



Commissioner for
Better Regulation
Red Tape Commissioner

GPO Box 4379
Melbourne Victoria 3001
Telephone: 03 9092 5800

23 August 2019

Dr Cathy Wilkinson
Chief Executive Officer
Environment Protection Authority
200 Victoria Street
CARLTON VIC 3053

Dear Dr Wilkinson

IMPACT ASSESSMENT FOR THE PROPOSED ENVIRONMENT REFERENCE STANDARD

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 Impact Assessment (IA) for the proposed Environment Reference Standard (ERS).

As you know, under the *Environment Protection Act 2017 (as amended by the Environment Protection (Amendment) Act 2018)*, the *Subordinate Legislation Act 1994 (SLA)* applies to a proposed Environment Reference Standard in a different way to other legislative instruments prepared in Victoria. In place of the Regulatory Impact Statement (RIS) that would normally be prepared, an IA is prepared for a proposed ERS. IAs are slightly different in scope.

Given that section 12H(3) of the SLA continues to apply to a proposed ERS, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in its IA.

As for a RIS, an IA will be 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 IA also needs to be clearly written so that it can be a suitable basis for public consultation.

These are the first ERS and IA to be prepared. EPA worked closely with the staff of my office to agree on an appropriate approach.

I am pleased to advise that the final version of the IA received by us on 22 August 2019 meets the adequacy requirements of the SLA.

Background

In 2015, the Victorian Government conducted an independent inquiry into the Environment Protection Authority (EPA), 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 *Environment Protection Act 2017*, which modernises EPA's corporate governance, strengthens its status as a science-based regulator, and gives it a clear objective to protect human health and the environment by reducing the harmful effects of pollution and waste.
- The *Environment Protection Amendment Act 2018*, which amends the *Environment Protection Act 2017* and repeals the *Environment Protection Act 1970*, introducing a new legislative framework to support this objective, focused on preventing waste and pollution impacts, rather than managing the impacts after they have occurred.

This new approach incorporates a general environmental duty for action-takers 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 establishing tiered permissioning systems, modernising EPA's compliance and enforcement powers, updating offences and penalties, and making more environmental information available to the public. Where necessary, the proposed Environment Protection Regulations give additional prescription or detail to support the new environment protection laws' effective implementation.

In particular, the new legislative framework includes provision for a new stand-alone subordinate instrument called an Environment Reference Standard (ERS). An ERS supports the protection of the environment from pollution and waste by providing a benchmark to assess and report on environmental conditions.

The proposed ERS largely reflects existing standards set out in State Environment Protection Policies (SEPPs), which will cease to operate as legislative instruments when the new Act comes into force. The regulatory elements of SEPPs are replaced by provisions in the proposed Regulations, along with the general environmental duty, other duties and guidance. The SEPPs and their standards have already been subject to various Policy Impact Assessments and reviews.

The IA describes the proposed ERS, how it was prepared, how it will be monitored and evaluated, and its intended operation and impacts.

Purpose and objectives

Individuals, organisations and regulators all make decisions informed by or that have an impact on the environment. The IA explains how the proposed ERS aims to provide a clear and transparent benchmark for these decisions. The purpose of the proposed ERS is:

"...to support the protection of human health and the environment from pollution and waste by providing a benchmark to assess and report on environmental conditions in the whole or any part of Victoria."

To support this, the objectives of the proposed ERS are:

- to promote a shared understanding of environmental value;
- to improve assessment and reporting on environmental conditions; and
- to ensure that relevant environmental regulatory decisions are informed by appropriate, consistent scientific reference information.

The ERS therefore addresses the key problem relating to information about the state of the environment: that a lack of clear and authoritative scientific standards for reporting and decision-making increases the level of uncertainty and inconsistency, while decreasing transparency, effective communication and coordination.

The proposed standards and how they were prepared

The proposed standards have four key elements:

- Environmental values – describe uses, attributes or functions of the environment which are valued qualities that the Victorian community wants to achieve or maintain.
- Indicators – the qualities or substances that have been selected as a metric to assess an environmental value.
- Objectives – the character, level, concentration or amount of an indicator that is used to assess an environmental value in an area. Objectives describe the conditions that achieve or maintain an environmental value, where a value may be threatened, or where further assessment may be required.
- Areas – the area(s) of Victoria to which an environmental value relates, whether the whole or part of the state.

Standards are proposed across four elements of the environment: air, land, noise and water.

Air

The proposed environmental values for air are:

- Life, health and well-being of humans;
- Life, health and well-being of other forms of life, including the protection of ecosystems and biodiversity;
- Local amenity and aesthetic enjoyment;
- Visibility;
- The useful life and aesthetic appearance of buildings, structures, property and materials; and
- Climate systems that are consistent with human development, the life, health and well-being of humans and the protection of ecosystems and biodiversity.

The proposed values, indicators and objectives are adopted, with minor changes to wording, from the current SEPP (Ambient Air Quality), and SEPP (Air Quality Management). The proposed ERS also includes a new qualitative objective for odour.

Land

The proposed environmental values for land are:

- Maintenance of natural ecosystems, modified ecosystems and highly modified systems;
- Human health;
- Building and structures;
- Aesthetics; and
- Production of food, flora and fibre.

The proposed values, indicators and objectives are adopted, with minor changes to wording, from the current SEPP (Prevention and Management of Contaminated Land) (SEPP (PMCL)).

As with the SEPP (PMCL), the ERS objectives are related to, and refer to, the standards of the NEPM Assessment of Site Contamination or to standards derived using the methodologies it prescribes as well as the Food Standards Australia New Zealand, Food Standards Code (the Food Standards Code).

Noise

The proposed environmental values for noise are:

- Sleep during the night;
- Domestic or recreational activities;
- Normal conversation;
- Child learning and development; and
- Human tranquillity and enjoyment outdoors in natural areas.

The proposed ERS adopts the three environmental values contained within the SEPP (Control of Noise from Industry, Commerce and Trade - SEPP (N-1) and SEPP (Control of Music Noise from Public Premises (N-2)), plus two additional environmental values that were identified through a review of these SEPPs.

The proposed new indicators and objectives provide a means of characterising the environmental values with respect to the ambient acoustic environment and clarify the noise levels above which there is an increased risk of impact to human health.

To apply the proposed standards, a set of five land use categories are proposed which reflect different urban form or land use settings ranging from highly urbanised to relatively natural areas.

Water

The proposed environmental values for water are:

- Water dependent ecosystems and species;
- Human consumption after appropriate treatment;
- Potable water supply;
- Potable mineral water supply;
- Agriculture and irrigation;
- Human consumption of aquatic foods;
- Aquaculture;

- Industrial and commercial use;
- Water-based recreation;
- Traditional Owner cultural values;
- Navigation and shipping;
- Buildings and structures; and
- Geothermal properties.

The proposed values, segments, indicators and objectives are adopted, with minor changes to wording, from the current SEPP (Waters), with the exception of cultural and spiritual values, as it is expected these are adequately captured by the other values.

Some of the proposed indicators and objectives are specified directly in the ERS table, while others are made by reference to other standards, such as the Australian and New Zealand Guidelines for Fresh and Marine Water Quality, the Australian Drinking Water Guidelines, the Guidelines for Managing Risks in Recreational Water, and the Food Standards Code.

Intended operation and impact

The proposed ERS' operation and impacts are mostly indirect, operating through other individuals' or regulators' decisions. The IA uses largely qualitative discussions to explain these impacts as playing an important role in supporting the objectives described above:

- To promote a shared understanding of environmental value: by providing a consistent and authoritative frame or “vocabulary”, the ERS is expected to support individuals, businesses and government to communicate more easily about environmental matters.
- To improve assessment and reporting on environmental conditions: the standards in the proposed ERS are expected to assist the EPA and other government agencies in reporting more efficiently, consistently and transparently about the health of the environment.
- To ensure that relevant environmental regulatory decisions are informed by appropriate, consistent scientific reference information: the *Environment Protection Act 2017* (as amended) and proposed *Environment Protection Regulations* specify a range of circumstances where the ERS must or may be considered as part of making a regulatory decision. The standards may be useful to a range of decisions where environmental matters should be taken into account, and will support those with clear and authoritative information or measurement approaches.

The IA describes these expected impacts compared to a hypothetical “base case” where the ERS is not made. In that situation, environmental issues would still matter to individuals and regulators and so the same considerations would still need to be made. Without an authoritative and consolidated set of standards, this would happen with greater costs incurred to identify and apply the appropriate standards, and with less consistency in the standards applied.

Compared to that situation, EPA expects the proposed ERS will make communication, assessment and reporting on environmental conditions more transparent, consistent and less costly.

Independent review by the Chief Environmental Scientist

To provide a further scientific assessment of the standards included in the proposed ERS, the Chief Environmental Scientist (CES) provided an independent assessment of the proposed ERS. The CES considered that most of the proposed standards are underpinned by scientific evidence that confirms that they are objective, peer-reviewed and based on national and international best practice.

The CES made fifteen recommendations for future reviews of the ERS standards and supporting guidance. EPA supports these recommendations in principle, subject to further assessment and prioritisation. The CES also suggested a process and governance arrangements for implementing her recommendations, which the EPA also supports in principle.

Monitoring, evaluation and reporting

The IA describes two types of monitoring, evaluation and reporting that EPA will apply to the proposed ERS.

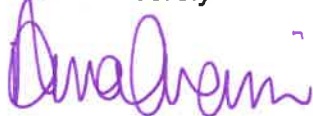
To understand the performance of the ERS in achieving its objectives, a set of key evaluation questions and indicators will be developed and incorporated into EPA's regular reporting processes through its organisational performance management framework.

To ensure the ERS standards are based on the best-available scientific information and supporting the environmental values, EPA will monitor environmental conditions and the evolving scientific knowledge that might inform new (or amendments to existing) standards, through their existing Monitoring and Environmental Assessment Framework.

The IA commits EPA to providing further detail on the questions and indicators noted above, and setting out an indicative timeline for future reviews of the ERS standards and guidance material in 2021. That timeline will reflect EPA's consideration of the CES' recommendations and proposed approach, noted above.

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