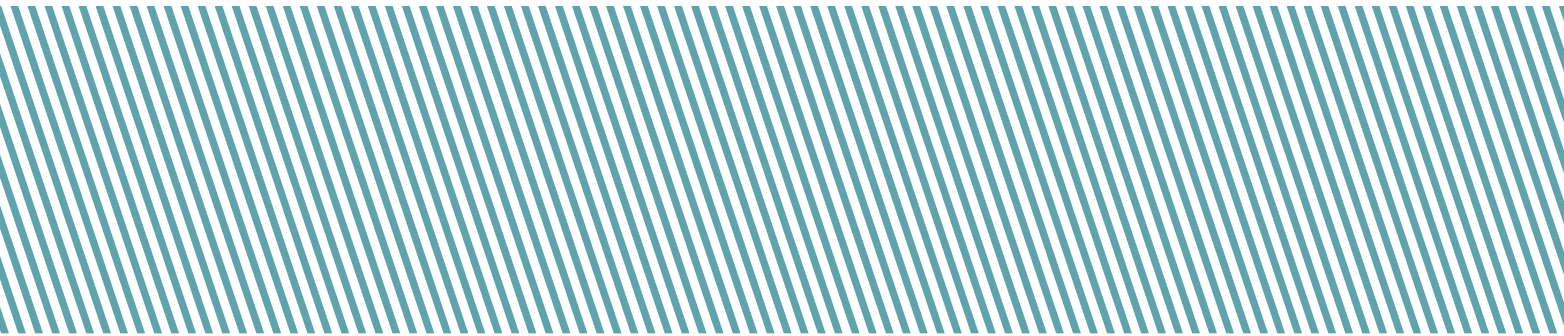


## **Victorian Government Response to**

Victorian Competition and  
Efficiency Commission's  
Final Report.

*A Sustainable Future for Victoria:  
Getting Environmental  
Regulation Right*



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*A Sustainable Future for Victoria:  
Getting Environmental Regulation  
Right*

Victorian Competition and Efficiency Commission's  
Final Report

**Victorian Government Response**

January 2010



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## Foreword

The Victorian Government is committed to maintaining and improving Victoria's environment. It is dedicated to ensuring that environmental objectives are delivered in the most efficient and effective manner, with costs to business the minimum required to achieve these objectives.

To this end, the Government directed the Victorian Competition and Efficiency Commission (VCEC) to investigate the benefits and costs of Victoria's current environmental regulation, and report on opportunities to reduce the burden on business of these regulations. The VCEC was also asked to report on improving institutional arrangements, applying alternative regulatory models, and the capacity of Victoria's regulatory system to respond to sustainability challenges.



This inquiry was completed in July 2009, and the Government welcomes the VCEC's final report, *A Sustainable Future for Victoria: Getting Environmental Regulation Right*. The Government thanks the VCEC for its dedication in undertaking this important inquiry.

Recognising the VCEC's estimate that unnecessary costs on business might amount to as much as \$48 million per annum, the Government will look to work through State Government agencies such as the Environment Protection Authority and collaboratively with local government to reduce regulatory burdens, without compromising the achievement of environmental objectives.

While the VCEC inquiry process has been underway, the Victorian Government has made important progress in articulating and delivering on its environmental objectives.

The Land and Biodiversity White Paper was released in December 2009. This far-reaching policy document outlines how the Victorian Government will manage our land and biodiversity in a time of climate change. A white paper on climate change is currently being developed. These two white papers provide the foundation for managing changes in Victoria's natural environment.

The Government's response to the VCEC's inquiry complements and expands on the policy objectives and vision outlined in the Land and Biodiversity White Paper and in the forthcoming Climate Change White Paper.

A handwritten signature in black ink, reading "John Lenders". The signature is written in a cursive, flowing style.

JOHN LENDERS MP

Treasurer



# Environmental impact assessment process

The Victorian Government requires proponents of large projects with potentially significant environmental effects to prepare an Environment Effects Statement (EES) for assessment by the Minister for Planning. The objective is to ensure that there is transparent, integrated and timely assessment of the environmental effects.

The Victorian Competition and Efficiency Commission (VCEC) identified a number of shortcomings with the existing process including:

- uncertain timeframes, due to a lack of transparent, binding timelines at certain stages of the process;
- some lack of coordination across government; and
- a lack of strategic assessments in the environmental effects assessment process.

The Government will refine the statutory framework of the EES process, particularly to improve the clarity of procedures. It will also establish new administrative arrangements to ensure the timely coordination of the EES process as well as its efficient alignment with related statutory approval processes. Through its current review of the *Planning and Environment Act 1987*, the Government will seek to improve the coupling of impact assessment and planning approvals for State significant projects. The Government will also investigate further changes to achieve greater integration of procedures for major projects once the review of the *Planning and Environment Act 1987* is completed.

Further, the Government will examine the opportunities for a strategic assessment approach to streamline procedures applying to individual projects. While a Bilateral Agreement for Environmental Impact Assessments has now been signed by the Victorian and Commonwealth Governments, opportunities to further reduce overlapping State and Commonwealth regulation will be pursued.

Taken together, the actions outlined in this response will provide greater certainty for project proponents about the EES process and will reduce delay costs associated with the EES approval process.

**Recommendation 5.1** That the Victorian Government further improve the efficiency of the environmental assessment process to ensure greater certainty for proponents, and to reduce time delays that impact on business costs by:

- amending the *Environmental Effects Act 1978* to provide statutory guidance on the matters to be considered in deciding whether proposed projects are likely to have a significant impact on the environment and should therefore be referred to the Minister, the assessment options available to the Minister for different levels of impacts, and the processes to be followed in respect of each assessment option. This amendment is intended to ensure that the proposed project's environmental impacts have been fully identified and appropriate mitigation responses made by the proponent, and that the reasons for the decision by the Minister on the appropriate form of assessment are transparent.

- amending the EES Ministerial Guidelines and the Environmental Effects Act to provide for an intermediate tier of assessment – between the requirement to prepare an EES and no EES required (with or without conditions). This amendment is intended to enable the Minister at the referral stage to better match environmental risks associated with the project with the form of assessment.
- amending the EES Ministerial Guidelines to specify that proponents who believe their project may require an EES should consult with government departments and agencies (via the Co-ordinator General of Major Projects) on their project prior to a referral for a decision on whether an EES is required. Such consultation should establish the key environmental risks of the project and the potential of mitigation options, as well as the approvals required for the project.
- amending the EES Ministerial Guidelines to clarify that referrals for approvals necessary for a project should, where feasible, be considered concurrently with the EES (including public review), both to avoid process duplication and to reduce timeframes for approvals contingent on the EES process.
- requiring that project-specific time limits be negotiated and applied to each stage of the EES process including the final Ministerial assessment stage. The specified time limits should be agreed at the start of the EES process and should also cover the required approvals. The scoping stage should not exceed 50 business days. Protocols should be established to give advance notice of delays and revisions to the agreed schedule. Advisory notes should be provided by DPCD on the scoping stage, the role of departments and agencies in technical reference groups and the structure and conduct of inquiries. After the end of the scoping stage, major issues outside the scope could only be introduced with the consent of the responsible department secretary or agency head.
- establishing the position of the Co-ordinator General of Major Projects (both public and private) under an Order-in-Council and reporting to the Minister for Major Projects, with powers specified to include a process facilitation role (not project assessment) in all stages of the EES process, and to encourage the alignment of approvals with the EES outcome. Memoranda of understanding should be negotiated between the key departments and agencies and the Co-ordinator General, to ensure there is a whole-of-government approach at each stage of the EES process. The Co-ordinator General would report publicly on the agreed timelines for each stage of the process and also reasons for any delays.
- improving the functioning of technical reference groups, by requiring that group members have the authority to express the views of their department or agency.

**Response**

**Support in part**

Environmental assessment processes under the *Environment Effects Act 1978* were reformed in mid-2006, through a combination of amendments to the Act and new Ministerial Guidelines that set out the detail of the Environment Effects

Statement (EES) process. These changes have brought significant improvements in terms of enhancing the clarity, efficiency and timeliness of assessment processes under the Act, as well as by enabling focussed alternatives to a 'full' EES.

The Government agrees with the VCEC that there is scope to further improve the efficiency of the EES process. Experience over the past three years, together with the advice from VCEC, point to the opportunity for improvements through a combination of possible amendments to the Act, refinements to the Ministerial Guidelines and new best practice guidance. The Government will evaluate these opportunities in more depth and introduce changes in 2010.

Priority aspects for change include:

- clearer objectives for the assessment process under the *Environment Effects Act 1978*;
- clearer criteria for requiring an EES;
- clearer criteria for applying conditions rather than requiring an EES;
- strengthening the accountability for achieving target timelines - including a 50 business day limit for developing the scope for an EES;
- providing best practice advisory notes, including to assist the scoping process, the role of technical reference groups and the conduct of inquiries; and
- ensuring the alignment of other statutory processes with the EES process.

VCEC's recommendation of an 'intermediate tier of assessment - between the requirement to prepare an EES and no EES required (with or without conditions)' has merit. However, this will need to be further considered in light of the current proposal before the Government to introduce an impact assessment pathway as part of the reform of the *Planning and Environment Act 1987*. If this latter pathway is adopted, it is possible that a new 'intermediate' process under the *Environment Effects Act 1978* may not be needed.

The most efficient approach for reducing the overall timeframes of statutory processes for major projects requiring an EES will be to achieve a closer alignment of the EES process with statutory approval processes. In the first instance, this can be best achieved by establishing better administrative arrangements to ensure timely inputs and coordination by relevant departments and agencies.

To achieve this, an Integrated Management of Major Projects process is being established. This is underpinned by formal agreements to consolidate and refine working arrangements to ensure that issues are identified and addressed in a timely manner, and statutory application processes are effectively coordinated with the EES process. Proponents will be encouraged to consult with departments and agencies before formally referring a project for a decision on the need for an EES, to enable early identification of key environmental risks as well as required approvals. When an EES is required, project-specific time schedules will be negotiated for the various steps in the formal assessment and approvals, including the respective

responsibilities of the proponents, departments and agencies. A Process Co-ordinator will be appointed to lead the alignment of statutory processes for each project requiring an EES.

These arrangements will provide a more effective approach than the suggestion of a Co-ordinator General, in part because of the established responsibilities of relevant departments and agencies under applicable legislation.

As part of these new administrative arrangements, defined pathways for the efficient coupling of statutory processes under various applicable legislation are being developed. In addition, best practice initiatives will enable a stronger focus on outcomes and risks, thus providing for further efficiencies.

<b>Recommendation 5.2</b>	<p>That the Victorian Government introduce legislation covering State Significant Projects (both public and private) – in the spirit of the Major Transport Facilitation Bill – which would provide a more consolidated process than those provided for by the amendments to the existing EES framework (under recommendation 5.1). This legislation and consolidated process would:</p> <ul style="list-style-type: none"><li>• be available to projects that the Minister for Planning determines are strategically significant to Victoria and for which unreasonable delays could seriously reduce the projects benefits for Victorians. The Minister would be required to publish the reasons for this determination;</li><li>• allow the Minister, on the advice of the Co-ordinator General, to refer a project from the existing EES process to the consolidated process in the event of an unacceptable delay. The Co-ordinator General and the Minister would be required to publish the reasons for any referral; and</li><li>• integrate all environmental approvals, with responsibility and final authority vested in either a Co-ordinator General of Major Projects or a single Minister.</li></ul>
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**Response**

**Support in part**

The Victorian Parliament has passed the *Major Transport Project Facilitation Act 2009*, which came into operation on 1 November 2009. This Act is directed towards complex transport projects declared to be of State significance. Because of the high degree of risk currently associated with approval and implementation of such projects under an array of legislative schemes, a 'one stop shop' approach to assessment, approvals and delivery has been established under the new Act.

While the new Act will deal with a particularly complex class of projects, wider benefits may be achieved by implementing an assessment and approvals pathway under the *Planning and Environment Act 1987*, for projects declared by the Minister for Planning to be of State significance. This approach to planning approvals is consistent with VCEC's recommendation. This new planning pathway, in addition to the Integrated Management of Major Projects administrative process to coordinate planning and other statutory procedures, would provide an efficient and readily implemented approach for the majority of projects of State

significance. By this means, optimal statutory decision-making will be achieved. An efficient coupling of the new planning pathway with an EES process would also be readily achieved.

The impacts of the proposed reform to the *Planning and Environment Act 1987* and the Integrated Management of Major Projects process will be key considerations in any future investigation of a 'Major Transport' legislative model for integrated assessment and approval of major projects generally.

**Recommendation 5.3** That for regions with similar projects and common environmental issues, the Victorian Government use strategic assessments, both to reduce timeframes and business costs, and to ensure that similar projects do not face different regulatory arrangements.

**Response**

**Support in principle**

The Government will evaluate the merit (including a comparison of the costs and benefits) of a formalised strategic assessment process that might be triggered to assess the environmental impacts of broad scale development proposals or the cumulative impacts of multiple projects or activities. This evaluation will have regard to the opportunities for such a process to guide strategic land use planning or planning for major projects, as well as to streamline statutory processes for specific proposals. It will also consider the availability of and need for baseline data to implement such strategic assessments. These aspects will be considered in the context of current strategic planning practice of local councils as well as the recent experience of the strategic assessment of the expansion of Melbourne's Urban Growth Boundary under Commonwealth legislation, which may have wider applicability to regional issues in Victoria.

## Native vegetation

Protecting our diverse and rich native vegetation has been a long standing policy objective of the Victorian Government. In 2002, through *Victoria's Native Vegetation Management: A Framework for Action*, the Government established the overarching goal of achieving a reversal, across the entire landscape, of the long term decline in the extent and quality of native vegetation.

This goal is being pursued through a range of strategies, including the maintenance of an extensive existing system of state and national parks and the establishment of additional conservation areas within the public estate. With respect to the conservation of native vegetation on private land, the Government has a two-pronged approach. Firstly, through the native vegetation regulations, a permit is required for clearing native vegetation and, as a condition of such permits, landowners can be required to make reparation for (or offset) losses of native vegetation due to clearing. The primary objective of the native vegetation regulations is to prevent further net loss of native vegetation. Secondly, in support of the longer term 'net gain' objective, the Government has a strategic investment program to purchase biodiversity conservation services from private landowners and support voluntary revegetation.

The Victorian Government is committed to ensuring that the native vegetation regulatory objectives are achieved as efficiently and equitably as possible, and without imposing undue administrative, compliance or delay costs on businesses, households and the community. To this end, in December 2005, a series of improvements were announced to simplify and clarify the regulatory framework. These improvements are beginning to bear fruit, particularly those implemented in Melbourne's growth areas. Even so, based on submissions from a wide range of stakeholders, the VCEC has concluded that there is room for further improvement to ensure that the native vegetation regulations achieve their objective with minimal economic impact on business and the community.

Many of these recommendations the Victorian Government will adopt, some it will investigate further to ensure that the findings of the Bushfire Royal Commission, due to release its final report in July 2010, are taken into account and that the optimal solution is delivered. The Land and Biodiversity White Paper also outlines policy and actions around native vegetation management and should be read in conjunction with this response.

**Recommendation 6.1** That the Victorian Government clarify the outcome that native vegetation regulations are intended to achieve, by specifying that the objective of the regulations is to ensure no net loss in the quantity and quality of native vegetation as a result of approved clearing.

### Response

### Support

The Government will communicate that the native vegetation regulations (including the provision of offsets) are designed to ensure no net loss of native vegetation as a result of permitted clearing. The recently released Land and Biodiversity White Paper explains that the native vegetation regulations aim to achieve no net loss, and that the overarching goal of a net gain in native vegetation is to be achieved by Government through voluntary measures and investments in improvements in the quality and extent of vegetation.

The Government will release a fact sheet explaining what this means in more detail and also update the *Guide for Assessment of Referred Planning Permit Applications* (DSE 2007). The guide is used widely by local council, Department of Sustainability and Environment (DSE) officers and consultants.

**Recommendation 6.2** That the Victorian Government undertake detailed mapping of native vegetation on private land outside the Melbourne metropolitan area as rapidly as resources permit, with the highest priority being areas of:

- high economic and environmental values where little or no prior detailed mapping exists and where land-use changes are likely;
- significant expected population growth; and
- projects relevant to Victoria's adjustment to a low-carbon economy are deemed to be likely.

**Response**

**Support in principle**

The Government supports upfront assessment and mapping within Melbourne's urban growth boundary, subject to costs being recovered. Melbourne's Growth Areas Authority already has in progress a program of native vegetation assessment and mapping, as part of the precinct structure planning process within the existing urban growth boundary. Consideration will be given to extending this program to areas within the expanded urban growth boundary, as resources permit.

Beyond Melbourne's urban growth boundary, unless large scale development is planned, the benefits of upfront assessment and mapping are unlikely to outweigh the costs. However, proactive vegetation mapping in growth areas may be justified for regional cities. There are also areas where major changes to water infrastructure and concentrations of energy projects may justify upfront mapping, subject to appropriate cost recovery mechanisms being in place.

Broad-scale strategic mapping can contribute to the strategic process outlined in the Government response to Recommendation 6.3 (below). However, it is important that detailed mapping is done close to when development decisions are to be made to avoid information becoming out of date.

**Recommendation 6.3** That the Victorian Government undertake a strategic planning process to identify specific areas outside the Melbourne metropolitan area (for both public and private land) that are essential to achieving the Government's biodiversity objectives. The output of this process would be a series of strategic plans for native vegetation that provide clear direction and information to business and individuals about environmental restrictions on land use, including:

- the location and types of native vegetation that are essential to achieving the Government's biodiversity objectives; and
- the areas of private land containing high-value native vegetation where clearing would not be permitted.

The process of developing the strategic plans for native vegetation would involve local councils, CMAs and DPCD, and consultation with the broader community.

**Response**

**Support in principle**

The Government supports consideration of all competing land uses in strategic planning processes to identify priority native vegetation areas. Such consideration occurs both as part of regional catchment strategies and in conjunction with planning for future land use and development, as part of its integrated approach to growth areas and related infrastructure. An example of the latter is the Armstrong Creek Growth Area, which will accommodate most of Geelong's growth in the coming decade, and where vegetation issues are being addressed as part of this process.

This approach is consistent with the Government's objectives as set out in the Land and Biodiversity White Paper, released December 2009.

Native Vegetation Precinct Plans are a recent mechanism within Victoria's land use planning system which enable both the objectives of vegetation protection to be specified and identification of specific areas in which vegetation either is to be protected or can be removed. These plans are developed through a consultative process including formal public input under the *Planning and Environment Act 1987*. They are primarily appropriate for use in major urban areas.

**Recommendation 6.4**

To further reduce uncertainty, time and cost to business of complying with native vegetation regulations, the Victorian Government should work with councils and the Commonwealth Government to develop and implement planning instruments for managing native vegetation in areas outside the Melbourne metropolitan area. The Victorian Government should prepare a strategy with a clear timetable and priorities for delivering planning instruments in areas outside the Melbourne metropolitan area.

**Response**

**Support in principle**

The Government supports development and implementation of planning instruments for managing native vegetation for areas outside of the Melbourne urban growth boundary. Such instruments will be implemented as the need arises and where benefits outweigh costs.

Planning instruments have already been developed to guide vegetation protection in conjunction with broader land use and development decision-making in Victoria. While implementation of these instruments has focussed to date on metropolitan Melbourne, they are of wider potential application, depending on priorities and the availability of adequate vegetation mapping.

Planning tools being used as part of planning for Melbourne's urban growth areas include:

- Growth Area Framework Plans, which establish the general arrangement of future land uses and infrastructure in sub-regional areas; and
- Precinct Structure Plans, which set out the specific distribution of future land uses and development.

Native Vegetation Precinct Plans may be developed in conjunction with Precinct Structure Plans.

Following the example of the approach recently adopted for expansion of Melbourne's urban growth boundary, circumstances may arise outside metropolitan Melbourne where a collaborative approach with the Commonwealth Government will be useful to enable both matters of national environmental significance and State interest to be jointly addressed.

The relationship between regional catchment strategies, regional vegetation plans and local government planning schemes is being strengthened, as part of a new governance structure announced in the Land and Biodiversity White Paper.

**Recommendation 6.5** That the Victorian Government publish its performance monitoring and evaluation strategies for native vegetation regulation and any changes to the regulations arising from this inquiry. An independent body such as the Victorian Auditor-General or the Commissioner for Environmental Sustainability should be given an oversight role in relation to the development of the strategies and their implementation.

**Response**

**Support**

The Government will publish performance monitoring and evaluation strategies, and changes arising from this inquiry.

The Government will develop a vehicle for performance monitoring and evaluation which is open and transparent, noting that:

- the Auditor General is accountable to the Parliament and as such the Government cannot direct the Victorian Auditor-General's Office (VAGO) to take this oversight role;
- the Victorian Catchment Management Council reports each five years on catchment conditions which includes native vegetation extent and quality; and
- the Commissioner for Environmental Sustainability, while not established to undertake detailed performance monitoring, will provide independent assessment of the status of Victoria's native vegetation stock through the State of the Environment Report.

As part of reforms to the *Planning and Environment Act 1987* currently being developed, new procedures for monitoring planning decisions are proposed. These procedures will be relevant to decisions relating to native vegetation.

**Recommendation 6.6** That the Victorian Government increase the separation of the policy and regulatory functions for native vegetation and make this separation transparent by establishing the Native Vegetation Regulator (NVR) to replace the current regulatory functions in the Department of Sustainability and Environment. The NVR would have the role of assessing applications to clear native vegetation and reviewing offset management plans. The NVR would have the capacity to assign the task of assessing some or all of the native vegetation removal applications in a municipality to a particular local council or group of councils, or to suitably qualified assessors.

**Response**

**Not support**

The Government supports the intent of providing greater clarity around the accountability for, and roles and responsibilities at all stages in, the native vegetation regulatory system. The Government also supports the principle of separation of policy and regulatory responsibilities.

Given that both State and Local Governments currently have a role in native vegetation regulation, and noting the potential for significant administrative costs, the Government is not convinced that creation of a new regulator specifically for this area of regulation is warranted, but will give further consideration to other options for streamlining the administration of native vegetation regulation and for ensuring clear accountability for outcomes.

**Recommendation 6.7**

That the proposed Native Vegetation Regulator (NVR) (or any agency to which the Victorian Government allocates responsibility for administering native vegetation regulations) establish management practices, organisation culture and values, processes and relationships with stakeholders that:

- achieves the consistent application of native vegetation regulations across Victoria through providing training, development, quality control, and application of consistent professional 'best practice' regulatory principles;
- adopts target timelines for the assessment of applications to clear native vegetation and reports publicly on its performance in meeting target and statutory timelines; and
- ensures that critical native vegetation issues are identified at the start of a native vegetation referral within a planning process, and that no further issues are subsequently raised (without high-level approval).

The Commission recommends that these steps be taken irrespective of where the regulatory function continues to reside within the Department of Sustainability and Environment. The NVR should encourage a constructive and close working relationship with councils in planning processes.

**Response**

**Support**

The Government will:

- develop a program for decision makers that will provide training and development in the application of 'best practice' regulatory principles; and
- work with proponents to ensure that the information provided to a decision maker is the minimum required so that further issues are avoided. This will be done through the development of templates and decision tools.

The Government notes that the timeframe for decision making for planning permits is set by regulation. The Government will report on its performance in meeting statutory timelines. Local Government will also report on its performance in meeting statutory timelines.

**Recommendation 6.8** That the Native Vegetation Regulator (NVR), in conjunction with the Department of Sustainability and Environment, develops a strategy to monitor and enforce compliance with the native vegetation regulations and offset agreements. The NVR would be accountable for administering this strategy and for reporting publicly on implementation.

**Response**

**Support in principle**

The Government supports increased emphasis on compliance and enforcement, provided it is applied in a cost effective way. The Government will develop a strategy to monitor and enforce compliance with the native vegetation regulations and offset agreements.

The monitoring of decision-making under the *Planning and Environment Act 1987* will occur as part of the modernisation of the Act. These changes are expected to be introduced during 2010.

**Recommendation 6.9** That the Victorian Government simplify, and increase flexibility in the rules for determining offsets, by:

- providing more flexibility to enable offsets to be provided in strategic reserves identified in strategic native vegetation plans (recommendation 6.3); and
- removing the capacity for local councils to impose additional conditions on offsets when the Native Vegetation Regulator has specified the offsets to be provided in its advice on planning applications.

**Response**

**Support in part**

Government supports actions that provide greater flexibility to create offsets, which achieve a no net loss of biodiversity values.

The Government, in undertaking the strategic assessment of Melbourne's future growth areas, will establish the Western Grassland Reserve to provide a supply of offsets for native vegetation removal associated with development in these areas. Experience from the establishment of the reserve will enable the Government to assess the costs and benefits, including risks, associated with the establishment of such reserves. This information will be used to inform consideration of any future reserves for strategic projects.

The Government supports removing the capacity for local governments to impose additional conditions on offsets and will work with local government to ensure consistency with native vegetation policy.

**Recommendation 6.10** That the Victorian Government simplify existing offset rules by:

- expanding the use of payment in lieu of offsets, subject to not compromising the Government's objectives for offsets that there is no net loss in the quantity and quality of native vegetation as a result of approved clearing;
- providing more flexibility for offsets on public land reserved for the primary purpose of nature conservation; and
- enabling the use of environmental bonds to facilitate permit approvals.

**Response**

**Support in part**

The Government supports the objective of simplifying existing offset rules and implementing a less costly and more certain regulatory framework. However, the actions proposed by the VCEC involve a number of risks that require careful assessment.

The expansion of payment in lieu in general is not supported, since this is likely to shift risk from the private sector to government and the environment.

Likewise, a general extension of offsets on public land is currently not supported as Government considers it may put at risk its native vegetation objectives. However, it is acknowledged that the proposal could provide benefits. The Government will investigate the risks and options for implementation, recognising that possible options must not compromise its native vegetation objectives.

The Government will continue to consider payment in lieu for public sector infrastructure projects of strategic significance, providing it does not compromise the Government's native vegetation objectives of net gain and no net loss.

The Government supports the use of environmental bonds to facilitate project approvals provided such use can be designed to minimise the risk to the Government and the environment of environmental bonds. The Government will investigate the most appropriate design.

**Recommendation 6.11** That the Victorian Government:

- seek expressions of interest from the business and not-for-profit sectors to provide BushBroker subsequent to an expansion of the supply of native vegetation for offset obligations; and
- test and, if validated, adopt the Native Vegetation Exchange.

**Response**

**Support in part**

The VCEC's recommendations are directed at reducing the time and costs involved in securing offsets by lowering transaction costs and creating stronger incentives for private parties to offer up offsets.

The Victorian Government established BushBroker to facilitate the location and securing of sites that could generate native vegetation offsets. BushBroker provides an opportunity for land owners to improve biodiversity on their properties and generate a potentially new income stream from their native vegetation.

More recently, the Victorian Government developed the Native Vegetation Exchange (NVX), an innovative approach to overcoming some of the problems inherent in establishing markets for environmental goods and services. NVX has the potential to significantly improve the efficiency of the offset market, benefiting land owners, permit holders and the environment. The Government supports the VCEC's recommendation to test the NVX before considering its future application.

**Recommendation 6.12** That the Victorian Government simplify the native vegetation permit process by:

- introducing a risk-based approach that better matches the complexity of the process for assessing the quantity and quality of native vegetation to the potential environmental significance of permit applications; and
- clarifying the factors to be considered in applying the three-step approach so that staff assessing permit applications consider the economic and social effects of proposed clearing in addition to the environmental effects.

The process of simplification should involve extensive consultation with a wide range of stakeholders and take account of ecologically sustainable development principles.

## **Response**

## **Support**

The proposed introduction of different tracks for planning approvals under the modernised *Planning and Environment Act 1987* to deal with proposals of varying complexity, is expected to provide the basis of a risk-based approach to applications for planning approval.

The further development of a risk based approach through new policy and technical guidance will enhance the consistency and efficiency of assessment of proposals for native vegetation clearance. The combination of new legislated pathways and guidance will streamline requirements for lower risk proposals while increasing assessment rigour for high risk proposals.

The Government agrees there needs to be a balance between environmental, social and economic effects in determining permit applications and will ensure this is reflected in the guidance material. The Government will also refine the guidance material available to both referral and responsible authorities in applying the 'three step approach'.

**Recommendation 6.13** That to ensure that the simplification initiatives are implemented in a consistent manner, the proposed Native Vegetation Regulator (NVR) should establish an internal quality control process for permit applications to complement any training, information and other support provided to assessment staff in the NVR.

**Response**

**Support**

The Government will use the newly developed Native Vegetation Tracking System (NVT) as its internal quality control process for the processing of planning permits. The NVT contains a wide range of information relating to the assessment process, timeliness, location and type of native vegetation offsets. An auditing program of the information contained in NVT will include:

- reporting against meeting statutory time lines in deciding applications;
- information standards; and
- appropriateness of native vegetation offsets.

This process enables comparison between officers and regions based on uniform criteria with a view to ensuring that the appropriate process has been applied and a high level of consistency of decision-making occurs.

**Recommendation 6.14** That the Native Vegetation Regulator, in conjunction with the DSE develop a strategy to monitor and enforce compliance with the native vegetation regulations and offset agreements. If councils retain responsibility for implementing the regulations, the Victorian Government should require councils to develop and implement enforcement strategies, with the DSE providing oversight.

**Response**

**Support**

The Government supports increased emphasis on compliance and enforcement, provided it is applied in a cost effective way. The Government will develop a strategy to monitor and enforce compliance with the native vegetation regulations and offset agreements. This strategy will be finalised by June 2010.

## Environment protection

Victoria's environment protection legislative framework ensures the protection of public health, improving the quality of life for all Victorians and addressing market failures in environmental markets. It allocates responsibilities so that the cost of an action is borne by those who benefit from the action and facilitates optimal decision making through the provision of all necessary information to stakeholders.

The Government has implemented significant reform to its environment protection legislative framework in recent times which has reduced the regulatory burden imposed on business while also leading to environmental improvements. In particular:

- the new industrial waste resource regulations allow industrial waste to be managed within a risk-based regulatory system, facilitating greater resource recovery opportunities through industry innovation and reducing the regulatory burden on business;
- the roll-out of corporate licences has enabled businesses to consolidate their licensing and reporting requirements while ensuring that businesses have clear, performance-based environmental obligations.

Implementation of the Government response will ensure that EPA Victoria's licensing and works approval reform program is fast-tracked and will lead to significant red tape reductions for business.

**Recommendation 7.1** That the Victorian Government redraft the triggers for works approvals in the *Environment Protection Act 1970* so works approvals are not required for premises upgrades that will result in the same or less environmental harm (to be defined as either the same or lower level of waste discharged, or the same level of discharge, but less toxic). Where appropriate, licences should be amended to reflect the new operating conditions.

### Response

### Support

Processes and guidance under the *Environment Protection Act 1970* will be amended to encourage a more risk based approach to requiring works approvals. Specifically, changes would entail amending the triggers for works approvals so that they are not required for premises upgrades that will result in the same or less environmental harm.

**Recommendation 7.2** That the *Environment Protection Act 1970* be amended, or, if sufficient, existing powers under the Act be used, to enable EPA Victoria to develop and maintain a list of pre-approved technologies that are exempt from the works approval process.

### Response

### Support in principle

The Government agrees that there is great potential to reduce the regulatory burden through reforming the Works Approvals system. EPA Victoria is currently implementing a project that investigates streamlining and enhancing its works approvals function. As part of the project EPA Victoria has already committed in its 2009-10

Corporate Plan to achieve an average of three months for processing works approvals (compared to the statutory time limit of four months). EPA Victoria has also publicly committed to reducing the average to two months by June 2011.

The project aims to reduce the administrative and compliance burdens associated with EPA Victoria's works approvals process and will investigate the potential for exempting pre-approved standard technologies from the process as a way of further reducing the works approval regulatory burden. EPA Victoria will investigate whether the Act needs to be amended to deliver this recommendation or if these changes can be delivered administratively. The project is currently collecting data to inform the potential for exempting pre-approved standard technologies. The completion of the new works approvals systems is planned by December 2010.

<b>Recommendation 7.3</b>	<p>That the Victorian Government amend the <i>Environment Protection Act 1970</i> to:</p> <ul style="list-style-type: none"><li>• establish a two-month maximum limit on the time taken by EPA Victoria to assess works approval applications (excluding the time it waits for further information from the applicant beyond the specified due date);</li><li>• allow time extensions beyond the two-month statutory time limit in exceptional circumstances only; and</li><li>• establish a 30-day maximum time limit for responsible authorities to support or object to applications or to request specified conditions be included in works approvals.</li></ul> <p>That, in the interim, EPA Victoria implement these measures administratively, to the extent possible.</p>
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**Response**

**Support**

The Victorian Government will implement a program to streamline processes for the assessment of works approval applications. In its Corporate Plan, EPA Victoria has committed to reducing the average time taken for a works approval to three months in 2009-10, and two months in 2010-11. EPA will implement the streamlined processes administratively before making any legislative change to reduce the time-limit for approving works approvals.

<b>Recommendation 7.4</b>	<p>That the Victorian Government amend the <i>Environment Protection Act 1970</i> to require EPA Victoria to report on its performance against the statutory and target time limits in its annual report, including:</p> <ul style="list-style-type: none"><li>• the elapsed time to assess works approval applications;</li><li>• the time taken by EPA Victoria to assess applications (excluding the time it waits for further information from the applicant beyond the specified due date) compared with statutory and target time limits;</li></ul>
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- the percentage of applications assessed within the statutory and target time limits;
- the number of information requests made under s.22 of the Act and the length of any time extensions; and
- the number of time extensions made under s.67A of the Act, and the length of these extensions.

That EPA Victoria incorporate statutory and target time limits in its annual plan of key deliverables, and an independent entity, such as the Victorian Auditor-General, periodically audit the organisations performance reporting on approval times (for example, once every five years).

**Response**

**Support**

The Government supports transparency of regulatory processes. EPA Victoria is developing improved guidance and advice to applicants and public reporting of performance against statutory and target time limits. EPA Victoria will commence reporting its performance against statutory and target time limits in its 2009-10 Annual Report.

**Recommendation 7.5**

That the EPA Victoria adopt a more strategic approach to works approval applications by:

- applying a risk-based approach to assessing works approval applications;
- wherever appropriate, developing and requiring outcome-based conditions for works approvals together with an appropriate mechanism for monitoring the ongoing achievements of agreed outcomes;
- preparing templates for works approval applications; and
- offering the option of pre-application meetings with proponents for complex works.

**Response**

**Support**

EPA Victoria is adopting a more strategic approach in assessing works approval applications and is continually investigating ways to improve the works approval system. EPA Victoria has commenced a project to develop a risk-based approach to assess works approvals; develop outcome-based conditions for works approvals; identify templates for applications; and review the option for holding pre-application meetings for complex works. Implementation of improvements to the works approval system will take place by December 2010.

**Recommendation 7.6** That EPA Victoria, in addition to simplifying compliance and reporting requirements in corporate licences, incorporate performance based conditions. To deliver the benefits of corporate licencing as soon as practicable, EPA Victoria establish targets in its annual plan of key deliverables to achieve 50 per cent of the total potential rollout of corporate licences by June 2010, and 75 per cent by June 2011.

**Response**

**Support**

The Victorian Government will commit to an accelerated implementation of corporate licencing to streamline current licences. Specifically, EPA Victoria will seek to achieve 75 per cent of the total potential roll-out of corporate licences (which streamline existing requirements for each site into a single licence and annual performance statement) by March 2010. All licence reforms will be completed by March 2011.

**Recommendation 7.7** That EPA Victoria conduct a rolling review of standard licences on issue that:

- examines the conditions of standard licences and, where appropriate, replace prescriptive conditions with performance-based conditions; and
- identifies actions to simplify licence conditions and reporting requirements.

That EPA Victoria establish targets in its annual plan of key deliverables to review 50 per cent of standard licences by June 2010, and 75 per cent by June 2011.

**Response**

**Support**

The Government is committed to streamlining the conditions of standard licences and is working towards this target which is identified in its Corporate Plan. EPA Victoria plans to exceed the recommended targets identified in the VCEC Inquiry final report. EPA Victoria intends to review 75 per cent of standard licences by June 2010 and all standard licences by June 2011.

**Recommendation 7.8** That EPA Victoria encourage waste producers, transporters and receivers, that would benefit, to use the WasteCert system. It should establish targets in its annual plan of key deliverables to have at least 60 per cent of all waste transport certificates for businesses that would benefit from electronic lodgement, lodged in electronic form by June 2011 and at least 80 per cent by June 2012.

**Response**

**Support**

The Government regards the promotion of the electronic lodgement of waste transport certificates for those businesses that would benefit as an important initiative. As a consequence, EPA Victoria has a dedicated team delivering regular training to businesses on the uptake of waste transport certificates.

**Recommendation 7.9**

That the Victorian Government redraft principle 11 of the *Environment Protection Act 1970* to state that waste should be managed according to the net benefit criterion – that is, waste management strategies should be based on actions which deliver the largest net benefits. This may involve considering the costs and benefits of actions such as avoidance, reuse, recycling, recovery of energy, treatment, containment, disposal and other relevant options.

That the Victorian Government change relevant state environment protections policies, waste management policies and environment protection regulations to reflect this change.

That, in the interim, EPA Victoria develop and provide guidance that encourages businesses to consider the net benefits of different waste management options.

**Response**

**Support in principle**

EPA Victoria, in practice, currently applies a net benefit criterion to the management of waste in Victoria. EPA Victoria regulates waste management according to the Principles of Environmental Protection set out in the *Environment Protection Act 1970* (sections 1B to 1L of the Act). The waste hierarchy (section 1I) is one of these principles and reflects generally the environmental 'order of preference' of managing waste. However, EPA Victoria must also give consideration to other principles in the EP Act when considering waste management requirements, including section 1B which requires the integration of economic, social and environmental considerations (effectively a net benefit test).

To ensure that industry is clear about how EPA Victoria regulates waste management, EPA Victoria will publish guidance material on the principles that guide waste management regulation in Victoria, including how the hierarchy fits within EPA Victoria's regulatory framework.

EPA Victoria will also review its public documents (including website material) on waste management to ensure that they are consistent with this guidance material.

EPA Victoria will publish the guidance material and review its public documents by the end of June 2010.

**Recommendation 7.10** That EPA Victoria, in developing protocols and guidelines for environmental management publish the key steps in the process as well as timeframes.

**Response**

**Support**

The Government supports a programme of ongoing review for updating protocols and guidelines for environmental management. EPA Victoria is committed to supporting transparent processes by publishing information regarding key processes and timeframes on the EPA Victoria Website each time it develops or reviews a protocol or guideline.

**Recommendation 7.11** That EPA Victoria clarify the definitions of 'best practice', 'best practicable outcome', 'best practicable measure or approach' and 'best available technology; in its policies and guidance to ensure they do not constrain businesses from meeting the required performance or outcome standards in a least cost manner.

**Response**

**Support**

EPA Victoria will continue to provide relevant guidance and support to industry to ensure the concepts and requirements of 'best practice', 'best practicable measure or approach' and 'best available technology' for EPA Victoria approvals and services are well understood. Furthermore in keeping with Principle 1B(3) of the *Environment Protection Act 1970* measures applied by business to achieve best practice are considered in light of their cost effectiveness.

Relevant guidance material will be available to the public via EPA Victoria's website.

**Recommendation 7.12** That EPA Victoria, to promote the consistency of its advice to business, review its training procedures, internal guidance material, information systems and other methods of internal communication.

**Response**

**Support**

To support the consistent delivery of high quality external services, EPA Victoria is implementing a quality management system (QMS). This will incorporate the development of policies, procedures, forms and guidelines to complement and align with the overarching corporate documents. This work will support knowledge and practices to be constructive, flexible and produce high quality services. The implementation of a QMS will ensure consistency among internal guidance and procedures. EPA Victoria has already made progress in improving the internal communication system through the review of how information is communicated via the internal intranet site. EPA Victoria will complete this project by June 2010. These changes will build on the improvements already made through EPA Victoria's recent restructure which centralised statutory decision making and advice and has ensured that clients have a single client manager to manage all contact points with EPA Victoria.

## Environmental reporting

Government programs such as Water Management Action Plans (WaterMAP) and Environment and Resource Efficiency Plans (EREP) have assisted businesses to identify savings in resource use which also result in significant cost savings to business.

Environmental reporting is crucial to the implementation of these programs and ensures that environmental policies are being complied with.

The programs have been designed to ensure that work undertaken under one of the Victorian Government programs or a Commonwealth Government program can be recognised under another program. However, as identified in the VCEC Final Report, some improvements can be made to further streamline reporting requirements.

Victorian businesses that have overlapping reporting requirements under different Government programs will benefit from the removal of unnecessary and duplicative reporting burdens.

<b>Recommendation 8.1</b>	<p>That EPA Victoria reduce the unnecessary costs of the Environment and Resource Efficiency Plans (EREPs), by recognising the performance of sites that do not derive benefits from participating in the EREP program. These sites could include those that:</p> <ul style="list-style-type: none"><li>• have a track record of sustained resource efficiency improvements;</li><li>• already report under other mandatory programs such as the EPA Victoria licences, Energy Efficiency Opportunities and the National Greenhouse and Energy Reporting System;</li><li>• participate in voluntary reporting and programs such as corporate sustainability reporting, the National Packaging Covenant, the ABARE fuel and electricity survey and Greenhouse Challenge plus;</li><li>• have an environmental management system with ISO certification; and</li><li>• depend on water and energy use and waste generation for their core business, and have proportionally high water, energy and waste costs.</li></ul>
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### Response

### Support in part

The Victorian Government recognises that there may be an unnecessary burden on some businesses who have multiple and overlapping reporting requirements under different Government programs. To ameliorate this, the Victorian Government commits to ensuring sites that have had an EREP approved and have completed all actions with a three-year or shorter payback will be exempt from annual reporting.

EREPs provide benefits now, having saved Victorian business \$70 million so far, and can assist business to prepare for future challenges. However, the energy reporting and implementation requirements under EREP's will continue to be monitored to ensure

they do not duplicate requirements with other programs and are complementary with the Commonwealth's proposed Carbon Pollution Reduction Scheme (CPRS). The Government will consider these issues further in a review of greenhouse mitigation policies to support the development of the forthcoming Climate Change White Paper.

- Recommendation 8.2** That the Department of Sustainability and Environment reduce the unnecessary costs of the WaterMAP program by:
- automatically exempting Environment and Resource Efficiency Plan participants from the WaterMAP program
  - reducing the 90 or so information obligations under WaterMAP to a core of about 15 one-off information obligations and 20 annual reporting obligations.

**Response**

**Support**

The Victorian Government commits that:

- entities whose sites report under the Environment and Resource Efficiency Plan (EREP) program will not be required to complete a separate WaterMAP. Instead, the water information in EREPs will be provided to the relevant water corporation; and
- reporting requirements under WaterMAP will be simplified. WaterMAP reporting requirements will be reduced from the 90 or so current information obligations to a core of about 15 one-off information obligations and 20 annual reporting obligations. Details of the new core reporting requirements will be finalised shortly following a review of the program which was completed in December 2009.

- Recommendation 8.3** That the Victorian Government reduce the costs to business of meeting environmental reporting requirements by:
- developing one online reporting point for all Victorian programs and licences, with standard formats and timing (including Environment and Resource Efficiency Plans, Water Management Action Plans, EPA Licences, Trade Waste Agreements and the Waste Management Policy (Used Packaging Materials); and
  - promoting a broader review of reporting at the Council of Australian Governments, which would include assessing ways to develop a national online reporting point for all programs and licences, with standard formats and timing, using OSCSAR.

**Response**

**Support in principle**

The Government is committed to the ongoing review of opportunities to consolidate reporting requirements on-line.

The Victorian Government has approved priority review funding for EPA Victoria to develop and implement by July 2010 a single online reporting point for all EPA Victoria licences and the Environmental and Resource Efficiency Plans (EREPs) program.

In addition, this project will investigate the potential for the reporting requirements of WaterMAP to be incorporated into the same online reporting point, to streamline the reporting process even further.

The Victorian Government will also support the simplification of reporting at the national level by encouraging further consideration of opportunities for online reporting through the Business Regulation and Competition working group of the Council of Australian Governments (COAG).

## Mining and extractive industry

The mining industry is an important contributor to the Victorian economy, particularly regional Victoria. The mining industry contributes approximately 2 per cent of Victoria's Gross State Product and employs around 9,200 people directly. It is essential that the mining industry operates in an environmentally sustainable manner, and that Victoria's environmental outcomes are achieved while the mining industry continues to contribute to Victoria's economic development.

**Recommendation 9.1** That the Department of Primary Industries (DPI), on behalf of work approval applicants, coordinate with other departments and agencies whose approvals are required in respect of mining and extractive approvals, when requested to do so by proponents.

That in appropriate cases, the DPI exercise the coordination powers granted to it by s2(2) of the *Mineral Resources (Sustainable Development) Act 1990*.

### Response

#### Support in part

As a regulator, DPI plays a co-ordinating role in respect of all mining and extractive approvals. This largely involves managing the referral process, by which other agencies' inputs are sought on proposals. DPI will continue to undertake this role.

DPI also takes a more proactive, facilitation role in project approvals for major projects, on a selective basis. This role involves working with proponents and other agencies to ensure an efficient approvals process and resolve substantive issues. DPI will continue to undertake this role selectively and will work closely with any new arrangements established for streamlining major project approvals under the EES process. DPI will develop criteria for determining which project approvals are facilitated to improve transparency. It is neither practical nor efficient to provide this service more broadly, at the request of proponents, as recommended by VCEC.

Section 2(2) of the *Mineral Resources (Sustainable Development) Act 1990* is repealed in the *Resources Industry Legislation Amendment Act 2009*, which takes effect on 1 January 2010.

**Recommendation 9.2** That the Department of Primary Industries (DPI) enter into memoranda of understanding with referral agencies, other than the Department of Sustainability and Environment and WorkSafe Victoria with which memoranda already exist, to ensure better coordination and shorter timeframes for their approval processes. To the extent possible, the memoranda of understanding should confer authority on the DPI to represent the interests of other agencies in the approval process when proposals are straight forward and it is reasonable to do so.

**Response**

**Support**

Memorandas of understanding (MOUs) between government agencies are an effective mechanism to improve co-ordination and shorten timeframes for approvals.

MOUs will be explored between DPI and agencies with a view to determining 'straight forward' proposals and conferring authority on DPI to represent the interests of other agencies in those cases.

This will be undertaken in 2010, as part of the review of the *Mineral Resources (Sustainable Development) Act 1990*.

**Recommendation 9.3**

That the Department of Primary Industries (DPI) should commit that, within 12 months, it:

- establish and publish target timeframes for approvals under mining and extractives legislation;
- measure and publish information on the time taken by the DPI and referral authorities to process approvals required under mining and extractives legislation;
- provide an explanation on its website of the reasons for any substantial delays in granting approvals by the DPI or any referral agencies; and
- regularly review and report on timeframes for approval with a view to finding areas for future improvements.

Reporting by the DPI on the timelines of approval process and the implications for its role in implementing the objectives of the MRSD Act should be reviewed periodically by an independent agency such as the Victorian Auditor-General.

**Response**

**Support in part**

Within 12 months, DPI will establish and publish target timelines for mining and extractive approvals, noting that some statutory timelines are already in place.

DPI currently publishes on-line the progress of mining and extractive approvals, including the time taken in each approval step. DPI will continue to do so, and will deliver improvements in the information available with the introduction of new information management and reporting capabilities (Resources Rights and Allocation Management System) expected in 2012.

Providing reasons on DPI's website for delays in approvals by DPI or other agencies is not supported. Generally, the costs outweigh the benefits of compiling and publishing such reasons. Most proponents are aware of reasons for delay, and if not, can readily contact DPI or the other agency involved for advice. Furthermore, in some cases proponents may not wish such reasons to be published.

Starting in 2009-10, DPI will report annually on timeframes for approvals and compliance with any target timeframes as well as continuing to identify areas for improvement.

The Victorian Government will consider which is the most appropriate body to review implementation of this recommendation.

**Recommendation 9.4** That the Department of Primary Industries (DPI) expand its website to list all the approvals that a mining or extractive industries proponent may need, and to provide guidelines, policy notes and advice on the requirements of each approval.

The DPI should regularly update the website, to ensure proponents are informed of any proposed changes to the legislation or the approvals process.

**Response**

**Support**

The DPI website is currently being modified to enable easier access for stakeholders. DPI is progressively improving the information on its website about approvals that may be required by proponents and related legislation.

**Recommendation 9.5** That the Department of Primary Industries, with input from the Department of Sustainability and Environment, and drawing on the work of Aboriginal Affairs Victoria for the Aboriginal Heritage Regulations:

- review the definition of 'low impact exploration' in the *Mineral Resources (Sustainable Development) Act 1990*; and
- propose a legislative amendment to the definition based on environmental impact rather than on the use of mechanical equipment.

**Response**

**Support**

The Department of Primary Industries, with input from the Department of Sustainability and Environment, will review the definition of 'low impact exploration' in the *Mineral Resources (Sustainable Development) Act 1990*.

The review will agree administrative changes to the definition based on environmental impact rather than on the use of mechanical equipment.

**Recommendation 9.6** That the Department of Primary Industries (DPI) report at least annually on its website on its administration of the *Mineral Resources (Sustainable Development) Act 1990*. Its report should utilise appropriate indicators detailing matters such as the monitoring of regulated activities and the enforcement action taken, and the contribution its administration makes to achieve the objectives of the Act and sustainable development.

An independent body, such as the Commissioner for Environmental Sustainability or the Auditor-General, should oversee DPI's reporting framework and reports, and should report periodically on their adequacy.

**Response**

**Support**

DPI publishes statistics on some of its licensing, regulation and enforcement activities in relation to mining and extractive industries in the Minerals and Petroleum Annual Statistical Review, which is available on DPI's website.

In the next 12 months, DPI will review the content of these reports with a view to expanding reporting on administration of the *Mineral Resources (Sustainable Development) Act 1990*.

The Government will consider the most appropriate oversight mechanism for the implementation of reporting frameworks in the next update of the Victorian Guide to Regulation due to be completed by mid-2010.

## Future regulatory challenges

There will continue to be significant economic and environmental challenges facing Victoria in the future. It is important that Victoria's environmental regulatory framework has the flexibility and capacity to respond to major changes, such as the introduction of a national carbon reduction pollution scheme (CPRS). The Government will act to ensure that the regulatory system is efficient and effective by improving:

- institutional and interface arrangements, to ensure a clear allocation of responsibility within government and efficient coordination mechanisms;
- use of other instruments to achieve environmental objectives, such as market based instruments; and
- the principles that government applies in developing and implementing regulation, including incorporating ecological sustainability principles.

The Government expects the following changes will ensure Victoria can meet its economic and environmental challenges.

**Recommendation 10.1** That the Victorian Government review the objectives of environmental regulation to ensure that all environmental legislation and supporting guidance contain clearly stated and specific objectives. Priority areas for attention are:

- *Environmental Effects Act 1978*
- Native vegetation regulations (under the *Planning and Environment Act 1987*)
- *Environment Protection Act 1970*
- *Flora and Fauna Guarantee Act 1988*
- *Wildlife Act 1975*
- *Sustainable Forests (Timber) Act 2004*.

### Response

### Support in principle

The Victorian Government agrees that environmental regulation should contain clearly stated and specific objectives. The Government will review the objectives of environmental regulation on an as-needs basis and when appropriate opportunities arise in comprehensive policy review processes. The Government has recently released the Land and Biodiversity White Paper, and is developing a Climate Change White Paper and a Climate Change Bill.

The Government also agrees with the VCEC's observation that several approaches can be used to resolve conflicts between the multiple objectives of regulation. To that end, the Government will also consider where any conflicting objectives of environmental regulation could be addressed more flexibly through management procedures or policy guidance documents, rather than through legislative amendment.

**Recommendation 10.2** That the Victorian Government extend the scope of the Reducing the Regulatory Burden Initiative to include substantive compliance and delay costs.

**Response**

**Support**

On 4 September 2009, the Treasurer announced that the existing Reducing the Regulatory Burden target would be increased from a target of \$256 million reduction in administrative burden by July 2011 to a new target of \$500 million by July 2012. Importantly, the new target includes reductions not only to the administrative burden of regulation, but also to substantive compliance and delay costs.

**Recommendation 10.3** That the Victorian Government develop performance reporting frameworks for environmental regulations to be implemented by the relevant department or agency, with the frameworks specifying:

- regulatory objectives, including the outcomes that regulation is intended to achieve;
- the types of indicators (outcome, output and input) and the frequency of reporting; and
- how the results are to be used (for example, the frequency of public reporting and the use of the information to review the regulations).

The development and implementation of performance reporting frameworks should be subject to oversight by an independent body such as the Commissioner for Environmental Sustainability or the Victorian Auditor-General which would report periodically on implementation.

**Response**

**Support in principle**

The Victorian Government recognises the importance of effective performance reporting on environmental regulations over time.

On 4 September 2009, the Treasurer announced that the Victorian Guide to Regulation will be updated to ensure that it incorporates the very latest experience in designing efficient regulation. This will include further guidance and tools for all regulation in relation to establishing appropriate regulatory objectives, performance indicators and reporting arrangements as part of the performance reporting framework. This process will involve input from relevant government agencies and other stakeholders, and be concluded by mid 2010.

In conjunction with this process, the Victorian Government will investigate the most effective mechanisms for the implementation, oversight and monitoring of performance reporting frameworks for environmental regulation.

**Recommendation 10.4** That the Victorian Government:

- require that all new environmental regulations with a potentially significant impact on business and the community have an evaluation strategy and associated data collection plan; and
- establish and make provision for an evaluation program for existing environmental regulations.

The evaluation program for environmental regulation would identify the criteria for prioritising evaluations, the specific areas of regulation to be evaluated, the agency responsible for undertaking or commissioning the evaluation, and the program timeframe.

The full results of evaluations would be provided to the Commissioner for Environmental Sustainability, which would also report publicly on the delivery of the evaluation program.

**Response**

**Support in principle**

In conjunction with its review of the Victorian Guide to Regulation, which will strengthen guidance on evaluation strategy, the Victorian Government will examine the most effective mechanism for requiring all new regulation (including environmental regulation) with a potentially significant impact on business and the community to have an evaluation strategy and associated data collection plan.

The Government believes that an immediate revision of existing environmental regulation to establish evaluation programs would not necessarily be cost effective. The Government will consider applying any evaluation mechanism identified during the review of the Victorian Guide to Regulation to existing environmental regulations on a case by case basis, particularly as opportunities arise through regulatory instruments sunseting or as part of other reviews.

**Recommendation 10.5** That the Victorian Government shift the primary responsibility for preparing new regulatory protocols from EPA Victoria to the Department of Sustainability and Environment.

**Response**

**Support in principle**

In principle this already exists, as the Department of Sustainability and Environment (DSE) has primary responsibility for providing policy advice and EPA Victoria provides technical input to regulatory development. The Victorian Government accepts the principle that regulatory agencies should not have primary responsibility for the provision of policy advice, and that this should be the role of the relevant government department.

DSE will continue to have primary responsibility for policy advice on the development of regulatory proposals relating to the *Environment Protection Act 1970*. Such advice will be developed in consultation with EPA Victoria. The Government will ask DSE to work with EPA Victoria to review existing regulatory and administrative settings, agree on an annual regulatory program, and make whatever changes are appropriate to ensure that this arrangement is put into effect by June 2010.

**Recommendation 11.1** That the Victorian Government amend the Victorian Guide to Regulation to require that policy makers preparing new environmental legislation and regulations actively consider the potential role for market-based approaches such as tradeable pollution permits, auction conservation contracts and smart markets early in the policy development process and, where this is a feasible option, provide an analysis in the resulting business impact assessments or regulatory impact statements.

That a set of criteria be included in the Victorian Guide to Regulation to promote early and full exploration of the alternatives to traditional regulation wherever this is likely to be feasible.

That amendments to the Victorian Guide to Regulation includes recognition of the different roles of supporting legislation needed to give effect to market-based approaches, and legislation required as the primary form of intervention.

**Response**

**Support**

On 4 September 2009, the Treasurer announced that the Victorian Guide to Regulation will be updated to ensure that it incorporates the very latest experience in designing efficient regulation. This will include market-based approaches.

This process will involve input from relevant government agencies and other stakeholders, and be concluded by April 2010.

DTF will be launching guidelines for market based instruments (MBIs) in natural resources in conjunction with the revised Victorian Guide to Regulation. These guidelines aim to improve the ability of policy analysts to identify where MBIs are relevant and would be beneficial to apply; and improve understanding of key considerations in early analysis and design of MBIs in natural resources.

**Recommendation 11.2** That the Victorian Government establish a policy design reference group, consisting of an independent expert group that includes academic economists and senior policy makers. The group's functions would include:

- to provide strategic advice about the policy mechanisms available for specific environmental policy problems;
- to provide advice and guidance on the use of experimental economics and field pilots to test/evaluate environmental policy proposals; and
- to identify governance and risk management issues relevant to the use of market-based instruments to achieve policy outcomes.

**Response**

**Support**

The policy design reference group will be incorporated into the market design function being developed by DTF. The reference group will be a component of a broader objective to build capacity for reform in sectors of the Victorian economy where markets are missing or inefficient.

**Recommendation 11.3** That EPA Victoria finalise by June 2010 its framework and process for assessing applications for environmental offsets, taking into account that offsets can be used to minimise the costs of achieving environmental objectives.

**Response**

**Support**

EPA Victoria is committed to streamlining its processes for reviewing environmental offset applications. EPA Victoria released for public comment a discussion paper on offsets in 2008. A draft framework has been developed and is currently being piloted with working partners. The framework will be finalised by June 2010.

**Recommendation 11.4** That EPA Victoria implement offset arrangements where it can demonstrate their cost effectiveness relative to other approaches.

**Response**

**Support in principle**

The Government is committed to developing a working framework which minimises the costs of achieving environmental objectives. The framework developed by EPA Victoria will ensure that the cost effectiveness of offset arrangements is considered relative to other approaches. Offset arrangements will be considered as appropriate opportunities arise with businesses.

**Recommendation 12.1** That the Victorian Government require policy makers developing legislation or regulation with significant environmental impacts to incorporate the principles of ecologically sustainable development (ESD) in their analysis by:

- requiring prior to external consultation, a preliminary consideration of the consistency of proposed measures with ESD principles, including how they inform the policy or regulatory options;
- requiring this consideration be subsequently carried forward into the analysis of proposed measures in regulatory impact statements (RIS) or business impact assessments (BIA), where applicable; and
- providing guidance on how to comply with the RIS/BIA adequacy requirements through a link from the Victorian Guide to Regulation.

That the Victorian Government pursue through the Council of Australian Governments the scope for achieving consistent national criteria for evaluating proposed environmental legislation and regulation by adopting such an approach nationally.

**Response**

**Support**

The Victorian Government is committed to the use of ecologically sustainable development (ESD) principles, as demonstrated by the VCEC's finding that there is a 'high degree of concordance between ESD principles and existing RIS/BIA processes in Victoria.'

In its review of the Victorian Guide to Regulation, the Government will investigate how to require departments and agencies developing legislation or regulation with significant environmental impacts to incorporate ESD principles. Departments and agencies will be encouraged to demonstrate ESD principles in the preparation of BIAs and RISs. Tools and guidance for dealing with uncertainty will also be developed.

The Government is also examining options to incorporate a common set of overarching ESD principles in a new legislative framework through the Land and Biodiversity White Paper, and to integrate ESD principles into government decision-making through the Climate Change Bill, a draft of which will be released with the forthcoming Climate Change White Paper.

**Recommendation 12.2** That departments and agencies administering environmental regulation prepare guidance for their staff on how to administer the regulation consistent with ESD principles. This guidance should include practical case studies relevant to the regulation and be released publicly.

That the Commissioner for Environmental Sustainability support the development of a community of practice among the staff of departments and agencies that administer environmental regulation to further develop skills and share knowledge on how to implement this regulation consistent with ESD principles, and thereby promote best practice.

## **Response**

## **Support**

The Victorian Government is committed to the use of ecologically sustainable development (ESD) principles and to ensuring transparency, predictability, accountability, and consistency in the administration of environmental regulation according to these principles.

The review of the Victorian Guide to Regulation, scheduled to be completed by mid 2010, will provide guidance to departments and agencies on administering environmental regulations in a way that is consistent with ESD principles.

In addition, consideration is being given through the Victorian Government's Climate Change Bill to integrating ESD principles into the decision making processes of departments and agencies, and to incorporating a common set of overarching ESD principles in a new legislative framework through the Land and Biodiversity White Paper, which was released in December 2009. Guidance will be provided to departments and agencies, as part of the implementation of these reforms, on how the principles should be applied.

In parallel with these processes, DSE will work with the Commissioner for Environmental Sustainability to review options to develop a community of practice among the staff of departments and agencies that administer environmental regulation, to promote best practice in application of ESD principles.

**Recommendation 12.3** That the Victorian Government amend the Victorian Guide to Regulation to provide further guidance and tools for dealing with uncertainty in the development and implementation of environmental regulation, including measures that might invoke the precautionary principle. The Government should also build the capacity of agencies to apply these techniques in developing and implementing environmental regulation.

**Response**

**Support**

On 4 September 2009, the Treasurer announced that the Victorian Guide to Regulation will be updated to ensure that it incorporates the very latest experience in designing efficient regulation. This will include further guidance and tools for dealing with uncertainty in the development and implementation of environmental regulation.

This process will involve input from relevant government agencies and other stakeholders, and be concluded by mid 2010.

**Recommendation 13.1** That the Victorian Government in responding to challenges in a carbon-constrained economy, commit to the principle of providing for neutrality among renewable energy sources and those with low carbon emissions, particularly in the area of electricity generation and distribution.

Specifically that Division 5A of the *Electricity Industry Act 2000* be amended to extend the requirement for energy retailers to publish prices, terms and conditions for the purchase of electricity from a broader range of low-emission technologies.

**Response**

**Support in principle**

The Victorian Government is committed to supporting low emission technologies in clean coal, carbon storage, gas and renewable energy. The Government has developed a comprehensive climate change policy package to reduce greenhouse gas emissions from the stationary energy sector. This includes support for renewable energy, energy efficiency, low emissions technologies and the Commonwealth's proposed Carbon Pollution Reduction Scheme (CPRS).

The Government recognises that the financial incentives for the deployment of low emission technologies will be contained in the Commonwealth's proposed CPRS. Any other policy initiatives to deploy low emission technologies should be assessed against COAG's Complementarity Principles (CP). Complementary policies are justified if the CPRS provides insufficient signals to overcome market failures that prevent the take-up of otherwise cost-effective abatement measures.

The Government is strongly committed to growing the renewable energy sector, recognising that renewables can reduce greenhouse gas emissions, create thousands of skilled jobs, and provide a sustainable supply of energy.

Division 5A was originally introduced in 2004 to assist the deployment of small scale wind energy generation. It was extended to other forms of renewable energy generation in 2008 and the

requirement for a premium Feed in Tariff (FiT) was introduced in 2009. The main objective of this provision was to balance the negotiating power of small customers in negotiating tariffs with the retailers.

In Victoria, a 'fair and reasonable' FiT is currently available for small scale hydro, wind, solar and biomass and was established primarily to enable smaller electricity consumers to participate directly in renewable generation. VCEC recommendation 13.1 proposes to broaden the FiT arrangements for low emission technologies.

The Government will not broaden the base of eligible generation until the key parameters of the finalised CPRS are known and it can be established that this would be a cost-effective measure to encourage low emission technologies.

<b>Recommendation 13.2</b>	<p>That the Victorian Government promote at the Council of Australian Governments, that the regulatory impact assessment for any revised building efficiency standards:</p> <ul style="list-style-type: none"><li>• consider the role of energy and water pricing in achieving building efficiency; and</li><li>• outline an evaluation strategy to monitor the costs and benefits of the standards over their lifespan.</li></ul>
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**Response**

**Support in principle**

The Victorian Government supports in principle the consideration of energy and water pricing in achieving building efficiency standards. However, it also needs to be recognised that improved energy and water pricing are often large scale reforms which are outside the scope of many building reforms.

The Victorian Government also supports in principle an evaluation strategy to monitor the costs and benefits of building efficiency standards on a lifecycle basis, whether those standards are developed at a State or national level. Nationally revised building standards are subject to the Council of Australian Governments' Best Practice Regulation Guidelines, which require information on how a proposal will be monitored and reviewed.

Other factors in addition to cost effectiveness must be adequately assessed when developing, revising or evaluating building efficiency standards.

<b>Recommendation 13.3</b>	<p>That the Victorian Government ensure that any residual Victorian building efficiency standards are consistent with, and do not duplicate, the revised outcomes based national standards being developed by the Council of Australian Governments.</p>
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**Response**

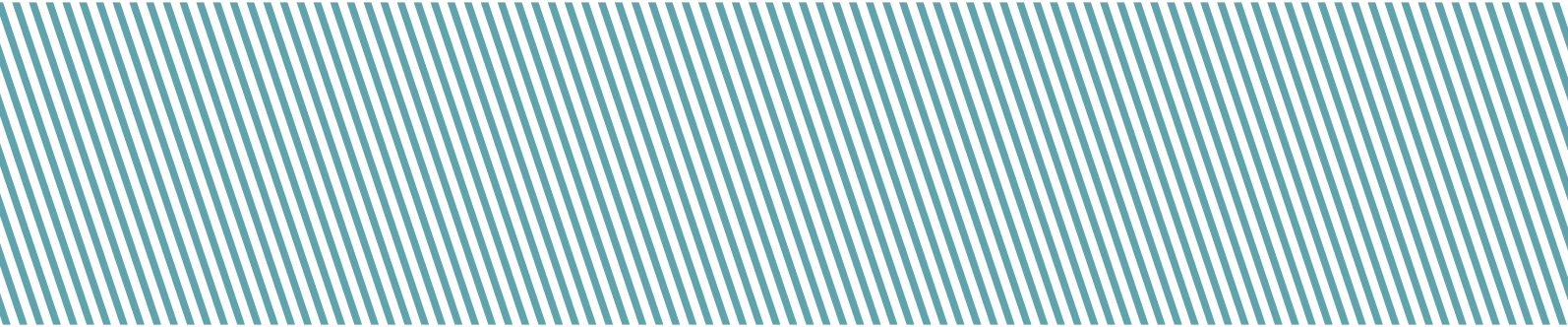
**Support**

The Building Code of Australia (BCA) provides for a uniform set of technical provisions across Australia which may then be adopted by State and Territory legislation. The BCA is structured to facilitate consistency in minimum building standards across jurisdictions.

The Victorian Government, through an intergovernmental agreement, has committed to restricting any new variations from the BCA as far as practicable to ensure consistency. This is done by:

- limiting variations to those arising from particular geographical, geological or climatic factors, as defined in the BCA;
- requiring that any variations be subject to a regulatory impact assessment; and
- requiring that any variation be approved by the State or Territory Minister.

In addressing the above, the Government will continue to meet its existing building efficiency policy commitments.



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**Victorian Government  
Response to**

Victorian Competition and  
Efficiency Commission's  
Final Report.  
*A Sustainable Future  
for Victoria: Getting  
Environmental  
Regulation Right*