community can be meaningfully involved in, and access fair treatment through, environmental regulation;
5. the ability of the EPA's current governance structures and funding arrangements to enable it to effectively and efficiently discharge its powers, perform its duties and implement its required functions;
6. the scope and adequacy of the EPA's statutory powers, and the effectiveness and efficiency of the suite of tools available to and utilised by the EPA, in enabling protection of the Victorian community and the environment, particularly in light of recent, new and emerging risks and issues; and
7. any other matter reasonably incidental to these above matters.

The Advisory Committee is also directed to:

- consider the best way to combine environmental protection with economic viability and growing sustainable jobs in Victoria, including through improving regulatory efficiency and minimising regulatory burden; and
- seek the views of the community, industry and workers in related industries, local government and Victorian government agencies, as well as those of other relevant stakeholders.

Discussion Paper Questions and Answers

The questions below have been taken from the discussion paper and coversheet provided in ‘Examining the future task of Victoria’s Environment Protection Authority’. The answers to the questions are the responses from the Victorian Automobile Chamber of Commerce (VACC).

1. *What do you think are the key environmental challenges which will impact the EPA in the future?*

If Victoria’s population increases steadily to the projected figures of 10 million by 2051, there will be an increase in environmental impacts across Victoria. As seen in other countries, when the population increases some of the following issues arise:

- Increase in waste
- Increase in pollution (i.e. air, water and land pollution)
- Encroachment of residential areas onto industrial areas
- Old infrastructure capabilities, e.g. piping/drainage, landfills, roads

EPA Victoria, as the environmental authority, will be challenged by the environmental impacts above. The further challenge for the EPA will be whether the environmental protection legislation, as old law, will be fit for purpose for the changes ahead. Furthermore, the challenges listed above can result from poor planning decisions of other government agencies.

2. *What aspects of the EPA’s work do you value and wish to preserve in the future?*

EPA need to be a regulator for the environment as stated in table 3 of the ‘Inquiry’ discussion paper. The problem regarding the EPA’s work as a regulator of the environment is that it has acted more reactively than preventatively in the past.

In the past few years the VACC has seen change in the EPA, where it is trying to regulate proactively. Recently, the EPA have planned and initiated preventative programs on various potential environmental impacts such as waste tyres, prescribed waste and most recently the Underground Petroleum Storage System program.

Another important aspect of the EPA’s work which is valued is the improvement in its industry engagement during the scoping, planning and implementation phases of industry programs. VACC strongly supports and wishes to preserve the EPA’s current approach of industry engagement by consulting and collaborating with industry, especially from start to finish of the program. It is vital that the EPA conducts measured evaluations of the programs once complete and relevant industry stakeholders are engaged.

EPA has also improved in its engagement of stakeholders by running a Business Reference Group and EPA Open House events. The VACC values the Business Reference Group and

wishes to preserve the group as it provides an opportunity for businesses to be consulted on future programs and changes at the EPA.

3. *How can the EPA effectively work in partnership with other government agencies to meet the environmental challenges of the future?*

EPA can effectively work in partnership with other government agencies to meet environmental challenges by actively participating in other government agencies' stakeholder groups and keeping an open line of communication with other government agencies, especially at the planning stages of long and short term strategies. For this to be most effective, the Victorian Government needs to understand that all the relevant agencies need to be open and transparent in its activities and have a joint forum for agencies.

VACC Professionals attend the stakeholder reference groups across the EPA, WorkSafe Victoria, other business associations, VicRoads, Victoria Police and Fire Authorities. VACC and VACC Members find it very frustrating when various regulators focus on the same industry segments within the space of a few years. Often the different government agencies are not aware of similar focuses on the same industry. Small and medium sized businesses that are targeted by various regulators in a short period of time are severely impacted financially and strain the company's resources, especially when the remedy is new and expensive to implement.

The Victorian Government needs to ensure that government agencies are coordinating and collaborating with each other. Government agencies such as EPA Victoria and WorkSafe Victoria have a lot in common in functionality, as well as with industry issues. Examples of automotive industry sectors that have been a focus for multiple regulators over the past few years are body repairers and currently petrol stations.

Also as addressed in question 1, there is disconnect between EPA and state based planning. EPA has a relegated role to play in land use planning decisions. The planning decisions are critical to the health and wellbeing of the environment and broader community.

4. *How can the EPA's role in safeguarding the community against the health impacts of pollution be clarified or strengthened?*

The framing of the future EPA themes as pointed in the discussion paper in section 5, page 20 are very important themes. VACC supports that the future EPA focus on these themes. Furthermore, the EPA needs to be flexible and adaptive to any emerging themes that may arise.

Taking into account the listed themes, the EPA's role in safeguarding the community against the health effects of pollution will only be strengthened if the EPA becomes a modern regulator that can balance its:

- proactive focus
- monitoring of the environment
- educational role and

- reaction to emergencies.

In the past, the EPA have placed a lot of focus on licensed sites and were not as active as a regulator on unlicensed businesses and on the community. Not being as active in unlicensed industries has resulted in appearing as a weak regulator. VACC has started to see an increase and focus on unlicensed environmental impacts; however, the EPA needs to improve its focus on community impacts as well. An example often expressed by VACC Members is in regards to the EPA enforcing oil water separators or triple interceptors for car washing at businesses, which costs approximately \$20,000 to install. However, community can wash cars to stormwater which is illegal and there is no threat from an EPA Inspector. The EPA must improve its brand and presence in community. It is recommended that the EPA launch a media campaign that sends a message of who the EPA is, what they do and what the community should be doing. Using the car washing example, the EPA could publicise a campaign to the community (i.e. car owner) explaining the impact to the environment if washing vehicles to stormwater and give proposed solutions to the problem. Similar campaigns were conducted in the United States.

Educating businesses and community in an effective way is very important as it establishes state of knowledge and will clarify and strengthen the EPA's role. A current issue identified by VACC is that business owners will not access or use EPA documents and guidelines because they are complex and often too technical. Also, the EPA educational materials are not easy to read, don't look good, lack diagrams as examples and lack marketing flair. The current Underground Petroleum Storage System Program is a recent example of this occurring, where small service station owners are seeking answers to comply, however, are not reading *Publication 888- Guideline on Design, Installation, Petroleum Storage Systems*. Publication 888 is not written for the average business owner to comprehend and implement.

Another way the EPA can clarify and strengthen its role in safeguarding the community against the health impacts of pollution is in the way it reacts to pollution caused by incidents. The EPA needs to act immediately and engage community on the incident. In pollution incidents that involve a business, the EPA has an important role to play in being a conduit of communication between the business and broader community. The EPA should work on solutions with the business and also be transparent with the community on the approach to resolving the issue.

Also, after any pollution incident, the broader industry should be informed of any key learnings or risk controls that have been implemented that can impact the broader industry. There have been occasions where the authorities have decided on measures that are not the norm for specific industries. VACC further recommends that industry associations or industry groups are engaged to work on industry solutions as EPA expertise is often too general. Once there is an agreed solution then the EPA can communicate outcomes to their authorised officers and broader industry. Furthermore, industry associations and industry groups will assist in communicating outcomes.

5. *How could statutory frameworks more effectively prevent future environmental risks and land use conflicts?*

VACC Members have been impacted by poor planning decisions from local councils. Encroachment of residential estates onto industrial areas has made it difficult for employers

when complaints are made by the new residents. VACC Members have been required to pay for additional traffic management (e.g. funding traffic intersections and roadworks), implement noise control measures on plant and limiting business activities. The EPA has been in the unfortunate position to mediate between industry and residents and the current planners are not held accountable.

As stated in previous answers, the EPA and other government agencies need to collaborate and consult with each other. When planning decisions occur, the EPA must be involved in the decision-making. The EPA should be given responsibility and sign off on the decisions made. Additionally, any government agency signing off should be held accountable if things go wrong in future. If land use planning is conducted properly, the risk will be minimised by implementing adequate buffers and controls.

6. *What role should the EPA play in emergency management?*

The EPA's role is not in the emergency services aspects of an emergency. However, the EPA needs to be present to advise other government agencies involved in the emergency. The EPA has a role to play during the investigation when conducting environment monitoring and provide alternative science-based advice. The EPA also needs to be a conduit of communication to the broader community on the environmental impacts of the emergency.

7. *How can the EPA better identify and, where necessary, address problems that are the result of past activity?*

For the EPA to better identify and address problems that are the result of past activities, the EPA must conduct research in conjunction with industry stakeholders. In some cases, the EPA needs to approach problems with a 'no-blame' attitude in order to identify and address problems. It is also important that the EPA, as a government agency, shows empathy for industries that are impacted commercially when the problems are addressed.

An example of this recently was regarding a small independent service station in [REDACTED] [REDACTED]. The VACC Member that was running the service station was leasing the old [REDACTED] [REDACTED] site. Due to community complaints of diesel odour, the EPA pin pointed and blamed the operating service station for contaminating the environment. The service station operator was conducting the leak detection requirements and was able to prove that the tanks he was using were not leaking. The service station operator spent over \$200,000 in fighting the matter and conducted his own research. The member's own investigations and research disclosed that there were 7 disused fuel tanks underground from previous operators. In addition, the rear of the site contained a diesel tank that was partly decommissioned as it had leaked in the past. Furthermore, the EPA was aware of this diesel tank as it had issued a notice in the past.

When the VACC Member conducted further research in preparation for his VCAT hearing to oppose the EPA notices, the VACC Member found a past report which was conducted by an Environmental Consultant when the site was sold between one property developer to the current property developer which outlined the diesel contamination and issues of the site. To make matters worse, it was highlighted at the VCAT hearing that the EPA ground samples did not match the diesel that was being sold by the VACC Member. The EPA being a science

based regulator should have conducted past research on the site and analysed the situation more appropriately. The current property owner/developer was well aware of the state of the site and did not disclose the reports to the VACC Member when a lease agreement was conducted. What is most concerning is that the smell of diesel in that location has been known in the community for a very long time and this focus is by no coincidence at a similar time where major redevelopment activity is being projected for a new precinct in Fisherman's Bend. The VACC Member was forced to close his business which had a valued forecourt service to the community.

When conducting research on past environmental activity, the research needs to be conducted fairly and is recommended that special interest working groups are engaged on problems. The special interest working groups can tease out and identify the problems and the solutions. Especially in situations as noted above in [REDACTED], there are many experts that have knowledge of the area and it is evident that the EPA cannot access and retain all the knowledge. Also, when bringing the special interest groups together from industry and community, solutions can be agreed upon that will satisfy industry, community and the EPA.

8. What can the EPA do to avoid potential future problems?

The EPA's risk based priority on initiatives is important and will lead to proactive programs being created but often those problems and hazards are already present. To prevent future hazards, the EPA needs to be flexible and viable enough to react to potential risks.

In order for the EPA to minimise hazards for the future, it will need to be resourced so it can identify emerging environmental issues. It is recommended that the EPA has a business unit that can conduct research on trends and conduct tests to ascertain environmental impacts.

It is recommended that the EPA's business unit establish a process for analysing emerging environmental issues. The EPA would look at new industry processes, technologies, types of workplaces, or social changes by:

- reviewing longstanding issues newly considered as a risk due to a change in public perception
- revealing new scientific knowledge from local or international studies and research
- conducting enquiries with other government agencies and institutions
- consulting with other state and territory regulators
- regularly consulting with industry groups

The EPA would also establish an emerging issues register that is publicised and open for comment from industry and community. By doing this, the EPA can act early if required and also provide some early advice on community concerns.

9. What role should the EPA play in improving environmental outcomes beyond those necessary to safeguard human health?

It is an obvious fact that negative environmental change has an impact upon human health. There is substantial evidence across the world where underdeveloped countries with poor water quality have high mortality. Also, links have been established between poor air quality and asthma even in developed countries.

The EPA has an important indirect role in environmental outcomes that links to health outcomes for humans and even for fauna. If environmental indicators need to be expanded when considering planning and objectives, then Government should consult with industry and community. Resourcing may need to increase if environmental indicators are expanded.

10. What role should the EPA play in reducing greenhouse gas emissions?

VACC is of the view that the EPA has a part to play in reducing greenhouse gas emissions through its current work. However, VACC encourages that the lead for this must come from the federal government as a national approach.

Industry finds it frustrating that different programs on greenhouse gas emissions have stopped and started since 2002. If any government is going to implement a new greenhouse emission program or scheme then it must be focused on updating processes, updating infrastructure and implementing new energy efficiency technologies. VACC Members are opposed to a tax collection like the carbon tax.

11. How do you see environmental justice being applied to the work of the EPA?

The concepts of environmental justice through participatory justice, distributive justice or restorative justice could be applied further into the work of the EPA. VACC supports the EPA's Environmental Citizenship Strategy which is a form of environmental justice and VACC acknowledges that EP Act section 67 AC (2) (c) is an element of restorative justice.

If environmental justice is further applied to the work of the EPA, VACC would recommend that environmental justice is incorporated into the EPA Compliance and Enforcement Policy. Furthermore, any proposed changes to the EPA Compliance and Enforcement Policy should be open for public comment.

12. What can we adopt from other regulators and regulatory models to implement best-practice approaches and ensure that the EPA can rise to key future challenges?

The only regulator in Victoria that functions in a similar way to the EPA is WorkSafe Victoria. VACC has seen the EPA borrow elements from WorkSafe Victoria with some success. VACC commends the EPA on the adoption of a Compliance and Enforcement Policy similar to that of WorkSafe and also take on similar functions of the Inspectorate.

The EPA needs to continue with a risk prioritisation model for regulatory work, however, the EPA needs to allocate resources to show a presence in all industries and community, even if

it's lower in risk. WorkSafe Victoria will focus inspections on high risk industries or on industries with a high number of claims; however, it ensures it shows a presence in other industries in randomised inspections.

What is important to note is that WorkSafe Victoria is a recognised brand to employers, employees and to the broader community. WorkSafe have produced media campaigns around their focus projects on TV commercials, billboards, social media, at field days, in schools, through sponsorship and with week-long initiatives such as WorkSafe Week, which occurs in October every year. The EPA is a regulator, but it's also a brand that needs to be recognised by employers, employees and community more broadly across Victoria. VACC recommends that the EPA is resourced to market its brand and conduct advertising that will complement the focus areas and initiatives.

13. Are there any other issues relevant to the Terms of Reference that you would like to raise?

When the EPA and other regulators have conducted initiatives and programs, they need to ensure there is consistency between the metro and rural areas. From VACC data that was acquired during audits, it was found that metro areas were given more attention than regional areas.

The inconsistencies have follow-on effects with service providers as well. Service providers build the customer base in the areas where there is a need. When rural areas catch up with the metro area initiatives and compliance, it is then difficult for rural areas source service providers. An example of this is most evident in prescribed waste providers. VACC has tried to create group waste deals with waste providers but the waste deals have little effect in rural areas. Many VACC Members have needed to stockpile the waste onsite and then when there is enough, they transport the waste in the back of a ute to a waste transfer station or location that can take the waste.

VACC wants the EPA to be consistent so industry in general is on the same playing field and also assist industry with regards to service providers. In the example of waste service providers, the EPA imposes licencing on the waste industry transporters, treaters and landfills. The EPA should encourage through licensing, the delivery of services across the whole of Victoria and ensure there are adequate facilities for the waste.

End.