MUNICIPAL ASSOCIATION OF VICTORIA

MAV response to:

- Environment Protection Regulations - Exposure Draft
- Environment Protection Transition Regulations
- Regulatory Impact Statement – Proposed Environment Protection Regulations
- Environment Reference Standard – Exposure Draft
- Impact Assessment – Proposed Environment Reference Standard

Submission

October 2019

MUNICIPAL ASSOCIATION OF VICTORIA

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Executive summary

The MAV supports in principle the shift to a preventative approach to environmental protection. It is clearly preferable to focus on avoiding and minimising the risk of a pollution event rather than responding to an event after it has occurred.

The Victorian government has committed to introducing the new environmental protection regime from 1 July 2020. In the haste to achieve this start date, it is critical that care is taken to ensure we end up with a framework that maintains or improves public health and environmental outcomes, rather than leads to increased risks of harm. In relation to onsite wastewater management, we firmly believe more time is needed to do the work necessary to ensure the regulations adequately mitigate public health and environmental risks.

The proposed environmental protection subordinate regulations will introduce significant and complex changes to many areas of council activity.

Councils will be impacted in their capacity as:

- Co-regulators (waste, litter, noise, air, onsite domestic wastewater management)
- Managers of land and infrastructure (roads, stormwater, drainage, contaminated land etc.)
- Potential polluters (waste collection depots, user of chemicals, etc.)
- Planning authorities (contaminated land, land-use permits, etc.)

We are especially concerned about the proposed new approach to the management of onsite wastewater systems below 5,000 litres capacity. The regulations as drafted will result in significant changes to the roles of landowners and councils. Important decisions affecting councils' resourcing and liability profile have been made based on rudimentary quick-turnaround costings provided by councils to inform the RIS. These changes are proposed to come into effect in a little over eight months.

Unless substantial assistance is provided more time is also needed for councils to implement reforms in contaminated land, planning approval processes and new mandatory reporting requirements.

It is highly problematic that in costing the impacts of the proposed regulations, the decision was made to use the new *Environment Protection Act 2017* as the base case, instead of current legislative and regulatory settings. This meant that in providing input to inform the RIS, councils were asked to identify costs relating to their current role which were then applied to scenarios that do not yet exist. As a result, some of the proposals in the RIS missed key details being considered when the options were being assessed.

The cost impacts of the proposed regulations will likely be significant for councils and for other duty holders. This is not sufficiently recognised within the RIS. The fact that councils are rate

capped also appears to have gone unacknowledged. The intended finalisation of the new regulations in early 2020 and the commencement of the new Act and subordinate instrument on 1 July 2020 mean that any additional resources required from councils will be unbudgeted until 1 July 2021.

By contrast, the Victorian government has significantly increased the funding provided to the EPA over the last couple of years to provide it with the resources needed to develop and implement the transformation process. According to the 2018-19 DELWP Annual Report, in 2018-19 the EPA was provided $81.06 million from the Municipal and Industrial Landfill Levy Trust Account. The report indicates that the EPA also benefited from Sustainability Fund funding, with $5.32 million allocated to `Bringing our Environment Protection Authority into the Modern Era.'

Such major regulatory transformation requires a re-think about the governance arrangements between governments, industry and communities. In relation to councils' role as co-regulators, we strongly recommend the development of a Memorandum of Understanding between EPA and local government to provide the basis for cooperation. The MoU will help:

- Provide clarity around local government and the EPA's respective environment protection roles and responsibilities.
- Demonstrate EPAs commitment to the principles of the Victorian State Local Government Agreement
- Enable topic specific arrangements where state-wide consistency of council activity is beneficial for industry

The 60-day consultation period for the proposed subordinate instruments is grossly inadequate. The volume of material to work through and the complexity of the changes under consideration are significant. It is likely that a range of operational and cost impacts that haven't been identified in the RIS or ERS Impact Assessment will only come to light once the new framework is in place. Councils are frustrated that they were not provided with enough time to obtain specialist external advice on the implications of the proposed reforms. They are also concerned that the 60-day period prevented them from providing councillors with detailed briefings.

We are aware that many councils have made their own submissions in addition to providing input to this MAV submission. Councils' efforts in this regard reflect their growing concern about the potential cost and operational implications of the new regulatory settings. We urge the EPA to carefully consider all the feedback provided. Local government is a critical partner for the EPA in protecting the environment. It is essential that councils' concerns, raised in individual submissions and over the following pages, are taken seriously.

This submission includes 56 recommendations. They address timing and implementation concerns and recommended drafting changes. A complete list of the recommendations is included at Appendix 1. They are also listed in each of the topic areas to which they relate.

We ask that the EPA prioritise the following recommendations, some of which are expanded on in individual sections of the submission:

- That the EPA enter into an MoU with local government to clarify roles and responsibilities; establish agreed approaches to collaborative implementation; and provide for ongoing guidance and support for councils in their co-regulator role

- That the regulations require the EPA to consult with local government prior to making determinations or instruments that are not subject to a RIS process

- That the regulations require renewal of septic tank permits and delay implementation of prescribed fees and reporting by councils

- That the regulations not classify aggregated municipal waste as industrial waste

- That the regulations retain the current (*Environment Protection Act 1970*) timeframe for payment of waste levies

- That the regulations provide definitions and alternative operating hours for non-concert events that involve music but are not centred on it

- That the EPA and DELWP work with local government to develop enforcement toolkits for air, litter and noise

- That the EPA commit to engaging and supporting councils to meet their obligations in recognition of the complexity of these reforms

Introduction

The Municipal Association of Victoria (MAV) welcomes the opportunity to provide a submission in response to the following documents currently out for consultation:

- Environment Protection Regulations - Exposure Draft
- Environment Protection Transition Regulations
- Regulatory Impact Statement (RIS) – Proposed Environment Protection Regulations
- Environment Reference Standard (ERS) – Exposure Draft
- Impact Assessment – Proposed Environment Reference Standard

The MAV is the statutory peak body for local government in Victoria. Formed in 1879, we have a proud tradition of supporting councils to provide good government to their communities.

The transformation of the EPA into a modern, responsive and powerful environmental regulator with a firm focus on harm prevention is essential to help achieve a healthy future for both our natural environment and for Victorian communities.

Councils interact with the EPA in several different roles, including as regulated duty holders, co-regulators and as planning authorities. Since 2011, a number of councils have also been participating in the Officers for the Protection of the Local Environment (OPLE) pilot program. The pilot program initially saw 11 EPA-employed and authorised officers placed in 13 council offices across Victoria and will soon expand to have 19 officers in 23 councils. We and councils strongly support the program and hope to see it made permanent, with placement of EPA authorised officers across all councils in Victoria. As well as strengthening the relationship between EPA and councils, it has proved invaluable to enabling councils work with industry and the community about local-source pollution.

The current consultation process is focused on the proposed subordinate instruments under the new Environment Protection Act. This submission also covers our concerns and suggestions regarding the operationalisation of the new environment protection framework. These are included under the specific topic sections.

It concerns us that such significant reforms are scheduled to come into effect on 1 July 2020 with so little lead-up time to educate, inform and prepare affected stakeholders. We urge the EPA to commit to extensive engagement with key stakeholders, including local government, in the months ahead of July 2020 to build greater understanding and readiness for the new regulatory settings. These are not simple reforms to understand. It is important that the State not underestimate the time and resources needed to assist duty holders to comply.

We acknowledge and appreciate the willingness of the EPA to involve the MAV and many council officers in discussions on key topics of importance to councils over the last year.

But being consulted is different to being involved in decision-making. New ways of involving local government will need to be accommodated in the new framework. Development of a MOU between the EPA and MAV (representing Victoria's 79 councils) will be critical where decisions and guidance impact councils' resourcing and liability profile.

Contaminated Land

We support the move to more proactive duties for managing contaminated land. This will reduce the risk to community and environment. These changes carry significant implications for councils as managers of land and for their role in the planning system.

Much of the weight of managing contaminated land is currently borne through the planning system and triggered by proposed changes of use. Proactive duties will apply to all persons in management or control of contaminated land. These duties apply regardless of whether that person caused the contamination or whether the contamination occurred prior to the new Act commencing.

In effect, a large number of sites will have additional management duties "switched on" with the commencement of the new Act on 1 July 2020. Former council depots and landfill sites are two obvious categories of potentially contaminated land that may require management and potential notification to EPA.

Victoria has a finite number of persons qualified to assess contaminated land, and a finite capacity for remediation. Bringing large numbers of sites into an environment protection framework will place considerable strain on this capacity. This may be exacerbated by current efforts to process large quantities of stockpiled hazardous materials and assess potential contamination resulting from their storage. The EPA must consider this when enforcing the Act. High risk sites must be prioritised for action. Duty holders making genuine attempts to comply with their obligations should not be sanctioned due to a lack of availability of the necessary tools for management.

In addition to sites under control of councils, former council sites carry significant financial risk. Costs of management of contaminated land can be recovered in court if the person responsible for pollution can be established. Owners of contaminated ex-council sites with newly introduced responsibilities may be able to seek costs from council.

Timeframes for consultation are short given the depth and breadth of the regulations. We also do not know the exact background levels that will be set. These factors make it impossible to quantify the costs to councils from sites in their control or that have been disposed of. This also makes it difficult to assess the adequacy of the regulations in preventing harm.

Activities resulting in contamination may not have breached any regulatory obligations in place at the time. Management of unknown future requirements can't be built into operating costs. While we support the polluter-pays principle, we urge the Victorian Government to keep in mind that in a rate-capped environment councils have limited capacity to fund significant and unforeseeable burdens placed on them.

State of knowledge is an important factor in considering the new duties. For councils this will refer to institutional knowledge rather than knowledge of individual officers. Contamination by council will generally have taken place a long time ago. The activities leading to contamination may have occurred under a different council pre-amalgamation. It will be no simple task for councils to inventory and understand the management requirements of sites under their control. Councils may require assistance to develop this understanding.

Better Environment Plans exist in the Act as a tool for duty holders to discharge complex responsibilities in a more manageable way. For contaminated land this could mean that a single person in control of multiple contaminated sites can prioritise management responses to the most high-risk sites. They can then be considered as fulfilling their duties across all sites. Councils will likely be the holders of some of the most expansive and complex inventories of contaminated sites. We believe that the EPA should prioritise the development of Better Environment Plans to assist councils in managing contaminated land in a practical manner.

What do the subordinate instruments cover?

Determining background levels (Regulation 5(1))

Land is considered contaminated only if a substance, chemical, or waste is present above background levels and poses a risk of harm to human health or the environment.

The proposed regulations do not prescribe background levels for individual substances. The EPA has the power to determine background levels. This allows the setting of background levels to be more responsive to a changing state of knowledge and emerging risks. However, this also creates uncertainty for duty-holders as the EPA will be able to set background levels without a regulatory impact statement process or formal consideration of the costs to duty holders of doing so.

Councils are subject to significant and unforeseeable cost burdens due to changing standards by the EPA. Prior to making new determinations on background levels it is critical for the EPA to consult with duty-holders. Potential cost implications and reasonable timeframes for implementation must be considered. To give duty-holders confidence, this should be part of the prescribed process in the regulations and not merely adopted as EPA practice.

While not explicit, it appears the intent of the EPA is to determine background levels to generally be at the Health Investigation Levels under NEPM. Given the timeframes, we believe that NEPM is a reasonable starting point for more general background levels.

The EPA has suggested it will then also consider making more targeted determinations applying to specific areas. Determining the highest priorities for setting alternate or elevated background levels should be done in consultation with councils. It is critical that implementing these elevated

background levels does not create risks to the community or environment by exempting management obligations where they are justified.

When notification to the EPA is required (Regulations 8-14)

The Act provides that for some types of contamination, the person in management or control of land must notify the EPA. If not prescribed in regulations, the Act provides that contamination is notifiable if it would cost $50,000 or more to remediate. The EPA and DELWP have stated that it was not the intent for this monetary trigger to ever come into effect. As outlined in the RIS, this would bring many lower risk sites into the duty to notify.

To implement this the regulations prescribe notifiable contamination (Regulations 8-12) as well as exemptions from being notifiable contamination (Regulation 13).

We support the proposed prescribed notifiable contamination regulations as well as the exemptions provided.

Regulation 14 requires that when notifying the EPA of contamination, a person must also provide their management response or proposed management response.

We understand this may allow the EPA to better triage their response to notifications as well as turning the mind of duty holders to a management response. However, this potentially complicates the duty to notify. A person must notify the EPA of notifiable contamination as soon as practicable after the person becomes aware of the contamination. Requiring a management response at the time requires the duty holder to make a judgement call between a speedy response and a comprehensive one. The Act allows a person to follow-up with further information as it becomes available. Guidance from the EPA is needed to assist in understanding what is required and when.

We support the requirement to provide a management response when notifying the EPA of contamination subject to this guidance being available.

Specific clean-up requirements for NAPLs (Regulation 15)

Contamination by Non-Aqueous Phase Liquids carries more stringent management duties than other forms of contamination. Where NAPLs are present in soil or groundwater, the person in management or control of the land must clean up the NAPL and remove or control its source so far as reasonably practicable. This expands upon existing requirements found in SEPP Groundwater that do not require clean up where the NAPL does not pose a risk to groundwater. This potentially places a requirement to clean-up on significantly more sites. Given the costs associated with clean-up of NAPLs this will pose a significant burden to duty holders but appears a necessary measure to address the risks posed.

Due to their serious health and environmental impacts, we support the specific requirement to clean up NAPL contamination and remove or control their source as far as reasonably practicable. However, duty holders will require guidance in identifying the steps necessary to do so.

Environmental values, indicators, and objectives for land (Environmental Reference Standard)

We support the proposed ERS for land. However, it will have significant potential impacts for councils, most notably as a consideration in planning decisions. As primary stakeholders in the planning system, we urge the EPA and DELWP to consult closely with councils in implementation of the environment protection framework through the planning system.

Recommendations

- That the regulations require the EPA to consult with local government prior to making determinations or instruments that are not subject to a RIS process, including:
    - The determination of background levels under Regulation 5(1), including elevated background levels for some regions
- That the Victorian Government provide assistance, including financial assistance, to councils in understanding and meeting their new obligations, including:
    - Identifying and cataloguing contaminated council land and former council land
    - Implementing management of contaminated council land
    - Identifying and cataloguing potentially contaminated land within their municipality
- That the EPA provide guidance on what level of detail should be provided in a proposed management response when notifying the EPA of contamination
- That the EPA consider the limited state-wide capacity both for assessment and remediation of contaminated sites in any enforcement measures, and work with duty holders to manage risk within these constraints
- That the EPA work with councils to build understanding of historically contaminated land
- That the EPA and DELWP work with local government to develop and implement necessary changes to the planning system, including:
    - Implementing the Preliminary Risk Screening system
    - Changes to Ministerial Directions
    - Changes to provisions including the Environmental Audit Overlay
    - Development of model permit conditions
- That the EPA prioritise the development of Better Environment Plans with councils to manage complex inventories of contaminated land.

Noise

Under the proposed framework there will continue to be a role for both councils and the EPA in managing unreasonable noise. We support the proposed subordinate instruments. Significant work is required to formalise how the intersecting responsibilities of the EPA and councils will be managed. An MoU between councils and the EPA is a necessary step in this process.

Councils also manage unreasonable noise outside of the environment protection framework through nuisance provisions, local laws and the planning system. The proposed changes may require councils to review and potentially update their current practices. The State should provide support to councils in undertaking this task. This will promote consistency and best practice, as well as limit the impacts on council capacity to continue performing other vital functions.

Consistent enforcement of the environment protection framework is beneficial to the community, industry, and councils. Guidance for councils on how and where to apply various powers available to them would assist in achieving this. The production of an officer handbook would be an effective approach. This has been undertaken previously for public health and wellbeing regulations and resulted in a valuable resource.

What do the subordinate instruments cover?

Residential noise (Regulation 114 & 115)
Under the Act, unreasonable noise from a residential premises is subject to a number of offences enforced by council and police.

Unreasonable residential noise continues to be defined primarily by the use of prescribed items at prohibited times. It also includes noise meeting the more general definition of unreasonable noise in the Act. We support this framework as well as the proposed exemption for the use of cooling systems during declared heat health alerts.

Where residential noise emanates from a prescribed item at a prohibited time and it results or is likely to result in harm to the human health or the environment, it is considered aggravated noise. Significantly harsher penalties apply to aggravated noise. This provision can only be enforced by the EPA and not by councils. There will need to be protocols established for the referral of aggravated noise to the EPA.

Residential construction noise (except for maintenance or repair of an existing dwelling) has been excluded from the definition of residential premises noise. As a result, the offences available to councils and police will not be available to address unreasonable noise emanating from residential construction. This noise will be addressed through the General Environmental Duty.

The EPA wishes to explore delegating to councils the power to regulate residential construction noise through the GED. This would require careful consideration from councils, as this

enforcement would be substantially different from either current or proposed management of residential noise. We need more information to assess whether such a delegation would be in the interests of councils.

Infringement penalties (Regulation 164 and Schedule 10)
A number of the offences available to councils relating to residential noise are proposed as infringement offences.

Unreasonable residential noise relating to the use of a prescribed item at a prohibited time is an infringement penalty carrying two penalty units for a natural person (ten for a body corporate). Failure to comply with an improvement notice or an unreasonable noise direction both carry a penalty of five penalty units as an infringement offence for a natural person (25 for a body corporate).

The ability to serve infringement notices is a vital tool for councils to efficiently enforce residential noise provisions. We support the proposed infringement offences and the associated infringement penalties.

Commercial, Industrial, and Trade (CIT) Premises noise (Regulations 116-121)
Councils do not have powers under the proposed environment protection framework to address CIT noise. Councils do play a role in managing some forms of CIT noise through nuisance provisions, the planning system and local laws.

Following the finalisation of regulations, councils may need to review and update their current approaches to dealing with CIT noise. Guidance and assistance from the EPA in undertaking this task would promote consistency, as well as mitigating the impact on councils' capacity to continue performing their other roles.

Some council services must be delivered at night time. This includes street cleaning and some waste collection. In some mixed-use areas this will be in close proximity to dwellings and residential buildings. It is important that noise regulations do not interference with critical service delivery.

Entertainment venue noise (Regulations 122-131)
Like CIT premises, councils do not have a direct role in managing entertainment venue noise under the new Act. Councils will again often play a role through either nuisance provisions, the planning system, or local laws, as well as being the first point of contact for many community complaints.

Under the proposed regulations, music noise from a live entertainment venue is not considered unreasonable if it meets the requirements of clause 53.06 of the Victoria Planning Provisions and the noise limit applying to that venue. We support this alignment of the environment protection framework with the agent of change principle in the planning system.

The proposed framework requires increased dialogue between the EPA and local government as co-regulators. We believe that this should be formalised to ensure the expectations on all parties are clear and agreed upon.

As with CIT noise, following the making of the regulations councils and the EPA should work together to review and potentially update current management of entertainment venue noise within local government.

The broad definition of "concert" captures many other events such as fun runs, triathlons, school fetes, markets, and food and wine festivals which use music for ambience. The proposed operating time definitions would prevent many of these events from running or require an exemption from the EPA. One council estimated that for council-run events alone they would require over 100 exemptions per year. Alternate operating times for other types of events should be considered.

The regulations (28(f) and 28(g)) prescribe what must be considered in assessing an application for operating outside of hours or conducting more than six outdoor concerts. The number of complaints is proposed. This would include both unsubstantiated noise complaints and complaints unrelated to noise levels. The nature of the complaints received should be considered, rather than merely the quantity.

Noise sensitive areas (Regulation 4 (Definitions))
Impacts on noise sensitive areas continue to be key in managing both CIT and entertainment venue noise. We support the adoption of current terminology in the Victoria Planning Provisions to promote consistency between the planning and environment protection systems.

We support the proposed expansion of noise sensitive areas to include childhood education facilities. Unreasonable noise can be disruptive to education and development and the regulations should reflect this. We also support the inclusion of tourism establishments and rural areas which derive value from natural acoustic characteristics.

Noise protocol (Regulation 113 and Noise Limit and Assessment Protocol)
From our understanding, the noise protocol translates the existing methodology of Noise related SEPPs and gives equal weighting to measures currently found in Noise from Industry in Regional Victoria and is supported.

Environmental values, indicators, and objectives relating to noise (Environmental Reference Standard)
The environmental values in the ERS are broadly equivalent to beneficial uses under the existing SEPPs. As with noise sensitive areas, consideration is now given to childhood education and development as well as human tranquillity in outdoor areas.

We support these new inclusions. Councils will need guidance on how these should be considered, particularly in planning decisions.

Land use categories relating to noise (Environmental Reference Standard)
Environmental values in the ERS are applied to areas based on their land use category. We support the use of land use planning zones to define land use categories in the ERS.

Wind farm noise

Councils, community, and the renewable energy industry have long advocated for the EPA to have responsibility for regulating noise from wind farms in Victoria.

Councils have incurred significant cost investigating wind farm noise through nuisance provisions as required under the Public Health and Wellbeing Act. Nuisance provisions are poorly suited to address this issue. It is a complex matter to assess and requires expertise that does not sit within council.

The new tiered permissioning system offers an opportunity for the EPA to regulate wind farms in a manner commensurate to their risk. Regulating centrally through the EPA means expertise can be held in-house. This would be far more efficient than individual councils having to contract experts for each complaint received. This approach has been adopted successfully in other jurisdictions. It represents a best practice approach to the regulation of wind farms. We believe this is a missed opportunity in the proposed regulations.

Recommendations

- That the regulations provide definitions and alternative operating hours or non-concert events that use music but are not centred on it
- That the regulations consider the type of complaints received rather than only the quantity when assessing applications to operate outside of hours or hold more than six outdoor concerts
- That the EPA enter into an MoU with local government to clarify their roles and responsibilities, including:
    - Referral of noise issues between relevant agencies
    - Management of entertainment venue noise
    - Potential delegation to councils for enforcement of residential construction noise
- That the EPA and DELWP work with local government to develop an enforcement toolkit, including:
    - When and how to refer noise issues to other authorities
    - Guidance on when to use the various noise enforcement tools available
    - Guidance on determining what is unreasonable noise
- That the EPA become the primary regulator of wind farm noise in Victoria
- That the Victorian Government provide assistance, including financial assistance, to councils in understanding and meeting their new obligations, including:
    - reviewing and updating how councils manage noise through nuisance provisions, planning and local laws
    - how councils should consider new environmental values (childhood development and human tranquility) proposed in the ERS
- That the EPA and DELWP work with local government to develop and implement necessary changes to the planning system, including:

Air

The operation and effectiveness of the proposed regulations and Environmental Reference Standards are of considerable interest to councils and their communities. This interest arises from:

- Changing industrial practices, including the trend to greater intensification
- Increasing urbanisation and denser concentrations of people living in close proximity to each other
- Increased use of diesel-fuelled vehicles and SUVs
- Emerging climate change impacts for how weather impacts air quality, such as urban heat, wind and intense weather events
- Rising community expectations about air quality being safe for human health
- Emerging community awareness and concern about natural events causing breathing and respiratory illness, such as bushfires, dust-storms and pollen events ('thunderstorm asthma').

We welcome odour being included in the Environmental Reference Standards. Due to the technical nature involved in identifying odour and its impact for the health of third parties, EPA continues to be the agency best placed to take responsibility for odour investigation and enforcement.

The proposed regulations will benefit from EPA updating the 2001 Ambient Air Quality NEPM Monitoring Plan Victoria as part of the implementation of the new regulation. Increasing EPA's monitoring coverage across the state will also provide better information to empower people to manage their own risks arising from poor air quality. In metropolitan settings, the cumulative effect of many sources of pollution impacting many people living and working in close proximity to each other mean that more information will be required to be collected by EPA to either prevent or mitigate adverse impacts for public health.

In rural settings, air quality is impacted by a different range of factors, such as agricultural industries where livestock and biological processes occur that are unable to be accurately quantified for emissions such as methane. Industrial-scale production, transport of products, dust during dry periods, pesticide spraying and wood-heater odour are also often part of the rural and regional landscape. As reporting pollutant levels to the National Pollutant Inventory involves cost to rural and regional businesses, careful consideration needs to be given to what is essential to be reported, and those activities which could be exempted.

Consideration of the increased use of diesel-powered vehicles needs to be factored into the impacts of vehicle emissions. Consideration of the increased use of diesel-powered vehicles needs to be factored into the impacts of vehicle emissions.

Given the dependencies of humans on the ecosystems that support the environment, we suggest that the Environmental Reference Standards articulate that the environmental value of air is relevant to all forms of life.

Recommendations

- Support more quantifiable approaches for measurement of odour being investigated so they can be more explicitly included in councils' planning approvals processes
- That EPA continue to be responsible for odour investigations and enforcement
- That EPA undertake further analysis about how small to medium businesses in rural and regional areas might measure their emission outputs which need to be reported to the National Pollution Inventory, in order that these requirements do not impose unnecessary regulatory burden
- Consideration of higher penalties for diesel emission exceedances due to the greater health liability and costs that they incur
- Consideration of particulate matter PM_1 being listed as a pollutant particle with an equivalent aerodynamic diameter of 1.0 micrometre or less, if it is shown from quantifiable independent research that PM_1s have the potential to cause harm
- Amend Part 2, Standard 5 so that it references all forms of life, with the environmental value being for the "Life, health and well-being of all forms of life, including the protection of humans, ecosystems and biodiversity "

Litter

In relation to litter reforms, arguably the most significant changes are in the Act rather than in the proposed regulations. For example, the Act defines litter as a quantity of waste that does not exceed 50 litres; introduces the term "dangerous litter" (essentially replacing the offence of "aggravated littering" with "dangerous littering"); and prescribes volume-based litter offences with increased penalties. It also prescribes different penalties for body corporates and individuals.

The proposed regulations provide that any litter that is wholly or partly comprised of "priority waste" is "dangerous litter". Schedule 5 of the proposed regulations identifies materials classified as priority waste, including asbestos.

The proposed regulations also include offences previously dealt with within the Act, e.g. depositing and affixing unsolicited documents; defacing, setting fire to, damaging or destroying a public litter receptacle; not appropriately securing a load to a vehicle. Importantly, the proposed regulations continue to allow infringement notices to be served for all these offences (apart from the offence of commissioning or engaging the distribution of unsolicited documents).

We consider these reforms will enhance council and other agencies' ability to take enforcement action for litter offences. We support the proposed regulations as drafted.

Operationalising the new regulatory settings

In seeking to ensure the new legislative and regulatory framework is effective, councils have identified a range of measures the EPA should take to support litter enforcement officers and agencies. These include:

- Updating the 2014 EPA litter enforcement toolkit to reflect the new legislative and regulatory settings, incorporating preventative reference standards. The updated toolkit should be shared with litter enforcement officers ahead of the Act's 1 July 2020 commencement date.
- Engaging with magistrates to ensure they are aware of the new offences and penalties.
- Preparation and sharing of standardised tools and resources across the state to support a consistent approach and messaging, including a state-wide education campaign.
- Providing councils with a direct contact person within EPA to provide support on large investigations.
- Sharing information and intelligence with councils.
- Providing councils with funding support to engage dedicated litter enforcement officers.

Councils also note the success of the NSW EPA's regional illegal dumping (RID) squads and programs in taking a strategic, coordinated approach to prevent illegal dumping. We understand

five Victorian councils from one region have approached the EPA to run a trial of the program here in Victoria. We encourage the EPA to work with those councils to progress a trial.

Recommendations

- That EPA update the litter enforcement toolkit to reflect the new legislative and regulatory settings; engage with magistrates to ensure they're aware of the new offences and penalties; provide standardized tools and resources across state, including a state-wide education campaign; provide councils with a direct contact person within EPA; and share information and intelligence with councils.

Plastic shopping bag ban

In 2018, following advocacy from a range of parties including the MAV and local government, the Victorian government committed to banning lightweight plastic shopping bags. The *Environment Protection Act 1970* was subsequently amended, with the ban coming into effect on 1 November 2019. The new Act, effective 1 July 2020, also includes a power to prescribe a ban but regulations are needed to give effect to the ban.

The proposed regulations define a "banned plastic bag" as follows:

> *banned plastic bag* means a bag, other than an exempt plastic bag—
>
> (a) with handles; and
>
> (b) that comprises, either wholly or partly, plastic, whether or not that plastic is biodegradable, degradable or compostable; and
>
> (c) that has a thickness of 35 microns or less at any part of the bag

An "exempt plastic bag" is defined as a bag `that comprises, either wholly or partly, plastic and that is an integral part of the packaging in which goods are sealed or provided for sale'.

The proposed regulations prohibit retailers from providing or selling banned plastic bags and from providing false or misleading information about the ban.

It is concerning that at the time of finalising this submission, one week after commencement of the ban, there has been little promotion or community education about the ban.

The complete absence of state-wide waste education campaigns on recycling and waste issues more generally is frustrating. It has no doubt contributed to the public's low level of understanding and appreciation of recycling and sustainable consumption.

Over recent years it has largely been left to councils to educate their communities about waste and recycling-related matters. Despite the landfill levy providing a ready source of revenue to fund community education, the Victorian government appears to have made little investment.

The EPA will have a significant role to play informing and educating both retailers and the community about how to comply with the ban and the penalties for failing to do so.

Recommendations

- EPA to visibly increase its engagement with retailers and community about how to comply with ban

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Waste

Given recent events in the waste sector, including the detection of numerous unsafe and illegal waste material stockpiles, it is appropriate that waste and resource recovery activities are very much in focus for regulatory reform and enhancement.

It's our hope that the new legislative and regulatory framework will mean that the EPA can more readily and more effectively take the lead on high-risk issues, working in collaboration with councils, WorkSafe and other relevant agencies as appropriate. The current reliance on planning and building enforcement action to deal with aspects of unsafe stockpiling is problematic. This has been particularly challenging for councils with high-risk waste and resource recovery sites within their municipalities.

The new Act and proposed regulations will require a wide range of waste and resource recovery activities and facilities to have EPA permission in order to operate. This expansion of permissioning will give the EPA better oversight of the waste and recycling sector as a whole. It should enable proactive regulation and harm minimisation.

We are concerned that in seeking to achieve greater oversight of problematic waste streams, the proposed regulations may have unintended consequences in terms of creating unwarranted regulatory burden for lower-risk activities. We explain our concerns in the sections below.

Impacts on councils

Industrial waste duties for municipal waste

For many councils - rural, regional and metropolitan - aggregation of materials at transfer stations is a necessary step in their kerbside collection systems. Aggregation creates volumes that make transportation to the nearest materials recovery facility or landfill economically feasible. The uneven geographical spread of waste and resource recovery facilities, and especially the lack of materials recovery facilities in regional areas, is a significant shortfall in Victoria's waste and resource recovery system.

Under the proposed regulations, municipal waste becomes subject to industrial waste duties once aggregated at a waste and resource recovery facility. For many councils this creates an unwelcome and unwarranted new layer of regulatory burden to manage what is a relatively low-risk waste stream.

We question whether, when drafting the proposed regulations, the government intended to impose industrial waste duties on municipal waste? We ask that the EPA consider an alternative approach to exempt councils from having to meet industrial waste duties where the aggregated material is predominantly or only municipal waste material. One possible solution might be to amend the wording of clause 60(b) to include reference to `transfer to and / or from waste and resource recovery facilities' in addition to the existing reference to `collection'. Municipal waste

should remain classified as municipal waste until the material is processed and the composition changes.

It should also be noted that the change in status of kerbside material from municipal waste to industrial waste once aggregated is not easily understood from reading the regulations. The provisions that articulate this requirement need to be made clearer (or ideally amended, as per the paragraph above).

Priority waste obligations

In conversations with the EPA, EPA officers have indicated that they consider the impact of the proposed regulations on local government to be limited because councils tend to deal with lower-risk waste materials. We are concerned that the EPA does not appreciate the diverse waste material types councils are often required to manage.

In responding to illegal dumping incidents and as transfer station operators, councils can and do find themselves handling a range of materials that will be considered priority or reportable priority waste under the new regulations. Councils will need to be supported to understand and comply with any new obligations in managing these higher risk materials. We fear the cost impacts of these new obligations may be substantial and that this has not been taken into consideration during the drafting of the regulations and RIS.

We anticipate the impacts on rural councils may be more significant as most waste and resource recovery centres in regional areas are council-owned and operated and, due to resource constraints, staffing at transfer stations is limited. The capacity and capability of councils varies across the state. It is important that the EPA takes this variability into account when considering the impacts of different reforms. EPA should consider whether less resource-intensive requirements could be applied where the material volumes being handled are low.

Permissions

Under the new Act and proposed regulations, a broader range of waste and resource recovery infrastructure, including transfer stations, will be required to have either a licence, permit or registration.

Schedule 1 of the proposed regulations provides a complete list of the activities that will require a permission and / or a financial assurance. In terms of waste and resource recovery facilities, the following table sets out activities and facilities identified as needing a licence, permit or registration.

Development or operating licence	Permit	Registration
Development licence: • All activities currently requiring a works approval. • WRRs which require either an Operating licence or a Permit throughout their operating life. **Operating licence:** • All activities currently requiring a licence. *(A full list of works approval and licence activities can be found in Schedule 1 of the Environment Protection (Scheduled Premises) 2017 regulations. Examples include: landfills, sewage treatment works and power stations.)* • WRRs receiving or processing more than 4,000 tonnes of waste (inc. combustible waste) in any month or storing more than 10,000 cubic metres at any time	• Consignment authorisations (Waste into Victoria and Waste out of Victoria) • Municipal landfills serving <5,000 people • Temporary plant for on-site waste treatment • Waste transport vehicle permits (for vehicles carrying prescribed waste codes). • WRRs receiving or processing more than 4,000 tonnes of waste (excluding combustible waste) in any month or storing more than 10,000 cubic metres at any time • WRRs receiving or processing less than 4,000 tonnes of waste (including combustible waste) in any month and storing between 5,000 and 10,000 cubic metres at any time • Supply or Use of Reportable Priority Waste and liquid wastes	• Biomedical storage by a council, health service or ambulance service • Temporary asbestos storage • Temporary storage of 1000 litres or less of designated waste not generated at the premises • Waste transport vehicle permits (for all other wastes requiring a transport permission). • WRRs storing between 5 and 5,000 cubic metres of waste (whether or not combustible) at any time. • Glass re-processors (who reprocess glass waste at a design capacity below the threshold set in the Scheduled Premises Regulations) • Waste tyre storage facilities (that fall below thresholds specified in the Scheduled Premises Regulations) • Organic waste processing facilities (that fall below thresholds specified in the Scheduled Premises Regulations) • e-waste reprocessing facilities (that fall below thresholds specified in the Scheduled Premises Regulations)

There are two primary impacts for councils. Firstly, councils will need to ensure that they have the appropriate permissions in place for their own facilities. Secondly, councils will need to ensure that the waste and resource recovery facilities that are receiving this material have appropriate permissions (i.e. are lawful places).

The consultation documentation is unclear whether the EPA intends to publish an up-to-date list of all permission-holders and provide the details of activity permitted against each permission. We think this would be beneficial. It would enable councils to check that an operator has the appropriate permission in place and is acting within scope of its registration, permit or licence.

It's also unclear whether the EPA will publish up-to-date details of any non-compliance issues and enforcement action taken against EPA permission-holders. Again, we think this would be beneficial to assist councils to be alert to potentially significant performance issues involving

their service providers. This kind of information sharing would have been helpful to councils affected by the recent SKM site closures.

One of the key weaknesses of our resource recovery system is that there is little transparency about where materials recovery facility operators send materials after they've completed the sorting process.The new permissioning system provides an excellent opportunity to address this information gap. In order to enhance the accountability of the waste and resource recovery sector, the EPA should require waste facility operators to provide information about the downstream destinations of the materials they receive. This would assist the EPA to better understand material flows and provide some means to check that material is genuinely being recycled, reused or recovered.

Fees and costs

Chapter 8 and Schedule 1 of the proposed regulations prescribe the fees for different permissions. It is our understanding that:

- There is no fee for registration (except for reportable priority waste transport)
- Under s.189 of the proposed regulations, the application fee for a permit for a range of activities, including municipal landfills servicing less than 5000 people and medium waste and resource recovery facilities is 119.54 fee units. The fee unit rate for the 2020-21 financial year is not yet known but based on the fee unit rate of $14.81 for the 2019-20 financial year, this equates to an application fee of approximately $1770. (Noting that different permit fees apply to other activities including reportable priority waste transport permits).
- The application fee for an operating licence is 84.78 fee units (approximately $1256) plus, if the assessment by the EPA exceeds 13 hours, an additional fee of 6.53 fee units (approximately $97) for each hour (or part of an hour) of assessment. The total fee is capped at a maximum of 965.35 fee units (approximately $14,297). Annual fees for operating licence holders also apply.

Chapter 6 and Appendix 7 of the RIS provide an overview of estimated costs to industry of applying for and complying with the new permissions:

- Development licence approval cost is estimated to be an average of $33,461, and development compliance costs are estimated at $29,694.
- Annual reporting costs for operating licence holders are estimated to be an average of $22,291 per year. The cost to comply with licence conditions is estimated at an average of $29,387 per year.
- The cost of the permit application process (including for municipal landfills serving less than 5000 people and for waste and resource recovery facilities handling 5000 cubic metres or more on the premises at any time) is estimated to be $14,000.

- The cost of registration has been conservatively estimated at $50, with the registration process estimated to take up to one hour.

These costs are significant. The Act also enables the EPA to attach conditions to a permission. Depending on the nature of those conditions, the compliance costs may be significantly higher.

Many Victorian communities have already borne an increase in their waste service charges over the last two years as a result of China National Sword policy impacts. A number of councils have also incurred additional costs to fund new services, such as introduction of food and garden organic (FOGO) collection services, in an effort to improve resource recovery within their municipality. The cumulative impact of these costs increases is not acknowledged in the RIS.

Although the proposed regulations do not adjust landfill levy (or "waste levy") rates, we understand that the Victorian government is currently reviewing the levy. We anticipate that an increase in levy amounts will likely be announced within the coming months.

The Victorian government's failure to invest greater amounts of landfill levy income into the resource recovery sector has no doubt contributed to the recent and ongoing challenges in the recycling sector. If the landfill levy had been used to improve resource recovery in Victoria – including via community waste education, investment in sorting and processing capacity and market development – the recycling system would be stronger and more sophisticated.

As at 30 June 2019, the Victorian government had around $406 million unspent landfill levies accrued in the Sustainability Fund. We ask that some of this money be used to offset the increased compliance costs councils and communities will face as a result of these environment protection reforms.

Waste levy payments

Under the *Environment Protection Act 1970*, licence holders liable to pay the landfill levy have three months to settle payment for the previous quarter. The proposed regulations significantly reduce that timeframe, requiring liable licence holders to pay the waste levy within 21 days after the end of the relevant period for which the levy is payable. The RIS does not discuss this reduced timeframe for payment nor the potential impacts on affected licence holders.

Councils have requested that the EPA review this reduced timeframe and amend the proposed regulations to retain the status quo (as per the *Environment Protection Act 1970*). Councils are concerned that the EPA has not adequately considered the cost and difficulty of complying with the 21-day timeframe, particularly for small resource recovery centres.

Electronic system approvals

Section 83 of the proposed regulations provides that a person may make an application for approval of an electronic system for recording or providing transaction details for the purposes of section 142(1) of the Act. Councils have asked that the EPA clearly define the system

requirements needed to enable waste service providers to self determine whether their existing system is compliant without having to go through an additional approval process.

Operationalising the new regulatory settings

We note that the Victorian government's circular economy policy is due to be released in late 2019. It is unclear how that policy will interface with the new environment protection framework. We very much support greater oversight and regulation of the waste and resource recovery industry. To facilitate greater recovery and reuse of materials it will be essential that the regulatory framework is easy to understand and navigate. This will assist new and established players to invest and do business in Victoria.

The Act provides that operating licenses may not remain in force for a period of more than 20 years. The one exception is for waste management activities engaged in at a current or former landfill site. These activities are licensed for a maximum period of 99 years. Given the capital costs involved in setting up facilities such as waste-to-energy plants, the 20-year cap for activities on sites other than current or form landfill sites seems problematic. There is a risk that the cap will act as deterrent to new investment and innovation. We also question whether providing better terms for activities occurring on current or former landfill sites means that there isn't a level playing field for those operating from other sites? The five-year maximum term for permits may also have unintended consequences in terms of deterring investment.

The proposed regulations include provisions regarding used packaging materials and sets out specific obligations for brand owners that are not signatories to the Australian Packaging Covenant. There is a view that some brand owners do not sign on to the Australian Packaging Covenant because they consider the alternative pathway – meeting obligations set by the relevant state environmental regulator – less onerous. The MAV has been calling for the federal and state and territory ministers to review the *National Environment Protection (Used Packaging Materials) Measure 2011* to impose mandatory participation and binding obligations across the consumer packaging chain. If the Victorian government is serious about transitioning to a circular economy, this would be an obvious and important issue for them to take up.

We find it difficult to understand and articulate the implications of the new environment protection framework for councils, let alone for other duty holders. It is hard to overstate the importance of EPA committing to extensive engagement with stakeholders, including councils, once the regulations and other subordinate instruments have been finalised. This will be essential to help duty holders understand and be ready to meet their new obligations.

The change in approach for both the EPA as our independent regulator and for all duty holders is significant. It will be incumbent on the EPA to have clear and concise guidance ready well in advance of the 1 July 2020 commencement date. This will be vital to help councils, businesses, industry and others to understand their obligations under the new framework. Ideally this

guidance would be prepared in consultation with specific stakeholder groups to ensure it is clear and suitably tailored to the readers' needs.

Finally, these are very complex reforms. It is likely that there will be unforeseen impacts on individual duty holders and on the workings of the resource recovery system that will become evident after the new framework comes into operation. It concerns us that the costs and administrative burden of complying with the new regulations may be far higher than reported in the RIS. The operational impacts of the new environmental protection framework will need to be closely monitored by the EPA in partnership with the resource recovery industry, local government and other key stakeholders.

Recommendations

- That the EPA revise the proposed regulations to remove the requirement for municipal waste to be managed as industrial waste once it has been aggregated at a waste and resource recovery facility for onward transportation.
- That the EPA review whether the regulatory requirements for handling low volumes of priority and reportable priority waste are commensurate with risk and that the EPA provide support to councils to understand and comply with any new obligations in managing these materials.
- That the EPA retain current Act requirements for timing of payment of waste levy, to give liable licence holders three months to settle payment (and not 21 days as proposed).
- That the EPA commit to engage and support councils to help them meet their obligations recognising the complexity of the reforms proposed.
- That the EPA prepare clear and concise guidance for duty holders in advance of the changes coming into effect.
- That the EPA publish a list of all permission holders including details of the activity permitted in order to facilitate greater accountability and transparency within the waste sector. That the EPA also publish details of any non-compliance issues and enforcement action taken against EPA permission-holders. And that the EPA also apply conditions on waste and resource recovery facility permissions to obtain data on downstream destinations of materials.
- That the EPA reconsider capped terms for operating licences and permits in light of need to attract resource recovery infrastructure investment into Victoria.
- That the EPA commit to monitoring cost and operational impacts of new framework in collaboration with resource recovery industry, local government and other key stakeholders

Land and infrastructure management, including roads, stormwater and construction

The replacement of most SEPP Clauses with the GED is going to present challenges for councils. SEPP Waters clauses about issues such as storage and handling of chemicals and hazardous substances, construction activities, management of roads and ensuring works on flood prone areas do not increase risk of pollutant transfer to waterways will now form part of councils' GED with no framing or limits if new information is produced by any government agency, research body or practiced by multiple councils.

Clauses in other SEPPs which have been framed specifically to accommodate stakeholder input will also be impacted by this change.

Under the new framework, the 'state of knowledge' principle is going to mean that standards may change much more frequently This will occur with much less oversight and reduced statutory requirements on DELWP or EPA to consult with stakeholders in the development of standards.

Continually needing to be up-to-date with contemporary knowledge will require staff-time, reporting to councils for resourcing re-assessment and budget adjustments. They will be time-consuming and resource intensive without necessarily being filtered for their importance and priority in managing the highest risks posed by council infrastructure activities.

EPA authorised guidance is going to be very important in providing clarity about expectations of councils as land and infrastructure managers to fill the gap left by the removal of the SEPPs.

In order that this guidance is appropriately risk-based and proportionate to need, councils must be involved in its development and content. The EPA must also have regard for the capacity of councils to implement guidance proposals. We would like to see this role reflected in the regulations.

Where councils seek to manage their GED through the development of Better Environment Plans, these will present costs to council to prepare and have endorsed by the EPA. We encourage the EPA to further consider the costs of these plans where templates are developed for use by more than one council across the state.

In respect of the SEPP Water clauses which will be retained for a further two years, we welcome this additional time for EPA and DELWP to work with local government to develop appropriate instruments for their role in developing and implementing Domestic Wastewater Management Plans and Urban Stormwater Management Plans. This will enable orderly development of the new planning frameworks and time for local government to be involved. It will also enable these plans to incorporate contemporary approaches to water management.

To enable consistent and broad participation by councils, we recommend that a funding program is considered when this proposal is being implemented.

Recommendations

- Insert into the regulations a requirement for EPA to consult with local government in the development of statutory guidance which has financial and resourcing implications for councils
- An MOU is developed between EPA and MAV (representing local government) which sets out the consultation and decision-making principles EPA will follow when it is developing guidance which has significant resourcing impacts for councils
- That MAV be involved in the development of Orders for Managers of Land and Infrastructure (OMLIs) due to their impact on the resourcing of councils for their management of infrastructure such as roads and stormwater
- A funding program for councils to renew their domestic wastewater and stormwater management plans are incorporated into the EPA's regulatory implementation plan

On-site wastewater (septic tanks)

The MAV is very concerned that the proposed regulatory framework will lead to increased risk of serious disease transmission for the community arising from pollution from on-site wastewater (ODWW) systems with capacity below 5,000 litres per day. Unlike the preventative approach underpinning the regulation for other types of pollution, for onsite wastewater the Victorian Government is proposing to rely on a system where the regulators (EPA and councils) mainly take action after pollution has occurred.

Under the proposed framework, hundreds of thousands of residential landowners and occupiers of properties (including tenants) across rural, regional and outer metropolitan areas are assumed to not only understand their GED, but also that they will take the necessary actions to meet their obligations. When they do not, EPA will be responsible for enforcing compliance by undertaking this itself or exploring the potential for delegating its powers to councils. Either way, taking action after pollution has occurred will involve costly and time-consuming investigations and follow-up actions. Issuing improvement notices is complex. Council decisions can be appealed to VCAT and the courts.

Figure 1 provides examples of recent investigations needing to be undertaken by councils – these occur frequently and regularly. They often require protracted effort from council staff and landowners to achieve rectification. The proposed new system will increase the likelihood of failing systems and the need for expensive rectifications.

The costs to councils will be high and unpredictable to plan for. They will need to be subsidised by all ratepayers. This includes those who already pay for reticulated sewerage services via their water bills and landowners who have paid for regular servicing of their wastewater systems. This approach is contrary to the principle that duty holders (landowners) should face the full cost to the environment and human health of their decisions, as they may otherwise continue to underinvest in preventing pollution ("why regulations may be needed", RIS, p37).

On-site wastewater management is one of the hardest policy areas to regulate because it can be diffuse (it's often difficult to identify its primary polluting source). It requires landowners and occupiers to be equipped to manage the risks they pose to themselves and the broader community. Given the costs to the general community from failures at the individual level, it is critical that the regulatory system fill the gaps.

It is welcome that the EPA is proposing to have a greater role on onsite wastewater management through its responsibility for enforcing the GED. Councils have concerns that the localised nature of onsite wastewater management will result in EPA not giving it the attention it requires, and that they will be expected to fill the gap.

It is concerning that in rejecting Option 2 of a five-year renewal permit, minimal consideration appears to have been given to the costs arising from the following issues:

- costs to the community from illness outbreaks and system failure
- opportunities for a very small renewal permit fee contributed by many could assist in preventing pollution occurring and minimising higher clean-up costs after the event

- the risks to the overall regulatory system if council workforce capability is diminished
- missed opportunities for regional development because councils are limited in their capacity to explore integrated water management innovations with their communities.

The implied expectation that councils will continue to do more with minimal ability to recover the costs of their regulatory activity continues and further embeds serious system vulnerabilities. This is despite two VAGO reports and the Victorian Government's own implementation plan for the introduction of the SEPP Waters 2018 identifying council resourcing as a key issue in the regulation of onsite wastewater management.

Need for renewal permit:

A low-cost renewal permit issued by councils would provide a means to remind landowners of their obligation to maintain their systems. It would enable tracking of properties with onsite wastewater systems and provide stable revenue for councils to play an active role. The multiplier effect of a renewal fee would be low for individual landowners, but collectively provide meaningful resources for councils.

A standard renewal permit process would also bring greater consistency across the state. Currently some councils have local laws, some check permit conditions over the life of the system, some require landowners to provide regular reports each quarter after a service agent has checked their system. Local laws may enable some councils to charge fees, there are many councils unwilling to charge landowners.

Regulator connections with residential and small business landowners:

The mostly residential profile of landowners and occupiers using onsite wastewater systems requires more nuanced responses than is provided by the proposed installation fee/GED model. The obligations of property owners need better clarification. The impact and actions of occupiers who are not the landowner also require consideration, as each level has a part to play in preventing pollution.

Councils can play an important role in providing information about onsite wastewater system issues to landowners. Water corporations also have a role to play through their regular contact with landowners through their supply of water to properties. Further examination of the conduits for information to be relayed to residential and small landowners is required.

Fees:

We are very concerned about the quality of the costings analysis used to set a prescribed maximum fee that will apply across the state. Even on the basis of very superficial information provided by six councils, Deloitte identified significant diversity and views about landowner capacity to pay and council resourcing costs. Multiply this by the more than 60 councils which have properties with septic tank systems, then it is clear more detailed analysis is required before such a significant decision impacting all landowners and property occupiers across the state is finalised.

We are also concerned at what appears to be double-standards being applied to EPA cost-recovery models and those being proposed for councils.

If EPA cost recovery rates were applied, our calculations indicate the regulatory system will rely on a very junior officer (between VPS 3 and VPS 4) spending a little over a day administering the application, checking the system complies with EPA and Australian standards, checking the manufacturers' instructions, making referrals to planning departments and water corporations, considering the land capability assessment and responding to questions from mostly residential landowners.

Such low regulatory oversight is clearly concerning for an area of regulation involving landowners who do not have technical knowledge about the system they are installing or their GED.

The proposed fee also ignores the scope of costs councils incur in assessing permit applications, such as undertaking site visits (higher travel time is needed in rural areas), managing referrals to water corporations and council planning departments, and providing mandatory reporting to EPA[1]. No funding is allowed for councils needing to prepare domestic wastewater management plans, a requirement under SEPP Waters 2018, ongoing liaison with landowners, or undertake investigations and issue improvement notices when pollution is suspected or occurs.

Figure 2 provides greater insights to the diversity of fees and costs by an interface, regional and small rural councils.

Taken at face value, the proposed fee is concerning if councils were to limit their activities to cost-recovery in line with best-practice regulatory principles. Councils giving much less time to onsite wastewater management will certainly increase the vulnerability of a system already found wanting in numerous Victorian Auditor General inquiries.

Governance and decision-making:

[1] EPA has identified staffing cost-recovery rates of $118.25 per hour for a VPS 5, and $153.46 per hour for a VPS 6 (RIS, p.301). Many EHOs may be employed at equivalent of VPS 6

Despite the considerable effort MAV and councils have given to providing advice and insights to assist EPA and DELWP over the last 12 months, we are very disappointed that the EPA did not seek to discuss or reach agreement with local government about the proposed fee regime. This is despite local government being the prime regulator in this area, and the outcome directly impacting council resourcing.

Future governance arrangements will need mechanisms for local government to be at the decision-making table alongside EPA, DELWP and DHHS if workable solutions are to be identified to minimise public health risks to the community.

We have identified a number of recommendations which require urgent consideration if local government is to continue to play an effective role in the regulation of on-site wastewater management in the future

We particularly seek:

- Inclusion of a renewal permit in the suite of regulatory instruments to enable landowners understand their GED through regular contact with their local council
- A delay in the implementation of a standard prescribed fee from 1 July 2020 pending further analysis about the cost impacts for landowners across the state and unintended consequences for council wastewater regulatory activity resourcing
- If adequate revenue sources for councils to undertake their proposed regulatory activities are not enabled, then other alternatives will need to be explored, such as hybrid models with water corporations (which have legislated responsibilities for sewerage services) where they are already supplying water to households, or service agreement arrangements with the EPA where delegations occur
- Ongoing staffing allocations within EPA to provide a central source of advice for councils, such as setting minimum standards for land capability assessments and
- Inclusion of a local government representative in any inter-departmental committees examining reforms for onsite wastewater management reforms impacting councils' resourcing and regulatory role
- Funding to councils for an onsite wastewater rectification program which enables them to explore integrated wastewater management (IWM) solutions and innovations in water recycling to assist landowners and to build capability for this necessary infrastructure in the regions where reticulated sewerage systems aren't economic.

To assist illustrate the impact for councils, the following table sets out our assessment of the regulatory framework from a local government perspective.

Activity	Proposed framework	Recommendations
Installation	● Council installation permit (regulation) which are time bound to a maximum of 5 years. In practice permits will be complete when the certificate to use is provided to the landowner *Pros*: ● Provides better clarity around status of the installation permit *Cons*: ● Council ceases contact with landowner after the certificate to use is issued ● No change to EPA's role in providing advice about conditions landowners should be aware of to manage their system appropriate to the local land capability	➢ Provide greater clarity in the regulations that the permit is complete once the certificate to use has been issued ➢ Urgently institute analysis of council costs to inform appropriate fees if these are to be prescribed in consultation with the MAV and councils ➢ DELAY commencement of regulations prescribing fees pending this analysis ➢ Review the time period allowed for councils to consider permit applications ➢ EPA to provide advice to councils about interpreting manufacturer instructions for system maintenance ➢ Develop EPA guidance for landowners and occupiers about what the GED is and what they need to do to comply with it
Ongoing	● Landowner has obligation to ensure their system does not pollute	➢ Include a renewable permit-of-use in the suite of

Activity	Proposed framework	Recommendations
ODWW systems maintenance	● Legacy and systems installed without permits will be captured in the regulatory system through the GED ● EPA responsible for on-going compliance *Pros*: ● Stronger responsibilities on landowners to take preventative action ● Legacy and unpermitted systems brought into the regulatory system *Cons:* ● Many landowners and occupiers (renters) don't understand their obligations ● Greater likelihood of increased non-compliances generating complaints and need for improvement notices to be issued ● Greater reliance on councils to issue improvement notices which are costly and complicated to investigate and resolve ● Greater likelihood of appeal and court processes needing to be resourced Greater risks of public health disease harm RIS analysis deficient in considering: - alternative permitting models utilising learnings from existing local laws in operation in some municipalities - analysis of economies of scale multiple permit revenue could provide to councils at small cost to landowners - costs of utilising nuisance provisions and issuing of improvement notices after pollution has occurred - the regulatory activities and costs councils incur ● The one-size-fits-all model does not meet different risks in different parts of the state, population densities, land profile capabilities and proximity to groundwater and waterways ● **Penalties and enforcement tools** Councils generally find the educative approach with landowners	regulatory instruments to enable landowners understand their GED ➢ Explore options which enable local laws to continue to be utilised where these are currently in place ➢ Re-examine the penalties for infringements to be issued by councils when improvement notices are not complied with

Activity	Proposed framework	Recommendations
	the most effective way of achieving wastewater system compliance with permit conditions and seeking rectification of failing systems without permits. There are times, however, when there needs to be additional tools needs to be available to regulators to achieve proportional actions -	
Municipal-wide activities	Councils must prepare Municipal Domestic Wastewater Management Plans (DMWPs) (SEPP Waters) *Pros:* Development of a plan enables highest risk areas to be targeted in an orderly and planned manner *Cons:* DWMPS are expensive to develop and implement Resourcing varies across the state based on risk profile and capacity of councils Resourcing problems may be exacerbated if councils need to administer greater numbers of improvement notices Ratepayers are subsidising landowners who fail to adequately manage their septic systems	➢ Funding to councils for an onsite wastewater rectification program which enables them to explore integrated wastewater management (IWM) solutions and innovations in water recycling which will assist landowners and build capability for this necessary infrastructure in the regions where reticulated sewerage systems are not economic to provide

Activity	Proposed framework	Recommendations
State-wide roles	● Clarity about the role of DELWP and EPA still to be determined in implementation plans ● EPA public health function strengthened ● Local government not represented on state inter-departmental committees	➢ Ongoing staffing allocations within EPA to provide a central source of advice for councils, such as setting minimum standards for land capability assessments ➢ Inclusion of a local government representative in any inter-departmental committees examining reforms for onsite wastewater management reforms impacting councils' resourcing and regulatory role
Council reporting requirements	Act provisions to be transferred to regulation ● Pros – state-wide picture of council activity levels and reports of non-compliance levels will assist policy development Cons – ● Unfunded extra staff time and resourcing for councils. IT systems – unclear process for EPA to consolidate data so it can be useful for councils to understand regional and state-wide trends ● Reduced service levels for ratepayers in other areas identified as priorities in the Council plan ● No identified work proposed to be undertaken by EPA to develop comparative data guides ● No consideration for EPA investment in technology systems to enable efficient reporting ● No complementary reporting requirements for EPA to report back to councils	➢ DELAY implementation of this regulation pending further analysis of the data collected by councils to inform development of standard datasets ➢ Include reporting as one of the issues for consideration in an MOU with EPA – for example an agreement could set out the details of the data to be reported, the actions the agencies commit to undertaking to use the data and the benefits that will be provided back to councils.

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Figure 1: Local government insights to wastewater management by landowners:

Examples of regularly occurring failing septic tank issues:

Experiences from a Melbourne metropolitan council:

The main issues we found through our inspection program related to:

- Grease traps missing baffles resulting in grease and food particles entering storm water systems.
- Effluent disposal fields saturated and ineffective, resulting in effluent flowing overland
- Plumbers bypassing defective septic system components and sending excess to stormwater drains as a cheaper option to repairing a defective system
- Septic system Infrastructure buried / hidden under ground
- Sand filter blockages from tree roots (general maintenance required)
- Treatment plants not being serviced as no service contract in place
- Properties failing to desludge the septic tank every 3 years
- Redirected / bypassed irrigation systems offsite
- Flush valves and inline cartridge filters being tampered with

As ONE example of the issues we found (there were many!):

- A large number of properties with failing irrigation fields had a plumber attend who would rectify by bypassing the irrigation field and connect the septic tank to storm water (cheaper option). The resident wouldn't necessarily know the plumber was doing this, they would get a few quotes and choose the cheapest option. The owner then never had any issues with their irrigation again and thought their septic system was operating perfectly!
- Council would only learn of this some 10 - 20 years later when we performed our onsite inspections and tested the systems (dye tests etc.).

"It is only through our inspection program that we are able to identify properties that would benefit from reticulated sewer and refer these to relevant water authorities for inclusion into their backlog community sewerage programs" – Council officer

Example of Improvement Notice times for remediation experienced by a rural regional city council:

This photo is of a recent non-compliant onsite wastewater system identified in January 2019 during the council's triennial inspection process. It was found as a result of an inspection to a neighbouring property. The old septic system was discharging onto the ground post distribution point. No underground trenches were installed, and the issue had been occurring for some time. In short, the effluent is easily identified in the images and caused a nuisance by running into the neighbouring property. An improvement notice was issued, however the remediation process took longer than expected, due to quotes and labourers' issues. Ultimately it took about 6 months for full remediation to occur.

Figure 2: Council costs and risk assessments

The following table provides some brief insights to the activities councils undertake to regulate onsite wastewater systems, and insights to the number of failing systems:

Activity	Properties at risk due to maintenance failures
General permit administration - Annual fee setting / budgeting - Council policy development/delegations - Communications / website maintenance - Information packs for landowners - Vehicles, travel time - Internal reporting to council - Liaison with EPA - Development of - Liability/insurance - Risk management strategy development **Permit granting process** - Receipt and recording of application and fees - Pre-inspection preparation - Initial assessment (on-site visit/desktop review) - Consideration/analysis of LCA recommendations (if LCA was conducted for the site) - Installation inspection - Follow-up non-compliance issues - Commissioning land capability assessor for larger-scale developments involving multiple landowners - Final inspection - Issuing permit - Follow-up of non-payment (where applicable) - Recording and reporting **Compliance** - Responding to complaints - Sampling - Issuing notices - Follow-up - Court processes - Follow-up of non-payment - Recording and reporting	<u>Council inspection results</u>: Interface council: - Of over 10,000 properties inspected, 60% of systems failed to meet standards Regional city: - Of 4,700 properties assessed, 48% were found to be unsatisfactory, 56% were disposing off-site Small rural shire: - 600 properties, 70% were found to be unsatisfactory

Activity	Comments
Domestic Wastewater Management Plans (DMPs) - Develop pro-forma, confirm instructions, process - Initiation of communication with landowners - Assessment process (onsite visit/desktop review) - Procure and manage consultancy contracts - Undertake community consultations - Responding to questions - Liaison with water corporations	<u>Council estimates:</u> Develop & review existing plans – varies, some councils report consultancy costs up to $200,000 Implementing actions – costs include vehicles, full-time staff member Corporate overheads – procuring and managing consultant contracts, IT systems, monitoring works undertaken by contractors (often plumbers), organise authorised to act on their behalf
Reporting to EPA - Currently not required, but proposed to be mandatory	<u>Council estimates:</u> Currently not required - would depend on complexity of data to be reported, and the extent of double/handling and extraction of data

Potential for EPA delegations to local government

Under s437 of the Act, the EPA (through its governing board) may by instrument delegate any EPA powers or functions under the Act to bodies including councils, or officers or employees of councils. We welcome further discussions with the EPA about the potential for delegation of its powers to local government.

There are some areas where councils will willingly accept having delegated powers to manage local issues. Some potential delegations may bring with them costs to councils, however, which they do not have capacity to undertake.

We therefore strongly recommend that governance processes are established to provide a framework for how EPA and local government negotiate potential delegations of powers. This will enable any agreed delegations to be informed by state-wide insights from the EPA in conjunction with the local on-the-ground insights from councils.

Recommendations

- Develop an MOU between EPA and MAV (on behalf of Victoria's 79 councils) to set out the principles for negotiation and agreed steps which will be undertaken for different scales and levels of delegations and their impact on council resources and liability profile

Interaction with land-use planning and the Victoria Planning Provisions

Many councils rely on clauses in the SEPPs to require development applications to meet certain criteria. Given that developers can seek legal review of council decisions, there is a need for urgent clarification that the lapsing of the SEPPs from the suite of regulatory instruments which will be maintained and reviewed by the Victorian Government every 10 years will not impact council authorisations or increase the risks of their decisions being overturned through developer appeals to VCAT and/or the courts.

Of particular concern is the proposed lapsing of SEPP Waters Clause 34(2) relating to urban stormwater management. Many council planning schemes reference both SEPP Waters and Urban Stormwater Best Practice Environmental Management Guidelines (BEPM) as the authorising environment for requiring management of stormwater runoff. Considerable time is required to make changes to the VPPs and local planning schemes.

As well, many recent Victorian Government reviews and plans have identified urban stormwater as a significant pollution threat to waterways requiring better management. These include being identified as a critical action for implementation in SEPP Waters, the Improving Stormwater Management Ministerial Advisory Committee, Water for Victoria's Chapter 5, the Victorian Floodplain Management Strategy, the Healthy Waterways Strategy for Port Phillip and Westernport regions, the Yarra River Action Plan Wilip-gn Birrarung Murron.

We are concerned that the nexus between current SEPPs, VPPs and enforcing provisions for the control of stormwater in developments will be more unclear and fragmented as a result of the lapsing of SEPP Waters Clauses 34(2) and 44. In addition, if the Best Environmental Practice Management for Urban Stormwater (BEPM) has unclear regulatory status, then the main regulatory instrument councils will need to rely on will be GED provisions.

Risking council decisions being challenged in the future has potential to work against the considerable body of work undertaken by the Victorian government and councils in recent years to strengthen requirements on developments to reduce pollution from stormwater.

Councils have raised a number of questions which require urgent clarification:

- The potential for small-scale developers (such as dual occupancies or small townhouse developments) to effectively be exempt from complying with the GED because their activities are primarily domestic and private, and not conducted for profit or financial gain (Part 11.4 and s308 of the Environment Protection Amendment Act)
- The role and capacity of the EPA to enforce the GED for small-scale developments which generate stormwater pollution

- The impact for councils' local planning policies which reference SEPP Waters, and how changes which may be required will be enabled by the start date of 1 July 2020
- The status of the BEPM in the new framework from 1 July 2020, given that consultation about its proposed changes are yet to occur
- The subjectivity for how the GED might be interpreted by developers and permit applicants and difficulties for enforcement when what the person concerned should have known (their 'state of knowledge) is not clear
- The impact of the BEPM review and the status it will have in the new arrangements.

As pollutant load targets, management of saline discharges and irrigation planning are already being proposed to transition for a further period, we suggest that SEPP Waters clauses relied on by councils in planning approvals and the setting of conditions are also included in the transitional clauses. This would provide time for changes to be made, not only to the VPPs, but for councils to also make the necessary amendments to their local planning policies.

There are further clauses in the VPPs which will also need to be reviewed and updated. For example, VPP clause 13.03.1S for floodplain management, VPP 14.02.1S for catchment planning and management and VPP 19.03.3S for integrated water management all reference the SEPP Waters as an authorising document applicants have to have regard for in their planning permit applications.

Given that the VPPs will require amendment as a result of the SEPPs ceasing to be state policy documents from 1 July 2020, it would be useful if the definitions of stormwater could be aligned to accord with the definition in the Exposure Draft Environment Reference Standards. This would provide regulatory clarity for councils which may also reference "stormwater" in local planning policies and documentation. The definition of stormwater contained in the VPPs would be better outlined in a Practice Note detailing the specific issues development applications need to have regard for in relation to their management of stormwater.

Recommendations

- Include the entirety of SEPP Waters Clause 34 in the transitional regulations to ensure there is no diminution of the regulatory instruments councils rely on when they set requirements in development applications for stormwater management
- Consider the extent to which ERSs will be referenced in the VPPs to maintain robust requirements for development applications on the range of issues
- Review and update the VPPs to accommodate changes posed by the lapsing of the SEPPs
- Request that VPPs be amended so that its definition of stormwater aligns with the definition contained in the ERS

MUNICIPAL ASSOCIATION OF VICTORIA

Appendix 1: Summary of recommendations

This submission provides comment and recommendations on a range of topics impacting local government. We seek agreement from the Victorian Government for the following recommendations. The cumulative impact for councils is significant. Those particularly necessary for successful implementation are highlighted in bold.

Recommendation	Timing concern	Drafting change	Implement-ation
General:			
1. That the EPA enter into an MoU with local government to clarify roles and responsibilities; establish agreed approaches to collaborative implementation; and provide for ongoing guidance and support for councils in their co-regulator role			✓
2. That the regulations require the EPA to consult with local government prior to making determinations or instruments that are not subject to a RIS process			✓
3. That the EPA commit to engaging and supporting councils to meet their obligations in recognition of the complexity of these reforms			✓
Contaminated land:			
4. That the regulations require the EPA to consult with local government prior to making determinations or instruments that are not subject to a RIS process, including: • The determination of background levels under Regulation 5(1), including elevated background levels for some regions		✓	
5. That the Victorian Government provide assistance, including financial assistance, to councils to understand and meet their new obligations, including: • Identifying and cataloguing contaminated council land and former council land • Implementing management of contaminated council land • Identifying and cataloguing potentially contaminated land within their municipality			✓
6. That the EPA provide guidance on what level of detail should be provided in a proposed management response when notifying the EPA of contamination			✓
7. That the EPA consider the limited state-wide capacity both for assessment and remediation of contaminated sites in any enforcement measures, and work with duty holders to manage risk within these constraints			✓

Recommendation	Timing concern	Drafting change	Implement-ation
8. That the EPA work with councils to build understanding of historically contaminated land			✓
9. That the EPA and DELWP work with local government to develop and implement necessary changes to the planning system, including: • Implementing the Preliminary Risk Screening system • Changes to Ministerial Directions • Changes to provisions including the Environmental Audit Overlay • Development of model permit conditions			✓
10. That the EPA prioritise the development of Better Environment Plans with councils to manage complex inventories of contaminated land			✓
Noise:			
11. That the regulations include definitions for other event types currently captured under "concert" and alternative operating times for them		✓	
12. That the regulations consider the type of complaints received rather than only the quantity when assessing applications to operate outside of hours or hold more than six concerts		✓	
13. That the EPA enter into an MoU with local government to clarify their roles and responsibilities, including: • Referral of noise issues between relevant agencies • Management of entertainment venue noise • Potential delegation to councils for enforcement of residential construction noise			✓
14. That the EPA and DELWP work with local government to develop an enforcement toolkit, including: • When and how to refer noise issues to other authorities • Guidance on when to use the various noise enforcement tools available • Guidance on determining what is unreasonable noise			✓
15. That the EPA become the primary regulator of wind farm noise in Victoria		✓	
16. That the Victorian Government provide assistance, including financial assistance, to councils in understanding and meeting their new obligations, including: • reviewing and updating how councils manage noise through nuisance provisions, planning and local laws • how councils should consider new environmental values (childhood development and human tranquility) proposed in the ERS			✓

Recommendation	Timing concern	Drafting change	Implement-ation
17. That the EPA and DELWP work with local government to develop and implement necessary changes to the planning system.			✓
Air:			
18. Support more quantifiable approaches for measurement of odour being investigated so they can be more explicitly included in councils' planning approvals processes			✓
19. That EPA continue to be responsible for odour investigations and enforcement			✓
20. That EPA undertake further analysis about how small to medium businesses in rural and regional areas might measure their emission outputs which need to be reported to the National Pollution Inventory, in order that these requirements do not impose unnecessary regulatory burden			✓
21. Consideration of higher penalties for diesel emission exceedances due to the greater health liability and costs that they incur			✓
22. Consideration of particulate matter PM_1 being listed as a pollutant particle with an equivalent aerodynamic diameter of 1.0 micrometre or less, if it is shown from quantifiable independent research that PM_1s have the potential to cause harm			✓
23. Amend Part 2, ERS 5 so that it references all forms of life, with the environmental value being for the "Life, health and well-being of all forms of life, including the protection of humans, ecosystems and biodiversity "		✓	
Litter:			
24. That the EPA update the litter enforcement toolkit to reflect the new legislative and regulatory settings; engage with magistrates to ensure they're aware of the new offences and penalties; provide standardized tools and resources across state, including a state-wide education campaign; provide councils with a direct contact person within EPA; and share information and intelligence with councils			✓
Plastic bag shopping ban:			
25. That the EPA visibly increase its engagement with retailers and community about how to comply with ban			✓
Waste:			
26. That the EPA revise the proposed regulations to remove the requirement for municipal waste to be managed as industrial waste once it has been		✓	

Recommendation	Timing concern	Drafting change	Implement-ation
aggregated at a waste and resource recovery facility for onward transportation.			
27. That the EPA review whether the regulatory requirements for handling low volumes of priority and reportable priority waste are commensurate with risk and that the EPA provide support to councils to understand and comply with any new obligations in managing these materials		✓	✓
28. That the EPA retain current Act requirements for timing of payment of waste levy, to give liable licence holders three months to settle payment (and not 21 days as proposed).		✓	
29. That the EPA commit to engage and support councils to help them meet their obligations recognising the complexity of the reforms proposed			✓
30. That the EPA prepare clear and concise guidance for duty holders in advance of the changes coming into effect.			✓
31. That the EPA publish a list of all permission holders including details of the activity permitted in order to facilitate greater accountability and transparency within the waste sector. That the EPA also publish details of any non-compliance issues and enforcement action taken against EPA permission-holders. And that the EPA also apply conditions on waste and resource recovery facility permissions to obtain data on downstream destinations of materials.			✓
32. That the EPA reconsider capped terms for operating licences and permits in light of need to attract resource recovery infrastructure investment into Victoria			✓
33. That the EPA commit to monitoring cost and operational impacts of new framework in collaboration with resource recovery industry, local government and other key stakeholders			✓
Land and infrastructure management:			
34. Insert into the regulations a requirement for EPA to consult with local government in the development of statutory guidance which has financial and resourcing implications for councils in their management of infrastructure such as roads and stormwater		✓	✓
35. An MOU is developed between EPA and MAV (representing local government) which sets out the consultation and decision-making principles EPA will follow when it is developing guidance which has significant resourcing impacts for councils			✓
36. That MAV be involved in the development of Orders for Managers of Land and Infrastructure (OMLIs) due to their impact on the resourcing of councils			✓

Recommendation	Timing concern	Drafting change	Implement-ation
37. A funding program for councils to renew their domestic wastewater and stormwater management plans are incorporated into the EPA's regulatory implementation plan			✓
Onsite wastewater management (septic tanks): *Installation:* 38. Provide greater clarity in the regulations that the permit is complete once the certificate to use has been issued		✓	
39. Urgently institute analysis of council costs to inform appropriate fees if these are to be prescribed in consultation with the MAV and councils	✓		✓
40. DELAY commencement of regulations prescribing fees pending this analysis	✓	✓	✓
41. Review the time period allowed for councils to consider permit applications		✓	✓
42. EPA to provide advice to councils about interpreting manufacturers' instructions for system maintenance			✓
43. Develop EPA guidance for landowners and occupiers about what the GED is and what they need to do to comply with it			✓
Ongoing systems maintenance: 44. Include a renewable permit-of-use in the suite of regulatory instruments to enable landowners understand their GED		✓	✓
45. Explore options which enable local laws to continue to be utilised where these are currently in place			✓
46. Re-examine the penalties for infringements when improvement notices are not complied with		✓	✓
Municipal-wide activities: 47. Funding to councils for an onsite wastewater rectification program which enables them to explore integrated wastewater management (IWM) solutions and innovations in water recycling which will assist landowners and build capability for this necessary infrastructure in the regions where reticulated sewerage systems are not economic			✓
State-wide roles: 48. Ongoing staffing allocations within EPA to provide a central source of advice for councils, such as setting minimum standards for land capability assessments			✓
49. Inclusion of a local government representative in any inter-departmental committees examining reforms for onsite wastewater management reforms impacting councils' resourcing and regulatory role			✓

Recommendation	Timing concern	Drafting change	Implement-ation
Mandatory reporting by councils:			
50. DELAY implementation of this regulation pending further analysis of the data collected by councils to inform development of standard datasets	✓	✓	
51. Include reporting as one of the issues for consideration in an MOU with EPA – for example an agreement could set out the details of the data to be reported, the actions the agencies commit to undertaking to use the data and the benefits that will be provided back to councils	✓	✓	✓
Potential delegation of EPA powers:			
52. Development of an agreement setting out the scale and scope of delegations			✓
Interaction with land-use planning and VPPs			
53. Include the entirety of SEPP Waters Clause 34 in the transitional regulations to ensure there is no regulatory diminution of the regulatory instruments councils rely on when they set requirements in development applications for stormwater management		✓	✓
54. Consider the extent to which ERSs will be referenced in the VPPs to maintain robust requirements for development applications		✓	✓
55. Review and update the VPPs to accommodate changes posed by the lapsing of the SEPPs			✓
56. Request that VPPs be amended so that its definition of stormwater aligns with the definition contained in the ERS		✓	

Further information

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