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Will your business be ready for Victoria's stronger environmental regime?

Johanna Kennerley, Senior Associate

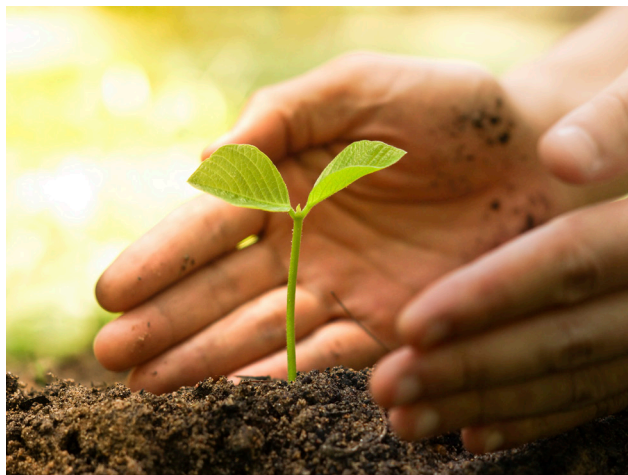
The Victorian Government has released its response to the Independent Inquiry into the Environmental Protection Agency (EPA) and environmental regulation in Victoria. The response overwhelmingly demonstrates the government's intention to modernise and strengthen environmental regulation in Victoria.

Independent Inquiry

In 2015, a Ministerial Advisory Committee was appointed to review the current role of the Victorian EPA as the environmental regulator, as well as to review environmental governance, regulation, powers and funding in the context of public and environmental health for current and future generations.

The Inquiry's report, released on 31 March 2016, contained 48 recommendations. Some of the key recommendations included:

- More activities requiring a licence or works approval;
- Increased criminal penalties, including a '*robust prosecution strategy*';
- Strengthened third party rights to restrain breaches;
- Earlier EPA input into planning;
- New statutory duties to minimise harm and notify pollution incidents;
- Licence reform and introduction of periodic reviews; and
- New '*post closure*' licence category (decommissioning).



Many of the recommendations called for the replication of environmental protection regulation currently implemented in New South Wales and Queensland.

Government response

The Victorian Government released its response to the Inquiry on 17 January 2017.

All of the 48 recommendations have been supported (either in full or in part), demonstrating the Victorian Government's commitment to modernise its environmental regulatory framework.

The government has committed \$45.5 million to 'kick start' a five year reform program. The funding will include:

- \$6.5 million to better 'hold polluters to account';
- \$4.8 million to expand the environmental public health capability in the EPA to better identify, manage and communicate environmental health risks in Victoria;
- \$4.8 million to pilot a program of local government environment protection officers to respond more effectively to local issues affecting liveability and amenity;
- \$2.1 million to appoint a Chief Environmental Scientist and boost EPA's intelligence-gathering on new and emerging risks;
- \$3.3 million for improved digital information management to support better regulation; and

- \$1.5 million to strengthen EPA's strategic role in land use planning.

Significant revisions of the *Environmental Protection Act 1970* (Vic) (**EP Act**) are anticipated within the next two years, and are intended to deliver Victorians with a '*bigger, better equipped and more effective EPA to address Victoria's environmental protection challenges now and into the future*'.

Impact on your business

Businesses operating in Victoria will need to prepare for potentially significant changes to their environmental obligations. In particular, construction companies, including contractors and sub-contractors, heavy industry, land fill operators, and those companies whose activities have the potential to contaminate land are likely to be substantially affected. The EPA's role in land use planning and mining approvals will also be expanded.

Some of the key recommendations that will be implemented and will affect businesses operating in Victoria include:

1. General environmental duties and mandatory notification

The government supports the introduction of a general duty to minimise the risk of harm to human health and the environment '*as the cornerstone of the preventative focus of the EPA*'. Initially, the new duty will only apply to those businesses conducting activities that require a licence or permit.

Queensland has a similar principle as the cornerstone of its environmental protection regime, known as the '*general environmental duty*', which applies to all people conducting any activity. It is anticipated that the new Victorian provision may be broadened to apply to everyone, not just licence holders, in the future.

In addition, all businesses will be required to notify pollution incidents to the relevant authority (which will likely be either the EPA or the local Council). Both New South Wales

and Queensland have equivalent provisions requiring notification of environmental incidents to the regulator.

2. Expand activities requiring a licence

The current list of activities in Victoria that require a licence or works approval is limited. The government plans to undertake a further process of review and consultation to re-evaluate the existing licensing model. It is anticipated that a greater range of activities will require environmental licences or permits moving forward.

The nature of the licenses issued will also be modernised. As an example, they may be issued for fixed terms and require regular reviews.

In addition, following the New South Wales example, the Victorian Government supports a statutory requirement that all licence holders prepare and implement pollution incident plans.

3. Holding polluters to account

One of the key messages in the government's response is a focus on *'holding polluters to account'*.

The government has committed \$6.5 million for the EPA to develop an overarching prosecution strategy in 2017 that will strengthen its processes, procedures and resourcing to facilitate timely prosecution.

There will also be a review of the effectiveness of enforceable undertakings in Victoria in comparison to other states. In addition, the range of provisions that attract penalties for breach will be expanded and the corresponding fines or criminal sanctions will be increased.

4. Powers of the EPA and third parties

EPA authorised officers will have increased powers to investigate breaches, similar to the powers of the safety regulators. Such powers are likely to include increased rights to enter premises and to compel individuals

to answer questions regarding environmental incidents.

The government has also *'supported in principle'* a proposal to improve the power of individuals to restrain or remedy environmental incidents or breaches of environmental regulation. However, the government's response has not confirmed any impending changes or guaranteed additional rights at this stage. If enacted, this could be a key change to the risk profile of doing business in Victoria.

Next steps

The next key step in the government's reform agenda is to prepare and introduce legislation focused on the governance aspects of the new EPA. In addition, the current capability of the EPA will be assessed to ensure current and new functions can be supported. An interim advisory board has been appointed to guide the EPA through these substantial changes.

Legislative amendments to the EP Act that related to environmental regulation, as opposed to governance, are not likely to be produced until 2018.

What should you do?

It is clear that the Victorian Government is determined to introduce a more active and modern environmental regulatory regime. Businesses in Victoria should ensure that they stay abreast of these changes, and review existing environmental procedures and policies to ensure ongoing compliance.

If you require any assistance regarding your existing permits, licences or any policies that affect your business in Victoria, please contact our planning and environment team.

Author



Johanna Kennerley
Senior Associate

D: +61 (0) 7 3000 8308
E: jkennerley@carternewell.com



Planning & Environment



Bronwyn Clarkson
Partner

 (07) 3000 8346



Andrew Shute
Partner

 (07) 3000 8371



Karen Brown
Partner

 (07) 3000 8377



Johanna Kennerley
Senior Associate

 (07) 3000 8308

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Brisbane
Level 13, 215 Adelaide Street
Brisbane QLD Australia 4000
GPO Box 2232, Brisbane QLD 4001
Phone +61 (0) 7 3000 8300

Sydney
Level 11, 15 Castlereagh Street
Sydney NSW Australia 2000
GPO Box 4418, Sydney NSW 2001
Phone +61 (0) 2 8315 2700

Melbourne
Level 10, 470 Collins Street
Melbourne VIC Australia 3000
Phone +61 (0) 3 9002 4500



ABN 70 144 715 010
www.carternewell.com