



Governance & Public Management
research interest group

EPA Inquiry
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6 November 2015

Dear Madam,

Attached please find our submission. We are Monash Business School academics convened through the Department of Management's Governance & Public Management research interest group.

This submission reflects the Monash Business School's role as a research intensive business school with an interest in the regulatory environment within which businesses are embedded. Values of human rights, social justice, and respect for diversity in individuals, communities and ideas are central to all of its activities. The Department of Management, in which four of the authors work, is one of the largest management schools in the Asia-Pacific region. The Department of Business Law and Taxation, where the fifth author works, regularly receives national and international competitive research grants and its doctoral program is one of the world's best.

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We would be pleased to clarify or elaborate any part of the submission.

Yours sincerely,



For: Ken Coghill, Deirdre O'Neill, Wayne Gumley, Shibaab Rahman and Linda McGuire.

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EPA Inquiry

Submission by
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Executive Summary

This submission highlights key environmental challenges facing Victoria (now and in the future), and addresses the general policy problem of environmental protection, incorporating but not limited to the role that the EPA should play and accordingly the implications for the structure, relationships and powers of the EPA, the Department of Environment, Land, Water and Planning (DELWP), other agencies and industries, communities and councils.

The submission identifies climate change, acknowledged globally as the most serious threat to mankind, as the key challenge confronting environmental protection and the EPA. As stated by the United Nations Secretary General, Ban Ki-moon "it is, simply, the greatest collective challenge we face as a human family".¹

The submission argues that the DELWP should have a clear responsibility within Victoria as the agency responsible for leading and coordinating the response to the clear and imminent threat of climate change to Victoria's environment, economy, health and social well-being. It is proposed that the DELWP should be the central agency within the Victorian Government responsible for advising government on the impact of policy initiatives and development approvals on environmental resources, within Victoria and with effects beyond the State's territory, including the atmosphere. In this model, the EPA should be responsible for licencing, monitoring and enforcement affecting discharges to the atmosphere, land and water.

The submission begins with a discussion of fundamental principles underpinning the issues we are addressing in this submission. These issues include: fiduciary duty and public trust; ethical dimensions of environmental decisions, environmental justice and ecological services. These principles underlie our recommendations in relation to the role, scope and funding of environmental protection in Victoria.

The submission then proceeds to examine certain specific issues and recommend associated reforms. These include expanding and strengthening the role of the EPA in relation to the environmental impacts of agriculture and forestry, enhancing the enforcement capability of the EPA through the creation of a dedicated Land and Environment Court, and changes to the funding of the EPA to ensure that it is appropriately resourced to undertake the functions and responsibilities entrusted to it by the Parliament of Victoria.

These issues are summarised in the table below.

Section	Topic	Terms of Reference
1	Introduction	1, 7
2	Conceptual issues: fiduciary duty & public trust; ethical issues; healthy environment as a human right; environmental justice;-and ecological services	1, 2, 3, 7
3	Scope, role and governance of environmental protection within the Victorian system of government and Creation of a Specialist Environment Court	1, 3, 4, 5, 6, 7
4	Funding of the EPA	3, 4, 5, 6, 7

The recommendations listed below would enable Victoria to better protect its citizens from degradation of the environment and environmental harm whilst also discharging its responsibilities to those affected beyond its borders. They are listed in the order in which they are discussed in the submission.

¹ Secretary-General Ban Ki-moon, Remarks at 39th Plenary Assembly of the World Federation of United Nations Associations, Seoul (Republic of Korea), 10 August 2009

Recommendations

- Recommendation A:** Participatory and deliberative democratic techniques be routinely applied by the EPA as appropriate on a case by case basis.
- Recommendation B:** Effective action to mitigate climate change be the predominant priority of environmental protection in Victoria.
- Recommendation C:** All legislation directly related to regulating, licencing, monitoring and enforcement to prevent harms to land, water or the atmosphere be consolidated into one Act to be administered by the EPA.
- Recommendation D:** DELWP be reformed as a central agency advising government on the impact of policy initiatives and development approvals on environmental resources and ecological services.
- Recommendation E:** All Cabinet submissions include a section assessing the proposal's environmental impact (specifically carbon emissions) and be submitted to DELWP.
- Recommendation F:** Sustainability Victoria be a Division of DELWP, providing similar services to those now provided.
- Recommendation G:** EPA be required to uphold environmental protection law and be insulated by statute from political direction or intervention except by direction published on the Minister's website and in the Victorian Government Gazette.
- Recommendation H:** EPA report directly to the Minister and be required to advise the Minister without delay of any incident having potentially significant impact on the atmosphere, land or waters in Victoria.
- Recommendation I:** EPA's role be explicitly extended to include agriculture and forestry, to monitor and prevent discharges with the potential for adverse impacts on land, water or the atmosphere.
- Recommendation J:** Commissioner for Environmental Sustainability be an Independent Officer of the Parliament, and report directly to the Parliament, including State of the Environment Reports.
- Recommendation K:** A specialist environment court be established in Victoria, modelled generally on the NSW Land and Environment Court.
- Recommendation L:** The Municipal and Industrial Landfill Levy and the Prescribed Industrial Waste Levy be paid into the Consolidated Fund.
- Recommendation M:** EPA be funded by appropriation from the Consolidated Fund, in accordance with Victorian Government and OECD principles and guidelines.

1 Introduction:

This submission responds to the invitation of the Ministerial Advisory Committee for the Inquiry into the Environment Protection Authority (EPA) to reflect on 'what we think the fundamental purpose and functions of the EPA should be'. We note that the Advisory Committee challenged the Victorian community to submit 'big ideas' about what the EPA should look like in the future. Accepting that invitation we address the general policy problem of environmental protection, incorporating but not limited to the role that the EPA should play. Accordingly we also consider the implications solutions to the policy problem for the structure, relationships and powers of the EPA, DELWP and other agencies. Within the constraints of time and resources, this submission endeavours to present several 'big ideas' for the Advisory Committee's consideration. These include:

- A central agency role for the DELWP
- Restructuring funding of environmental protection
- Explicitly extending the role of the EPA to include agriculture and forestry
- The establishment of a specialist Environment Court

Our submission is informed by two core beliefs. The first is that climate change is the greatest threat to Victoria's environment and that DELWP must be given the role of the central agency within government in Victoria, tasked with addressing and mitigating the impact of climate change. All recommendations in this submission flow from this fundamental understanding.

The Advisory Committee's Discussion Paper, *Examining the future task of Victoria's Environment Protection Authority*, (*Discussion Paper*) confirms that the Victorian Government has a strong commitment to effective action to mitigate climate change.² This coincides with the Commonwealth Government's renewed commitment to reduced carbon emissions. Both Governments support large expansions of renewable energy production to replace fossil fuel fired power plants. However, whilst the *Discussion Paper* acknowledges that "climate change is increasingly acknowledged as the most significant future 'pollution' problem facing communities across the world" it goes on to say that "although the EPA has retained a power to regulate greenhouse gas emissions, the EPA does not currently deploy interventions specifically targeted at emissions reduction". The enormity of the task of a transition to a low carbon economy requires that this aspect of environmental protection must be a central driver of government policy and action, as discussed in greater detail elsewhere in the submission.

The second core belief informing the arguments and recommendations presented is the view that regulation, regulators and regulatory frameworks are of the utmost importance to effective regulation, including regulation of pollution. As a previous Premier and Treasurer jointly noted, 'Strengthening the governance of our regulators will help to maintain the confidence of those being regulated and the broader community.'³The Victorian Government has an enviable record in this regard. A document setting out principles and guidelines for regulatory governance⁴ was highly influential in the development of the content of a subsequent report by the OECD.⁵ The key principles for the governance of regulators identified first in the Victorian guidelines and then in the OECD report are

- Role clarity
- Preventing undue influence and maintaining trust
- Decision making and governing body structure for independent regulators
- Accountability and transparency
- Engagement
- Funding
- Performance evaluation

² Gordon, J. (2015, 17 March 2015). Climate variability out, climate change in. The Age. Retrieved from <http://www.theage.com.au/victoria/climate-variability-out-climate-change-in-20150317-1m1dk2.html>

³ John Brumby and John Lenders, Foreword, in Government of Victoria (2010), *Improving Governance of Regulators: Principles and Guidelines*, Department of Premier and Cabinet.

⁴ Government of Victoria (2010), *Improving Governance of Regulators: Principles and Guidelines*, Department of Premier and Cabinet.

⁵ OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing.

2 Conceptual issues

Before elaborating upon our recommendations and the rationales behind them, we need to clarify relevant conceptual issues that arise from the purposes of the Act and the expectation that the Inquiry will “establish how (Government) can develop the authority to ensure it can protect public health, while protecting our precious Victorian environment for future generations”.⁶ These conceptual issues relate to fiduciary duty and public trust, the ethical dimensions of environmental decisions, environmental justice, and ecological services. These are now briefly discussed

2.1 Fiduciary duty and public trust

The role of the EPA and its relationships with government involve public bodies and public offices. The Government is responsible as a public body for the EPA’s role as a public body executing Government’s discharge of its responsibility.

The Minister responsible for the EPA is a public officer as a Member of Parliament and furthermore in her responsibilities as a member of the Executive. Those who serve under the Minister’s responsibilities are also public officers as each occupies ‘a position of trust, authority, or service under constituted authority’.⁷

The manner in which public officers discharge their responsibilities (in their individual capacities and collectively through public sector institutions) derives from the Magna Carta and is expressed as fiduciary duty and the public trust.

The person occupying public office exercises a public trust. This arises from ancient principles of equity whereby, if one holds property as its legal owner, but does so for the benefit of another person, one is a trustee for that person. That trustee has fiduciary obligations to that person who is the beneficiary.⁸ The implications of this are spelled out by Worthington:

(e)quity insists that beneficiaries are entitled to the single-minded loyalty of their trustees, or, more generally, that principals are entitled to the single-minded loyalty of their fiduciaries. Put starkly, the fiduciary duty of loyalty requires fiduciaries to put their principals’ interests ahead of their own; it requires fiduciaries to act altruistically. ... The duty demands a general denial of self-interest: the fiduciary role proscribes certain perfectly legitimate activities unless the principal consents to the fiduciary’s involvement. The fiduciary’s personal autonomy is correspondingly constrained.⁹

It is on this foundation that it is argued that “the most fundamental of fiduciary relations in our society is that which exists between the community (the people) and the State and its agencies that serve the community”.¹⁰ As Chief Justice French puts it, “echoes of the concept of fiduciary obligation are to be found in the standards which the law imposes upon the exercise of official power by admin decision-makers”.¹¹ Accordingly the public officers and public offices of the State of Victoria have responsibilities as fiduciaries to discharge a public trust – that is to say, to serve the public interest.

One of the most fundamental public interests to be served is protection of the natural environment, as recognised by the purposes of the Environment Protection Act, including sections 1B (integration of

⁶ Neville, L. (Minister for Environment, Climate Change and Water) 2015 Terms of reference. Retrieved from [http://www.epa.vic.gov.au/about-us/news-centre/news-and-updates/news/2015/july/23/~media/Files/about_us/News/EPA%20Inquiry%20\(2015\)/EPA-public-inquiry--signed-Terms-of-Reference.pdf](http://www.epa.vic.gov.au/about-us/news-centre/news-and-updates/news/2015/july/23/~media/Files/about_us/News/EPA%20Inquiry%20(2015)/EPA-public-inquiry--signed-Terms-of-Reference.pdf)

⁷ French, R. (2011). Public Office and Public Trust. Seventh Annual St Thomas More Forum Lecture. Canberra. 11

⁸ French, R. (2011). Public Office and Public Trust. Seventh Annual St Thomas More Forum Lecture. Canberra.

⁹ Worthington (2003) at 121 quoted in French (2011). Public Office and Public Trust. Seventh Annual St Thomas More Forum Lecture. Canberra. 8

¹⁰ Finn, P. (2012). Public Trusts and Fiduciary Relations. In Fiduciary Duty and the Atmospheric Trust. K. Coghill, C. Sampford and T. Smith. Farnham (UK); Burlington (Vermont, USA), Ashgate. 31

¹¹ French, R. (2011). Public Office and Public Trust. Seventh Annual St Thomas More Forum Lecture. Canberra.

economic, social and environmental considerations), 1C (the precautionary principle), 1D (intergenerational equity) and s 1E (the conservation of biological diversity and ecological integrity). These responsibilities do not stop at the Victorian border. Fox-Decent explains that “fiduciary theory explains why every state owes a cosmopolitan duty to extra-territorial non-citizens”.¹² This is a recognition that the atmosphere is without boundaries - carbon dioxide emissions from Victoria spread rapidly throughout the world’s atmosphere. Accordingly public officers’ responsibilities are not limited to any particular geographic territory but extend throughout the world.

Every human being has a right to a healthy environment. Fox-Decent argues for “human rights ... conceived as norms arising from a fiduciary relationship that exists between states (or state-like actors) and the citizens and non-citizens subject to their power”. Importantly, he notes that “fiduciary theory explains why every state owes a cosmopolitan duty to extra-territorial non-citizens”.¹³

2.2 Ethical Dimensions of Environmental Decisions

Environmental protection, including climate change, raises immense ethical questions, the significance of which extends far beyond legal provisions. According to Ban Ki-moon, Secretary General of the United Nations: “it is, simply, the greatest collective challenge we face as a human family”.¹⁴ The ethical bases of decisions affecting the environment are ever more important, whether made by the most or the least powerful public officials.

Ethics are at the base of decisions by heads of government, members of parliaments and officials who are appointed to exercise discretionary powers which contribute to whether mankind’s impact places the survival of civilisation at increasing risk.

Even the smallest, most incremental impact, adverse or beneficial has an ethical dimension. For example, a works approval allowing increased carbon emissions is making a decision that puts short-term considerations ahead of later deaths.

Giving advice (to Government) that omits reference to the incremental damage to the climate is to make an ethical decision that diminishes the quality of advice it receives, contributes harm to public health and degrades our precious environment for future generations.¹⁵

2.3 Environmental justice

The *Discussion Paper* refers firstly to the “requirements of environmental justice, a key objective of which is to ensure greater access to cleaner environments for more local communities” and secondly to “the importance of environmental justice principles that support community involvement in decision-making and equitable protection from environmental hazards”.

One of the authors of this submission (Coghill) has had considerable personal experience of promoting environmental justice, including through his role in establishing the Altona Complex Neighbourhood Consultative Group. Hardy has reported:

The Minister for Planning ... invited the Labor Member for Werribee, Dr. Ken Coghill to investigate ways in which the various parties could be brought together and an equitable solution found.

¹² Fox-Decent, E. (2012). From Fiduciary States to Joint Trusteeship of the Atmosphere: The Right to a Healthy Environment through a Fiduciary Prism. In *Fiduciary Duty and the Atmospheric Trust*. K. Coghill, C. Sampford and T. Smith. Farnham (UK); Burlington (Vermont, USA), Ashgate. 253-4

¹³ Fox-Decent, E. (2012). From Fiduciary States to Joint Trusteeship of the Atmosphere: The Right to a Healthy Environment through a Fiduciary Prism. In *Fiduciary Duty and the Atmospheric Trust*. K. Coghill, C. Sampford and T. Smith. Farnham (UK); Burlington (Vermont, USA), Ashgate. 253-4

¹⁴ Secretary-General Ban Ki-moon, Remarks at 39th Plenary Assembly of the World Federation of United Nations Associations, Seoul (Republic of Korea), 10 August 2009.

¹⁵ For a more extensive review of ethical issues relevant to climate change, see: Coghill, K. (2016) The great moral challenge. In *Ethics in Public Policy and Management* Lawton, Van Der Wal & Huberts. Routledge. 277-298

In late 1988 Dr. Coghill held a number of public meetings to which he invited residents, representatives of the Chemical Complex, the City of Altona, the EPA and the Department of Planning and Environment. As a result of these negotiations the Altona Complex Neighbourhood Consultative Group (ACNCG) was set up to facilitate discussions between industry, regulators and residents.¹⁶

Whilst ACNCG has endured and been successful, it is but one of many participatory and deliberative democratic techniques available to facilitate the resolution of “wicked problems” (of which climate change is one) and to achieve improved outcomes through the potential of the community to bring forward relevant information not readily available to public officers and public offices and to more accurately reflect the public interest than may otherwise be possible.

The potential of these techniques is demonstrated by the natural experiment in Brazil whereby cities which have applied participatory budgeting have generally had superior social outcomes. In part this has been due to the increased influence wielded by lower socio-economic groups.¹⁷

In Western Australia, a former Minister of Planning, MacTiernan successfully applied a range of techniques to resolve land use planning matters in that state. She advises that effective community engagement requires: representative participation, informed deliberation, empathetic listening, building consensus, and making the outcomes matter.¹⁸

Victoria’s environment protection authority should routinely apply participatory and deliberative democratic techniques as appropriate on a case by case basis in order to satisfy the democratic ideal of “responsive rule” i.e. the “necessary correspondence between acts of governance and the equally-weighted felt interests of citizens with respect to those acts”.¹⁹ This should be in addition to standard provisions for submissions (objections) on publicly-advertised applications for EPA approvals.

Recommendation A: Participatory and deliberative democratic techniques be routinely applied by the EPA as appropriate on a case by case basis

2.4 Ecological services

The concept of ecological services is a useful complement to current Victorian approaches to environmental protection. The Ecological Services Program of the United States Government Fish and Wildlife Service has described the importance of this concept in the following terms:

When we protect species and habitats, we conserve the natural resources on which we all depend. We ensure that wetlands persist to protect us from storms and filter our water. We conserve for future generations a continued source of sustainable land. Wild things and wild places are part of our shared history. They are part of the natural foundation of the lands we call home.²⁰

¹⁶ Hardy, Nessie. (2006) The Altona Chemical Complex Neighbourhood Consultative Group Retrieved from [http://www.qenos.com/internet/home.nsf/vwfiles/the_acncg_by_nessie_hardy/\\$file/altona+complex+brochure.pdf](http://www.qenos.com/internet/home.nsf/vwfiles/the_acncg_by_nessie_hardy/$file/altona+complex+brochure.pdf)

¹⁷ See for example: Touchton, M. and B. Wampler (2014). "Improving Social Well-Being Through New Democratic Institutions." *Comparative Political Studies* 47; Wampler, B. and M. Touchton (2014) Brazil let its citizens make decisions about city budgets. Here’s what happened. *Washington Post*; Souza, C. (2001). "Participatory budgeting in Brazilian cities: limits and possibilities in building democratic institutions." *Environment & Urbanization* 13 (1): 159-184.

¹⁸ MacTiernan, A. (2014, 21 October). *Making it Marvellous: Enriching Democracy*. Speech to Electoral Regulation Research Network.

¹⁹ Saward, Michael (1996). “Democracy and Competing Values”, in *Government and Opposition*, Vol. 31, No. 4, Autumn, 467-486.

²⁰ United States Government Fish and Wildlife Service (2015) Ecological Services. Retrieved from <http://www.fws.gov/ecological-services/about/index.html>

This concept is increasingly recognised as a vital element of the broad scope of government functions which form parts of the spectrum of environmental protection.²¹ Whilst it is not necessary and may not be desirable to create one very large multi-faceted agency with responsibilities for all such environmental protection functions, it is clearly desirable that there be good co-ordination between agencies performing the complete range of environmental protection functions.

The above principles are reflected in the EPA's statutory mandate, set out in the Environment Protection Act principles (*Discussion Paper*, p. 13).

3 Scope, role and governance of environmental protection within the Victorian system of government

In this section we draw on the Victorian Government publication *Improving Governance of Regulators: Principles and Guidelines* and the very similar principles in the later OECD publication *The Governance of Regulators*.^{22, 23}

3.1 Climate change

Anthropogenic climate change is the most significant and serious problem facing Victorian Government. Victoria is one of the world's highest per capita generators of carbon emissions, exacerbated by the State's dependence on brown coal fired power stations. The high rate of emissions due to highly polluting sources of electricity adds to the arguments for particularly expeditious action for a rapid transit to a low carbon economy, on moral, ethical and legal grounds.

In addition, Victoria must share in the necessity for all jurisdictions to make a transition to a low carbon economy – ultimately a zero net-carbon economy as recently stated by Australia's Chief Scientist-designate and former Chancellor of Monash University, Alan Finkel. Currently, decision-making in Victoria has not made the transition from the false assumption that "business as usual" economic management can continue indefinitely to decision-making orientated to transformation to a low carbon economy.

Achieving this transition requires wide-ranging reform of policy and practice. There must be strong and effective governance structures which put in place high levels of community and business engagement leading to equitable, evidence-based policies, a robust regulatory regime and rigorous enforcement arrangements. In particular, almost every decision of government must to have regard to its implications for carbon emissions in a similar way to the implications for revenue and expenditure.

The State's carbon budget must be no less significant than its finances. However, there must also be collaboration with the Department of Treasury and Finance in planning further, extensive de-coupling of carbon emissions, development and employment. Such a transition requires a reform of government structures and processes in which environmental advice to government must have the status of central agency advice. These changes are discussed below.

Recommendation B: Effective action to mitigate climate change be the predominant priority of environmental protection in Victoria.

3.2 Structure of governance applying to environmental protection

As shown in Appendix 1, the Minister for Environment, Climate Change and Water is either wholly or partly responsible for approximately 60 pieces of legislation, including the Environment Protection Act 1970, the Climate Change Act 2010, and the Pollution of Waters by Oil and Noxious Substances Act 1986. The responsibilities assigned to the Minister illustrate the enormous complexity of the many legislative provisions affecting the protection of Victoria's environment and the need for consolidation especially with regard to environmental protection. It is essential that wherever possible, legislation regarding the regulation and protection of the environment should be located within one piece of

²¹ Millennium Ecosystem Assessment Board. (2005). *Millennium ecosystem assessment*. Washington, DC: New Island

²² Victorian Government (2010) *Improving Governance of Regulators: Principles and Guidelines*

²³ OECD (2014) *The Governance of Regulators* OECD Best Practice Principles for Regulatory Policy, OECD Publishing

legislation, and administered by one department and its regulator, namely a restructured and properly funded DELWP and EPA. The current EPA has demonstrably failed to discharge the policy advisory and regulatory functions now required. A re-structuring of administrative arrangements, funding and enforcement is recommended as set out below.

Recommendation C: All legislation directly related to regulating, licencing, monitoring and enforcement to prevent harms to land, water or the atmosphere be consolidated into one Act to be administered by the EPA.

3.3 Re-structuring of the Environment Portfolio

Victoria lacks an effective agency to advise and support government to address climate change, as is clear from the websites of relevant agencies.

The Sustainability Victoria website indicates: “the environment portfolio (Sustainability Victoria, the and Department of Environment, Land, Water and Planning and EPA Victoria as well as the Waste Resource Recovery Groups) provides the Victorian Government with policy advice, environmental regulation, programs to implement policies and reporting on the state of Victoria's environment.”²⁴ It does not mention the Commissioner for Environmental Sustainability.

No agency is clearly identified with responsibility for advising government on policy on climate change or environmental protection more generally. The DELWP “About us” website indicates:

The Department of Environment, Land, Water and Planning creates liveable, inclusive and sustainable communities that support jobs and growth in Victoria.

We recognise the link between the built and natural environment in the quality of our lives, and work to accommodate population growth while maintaining world class liveability and protecting our heritage for future generations.

The rationale for Sustainability Victoria being a free-standing agency is unclear

Legislative authority and administration of environmental protection are fragmented and lacking whole of government integration. The EPA already has a central role in monitoring and regulating environmental impacts for high risk industrial facilities. Its role should be expanded to take advantage of that expertise in the administration of several other legislative schemes that require environmental impact assessments, including *the Environment Effect Act 1978*, the *Major Transport Projects Facilitation Act 2009* and the *Planning and Environment Act 1987*.

Providing DELWP with a central agency role as advocated in para. 3.2 raises major issues for the structure of environmental protection functions. Notwithstanding that many of the Minister's Acts relate to routine administration of areas of land, the spread of her responsibilities (Appendix 1) highlights the range of functions relevant to protection of the environment. DELWP should be reformed as a central agency advising government on the impact of policy initiatives and development approvals on environmental resources and ecological services, within Victoria and with effects beyond the State's territory, including the atmosphere. Somewhat like the Department of Treasury and Finance (DTF), it should have Divisions such as:

- *Environmental Management;
- *Monitoring & Strategy (includes Environment Reporting; Environmental Strategy; & Portfolio Analysis); and
- *Corporate and Government Services

The Cabinet is the central decision-making body for all whole-of-government and other major policy decisions and approvals of significant projects and appointments. Submissions to Cabinet routinely go to the Department of Treasury and Finance (DTF) for checking prior to Cabinet, to ensure that agency estimates of revenue and expenditure implications are comprehensive, accurate and consistent with overall policy settings. Submissions are not admitted to the Cabinet Agenda without clearance by DTF. There should be a like approach to the state's carbon budget. Similar processes are essential for

²⁴ Retrieved from <http://www.sustainability.vic.gov.au/who-we-are/our-partners>

effective evaluation of the implications of submissions for climate change and other environmental. This is relevant to policies and projects as diverse as coal-seam-gas extraction, urban renewal, intensification of agriculture and the construction and operation of infrastructure. Accordingly, all Cabinet submissions should rigorously address their environmental implications and include a section assessing the proposal's environmental impact (specifically carbon emissions). Cabinet submissions should be submitted to DELWP in the same way as to DTF.

Recommendation D: DELWP be reformed as a central agency advising government on the impact of policy initiatives and development approvals on environmental resources and ecological services.

Recommendation E: All Cabinet submissions include a section assessing the proposal's environmental impact (specifically carbon emissions) and be submitted to DELWP.

Recommendation F: Sustainability Victoria be a Division of DELWP, providing similar services to those now provided.

3.4 Environmental Protection

Regulating, monitoring and enforcement of discharges to land, air and water should be the responsibility of a re-structured Environmental Protection Authority (EPA) which, like Victoria Police, would be required to uphold environmental protection law and would be insulated by statute from political direction or intervention except by direction published on the Minister's website and in the Victorian Government Gazette. The EPA would report directly to the Minister and would be required to advise the Minister without delay of any incident having potentially significant impact on the atmosphere, land or waters in Victoria. The EPA's role should be clarified to ensure that pollution from agriculture and forestry is properly and responsibly regulated. The EPA is already responsible for regulation of water pollution in Victoria and the *Discussion Paper* identifies fertilizer run-off from farms as a source of water pollution.²⁵ The *Discussion Paper* also predicts that the intensification of primary industry will lead to the doubling of food and fibre production in Victoria by 2030. Similar risks of harmful chemical run-off arise in relation to forestry (natural or plantation). Intensification, especially from agriculture, could lead to increased pressures on the environment, including managing significant volumes of waste and avoiding impacts on local waterways.

The current policy relating to the impact of agriculture on the environment is the State Environment Protection Policy (SEPP) (Waters of Victoria) (2003), which 'requires DSE, DPI, CMAs, and industries to encourage and assist landholders to develop and apply effective farm management practices that minimise the pollution of surface waters'²⁶. The SEPP (Waters of Victoria) 'encourages farm management practices and activities to be linked to industry based environment management systems to enable a coordinated and consistent approach to reducing the impact of agricultural activities, across industry types'²⁷. The SEPP stated that 'the intent of the clause is to continue the work that is occurring throughout agriculture to undertake activities in environmentally sustainable ways by progressively changing existing practices and making better use of existing resources.

However, the EPA *5 Year Plan* (2011) identified aspects of the condition of Victorian water quality as 'poor', stating 'Most areas of the bays, streams and groundwater were considered poor or to have some condition issues.'²⁸ The 5 Year Plan accordingly proposed a range of environmental outcomes to realise healthy groundwater and healthy marine and freshwater systems. Key measures to maintain and where necessary improve groundwater quality to ensure it is suitable for use included:

- Polluted groundwater not used for unsuitable purposes
- Where not suitable for use, groundwater cleaned up to be suitable for use
- Reduction in use of groundwater posing unacceptable risk to health

²⁵ Ministerial Advisory Committee for the Inquiry into the Environment Protection Authority, *Examining the future task of Victoria's Environment Protection Authority, Discussion Paper*, p20

²⁶ EPA Victoria, (2003), *State Environment Protection Policy (Waters of Victoria)*, p74

²⁷ Ibid.

²⁸ EPA Victoria, (2011) *5 Year Plan 2011-2016*, p. 7

Key measures to ensure marine and freshwater objectives are met, ensuring all beneficial uses are protected and the condition of marine and freshwater+ systems is improved included:

- Pollutants do not trigger non-compliance with standards in the State Environment Protection Policy (SEPP) Waters in Victoria
- Improvement in water quality for priority freshwater and marine systems
- Reduction in the number of days when water quality poses unacceptable risk to health.

A more directive approach such as the Queensland regulations regarding agricultural run-off into the Great Barrier Reef provides a useful model on which to base Victorian regulation. Reef protection requirements were brought in under the Chapter 4A of the *Environmental Protection Act 1994* (Qld) and the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Qld) and associated regulations in 2010. The legislation has led to direct regulation of the water quality impacts of cattle grazing on properties of more than 2,000 hectares, and all commercial sugarcane farming in the Burdekin Dry Tropics, Mackay Whitsunday and Wet Tropics catchments. The legislation was prepared in response to scientific evidence that significant quantities of fertiliser, pesticides and sediment from broad-scale agriculture are entering the Great Barrier Reef lagoon, risking serious long-term effects on the health of the reef—about 90% comes from cattle and sugarcane production.²⁹ This evidence was further supported by the 2013 Scientific Consensus Statement.

Recommendation G: EPA be required to uphold environmental protection law and be insulated by statute from political direction or intervention except by direction published on the Minister's website and in the Victorian Government Gazette.

Recommendation H: EPA report directly to the Minister and be required to advise the Minister without delay of any incident having potentially significant impact on the atmosphere, land or waters in Victoria.

Recommendation I: EPA's role be explicitly extended to include agriculture and forestry, to monitor and prevent discharges with the potential for adverse impacts on land, water or the atmosphere.

3.5 Commissioner for Environmental Sustainability

The Commissioner's role should remain broadly as at present. However, the Commissioner should be an Independent Officer of the Parliament, in the same way that the Auditor-General and the Ombudsman are Independent officers of the Parliament, thus reporting directly to the Parliament and not subject to Ministerial direction. The Commissioner for Environmental Sustainability should report directly to the Parliament, including State of the Environment Reports.

Recommendation J: Commissioner for Environmental Sustainability be an Independent Officer of the Parliament, and report directly to the Parliament, including State of the Environment Reports.

3.6 Strengthening Prosecutorial Options through a Specialist Environmental Court.

The *Environment Protection Act 1970* establishes an unusually strict regime of penalties and offences for environmental pollution, which is considerably harsher than many other areas of government regulation. In particular, pollution offences are treated as offences of absolute liability, occupiers of commercial premises are deemed to have caused a pollution originating from their premises (s 62C) and directors or other persons concerned in management of a corporation committing an offence are prima facie guilty of the same offence (s 66B). This harsh design was both deliberate and necessary to provide a strong deterrent to offenders due to the severe levels of environmental degradation that were being experienced in Victoria and elsewhere at that time. The Act clearly envisaged that the EPA would have very strong powers of prosecution for environmental offences. The Krpan Review recognised that a credible risk of enforcement action is a key to improving industry performance in environment, health and safety matters. That review found relatively low levels of prosecution action

²⁹ See Reef Water Quality Protection Plan Secretariat. 2008 Scientific consensus statement on water quality in the Great Barrier Reef. Retrieved from <http://www.reefplan.qld.gov.au/about/assets/scientific-consensus-statement-on-water-quality-in-the-gbr.pdf>

by the EPA despite increasing frequency and severity of pollution incidents, and recommended that prosecution activity be significantly increased in order to ensure there are fair and appropriate consequences for serious offences under the EP Act.³⁰

One area of administrative difficulty is that the EPA has adopted a risk based approach in its compliance and enforcement efforts.³¹ This approach relies upon a hierarchy of enforcement responses and relationship building between the regulator and industry players following the Ayres and Braithwaite responsive regulation model.³² A well-recognised weakness with this model is that even when serious breaches occur, regulators are predisposed to adopt a softer step by step approach in accordance with the enforcement policy, and tougher responses may be inhibited by a pre-existing co-operative relationship with the offender.³³ The reduced emphasis upon prosecution action also shifts resources and skills away from the EPA's core function as the prosecutor of environmental offences.

A more fundamental problem is the lack of judicial infrastructure to support environmental prosecutions in Victoria. At present most environmental prosecutions are pursued in Magistrates Courts rather than a specialist environmental court. The Magistrates Court is not capable of delivering best practice in environmental prosecutions for a number of reasons:

1. Magistrates Courts are courts of summary jurisdiction which normally hear a high volume of less serious cases such as traffic offences, minor assaults, property damage and offensive behaviour. Most environmental offences under the EP Act are indictable offences, which would normally only be heard by a Magistrate for a committal hearing, to determine whether it should be sent for trial by a higher Court.
2. There is a limit of 500 penalty units (\$75,835) for any indictable offence heard summarily by a Magistrates Court,³⁴ whereas the maximum penalties for basic pollution offences under the EP Act heard in a higher court would be up to 2400 units (\$364,008).³⁵ This clearly limits the Magistrates Court from enforcing the Act using the full range of penalties intended by Parliament.
3. Magistrates Courts generally do not have relevant expertise to assess the significance of environmental impacts, such as the need for consideration of scientific evidence on the toxic nature and health risks associated with environmental incidents. Environmental law breaches are matters of high public policy concern, due to their potentially widespread and on-going costs to the community, and thus the judicial tasks involved are often very different to those required in matters commonly handled by a Magistrates Court.
4. There are several unusual aspects of environmental offences which create the likelihood of lengthy legal arguments more commonly dealt with in higher courts. These include the potential for personal liability of company directors and corporate managers, extended concepts of vicarious liability and the significance of risk management systems, etc. It is instructive to note that in *Allen v United Carpet Mills*, Nathan J of the Supreme Court allowed an appeal by the EPA due to three errors of law made by a Magistrate in the decision at first instance.³⁶
5. Magistrates Courts do not generally provide written reasons for their decisions, nor do they keep a transcript of proceedings and evidence, and thus important decisions on matters of broad public interest are less transparent and more difficult to review. As a result, the State of Victoria has a massive gap in its jurisprudence on environmental law, when compared to best practice jurisdictions like New South Wales. For instance, the EPA Victoria's annual report for the 2013-14 year lists five prosecutions for that year, all heard by Magistrates, whereas in NSW there were 27 cases heard by the NSW Land and Environment Court in the same year, all decided with a full written decision.³⁷

³⁰ Krpan (2011) *Compliance and Enforcement Review* (EPA Publication 1389), at p173 and Recommendation 11.1.

³¹ EPA (2014) *Compliance and Enforcement Policy*, Publication 1388.1.

³² Ayres and Braithwaite (1992) *Responsive Regulation*

³³ Freiberg (2010) *The Tools of Regulation*

³⁴ *Sentencing Act 1991* (Vic) s 112A.

³⁵ Under the *Monetary Units Act 2004* (Vic) one penalty unit for the year 2015-2016 = \$151.67.

³⁶ [1989] VR 323.

³⁷ Written decisions of the NSW Land and Environment Court can be found at the court website and on the Austlii database at: <http://www.austlii.edu.au/au/cases/nsw/NSWLEC/>

Against these disadvantages it can be argued that a Magistrates Court offers a cheaper faster, and more convenient option for the EPA compared to court action in the higher Victorian courts (i.e. the County Court and Supreme Court). This short term advantage, must be weighed up against the forgone benefits of a far stronger deterrent effect and deeper understandings of the law provided by the higher 'courts of record' whose decisions provide on-going guidance for corporate behaviour across the whole of industry.³⁸

One foreseeable problem of increasing the volume of EPA prosecutions taken to the higher courts is the additional delay and cost of such proceedings. This can be most effectively addressed by introducing a specialist land and environment court. The Hon Justice Brian Preston, Chief Justice of the NSW Land and Environment Court has written extensively on the benefits of such a move:

"Increasingly, it is being recognised that a court with special expertise in environmental matters is best placed to play this role in the achievement of ecologically sustainable development. Among the advantages of a specialist environment court are:

1. Having a comprehensive, integrated jurisdiction to deal with a range of environmental matters, frequently providing a "one stop shop" for merit appeals, judicial review and criminal and civil enforcement.
2. Bringing together in the one court, officers (both judges and non-lawyer specialists) with knowledge and expertise in environmental law. This creates a centre of excellence, a think tank on environmental law. Bringing experts together creates a synergy, facilitating free and beneficial exchange of ideas and information.
3. Where the design enables the appointment of multidisciplinary officers (both judges and non-lawyer specialists), it allows the court to construct panels of officers with expertise relevant to the issues in the matter so as to facilitate interdisciplinary decision-making.
4. Facilitating lawyers who bring environmental matters and officers who hear these matters continuing to develop a specialised knowledge of environmental law and issues.
5. Adopting a holistic approach to the resolution of environmental matters, both by reason of the comprehensive jurisdiction and of interdisciplinary decision-making.
6. Being better positioned to develop innovative remedies and solutions to environmental problems.
7. Developing innovative practice and procedure so as to facilitate access to justice, including public interest litigation.
8. Being better positioned and having more opportunity to develop a coherent and consistent body of precedent and environmental jurisprudence.
9. Being better positioned to move more quickly through complex environmental cases, achieving efficiencies and reducing the overall cost of litigation.
10. Relieving backlog in other courts by separating from the body of pending cases and then resolving more efficiently matters involving environmental issues."³⁹

These benefits could be expected to apply at least equally in Victoria with the introduction of a similar court in this State. A Victorian Land and Environment Court could be conveniently established as a new Division of the County Court of Victoria, and economic efficiencies could be achieved by transferring relevant environment related aspects of the Victorian Civil and Administrative Tribunal into the new Court, in particular the merits review of local council planning permit decisions under the Planning and Environment Act 1987 (Vic).

Recommendation K: A specialist environment court be established in Victoria, modelled generally on the NSW Land and Environment Court.

³⁸ A good example of these on-going benefits is provided by a higher court decision is the aforementioned *Allen v United Carpet Mills*, decided way back in 1989, where the Supreme Court established several fundamental principles on the nature of liability under the Act which have continued to provide crucial guidance to both the EPA and industry managers ever since.

³⁹ Preston, B. J. Operating an environment court: The experience of the Land and Environment Court of New South Wales" (2008). *Environmental and Planning Law Journal*, 25.

4 Funding of the EPA

The EPA as the environmental regulator of Victoria has a broad range of functions that include administering licences and fees, supporting the government's overall environmental policy and objectives, and ensuring enforcement and compliance of regulated entities in accordance with the *Environment Protection Act 1970* and other relevant legislation. This broad range of regulatory powers and activities reflects the complex and diverse needs of Victoria, its diverse communities and the Victorian economy. The regulator's powers are underpinned by the overarching mission of reducing environmental degradation and ensuring sustainable development. In order for the EPA to conduct its duties efficiently and effectively, a core part of the EPA's institutional arrangement that enables it to achieve regulatory outcomes is the regulator's funding arrangement. The OECD's work on regulatory governance has highlighted the need for adequate resources and appropriate systems in place within regulatory institutions to manage resources effectively and to discharge enforcement responsibilities.⁴⁰ This section of the submission examines the implications of the EPA's current funding arrangement, its adequacy and appropriateness in tackling the environmental challenges in Victoria.

4.1.1 The Principles of Funding Regulators

The sources and levels of funding for the EPA are pivotal to its role as the environmental regulator of Victoria. Funding arrangement for a regulator is a significant determinant in defining and upholding its independence as an effective environmental regulator. As the OECD explains:

"The amount and source of funding for a regulator will determine its organization and operations. It should not influence the regulatory decisions and the regulator should be enabled to be impartial and efficient to achieve its objective".⁴¹

According to the OECD, funding of regulators should be underpinned by the principles set out in Box 1 (see also Victorian Government Principles and Guidelines referred to above).

Box 1: Principles for Funding

Principle 1: Supports outcomes efficiently

1. Funding levels should be adequate to enable the regulator, operating efficiently, to effectively fulfil the objectives set by government, including obligations imposed by other legislation.
2. Funding processes should be transparent, efficient and as simple as possible.

Principle 2: Regulatory cost recovery

3. Regulators should not set the level of their cost recovery fees, or the scope of activities that incur fees, without arm's-length oversight. These fees and the scope of activities subject to fees should be in accordance with the policy objectives and fees guidance set by government or, where these are not in place, the OECD's *Best Practice Guidelines for User Charging for Government Services* (OECD, 1998).
4. Where cost recovery is required, the regulator should not be at risk of setting unnecessary or inefficient administrative burdens or compliance costs on regulated entities.

Litigation and enforcement costs

5. Because of the significant and unpredictable costs involved, regulators should follow a defined process to obtain funding for major unanticipated court actions in the public interest that is consistent with the degree of independence of the regulator.

Funding of external entities by a regulator

6. A regulator should only fund other entities to deliver activities where they are directly related to the regulator's objectives, such as information and education about how to comply with regulation, or research to inform the regulator's priorities. Any funding of representative or policy advocacy organisations should be the responsibility of the relevant ministry, not the regulator.

Source: OECD 2014

⁴⁰ OECD (2005) *OECD Guiding Principles for Regulatory Quality and Performance*; OECD (2014) *The Governance of Regulators*, OECD Publishing; OECD (2012) *Recommendation of the Council on Regulatory Policy and Governance*.

⁴¹ OECD (2014) *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy OECD Publishing, p. 97.

4.1.2 Ensuring adequate funding

Drawing on the OECD funding principles and other research, this submission identifies several issues of concern in relation to the funding of the EPA that have implications for the EPA in discharging its duties effectively.

One of fundamental questions that is posed by the OECD is whether a regulator has appropriate levels of funding. The authors believe the current funding arrangements for the EPA are inappropriate and the level of funding may not be adequate. The Hazelwood Mine Fire Board of Inquiry Report found the EPA to be ill-equipped to respond rapidly to an emergency. For example, the use of mobile monitoring technology (which was not available to the EPA at the time) could have allowed monitoring of the situation (air and soil quality) to commence much earlier in the critical period of the first week of the incident when the highest air pollution concentration were likely to have affected the Latrobe Valley community. The inquiry concluded that:

The EPA did not have the right equipment to rapidly establish data gathering and analysis for air quality monitoring and testing. Based on the information available the Board is concerned that the EPA was ill-equipped to respond. The Board affirms the Victorian Government's intention to clarify future expectation of incident air monitoring and scenarios, and determine the appropriate inventory of equipment, and to review EPA emergency protocol, incorporating lessons from the Hazelwood mine fire.⁴²

More importantly, the Board of Inquiry recommended that the State appropriately equip itself to undertake rapid air quality monitoring in all locations in Victoria. These findings suggest there is a need to make more funds available to EPA to effectively carry out its duties.

The need to ensure adequate funding of the EPA is further predicated by our recommendations for broadening the role of the EPA in relation to climate change, agriculture and forestry. These changes to the EPA's regulatory portfolio will require significant resourcing to administer policy instruments as well as compliance and enforcement that will demand increases in funding for the agency to conduct its work effectively. By ensuring that the EPA has sufficient funding, the Victorian Government can ensure the regulator will be able to support outcomes more efficiently and effectively.

4.1.3 Sources of funds

According to the *Discussion Paper*, the levels of funding (defined as operating budget) is approximated to be around \$70 million per annum. The sources of funding include the Municipal and Industrial Landfill Levy distribution, prescribed industrial waste levies, investment income, grants; fees, and fines. A majority of EPA's funding is provided through distributions received from landfill levies (approximately 60% of total EPA revenue is sourced from landfill levies).

The most recent published figures suggest that Victorian Government revenue and expenditure related to environmental protection is as shown in Table 1 (below). The limited data available and the form in which it is published make it difficult to reconcile the various figures available. This highlights the very poor transparency and accountability for environmental protection services in Victoria.

⁴² Government of Victoria (2014), 'Hazelwood Mine Fire Inquiry Report', p 291.

Table 1. Revenue and expenditure related to environmental protection (2013/14).

Source of Funds		Expenditure	
Consolidated Fund	\$0	EPA - operating expenses	\$64,266,000
Municipal and Industrial Landfill Levy	\$170,930,000	Sustainability Victoria	\$118,424,000
Investments	\$13,753,000	Municipal Waste Management Groups	\$7,518,000
Prescribed Industrial Waste Levy	\$23,264,000	Hazwaste Fund (An estimated \$30 million was made available over 4 years. <i>The Fund closed to new applications on 29 June 2012</i>)	Undisclosed
Grants	\$8,087,000		
License Levy, fines, fees and others	\$4,842,000		
Total Revenue	\$220,876,000	Total Expenses	\$190,208,000

Sources: EPA Annual Report 2013/14; EPA HazWaste Fund Update for 2013 Edition 12

Determination of the distribution by the Minister is a further problem as it screens the EPA's budget from Parliamentary budget-making, scrutiny and accountability.

According to the best practice guidelines of the OECD, sources of funding for a regulator may include consolidated funds, cost-recovery fees from regulated entities and fines and interest earned from investments and trust funds. The guideline also emphasizes that there should be a clear rationale of the mix of funding sources that are appropriate for the particular circumstances of the regulator.

The current mix of funding is inappropriate and offensive to best practice public sector financial management. According to long-standing budgetary principles, all revenue should be paid into the Consolidated Fund, whether from licence fees, penalties or the Municipal and Industrial Landfill Levy or other sources. This would respect and uphold the fundamental constitutional principle in the Westminster system that all revenue collection and expenditure should be approved by Parliament. It enables responsible government (i.e. the Executive to be responsible to the Parliament) and accountability to occur. Correspondingly, all appropriations for environmental protection should be approved by the parliament as part of the budget process i.e. only the parliament is authorised to appropriate from the Consolidated Fund and hence to approve expenditure by agencies of the executive, of which the EPA is clearly one i.e. the Minister is assigned to administer the Act.

In the same way, neither the Minister, nor any other Minister (e.g. Treasurer) nor the Governor-in-Council should be authorised to make discretionary transfers to agencies (distribution of the landfill levy, previously authorised under Environment Protection (Distribution of Landfill Levy) Regulations, occurs under Ministerial Determination from 1 July 2015). Distribution of funds by Executive action compromises the independence of action by the EPA and thereby has the potential to undermine its effectiveness.

It is clear from published records of revenue from the Municipal and Industrial Landfill Levy and expenditure related to landfill from municipal and industrial sources that the Levy is not applied in accordance with any user-pays approach but is treated like a tax. Similarly it appears that revenue from the Prescribed Industrial Waste Levy has vastly exceeded payments from the Hazwaste Fund. Furthermore, the Municipal and Industrial Landfill Levy is irrelevant to the vast majority of the EPA's activities to which it is applied.

The landfill levy and the Prescribed Industrial Waste Levy are not appropriate to be hypothecated to fund the ordinary operations of the EPA, Sustainability Victoria, DELWP or any other cost-centre within the Victorian Government administration.

Recommendation L: The Municipal and Industrial Landfill Levy and the Prescribed Industrial Waste Levy be paid into the Consolidated Fund.

Recommendation M: EPA be funded by appropriation from the Consolidated Fund, in accordance with Victorian Government and OECD principles and guidelines.⁴³

4.1.4 Supporting costs of prosecution and court actions

It has been emphasised above that one of the most fundamental ways that the EPA discharges its duties as the state's environmental regulator is through prosecutions for offences under the *Environment Protection Act 1970* which provide an appropriate sanction to an offender and act as a deterrent to other would-be offenders. However, prosecutions, which are often unanticipated, involve significant legal costs, including potentially the costs of other parties. Any increase in the volume of prosecution action above current levels would create a significant funding challenge to the EPA, with or without a new specialist environmental court. The OECD guidelines recognise the importance of a "defined process" for funding unpredictable but highly necessary litigation and enforcement costs for a critical agency such as the EPA. Given the need for government to be accountable for a regulator's expenditure, it may be difficult for the relevant minister to provide the EPA pre-approval for substantial funds for major unanticipated prosecutions. On the other hand, the requirement of an independent regulator to seek ministerial approval for funds may compromise the independence and impartiality of the EPA in undertaking major prosecutions.

5 Conclusion

This submission has taken up the invitation to contribute big ideas. Noting Ban Ki-moon's observation that climate change "is, simply, the greatest collective challenge we face as a human family", it accepts climate change as the key environmental challenge facing Victoria (now and in the future). It begins with a discussion of fundamental principles underpinning the issues.

To address climate change, it recommends an expanded, central agency role for the Department of Environment, Land, Water and Planning (DELWP) in order to support Government and its agencies and enable government to provide leadership to industries, communities and local government councils.

The submission argues that Victoria's carbon budget is at least as important as its financial budget and should be handled in an analogous way. DELWP should have a clear responsibility within Victoria as the agency responsible for leading and coordinating responses to threats to Victoria's environment, economy, health and social well-being.

In this model, the EPA is responsible for licencing, monitoring and enforcement affecting discharges to the atmosphere, land and water and explicitly agriculture and forestry.

As part of a big ideas re-think, the submission advocates the creation of a dedicated Land and Environment Court, and changes to the funding of the EPA to ensure that it is appropriately resourced to undertake the functions and responsibilities entrusted to it by the Parliament of Victoria.

These big ideas have the potential to equip Victoria for a smooth transition to a low carbon society and economy.

⁴³ OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing

Appendix 1. Acts assigned to Minister

Extract from Administrative Arrangements General Order dated 1 January 2015, as amended by Supplement to the General Order dated 17 February 2015.

Minister for Environment, Climate Change and Water

Aboriginal Lands Act 1991

- The Act is jointly and severally administered with the Minister for Aboriginal Affairs

Alpine Resorts Act 1983

Alpine Resorts (Management) Act 1997

Catchment and Land Protection Act 1994

Climate Change Act 2010

Coastal Management Act 1995

Commissioner for Environmental Sustainability Act 2003

Conservation, Forests and Lands Act 1987 – Except:

- In so far as it relates to the exercise of powers for the purposes of the Fisheries Act 1995 (these powers are exercised by the Minister for Agriculture)
- Sections 11(1), 12, 28, 83, 88A, 91, 95A and 96 and Schedule 2 in so far as they relate to the exercise of powers for the purposes of:
 - sections 40 and 52AA of the Forests Act 1958 (these powers are exercised by the Minister for Agriculture)
 - sections 1, 2, 3(1), 3B, 4-7(1), 7(3), 18, 19-22, 26A, 52, 53-55, 57, 75, 78-84, 94-100, 101, 102 and 103 of the Forests Act 1958 (these powers are jointly and severally exercised with the Minister for Agriculture)
 - the Safety on Public Land Act 2004, in so far as that Act relates to declaring, managing and enforcing public safety zones for the purposes of timber harvesting operations (these powers are jointly and severally exercised with the Minister for Agriculture)
 - the Sustainable Forests (Timber) Act 2004 (these powers are exercised by the Minister for Agriculture) except:
 - sections 3, 22, 23(1) and 24 and Part 9 (these powers are jointly exercised with the Minister for Agriculture)
 - Part 2, section 45, Division 1 of Part 6 and Part 8 (these powers are exercised by the Minister for Environment, Climate Change and Water)
- Sections 11(1), 28, 31-40, 83, 88A, 91 and 96 in so far as they relate to the exercise of powers for the purposes of:
 - section 5, Parts 3 and 5 and Divisions 1 and 2 of Part 6 of the Flora and Fauna Guarantee Act 1988 (these powers are jointly exercised with the Minister for Agriculture)
 - section 3 of the Land Conservation (Vehicle Control) Act 1972 (these powers are jointly exercised with the Minister for Agriculture)
 - Part I (except section 4B), Parts III, IIIA, VIII and IX, sections 16, 35, 41-44, 47D, 48-48C, 53-58B and 86-86C and, in so far as it relates to the effective management of hunting, including preserving good order among hunters of wildlife, section 87 of the Wildlife Act 1975 (these powers are jointly exercised with the Minister for Agriculture)
 - Part IIIB in so far as it relates to the hunting of game and sections 58C, 58D and 58E of the Wildlife Act 1975 (these powers are exercised by the Minister for Agriculture)
- Section 12 and Schedule 2 in so far as they relate to the exercise of powers relating to hunting or game for the purposes of the Wildlife Act 1975 (in so far as they relate to those matters, these provisions are administered by the Minister for Agriculture)
- Section 99 in so far as it relates to:
 - sections 40 and 52AA and sections 1, 2, 3(1), 3B, 4-7(1), 7(3), 18, 19-22, 26A, 52, 53-55, 57, 75, 78-84, 94-100, 101, 102 and 103 of the Forests Act 1958
 - the Safety on Public Land Act 2004, in so far as that Act relates to declaring, managing and enforcing public safety zones for the purposes of timber harvesting operations
 - the Sustainable Forests (Timber) Act 2004

Appendix 1. Acts assigned to Minister

- Part I (except section 4B), Parts III, IIIA, VIII and IX, sections 16, 35, 41-44, 47D, 48-48C, 53-58B and 86-86C and, in so far as it relates to the effective management of hunting, including preserving good order among hunters of wildlife, section 87 of the Wildlife Act 1975
- Part IIIB in so far as it relates to the hunting of game, Part VIIA and sections 58C, 58D and 58E of the Wildlife Act 1975
(in so far as it relates to those matters and provisions, this provision is jointly and severally administered with the Minister for Agriculture)
- section 5, Parts 3 and 5 and Divisions 1 and 2 of Part 6 of the Flora and Fauna Guarantee Act 1988
- section 3 of the Land Conservation (Vehicle Control) Act 1972
(in so far as it relates to those matters and provisions, this provision is jointly administered with the Minister for Agriculture)

Crown Land (Reserves) Act 1978 – Except:

- In so far as it relates to the land shown as:
 - Crown Allotments 2A, 3 and 4 of Section 5, City of Melbourne, Parish of Melbourne North (Parish Plan No. 5514C) and known as the Treasury Reserve
 - Crown Allotments 4A and 4B on Certified Plan 111284 lodged with the Central Plan Office and to be known as the Old Treasury Building Reserve
(in so far as it relates to those matters, the Act is administered by the Minister for Finance)
 - Crown Allotment 18, section 12, City of Port Melbourne, Parish of Melbourne South as shown on Original Plan No. 119746-A lodged in the Central Plan Office - (LA/32/0012) known as Station Pier
(in so far as it relates to those matters, the Act is administered by the Minister for Ports)
 - Crown Allotment 16F, section 37B, City of South Melbourne in the Parish of Melbourne South, County of Bourke and known as the former Distance Education Centre in Albert Park
(In so far as it relates to those matters, the Act is administered by the Minister for Tourism and Major Events)
 - Crown allotments 2219, 2220, 2221 and 2222 as shown on OP 122930 and Crown allotments 2026, 2031, 2162 and 2223 as shown on OP 122933, County of Bourke, Parish of Melbourne South, City of South Melbourne
(in so far as it relates to those matters, the Act is administered by the Premier)
- Sections 17B, 17BAA, 17BA, 17CA, 17D, 17DAA, 18A and 18B, in so far as they relate to the exercise of powers in relation to the land as shown as Crown Allotment 15 on Certified Plan 009176 and Crown Allotment 16 on Certified Plan 1, Section B1, Parish of Ararat, lodged with the Central Plan Office
(in so far as they relate to those matters, these provisions are administered by the Minister for Corrections)
- Sections 17B, 17BAA, 17BA, 17CA, 17CC, 17D, 17DAA, 17DA, 18A and 18B in so far as they relate to the exercise of powers in relation to the land described as Crown Allotment 3 Section 13A at Parkville Parish of Jika Jika
(in so far as they relate to those matters, these provisions are administered by the Minister for Health)
- Part 3 (except sections 17AB, 17C and 18) in so far as it relates to the land shown as:
 - Crown Allotment 1, Section 54D at Bendigo, Parish of Sandhurst;
 - Crown Allotment 7, Section 83C at Bendigo, Parish of Sandhurst;
 - Crown Allotment 2105 at Bendigo, Parish of Sandhurst;
 - Crown Allotments 2120 and 2121 at Bendigo, Parish of Sandhurst on Certified Plan OP123343 lodged with the Central Plan Office;
(in so far as they relate to those matters, these provisions are administered by the Minister for Health)

Cultural and Recreational Lands Act 1963

Dental Hospital Land Act 2011

Environment Protection Act 1970

Flora and Fauna Guarantee Act 1988 – Except:

- Section 5
- Parts 3 and 5 and Divisions 1 and 2 of Part 6

Appendix 1. Acts assigned to Minister

(These provisions are jointly administered with the Minister for Agriculture)

Forests Act 1958 – Except:

- Sections 1, 2, 3(1), 3B, 4-7(1), 7(3), 18, 19-22, 26A, 52, 53-55, 57, 75, 78-84, 94-100, 101, 102 and 103 (these sections are jointly and severally administered with the Minister for Agriculture)
- Sections 40 and 52AA (these sections are administered by the Minister for Agriculture)

Geelong Lands (Steampacket Place) Act 1996

Geelong Market Site Act 1983

Groundwater (Border Agreement) Act 1985

Heritage Rivers Act 1992

Land Act 1958 – Except:

- In so far as it relates to the exercise of powers relating to leases and licences under Subdivisions 1 and 2 of Division 9 of Part I in respect of –
 - land in the Melbourne Casino area within the meaning of Part 9A of the Casino Control Act 1991
 - Crown land coloured brown on Plans numbered LEGL./93-211, LEGL./93-212, LEGL./93-213, LEGL./93-214 and LEGL./93-215 lodged in the Central Plan Office
 - land shown as Crown Allotment 32E, section 7 on Certified Plan No. 108871 lodged in the Central Plan Office
 - land shown as Crown Allotment 4A, section 1A on Certified Plan No. 75050 lodged in the Central Plan Office
 - land shown as Crown Allotment 4D, section 1A on Certified Plan No. 112128 lodged in the Central Plan Office
 - The area of 3643 square metres of land in the City of Port Melbourne as shown on Plan LEGL./96-216 lodged in the Central Plan Office
 - land shown as Crown Allotment 4, section 1A on Certified Plan No. 109991 lodged in the Central Plan Office

(in so far as it relates to those matters, the Act is administered by the Minister for Finance)

- In so far as it relates to the exercise of powers relating to leases and licences under Subdivisions 1 and 2 of Division 9 of Part I in respect of land described as Crown allotment 22D of section 30, Parish of Melbourne North being the site of the Victorian County Court (in so far as it relates to those matters, the Act is administered by the Attorney-General)
- In so far as it relates to the exercise of powers relating to leases and licences under Subdivision 1 of Division 9 of Part I in respect of –
 - land identified in Certified Plan 114680-A dated 8 February 1995
 - land shown as Allotment 8B, section 13 on Certified Plan 116685 and Allotment 4A, section 17 on Certified Plan 116944 lodged in the Central Plan Office
 - land shown as hatched on the plan numbered LEGL./95-80 lodged in the Central Plan Office

(in so far as it relates to those matters, the Act is administered by the Minister for Corrections)

- In so far as it relates to the exercise of powers relating to leases and licences under Subdivisions 1 and 2 of Division 9 of Part I in respect of:
 - the land described as Crown Allotment 60 A1 in the Parish of Traralgon and contained in Crown Lease Volume 1212 Folio 519
 - the land described as Allotment 3A of section 16 Block E in the Parish of Mildura and contained in Crown Lease Volume 1212 Folio 567
 - the land described as Crown Allotment 2633 in the Parish of Jika Jika shown on the plan numbered OP123398 lodged in the Central Plan Office, being the site of the new Royal Children's Hospital

(in so far as it relates to those matters, the Act is administered by the Minister for Health)

- In so far as it relates to the exercise of powers relating to the leases and licences under Subdivisions 1 and 2 of Division 9 of Part I in respect of the land described as Allotment 18 of section 12 City of Port Melbourne Parish of Melbourne South being the land in Certified Plan No. 119746 lodged in the Central Plan Office

(in so far as it relates to those matters, the Act is jointly and severally administered by the Minister for Ports and the Minister for Roads and Road Safety)

Appendix 1. Acts assigned to Minister

- In so far as it relates to the land coloured green on Plans numbered LEGL./08-002 and LEGL./08-003, lodged in the Central Plan Office
(in so far as it relates to those matters, the Act is jointly and severally administered by the Minister for Ports and the Minister for Roads and Road Safety, except Division 6 of Part I, Subdivision 3 of Division 9 of Part I, section 209, and the remainder of the Act where it relates to the sale and alienation of Crown Lands as set out in Administrative Arrangements Order No. 58 (which are administered by the Minister for Finance) and sections 201, 201A and 399 (which are jointly administered with the Minister for Finance)
- Sections 22C-22E (these provisions are administered by the Attorney-General)
- In so far as it relates to the land described as Crown Allotment 16 of Section 5, At Elwood, Parish of Prahran being the site of the former Elwood Police Station (in so far as it relates to that land, the Act, except Division 6 of Part I, Subdivision 3 of Division 9 of Part I, sections 201, 201A, 209 and 399 and the remainder of the Act where it relates to the sale and alienation of Crown Lands as set out in Administrative Arrangements Order No. 58, is administered by the Attorney-General)
- Division 6 of Part I, Subdivision 3 of Division 9 of Part I, section 209, and the remainder of the Act where it relates to the sale and alienation of Crown Lands as set out in Administrative Arrangements Order No. 58 (these provisions are administered by the Minister for Finance)
- Sections 201, 201A and 399, except in so far as they relate to the land described as Crown Allotment 16 of Section 5, at Elwood, Parish of Prahran being the site of the former Elwood Police Station (except in so far as they relate to that land, these provisions are jointly administered with the Minister for Finance)
- Sections 201, 201A and 399 in so far as they relate to the land described as Crown Allotment 16 of Section 5, at Elwood, Parish of Prahran being the site of the former Elwood Police Station (in so far as they relate to that land, these provisions are jointly administered by the Minister for Finance and the Attorney-General)

Land Conservation (Vehicle Control) Act 1972 – Except:

- Section 3 (this section is jointly administered with the Minister for Agriculture)

Land (Goonawarra Golf Course) Act 1988

Land (Reservations and other Matters) Act 1997

Land (Reservations and other Matters) Act (various years)

Land (Revocation of Reservations) Act 2012

Land (Revocation of Reservations) Act (various years)

Land (St. Kilda Sea Baths) Act 2000

Land (St Kilda Triangle) Act 2006

Melbourne and Olympic Parks Act 1985 –

- Sections 24-28

(The Act is otherwise administered by the Minister for Tourism and Major Events and the Premier)

Melbourne (Yarra Park) Land Act 1980

Murray-Darling Basin Act 1993

National Environment Protection Council (Victoria) Act 1995

National Parks Act 1975

Parks and Crown Land Legislation (Mount Buffalo) Act 2010

Parks Victoria Act 1998

Pollution of Waters by Oil and Noxious Substances Act 1986 –

- Sections 30 and 47 (these provisions are jointly administered with the Minister for Ports)
- Sections 8, 9, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 23B, 23D, 23E, 23G, 23J, 23K, 23L and 24E

(The Act is otherwise administered by the Minister for Ports)

Queen Victoria Market Lands Act 1996

Reference Areas Act 1978

Royal Agricultural Showgrounds Act 2003

Royal Botanic Gardens Act 1991

Royal Children's Hospital (Land) Act 2007

Royal Women's Hospital Land Act 2012

Appendix 1. Acts assigned to Minister

Safety on Public Land Act 2004 – Except:

- In so far as it relates to declaring, managing and enforcing public safety zones for the purposes of timber harvesting operations (in so far as it relates to those matters, the Act is jointly and severally administered with the Minister for Agriculture)

South Melbourne Land Act 1986

Southgate Project Act 1994

State Owned Enterprises Act 1992 –

- Division 2 of Part 2 in so far as it relates to the Victorian Plantations Corporation
- Division 2 of Part 2 in so far as it relates to the Water Training Centre
(The Act is otherwise administered by the Premier, the Minister for Finance, the Minister for Multicultural Affairs and the Treasurer)

Sustainable Forests (Timber) Act 2004 –

- Sections 3, 22, 23(1) and 24 and Part 9 (these provisions are jointly administered with the Minister for Agriculture)
- Part 2, section 45, Division 1 of Part 6 and Part 8
(The Act is otherwise administered by the Minister for Agriculture)

Sustainability Victoria Act 2005

Swan Hill Pioneer Settlement Authority (Repeal) Act 1994

Temperance Halls Act 1958

University of Melbourne Land Act 2000

Victorian Conservation Trust Act 1972

Victorian Environmental Assessment Council Act 2001

Victorian Plantations Corporation Act 1993

Water Act 1989

Water (Commonwealth Powers) Act 2008

Water Efficiency Labelling and Standards Act 2005

Water Industry Act 1994

Wildlife Act 1975 – Except:

- Part I (except section 4B), Parts III, IIIA, VIII and IX
- Sections 16, 35, 41-44, 47D, 48-48C, 53-58B and 86-86C
- Section 87 in so far as it relates to the effective management of hunting, including preserving good order among hunters of wildlife

(These provisions are jointly administered with the Minister for Agriculture)

- Part IIIB in so far as it relates to the hunting of game

- Sections 58C, 58D and 58E

(These provisions are administered by the Minister for Agriculture)

Zoological Parks and Gardens Act 1995

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