



Community and Public Sector Union Victoria
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CPSU SUBMISSION

TO THE EPA INQUIRY

November 2015

Written by Travis Batesmith with the kind input of EPA staff from across Victoria.

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Executive Summary

CPSU, as the union representing staff employed at the EPA, have a unique insight into the issues confronting staff as they seek to regulate industry, amenity and land usage issues in the interest of Victorians.

The Inquiry provides an opportunity for their ideas, issues and suggestions to be presented to the Ministerial Advisory Committee on what would assist them in their work but also provide a refocussing of environment protection laws as Victoria grapples with many new environmental threats not envisaged at the time the original legislation was drafted.

CPSU has reviewed both the Discussion Paper and the broad Terms of reference and the response is structured around five key themes:

- Context
- EPA's Role
- Co-Regulation
- Legislation
- Internal Support

Each theme has a number of recommendations that we believe strengthen the operational capacity of the EPA. The union has looked at models which inform other regulatory bodies, such as WorkSafe in order to develop an option that would replicate the Occupational Health and Safety Officer and Representative role as a new Environmental Health and Safety function. The submission looks to the Occupational Health and Safety Act (Vic) and the Work Health Safety Act (2011) (C/W) as a base for developing similar roles under the Environment Protection Act (Vic).

The concept is an attempt to refocus the regulatory regime from post pollution event to one of prevention.

Similarly the prevention principle flows through the recommendations we have suggested regarding the amendments to the planning schemes across the state and also to the creation of a U.S. E.P.A. style Superfund which operates as an insurance type scheme with non-refundable funds paid by industry which are pooled and deployed as necessary. Over time, the model has shown that

environmental insurance levy becomes just another cost of doing business. It would also assist in the clean-up of legacy sites without resort to litigation.

Underpinning the submission is the issue of appropriate resourcing for the organisation. As the submission highlights cuts by the Baillieu / Napthine Government, including the removal of all appropriation funding has undermined the budgetary framework of the organisation. This coupled with the wholesale redundancy program that cut over 25% of the staff available to manage Victoria's environment protection and has left the EPA struggling to cope with the burgeoning workloads arising from new environmental threats such as noise, land usage, dust and odour.

It is CPSU's view that whatever model is developed and whatever priorities set, they must be accompanied by a return to an appropriation allocation from the State Budget. Not to rectify this funding uncertainty will mean that the ability of the EPA and its staff to regulate will be severely undermined.

As with any organisation of this nature, it is staff that makes the difference and their commitment, dedication and professionalism is often overlooked by politicians, industry and citizens. Without these staff EPA and its regulatory abilities could not function. The staff have been under enormous pressures with redundancy cuts and the staff freeze resulting in the loss of nearly 100 positions, this at a time as more and more demands were being made on them. Staff have asked that resourcing, tools of trade, staffing levels and career opportunities be factored into the recommendations to Government. The shooting death of the NSW EPA Officer has had a significant impact with Victoria's EPA staff and a series of recommendations have been made about risk assessment, risk mitigation and a more strategic interface with other regulatory bodies be considered.

These recommendations, we believe, will greatly improve the effectiveness, regulatory enforcement, preventative and educational strategies available to the Environment Protection Authority in the 21st Century.

Recommendations List

Theme 1: context

Recommendation 1: That the Inquiry acknowledge the overwhelming necessity for an independent agency with broad powers to set and enforce environmental standards. Such an agency should report directly to Parliament, to enshrine their direct accountability to the people of Victoria, rather than to the government of the day. It should be well resourced and staffed with experts in relevant disciplines. The EPA is the most logical agency to be tasked with this responsibility, given its history and expertise.

Recommendation 2: That the Inquiry recognise that the environmental challenges of the future will relate to the proliferation of chemicals (including their synergistic effects) and to the diffusion of pollution sources as more products are made available to individual consumers, and that as such, the EPA's legislative tools must be nimble enough to enable it to respond to these challenges.

Theme 2: EPA's Role

Recommendation 3: That the Victorian Government review its monitoring and analysis activities as they relate to environmental health indicators with a view to ensuring they comply with World Health Organisation standards, and are carried out in a consistent fashion, ideally by a single organisation.

Recommendation 4: That the EPA be adequately mandated and resourced to provide community education campaigns to the community, similar in style and effectiveness to those of the Transport Accident Commission and WorkSafe.

Recommendation 5: That the EPA be adequately mandated and resourced to incorporate the setting and enforcement of greenhouse gas emissions standards into its ongoing remit.

Recommendation 6: That the setting of greenhouse gas emissions reduction targets be decided by a Committee comprised of EPA and DHHS officers with scientific qualifications, based on scientific evidence and best practice abatement technologies and practices.

Theme 3: Co-regulation

Recommendation 7: That the Victorian Government develops legally binding Protocols between the EPA and agencies listed in *Table 1* (and others as it deems necessary) to clearly articulate respective areas of responsibility, and that these Protocols be developed as a priority to ensure timely responses to matters of community concern and demonstrate to the people of Victoria that their government is capable of coordinated and prompt action.

Recommendation 8: That the Victorian Government recognises the complex nature of many environmental problems and better equip relevant agencies to work collaboratively with the community and industry to pursue long term solutions.

Recommendation 9: That EPA should work as a support agency under the Emergency Management Victoria framework to contribute to whole-of-government responses to future emergencies.

Recommendation 10: In order to maximise EPA's future emergency preparedness, sufficient resourcing should be made available for the procurement, maintenance and deployment of specialist equipment for environmental monitoring and reporting.

Theme 4: Legislation

Recommendation 11: That EPA's powers as a statutory referral authority be expanded to allow EPA to influence and, where necessary, veto, individual planning applications.

Recommendation 12: That EPA be included in the early drafting of planning scheme amendments, in order to protect beneficial uses for future users of the land, water and air environment. Such involvement must include a right of veto over incompatible land uses or encroachments.

Recommendation 13: That land use planning decisions be founded on the concept of "agent of change", that is, that to the extent that there is a conflict between existing and proposed land uses, the existing land use should have primacy.

Recommendation 14: That the Victorian Government should consider buffer distances between sensitive uses and industrial zones, to avoid the most common source of complaints, being odour and noise.

Recommendation 15: That EPA be resourced sufficiently to provide a strong planning advice function to DELWP and to local Councils.

Recommendation 16: That a specialist environment court, similar to the NSW jurisdiction, be set up to hear offences against the EP Act in front of a specialist sub-set of the judiciary with appropriate qualifications or experience with environment matters. This will also take the place of VCAT in relation to planning disputes, allowing matters to be heard on more than an administrative basis, but to also take into account the impact of a planning decision on surrounding land uses, applying the "agent of change" principles.

Recommendation 17: That the EP Act adopt provisions from the Victorian OHS Act 2004 to allow for EHS Representatives in workplaces. That these individuals be given appropriate protections and the ability to issue provisional abatement notices to address risks and actual harms. Further, in the event that this recommendation is adopted, we recommend an alignment of the powers of the Authorised Officers and the EHS Representatives.

Recommendation 18: That the EP Act adopt the principles set out in sections 27 of the Work Health and Safety Act 2011 (C/W), creating a duty for officers of organisations to undertake due diligence with regard to environmental risks.

Recommendation 19: That the EPA be granted the power to set, collect and invest a USEPA-Superfund-style insurance scheme to levy industry to fund the cleanup of contaminated sites.

Recommendation 20: That the EPA be granted the power to coordinate site cleanups when it is not possible to compel the polluter or landowner to do so, and pursue cleanup costs from polluters and/or landowners where possible.

Recommendation 21: That EPA create tools incorporating the BPEM model to enable quicker, more nimble response to emerging environmental issues without the need for statutory reform.

Recommendation 22: That the EP Act incorporate summary offences for small scale breaches, to give Authorised Officers a quick and effective deterrent when dealing with smaller non compliances.

Recommendation 23: that the Inquiry has regard to the progress of the Trans Pacific Partnership through the Australian Parliament and, if it becomes law, considers what impact the likelihood of investor-state disputes will have on Victoria's continued ability to raise environmental standards, given the lack of protection from ISDS included for governments to change environment and health laws.

Theme 5: Internal Support

Recommendation 24: That the current depth and breadth of EPA's duties and powers be preserved in any reconsideration of EPA's scope, in addition to the recommendations for expansion as articulated elsewhere in this submission.

Recommendation 25: Recognising that identifying contaminating sites without also making remediation plans can represent an unacceptable burden on landowners. Any mandatory reporting of contaminated sites, such as that proposed in DEPI's *Cleaner Environments* Policy, should be accompanied by a clear remediation framework, making responsibilities of landowners, auditors, and Government agencies clear so that all sites that are identified will also be earmarked for remediation using a transparent prioritisation system.

Recommendation 26: That EPA pursue opportunities to share information between itself and other agencies. That the Victorian Government pursue opportunities to share information amongst agencies, by standardising reporting requirements across all agencies involved in management of contaminated sites and other matters related to compliance with environmental and other laws.

Recommendation 27: That Councils be required to turn over information on known contaminated sites within their municipality to the EPA. This would require a one-off transfer of historical data, as well as ongoing mandatory reporting requirements.

Recommendation 28: That EPA be provided with resourcing to establish comprehensive pollution and related field information GIS layers, and to manage the sharing of this and other data with other relevant agencies.

Recommendation 29: That the Victorian Government recognises the substantial capital investment EPA has made in Ibis and provides sufficient resources to ensure Ibis' potential as a business tool is realised.

Recommendation 30: That EPA overhaul its records management procedures, staff induction and ongoing filing compliance regimen to establish a culture of diligent record keeping.

Recommendation 31: That EPA's current strong governance structure be embedded, with requirements to maintain separate Chair and CEO positions, a Board and Advisory Committees.

Recommendation 32: That the Government redirects interest dividends from the Sustainability Fund to fund the ongoing work of the EPA, and reinstate the appropriation budget allocation cut by the Bailleu / Napthine Government, to stabilise EPA's ongoing funding and provide a long term foundation for organisational planning, including appropriate EFT resourcing.

Recommendation 33: That the Inquiry recognise the exceptional work ethic of EPA's staff, and further recognise that the output of recent years is unsustainable at current staffing levels by ensuring that any proposals about EPA's future scope and staffing levels reflect a sustainable ratio of staff to duties, based on sound workforce planning principles.

Recommendation 34: To better address the emerging specialisation required to meet the changing environmental threats, a new career structure should be developed to better reflect the operational demands of EPA and its staff. This should include a new entry point, a point for recognition of qualifications both mandatory and discretionary and as EPA is a science based operation, and that the classification structure provide for a career pathway for Environment Protection Officers to be recognised as Senior Technical Specialists.

Recommendation 35: That the Inquiry recognise the value of data analysis and synthesis as necessary regulatory tools, and build such a recognition into its recommendations for EPA's future composition.

Recommendation 36: That the Victorian Government, in recognition of the importance of environmental laws, audit its own sites to establish a prioritised remediation schedule in conjunction with the EPA.

Recommendation 37: That all EPA staff be granted the same protection as emergency workers and staff of local authorities under the *Summary Offences Act 1966*¹, which makes it a punishable offence to impede or harm an officer in the course of their work.

Recommendation 38: That EPA defaults to sending all staff, and especially Environment Protection Officers, out in pairs unless a risk assessment establishes that attending alone is safe. Further that as a priority a task force be established, chaired by Worksafe with EPA and CPSU representation, to conduct a complete risk assessment of all work of EPO's and other field based staff in order to develop an appropriate risk management tool to address OHS concerns expressed by staff during this review.

Recommendation 39: That EPA immediately cease the practice of outsourcing core business, and abolish use of labour hire.

Recommendation 40: That the incongruity between state regulated and federally regulated ballast water environmental hazards needs to be resolved, and we recommend that federal and state governments discuss this as a matter of priority.

¹ Summary Offences Act 1966 (Vic), s.51

Glossary

BPEM – Best Practice Environmental Management (a type of policy document produced by EPA)

DEDJTR – the Victorian Department of Economic Development, Jobs, Transport and Resources

DELWP – the Victorian Department of Environment, Land, Water and Planning

DEPI – the former Victorian Department of Environment and Primary Industries

DHHS – the Victorian Department of Health and Human Services

DTF – the Victorian Department of Treasury and Finance

EPA – the Victorian Environment Protection Authority

EPO – Environment Protection Officer

Ibis – EPA's in-house electronic database

PIW – Proscribed Industrial Waste

USEPA – the United States Environmental Protection Agency

HSR – Health and Safety Representative

Introduction

The Community and Public Sector Union (CPSU) is an organisation of employees registered under the Fair Work (Registered Organisations) Act 2009 (C/W).

The CPSU SPSF Victorian Branch represents the industrial and employment interests of its members employed in the Victorian Public Sector and associated bodies, and more specifically, staff employed within the Environment Protection Authority (EPA).

CPSU acknowledges the cooperation of the EPA Chief Executive Officer, Nial Finegan, who agreed to the secondment of CPSU member, Travis Batesmith, from EPA to work on the submission which has been critical to the formulation of this document.

Through the making of this submission CPSU has sought to ensure that all staff within the Environment Protection Authority were engaged. This gave them an opportunity to express their views about the challenges and opportunities facing the organisation and considered by the Inquiry into the Environment Protection Authority established by the Victorian Government.

CPSU sought the views of all staff (both members and non-members) within the EPA through electronic surveys and meetings in all workplaces and business units across the state. CPSU is proud to be able to represent the views of a very professional and committed group of public servants. Through their experience working in the field, these staff are able to present a unique perspective on how to address the environmental issues facing the Victorian community in the twenty-first century.

Discussion

The following sections set out the CPSU's answers to questions posed in both the Terms of Reference and the Discussion Paper. The questions have been grouped into five themes – *Context, EPA's Role, Co-regulation, Legislation* and *Internal Support*. Each theme reproduces the relevant questions, followed by a discussion and finally, recommendations.

Theme 1: Context

1. What do you think are the key environmental challenges which will impact the EPA in the future?
2. Comment on the EPA's appropriate role in protecting the environment.

Why the environment matters

The health of the environment is of such profound significance to humankind that it necessitates protection and advocacy of the highest order. This is not a statement of political philosophy – it is a statement of fact.

Environmental considerations are often weighed against social and economic factors – this is the foundation of triple bottom line accounting. The common understanding of the three is one of winners and losers engaged in a zero-sum game; for example, a new regulation may increase environmental protection but cost the economy.

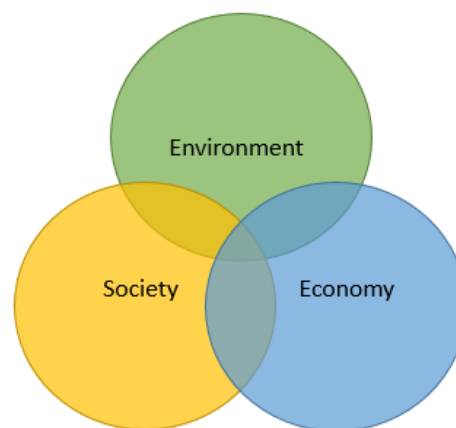


Figure 1: the environment, society and the economy envisaged as separate spheres with some overlapping interactions

However, this mental model fails to take into account demonstrable physical reality, which is that the economy is actually wholly dependent on society, which itself is wholly dependent on the environment. Consider - the economy cannot exist in the absence of humans, and humans cannot exist in the absence of food, water, air or other environmental products. Thus a more accurate representation of these three areas would be as illustrated in figure 2.

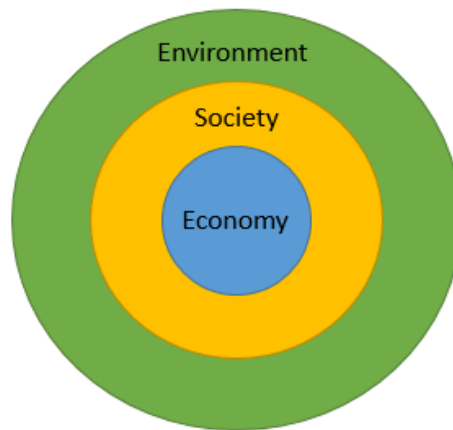


Figure 2: the environment, society and the economy oriented to display dependence and relative scope. Items encircled by other sphere/s are wholly dependent for their existence on the encompassing sphere/s; the opposite is not true.

Where we've come from

Current environmental regulation in Victoria is administered through a collection of agencies. Responsibility for writing environmental legislation sits principally with DELWP, however the implementation of the legislation sits with EPA, local Councils, Waste Management Groups and DHHS.

Powers are spread across the *Environment Protection Act 1970*, the *Public Health and Wellbeing Act 2008*, the *Planning and Environment Act 1987*, the *Local Government Act 1989*, the *Greenhouse Gas Geological Sequestration Act 2008* and others.

EPA's powers are limited to the regulation of industrial activity, with the DELWP responsible for flora and fauna management, local Councils responsible for domestic pollution, DHHS responsible for human health, DEDJTR responsible for mines administration and, sadly, nobody responsible for complex precinct or regional scale issues.

In such a fractured regulatory environment, it is inconceivable that the gains made in the first 40 years of the EPA – gains focussed on the prevention of point source gross pollution from industry – will continue to be achievable in the next 40 years and beyond. The challenges of the past are not the challenges of the future, and what worked in the past is failing us now.

When the Environment Protection Act ("the EP Act") was first conceived, known environmental toxicants were numbered in the hundreds; today they are numbered in the tens of thousands. Further, the EP Act was set up to respond to point source pollution from large emitters, whereas today, diffuse pollution accumulates through the low level production of waste from millions of individuals. New pollutants emerge every year, and their interactions with each other and the receiving environment are rarely studied. There is no ability for EPA to meaningfully monitor impacts on non-human species in many ecosystems, nor to drive ongoing increases in environmental standards.

Consider that the average Melbourne family will now be flushing antibiotics, wet-wipes, microbeads and more down their drains every day. They will be emitting fine particulate matter from their wood burning fireplace and invisible but dangerous gasses from their vehicle exhaust. These pollutants will intermingle with the heavy metals from a nearby smelter and the CO₂ from Latrobe Valley power stations. Dust in the air will annoy the children while they play; increased NO₂ emissions will trigger their asthma. Meanwhile the frogs in the local wetland will gradually disappear, the previously clear water will become clouded with algae and the trees will slowly change from natives to introduced species. All of these impacts are observable today, but neither the EPA nor any other Victorian government agency is properly equipped to deal with such widespread system degradation.

What is needed

It is the CPSU's view that effective environmental protection requires five core functions:

	Core Function	Description
1	Science	establishing standards through objective study
2	Legislation	enshrining the standards in law
3	Assessment	establishing compliance with the standards prior to commencement of any activity that might degrade the environment
4	Enforcement	monitoring ongoing compliance with the standards and correcting non-compliances as they arise
5	Communication	educating the community and industry about environmental health matters; responding with environmental health information during times of crisis

Table 1: the five core functions required of an independent agency that are necessary for effective environmental protection

No single government agency has carriage of these 5 functions at present. It is CPSU's view that the dangers to the environment, and thus to all of the people of Victoria, are so substantial and immediate that a strong, well resourced and thoroughly independent agency should be of the highest priority to the Victorian Government.

CPSU believes that the EPA, as an existing independent statutory authority with 40 years experience in environmental monitoring, protection and education, is the most appropriate agency to take on the responsibility of end-to-end environmental protection.

In order to do this, the EPA must be appropriately resourced, both to recruit and retain necessary expertise, and to have the operational funding needed to execute its mandate.

Recommendation 1: That the Inquiry acknowledge the overwhelming necessity for an independent agency with broad powers to set and enforce environmental standards. Such an agency should report directly to Parliament, to enshrine their direct accountability to the people of Victoria, rather than to the government of the day. It should be well resourced and staffed with experts in relevant disciplines. The EPA is the most logical agency to be tasked with this responsibility, given its history and expertise.

Recommendation 2: That the Inquiry recognise that the environmental challenges of the future will relate to the proliferation of chemicals (including their synergistic effects) and to the diffusion of pollution sources as more products are made available to individual consumers, and that as such, the EPA's legislative tools must be nimble enough to enable it to respond to these challenges.

Theme 2: EPA's Role

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

In examining the place of the environment in the world today, *Theme 1: Context* drew conclusions about EPA's role; thus those conclusions and associated recommendations will be taken as the starting point for the discussion in this section.

The discussion in *Theme 1* illustrates that EPA's role must go beyond what is necessary only to safeguard human health, because by protecting overall environmental health, human health is also protected.

According to the World Health Organisation², indicators of environmental health include:

- Species biodiversity
- Air quality
- Water quality
- Human health
- Human amenity
- Waste management
- Vector-borne diseases
- Hazardous substances

Any future agency which seeks to deliver whole-of-environment protection for Victoria must be measured against such indicators.

Recommendation 3: That the Victorian Government review its monitoring and analysis activities as they relate to environmental health indicators with a view to ensuring they comply with World Health Organisation standards, and are carried out in a consistent fashion, ideally by a single organisation.

4. Comment on the Victorian community's and industry's expectations of the EPA as its environmental regulator.

The expectation of community which is commonly expressed to EPA staff is that EPA exists to set standards that will protect environmental amenity, and ensure industry complies with those standards. What such amenity looks like to the community can be extrapolated from pollution reports. These reports overwhelmingly relate to issues of noise, odour and dust.

The expectations of industry and business groups, again as expressed to EPA staff, are that EPA exists to hold all members of an industry to the same standard as each other. The goal for industry is to have a level playing field, to prevent market distortions created by illegal avoidance of compliance costs.

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

It's important to clarify EPA's role in regard to public health, as the community's expectations do not always accord with EPA's regulatory powers and duties.

As stated above, the community most frequently expresses concern about impacts from noise, odour and dust. These are issues which impact negatively on amenity, but only to a minor degree on human

² World Health Organisation, *Environmental Health Indicators: Framework and Methodologies*, 1999

health, and thus have historically received only minor consideration in environmental legislation (while causing maximum community frustration).

With all of these amenity issues, the root cause is often poor planning decisions which see residential and industrial land uses come into conflict through encroachment, or through different historic approaches to planning. The need for greater EPA involvement in planning decisions will be discussed more fully in *Theme 3: Co-regulation*.

Staff comment

“EPA needs to be more involved in local community events as an educational program, so they get to know us and what we do. Perhaps this doesn’t just sit with EPA, but also with other regulators or environment departments.

Communities have a right to understand what their EPA is doing and why. However, they also need to be cognisant of the relative health impact of various types of environmental pollution, and of the somewhat inextricable relationship between the industries that provide goods and employment to Victorians, and the noise, odour or other amenity impacts that accompany them.

There are effective public education campaigns that EPA could model, for example the Transport Accident Commission’s “Bloody Idiot” campaign or the WorkSafe “Homecomings” campaign.

Recommendation 4: That the EPA be adequately mandated and resourced to provide education and involvement campaigns to the community, similar in style and effectiveness to those of the Transport Accident Commission and WorkSafe.

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

In order to avoid debate over whether or not greenhouse gas emissions need to be reduced, for the purposes of this question this submission will assume that there is an intention at Government level to measure, manage, and reduce greenhouse gas emissions. The CPSU certainly supports this.

EPA is currently well placed to have a role in managing greenhouse gas emissions, as many of the waste gases concerned are already proscribed by EPA legislation, with industrial emitters generally required to monitor and report their emissions through EPA licences. This data could be used by government to inform the feasibility of various emissions reduction targets, and given that EPA already licenses these emissions, it would be well placed to manage any changes to those license limits, assuming legislation was adjusted to allow for this.

If the state of Victoria were to enter the area of reducing greenhouse gas emissions, this would ideally be led by an impartial and independent statutory authority as envisaged in *Recommendation 1*, rather than by an arm of DELWP. It would be of questionable value to create a new authority to undertake this role, and the role would fit well within EPA’s current framework, being an authority which makes decisions and informs policy based on scientific evidence. As such it would be reasonable to create and appropriately fund a new program division within EPA to focus on setting standards, and further resource other parts of EPA to have a greater focus on regulating these new standards.

Recommendation 5: That the EPA be adequately mandated and resourced to incorporate the setting and enforcement of greenhouse gas emissions standards into its ongoing remit.

Recommendation 6: That the setting of greenhouse gas emissions reduction targets be decided by a Committee comprised of EPA and DHHS officers with scientific qualifications, based on scientific evidence and best practice abatement technologies and practices.

Theme 3: Co-regulation

7. How can the EPA effectively work in partnership with other government agencies to meet the environmental challenges of the future?
8. Comment on 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;

EPA's role in public health issues is inextricably intertwined with other agencies'. If the EPA is to leverage other organisations to achieve better environmental outcomes, all agencies need to have clearly defined roles and responsibilities.

Key agencies with which EPA must have strengthened relationships include:

- DELWP
- DHHS
- Energy & Earth Resources Division (DEDJTR)
- Parks Victoria
- Local Councils
- Places Victoria
- Worksafe

Staff comment

“Nobody understands where the boundaries are with asbestos. Worksafe only cares if it’s in a factory; we only care if it’s being dumped; Council just worries about having a tip that’ll take it. It’s everyone’s problem and no-one’s.”

To illustrate the complexity of the type of issue EPA faces, here is a (non-exhaustive) table of the interactions between the agencies cited and the issues mentioned in question 9 above.

	Asbestos	Chemicals	Site contamination prevention	Site contamination management	Air quality	Water quality
DELWP		X	X		X	X
DHHS	X	X		X	X	X
DEDJTR					X	X
Parks Vic	X				X	
Councils	X	X	X	X	X	X
Places Vic				X		
Worksafe	X	X	X		X	X

Table 1: mapping the interaction of agencies and issues relating to environmental health

Case study 1: Brooklyn industrial precinct

The first case study presented here illustrates what can be achieved when agencies come together with community and industry groups to work on precinct-wide problems.

The Brooklyn industrial precinct covers most of the suburb of Brooklyn, 8-10 kilometres west of Melbourne CBD. Businesses in the precinct include abattoirs, renderers, transport and logistics hubs, materials recycling, raw materials processors, concrete batching and other heavy industries. Some roads in the precinct are unpaved dirt. Surrounding and scattered throughout the suburb are residential streets.

The principal matters of concern to residents of the area are odour, dust and noise. The sources of each type of pollution are fairly well known, but solutions have proven very difficult to negotiate.

EPA started a concerted effort to “fix Brooklyn” over five years ago. EPA has devoted a substantial amount of its resourcing to the problem, both in terms of field inspections and community outreach. There has also been a sustained effort to build relationships with the industries and with other government agencies who have a stake in the problem, particularly the local Councils and VicRoads. Real progress started happening when all of the stakeholders were able to hear differing perspectives and then start agreeing on a workable series of actions that addressed the problems that faced the precinct as a whole. EPA would not have been able to achieve progress on its own, as its current legislation focusses on site-by-site compliance activity, making precinct issues harder to solve.

This case study illustrates that large, intractable problems can be addressed through coordinated and adequately resourced government agencies who can then engage with industry and communities to frankly explore problems and collectively agree workable solutions. However it also illustrates how problems are created through poor planning decisions and long term inattention by government agencies.

Recommendation 7: That the Victorian Government develops legally binding Protocols between the EPA and agencies listed in *Table 1* (and others as it deems necessary) to clearly articulate respective areas of responsibility, and that these Protocols be developed as a priority to ensure timely responses to matters of community concern and demonstrate to the people of Victoria that their government is capable of coordinated and prompt action.

Recommendation 8: That the Victorian Government recognises the complex nature of many environmental problems and better equip relevant agencies to work collaboratively with the community and industry to pursue long term solutions.

9. What role should the EPA play in emergency management?

Before discussing this question, consider the following illustrative case study.

Case study 2: Hazelwood mine fire

This case study explores the impact of confusion between agencies as to their respective roles and obligations to the community.

In 2014, the Hazelwood open cut coal mine caught fire during the summer bushfire season. From the beginning, there was a clear need for health advice to be provided to communities affected by poor air quality from smoke and ash, however such advice was slow to be provided and the delays caused widespread community concern. There is no doubt that the community's expectations about health information and health protection were not met.

The delays in communication with the community were caused by confusion between agencies as to who was responsible for such messaging, and by gaps between the collecting and reporting of data.

EPA was placed under enormous stress during the fire. Out of 312 staff, around ¼ were directly involved in fire response, through the deployment of air quality monitoring equipment, data analysis, community liaison and interagency coordination. The protracted duration of the fire meant that the remaining staff left to deal with business-as-usual were carrying an untenable burden. EPA staff rallied to ensure that the organisation's core functions were maintained, but this is not a sustainable response method.

Once responsibilities were decided, the various agencies involved in the Hazelwood response each worked fairly well together, thus showing that the problem of lack of coordination was not one of willingness so much as confusion. The Hazelwood incident illustrates the necessity for clear lines of responsibility for each agency.

The community made it clear to EPA staff at the time that they did not consider it reasonable for EPA to have no control over mine operations. The refrain of "that's not EPA's jurisdiction" held no water with them. To them, the fire was impacting the environment and that should be EPA's job to fix.

Without pre-empting recommendations from the reopened Hazelwood Mine Fire Inquiry 2015-16, it is also worth pointing out that it remains questionable whether the current regulatory system, whereby mines are not subject to oversight by EPA and multi regulatory bodies, remains tenable.

In recent years, EPA has been involved in inter-agency emergencies on an increasing basis. Some of this is due to greater impacts of climate change (eg bushfires, flooding), some due to encroachment and poor planning decisions (eg Brookland Greens landfill gas migration) and others that are the result of matters outside government control (eg Esso Longford explosion). Regardless of cause, the citizens of Victoria expect timely and accurate information on contamination that may compromise their health.

Staff comment

"The community doesn't really know what we can and can't do - people call us for anything 'environment', including lots of things that aren't within our remit. When we tell them to ring someone else, it drives them nuts. Fair enough too."

In 2014, the Victorian Government established Emergency Management Victoria (EMV), an authority with the remit to "lead emergency management in Victoria by working with communities, government agencies and business to strengthen their capacity to withstand, plan for, respond to and recover from emergencies". Since then, EPA has worked with EMV to coordinate emergency management for future events.

At present, relevant EPA staff are offline working on special projects in preparation for the 2015-16 fire season. EPA has also just appointed an Emergency Response manager and staff. All of these activities should contribute to greater preparedness and response from EPA in future emergencies.

These efforts, combined with recommendations above aimed at clarifying the roles of various agencies, will make both EPA and the wider Victorian government much better prepared to meet community expectations during future emergencies.

Recommendation 9: That EPA should work as a support agency under the Emergency Management Victoria framework to contribute to whole-of-government responses to future emergencies.

Recommendation 10: In order to maximise EPA's future emergency preparedness, sufficient resourcing should be made available for the procurement, maintenance and deployment of specialist equipment for environmental monitoring and reporting.

Theme 4: Legislation

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

The majority of work undertaken by EPA in response to reports from the general public can be traced back to poor planning decisions that set up long term conflicts of land uses. For the regional officers who respond to these types of complaints from the community, getting a resolution which is satisfactory to the public is often very difficult.

Conflicts are partly due to the changing expectations of the public; as new people move into an area they are less likely to be accepting of the existing local industry that is causing impacts on their amenity. Conflicts can also arise when planning decisions get overturned in VCAT due to successful challenges by developers who are more interested in securing profit than in the ongoing wellbeing of future residents.

This clash can be seen in parts of south east Melbourne where housing has been constructed in close proximity to landfills. The residents in these areas are now the source of a large portion of EPA's pollution reports, and the region is the focus of much of EPA's compliance efforts.

It is the CPSU's view that EPA needs to have greater powers with regard to land use planning, including a right of veto where proposed uses will dramatically increase the likelihood of negative outcomes.

The CPSU believes that land use planning needs also to incorporate the "agent of change" principle, whereby the burden to guarantee no negative outcomes is placed on the company or individual who is causing there to be a change in circumstances.

Another logical addition to the planning scheme would be the exclusion of certain sensitive uses within a given buffer distance of other uses; for example, no residential zoning within 1km of industrial zoning (the buffer could be provided by commercial or green wedge zoning).

EPA has already started down this path, releasing buffer guidance for a variety of industries, and enforcing these distances for approvals granted by EPA. Some Councils have also taken these on as hard requirements for some planning restrictions, however there is currently very little statutory power behind Councils to make that decision, leaving such a decision open to challenge.

Another missing link in this discussion is that of a Land and Environment Court, similar to that which has existed in New South Wales since it was set up under the *Land and Environment Court Act 1979* (NSW). In many jurisdictions around the world these specialist Environment courts have been shown

to improve decision making on environmental justice, both in terms of consistency of decision making and in use of appropriate levels of sanction. This is due to the requirement for the judiciary involved to have greater experience with and understanding of the subject matter, and as a result not comparing environmental impacts with human impacts as can be the case currently in the Victorian Magistrates court where many breaches of the EP Act are currently heard. The new court could also take the place of VCAT in mediating disputes related to planning and environment decisions.

Recommendation 11: That EPA's powers as a statutory referral authority be expanded to allow EPA to influence and, where necessary, veto, individual planning applications.

Recommendation 12: That EPA be included in the early drafting of planning scheme amendments, in order to protect beneficial uses for future users of the land, water and air environment. Such involvement must include a right of veto over incompatible land uses or encroachments.

Recommendation 13: That land use planning decisions be founded on the concept of "agent of change", that is, that to the extent that there is a conflict between existing and proposed land uses, the existing land use should have primacy.

Recommendation 14: That the Victorian Government should consider buffer distances between sensitive uses and industrial zones, to avoid the most common source of complaint, being odour and noise.

Recommendation 15: That EPA be resourced sufficiently to provide a strong planning advice function to DELWP and to local Councils.

Recommendation 16: That a specialist environment court, similar to the NSW jurisdiction, be set up to hear offences against the EP Act in front of a specialist sub-set of the judiciary with appropriate qualifications or experience with environment matters. This will also take the place of VCAT in relation to planning disputes, allowing matters to be heard on more than an administrative basis, but to also take into account the impact of a planning decision on surrounding land uses, applying the "agent of change" principles.

11. 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?

OHS laws

There are clear comparisons with national OHS legislation which can be used as a template to create more appropriate powers for the EPA. Using similar regulatory approaches across legislation will benefit businesses by simplifying compliance.

One relevant area of the Occupational Health and Safety Act 2004 (OHS ACT) is the ability for employees to elect a representative to act on their behalf with regard to health and safety, known as the Health and Safety Representative (HSR). This concept could be modified to provide for an Environment Representative, in order to assist business in compliance with the act, and to assist the EPA in monitoring compliance with the act. Similar protections would be required for an Environment Representative as are currently enacted around HSRs, in order that people are willing to take on the responsibility, and that they are protected while doing so.

Secondly, the Commonwealth model act, *Work Health and Safety Act 2011* (WHS Act) introduces a concept whereby an officer of the company for undertaking due diligence, parts of which could again be modified to provide for due diligence in relation to Environment matters at the workplace, in order to prevent any environmental impact from occurring, and to require that any reasonably practicable steps are taken to avoid such an impact.

This preventative approach places the onus upon businesses to take all reasonably foreseeable steps to prevent harm, rather than simply fixing a problem after it's happened. For example, a business is required to put safety barriers on dangerous equipment, rather than just pay compensation after an employee loses an arm. In the same way, organisations should be required to take preventative steps to control possible sources of pollution at their site without intervention from EPA, rather than just requiring clean up afterwards. The reason is simple – some harms cannot be adequately remedied after they've happened. Just as a person's arm cannot readily be reattached, nor can mercury in sediments be removed from the Bay, nor tar be removed from fractured aquifers.^a

Recommendation 17: That the EP Act adopt provisions from the Victorian OHS Act 2004 to allow for EHS Representatives in workplaces. That these individuals be given appropriate protections and the ability to issue provisional abatement notices to address risks and actual harms. Further, in the event that this recommendation is adopted, we recommend an alignment of the powers of the Authorised Officers and the EHS Representatives.

Recommendation 18: That the EP Act adopt the principles set out in sections 27 of the Work Health and Safety Act 2011 (C/W), creating a duty for officers of organisations to undertake due diligence with regard to environmental risks.

Superfund – US EPA

From the US EPA website: “Since 1980, EPA’s Superfund program has helped protect human health and the environment by managing the cleanup of the nation’s worst hazardous waste sites and responding to local and nationally significant environmental emergencies.”³

The Superfund is responsible for cleaning up sites when polluters cannot. The cost is typically recovered from the polluter, however a trust fund is available to supply unrecoverable costs. The United States EPA levied a tax on petroleum and chemical industries to raise capital, and ongoing funds are injected from central revenue.

By contrast, the Victorian EPA uses a system of Financial Assurances, which are placed on certain licenced sites and which operate similarly to a rental bond – if the site is left in a polluted state at the cessation of that business’ activity, then the Financial Assurance is (theoretically) used to remediate the site.

However, the Financial Assurance system is riddled with problems. The cost to an individual business of having a lump sum of tens to hundreds of thousands of dollars tied up as a Financial Assurance can be prohibitive. However, the funds held often would not come close to cleaning up a site, as remediation expenses can easily run to millions of dollars.

The US EPA’s Superfund operates more like an insurance scheme – funds paid by industry are non-refundable but are of a much smaller amount than Financial Assurances. The funds are pooled and deployed as necessary. Over time, the ‘insurance’ becomes just another cost of doing business.

The Superfund also, critically, uses funds available to clean up *legacy* contaminated sites, not just active sites. This point will be expanded upon in answer to question 15 below.

Recommendation 19: That the EPA be granted the power to set, collect and invest a USEPA-Superfund-style insurance scheme to levy industry to fund the cleanup of contaminated sites.

Recommendation 20: That the EPA be granted the power to coordinate site cleanups when it is not possible to compel the polluter or landowner to do so, and pursue cleanup costs from polluters and/or landowners where possible.

³ <http://www2.epa.gov/superfund/superfund-history>

12. Comment on 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.

Since being enacted into law in 1970 the Environment Protection Act 1970 has been amended 192 times, and reprinted to accommodate these amendments 40 times. It has now been amended so many times, for so many different reasons, that the lawyers, assessors and field officers who deal with it regularly consider it to be contradictory and ambiguous. As a result, the Act itself can now be a barrier to EPA taking on what a lay-person would consider an obvious case for prosecution of a company over poor environmental performance.

Further amendments are not the best way to solve this problem; the solution must be a complete re-write of the Act.

While it would not be feasible for this submission to embark on an exhaustive critique of the current Act, EPA staff have put forward a range of opportunities for improvement, a selection of which will be discussed here. The CPSU strongly encourages the Inquiry to consult with EPA staff past and present if more detail on the EP Act is desired, as the staff of the EPA have a forensic understanding of the Act's strengths and weaknesses.

Best Practice

In recent years EPA has added a new tool to Victoria's environmental regulatory toolbox - best practice environmental management (BPEM) publications.

For example, referring to the BPEM publication pertaining to landfills has allowed EPA to provide more information than would otherwise be appropriate in landfill licence conditions. By referring to a living document, the benchmark by which best practice is judged can continually be updated and improved without having to pursue amendment to legislation or regulations (a laborious, expensive and time consuming task). It also allows EPA to update all landfill licences without the lengthy process of licence amendments – instead it can simply update the BPEM.

The idea behind BPEM can be repurposed more broadly. That is, a tool which is given the power of law through definition within a Regulation, but can still be amended easily enough to incorporate developments in the environment field. Uses might include emergent contaminants of concern or new remediation practices – matters which are constantly evolving and which, historically, have taken years (if not decades) for environment regulators to respond to.

Recommendation 21: That EPA create tools incorporating the BPEM model to enable quicker, more nimble response to emerging environmental issues without the need for statutory reform.

Summary Offences

Many years ago, the EPA lobbied government to convert some of their existing provisions from summary offences to indictable offences. In doing so, EPA improved the usefulness of these sanctions, as the fines related to summary offences were far lower and were not seen as a significant enough cost to serve as a deterrent. However, what this also meant was a far higher burden of proof, and resultant effort and time required for the organisation to successfully fine a company for poor performance.

Over time, the relative cost and effort of these fines has also become inappropriate for some offences, such that it would be appropriate for a new set of summary offences to be created to cover the gap. These could be specifically targeted at small scale offences, and designed to be easy to prove and issue. Such an immediate cause / effect relationship with regard to fines for poor behaviour has also been shown to be a very effective deterrent for smaller infractions.

Recommendation 22: That the EP Act incorporate summary offences for small scale breaches, to give Authorised Officers a quick and effective deterrent when dealing with smaller non compliances.

Trans Pacific Partnership

The Inquiry may wish to take note of the potential impact on environmental regulation of trade agreements such as the pending Trans Pacific Partnership (TPP), particularly investor-state dispute settlement (ISDS) provisions.

With the release of the text of the TPP on 6 November 2015, it has become clear that there are insufficient protections within the document to allow for signatory nations to make changes to environment and public health legislation. Doing so can now leave nations open to legal challenge from international corporations through the ISDS provisions in the TPP, where these changes impact on corporate profit.

As an example, NAFTA, the free trade deal between Canada, the USA and Mexico that came into effect in 1994, was the first trade deal among developed countries to include the now-standard feature of ISDS provisions. As a result of NAFTA's ISDS challenges, Canada is now the most sued developed country in the world.

Of the 77 known NAFTA investor-state claims, 35 have been against Canada. Canada has paid American corporations more than CAD\$200 million. For example;

- Ethyl, a U.S. chemical corporation, successfully challenged a Canadian ban on imports of its gasoline that contained MMT, an additive that is a suspected neurotoxin. The Canadian government repealed the ban and paid the company CAD\$13 million for its loss of revenue.
- Mesa Power Group is claiming CAD\$775 million in a challenge to the province of Ontario's Green Energy Act, which gives preferential access to local wind farm operators.
- Lone Pine, a Canadian energy company, is suing the Canadian government through its American affiliate for CAD\$250 million because the province of Quebec introduced a temporary moratorium on all fracking activities under the St. Lawrence River until further studies are completed⁴.

If the TPP passes the Australian Parliament, this has the potential to seriously curtail the Victorian Government's ability to enact environmental legislation.

Recommendation 23: that the Inquiry has regard to the progress of the Trans Pacific Partnership through the Australian Parliament and, if it becomes law, considers what impact the likelihood of investor-state disputes will have on Victoria's continued ability to raise environmental standards, given the lack of protection from ISDS included for governments to change environment and health laws.

⁴ <http://www.globaljustice.org.uk> 28/10/2015

13. What aspects of the EPA's work do you value and wish to preserve in the future?

As this is a submission from the CPSU, representing both the view of the union and members of EPA staff, it is our collective opinion that there are no aspects of the work that EPA does that are not valuable, and we would certainly wish to preserve all that is currently done by EPA into the future.

That said, there are certainly opportunities for the management and integration of those functions to be improved, and room for EPA to be better resourced in order to provide the benefit of that work to a greater portion of the Victorian Community.

Recommendation 24: That the current depth and breadth of EPA's duties and powers be preserved in any reconsideration of EPA's scope, in addition to the recommendations for expansion as articulated elsewhere in this submission.

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

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

Identification and addressing of past contamination are two very different problems.

Identifying sites poses a range of challenges. For example, as soon as a site's contamination is identified, the value of that site plummets. Thus there is a strong disincentive for disclosure and a very real matter of natural justice to consider.

Further, it is the EPA staff's experience that once an agency like EPA knows about a contamination, there is a very strong public expectation that "something should be done", regardless of the jurisdiction given to the EPA by its current legislative base.

Finally, it must be remembered that a large proportion of known (and, presumably, unknown) historical contamination was not the result of illegal activity. Rather, it was conducted lawfully, in the absence of environmental regulation.

Addressing past contamination holds similar challenges. Once contamination is identified, the burden of clean up typically falls on the land owner. When this is a multinational corporation with millions of dollars behind them, there may be a perception that "they can afford it" or that "they should've done their due diligence". However, it is hard to maintain that defence when the owner is a small business, or a young investor, or a recent immigrant family. These are the very real possibilities, and these people need help.

Case Study 3: Contaminated Site

This case study demonstrates the complexity in identifying and remediating historically contaminated sites.

In 2010 EPA embarked on a project to remediate approximately 5 acres of contaminated land covering a residential area of low socioeconomic status in inner Melbourne. The contamination was a result of quarry backfilling activity from the 1930's, including foundry wastes that were very high in lead (Pb). Once full, the site was levelled and homes were built on it from the 1950's on; the EPA had known about the site for around 20 years.

Debate continues to this day as to whether the contamination was EPA's problem, due to its age and its siting under present-day homes. However, there was serious disagreement between EPA, the local Council and the homeowners as to who should deal with the problem, and eventually, EPA decided to pursue a self-funded clean up, in the interests of human health.

However, the project did not go smoothly. This was due in part to a lack of powers – EPA had no right of entry, let alone right to excavate, so all activity had to be negotiated amongst landowners and residents. Also, given that this was far from EPA's core business, the internal expertise was insufficient to manage the project efficiently.

The cleanup progressed very slowly and was eventually completed in early 2015 after substantial staff turnover. The cost far exceeded its original \$2M budget.

This project offers the Inquiry an insight into what would be required if EPA were to be tasked with "address(ing) problems that are the result of past activity", where those problems involve contaminated sites. There is a broad willingness from within the ranks of EPA staff to take on such a challenge, however this willingness must be backed up with adequate resourcing and training.

Contaminated sites can sit vacant and unproductive for many years, until such time as remediation technology and costs can be outweighed by the profit gained by remediating and making the land productive in some manner again. While this works for some sites, particularly in inner Melbourne, in regional areas there is often little chance that land values will rise to meet remediation costs.

In most cases, such sites are fenced and left fallow. However from a community perspective, these sites are an eyesore, a waste of what could otherwise be productive land, and often attract unsavoury activity such as drug dealing or illegal dumping.

As discussed earlier in this submission, the creation of a Superfund-style pool of money could be used to offer a remediation "Plan B" when the current or past owner cannot reasonably be compelled to facilitate the cleanup.

Such a fund would be able to resolve not only historically contaminated sites, but also sites that become problems in the future.

If EPA were able to pursue a Superfund-style system, remediation would be able to be undertaken in order of priority so that the sites of highest risk to the community and the environment could be reclaimed; there would be no need to generate a profit as is currently the outcome desired by development companies, and therefore the current limiting factor in remediating these sites could be lowered.

Recommendation 25: Recognising that identifying contaminated sites without also making remediation plans can represent an unacceptable burden on landowners. Any mandatory reporting of contaminated sites, such as that proposed in DEPI's *Cleaner Environments Policy*, should be accompanied by a clear remediation framework, making responsibilities of landowners, auditors, and Government agencies clear so that all sites that are identified will also be earmarked for remediation using a transparent prioritisation system.

Interagency Databases

Agencies at all levels of government maintain databases of information which serve specific purposes, and which could be useful to other agencies. While the CPSU would certainly not advocate for the sharing of databases which contain personal information about individuals, the prospect of government having a better understanding of the location and types of businesses that exist in the state, and what interactions other regulators are having with these businesses, makes a lot of sense.

Local Councils also have a great deal of data which would be helpful in determining locations of likely problems due to past activities; this information is currently not easily available to EPA.

Recommendation 26: That EPA pursue opportunities to share information between itself and other agencies. That the Victorian Government pursue opportunities to share information amongst agencies, by standardising reporting requirements across all agencies involved in management of contaminated sites and other matters related to compliance with environmental and other laws.

Recommendation 27: That Councils be required to turn over information on known contaminated sites within their municipality to the EPA. This would require a one-off transfer of historical data, as well as ongoing mandatory reporting requirements.

GIS

Geospatial Information Systems (GIS) have existed in their current form only for around a decade, however when it comes to making data available to the public, industry and other regulators, and making this data useful to staff, this is definitely the future.

GIS databases house information such as drainage maps, contour layers, access pit sites, nearby landmarks, pollution locations and a myriad of other data that can readily be shared between agencies. Currently EPA uses GIS to a minor degree, but has only 1FTE dedicated to the establishment and maintenance of its GIS database (though a second FTE is proposed soon).

Recommendation 28: That EPA be provided with resourcing to establish comprehensive pollution and related field information GIS layers, and to manage the sharing of this and other data with other relevant agencies.

Ibis

Ibis is the name of EPA's custom-made SAP-based database. It was launched in 2013 and cost over \$10 million. Ibis was designed to replace over 30 separate computer programs and was supposed to give EPA staff unprecedented ability to analyse data. However, the reality has failed to live up to expectations. Rather, Ibis has become a hindrance to staff on a daily basis. One reason for the failure is that, post-implementation, nearly all optimisation ceased. Comments from staff involved in Ibis' build indicate that a typical system of this nature would have a small team of system architects continuing to work on the fine tuning for a period of 1-2 years after launch, however this didn't happen at EPA due to budget cuts brought in by the Baillieu government. Thus, the system didn't quite do what it was supposed to do on Day 1, and as EPA's needs have changed over time, Ibis has been less and less fit for purpose.

Recommendation 29: That the Victorian Government recognises the substantial capital investment EPA has made in Ibis and provides sufficient resources to ensure Ibis' potential as a business tool is realised.

Filing

EPA's current filing system has not been updated for at least 20 years and offers only the most basic electronic indexing. Further, EPA staff are not currently inducted into the organisation's filing practices; thus adherence to proper filing procedure is low. This places an unnecessary burden on staff's ability to record and pass on site history, past compliance activity and any other salient information.

Recommendation 30: That EPA overhaul its records management procedures, staff induction and ongoing filing compliance regimen to establish a culture of diligent record keeping.

16. Comment on 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

Governance

Under the EP Act, all authority currently sits with the Chairman. In practice, the Chairman delegates virtually all power to the CEO, Directors and staff. This is appropriate and functions well. There is also a Board and a number of advisory and oversight committees. All of these arrangements are voluntary though, and the fairly robust current governance arrangements are only relatively recent. Just 7 years ago, there was only a joint Chairman-CEO, and a much higher proportion of day-to-day business decisions went through his office, causing bottlenecks and uniformity of thought.

Recommendation 31: That EPA's current strong governance structure be embedded, with requirements to maintain separate Chair and CEO positions, a Board and Advisory Committees.

Relationship to DELWP

During the last term of government, the decision was made that EPA would no longer report directly to the Environment Minister but would instead report via the DELWP. In addition, over the last few years more policy responsibilities have been shifted away from EPA's control and given to the Department. This loss of control has led to EPA being less able to make required changes to the Act, SEPPs and Regulations, as EPA is no longer in control of the policy making agenda and resources. This means that the Department now exerts a certain level of control over the EPA and the advice EPA provides to government.

The rationale for moving policy drafting to the Department was that there is a perceived conflict in having policy written and enforced by the same agency. However given that the Minister and Parliament have final signoff on statutory policy, any such actual or perceived conflict would be ameliorated. Further, it is common practice within other agencies of government to have both drafting and enforcing powers in the same organisation.

It is integral to EPA's independence as a Statutory Authority that policy is made based on the best scientific evidence available, and not influenced by political ideology or the expediency involved in getting proposals through deep layers of bureaucracy. In making the Department responsible for policy making which affects EPA's activities, the independence of the EPA is hampered.

From a practical perspective, the expertise that's required to inform policy making sits within EPA, and is maintained for purposes other than policy making. This means that having the responsibility for policy making sit outside of EPA is inefficient, as the relationships with experts is less available to those outside of EPA. In practice, EPA staff often end up resourcing the policy making via secondments or participation in Department-led project teams, thus pulling EPA resources offline.

Of greater concern is that EPA's policy needs must compete with the rest of the Department's policy making agenda, with no guarantee that a matter that is urgent to EPA will attract sufficient momentum to make it onto the Department's agenda. This bottleneck has seen much-needed reforms delayed, causing blowouts in EPA's other operations that the organisation is powerless to control.

As discussed in *Theme 1: Context*, EPA must be thoroughly independent if it is to pursue its continuing mission to protect the environment. Thus, rather than making a recommendation at this point, it is sufficient to reiterate Recommendation 1, which is *that the Inquiry acknowledge the overwhelming necessity for an independent agency with broad powers to set and enforce environmental standards. Such an agency should report directly to Parliament, to enshrine their direct accountability to the people of Victoria, rather than to the government of the day. It should be well resourced and staffed with experts in relevant disciplines. The EPA is the most logical agency to be tasked with this responsibility, given its historical and current remit.*

Funding

EPA's funding is insufficient to discharge its current duties. Budget and FTE cuts during the term of the Baillieu government have further exacerbated an already dire problem.

There has been a push in recent years for the EPA to be self-funded, that is, to source funding through means other than consolidated revenue. EPA has not received appropriations funding since 2012. EPA's 2012-13 annual report describes this decision as "The Government's decision to replace appropriation funding to EPA with a larger share of the Landfill Levy". The immediate result of this decision was a destabilisation of EPA's funding base, and **a drop of 26%** in the funding that EPA received that year compared to the previous year. This, combined with no certainty for future funding levels, caused a seismic change in EPA's operations, with cuts being made to every unit's budget.

Further compounding the impact of that decision, the previous government also decided that at the conclusion of 2014-15 the control of the Sustainability Fund (and any interest which it accrues) would transfer from EPA to DELWP, resulting in not only a further drop in EPA's funding, but also an increase in the proportion of EPA's funding which comes from the Landfill Levy – revenue which is difficult to predict from year to year, and which poses a fundamental conflict.

The conflict arises because of EPA's stated goal to reduce wastes deposited in landfills; success in this goal will result in reduced revenues for EPA to continue to operate. Although the CPSU and its EPA members do not believe that EPA is in any way colluding to avoid a reduction of waste to landfill, we acknowledge that the perception of conflict makes this arrangement problematic. In addition, the insecure nature of this funding makes planning long term projects difficult, and the nature of large environmental problems which EPA deals with is that they can take many years to resolve.

In order for EPA to be truly independent, it must have a reliable and sustainable funding base, otherwise EPA will always be at the mercy of changing attitudes towards the environment, an increasingly politicised topic.

Recommendation 32: That the Government redirects interest dividends from the Sustainability Fund to fund the ongoing work of the EPA, and reinstate the appropriation budget allocation cut by the previous Government, to depoliticise EPA's ongoing funding and provide a long term foundation for organisational planning, including appropriate EFT resourcing.

Workload

In order to manage the workload, it is necessary for EPA staff to spend as little time as possible on any individual job. In practice this has many ramifications, for example focussing on small achievable problems to the exclusion of the more difficult or time consuming issues, or being unable to take the time required to understand monitoring data which affects a decision or to review documents provided by business to support their application.

EPA is also losing expertise. Both through the aforementioned job losses and generational change, many of the “old guard” are now gone, and with them, their deep knowledge of scientific and policy areas, and the historical decisions and institutional memory that EPA relies on for direction.

The problem has been compounded by recent restructures that, while designed to increase access to expertise, have arguably had the opposite effect by pulling expertise out of decision-making units and centralising it in a science hub at Macleod. The philosophy behind the restructures was sound, but a deeply flawed execution has left critical units with a dearth of expertise that threatens to compromise core business.

Staffing

Currently the EPA has just 341 staff for the entire state of Victoria. The majority of those are based in the metropolitan area, with the Carlton, Macleod and Dandenong offices making up 80% of staff. The five offices in regional areas have only 10-15 staff in each regional office, including management and administrators.

Every year these 341 people are responsible for monitoring the environment, drafting guidance documents, assessing thousands of applications, inspecting thousands of licensed and unlicensed sites, answering nearly 100,000 inquiries from the general public, running community outreach events, participating in nationwide pollution tracking activities and hundreds more functions that keep Victoria’s environment healthy and liveable for all Victorians to enjoy.

They are exhausted.

How did it get this bad? On 15 December 2011, the then-government announced their “Sustainable Government Initiative” (SGI), which in reality was 10% across-the-board job cuts and a hiring freeze, effective for two years. EPA had spent the previous 3 months working collaboratively with staff on an organisation-wide restructure to better align the business with the newly minted EPA 5 Year Plan. The day before the government’s announcement, the then CEO had announced the new structure to EPA staff – he had no idea the SGI was coming. EPA had been intentionally delaying recruitment to vacant positions, to minimise disruption during the planned restructure. Thus, when the SGI was announced, EPA was already operating about 15% under normal staffing. The headcount on the day the government announced the SGI became each agency’s baseline figure, from which 10% then had to be trimmed. A subsequent budget added another 5% staff cut. All in all, and from a starting point below capacity, **EPA lost a further 26% of its staff** in the 2 years of the SGI, dropping from 419 to 312 FTE at its lowest. These staff losses were in no way controlled, because vacated positions could not be recruited to. Thus, EPA lost expertise in a haphazard way and could not “cut its cloth” to suit the straitened circumstances. Combine these staff cuts with the budget changes described in the previous section, and it is genuinely a testament to the individuals within EPA that the organisation has continued to function.

The types of people that do this work are in the job because they have a passion for environment protection, and they are surrounded by people with the same passion. While the stress is immense and burn out happens regularly and with full knowledge of immediate management, individuals are unlikely to report this as an OHS concern. This is a result of a combination of dedication to the job, and the support of co-workers who have been through the same thing. While this demonstrates the

positive culture which EPA has been striving to achieve, it masks serious workload stresses which are then not taken into account by upper management when planning the workload of the business.

Recommendation 33: That the Inquiry recognise the exceptional work ethic of EPA's staff, and further recognise that the output of recent years is unsustainable at current staffing levels by ensuring that any proposals about EPA's future scope and staffing levels reflect a sustainable ratio of staff to duties, based on sound workforce planning principles.

Authorised Officers

Under the Environment Protection Act, the widest range of powers is granted to Authorised Officers. This term has specific meaning under the Act, as Authorised Officers wield enormous power and must be trained accordingly. The most common type of Authorised Officer in EPA is the Environment Protection Officer, or EPO. EPOs are what most members of the community envision when they think of EPA – EPOs are the ones in uniform who inspect industrial sites and attend pollution events.

While the organisation nominally claims 100 Authorised Officers, a number of these officers are actually employed by labour hire agencies, or are in roles focussed on delivery of a particular program, and thus are not the general-duties EPOs that the community expects.

In reality, there are only 37 Environment Protection Officers on general duties for the entire state of Victoria.

EPA has six operational regions; Melbourne Metro and Southern Metro cover only small geographical areas, but the remaining four regions (offices are in Geelong, Bendigo, Wangaratta and Traralgon) have territories that extend in some cases more than 400km away from their office. Some regions have fewer than four full time EPOs.

A major component of EPA's effectiveness (or otherwise) comes down to community and industry knowing what EPA's role is, when to call them, and what to expect when EPA arrives. When EPA attends a site, their coercive power in part comes from being a credible threat, and not a "toothless tiger". It's difficult to be credible when even license holders can go many years without contact from the regulator.

Environment Protection Officers are required to have a working knowledge of a number of industry types and environmental segments, a fact which is only growing greater as EPA tries to become involved in more varied aspects of environment and public health protection. While this is considered an efficiency by the organisation, as its staff are more versatile, what it means in practice is that EPOs operate as generalists, often operating outside their area of study or specific expertise.

Further, EPOs are measured on the number of interactions they are involved with, and thus don't often get to spend much time on any particular topic – quantity over quality. An officer can be dealing with more than 30 sites at any one time, across as many industries, and many of which are likely to be facing long term issues with completion dates from years to decades away.

Compounding the problem facing EPOs is the absence of consistent career progression. While some regions seek to promote an EPO from VPS3 to VPS4 upon completion of their Authorised Officer training, other regions allow their EPOs to languish as VPS3.1's for years, only able to progress through competitive recruitment for higher graded positions. This is an unnecessary and unfair burden when there are many alternative progression models available within the Victorian Public Service and beyond.

Recommendation 34: To better address the emerging specialisation required to meet the changing environmental threats, a new career structure should be developed to better reflect the operational demands of EPA and its staff. This should include a new entry point, a point for recognition of qualifications both mandatory and discretionary, and as EPA is a science based operation, that the

classification structure provide for a career pathway for Environment Protection Officers to be recognised as Senior Technical Specialists.

Analytical capability

The EPA currently gathers vast amounts of data, however the majority is never analysed or put to much useful purpose. This represents a cost to industry that isn't currently justified by greater environmental protection.

Case Study 4: PIW data

This case study illustrates the gaps in analytical capability within the EPA.

Currently EPA tracks all movements of Prescribed Industrial Waste (PIW) in Victoria through a chain of regulation including issuing Vehicle Permits, requiring the creation of Waste Transport Certificates (WTCs) for each load and requiring that all PIW be transported to Licenced sites. However, around half of the WTCs are still done on paper and submitted days or weeks after the waste movement. The files are manually data-entered, which takes substantial resourcing, and the nature of the way the files are structured in EPA's computer system makes it very difficult to look for "gaps" in the data chain.

The burden on EPA to run the existing system is large, taking around 1% of total FTE. However, because of burdensome systems, meaningful analysis of the data is impossible. Efforts to improve the data collection methods have thus far failed to remedy the situation.

While the present situation is frustrating to staff, they are confident that much more is possible. Much of the analysis could be automated, if the data quality was sufficient. EPA's resources could be directed to trend analysis, knowledge synthesis, communication and compliance activity rather than "decoding truckies' handwriting".

Recommendation 35: That the Inquiry recognise the value of data analysis and synthesis as necessary regulatory tools, and build such a recognition into its recommendations for EPA's future composition.

17. Are there any other issues relevant to the Terms of Reference that you would like to raise that have not been covered in this paper?

Victorian Government compliance

Victorian Government agencies should be model environmental citizens, but they are frequently not. The EPA has had to enter into difficult negotiations with agencies; for example, in 2013 EPA started negotiations with the Department of Treasury and Finance to try to secure cleanup of a tar plume on crown land in inner Melbourne.

If the Victorian Government doesn't see fit to comply with environmental laws, then how can it expect that industry will?

Recommendation 36: That the Victorian Government, in recognition of the importance of environmental laws, audit its own sites to establish a prioritised remediation schedule in conjunction with the EPA.

Officer safety

Last year in NSW, Environment Officer Glendon Turner was shot in the back as he attempted to serve a notice on a landowner⁵. His partner was not able to save his life, but he was able to call for help.

In Victoria, any assault on a police officer is treated as a crime, even when it's a tipsy lady at the Races pushing an officer into the shrubs⁶.

Yet in the last five years there have been at least two violent assaults against EPA staff and at least five other worrying incidents such as slashed tyres and stalking. In one particularly shocking case, an employee was nearly murdered while visiting a member of the community – to bring them good news. Fortunately they were accompanied, and their colleague was able to get to the car and get them both away from the situation. Had the officer been at the site on their own, it is possible they may not have made it home that day.

Yet to staff knowledge, none of these incidents have been pursued by EPA, but rather have been left to staff to pursue. (This may not be an accurate representation, as the CPSU does not have access to EPA's OHS incident records. At a minimum, it illustrates that staff are not kept informed on such matters and do not have the confidence that if something were to happen to them, the organisation would defend them).

At the same time, EPA staff are being pressured to attend compliance inspections "1-up", that is, on their own, rather than "2-up" – with a partner. This can mean entering sites where staff and owners have weapons (eg abattoir knives), heavy machinery (eg tools, forklifts etc) and even sites that are run by organisations involved in crime.

The reason is clear – there are not enough staff to get through all the work, so management is seeking to make ends meet any way it can. The staff of EPA understand the pressure, and have consistently expressed hesitation in raising their fears to management because they too want to get the work done. However, it is never acceptable for expedience to trump safety, least of all when someone is just trying to do their job and serve the community.

Recommendation 37: That all EPA staff be granted the same protection as emergency workers and staff of local authorities under the *Summary Offences Act 1966*⁷, which makes it a punishable offence to impede or harm an officer in the course of their work.

Recommendation 38: That EPA defaults to sending all staff, and especially Environment Protection Officers, out in pairs unless a risk assessment establishes that attending alone is safe. Further that as a priority a task force be established, chaired by Worksafe with EPA and CPSU representation, to conduct a complete risk assessment of all work of EPO's and other field based staff in order to develop an appropriate risk management tool to address OHS concerns expressed by staff during this review.

⁵ <http://www.theaustralian.com.au/news/nation/environment-officer-glendon-turner-killed-serving-notice/story-e6frg6nf-1227007811684>

⁶ <http://www.theage.com.au/victoria/melbourne-cup-2105-senior-police-officer-laughs-off-cup-bush-push-20151103-gkq3r2.html>

⁷ Summary Offences Act 1966 (Vic), s.51

Outsourcing

The CPSU firmly asserts that the work of the Victorian Public Service should be done by public servants. This is not protectionism. Victorian Public Servants are bound by the VPS Code of Conduct; their pay and conditions are designed to offer job security, with the express and specific intent that such security is a necessary prerequisite for the provision of the frank and fearless advice to Government that forms part of the bedrock of the Westminster system. It is not possible to get frank and fearless advice from outsourced temps who know they can be terminated at will.

EPA currently outsources parts of its call centre function, its Ballast Water Program (which is run by Authorised Officers, representing an astonishing misallocation of training resources) and its Litter Program – a law enforcement function that issues tens of thousands of fines per year.

Recommendation 39: That EPA immediately cease the practice of outsourcing core business, and abolish use of labour hire.

Ballast Water program

There is currently a distinction between coastal and international shipping, with EPA Victoria only having jurisdiction over the treatment of ballast water on coastal and not international ships. This is an inconsistency and leaves Victoria open to contamination being dumped into our coastal areas, including the introduction of invasive species such as the crown of thorns.

Recommendation 40: That the incongruity between state regulated and federally regulated ballast water environmental hazards needs to be resolved, and we recommend that federal and state governments discuss this as a matter of priority.

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