

September 25, 2015

**Enquiries:** E80.0162  
**Reference:** OUT15/1FE3A4BD

The Chairperson  
EPA Ministerial Advisory Committee  
PO Box 21428  
Little Lonsdale Street,  
Melbourne Vic 8011

Dear Ms Armytage,

**Re: Environment Protection Authority Review**

I write to detail the views of council on the current review of the Environment Protection Authority and related Act.

Thank you for the opportunity to make this submission regarding this review and also making the time to meet the council in person on September 7, 2015. We commend the MAC for seeking views from all councils, the community and business sectors. Our recent VCAT and court actions have highlighted the financial burden placed on the council when becoming involved in a specific environmental issue that results in litigation which may have been prevented if suited controls were implemented in the first instance.

In line with our comments at our recent briefing, we detail those issues for your consideration:-

*1. the lack of access to EPA officers in the area;*

Contact with the regional office is difficult and contact with an officer is extremely difficult for both members of the public and council staff. The diversion of calls to a metropolitan based call centre has resulted in numerous complainants ceasing to lodge complaints, thereby distorting the actual severity of an ongoing issue. Complainants have advised the council that the reporting of an ongoing offence to a different call centre operator each time, describing the locality (queried if even in the state), explaining the issue, etc, time and again, is extremely frustrating and eventually becomes a deterrent.

*2. the lack of presence of EPA officers in the area;*

The time taken for an EPA officer to arrive onsite after the lodgement of a complaint, due to the size of the region and the placement of the regional office some 80kms away, is known to polluters and thus poor practices are undertaken in the knowledge that an EPA response is often "hours later".

*3. a lack of enforcement focus;*

There appears to be a clear policy decision that the EPA not be the "environmental regulator" and "enforcer". In the absence of any other suited environmental regulator, we believe the EPA should undertake that function as they:



- provide permit conditions to councils (referral agency),
- have the expertise in the relevant fields,
- have the technical support, (some 200 staff) and
- process and deal with these issues across the state, (which should ensure some uniformity across the state).

The converse also applies in that a single local government is not likely to deal with these issues very often, does not have the internal expertise, and could be biased as local employment etc. may be implicated.

4. *a reluctance to value local government opinion; and*

Local government usually has a very good understanding of local concerns and local sentiment. Unfortunately council views are apparently often not reflected in the various responses provided by EPA.

5. *cost shift of tasking to local government.*

The gradual and ongoing devolution of tasking to local government usually occurs without attached funding or resourcing. Some specifics in more recent years include asbestos response, noise issues relating to premises other than domestic residences, septic tank approvals, and litter. With the pending rate capping regime about to commence, councils can not undertake further tasking and thus these issues will be referred back to EPA.

To directly respond to questions listed in the discussion paper:

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

We believe the key challenges have been listed. However, there is very little comment about the responsiveness of EPA which we are particularly concerned about.

2. *What aspects of the EPA's work do you value and wish to preserve in the future? How can EPA effectively work in partnership with other government agencies to meet the environmental challenges of the future?*

We believe the role of the EPA should be very much focused on being the environmental regulator and a major focus should be on the more technical issues that local government does not have the technical expertise to resolve.

EPA needs to be fully engaged and responsive to all environmental issues whether they are in the realm of local government, Worksafe or other agencies.

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

EPA can safe guard the community by undertaking a more proactive stance, setting clear license controls, and enforcing those controls.

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

EPA can more effectively prevent environmental risks by undertaking a more proactive stance, setting clear license controls, and enforcing those controls. It would also be useful to not reduce existing standards unless new systems and/or technology is proven.

*5. What role should the EPA play in emergency management?*

The EPA is already listed as a response agency for certain events due to their expertise in specialized areas. This should remain. For prolonged incidents either affecting large numbers of the community or being particularly hazardous, EPA should be able to access state/federal funding under disaster aid if necessary.

As the environmental specialists, the EPA should also undertake research to fill environmental information gaps to enhance our understanding of the likely impacts across health and wellbeing, economic development, and natural resources.

*6. How can the EPA better identify and, where necessary, address problems that are the result of past activity? What can EPA do to minimise hazards for the future?*

In the first instance, a full audit of known risk activities should be undertaken, eg an expanded contaminated land register. Similar to the response to old landfills, an appropriate time to upgrade should be provided, eg 10 years is not unfair, and the transference/sale of property may/should be subject to an examination so that a new owner does not become responsible for an unknown hazard.

EPA, with relevant reference to other regulators worldwide, must remain conversant of emerging risks and put in place suited constraints. The example of lithium batteries (similar to the concerns with smoke detectors some years ago) is well known today and should be safe guarded against at this early stage.

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

EPA should not be just limited to those environmental outcomes that impact directly on human health. On a broader sense, pollution of the air, water and land have an ultimate effect on the health and well being of all, albeit in some circumstance, more of a mental health issue with people not being able to sleep or being overly worried.

*8. What role should EPA play in reducing green house gas emissions?*

In the absence of the federal government's Carbon Pollution Reduction Scheme, the state has a role to play in reducing green house emissions. Whether this is a function of EPA or another agency is unknown, but setting targets will help guide industry (and the community) to reduce their impacts. Any mandated controls need to be fair and allow for business (including local government) to suitably plan and adjust for.

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

Whilst the general principle of environmental justice has merit, in reality, this cannot always be applied. Some activities by government and government agencies must place a greater emphasis on the benefit for the "greater good". A very careful consideration of the application of this principle is required.

*10. 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?*

The council accepts that the EPA has moved over time to a more "risk based" approach and concede it is necessary. We also believe the Worksafe model, the placement of a fair/large responsibility on the business operator, is appropriate.

*11. Are there any other issues relevant to the Terms of Reference that you would like to raise that have not been covered in this paper?*

(a) Due to the proximity of the state border, some anomalies will remain, unless further works/collaboration is undertaken with NSW agencies. Accordingly, a near national approach would be beneficial in this instance.

(b) The EPA tendency towards "outcome based licenses" versus "prescriptive licenses" shifts the onus of compliance back to the operator. This self regulation model is in-effective in the hands of unscrupulous or money saving operators, especially with a lack of EPA resources to follow up when problems do occur due to a lack of clear license requirements that can be proven to be breached in court.

(c) Without clear license controls, a breach is very difficult to prove whereas a regime with clear controls, that may also include regular checking by the operator (and/or regulator), provides a history and/or audit trail suited for legal action.

(d) EPA should consider inserting sunset clauses into licenses so that recalcitrant operators with a history of non compliance, can more easily have their licenses revoked or terminated.

(e) EPA appears to have a natural bias of avoiding litigation, whether this is due to resources, poor legislative design, or VCAT decisions. This has resulted in poor environmental practices being allowed to continue unchecked with operators easily finding ways to "work the system", knowing they are unlikely to be prosecuted.

Please feel free to contact council's environment manager, Mark Verbaken for any further information or clarity of issues raised.

Yours faithfully



Patience Harrington  
**CHIEF EXECUTIVE OFFICER**