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City West Water submission to the Ministerial Advisory Committee for the Inquiry into the Environment Protection Authority

Thank you for the opportunity to contribute to the Independent Inquiry into EPA.

City West Water (CWW) is one of three Victorian Government owned retail water businesses in metropolitan Melbourne. CWW provides drinking water, sewerage, trade waste, recycled water and stormwater services to customers in Melbourne's central business district, inner and western suburbs. Each year CWW supplies around 107 billion litres of drinking water to customers and transfers most of the sewage and trade waste collected to Melbourne Water's Western Treatment Plant. CWW holds a licence with EPA for its sewage treatment plant at Altona. CWW is part of the EPA-VicWater Water Industry Reference Group that meets quarterly.

CWW's submission addresses three priority areas that are aligned with the MAC's scope and key areas for attention, followed by responses to the specific questions raised in the MAC discussion paper:

Priority Area 1 - A Whole of Government strategy for the environment

EPA's capacity to deliver environmental and public health outcomes is not independent of other government departments. CWW considers that there is a need for a whole of government strategy and approach to environmental protection and improvement that clarifies the roles of all the relevant organisations including EPA, the Commissioner for Environmental Sustainability, the Department of Environment Land Water and Planning (DELWP), Sustainability Victoria and the water businesses. This should be articulated in a whole of government planning approach for environment and outline how government agencies are working together towards agreed outcomes and timeframes. We suggest the articulation of rolling 5 year objectives, to enable the relevant government agencies to plan to support delivery of those outcomes. In the case of the water industry, that timeframe would also fit our pricing framework.

Water corporations are an arm of government skilled at service delivery and play a fundamental role in protecting Victoria's environment. Water corporations can support the delivery of improved environmental outcomes consistent with Government expectations. The abovementioned whole-of-Government framework should consider how water corporations and other government owned service delivery organisations can play a role in supporting the achievement of the Government's environmental objectives. The Upper Stony Creek Transformation project under the 'Greening the West' initiative is an example of government agencies coming together to revitalise a waterway and land surrounding Upper Stony Creek in Sunshine. CWW has played a facilitator role in coordinating Greening the West. Stakeholders have

been brought together and developed a shared vision, goals and targets, and agreed action plan. This could be a model for how Government service delivery organisations can support on-the-ground outcomes aligned with overarching Government objectives.

Priority Area 2 - Risk Based Regulation

The Inquiry asks about EPA's role into the future, given a changing environment. CWW considers that EPA should continue to play a role in setting the 'standard of evidence', for example in the assessment of risk of contaminated land or informing the water quality objectives in the State Environment Protection Policy (Waters of Victoria) (SEPP WoV).

A modern regulator must also enable a risk based approach to regulating. Despite some movement toward frameworks that enable risk based decisions, EPA is still hesitant to implement a framework for water quality offsets. The offsets clause in SEPP WoV is an economic instrument that acknowledges outcomes can be achieved in different ways to prescriptive requirements. A traditional engineering upgrade option for a sewer asset that is non-compliant with the prescriptive stormwater containment clause in SEPP WoV was estimated to cost in the order of $10-20 million dollars, and compromise significant cultural heritage in the area. A water quality study determined the stressors on the waterway not to be related to episodic wet weather discharges of sewage to the Maribyrnong River. However, EPA isn't yet supportive of applying the offsets framework to this sewerage containment clause. CWW considers that effective risk based regulation can ensure appropriate environmental protections are in place while also ensuring water services are delivered efficiently and affordably for customers.

EPA's principles of a modern regulator include targeted, proportionate and effective regulation. CWW has observed EPA taking some steps towards more targeted, risk based intervention/regulation including the following:

- Consideration of risk based 'tiering' for its next iteration of the Scheduled Premises Regulations.

- An Earned Autonomy program which acknowledges performance and lower burden of regulation (this is proportionate, and frees up resources to be more targeted).

- Exemptions under the Environment Protection Act, for both licensed and unlicensed sites.

In the past, EPA has set licence limits informed by the availability of technology. With licence modernisation, although positive, there's a risk EPA will tighten licence limits, not due to a public health or environmental risk, but because the technology is available. A balance must be struck between the incremental environmental benefit of applying new technologies against the increased cost to deliver services to customers.

A regulator should not be driven by input statistics e.g. number of notices issued or number of inspections conducted.

Priority Area 3 - Responsiveness

For matters that aren't guided by statutory decision frameworks (such as approval of recycled water schemes via Health and Environmental Management Plans and Environment Improvement Plans), EPA is presently not able to deliver decisions in a timely manner. CWW would like to see faster decision making by EPA. CWW doesn't think that this necessarily compromises quality of decisions. If this is not always possible, clear and regular communication is needed to update progress on the assessment. A key barrier appears to be the decision making processes between the Applied Science Group (advice function) and Development Assessment Unit (approvals team).

Discussion Paper Questions

1. **Do you think the key environmental challenges which will impact the EPA in the future have been captured? Are there any others?**

Waste

The discussion paper focus is on solid waste rather than integrated waste management across both solid and liquid forms. This can drive perverse outcomes across waste streams and lead to lost opportunities for reuse and recycling.

Water corporations are the largest treaters of liquid waste (via trade waste and the sewer). This includes trade waste generated by industry that is not subject to the same coordinated support as Prescribed Industrial Waste to drive 'upstream' reuse and recycling. The expectation (articulated in SEPP WoV and Water corporations Statement of Obligations) is that Water corporations will drive customers to implement the waste hierarchy through trade waste policies and procedures. Water corporations are only able to place requirements on customers if there is a risk to the sewerage system and to facilitate least community cost across its customer base. Where possible CWW works with its customers to improve resource efficiency and reduce waste discharge to sewer, however in the absence of coordinated support from Government, the opportunities to drive onsite reuse and recycling are significantly diminished.

More support and recognition is needed for waste treatment facilities, including liquid waste treaters. These facilities are vital to Water corporations (and society) to ensure that contaminants are not discharged to sewer that adversely impact the sewerage system. It is important that EPA looks beyond simple compliance solutions for these premises and provides more positive recognition and support for more sophisticated treatment solutions that drive greater reuse, recycling or energy recovery and also supports long term viability of the sewerage system, recycled water and biosolids recycling.

Tighter regulation and requirements on solid waste can result in potentially negative impacts for trade waste management such as the diversion of wastes to sewer. Similarly, regulations that are cumbersome and result in slow or unclear decision making can stifle the reuse or recycling of trade waste because the sewer is seen as the easier disposal option. EPA should enable innovation that drives better, holistic outcomes for waste management. A positive recent example is the licence amendment at the Western Treatment Plant to accept high strength organic waste. Water corporations are well placed to support organics recycling toward resource

recovery and energy efficiency but EPA often has a conventional idea of sewage collection and treatment. More holistic tracking of prescribed waste across solid and liquid waste streams is also needed to better understand the interdependencies between solid and liquid waste.

Urban growth

The discussion paper acknowledges that today's water quality threats are more diffuse, including from residential urban development. Water quality objectives do not seem to be the starting point for development constraints, nor should they be. Water Sensitive Urban Design and Integrated Water Management have resulted in significant improvement to water quality outcomes associated with residential development, e.g. through stormwater harvesting and treatment. To address the impact on waterways from stormwater flushing and scouring, catchment managers are identifying diversion targets. Diversion targets presents a challenge to water corporations as there is increased pressure and cost to find solutions to keep nutrients and other diffuse pollutants out of waterways. There isn't enough demand for large scale stormwater harvesting therefore Water corporations can't achieve everything through integrated water management alone. Land use conflict is often focussed on the proximity of residents to industrial premises, but urban growth presents a broader land use conflict issue that is particularly pertinent for rapid growth areas such as the western suburbs of Melbourne.

A coordinated approach is required from all Government agencies to decide how to protect the environment given such an extensive land use change. DELWP now plays a critical role in determining the trade-offs between environment, water and planning, with all functions now within the one department. DELWP taking on the role in statutory policy development should help with a strategic solution.

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

- EPA informing the science underpinning DELWP-led policies e.g. State Environment Protection Policies, and other standards.

- EPA's role in setting the 'standard of evidence' e.g. in the assessment of risk of contaminated land.

- EPA Appointed Auditors, including Industrial Facilities auditors – CWW is increasingly using this type of auditor to verify the risk posed by industrial facilities to the sewerage system.

- Setting and enforcing standards for high risk industrial premises. This includes identifying high risk activities and identifying a level of works approval and operational oversight e.g. through the Environment Protection (Scheduled Premises and Exemptions) Regulations 2007.

- The exemptions provision under the Environment Protection Act as it allows a proponent to demonstrate low risk to third party stakeholders and the environment. This works where the decisions are consistent and made transparent. EPA initially listed exemptions on its website but this has fallen off.

- In its efforts to transform into a modern regulator, EPA has introduced an Operational Strategy function (represented as both a central function and component of each region) which looks at problems that don't have traditional regulatory solutions. It takes a harm approach focused on problem solving i.e. defining the problem together with industry, trialling innovative solutions. This balances licence maintenance and pollution response with strategic intervention.

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

A Whole of Government strategy for the environment

See section under Priority Area 1.

Relevant regulation

The Inquiry should consider whether there are historically regulated aspects that no longer need regulating. Formal reviews of regulations (as they sunset) and statutory policies provide an opportunity for this, but the Act keeps accumulating industry burden without revisiting the need for regulation. To this end, EPA should step away from its approvals or intervention function where it is confident in the competency of the regulated entity to deliver the activity, or the regulated entity has sufficient self-interest in achieving the same outcome that EPA would regulate toward.

Recycled water is an example. When recycled water was an emerging practice (itself driven partly by the water conservation clause in SEPP WoV) it benefited from regulation and statutory guidelines were developed. Now, water corporations are competent and have self-interest in achieving the outcomes EPA is driving.

It would be useful for EPA to articulate clearer outcomes that it wants to achieve. There are environmental benefits from recycling wastewater but also some environmental costs, e.g. irrigating land with a lower quality water source and potential for run-off to local waterways. Once these trade-offs are agreed by EPA then Water corporations should manage risks as appropriate. This would be similar to DHHS' approach of accepting a DALY (disability adjusted life years) and then setting water quality targets. The water authorities manage the end user risk with tap test audits but there is no requirement to report these regularly to DHHS.

EPA could consider a role for setting standards and occasionally auditing, but not maintaining an ongoing approval role e.g. signing off changes to management plans, particularly as it does not seem to have the resources to prioritise the work which can result in delays to Water corporations and impact on our recycled water customers. This sort of approach could occur through the Earned Autonomy framework EPA is trialling. If EPA intends to continue regulating recycled water, it needs to be more coordinated with the co-regulating. The role of DHHS in endorsing recycled water schemes is not recognised in the discussion paper.

Active coordination

At a State government level, it would be valuable to have dedicated resources liaising with stakeholders to identify needs, and then bring stakeholders together to drive action for shared outcomes. Active coordination seems key to success of multi-stakeholder/government initiatives. A big learning in the review of the SEPP WoV is that the policy is not fundamentally flawed, but lacks implementation.

Regulatory interventions should achieve objectives informed by science or strategies e.g. Sustainability Victoria's Statewide Waste and Resource Recovery Infrastructure Plan Victoria. It's not obvious how the EPA, Sustainability Victoria, Commissioner for Environmental Sustainability work together to achieve environmental outcomes. More coordination is needed so Government organisations are driven to work toward shared objectives.

Co-regulation

City West Water has recently had very positive co-regulator interactions with EPA. We shared our risk based approach to regulating trade waste customers to inform tiered licensing for upcoming Scheduled Premises Regulations (with EPA's Policy and Regulation team). Metropolitan water retailers have also recently been working with EPA to coordinate our respective regulatory requirements, including:

- opportunities to coordinate our approach to explain regulatory expectations in a more timely and efficient manner where synergies exist such as groundwater, stormwater and prescribed waste aspects of the liquid/solids waste interface.

- a more holistic approach to waste management that better considers the liquid/solid waste interface.

Co-regulation has the potential to deliver outcomes more effectively and efficiently by sharing and leveraging off existing resources across organisations that are working with similar groups of people, seeking similar outcomes. These opportunities should be identified and explored where possible.

Collaboration with key stakeholders

The water industry represents one third of EPA licensed sites. The Water Industry Reference Group (WIRG) can be an effective and efficient forum for both EPA and water corporations to address issues of significance in a strategic way, however it needs to be supported across all levels of EPA and facilitate a more collaborative approach to regulation. An example of where this has not occurred is the failure of EPA to consider the issue of water quality offsets (enabled under SEPP WoV) through the WIRG despite significant interest from the water corporations.

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

No response to this question.

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

No response to this question.

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

No response to this question.

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

Contaminated land and essential services

An area for attention identified by the Inquiry is 'combining environmental protection with economic viability'. The classification of soil contamination in the EPA's soil hazard categorisation and management framework (outlined in the Industrial Waste Resource Guidelines) places a potentially large financial burden on water authorities in relation to the disposal of contaminated soil excavated during water/sewer main works. This is particularly relevant in the western suburbs of Melbourne where there is a relatively high number of contaminated sites compared to other areas of Melbourne. Whilst the EPA regulations seem focused on sites owned by individuals and/ or organisations, the issue of soil under public roads or under nature strips that technically is prescribed industrial waste due to a small elevation in some parameters should be considered with the aim of 'best community outcome'.

It would be beneficial to the community if the various agencies could work together more closely to arrive at a better outcome, rather than, as it appears, just the application of a regulation. EPA could do more to facilitate improved contaminated land management in Victoria. In Queensland, the EPA makes available GIS layers for known contaminated sites and potentially contaminated land (based on former site use). This helps planning and utilities organisations better identify and manage contaminated soil. The format of that data is also relevant to make it accessible and utilised.

8. What can the EPA do to minimise hazards for the future?

A tiered licensing framework (proposed for the 2017 Regulations) could allow better tracking of some activities that wouldn't quite make it into a high risk licensing framework however may present a hazard at some points and would benefit from oversight at particular points in time.

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

EPA should play a strong role in improving environmental outcomes beyond those necessary to safeguard human health. EPA's role is not in isolation of valuable analysis and direction from the Commissioner for Environmental Sustainability, Sustainability Victoria, and DELWP. Science must be the starting point for understanding limits and stressors (both for environment protection and human health protection). The regulatory framework must support attainment of those objectives, through setting standards, and enforcing against them. EPA is not the only player to achieve the objectives. Ultimately a healthy environment supports healthy humans, both for beneficial uses that humans value (e.g. recreational water use) and also ecosystem health which

provides humans benefits in the form of ecosystem services (as well as having intrinsic value which should be protected).

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

There is no strong regulatory presence in climate mitigation. History shows that both the Industry Greenhouse Program and Environment Resource Efficiency Plan Regulations delivered good outcomes, including financial savings and could be re-adopted. Water corporations can play an important role here as a service delivery arm of Government.

As a science-based organisation with a vision to support a liveable and prosperous Victoria, EPA has the capacity to change the industrial landscape and should have the right powers to drive best practice in relation to greenhouse gas emissions through Works Approval and licensing.

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

EPA should play a role to drive consistent environmental health outcomes for all. For example people in the west are exposed to greater environmental health impacts from urban heat island effect, dust from the Brooklyn area, noise and emissions from truck traffic, contaminated land from past land uses etc. EPA should focus its efforts on driving consistent environmental health outcomes for all members of the community regardless of where they live.

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

In addition to regulatory models, there's also a question about how EPA works more effectively with and through other regulators. See response to question 3.

13. 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?

Catchment focus

EPA is too focussed on premises and regulation within the boundaries of the premises. As stated in VicWater's response to the SEPP WoV policy review, EPA needs to acknowledge catchment wide threats and impacts on receiving waters. Currently the focus on premises relates to limitations of the Environment Protection Act head of power, where it's easier to enforce premises boundaries. It should be a priority to change the Act if necessary to achieve environmental outcomes. If (actively coordinated) implementation of management frameworks can be successful for catchment issues, there should be more management frameworks to drive outcomes, like the Port Phillip Bay Environmental Management Plan (PPB EMP) for nitrogen. EPA should evaluate what made the PPB EMP successful in delivering water quality improvements.

In closing

CWW would like to again thank the MAC for asking for feedback on the role of EPA into the future, and the MAC's respectful and considered consultation process. CWW attended the AiGroup and VicWater consultation sessions, represented by members of the MAC.

EPA's role into the future is not independent of other government agencies and CWW would like to see clearer roles and responsibilities for the government agencies, with a whole of government strategy outlining how they all work together for the best outcome. CWW also supports the direction towards becoming a risk based 'modern regulator' and hopes the Inquiry outcomes will enable EPA to be more responsive and decisive.

If you would like to discuss CWW's submission further, please contact [redacted] on [redacted] or [redacted].