

Independent Environmental Protection Agency (EPA) consultation

# Discussion paper

May 2022



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# Minister's message



Queensland is home to one of the world's most spectacular and diverse environments, which is worth protecting for the health and prosperity of current and future generations.

I am proud of Queensland's strong environmental legislation and the investment the Government is making across a broad range of programs and initiatives that aim to protect our environment, reduce waste and create jobs for Queenslanders.

A critical component in the Government's efforts to protect and enhance our environment is that of Queensland's environmental regulator.

We're committed to investigating and consulting about the establishment of an independent Environmental Protection Agency (EPA) to protect our environment, create jobs and support economic growth.

The term 'independent' is a complex part of the investigation and consultation activities.

There are different models for establishing an independent environmental regulator, a variety of ways that independence interacts with transparency and accountability, and diverse views and perceptions about how it all translates into an operational environment.

We have and continue to seek these views from Queenslanders and key stakeholders.

I would like to thank every person who has so far participated in the consultation and engagement activities, taking the time to provide considered, passionate and informed responses about this important topic.

Your views have played a vital role in shaping this discussion paper.

In addition to these views, this discussion paper provides insights from the investigation and research, which has explored an assessment of our current state, benchmarking of other jurisdictions, research, financial modelling and a governance review.

It presents a detailed and considered analysis of the various features observed in alternate regulatory models in comparison to the current state of environmental regulation in Queensland. It also poses a series of questions to inspire informed stakeholder perspectives to accompany advice to government on the outcomes of the investigation and consultation process.

We now look to Queensland's stakeholders in environmental regulation to help shape the future of environmental regulation in Queensland and make submissions in response to this discussion paper. I look forward to hearing your thoughts.

## **Meaghan Scanlon MP**

Minister for the Environment and the Great Barrier Reef  
Minister for Science and Youth Affairs

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# Introduction

The Queensland Government has committed to investigate and consult about the potential establishment of an independent Environmental Protection Agency (EPA) to protect our environment, create jobs and support economic growth.

The role of Queensland's environmental regulator is currently undertaken by the Queensland Government Department of Environment and Science (DES).

In this role, DES manages and monitors environmental risk through a range of assessment, compliance, investigation and enforcement activities. To ensure compliance with legislation, the department monitors compliance, rewards good performers, conducts educational programs and responds to breaches with enforcement action.

In Australia and around the world, there are different models for environmental regulators. One of the key elements of any model is to what level they are designed to ensure objectivity and integrity in decision-making—their level of independence.

A number of stakeholders have raised interest in having an independent environmental regulator to separate the policy-making functions of government from the assessment and compliance functions of the regulator. Queensland is the only state in Australia without an EPA or an independent governance component within its environmental framework.

This discussion paper is part of a broad range of consultation activities underway and has been designed to encourage stakeholders to consider the opportunities presented by the consideration of an independent EPA in Queensland, and if a decision is made by the Queensland Government to establish an EPA, the preferable structure.

The discussion paper brings together learnings from the investigation, research, benchmarking and feedback received to date during community and stakeholder consultation activities.

# First Nations People and the EPA Program

DES recognises, respects and values First Nations peoples and cultures. We recognise that First Nations people have rights and interests in the Country on which we work. We are committed to progressing self-determination by working with First Nations peoples to incorporate their priorities and perspectives in decision-making and operations.

DES is progressing initiatives under its Gurra Gurra Framework 2020–2026<sup>1</sup> to reframe relationships with First Nations peoples by holding Country and people at the centre of all that we do, from policies and programs to service delivery.

The investigation into potential models for an EPA and information contained within this discussion paper may provoke thoughts and ideas about possible opportunities that could strengthen the engagement of First Nations people into the operations and decision-making frameworks of the environmental regulator.

Without wishing to limit thoughts and ideas, out of respect, this discussion paper does not attempt to consult our broad stakeholder base about specific First Nations elements. Such a discussion is most appropriately held directly with our First Nations partners.

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<sup>1</sup> The Gurra Gurra Framework 2020–2026 ([des.qld.gov.au](https://des.qld.gov.au))

# Queensland's environmental regulation snapshot



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DES regulates over **86** different activities and over **8,100** environmental authorities.



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During 2020–21, DES made decisions about **1,135** new or amended environmental authorities and conducted more than **1,600** compliance inspections.



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During 2020–21 DES finalised **28** successful prosecutions.



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Those prosecutions led to **\$1.3 million** in fines and over **\$45,000** in awarded costs.



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DES received more than **46,000** enquiries to our customer service centre.



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These enquiries included more than **26,000** customer enquiries to our permit and licensing team.



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And **20,000** community and industry reports to the pollution hotline.

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# Queensland's current environmental regulator

The role of Queensland's environmental regulator is currently undertaken by the Queensland Government Department of Environment and Science (DES).

In this role, the department is responsible for applying environmental standards and reducing the impacts of environmental harm across a variety of activity types that have the potential to impact our environment, such as:

- aquaculture
- chemical manufacturing
- coastal developments
- certain agricultural activities in Great Barrier Reef catchments
- oil refineries
- power stations
- quarries
- food processing
- foundries, smelters and mineral processing
- pulp or paper manufacturing
- cement manufacturing
- chemically treating timber
- waste disposal, transport and reprocessing
- sewage treatment
- mining and gas
- built heritage (compliance).

As a department, DES is also responsible for a broader portfolio of business across different areas including Environmental Policy and Programs, Queensland Parks and Wildlife Service and Partnerships, Environmental Services and Regulation, Science and Technology and Youth Affairs.

It is led by a Director-General with a reporting relationship to the Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs.

As Queensland's primary piece of environmental protection legislation, the *Environmental Protection Act 1994* (EP Act) outlines the regulatory framework for the administration of environmental regulation in Queensland.

The decision-maker under the environmental protection legislation is generally the 'Chief Executive of the Administering Authority', which is the Director-General of DES. This decision-making power is delegated down to officers within the department via an instrument of delegation.

DES delivers this legislative framework by proactively managing and monitoring environmental risks through modern environmental assessment, coupled with best-practice compliance, investigation and enforcement programs.





# Why consider independence?

Environmental regulation involves balancing environmental protection and economic growth.

Given the complex and long-term nature of environmental impacts and associated risks to the community and environment, many jurisdictions have established independent regulators to:

- limit external influence and ensure impartiality of decision-making
- maintain public confidence in regulatory integrity
- maintain competitive neutrality for regulating public and private entities.

The underlying objective of establishing a regulator as an independent entity is to support and promote regulatory integrity. A high degree of independence and properly constructed accountability mechanisms are mutually reinforcing.

The relevance of independence in environmental regulation was recently highlighted by the independent review of the *Commonwealth Environmental Protection and Biodiversity Conservation Act 1999*.<sup>2</sup> Professor Graeme Samuel AC emphasised the importance of ensuring that environmental compliance and enforcement functions under the Commonwealth framework should not be subject to actual or implied direction from political interference.

Considering a potential independent form for Queensland's environmental regulator is consistent with the Organisation for Economic Co-operation and Development (OECD) Best Practice Principles for the Governance of Regulators<sup>3</sup> which provides international principles designed to facilitate good regulatory practices.

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<sup>2</sup> Final report | Independent review of the EPBC Act ([environment.gov.au](http://environment.gov.au))

<sup>3</sup> The Governance of Regulators | OECD Best Practice Principles for Regulatory Policy | OECD iLibrary ([oecd-ilibrary.org](http://oecd-ilibrary.org))

# The investigation and consultation

Research into other jurisdictions and governance models has found there are options to consider that could further strengthen Queensland's environmental regulatory structure, such as enhanced independence and accountability elements that provide increased transparency and public confidence in the effectiveness and efficiency of the regulator.

The investigation into possible models for an independent EPA in Queensland involves:

- an assessment of the current state of environmental regulation in Queensland
- benchmarking across other jurisdictions, including Australian states and territories, New Zealand, Scotland and the United States
- research into the importance of independence in regulation
- development of assessment criteria for comparison of possible EPA models
- financial modelling and a governance review
- consultation and engagement.

To support the investigation, DES is coordinating community and stakeholder consultation and engagement to help inform the Queensland Government about the possible establishment of an independent Queensland EPA.

The consultation seeks to understand the views and needs of the community and stakeholders about the future of environmental regulation in Queensland.

Consultation feedback will help decide whether Queensland should have an independent EPA, and if so, what it could look like and how it should operate.

Environmental regulation and the question of independence is complex. There are different levels of interest, knowledge, opinions and ideas among Queenslanders and our State's environmental experts. Consultation activities are designed for these different groups.

## Community consultation

**Open community consultation** occurred from Saturday 11 December 2021 to Sunday 6 February 2022. It is described as 'open' as it was open to all Queenslanders. It consisted of a short, five-minute survey and a community summary publication to help interested Queenslanders understand more about environmental regulation. More than 1700 survey responses were received.

**Closed community consultation** also occurred through a statistically balanced group of more than 1500 Queenslanders. It is described as 'closed' and statistically balanced because this research was conducted with a randomly selected group of Queenslanders across key demographic areas such as age, location and cultural background. This phase of the consultation consisted of a closed online survey conducted during December 2021.

The results of the open and closed community surveys provide valuable information about the Queensland community sentiment towards whether Queensland should adopt an independent EPA model, as other Australian states and territories have.

Some of the key findings from the open and closed community surveys are referenced in this discussion paper.

## Stakeholder consultation and engagement

Targeted, expert stakeholder consultation is under way with Queensland's peak industry, environmental and community groups and associations. Engagement with DES staff is also occurring.

Between October and December 2021, six stakeholder information sessions were held with peak groups across the following sectors:

- Agriculture and food
- Conservation and environment
- Industry and commerce
- Local government
- Resources
- Waste and resource recovery.

The information sessions provided stakeholders with an overview of the investigation and consultation activities and how they would be able to participate in stakeholder consultation in early 2022.

The sessions also provided stakeholders with an opportunity to provide some early insights about environmental regulation in Queensland. These insights have helped shape this discussion paper and when they are referenced, they are described as **early stakeholder sentiment**.

While these stakeholder consultation activities were occurring in late 2021, about 1600 DES staff also participated in a series of information sessions. During the sessions staff had the opportunity to ask questions and provide some early insights. These insights have helped shape this discussion paper and engagement with staff is ongoing.

## Stakeholder discussion paper

The purpose of this discussion paper is to prompt stakeholder feedback about possible alternative models for an independent environmental regulator, the current state of environmental regulation in Queensland and other key themes.

To help inform discussion, this paper brings together what we've learnt and heard during our investigation and consultation activities to date.

It draws on the research, investigation and modelling and also brings together open and closed community survey insights and early stakeholder sentiment.

Stakeholders can respond to the discussion paper and the questions it presents by completing an online survey on our engagement platform.

Consultation is open until **22 July 2022**.

A consolidated list of the survey questions is included toward the end of this discussion paper.

## Program scope

The exploration of an independent EPA for Queensland is an opportunity to:

- envision world class environmental governance and regulatory frameworks
- examine the roles of policy and regulation and evaluate different models and their potential for improvement to be ready for future environmental challenges
- optimise the effectiveness, transparency, and accountability of environmental regulation.

The investigation does not include a broader review of Queensland's environmental legislation, however policy initiatives continue to be progressed separately as part of the department's core policy function and role.

# Possible governance structures

The Queensland Government is seeking to determine the most appropriate and effective governance structure for modern environmental regulation in Queensland.

Different governance structures provide for varying degrees of separation between the government and the environmental regulator.

It is important to remember that irrespective of the structure, the environmental regulator will always be required to operate with transparency, and remain accountable to the Queensland Government, Queensland Parliament, the community and stakeholders for the performance of its functions. The form of reporting requirements may differ between structures, but some form of annual reporting will always be required.

Governance is important as it establishes clarity of roles and responsibilities enabling an organisation to perform its functions efficiently and effectively, while also setting clear lines of accountability for decision-making and performance.

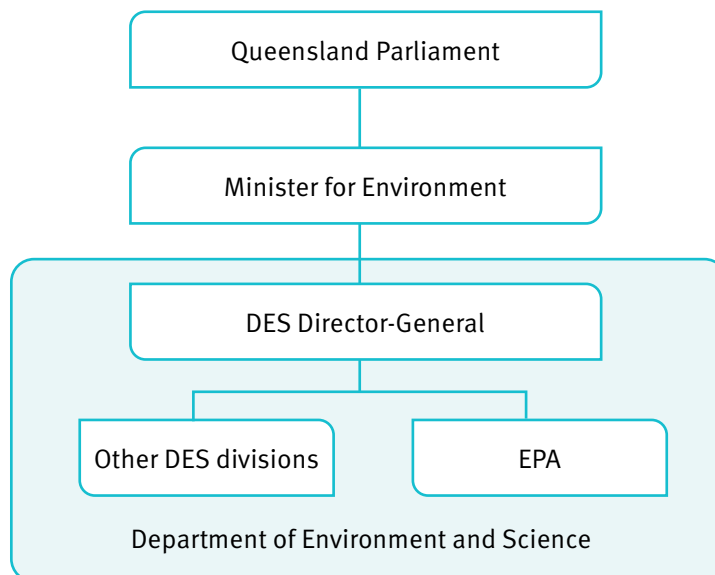
The Queensland Government provides its services and functions through a variety of entity types. The [Queensland Government Good Governance Framework](#)<sup>4</sup> provides guidance about structural options available for the delivery of regulatory functions in Queensland. Based on this guidance, the following three structures emerge as potential models for an independent EPA in Queensland:

1. Continuation of the current departmental structure (with rebranding of the environmental regulatory function as an 'EPA')
2. Statutory authority (with or without a board)
3. Statutory body (with or without a board).

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<sup>4</sup> <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiAiLLRqqj1AhUcTGwGHeeFDjlQFnoECAQQAQ&url=https%3A%2F%2Fwww.premiers.qld.gov.au%2Fpublications%2Fcategories%2Fpolicies-and-codes%2Fassets%2Fgood-governance-framework.doc&usg=AOvVawzhGuE4PtpNzKytPoHpujwW>

## Model 1: Government department with EPA rebranding



The current Queensland environmental regulator, DES, is a department within the Queensland Government. The environmental regulatory function is primarily delivered by the Environmental Services and Regulation (ESR) division within DES.

Model 1 would largely be a rebranding of this existing structure, with the ESR division renamed the ‘Environmental Protection Agency’. While it is acknowledged this alone would not provide an increased level of independence, preliminary discussions with stakeholders and feedback from the community have indicated there may be benefits associated with the brand awareness and identity that an ‘EPA’ would provide.

EPAs are synonymous with environmental protection and regulation agencies across the world. In Australia, Queensland is the only state not using the ‘EPA’ brand within its environmental regulation framework.

The closed community consultation indicates that only one in five Queenslanders are aware that DES is the state’s environmental regulator.<sup>5</sup> This may represent an opportunity for Queensland to align itself with an internationally recognised environmental regulation identity that has been genericised through popular culture references<sup>6</sup> since the world’s first EPA was formed in the United States in 1970.

An unintended outcome of using the EPA name may be that it leads people to assume all environmental matters fall within the remit of Queensland’s environmental regulator, when federal, local and other state government agencies would still retain responsibility for certain relevant legislation and functions— noting this would apply to any EPA model.

<sup>5</sup> Only 22% of respondents to a market research survey undertaken on behalf of DES had heard of DES and knew it was the environmental regulator. 25% had not heard of DES before.

<sup>6</sup> Pop culture references include films *The Simpsons Movie* and *Me, Myself and Irene*, and TV program *Breaking Bad*.

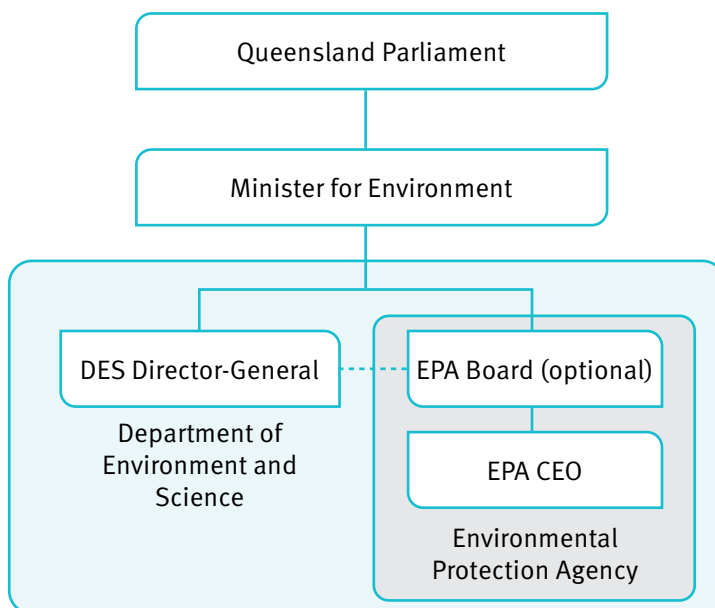
Under Model 1, the environmental regulator would not be a separate legal entity and would remain subject to periodic government restructures. While anything established by government can be changed by government, a departmental office would be easier to change than regulator models established by legislation.

The Premier of Queensland has responsibility for determining ministerial portfolios and government departments through the establishment of Administrative Arrangement Orders. The Orders detail each Minister’s principal responsibilities, the legislation they administer, and the departments, agencies, and office holders responsible for them. Administrative Arrangement Orders are re-issued or amended when a change in the structure of government—known as ‘machinery of government’—takes place.

By way of example, responsibility for environmental regulation in Queensland has been held by four different government departments during the past 13 years, namely the former Environmental Protection Agency, the former Department of Environment and Resource Management, the former Department of Environment and Heritage Protection and currently DES.

Model 1 would require the lowest level of implementation effort and cost to establish. This model would effectively represent continuation of the current state for governance with rebranding of the environmental regulator.

## Model 2: Statutory authority (with or without a board)



A statutory authority is a separate legal entity established under legislation to provide independent oversight of relevant functions. Although it is a separate legal entity, for financial accountability purposes, it is treated as part of its administering agency, typically a department.

In addition to the annual reporting of the administering agency, including financial statements in compliance with the *Financial Accountability Act 2009*, statutory authorities may also have separate accountability reporting requirements specified within their enabling legislation.



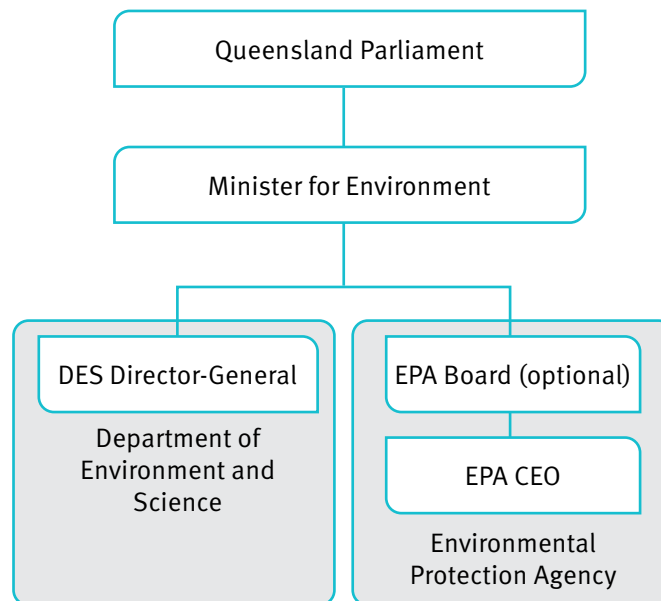
Establishing an EPA as a statutory authority would provide the same benefit of brand recognition as Model 1, with the addition of creating a separate legal entity with an independent role clearly established within legislation.

Under Model 2 there is an option to establish a board to provide oversight of the regulator. The existence of a board could strengthen the independent oversight of the statutory authority in terms of performance, effectiveness and efficiency. A board may also enhance strategic direction by drawing on a mix of different perspectives and expertise through its membership.

There can be different levels of responsibility held by boards. At the lower end, a board may be responsible for the oversight of corporate management only. At the higher end of the scale, the board could hold ultimate responsibility for the direction of resources and setting of operational priorities.

Model 2 would require moderate implementation effort and the passing of enabling legislation to establish the EPA as a separate legal entity and should board oversight be preferred, set board roles and responsibilities. Ongoing operating costs, in the absence of a potential board or advisory committees, would generally be equivalent to the operating costs of a departmental form undertaking an identical set of activities.

### Model 3: Statutory body (with or without a board)



Statutory bodies are established under their own legislation and are responsible for specific aspects of government administration.

Most statutory bodies are administered by boards or committees, and all must report through the responsible Minister about their operations.

Statutory bodies are usually established to carry out specific functions that the Queensland Government considers may be more effectively performed outside a traditional departmental structure. Reasons for this could include:

- a need for some operational independence from the Queensland Government
- funding arrangements that are not reliant on the annual budget process, or
- a need to establish a separate entity.

Statutory bodies must generally be self-funding. Income received by the statutory body is retained solely for its own use (i.e. funding is not paid into the Queensland Government fund).<sup>7</sup>

While statutory bodies may be established to allow a certain level of independence from government, the Queensland Government remains responsible for ensuring taxpayers' funds are expended in the most efficient, effective and economical manner. Statutory bodies often have relationships with other Queensland Government officers or agencies, including for the provision of staff to support the body.

Statutory bodies are subject to varying degrees of Ministerial direction, the extent of which is specified in the statutory body's enabling legislation. Ministers are responsible to the Queensland Parliament for the operation of all government boards and agencies within their portfolios and are required to table their annual reports in Parliament. However, the level of Ministerial approval or oversight can differ.

Statutory bodies may also be governed and/or overseen by a board. The role of the board, appointment process and its membership would be clarified at its establishment, along with its objectives, business, operating environment, annual reporting requirements and relevant legislation.

Boards can include representatives from a broad range of stakeholders and thus provide a diversity of views and expertise.

The main difference between a statutory authority and a statutory body is that a statutory body controls its own funds. By contrast, a statutory authority is given an allocation from the Queensland Government for the performance of its statutory obligations and may also administer funds on behalf of the Queensland Government. Statutory bodies only receive funding from government in limited circumstances, and if so, this is generally given in the form of grants.

Default financial reporting requirements between statutory authorities and statutory bodies also differ in that a statutory body creates its own annual reports, while statutory authorities report as part of their administering agency. This distinction may be removed through a legislative requirement for additional reporting requirements for a statutory authority.

Model 3 would require the highest level of implementation effort and investment, with enabling legislation, corporate systems/functions, and the potential role of a board to be considered. A statutory body would also require an additional initial investment to establish. It would have higher corporate operating costs due to its separate operating structure and resulting requirement to duplicate some key corporate roles.

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<sup>7</sup> Section 6(2) *Statutory Bodies Financial Arrangements Act 1982* (Qld)

# Key observations and discussion points

Underpinning this investigation and consultation process, is a series of assessment criteria, developed to assess the case for the possible establishment of an independent EPA in Queensland. The criteria were developed based on the requirements of the Queensland Government Good Governance Framework. All criteria are equally weighted.

- **Independence:** What is the actual and perceived independence of the governance model?
- **Accountability:** How clear and transparent are the roles, responsibilities and decisions under the governance model?
- **Financial:** Is financial sustainability/independence possible within the governance model? What are the financial impacts of implementation?
- **Efficiency:** How efficiently can services be delivered or transformed/optimised under the governance model?
- **Effectiveness:** How effective is the governance model in achieving the objectives of government and environmental legislation?
- **Economic:** To what degree can the governance model increase investor confidence for proposals that promote ecologically sustainable development?

Observations made against each of the assessment criteria are discussed in more detail, including preliminary consultation feedback and insights obtained from benchmarking interstate and select international EPA governance models.<sup>8</sup> Reflections on the current state of environmental regulation in Queensland have also been included.

This section of the discussion paper also includes questions. Based on the outcomes of the investigation so far, the questions focus on key themes for which we are seeking stakeholder insights and feedback. Responses to these questions will form the basis of stakeholder submissions to this discussion paper.

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<sup>8</sup> Jurisdictions scanned are Victoria, New South Wales, Tasmania, Western Australia, Northern Territory, South Australia, New Zealand, Scotland, and the United States.



## Questions

**Question 1:** Please rank in order of priority what you think are the most important factors for an environmental regulator?

Rank 1–6, where 1 is ‘top priority’

- Independence (decisions the regulator makes are not subject to external influence)
- Accountability (the regulator’s roles, responsibilities, and decisions are clear and transparent)
- Financial (the funding for the regulator is stable)
- Efficiency (the regulator’s services are delivered efficiently)
- Effectiveness (the regulator’s actual achievement against the objectives of government and environmental legislation)
- Economic (the regulator enables sustainable development)

**Question 2:** How much do you agree that adopting the EPA brand would improve awareness of the role of Queensland’s environmental regulator?

# Independence

Many jurisdictions have established independent environmental regulators to:

- limit external influence and ensure impartiality of decision-making
- maintain public confidence in regulatory integrity
- maintain competitive neutrality for regulating both public and private entities.

Independence of a regulator can occur in different ways and is not only derived from the structure of the regulator. A regulator can operate separately while located within a government department, and conversely, a regulator may be subject to direction despite being a distinct entity (such as a statutory authority or body). Likewise, any regulator can be subject to external influence if its leadership or culture is inclined to be influenced.<sup>9</sup>

A degree of structural separation can be beneficial as it provides protection from perceived or actual influence, and as a result, can promote a culture of independence and increased confidence for stakeholders and the broader community.

However, the level of separation between a government and the regulator is not the sole factor determining the level of independence of a regulator. It is the enabling legislation in combination with the structure that ultimately determines the regulator's level of independence.

## Preliminary consultation feedback

- External perceptions of 'integrity' and 'independence' in the current state are varied. During the targeted stakeholder information sessions, half of the external sector-based groups tended to agree that the current state of regulation represents integrity and independence, with three groups tending to disagree.
- Stakeholders at the information sessions were asked to rank the importance of the assessment criteria in evaluating a potential independent EPA. Early stakeholder sentiment was that two groups ranked independence as the most important and two groups ranked it as the least important. Four of the six groups ranked independence in the top three criteria.
- The direct accountability of the Director-General to the Minister also appears to create a stakeholder and community perception of a lack of independence from politics in departmental decisions, despite the Minister generally having no role in the operational decision-making process. This perception may affect public confidence in the integrity and effectiveness of the environmental regulatory decision-making process.
- Independence was ranked as the most important criterion in the open survey, with 72% ranking it as the most important factor. On a priority scale where 1 is ranked the highest importance and 6 is ranked the lowest, independence was given an average rank of 1.6 followed by accountability (2.4), effectiveness (3.7), financial (3.8), efficiency (4.3) and economic (5.1).
- However, on the same priority scale, closed community survey respondents ranked effectiveness (2.7), accountability (2.9) and efficiency (3.4) of higher importance than independence (3.5), followed by economic (4.0) and financial (4.4).

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<sup>9</sup> [Striking a balance – Peter Shergold and Graeme Samuel discuss independent vs departmental regulators](#) | ANZSOG

- In both closed and open community surveys, public confidence would appear to increase if an independent EPA was established.
- 85% of open and 73% of closed community survey respondents would have increased confidence that an independent EPA would effectively achieve its objectives.
- 78% of open and 75% of closed community survey respondents indicated having an independent EPA in Queensland would increase their confidence that industry will operate in an environmentally sustainable way.

### Benchmarking insights

- 88% of benchmarked EPAs have been established as an independent organisational form, with the exception being the US EPA which is effectively a government department of the federal US government.
- Key governance and accountability features associated with independent models include the strategic oversight of EPA operations by a multi-skilled board, clear and published expectations for the EPA and annual published reporting for performance against objectives.
- The organisational forms assessed as providing the highest level of independence included independence established in legislation and supported by clear separation of government policy making and regulatory functions, and an effective balance of public and private sector interests.

### Current state reflection

- Integrity and independence from external influence are built into the existing decision-making and delegation framework of Queensland's current environmental regulator, DES, through a range of mechanisms including:
  - while the Director-General reports directly to the Minister, assessment and compliance decisions are undertaken by DES independently of the Minister<sup>10</sup>
  - decision-making for environmental legislation is delegated by the DES Director-General to departmental officers
  - multiple departmental officers of different levels are involved in decision-making and review processes to support impartiality in decision-making and limit the potential for external influence
  - various objections, review and judicial appeal processes are available to dissatisfied recipients of a regulatory decision.
- DES is responsible for regulating both public and private entities that conduct regulated activities.

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<sup>10</sup> The Minister retains the right to review a refusal by the department to allow an Environmental Impact Statement (EIS) to proceed under section 50 of the EP Act, following receipt of a written notice from the applicant seeking a review.



## Independence questions

**Question 3:** How much do you agree that establishing an EPA as an independent organisational form would improve the independence of the environmental regulator?

**Question 4:** How much do you agree that an independent organisational form would improve community confidence in the integrity of the environmental regulator?

**Question 5:** How important is it to you that a regulator providing oversight to both public and private entities is established in a form that is independent and at 'arms' length' from government?

## Accountability

Accountability encompasses clarity of roles within the regulatory framework and the associated transparent oversight of performance measured against clear objectives.

Independence should be counterbalanced with accountability to ensure the regulator is effective and efficient. While a high degree of independence and properly constructed accountability mechanisms are mutually reinforcing, one side weighted too heavily could also undermine the value of the other. For example, absolute independence may mean that an organisation is not effectively held accountable for its performance or expenditure. By contrast, too many accountability measures could hinder an organisation's effectiveness, efficiency and independence.

It is important to be clear that an independent regulatory decision-making body in any form would still be accountable to the Queensland Parliament. The mechanisms for accountability may differ depending on organisational form, but in all scenarios the regulator will be required to be accountable to parliament for its performance. For example, a Chief Executive Officer for a statutory authority or body may be required to attend parliamentary committee or estimates hearings as the accountable officer for the regulator.

## Preliminary consultation feedback

- Early stakeholder sentiment from the information sessions indicated 'accountability and transparency' were the second highest priority for improvement, with four of six stakeholder groups not agreeing that the current state of environmental regulation in Queensland is rigorous, transparent or stable.
- Early stakeholder sentiment indicated a lack of transparency around advice provided by DES to other decision-making entities in relation to planning proposals, such as the State Assessment Referral Agency and the Coordinator-General. This type of technical advice is not available on public registers and obtaining access through right to information processes can take time and effort.
- Early stakeholder sentiment ranked accountability as an important assessment criterion, with two groups ranking it second and three groups ranking it third.
- Results from both the open and closed community surveys indicate accountability is considered the second most important factor for an environmental regulator for the community.

## Benchmarking insights

- Board oversight is a common feature of accountability frameworks with clearly legislated roles and responsibilities for the EPA, board, and Minister, supported by robust and published board code of conduct and policy for managing conflicts of interest.
- Identified factors for inclusion of boards in EPA models include:
  - the need for autonomy and independence in the exercise of functions or decision-making
  - the contentious nature of the EPA's functions
  - the extent to which a strategic focus is required to achieve the EPA's objectives
  - the need for specialist or expert judgment, or a diverse range of perspectives and experience.
- Some jurisdictions disclose public board meeting agendas and minutes (subject to commercial-in-confidence considerations).



- A Statement of Expectations and Statement of Intent (or similar accountability mechanisms) are used in some jurisdictions. By issuing a Statement of Expectations, a Minister can provide greater clarity about government policies and objectives relevant to the operation and focus of the EPA board, including the policies and priorities it is expected to observe in conducting its operations.<sup>11</sup> The EPA board responds to the Statement of Expectation through a published Statement of Intent outlining how it intends to achieve its objectives, carry out its functions and exercise its powers.
- Common accountability features included:
  - published annual reports that include a regulatory assurance statement from the board on both EPA operations and observed industry environmental performance
  - annual reports that include externally audited financial statements
  - public disclosure of decision-making and formal advice
  - robust internal auditing and Ministerial/Parliamentary reporting processes.
- Ministers have formal step-in rights in some jurisdictions. This means a Minister has a legislative right to choose to assume the role of the decision-maker where it is considered to be in the public interest to do so.

## Current state reflection

- DES has an Audit and Risk Committee (ARC) as required by the Financial and Performance Management Standard 2019.<sup>12</sup>
- An Internal Audit Services function, independent of DES management and external auditors, supports the ARC to provide an independent and objective assurance function to the Director-General in discharging responsibilities under the *Financial Accountability Act 2009*.
- DES periodically undergoes external audits and scrutiny of its functions,<sup>13</sup> publishes a range of strategic documents and reports about its activities.<sup>14</sup>
- ESR provides investigation, litigation and infringement notice administration services to other DES divisions.
- A Compliance Steering Committee, comprised of executive representatives from each operational compliance area of DES, operates as a governance and accountability mechanism overseeing the allocation of resources where prosecution actions are proposed.
- Accountability at a regulatory decision-making level is further reinforced by legal options for internal review and appeal processes, and online publication of public register documents such as approvals granted and enforcement actions taken.

<sup>11</sup> [Statements of Expectations | Treasury.gov.au](https://www.treasury.gov.au)

<sup>12</sup> The ARC is chaired by a member external to DES and provides independent assurance and assistance to the Director-General on risk, control and compliance frameworks, external accountability responsibilities and the integrity framework. ESR has an executive level member on the ARC.

<sup>13</sup> Including through the Queensland Audit Office, with Auditor-General reports tabled in Parliament, and other external entities such as relevant Royal Commissions, Inspector General Emergency Management reviews and Parliamentary Committee hearings.

<sup>14</sup> DES publishes Strategic Plans, a Regulatory Strategy and strategic compliance priorities; reports on its activities through annual reports, budget documents (Service Delivery Statements) and specific reports relating to the administration of Acts that it administers (e.g. the Annual report on the administration of the EP Act); a range of public register information, including environmental approvals issued and enforcement actions taken (noting that Penalty Infringement Notices are not included within the public registers).



# Accountability questions

**Question 6:** How much do you agree establishing a Board to oversee an independent EPA would improve accountability?

**Question 7:** If Queensland were to adopt a model with a Board or Committee, what areas of expertise do you think are most important to be represented?

Rank in order 1–9 where 1 is ‘top priority’.

- Business/industry
- Cultural
- Environmental/natural resources management
- Finance/accounting
- Legal
- Local government
- Management
- Science
- Technology

**Question 8:** Are there any other areas of expertise that you think should be represented on a Board or Committee?

**Question 9:** How much do you agree that the environmental regulator should publish its own separate annual performance report distinct from the broader department?

## Financial

The financial criterion plays an important role in considering possible funding models for an independent EPA as it is necessary to ensure cost effectiveness is achieved, the model is sustainable and any investment into implementation is worthwhile.

As noted earlier in this discussion paper, a statutory authority is a separate legal entity established under legislation to provide independent oversight of relevant functions. Although it is a separate legal entity, for financial accountability purposes it is treated as part of its administering agency, typically a government department. In addition to the normal annual reporting of the administering agency, including financial statements in compliance with the *Financial Accountability Act 2009*, statutory authorities may also have separate accountability reporting requirements specified within in their enabling legislation.

A statutory body is a separate legal entity created under legislation to provide flexibility and independence and will control its own funds. It can act as a trading body and the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982* apply. A statutory body must prepare annual financial statements and have these audited by the Auditor-General with annual reports tabled in Parliament. Funding of statutory bodies is generally in the form of self-funded revenue and government grant-in-aid funding. This has implications for the type of functions a statutory body could undertake, limited to activities for which a levy or a fee could be charged.

The need for a statutory body to establish its own corporate support structures, additional annual reporting and external audit requirements introduces additional costs (both initial and ongoing) in comparison to a statutory authority, which generally leverages off the corporate systems of its administering department.

Preliminary financial modelling indicates that existing regulator revenue would not sustain the ongoing operations of a statutory body, however the difference would also be substantially offset by a reduction in cost to the department it was separated from. There would also be a need for some duplication of key corporate roles under the statutory body option, e.g. a Chief Finance Officer would be required by both the department and the new EPA to support compliance with the *Financial Accountability Act 2009*.

Existing revenue could largely support the ongoing operations of a statutory authority by leveraging off the corporate structure of an administering department. With a modest initial investment to develop enabling legislation and complete recruitment to key governance and executive roles, ongoing operating costs are relatively sustainable at existing resourcing levels.

### Preliminary consultation feedback

- Both early stakeholder sentiment and closed community survey results indicated low rankings for the financial criterion. Efficiency was ranked higher by both groups.
- Early stakeholder sentiment indicated funding arrangements for an EPA should be designed to ensure no unintended conflict of interest is created.

## Benchmarking insights

- In Australian jurisdictions EPAs are funded by a mix of fees, charges, levies and/or direct budget allocations from government. There are examples of EPAs that are fully financially independent and examples that are fully funded by annual government appropriations.
- The highest rated models comprised financial independence supported by both stable and adequate government funding and cost recovery through industry fees, such as licensing.
- The larger Australian EPAs typically manage controlled revenue sources for licensed activities that fund a portion of their total budgets, with revenue sources like waste levies administered on behalf of government. Ongoing government grant funding comprised significant contributions to a number of EPA budgets.
- The distinction between statutory authority and statutory body is not made in all jurisdictions, with many EPAs generally referencing themselves as statutory authorities, while providing separate annual reports including financial statements.
- It is common for EPAs in benchmarked jurisdictions to leverage corporate support from an associated administering agency, while also reflecting the costs of that corporate support as operating costs within their financial statements.
- Many benchmarked EPAs employ approaches where revenue collected is paid into the government consolidated fund, rather than retained directly, to reduce the potential for conflicts of interest. This conflict can be illustrated using the example of how fines issued by the environmental regulator are currently managed in Queensland. Revenues from fines are paid directly to the Government consolidated fund and do not benefit the regulator financially, thereby avoiding potential conflict of interest in penalty decisions.

## Current state reflection

- As part of a broader portfolio of departmental business, the financial reporting for the division primarily responsible for environmental protection regulation (ESR) is included within the whole of DES Annual Report and Financial statements.
- The primary source of revenue associated with ESR activities is annual fees that are payable by holders of Environmental Authorities that authorise environmentally relevant activities. This makes up around 97% of revenue, with additional sources associated with Waste Tracking fees and Environmental Impact Statement fees. This controlled revenue is largely equivalent to the expenses incurred by ESR regulating those activities.
- ESR receives some additional budget allocation that it applies to other specific purposes, such as waste levy compliance operations, however waste levy revenue is administered by the Environmental Policy and Programs division of DES.
- Existing corporate costs incurred by DES in supporting ESR operations are not self-funded by existing ESR revenue.
- There are economies of scale realised within the current state through the provision of critical corporate support functions across the multiple divisions of DES.



## Financial questions

**Question 10:** What level of risk (in terms of a conflict of interest) do you think would exist if an independent EPA fully controlled its own industry-sourced revenue?

**Question 11:** How much do you agree that funding of environmental regulation should be supported by revenue collected from regulated industries through fees (e.g. licence fees)?

**Question 12:** How much do you agree that inclusion of an EPA's financial reporting within departmental financial statements would provide sufficient transparency of financial performance?

## Efficiency

Whatever its form, an environmental regulator should clearly document how its operations align with its regulatory purpose, functions and objectives. In doing so, the regulator can demonstrate its effectiveness and efficiency in achieving its objectives and fulfilling its legislative functions.

In the context of a potential alternative model for an independent EPA in Queensland, consideration needs to be given to whether an alternative model can improve the efficiency and effectiveness of current operations.

The Queensland Audit Office (QAO) recommends that regulators regularly report against key performance measures with a focus on outcomes designed to increase accountability and transparency.<sup>15</sup> Performance measures recommended by QAO include:

- a cost allocation framework that is cost-effective and defensible
- clear service outcomes and measures to track the status and effectiveness of goals
- management-level efficiency indicators to monitor and report on operations and services
- accuracy of evidence gathered for escalating non-compliance cases
- efficiency of the regulator and timeliness of decision-making trends in compliance or reduction in non-compliance.

## Preliminary consultation feedback

- Both the early stakeholder sentiment and the closed community survey results ranked 'efficiency' as a top 3 important factor for an environmental regulator, following effectiveness and accountability.
- The open community consultation results ranked efficiency as the fifth most important criterion, following independence, accountability, effectiveness and financial.
- Early stakeholder sentiment at the information sessions, generally disagreed that the current state of environmental regulation in Queensland is efficient or effective.
- However, the view is not universal with some stakeholders indicating that the current state should be maintained as DES is already robust, effective and efficient.
- Some stakeholders have submitted that regardless of organisational form, there remain opportunities to realise future efficiencies through programs aimed at further digitising processes and industry reporting requirements.
- Some stakeholders at the information sessions commented that models that provide clear distinction between the regulatory function, separate from program delivery (such as grant programs), and policy development can promote efficiency and effectiveness.

## Benchmarking insights

- Quantitative comparisons across different jurisdictions are challenging due to differences in reported metrics, scope of regulated activities, budgets, workforce profile, policy settings, additional functions undertaken by other EPAs (such as applied science, enhanced education and engagement activities), population pressures and physical differences in the geographical areas that regulatory activities are conducted across.

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<sup>15</sup> Regulating animal welfare services | Queensland Audit Office ([qao.qld.gov.au](http://qao.qld.gov.au))

- In comparing available quantifiable information, it was difficult to identify clear differences in efficiency of regulatory operations across jurisdictions.
- Qualitative observations indicated that structures that provide minimal duplication or crossover of functions across policy, programs and regulation, combined with approaches that leverage innovative technologies and community consultation, are most likely to provide efficient pursuit of objectives within each functional area.
- Structures observed through benchmarking were diverse, ranging from:
  - an EPA departmental form (US)
  - EPA ‘boards’ established with the specific role of providing recommendations and advice to a Minister as the decision maker for significant projects
  - EPAs responsible for regulatory decision making across approvals, compliance, enforcement, and incorporating education and engagement, with policy function delivered through a relevant department and program delivery (e.g. grant programs) through specialised entities e.g. Green Industries South Australia
  - EPAs with broad functions incorporating decision making for approvals and compliance, education, engagement, grant programs and some policy functions.

### Current state reflection

- Within DES, there is an internal structural separation of policy and programs from regulator functions, however all functions ultimately report to the Director-General.
- Strategic plans and associated objectives incorporate the entirety of DES functions.
- Queensland’s environmental regulator has developed tools that aim to promote the best use of available resources.
- Its Compliance Prioritisation Model aims to identify higher risk sites that are prioritised for compliance monitoring.
- The introduction and development of an intelligence function and annual strategic compliance priority focus areas, enables ESR to prioritise available resources and promote a general deterrence to offending by publishing areas of regulatory focus.
- DES has adapted new technologies to its work, such as the use of drones. These systems have provided significant efficiency benefits for compliance inspection work, including surveys of key site features and improved quality of imagery records.
- DES has worked to improve its digital systems and increase accessibility to information through web-based platforms like its Public Register Portal.
- DES measures efficiency against a number of measures reported in annual Service Delivery Statements such as costs per permit assessed, investigations undertaken, and complaints resolved.
- DES has worked to streamline internal processes to improve both the quality and efficiency of its operations. Continuous improvement is inherent within the DES Regulatory Strategy.



Wallaman Falls at Girrigun National Park  
Photographer Kerry Trapnell  
© Queensland Government



# Efficiency questions

**Question 13: How much more efficient do you think an environmental regulator would be if it was independent?**

**Question 14: Would making an independent regulator accountable to a multi-skilled Board further improve its efficiency?**

**Question 15: Would separating the policy and regulatory functions create any risks for your sector?**

**Question 16: Where do you think the following functions are best located?**

**(One selection is permitted for each function)**

	Department	Independent EPA	Neither	Not sure
Policy/legislation development				
Program Delivery (e.g. grants)				
Assessment (recommendation)				
Approval (decision)				
Compliance Monitoring				
Enforcement (decision)				

## Effectiveness

An effective regulator provides best practice regulation to achieve positive environmental and socio-economic outcomes. It should also demonstrate value for money in terms of fulfilling its operational function and delivering government objectives.

At its core, the measure of effectiveness for an environmental regulator relates to how well it is delivering against the objectives of ecologically sustainable development - how well it is protecting Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

Advisory committees are a potential mechanism for the promotion of effective outcomes and could be utilised across all three models. Advisory committees can be established for a specific purpose tailored to the needs of an organisation. They provide subject matter expertise and generally serve to make recommendations and/or provide key information about specific topics or issues.

An advisory committee generally does not have formal authority to govern an organisation or make decisions, but instead exists to provide advice to inform decision-makers. In doing so, advisory committees can focus on specific issues to enhance the organisation's overall performance and the achievement of its objectives. Like boards, advisory committees can include a diversity of representatives and specialist skills.

Scientific expertise is also particularly important in environmental regulation. The efficacy of environmental decisions and policy depends heavily on the integrity of the supporting science. Likewise, the scientific expertise of the regulator must be recognised and accepted for it to be trusted as a credible source of information.

Education and engagement can also enhance effectiveness. By maximising education and engagement activities, environmental regulators can ensure the needs and perspectives of the community and stakeholders are understood and appropriately reflected in environmental regulation.

## Preliminary consultation feedback

- Early stakeholder sentiment at the information sessions generally disagreed the current state of environmental regulation in Queensland is efficient or effective.
- Both early stakeholder sentiment and the closed community survey results rank effectiveness as the most important factor for an environmental regulator.
- Open community survey results indicate that about 85% of respondents would have increased confidence that an independent environmental regulator would effectively achieve government objectives (73% for the closed community survey).
- About 78% of open and 75% of closed community survey respondents indicated having an independent EPA in Queensland would increase their confidence that industry will operate in an environmentally sustainable way.

- Stakeholders raised ideas at information sessions for how an EPA could measure its success through tangible environmental measures. Possible measures suggested included greenhouse gas emission levels, Environment Social and Governance (ESG) performance and credit metrics, waste and resource recovery rates, water quality levels, National Pollutants Register, extinction rates and land clearing rates.
- Stakeholders also suggested that consideration be given to specialist roles. This could include a Chief Environmental Scientist to advise the EPA on regulatory decisions and standards and work alongside the Chief Health Officer on environmental health matters. Focussed working groups like an Environmental Health Group have also been suggested by stakeholders to promote improved effectiveness.
- Some stakeholders have recommended broadening the scope of an EPA's remit to include expanded responsibilities for nature conservation and natural resource management functions that are beyond the current environmental protection responsibilities of ESR.
- Others advocate for an independent EPA that is primarily focussed on preventing and reducing the harmful effects of pollution and waste on the environment and human health.
- The current combination of environmental policy and regulatory functions within DES, albeit in separate divisions, was criticised by some stakeholder groups.
- The separation of strategic policy and environmental compliance is supported by Graeme Samuel AC (former Chairman of the Australian Competition and Consumer Commission) who has expressed the opinion that independent regulators must be constrained in their ability to influence policy because policy direction is the remit of the elected government.<sup>16</sup>

## Benchmarking insights

- The success of South Australia (SA) in nation-leading resource recovery rates and waste reduction was referenced by stakeholders as an example of effectiveness in the context of the separation of functions into different agencies: the SA EPA as regulator; program delivery through Green Industries SA, and; policy formulation within the Department of Environment and Water.
- Benchmarking found an unclear separation between policy and regulatory functions in a number of other scanned jurisdictions.
- Establishing an independent regulatory structure with enhanced accountability mechanisms may increase the focus of strategic planning onto environmental protection objectives and place greater emphasis onto specific measures of effectiveness for the regulator.
- Direct access to advisory committees for credible advice informing strategic direction at a board level also supported fit-for-purpose and effective operations of some benchmarked EPAs. Examples of advisory committees include the Science, Engineering and Health Oversight Committee in the Victorian EPA model, the Ngā Kaihautā (Maori Advisory Committee) within the New Zealand EPA and the US EPA Science Advisory Board.
- The inclusion of advisory committees for specific areas of expertise to support effectiveness is supported by the 2020 Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* which noted expert technical advice from the Independent Expert Scientific Committee improved decision-making and led to increased transparency and community confidence.<sup>17</sup>

<sup>16</sup> [Striking a balance – Peter Shergold and Graeme Samuel discuss independent vs departmental regulators | ANZSOG](#)

<sup>17</sup> Final report | Independent review of the EPBC Act (environment.gov.au)

- Some benchmarked EPAs have established advisory committees to provide science advice to the environmental regulator to inform its strategic approaches to regulation. One EPA benchmarked has established a Chief Environmental Scientist role.
- Consideration would need to be given to the relevance of adopted measures of success against the EPA's purpose and legislative remit. All EPAs benchmarked broadly included the following core regulatory services: waste (hazardous and non-hazardous); chemicals; contaminated land; water quality; air quality; noise emissions and, odour emissions associated with regulated activities. Some models include other functions, such as environmental health, radiation, pest management, dangerous goods transport, native forestry, biodiversity and climate change.

### Current state reflections

- Under the current state there are benefits of ease of access for the environmental regulator (ESR) to:
  - science support within the Science and Technology division
  - policy engagement within the Environmental Policy and Programs (EPP) division
  - operational support and alignment with programs run through EPP
  - shared resources with Queensland Parks and Wildlife Service and Partnerships during times of disaster and incident response and responding to serious offending with enforcement.
- DES is currently progressing initiatives under its Gurra Gurra Framework 2020–2026<sup>18</sup> to reframe relationships with First Nations peoples by holding Country and people at the centre of all that we do, from policies and programs, to service delivery.
- DES primarily relies on the scientific knowledge, research and experience of its environmental officers to make regulatory decisions and for the development of scientific aspects of operational guidelines and policy.
- The Queensland Government's existing Chief Scientist role is located within DES, although this role's remit is broader than a specific focus on environmental science.
- The Science and Technology division is accessible to both assessment and compliance teams for scientific and technical advice about environmental, natural resource and climate matters. In instances where further expertise is required, DES can also seek advice from an external body such as CSIRO, academic institutions, or subject matter experts.
- DES has Communications and Community Engagement teams within the Corporate Services Division that facilitates a variety of communication activities like media, web, design, campaigns, social media and publications, and also engagement between the environmental regulator and the Queensland community.
- DES also undertakes a range of public consultation processes and regular stakeholder engagement forums.
- As the current regulator, ESR has a strong focus onto risks associated with pollution and waste, however also assesses risks to a broader range of environmental values associated with proposals to undertake environmentally relevant activities, e.g. biodiversity and ecosystem impacts, and rehabilitation of disturbed landforms.

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<sup>18</sup> The Gurra Gurra Framework 2020–2026 (des.qld.gov.au)

- ESR has established key business structures and functions to promote effective service delivery, such as:
  - specialised business centres to provide assessment services across specific industries including the Minerals (Cairns), Coal (Emerald), Energy and Extraction (Brisbane), and Waste and Development (Brisbane)
  - an Environmental Impact Assessment team to administer Environmental Impact Statement processes
  - centralised access points for both industry and community via the Permits and Licensing, and Community Response teams
  - compliance teams monitoring and responding to industry performance, distributed across 13 office locations throughout Queensland
  - a 24/7 environmental incident response service
  - operational support units that produce and publish guidance and information resources for industry and staff, Regulatory Strategy, internal capability development, and data/systems services like the web-based Public Register Portal
  - enforcement and compliance support, including intelligence and Geographical Information Systems (GIS), strategic compliance planning, and support services for compliance investigations
  - a Litigation Unit providing prosecution and appeal services and internal legal advice.
- At present, ESR reports against its environmental protection operations within the broader portfolio of activities of DES. Environmental regulation is part of DES strategic planning.
- There are current measures of effectiveness that are reported through Service Delivery Statement targets. These relate to moving non-compliant industry operations back to compliance through enforcement intervention.
- The majority of formally reported information about ESR’s activities in relation to the administration of the EP Act is quantitative outputs, such as assessments completed and enforcement actions taken.
- Behind each one of the reported outputs is an environmental outcome of some magnitude, however it is not easily visible within reported information.
- DES has increasingly used social and mainstream media and regulatory newsletters to promote specific achievements.
- DES has increasingly improved access to regulatory information, such as the recent introduction of its enhanced public register portal that includes searchable information about environmental approvals and enforcement actions.
- DES has recently refreshed its Regulatory Strategy<sup>19</sup> to inform its forward approach to strategic regulation.
- DES has a successful record of prosecuting serious offending, finalising 28 successful prosecutions in 2020–21, resulting in \$1.3 million in fines.
- The Queensland State of the Environment (SOE) report plays an important role in measuring the performance of the entire environmental framework in Queensland, including policy settings and the measurement of success against environmental objectives. The SOE report provides an assessment of Queensland’s environmental performance over three-year periods, using the internationally accepted ‘pressure-state-response’ framework. The information contained in the report focuses on five themes —biodiversity, heritage, pollution, climate and liveability.

<sup>19</sup> <https://environment.des.qld.gov.au/management/policy-regulation/regulatory-strategy>



## Effectiveness questions

**Question 17:** How much more effective do you think an environmental regulator would be if it is independent?

**Question 18:** Would making an independent regulator accountable to a multi-skilled board further improve its effectiveness?

**Question 19:** Would establishing Advisory Committees for specific focus areas, such as environmental science, improve the effectiveness of the environmental regulator?

**Question 20:** Which of the following do you feel would be more effective?

- An EPA with a targeted focus regulating against the risks to environmental values associated with industry and development
- An EPA with a broader remit of responsibilities, incorporating nature conservation and natural resource management functions

## Economic

Investment is a future-focused endeavour. Investors will be attracted to jurisdictions for a variety of reasons, however certainty of pathways to deliver projects that create returns on investment are fundamental advantages. Investments in Queensland create jobs and opportunities, supporting livelihoods and the health and wellbeing of our community.

Investment and economic development are not diametrically opposed to environmental protection. Ecologically sustainable development is a core principle of the EP Act and it is an important role of the regulator to enable it.

At a global scale, the emergence of the prominence of Environmental, Social and Governance (ESG) metrics in the world of financial investment demonstrates the importance of countries, states, territories, and organisations committing to measure up to these factors and make positive community contributions. The world is rapidly increasing investment in sustainability initiatives and decarbonisation as companies seek to improve ESG credentials and we look to a zero net carbon emissions future.

The World Economic Forum's The Global Risks Report 2021 ranked four key environmental risks within the top seven globally perceived risks to society by likelihood and by impact, as follows:



Figure: Top global risks by likelihood (2021)



Figure: Top global risks by impact (2021)

Credit agencies are increasingly beginning to assess the ESG performance of countries and their states and territories. MSCI, an American finance company, publishes a range of credit assessments and metrics including annual Government ratings. MSCI ESG Government Ratings reflect its assessment of how countries' or states' exposure to and management of ESG risk factors may affect the long-term sustainability of their economies.

In relation to the environment metrics, MSCI assesses the extent to which a jurisdiction's long-term competitiveness is affected by its ability to protect, harness, and supplement its natural resources, and to manage environmental vulnerabilities and externalities. In July 2021, MSCI's ESG rating for Queensland was affirmed at the AA level with a change in the outlook to Negative. MSCI's ESG Ratings range from leader (AAA, AA), average (A, BBB, BB) to laggard (B, CCC).

Financial institutions like ANZ<sup>20</sup> are forecasting, based on economic reports, that around \$125 trillion in investment will be required globally to transition to net zero, with potential doubling of the critical minerals sector to supply green technologies, surging demand for hydrogen and a 15-fold increase in environmental markets by 2030 driven by net zero commitments.

As Queensland prepares for the 2032 Olympic Games, it is critical the environment is at the forefront of Queensland's economic recovery and growth. Our environment and natural assets are one of the key reasons the Games have been secured for Queensland.

In terms of both the environment and economy, there are clearly significant challenges and a wealth of opportunities in front of us.

### Preliminary consultation feedback

- Results from the closed community survey indicate 76% of people agree that an environmental regulator must balance environmental protection with economic prosperity. However, only 32% of respondents to the open community survey agreed.
- Early stakeholder sentiment at the information sessions, tended to disagree the current state supports investor confidence.
- Early stakeholder sentiment and the open community survey results rank the economic criterion as the least important for evaluating an environmental regulator model.
- Closed community survey respondents ranked the economic criterion as the fifth (or second last) most important criterion, ranking it ahead of the financial criterion.

### Benchmarking insights

- Jurisdictions promoting wider socio-economic outcomes and benefits to the community, transparency in decision-making, regulatory efficiency and clarity in objectives may support greater investor confidence.
- Some jurisdictions incorporate a review of current economic conditions within EPA annual reports, including economic factors that may affect environmental outcomes, economic growth patterns, economic opportunities and impacts, and employment trends.

### Current state reflection

- DES recognises the importance of balancing environmental values with economic considerations. Important industries such as tourism and agriculture depend on the beauty and productivity of Queensland's natural environment to be successful. At the same time, the environmental regulator must consider the public interest and financial implications of its decision making, which may include job creation and industry development that improves the total quality of life.

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<sup>20</sup> [20 2021-investor-roundtable-esg-update-nov-2021 \(anz.com\)](https://www.anz.com/2021-investor-roundtable-esg-update-nov-2021)



- In enabling sustainable development, DES must balance the efficiency of assessments and approvals with the effectiveness of outcomes. Suitable information from applicants is key to enabling assessments against relevant environmental objectives to be completed.
- DES has continuously worked to enhance guidance for applicants and has progressively published web-based information across a broad range of industry areas providing clarity of expectations for application information.
- DES measures the efficiency and timeliness of its assessment activities, reporting on cost per permit assessed as part of its annual reporting against Service Delivery Statements.



## Economic questions

**Question 21:** How important is public trust in the regulatory framework to industry's social licence to operate?

**Question 22:** How much do you agree that establishing an independent environmental regulator would improve Queensland's environmental reputation?

**Question 23:** How important do you think Queensland's Environmental Social and Governance (ESG) credentials are to its future economic prosperity and job creation?

# Final questions

**Question 24: How supportive are you of establishing an independent EPA in Queensland?**

**Question 25: On the balance of information presented within the discussion paper do you see a preferred model?**

- No preference
- Maintain current state
- Model 1 create EPA identity in departmental form
- Model 2a Statutory Authority (with board)
- Model 2b Statutory Authority (without board)
- Model 3a Statutory Body (with board)
- Model 3b Statutory body (without board)

These survey questions are the result of key themes identified through investigation, research and stakeholder consultation and engagement. Selecting 'yes' to this next question will take you to a free text field where you can add additional information.

**Question 26: Are there any final comments you would like to make about an independent EPA in Queensland?**

# How to make a submission

During this stage of consultation, targeted, expert stakeholders are invited to make a submission in response to this discussion paper and the questions it presents.

Targeted stakeholders include:

- Queensland's peak industry, environmental and community groups and associations across sectors including:
  1. Agriculture and food
  2. Conservation and environment
  3. Industry and commerce
  4. Local, state and federal government agencies
  5. Resources
  6. Waste and resource recovery
- staff of the current environment regulator, DES, and
- more than 8000 Environmental Authority (EA) holders.

Peak industry bodies are asked to make a submission on behalf of their organisation and members.

DES staff are invited to make submissions.

EA holders are invited to make submissions.

Peak bodies, DES staff and EA holders will receive a private link to the survey, which will take them to the department's engagement platform In the Loop.

## To make submission:

1. Stakeholders will receive an email with a link to our engagement platform where they will need to set up an account. It only takes a few minutes.  
Setting up an account help protects the integrity of the survey results.
2. Log in and respond to the questions posed in the discussion paper. Responses can be completed gradually—you can save and return to your submission at any time.
3. Let us know who you are. In addition to the questions, you will be prompted to identify the organisation you are representing.
4. Submit the response.

**Stakeholder consultation is open for eight weeks until Friday 22 July 2022.**

For more information visit [www.qld.gov.au/epaconsultation](http://www.qld.gov.au/epaconsultation) or email the project team [EPAProgram@des.qld.gov.au](mailto:EPAProgram@des.qld.gov.au)

# Next steps

## EPA program timeline



Targeted consultation is occurring between November 2021 and July 2022.

Research and modelling occurred between October 2021 and January 2022. This work forms the basis of the current targeted stakeholder consultation. This phase of the consultation includes the opportunity to provide detailed feedback on a range of themes and options. It closes on 22 July 2022.

The combined outcomes from the investigation, research, financial modelling and consultation activities will inform advice back to the Queensland Government for consideration in 2022.

# Summary of questions

The discussion paper questions are included here for informational purposes.

Expert stakeholders have been invited to provide a submission in response to this discussion paper.

## Questions

**Question 1:** Please rank in order of priority what you think are the most important factors for an environmental regulator?

Rank 1–6, where 1 is ‘top priority’

- Independence (decisions the regulator makes are not subject to external influence)
- Accountability (the regulator’s roles, responsibilities, and decisions are clear and transparent)
- Financial (the funding for the regulator is stable)
- Efficiency (the regulator’s services are delivered efficiently)
- Effectiveness (the regulator’s actual achievement against the objectives of government and environmental legislation)
- Economic (the regulator enables sustainable development)

**Question 2:** How much do you agree that adopting the EPA brand would improve awareness of the role of Queensland’s environmental regulator?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Not sure

## Independence questions

**Question 3:** How much do you agree that establishing an EPA as an independent organisational form would improve the independence of the environmental regulator?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Not sure

**Question 4:** How much do you agree that an independent organisational form would improve community confidence in the integrity of the environmental regulator?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Not sure

**Question 5:** How important is it to you that a regulator providing oversight to both public and private entities is established in a form that is independent and at ‘arms’ length’ from government?

- Very important
- Important
- Neutral
- Not important
- Not at all important
- Not sure

## Accountability questions

**Question 6:** How much do you agree establishing a Board to oversee an independent EPA would improve accountability?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Not sure

**Question 7:** If Queensland were to adopt a model with a Board or Committee, what areas of expertise do you think are most important to be represented?

Rank in order 1–9 where 1 is ‘top priority’.

- Business/industry
- Cultural
- Environmental/natural resources management
- Finance/accounting
- Legal
- Local government
- Management
- Science
- Technology

**Question 8:** Are there any other areas of expertise that you think should be represented on a Board or Committee?

- Yes (free text field appears)
- No
- Unsure

**Question 9:** How much do you agree that the environmental regulator should publish its own separate annual performance report distinct from the broader department?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Not sure

## Financial questions

**Question 10:** What level of risk (in terms of a conflict of interest) do you think would exist if an independent EPA fully controlled its own industry-sourced revenue?

- Very high risk
- High risk
- Neutral
- Low risk
- Very low risk
- Not sure

**Question 11:** How much do you agree that funding of environmental regulation should be supported by revenue collected from regulated industries through fees (e.g. licence fees)?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Not sure

**Question 12:** How much do you agree that inclusion of an EPA's financial reporting within departmental financial statements would provide sufficient transparency of financial performance?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Not sure



## Efficiency questions

**Question 13:** How much more efficient do you think an environmental regulator would be if it was independent?

- Much more efficient
- More efficient
- No difference/unchanged
- Less efficient
- Much less efficient
- Not sure

**Question 14:** Would making an independent regulator accountable to a multi-skilled Board further improve its efficiency?

- Yes
- No
- Not sure

**Question 15:** Would separating the policy and regulatory functions create any risks for your sector?

- Yes (please specify—free text box)
- No
- Not sure

**Question 16:** Where do you think the following functions are best located?

(One selection is permitted for each function)

	Department	Independent EPA	Neither	Not sure
Policy/legislation development				
Program delivery (e.g. grants)				
Assessment (recommendation)				
Approval (decision)				
Compliance monitoring				
Enforcement (decision)				

## Effectiveness questions

**Question 17:** How much more effective do you think an environmental regulator would be if it is independent?

- Much more efficient
- More efficient
- No difference/unchanged
- Less efficient
- Much less efficient
- Not sure

**Question 18:** Would making an independent regulator accountable to a multi-skilled board further improve its effectiveness?

- Yes
- No
- Not sure

**Question 19:** Would establishing Advisory Committees for specific focus areas, such as environmental science, improve the effectiveness of the environmental regulator?

- Yes
- No
- Not sure

**Question 20:** Which of the following do you feel would be more effective?

- An EPA with a targeted focus regulating against the risks to environmental values associated with industry and development
- An EPA with a broader remit of responsibilities, incorporating nature conservation and natural resource management functions

## Economic questions

**Question 21:** How important is public trust in the regulatory framework to industry's social licence to operate?

- Very important
- Important
- Neutral
- Not important
- Not at all important
- Not sure

**Question 22:** How much do you agree that establishing an independent environmental regulator would improve Queensland's environmental reputation?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Not sure

**Question 23:** How important do you think Queensland's Environmental Social and Governance (ESG) credentials are to its future economic prosperity and job creation?

- Very important
- Important
- Neutral
- Not important
- Not at all important
- Not sure

## Final questions

**Question 24:** How supportive are you of establishing an independent EPA in Queensland?

- Very supportive
- Supportive
- Neutral
- Unsupportive
- Very unsupportive
- Not sure

**Question 25:** On the balance of information presented within the discussion paper do you see a preferred model?

- No preference
- Maintain current state
- Model 1 create EPA identity in departmental form
- Model 2a Statutory Authority (with board)
- Model 2b Statutory Authority (without board)
- Model 3a Statutory Body (with board)
- Model 3b Statutory body (without board)

These survey questions are the result of key themes identified through investigation, research and stakeholder consultation and engagement. Selecting 'yes' to this next question will take you to a free text field where you can add additional information.

**Question 26:** Are there any final comments you would like to make about an independent EPA in Queensland?

- Yes (free text field appears)
- No



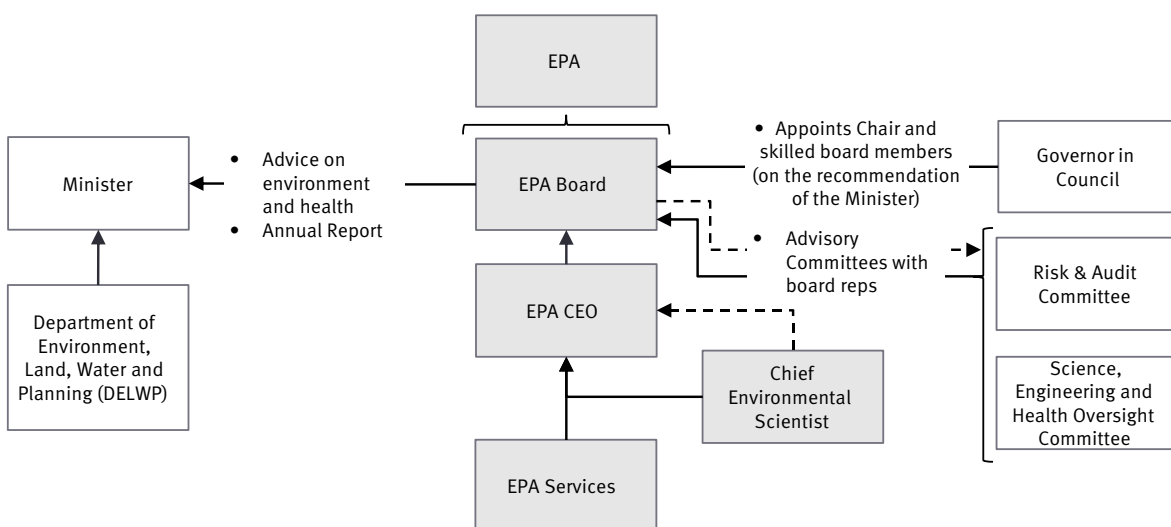
# Appendix 1: Snapshot of benchmarked EPA governance models

Benchmarking was undertaken at the end of 2021.

## Victoria EPA

### Structure and independence

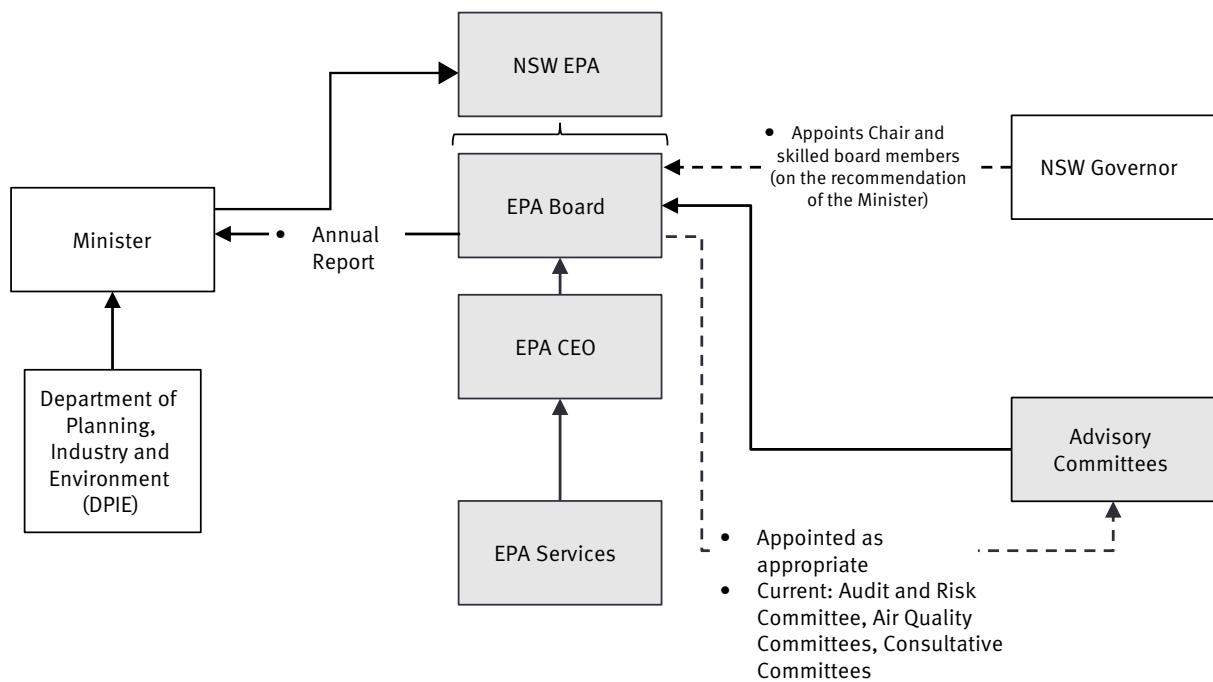
- The Victorian EPA is an independent statutory authority established under the *Environment Protection Act 2017* in accordance with recommendations of the Ministerial Advisory Committee 2016 report on the review of the EPA (MAC report).



# NSW EPA

## Structure and independence

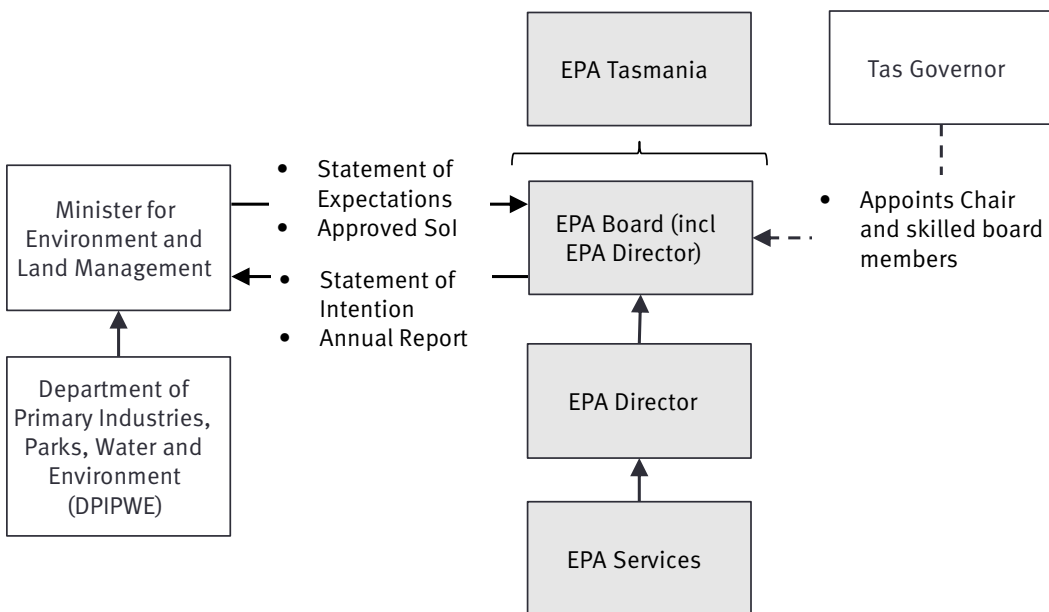
- The NSW EPA is a body corporate established by the *Protection of the Environment Administration Act 1991* (POEA Act). The EPA is a statutory body representing the Crown, with an independent, experienced-based governing board.
- The NSW EPA is, in the exercise of its functions, subject to the control and direction of the Minister, however the board is not subject to the control and direction to the Minister in the exercise of any of its functions.



# EPA Tasmania

## Structure and independence

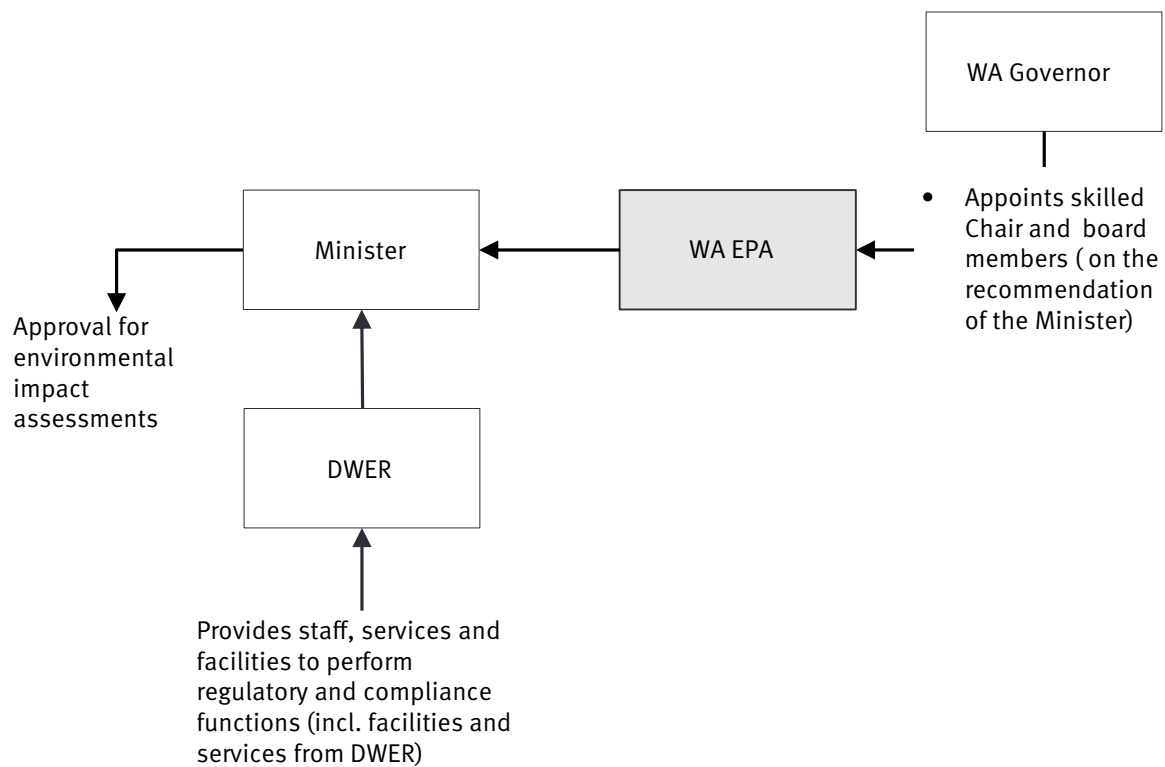
- The Tasmanian EPA is established as an independent statutory authority under the *Environmental Management and Pollution Control Act 1994* (EMPCA).
- The EMPCA requires the board is to conduct its business and affairs in a manner that is consistent with the Ministerial Statement of Expectations (SoE), and EPA's Statement of Intent (Sol) issued in response to the SoE.
- The Sol must be approved by the Minister.



# WA EPA

## Structure and independence

- The WA EPA is an independent statutory authority established as a body corporate under the *Environmental Protection Act 1986*.
- The EPA comprises five members (including Chair and Deputy Chair) appointed by the Governor of WA on the recommendation from the Minister.
- The EPA's regulatory functions are environmental assessment and recommendation for decision-making by the Minister.
- The EPA does not undertake approval, monitoring/compliance and enforcement activities.

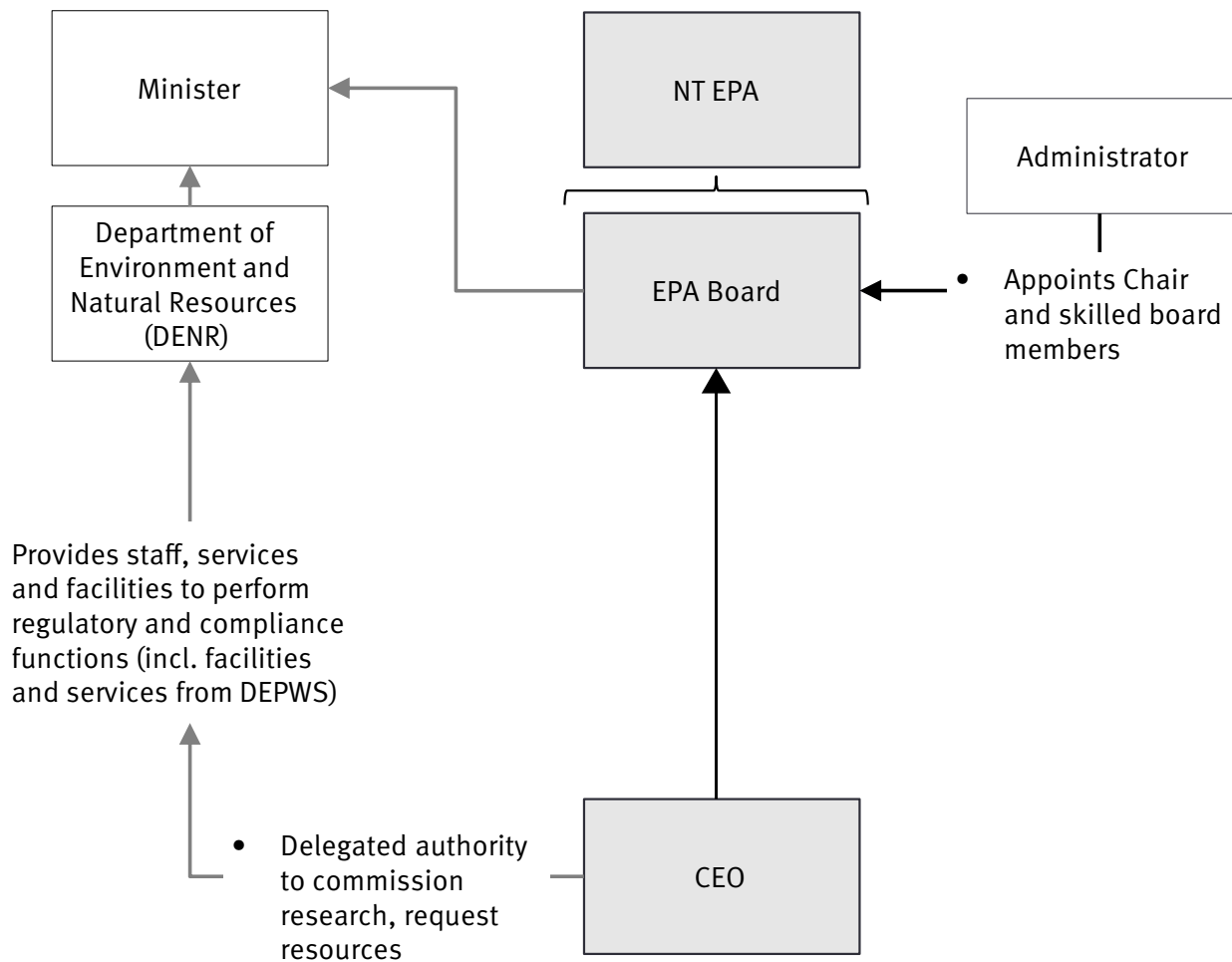




# NT EPA

## Structure and independence

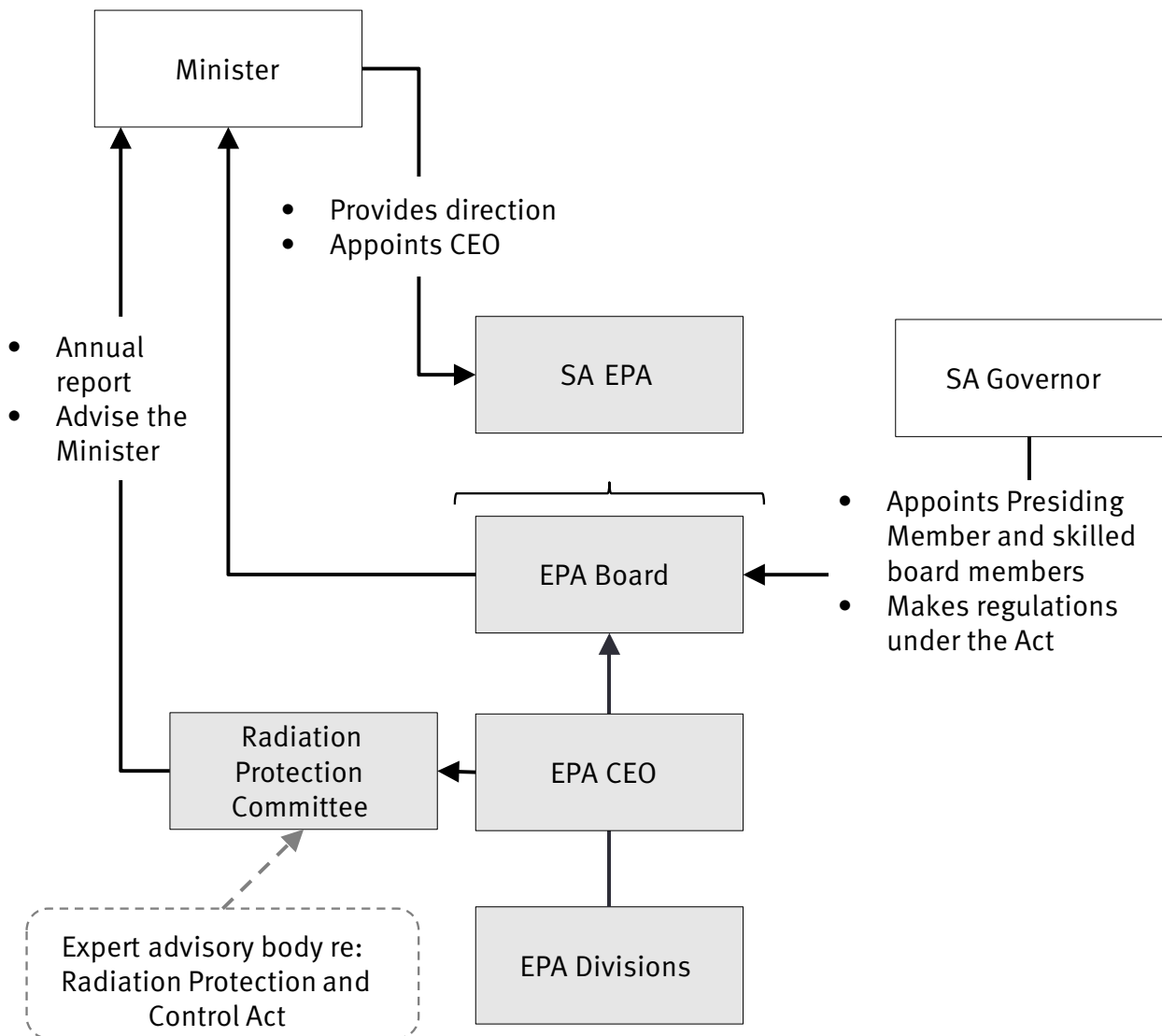
- The NT EPA is an independent statutory body established as a body corporate under the Northern Territory *Environment Protection Authority Act 2012*.
- The NT EPA and its members are not subject to the direction or control of the Minister in the exercise of their powers or functions.



# SA EPA

## Structure and independence

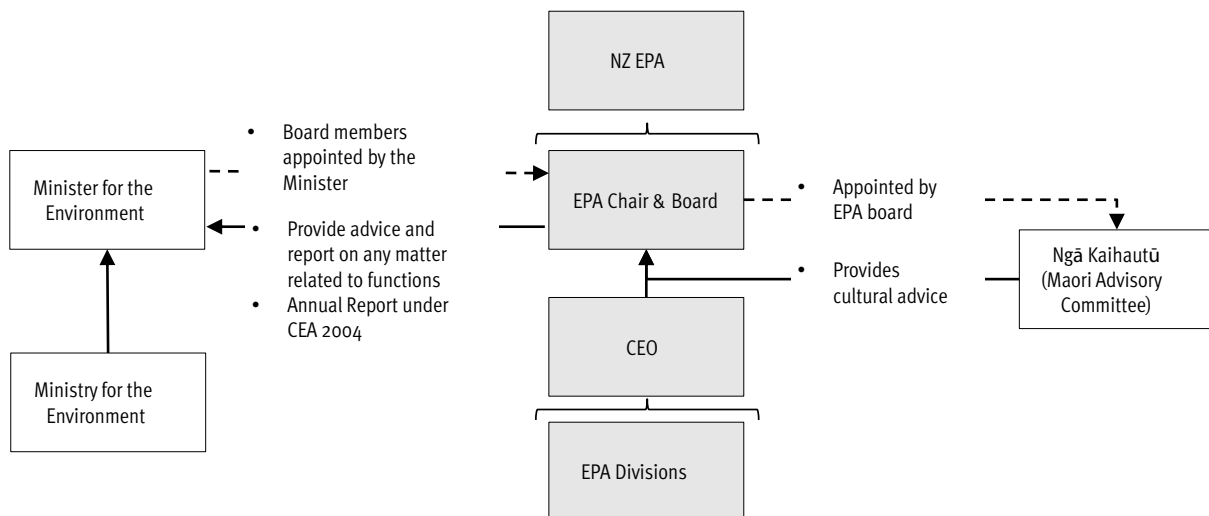
- The SA EPA is an independent statutory body established as a body corporate under the *Environmental Protection Act 1993* (EP Act).
- The Minister provides direction to the SA EPA except in relation to ministerial recommendations, performance of legislated functions and enforcement of the EP Act.
- The board provides an annual report and advice to the Minister on the administration and enforcement of the EP Act.



# NZ EPA

## Structure and independence

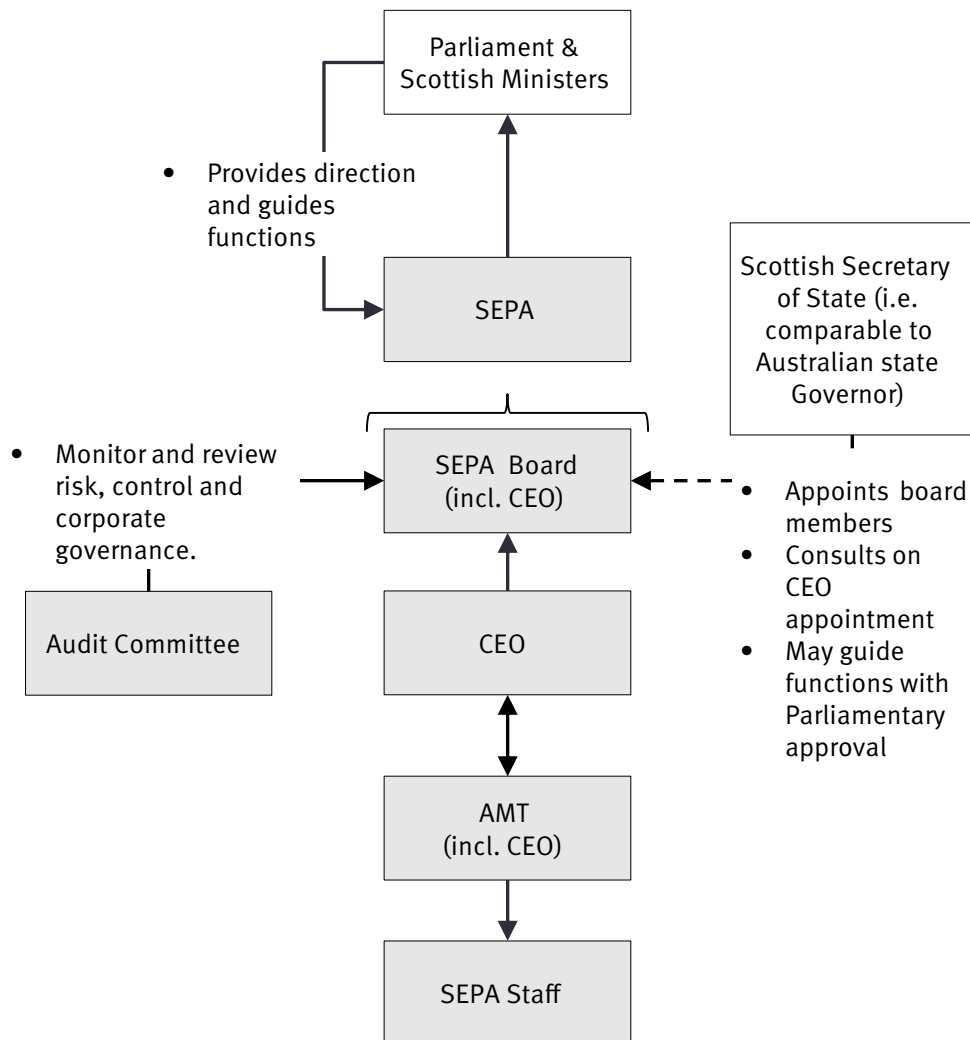
- Established under the *Environmental Protection Authority Act 2011* as a Crown Agent—a body corporate at arm’s length from Minister. A Crown Agent is an organisation that give effect to government policy.
- At least one board member must have knowledge and experience of the Treaty of Waitangi and Tikanga Māori (Māori customs).
- Ngā Kaihautū, EPA’s statutory Māori Advisory Committee, has four to eight members who provide cultural advice to the EPA to ensure Māori perspectives are taken into account.



# Scottish EPA

## Structure and independence

- The Scottish EPA (SEPA) is a non-departmental public body, accountable to Scottish Ministers and the Scottish Parliament established as a body corporate under the *Environment Act 1995*.
- Parliament is responsible for appointment of the board members (currently 10). It also determines the scope of board duties and may direct the EPA and guide functions.
- The board is also responsible for annual report, annual internal finance and governance audit.
- The CEO sits on the board, and is delegated day-to-day management of SEPA. The CEO also heads up the Agency Management Team (AMT), which oversees strategic planning, business management and change management.
- The Scottish Secretary of State in the government of the United Kingdom works along side other Scotland Office Ministers and also may provide guidance to SEPA with respect to its objectives.



# US EPA

## Structure and independence

- The US EPA is established as an independent authority of government under the National Environmental Policy Act 42 USC §4321 et seq. (1969). However, it is not considered separate from the political leadership.
- The US President appoints the EPA Administrator, Deputy Administrator and up to five Assistant Administrators with the advice and consent of the Senate.
- The EPA Administrator provides overall supervision of the agency and is responsible directly to the President of the United States.
- The Office of the Inspector General independently audits and reports EPA performance to Congress.

