

TERMS OF REFERENCE

INQUIRY INTO THE ENVIRONMENT PROTECTION AUTHORITY

1. Preamble

Our promise to Victoria at the election was to respond to concerns about how our environment and our industries are managed together to protect the health of Victorians.

We promised to look closely at the Environment Protection Authority (EPA) to establish how we can develop the authority to ensure it can protect public health, while protecting our precious Victorian environment for future generations.

Since the EPA was first established, our population has changed and so have our challenges. Victoria's population is expected to double by 2050. Increases in resource consumption, traffic and waste volumes will follow. Demand for housing and urban density will continue bringing communities into closer proximity with potentially contaminated land, industrial areas and with each other. We need to better protect Victorians from exposure to chemicals and pollution than we unfortunately sometimes have in the past. And we need to ensure that the principle of environmental justice is adhered to. We all have the right to participate in making decisions on our shared environment, and share in the benefits it provides.

Victoria's environment protection approaches need to be ready to deal with the range of human and environmental impacts and challenges we expect to face in the future.

The review will examine whether the EPA has the right powers, right tools and proper resourcing to ensure it is agile and efficient and can tackle the environmental challenges of today and tomorrow.

Undertaking a public inquiry will ensure we are setting the EPA up for success – to be able to respond to the justifiable public health concerns arising from contaminated sites, water quality, air pollution and community concerns such as exposure to asbestos.

To ask if the EPA is our environmental protector or regulator or both.

In undertaking this inquiry, the government will seek the advice of a ministerial advisory committee on the EPA's most appropriate role in public health issues related to land, air and water pollution, and in protecting our environment. It will also examine how to best prevent contamination of sites as well as the EPA's ability to respond to day-to-day environmental issues.

The ministerial advisory committee will seek the views of the community, industry and workers in related industries as well as those of other relevant stakeholders.

From this review, I expect to see recommendations about the way the EPA can execute the right powers, duties and functions to achieve sustainable health for our State.

Hon Lisa Neville, MP

Minister for Environment, Climate Change and Water

2. Establishment of a Ministerial Advisory Committee to conduct inquiry

The Minister for Environment, Climate Change and Water (Minister) establishes an independent ministerial advisory committee (MAC) to be known as the 'Environment Protection Authority Inquiry MAC' by these terms of reference to conduct a public inquiry into the EPA.

3. Entire Terms of Reference

The Annexure forms part of these inquiry Terms of Reference and all references to the "inquiry Terms of Reference" refers to these Terms of Reference and the Annexure. The Annexure sets out MAC member rights and responsibilities, procedures and the contribution of the secretariat and observers.

4. Scope of inquiry

The inquiry will be conducted by the MAC which will inquire into, report on, and present any recommendations and/or options that it considers appropriate in relation to the matters specified below. These are to be considered in the following order of priority:

- 1) the EPA's appropriate role in relation to public health issues, including at least: community concerns such as exposure to asbestos, chemicals and other pollutants; the prevention and management of site contamination, air quality, and water quality in rivers and other waterways;
- 2) the Victorian community's and industry's expectations of the EPA as its environmental regulator;
- 3) the EPA's appropriate role in protecting the environment;
- 4) the ability of the EPA to ensure that the principle of environmental justice is adhered to, the environment is protected for the benefit of the community, and members of the community can be meaningfully involved in, and access fair treatment through, environmental regulation;
- 5) the ability of the EPA's current governance structures and funding arrangements to enable it to effectively and efficiently discharge its powers, perform its duties and implement its required functions;
- 6) the scope and adequacy of the EPA's statutory powers, and the effectiveness and efficiency of the suite of tools available to and utilised by the EPA, in enabling protection of the Victorian community and the environment, particularly in light of recent, new and emerging risks and issues; and
- 7) any other matter reasonably incidental to these above matters.

In conducting this inquiry, the MAC will consider the best way to combine environmental protection with economic viability and growing sustainable jobs in Victoria, including through improving regulatory efficiency and minimising regulatory burden. The MAC will also seek the views of the community, industry and workers in related industries, local government and Victorian government agencies, as well as those of other relevant stakeholders.

5. Functions of the Ministerial Advisory Committee

The MAC will conduct the review, operating from **1 June 2015** to **31 March 2016**, with the following functions:

- a. Conduct the inquiry, including:
 - i. consulting with interested parties (including the community, industry and workers in related industries, and Victorian government agencies)
 - ii. seeking and reviewing submissions
 - iii. commissioning necessary advice and information through its secretariat
- b. Provide the "public face" for the inquiry
- c. Through its secretariat, oversee inquiry administrative and organisational arrangements
- d. Provide written report to Minister on its findings, making recommendations and/or options as appropriate
- e. Request advice from, and refers matters to, the Government Reference Group
- f. Request advice from the Community and Industry Advisory Group.

6. Accountability

The MAC will report to the Minister.

A diagram of the overall governance structure for the inquiry is provided on page 5.

7. Reporting arrangements

The MAC is to provide a written report to the Minister by **31 March 2016**. The Minister intends to publicly release the report and a response to its findings and recommendations on behalf of the Victorian Government.

8. Appointment

8.1 MAC members are appointed by instrument by the Minister.

8.2 The MAC comprises three members.

8.3 The Minister will appoint one member as chairperson and one member as deputy chairperson.

9. Term of appointment

A member of the MAC holds office for the period specified in the instrument of his or her appointment.

10. EPA and Environment Protection Board (EPB) contribution

During the course of its review, the MAC must consult with the EPA Chairman and the EPB members for advice on:

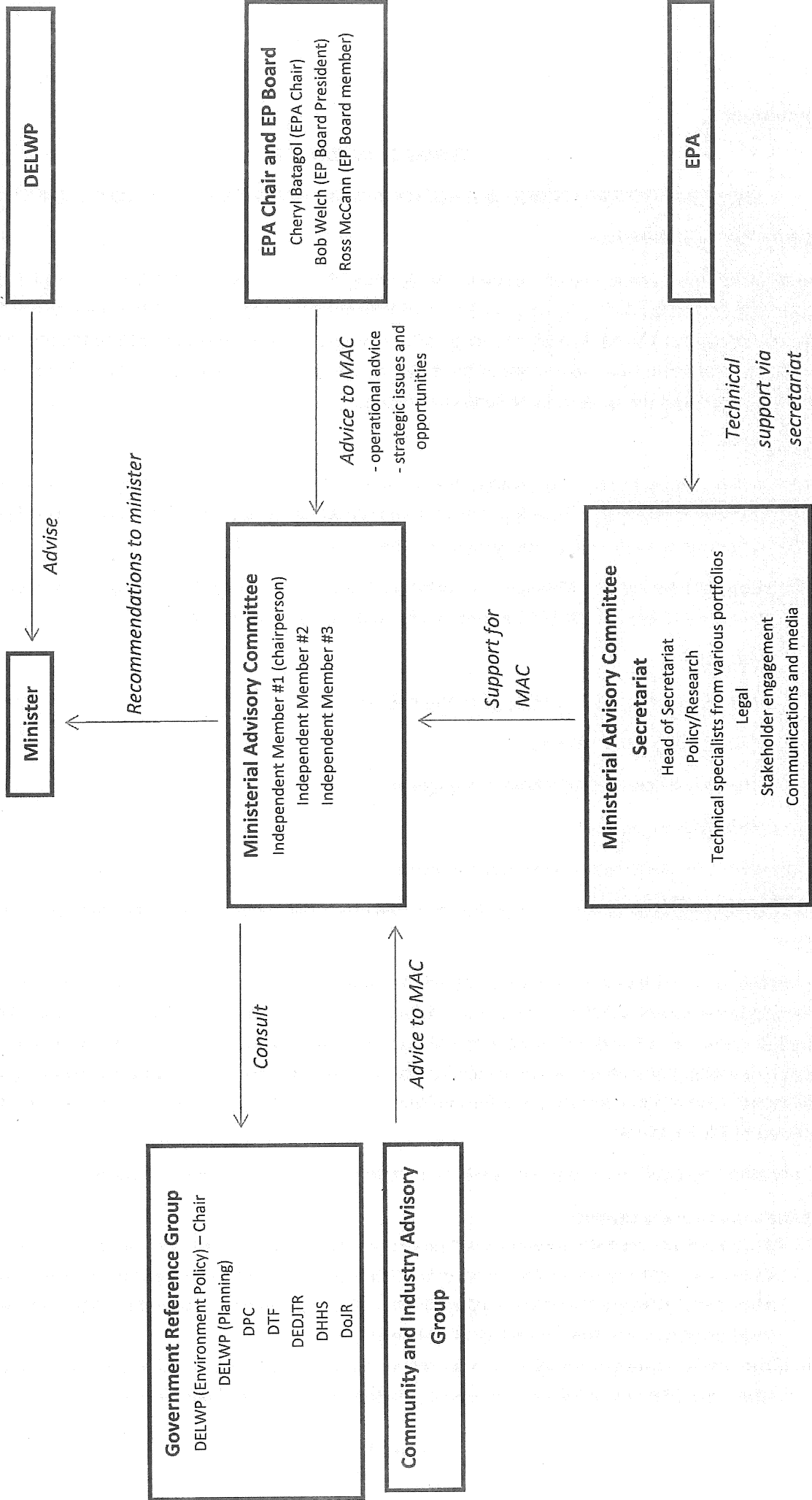
- strategic issues and opportunities for EPA; and
- the operational implications of reform options for EPA.

The EPA Chairman and EPB members will provide this and any other advice to the MAC in response to requests from the MAC.

11. Government Reference Group

The MAC will be supported by a Government Reference Group, to be chaired by the Executive Director Environment Policy, DELWP, and with representatives from the Planning Division, DELWP; Department of Premier and Cabinet; Department of Treasury and Finance; Department of Economic Development, Jobs, Transport and Resources; Department of Health and Human Services and Department of Justice and Regulation. The Government Reference Group will provide advice to the MAC in response to requests from the MAC.

Governance Structure



Annexure 1

TERMS OF REFERENCE

ENVIRONMENT PROTECTION AUTHORITY INQUIRY MINISTERIAL ADVISORY COMMITTEE

1. Entire Terms of Reference

These terms of reference are an annexure to the *Terms of Reference for the Public Inquiry into the Environment Protection Authority* (inquiry Terms of Reference) and form part of that Terms of Reference, which, under clauses 1 to 11, specify the scope of the inquiry and the functions, accountability, deliverables, membership and terms of appointment of the MAC, as well as the contribution of the EPA, the Environment Protection Board and the Government Reference Group.

2. Secretariat

The MAC will be supported by a secretariat, the members of which are employed by the Department of Environment, Land, Water and Planning (DELWP). DELWP will be responsible for HR matters relevant to secretariat members, such as payment of salaries and formal approval of leave.

The secretariat will be led by a Manager – Ministerial Advisory Committee Secretariat and will consist of a team of specialists to ensure the MAC is effectively supported in the areas of:

- policy advice
- technical knowledge, including environment protection
- legal and regulatory expertise
- communications and stakeholder engagement
- administrative support.

2.1 Obligations of chairperson in relation to secretariat

On a day to day basis, the chairperson of the MAC will direct the activities of the secretariat through its manager.

The conditions of employment of the secretariat members will be governed by the *Victorian Public Service Workplace Determination 2012* and the *Public Administration Act 2004*. The chairperson of the EPA Inquiry MAC must ensure that any directions given to the secretariat are consistent with these provisions, and are subject to budget or any other resource constraints as advised by DELWP. Any dispute over employment conditions between the secretariat and the chairperson of the MAC will be referred to the Executive Director Environment Policy, DELWP.

The secretariat is required to step out of a MAC meeting if requested by the chairperson.

3. Remuneration and expenses

- a) Remuneration for MAC members will be in accordance with the Department of Premier and Cabinet's *Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees* (Guidelines). The Minister has classified the MAC a Group D, Band 3 organisation in accordance with the Guidelines.
- b) If the MAC members are eligible to receive remuneration, they are entitled to receive remuneration as determined by the Minister and set out in their instrument of appointment.

- c) MAC members are entitled to reimbursement of reasonable travelling and personal expenses that they incur as a result of their service to the inquiry. These expenses will be paid at rates that apply to employees of DELWP.

4. Resignation from office

A member may resign from office by notifying the Minister in writing. Any such resignation will take effect from the date of receipt of notice or such later date as specified in that notice.

5. Removal from office

The Minister, without cause, may remove a member from office at any time, by providing that member with notice in writing, which shall have immediate effect.

6. Vacancies

A position on the MAC becomes vacant upon:

- a) a member's resignation;
- b) removal of a member;
- c) bankruptcy of a member; or
- d) disqualification of a member from acting as a director.

Where a position on the MAC becomes vacant, the vacancy may be filled by the Minister in accordance with these terms of reference.

7. Observers

The chairperson may invite any person who is not appointed as a member to attend MAC meetings, or a part of a meeting(s), as an observer and to participate in discussions.

Observers are to receive all relevant information provided to members of the MAC for a particular meeting or part of a meeting that an observer is attending, except that designated confidential.

Observers must receive a copy of the Terms of Reference for the Public Inquiry into the EPA, including this annexure, in advance of the meeting he or she is to attend. An observer's attendance at a meeting is implied acceptance of these terms of reference, particularly clauses 10 and 11 of this annexure.

Observers do not have the right to vote at MAC meetings and cannot exercise any decision-making or other powers of an appointed member.

Observers are required to step out of the meeting if requested by the chairperson.

8. Time commitment

The chairperson should anticipate at least 60 days of work, and other members should anticipate at least 90 days of work. This includes MAC meetings, consultation meetings and sessions, preparation for meetings and contributing to the development of the inquiry's report.

If members believe they need to do additional work beyond the days provided, they should advise the chairperson and the secretariat to ensure the workload is not unreasonable.

Members are required to attend a minimum of 75% of meetings.

9. Insurance

It is a MAC member's obligation to obtain or maintain any professional indemnity insurance.

10. Confidentiality

The details of MAC internal deliberations, and any material provided to the MAC that is marked *confidential*, must be treated confidentially by members and observers in order to provide a forum for frank and fearless advice and debate.

Discussions surrounding confidential information will not be minuted. Confidential information includes, but is not limited to, cabinet in confidence information, commercial in confidence information and personal information.

At the direction of the chairperson, observers attending MAC meetings must leave the meeting for confidential deliberations.

Members of the MAC must not discuss any deliberations or circulate any confidential materials publicly, or in any other forum.

MAC members and secretariat members will be required to sign a deed of confidentiality on their appointment.

11. Privacy

MAC members are to handle all personal information arising from their work on the MAC consistent with the requirements of the *Privacy and Data Protection Act 2014* and DELWP's privacy policy.

12. Standards of conduct

MAC members are required to comply with the obligations in the *Public Administration Act 2004* (PAA) that apply to a director of a "public entity" as if they were a director of a public entity (see the Victorian Government legislation website www.legislation.vic.gov.au), including but not limited to:

- Public sector values (section 7)
- Duties of directors (section 79) and the Directors' Code of Conduct

MAC members must also comply with these Terms of Reference and any directions or guidance provided by the Minister.

13. Meeting procedure

Meetings of the MAC must be conducted in a manner determined by the MAC subject to these Terms of Reference or any direction given by the Minister. If the chairperson is not present at a MAC meeting, the deputy chairperson will preside over that meeting.

The quorum of a meeting shall be at least two members. Decisions of a meeting of the MAC are determined by consensus. The chairperson, or presiding chairperson, must ensure as far as practicable that every member has adequate opportunity to participate in discussions.

14. Conflicts of interest

MAC members are required to provide a current Declaration of Private Interest prior to being appointed, which must be recorded by the secretariat in a Register of Interests.

At the commencement of each meeting, the chairperson will request that members disclose if they have a real, potential or perceived interest in any item on the meeting agenda. At this time any member with an interest must declare it, including the nature of the interest and the conflict that results or may result from it. If any member becomes aware of an interest during the course of the meeting, the member must declare the interest immediately.

The MAC must determine whether any declared real, potential or perceived conflict of interest is material. If the MAC decides that the interest is material, then the member who has made the declaration must not be present, take part in any discussion or vote on the matter to which the declaration relates unless the MAC agrees otherwise.

If a member declares a real, potential or perceived interest at a meeting, the secretariat must cause the following to be recorded in the minutes of that meeting:

- (a) a description of the interest and the conflict;
- (b) whether the interest is considered by the MAC to be material;
- (c) the action that the MAC has determined should be taken to ensure that the conflict is managed in the public interest; and
- (d) if the member with the interest leaves the meeting during the discussion and/or decision making on the item, the time the member leaves and the time that the member returns.

Should any interests be declared, the secretariat will keep a record in the Register of Interests. It is the responsibility of MAC members to inform the secretariat if there are any changes to their interests during the term of their appointment.

15. Minutes

The secretariat will take minutes for all meetings of the MAC, including formal discussions with external parties, and provide a copy of the minutes to the chairperson for the chairperson's approval. The chairperson must ensure that accurate minutes of each meeting are kept, that they are circulated to members for comment before being formally adopted at the next meeting, and that they are made available to the Minister or Secretary of DELWP on request.

16. Gifts, benefits and hospitality

A MAC member must not receive any gifts, benefits or hospitality in relation to his or her role on the MAC, except with approval in writing from the Deputy Secretary Land Fire and Environment, DELWP.

17. Dispute resolution

If two or more MAC members have difficulty working together and this unduly affects the functioning of the MAC, the matter will be resolved as soon as possible in the public interest. If a dispute arises, the chairperson will actively guide an informal resolution process. If the chairperson is involved in the dispute, the Manager of the secretariat will guide the process.

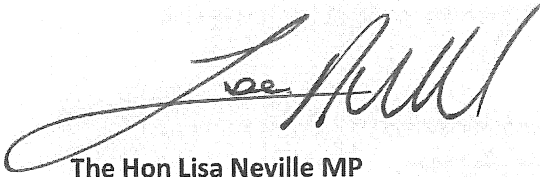
If a dispute cannot be resolved informally, the chairperson or secretariat will place the matter on the agenda of the next meeting. If satisfied that a dispute is unresolved despite proper and sufficient efforts by the parties, the MAC will invoke a formal dispute resolution process through the appointment of a mediator. If a dispute poses a major risk to the effective operation of the inquiry, the Minister and DELWP Secretary will be notified.

18. Review process for Terms of Reference

The Minister may at any time request that these Terms of Reference be amended. An updated Terms of Reference will be provided to the chairperson. These Terms of Reference will be reviewed by the MAC secretariat regularly for continued relevance, or as required by the Minister or the DELWP Secretary.

19. MAC abolition

The MAC will automatically be abolished on expiry or termination of the last member, or by the Minister at any time by notice.



The Hon Lisa Neville MP

Minister for Environment, Climate Change and Water

20/5/2015