



Briefing paper

Reform of the Victorian EPA and Environment Protection Act – what is the Government proposing?

Background

In 2015, the Andrews Labor Government [commenced a major review](#) of the Victorian EPA and *Environment Protection Act 1970 (Vic)* (EP Act). The EP Act contains Victoria's key pollution control laws. An independent committee conducted an extensive review, including public consultation, and [released their recommendations](#) in March 2016. It was the first major review of the EPA and EP Act in the 45 years since they started operating. The independent committee found that significant reforms were needed to make the EPA an effective modern regulator and ensure it has the powers it needs to protect the community and the environment. It made 46 recommendations to improve the Act, the operation of the EPA and other 'whole of government' functions.

Government response

On 17 January 2017 the Victorian Government released its [response to the independent inquiry](#), announcing its proposed reforms for the EPA over the next five years. Key features are:

- \$45.5 million over 2017–2018 to start the reforms;
- major overhaul of the Environment Protection Act over the next two years (in this term of government);
- shifting the EPA to having a stronger harm prevention focus;
- a new general duty on industry and other polluters to prevent harm to the environment and human health;
- greater focus on environmental public health;

- significant increase to EPA’s resources for investigating pollution and enforcing breaches;
- a pilot study for local government environment protection officers to respond quickly to local amenity issues such as noise, odour and dust; and
- new powers to set environmental conditions for mining (currently sits within the government agency that regulates and facilitates mining).

A number of the Government’s responses are general and vague and it is clear there is more thinking to be done on some of the specifics. The Government intends a Bill with the first round of reforms to be in Parliament in the first half of this year. This will focus on governance and structural issues. The second round of reforms, which will be the EPA’s powers and pollution laws including the general duty not to pollute will happen in 2018. The Government has stated that significant consultation will happen throughout 2017 on the substantive reforms – therefore there is still significant opportunity to engage in the process to ensure the community gets the reforms it needs.

Environmental Justice Australia’s involvement

Environmental Justice Australia was heavily involved in the review, advocating for a number of reforms to help affected communities achieve environmental justice, strengthen pollution powers, increase community rights of appeal and enforcement and increase EPA’s ability to prosecute offenders. The table below compares the key things that EJA advocated for in the review to what the independent committee recommended and what the government has committed to.

Comparison of EJA recommendations, Independent Inquiry recommendations and the Government’s response on key issues

EJA recommendation	Independent Inquiry Committee recommendation	Government response
Environmental justice should be incorporated as one of the objectives in the EP Act.	Environmental justice should be achieved through a ‘whole of government’ approach.	DELWP will determine best whole of government approach to improving environmental justice.
Right to a safe and healthy environment should be included in the Act and there should be a clearer role for EPA on issues that affect our health and wellbeing.	No specific right to be included but a primary goal for EPA should be protection of human health.	Objective of the EPA will encompass protection of human health and the environment. Immediate funding to boost EPA’s environmental health capabilities.
Pollution information (e.g. industry proposals, pollution monitoring data, breaches, enforcement etc) should be publicly available by default.	Require licencees to make emissions monitoring information available to the public. EPA should assess adequacy of its pollution monitoring and consider options to improve pollution monitoring data sharing and accessibility.	Government will consider the ‘best mechanism’ to require publication of emissions data while ‘not imposing undue regulatory burden’. EPA will assess its monitoring in order to significantly improve its monitoring networks and identify practical cost effective action to improve data sharing and accessibility. No comment on other information.

EJA recommendation	Independent Inquiry Committee recommendation	Government response
The Act should include an enforceable general environmental duty not to pollute.	Introduce a general duty to minimise risks of harm to human health and the environment. This requires a person to take reasonably practicable steps to minimise risks of harm from pollution and waste.	Agreed to introduce a 'general preventative duty' but unclear whether the government agrees with independent inquiry's suggestions on how it would operate.
Act should include a broad range of civil remedies (pecuniary penalties, injunctions, orders appropriate to restoration of environmental damage or harm).	Range and severity of sanctions should be expanded e.g. increase maximum penalties, introduce civil penalty regime, improve enforceable undertakings.	Government will determine an appropriate and proportionate mix of offences, sanctions and penalties to achieve stronger deterrence and better environmental outcomes.
There should be a right for any person to take polluters to court for a breach of the Act (third party enforcement rights).	Allow any person, with permission of the court, to seek a court order to restrain or remedy breaches (civil remedies only not criminal).	Government supports access to justice and holding polluters to account and will 'investigate' strengthening third party access to civil remedies.
Third party standing should be overhauled and simplified so that 'any person' can seek review of a decision to grant a licence or works approval under the EP Act.	Need to clarify which third parties can seek review of certain EPA decisions to ensure anyone with a genuine interest can appeal. No expansion to the decisions that can currently be appealed (essentially works approvals only).	Government supports in principle, but will investigate this clarification to determine whether it can be done without creating uncertainty across other legislation.
The EPA should act to regulate, limit and reduce greenhouse gas emissions from industry, as it already does for other dangerous wastes and pollutants.	The government should confirm the nature and extent of EPA's role in greenhouse gas regulation and ensure the EPA has the appropriate statutory instruments to give effect to its role in managing greenhouse gas emissions.	The new Climate Change Bill clarifies that the EPA has the power to regulate GHG emissions, but the government has stated it will not use these powers at present.
A more powerful role for the EPA in land use planning decisions.	Require planning decision makers to seek early advice from EPA on strategic planning processes that affect human health or environmental risk.	A statutory mechanism will be created to ensure EPA input is sought early in strategic planning processes. More work will be done to determine how to do this.
Much greater role for the EPA in mining – e.g. EPA should be the regulator or at least a mandatory referral authority for mining approvals, and have a much stronger role in mine site rehabilitation.	Strengthen and formalise the EPA's role in mining regulation including mandatory referral of work plans and rehabilitation plans to EPA for environmental management conditions, EPA responsibility for enforcement of environmental conditions, and input into rehabilitation bonds.	Agree in principle, but not a full commitment to the inquiry's recommendations. Work plans and rehabilitation plans will be referred to the EPA for waste and pollution conditions. Improved environmental standards will be established for all mines. EPA advice will be sought on rehabilitation bonds but appears to not be mandatory to include it.

Our views on the government response

Our overarching view is that the Government's response is good, and if implemented well and funded properly should achieve many of the essential reforms needed. However, there are some important elements that the Government has either not fully committed to, or not provided detail on, which we believe are critical to achieving a strong and effective pollution control regime for Victoria. The success of this reform lies in the detail and the Government's ongoing commitment to achieving what they have set out to do.

Some of the key issues that we believe will be required to make this reform successful are as follows.

- A substantial increase in funding for the EPA to allow it to effectively and efficiently regulate polluting industries, monitor impacts on the environment and communities and take legal action against polluters when breaches occur. This seems to be what the Government is intending but funding beyond next year has not been announced.
- A clear duty not to pollute the environment which can be effectively enforced by the EPA. The Government has committed to including a general duty not to pollute, but with possible qualifiers. This duty needs to be strong and enforceable to be effective.
- A right for the community to take enforcement action against polluters who have breached the law if the EPA won't. The Government has said it will consider this but has not committed to it.
- Improved monitoring of pollution, with all EPA and industry monitoring data publicly available. The Government has said monitoring will be improved, but has not committed to full public release of data.
- Clear actions to support communities that bear an unfair burden from Victoria's pollution to achieve environmental justice. The Government has said it will commence a whole of government environmental justice framework, but with no detail on what this will entail. Motherhood policy statements will not be enough, to achieve environmental justice for pollution affected communities a number of legally binding measures are needed.

Next steps

EJA will continue to work on this reform as a priority throughout the next year to ensure the reforms are what the community and environment needs. We will be running community workshops and other community actions to assist the community to engage in the reforms and advocate for the inclusion of community rights in the new Act. [Sign up to our ebulletin](#) for updates and please contact us if you are interested in being involved.

About Environmental Justice Australia

Environmental Justice Australia (formerly the Environment Defenders Office, Victoria) is a not-for-profit public interest legal practice. Funded by donations and independent of government and corporate funding, our legal team combines a passion for justice with technical expertise and a practical understanding of the legal system to protect our environment.

We act as advisers and legal representatives to the environment movement, pursuing court cases to protect our shared environment. We work with community-based environment groups, regional and state environmental organisations, and larger environmental NGOs. We also provide strategic and legal support to their campaigns to address climate change, protect nature and defend the rights of communities to a healthy environment.

While we seek to give the community a powerful voice in court, we also recognise that court cases alone will not be enough. That's why we campaign to improve our legal system. We defend existing, hard-won environmental protections from attack. At the same time, we pursue new and innovative solutions to fill the gaps and fix the failures in our legal system to clear a path for a more just and sustainable world.

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