

DETAILED SUBMISSION

I make this submission in my personal capacity.

I am a Principal with Russell Kennedy (**RK**), a legal firm based in Melbourne. My practice involves acting for local government, water corporations and private industrial clients that interact with the Environment Protection Authority (**EPA**).

I commenced my professional career with the EPA in 1999 as a graduate engineer and worked across the organisation in a range of roles until early 2006.

My intention in making this submission is to contribute to a substantive improvement in the regulation and enforcement of environment requirements in Victoria. If achieved, this will facilitate creation of employment, investment in infrastructure, development of technology and a net community benefit.

SCOPE OF INQUIRY

The core objective of the 'Inquiry into the Environment Protection Authority' (**Inquiry**) identified in the 'Terms of Reference' (**Terms**) is to protect the health of Victorians.

The Terms identify that the risk to health of Victorians arises from pollution of the environment (land, waters and atmosphere) and from industrial waste, specifically asbestos.

My comments are provided below in response to the Terms having regard to the broad directions to the Inquiry to consider:

- regulatory efficiency; reducing regulatory burden; employment growth; integration of economic, social and environmental considerations
- consultation of the community, industry, workers, local government and state government

- 1) ***the EPA's appropriate role in relation to public health issues, including at least: community concerns such as exposure to asbestos, chemicals and other pollutants; the prevention and management of site contamination, air quality, and water quality in rivers and other waterways;***

Issue	Comment
Role in public health – water pollution	<p>State Government (EPA or a restructured entity) must be involved in the protection of public health from water pollution.</p> <p>The <i>Environment Protection Act 1970 (EP Act)</i> and the <i>Pollution of Waters by Oils and Noxious Substances Act 1986 (POWBONS Act)</i> and subordinate instruments create part of the legal framework presently administered by the EPA relating to protection of human health from water pollution.</p> <p>Administration, regulation and enforcement of the pollution of waters from ships in State coastal waters is a specialised area. These functions would appear to be best performed by either the Australian Maritime Safety Authority (AMSA) with State jurisdiction conferred upon it or a State Government entity with responsibility for Victorian ports. There are no reported prosecutions by the EPA for a POWBONS offence for some time.² EPA's capability is reliant of Port Authorities and AMSA to conduct investigations. Extradition of offenders presents a significant obstacle to successful enforcement. AMSA would appear to be best placed to perform this function.</p> <p>Administration, regulation and enforcement of the EP Act to address pollution of inland surface waters may be more effective through collaborative initiatives between State Government, water corporations and local government. In the event that diffuse sources now present the most significant risk of pollution then innovative programs are required. Previous regulation and enforcement by the EPA has been successful in responding to significant point source contributors. EPA or a State Government entity responsible for administering the EP Act should contribute to land use planning decisions as a determining referral authority together with water corporations and catchment management authorities particularly for potable water catchments. Other initiatives could include a function in development, funding and resourcing domestic wastewater management plans and compelling land owners to connect to sewer with the objective of phasing out poor performing septic tanks etc.</p> <p>EPA's sanction focused enforcement targeting scheduled premises is ineffective noting that the majority of scheduled premises have significant investment in stormwater control, collection and treatment and groundwater protection and monitoring infrastructure. Continued focus on scheduled premises will not substantially reduce the risk of water pollution to human health.</p>

² Reported prosecution for discharge during loading of Leyte Spirit – June 2012. Charges under EP Act not POWBONS Act.

Issue	Comment
	<p>Regulation of scheduled premises to maintain existing gains is appropriate with outcomes identified by license holders to be facilitated (see water corporation’s example below). A risk weighted compliance approach is appropriate and the more recent LORA program appears sensible. Licensees should be given the opportunity to adopt and annual auditing and reporting program (at discretion of licensee) to reduce regulatory burden. The accredited licensee program used to fulfil this function (Part III, Division 4 of the EP Act). I am not aware if the power is still utilised. This may require an amendment to the EP Act to modernise the provision to today’s circumstances.</p> <p>Example 1: The continued targeting of water corporations, where the annual mean waste discharge limit for volume is exceeded, there is no environmental gain from initiating enforcement proceedings against the water corporation or compelling the water corporation to apply for a works approval, particularly where the increased flow is a result of population grown and sewer infiltration in high rainfall years.</p> <p>State Government, whether EPA or another configuration, needs to facilitate timely amendment and variation to licences and approvals to allow the licence holder to implement solutions rather than taking a rigid enforcement oriented approach.</p> <p>There is an opportunity to improve public access to information concerning polluted groundwater in Victoria. Mapping of groundwater pollution identified in Groundwater Quality Restricted Use Zones is not publicly available. This is consistent with environmental justice.</p> <p>Pollution of groundwater presents a lesser risk to human health where the beneficial uses of the segment are not utilised.</p> <p>Consistency is required in relation to requiring clean up, remediation and ongoing management of polluted groundwater (i.e. polluter, land owner, land occupier, local government/State Government).</p> <p>[REDACTED]</p>

Issue	Comment
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Any proposition that the EPA is an independent regulator that intervenes with Sate Government, local government and private entities equally is false.</p> <p>On this basis the functions of the EP Act may be more effectively administered by a reconfiguration of State Government entities (see comments throughout this submission) and an empowerment of local government, non-government entities and private entities to initiate proceedings addressing environmental issues.</p> <p>Example 3: I am aware of EPA’s intervention in relation to historical contamination of groundwater in a suburb of Melbourne, which may be attributable to a former industrial facility. Initial EPA intervention targeted the municipal council purporting to compel disclosure of reports under a notice issued to consultants retained by the municipal council’s lawyers for the purpose of providing legal advice. This was coordinated with correspondence to the executive of the municipal council inferring negligence in rezoning land and granting planning permission. In this instance the municipal council did not cause the pollution and like other private land owners is now dealing with the legacy of historical contamination.</p> <p>The EPA’s erratic and aggressive enforcement approach has prevented a collaborative between State Government, Local Government and private land owners.</p> <p>The likely polluter remains a registered corporation in Australia. There is no record of the EPA issuing remedial notices to that company.</p> <p>See comments below addressing ‘Performance of Regulator’.</p> <p>Example 4: Over the past 2 years the EPA has continued to target a municipal with remedial notices and threats of further remedial notices for remediation and ongoing monitoring of contaminated groundwater allegedly caused by a closed landfill located on unreserved Crown land. The municipal council’s predecessor in law rehabilitated the landfill at the time of closure and surrendered the land to the State Government over a decade ago. EPA continues to target the municipal council despite executive level interaction confirming the municipal council is no longer an occupier of the site.</p> <p>EPA’s intervention has prevented an collaborative approach between State Government and the municipal council aimed at maintaining the land as public open space for the benefit of the community.</p>

Issue	Comment
	<p>See comments below addressing 'Performance of Regulator'.</p> <p>Example 5: Since 2012 I have acted for various municipal councils in relation to closed landfills across Victoria. A consistent issue is the EPA targeting municipal councils with remedial notices, including in circumstances where the municipal council is not the occupier and a private entity or State Government is the land owner. A search of EPA's Interaction Portal does not reveal any remedial notice being issued to State Government for a closed landfill in Victoria. Over 100 such notices have been issued to local government.</p> <p>EPA continues to apply the Closed Landfill Guidelines (Publication 1490) issuing remedial notices purporting to impose current landfill rehabilitation standards to landfills closed decades ago. These notices have been successfully challenged in VCAT for metropolitan and regional municipal councils. Despite this consent outcome EPA Publication 1490 has not been amended and EPA continues to target municipal councils with identical notices. The same principle applies to cells of operational landfill closed previously. Remedial notices cannot be issued retrospectively applying current standards of rehabilitation. The cost consequence for municipal council's is significant. EPA's approach shifts liability from state Government to Local Government.</p> <p>The Victorian Auditor-General's report titled 'Managing Contaminated Sites' (December 2011) makes extensive recommendations concerning contaminated land and groundwater in Victoria. These recommendations should be considered by the Inquiry in this context – pollution of groundwater and human health.</p> <p>Further the Victorian Auditor-General's Report 'Managing Landfills' (September 2014) makes recommendations with implications for protection and clean up of contaminated groundwater. All of these recommendations should be addressed.</p> <p><u>OPPORTUNITY:</u></p> <p><u>AMSA and Victorian State Government port authorities to administer, regulate and enforce the POWBONS Act.</u></p> <p><u>EPA/State Government, Local Government and private land owners to develop and promote initiatives requiring clean up and removal of sources of surface water and groundwater pollution.</u></p> <p><u>EPA/State Government entity responsible for administering the EP Act to facilitate licence variations for water corporations to deal with exceedances of mean annual discharge limits caused by population growth and/or increased sewer infiltration rates.</u></p> <p><u>Collate and map all GQRUZ for public access on EPA's website.</u></p> <p><u>Refrain from targeting municipal councils with remedial notices for closed landfills, which are no longer occupied by local</u></p>

Issue	Comment
	<p><u>government.</u></p> <p><u>Balance the targeting of remedial notices between polluter and/or occupier.</u></p> <p><u>Allow public access to all remedial notices via download from the EPA’s website.</u></p> <p><u>Amend Publication 1490 to confirm that remedial notices cannot be issued retrospectively imposing standards of rehabilitation on closed landfills or closed cells within operational landfills.</u></p> <p><u>Utilise the accredited licence provisions of the EP Act to reduce the regulatory burden on scheduled premises.</u></p>
Role in public health – land pollution	<p>I refer to my comments concerning groundwater above and repeat them in relation to land pollution.</p> <p>The environmental audit system for contaminated land (Part IXD of the EP Act) is critical for the continued development of land in Victoria. State Government should continue to contribute resources to the management of the environmental auditing system.</p> <p>Mapping of known land contamination has been identified by various State Government reviews.³ Public access to this information is important – environmental justice.</p> <p>Mapping of statements of environmental audits and certificates of environmental audit for public access – environmental justice.</p> <p>Existing access to the Priority Sites Register for land subject to a remedial notice dealing with land or groundwater contamination is not accessible by mapping and the notices are not available by download from the EPA’s website. The time delay associated with a written request to EPA to access a remedial notice can be improved.</p> <p>Compliance with conditions attached to statements of environmental audit, which are often determined by advice from the EPA to the appointed auditor or arise from the clean up to the extent possible determination, is not assessed by the EPA nor is implementation secured under the EP Act. Reliance is placed on municipal councils to implement permit conditions and section 173 agreements. This is addressed in the Victorian Auditor General’s report.</p> <p>Careful consideration is required of the regulatory intervention in the land application of organic products as distinct from organic wastes. Segregation and diversion of organic waste from landfill drive this environmental risk.</p>

³ ‘Managing Contaminated Sites’ [December 2011] Victorian Auditor General’s Office – recommendation 3; ‘Managing Landfills’ [September 2014] Victorian Auditor General’s Office – recommendations 5 and 14.

Issue	Comment
	<p>Distinction between owner and occupier in targeting remedial notices.</p> <p><u>OPPORTUNITY:</u></p> <p><u>EPA to continue with role in regulating scheduled premises through licences.</u></p> <p><u>EPA, State Government and Local Government to develop and promote initiatives requiring clean up and removal of sources of land pollution.</u></p> <p><u>Collate and map all contaminated sites, including landfills, for public access on EPA’s website. Also make statements and certificates of environmental audit and remedial notices relating to land pollution.</u></p> <p><u>Allow immediate public access to all remedial notices (access to licences is provided in this manner).</u></p> <p><u>State Government/EPA to assess compliance with conditions attached to statements of environmental audit and intervene if compliance not achieved.</u></p> <p><u>Refrain from interference in land application of organic products produced by scheduled premises. Prohibit the direct land application of organic wastes (current situation).</u></p>
<p>Role in public health – air pollution</p>	<p>In the last couple of years the EPA has identified a priority of preventing encroachment of incompatible land uses on waste management facilities and wastewater management facilities. I am aware of multiple instances where the EPA has made submissions to Planning Panels. EPA’s contribution should be encouraged with a view to supporting waste management facilities and water corporations. This will require a balance between protection of waste management facilities from encroachment with sanction focused enforcement against waste/water corporations for amenity impacts.</p> <p>Licence condition LI_A1 requires no odour offensive to the sense of human being beyond the boundary of the premises must be amended to be consistent with the statutory defence at s 30 of the Act, where a licence holder is not liable for breach of licence in relation to an odour offensive to the senses of human beings unless it is detected in a residential area or public open space adjacent to a residential area.</p> <p>A substantive body of expert evidence and VCAT decisions has accumulated identifying the criteria of 1 odour unit at the boundary of the premises (State Environment Protection Policy (Air Quality Management) as unrealistic and too conservative.</p> <p>Remedial notices imposing capital works and operational costs need to be considered in context of a waste company’s financial</p>

Issue	Comment
	<p>capability and the balance between amenity protection and facility protection. Where the scheduled premises operator is prepared to voluntarily invest in infrastructure upgrades, remedial notices should be issued requiring the works, which expedites implementation by exempting the works from works approval and planning permission (see for example, <i>Ileowl Pty Ltd v Environment Protection Authority</i> [2013] VCAT 1562).</p> <p>Odour causing an amenity impact is largest source of community reports to the EPA. Where these reports are attributable to a scheduled premises the report should automatically be emailed to the scheduled premises allowing the operator to investigate the facility and implement remedial measures. Community reports are referred to the scheduled premises days or weeks later, which prevents the licensee from dealing with any problem or verifying the premises as a source and if it is the source allows the odour emission to continue unabated to the community's detriment.</p> <p>Immediate disclosure to the licensee would place onus on the reporter to ensure accuracy, allow the licensee to respond at the time and prevent EPA wasting resources responding to community reports after the event, which frustrates all concerned as no environmental outcome is achieved.</p> <p><u>OPPORTUNITY</u></p> <p><u>EPA to facilitate and expedite voluntary initiatives to improve the environmental outcome of a scheduled premises.</u></p> <p><u>EPA to continue its support of initiatives to protect waste and wastewater management facilities from encroachment.</u></p> <p><u>EPA to amend licence condition LI A1 to be consistent with the statutory defence at section 30 of the EP Act.</u></p> <p><u>EPA / State Government to remove or increase the criteria of 1 odour unit at the boundary of a premises under the State Environment Protection Policy (Air Quality Management) in line with expert opinion.</u></p> <p><u>EPA/State Government to automatically disclose community complaints to licensees alleged to be source.</u></p>
Role in public health – asbestos exposure	<p>EPA or a reconstituted State Government entity has a function to fulfil in regulating and enforcing the provisions of the EP Act in relation to asbestos as a waste. This should apply irrespective of the source of the waste asbestos (domestic or commercial/trade/industry).</p> <p><u>Example:</u> A contractor used a high pressure hose to clean a friable asbestos roof resulting in asbestos debris being discharged over two adjoining residential properties presenting an immediate risk to human health. EPA refused to intervene on grounds that it was a domestic source despite the works being carried out by a contractor. WorkSafe refused to intervene as it was no longer a workplace (contractor completed works the same day). The municipal council</p>

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	<p>intervened and prosecuted the contractor under the <i>Public Health and Wellbeing Act 2008</i>. The provisions under the EP Act would have allowed far more effective and timely clean up and to compel a contribution from the landowner who commissioned the contractor and benefited from the performance of the works.</p> <p>EPA's reluctance to become involved undermines the confidence of professional environmental health officers within local government to seek EPA intervention.</p> <p>WorkSafe is the appropriate State Government entity regulate and enforce workplace obligations relating to asbestos.</p> <p>EPA/State Government should consider waiving the landfill levy payable for waste asbestos in consideration that there is a significant legacy problem facing Victorian industry and the community (domestic sources). There is no ability to reuse, recycle or reduce the generation of waste asbestos. In that context the landfill levy provides no incentive. It is likely to have a counterproductive impact by deferring removal and safe disposal of waste asbestos and causing increase illegal dumping. The cost of waste asbestos disposal has a significant impact on the renewal, replacement or decommissioning of utilities infrastructure.</p> <p><u>OPPORTUNITY</u></p> <p><u>Abolish the landfill levy payable on waste asbestos disposal.</u></p>
Role in public health – chemical exposure	<p>EPA/State Government under the EP Act has a function to perform in assessing chemical concentrations in segments of the environment and subsequently initiating a collaborative investigation and remedial response. This might involve consideration of whole catchments, aquifers, air sheds or land areas.</p> <p>This type of approach may be effective in dealing with multiple diffuse sources as compared with significant point sources, which was historically the intention of the scheduled premises framework.</p> <p>This approach would present significant opportunities for local communities (residents, businesses, industry, non for profit groups) to participate in local programs and strengthen links between the community and State Government and municipal councils.</p> <p><u>OPPORTUNITY</u></p> <p><u>Initiate targeted local initiatives assessing chemical concentrations in segments of the environment. Develop collaborative investigation and remedial programs with community involvement, industry, State Government and Local Government.</u></p> <p><u>Introduce amendments to the EP Act to provide for programs addressing catchment/aquifer/air shed or land area programs.</u></p>

2) *the Victorian community's and industry's expectations of the EPA as its environmental regulator;*

Issue	Comment
Scope of regulation	<p>At its core the EP Act is intended to regulate discharges of waste to the environment (including landfill) and the management of prescribed industrial waste.</p> <p>Any regulatory reform must foster innovation by industry, protect industry investment through certainty of requirements and facilitate preferential investment where an improved environmental outcome is delivered.</p> <p>Legislative reform is required to allow local initiatives focused on a catchment/aquifer/air shed/land area, which facilitates local community involvement (residents, schools, businesses, industry, local government).</p> <p><u>Works approvals, licensing and exemptions</u></p> <p>The Victorian Competition and Efficiency Commission (VCEC) made extensive recommendations⁴ concerning the works approval process and licensing of scheduled premises. VCEC's recommendations called for an amendment to the EP Act and <i>Environment Protection (Scheduled Premises and Exemptions) Regulations 2007</i>.</p> <p>In relation to works approvals the VCEC recommendations, included:</p> <ul style="list-style-type: none"> • confining the triggers for works approval⁵ • exempting specified technology from works approval⁶ • reducing the statutory time for EPA to determine an application for works approval⁷ <p>These recommendations have not been implemented. Consistent with the VCEC's recommendations the EPA has sought to</p>

⁴ 'A Sustainable Future for Victoria: Getting Environmental Regulation Right' (July 2009) Victorian Competition and Efficiency Commission – Chapter 7.

⁵ Recommendation 7.1

⁶ Recommendation 7.2

⁷ Recommendation 7.3

Issue	Comment
	<p>address these recommendations by interim measures such as guidance documents and an 'approval pathway process'.</p> <p>The interim measures have no legal standing and in many instances are actually delaying the statutory decision process (e.g. the Approvals Pathway Form delays the lodgement of an application and the commencement of the statutory time period).</p> <p>VCEC recommended removal of the statutory requirement for a works approval for a premises upgrade where the where the same or less environmental harm will result.⁸</p> <p>[REDACTED]</p> <p>In 2000 an amendment to the EP Act consolidated the previous schedule 1, 2, 3, 4, 5 and 6 scheduled premises into a 'scheduled premises'. Schedule 4 premises were premises for the management of prescribed industrial waste. The triggers for works approval (former s19A(3A)) were confined to prescribed industrial waste. Section 19A now makes no distinction in the criteria for a works approval or exemption by substituting 'waste' for 'prescribed industrial waste'. The result being that any change in waste handling requires a works approval rather than a change in prescribed industrial waste handling.</p> <p>The requirements for works approval should be amended.</p> <p>[REDACTED]</p>

⁸ Recommendation 7.1
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Issue	Comment
	<p>The VCEC recommendations should be implemented by an amendment to the EP Act and regulations as a priority and the ‘pathway application’ process and ‘fast track’ works approval process, which have no basis in legislation should be abolished.</p> <p><u>Acceptance of works approval applications</u></p> <p>Section 19B of the EP Act should be amended to allow merits review before the VCAT of any refusal by the EPA to accept a works approval application (environmental justice). EPA is not accountable for its decision as there is no means of merits review before the VCAT.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p><u>Regulation disadvantaging scheduled premises and undermining industry confidence to invest</u></p> <p>On 21 September 2015 the EPA released the ‘Classification of drilling mud’ (2015/205) under the <i>Environment Protection (Industrial Waste Resource) Regulations 2009</i> classifying drilling mud (liquid waste with high solids content, which is a category A prescribed industrial waste) to be an industrial waste subject to treatment in an appropriate manner.</p> <p>The classification allows non-scheduled premises (i.e. no EPA licence) to treat and handle liquid drilling muds without any control or supervision by EPA. EPA licensed premises are at a commercial disadvantage noting the infrastructure and operational practices required to comply with the licence conditions prohibiting the discharge of waste to groundwater and surface waters. Further, most licensed premises (A01 – PIW Management) will not have drilling mud listed as an industrial waste in Schedule 2 of its licence, which bars the waste from being accepted at the licensed premises. If licences are amended to allow industrial waste (drilling mud) to be accepted at licenced A01 – PIW Management premises, the industrial waste will attract a licence lee per tonne of waste (r 10(1)(b) of the Environment Protection (Fee) Regulations 2012), which is not payable for industrial waste treated at an unlicensed premises. This distorts the market and placed licensed A01-PIW Management premises at a</p>

⁹ *Ileowl Pty Ltd v Environment Protection Authority* [2013] VCAT 1562

¹⁰ Letter of 4 September 2013 – application for Dewater Facility and Drying Facility; Emails 23 and 30 May 2014 – application for Drying Facility only.

Issue	Comment
	<p>competitive disadvantage. The likely result is that this licensed premises will not be able to compete for the accept of drilling muds despite being equipped to do so.</p> <p>Further, an existing scheduled premises, which seeks to build new plant to treat drilling mud on its premises will require an approval under the EP Act (works approval or exemption), whereas if the plant is built on adjoining land outside the licensed boundary no approval is required – s 19A(1).</p> <p>I raised these matters in written submissions to the EPA during consultation on the classification. These matters are not disclosed on the EPA website summarising issues arising from submissions.</p> <p>These matters have not been addressed.</p> <p>This is raised as an example of an EPA decision that undermines industry confidence to invest infrastructure and technology creating employment, disadvantages licence premises and ultimately increases the risk to the environment and the community through water pollution.</p> <p><u>Exemptions</u></p> <p>The EP Act should be amended to impose a statutory timeframe for the determination of an application for an exemption and to allow merits review in the VCAT of any refusal to grant an exemption or of any condition attached to an exemption (environmental justice). EPA is not accountable for its acceptance, processing and determination of applications for exemption.</p> <p>All exemptions granted should be available for public access from EPA’s website.</p> <p><u>Minor works pollution abatement notices and clean up notices</u></p> <p>No merits review to the VCAT for a minor works pollution abatement notice or clean up notice exists. This denies the recipient the opportunity to ventilate important aspects of the notices and for the EPA’s decision and requirements to be independently reviewed by an expert tribunal. Judicial review is confined to errors of law. The cost of compliance with clean up notices often incurs significant cost. Consistency is required between targeting of occupiers, land owners and polluters.</p> <p><u>Example 1:</u> EPA issued a clean up notice to a land owner (individual) to remediate subsurface oil contamination originating from the adjoining waste oil recovery facility. EPA licensed the adjoining facility. The individual was not in a financial position to comply with the notice. Drainage of the waste oil from his property simply drained further oil from the adjoining licensed facility. The cost of compliance was significant. No remedial notices are identifiable as being</p>

Issue	Comment
	<p>issued to the licensed facility.</p> <p>Example 2: EPA issued a minor works pollution abatement notice to a municipal council in relation to landfill gas monitoring of private land the cost of compliance estimated at \$150k. EPA has initiated its own monitoring program, although at this time the notice has not been revoked. The municipal council did not seek judicial review despite grounds to do so.</p> <p>All EPA decisions should be reviewable in the VCAT (environmental justice).</p> <p><u>Third Party Enforcement of EP Act</u></p> <p>EPA/State Government resources are limited. Provisions similar to the enforcement order provisions of the Planning and Environment Act 1987 (s 114) should be included in the EP Act to empower third parties to initiate proceedings where the EPA/State Government is not able or willing to do so. Protection of the environment under the EP Act should not be confined to proceedings initiated by the EPA. This would facilitate local environmental justice.</p> <p><u>OPPORTUNITY</u></p> <p><u>Amend the EP Act and regulations to implement the VCEC’s recommendations.</u></p> <p><u>EP Act to be amended to:</u></p> <ul style="list-style-type: none"> • <u>remove the requirement for approval, which does not apply to non-scheduled premises handling industrial waste – by EPA issued classifications (s 19A and licence fees);</u> • <u>reinstate the constraint for PIW Management scheduled premises by confining s19A(1) to prescribed industrial waste;</u> • <u>allow merits review of decision on exemptions and acceptance of a works approval application;</u> • <u>incorporate enforcement by any entity not just the EPA</u> <p><u>EPA to abolish pathway approval and fast track works approval processes or otherwise amend the EP Act to create legislative provisions.</u></p>
Function of regulator	<p>The regulatory and enforcement functions under the EP Act must be separated and performed by different State Government entities.</p> <p>These distinct functions are compromised, particularly in regional areas, where the same EPA officers are responsible for both</p>

Issue	Comment
	<p>functions or at least involved in them.</p> <p>Effective and targeted enforcement is critical to uphold the legislative framework and create certainty for industry to invest and compete fairly in the marketplace. EPA's enforcement is failing by targeting generally compliant industry, local government and water corporations rather than recalcitrant offenders that obtain a financial or competitive advantage by offending.</p> <p>Victoria Police should be delegated to enforce the indictable offences under the EP Act. EPA has failed to deliver prosecutions outcomes for a number of years. Significant offences are being committed, particularly in relation to dumping or abandoning industrial waste, which ultimately undermines legitimate industry.</p> <p>The regulatory function under the EP Act should be administered by State Government or EPA with closer links to State Government departments able to facilitate investment, grants and other available initiatives directed towards improving environmental performance, creating employment and investment in infrastructure. This is critical for regional Victoria.</p> <p>The regulatory function under the EP Act will continue involve guarded and limited interaction from industry where the same State Government entity is also responsible for enforcement and that enforcement continues to target legitimate industry, local government and water corporations rather than recalcitrant offenders deriving a financial benefit from offending.</p> <p><u>OPPORTUNITY</u></p> <p><u>Separate the regulatory and enforcement functions under the EP Act to leverage of State Government entities properly trained and resourced to discharge functions (i.e. Victoria Police for enforcement) and to facilitate access to State Government programs and initiatives to improve environmental performance, creation of employment and industry investment.</u></p> <p><u>Amend the EP Act to expressly require the EPA or the VCAT, on review to expressly consider the net community benefit, social, economic and environmental impact of a decision.</u></p>
Performance of regulator	<p>EPA's sanction focused enforcement dominates its performance causing it to be an ineffective regulator that fails to protect the environment.</p> <p>EPA continues to target generally compliant industry, local government and water corporations for minimal environmental gain.</p>

Issue	Comment
	<p>EPA’s sanction focused enforcement has resulted in EPA conduct undermining industry confidence to invest.</p> <p>Consistency of requirements and consultation on the introduction of any changes is critical to the performance as an effective regulator of the EP Act.</p> <p>In the past 5 years I have observed and been subject to EPA strategies to utilise any means possible to influence an outcome. This has involved targeting a tenant’s relationship with its landlord, a licensee’s relationship with its customers and a landowner’s relationship with local government and other State Government entities responsible for regulating an aspect of that licensee’s business. This conduct is abhorrent, unjustified and damaging to industry and ultimately the community.</p> <p>[REDACTED]</p> <p>EPA’s approach to use any means possible has created significant distrust in industry, including service industries.</p> <p><u>OPPORTUNITY</u></p> <p><u>Vary performance criteria from sanction focused enforcement to verifiable offences rates, industry investment, employment creation and economic, social and environmental impact.</u></p> <p><u>Report on EPA’s facilitation of industry investment through referral or introduction of industry to Federal, State or Local Government programs and initiatives.</u></p> <p><u>Reform EPA’s internal procedures to refrain from interfering with a third parties independent relationships (e.g. landlord or customers).</u></p>
Outcome of regulation	Regulation and enforcement of the EP Act should be focused on delivering an environmental outcome and a net community

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	<p>benefit.</p> <p>There is already a requirement to administer the EP Act in consideration of the environment protection principles, which includes the ‘principle of integration of economic, social and environmental considerations’.</p> <p>“1B Principle of integration of economic, social and environmental considerations</p> <ul style="list-style-type: none"> (1) Sound environmental practices and procedures should be adopted as a basis for ecologically sustainable development for the benefit of all human beings and the environment. (2) This requires the effective integration of economic, social and environmental considerations in decision making processes with the need to improve community well-being and the benefit of future generations. (3) The measures adopted should be cost-effective and in proportion to the significance of the environmental problems being addressed.” <p>EPA’s regulation and sanction focused enforcement fails to properly consider this principle and results in a net community detriment.</p> <p>Victorian industry would be assisted by a facilitative interaction with the EPA, which seeks to foster innovation in the delivery of essential services.</p>

3) the EPA’s appropriate role in protecting the environment;

Issue	Comment
	Comments through submission.

- 4) *the ability of the EPA to ensure that the principle of environmental justice is adhered to, the environment is protected for the benefit of the community, and members of the community can be meaningfully involved in, and access fair treatment through, environmental regulation;*

Issue	Comment
Environmental justice	<p>The Terms identify the criteria of adherence to the ‘Principle of Environmental Justice’ (Principle). The Principle is not defined in Australian legislation. In 1993 the United States government established a federal advisory committee; the ‘National Environmental Justice Advisory Committee’ to provide advice and recommendations across government on broad environmental issues. The United States Environment Protection Agency (US EPA) defines the Principle to mean:</p> <p>“Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color (sic), national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work. (US EPA)</p> <p>Internationally, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998 (Int) (Aarhus Convention) creates duties to pursue environmental justice and create structures for its promotion and protection in recognition of the link between environmental inequalities and poverty. Australia is not a signatory to the Aarhus Convention.</p> <p>Australia is a signatory to the Rio Declaration on Environment and Development 1992 (Int) (Rio Declaration), which establishes principles including:</p> <p>“Principle 10</p> <p>Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that</p>

Issue	Comment
	<p>is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.</p> <p>This principle has been reaffirmed in subsequent conferences and adopted in the implementation plan – Agenda 21.</p> <p>In Australia there has been limited judicial authority considering the Principle and its application in Australia. In <i>Tweed Business and Residents Focus Group Inc v Northern Region Joint Regional Planning Panel</i> [2012] NSWLEC 166 at [11] Justice Giscoe held that “the real test of Principle 10’s significance lies in domestic law rather than international law.” Justice Giscoe then considered the objects of the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> in that context.</p> <p>Please see the commentary below. Restrictions in the EP Act prevent the achievement of environmental justice in Victoria – community participation in decision making.</p> <p>The legislation establishing Sustainability Victoria (SV) enacts aspects of the Principle. It should be noted that the statutory functions of SV and the EPA are fundamentally different. In any event, too many statutory decisions under the EP Act are not reviewable on the merits (e.g. exemptions and minor works pollution abatement notices). Further the provision to seek a declaration is significantly constrained to circumstances where there is a reviewable decision. This effectively prevents proactive intervention prior to an EPA decision, which would reduce costs and demand on resources.</p> <p><u>OPPORTUNITY</u></p> <p><u>Amend the EP Act to:</u></p> <ul style="list-style-type: none"> • <u>allow duty holders to apply to the Tribunal for merits review of all EPA decisions;</u> • <u>allow community participation in merits review of all EPA decisions</u> • <u>allow a declaration of any matter of interpretation and application of the EP Act, Policies, EPA Guidelines (referenced in a Policy) or instrument issued under the EP Act such as a licence (see ss 149A and 149B(1)(b) of the <i>Planning and Environment Act 1987</i>)</u> • <u>disclose all notices and decisions under the EP Act allowing public access and download</u> • <u>public access to mapping of contaminated land and groundwater as detailed in this submission</u> • <u>public access to mapping of statements and certificates of environmental auditing</u>

Issue	Comment
Protect environment	<p>Protection of the environment is the responsibility of all levels of government, industry and community. Environment protection must be an integral component of decision-making. Innovation and community participation is critical in achieving environment protection.</p> <p>EPA's ability to contribute the Government's protection of the environment is a function of its funding, its personnel and decision-making and programs. There may be an opportunity to consolidate resources to focus on core business.</p>
Community participation	<p>The EP Act applies the 'principle of accountability' (s 1L(2)), which must be considered in the administration of the EP Act. Section 1L provides:</p> <p style="padding-left: 40px;">"Principle of accountability</p> <p style="padding-left: 40px;">(1) The aspirations of the people of Victoria for environmental quality should drive environmental improvement.</p> <p style="padding-left: 40px;">(2) Members of the public should therefore be given-</p> <p style="padding-left: 80px;">(a) Access to reliable and relevant information in appropriate forms to facilitate a good understanding of environmental issues;</p> <p style="padding-left: 80px;">(b) Opportunities to participate in policy and program development;"</p> <p>Part IV establishes the review jurisdiction of the VCAT and the jurisdiction of the Tribunal to make a declaration (limited to decisions able to be reviewed – <i>Ileowl Pty Ltd v Environment Protection Authority</i> (Includes Summary) (Red Dot) [2015] VCAT 1105).</p> <p>Community participation in the decision-making process under the Act is limited to applications for works approval, licence amendment or a 'long-route' licence (requirement of application to give notice to the public). Community participation is not provided under the EP Act for any other approval or decision made by the Authority, including issuing notices and enforcement.</p>

Issue	Comment
	<p>Where the applicant/recipient applies for merits review of the EPA decisions listed in s32(1) before the Victorian Civil and Administrative Tribunal (VCAT), the community may apply to be joined to the proceeding on ground of interest (s60 of the <i>Victorian Civil and Administrative Tribunal Act 1998</i>). Where the community is not aware of the applicant's/recipient's initiation of the proceeding the opportunity to apply to be made a party is missed. Awareness is typically created by local media coverage or direction of the VCAT. No notification is required by the EPA or the applicant/recipient.</p> <p>Restrictions in the EP Act preventing community participation and merits and judicial review of EPA decision-making is a failure to deliver environmental justice.</p> <p>EPA's vigorous litigation in relation to the extent of the declaratory provision renders the power virtually useless. Amendment of the EP Act is required to insert a provision equivalent to s149 of the <i>Planning and Environment Act 1987 (Vic)</i> allowing VCAT to intervene where appropriate.</p>

5) *the ability of the EPA's current governance structures and funding arrangements to enable it to effectively and efficiently discharge its powers, perform its duties and implement its required functions;*

Issue	Ileowl Comment
Governance	No comment.
Funding	Funding EPA 100% from the landfill levy, while virtually no funds are granted to local government for rehabilitation and aftercare of closed landfills and legacy sites creates a potential conflict of interest.

Resourcing	No comment.

- 6) ***the scope and adequacy of the EPA's statutory powers, and the effectiveness and efficiency of the suite of tools available to and utilised by the EPA, in enabling protection of the Victorian community and the environment, particularly in light of recent, new and emerging risks and issues; and***

Issue	Ileowl Comment
Statutory powers	<p>Excluding determination of applications for works approval or a long-route licence application, there is no right/opportunity for community participation in the process.</p> <p>Voluntary community consultation completed by Water Corporations in planning infrastructure upgrades is then duplicated by the works approval or long-route licence process increasing costs and delaying the delivery of improved infrastructure. The community consultation is a component of preparing each Water Plan.</p> <p>Duplication and delay is also replicated where the planning process has already been completed and involved notification.</p>

- 7) ***any other matter reasonably incidental to these above matters.***

Issue	Ileowl Comment
	Nothing further.

1. What do you think are the key environmental challenges which will impact the EPA in the future?
2. What aspects of the EPA's work do you value and wish to preserve in the future?
3. How can the EPA effectively work in partnership with other government agencies to meet the environmental challenges of the future?
4. How can the EPA's role in safeguarding the community against the health impacts of pollution be clarified or strengthened?
5. How could statutory frameworks more effectively prevent future environmental risks and land use conflicts?
6. What role should the EPA play in emergency management?
7. How can the EPA better identify and, where necessary, address problems that are the result of past activity?
8. What can the EPA do to avoid potential future problems?
9. What role should the EPA play in improving environmental outcomes beyond those necessary to safeguard human health?
10. What role should the EPA play in reducing greenhouse gas emissions?
11. How do you see environmental justice being applied to the work of the EPA?
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?
13. Are there any other issues relevant to the Terms of Reference that you would like to raise?