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**Submission to Ministerial Advisory Committee for the inquiry into the Environment Protection Authority**

**From Dr Diane Sisely, member Enforceable Undertakings Panel, Environment Protection Agency**

**13 November 2015**

**Introduction**

Thank you for the opportunity to make a brief, late submission to the Inquiry, I will address my comments to the issues of environmental justice and enforceable undertakings. I would be pleased to provide further verbal comment if required.

**Environmental justice and the EPA**

1. The EPA's *Environmental Citizenship Strategy* sets a clear framework for the development of environmental justice however it would benefit considerably from incorporating the relevant components of Victoria's Charter of Human Rights and recognise the EPA's responsibilities under the Charter.

You will be aware that the Charter has been recently reviewed by Mr Michael Brett Young for the Attorney-General and amongst his recommendations is the recommendation that "The Charter be amended to clarify that decisions of public authorities must be substantively compatible with human rights, whether by defining 'to act' as including making a decision' or by specifying in section 38 (1) that it is unlawful for a public authority to make a decision that is incompatible with a human rights". Functions that are covered by the Charter include many the EPA has some responsibility for, including public health services, emergency services and water supply.

2. There would be significant benefit to the EPA if at the same time as pursuing environmental justice it also adopted a restorative justice approach<sup>1</sup> to its implementation. The EPA's *Environmental Citizenship Strategy* calls for empowerment of the community and for communities and businesses to know their rights and responsibilities, however it is my observation that a stronger mandate for this approach to be implemented by the EPA, especially in relation to the development of enforceable undertakings, is required.

Amongst other strategies, a restorative justice approach requires that all affected parties be meaningfully involved in the discussion and resolution of issues from the first point at which an environmental breach becomes known. It is my experience that the EPA should be better equipped to do this and is currently missing opportunities to inform and educate both the public and business about environmental issues and responsibilities. Here I refer to a submission by my colleague, Mr Russell Cooper, and endorse his comments in relation to enforceable undertakings. The effective and meaningful involvement of the relevant community not only facilitates environmental justice but it also educates members of the public about their rights and responsibilities regarding the environment.

A clear statement of what a restorative justice approach is and how it can be implemented by EPA staff in the communities in which they work, is required.

The principles outlined in Michael King's *Solution-Focused Judging Bench Book* (2009) combined with a human rights based approach to community engagement would provide a good starting point for the development of a restorative justice approach for the work of the EPA.

For King, a solution-focused approach to environmental breaches involves a

- strengths-based approach
- focus on behavioural change
- self determination, not paternalism
- procedural justice for all participants

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<sup>1</sup> This approach, also known as the 'solution-focused approach' is utilized across the health sector in Victoria.

- regulatory interaction with participants
- holistic approach.
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A human rights based approach to community engagement involves

- participation, involve all relevant people, that is active and meaningful
- accountability, identification of those with duties (responsibilities) and those with claims (grievances) and assistance to make claims if required
- non-discrimination, attention to minority groups and unfair power imbalances
- empowerment, enable people to understand and build their capability to participate and monitor developments
- links, to human rights standards.