



**EPA Inquiry**  
**Examining the future task of Victoria's**  
**Environment Protection Authority**

**Response to discussion paper**

**6 November 2015**

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## 1 Introduction

The Municipal Association of Victoria (MAV) welcomes the opportunity to make a submission to the Ministerial Advisory Committee (MAC) as part of the Inquiry into the Environment Protection Authority (EPA).

The EPA provides a critical regulatory pillar in the State Government's environment protection endeavours. Its key role is to protect the environment from the negative impacts of human activity. The EPA is valued as a regulator, facilitator, educator, researcher and informer.

The MAV and councils firmly believe that environment protection is a shared responsibility. All levels of government, and agencies within government, need to effectively understand and play their role for this cooperative model to work. Responsibility must be very clear and there must be also be knowledge and acceptance of the limitations of the parties. Structures should also be in place for joint visioning and strategic planning so that there is a better appreciation of the task at hand and the mechanisms and resources which can be employed.

It is the MAV's view that the EPA should concentrate on the prevention of pollution of air, water and land, and its regulatory duties. This should be bolstered by improvements to the enforcement provisions of the *Environment Protection Act 1970*, and building technical expertise and risk-based decision making. This expertise can then better support and assist councils in their roles in environmental management. If adequately supported councils can be active and contributory partners.

Local government is often best placed to deal with local issues. However, councils do not have the adequate or appropriate authority, capacity, capability or resources to deal with many environmental management challenges they face. The potential rates cap threatens to further erode councils' ability to fund their multiple obligations and services.

This submission contemplates the future of the EPA within the context of the broader environment protection agenda and, more particularly, potential improvements to the interaction between the EPA and councils. Landfills, onsite wastewater, potentially contaminated land, major hazard facilities and noise and odour complaints all require attention and specific recommendations are made about these matters.

### 1.1 About the MAV

The MAV is the peak body for local government in Victoria. Formed in 1879, we have a long and proud tradition of supporting councils and councillors to provide good governance to their communities.

This submission has been prepared by the MAV following consultation with the MAV Board and councils. While the submission aims to broadly reflect the views of local government in Victoria,

it does not purport to reflect the views of every individual council. Councils have also been encouraged to make their own submissions to the Committee.

## 1.2 Scope of the review

The MAV understands the scope of the EPA Inquiry to be very broad and future focused; inclusive of the legislative framework and operational issues.

We consider that in order to strengthen the EPA, it will be necessary to also improve the role clarity and effectiveness of the Department of Environment Land Water and Planning (DELWP) and Sustainability Victoria (SV). These agencies, along with the EPA, represent the three key partners in environmental management and inevitably there will be feedback and findings that reflect and impact upon DELWP and SV. The MAV strongly recommends that this feedback not be dismissed as out of scope. Recommendations should be specifically made for these agencies if they impact on how effectively the EPA operates.

## 1.3 How councils interact with the EPA

Local government has a range of substantial environmental management responsibilities, many of which derive from State Environment Protection Policies (SEPPs).

In the administration of these responsibilities councils interact with the EPA in a number of different ways:

The EPA as a **Regulator** of councils – In the case of landfills, transfer stations and council depot sites, councils are licensed by the EPA to operate such facilities. While councils take their responsibilities very seriously, they have indicated that, at times, they feel unfairly targeted by the EPA in terms of compliance or clean up requirements. As councils ‘will always be there’ there is a perception that they are seen as a soft target.

The EPA as a **Regulator** of industry/commercial premises – The regulation of noise and odour causes significant workload for councils. Councils receive many complaints from the community about these issues and there is a lack of clarity about when matters should be addressed by the EPA and when they are the responsibility of local government.

The EPA as a **Referral Authority** – There are many land uses controlled by the planning system, such as uses with adverse amenity potential under Clause 52.10 of planning schemes, where there is a mandatory referral of planning applications to the EPA. The EPA is a ‘determining’ Referral Authority which effectively means they can object and an application must be refused. The EPA may also impose conditions on a planning permit. There are also some instances in which councils will seek advice from the EPA about particular types of applications. The EPA’s administration of this statutory function has been good in some instances and poor in others. Technical expertise is not spread regionally and advice has too often not been timely.

The EPA has also historically not been willing to defend its decisions where a matter proceeds to the Victorian Civil and Administrative Tribunal (VCAT).

The EPA as a **partner** - In the case of of industry/commercial premises, there have been some examples where the EPA and councils work well as effective partners. In some cases the EPA has monitored noise from industrial estates and sought compliance. The role of councils has been to coordinate community engagement and disseminate information on noise monitoring and regulation.



## 2 The current EPA legislative framework and operation

### 2.1 Value

The EPA plays an important role in environmental management in Victoria and is of ongoing value. Local government respects and values the EPA as a:

- Regulator of industry and protector of environmental values
- Facilitator of improved outcomes
- Educator of industry and the community
- Researcher of new technology and improved processes
- Informer of other areas of government.

### 2.2 Structure

Councils and other stakeholders are currently unclear about the interrelationships between the DELWP, SV and the EPA.

Notionally it would seem that DELWP is the policy and legislative setting body for Crown land, environmental values, and protection from environmental impacts. In reality the Department appears to have little policy impact in terms of issues of interest to the EPA. Oddly, the EPA is also explicitly charged, under the *Environment Protection Act 1970*, with preparing State Environment Protection Policies and also Regulations.

SV, a relatively new statutory authority, is charged with forward thinking about environmental issues and strategising about matters such as waste. Instead they appear to have taken on a different role largely in education and engagement with the community. A role that was previously undertaken by the EPA.

There is ongoing confusion between the roles and functions of the EPA and SV in the areas of environmental justice, community education and ownership, waste stewardship and the environment citizenship strategy.

This leaves the EPA with a relatively constrained role. However, because the policy and education roles require expertise only found in the EPA, the EPA finds itself still playing in both the policy and education areas with a dilution of expertise in the regulatory area.

For example, the EPA is leading a project that it calls the 'encroachment project' in an effort to address the intrusion of residential development into industrial buffers. While the EPA regulates industry through licensing and is a referral authority in the planning system for a range of industrial developments, it is the absence of clear policy in relation to buffers zones that is the key problem. As the environment portfolio partner charged with setting policy, DELWP should be leading this project, with the EPA providing technical assistance. The current approach to the

project is unlikely to result in the necessary policy change because DELWP has no ownership of the work.

## 2.3 Legislation

The lack of role clarity is further compounded by an environmental legislative framework which is outdated, lacks accountability, and does not provide a regulatory system that is robust and enforceable.

The MAV considers the key failings in the legislation, and its administration, to be:

- The excessive functions given to the EPA without the provision of adequate resources to carry out such functions. A review needs to be undertaken to consider whether the functions are appropriate for a statutory authority and to gauge the resources needed. In particular, we question the policy and regulation-making functions provided by the Act.
- The role of SEPPs and their status. While the policies are subordinate legislation, they appear to have the ability to allocate responsibilities to local government without negotiation. This is contrary to the *Victorian State-Local Government Agreement 2014*.
- There is an absence of an enforcement framework around SEPPs. It is unclear whether they can be enforced, by whom, and in what circumstances.
- A rigid structure that results in an absence of authority for the EPA to act in some areas of operation (for example Certificates of Approval for onsite wastewater systems).

## 2.4 Operations

Discussions with councils raise a number of operational issues that also should be considered as part of the Inquiry.

At the outset of this discussion, we would like to acknowledge the work done on the EPA's *5 Year Strategic Plan 2011-2016*. The process for preparing the plan was comprehensive and involved engagement with stakeholders. Its vision and key strategic priorities are solid and clearly focused on what appears to now be the key tasks of the EPA – rehabilitation, regulation and monitoring.

However, there is an absence of focus on the prevention of pollution of air, water and land and this should be addressed. The EPA has also been distracted from its strategic priorities because of the Inquiry uncertainty, lack of definition of the roles of DELWP and SV and overlapping activities. Implementation of the Plan to date has been problematic because:

- The organisational structure is not focused on the key strategic priorities.
- The culture of the organisation is risk adverse. It is evident that there is a reluctance to develop clear, defensible positions in response to issues (see case study 3 –

wastewater risk shifting) and there has been a tendency to push on-the-ground resolution to councils.

- There is declining technical expertise within the organisation and an unwillingness to apply the available expertise on a case by case basis. There is also inconsistent resourcing across the State with some councils reporting good support and others reporting no support.
- Most likely linked to the points above, councils report declining confidence of EPA officers to engage on and resolve issues.
- There is all too often a lack of engagement or consultation with councils and other stakeholders about changes in work practices or additional responsibilities.

Relationships with councils, particularly in regional areas, have been deteriorating. Councils have been directed to the EPA call centre as the primary point of contact rather than a regionally based EPA officer familiar with council operations. This has resulted in the inefficient handling of matters. Such an approach is also frustrating for councils because it effectively relegates them to 'complainant' status rather than a key environmental protection partner. The EPA needs to be adequately resourced at a regional level to be effective and relevant. Currently the majority of technical expertise resides in the Melbourne based office, particularly for landfill rehabilitation works, and is difficult to access. Council acknowledges EPA responsiveness and assistance after an event; however councils also rely upon the guidance and regulatory interpretation of the EPA to assist them with compliance and problem solving.

### 3 Key environmental management issues for local government

#### 3.1 Landfill management and rehabilitation

As owners and operators of landfills (open and closed, licensed and unlicensed) councils have a long history of engagement with the EPA in their role as the licensing and regulatory authority for landfills.

Councils accept and acknowledge that it is incumbent on the EPA to ensure there are appropriate environmental standards in place for the siting, design, operation and rehabilitation of landfills. The EPA has become more diligent in their approach to this matter in recent years.

The costs of design, construction, operation and rehabilitation of landfills have escalated to meet the requirements of EPA's *Best Practice Environmental Management for Landfills* (BPEM). The current arrangement requires new designs to be independently audited and then ultimately approved by EPA. The works are then supervised by a quality assurance team. Liner and cushioning materials are also independently tested.

The default position of the EPA is to rely solely on prescribed landfill systems. This has the result of stifling innovation and in many cases requiring councils to invest more money in landfill works than is actually necessary to adequately manage a site's risk. The EPA appears to focus entirely on consequence, neglecting the likelihood of an event occurring or any controls put in place to guard against the event occurring. A consequence of the BPEM not having gone through a regulatory impact statement process is that there remains little understanding or appreciation of the operational and financial implications for councils.

This approach has been challenging for the EPA, councils, contractors and auditors, and costly to ratepayers. There are no funding sources currently in place to allow councils to meet the standards. While it is necessary to have stringent requirements to protect the environment and public health now and into the future, councils believe that the EPA should be open to alternative measures that may be available to mitigate risks.

Councils believe that there is a pressing need to explore a more risk-based approach that might involve pre-qualifying designs and alternative quality assurance systems to ensure that requirements are fit for purpose. In particular the EPA needs to review:

- The capping/cell construction audit process. It is considered that the EPA needs to take some ownership and lead the auditing process rather than rely solely on third parties.
- The Best Practice Environment Management (BPEM) – revisiting the “one size fits all” approach.
- The Annual Performance Statement reporting which requires noncompliance reporting for sites that pre date EPA or current BPEM standards.

For rural and regional councils that have multiple legacy closed landfills within their boundaries, the EPA's increased activity and standards are a pressing concern. There are a number of rural municipalities that have well in excess of 15 closed landfills scattered among small towns where there is potentially limited environmental protections in place and limited resources to rectify this. Many councils do not have the resources or capacity to keep up with the knowledge and practice advances made in the waste industry.

The reduction of EPA resourcing in regional areas means that councils no longer have ready access to expert guidance and advice that is cognizant of local operations and conditions. Furthermore, while EPA has almost certainly reduced its own risk exposure by requiring external auditors to be involved in the various stages of landfill construction, this has only exacerbated the cost burden for councils.

When the EPA first sought comment on the new BPEM in the late 2000s, a number of councils raised concerns about the multiple consultants required to prepare and audit landfill designs, capital works and operations. These concerns were discounted by the EPA at the time but have proven to be well-founded. Councils report that it is not unusual to have one consultant questioning another consultant's opinion (often a commercial competitor) resulting in additional cost to councils. Councils also advise that auditors appear unable to allow an audit to conclude without requiring further infrastructure i.e. additional groundwater bores or gas bores or extra monitoring. This gradual ratcheting up of standards occurs without any evidence that the previous standard is actually posing a risk to the environment. Ratepayers and the community have to foot the bill.

One of the sector's greatest disappointments is that the State has not used landfill levy revenue to better support councils to achieve positive environmental outcomes in relation to management and rehabilitation of landfills. According to media reports, there was more than \$311 million of landfill levy funds accrued in the Sustainability Fund at the end of 2014. The MAV has long advocated for the funds to be expended on measures to help make a step-change in how Victoria manages its waste and captures resources, as well as assisting with the

#### **Case study 1- Landfills – cost burden**

East Gippsland Shire Council is Victoria's second largest municipality in terms of land size. Its resident population of 45,000 people is scattered across more than 150 localities. Around 75 per cent of the land is state or national forest.

Waste management is Council's second largest budget item. Since 2004 the Shire has paid a total of \$5,052,885 in landfill levies to the State and in return has received \$733,326 in grant funding to support various waste/resource recovery initiatives. Over the same period EPA's standards for landfills have increased substantially and consequently so has the cost burden for Council.

Eighteen months ago the Shire had nine open landfills, it now has four, plus the additional cost of rehabilitating the closed sites as well increased carting needs. The Shire has 44 known legacy landfills. Due to the geography and demographics of the Shire, it's not possible to charge the real costs of waste disposal without then having to deal with the very strong likelihood of increased illegal dumping.

Bairnsdale landfill's new cell cost around \$2.7 million and should service the community for up to 3-4 years. The design of the cap for another cell has cost Council around \$140,000. The audit process for the construction of one cell can cost up to \$100,000. Council has allowed around \$20 million for landfill rehabilitation costs over the next 10 years.

very costly task of rehabilitating landfills to EPA standards. We note the Victorian Auditor-General's 2014 recommendation that the EPA work with the DELWP (formerly DEPI) and waste portfolio partners to develop options for the landfill levy to be used for the timely rehabilitation of high-risk landfills.

The imposition of revenue control on councils via rate-capping will substantially increase the pressure on councils and their communities, particularly in rural areas. Councils report that the cost of managing and rehabilitating landfills is increasing faster than the rate cap proposed.

**Recommendations:**

- **The EPA review the requirements for landfills to consider a risk based approach that might include pre-qualifying designs and alternative quality assurance measures.**
- **The EPA assess remedial actions at legacy landfills on a site by site basis with an emphasis on the cost vs benefit for low level risks.**
- **The government use accrued landfill levy funds to assist councils in covering the costs of rehabilitating and managing increased environmental compliance costs for legacy landfills.**

### **3.2 Illegal dumping**

The landfill levy's policy objective was to create an incentive to divert waste from landfill into higher value uses such as re-use or recycling. In some cases however, it has led to increased stockpiling and illegal disposal, particularly in rural areas where opportunities to recycle are limited.

The EPA is responsible for littering from vehicles and large scale illegal dumping. Local government is responsible for all other illegal dumping and littering.

Catching and prosecuting illegal dumpers is difficult, time consuming and costly. An appropriate framework needs to be developed to monitor sites, identify responsibility, and provide a clear and streamlined path for enforcement.

Depending on how it is implemented, the State's proposed ban on allowing e-waste go to landfill threatens an increase in illegal dumping.

**Recommendations:**

- **The EPA, with councils, develop an appropriate framework to monitor sites, identify responsibility and provide a clear and streamlined path for enforcement.**
- **Councils receive an allocation from landfill levy revenues to help fund the costs of investigating and prosecuting illegal dumping offences.**

### 3.3 Noise and odour

Noise and odour responsibilities arise for councils because of the 'nuisance' provisions (section 62) of the *Public Health and Wellbeing Act*. A council must investigate any notice of nuisance and take any actions it considers appropriate. This can include:

- Advising the complainant that the matter is best dealt with privately
- Abating the nuisance when the owner or occupier cannot be found
- Issuing an improvement or prohibition notice
- Bringing proceedings for an offence.

Section 31A of the *Environment Protection Act* 1970 empowers the EPA to serve a pollution abatement notice upon the occupiers of any premises which emits or is likely to emit unreasonable noise.

The MAC's discussion paper lists the noise responsibilities of local government to be residential properties, shops and other small commercial premises.

This seems different to the long held convention that councils, or the police, respond to noise issues in residential areas, and the EPA deal with the more significant issues arising in industrial/commercial areas. This division of responsibility is based on the likely significance of the issue and the fact industrial sites will largely be licensed by the EPA. The issue of responsibility for entertainment noise is unclear. At times there will be planning permit conditions that require enforcement, however, there is also the *State Environment Protection Policy (Control of music noise from public premises) No. N-2*.

The EPA recently introduced strategies to reduce its noise related workload. This included directing smaller industrial/commercial noise complaints to councils under the EPA's risk matrix. The risk matrix was developed without consultation with councils and has shifted the burden of these complaints without considering the implications on councils' resources, and whether they have the technical expertise. Councils do not support this change, as they are unable to resource it, and are concerned that the recently commenced review of the *State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) N1* will provide a vehicle to formalise the transfer of responsibility.

#### Case study 2 – Noise complaints

A recent issue arose where a major manufacturer was causing noise issues in a residential area. A complainant, acting on behalf of other complainants, contacted the relevant council. As the manufacturer fell under SEPPN-1 the council wrote to the EPA, on the behalf of the complainants, requesting the matter be investigated. The request was declined as only one complainant had logged issues with the EPA and the matter referred back to council to deal with as a 'nuisance'. After a petition from residents and lobbying by complainants the EPA eventually agreed to conduct noise logging (which was beyond the capacity of council). A pollution abatement notice was subsequently issued.

Responsibility for odour is also unresolved. In a 2014 EPA survey, it was found that 95 per cent of the community members surveyed would most likely report an odour disturbance to their local council. The EPA is, however, responsible for odour offensive to humans.

For the community, the issue of who responds to noise and odour complaints must be resolved and communicated appropriately.

**Recommendations:**

- **The EPA, with councils, prepare an accepted noise and odour management protocol, that develops an agreed approach to the gap for small scale industrial/commercial noise created by the EPA's risk matrix.**
- **The EPA share the protocol with the community.**

### **3.4 Onsite Domestic Wastewater**

The responsibility of local government to regulate Onsite Domestic Wastewater Systems (ODWS) is primarily created under the *Environment Protection Act 1970*, and detailed in the subordinate legislation the *State Environment Protection Policy (Waters of Victoria)*.

Council responsibilities for on-site wastewater treatment include regulating the initial construction and installation of ODWS and regulating the ongoing maintenance of ODWS to prevent their failure, referred to as 'legacy' issues.

It is a requirement of both the SEPP and the *Ministerial Guidelines for Planning Permit Applications in Open, Potable Water Supply Catchment Areas*, that councils prepare, adopt and implement a Domestic Wastewater Management Plan (DWMP). This requirement is now being rigidly enforced.

In the MAV's *Domestic Wastewater Costing Study 2008* the MAV reported on the likely costs of improving the local government sector's capacity to manage legacy issues. In the report, councils identified a number of deficiencies in the current regulatory framework:

- A lack of clarity of roles and responsibilities
- A disparate regulatory framework and the need for a comprehensive onsite wastewater treatment policy
- A lack of statutory powers concerning retrospectivity of standards, rectification works and compliance
- A lack of the prescription of wastewater as a function under the *Local Government Act 1989*, meaning a lack of funds to conduct necessary compliance and enforcement activities.



The Mansfield Shire Council recently obtained a State grant to prepare a model Pilot DWMP. The pilot DWMP involved effective collaboration between council, Goulburn Murray Water, Goulburn Valley Water, Murrindindi Shire Council, the EPA and the former Department of Environment and Primary Industries.

Concerns arising from this process include:

- Whether councils have the expertise or resources to prepare such plans
- The inability to easily translate learnings for other councils
- The actions that arise for councils as a result of the plans which they will have difficulty funding given the absence there is no efficient mechanism for recovering costs.

The MAV and councils consider the EPA's involvement in onsite wastewater could be:

- Improving the understanding and mapping of legacy systems
- Monitoring and compliance issues
- Collecting evidence of impacts
- Developing guidance material to set out responsibilities, including communication, consultation and legislated requirements
- Providing funding for backlog issues in priority areas, jointly identified by local government and water authorities.

### Case study 3 – Wastewater risk shifting

The EPA advised councils they would no longer be issuing Certificates of Approval (CAs) for individual wastewater treatment systems from 1 July 2015.

Councils rely on CAs to determine if a wastewater system is suitable for installation in Victoria.

Councils have a range of concerns about this new approach as:

- There is no independent regulator of Australian Standards so systems are privately tested and 'certified'.
- There are some reports that 30 per cent of systems that have passed private 'certification' have failed the Australian Standards or had not been correctly tested.
- There are some treatment systems for which no Australian Standard exists.
- The removal of CAs will enable systems that previously failed Victorian EPA testing to be installed.
- There is the potential to have varying approaches to regulation of systems across Victoria.

The EPA has mitigated its own risk of system failure and manufacturer legal action, however this risk has been passed onto councils.

Without the EPA CAs councils may:

- Have difficulty refusing permits for unsuitable or unsafe systems due to restraints on trade rules and/or face costly legal challenges
- Take on the liability for failing systems
- Need to increase resources to undertake assessments without the benefits of economies of scale, regulatory authority and expertise that exist at the State level
- Have less resources available for monitoring and enforcement.

### Recommendations:

- **The EPA take a greater leadership role in bringing together agencies and councils to create comprehensive onsite wastewater treatment policy.**
- **The EPA provide guidance material and training to councils to assist them to meet their legislative responsibilities.**
- **The EPA maintain a regulatory regime for onsite-domestic wastewater management.**

### 3.5 Potentially contaminated land

The *State Environment Protection Policy (Prevention and Management of the Contamination of Land)* provides the legislative basis for the involvement of councils in potentially contaminated land.

A council considers potentially contaminated land, as a:

- Planning Authority when considering an amendment to its planning scheme must be satisfied that the environmental conditions of the land are or will be suitable for the use.
- Responsible Authority when making a decision on a planning permit application and when enforcing its planning scheme and any planning permits issued under it.
- Land and facility owner or manager – councils often take a proactive approach in investigating facilities for potential contamination. If found, the council must rectify the potential hazard.

In a submission to the *Ministerial Advisory Committee on Potentially Contaminated Land - November 2011*, the MAV expressed the view that the whole framework around potentially contaminated land should be reviewed as looking only at the planning levers failed to address some of the more fundamental issues such as the role of the EPA; the mechanism for timing and operation of environmental audits; off-site pollution; enforcement; and the monitoring of the performance of the system.

Councils consider the current system to be highly ‘reactive’ and some of the other key points made were:

- The lack of technical expertise within councils to identify land as potentially contaminated in the first instance, and to be able to assess technical documents and compliance, is a significant issue for councils in administering the planning controls.
- In most instances the EPA is not a referral authority and many councils struggle to access expertise at a reasonable cost.
- The EPA has access to significant records that could be utilised to identify and map potentially contaminated land in a GIS layer compatible with council systems. Some councils like Maribyrnong and Brimbank have undertaken proactive exercises to map old quarries and old landfills. Many councils do not have any mapping available about their legacy sites and this is a constraint to effective decision making.
- The ongoing management of conditions of Statement of Environmental Audit places an unreasonable technical burden on councils and does not place sufficient emphasis on the proponent or applicant.

The review did not progress and there have been no changes to the management of potentially contaminated land.

#### Recommendations:

- **That government:**
  - **Undertake a comprehensive review of the potentially contaminated land legislative framework to identify role and responsibilities that fit with expertise.**
  - **Include the EPA as a referral authority where an Environmental Audit Overlay is in place.**
- **That the EPA:**
  - **Develop a centralised register of potentially contaminated sites across Victoria and map them.**
  - **Facilitate discussions with councils about how to best manage potentially contaminated land and foster the sharing of information.**

### 3.6 Encroachment/buffers

Councils are involved in buffers for industry and other uses with adverse amenity impacts through administration of their planning scheme. Clause 52.10 sets out threshold distances between particular uses and zones and the EPA is a referral authority in certain circumstances. Councils are also notified of works approvals and licensed premises and may provide comments as part of the process. In making decisions about works approvals and licensed premises the EPA uses the *Recommended Separation Distances for Industrial Residual Air Emissions Guideline*.

The issues that have arisen for councils in the administration of Clause 52.10 include:

- Ongoing awareness of the threshold distances to be maintained to industries when making rezoning decisions.
- Ensuring the EPA is made aware of rezoning amendments that might reduce the threshold distances.
- Getting timely advice from the EPA and a willingness to defend that advice.
- Dealing with legacy situations where the distances have not been maintained.
- Understanding the differences in the threshold distances and those set out in the *Recommended Separation Distances for Industrial Residual Air Emissions Guideline*.
- Ensuring innovation in management techniques can be accommodated and buffers are not rigidly adhered to when other measures are in place.

**Recommendations:**

- **The EPA provide mapping, in a format consistent with the GIS layers of councils, that shows the buffers around priority sites or precincts.**
- **The EPA consider how they can ensure they are involved in amendments that rezone land to sensitive uses where there may be buffers.**
- **The EPA offer a pre-application service to enable applicants (with applications that have potential adverse amenity impacts) to identify and address issues prior to lodgement of a planning permit application.**

### **3.7 Windfarms**

Over the years, the responsibility for the assessment of wind farms in Victoria has changed several times between the Minister for Planning and councils. In 2014, the Minister again became responsible for the assessment of wind farm applications and explicitly changed the *Planning and Environment Act 1987* to ensure that compliance and enforcement responsibilities remain with councils, except where the Minister is referenced as the relevant authority in a condition of the permit.

With more than 20 permits approved and several in operation, this has left councils with the responsibility to enforce planning permit conditions that they did not draft and that are often well beyond their expertise to administer.

Councils receive noise complaints related to compliance with conditions of planning permits and broader noise related nuisance complaints under the *Public Health and Wellbeing Act 2008*.

In dealing with complaints, councils have found difficulty in establishing:

- Whether there is a breach of the relevant noise standard
- If an investigation under the *Public Health and Wellbeing Act 2008* is needed and whether a nuisance is created (the noise is dangerous to health or offensive)
- The independence of any noise compliance assessment.

The MAV has recently brokered an arrangement that provides councils with access to EPA accredited auditors on a fee-for-service basis. While this service comes at a cost, and the monitoring and compliance burden still rests with a council, the independent advice from auditors will remove any doubt regarding a wind farm's compliance with the relevant noise standards.

This arrangement, however, is seen as temporary by councils who would like to see wind farms regulated through the environment protection licensing regime used for other electricity generators and industries. This would enable an annual licensing fee to be paid by the operator

to resource ongoing monitoring and compliance. An annual certificate could be produced to verify compliance with the relevant standards and conditions.

**Recommendation:**

- **That the EPA become more actively involved in wind farms by making wind farms a licenced activity under the *Environmental Protection Act 1970* and that the EPA become responsible for noise monitoring and compliance.**

### **3.8 Major hazard facilities**

There are 45 major hazard facilities within Victoria which are heavily regulated by the EPA and WorkSafe. The main role of councils is to regulate the landuse around a facility.

In May 2014, the MAV State Council resolved that the MAV write to the government asking for a review of planning controls around major hazard facilities as there is limited guidance and direction about land use planning around major hazard facilities.

Land use planning requires an understanding of the hazards and risks posed by a potentially hazardous development to the surrounding land uses. It also requires criteria against which the acceptability of the estimated risk can be judged.

Planning NSW has introduced *Hazardous Industry Planning Advisory Paper No 4 Risk Criteria for Land Use Safety Planning 2011*. These guidelines set out suggested risk criteria for various types of risk and land uses. They are relevant to the assessment of new potentially hazardous facilities and the assessment of outside development in the vicinity of such facilities. A similar level of work needs to be undertaken for major hazard facilities in Victoria.

The government made an election commitment to reviewing land use planning around major hazard facilities, however, a review has not yet commenced.

**Recommendation:**

- **That the EPA promote the commencement of a review of planning around major hazard facilities as soon as possible**

## 4 What should the EPA look like and how should it work?

### 4.1 What should the role of the EPA be?

The EPA's expertise in air, land and water pollution is highly valued and unique in government. This expertise should be protected, and indeed enhanced, if Victoria is to be effective in preventing future risks and managing legacy issues.

The current legislative environment and framework does not assist the EPA and requires a significant review to provide the strategic direction and framework for the EPA to define, clarify and communicate its role and effectively operate.

In defining what the EPA should be, it is important to consider what it is not:

- The EPA is not primarily responsible for human health. This is the role of the Department of Health. Its activities are obviously important to maintaining human health but this is more of an outcome than a primary purpose.
- The EPA is not an emergency management agency. It contains skills that are important in the response to some (but not all) emergencies, and it has a regulatory role if the emergency is a breach of the Act or licence. However, the role and resources of the EPA must be appropriately scoped in this area, based on risk, to enable 'business to continue' in the event of an emergency.
- The EPA is not a regulator of land use. This is the role of local government. What it can do is advise on the level of impact and risk and consequences so that decisions are well informed and councils are supported.

It is also important to consider the timescale of activity. At present, much of the EPA's activities are focused on a 'post harm' approach. A new philosophy based on 'prevention' strategies should be adopted to address emerging and ongoing events that are foreseeable.

To achieve this, the complex web of arrangements for environmental management within Government needs to be untangled and restructured to support the EPA. The EPA's expertise must be rebuilt and it is suggested that:

- Policy development be undertaken by DELWP rather than the EPA. It is critical that DELWP develop its policy skills and is capable of developing an effective policy framework for protecting environmental values and environmental management. They will, of course, need to be supported by the expertise of the EPA, however, DELWP should be the lead agency.
- SV explore a longer term sustainability agenda and strategies.
- The EPA act as an expert body that prevents pollution of air, water and land, and informs discussion, debate and policy development.

This will mean greater role clarity of DELWP, SV, EPA and councils and closer collegiate working arrangements.

**Recommendation:**

- **The government determine the appropriate roles and responsibilities of EPA in the context of DELWP and SV. This includes appropriately developing the policy skills of DELWP in areas currently supported by the EPA.**

#### **4.2 What should the EPA look like?**

It is critical that the pillars of environment protection (DELWP, SV, EPA and councils) can work together. It is suggested that this be achieved through a joint strategic planning exercise so that all organisations have ownership of a common plan and commit to its resourcing. It may also be useful to have a committee that oversees and monitors the plan so that issues can be addressed as they arise.

The MAV considers that the vision and strategic priorities outlined in the EPA's current strategic plan are sound, however it is suggested that:

- The governance structure of the EPA be modernised to be a skills based board.
- The organisation be rebuilt with technical staff so that regulatory needs can be fulfilled and provide support to local government.
- The organisation be restructured to include an emphasis on prevention and better align with the strategic priorities set out in the strategic plan.
- Support arrangements for local government be specifically identified and communicated.

**Recommendations:**

- **A joint strategic planning exercise be undertaken with DELWP, SV, EPA and councils to develop a common plan.**
- **The governance structure of the EPA be modernised to be a skills-based board.**
- **The EPA be rebuilt with technical staff and structured to align with strategic priorities.**
- **Support arrangements for local government be identified and communicated.**

### 4.3 How should the EPA be funded?

Currently 60 per cent of EPA's \$70 million annual operating budget comes from the landfill levy. There is a case for a broader funding base for the EPA that represents the full scope of its activities. Foreseeably the minerals and energy sector could contribute more to the funding of the EPA if the EPA is to take a greater role in monitoring and regulating greenhouse gas emissions, unconventional gas exploration, and air quality. There is also scope to ensure that fees are based on full cost recovery.

**Recommendation:**

- **The government explore alternative funding arrangements for the EPA.**

### 4.4 How should it work?

As starting principles local government is of the view that the EPA should:

- Be the technical experts
- Make risk-based decisions
- Strategically utilise scarce resources
- Be willing and able to provide advice and defend positions.

Councils consider the main areas for operational improvement to be rebuilding of the technical expertise and confidence of the EPA, and ensuring adequate access to such expertise for councils (and industry) across all areas of the State. To this end some elements of the EPA's operations need to be reframed to provide for a clearer delivery of responsibilities.

Councils need to be able to work closely with the EPA in matters such as noise, waste and water, particularly where complaints relate to industry and the EPA is the licensing agency. In such cases the EPA should be the lead authority investigating the complaint, and if protocols for information sharing between agencies are developed, then councils can support EPA at the local level. Similarly, with new businesses that are seeking planning permission, the EPA needs to provide referral information on noise, waste, water concerns and provide advice council on measures that need to be controlled through local planning and health permits.

The MAV suggests that shared arrangements between the EPA and local government should take the form of an operational agreement setting out responsibilities and resource demands. This would ensure that any changes to responsibilities can be understood and a negotiated outcome resolved cognisant of the constraints of both parties.

**Recommendation:**

- **An operational agreement between the EPA and local government be developed that clearly sets out responsibilities and cooperation.**



In the discussion below we have identified some specific areas that could be improved.

### **Involvement in land use planning**

The EPA needs a structured and consistent approach to involvement with planning decision making. It is acknowledged that it would be almost impossible for the EPA to be involved in all matters and as a result priority areas and issues should be identified. These might involve areas for direct involvement and areas of support to local government.

#### **Direct**

- Involvement in key planning scheme amendments (identified areas or types)
- Efficient planning permit referral responses – particularly where there is potential encroachment around the boundaries of key areas of industry. Seek review VPP provisions if the advice is currently not focused enough
- Preparedness to impose and enforce conditions imposed on planning permits
- Preparedness to defend decisions at VCAT.

#### **Support**

- Mapping of legacy contaminated sites and buffers
- Published advice on how to manage complaints about noise and uses with amenity impacts.

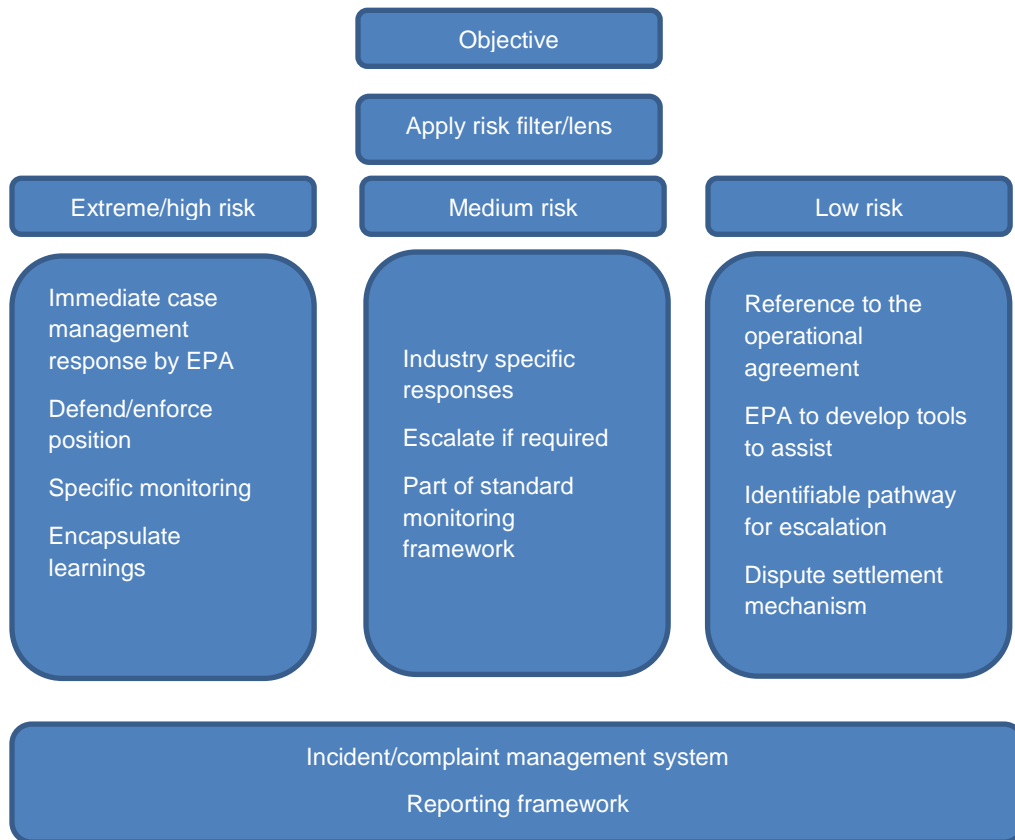
### **Response to issues/incidents**

In the case of particular incidents, a risk-based framework should be developed so that the EPA is quickly involved in critical incidents and there is a clear process for response across all levels of risk.

For both EPA and councils, significant time is spent responding to complaints of an often minor nature. This can be resource draining for both organisations. There can also be community uncertainty and frustration where complaints are batted between organisations.

For low risk incidents there also needs to be a means of dispute resolution as often complaints are a result of neighbourhood disputes.

The diagram (next page) sets out a potential approach that could be included in an Operational Agreement between the EPA and local government.



## Monitoring of emissions

The EPA already plays a role in the monitoring of greenhouse emissions through:

- Including emission reduction requirements in licenses
- Monitoring of compliance with requirements (and possibly education of industry to help achieve compliance)
- A statewide monitoring and reporting role.

The MAV and councils support the continuation of this role if an emissions target is announced by government. It is possible that the monitoring framework could be enhanced and consideration given to facilitating and incentivising reduced greenhouse emissions through licensing.

## 5 Conclusion

The MAV and councils appreciate the opportunity to provide an outline of our experiences with the EPA and to offer recommendations for its future direction and operations.

We hope that the government will take an overarching view of environment protection rather than constrain its focus to the actions of the EPA alone. In order for the EPA to be successful it is essential that all pillars of the environmental protection framework operate effectively.

Councils acknowledge their shared responsibility for environmental protection and trust that moving forward an operational agreement can be developed between councils and the EPA to provide greater structure and clarity around responsibilities, and any changes to responsibilities.

There are a number of specific areas such as landfills, noise and wastewater that require the committed attention of the EPA and we look forward to working through these issues.

We would be pleased to consult with the Ministerial Advisory Committee further if this would be of assistance, or convene councils to work through particular issues as required.