

To: Environment Protection Authority

15 October 2024

### **Draft Statement of Regulatory Intent on Climate Change 2025-27**

We appreciate the opportunity to comment on the EPA's draft Statement of Regulatory Intent (SRI) on Climate Change 2025 to 2027 and thank the EPA for time spent to date engaging with Environment Victoria on this topic.

#### **About Environment Victoria**

Environment Victoria is the leading not-for-profit environmental advocacy organisation in Victoria. With 40 grassroots member groups and over 200,000 individual supporters, we've been representing Victorian communities on environmental matters for over 50 years. Through advocacy, education and empowerment, Environment Victoria seeks significant and enduring solutions that will safeguard the environment and future wellbeing of all Victorians.

#### **Introductory comments**

The purpose of the SRI is to signal to stakeholders what to expect of the EPA during this three years. The draft document is careful to reassure businesses that the EPA will start slowly with an education and engagement approach, and will only be activating existing rules. This in turn sends a signal to those who understand the imperative to reduce greenhouse gas (GHG) emissions and prepare for climate change to temper their expectations.

It is difficult to reconcile the EPA's slow and timid approach with the urgency of climate action or indeed the Victorian government's own commitments to reduce emissions. Back in 2016 in parliament the Minister for Energy, Environment and Climate Change described climate change as "one of the most critical issues facing us today", emphasising the importance of "acting now".<sup>1</sup>

Through the legislative frameworks that are already in place, the EPA has the potential to make a difference to Victoria's GHG emissions and resilience to climate change-induced events. However, through work done to date, including the draft SRI, we cannot see that the EPA is taking climate change seriously.

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<sup>1</sup> Victoria, 'Second Reading Speech, Climate Change Bill 2016' (Legislative Assembly, 23 November 2016), <https://www.parliament.vic.gov.au/>.

The Climate Change Act 2017 served to reset and reaffirm Victoria's commitment to tackling the urgent challenge of climate change. GHG emissions are unequivocally causing harm to human health and the environment, and the general environmental duty (GED) described in the Environment Protection Act 2017 obliges duty holders to proactively minimise the risk of such harm. The EPA's role is to enforce the GED.

Since the 2017 legislation reset, the EPA has moved very slowly to implement a regulatory regime for GHG emissions. After five years, in 2022 the EPA published its first document on the topic of GHG emissions, being guidelines to inform businesses how to meet the GED and minimise GHG. The next publication will be the SRI which will apply 2025-27.

This amounts to 10 years of inaction. Licenses issued by the EPA still do not place limits on GHG emissions, not even from Victoria's three remaining coal power stations which collectively are responsible for around half of the state's greenhouse gas emissions.<sup>2</sup> There is no visible evidence that the EPA is enforcing the GED in relation to GHG emissions.

Recent satellite data indicates that methane emissions self-reported for the National Greenhouse and Energy Reporting (NGER) Scheme are vastly underestimated.<sup>3</sup> This includes the Loy Yang and Yallourn coal mines. This calls into question the EPA's plan to leverage the NGER Scheme and presents a test for the EPA's regulation of the GED.

There is a serious trust deficit. In this submission we make constructive suggestions for addressing the trust deficit and stepping up Victoria's climate action.

### **The EPA must do its job and move with appropriate urgency**

The SRI makes clear that during 2025-27 the EPA will only use a subset of the tools at its disposal for regulating the causes and consequences of climate change. The EPA has not stated what will be achieved by 2027. The document signals that enforcement of the GED will not change from the status quo, which means that the GED will not be noticeably enforced. It appears the plan is closely tethered to business-as-usual.

Figure 1 in the SRI identifies the EPA's legislated role in climate change as applying the GED, waste management framework, licensing and permitting, and influencing other authorities such as via planning decisions. This table omits important EPA powers that have the potential to make a difference to Victoria's GHG emissions.

For example, section 465 of the Environment Protection Act 2017 provides for regulations to be made to regulate or prohibit the emission or discharge of GHG emissions, prescribe standards such as emission intensity standards and maximum levels of emissions, and prescribe conditions under which GHGs may be emitted or discharged.

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<sup>2</sup> Victorian Government, 'Victorian Greenhouse Gas Emissions Report 2021', 2023, [https://www.climatechange.vic.gov.au/\\_\\_data/assets/pdf\\_file/0036/687825/Victorian-Greenhouse-Gas-Emissions-Report-2021.pdf](https://www.climatechange.vic.gov.au/__data/assets/pdf_file/0036/687825/Victorian-Greenhouse-Gas-Emissions-Report-2021.pdf).

<sup>3</sup> 'New Groundbreaking Satellite Monitoring Tool Shows Significant Underestimation of Methane Emissions from Fossil Fuel Sites', The Superpower Institute, accessed 9 October 2024, <https://www.superpowerinstitute.com.au/news/new-groundbreaking-satellite-monitoring-tool-shows-significant-underestimation-of-methane>.

Part 5.2 of the same Act provides for environmental reference standards (ERS) to be made. The ERS may specify indicators or objectives to be used to measure where environmental values—such as a safe climate—are being achieved, maintained or threatened. The EPA should develop indicators and objectives for climate systems in the ERS and then enforce them.

The GED includes scope 3 emissions, but the SRI is clear that the EPA does not intend to address them. This choice by the EPA sends a message to businesses that emissions in their supply chain are not important. Similarly, the omission of distributed but collectively significant sources of emissions such as transport and agriculture signals that these are not important. Transport and agriculture are Victoria's second and third-largest emissions sources, together accounting for 35% of emissions.<sup>4</sup>

### **Focusing on causes and consequences requires a resilience lens**

The EPA's intention to focus on both the causes and consequences of climate change is welcome, as these are both essential components of climate resilience. Success relies on the EPA driving real change which in part depends on the realignment of the EPA's regulatory paradigm towards resilience.

In the face of ongoing climate change, businesses, the community and the environment fundamentally need resilience. However, planning for resilience is not a trivial task and risks unintended consequences if it is limited to standard approaches to risk assessment, which tend to focus on the ability to withstand disturbances, rather than recover and then adapt to future conditions, and fail to consider complex impacts.

One instructive example is the South Australian system black event in September 2016 where storms caused a 24 hour electricity outage over the entire state. The subsequent review by the Australian Energy Market Commission found that the prevailing risk management approach had a blind spot for 'indistinct' events – risks that are difficult to identify because they do not arise from the failure of a single asset.<sup>5</sup>

The importance of adaptive capacity is evident following climate change-induced disasters that destroy infrastructure such as roads, powerlines and telecommunications. Infrastructure operators find it difficult to 'build back better' because they do not have the right planning and settings in place at the right time. The EPA, through its regulatory approaches, can hence be a help or a hindrance to Victoria's climate resilience.

It is possible for the EPA to align its risk management frameworks to resilience. To this end, risk frameworks must consider not only recovery (restoring function) but also adaptation (continual improvement and transformation to long-term sustainability), and mitigation (reducing GHG emissions).<sup>6</sup> We emphasise that it does not make sense to prepare for climate change while simultaneously making it worse.

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<sup>4</sup> Victorian Government, 'Victorian Greenhouse Gas Emissions Report 2021'.

<sup>5</sup> Australian Energy Market Commission, 'Mechanisms to Enhance Resilience in the Power System: Review of the South Australian Black System Event' (Sydney: AEMC, 12 December 2019), [https://www.aemc.gov.au/sites/default/files/documents/aemc\\_-\\_sa\\_black\\_system\\_review\\_-\\_final\\_report.pdf](https://www.aemc.gov.au/sites/default/files/documents/aemc_-_sa_black_system_review_-_final_report.pdf).

<sup>6</sup> Tom McLeod Logan et al., 'Risk Science Offers an Integrated Approach to Resilience', *Nature Sustainability*, 26 May 2022, 1–8, <https://doi.org/10.1038/s41893-022-00893-w>; Katrina M. Kelly-Pitou et al., 'Microgrids and Resilience: Using a Systems Approach to Achieve Climate Adaptation and Mitigation Goals', *The Electricity Journal* 30, no. 10 (1 December 2017): 23–31, <https://doi.org/10.1016/j.tej.2017.11.008>.

The EPA's frameworks must apply not only to single facilities, but also at the systemic scale, and need to consider the specific risks arising from different types of hazards (such as bushfires, storms, inundation, etc).

For the EPA to make any positive difference to climate resilience in Victoria, it needs to develop regulatory approaches that are informed by resilience science. The EPA must:

- Be capable of examining risks at different scales and complexities and have the ability and willingness to compel businesses to make changes.
- Be serious about GHG emissions reduction rather than benchmarking to business-as-usual.
- Support and require businesses to transform their operations over the long term to minimise emissions and have the capacity to adapt.

### **Repair the transparency and trust deficit**

The 'Review and Evaluation' section of the SRI notes business engagement and annual reporting as methods. Neither of these are credible evaluation approaches. As we understand it, the EPA usually contracts consultants to conduct reviews and evaluations and never makes the results available to the public – there is no transparency or accountability. Therefore, we suggest that the EPA publish evaluation reports so that the work as set out in the SRI is visible to stakeholders.

Achievement and evaluation of the objectives of the SRI would be more credible if ERS indicators or objectives for climate systems were established by the EPA, in order to facilitate quantitative assessment. Evaluations should also be established as standard practice following significant events related to climate change.

### **In summary**

The EPA has the remit and the powers to make a much-needed difference to Victoria's climate action and resilience, but to date has not taken this responsibility seriously. This does not help anyone—including businesses—as we increasingly face the challenges of a changing climate. We encourage the EPA to step up, and show the public what is being done and what is being achieved. I would be more than happy to discuss any of the above in more detail.

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