

Memorandum of Understanding
between
the Local Government Association Tasmania (LGAT)
and
the Environment Protection Authority (EPA)
on
Environmental Regulation and Pollution Control

1. Rationale

The parties acknowledge that:

- 1.1 Environmental regulation and pollution control is a critical public good in Tasmania, which is complex due to legislative, legal, social, economic, governance, scientific, technical, compliance, enforcement, and operational considerations.
- 1.2 Councils and the EPA are responsible for administering and enforcing core legislation relevant to environmental management and pollution control and which forms part of Tasmania's integrated Resource Management and Planning System (RMPS).
- 1.3 Councils have responsibility under the *Land Use Planning and Approvals Act 1993* (LUPAA) for considering development proposals, during which they must either assess environmental impacts or refer proposals to the Board of the EPA for assessment under the *Environmental Management and Pollution Control Act 1994* (EMPCA). Councils and the EPA are also relevant parties for implementation of the State Policy on Water Quality Management 1997. Councils have other legislative requirements and functions that intersect with environmental regulation, including the *Public Health Act 1997*.
- 1.4 EMPCA positions the EPA as Tasmania's principal independent environmental regulator. In addition, councils have wide ranging compliance and enforcement obligations and powers under EMPCA. The varying capacity of individual councils to enact these is acknowledged.

- 1.5 The EPA is responsible for subordinate and additional environmental legislation and statutory policies such as those dealing with underground petroleum storage systems, waste transport and management, air quality, noise, smoke, marine pollution, littering, and national environment protection measures and standards. Council advice and other practical support is vital to the EPA's ability to effectively administer these laws.
- 1.6 Given the above, and the broad scope of legislative responsibilities held by both Parties, it is essential for councils and the EPA to work together to further the objectives of the RMPS and EMPCA for the benefit of the Tasmanian environment, community and economy.
- 1.7 Such collaboration requires commitment and regular, purposeful engagement to achieve lawful, fair, equitable, consistent, timely and evidence-based decision-making on environmental and pollution control matters.
- 1.8 This MoU follows on from the first MoU between LGAT and the EPA executed in 2017, reflecting the strong relationship between the parties and ongoing, shared desire to show leadership and engage in a structured, cooperative and productive manner. The parties will continue to develop an environment where EPA and councils collaborate and share resources and information.
- 1.9 LGAT, as the representative body for Local Government in Tasmania, enters this MoU on behalf of its member Councils but does not purport to represent the views of individual Councils.
- 1.10 LGAT and the EPA recognise that the effectiveness of this MOU is dependent on the size, distribution, and capabilities of the EHO and authorized officer workforce in local government.

2. Purpose

The purpose of this agreement is to establish and implement a framework under which LGAT, Councils and the EPA will work collaboratively and cooperatively in assessing and regulating environmentally relevant activities and responding to events which may cause environmental harm or nuisance. The framework comprises the items listed at 4 below.

3. Principles

The parties agree to abide by the following principles:

- 3.1 MoU Work is Achievable – recognising the broader business of each Party and councils is large and diverse, the Parties will strive to ensure that work proposed under the MoU is realistic in its nature and scope, and able to be achieved within existing resources.
- 3.2 MoU Effectiveness – the Parties agree that workforce planning, coordination and management, as described in *A workforce development strategic plan for Environmental Health Officers (2020)*, are issues essential to describing what is achievable.

- 3.3 MoU Work is Prioritised – noting that each Party and councils must retain flexibility to respond to other issues, the Parties will make best endeavours to give priority to work planned under the MoU.
- 3.4 MoU Governance – the Parties agree to abide by the governance arrangements set out in this MoU and always conduct themselves in an honest, open, consultative, and respectful manner. This includes raising any issues at the earliest appropriate opportunity, allowing sufficient time for consultation, joint decision-making on MoU matters of mutual interest, sufficient record keeping, and upholding any commitments made.
- 3.5 MoU Reporting – the Parties agree to undertake regular reporting of MoU work internally, to councils and to the public, and maintain a high level of transparency and openness to feedback.

4. Strategic Priorities 2023 – 2027

The Strategic Priorities for 2023-2027 in no particular order are:

4.1 Environmental Complaints, Incident Preparedness and Response

Councils and the EPA routinely deal with environmental complaints and incidents, liaising on complaint referrals, sharing information or providing on-ground support to each other. Councils and the EPA will continue to work together in this way and strengthen collaboration.

In the event of significant natural disasters, councils, and the EPA each have responsibilities under the Tasmanian Emergency Management Arrangements. TEMA also recognises the EPA as the statutory lead agency for marine pollution events in Tasmanian waters, with councils having critical support and community recovery functions.

During the term of the MoU, the EPA will conduct pollution incident, including marine pollution incident, preparedness activities such as training and scenario exercises, and will invite participation by relevant councils.

4.2 Illegal Dumping

The introduction in 2022 by the Tasmanian Government of a levy on waste taken to landfills to encourage reuse and recycling and support a circular economy may also exacerbate unlawful disposal of waste.

The EPA will design and lead an illegal dumping compliance and enforcement program. This program will involve active engagement and collaboration with councils, including on program planning for compliance education and enforcement activities. To complement EPA's work, the parties will work together to advocate for additional resources and direct funding for councils.

4.3 Environmental Investigations and Prosecutions

The EPA routinely liaises with and seeks advice and information from councils in the course of its investigations into potential breaches of EMPCA and other environmental legislation. Similarly, councils may request advice or information from the EPA during environmental investigations they lead. Councils and the EPA will continue to work together in this way.

The EPA, while investigating potential contraventions of legislation it administers, may also discover potential breaches of a development permit under section 63(3) LUPAA. In this event, the EPA may take carriage of the LUPAA offence, alongside any breach of EMPCA, rather than referring the LUPAA breach to council, yielding a more efficient use of public resources.

An agreed procedure will be developed to set out the way this mechanism could be used, noting that it would only be used if a LUPAA breach was found during an EMPCA investigation, and with agreement of the relevant council.

4.4 Capability Building

Councils and the EPA both stand to benefit, better understand and support each other's environmental regulatory business by undertaking joint capability and skills development. This will be based on existing¹ and new data describing the local government workforce engaged in EMPCA and LUPAA across the state.

An annual calendar of training and professional development opportunities and products will be formulated under the MoU and made available to all councils and EPA staff.

4.5 Capacity

LGAT will work with the EPA, other key agencies such as Public Health Tasmania and Consumer Building and Occupational Services, to develop an understanding of individual council capacity and the relevant local government workforces ability to respond to regulatory obligations under legislation including EMPCA, LUPAA, Building Act, and the Public Health Act. This work will consider, and complement, relevant recommendations of the Local Government Board's Future of Local Government Review and the *A workforce development strategic plan for Environmental Health Officers (2020)*. This shared understanding will help the key State agencies support councils in fulfilling their regulatory obligations under the legislation identified above.

¹ For example, LGAT's 2020 report *Strengthening the front-line health protection and environmental management workforce in Tasmania: A workforce development strategic plan for Environmental Health Officers*

4.6 National Standard Implementation

The National Standard for Environmental Risk Management of Industrial Chemicals (IChEMS) is an important COAG reform intended to result in improved and consistent management of environmental risks posed by industrial chemicals. All jurisdictions agreed in 2015 to a cooperative implementation model for IChEMS with each jurisdiction adopting decisions made under Commonwealth law through their own mechanisms and taking responsibility for compliance. Commonwealth legislation to create an IChEMS chemical register was passed in 2021 which establishes risk-based schedules, mechanisms for assessing which schedule a chemical spill falls into, and for prescribing risk management measures. IChEMS is led by the Australian Government.

The EPA and the Department of Natural Resources and Environment are working on implementation arrangements for IChEMS in Tasmania and will commence promotion and awareness raising for councils and other stakeholders in 2023.

4.7 Collaboration on more complex development applications and regulation

Some councils need extra resources and expertise support to assist with more complex development applications and regulation. EPA will continue to provide guidance on more complex development applications and regulation. The parties will work together to identify the best way to share the lessons learnt from more complex development applications.

5. Annual Action Plan

- 5.1 An annual action plan will be produced each year for the term of the MoU, specifying the activities the parties will undertake to further the strategic priorities. The action plan will provide a short description of each activity and identify who will lead, who will support, how success will be measured and timeframe for completion.
- 5.2 The annual action plan follows the financial year business planning cycle. LGAT and the EPA will commence drafting each annual action plan in March and finalise it by the end of May. The annual action plan will be tabled at the first LGAT General Meeting in the new financial year and will become the workplan for the EPA's Local Government Engagement Program.

6. MoU Governance and Progress Reporting

- 6.1 The term of this MoU is five years from the date of signing.
- 6.2 A working group comprising LGAT and EPA officers will meet quarterly to develop, oversee and review progress with the annual action plan and address any issues that arise, including new matters that may require consideration as Strategic Priorities.

6.3 The working group will be chaired in rotation by the Policy Director, LGAT and the Director Environmental Regulation, EPA, who will also brief their respective Chief Executive Officers after each quarterly meeting. The EPA will provide meeting coordination, minute taking and other secretariat services for the quarterly meetings.

6.4 LGAT and EPA working group members will provide information on key activities under the MoU for the annual reports for their respective organisations, to councils and where appropriate otherwise promote joint work on their websites and in other corporate communications.

7. Dispute Resolution

7.1 LGAT and EPA officers will endeavour to settle any disputes that arise about the operation of the MoU in the first instance, and if necessary, refer the matter to their respective Directors. If the Policy Director, LGAT and Director Environmental Regulation, EPA are unable to resolve a matter, each will brief their Chief Executive Officer, including on options for a way forward.

8. Execution

Signed on behalf of the Local Government Association Tasmania



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Dion Lester
CHIEF EXECUTIVE OFFICER

Date: 29/8/2023.

Signed on behalf of the Environment Protection Authority



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Wes Ford
CHIEF EXECUTIVE OFFICER

Date: 29/8/2023