



Commissioner for  
Better Regulation  
Red Tape Commissioner

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27 August 2019

Dr Cathy Wilkinson  
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Dear Dr Wilkinson

## **REGULATORY IMPACT STATEMENT FOR THE PROPOSED ENVIRONMENT PROTECTION REGULATIONS**

I would like to thank your staff at the Environment Protection Authority (EPA) for working with my team, and with the Department of Environment, Land, Water and Planning (DELWP), on the preparation of the Regulatory Impact Statement (RIS) for the proposed Environment Protection Regulations and Environment Protection Transitional Regulations (the proposed Regulations).

As you know, the *Subordinate Legislation Act 1994* (SLA) requires the Commissioner for Better Regulation to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 26 August 2019 meets the adequacy requirements of the SLA.

### **Background**

In 2015 and 2016, the Victorian Government conducted an independent inquiry into the EPA (the Inquiry), which recommended fundamental changes to modernise Victoria's environment protection legislative framework and to enable the EPA to address current and future environmental challenges. In response, the *Environment Protection Act 1970* was completely overhauled and rewritten in two tranches.

- The first tranche established the new *Environment Protection Act 2017*, which modernised EPA's corporate governance, strengthened its status as a science-based regulator, and gave it a clear objective to protect human health and the environment by reducing the harmful effects of pollution and waste.

- The second tranche, effected through the *Environment Protection Amendment Act 2018*, involved amending the *Environment Protection Act 2017* and repealing the *Environment Protection Act 1970*. This introduced a new legislative framework to support the objective of the new Act, focused on preventing waste and pollution impacts, rather than managing the impacts after they have occurred.

This new approach is intended to commence from 1 July 2020. It incorporates a General Environmental Duty (GED) for businesses, industry and the community (duty-holders) to take reasonably practicable steps to eliminate or otherwise reduce risks of harm to human health and the environment from pollution and waste.

The framework is supported by the establishment of tiered permissioning system, modernisation of EPA's compliance and enforcement powers, an update of offences and penalties, and making more environmental information available to the public.

The proposed Regulations prescribe additional detail for these and other matters to support the new framework's objectives.

### **Problem and Objectives**

As the RIS outlines, the new legislative framework described above is unlikely to completely resolve all risks of harm to human health and the environment by itself. In some areas, for example, 'residual risks' to human health and the environment may arise because:

- the legislation may not adequately address risks in areas where serious harms can occur, or where there is a known risk of mismanagement by duty holders; and
- duty holders may require greater certainty and consistency to understand and comply with their obligations under the framework in some areas.

The proposed Regulations aim to reduce these residual risks, and to provide further detail to improve clarity, reduce regulatory burden or improve environmental outcomes.

### **Analytical Approach**

The RIS describes the residual problem, and considers regulatory and non-regulatory responses, in each of eleven different problem areas:

- permissions;
- on-site wastewater management systems (septic tank systems);
- contaminated land;
- waste;
- litter;
- plastic bags;
- air;
- water;
- noise;
- vehicle emissions; and
- cost recovery and fees.

Because of the range of problem areas considered — some including several regulatory design choices and each with different data limitations — the RIS applies a range of different analytical tools to each, including Cost–Benefit Analysis (CBA), Break-Even Analysis (BEA), Multi—Criteria Analysis (MCA), as well as qualitative discussions.

The most thorough and proportionate analytical tool available was applied to each area, depending on the size of the problem being addressed, the options being considered, and the extent of data available.

In some circumstances, either multiple approaches are needed to fully address a specific problem area, or the approach proposed for one problem area is expected to affect the underlying problem in another area. Key examples of this are in the approaches to permissioning, and contaminated land management. These interactions are described in further detail in the RIS.

## **Proposed Regulations**

### Permissioning

The new legislative framework establishes a tiered permissions system including:

- licences: customised permissions for complex, risky or highly-specialised activities, that will often include customised conditions;
- permits: largely standardised permissions for medium-high risk activities; and
- registrations: simple, generic and automatically-granted permissions for low to moderate risk and standardised activities.

It also allows the EPA to require duty holders to hold a financial assurance. The RIS uses a CBA methodology to consider when these permissions or assurance should be required.

The preferred option applies requirements to those activities already subject to a permission or exemption under the existing legislative framework, as well as expanding these to include other activities — particularly at waste and resource recovery facilities.

The EPA and DELWP expect this approach to provide greater certainty of control for activities which pose the most significant risks, and to generate a net benefit of \$1,791 million (Net Present Value, NPV, calculated in 2018 dollars) over the ten-year life of the Regulations.

### On-site wastewater management (septic tanks)

Septic tank systems which are poorly located or maintained can pose significant risks to the environment, public health of communities, and local amenity.

Under the new legislative framework, local councils can issue permits, but the RIS notes that, without prescription under the Regulations, there may be a lack of certainty about councils' role in managing these risks.

The RIS uses an MCA methodology to consider responses to this problem. The preferred approach is for councils to issue permits to construct, install or alter systems with flow rates less than 5000 litres per day.

This is consistent with the current approach under the *Environment Protection Act 1970*. It is considered only slightly less effective, but much less costly, than the alternative approach of also requiring permits for these systems' ongoing operation.

### Contaminated land

The 2016 Inquiry found contaminated land to be a critical challenge for environmental management in Victoria. The new legislative framework establishes two specific duties in addition to the GED: to manage contaminated land; and to notify the EPA of contaminated land.

The EPA considers these legislative requirements on their own may not provide enough specificity to duty holders, leading to a risk of under-or-over-compliance. The RIS considers alternative ways to manage these risks using an MCA methodology. The preferred options involve the following.

- Allowing the EPA to make determinations on background contamination levels, on a case-by-case basis, and also to prescribe specific measures for Non-Aqueous Phase Liquid (NAPL) contamination, given the high-risk nature of these specific substances. The RIS finds that this is expected to be significantly more costly than the less direct alternatives considered, but much more effective in reducing risks (and possibly in reducing future environmental clean-up costs).
- Prescribing a risk-based definition of notifiable contamination, requiring duty holders to provide a management response with their notification to the EPA, and establishing specific exemptions to notifiable contamination. The RIS concludes that this approach is expected to avoid more costs to government and duty holders than would the other options considered, and enable the EPA to target its regulatory effort on high-risk contaminated sites.

### Waste

Mismanagement of waste can lead to serious risks and harms, as seen in recent fires and waste stockpiling cases. The RIS explains how the new legislative framework aims to address some of the problems that have arisen in recent times but requires supporting Regulations to function properly, and to ensure small but cumulative risks (such as waste stockpiles) are adequately managed.

The RIS uses a combination of BEA, MCA and qualitative discussions to consider six specific choices in this area. The preferred approach involves the following:

- Establishing a tiered classification system for industrial waste. This was considered more effective and less costly than the alternative of requiring chemical testing of waste in a majority of circumstances to determine its hazard level.
- Introducing a Declaration of Use tool for facilities to establish they are lawfully authorised to receive industrial waste for re-use (are a 'lawful place'), in addition to places that might be explicitly approved through a permission where the waste is intended for legitimate use. This was expected to be less costly and less confusing than the alternative approach where several approaches (including statements of acceptance and statements of compliance) could also be used.
- Prescribing as priority wastes very-high-hazard, high-hazard and moderate-hazard wastes, as well as those at risk of mismanagement (tyres and electrical waste). Duties and controls will be applied to these through the new legislative framework.
- Requiring transport permissions for moderate to very-high hazard wastes, as well as transaction tracking for all very-high and high hazard wastes (e.g. asbestos, hazardous liquids), and to require waste tracking for reportable priority waste.

- Prescribing that sensitive environmental areas must not be impacted by a landfill, and prevent EPA from granting permissions for landfill sites to accept particular high-risk wastes.
- Prescribing information that the EPA requires to assess compliance with the waste levy scheme, the conditions under which waste can attract a rebate (for being recoverable), the timing of waste levy payments and the time limits within which materials must be recovered to claim a rebate.

### Litter

Some provisions from the *Environment Protection Act 1970* aimed at preventing material from becoming litter, and avoiding damage to litter receptacles, are not included in the new legislative framework and will cease to operate. The RIS notes that risks and harms (from annoyance to more serious environmental damage) may emerge if not regulated.

The RIS uses an MCA methodology to consider whether to transition these provisions into the proposed Regulations, or rely on non-regulatory approaches such as public information campaigns to avoid these residual harms.

The RIS concludes that the preferred option is to transition the current provisions that were not introduced into the new legislation into regulations. EPA expects this will be more effective and less costly as a mechanism for managing these risks. The RIS also notes that, in practice, non-regulatory approaches could be used to supplement this approach.

### Plastic bags

Although some retailers may have already voluntarily stopped providing lightweight plastic bags, the RIS estimates that hundreds of millions of bags are still provided in Victoria each year. This can lead to harm to wildlife and ecosystems, visual amenity issues and contamination of recyclables.

In June 2019, the Victorian Government introduced a Bill into Parliament that would ban lightweight plastic shopping bags. That ban would not be able to operate in the absence of supporting Regulations.

The RIS draws on a previous CBA report by DELWP and Marsden Jacob Associates, to develop an MCA considering three approaches to this problem.

The RIS concludes that the preferred option is to ban all lightweight plastic bags with handles, including degradable, biodegradable and compostable plastic bags. This is expected to be effective in reducing the number of lightweight plastic bags given out by retailers. It is expected to be more effective than a public information campaign, and less costly and easier to implement than a complete ban.

### Air

The new legislative framework's GED and other requirements will address the risks of air pollution to some extent. It is necessary, therefore, to ensure that the proposed permissioning approach allows the EPA to establish conditions for producers of air pollution.

However, the RIS considers that some residual risk remains in relation to the consequences of air pollution generated by wood heaters, the emission of highly hazardous air pollutants ('Class 3 substances') and the use of methyl bromide (an ozone-depleting substance).

The RIS uses a combination of CBA, MCA and qualitative discussion to consider approaches that would resolve these problems without introducing unnecessary costs. The preferred approach includes the following measures:

- Introduction of a compliance note to explain that operators will comply with the GED if they meet national standards in relation to efficiency and emissions levels;
- Prescription of a list of Class 3 substances in regulations, and outline the steps license-holders must take to minimise emissions;
- Prescription of requirements for handlers, suppliers and purchasers of equipment with methyl bromide, and persons who use methyl bromide for selected activities; and
- Requirements for businesses to report their emissions levels to the National Pollutant Inventory (NPI) when emissions thresholds are exceeded, rather than to adopt a non-regulatory approach that the EPA considers might not adequately ensure the community has access to information about toxic substances which may affect them.

### Water

The EPA expects the new legislative framework and proposed Regulations related to permissions, waste and contaminated land to significantly reduce risks to human health and the environment related to water pollution. However, waste discharge from vessels into the water is not specifically managed by these provisions and the RIS notes that this may lead to environmental harms if not directly regulated.

The RIS considers this problem using qualitative discussions. The preferred option is to specifically prescribe that waste from vessels must not be discharged into water, in addition to the existing offences in the legislative framework against depositing waste into the water environment.

The EPA expects the proposed Regulations to improve effectiveness by ensuring vessel operators understand their obligations, without imposing significant additional costs.

### Noise

The RIS describes noise as a widespread problem, generally characterised as a low-harm, high occurrence event. Noise accounts for the majority of EPA publication and advice enquiries. More than 100 000 noise complaints are typically received by police and Councils per year.

The new framework establishes several duties and penalties in relation to noise, but several terms are not explicitly defined. The existing State Environment Protection Policies (SEPP N-1 and SEPP N-2) that include standards and regulatory requirements for noise will cease to operate as legislative instruments under the new framework.

As a result, the EPA considers that there is a risk of under-or-over compliance if the new framework is used without further prescription in the Regulations. The RIS uses several MCAs to consider responses to these problems. The preferred option is to:

- Prescribe a framework for establishing noise limits for Commercial, Industrial and Trade (CIT) premises in urban and rural areas based on SEPP N-1 for setting noise limits and the recommended noise levels in the Noise from Industry in Regional Victoria (NIRV) guideline.
- Prescribe a framework for establishing noise limits for entertainment premises based on the existing SEPP N-2 framework with selected improvements.
- Define unreasonable and aggravated noise, as well as unreasonable and aggravated music noise.

These are expected to reduce uncertainty and therefore reduce instances of under-or-over-compliance with the new requirements.

### Vehicle emissions

The RIS uses qualitative discussions to consider an approach to managing the air and noise pollution caused by light vehicles. The Environment Protection (Vehicle Emissions) Regulations 2013 currently set a range of standards and controls to reduce these harms. These will continue to operate under the new legislative framework, but the EPA considers that including regulatory requirements across several instruments may lead to a complex and confusing structure.

The RIS concludes that the preferred approach is to translate the current requirements into the proposed Regulations, and to incorporate minor changes to the national motor vehicle rules at the same time. The EPA expects this will simplify the requirements, improving compliance and reducing administrative costs for EPA.

### Fees

The fees to be charged for permissions granted in the new legislative framework are considered using an MCA approach. These included:

- Development license applications;
- Pilot project license applications;
- Applications for a permit to transport reportable priority waste;
- Applications to local councils for a permit to construct, install or alter on-site wastewater management systems; and
- Other EPA-issued permit applications.

A range of other permissions activities that were more homogenous, or carried lower administrative costs were considered qualitatively. Revenue collected from these fee categories is expected to total about \$1.8 million annually, less than 20 per cent of the EPA's total fee revenue.

The EPA will undertake a future review of the fees prior to the sunset of the proposed Regulations. This will include considering whether to establish a load-based licensing scheme for operating license renewals, as recommended by the Inquiry report. The proposed approach is to maintain the current rates for these renewals, until that review.

## Implementation and Evaluation

Implementation of the new legislation, proposed Regulations and proposed Environment Reference Standard will occur concurrently and in an integrated way. The RIS includes an implementation plan, setting out a timeline of key tasks including public consultation on this RIS (to begin immediately), internal and external training and capacity-building (to be in place by July 2020), and developing new guidance materials (progressively up to and after commencement).

The RIS also describes an evaluation strategy to help ensure that the proposed Regulations meet the Victorian Government's objectives to protect human health and the environment from pollution and waste. The strategy identifies a range of key evaluation steps, measures and indicators that EPA and DELWP will use to ensure learning and improvement can occur at both the departmental (legislative) and regulator levels.

The timeline for this evaluation strategy will include two shorter-term evaluations: an intermediate evaluation of the framework's short-term outcomes two to three years after commencement, as well as an evaluation of its effectiveness and efficiency after the framework has been operational for four and a half years.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



Anna Cronin  
**Commissioner for Better Regulation**