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PART D

# WHAT INSTITUTIONAL ARRANGEMENTS AND CAPABILITIES ARE NEEDED TO SUPPORT THE EPA?



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#### CHAPTER 19

ESTABLISHING EFFECTIVE GOVERNANCE ARRANGEMENTS

ESTABLISHING EFFECTIVE GOVERNANCE ARRANGEMENTS

**KEY MESSAGES**

Good governance is fundamental for an organisation to perform effectively.

For a regulator, governance arrangements need to ensure independence, integrity of regulatory decisions and transparency, to support public confidence and accountability.

Current governance arrangements under the *Environment Protection Act 1970* are inadequate. In particular, the EPA’s decision making structure does not meet principles of contemporary governance.

The EPA needs a governing board that provides it with influence and strategic direction. The Board’s responsibilities must be clearly distinguished from those of the Chief Executive Officer, particularly relating to regulatory decision making.

The governance structure should also reflect the EPA as specialist, science-based regulator, and its key role alongside the Department of Health and Human Services in protecting human health.

The EPA also needs to be formally established as an independent statutory authority.

* 1. Introduction

*Strong governance strengthens the legitimacy and integrity of the regulator, supporting the high level policy objectives of the regulatory scheme and will lead to better outcomes.*1

Our terms of reference asked us to inquire into, report on, and present recommendations and options about the EPA’s current governance structure. Specifically, we examined whether the EPA can effectively and efficiently discharge its powers, perform its duties and implement its required functions under current governance arrangements.

One of the most consistent messages we received during our consultations with stakeholders – including discussions with the EPA Chairman and Environment Protection Board – was the need to fundamentally reform the EPA’s current governance structure. The formal arrangements provided under the EP Act have clear shortcomings.

We consider establishing a modern, fit-for-purpose governance structure for the EPA to be a key priority for action. As outlined in chapter 5, we propose the Government implement the new governance arrangements outlined in this chapter as part of our proposed EPA (Establishment) Act.

The governance structure needs to meet contemporary standards and principles, including Victorian public sector requirements, and also support the EPA in its future role. Governments, academics and international bodies have examined governance closely, to define key generic requirements for good governance for a public authority or regulator. Recently defined best practice principles for the governance of regulators2 provided a framework for our consideration of appropriate structures to support the EPA’s functions.

Throughout the report, we advocate that the EPA be a confident regulator – proactively developing and deploying its toolkit to prevent pollution and waste impacts on public health and the environment – and a mature and influential regulator – involved in whole-of-government strategic planning and providing early advice to support robust decision making. The EPA needs a governance structure that supports these objectives.

In part, the EPA’s influence will depend on the strength of its in-house expertise (chapters 6 and

1. ) and opportunities to be ‘at the table’ for strategic discussions within government (chapters 7 and 10). But its governance structure can also extend the EPA’s influence and authority – through the standing and expertise of external figures who play a role in the governance (for example, as Chair and board members), and through the networks that they can draw on for the EPA.

Our proposals for the EPA governance structure seek to address specific requirements as well as to meet the generic requirements of the Victorian regulatory environment and best practice principles, as outlined below:

* Whole-of-government requirements for public sector governance, including:
  1. oversight by external bodies reporting to Parliament3
  2. compliance with the duties of entities, Chairs, directors and public servants4
  3. entity financial management and reporting obligations5
  4. organisational compliance with legislation6 and government policy.7
* Consistency with internationally accepted best practice governance principles for regulators,8 in particular, elements dealing with:

1. integrity of regulatory decision making
2. governing body structure that provides for effective strategic direction setting and oversight of corporate governance, separate to regulatory and operational decision making functions
3. accountability and transparency.

* Specific governance features necessary to support the EPA’s authority and influence as a specialist science-based regulator with a responsibility for protecting human health (as clarified by our proposed legislated objective).

Importantly, these proposals for change are about positioning the EPA for the future and do not reflect the capability or diligence of the current, or indeed previous, EPA Chairmen, or

others involved in the EPA’s governance arrangements. We acknowledge that they have shown enormous commitment to the organisation.

### The case for change

*How a regulator is established, directed, controlled, resourced and held to account*

* + *including the nature of the relationships between the regulatory decision maker, political actors, the legislature, the executive administration, judicial processes and regulated entities – builds trust in the regulator and is crucial to the overall effectiveness of regulation.*9

Governance is nominated as a crucial issue by both regulatory experts and by stakeholders. One in four submissions to the inquiry included comments on the EPA’s governance arrangements and the way the organisation operates. The majority of commentary on governance in the submissions advocated for an independent and accountable EPA with

a modern governance framework.10

Our consultations also revealed broad acknowledgement of the deficiencies in the EPA’s legislated governance structure. These limitations are well recognised by the EPA and the current Chairman.

A key problem is that all formal responsibility and authority is vested in a single person-based structure. The EP Act specifies that the Chairman is the ‘Authority’ with sole oversight and responsibility for the EPA’s regulatory activity. The Chairman is supported by a three-person advisory Board which has no power or decision making authority.11 Concentrated powers and functions in the Chairman has been a feature through most of the EPA’s 45 year operating  
life (see table 19.1 for the history of the EPA’s governance structure) but is now broadly acknowledged as neither consistent with modern governance principles nor practical or reasonable to demand of any individual.

The current Chairman has taken steps to address these issues. In 2009, a Chief Executive Officer (CEO) role was created to broaden oversight and accountability for the EPA. All powers or functions of the Authority (Chairman) have been delegated to the CEO (under section 68A  
of the EP Act). The CEO has no statutory foundation, even though he or she is effectively responsible for all regulatory decision making. The Chairman established a Chair’s Executive Forum (comprising the CEO and senior executives) to assist her oversight. The Chairman also accesses external strategic advice and oversight guidance through the following high level advisory committees:

* + - Risk and Audit Committee – to support the Chairman and CEO to meet obligations under the

*Financial Management Act 1994*

* + - People and Culture Committee
    - Science and Engineering Advisory Committee.12

These committees are valuable practical improvements to the EPA’s governance structure. They provide a broader range of views and skills to corporate governance functions, and support ‘continuous improvement in its people, culture, science and engineering.’13 However, it is clearly time for the EPA to have an appropriately modern, legislated framework that provides an enduring basis for good governance.

**TABLE 19.1:** HISTORY OF EPA GOVERNANCE STRUCTURES

|  |  |  |
| --- | --- | --- |
|  | Decision Making Role/s | Advisory Bodies |
| **1971** | **Three member Authority**   * Two experts in environmental control * One with administrative skill and experience | **Environment Protection Council** – 17 members comprising:  Experts with the following qualifications: environmental management (nominated by Minister of Mines), industrial waste chemist or industrial waste engineer (nominated by minister via CSIRO), town and country planner (nominated by Minister for Local Government), university professor or teacher of ecology or aquatic or marine biology (nominated by Minister for Conservation)  **Government representatives**, including from key agencies: Melbourne Metropolitan Board of Works, Chief Health Officer, Director of Fisheries and Wildlife, Soil Conservation Authority, State Rivers and Water Supply Commission (nominated by Minister of Water Supply), State Electricity Commission and Gas and Fuel Corporation (nominated by Minister for Fuel and Power), Ports and Harbour Division of the Public Works Department (nominated by Minister for Public Works)  **Sector representatives:** industrial waste (nominated by Minister from five submitted by Vic Chamber of Manufacturers), trade unions (nominated by the minister from five submitted by Victorian Trades Hall Council), local government (nominated by Minister for Local Government from five submitted by Municipal Association of Victoria), nominated by Minister for Agriculture, and representing the general public. |
| **1984** | **Single member Authority/ Chairman, plus**  Deputy Chairman (optional) | **Environment Protection Council** – not more than 12 members, with a special interest in preventing and controlling pollution and protecting and improving the quality of the environment. |
| **1997 to present** | **Single member Authority/ Chairman**  Deputy Chairman (optional) | **Environment Protection Board** – 3 members with skills, experience or knowledge that will assist in carrying out advisory functions to minister and Chairman, including on: administration, policies and strategic directions of the EPA; EPA’s corporate plan; national and international trends of significance in environment protection. |

19.2.1 Measuring up against best practice governance principles

T(he) OECD laid out a set of principles for the governance of regulators in 2014.14 Those principles rely extensively on the best practice principles developed by the Victorian Government in 2010.15 We drew on these principles in this chapter to consider governance arrangements.

In addition, we drew on them as we considered role clarity16 and funding17 (chapters 5 and 21 respectively).

Our proposals for reforms to the EPA’s legislated governance structure account for the following principles.

*Independence and regulatory integrity*

A regulator must conduct – and be seen to conduct – its regulatory decisions and functions with integrity and impartiality to ensure confidence in the regulatory regime. It must consider both its procedures for regulatory decision making and the institutional structures that define its relationship with the minister and the department. Regulatory integrity is also buttressed by accountability and transparency.

Governance structures that support regulatory integrity are crucial for the EPA because it regulates government and non-government entities, and makes decisions that can have significant impacts on the interests of industry sectors and the community.18 The EPA must have the public’s confidence as an independent authority making rigorous, objective and impartial decisions.

The EPA is currently established as an administrative office of DELWP. We consider that its formal establishment arrangements should be changed to reflect its operational independence.

*Governing body structure*

The appropriate governance structure depends on the nature of the regulatory task – in particular, its complexity and the volume of decisions – and the sectors subject to the regulation. When

a regulator has a separate governing body and chief executive, clearly defining the levels of decision making and their allocation between the governing body and the chief executive (or management levels) is important.19

The OECD identifies three main governance structures for independent regulators:

* + - Governance board model – the board is primarily responsible for the oversight, strategic guidance and operational policy of the regulator, with regulatory decision making functions largely delegated by the chief executive officer
    - Commission model – the commission itself makes most substantive, regulatory decisions
    - Single member regulator – an individual is appointed as regulator and makes most substantive regulatory decisions and delegates other decisions to his or her staff.20

We did not consider the single member model, because this replicates deficiencies in the current structures. In particular, it does not provide the EPA with important oversight and guidance on strategic direction.

We considered the commission model because of its potential to address some elements of the EPA’s regulatory decision making task. Specifically, it provides a capacity for hearing matters and adjudication. But we rejected the commission model for several reasons. First, we concluded that the existing mechanisms for the Victorian Civil and Administrative Tribunal to review EPA decisions are appropriate and that further special provision for internal hearings or reviews

is not required. Second, commission model is of limited value for most EPA decision making, which is delegated to authorised officers and involves technical staff, including often a range of inputs from internal scientific and technical experts. Third, like the single member model, the commission model does not generally provide for corporate governance and strategic direction setting functions. We consider these are the most important features to be added to EPA’s governance structure.

We consider that the board model best provides the EPA with a governance structure that provides strategic direction and oversight, and brings to this a range of expertise and experience. These functions are best located in a body that is not engaged in day-to-day

operations or regulatory decision making. While the board would oversee the discharge of these responsibilities, regulatory decision making is best placed with the EPA CEO, with appropriate delegations.21

*Accountability and transparency*

*Regulators can avoid actual or perceived influences by simply being more open and transparent about their decisions. … Making such justifications or the reasoning behind the decision open to full public scrutiny is important to achieve not only good regulatory outcomes but also support more fundamental issues such as the rule*

*of law.*22

The EPA is accountable to three groups of stakeholders: the minister, regulated entities, and the public.23 Accountability that demonstrates the regulator is properly using its statutory powers and resources builds confidence and strengthens the regulator’s authority.

We consider performance evaluation to be a key element of accountability – requiring the regulator to track outcomes, be aware of the impacts of its regulatory actions and decisions, and be transparent about these. This helps drive internal improvements to systems and processes, and build confidence in the regulatory system.24

### A legislated governance structure for the future

*Improving the governance arrangements of regulators can benefit the community by enhancing the effectiveness of regulators and, ultimately, the achievement of important public policy goals.*25

There is a compelling case for legislative reform to provide the EPA with properly constituted  
and enduring governance arrangements consistent with best practice governance principles for regulatory bodies. Our recommendations also seek to formalise specific features that strengthen the EPA’s influence and authority as a specialist science-based regulator.

Our recommended governance structure addresses the acknowledged deficiencies of the current structure and will support the broader reforms proposed in this report.

In summary, we recommend including the following specific governance elements in the proposed EPA (Establishment) Act:

* + - create the EPA as an independent statutory authority
    - establish a seven member Board responsible for strategic direction, and oversight of corporate governance and the discharge of the regulatory approach – to include two members with specified qualifications or experience to support key elements of the EPA’s task (in particular, a member nominated by the Minister for Health)
    - establish a legislated Science, Engineering and Health subcommittee of the Board, with members including external experts and Victoria’s Chief Health Officer
    - legislate the functions of the Board and the CEO – and vest responsibility for all regulatory decision making in the CEO
    - specify that the CEO should have science or engineering qualifications or experience
    - establish a legislated role of Chief Environmental Scientist as part of the EPA executive, to support enhanced technical capability and advisory functions.

The focus on expertise is an important strand running through the proposed governance structure, reflecting our strong view of the EPA’s distinctive role as a science-based regulator. It underpins its capacity to influence and provide effective protection of human health and the environment. The governance structure provides an opportunity to communicate, support and enhance this role at the highest level.

### Clarifying the EPA’S STATUS as an independent statutory authority

*The EPA’s statutory independence and standing as an ‘authority’ is valued. The independence of the Environment Protection Board and the Authority under its Chief Executive Officer to impartially and objectively deal with environment protection issues is a key factor in its achievements to date and should be preserved in the future.* (Planning Institute of Australia Victoria submission, p. 1)*.*

Regulatory independence is primarily about ensuring the integrity of decision making processes

– in particular, that individual regulatory decisions are not subject to direction by executive government.26 The EPA must be seen as independent ‘… to maintain public confidence in the objectivity and impartiality of decisions’.27 This is particularly important for a regulator, such as the EPA, that deals with government entities on a range of issues, such as: licensing water authorities, requiring statutory environmental audits of contamination and issuing clean up notices,28 and assessing works approvals for major infrastructure.29

The EPA’s current status is as an ‘administrative office’ of DELWP. This status is not consistent with contemporary governance approaches for a public entity of this scale, which regulates both industry and government activities. We do not suggest that the current arrangements affect the integrity of the EPA’s decisions, but we consider its legislative status should reflect its

independence of operation, and therefore recommend the EPA should be formally established as a non-departmental statutory corporation ’public entity’ in its own right.

The EPA’s status under the *Public Administration Act 2004* (PA Act) would change from being an Administrative Office to being a ‘public entity’30 but we propose that EPA staff continue to be employed as public servants. As outlined by the Victorian Public Sector Commission, this  
would require an amendment of section 16 of the PA Act, to declare the CEO ‘a person with the functions of a public service body Head’ for the purposes of the PA Act.31 This approach has been adopted with a number of other public entities that require independence but where there is a case for employing public servants. Examples include the Victorian Auditor-General’s Office and Essential Services Commission. We consider it is important that EPA staff remain Victorian public servants to give them consistent employment and to allow them to move between the EPA and other parts of the Victorian public service.

The EPA’s responsibilities for financial management under the *Financial Management Act 1994* would not change. However, responsibility within the EPA would move from the EPA Chair and CEO to the proposed EPA Board and CEO, in accordance with the corresponding legislative obligations.

Independence is an important element for regulatory integrity, but it operates alongside other equally important principles for accountability applying to the EPA, as with all other public bodies:

*Accountability and transparency is the other side of the coin of independence and a balance is required between the two.*32

As noted in the Victorian Government guidelines: ‘a regulator’s ‘independence’ from government can never be absolute’, indeed, it ‘exists to achieve objectives deemed by government to be in the public interest and operates using the powers conferred by Parliament’.33

The EPA will remain accountable to the Minister for Environment, Climate Change and Water  
for performing its functions in accordance with its legislation. DELWP would continue to have an important role in supporting the minister in overseeing the EPA.

The EPA’s establishment legislation should be transparent about the powers of the Minister  
to request and receive advice from the EPA, and to appoint and terminate the appointment of

members of the governing body in specified circumstances.34 And also about the EPA’s power to advise the Minister in the absence of a request, on matters about protecting the environment, and on amendments to environment protection laws.

The capacity to provide advice to the minister is important. It ensures the EPA can provide frank and fearless advice35 as an apolitical, responsive, effective and accountable regulator.36

*The EPA would report directly to the Minister and would be required to advise the Minister without delay of any incident having potentially significant impact on the atmosphere, land or waters in Victoria.* (Monash Business School, Monash University submission, p. 11)

### Governing the EPA through a multi-member Board

We recommend changing the EPA’s corporate form to a seven member board structure. Key elements of the proposed board structure – that would be included in the establishment legislation for the EPA – are set out below:

#### Composition of the Board

* + - Board members and Chair will be appointed by the Governor in Council on the recommendation of the Minister responsible for the EPA (at present, the Minister for Environment, Climate Change and Water).
    - The Board will comprise seven members, including the Chair, who bring a range of expert inputs and skills relevant to the functions of the EPA.
    - Two of these Board members should have specified qualifications or experience: one in science or engineering, and one in health.
    - The Minister for Health nominates the member with health qualifications or experience.
    - The CEO attends all Board meetings but is not a member of the Board.

#### Functions of the Board

* + - The Board is accountable to the relevant minister (currently the Minister for Environment, Climate Change and Water).
    - Strategic role: The Board sets overall strategic directions for the EPA, and oversees the CEO in carrying out the Board’s strategic direction.
    - Oversight role: The Board oversees the discharge of the regulatory approach; oversees corporate performance, including risk management, financial management and effective use of resources; and ensures the EPA meets its statutory obligations as a public entity.
    - Advisory role: The Board responds to requests from the minister, and provides advice to the minister as appropriate.

#### Science, Engineering and Health subcommittee of the Board

* + - It is included in the EPA’s establishment legislation.
    - It is chaired by the Board member with science/engineering qualifications, and includes the Board member with health qualifications.
    - The Board appoints other members, including external experts and the Chief Health Officer.

Our proposed board structure enhances the EPA’s capacity for strategic decision making and for external influence. In particular, it supports the EPA’s authority as a science-based regulator and key source of expert advice for government and the community. These features are discussed further below.

* + 1. Building authority and influence

The board of a public entity needs, at a minimum, to comprise directors who collectively possess the capabilities necessary for effective governance relating to: strategy, administration and  
risk management;37 legal requirements for accountability, conduct, financial management, transparency, integrity, human rights and privacy;38 and upholding public sector values and duties of directors under the *Public Administration Act 2004*39 and related codes, including the Directors’ Code of Conduct.40

The EPA’s governance structure can also increase its authority and influence to addressing current and future challenges. By involving eminent and experienced board members, the board structure expands the EPA’s ‘thought leadership’, and brings additional gravitas and standing to the EPA as it advises both government and the community.

The Chair of the EPA Board is a critical leadership role for the EPA, that brings to the organisation standing and eminence, and who would enjoy the trust and respect of government, industry and the public. The Chair leads the EPA and its Board, and manages relationships with the CEO and external stakeholders.41

Our proposed board model reflects the feedback we received from stakeholders, who supported a strong, independent, highly skilled EPA Board and strong advisory committees:42

*An expanded, skills-based board would help to provide greater independence…*

(Professor John Stanley submission, p. 3)

*The MAV considers that the vision and strategic priorities outlined in the EPA’s current strategic plan are sound, however is it is suggested that … [t]he governance structure of the EPA be modernised to be a skills-based board.* (Municipal Association of Victoria submission, p. 23)

As well as the specified skills, Board members should bring a broad range of skills and experience consistent with best practice governance, for example:

* members who understand the regulatory environment, including market operations and the impacts of regulatory instruments
* members with industry experience, as a way of engaging and forming partnerships with regulated industries, as is the case with the current membership of the Environment Protection Board43.
* community members.

The Board will, as a matter of course, establish other subcommittees as appropriate including a Risk and Audit subcommittee, as required by the *Financial Management Act 1994*.

We consider it vital that the CEO attend all Board meetings, both to report to the Board and to ensure that the EPA’s operation is both informed by and responsive to the directions set by the Board.

*Science and engineering expertise*

Board members provide the EPA with access to state, national and international expert networks. Specifying members with science/engineering and health qualifications or experience complements our proposals to enhance staff skills in the applied sciences area and to elevate science and health expertise to the organisation’s highest levels. We recognise the EPA already derives some of these benefits through the current engagements with members of the Science and Engineering Advisory Committee (established by the current Chairman) and consider that this is a strong indicator of the value of our proposed new Board arrangements.

The proposed Board composition will support the EPA’s science-based regulatory role via:

* stronger strategic direction and authorisation internally, including expert input and oversight of scientific and technical strategies, environmental standards and organisational capabilities
* enhanced influence within government
* greater credibility and confidence in the EPA from those subject to its regulation
* a more authoritative and trusted voice in the community
* expanded expert networks within Victoria, nationally and internationally, with the potential to leverage others’ knowledge.

*Health expertise*

We recommend the Minister for Health nominate one member of the EPA Board, with health qualifications or experience.

*If the Victorian EPA is serious about strengthening its role in public health issues, it should add a health voice/expertise in its management and/or governance. Looking at the Victorian EPA’s organisational chart, there are no board members, executive officers, nor principal experts who hold public health or medical qualifications, and no health focus within its organisational structure.* (Doctors for the Environment Australia submission, p. 6)

This proposal supports the strengthened focus on the EPA’s role in protecting human health by:

* providing strategic leadership for the enhanced public health functions and input into EPA’s regulatory framework, as determined by the Board
* formally recognising the important ongoing links between the work of the EPA and of the health portfolio.

This approach has precedence in other Victorian legislation where cross-portfolio interests must be represented in governance structures. For example, under the *Mental Health Act 2014*, the board of directors of the Victorian Institute of Forensic Mental Health include members nominated by the Attorney-General and the minister responsible for corrections.44

*Science, Engineering and Health subcommittee*

To ensure that high order technical expertise relevant to EPA’s regulatory task and advisory roles remains an enduring focus for the Board, we recommend the EPA (Establishment) Act should establish a Science, Engineering and Health subcommittee of the Board. In general, subcommittees of the Board are a matter for the Board to determine. However, in this case, we consider this subcommittee requires a legislated status.

The Science, Engineering and Health subcommittee will provide strategic advice on the EPA’s science, engineering and health functions. It should be chaired by the Board member with science qualifications or experience, and include in its membership the Board member with health qualifications or experience. The other members should comprise pre-eminent technical and scientific specialists, and the Chief Health Officer.

* + 1. Legislated functions for the Board

The Board steers the EPA on behalf of the Minister and must inform the Minister of major risks to the EPA and measures to address risks. The Board is responsible for its own effectiveness as a governing body, subject to the obligations of Directors of public entities.45

We consider the EPA Board’s legislated functions should include:

* determining the EPA’s strategic direction, and overseeing strategic priorities (for example, through the Annual Plan and targets) and outcomes
* overseeing the corporate performance of the EPA, including approving budgets and business plans and monitoring performance and financial management
* overseeing the discharge of the regulatory approach
* responding to, and reporting against, any statement of expectations from the minister
* advising the minister and responding to requests from the minister
* appointing the CEO and monitoring the CEO’s performance
* establishing subcommittees as required for good governance and appointing their members, and also members of the Science, Engineering and Health subcommittee (to be established under legislation).

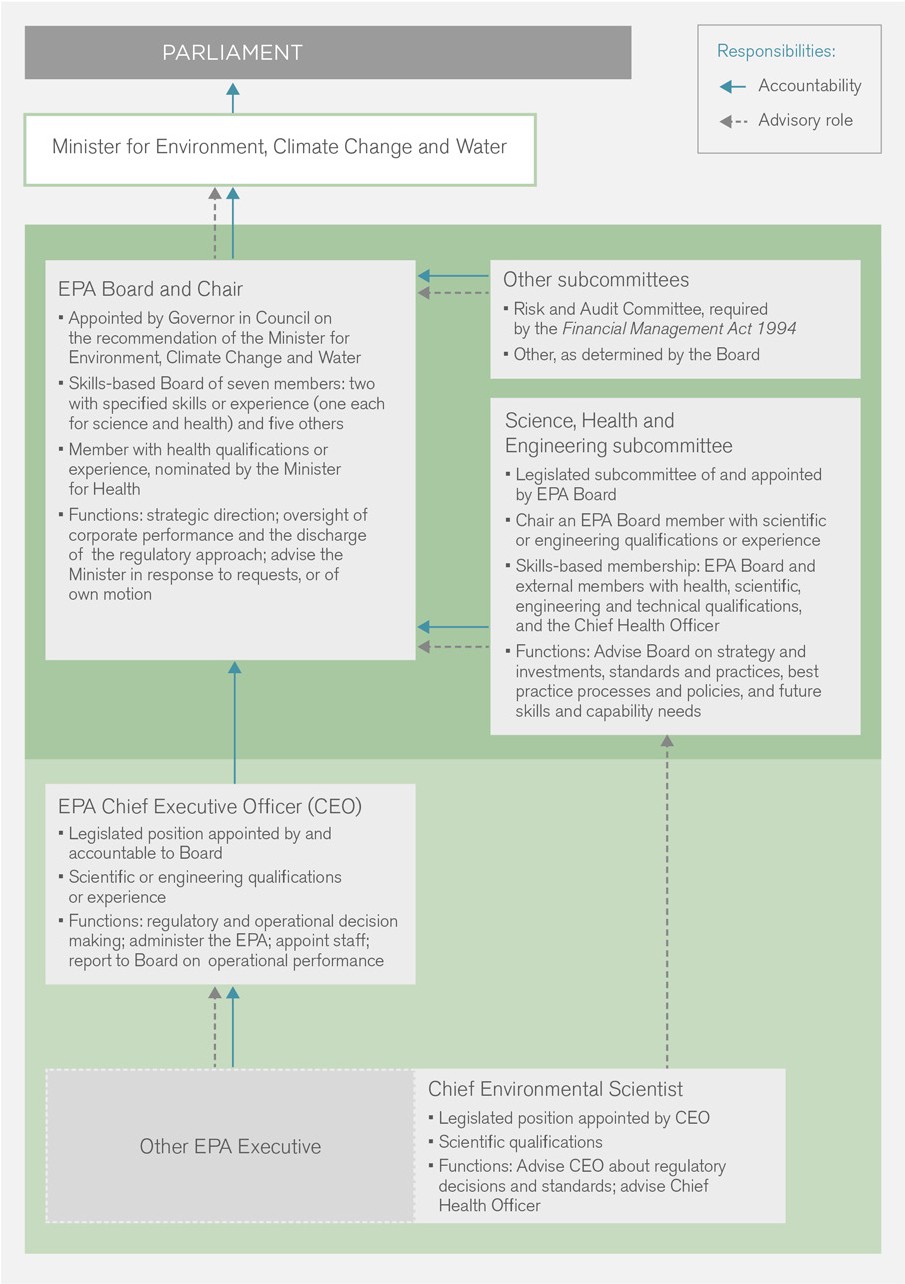
*Clear differentiation of Board and CEO functions*

The Board’s role is to provide strategic direction and oversight, including of the EPA’s management. But it does not participate in the organisation’s day-to-day management. That role sits with the CEO, who has primary accountability for employment of staff and for financial management.46

We also propose the legislation assign all regulatory decision making functions to the CEO. While the Board will set the regulatory approach and oversee the CEO as the primary regulator, formal responsibility for regulatory decision making would rest with the CEO and through delegation arrangements to EPA staff (see section 19.6.1). This split of functions is consistent with the majority of Victorian public entities established outside departments.47

A summary of our proposed governance structure for the EPA is at figure 19.1

**FIGURE 19.1** PROPOSED LEGISLATED ELEMENTS OF EPA’S GOVERNANCE STRUCTURE



### Administering the EPA

We consider that formal accountability for regulatory decision making must be clarified as part of the governance reforms. This is the EPA’s core function and the legislation must clearly direct the organisation and the community on who should hold primary responsibility.

Under the current EP Act, this statutory role rests with the Chairman but all the powers, duties and functions of the EPA are delegated from the Chairman to the CEO and to other EPA officers. We recognise this delegation was established to separate the Chairman’s oversight functions (sitting with the Chairman) from regulatory decision making functions.

The new governance structure and proposed establishment legislation provides an opportunity to set out the formal responsibilities of the Chair and Board, and those of the CEO, in particular, the CEO’s responsibility as the primary regulator.

* + 1. Primary regulator and CEO

The CEO is appointed by, and accountable to the Board.

We recommend setting out the CEO’s functions in the proposed EPA (Establishment) Act. Providing a clear and separate accountability for regulatory decision making strengthens transparency and accountability.

The CEO’s legislated functions should include:

* primary responsibility for regulatory decision making, with a power of delegation
* operational decision making
* ensuring Board decisions are implemented effectively and efficiently
* employing staff, including the Chief Environmental Scientist
* reporting to the Board on organisational performance.

The CEO is accountable to the Board for organisational expenditure, operations and administration pursuant to the Board’s strategy, policies and legal requirements.48 The CEO’s role is to manage the operations of the organisation and to provide a bridge between staff and the Board. The CEO implements Board policies and is responsible for achieving organisational outcomes and performance objectives.

*Requirement for science or engineering background*

We recommend the legislation specify that the person holding the position of CEO must have qualifications or experience in applied science or engineering. By doing so, the legislation embeds features that support the EPA as an effective science-based regulator – in this case, leadership by someone who understands the nature of the ‘business’. We do not expect, nor think it desirable, for the CEO to be a technical expert in a particular field. But the CEO must understand and be able to interpret to others (both within government and more broadly) technical issues about applying science and engineering to identify, assess, remediate and mitigate risk. The CEO must also be able to engage with and provide leadership to in-house experts and expert members of the Board.

The CEO is also the public face of the EPA and must be able to communicate with clarity and authority on these matters, including to provide advice and defend regulatory decisions.

*Delegation of regulatory decision making*

We recognise many regulatory decision making functions must be formally delegated from the CEO to members of the EPA Executive and appropriate EPA officers. The EPA’s technical and scientific activities – including works approvals, licensing and enforcing pollution offences – need specialist input from experts across the EPA (and externally where required). Similarly, specialists also provide input for review proceedings at the Victorian Civil and Administrative Tribunal or criminal proceedings involving the EPA.

Regulatory decisions should be made at the appropriate level within the EPA’s corporate structure, where the appropriate capability and knowledge of the relevant issue or problem sits. And decisions should be escalated based upon various risk factors, including consideration of potential public health and environmental impacts. But certain decisions must be retained by the person with primary accountability for regulatory decision making – the CEO. In short, while delegation can push decision making down within the organisation, appropriate management

procedures should ensure that decision making is escalated, including to the CEO, in accordance with relevant risk factors.

There will also need to be consideration of how appropriate powers are provided to the local government environment protection officers (see chapter 18) and EPA’s arrangements for oversight of and accountability for these.

With all delegations, the CEO should retain the power to make a regulatory decision, including where there is potential for significant impacts on public health or the environment, the matter is particularly complex or novel, or where the matter has the potential to set a regulatory precedent. It needs to be clearly understood and communicated that ultimate accountability rests with the CEO as the primary regulatory decision maker.

* + 1. Chief Environmental Scientist

We recommend establishing a Chief Environmental Scientist as a statutory function, appointed by, and reporting to, the CEO. The Chief Environmental Scientist will provide expertise at a senior level, and strengthen the EPA’s authority and influence by supporting the CEO in engagement with government and external parties.

We consider the role should be legislated to ensure transparency and consistency by securing the role into the future. We do not consider that it is appropriate or necessary for the Chief Environmental Scientist to have statutory powers49 but the legislation should detail the scope of its advisory role. In particular, the Chief Environmental Scientist will liaise with the Science, Engineering and Health subcommittee of the Board, and should attend all meetings as an observer. The Chief Environmental Scientist will also liaise with the Chief Health Officer.

Chapter 6 considers this role in more detail.

### Public access to information – transparency, accountability and evaluation

Best practice governance principles highlight the importance of transparency and accountability.50 Our consultations and social research revealed that the community views information as critically important for accountability – for judging and trusting the EPA’s performance. As outlined

in chapter 3, stakeholders want the EPA of the future to be more transparent, responsive and communicative.

From the point of view of government, the community and business, ‘comprehensive accountability and transparency measures actively support good behaviour and performance by the regulator’.51 In this respect, the EPA’s governance arrangements also need to keep pace with changing business and community expectations, including about the manner and extent of engagement with regulators. Changing technology and a greater awareness of public health and environmental impacts arising from pollution and waste is placing more pressure on accountability and transparency.

From the regulator’s point of view, increased transparency can have practical outcomes, through public understanding of the importance of environment protection,52 and improved regulatory effectiveness, including through the following:

*Increasing the transparency of, and regulated entities’ confidence in, the regulatory regime, can be expected to increase the level of voluntary compliance.*53

*Transparency in the actions and decisions of regulators is beneficial for preventing reviews of decisions.*54

Publication and reporting requirements are important for compliance with best practice principles of accountability, transparency and performance evaluation. The new legislated functions proposed for the EPA include both these elements – reporting and information provision, and evaluation (see chapter 5). These activities will become increasingly important with the introduction of a general duty (see chapter 12) and in response to changing community expectations.

In addition to the annual reporting requirements of the *Financial Management Act 1994*, the EPA publishes an Annual Plan and an Annual Compliance Plan, which set out its priorities for the coming year, including compliance and enforcement priorities. They also set out performance measures that the EPA subsequently reports on in its Annual Report.

We consider there is scope for expanded reporting and improved accessibility – including routine online updates. This approach measures EPA’s performance against objectives and provides information in the public interest. Generally, we support the following proposals from submissions:

* Publish prosecution summaries and results and compliance information on the EPA website55
* Publish EPA enforcement activities measured against key performance indicators to ensure contaminated land/emergency/environmental issues are managed adequately.56

Our proposed legislated functions for the EPA will include specific functions to improve accountability and transparency (see chapter 5), including to:

* report to, educate and engage with the community on managing risks and the condition of the environment; and
* evaluate the effectiveness of regulatory interventions.

### Recommendations

**RECOMMENDATION 19.1**

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

1. appointed by the Governor in Council on the recommendation of the Minister for Environment, Climate Change and Water
2. comprising seven members including:
   1. a member with qualifications or experience in science or engineering
   2. a member with qualifications or experience in health, as nominated by the Minister for Health
3. with functions to:
   1. determine the EPA’s strategic direction
   2. provide oversight of the EPA’s corporate performance
   3. provide oversight of the discharge of the EPA’s regulatory approach
   4. respond to, and report against, any statement of expectations from the minister
   5. provide advice to the minister and respond to requests from the minister
   6. appoint the Chief Executive Officer and monitor the Chief Executive Officer’s performance
   7. establish subcommittees as required for good governance and appoint their members and also members of the Science, Engineering and Health subcommittee
4. a Science, Engineering and Health subcommittee of the Board that is:
   1. appointed by the Board
   2. chaired by a Board member with science or engineering qualifications and experience
   3. 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
   4. to advise the Board.

**RECOMMENDATION 19.2**

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

1. appointed by the Board
2. with applied science or engineering qualifications or experience
3. with responsibility for regulatory and operational decision making, and for the corporate performance and administration of the EPA, including the appointment of staff.
4. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 17.
5. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing; Government of Victoria 2010, *Improving governance of regulators: principles and guidelines*, Melbourne.
6. For example, Victorian Auditor-General’s Office, Ombudsman Victoria, Victorian Commissioner for Privacy and Data Protection, Victorian Public Sector Commissioner.
7. Under the *Public Administration Act 2004* and the Public Sector Code of Conduct.
8. Under the *Financial Management Act 1994*, standing directions of the Minister for Finance and the *Audit Act 1994*.
9. For example, *Public Records Act 1973*, *Freedom of Information Act 1982*, *Protected Disclosure Act 2012*, *Equal Opportunity Act 2010*, *Occupational Health and Safety Act 2004* and the *Charter of Human Rights and Responsibilities Act 2006*.
10. Victorian Public Service Commission[, http://vpsc.vic.gov.au/,](http://vpsc.vic.gov.au/) for example, Gifts, Benefits and Hospitality Policy; Victorian Government Risk Management Framework, Conflict of Interest Policy; Policy on Executive Remuneration for Public Entities.
11. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing; Government of Victoria 2010, *Improving governance of regulators: principles and guidelines*, Melbourne.
12. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 15; Victorian Government 2010, *Improving governance of regulators: principles and guidelines*, Melbourne, p. 1.
13. The Strategy Shop 2015, *Report on submissions to 2015 EPA Inquiry*, Melbourne, December, p. 68.
14. Section 8, *Environment Protection Act 1970*.
15. EPA Victoria 2015, *EPA Governance Charter*, Melbourne, June, pp. 6–11.
16. EPA Victoria 2015, *EPA Governance Charter*, Melbourne, June p. 6.
17. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 16.
18. Victorian Government 2010, *Improving governance of regulators: principles and guidelines*, Melbourne.
19. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 30; Government  
    of Victoria 2010, *Improving governance of regulators: principles and guidelines*, Melbourne, p. 18.
20. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 98; Government  
    of Victoria 2010, *Improving governance of regulators: principles and guidelines*, Melbourne, pp. 54–8.
21. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 49.
22. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 72.
23. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 69.
24. Government of Victoria 2010, *Improving governance of regulators: principles and guidelines*, Melbourne, p. 37.
25. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 54.
26. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 79; Government  
    of Victoria 2010, *Improving governance of regulators: principles and guidelines*, Melbourne, pp. 44–8.
27. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 105; Government  
    of Victoria 2010, *Improving governance of regulators: principles and guidelines*, Melbourne, pp. 44–7.
28. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 15.
29. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 47.
30. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 49.
31. For example, Country Fire Authority’s Fiskville training facility http:// apps.epa.vic.gov.au/EnvAuditFiles/53V/71740-1/71740-1\_c.pdf (accessed 23 March 2016).
32. For example, Wonthaggi desalination plant[, http://www.epa.vic.gov.au/](http://www.epa.vic.gov.au/) our-work/current-issues/water-quality/~/media/Files/projects/Docs/ WA64404-Desalination-plant.pdf (accessed 23 March 2016).
33. Section 5, *Public Administration Act 2004*.
34. Victorian Public Sector Commission, *Employment arrangements for public entities*, p. 12.
35. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 81.
36. Victorian Government 2010, *Improving governance of regulators: principles and guidelines*, Melbourne, p. 26 and p.6.
37. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, pp. 55–6, 60–1; Victorian Government 2010, *Improving governance of regulators: principles and guidelines*, Melbourne, pp. 25, 30–3.
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39. Section 7, *Public Administration Act 2004*; see also Victorian Public Sector Commission 2015, *Code of Conduct for Victorian Public Sector Employees*, pp. vi, vii, 5.
40. Victorian Public Sector Commission, *Welcome to the Board: Directors’ guide to public entity governance*, pp. 9–10.
41. For example, under the *Public Administration Act 2004*, *Financial Management Act 1994*, *Freedom of Information Act 1982*, *Information Privacy Act 2000*, *Public Records Act 1973* and the *Disability Act 2006*.
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48. Victorian Public Sector Commission, *Welcome to the Board, Directors’ guide to public entity governance*.
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2. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 81.
3. The Strategy Shop 2015, *Report on submissions to 2015 EPA Inquiry*, December, Melbourne, p. 63.
4. Australian National Audit Office 2007, *Administering Regulation*, Better Practice Guide, Canberra, p. 6, quoted in OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 81.
5. OECD 2014, *The governance of regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p. 84.
6. Roger Hawthorn, Swinburne University submission, p.3.
7. Australian Contaminated Land Consultants Association submission, p. 11.



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#### CHAPTER 20

THE EPA’S CAPABILITY NEEDS

## THE EPA’S CAPABILITY NEEDS

**KEY MESSAGES**

The EPA needs multi-disciplinary capabilities alongside enhanced technical expertise to be effective as a mature regulator with a preventative and strategic focus. It should be an innovative problem solver, which is responsive and adaptive.

Getting the mix right – of skills, knowledge and resources – is critically important to deliver outcomes. And the right mix will change over time as problems change and tools evolve. The proposed general duty needs the EPA to have new and enhanced capabilities to maximise the general duty’s benefits to Victoria.

In particular, the EPA of the future must have the capability to:

* maintain high level scientific and technical expertise, informed by technologies and data analysis
* influence strategic planning and decision making processes within government
* evaluate the effectiveness of its regulatory tool kit and adjust it to reflect better regulatory practice and maintain currency with evolving knowledge and conditions
* provide education and information, including shared data, to businesses and the broader community, to support compliance and better manage risks.
  1. Introduction

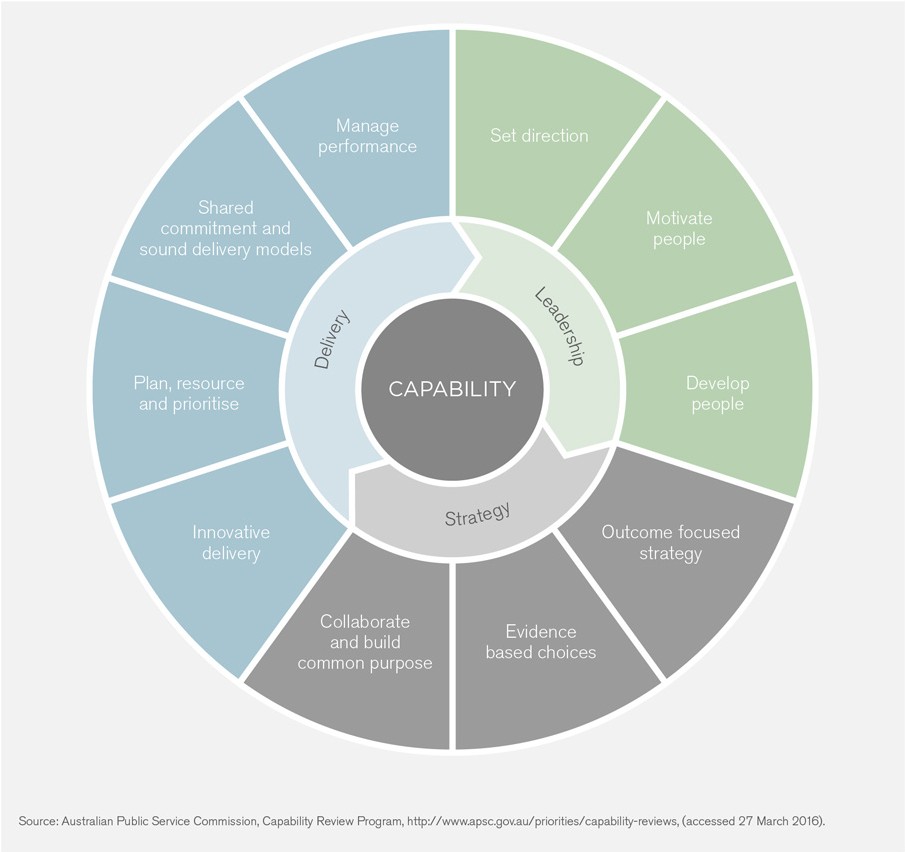
The EPA must have enhanced capabilities to meet the challenges that it faces now and in the future. These challenges are significant. They include the impacts of climate change, population growth and diffuse source pollution. They also include increased demands by the community, business and other areas of government. Our vision involves the EPA being proactive to prevent harm from pollution and waste. This will require the EPA to be many things, including influential, expert, assertive, innovative, responsive and collaborative. To be these things the EPA must invest in new capabilities, including new skills and new technology. It must also build on the knowledge and experience that it already holds.

The capability needs that we identify for the future do not reflect on the individual capabilities of current staff, whom stakeholders valued highly for their skills and expertise. It was not within our remit to attempt a detailed analysis of the EPA’s current capabilities.

Our findings on capabilities are initial signposts, which should be confirmed by a comprehensive assessment using government capability frameworks. We recommend that this should be initiated by the EPA Board once the new governance arrangements are in place. This capability review will need to take account of the particular requirements needed to deliver and operate the reforms identified for the EPA’s functions, new statutory tools and governance arrangements.

This initial survey of capability needs is informed by materials prepared by the Victorian Public Sector Commission (VPSC) and the Australian Public Service Commission (APSC).1 The VPSC identifies the following key elements: strategy and leadership, people and culture, engagement and delivery.2 The APSC notes that contemporary public sector agencies must have capabilities across all of the domains identified in its model to achieve objectives in the face of current and future challenges (figure 20.1). Capability, or a lack thereof, has direct implications on performance.

**FIGURE 20.1** KEY CAPABILITY AREAS



In considering capabilities for the future, we also drew on the feedback we received from the community and on the views of the EPA. We considered lessons from other agencies facing similar regulatory challenges, and we accounted for the changing digital environment.

The way that different capabilities interact and work together is fundamental to the success of an organisation. The EPA must take care to balance the skills and professional backgrounds of staff, and foster the right culture, to create a dynamic multi-disciplinary team. It must also continue to develop and invest in capabilities through time. Organisational culture plays a vital role in the development and deployment of capability – but this is best left in the hands of the future EPA’s Board, management and staff.

### Learning from others

As we considered the EPA’s shift to a more proactive and mature regulatory model, we also drew on the experience of other agencies that have successfully navigated similar changes, especially the Commonwealth Government’s Fair Work Ombudsman (FWO) and WorkSafe Victoria. Both agencies moved away from traditional compliance and enforcement approaches, to adopt

a ‘strategic enforcement’ model. WorkSafe also administers a general duty of care relating to occupational health and safety.

While there are significant differences between the EPA and these agencies, we can learn from the experiences of both in considering the EPA of the future. For example, the Fair Work Ombudsman’s strategic enforcement model identified the following strategies:3

* + Proactive detection measures – The FWO aims to devote 50 per cent of inspectorate resources towards proactive education and compliance activities.
  + Specialist investigative groups – These specialist groups are focussed on and organised around key risks and priorities. They observe industry patterns, locate specific issues and engage with the community to enhance strategic compliance efforts. These groups support and develop inspectors, legal and managerial staff.4
  + Strategic campaigns – The FWO introduced campaigns to check, improve and maintain compliance. It uses a risk-based and proportionate approach to determine which industries, locations and workplace relations issues to focus on. Intelligence gathering ensures campaigns are evidence-based and deliver the greatest benefit.5

These strategies are strongly connected with our focus on the need for technology, data and science related capabilities and operational and regulatory design capabilities.

From WorkSafe, we drew on the lessons from establishing a general duty of care for occupational health and safety. In particular, the review of the Occupational Health and Safety Act identified the range of skills inspectors must possess to determine what constitutes compliance and to engage with duty holders.

*The inspector has to be, variously, an expert at hazard identification and risk assessment; an expert at systems engineering; an expert at microeconomics; competent at statutory interpretation; and have skills as a diplomat/negotiator/ mediator. He/she also has to have a fairly thick skin, given that site inspections are often unpopular events with duty holders.*

*It is, therefore, vital that inspectors be well trained (and kept up to date), well- instructed about their tasks, well-advised about the legal parameters within which they operate, well-resourced, and well-supported by their managers and peers.*

*Above all, inspectors need to feel confident about their powers and about the back-up available to them from the Authority when required. It is also essential that, once an inspector has made a decision, he/she participate fully in any review of the decision, and be kept informed about decisions made with respect to any prosecution based on that decision.*6

This highlights the importance of operational, science and education related capabilities for the EPA as well as the need for a multidisciplinary approach.

We also considered the growing importance of data and digital technology for the government. Governments around the world recognise the importance of this digital transformation:

* The UK Government has located its Digital Service within the Cabinet office.7
* The US Government has launched a Digital Government Strategy. The US EPA submitted the EPA Open Data Implementation Plan, which recognises the importance of open data and delivering digital services.8
* The Australian Government has a Digital Transformation Office in the Department of Prime Minister and Cabinet.
* The Victorian Government has recognised the benefits that data and digital technology can provide, by establishing Enterprise Solutions9 and Data.Vic.10

### Identified capability needs

Our proposed EPA of the future must undertake a range of activities that seek to anticipate risks and prevent harm to public health and the environment. This task requires an increased ability to:

* influence strategic interactions across government
* support compliance, including by educating businesses and the broader community, and by providing training and support for local government
* design, evaluate and update regulatory standards, tools and instruments.

That is, the EPA must be a trusted source of information, and a scientific and technical expert with a depth and breadth of skills. This requires increased capability to:

* monitor and scan to identify pollution and waste as it occurs, and anticipate future pollution and waste issues
* use data, analysis, science, research, networks and partnerships to understand the risks of harm to health and the environment.
  + 1. New or enhanced ‘knowledge and skills’ capabilities A multidisciplinary approach and working with others

The success of the EPA relies on a multidisciplinary approach. For example, strong regulatory

design and problem solving that results in the application of an economic instrument relies on scientists and modellers working closely with economists, policy officers, lawyers and operational staff.

The EPA’s current five year plan focuses on building strong partnerships with industry and the community.11 Partnering with business and the community helps the EPA gather and exchange data, leverage expertise and support compliance. Partnering with the community, for example in citizen science programs and through environmental improvement plans, may promote empowerment, trust and effective outcomes.

*The EPA must be visibly present to the community and take up opportunities presented to it to provide input into local government and community processes. The need to be at the coal-face interacting with the community needs to be valued by the EPA and be*

*appropriately resourced to provide this approach.* (Latrobe City Council submission, p. 2)

*The EPA also has an important facilitation and education role to help local government and business to most cost effectively meet their environmental obligations.* (Wellington Shire Council submission, p. 1)

There are many examples that demonstrate the merits of partnering within the public and private sectors to develop capabilities. Partnerships with business, such as industry placements and mentoring programs, may provide the EPA with opportunities to build its commercial, engagement and leadership capabilities as well as industry knowledge. Partnerships with regulators and

other parts of government, through secondments and job rotations, can help the EPA to expand its influence as well as identify a broader range of approaches to address complex issues and intractable problems, combining expertise, tools and information across government.

Empowering local government to respond to local pollution and waste complaints and issues (chapter 18) will require the EPA to develop an ongoing partnership and statewide support framework that builds the capability of local government environment protection officers in local governments. On its part, the EPA will complement local response by taking a system view of issues and applying resources to strategic problem-solving.

*Scientific and engineering capabilities*

Science underpins the EPA’s capability as an evidence-based trusted and influential authority. It needs comprehensive coverage of key pollution and waste issues. To be a multidisciplinary regulator the EPA must have a significant variety, depth and breadth of scientific, technical and engineering expertise. Recognising this, we propose the EPA needs to fill recognised capability

gaps in key pollution and waste issues such as waste, chemicals, major industries, groundwater, noise and odour (chapter 6). The EPA must also strengthen its environmental health capability, including with expertise in epidemiology and toxicology (chapter 6).

Given our proposal to increase its role in mining (chapter 17), the EPA may need more expertise on the pollution issues associated with the mining industry. Our proposal to introduce a registration scheme (chapter 12) will rely on the EPA having expertise on pollution issues associated with the industry sectors included in the scheme.

The EPA will need data scientists who are skilled in data collection, analytics, storage, sharing and management. They must know what technology to adopt, what data streams to use and how to apply the data.

The EPA needs scientific capabilities at senior levels and this will also strengthen potential career paths for specialist disciplines, improving capabilities in the long term.

*EPA needs to be led by personnel with strong scientific backgrounds and ensure it is resourced with experienced officers who can provide consistent advice.* (Latrobe City Council submission, p. 3)

The skills-based board, a Chief Executive Officer with scientific or engineering qualifications and a Chief Environmental Scientist will increase the EPA’s authority and influence. The EPA could also use the Senior Technical Specialist (STS) classification12 for positions such as ‘principal experts’ to help the EPA retain and recruit highly regarded staff with strong networks. The EPA could also expand its links with independent experts, universities and research facilities, as well as with regulators in Victoria and other jurisdictions to build its network of expertise and career paths for specialists.

*Influencing within government*

The ability to influence within government will greatly assist the EPA to manage risks and prevent harm to human health and the environment. For example, the ability to influence government decisions in relation to transport infrastructure could prevent harm to public health and the environment and reduce the costly management of pollution issues in the future. To exert influence the EPA must be connected within government. It must also be a trusted and authoritative source of information, so that it’s input and advice are sought by other government agencies. It must have the strategic ability to identify when and where to exert its influence to most effectively prevent harm.

The EPA of the future must be able to influence land use planning issues across Victoria. In particular, the EPA must influence strategic land use planning by working with the Metropolitan Planning Authority (and its successor, the Victorian Planning Authority) and also with local government.

To do all of these things, the EPA needs statutory planning skills and experience, as well as regulatory design and mature policy skills. The EPA can develop these skills, if necessary, via training and a formal secondment program to government departments.

*Regulatory design and problem solving*

The EPA will require strong regulatory design and evaluation skills.

*Essential to good regulation is the judgement to know which regulatory tools to employ in which combination for which issues. It also is important that those tools are selected and deployed confidently and decisively, and with an understanding and appreciation of the context in which both the EPA and the people it seeks to influence operate.* (Eric Windholz, Monash University submission, p. 5)

The EPA must have the capability to analyse information from the field, including from pollution reports, from other areas of activity within Victoria, and from other jurisdictions – to identify trends and emerging issues and assess risk levels. The scanning of other jurisdictions needs to encompass intelligence gathering on better practice tools and approaches, including potential collaboration with other Australian jurisdictions to foster innovation and data-sharing.

There also needs to be attention to evaluating the operation of EPA’s regulatory tools and approaches (noting that this is a proposed legislated function), accounting for the health, wellbeing, environmental and productive outcomes as well as economic and social factors. Consultations with businesses and the community will also be an important element of these evaluations – to assess regulatory burden and practicability, and to test expectations and perceptions of outcomes. Over time, these evaluation processes can help the EPA determine the need for changes or new tools.

The EPA needs economic skills, to understand the economic implications, including possible perverse incentives, of different regulatory tools. Internal economic capability will also help the EPA to identify pollution and waste issues that would benefit from the application of economic instruments. Access to economic design skills will assist the EPA to pilot economic instruments.

For example, the EPA could work with the groups such as the Centre for Market Design at the University of Melbourne, which supports policy innovation by applying economic design techniques to public policy.13

The future EPA will need to be an intelligent and creative problem solver, that is flexible, responsive and adaptive in response. This will involve testing regulatory approaches, running pilots, exploring alternative solutions and being willing to use the full range of its powers to pursue its objectives.

Stakeholders considered it important for the EPA to understand how regulation affects business systems. Partnerships with business can help provide this insight.

*It would be beneficial for the EPA to conduct its activities with more commercial awareness and backing of scientific evidence, in order to resonate with relevant stakeholders and provide authoritative advice.* (Law Institute of Victoria submission, p. 9)

The EPA may also need to enhance its legal expertise, to ensure it can take timely and decisive action against breaches, including the strategic use of prosecutions (chapter 13). This may involve being a smart purchaser of legal services, seeking a range of opinions, being willing to test precedents and being prepared to lose.

*Operational capability*

Authorised officers require a wide range of skills and are an important component of the EPA’s workforce. As the EPA has recognised, authorised officers need robust recruitment, training and appointment processes,14 as well as learning and development opportunities. Authorised officers also need a clear career pathway.

Introducing a general duty will affect the demand for and the capabilities required of authorised officers within the EPA. The EPA’s shift to focus on prevention will require its authorised officers to be effective in encouraging and determining compliance with the general duty. To do this authorised officers must have a wide array of skills. For example, they must be scientifically and technically proficient to identify and understand risks, they will require an awareness of the

commercial pressures and engineering systems that exist in the industry and they must be good communicators who can engage with duty holders to advise and educate them. They will require ongoing learning and development and multidisciplinary support from EPA’s specialists.

We propose introducing local government environment protection officers in chapter 18. The EPA will need to develop an ongoing partnership and support framework, involving capability building of ‘local government environment protection officers’ and enabling escalation between the

EPA and local government for pollution issues above a defined risk threshold. This support role would need to be ongoing, not just in the initial stage of development and implementation of the reform proposals. The EPA would need capabilities both in regional offices and head

office systems and services, to implement the suggested change, which would include ensuring consistency in approach. The capability review should consider the implications that this has for capability requirements.

*Education*

The EPA must be able to engage with stakeholders at various levels – including on regulatory or business reforms, works approvals, incident response and strategic work on hotspots. This will become increasingly important to support the larger cohort of entities regulated under the general duty and registration system. As noted in the Victorian Occupational Health and Safety Act Review:

*The function of maximising awareness of those rights and obligations is not merely ancillary to the Authority’s other functions: it is central and fundamental. Indeed,*

*it seems obvious that the education function is every bit as important as the enforcement function. The greater the spread of good information about what the Act requires, and how to comply with it, the less – ultimately – the Authority should need to do by way of enforcement.*15

Successfully engaging with and educating stakeholders requires skills in communicating, developing educational materials and translating information (including scientific and technical information) into practical guidance that is easily understood and proportionate to risk.

*AGL considers the EPA can play an important role in public education, by providing independent and trustworthy information to the community on pollution and environmental risk. Communications need to be tailored for the intended audience, to ensure that the format and content are relevant and can be easily understood, with the context for risk and any required action well explained.* (AGL Energy submission, p. 3)

Engaging and educating stakeholders relies on many of the technical capabilities discussed earlier. It may also benefit from:

* access to skills (both internal or external) in producing online learning and education tools and material
* behavioural economics concepts that ‘nudge’ stakeholders towards reducing their pollution and waste.
  + 1. New or enhanced technology

Improved digital data and technology capabilities present many opportunities for the EPA and others managing Victoria’s environment more broadly. An obvious benefit is having better information to successfully prosecute polluters. But these new capabilities can also provide

a more detailed, real time view of pollution, the environment, human health and their interactions.

This makes it easier for an environmental regulator to identify risks to the environment and/ or public health and to work with engaged communities, industry and government to develop solutions that more effectively prevent harm.

The EPA’s leaders must understand digital trends and technologies to support and encourage innovation. We recommend the EPA develop a digital data, technology and analytics strategy to understand trends and to guide decisions and investments in its data and technology capability. Developing a strategy also reduces the likelihood of ad hoc decisions and incompatible technology investments. The strategy should consider what role the EPA might play versus other government organisations, businesses and citizens in developing and managing new technologies.

*The suite of analytical, technological and scientific equipment available for use by EPA staff must be sufficient to enable them to conduct independent investigations at a world class level, and provide expert advice in response to queries from other government agencies and the public.* (Dora Pearce submission, p. 1)

The following sections discuss the benefits of improving the EPA’s technology and system based capabilities.

*Monitoring technologies to gather data*

New technologies offer opportunities to collect information more quickly, cheaply and from

a wider range of sources. The EPA needs the capability to identify and obtain those technologies that offer a more cost effective way to identify risks and manage harms. Sensors are getting smaller and cheaper. For example, infrared and remote sensors can be used to detect pollution, such as methane gas from buried waste or oil spills.16 And technologies that operate together, such as GPS and unmanned aerial vehicles or drones, may reduce the costs of collecting large amounts of accurate data from difficult to reach places that can be analysed to identify possible risks of harm. For example, in China drones are used to detect illegal emissions at night from factories, using infrared lights and thermal imagery.17

The EPA currently invests in monitoring technology, but strengthening Victoria’s ability to capitalise on the opportunities offered by new technologies to forecast and address emerging risks warrants further investment. This is particularly important for monitoring air quality (chapter

6) and supporting the EPA’s advisory role in emergency management (chapter 9).

*The lack of declared GQRUZs and an easily accessible database system means that the existence and impact of contamination from other ‘off-site’ sources is not being adequately recognised, which can lead to wasted effort in repeat investigation of contamination issues, and/or consideration of restoration of beneficial uses when this is inappropriate.* (Orica submission, p. 2)

*Data storage and sharing*

Making data publicly available can help promote trust, citizen empowerment and innovation. But it relies on significant data storage and sharing capability, and systems that make online information publicly available. Cloud computing and federated data systems open up new possibilities for data access and transparency. In addition to better enabling the EPA to share

data, it also provides the EPA with access to many other data sources. In order to promote citizen empowerment and innovation, data shared by different custodians should be compatible.

Governments increasingly recognise the benefits of improving access to information. Examples include the Commonwealth Government’s involvement in the Data.Start18 and GovHack19 programs, which encourage people to use government data.

Other data sharing options – including requiring businesses to publish their pollution emissions (chapter 16), publishing compliance determinations and prosecutions, the State of the Environment Report and environmental economic accounts – can promote transparency and accountability.

*EPA must be made accountable with their enforcement and be measured against (independently verified) Key Performance Indicators to ensure contaminated land/emergency/environmental issues are managed adequately. If such KPIs already exist, then EPA should consider publishing these statistics so Industry can better understand current successes and areas that require focus.* (Australian Contaminated Land Consultants Association submission, p. 11)*.*

*There is a need for better transparency and community education through direct easier access to EPA compliance determinations and prosecutions –* ‘Justice must not only be done but seen to be done.’ (Professor Roger Hawthorn submission, p. 3)

A state wide system for collecting, storing and sharing site history information for sites associated with potentially contaminating activities (chapter 14) will help inform and manage land contamination issues. This is a clear example of the way in which the strategic investment in data and digital capabilities will assist the EPA and the broader community to better identify and manage risks.

*Data analytics and connection with science*

Data analytics software may help the EPA to predict pollution incidents and the harms that arise. For example, programs can link real time spatial data about pollution and waste with spatial and temporal data about the impacts to public health and the environment. This may not only reduce the costs of tackling pollution, but it can also help the EPA design and evaluate its regulatory tools. Allowing public access to these results may also encourage research and development.

*Digital media*

Enhancing the EPA’s digital media resources, including its website, can help to educate duty holders, and reduce the regulatory burden of finding information. Information and guidance, including codes of practice for a general duty, should be easily searchable and accessible.

Digital media, including websites and social media sites, offer government organisations like the EPA valuable tools to inform, educate, communicate and empower the community and to demonstrate transparency and accountability. As they are adopted throughout the community, they influence how the community expects to be engaged and informed.

*Community expectations around communications and timeliness of communication are changing with the emergence of new digital and social media, and businesses and government agencies need to build capacity in these areas to ensure they can keep pace.* (AGL Energy submission, p. 3)

The EPA could use digital media technologies to engage with and inform stakeholders. The EPA will need the skills to use new digital media platforms. Digital media technologies can also be used to minimise regulatory burden. This approach is consistent with the Government’s shift to a digitally powered one-stop-shop (Service Victoria).

### Recommendations

**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 a long term capability and resource strategy.

**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.

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#### CHAPTER 21

FUNDING FOR THE FUTURE

## FUNDING FOR THE FUTURE

**KEY MESSAGES**

The EPA’s funding arrangements need reform, to reduce revenue volatility and uncertainty and to better align with its regulatory mission.

An annual State budget appropriation is the most common approach applied to environmental regulators in other jurisdictions to fund core public good functions, such as scientific research and environmental monitoring. These activities could also be funded through a broadly based waste levy, provided landfill levies are redesigned to better meet their environmental objectives.

The EPA of the future will need increased resources to support a wider range of functions, including enhanced scientific and environmental health capabilities, a stronger role in in land use planning and increased outreach services to inform a much wider group of duty holders under a general duty.

Local government authorities will also require additional resources to support our proposal to devolve responsibility for environmental issues that are more effectively addressed at

a local level.

* 1. Introduction

The inquiry terms of reference asked us to inquire into and report on the ability of the EPA’s current governance structures and funding arrangements to enable it to effectively and efficiently discharge its powers, perform its duties and implement its required functions.

For this inquiry, we considered:

* + best practice principles for funding an independent regulator, Department of Treasury and Finance fees and charges guidelines and the economic literature on best practice in setting environmental fees and levies
  + perceived problems with current funding arrangements identified by external stakeholders,  
    the EPA and DELWP
  + expert advice and reports commissioned by the EPA and DELWP on the EPA’s current cost base and future funding options, including the potential for increased cost recovery
  + resourcing levels and specific funding arrangements for environmental regulators in other jurisdictions with similar responsibilities
  + resource implications of our future vision for the EPA, which calls for a greater focus on prevention, increased expertise and risk scanning and increased authority and strategic involvement in areas such as land use planning.

### Current resource levels and funding arrangements

* + 1. Operating revenue

Over the past five years, the EPA’s annual operating budget, net of grants to other agencies1 has averaged around $72.5 million, albeit with some year-to-year variability. In 2015-16, the EPA budgeted for total operating revenue of $74.9 million.2

The EPA collects considerably more revenue than is available to it for operating purposes.  
In 2014–15, the EPA collected the following revenues:

* $73.5 million for the EPA’s core regulatory and environment protection activities
* $3.4 million in controlled revenue earmarked for environmental projects
* $4.7 million in custodial levy revenues applied to co-investment with industry to reduce waste and increase treatment of contaminated soils
* a further $169.3 million over which the EPA exercised custodial responsibilities only. These revenues primarily related to the Sustainability Fund. Responsibility for the fund was transferred to DELWP on 1 July 2015, so the EPA no longer collects these revenues.
  + 1. Funding mix and trends

The EPA currently derives revenue (see figure 21.1) from a mix of:

* government appropriations (currently in the form of specific purpose grants) and projects
* levies – predominantly on landfill waste
* fees – covering licences, permits, works approvals and environmental audits
* penalties and fines – for offences such as littering
* investment income, predominantly on balances in the Sustainability Fund.3

For the most part, the EPA does not have direct access to the revenue it collects from licence fees or charges for works approvals, nor does it retain most fines and penalties for environmental offences. Most of these receipts are paid into the Consolidated Fund. A notable exception is revenue from litter fines: the agency estimates around $4.7 million in litter fines will be issued in 2015–16.4

*General government funding*

The EPA has not received an annual appropriation from the State budget since 2012–13.

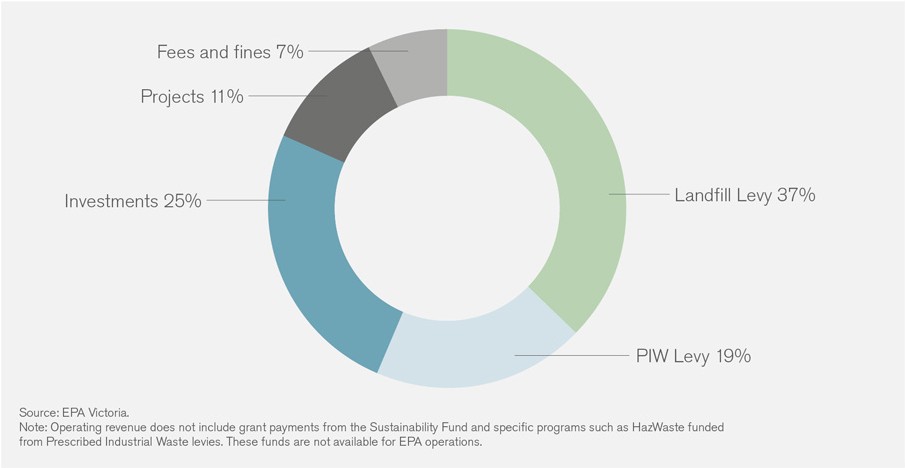
*Grants*

Grants from external sources are earmarked for specific projects or programs and include:

* Programs funded through DELWP – in 2015–16, these include $900,000 for River Monitoring and Assessment5 and $1 million for a four-year Yarra and Bay Action Plan.6
* Expenditure Review Committee (ERC) approved grants – in 2015–16, these include $2.1 million (from a total of $6.3 million over the five years to 2017–18) for an illegal dumping strike force, and $3.4 million (from a total of $5 million over the five years to 2017–18) for rapid response air monitoring following natural disasters and other major events that may affect air quality.
* Commonwealth Government funding of $100,000 for the National Pollutant Inventory – a public database that provides information on 93 substances being emitted to air, land and water and transported in waste.

While grant funding for specific projects varies from year to year, in total it has remained relatively stable at approximately $7–9 million each year.

**FIGURE 21.1:** EPA OPERATING REVENUE 2015-16



In 2015–16, the EPA received a grant from DELWP to replace the investment income it used to receive from being custodian of the Sustainability Fund. This grant was capped at $15 million for 2015-16 only. While these funds are not earmarked for specific purposes and can be used at the EPA’s discretion, the agency remains exposed to the risk that investment income returns will fall short of the $15 million cap. While ongoing replacement income arrangements are yet to be finalised, in future, it is expected that the EPA will receive only the actual returns generated from the investment of the fund.

*Levies*

The EPA currently draws the largest proportion of its operating income from the Municipal and Industrial (M&I) Landfill Levy and from Prescribed Industrial Waste (PIW) levies (box 21.1). There is also a general environmental levy on licence fees, although this is a relatively insignificant revenue source.

The EPA receives only a portion of the two waste levies. In 2013–14, for example, the EPA received 64 per cent of the PIW Levy but only 18 per cent of the total revenue from the M&I Landfill Levy (table 21.1).

**TABLE 21.1** ENVIRONMENTAL LEVY DISTRIBUTIONS TO EPA, 2013–14

|  |  |  |  |
| --- | --- | --- | --- |
|  | Total levy revenue  $m | EPA operating  revenue  $m | Proportion  to EPA  % |
| Municipal and Industrial Landfill Levy | 163.8 | 29.7 | 18.1 |
| Prescribed Industrial Waste Levy | 21.8 | 14.0 | 64.3 |
| Environment Protection (Licence) Levy | 0.3 | 0.3 | 100.0 |
| **TOTAL** | **185.9** | **44.0** | **23.7** |

Source: EPA Victoria.

*Fees*

The EPA charges regulatory fees to recover the costs of administering licences and permits as well as for activities to audit or approve environmental works proposed by manufacturers, land developers and other project proponents. In 2015–16, regulatory fees are expected to generate just under $15 million. The fees cover:

* licence fees issued to premises to accept or discharge waste
* permits issued for waste transport and septic tanks
* works approvals required for industrial and waste management activities that have the potential for significant environmental impact.

Although the EPA determines and administers these fees, the revenues are paid into the Consolidated Fund. The only exceptions are:

* fees paid to a municipal council for septic tank permits, which the council may retain
* fees environmental auditors pay to the EPA, which the EPA retains. These amounted to

$268,000 in 2014–15.

*Penalties and fines*

The EPA collects fines for a number of offences. These fines range from around $300–600 for littering or for noisy or smoky vehicles, through to penalties in the thousands of dollars for unlicensed emission of toxic substances or unlawful disposal of hazardous waste. Currently the EPA retains revenue from the litter fines only, councils retain penalty fines for offences related to littering, septic tanks or excessive noise. All other fines revenue is paid into the Consolidated Fund.

After provision for doubtful debts, litter fines revenues are estimated to yield around $3.6 million in 2015–16, or just under five per cent of the EPA’s operating budget.

**BOX 21.1** ENVIRONMENTAL LEVIES

*Municipal and Industrial Landfill Levy*

Introduced in 1992, Victoria’s M&I Landfill Levy is paid on all waste disposed of at licensed landfills. Levies are charged on a per-tonne basis, and rates are based on fee units, as set out in Schedule DA of the Environment Protection Act 1970. There are also regional differences (between metropolitan and provincial centres and rural landfill sites). Landfill levy funds are distributed quarterly between EPA, Sustainability Victoria and Waste and Resource Recovery Groups, with any surplus funds paid into the Sustainability Fund. In July 2015, the annual landfill levy distribution regulations were replaced by a ministerial determination. Total cash receipts were $186 million in 2014-15, of which: EPA received $34 million (or 18.2 per cent), Sustainability Victoria received $22.6 million (12.2 per cent) and Waste and Resource Recovery Groups received $9.6 million (5.2 per cent). EPA distribution in 2015-16 is   
$27.7 million.

*Prescribed Industrial Waste Levy*

The *Environment Protection (Amendment) Act 2006* introduced increased and differential levies on the disposal of Prescribed Industrial Waste (PIW) to landfill, to reflect the level of hazard posed by different categories of PIW. The type of waste an existing landfill can accept is set in EPA licences. Category A is the highest hazard and is prohibited from disposal to landfill. Category C is the lowest hazard. EPA receives only part of the PIW Levy revenue

for its operational budget. In 2015-16, EPA budgeted to receive $14.4 million (or 66 per cent of expected PIW revenue) – although this is at risk as a result of increased recycling claims. The remainder is reserved for special purposes through the PIW Minister’s Fund and the HazWaste/PIW Charter Fund.

*Environmental Protection Levy*

The Environment Protection Levy is a three per cent levy charged on licence fees for licensed premises and is paid over and above the licence fee. Unlike the licence fee itself, which goes into the Consolidated Fund, the EPA retains the revenue from the licence

levy for its operations. It currently raises less than $300,000 each year (or 0.4 per cent of operating revenues).

*Investment income*

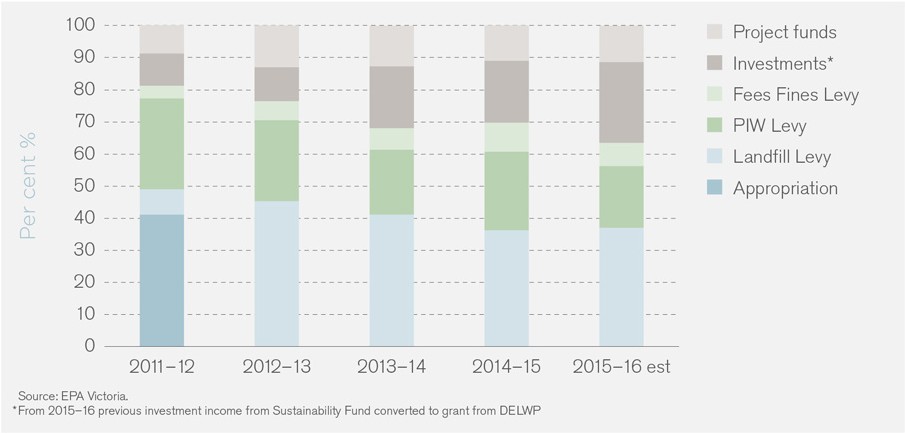
The EPA receives some income from direct EPA investments each year – a small amount earned on non landfill levy sources and an estimated $200,000 each year on quarterly collections of the landfill levy before it is transferred to DELWP. In 2015–16, income from direct EPA investments is forecast to generate approximately $3.8 million.

Before 1 July 2015, the EPA received investment income directly from the Sustainability Fund. DELWP now has custodial responsibility for the Sustainability Fund. But the EPA receives replacement grants, which are based on the fund’s actual investment income. The EPA expects revenue from replacement grants to account for 25 per cent of its operating revenue in 2015-16. Because replacement grants will fluctuate with investment returns, we classified this revenue as investment income for this report.

* + 1. Changes over time

EPA funding arrangements have fluctuated in recent years. Before 2012-13, the EPA received 40–50 per cent of its budget via direct budget appropriation, with PIW levies the next largest source (accounting for 19–28 per cent each year) (figure 21.2).

**FIGURE 21.2:** SOURCES OF EPA OPERATIONAL REVENUES (%)



In 2012–13, the Victorian Government replaced annual appropriations to the EPA with additional allocations from the M&I Landfill Levy. Allocations from this source rose from $5.9 million in 2011–12 to $30.7 million in 2012–13.

M&I Landfill levies rose markedly in mid-2010, when the Government introduced a schedule of stepped increases in levy rates. Since then, rates have risen significantly between 2010 and 2015 (table 21.2).

**TABLE 21.2:** SCHEDULE OF INCREASES TO M&I AND PIW LANDFILL LEVY RATES

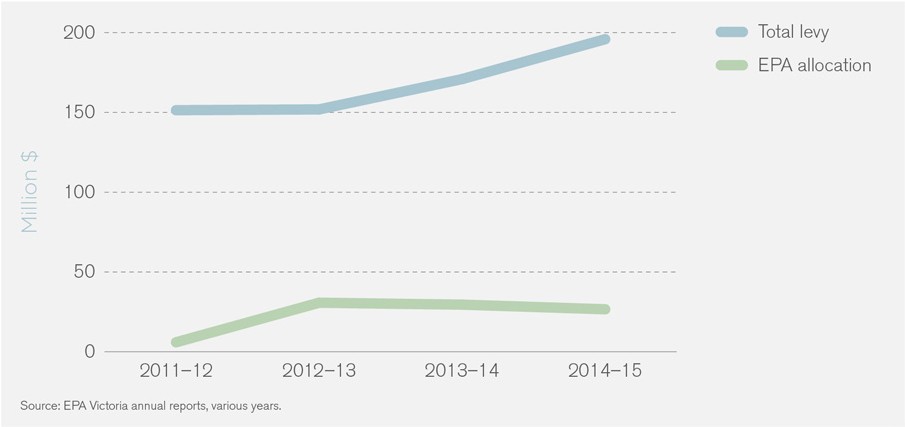
*($ per tonne)*

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Year |  | Rural | Metro and provincial | | PIW Rates – all regions | | |
|  | **Municipal**  **$** | **Industrial**  **$** | **Municipal**  **$** | **Industrial**  **$** | **Asbestos**  **$** | **PIW Cat C**  **$** | **PIW Cat B**  **$** |
| 2009–10 | 7.00 | 13.00 | 9.00 | 15.00 | 30.00 | 70.00 | 250 |
| 2010–11 | 15.00 | 25.00 | 30.00 | 30.00 | 30.00 | 70.00 | 250 |
| 2011–12 | 22.00 | 38.50 | 44.00 | 44.00 | 30.00 | 70.00 | 250 |
| 2012–13 | 24.20 | 42.40 | 48.40 | 48.40 | 30.00 | 70.00 | 250 |
| 2013–14 | 26.60 | 46.60 | 53.20 | 53.20 | 30.00 | 70.00 | 250 |
| 2014–15 | 29.30 | 51.30 | 58.50 | 58.50 | 30.00 | 70.00 | 250 |

Source: EPA Victoria 2014, *Future Funding Options – Environment Protection Authority*, Final Report, prepared for the EPA by PwC Australia, April, table 10, p. 62.

Theoretically, the switch from annual appropriations to a proportional allocation of the landfill levy gave the EPA access to a source of growth funding. But, in practice, the amount the EPA receives from the levy has not risen. Indeed, after the step change in 2012-13, distributions to the EPA have fallen in nominal terms (figure 21.3). Instead, the additional revenues have been accumulating in the Sustainability Fund.

**FIGURE 21.3** GOVERNMENT DISTRIBUTIONS TO EPA FROM MUNICIPAL AND INDUSTRIAL LANDFILL LEVY



At the same time, receipts from PIW levies have also fallen, and are projected to keep falling over the forward estimates to 2017–18 (figure 21.4). This result reflects lower levels of economic activity but also less prescribed industrial waste creation in response to the levy and in line with changes in Victoria’s industrial base. A rising incidence of illegal dumping and other strategies to avoid the levy is also contributing to falling revenues.

Substantially offsetting the fall in PIW levy revenue, investment income grew strongly between 2012–13 and 2014–15. The EPA derived 17–20 per cent of its operational budget from investment income over this period, predominantly from investing landfill levy balances in the Sustainability Fund. However, in April 2013, the Ministerial Advisory Committee on Waste and Resource Recovery Governance Reform recommended transferring custody of the Sustainability Fund from the EPA to DELWP because ‘… the management of the landfill levy presents the potential for a perceived conflict of interest in management of the funds by agencies that are the primary recipients of those funds, such as Sustainability Victoria being the administrator but also

a recipient of such funds’ (box 21.2).7

**BOX 21.2** TRANSFERRING THE SUSTAINABILITY FUND TO DELWP

To address potential conflicts of interest, and to streamline the complex institutional and governance arrangements for the Sustainability Fund, the Ministerial Advisory Committee on Waste and Resource Recovery Governance Reform recommended DELWP manage the

Sustainability Fund. The amending legislation – the *Environment Protection and Sustainability Victoria Amendment Act 2014* – also changed the mechanism for distributing landfill

levy revenue:

* The EPA pays all M&I Landfill Levy revenue into a General Landfill Levy Account (which is still part of the EP Fund). Each quarter, the EPA transfers these revenues to a new M&I Landfill Levy Trust Account held by DELWP.
* DELWP distributes landfill levy revenue from this new account.
* Landfill levy distributions occur via a ministerial determination instead of through regulations, so agencies receive more timely information about their distributions.
* DELWP pays any money remaining in the M&I Landfill Levy Trust Account at the end of each quarter into the Sustainability Fund Account.

Both the Premier and the Minister for Environment, Climate Change and Water must approve any money paid from the Sustainability Fund Account. The fund can be used to foster environmentally sustainable uses of resources and best practices in waste management, or community action or innovation to reduce greenhouse gas substance emissions or to adapt or adjust to climate change.

### The case for change

The combined effects of recent policy and budgetary decisions, ongoing economic trends and deficiencies with the regulatory framework for PIW has left the EPA with a set of funding arrangements that are increasingly volatile and uncertain. Some key revenue lines are also

poorly aligned to the EPA’s environment protection role. In particular, some stakeholders consider replacing annual appropriations with levy revenues has compromised the EPA’s independence.

EPA funding relies on future growth in landfill, when the intent of these levies was to reduce waste disposal to landfill.

Echoing these concerns, in 2013 the EPA developed a long-term financial plan which documented problems with the sustainability of its funding:

* key funding sources are outside the EPA’s control and generate highly variable revenue streams
* some funding sources involve an inherent conflict, impairing the EPA’s capacity as a regulator to make independent decisions without affecting its revenue base
* revenue variability impacts the EPA’s ability to budget for service levels and undertake environment protection activities
* strategic planning is also impacted by revenue variability and lack of certainty of funding.8

Further, when the government subsequently agreed to the Ministerial Advisory Committee’s recommendation to transfer the Sustainability Fund to DELWP, the EPA could no longer offset falls in other revenue sources with growing investment income from the fund. Believing that some 40 per cent of its operating revenues could be at risk, the EPA engaged PwC Australia to review its funding and recommend a preferred model.

PwC Australia identified the following key issues with the EPA’s funding arrangements:

* government policy changes have diminished the EPA’s control over investment income
* variability and risks affect key funding sources, particularly the PIW Levy revenue, which has fallen in recent years
* funding arrangements are complex and not well aligned with the EPA’s objectives, creating potential for perceived conflicts of interest.9

Each of these issues is discussed further below, together with the views of key stakeholders and the wider community.

* + 1. Policy changes

The policy decision to transfer custody of the Sustainability Fund to DELWP raised initial uncertainty about how the EPA would fill the revenue void created by losing access to investment income. An investment income replacement grant from DELWP seems to partially resolve this issue for 2015-16. In 2015-16, the investment income replacement grant has been capped at $15 million; in future years, the EPA expects to receive only the actual investment returns.

* + 1. Variability and uncertainty in key funding sources

The volatility and uncertainty of some of the EPA’s major revenue sources makes it difficult for the authority to plan and budget for core regulatory services, to maintain key scientific assets and capabilities, and to deliver multi-year strategies to address complex environmental problems.

*Investment income*

As future replacement grants from DELWP are yet to be negotiated but are expected to be based on actual returns, the EPA will continue to bear the risks of any market volatility. Currently,

year-to-date investment returns are significantly less than expected and the EPA now estimates a likely $7.6 million shortfall in its 2015-16 investment income replacement grant from DELWP.

We consider exposing as much as a quarter of the EPA’s total operating budget to market risk constitutes an unacceptably high degree of reliance on a volatile and risky revenue source.

Indeed, the projected $7.6 million shortfall represents more than 10 per cent of the EPA’s annual operating budget for 2015-16.

Further, such a high reliance on investment income is inconsistent with funding models for other regulators. The State Services Authority found only three of 69 regulators funded more than

10 per cent of their reported expenditure from investment income.10

*Prescribed industrial waste revenue*

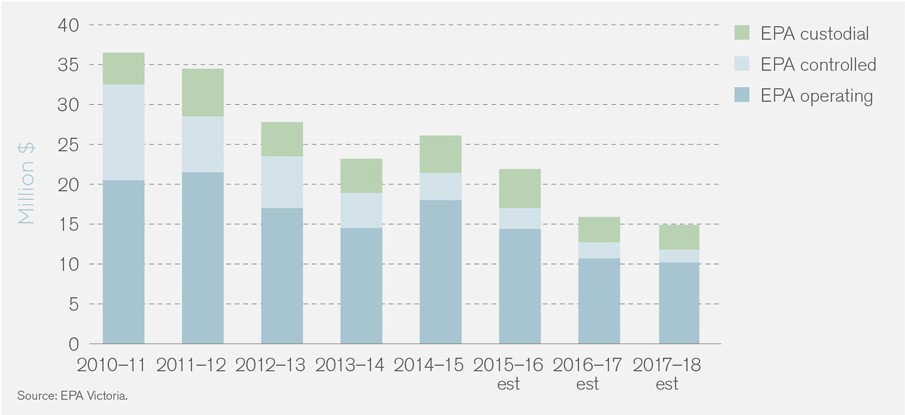
Revenue from the PIW Levy – which currently represents almost a fifth of EPA’s total operational revenue – is also increasingly volatile and uncertain. Recent court challenges to the levy are only adding to this uncertainty. In the current financial year, for example, the EPA advises that up to

$7.5 million in PIW levies is at risk due to litigation.

As well as year-to-year volatility, total PIW Levy revenue has fallen significantly over time, from over $34 million in 2010-11 to a projected $21.9 million in 2015-16. By 2017-18, the levy is

projected to generate just $14.8 million, with the EPA’s share falling to $10.7 million (figure 21.4). This trend reflects the combined effects of changes to Victoria’s industrial base, waste policy initiatives to reduce waste going to landfill and rising incidence of either illegal dumping or of waste management practices which are environmentally unsafe or undesirable.

**FIGURE 21.4:** PRESCRIBED INDUSTRIAL WASTE LEVY REVENUE



*Municipal and Industrial Landfill Levy revenue*

Although scheduled increases in the M&I Landfill Levy should ensure growth over time, revenue from this source is somewhat uncertain. Distributions are determined year to year, and they have been subject to government imposed savings.

*Grants*

Grant funding is also largely determined year to year. And while overall grant funding has been reasonably stable, these funds are typically earmarked for specific programs or one-off projects, and so cannot offset volatility in other revenue lines. Currently the EPA relies on ERC approved grants to fund strategic ‘hotspot’ projects – such as illegally dumped waste – that might be regarded as an environmental regulator’s core functions.

* + 1. Complexity and potential for conflicts of interest

*Complexity*

The EPA’s funding arrangements are complex, with the agency collecting, holding, managing and reporting on several revenue sources in addition to its own operating budget. According to PwC Australia, this undue complexity:

* reduces transparency of reporting
* makes it difficult to understand the EPA’s actual operational budget and its business activities
* reduces efficiency
* imposes additional cost, including costs of collecting, administering and reporting on funds.

The EPA is no longer responsible for administering and reporting on the Sustainability Fund, but it retains responsibilities for the PIW Levy, and also collects fees and fines that are passed on to the Consolidated Fund.

*Potential for conflict of interest*

Current funding arrangements are poorly aligned with the EPA’s objectives as an environmental regulator. In particular, its reliance on the M&I Landfill Levy, PIW Levy and litter fines may create perverse incentives and involve either perceived or actual conflicts of interest.

Landfill levies currently comprise more than half (56 per cent) of the EPA’s operating budget. While the policy objective of these levies was to reduce waste flows, achieving this objective should ultimately result in declining landfill levy collections. This leaves the EPA with a potential conflict between reducing waste and encouraging revenue-generating landfill.

For the M&I Landfill levy, any conflict may be more perceived than real, because it generates more revenue than the EPA needs. It is unlikely any fall in this revenue would affect the EPA’s funding. However, community perceptions about a conflict may be reinforced by design flaws that inhibit its effectiveness in driving behavioural change (discussed below).

More concerning is the significant contribution of litter fines to the EPA budget. Maintaining access to this revenue stream carries a real risk that the EPA’s resource allocation priorities will be skewed towards relatively low level environmental concerns.

* + 1. Community views

Stakeholder comments on the EPA’s resourcing – included in one in four submissions – indicated very little support for the current funding model. Several stakeholders were concerned about

the perverse incentives of the EPA’s increasing reliance on revenues from the M&I Landfill Levy where successfully reducing wastes could reduce revenues for the EPA’s operations.

*The current mix of funding is inappropriate and offensive to best practice public sector financial management.* (Ken Coghill et al, Monash Business School submission, p. 17)

*The distribution of the landfill levy appears inconsistent with the purpose for which the levy is collected; that is to promote and support recycling, waste reduction and waste management.* (City of Kingston submission, p. 4)

Others stressed the importance of secure funding to preserve the EPA’s independence:

*In order for the EPA to be truly independent it must have a reliable and sustainable funding base, otherwise EPA will always be at the mercy of changing attitudes towards the environment, an increasingly politicised topic.* (Community and Public Sector Union submission, p. 29)

Most participants suggested financing the EPA from consolidated revenue as a state government expense, in accordance with Victorian government and OECD principles and guidelines. At the same time, landfill levies and industrial waste levies should be paid into consolidated revenue.

*The EPA’s role is for the protection of all Victorians and the whole of Victoria’s environment and should be publicly funded rather than a cost recovery model.* (Qenos submission, p. 2)

Several submissions suggested better ways to use the landfill levies. For example the Waste Management Association of Australia stated:

*…If the issue is one of resourcing, it is recommended additional resources be engaged using the funding collected from the Landfill Levy. Currently the bulk of the levy money is kept within the Department of Environment, Land, Water and Planning (DELWP)*

*sustainability fund for projects which have not yet been identified. WMAA would prefer that a portion of this money is used to ensure EPA is adequately resourced.* (submission, p. 3)

A number of local councils argued they should receive a greater proportion of landfill levies to help fund the costs of investing in waste management and recycling, investigating and prosecuting illegal dumping offences, and rehabilitating legacy landfills. They saw the current

use of the levy as particularly unfair on councils, because councils are the source of substantial revenue to the EPA but receive very little financial support for their own programs to reduce pollution and greenhouse gas emissions. This is particularly sensitive for councils that perceive that the EPA’s operational limitations are the cause of cost shifting to councils.

* + 1. DELWP and EPA views

In a joint assessment of future funding options DELWP and the EPA stated a modern regulator must be funded in a way that

* ensures its regulatory independence
* is sustainable in the long term
* enables the regulator to deliver on its core functions.

The agencies noted ‘… inadequate or volatile funding for core services is a distraction which increases the risk to the community of unacceptable environmental practices going unchecked or inadequately monitored,’ and concluded:

*… the existing funding model is inadequate to meet the requirements of EPA’s regulatory services responsibilities and its environment protection role.*11

### Funding objectives and principles

We based our proposed funding arrangements for the EPA on the following broad funding objectives and principles.

* + 1. Funding objectives

Future funding arrangements need to ensure both sufficient resources for the EPA to carry out its core functions and also greater year-to-year certainty about its overall operating budget. The EPA needs greater revenue certainty to deliver multi year strategies, including developing and retaining appropriate scientific capabilities. In its report for the EPA, PwC Australia identified the following objectives:12

* **Sufficiency** – the ability of funding streams to meet operating needs sufficiently
* **Certainty** – the predictability of funding streams and potential to enable planning for the future
* **Simplicity** – the cost and effort to administer and comply with the funding model
* **Alignment of incentives and outcomes** – whether the model creates a conflict or has a positive/negative effect on the activities and operations of the EPA
* **Practicality** – ease of implementation and support from government and other parties.

The EPA and DELWP identified a similar set of criteria but added ’independence’ and ‘stakeholder confidence and acceptance’.

* + 1. Best practice principles for funding regulatory agencies

Department of Treasury and Finance (DTF) cost recovery guidelines set out criteria for determining the most appropriate source of funding for different types of government activity (table 21.3). Relevant elements of the guidelines support the case for:

* taxpayer funding of public good type activities (for the EPA, this might include basic scientific research and general environmental monitoring and reporting functions that cannot be attributed to particular firms or industries)
* cost recovery of private goods (for the EPA, examples might include works approvals and environmental audits)
* cost recovery of regulatory activities associated with controlling negative externalities, such as pollution (such as the EPA’s licence fees).

**TABLE 21.3:** TYPES OF GOODS, GOVERNMENT REGULATION AND CHARGING CONSIDERATIONS

|  |  |  |
| --- | --- | --- |
| Description | Examples | Charging considerations |
| ‘Pure’ public goods display the following characteristics:   * they are non excludable, which means that anyone can have access to them once they are provided, and * they are non rivalrous, which means that any person can benefit from them, without diminishing anyone else’s enjoyment. | National defence Street lighting | Given the wide ranging and non exclusive nature of the benefits, there is a strong case for funding pure public goods  from the community as a whole through general taxation. |
| ‘Selective’ public goods are public goods that benefit specific groups. For example, the groups may be differentiated by:   * area of interest (e.g. all Victorian beef producers), or * geographical region (e.g. wine grape growers in the Yarra Valley). | Basic  strategic research  Development of new crop varieties | A number of policy initiatives have been introduced to enable these type of public goods to be funded by the beneficiaries  – e.g. legislation that allows compulsory levies to be introduced on identifiable groups that benefit from research  and development.  Funds may come from the budgets of the government departments responsible for the relevant activity/benefit group, where there are external benefits to society. |
| Club goods are those where people can be excluded from its benefits at low cost (unlike a public good) but its use by one person (within the ‘club’) does not detract from its use by another (at least until congestion becomes an issue).  The key difference between a club good and (selective) public goods is that the ability to exclude implies the feasibility of charging for use. | Cable television  Private schools  National parks (where entrance fees can be charged) | Club goods may be provided (and funded) by member owned collectives (such  as an industry organisation).  In some cases, the public sector may also provide club goods, in which case charging the members of the ‘club’ can be an efficient way of recovering costs. |

|  |  |  |
| --- | --- | --- |
| Description | Examples | Charging considerations |
| Private goods display the following characteristics:   * they are excludable – it is physically, technically and/or legally possible   to prevent use by another party, and   * they are rivalrous, which means consumption/benefit by one party rules out consumption/benefit by another. | Birth certificate  Research and development tailored to a specific  party | There is a strong case for recovering the costs of a private good from those who benefit from it. |
| Merit goods have the property that the community as a whole desires a higher use of the output than would be likely than if they were charged at full cost. Similarly, some goods display positive externalities because they also benefit unrelated third parties. | Education Healthcare Exercise The Arts | There may be a case for charging at less than full cost – i.e. providing a government subsidy – because there may be both private and public benefits. |
| There is often a need for Government regulation in order to reduce the risk of harm or damage that may arise  to consumers, the whole community or the environment. | Regulation to address:  Negative externalities  Inadequate information  Market power | On economic efficiency grounds, there is a case for the administrative costs of regulation to be internalised into the cost structure of the regulated industry.  Practical considerations normally mean charges are imposed on businesses (but may ultimately be shared with consumers with costs shifting along the production line). |

Source: Department of Treasury and Finance 2013, *Cost recovery guidelines*, Melbourne. Also incorporates information formerly published in the ‘Guidelines for setting fees and user charges imposed by departments and central government agencies’.

### How other regulators are funded

While some regulators receive the majority of their funding through a direct government appropriation, others rely on a mix of appropriations, licence fees and other cost recovery arrangements, and industry levies. No funding model is likely to suit all regulators equally. Funding arrangements applied to other regulators nevertheless demonstrate the range of options that may be appropriate for the EPA.

* + 1. Other Victorian regulators

Victoria’s EPA is unusual in having no budget appropriation. The State Services Authority found that the vast majority (77 per cent) of Victorian regulators received at least some base funding from budget appropriations.13

Almost all Victorian regulators also relied on cost recovery charges in some way, including:

* regulatory fees, such as licensing and inspection fees charged to regulated entities to cover the cost of regulatory activities
* hypothecated levies or industry-specific levies for which the revenue is specifically collected to fund regulatory activities
* user charges to recover the cost of additional services, such as publications, data services, and the like.

Some regulators are fully funded by industry fees or levies. For others, cost recovery represents only a minor source of overall operating revenues.

Recovering the costs of industry regulation from regulated entities is considered appropriate provided those costs are reasonable and efficient. In Victoria the requirement to issue a regulatory impact statement for significant categories of fees and charges and to consult with affected stakeholders before determining the nature and level of those charges helps to ensure some level of accountability by regulatory authorities and may encourage them to improve their efficiency.

On the other hand, using general industry levies to fund regulatory activities does not clearly link the levy charged with the direct cost of providing regulatory services. General industry levies may be appropriate in certain circumstances, but they can be abused if there is little accountability back to industry for the cost and quality of the services funded.

* + 1. EPAs in other jurisdictions

Although some regulators receive a majority of their funding from industry, this is unusual for environmental regulators. Environmental regulators in the United Kingdom, New Zealand and most other Australian states receive the majority of their funding through direct government

appropriations, supplemented to varying degrees with licence fees and other cost recovery charges:

* For the UK Environment Agency, government appropriations contributed 62 per cent of operating revenue in 2012-13, with user charges, licence fees and penalties making up a further 32 per cent.
* In New Zealand, government appropriations made up 78 per cent of the environmental regulator’s funding, with user charges, licence fees and penalties making up around 20 per cent.
* In other Australian jurisdictions, only South Australia relies heavily on revenue from levies on waste, which comprise 54 per cent of its operating budget, while fees and charges contribute 41 per cent and grants a further 4.3 per cent. By comparison:
  + - 1. New South Wales receives over 86 per cent of its funding through government appropriations and another 9.5 per cent through grants
      2. Queensland receives around 87 per cent through government appropriations and another

6.4 per cent through grants

* + - 1. Western Australia receives over 93 per cent through government appropriations.14

### 21.6 Future funding options for Victoria’s EPA

We propose a new funding model be developed for the EPA that provides a more balanced mix of revenue sources, including an increased reliance on cost recovery and user charges. One possible revenue neutral option that could deliver increased stability and better align with the EPA’s regulatory mission is outlined in section 21.6.5 below.

In considering future funding options for the EPA, we assessed the potential contributions of the following revenue sources against the criteria of sufficiency, certainty, simplicity, incentive alignment, practicality, independence and stakeholder acceptance outlined earlier:

* appropriations
* levies (including the M&I Landfill and PIW levies)
* pollution taxes
* licence fees
* charges for services
* fines and penalties.
  + 1. Appropriations

A number of stakeholders believe the EPA should receive a significant portion of its funding through a direct budget appropriation.

Reinstating a significant funding contribution through direct government appropriations would simplify the EPA’s funding arrangements and better align with its core mission than relying on levies. It may also improve funding certainty if it reduces the EPA’s reliance on more volatile funding sources. This approach is consistent with arrangements in most other jurisdictions and would better satisfy community expectations for an independent regulator.

Restoring budget funding could be revenue neutral (at least in principle) if the Parliament reassigned revenues from the M&I Landfill Levy to the Consolidated Fund, and then redistributed these funds to agencies and activities (including the EPA) through direct appropriations.

We believe this option should be actively considered in the longer term. However, for the immediate future we acknowledge that reinstatement of a budget appropriation may not be practical as the current hypothecated levy revenues have had the support of both parties and successive governments over a number of years. There would also be ongoing issues of funding sufficiency and certainty, given competing claims on the Consolidated Fund.

* + 1. Levies

Currently, the M&I Landfill and the PIW levies are the EPA’s principal sources of levy revenue.

*Municipal and Industrial Landfill Levy*

Revenue from the M&I Landfill Levy is more likely to secure funding sufficiency and certainty for the EPA, given the political and budgetary impediments to reinstating a direct budget appropriation. It is also more practical, because it does not involve any changes to current legislative arrangements.

By contrast, the community is concerned about conflicts of interests (whether actual or perceived) relating to the EPA’s increasing reliance on levies. But of more concern to us are questions about whether the levy satisfies the objectives for which it was originally designed.

To increase community acceptance of the EPA’s ongoing reliance on landfill levies, we recommend redesign of the M&I Landfill Levy to better meet its regulatory objectives, and maintain a sustainable source of funding environment protection activities.

The levy’s stated rationale was to send a price signal to households, firms and waste management facilities to reduce disposals to landfills, and to encourage reuse and recycling.15 Yet despite substantial increases in the levy over recent years, waste disposal to landfill continues to grow. Indeed, over the past 10 years, the average amount of waste attributable to each Victorian every year increased by

29 per cent.16 Recovery rates for municipal solid waste have stalled at just 44 per cent in both 2011 and 2014, well below the *Towards Zero Waste* target of 65 per cent for the final year (table 21.4).

Evidence that the M&I Landfill Levy is having little impact on household behaviour feeds into community concerns that the levy’s purpose is to raise revenue, rather than reduce waste. A key criticism of the levy in relation to household waste is that there is no direct relationship between the amount of waste a household generates and the price that it pays for disposal. In its 2006 review of waste management arrangements in Australia, the Productivity Commission found that: ‘… most householders currently pay a flat annual waste disposal fee’. As a result ‘… the cost for a household of generating an additional unit of waste is effectively zero (until the bin is full), hence there is little incentive to curb waste disposal’.17

By contrast, levies for commercial and industrial waste, and for construction and demolition waste, provide a clearer price signal to generators of these waste streams, there is a direct relationship between the volume of waste and the price that must be paid. On the face of it, this may appear to have encouraged stronger recovery rates for construction and demolition waste. For example, in both 2010–11 and 2013–14 this sector recorded an actual recovery rate of 83 per cent, exceeding the *Towards Zero Waste* target of 80 per cent by 2014.

However, a key factor behind reduced disposal of construction and demolition waste to landfill is the widespread and growing incidence of illegal dumping. This appears to be driven largely by the desire to avoid landfill costs, including the rising cost of landfill levies. As the price of landfill rises, so too does the incentive for illegal disposal, with the risk of illegal disposal greatest when landfill is the only available or economically viable option for waste generators and disposers.

**TABLE 21.4:** SECTORAL RECOVERY RATES OF SOLID WASTE FOR REUSE, RECYCLING OR ENERGY GENERATION

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Per cent by weight of solid waste recovered for reuse, recycling and/or energy generation | 2010–11  projected  % | 2010–11  actual  % | 2013–14  projected  % | 2013–14  actual  % |
| Municipal solid waste | 53 | 44 | 65 | 44 |
| Commercial and industrial waste | 70 | 55 | 80 | 73 |
| Construction and demolition waste | 70 | 83 | 80 | 83 |

Source: Sustainability Victoria survey data.

Construction and demolition material accounts for approximately half of the illegally disposed waste identified by the EPA. In 2014–315, it cost the state an estimated $30.6 million, comprising

$19 million in foregone landfill levy, $10.5 million in clean up costs and $1 million in prosecution and enforcement costs.18 These costs could potentially outweigh the benefits of landfill

levies received.

Given these issues, we propose the Government redesign the M&I Landfill Levy, so that it better satisfies its primary regulatory objective of providing a financial incentive to avoid, reduce or recycle waste. A redesigned levy could help the Government achieve its waste reduction objectives and avoid the considerable financial and social costs of illegal dumping, while also providing a sustainable source of funding for environment protection. Stakeholders and the general community would also find the levy more acceptable as an ongoing source of funding for the EPA.

There may also be a case for sharing M&I Landfill Levy revenues with local councils. Local government authorities dislike the current arrangements for collecting and disbursing the levy. They must incorporate the levy into household waste disposal charges, yet little is returned to their local communities:

*At present our community is paying the landfill levy and seeing little in return as the money leaves the region and the utilisation of the funds is not transparent.* (Southern Grampians Shire Council submission, p. 9)

*Maribyrnong Council would like to see that all funds collected by the landfill levy are spent every year and that projects and initiatives from the funds are used to benefit the communities that contribute the funds.* (Maribyrnong City Council submission, p. 5)

*The distribution of the landfill levy must be significantly increased with a focus applied to new large scale resource recovery and waste management facilities across Victoria.* (Corangamite Shire Council submission, p. 8)

We propose in chapter 18 to expand some local environmental protection activities of local government, for which local authorities will require additional funding. A landfill levy revenue- sharing arrangement may help local government to meet these additional costs.

*Prescribed Industrial Waste Levies*

Falling revenues, and the rising costs of rebates and of defending rebate claims in court, make PIW levies an increasingly volatile and uncertain source of future revenue for the EPA. We recommend replacing PIW levies as a source of funding for the EPA. We also recommend redesigning the PIW Levy and the accompanying regulatory framework for transporting, storing and disposing of hazardous wastes, to minimise incentives for illegal dumping.

The volatility of PIW levy revenues reflects several factors. First, recycling rebates apply if waste deposited at a landfill is subsequently recycled, reprocessed, recovered or purified. Recycling PIW rebates, which lower the amount a landfill operator pays, can be made within three years of the waste being removed from the premises. This process creates uncertainty about whether and when rebate claims will be made.

Second, as well as managing the budgetary impacts of legitimate rebate claims, the EPA is increasingly defending the PIW revenue base against disputed claims. In 2015-16, for example, the EPA is defending a disputed PIW levy rebate claim of $7.5 million. Losing this case could cost the agency as much as 10 per cent of its total operating budget.

Third, the rising incidence of illegal dumping and other avoidance behaviour reduces revenues. It also suggests fundamental design problems with the PIW Levy and the associated regulatory framework for transporting, storing and disposing of hazardous waste.

The PIW price on landfill is intended to encourage greater waste recovery and recycling, but there will always be some hazardous waste streams that cannot be recovered economically. In these circumstances, high landfill levies are likely to drive increased illegal dumping and other avoidance activity. Evidence to other inquiries established the clear link between high levies and illegal dumping of hazardous wastes. For example, in a submission to the 2006 Productivity Commission Waste Inquiry, Hanson Landfill Services (sub. DR125) noted that the high levy imposed in Victoria on disposal of asbestos waste to landfill (then $26 per tonne) discourages decontamination of sites, and encourages disposers to illegally dump asbestos, or to hide it among other waste going to landfill.19

There is also evidence that some operators deliberately game the levy by establishing so called ‘recycling centres’ that collect waste but with no intention of significant recycling or reuse. And some recycling operations, while technically compliant, spread contaminants back into the environment in diluted form – for example, as ‘clean fill’ soil. The EPA is concerned that these practices – which are difficult to detect or effectively manage – are likely to result in a legacy of hazardous waste and contamination around Victoria for future generations to address.20

Further, when Victoria’s industrial waste landfill levy rates are significantly higher than those in other jurisdictions, waste generators have strong financial incentives to transport waste to states with lower landfill costs. The EPA reports around 2,000 approved interstate

movements of prescribed industrial waste each year, plus an unknown number of unapproved vehicle movements.

Aside from the increased risk of harm to the environment and to public health, these various avoidance activities represent significant revenue foregone to the state. They also impose substantial additional costs on the EPA and raise questions about whether PIW levies can be an ongoing source of funds for future environment protection activities.

We recommend mitigating these risks by redesigning the PIW Levy and accompanying regulatory framework for transporting, storing and disposing of hazardous wastes to:

* curtail the growing problem of illegal dumping of hazardous waste (including asbestos)
* reduce mounting costs of additional compliance activity targeted to illegal dumping
* prevent further avoidance-driven erosion in the PIW revenue base.

In the meantime, replacing PIW levies in the EPA’s budget with a more stable and sustainable revenue source would better align EPA funding with its regulatory mission, and reduce its reliance on an increasingly volatile and uncertain funding source. PIW levy revenues could be redirected into the Consolidated Fund, with the EPA receiving replacement funding via:

* an annual Budget appropriation
* an increased allocation from M&I Landfill Levy collections, or
* broadly equivalent revenues from regulatory fees currently paid into the Consolidated Fund.

Further, we consider it appropriate that the EPA should either be relieved of defending the revenue base against avoidance and evasion, or be funded explicitly for the additional litigation and enforcement costs.

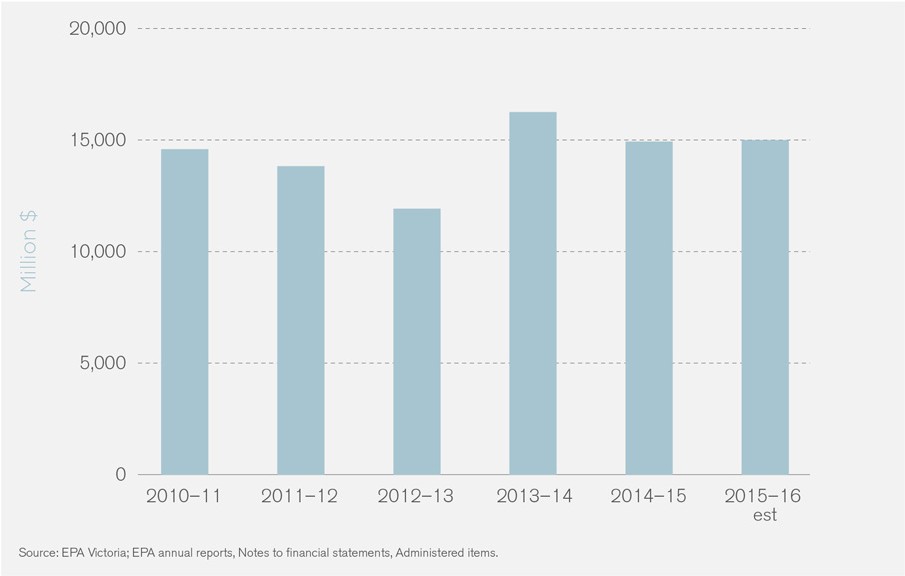
* + 1. Licence and other regulatory fees

We propose the EPA retain licence fees and waste permit charges it levies to recover the costs of administering its licensing and permit regimes. Currently, these revenues are paid into the Consolidated Fund.

We consider it appropriate for the EPA’s funding arrangements to reflect a greater cost recovery component. Provided costs are reasonable and efficient, greater reliance on cost recovery fees and charges better aligns the EPA’s funding with its core functions and improves accountability to regulated entities for regulatory services it provides. Licence fees and other user charges account for significant proportions of the operating revenues of environmental regulators in other jurisdictions – 32 per cent of the UK Environment Agency’s operating revenues, for example, and 41 per cent of the operating revenues of South Australia’s EPA.

Over the past two years, EPA regulatory fees (including fees for licences, waste transport permits and works approvals) netted $15 million to $16 million each year, representing 20–24 per cent of the agency’s overall operating budget. Figure 21.5 indicates the revenue that would be available to the EPA if it retained the regulatory fees that it currently administers on behalf of the state.

**FIGURE 21.5:** EPA REGULATORY FEES



Additional regulatory fee revenue over and above these amounts would be generated if the EPA introduces a second regulatory tier of registered businesses, as we recommend in chapter 12. We consider it appropriate for the EPA to retain these additional funds, to cover its

additional costs. We recommend the EPA also retain charges for other services that it carries out at the behest of industry. This approach is consistent with arrangements that apply to most other regulatory bodies that provide services on a cost recovery basis. Further, there is no in principle reason for paying these charges directly into the Consolidated Fund.

Including cost recovery revenues in the EPA’s overall funding model would contribute to revenue sufficiency and independence and better align with its core functions than the current funding mix. Efficient and transparent cost recovery fees give the EPA an incentive to recover the full cost of the services it provides. They also send a better price signal to its clients.

*Adequacy of cost recovery fees*

We propose better aligning the EPA’s licence fees and charges for works approvals and other regulatory services with the costs it incurs.

Following a review, the Environment Protection (Fees) Regulations 2012 introduced revised fees for the majority of EPA administered licences and approvals, including:

* works approvals fees
* licence fees
* waste transport permit fees
* environmental audit fees.

These revisions better reflected the EPA’s efforts in regulating each type of licensed activity, with base fees to incorporate risk as a factor in setting the fees. Other changes included:

* extending fees for environmental audits to section 53V audits that were not previously charged a fee
* simplifying the system of charging for works approvals
* simplifying categories of waste permit transport fees and incorporating a risk factor into the fees (with these fees falling around 38 per cent).

However, the recent review by PwC Australia found disparities remain between rates of cost recovery and estimated actual output costs for some core regulatory activities.21 The review found evidence of significant under recovery of some costs – with actual costs incurred to process works approvals estimated to be up to four times greater than the fee revenue collected against those outputs. Similarly, once all relevant related activities are included, the cost of administering licences may exceed the value of licence fees collected.

Further work is necessary to refine these cost estimates, but we consider there is scope for better recovering costs from works approval and licensing activities.

* + 1. Fines and penalties

We propose the EPA no longer retains revenues from litter fines and penalties for environmental offences. Retaining these revenues is a clear conflict of interest and aligns poorly with the EPA’s mission. The availability of these receipts may distort the regulator’s incentives and encourage it to dedicate a disproportionate share of its limited resources to a relatively minor environmental hazard.

* + 1. Proposed alternative funding mix

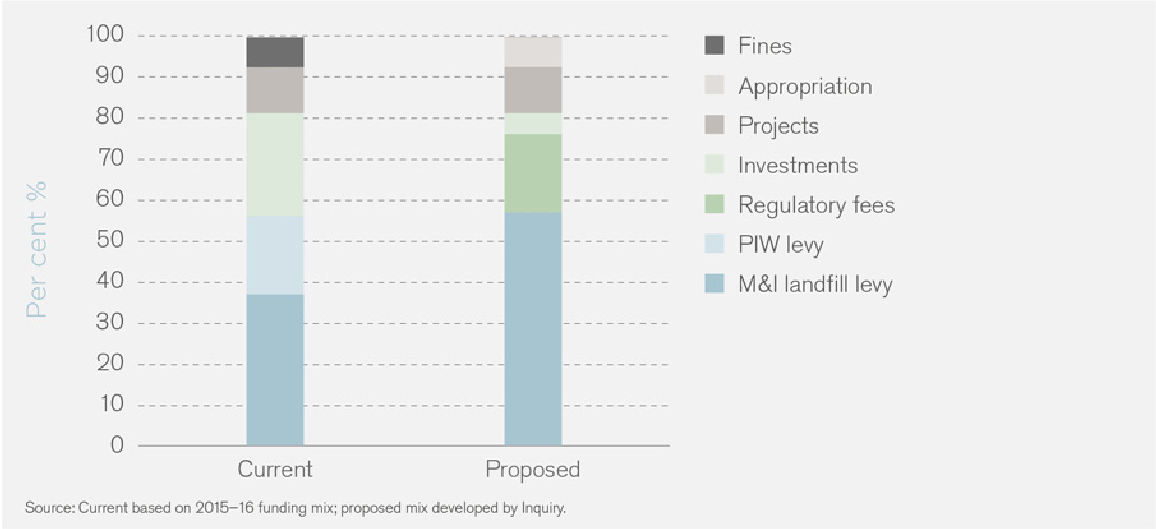
We recommend a new funding model for the EPA that provides for increased reliance on cost recovery and user charges and reduced reliance on investment income, PIW levies and litter fines which are poorly aligned with the EPA’s regulatory mission.

Figure 21.6 illustrates one possible alternative funding mix for the EPA. The current funding mix is based on the EPA’s 2015-16 operating revenues, the proposed alternative is based on

a broadly revenue neutral set of adjustments to funding transfers between the EPA, DELWP and the Consolidated Fund, as follows:

* EPA continues to receive annual disbursements from the M&I Landfill Levy that replaced annual budget appropriations in 2012-13.
* EPA retains regulatory fees currently paid into the Consolidated Fund (around $15 million).
* PIW levy revenues of $14.4 million currently retained by EPA are directed to the Consolidated Fund to offset the loss of regulatory fees.
* Litter fine revenues (netting between $3.6 and $4.7 million annually) are paid into the Consolidated Fund, and replaced by an equivalent budget appropriation (or alternatively by additional disbursements from the M&I Landfill Levy).
* Additional disbursements from the M&I Landfill Levy replace the $15 million investment income replacement grant provided by DELWP, with the EPA retaining only that portion of investment income that derives from its direct investments (around $3.8 million).

**FIGURE 21.6:** EPA FUNDING MIX: CURRENT AND PROPOSED



Importantly, these reforms ***do not*** address issues of funding adequacy, which are discussed below. However, the proposed alternative funding model reduces the EPA’s exposure to volatile and uncertain revenue streams and places the risks of revenue volatility with central government, where they can be better managed. It also resolves potential conflicts of interest that arise

from the EPA’s current reliance on PIW levies and litter fines. Finally, allowing the EPA to retain revenue from its regulatory fees better aligns revenue with its regulatory functions and is more consistent with funding models applied to other regulatory agencies.

### Adequacy of EPA Funding

In considering the adequacy of resources for the EPA to fulfil its proposed future mission, we focused on the resource implications of our proposed changes. In particular, we considered the implications of increasing the EPA’s focus on prevention and of introducing a general duty. We also considered:

* community views expressed through public consultation
* resourcing levels for environmental regulators in other jurisdictions
* the available evidence on the EPA’s current cost base, including the resource impacts of the EPA’s role in emergency management
* the scope for the EPA to improve efficiency.

Many stakeholders suggested that the EPA is already underfunded and that this has resulted in deterioration in its core capabilities, particularly in scientific analysis and environmental surveillance.

We consider the EPA will need more resources in the future to fulfil the broader suite of functions and responsibilities and deliver on the vision that we propose. This view is regardless of whether funding is adequate for current functions, or further business efficiency improvements can yield some savings.

A more authoritative EPA with a clearer focus on prevention will require:

* strengthened scientific capabilities and assets to underpin an enhanced environmental (including environmental health) surveillance and advisory functions
* an enhanced outreach function to support a much broader range of duty holders and a general duty
* enhanced support to local government, which will have a greater role in addressing local issues.
* investment in up-to-date information, communication and surveillance technologies
* greater strategic involvement in areas such as land use planning
  + 1. Community views

One in four submissions to our inquiry commented on finances and generally argued the EPA’s funding was inadequate.

*The EPA has a number of technically strong staff but is under resourced.* (Australian Contaminated Land Consultants Association submission, p. 10)

Many submissions recommended enhancing the EPA’s future role, which also implied a need for greater resources. These submissions variously argued for an increased EPA budget so it could:

* play an active role in community education, particularly in regional areas
* attract and keep outstanding scientists and specialist advisors to educate and influence all stakeholders
* maintain professional laboratories, extensive libraries and sophisticated database systems
* undertake major prosecutions without compromising its day-to-day operations
* invest in research and education, and in maintaining its reputation
* scope environmental challenges and lead a whole of government response to them
* collaborate regularly with overseas experts and pursue best practice
* continue to invest in internal IT to ensure its potential is realised
* market its brand and conduct advertising to complement its operational initiatives
* constantly train and develop its enforcement officers and other technical staff, particularly in basic toxicology and biology
* sustain a customer focused accessibility that includes regional offices.
  + 1. EPA resource levels in other jurisdictions

As the two largest and most industrialised states, New South Wales and Victoria could be expected

to have larger environmental protection agencies than the other states. In turn, New South Wales, with its bigger population and much larger geographic spread, would be expected to commit proportionately more resources to its EPA than Victoria.

Direct comparisons between the two agencies are difficult, given the functional and geographic differences. However, simple comparisons based on population shares may be instructive. In 2015–16, the NSW EPA had budgeted operating revenues of around $114 million (after deducting grants passed on to other entities). The equivalent for Victoria would be around $89 million.

* + 1. Current resource pressures

According to the EPA, it currently faces significant budgetary pressures, reflecting both revenue shortfalls and expense increases.

The key drivers behind this year’s projected revenue shortfalls are lower than expected returns on investments (which are now forecast to fall $7.6 million short of the original budget estimate) and up to $7.5 million in PIW levies at risk due to litigation.

Neither of these problems necessarily implies ongoing revenue inadequacy, but they highlight how the volatility of some of the EPA’s key revenue lines can affect year-to-year operations.

By contrast, the key drivers behind unbudgeted increases in expenditure – the resource implications of the EPA’s role in emergency management and increased litigation costs – are more likely to be ongoing.

*Emergency management*

We recommend the EPA receive additional funding to fulfil its emergency management role.

As part of the ‘all hazards, all agencies’ approach, the EPA is expected to be more involved in emergency management. We proposed a refocusing of the EPA’s emergency management role in chapter 9, however, the exact nature of the EPA’s role in this space is still evolving, and will remain a new and unfunded responsibility.

The EPA estimates that resourcing the emergency management function currently consumes an unrecoverable $2.5 million of its annual budget, significantly affecting its core activity.

*Litigation costs*

The EPA faces rising litigation costs associated with defending the PIW Levy revenue base, as the levy system is increasingly challenged in the courts. We consider the EPA should be relieved of this responsibility or have its litigation costs reimbursed. Revenue protection should not be

a core function of a regulatory agency.

* + 1. Resource implications of proposed changes to EPA objectives and functions

The EPA will require additional resources to perform the new and expanded functions we recommend, including its wider focus on public health and its broader span of functions.

*Increased environmental health and scientific capabilities*

A stronger focus on environmental health surveillance requires new and strengthened capabilities to gather and analyse data, monitor pollution and identify risks. Specifically, we propose a new group with expertise in areas including environmental health epidemiology and toxicology. We also propose elevating the level of the EPA’s senior scientific officers – including creating a Chief Environmental Scientist – to ensure the EPA has both the expertise and the authority to influence decision making across government. Including people with high level scientific and other skills on the EPA Board will also have some additional resource implications for the agency.

Our proposal to establish an environmental health surveillance group within the EPA also requires sufficient funding for DHHS to provide support to and work with the group and for liaison with

the Chief Health Officer.

A stronger focus on prevention will also require:

* an ability to adapt to changes in industry practices and to respond to new and emerging environmental risks
* better dissemination of science and technical information through better data systems and hardware (for example, monitoring equipment).

*Other additional functions*

The EPA of the future will also require additional resources for the following functions:

* **Outreach activities associated with a general duty**: A new general duty applying to

a larger regulated cohort will require an early focus on educating and informing businesses and the community about new obligations and how to comply. We consider the general duty will improve environmental practices and lessen the need for regulatory intervention over the longer term. But the EPA will require additional resources in the short term, to develop and disseminate clear guidance material and educate both new duty holders and joint regulators, including local government.

* **Support for devolved functions**: The EPA will require capabilities to provide statewide coordination and support to local government authorities, which will have greater responsibility for local issues. The EPA will need to develop targeted interventions, provide technical support and training and step in where necessary.
* **Enhanced role in land use planning**: Given the importance of increasing the EPA’s strategic input to land use planning, the EPA of the future must devote additional resources to providing this advice, as well as educating and supporting land use planning decision makers about pollution and waste impacts.

*Funding the expanded role for local government*

Local government authorities will also require additional funding to fulfil their increased role for managing local issues. Specifically, they will need funding to appoint local government environment protection officers. We recommend in chapter 18 that DELWP bring a proposal to government to identify additional resources for local government to fund these additional functions. As noted earlier, one option would be to develop a landfill levy revenue-sharing arrangement with local councils.

*One off investments*

In addition, we identified several critical one off investments, with some ongoing maintenance costs, to improve the EPA’s capability. These include:

* increased capability to undertake environmental monitoring, both for ambient environmental monitoring and in response to incidents
* preparing initial codes of practice to support a general duty and updated operational policy, standards and guidance material
* informing and educating businesses and the community about the reforms and their obligations under an enhanced statutory regime, and
* updating and improving business systems and retraining authorised officers.

To play a stronger and more proactive role in prevention through increased environmental scanning while continuing to deliver core regulatory functions associated with known environmental risks, the EPA must have access to up-to-date information, communication and surveillance technologies, including remote monitoring of environmental impacts. Investment in modern technologies and more sophisticated use of data analytics will also be increasingly

essential to the efficient delivery of core regulatory functions. A multi-year investment strategy is required to establish these platforms.

*Offsetting savings*

Partially offsetting these additional resource requirements, some of our recommendations will allow the EPA to divest itself of some functions that are better performed elsewhere. In particular, devolving some local issues to local government would free up some resources to focus on more significant local and statewide environmental hazards.

Transferring responsibility for recovering avoided landfill levies to DELWP would also represent a saving to the EPA’s operating budget, not just in direct litigation costs but in associated enforcement activity.

* + 1. Scope for efficiency improvements

We did not consider the EPA’s efficiency in carrying out its functions, but we identified some potential for efficiency improvements. Reallocating resources from lower order risks to focus on more significant environmental hazards would also enable the agency to deliver stronger environmental protection within existing resource levels.

Other potential areas for efficiency improvements and other savings include the following:

* introducing a general duty may in time reduce enforcement activity and make litigation more cost effective
* a clearer focus on prevention, including strengthened licensing and post-closure requirements, and greater strategic involvement in the early stages of the planning process, should yield some future savings in clean up and enforcement costs
* significant costs associated with addressing illegal dumping of hazardous waste could be avoided by redesigning the M&I Landfill and PIW levies
* transferring custody of the Sustainability Fund from the EPA to DELWP should reduce the EPA’s administration costs and associated reporting costs
* improved cost recovery for certain activities, such as the consultation processes associated with works approvals, could reduce the budgetary impact of these activities
* improved information and communication technology may allow the EPA to deliver some regulatory services more efficiently and at lower overall cost.

The EPA has already started detailed work on allocating costs to its various functions, to better understand key cost drivers. This work will also reveal the relative resource intensity of alternative means of carrying out certain functions – for example, the relative costs of carrying out onsite inspections compared with desktop assessments. The EPA could also use unit cost information  
to benchmark its costs against best practice or similar activities with other regulators.

However, we expect the additional costs associated with our recommendations to more than outweigh these possible savings.

### Recommendations

**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:

1. continue to receive annual distributions from the Municipal and Industrial Levy, unless or until a decision is taken to reinstate annual budget appropriations
2. retain revenues from regulatory fees and user charges that are currently paid into the Consolidated Fund
3. no longer retain Prescribed Industrial Waste Levy revenues which should be directed instead into the Consolidated Fund
4. 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
5. receive an annual budget appropriation that replaces litter revenue which should instead be paid into the Consolidated Fund.

**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.

**RECOMMENDATION 21.3**

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

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

**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:

1. environmental health and scientific capabilities
2. activities to support a general duty
3. EPA coordination and oversight of local government environment protection officers
4. land use planning expertise
5. investing in up-to-date information, communication and surveillance technologies.
6. Grant payments from the Sustainability Fund and specific programs funded from Prescribed Industrial Waste levies (for example, HazWaste and Regional Waste Management Groups) are excluded from the operating budget because these funds are not available to the EPA

for its own purposes.

1. However, the EPA expects actual revenues in 2015-16 to fall well short of this estimate, reflecting lower than forecast returns on investments and higher than expected rebates of the Prescribed Industry

Waste levy.

1. Although administration of the Sustainability Fund was transferred to DELWP on 1 July 2015, investment income replacement grants to the EPA continue to reflect actual income earned on investment of Fund balances.
2. After provision of $1.1 million in doubtful debts, net receipts from litter fines of $3.6 million are expected.
3. EPA has run a statewide biological monitoring program in rivers and streams since 1990. DELWP has largely funded the River Monitoring and Assessment Program (RiverMAP) since the early 2000s. Under current arrangements, RiverMAP is funded from November 2012 to June 2016 with a budget of $3.2 million.
4. An allocation from the Sustainability Fund, announced in December 2013, provided $2.165 million to the EPA over four years (2013-14 to 2016-17) to implement actions 6, 13, 14 and 15a of the Yarra and Bay Action Plan. The EPA was to contribute $800,000 in-kind.
5. Victorian Government 2013, *Report of the Ministerial Advisory Committee on Waste and Resource Recovery Governance Reform*, Melbourne, p. 59.
6. EPA Victoria, 2016.
7. EPA Victoria 2014, *Future Funding Options – Environment Protection Authority*, Final Report, prepared for the EPA by PwC Australia, April,
   1. iii.
8. State Services Authority 2009, *Review of the rationalisation and governance of regulators*, Melbourne, p. 48.
9. EPA Victoria 2015 *Future Funding Options Assessment*, Assessment Panel Report, August, p. 1.
10. EPA Victoria 2014, *Future Funding Options – Environment Protection Authority*, Final Report, prepared for the EPA by PwC Australia, April,
    1. vii.
11. State Services Authority 2009, *Review of the rationalisation and governance of regulators*, Melbourne, p. 48.
12. EPA Victoria 2014, *Future Funding Options – Environment Protection Authority*, Final Report, prepared for the EPA by PwC Australia, April, table 12 p. 79.
13. In debate on the Environment Protection Amendment (Landfill Levies) Bill 2011, the then Minister for Environment and Climate Change told Parliament that ‘the new levy will set appropriate incentives for waste reduction alternatives and strike the right balance between greater recycling and limiting the burden on households and businesses’ (R Smith, Hansard p. 1371); Mr Morris (p. 1732) stated ‘the landfill levies will provide a financial incentive to reduce the level of waste. That

is what the bill is about. The likely outcome of this bill is a reduction something in the order of 282,000 to 285,000 tonnes of waste going to landfill per annum’.

1. Victorian Government 2013, *Getting full value – the Victorian waste and resource recovery policy*, April, Melbourne, p. 12.
2. The Productivity Commission found that using levies to reach selected landfill targets, or to generate revenue, was incompatible with the desired objective of internalising the externalities of waste disposal

to landfill. To improve price signals to households the Commission recommended a low cost variable charging systems for municipal waste disposal and resource recovery should be considered. Productivity Commission 2006, *Waste Management*, Inquiry report no. 38,  
Canberra, October, p. 226.

1. EPA Victoria 2016.
2. Productivity Commission 2006, *Waste Management*, Inquiry report no. 38, Canberra, October, p. 223.
3. For example, landowners such as marginal farmers who, knowingly or otherwise, accept contaminated waste will often lack the resources required to cover the considerable clean up costs.
4. EPA Victoria 2015, *Cost and capacity review*, Final Report, internal working report prepared for EPA by PwC Australia, November,

pp. 21–22.