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Ms Penny Armytage

CHAIRPERSON

Ministerial Advisory Committee

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Dear Ms Armytage

RE: INDEPENDENT INQUIRY INTO THE EPA

The Australian Industry Group (Ai Group) welcomes the opportunity provided by the Public Inquiry into the EPA to provide input into development of the EPA as an effective, modern regulator that protects public health and the Victorian environment. In addition to this submission, Ai Group has provided direct input into the Public Inquiry through representation on the Community and Industry Advisory Group and the Industry Roundtable. Ai Group also facilitated a member session with the Ministerial Advisory Committee (MAC) and Inquiry Secretariat which provided member companies with the opportunity to provide direct input to on their experiences, issues, challenges and opportunities with the EPA and environment regulation in Victoria. We see these discussions as important input, and hope that they will be taken on board.

Ai Group is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies;

airlines; and other industries. The businesses which we represent employ more than 1 million people. Ai Group members include both licensed and non-licensed sites and their interaction and engagement with EPA varies considerably.

Ai Group has a long standing and cooperative relationship with EPA. Our ongoing engagement includes (but is not limited to) representation on the EPA Business Reference Group, and conducting events whereby EPA staff provide updates to members on environment regulation issues impacting industry. For the period 2011 to 2014 Ai Group in collaboration with the EPA also delivered the Assessing Compliance and Environmental Risk Training (ACERT) Program that helped industry to understand and comply with its environmental legal obligations.

Ai Group was a key contributor to the previous independent review of the EPA conducted by Stan Krpan which identified a need for the EPA to:

- Re-clarify its core role as an environmental regulator by promoting and adhering to the principles of a modern regulator
- Refocus its energy on building staff expertise and knowledge and using that expertise to support duty-holders to comply with the law
- Make smarter, more targeted and transparent decisions to tackle the issues that pose the greatest risk to human health and the environment

While the EPA has made progress on many of the recommendations of this review, industry continues to experience a number of challenges in dealings with the EPA. These are outlined below.

1. *Contact and responsiveness:* Ai Group members continue to raise concern in relation to the lack of contact from and responsiveness of EPA. Many companies operating significant sites report the infrequent nature of contact with EPA and in some circumstances it has taken EPA in excess of 12 months to respond to issues. Following site visits by EPA it can take many months before a company receives notification of the issues identified during that visit. And when EPA receives complaints about a site or an incident it can take some time for EPA to convey these to the business, making it hard for the company to investigate the issue and respond effectively. The lack of contact is a serious concern and a cooperative, engaging and responsive relationship between EPA and industry is required.
2. *Capability, guidance and support:* Environmental regulation in Victoria has moved from a highly prescriptive licensing regime – where historically EPA told companies exactly what was required

of them - to a partly self-managed licensing regime where the EPA has relied on written guides as the only source of guidance.

Ai Group's membership continues to express frustration that they find it difficult to engage with EPA to seek clarification or to test their ideas and approaches. A key recommendation from the Krpan review was that the EPA refocus its energy on building staff expertise and knowledge (including establishing an operational support team). However, it remains the case that EPA staff often lack relevant industry expertise. This leads to delays in the EPA responding to industry issues. It also makes EPA staff very reliant on prepared guidance material, to which businesses are often referred. In members' experience this material is very frequently out of date, ambiguous or otherwise inadequate, creating considerable confusion and cost. These costs are borne not just by the businesses themselves, but by those affected when confusion leads to noncompliance.

In contrast, employees from other agencies that have interactions with industry (i.e. Worksafe) often have gained valuable experience from previous industry employment before working for a regulator. As a result they understand the commercial realities, pressures and issues faced by industry. Guidance provided by Worksafe is also clear and up to date. Key skill gaps exist within EPA, in particular in relation to planning and encroachment related issues. The recruitment of staff by EPA with industry skills and background is required.

3. *A level playing field:* The Krpan review also recommended an increased focus on the EPA's social duty of care to the environment by broadening its reach beyond sites that it licenses and putting more effort into educating the community and businesses. However, some years later Ai Group members continue to raise concerns that the poor site-based practices of competing businesses are often ignored by EPA, leading to undue bias and disadvantaging companies that do the right thing. Ai Group continues to receive feedback where some licensed sites are being increasingly scrutinised whilst their competitors (also licensed sites in close proximity) are undertaking the same activities but are being left alone by EPA.

Currently non-licensed sites may often present environmental issues that are comparable to or greater than those posed by licensed sites. However, such sites usually go unaddressed because it is easier deal with licensed sites. For instance, companies have raised concerns to EPA in relation to neighbouring properties' stormwater pollution management, but the concerns have

either not been acted upon or EPA has advised the issue is not their responsibility (despite it being a key EPA compliance priority issue).

A level playing field for all industry (both licensed and non-licensed sites) is required through EPA providing clarity and consistent enforcement.

4. *Urban encroachment*: the growing and projected growth of urban development and subsequent encroachment is impacting both manufacturing and waste/resource recovery facilities. The lack of effective statutory tools, frequently ineffective or non-existent relationships between EPA and Local Councils as well as the lack of internal planning skills and capability by EPA is an ongoing concern for industry and a source of constraint on economic growth.
5. *The role of science and environment risk*: other recommendations of the Krpan review included: adoption by the EPA of a risk-based and responsive regulatory model; that it clearly communicate its activities in the context of its regulatory role; and that it make smarter, more targeted and transparent decisions to tackle the issues that pose the greatest risk to human health and the environment.

Ai Group considers that strong scientific evidence is the key in making decisions in relation to environment regulation and innovation. Where evidence and information is lacking, particularly with respect to new and innovative products, processes or environmental management approaches, some level of risk will need to be accepted to acquire a sufficient weight of information and experience to underpin decisions. This could involve pilots, or the acceptance of assessments from other trusted jurisdictions.

EPA has also been encouraging licensed sites to go beyond existing and long-standing consultative and incident reporting arrangements, and use social media to report all incidents no matter how minor. While embracing new technology and responding to legitimate community expectations are important, sites have been presented with a one-size-fits-all approach that would likely be counterproductive, turning minor operational matters into a locus of misplaced concern. By contrast, more flexible support and encouragement for sites to learn from leading practice in use of social media to provide genuinely useful information and respond to concerns would be welcome.

Whilst managing community expectations and responding to community views is important, EPA's conservative approach to decision making has the potential to place increased operating costs on business through increased monitoring requirements and excessive public disclosure expectations (in particular on parameters that have low environmental risk) as well as stifling innovation. EPA should not lose sight of scientific evidence in its decision making.

The following outlines Ai Group's recommendations to ensure that EPA is set up to be an effective, modern regulator that protects public health and the Victorian environment.

1. *Coherent protection of public health:* the Terms of Reference stress the role of EPA in protecting public health. While this is an important underlying motivator for much EPA activity, it is also an objective that EPA shares with other agencies and departments with public health responsibilities. EPA should establish better links with the Department of Health and Human Services. This may include the establishment of a dedicated health liaison within EPA to build these linkages, or the establishment of a Memorandum of Understanding (MoU) between EPA and the Department of Health and Human Services which clearly outlines roles and responsibilities in relation to protecting public health.
2. *Environmental justice:* like many stakeholders, industry has found this new construct and terminology to be hard to interpret. If environmental justice is a concept that is going to be incorporated either into the EPA's remit or the Environment Protection Act, it will need to be rigorously defined and explained. Environmental justice needs to recognise existing industry and the economic benefits it provides; the concept is most applicable as a guide to future planning decisions and the management of competing land uses. Local government planners considering decisions that would allow residential encroachment on existing industrial sites may perceive this poses a future risk of environmental justice issues.
3. *Embrace and accelerate innovation:* EPA regulatory decisions and the information EPA provides to the public can help facilitate and accelerate innovation – or hinder it. This includes being the technical experts on acceptable and best practice and the impacts of emerging technologies, making decisions based on scientific evidence and environment risk, and using this expertise and knowledge to provide a reality check to the community on their concerns with new and existing practices, processes and substances.

A process of mutual recognition is also needed for accepting practices already approved by respective EPAs and government agencies in other jurisdictions. If a proposal has been approved in another jurisdiction then it should be approved in Victoria without having to go through the whole approval process again. This approach will reduce red tape and costs.

4. *Support industry:* EPA has a leading role to play in supporting industry to understand and comply with their environmental legal obligations. Ai Group's previous environment compliance programs consistently observed that there was a lack of knowledge or training provided to staff in environmental matters. EPA needs to support and work collaboratively with companies on their specific issues. Codifying good practice will be helpful if it is illustrative, educational and current, rather than narrowly prescriptive and allowed to become dated. In addition an important opportunity exists for EPA to work in partnership with Ai Group to support industry. This role will be particularly important if the Review adopts concepts like a general duty of care to replace the licensing regime. Regular and comprehensive reviews and updates to the content and accessibility of EPA's guidance material for business are also essential.

As part of a broader push to be more present and responsive, EPA should be able to notify licensed sites as soon as a complaint is received from the public. Rapid automatic notification should be implemented to investigate issues and responds in a timely manner.

5. *Provide stronger planning tools to protect industry:* a revision of Victoria's planning system to support and protect industry (along with other economic activities including housing development) along with effective planning tools to protect existing and future industry from urban encroachment. While we support integrating EPA's perspective and expertise into planning, we are not proposing that EPA makes planning decisions itself.
6. *Consistent enforcement of environmental standards.* Uneven application of accepted standards creates problems for business as much as for the community and therefore consistency in enforcement is required. The alternative is weak environmental protection and unfair disadvantage for licensed entities against each other or unlicensed sites.
7. *The need for a wholesale review of the Environment Protection Act 1970:* there is a strong need to overhaul, re-write and streamline the Act to help ensure that the EPA is current, innovative, adaptive and responsive. An overhaul should also aim to provide greater formal and substantive

consistency with the environment regulations of other Australian jurisdictions. This could also include the provision of a general environment duty in the Act.

8. *Increased skills, capability and experience:* EPA needs to be able to recruit and retain staff with the required skills and experience to understand and support industry, in sufficient numbers to meet the needs of licensed businesses and the expectations of the public.
9. *Coherent national approaches to climate change:* Mitigating greenhouse gas emissions is primarily a national issue requiring a coherent national approach. Greenhouse gas emissions from energy generation and industrial activity are a subject for national policy, except where there is a specific local risk. There are other aspects of mitigation that the States play the leading role on, including transport infrastructure planning and the regulation of land clearing activity. EPA properly has the ability to take potential future climate conditions into account in specifying matters like the safe level of embankments around holding ponds.

Ai Group would welcome the opportunity to further discuss the issues outlined in our submission to the Public Inquiry with the Ministerial Advisory Committee and we look forward to the outcomes of the Public Inquiry.

Yours sincerely

Timothy Piper
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Australian Industry Group