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Ms Kate Mihaljek  
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Upper House Committees  
Legislative Council  
Parliament of New South Wales

By email: [PortfolioCommittee6@parliament.nsw.gov.au](mailto:PortfolioCommittee6@parliament.nsw.gov.au)

Dear Ms Mihaljek,

Thank you for your email dated 13 October 2017 from the Hon Paul Green MLC, Chair, Portfolio Committee No. 6 – Planning and Environment seeking an update on the implementation of recommendations from the 2015 General Purpose Standing Committee No. 5 *Report on the performance of the NSW Environment Protection Authority*.

Please find attached an update on the Recommendations as requested.

Please contact Alison Cochrane, Manager, Executive Services, Environment Protection Authority on if you require further information.

Yours sincerely

**BARRY BUFFIER AM**  
Chair and CEO  
Environment Protection Authority

## Response to Recommendations of the 2015 General Purpose Standing Committee No. 5

Recommendation update 26 October 2017	Government Response	EPA update
<p><b>Recommendation 1:</b> That the NSW Government amend the <i>Protection of the Environment Administration Act 1991</i> to provide for the appointment of a chairperson of the board independent of the Chief Executive Officer of the NSW Environment Protection Authority.</p>	<p>Noted. The Government is currently reviewing the governance framework for all statutory entities in NSW. The governance regime of the NSW EPA will be one of the first entities to be reviewed under this framework.</p>	<p>The review of the governance framework for all statutory entities is continuing.</p>
<p><b>Recommendation 2:</b> That the NSW Government amend the <i>Protection of the Environment Administration Act 1991</i> so that the Governor, on the recommendation of the portfolio Minister, and with the concurrence of the board, appoint the Chief Executive Officer of the NSW Environment Protection Authority.</p>	<p>Noted. If the Governor were to appoint the CEO then we would have a situation where the Chair, Board Members and the CEO are all appointed by the Governor. This does not occur currently with any other Statutory Bodies in NSW.</p>	<p>No change</p>
<p><b>Recommendation 3:</b> That the NSW Government amend the <i>Protection of the Environment Administration Act 1991</i> to provide that the board of the Environment Protection Authority has a performance management agreement with the Chief Executive Officer.</p>	<p>Noted. However, if the Governor appoints the CEO as per recommendation 2 then the Performance Management agreement between the Board and the CEO could not permit the Board to terminate the CEO.</p>	<p>No change</p>
<p><b>Recommendation 4:</b> That the NSW Environment Protection Authority appoint an independent chair to the Independent Review Steering Panel overseeing the Orica Mercury Independent Review.</p>	<p>Noted. In March 2014, the Independent Review Steering Panel considered the appointment of an independent chair. The Steering Panel determined it would not seek a new chair but requested the EPA board to seek a recommendation from the Minister for the Environment to appoint an independent science expert.</p>	<p>This Steering Panel completed its work and the Independent Review was completed in April 2016.</p>

	Emeritus Professor Chris Fell was subsequently appointed.	
<b>Recommendation 5:</b> That the NSW Environment Protection Authority prioritise the development of a communications and engagement process to consult and inform local residents of the activities of the Independent Review Steering Panel overseeing the Orica Mercury Independent Review and publicly release the results of any testing undertaken.	Supported. A communication and engagement strategy has been in place since the Independent Review Steering Panel Report was handed down. Information about the Orica Mercury Independent Review Stakeholder Engagement Schedule is publicly available on the EPA website. The EPA has communicated with the local community through various channels including two letter box drops to 4500 and 3000 residences, 3 public forums, print and social media and regular face to face meetings with key stakeholders. The findings from stage one of the Botany Orica Mercury Independent Review that the risk of off-site contamination is low were published in January 2014. The findings of the stage two comprehensive environmental testing program were published on 5 May 2015. The results show mercury concentrations in soils, air, sediments and fish are low to very low. A community forum was held on 3 June to present the findings to the community.	The Stage 3 Environmental Health Risk Assessment was finalised in April 2016 and found that the risk of mercury contamination in residential areas of Botany and Randwick is acceptable. The Stage 3 results were presented to the community on 14 April 2016 and this marked completion of the review.
<b>Recommendation 6:</b> That the NSW Environment Protection Authority consult with the new Chief Scientist and Engineer to review the air quality monitoring strategy in the Upper and Lower Hunter, including a survey of international data and policy responses to the issue, and request	Supported. The EPA and the Office of Environment and Heritage (OEH) have committed to a review of the principles and requirements of air quality monitoring in New South Wales. The first stage of the review will focus on the NSW	The NSW Office of Environment and Heritage (OEH) has completed a review of the Upper Hunter Air Quality Monitoring Network (UHAQMN) and provided the review to the UHAQMN Advisory Committee. The review was a statutory review required under the Protection of the Environment Operations (General) Regulation 2009. The review found that:

<p>recommendations to devise a monitoring network that will assist with any knowledge gaps and strengthen the confidence of the community. The response from the NSW Environment Protection Authority should include its advice on the method of funding this monitoring network.</p>	<p>Government's ambient air quality network, operated by OEH, and the industry funded, government operated air quality monitoring networks in the Upper Hunter and Newcastle Local areas. The EPA levies industries who hold an environment protection licence, and that have an impact on Hunter Valley air quality, to pay for the operation of the Upper Hunter and Newcastle networks. The EPA and OEH will ask representatives from external stakeholder organisations to be part of an advisory panel to provide input and review key deliverables. This panel will include representatives from each of the following disciplines: air quality research; environmental health research; the community and an air quality monitoring practitioner from another jurisdiction. The Chief Scientist and Engineer has nominated, Dr Chris Armstrong, from her office for inclusion on the stakeholder advisory panel.</p>	<ol style="list-style-type: none"> <li>1. The objectives of the Upper Hunter monitoring program are being met</li> <li>2. The Upper Hunter program is being run efficiently and cost-effectively</li> <li>3. Some improvements could be made to the monitoring program.</li> </ol> <p>OEH has been participating in the cross-jurisdictional Expert Working Group (EWG) supporting the review of the National Environment Protection (Ambient Air Quality) Measure (NEPM). The EWG is assessing the technical monitoring requirements of the NEPM.</p> <p>OEH has completed a review of international best practice in monitoring network design. Complementing this, OEH also reviewed the application of NEPM guidance material in Australian monitoring network design. The reviews found that:</p> <ol style="list-style-type: none"> <li>1. The guidance on NEPM monitoring network design is comprehensive and often more comprehensible than other comparable international guidance material.</li> <li>2. NEPM guidance on monitoring is flexible, allowing jurisdictions to monitor air quality anywhere. It does not restrict monitoring to regions only with populations over 25,000.</li> <li>3. Most jurisdictions are meeting their NEPM monitoring requirements. However, population growth in some regions means that jurisdictions should re-assess monitoring requirements based on the latest available census data.</li> <li>4. There is inconsistency in the designation of monitoring station types between jurisdictional monitoring plans and</li> </ol>
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<b>Recommendation 7:</b> That, in the event that the	Noted. The Chief Scientist and Engineer	In August 2016 the NSW Chief Scientist and Engineer, Professor

<p>Chief Scientist recommends that all coal trains be fully covered and all empty wagons be washed to reduce coal dust emissions, the NSW Environment Protection Authority amend the relevant licences to adopt the Chief Scientist's recommendation.</p>	<p>will be requested to review the substantial work the EPA has undertaken in relation to coal dust emissions along the rail corridor in the Hunter Valley. This includes environmental monitoring, literature reviews, and an examination of the environmental management and compliance performance of operators using the rail network.</p>	<p>Mary O'Kane, released a report on rail coal dust emissions management practices in NSW. The report found that further investigation and research was needed to better understand the nature and distribution of particles along rail corridors, and that industry should continue to implement existing dust mitigation measures. The OEH and EPA are working with the office of the NSW Chief Scientist and Engineer and the NSW Smart Sensing Network to research the development and application of low cost smart sensors in an effort to fill existing data gaps.</p> <p>The EPA will consider the recommendation in light of the findings of those investigations upon completion.</p> <p>The government will consider further actions during the finalisation of the <i>NSW Clean Air Strategy</i>. The Strategy will provide the government's direction for the next 10 years to improve air quality in NSW.</p>
<p><b>Recommendation 8:</b> That, in consideration of the high level of community concern about the health and environmental impacts of the coal seam gas industry, investigations into significant pollution incidents should be led by independent experts working with the NSW Environment Protection Authority, not the coal seam gas company under investigation.</p>	<p>Not supported. The new NSW Gas Plan introduces strong and certain regulation with the EPA as the regulator responsible for all compliance and enforcement of conditions of approval for gas activities in NSW (with the exception of work health and safety). The EPA has been established as an independent environmental regulator and delivers these services on behalf of the NSW Government. The EPA has a legislative responsibility, under the <i>Protection of the Environment Administration Act 1991</i>, to investigate and report on alleged non-compliance with environment protection legislation. During these investigations the EPA's skilled investigators utilise the</p>	<p>The EPA continues to lead investigations of reported pollution incidents and breaches of conditions of approval for all gas activities in NSW. This is consistent with the changes introduced under the NSW Gas Plan which made the EPA the lead regulator for gas activities in NSW (except for work health and safety).</p>

	<p>expertise of external and in-house specialists, as well as information licensees are legally required to provide to the EPA. The EPA does not permit companies to “lead” investigations.</p>	
<p><b>Recommendation 9:</b> That the NSW Environment Protection Authority conduct a comprehensive review of its licensing procedure for hazardous chemicals. The review should examine the appropriateness of granting environmental protection licences that do not provide clear limits with respect to the use of hazardous chemicals. Further, the review should also consider the appropriate recourse to be taken against a licensee for failing to maintain concentrations within specified limits.</p>	<p>Supported. The EPA is reviewing the <i>Environmentally Hazardous Chemicals Act 1986</i> (EHC Act). Environment Protection Licences currently have concentration limits for pollutants. The EPA’s new risk based licensing system will provide additional information relevant to these limits. The risk assessments examine the licensed activity, the associated pollutants and controls, the receiving environment, and operator performance to determine environmental risk. This structured assessment will ensure that the activity receives the appropriate level of regulation based on the level of risk posed to human health and the environment by the activity. The EPA is also currently reviewing the Load Based Licensing (LBL) polluter pays scheme.</p> <p>In relation to recourse for failing to maintain concentrations within specified limits, the EPA’s publicly available Compliance Policy and Prosecution Guidelines provides the framework for determining the appropriate regulatory response based on a range of factors</p>	<p>To implement risk based licensing, the EPA completed detailed assessments of the environmental risks at every licenced premises in November 2016. These assessments were completed during site inspections in consultation with licence holders. The assessments include information to ensure the EPA better understands environmental risks and where licensees need to make operational improvements to reduce risks and better protect the environment.</p> <p>In relation to the Load Based Licensing Review, the EPA released an Issues Paper for public consultation in October 2016; and received 52 detailed submissions. The EPA is currently preparing a Proposal Paper for cabinet consideration.</p>

	<p>including environmental risk. This framework applies an escalated response to address non-compliance. The Protection of the Environment Operations Act allows the EPA to issue further penalties for each day an offence continues.</p>	
<p><b>Recommendation 10:</b> That the NSW Government amend the Protection of the Environment Operations Act 1997 to require cruise ship terminals to hold an environment protection licence.</p>	<p>Not supported. The environmental conditions in the Development Consent, along with existing and proposed mechanisms for the managing these issues preclude the need for an environment protection licence. For example, improved environmental outcomes will be delivered through a combination of a new regulatory requirement to use low sulfur fuel, the ongoing development of noise mitigation strategies and an investigation of shore power. The new draft regulatory requirement for the use of low sulfur fuel by 1 October 2015 was released by the EPA for public consultation on 3 June 2015.</p>	<p>In September 2015, the NSW Government introduced regulatory requirements for the use of low sulfur fuel (0.1 per cent or less) by cruise ships in Sydney Harbour. However, the Commonwealth Government made amendments to the <i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>, effective January 2016. The amendments to the Commonwealth Act rendered the NSW powers to regulate low sulfur requirements for shipping inoperative.</p> <p>The Commonwealth Government is now responsible for the regulation of fuel used for all ships, including by cruise ships, in Sydney Harbour and regional NSW ports. The specifications for the fuel used by cruise ships in Sydney Harbour is no longer regulated under NSW legislation.</p> <p>Following NSW Government and community representations, the Commonwealth introduced requirements in December 2016 for cruise ships to use 0.1% or less sulfur fuel at berth in Sydney Harbour. Alternatively, ships can use approved air pollution control equipment. These requirements are administered by the Australian Maritime Safety Authority.</p> <p>The 0.1% sulfur content is considered best practice and brings sulfur emissions in Sydney Harbour in line with those in North America and Europe.</p>



		In October 2016, the International Maritime Organization agreed to reduce the current global sulfur cap of 3.5% to 0.5% for fuel oil used by ships from 1 January 2020. This minimum requirement will apply to all shipping.
<b>Recommendation 11:</b> That the NSW Environment Protection Authority immediately approach the National Environment Protection Council to request a review of the air pollution limits set under the National Environment Protection Measures.	<p>Noted. The EPA, on behalf of the NSW Government, has for the past two years been leading the review of the National Environment Protection (Ambient Air Quality) for the standards for particles as PM2.5 and for PM 10. At the meeting of Environment Ministers held on 15 July 2015, the Ministers signaled their “in principle” support for varying the National Environment Protection (Ambient Air Quality) to implement strengthened reporting standards. The Ministers agreed to finalise their consideration of this matter by 31 December 2015.</p> <p>The Victorian Government is now leading the review of the National Environment Protection (Ambient Air Quality) Measure in relation to sulfur dioxide, ozone and nitrogen dioxide. The EPA is contributing to this process on behalf of the NSW Government and the Port Authority has implemented a voluntary air monitoring regime which, amongst other things, will monitor PM2.5.</p>	<p>NSW led the review of national ambient air quality standards for particles. In February 2016, a variation to the National Environment Protection (Ambient Air Quality) Measure (AAQ National Environment Protection Measure) commenced which:</p> <ul style="list-style-type: none"> <li>• amends the status of fine particles (PM2.5) ‘advisory reporting standards’ to ‘standards’</li> <li>• introduces an annual average PM10 standard of 25 micrograms per cubic metre (µg/m3)</li> <li>• includes long-term goals for PM2.5</li> <li>• initiates a national approach to reporting population exposure to PM2.5.</li> </ul> <p>The new national standards for fine particles (PM2.5) are more health protective than World Health Organization Guidelines and are the most health protective PM2.5 standards in the world.</p> <p>A national review of ambient air quality standards for ozone, nitrogen dioxide and sulfur dioxide is underway.</p>
<b>Recommendation 12:</b> That the NSW Government	Noted. The NSW government	In December 2016, the Commonwealth introduced

<p>require that:</p> <ul style="list-style-type: none"> <li>▪ cruise ship operators using the White Bay Terminal be required to develop noise mitigation strategies and that noise be monitored and limits be enforced</li> <li>▪ the White Bay Terminal be retrofitted to include shore to ship power.</li> </ul>	<p>acknowledges the concerns of the Balmain community regarding noise and air emission impacts of cruise ships and the White Bay Cruise Terminal. In the context of Sydney being Australia’s leading cruise ship destination and the importance of enabling Sydney’s valuable strategic and economic port and tourism industries, the NSW Government is committed to outcomes that will best balance the interests of all stakeholders. In response to community concerns the Port Authority continues to work with the cruise industry to deliver changes to operational practices that generate noise (e.g. external announcements) and suspended all overnight cruise ship visits to White Bay until the new low sulfur fuel regulation is introduced. Further air monitoring will measure the benefits of the use of low sulfur fuel. At the same time, the Port Authority will undertake a feasibility study of shore power. The Port Authority of New South Wales commissioned independent consultants to monitor noise during terminal operations at White Bay and these results are publicly available on its website.</p>	<p>requirements for cruise ships to use 0.1% or less sulfur fuel at berth in Sydney Harbour. These requirements effectively achieve the same outcomes as the NSW low sulfur fuel requirements that were put in place by NSW in 2015, prior to an amendment to the <i>Commonwealth Protection of the Sea Act 1983</i>.</p> <p>In July 2017, the Port Authority released details of its investigation into the feasibility, costing and emissions benefit of the introduction of shore power to the White Bay Cruise Terminal. Shore power systems enable ships to draw their power from land-based electricity networks while at berth, instead of operating their engines for power generation. The key findings of the study indicate that shore power at the terminal is not a cost effective means of mitigating air emissions from cruise ships and that any air quality benefits would be minimal. The study notes that improvements in air quality have already been significant since the introduction of Commonwealth requirements for cruise ships to use low sulfur fuel at berth.</p> <p>As a result of this report, the government will not install shore power at the White Bay Cruise Terminal. The EPA continues to work with the Port Authority to encourage engagement with affected communities throughout the process.</p> <p>Following input from the community the Port Authority is implementing a Noise Reduction Strategy.</p>
<p><b>Recommendation 13:</b> That the NSW Government allocate significant additional funds to the Environment Protection Authority to further train</p>	<p>Supported. The NSW Government has included in the EPA 2015-16 budget additional funding of \$1.272 million for</p>	<p>The NSW Government included in the EPA 2015-16 budget additional funding of \$1.272 million for 2015/2016 to increase forestry staffing levels.</p>

<p>staff and to facilitate the appointment of additional personnel to the Forestry Section.</p>	<p>2015/2016 to increase staffing levels. Additional funding for the longer term to provide an ongoing increase in resources will be considered as part of the 2016/17 Budget setting process.</p>	
<p><b>Recommendation 14:</b> That the NSW Environment Protection Authority, as part of its public engagement and communication strategy, make greater use of community consultation committees, ensuring they are transparently evaluated and engender genuine participation.</p>	<p>Supported. The EPA is developing protocols and processes to assist staff in their communications especially with external committees. The EPA is reviewing its advisory committees in relations to their functions, governance and documentation, with a view to establishing consistent approaches and consultation practices.</p> <p>The EPA is developing a standardised framework that can be applied to advisory committees, for both community and expert based groups. This framework will provide consistent terms of reference, the recommended number of members and breadth of representation to engender participation. In addition, the EPA is developing appropriate methods for evaluating these committees.</p> <p>To facilitate these community consultation processes, the EPA has developed the Engagement Guidelines which outline how and when the EPA informs, consults and involves stakeholders in all aspects of its work. The guidelines highlight the EPA's focus</p>	<p>Effective communications and stakeholder engagement is a priority for the EPA and a key result area in the EPA Strategic Plan 2017-21.</p> <p>The EPA continues to be committed to maintaining the use of community consultative committees on key issues to enable communities to engage with their industrial neighbours and key stakeholders on local environmental issues, and to provide a conduit for information back out to the communities they represent. Current groups include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• The Upper Hunter Air Quality Committee</li> <li>• The Newcastle Community Consultative Committee on the Environment</li> <li>• The Broken Hill Environmental Lead Reference Group</li> <li>• The North West Air Quality Committee</li> </ul> <p>These groups provide the EPA with an opportunity to develop long-term relationships with local communities and to present information to and receive feedback from residents and other stakeholders about the environmental performance of industry and other new or emerging issues in their local area. These groups also provide the EPA with essential insights and understandings into the issues most affecting local communities.</p> <p>Additionally, in late 2016, the EPA asked over 3000 stakeholders for their views on interactions with the EPA and is committed to</p>

	<p>on improving its communication and consultation activities, and clarifies how and when the EPA informs, consults and involves community, environment groups, government and industry. The guidelines are available on the EPA website and in brochure format. Additional funding for the longer term to provide an ongoing increase in resources will be considered as part of the 2016/17 Budget setting process.</p>	<p>addressing areas for improvement. The EPA now has 10 dedicated engagement officer positions in key locations across the State, is improving online consultation pages, has launched a new easier to read and navigate website and is improving its stakeholder newsletter.</p>
<p><b>Recommendation 15:</b> That the NSW Environment Protection Authority be adequately resourced to clear the backlog of contaminated sites awaiting assessment, as well as develop systems to ensure contaminated lands are assessed in a more timely manner.</p>	<p>Supported. Funding of \$1.438 million was allocated for the 2015-16 and \$1.7 million for the 2016-17 financial years to the Contaminated Lands Program to improve both the systems and the rate at which backlog sites are able to be assessed. Additional funding of \$0.9m for the first half of the 2017-18 financial year was also provided to enable the completion of the Backlog Program.</p>	<p>With the extra funding of the \$4.0 million the EPA established a dedicated team to clear the backlog of contaminated sites, and will complete the Backlog Program before the end of 2017.</p> <p>Procedures have been established to prioritise and track the progress of newly notified sites. The EPA aims to assess and prioritise 95% of contaminated sites within four months of being formally notified of the contamination, providing sufficient information is available.</p>
<p><b>Recommendation 16:</b> That the NSW Environment Protection Authority take immediate steps to refine and enhance stringent internal protocols and procedures to ensure timely public communication of all pollution incidents.</p>	<p>Supported. Incidents in which the EPA is involved are now communicated through multiple channels, for example, when the incident potentially or actually poses a risk to human health or the environment the EPA communicates via Twitter, media release and often directly with the community involved. In addition, the EPA's media policy has been updated to ensure that regulatory actions are communicated via a media release and</p>	<p>This is now embedded in the EPA's operating procedures.</p>

	tweet to all relevant media.	
<p><b>Recommendation 17:</b> That the NSW Environment Protection Authority make greater use of Protection of the Environment Policies, available to it under the Protection of the Environment Operations Act 1997, and give serious consideration to applying a multiplier effect for penalty notices to repeat offenders and setting maximum pollution or emissions caps for zones and regions.</p>	<p>Supported in principle. When addressing environmental issues or problems the EPA considers the most effective response. The EPA has used tools other than Protection of the Environment Policies (PEPs) to achieve its objectives and deliver improved environmental outcomes.</p> <p>The EPA is currently examining the applicability and efficiency of a PEP to guide decisions that affect the environment, in particular in relation to air quality. As part of the review of the ambient air quality NEPM, the EPA is examining a number of potential options to assist with the implementation of any new NEPM standards.</p> <p>With respect to repeat offenders the EPA applies an escalating regulatory response to breaches of environmental legislation, as articulated in the EPA Compliance Policy.</p> <p>Under the Protection of the Environment Operations Act 1997 (POEO Act) there is a three-tiered structure of offences with the most serious offences attracting the highest penalties. As per the EPA's Prosecution Guidelines, simultaneous or successive penalty notices are not generally issued for multiple or ongoing breaches of the legislation. In these</p>	<p>The EPA is investigating the use of a PEP to inform and manage the impacts of urban growth on water quality in the South Creek catchment. The investigation is being undertaken in conjunction with the Greater Sydney Commission.</p> <p>The EPA did not progress a PEP in relation to air quality as other tools were determined to be more suitable to achieve objectives and deliver improved environmental outcomes for ambient air quality.</p>

	<p>cases, there is obviously a continuing environmental or compliance problem, even though each breach may be comparatively minor. These are usually dealt with by issuing an appropriate statutory notice or through court proceedings.</p> <p>With respect to pollution or emission caps. The EPA considers the sensitivity of the receiving environment when reviewing development or licence applications. The EPA's advice on development applications and level of controls placed on licences reflect the level of environmental risk. Other regulatory tools including the EPA's load based licensing scheme critically examine the sensitivity of the receiving environment when setting pollutant load limits and calculating the amount of pollutant fees to be paid.</p> <p>In addition, the EPA has successfully developed and implemented emissions and economic trading schemes to cap pollutant emissions in a region or receiving environment. For example, the 'bubble' licensing scheme is a small, self-contained, emissions trading scheme in the South Creek area of the Hawkesbury-Nepean River that allows the three participating sewage treatment systems to adjust their individual discharges, provided the total pollutant load limit for</p>	
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	<p>the scheme is not exceeded. The Hunter River Salinity Trading Scheme sets a variable cap on the amount of saline water that can be discharged by licensed activities depending on river flow and provides a scheme for trading discharge credits.</p>	
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