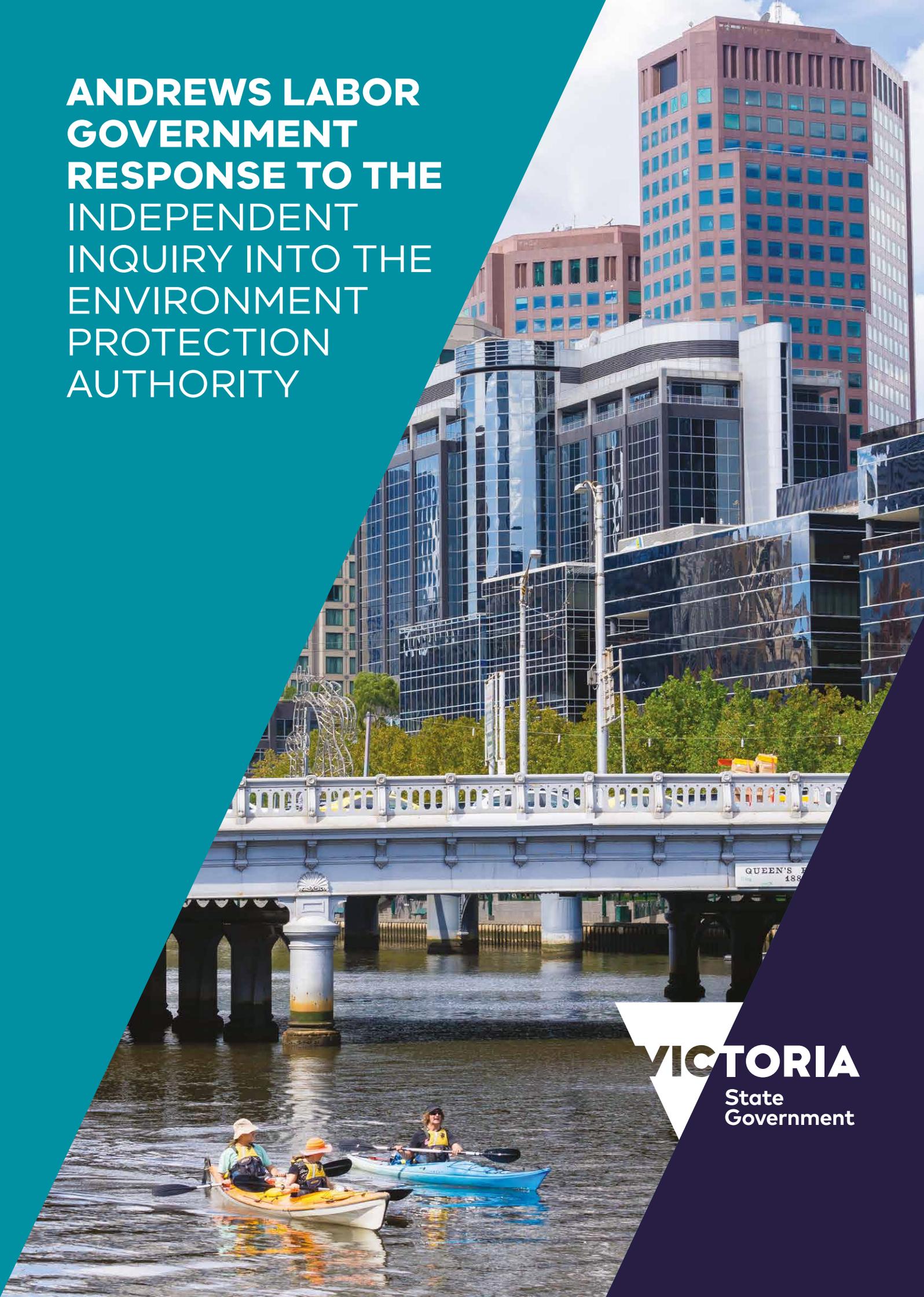


**ANDREWS LABOR  
GOVERNMENT  
RESPONSE TO THE  
INDEPENDENT  
INQUIRY INTO THE  
ENVIRONMENT  
PROTECTION  
AUTHORITY**



**VICTORIA**

State  
Government

© The State of Victoria Department of Environment, Land, Water and Planning 2017



This work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Environment, Land, Water and Planning (DELWP) logo. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>

Printed by Finsbury Green, Melbourne  
ISBN 978-1-76047-315-0 (print)  
ISBN 978-1-76047-316-7 (pdf/online)

### Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

### Accessibility

If you would like to receive this publication in an alternative format, please telephone DELWP Customer Service Centre 136 186, email [customer.service@delwp.vic.gov.au](mailto:customer.service@delwp.vic.gov.au), via the National Relay Service on 133 677 [www.relayservice.com.au](http://www.relayservice.com.au). This document is also available on the internet at [www.delwp.vic.gov.au](http://www.delwp.vic.gov.au)

# Contents

<b>Foreword</b>	<b>5</b>
<b>Introduction</b>	<b>6</b>
<b>Andrews Labor Government Response to the Independent Inquiry into the Environment Protection Authority</b>	<b>8</b>
Clarifying the EPA's objective, principles and functions	8
Recommendation 5.1–5.5	8
The EPA as a science-based regulator	11
Recommendation 6.1–6.3	11
The EPA's role within Victoria's environment protection regime	12
Recommendation 7.1–7.5	12
Responding to the challenge of climate change	14
Recommendation 8.1–8.2	14
EPA's role in emergency management	15
Recommendation 9.1–9.2	15
Taking a strategic approach to land use planning	16
Recommendation 10.1–10.5	16
Strengthening prevention	18
Recommendation 12.1–12.3	18
Holding polluters to account	20
Recommendation 13.1–13.4	20

<b>Managing legacy risks</b>	<b>21</b>
Recommendation 14.1–14.3	21
<b>A new approach to standard setting</b>	<b>22</b>
Recommendation 15.1	22
<b>Deploying a wider range of instruments</b>	<b>23</b>
Recommendation 16.1–16.3	23
<b>Strengthening mining regulation</b>	<b>24</b>
Recommendation 17.1	24
<b>A broader and more effective local response</b>	<b>26</b>
Recommendation 18.1–18.3	26
<b>Establishing effective governance arrangements</b>	<b>27</b>
Recommendation 19.1–19.2	27
<b>The EPA’s capability needs</b>	<b>28</b>
Recommendation 20.1–20.2	28
<b>Funding for the future</b>	<b>29</b>
Recommendation 21.1–21.4	29
<b>Next steps</b>	<b>31</b>

## Foreword

**The Andrews Labor Government’s response to the Independent Inquiry into the Environment Protection Authority marks a historic moment for environment protection in our state. Through this response, we will make the reforms that will equip our EPA to protect Victorians and our environment into the future.**

Environment protection is fundamental to our economy, our lifestyle and our health. Many of our key industries, including tourism, education and agriculture, rely on a healthy and productive environment. Our health, quality of life and our world-recognised liveability also depend on clean air, water and land. As our population grows, our economy diversifies, and as we deal with evolving threats like climate change, we need to ensure the EPA continues to play a central and effective role in protecting our health and environment.

The Andrews Labor Government welcomes the report of the independent inquiry, and thanks the thorough and thoughtful work of the inquiry Ministerial Advisory Committee chaired by Penny Armytage with members Jane Brockington and Janice van Reyk.

Through implementation of this response, the government will continue to deliver reforms and investment for the benefit of Victoria’s people, jobs and economy, providing Victoria with a modern environmental regulator for the future.



A handwritten signature in black ink, appearing to read 'Daniel Andrews'.

**The Hon. Daniel Andrews MP**  
Premier of Victoria



A handwritten signature in black ink, appearing to read 'Lily D'Ambrosio'.

**The Hon. Lily D'Ambrosio MP**  
Minister for Energy, Environment and Climate Change

## Introduction

**The Independent Inquiry into Victoria’s Environment Protection Authority (EPA) was undertaken over ten months from June 2015 to March 2016 by a Ministerial Advisory Committee chaired by Penny Armytage. The inquiry made 48 recommendations to government about how the EPA can be equipped to meet the environment and human health challenges of today and the future. This document sets out the Andrews Labor Government’s response to each of the inquiry’s recommendations.**

Through the inquiry, government has heard clear views from experts, community, industry and stakeholders about the importance of a strong, modern and mature EPA within a growing and transitioning Victoria. Government has heard that an EPA that delivers efficient, proportionate and consistent regulation is vital for business and to ensure Victoria is an attractive place for investment. Government has heard that the Victorian community wants an EPA that effectively and proactively protects their health and their environment from harm.

The reforms set out in this response will deliver:

- a proactive and strategic EPA focussed on preventing harm to human health and the environment
- an EPA that provides business with clarity, certainty and support to comply, and holds polluters to account
- modern, fit-for-purpose legislation
- greater responsiveness to local and regional issues that matter to communities
- strengthened governance for the EPA, providing independence and accountability
- a trusted and authoritative source of science and technical knowledge and advice.

The reforms will transform Victoria’s approach to environment protection over a number of years. Implementation will include consultation with business, community and stakeholders, and be guided by core principles:

- reform will deliver better environment and human health outcomes for Victorians
- reform will build trust of community and industry in the EPA and government
- regulatory approaches will be targeted, proportionate, risk-based and cost-effective
- regulation will be monitored and evaluated to ensure systems remain fit for purpose as circumstances change
- role clarity will be increased and all opportunities taken to simplify and streamline processes.

The EPA has played a vitally important role for Victoria since it came into operation in 1971, and these reforms will ensure that it continues to do so.

## Government investment

The Andrews Labor Government has committed \$45.5 million in 2016–17 and 2017–18 to commence priority reforms, including:

- introducing two bills to Parliament to modernise the EPA's governance and overhaul the *Environment Protection Act 1970*
- \$4.8 million to enhance and consolidate Victoria's environmental public health capability
- \$2.1 million to appoint a Chief Environmental Scientist to the EPA
- \$4.8 million to conduct a pilot of local government environment protection officers whose priority will be responding to issues like noise, odour and dust which significantly impact local amenity and health
- \$6.5 million to build the EPA's capacity to hold poor performing and non-compliant operators to account by increasing the EPA's on-ground presence and developing a prosecution strategy
- \$1.5 million to strengthen the EPA's role in strategic government decisions, including land use planning decisions to help reduce impacts on liveability into the future.

The government has appointed an interim advisory Board for the EPA with a mix of relevant skills to work with the current Chairman, Cheryl Batagol, to assist the EPA through this significant reform process and provide strategic advice to support its leadership, while formal governance provisions are legislated.

# Andrews Labor Government Response to the Independent Inquiry into the Environment Protection Authority

## Clarifying the EPA's objective, principles and functions

### Recommendation 5.1

Undertake a comprehensive overhaul of the *Environment Protection Act 1970*, including to establish two separate pieces of legislation:

- i. Create a standalone EPA (Establishment) Act to facilitate role clarity and strengthened governance
- ii. Create a modernised Environment Protection Act, which applies to the EPA and other entities charged with reducing pollution and waste impacts.

### Response: Support

An overhaul of the *Environment Protection Act 1970* will deliver a modernised, fit for purpose legislative framework for environment protection in Victoria.

Amended establishment provisions will ensure the EPA's role and objective are clear, and strengthen institutional governance arrangements. Government will prioritise the provisions relating to the establishment and governance of the EPA to allow for newly strengthened governance arrangements to be in place to guide further reforms to the organisation and the *Environment Protection Act 1970*.

Government prefers to keep the EPA's objective, principles, functions and governance within the same legislation as its environment protection tools. Government will therefore legislate the recommended establishment provisions within the *Environment Protection Act 1970*, rather than in a separate Establishment Act. As such, the *Environment Protection Act 1970* will be updated in two stages:

1. a bill to legislate establishment and governance provisions introduced to Parliament as soon as practicable in 2017
2. a bill to give effect to the overhaul of the *Environment Protection Act 1970* introduced to Parliament in 2018.

The inquiry recommends a significant legislative reform agenda, with important implications for Victoria's environment, public health and economy. Government is committed to thorough consultation and analysis during the development of the modernised legislation and supporting statutory instruments.

## Recommendation 5.2

Prioritise creation of the EPA (Establishment) Act which defines, as a minimum, the EPA's objective, decision making principles, functions and governance structure.

### Response: Support

Provisions relating to the EPA's establishment and governance will be prioritised, as outlined in the response to recommendation 5.1.

## Recommendation 5.3

Establish a statutory objective for the EPA to protect human health and the environment by reducing the harmful effects of pollution and waste.

### Response: Support

The EPA's objective will be included in the bill to legislate establishment and governance provisions. A legislated objective will provide the EPA, stakeholders and the broader community with clarity about the overarching purpose for the EPA. This objective will encompass the EPA's proactive protection of human health and the environment from the harmful effects of pollution and waste.

## Recommendation 5.4

Establish a simplified set of legislated decision making principles for the EPA that encompasses the following elements:

- i. Balancing of economic, social and environmental considerations
- ii. Primacy of prevention
- iii. Proportionality, recognising the importance of a risk-based approach to regulation
- iv. Intragenerational and intergenerational equity
- v. Shared responsibility, including recognition of the importance of the polluter pays principle
- vi. Evidence-based decision making that accounts for the precautionary principle
- vii. Accountability and access to decision making, noting the importance of procedural fairness, transparency and access to information.

### Response: Support

A simplified set of legislated principles will be introduced. The principles recommended by the Committee form a sound starting point, and will support delivery of other reforms such as the EPA's increased focus on prevention, public health and environmental health. Analysis and any required revisions will be undertaken so that principles are appropriate to guide the EPA and recognise the position of a modern EPA within a growing Victoria.

## Recommendation 5.5

Establish ten high level functions for the EPA:

- i. Monitor and identify impacts and risks to public health and the environment
- ii. Proactively adopt tools and instruments to prevent and reduce impacts and risks
- iii. Advise government
- iv. Lead, coordinate and collaborate with local governments, joint regulators and other government agencies
- v. Determine and set environment protection standards ('goal post' standards)
- vi. Set compliance obligations and seek to improve environmental performance
- vii. Support compliance
- viii. Report to, educate and engage with the community on managing risks and the condition of the environment
- ix. Monitor compliance and enforce the law
- x. Evaluate the effectiveness of regulatory interventions.

### Response: Support

Legislating high level functions of the EPA will provide a clear bridge between the EPA's statutory objective and statutory tools, and create stability and flexibility for the organisation. The functions proposed by the Committee provide a strong basis for legislative functions, however, government will make any necessary revisions to ensure they align with reforms to the *Environment Protection Act 1970*, and the strengthened role of the EPA.

## The EPA as a science-based regulator

### Recommendation 6.1

Establish a legislated Chief Environmental Scientist position within the EPA's senior executive structure.

#### Response: Support

A Chief Environmental Scientist will bolster the already significant scientific credentials and authoritative voice of the EPA. The Chief Environmental Scientist position will be included in the bill to legislate establishment and governance provisions. The role will be established to deliver role clarity for the Chief Environmental Scientist, and clear delineation from the role of other relevant positions in government such as the Chief Health Officer. The process to recruit an interim Chief Environmental Scientist will begin in early 2017.

### Recommendation 6.2

Create a consolidated and enhanced environmental health capability for Victoria within the EPA, with appropriate governance arrangements recognising its critical relationship with the Department of Health and Human Services.

#### Response: Support

The Andrews Labor Government commits an initial \$4.8 million to establish an enhanced and consolidated environmental health capability in the EPA which will deliver more effective and coordinated management of environmental health issues in Victoria, in line with community expectations. Government has already acted to transfer relevant Department of Health and Human Services staff to the EPA to form part of this enhanced capability. Effective systems have been put in place to ensure ongoing critical links with the Department of Health and Human Services.

### Recommendation 6.3

The EPA assess the adequacy of its air and water monitoring networks, particularly in relation to air quality, and consider options to improve data sharing and accessibility, and community communications.

#### Response: Support

There are opportunities to significantly improve the EPA's monitoring networks in air and water environments across Victoria. In 2017, the EPA will begin working with other relevant parts of government to assess the networks with the view to identifying practical, cost effective actions to improve quality, coverage, data sharing, analysis, accessibility and community communications and engagement. This will take into account work already underway, such as cross-government actions in response to the recent Victorian Auditor-General's Office audit on monitoring Victoria's water resources and improvements to the air quality network in the Latrobe Valley.

## The EPA's role within Victoria's environment protection regime

### Recommendation 7.1

Establish a high level Environment Protection (Integration and Coordination) Act to improve coordination and collaboration across government on environment protection, and associated public health issues, including by:

- i. Setting shared objectives and principles for whole-of-government decision making, including environmental justice principles
- ii. Clarifying the respective roles and responsibilities of key government agencies charged with environment protection, including the EPA
- iii. Establishing a formal mechanism, led by the Department of Environment, Land, Water and Planning, to support whole-of-government consideration of environment protection and environmental issues impacting on human health and wellbeing, including:
  - a. identifying strategic priorities
  - b. collaborating on risk assessment and analysis of options, informed by the EPA and other relevant sources of expert advice
  - c. coordinating deployment of tools available across government, as appropriate to different issues.

### Response: Support in principle

There is a clear need to improve how government works across agencies and portfolios to address complex environment protection and public health issues. As Victoria's population grows and major environmental and public health issues continue to evolve and increase in complexity, the need for an environment protection framework that integrates and coordinates action by government will be crucial. A statutory approach can help ensure the longevity of such a framework.

Following the overhaul of the *Environment Protection Act 1970*, government will consider a range of legislative models and non-legislative mechanisms in determining the best approach to delivering on the intent of this recommendation. This work will also consider whether separate legislation is the most effective approach, and where existing processes for decision making relating to environment protection, environmental justice and public health can be improved.

### Recommendation 7.2

Implement, through the Department of Environment, Land, Water and Planning, measures to coordinate environmental management in Victoria, in partnership with the EPA and other agencies responsible for environmental, public health and other liveability outcomes, including:

- i. statewide environmental monitoring
- ii. a statewide spatial data system
- iii. statewide reporting of health, environmental and liveability outcomes.

### Response: Support

The Department of Environment, Land, Water and Planning (DELWP) will lead better coordination of environmental management, monitoring and reporting in Victoria to improve decision making, information provided to communities and stakeholders, and environmental and public health outcomes. DELWP will commence work in 2018 with key stakeholders, some of whom have existing statutory environmental management, monitoring and reporting responsibilities such as the EPA, the Commissioner for Environmental Sustainability, the Department of Health and Human Services and the water industry.

### Recommendation 7.3

Develop, through the Department of Environment, Land, Water and Planning, a whole-of-government approach to environmental justice, setting out high level objectives and principles to support consistent decision making across the Victorian public sector.

#### Response: Support

Government is committed to environmental justice, including principles of inclusion and equity. DELWP will lead work to determine the best whole of government approach to improving environmental justice, including integration into existing decision making, commencing in 2017.

### Recommendation 7.4

Clarify that the test for third party standing for review of decisions under the *Environment Protection Act 1970* (reviewable by the Victorian Civil and Administrative Tribunal) matches section 5 of the *Victorian Civil and Administrative Tribunal Act 1998*.

#### Response: Support in principle

Government supports the intent of clarifying which third parties may apply for review of EPA decisions under section 33B(1) of the *Environment Protection Act 1970*. Government will investigate whether and how this can be done without creating uncertainty across other legislation.

### Recommendation 7.5

Strengthen third party rights to allow persons whose interests are affected or any other person with the permission of the court to seek a court order to restrain or remedy breaches of environment protection laws (civil remedies).

#### Response: Support in principle

Government supports the intent of providing access to justice and holding polluters to account. Government will investigate ways to achieve this, including strengthening third party access to civil remedies for breaches of environment protection laws. This investigation will consider the legal, environmental, economic and social implications of different measures as part of the overhaul of the *Environment Protection Act 1970*, including how unmeritorious actions can be minimised.

## Responding to the challenge of climate change

### Recommendation 8.1

Confirm the nature and extent of the EPA's role in regulating greenhouse gas emissions within Victoria's wider whole-of-government policy settings.

#### Response: Support

Government is restoring Victoria as a model for other states on climate change action. In November 2016, government introduced a Climate Change Bill into Parliament. If passed, this Bill will:

- enshrine a long-term target for Victoria of net zero emissions by 2050
- require five yearly interim targets to keep Victoria on track to meeting this long-term target
- introduce new policy objectives and updated guiding principles that will provide the basis for taking climate change considerations into account in government decision-making
- require development every five years of a Victorian Climate Change Strategy to set out how interim targets will be met and how adaptation to the impacts of climate change will be fostered
- establish a process for government to make pledges to reduce emissions from its own operations and across the economy
- establish a system of periodic reporting to provide transparency, accountability and ensure the community remains informed.

In setting five yearly interim targets and developing the Victorian Climate Change Strategy, government will identify appropriate policy instruments, including determining if and when EPA regulation is appropriate.

### Recommendation 8.2

Ensure the EPA has the appropriate statutory instruments to give effect to its role in managing greenhouse gas emissions, as determined by government and informed by advice from the EPA.

#### Response: Support

Government will ensure that the EPA has appropriate instruments and tools to give effect to any role in managing greenhouse gas emissions as required.

## EPA's role in emergency management

### Recommendation 9.1

Confirm the EPA's role as a technical advisor across the continuum of the State Emergency Response Plan – prevention, response and recovery.

#### Response: Support

Government has made significant advances in enhancing community resilience to emergencies through emergency mitigation, response and recovery. The EPA plays a role in preventing or mitigating some emergencies through its regulatory powers.

It is important that the technical and scientific expertise within the EPA supports the continuum of emergency management, including providing an onsite advisory function and 'support agency' role where appropriate. The EPA and DELWP will work with Emergency Management Victoria to ensure clear roles and responsibilities for the EPA in emergency management, including through amendments to the Emergency Management Manual Victoria.

### Recommendation 9.2

Remove the EPA as the control agency responsible for pollution for inland waters, and transfer these responsibilities to appropriate first responders.

#### Response: Support

The EPA's role in emergency management must be well defined and achievable so that the EPA can deliver effective and timely technical and scientific advice to support Victoria's emergency response. Control agency responsibilities for pollution of inland waters will be transferred from the EPA to DELWP as soon as practicable through amendments to the Emergency Management Manual Victoria. The EPA will hold a 'support agency' role for pollution of inland waters.

## Taking a strategic approach to land use planning

### Recommendation 10.1

Create a statutory trigger, potentially via a Ministerial Direction under the *Planning and Environment Act 1987*, to require responsible authorities to seek early advice from the EPA on strategic planning processes (such as, but not limited to, scheme amendments, rezoning and structure planning) that involve significant human health and environmental risks or development in close proximity to a licensed facility.

#### Response: Support

The Victorian planning system currently provides the opportunity for strategic planning advice from the EPA. This will be strengthened by the creation of statutory mechanisms to ensure the EPA is involved early in strategic planning processes for a specific range of land uses, bringing Victoria in line with other Australian states.

This approach will ensure the EPA's input is sought early in the planning process when changes or improvements are most readily incorporated, providing greater certainty to government, community and developers. It will also lead to efficiencies 'down stream' in statutory planning, and support ongoing compliance with environmental standards.

Government will commence work in 2017 to identify and implement the appropriate statutory mechanisms to give effect to this recommendation. Government will carefully consider the specific range of land uses to be covered, and alignment with existing referral processes and timelines where appropriate.

Strengthening consideration of environment and human health in this way will help maximise benefit for Victoria.

### Recommendation 10.2

Require, as part of its establishment legislation, that the Victorian Planning Authority refer strategic planning processes (such as, but not limited to, scheme amendments, rezoning and structure planning) to the EPA including where such processes consider development in close proximity to a licensed facility, including waste facilities.

#### Response: Support in principle

Early advice from the EPA will help improve how environment, human health protection and safety are considered in Victorian Planning Authority strategic planning processes. Government will commence a process in 2018 for the Minister for Planning to strengthen appropriate directions to give effect to this recommendation.

### Recommendation 10.3

Develop, as a priority, strengthened land use planning mechanisms that establish and maintain buffers to separate conflicting land uses, avoid encroachment problems, help manage health, safety and amenity impacts, and ensure integration with EPA regulatory requirements.

#### Response: Support

Strengthened land use planning mechanisms that establish and maintain buffers are critical to ensure sensitive land uses are well located, and that there are appropriate distances from industries and activities that pose health, safety and amenity risks.

Government will support the provision of mechanisms to ensure buffer distances are more clearly specified and communicated through the Victorian planning framework. This will include appropriate forward-planning to identify and protect buffers for existing and future industries and activities. The definition and application of buffer distances must be evidence-based, using guidance from the EPA and other expert sources where required. This work will be informed by the government responses to the recommendations of the Major Hazard Facilities Advisory Committee report to the Minister for Planning, and the Animal Industries Advisory Committee.

### Recommendation 10.4

Together, the EPA and the Department of Environment, Land, Water and Planning simplify and better integrate EPA regulatory standards and obligations that are to be applied through the planning system, including through the creation of mandatory, measurable and enforceable planning controls that land use planners can more readily understand and apply.

#### Response: Support

Government will commence working through changes in 2017, including the development of clear and updated standards and controls, to ensure that the EPA's regulatory requirements can be readily understood and applied through the planning system. The EPA will also strengthen its education and advice role to provide better support to planning professionals.

### Recommendation 10.5

Amend the existing *Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria* to require a statutory environmental audit of noise be undertaken for approval and compliance.

#### Response: Support

Government is committed to strategic policy and process reform to improve outcomes for the Victorian community and the wind energy industry in delivering on Victoria's renewable energy target and the thousands of jobs it can support. DELWP has commenced a review of its internal processes and will deliver the necessary reform to provide clarity and certainty to the industry and the community.

The planning provisions for Wind Development and associated Guidelines will be strengthened to require an assessment of noise to be undertaken by the proponent at the time of application and after facility commissioning. This would require noise assessments and noise management plans to be reviewed and verified as suitable by environmental auditors appointed under the EPA's statutory environmental audit system. This reform will ensure that the community and industry have the assurance that wind energy facilities will be designed and operated to achieve compliance with the relevant noise standards.

## Strengthening prevention

### Recommendation 12.1

Introduce a general duty to minimise risks of harm to human health and the environment, as the cornerstone of a preventative focus for the EPA. Specifically:

- i. the duty would require a person to take reasonably practicable steps to minimise risks of harm from pollution and waste
- ii. introduction of the duty would be staged, with its application limited initially to those entities that operate under EPA licences or works approvals, and entities registered under a new registration scheme to be based on WorkSafe's dangerous goods notification
- iii. breach of the duty would give rise to criminal penalties, civil penalties and/or civil remedies
- iv. breach or threatened breach of the duty would provide a uniform trigger for the issue of remedial notices
- v. compliance with the duty would be underpinned by statutory codes of practice, and advice from the EPA.

### Response: Support

This reform will deliver a landmark shift towards preventing harm to the health of Victorians and our environment. Government will legislate to introduce a general preventative duty as part of the overhaul of the *Environment Protection Act 1970*.

A preventative duty will deliver:

- increased clarity and guidance for industry about their environment protection responsibilities
- greater flexibility for industry on how they manage environmental risks
- a more level playing field for regulated entities.

The preventative duty will be designed to complement other current and new tools to deliver a proportionate, risk-based and efficient suite of regulations. Government will also pursue opportunities to simplify the end-to-end regulatory experience for business to achieve environment and health objectives at least cost.

The modernised EPA will develop guidance for how to comply with the duty in consultation with business. The preventative duty will draw on experience from the occupational health and safety framework that businesses are already familiar with, and the application of preventative duties for environment protection elsewhere in Australia and internationally.

## Recommendation 12.2

Expand the cohort of activities requiring a works approval or licence to include all activities with significant impacts on human health or the environment, regardless of the type of hazard posed.

### Response: Support in principle

Any expansion of the activities requiring works approvals and licences will only occur after careful consideration of the range of tools available, the context of the reformed regulatory framework resulting from this government response, and whether works approval and licensing are the right tools for managing risks proportionately. Options to improve the efficiency of regulatory approaches, such as incentive-based regulation, will also be considered as part of continuous improvement of the licensing system.

To be given effect, this recommendation requires changes to the Environment Protection (Scheduled Premises and Exemptions) Regulations 2007. These regulations are currently under review to be remade with relatively minor clarifications and improvements before they sunset in 2017. A subsequent comprehensive review of the EPA's permissioning framework will give effect to this and other relevant recommendations, at a suitable time to align with the broader implementation of this government response.

## Recommendation 12.3

Introduce new tools, including:

- i. fixed terms for new licences and a statutory mechanism for regular reviews of licences
- ii. a new post-closure licence category (or a new form of post closure instrument) for landfills and high risk contaminating activities
- iii. a requirement for EPA licensees to prepare and implement pollution incident plans
- iv. a requirement for all businesses to notify pollution incidents to the relevant authority (either the EPA or local government).

### Response: Support

As part of the overhaul of the *Environment Protection Act 1970*, analysis will determine the effective and appropriate mix of tools. A range of innovative tools in addition to the tools listed will be considered. In developing new tools, government will take a proportionate approach and ensure integrated consideration of environmental, economic and social impacts.

## Holding polluters to account

### Recommendation 13.1

The EPA develop an overarching prosecution strategy to strengthen its processes, procedures, and resourcing to facilitate timely prosecution.

#### Response: Support

Government has committed \$6.5 million for the EPA to begin developing a prosecution strategy in 2017 to maximise the effectiveness and efficiency of existing powers. The EPA will revise the strategy post implementation of the general duty.

### Recommendation 13.2

The EPA review how it applies enforceable undertakings, taking account of best practice by other regulators.

#### Response: Support

In 2017, the EPA will commence a review of the use of enforceable undertakings and how they can be applied in different circumstances, with a view to expanding their use.

### Recommendation 13.3

Expand the range, and increase the severity, of sanctions by:

- i. increasing the maximum penalties for criminal offences
- ii. fixing separate maximum penalties for individuals and corporations
- iii. empowering courts to fix fines which take account of the economic benefits of non-compliance
- iv. introducing a civil penalty regime as an alternative to prosecution.

#### Response: Support

It is important that the EPA's range and severity of sanctions is in line with what is expected of a modern regulator, to achieve stronger deterrence and better environmental outcomes. Government will determine an appropriate and proportionate mix of offences, range of sanctions, and severity of penalties to be legislated as part of the overhaul of the *Environment Protection Act 1970*.

### Recommendation 13.4

Modernise the inspection and enquiry powers for EPA authorised officers (including local government environment protection officers) to provide powers equivalent to those of safety regulators.

#### Response: Support

Government will modernise the inspection and enquiry powers of EPA authorised officers as part of the overhaul of the *Environment Protection Act 1970*. This work will include consideration of the reformed regulatory approach of the EPA, and will ensure that local government environment protection officers are supported to deliver on the modernised powers.

## Managing legacy risks

### Recommendation 14.1

The Department of Environment, Land, Water and Planning develop a comprehensive statewide database of sites that pose a high risk to the community because of their past use, which should link to other relevant government data sources including information held by the EPA.

#### Response: Support

Government is committed to improving access to information to strengthen management of risks associated with legacy contamination. A public database providing consistent and easily accessible, state-wide site history information will be developed to assist with the identification of potentially contaminated sites.

Existing data across government as well as external information will be drawn upon. The database will include past uses of potentially contaminated sites, whether a statutory environmental audit has occurred for a site and whether any actions have been taken following that audit. Government will also provide guidance materials on how to interpret the information.

The database will inform the community of potential contamination risks and support informed decision making by individuals, government and councils, including better targeted application of the Environmental Audit Overlay. DELWP has already commenced work to digitise historical land use information held by the State Library Victoria. As a first step, this information will be accessible in a searchable format through the State Library Victoria's website from late 2017.

### Recommendation 14.2

Integrate and strengthen planning and environmental regulation of legacy contamination, through a reform process led by the Department of Environment, Land, Water and Planning to provide a more consistent, risk-based approach to risk screening, assessment and remediation requirements and ongoing compliance mechanisms.

#### Response: Support

DELWP will lead a comprehensive process to reform and better integrate planning and environmental regulation, policy and management of legacy contamination risks.

Changes to the *Environment Protection Act 1970* and environmental and planning statutory instruments will: position the EPA and planning decision-makers to identify and consistently screen potentially contaminated sites according to risk, including through expanded notification requirements; provide for proportionate clean up, in particular a more risk-based approach to groundwater contamination; and strengthen monitoring and enforcement of audit conditions with increased transparency and clarified responsibilities.

These reforms will be supported by enhanced information for landowners and the broader community, improved guidance and training to support local government decision making, and targeted facilitation measures to attract investment in renewal of contaminated sites and precincts. This will support the safe and efficient redevelopment of legacy contaminated sites and will complement reforms designed to prevent contamination and target early interventions (refer to recommendations 12.3 ii, iii and iv).

### Recommendation 14.3

As part of reform of the Prescribed Industrial Waste Levy, give specific attention to addressing illegal dumping and supporting responsible disposal of asbestos.

#### Response: Support

Government is currently reforming Victoria's hazardous waste management framework. This reform will include a holistic review of current regulatory and management processes for hazardous waste, including the Prescribed Industrial Waste Levy. Government aims to continue to minimise adverse impacts of hazardous wastes, including asbestos, on the environment and human health.

## A new approach to standard setting

### Recommendation 15.1

Replace state environment protection policies and waste management policies with a simplified approach to standard setting that allows for timely review and updating of standalone elements, including:

- i. overarching policy settings to be established by the Department of Environment, Land, Water and Planning
- ii. technical standards to be determined by EPA.

#### Response: Support

Government will consider models to set outcomes-based standards through the review and reforms to the *Environment Protection Act 1970*.

Reviews of statutory policies currently underway will continue and revised statutory policies will be adapted to the new model as soon as practicable. The EPA will continue to seek stakeholder feedback and regularly evaluate how regulation is achieving objectives.

## Deploying a wider range of instruments

### Recommendation 16.1

Remove the current barriers to introducing a load-based licensing scheme (licence fees restricted to cost recovery and fee caps) from the *Environment Protection Act 1970* and actively consider their use, together with the full suite of economic instruments available to the EPA.

#### Response: Support

Government and the EPA will assess the application of economic instruments where they may be appropriate tools for specific problems, or to drive better performance and practice. Government will remove barriers to load-based licencing, to enable it to be considered as one possible tool to efficiently achieve desired regulatory outcomes as part of an integrated toolkit.

### Recommendation 16.2

Require EPA licensees to make emissions monitoring information available to the public.

#### Response: Support

Public information on emissions is essential for transparency, incentivising emissions reduction, increasing public awareness of human health risks, meeting community expectations and informing regulation. Government will consider the best mechanism to require publication of emissions data while not imposing undue regulatory burden, and ensuring requirements are proportionate to the level of risk involved.

Requirements will be consistent with protection of commercially confidential information. The EPA will use digital technologies to report data in a way that is timely, accessible and easily understood. Implementation will be considered in conjunction with implementation of recommendation 20.2.

### Recommendation 16.3

The EPA work with the Department of Premier and Cabinet's Behavioural Insights Unit to design and test new, innovative approaches.

#### Response: Support

Behavioural economics and psychology are useful regulatory tools to proactively support compliance and improve practices. In implementing reforms, and in ongoing evaluation, the EPA will test behaviour change methods as part of its regulatory toolkit in collaboration with the Behavioural Insights Unit and the Market Design area in the Department of Treasury and Finance.

## Strengthening mining regulation

### Recommendation 17.1

Strengthen and formalise the EPA's role in mining regulation under the *Mineral Resources (Sustainable Development) Act 1990* by:

- i. Requiring the EPA to advise on environmental considerations with respect to all mining licence applications, renewals and extensions, including on setting of bonds and environmental conditions
- ii. Requiring Earth Resources Regulation to refer mining work plan applications and variations to the EPA, including rehabilitation plans, for determination of appropriate environmental management conditions, consistent with the mining licence
- iii. Making the EPA responsible for compliance and enforcement of the environmental conditions in the mining licence
- iv. Requiring care and maintenance conditions be established for inactive but still licensed mine sites, with the EPA to be responsible for compliance and enforcement of these conditions, and creating a statutory duty for mining operators to inform authorities if mining operations become inactive
- v. Requiring Earth Resources Regulation to seek the EPA's advice on all applications for reductions in, or the return of, rehabilitation bonds
- vi. Making the EPA responsible for compliance and enforcement of environmental elements of remediation requirements in the mining licence conditions.

### Response: Support in principle

It is critical that environment and public health risks associated with mining are effectively and efficiently managed to increase community confidence and industry certainty.

Work plans are the main mechanism for setting environmental management conditions for mining, rather than mining licenses. As such, alongside the overhaul of the *Environment Protection Act 1970*, government will legislate requirements for mining work plan applications and variations, including rehabilitation plans, to be referred to the EPA for determination of appropriate environmental management conditions related to waste and pollution (i.e. controls to protect air, water and land quality and minimise noise).

Government will establish clear and easy to use environmental standards under the *Environment Protection Act 1970*, and clarify that the standards apply to mining over the lifecycle of a mine. The standards will be used to set environmental conditions in work plans.

The EPA currently has the power to inspect and audit active and inactive mining sites, and issue remedial notices and sanctions. The EPA and Earth Resources Regulation (ERR) will continue to deliver more joint inspections, particularly for high risk sites.

EPA advice will be sought to inform strategic decisions of government about the location of mineral exploration and mining among other land uses. The EPA will also continue to participate and advise on environment protection through community and industry forums regarding mining.

In 2015, the government introduced changes to the *Mineral Resources (Sustainable Development) Act 1990* that require risk-based work plans and enable the Minister for Resources to require operators to report on their performance against all the specified objectives, standards and acceptance criteria.

## Response: Support in principle

(continued)

Government will also deliver improved environmental and human health outcomes through implementation of current reforms to ERR and the actions within the Hazelwood Mine Fire Inquiry Victorian Government Implementation Plan released in June 2016, including:

- improving coordination through the Earth Resources Regulator Forum, which includes the EPA, to oversee implementation of the regulatory framework for the earth resources sector
- implementing an ERR capability strategy to improve workforce capability, culture and governance arrangements
- allocating \$7.7 million over four years to modernise earth resources regulation, as announced in the 2016–17 State budget
- developing a compliance strategy for the earth resources sector that clarifies the roles of different agencies including ERR and the EPA
- reviewing the rehabilitation bond policy for the earth resources sector to provide safe and stable rehabilitated sites, focusing initially on the Latrobe Valley coal mines. The EPA's advice will be sought in the setting and returning of rehabilitation bonds for all high risk mine sites. As part of the reform work being undertaken between the EPA and ERR, including implementation of the working agreement between the EPA and ERR, the two organisations will establish a clear understanding of what constitutes a high risk mine site
- the Ministerial *Statement of Expectations* for 2015–16 and 2016–17, which continues the ERR reform program and implementation of improved regulatory practice
- reviewing the earth resource regulatory framework in response to the Hazelwood Mine Fire Inquiry Report 2015–16 – Volume IV – Mine Rehabilitation to:
  - improve coordination of the regulation of the earth resource sites, including considering the potential role of the EPA's new preventative regulatory framework
  - reviewing the regulatory framework for the earth resources sector, including sanctions to deter non-compliance and improving post-closure monitoring. As part of this review, government will also ensure there are clear requirements for mining operators to notify authorities if mining operations become inactive.

## A broader and more effective local response

### Recommendation 18.1

Establish a new statewide network of local government environmental protection officers to address localised pollution and waste complaints, appropriately authorised under the *Environment Protection Act 1970* with clearly defined statutory roles and governance arrangements, including to streamline provisions relating to litter, noise and septic tanks.

#### Response : Support

Local response to pollution and waste complaints is an important role for government. Commencing in 2017, government will work with the local government sector to design and implement a pilot program of local government environment protection officers, working alongside the EPA and with authority under the *Environment Protection Act 1970*.

### Recommendation 18.2

Through the Department of Environment, Land, Water and Planning, bring a proposal to government to provide funding to local government to meet the additional costs of local government environment protection officers.

#### Response: Support

Government commits \$4.8 million to deliver a pilot local government environment protection officer program in 2017–18. Informed by the pilot, government will consider further investment to expand the program.

### Recommendation 18.3

Provide, through the EPA, oversight, strategic coordination, standard setting, technical support, training and capacity building to local government to support its expanded local protection role.

#### Response: Support

Oversight, strategic coordination, standard setting, technical support, training and capacity building by the EPA will be essential to support local government environment protection officers.

## Establishing effective governance arrangements

### Recommendation 19.1

Establish the EPA as an independent statutory authority with a Board as the governing body that has the following features, to be legislated as part of the EPA (Establishment) Act:

- i. appointed by the Governor in Council on the recommendation of the Minister for Environment, Climate Change and Water
- ii. comprising seven members including:
  - a. a member with qualifications or experience in science or engineering
  - b. a member with qualifications or experience in health, as nominated by the Minister for Health
- iii. with functions to:
  - a. determine the EPA's strategic direction
  - b. provide oversight of the EPA's corporate performance
  - c. provide oversight of the discharge of the EPA's regulatory approach
  - d. respond to, and report against, any statement of expectations from the Minister
  - e. provide advice to the Minister and respond to requests from the Minister
  - f. appoint the Chief Executive Officer and monitor the Chief Executive Officer's performance
  - g. establish subcommittees as required for good governance and appoint their members, and also members of the Science, Engineering and Health subcommittee.
- iv. a Science, Engineering and Health subcommittee of the Board that is:
  - a. appointed by the Board
  - b. chaired by a Board member with science or engineering qualifications and experience
  - c. comprising members of the board with science/engineering and health expertise and also external scientific, engineering and health experts, including Victoria's Chief Health Officer
  - d. to advise the Board.

### Response: **Support**

Strengthening and modernising the EPA's governance will ensure Victoria is protected by an independent environmental regulator. A multi member Board to oversee the authority, rather than a single person based structure, is vital given the EPA's complex functions and involvement in regulatory decisions with impacts on the environment and on public health. These changes will be included in the bill to legislate establishment and governance provisions, to bring the EPA into line with best practice public sector governance. A science, engineering and health advisory panel will be established to provide strategic advice to the Board.

## Recommendation 19.2

Establish the Chief Executive Officer of the EPA as a legislated position under the EPA (Establishment) Act:

- i. appointed by the Board
- ii. with applied science or engineering qualifications or experience
- iii. with responsibility for regulatory and operational decision making, and for the corporate performance and administration of the EPA, including the appointment of staff.

### Response: Support in part

Government will include the EPA's Chief Executive Officer (CEO) position in the bill to legislate establishment and governance provisions. The powers of the Authority will be vested in the Board with the capacity for the Board to delegate appropriate powers to the CEO.

It is vital that the EPA be a science-based organisation and while it is important that the CEO have skills and understanding of science and/or engineering, it is not appropriate to legislate required qualifications for the role. Doing so has the potential to limit the pool of experienced executives with strong executive leadership and regulatory skills. The preference for these qualifications in the CEO can be supported through:

- the Chief Environmental Scientist (who reports to the CEO)
- science, engineering and health advisory panel
- the recruitment process clarifying necessary and desired skills and experience
- through capability in the executive cohort.

## The EPA's capability needs

### Recommendation 20.1

Require the new EPA Board to initiate a full capability assessment linked to developing new legislation and statutory tools, as a basis for preparing long term capability and resource strategy.

### Response: Support

A thorough capability analysis will be essential to ensure that current and new functions of the EPA are supported by an effective and efficient strategy for capability and resourcing. The capability assessment will commence in 2017 and will be one of the first tasks of the new EPA interim advisory Board.

### Recommendation 20.2

Require the EPA to develop a digital data, technology, and analytics strategy, to help guide the EPA's regulatory decision making and investments.

### Response: Support

Data, technology and analytics are essential for a modern, science-based regulator. In 2017, the EPA will develop and commence implementation of a strategy to guide its activities more accurately and improve environmental outcomes over time. The strategy will set the direction for the EPA to achieve a coordinated and collaborative approach to data collection, analysis and reporting.

## Funding for the future

### Recommendation 21.1

Develop a new funding model for the EPA that provides greater revenue certainty and stability, and reduces reliance on funding sources with conflicts of interest, including consideration of options for the EPA to:

- i. continue to receive annual distributions from the Municipal and Industrial Landfill Levy, unless or until a decision is taken to reinstate annual budget appropriations
- ii. retain revenues from regulatory fees and user charges that are currently paid into the Consolidated Fund
- iii. no longer retain Prescribed Industrial Waste Levy revenues which should be directed instead into the Consolidated Fund
- iv. receive additional disbursements from the Municipal and Industrial Landfill Levy to replace market linked investment income replacement grants from the Department of Environment, Land, Water and Planning
- v. receive an annual budget appropriation that replaces litter revenue which should instead be paid into the Consolidated Fund.

#### Response: Support

Government will implement a funding model for the EPA that is more predictable and that supports the EPA to deliver its core functions and activities, ensure stakeholder confidence, maintain the EPA's independence and be adequate and transparent.

### Recommendation 21.2

Redesign the Municipal and Industrial Landfill Levy so that it better meets its regulatory objectives and to reduce incentives for illegal dumping, while maintaining a sustainable source of funding for environment protection activities.

#### Response: Support in principle

The landfill levy will remain an important driver to reduce waste to landfill, to support alternatives to landfill and for reinvestment in environment protection activities.

The design of the levy will be examined as part of a broader mix of policy and programs. This includes efforts to develop markets in resource recovery and programs that influence behaviour delivered by government, local government and Waste and Resource Recovery Groups.

Illegal dumping continues to be an issue in Victoria. There are a range of actions already underway which aim to reduce risks from illegal dumping and stockpiling, such as the EPA's Illegal Dumping Strikeforce program and the recent introduction of licensing for waste tyre storage. Government will also look at where other states have had success in reducing stockpiling through amending the collection and rebate mechanisms.

Many of the reforms supported in the broader government response will also help to curtail illegal dumping, including a prosecution strategy, and a network of local government environment protection officers.

### Recommendation 21.3

Reform the Prescribed Industrial Waste Levy (and the associated regulatory framework for transporting, storing and disposing of hazardous waste) to:

- i. curtail the growing problem of illegal dumping of hazardous waste
- ii. reduce mounting costs of additional compliance activity targeted to illegal dumping
- iii. avoid further erosion in the Prescribed Industrial Waste Levy revenue base due to avoidance activity.

#### Response: Support

For effective reform, the Prescribed Industrial Waste Levy must be considered within the broader hazardous waste management framework. Government has commenced a review of the framework, including the levy, to ensure it remains effective in minimising risks to human health and the environment into the future. Government will take into account other inquiry recommendations that will assist in reducing hazardous waste risks, such as strengthening prevention and a more effective local response.

### Recommendation 21.4

The Department of Environment, Land, Water and Planning prepare a business case to support an increase in the EPA's future resource levels, to enable it to fulfil the additional functions and responsibilities recommended by this inquiry, including:

- i. environmental health and scientific capabilities
- ii. activities to support a general duty
- iii. EPA coordination and oversight of local government environment protection officers
- iv. land use planning expertise
- v. investing in up-to-date information, communication and surveillance technologies.

#### Response: Support

The Andrews Labor Government has committed \$45.5 million in 2016–17 and 2017–18 to enable work to commence immediately to deliver a timely, systematic and effective program of reform, informed by engagement with community and industry.

This funding will initiate historic reforms to the EPA that will ensure protection of Victorians and our environment into the future.

## Next steps

This government response commits to a significant program of reform for the EPA and government that will transform environment protection in Victoria over a number of years.

### Key next steps include:

- Introduce a bill to Parliament as soon as practicable in 2017 to legislate provisions relating to the establishment and governance of the EPA
- Introduce a bill to Parliament in 2018 to deliver a modernised and fit-for-purpose *Environment Protection Act 1970*
- In consultation with local government, commence development of a pilot program of local government environment protection officers authorised under the *Environment Protection Act 1970* in 2017, to ensure more timely local responses to pollution
- Commence the appointment process for a Chief Environmental Scientist for enhanced leadership and authoritative science communication
- Strengthen the EPA's environmental health capability
- The EPA interim advisory Board will commence operation in early 2017 to provide strategic advice and support to the EPA through this significant reform process and work with the current Chairman and EPA leadership
- The EPA will commence a capability assessment in 2017 to ensure current and new functions are supported
- The EPA will set out its approach to reforms arising from the EPA inquiry in an organisational strategy to be in place by 30 June 2017.

**ANDREWS LABOR GOVERNMENT RESPONSE TO THE  
INDEPENDENT INQUIRY INTO THE ENVIRONMENT  
PROTECTION AUTHORITY**

