

# BOARD OF INQUIRY INTO THE MCCRAE LANDSLIDE

## RESPONSE TO THE SECOND LIST OF QUESTIONS FOR THE STATE OF VICTORIA

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## A OVERVIEW

- 1 On 16 April 2025, the Solicitor Assisting **the Board** of Inquiry into the McCrae Landslide wrote to the lawyers for **the State** of Victoria requesting that the State produce witness statements in response to a **second list of questions** for certain entities.<sup>1</sup> On 17 April 2025, the lawyers for the State (Clayton Utz) wrote to the Solicitor Assisting the Board offering to answer the second list of questions by way of submission for each of the specific entities that it represents, such submission being settled by the State's external legal team, including its counsel.<sup>2</sup> The Solicitor Assisting confirmed this alternative was acceptable.<sup>3</sup>
- 2 The State makes the submission referred to at [1] in answer to the second list of questions for the entities referred to below in **Section C**. The State does not make any submission for the following specific entities for whom the lawyers for the State do not act in this Inquiry:
  - (a) South East Water Corporation;<sup>4</sup>
  - (b) Melbourne Water Corporation;<sup>5</sup>
  - (c) Southern Rural Water Corporation;<sup>6</sup>
  - (d) the Energy and Water Ombudsman Victoria;<sup>7</sup>
  - (e) the Victorian Ombudsman.<sup>8</sup>
- 3 In making this submission, the State has sought only to answer the second list of questions. It is not making any final submission as to specific issues the subject of the Inquiry. The State generally reserves its position to make any oral and/or written submission directed to any specific issue of fact or law that relates to any of its answers to the second list of questions

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<sup>1</sup> Letter from Georgie Austin, Solicitor Assisting to Pip Mitchell, Partner, Clayton Utz dated 16 April 2025.

<sup>2</sup> Letter from Pip Mitchell, Partner, Clayton Utz to Georgie Austin, Solicitor Assisting dated 17 April 2025.

<sup>3</sup> Letter from Georgie Austin, Solicitor Assisting to Pip Mitchell, Partner, Clayton Utz dated 17 April 2025.

<sup>4</sup> Second list of questions; list of entities at [2.8]; see, Letter from Pip Mitchell, Partner, Clayton Utz to Solicitor Assisting dated 17 April 2025.

<sup>5</sup> Second list of questions; list of entities at [2.10]; see, Letter from Pip Mitchell, Partner, Clayton Utz to Solicitor Assisting dated 17 April 2025.

<sup>6</sup> Second list of questions; list of entities at [2.11]; see, Letter from Danielle Taske, Director Legal, Victorian Ombudsman to Solicitor Assisting dated 24 April 2025.

<sup>7</sup> Second list of questions; list of entities at [2.20]; see, Letter from Pip Mitchell, Partner, Clayton Utz to Solicitor Assisting dated 17 April 2025.

<sup>8</sup> Second list of questions; list of entities at [2.21]; see, Letter from Danielle Taske, Director Legal, Victorian Ombudsman to Solicitor Assisting dated 24 April 2025.

in order for the Board to discharge the requirements of procedural fairness<sup>9</sup> in conducting the Inquiry.<sup>10</sup> This reservation includes any oral and/or written submission as to the scope of the Board's Terms of Reference.<sup>11</sup> Further, this submission makes discrete reference to certain Victorian legislation, and provisions therein, however, this submission is not (and does not purport to be) a comprehensive or exhaustive reference of any legislation or provision referred to therein.

- 4 The submission has been prepared by the State in the time available.<sup>12</sup> The State's answers to the second list of questions do not purport to be completely exhaustive. If any further relevant information to the second list of questions becomes available to the State, it generally reserves its position to supplement this submission as necessary to assist the Board. If the Board would be assisted by any further information arising from a specific answer, the State will consider and provide its response to any such request as soon as is reasonably practicable.
- 5 The State will shortly provide to the Board a further submission for the specific entities listed below in **Sections C.6, C.9, C.11 and C.15**.<sup>13</sup>

## **B THE SECOND LIST OF QUESTIONS**

- 6 The second list of questions is as follows:

[1] For each of the entities listed below (including any predecessors if applicable, describe the responsibilities, powers, duties and functions (collectively, **role**) it has or exercises in relation to the prevention and management of landslides and landslips in Victoria in the period from 14 January 2019 to date, including by reference to any applicable regulations or legislation. In explaining each entity's role, please specifically indicate the extent to which each entity's role concerns:

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<sup>9</sup> *Inquiries Act 2014* (Vic) s 59: A Board of Inquiry may conduct its inquiry in any manner that it considers appropriate, subject to –

- (a) the requirements of procedural fairness;
- (b) the establishing Order for the Board of Inquiry; and
- (c) this Act, the regulations and any other Act.

<sup>10</sup> The Board's Terms of Reference are contained in the Order in Council, No. 6 111, dated 18 March 2025 at [3].

<sup>11</sup> Terms of Reference at [3.4(a)]: "Without limiting the scope of your inquiry or the scope of any recommendations arising out your inquiry that you may consider appropriate you are directed to: (a) Conduct your inquiry as you consider appropriate, subject to the requirements of procedural fairness".

<sup>12</sup> The request was received on 16 April 2025 and a response was requested by 30 April 2025. During this period, there were three public holidays that fell on 18 April, 21 April, and 25 April, such that only seven business days were available to acquit the request.

<sup>13</sup> Letter from Clayton Utz to Solicitor Assisting dated 30 April 2025.

- [1.1] erosion management in Victoria;
- [1.2] stormwater management in Victoria;
- [1.3] maintenance or the replacement of infrastructure and assets (**works**), including (but not limited to) roads, pipes and channels, being works which contribute (directly or indirectly) to the prevention and management of landslides and landslips in Victoria;
- [1.4] responding to complaints or concerns raised by persons such as (but not limited to) landowners, land managers, or local authorities about changes or issues in the landscape or infrastructure (including local water infrastructure) that may, on an objective assessment, indicate the risk of a landslide or landslip occurring; and
- [1.5] commissioning or undertaking risk assessments to determine the likelihood of landslides and landslips in Victoria.

## C SPECIFIC ENTITIES

7 The State answers the second list of questions for the following specific entities<sup>14</sup> listed below:

- (a) the Department of Energy, Environment and Climate Action (**DEECA**) (see **Section C.1**);<sup>15</sup>
- (b) the Department of Government Services (**DGS**) (see **Section C.2**);<sup>16</sup>
- (c) the Department of Jobs, Skills, Industry and Regions (**DJSIR**) (see **Section C.3**);<sup>17</sup>
- (d) the Department of Justice and Community Safety (**DJCS**) (see **Section C.4**);<sup>18</sup>
- (e) the Department of Premier and Cabinet (**DPC**) (see **Section C.5**);<sup>19</sup>
- (f) the Department of Transport and Planning (**DTP**) (see **Section C.6**);<sup>20</sup>
- (g) the Department of Treasury and Finance (**DTF**) (see **Section C.7**);<sup>21</sup>

<sup>14</sup> Where appropriate, this submission uses specific sub-headings for some entities: “**Erosion management**”, “**Stormwater management**”, “**Maintenance or replacement works**”, “**Responding to complaints or concerns**” or “**Risk assessments**”.

<sup>15</sup> Second list of questions; list of entities at [2.1].

<sup>16</sup> Second list of questions; list of entities at [2.2].

<sup>17</sup> Second list of questions; list of entities at [2.3].

<sup>18</sup> Second list of questions; list of entities at [2.4].

<sup>19</sup> Second list of questions; list of entities at [2.5].

<sup>20</sup> Second list of questions; list of entities at [2.6].

<sup>21</sup> Second list of questions; list of entities at [2.7].

- (h) the Essential Services Commission (see **Section C.8**);<sup>22</sup>
- (i) the Victorian Building Authority (**VBA**), including municipal building surveyors contracted by the VBA (see **Section C.9**);<sup>23</sup>
- (j) the Victorian Managed Insurance Authority (**VMIA**) (see **Section C.10**);<sup>24</sup>
- (k) the Victorian Planning Authority (**VPA**) (see **Section C.11**);<sup>25</sup>
- (l) Emergency Management Victoria (**EMV**) (see **Section C.12**);<sup>26</sup>
- (m) Victoria State Emergency Service Authority (**VICSES Authority**) (see **Section C.13**);<sup>27</sup>
- (n) Victoria Police (see **Section C.14**);<sup>28</sup>
- (o) VicRoads (see **Section C.15**); and
- (p) the Victorian WorkCover Authority (trading as WorkSafe) (see **Section C.16**).<sup>29</sup>

## **C.1 Department of Energy, Environment and Climate Action**

- 8 On 1 January 2023, the name of the Department of Environment, Land, Water and Planning (**DELWP**) was changed to the Department of Energy, Environment and Climate Action (**DEECA**).<sup>30</sup> On the same date, portfolio responsibility for Planning was transferred to the Department of Transport (see below at **Section 38** and the State’s forthcoming further submission (see above at [5])).
- 9 DEECA brings together Victoria’s energy, environment, water, agriculture, forestry, resources, climate action, and related emergency management functions into a single department. DEECA is a key manager of Victoria’s public estate. Within its eight core business groups are:

<sup>22</sup> Second list of questions; list of entities at [2.9].

<sup>23</sup> Second list of questions; list of entities at [2.12].

<sup>24</sup> Second list of questions; list of entities at [2.13].

<sup>25</sup> Second list of questions; list of entities at [2.14].

<sup>26</sup> Second list of questions; list of entities at [2.15].

<sup>27</sup> Second list of questions; list of entities at [2.16].

<sup>28</sup> Second list of questions; list of entities at [2.17].

<sup>29</sup> Second list of questions; list of entities at [2.19].

<sup>30</sup> Order in Council made under s 10 of the *Public Administration Act 2004* (Vic), “Order establishing and renaming Departments”, No. S 673, dated 5 December 2022 (**DGS.0001.0003.0001**).

- (a) Agriculture Victoria, which partners with farmers, industries, communities, government and research organisations to grow, modernise, protect and promote Victoria's agriculture. Agriculture Victoria has a specific role in providing general guidance and advice to private rural land managers for erosion, including in managing landslips;<sup>31</sup>
  - (b) Bushfire and Forest Services, which manages approximately 3.2 million hectares of state forests, including delivery and maintenance of recreation assets, tourism services and forest health activities. The group also leads DEECA's works across the State in preparing for and responding to bushfire and other emergencies, working alongside emergency services under the Victorian Government's "all communities, all emergencies" operating framework;
  - (c) Regions, Environment, Climate Action and First Peoples (RECAFP) Group leads the Victorian Government's climate action and provides advice to government on principles, strategies, policy settings, programs and initiatives related to environmental protection, the management of public land and protecting the State's biodiversity;
  - (d) Water and Catchments Group ensures Victoria has safe, sustainable, and productive water resources to meet current and future urban, rural, environmental and cultural needs and is responsible for the implementation of the government's long-term water plan, Water for Victoria, which sets the strategic directions for the State's water management. The group works in partnerships with water corporations, catchment management authorities, government agencies, industry, community, and Traditional Owners to balance the economic, environmental, and social values of water.
- 10 DEECA supports and provides advice to several Ministers, including the Minister for Climate Action, the Minister for Environment, the Minister for Agriculture, and the Minister for Water. DEECA's role includes providing support and advice for the administrative responsibilities those ministers may have (either jointly or severally) under specific Acts (or parts of Acts), including:

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<sup>31</sup> < <https://agriculture.vic.gov.au/farm-management/soil/erosion/managing-landslips> >

- (a) the *Water Act 1989* (Vic) (**Water Act**)<sup>32</sup> and the *Water (General) Regulations 2021* (Vic) (**Water (General) Regulations**);<sup>33</sup>
  - (b) the *Catchment and Land Protection Act 1994* (Vic) (**the Catchment and Land Protection Act**);<sup>34</sup>
  - (c) the *Climate Action Act 2017* (Vic) (**Climate Action Act**);<sup>35</sup>
  - (d) the *Marine and Coastal Act 2018* (Vic) (**Marine and Coastal Act**).<sup>36</sup>
- 11 DEECA also has a management and oversight role for Crown land under the *Land Act 1958* (Vic), the *Crown Land (Reserves Act) 1978* (Vic), the *Forests Act 1958* (Vic), and the *National Parks Act 1975* (Vic). These Acts primarily<sup>37</sup> do not include provisions that relate to prevention or mitigation measures for landslides or landslips.

### C.1.1 *Water Act 1989* (Vic)

- 12 The *Water Act* is the principal law relating to water in Victoria.<sup>38</sup> The purposes of the *Water Act* include to:
- (a) provide for the integrated management of all elements of the terrestrial phase of the water cycle;<sup>39</sup>
  - (b) provide formal means for the protection and enhancement of the environmental qualities of waterways and their in-stream uses;
  - (c) provide for the protection of catchment conditions;<sup>40</sup> and

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<sup>32</sup> This submission refers to the [Authorised Version No. 142](#) unless otherwise stated.

<sup>33</sup> This submission refers to the Authorised Version of the *Water (General) Regulations* unless otherwise stated.

<sup>34</sup> This submission refers to the [Authorised Version No. 072](#) of the *Catchment and Land Protection Act*.

<sup>35</sup> This submission refers to the Authorised Version No. 011 of the *Climate Action Act* unless otherwise stated. Note, the Act was formerly titled “*Climate Change Act 2017* (Vic)”.

<sup>36</sup> This submission refers to the [Authorised Version No. 005](#) of the *Marine and Coastal Act* unless otherwise stated.

<sup>37</sup> There are provisions of Acts which do indirectly relate to matters connected to potential landslides (or landslips). See, for example, *Forests Act 1958* (Vic) s 38(2)(c) enables the Minister to purchase by agreement or compulsorily acquire land required for prevention or minimising of erosion by rivers streams rain or wind of the soil of State forests or plantations. This submission refers to the Authorised Version No. 146 unless otherwise stated.

<sup>38</sup> *Water Act* s 1(a).

<sup>39</sup> *Water Act* s 1(b).

<sup>40</sup> *Water Act* s 1(k).

- (d) enable general supervision by the Minister for Water of authorities established under the Water Act through approved corporate plans<sup>41</sup> and express directions.<sup>42</sup>
- 13 In overview, the Water Act sets out the functions, powers and obligations of entities with responsibility for water supply irrigation and salinity mitigation, wastewater management, waterway management, regional draining and floodplain management and establishes the governance arrangements for Victoria's water entities. DEECA has published *A Guide to Governing in the Water Sector* (DEE.0001.0001.0057) relating to Victoria's water entities, which comprise the water corporations<sup>43</sup> and catchment management authorities.<sup>44</sup> Part 6 of the Water Act provides for the "Water Corporations". Water Corporations also have limited emergency management responsibilities described in role statements contained within the State Emergency Management Plan made under the *Emergency Management Act 2013* (Vic).<sup>45</sup>
- 14 The Minister for Water also has specific powers in relation to Authorities (a water corporation or a catchment management authority<sup>46</sup>) under the Water Act, for example:
- (a) to require the water corporation to review an emergency management plan and remake it,<sup>47</sup> which the water corporation must include or have regard to the matters in the Minister's notice about such plan;<sup>48</sup>
  - (b) to make recommendations to the Governor in Council to direct a water corporation to take specified action in a specified area for emergencies;<sup>49</sup>
  - (c) specific functions in relation to water management schemes throughout the State, for example, to cause schemes for the improved management of waterways, drainage and floodplains to be prepared and implemented;<sup>50</sup>

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<sup>41</sup> See, for example, Water Act s 247 ("Corporate Plans").

<sup>42</sup> Water Act s 1(l).

<sup>43</sup> *A Guide to Governing in the Water Sector* pp 30-42 (DEE.0001.0001.0057).

<sup>44</sup> *A Guide to Governing in the Water Sector* pp 43-46 (DEE.0001.0001.0057).

<sup>45</sup> < <https://www.emv.vic.gov.au/responsibilities/state-emergency-management-plan-semp/roles-and-responsibilities/role-statements> >

<sup>46</sup> Water Act s 3(1) definition of "**Authority**" "means a water corporation or a Catchment Management Authority".

<sup>47</sup> Water Act s 159D(1).

<sup>48</sup> Water Act s 159D(2).

<sup>49</sup> Water Act s 159E(1).

<sup>50</sup> Water Act s 213(b).



- (d) to give a written direction (after consulting with the Treasurer) to an Authority in relation to the performance of any of its functions or the exercise of any of its powers.<sup>51</sup>
- 15 Part 2 of the Water Act deals with “Rights and liabilities”, including the Crown’s rights to water (s 7), and liability arising out of flow of water (s 16). The liability of Authorities arising out of the flow of water is dealt within s 157 of the Water Act.
- 16 Part 5 of the Water Act deals with Works, which includes the process for an Authority or another person to apply to the Minister for Water for the issue of a licence to construct, alter, operate, remove or decommission any works on a waterway<sup>52</sup> or a bore,<sup>53</sup> as well as the Minister for Water’s power to determine such applications (s 69), having regard to the matters to be taken into account (s 68), which include the likely effects of the escape of water from works.<sup>54</sup> The Minister for Water also has various specific powers for works, including:
- (a) to give directions to the occupier of any works on waterway or a bore, including, for example, to take measures that the Minister thinks necessary to protect the environment, including the riverine and riparian environment;<sup>55</sup>
  - (b) to give directions concerning public or private dams if the Minister decides that the dam is or is likely to be hazardous to public safety, property or the environment because of its location or the nature of its construction;<sup>56</sup>
  - (c) to carry out work if the Minister for Water considers that, for example, a person has failed to carry out work necessary to comply with an earlier issued direction,<sup>57</sup> or if the Minister considers it necessary for the work to be carried out on an urgent basis to protect public safety, property or the environment.<sup>58</sup>
- 17 Part 5AA of the Water Act provides for “Levee maintenance on Crown land”, which includes the process for authority for a holder of a levee maintenance permit to carry out maintenance on a levee that is located on specified crown land<sup>59</sup> or to enter or pass over any specified

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<sup>51</sup> Water Act s 307(1). See, too, “Accountability of Authorities” in Water Act s 125.

<sup>52</sup> Water Act s 67(1)(a).

<sup>53</sup> Water Act s 67(1)(b).

<sup>54</sup> Water Act s 68(c).

<sup>55</sup> Water Act s 78(1)(b).

<sup>56</sup> Water Act s 80(1).

<sup>57</sup> Water Act s 81(1)(a).

<sup>58</sup> Water Act s 81(1)(b).

<sup>59</sup> Water Act s 84AAB(1)(a).

Crown land.<sup>60</sup> The Minister has the power to approve and issue or refuse applications for levee maintenance permits.<sup>61</sup>

- 18 DEECA has a role in supporting the Melbourne Water Corporation and municipal councils in relation to their shared responsibility for drainage and flood management.<sup>62</sup>

### **C.1.2 *Catchment and Land Protection Act 1994 (Vic)***

- 19 The Catchment and Land Protection Act has a purpose of setting up a framework for the integrated management and protection of catchments.<sup>63</sup> Catchments are areas which, through run-off or percolation, contribute to the water in a stream or stream system.<sup>64</sup> Part 2 of the Catchment and Land Protection Act provides for the “Catchment and land protection advisory system”, which includes “Catchment and land protection regions” (Div 2) and “Catchment Management Authorities” (Div 3).<sup>65</sup> These Authorities have specific functions, powers and duties in respect of each region for which it has been appointed, including to:

- (a) prepare a regional catchment strategy for the region and to co-ordinate and monitor its implementation.<sup>66</sup> Part 4 of the Catchment and Land Protection Act provides for “Catchment Planning”, including “Regional catchment strategies” (Div 1). The contents of a regional catchment strategy must state the region to which it applies,<sup>67</sup> and must, for example, assess the nature, causes, extent and severity of land degradation of the catchments in the region and identify areas for priority attention,<sup>68</sup> and state the action necessary to implement the strategy and who should take it;<sup>69</sup>
- (b) prepare special area plans for areas in the region and to co-ordinate and monitor their implementation;<sup>70</sup>

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<sup>60</sup> Water Act s 84AAB(1)(b).

<sup>61</sup> Water Act s 84AAE.

<sup>62</sup> < <https://www.water.vic.gov.au/water-sources/diverse-water-sources/improving-stormwater-management> >

<sup>63</sup> Catchment and Land Protection Act s 1(a).

<sup>64</sup> Catchment and Land Protection Act s 3.

<sup>65</sup> Note, Catchment and Land Protection Act s 11A provides that the Melbourne Water Corporation is appointed as the Catchment Management Authority for the Port Phillip and Westernport Region.

<sup>66</sup> Catchment and Land Protection Act s 12(1)(a).

<sup>67</sup> Catchment and Land Protection Act s 24(1).

<sup>68</sup> Catchment and Land Protection Act s 24(2)(b).

<sup>69</sup> Catchment and Land Protection Act s 24(2)(e).

<sup>70</sup> Catchment and Land Protection Act s 12(1)(b).

- (c) to advise the Minister on guidelines for integrated management of land and water resources in the region<sup>71</sup> and on matters relating to catchment management and land protection;<sup>72</sup> and
  - (d) to make recommendations to the Minister and the Secretary about actions to be taken on Crown land managed by the Secretary to prevent land degradation.<sup>73</sup>
- 20 DEECA is responsible for the *Strengthening the Catchment Stewardship Framework*, which includes guiding principles as to the way catchment stewardship is understood and implemented in Victoria.<sup>74</sup> The Framework builds on the Victorian Government’s strategic directions statement published in 2021 *Our Catchments, Our Communities: Building on the Legacy for Better Stewardship*,<sup>75</sup> which has a general aim of minimising damage to public and private assets from flooding and erosion.

### C.1.3 *Climate Action Act 2017 (Vic)*

- 21 The purposes of the Climate Action Act include: to facilitate the consideration of climate change issues in specified areas of State Government decision-making;<sup>76</sup> to set policy objectives and guiding principles to inform decision-making under the Act and the development of State Government policy;<sup>77</sup> and to provide for a strategic response to climate change through a climate change strategy and adaptation action plans.<sup>78</sup>
- 22 Part 5 of the Climate Action Act provides for “Planning for climate change” and includes the “Climate change strategy” (Div 1) and “Adaptation action plans” (Div 2). This includes the obligation on the relevant Minister to prepare adaptation plans for systems, such as the “built environment system”<sup>79</sup> and the “natural environment system”:<sup>80</sup>

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<sup>71</sup> Catchment and Land Protection Act s 12(1)(d)(ii).

<sup>72</sup> Catchment and Land Protection Act s 12(1)(d)(iii).

<sup>73</sup> Catchment and Land Protection Act s 12(1)(g).

<sup>74</sup> < <https://www.water.vic.gov.au/catchments/our-catchments-our-communities> >

<sup>75</sup> < <https://www.water.vic.gov.au/catchments/our-catchments-our-communities> >

<sup>76</sup> Climate Action Act s 1(c).

<sup>77</sup> Climate Action Act s 1(d).

<sup>78</sup> Climate Action Act s 1(e).

<sup>79</sup> Climate Action Act s 34(4)(a). See, Climate Action Act s 3 definition of “**built environment**” which “means the places and structures built or developed for human occupation, use and enjoyment. Examples: Cities, buildings, urban spaces, housing and infrastructure” and the “built environment system” which “means (a) the built environment; and (b) how people use and interact with the built environment”.

<sup>80</sup> Climate Action Act s 34(4)(d). See, Climate Action Act s 3 definition of “**natural environment system**” which “means the State’s natural environment including – (a) land, water over that land and the soils and biodiversity associated with that land; and (b) the coastal waters of the State..., the land under those waters and the biodiversity associated with those waters and that land and (c) the ecological processes and systems associated with the things set out in [(a) & (b)]”.

- (a) the *Built Environment Climate Change Adaptation Action Plan 2022-2026*<sup>81</sup> (**DEE.0001.0001.0002**) identifies the risks of climate change on the built environment system, including the associated risks of landslides and increased incidence of landslides and erosion to the future climate projections for compound events such as more frequent bushfires followed by intense rainfall events.<sup>82</sup> One of the proposed actions<sup>83</sup> for governance and regulation is to update planning provisions to respond to climate change based on the most current advice from relevant natural resource and emergency management authorities, and a specific response that is identified is the need to review the landslide policy and strategic approach in the planning system, including the Erosion Management Overlay (see below at **Section** Error! Reference source not found. and subsequent submission), as more extreme rainfall events and bushfires will increase risk;
- (b) the *Natural Environment Climate Change Adaptation Action Plan 2022–2026*<sup>84</sup> (**DEE.0001.0001.0374**) also identifies the climate change impacts of sea level rise and storm surge will lead to changes to the direction of waves will affect the pattern of sediment movement and erosion along Victoria's coastline which could impact plant and animal species that currently live there.<sup>85</sup>

#### C.1.4 *Marine and Coastal Act 2018 (Vic)*

23 The purposes of the Marine and Coastal Act include to:

- (a) establish an integrated and co-ordinated whole-of-government approach to protect and manage Victoria's marine and coastal environment;<sup>86</sup>
- (b) provide for integrated and co-ordinated policy, planning, management, decision-making and reporting across catchment, coastal and marine areas;<sup>87</sup>

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<sup>81</sup> The responsible Minister for this adaptation action plan is the Minister for Planning.

<sup>82</sup> Built Environment Climate Change Adaptation Action Plan 2022-2026 at [3.2] Table 3 p 22 (**DEE.0001.0001.0002**).

<sup>83</sup> Built Environment Climate Change Adaptation Action Plan 2022-2026 at [5.1] p 38 (**DEE.0001.0001.0002**).

<sup>84</sup> The responsible Minister is this adaptation action plan is the Minister for Environment.

<sup>85</sup> *Natural Environment Climate Change Adaptation Action Plan 2022–2026* p 22 (**DEE.0001.0001.0374**).

<sup>86</sup> Marine and Coastal Act s 1(a).

<sup>87</sup> Marine and Coastal Act s 1(b).

- (c) provide for the preparation of a Marine and Coastal Policy, a Marine and Coastal Strategy, and a State of the Marine and Coastal Environment Report;<sup>88</sup>
  - (d) provide for other planning mechanisms in the form of environmental management plans and coastal and marine management plans;<sup>89</sup>
  - (e) provide for the giving of consents to use or develop, or undertake works on, marine and coastal Crown land and establish an application process;<sup>90</sup>
  - (f) allow coastal Catchment Management Authorities and the Melbourne Water Corporation to provide advice on matters relating to and affecting coastal erosion.<sup>91</sup>
- 24 The objectives of the Marine and Coastal Act for the planning and management of the marine and coastal environment include: to protect and enhance the marine and coastal environment;<sup>92</sup> to promote the resilience of marine and coastal ecosystems, communities and assets to climate change;<sup>93</sup> and to respect natural processes in planning for and managing current and future risks to people and assets from coastal hazards and climate change.<sup>94</sup> The Marine and Coastal Act provides for several guiding principles including evidence-based decision-making,<sup>95</sup> the precautionary principle<sup>96</sup> and the proportionate and risk-based principle.<sup>97</sup>
- 25 Part 3 of the Marine and Coastal Act provides for the “Marine and Coastal Council”, which has specific functions including to provide guidance and strategic advice to the Minister on the development<sup>98</sup> and implementation<sup>99</sup> of the Marine and Coastal Policy and the Marine and Coastal Strategy. Part 4 of the Marine and Coastal Act sets out the processes relating to the making of the Marine and Coastal Policy (Div 1), the Marine and Coastal Strategy (Div 2), and the State of the Marine and Coastal Environment Report (Div 3). Part 5 of the Marine and Coastal Act provides for “Reporting requirements and guidelines”, which include

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<sup>88</sup> Marine and Coastal Act s 1(d).

<sup>89</sup> Marine and Coastal Act s 1(i).

<sup>90</sup> Marine and Coastal Act s 1(j).

<sup>91</sup> Marine and Coastal Act s 1(k).

<sup>92</sup> Marine and Coastal Act s 7(a).

<sup>93</sup> Marine and Coastal Act s 7(b).

<sup>94</sup> Marine and Coastal Act s 7(c).

<sup>95</sup> Marine and Coastal Act s 11.

<sup>96</sup> Marine and Coastal Act s 12.

<sup>97</sup> Marine and Coastal Act s 13.

<sup>98</sup> Marine and Coastal Act s 16(1)(a).

<sup>99</sup> Marine and Coastal Act s 16(1)(b).

the power of the Secretary to make guidelines in relation to the Marine and Coastal Policy<sup>100</sup> and Strategy.<sup>101</sup>

26 The *Marine and Coastal Strategy* (**DEE.0001.0001.0304**) was published in May 2022 and it identifies that access, use and development of the marine and coastal environment may be impacted by inundation and erosion of cliffs and beaches as coastal hazards.<sup>102</sup> “Action 3 – Adapt to climate change” in the Strategy identifies the specific Policy Outcome of risks from coastal hazards being understood and planned for and marine and coastal managers having the knowledge, skills and capacity to manage current and future challenges.<sup>103</sup> Some of the specific actions identified include:

- (a) (at [3.2(c)]) information collection and sharing including using such information to inform coastal hazard mapping and projections, erosion advice, emergency responses and adaptation planning;<sup>104</sup>
- (b) (at [3.4]) delivering priority coastal hazard data and maps to fill known gaps along the coast, which enable fit for purpose coastal hazard assessments, adaptation planning and emergency response and recovery planning across public and private land;<sup>105</sup>
- (c) (at [3.5]) establishing coastal erosion advisory support for Victoria through: (a) developing a process for the provision of coastal erosion hazard advice (b) developing processes and systems that enable this advice to be used by stakeholders for long-term planning, management and adaptation responses; (c) building capacity for relevant agencies to deliver the advice; (d) testing the process (including all tools, data and systems);<sup>106</sup> and
- (d) (at [3.7]) reviewing and strengthen coastal hazard warning services to include consideration of coastal erosion events as contributing factors in landslides and inundation.

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<sup>100</sup> Marine and Coastal Act s 41(1)(a).

<sup>101</sup> Marine and Coastal Act s 41(1)(b).

<sup>102</sup> Marine and Coastal Strategy, p 15 (**DEE.0001.0001.0304**).

<sup>103</sup> Marine and Coastal Strategy, p 14 (**DEE.0001.0001.0304**).

<sup>104</sup> Marine and Coastal Strategy, p 16 (**DEE.0001.0001.0304**).

<sup>105</sup> Marine and Coastal Strategy, p 17 (**DEE.0001.0001.0304**).

<sup>106</sup> Marine and Coastal Policy, p 17 (**DEE.0001.0001.0210**).

- 27 The *Marine and Coastal Policy* (**DEE.0001.0001.0210**) was published in March 2020. Chapter 6 deals with “Managing coastal hazard risk”, which identifies “Policies”<sup>107</sup> such as (at [6.2]) to consider and plan for how coastal hazard risks will change over time including from gradual increases in sea level<sup>108</sup> and (at [6.3]) to avoid development in identified areas that are vulnerable to coastal hazard risk from impacts such as erosion and flooding (both estuarine and coastal), inundation, landslips and landslides and geotechnical risk.<sup>109</sup> Chapter 6 also identifies “Responsibilities”<sup>110</sup> such as (at [6.13]) the State Government will lead, support and enable ongoing improvements to, and sharing of, scientific understanding and guidance on marine and coastal processes and coastal hazard risk. Chapter 7 deals with “Emergency response and preparedness” and includes “Policies” such as (at [7.2]) planning for emergencies and natural hazard events in the marine and coastal environment.<sup>111</sup>
- 28 DEECA has published the *Marine and Coastal Knowledge Framework & Strategic Directions 2020-2022* (**DEE.0001.0001.0181**) to enable standards for data collection, management and analysis to inform decision-making, which include the need for understanding of change and coastal hazards.<sup>112</sup> DEECA administers the Victorian Coastal Monitoring Program (**VCMP**), which is a major field monitoring and knowledge management program that provides coastal managers and communities with information on coastal processes and hazards. DEECA also administers “Victoria’s Resilient Coast Grants” program.<sup>113</sup> This grants program provides funding for organisations to progress strategic coastal hazard risk management and adaptation aligning to one or more stages of “Victoria’s Resilient Coast Adapting for 2100+”, which is a framework, guidelines, and support for Local Government, land managers and communities to enable place-based, best practice and long-term coastal hazard risk management and adaptation, and to build on the directions in the *Marine and Coastal Policy*.<sup>114</sup>
- 29 In March 2023, DEECA published a report on *Victorian Coastal Erosion Indicators* for sites monitored by the VCMP (**DEE.0001.0001.0411**). Also in 2023, DEECA published the

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<sup>107</sup> Marine and Coastal Policy, pp 36-38 (**DEE.0001.0001.0210**).

<sup>108</sup> Marine and Coastal Policy, p 36 (**DEE.0001.0001.0210**).

<sup>109</sup> Marine and Coastal Policy, p 36 (**DEE.0001.0001.0210**).

<sup>110</sup> Marine and Coastal Policy, p 39 (**DEE.0001.0001.0210**).

<sup>111</sup> Marine and Coastal Policy p 41 (**DEE.0001.0001.0210**).

<sup>112</sup> *Marine and Coastal Knowledge Framework & Strategic Directions 2020-2022* at [3.7.3] p 15 (**DEE.0001.0001.0181**).

<sup>113</sup> < <https://www.marineandcoasts.vic.gov.au/grants/victorias-resilient-coast-grants> >

<sup>114</sup> < <https://www.marineandcoasts.vic.gov.au/marine-coastal-management/victorias-resilient-coast-adapting-for-2100> >

Victorian Coastal Cliff Hazard Assessment,<sup>115</sup> a digital dataset consisting of multiple spatial layer outputs from modelled erosion (cliff instability) and risk assessment scenarios.

- 30 Coastal hazard and climate change risks are also dealt with by Department of Transport and Planning in the context of the planning system (see below in **Section C.6** and subsequent submission).

## C.2 Department of Government Services

- 31 On 1 January 2023, the Department of Government Services (**DGS**) was established.<sup>116</sup>
- 32 DGS has no specific role in relation to the prevention and management of landslides (or landslips) including in relation to any of the matters listed in [1.1] to [1.5] of the second list of questions. DGS provides general policy advice and support to the Minister for Local Government and Consumer Affairs and the Minister for Government Services. It also provides support to local councils, including through the circulation of emergency management updates to local councils, which provide information, including from other departments or government agencies, such as weather forecast updates or updated policies or guidance.
- 33 The Secretary of DGS also participates in the State Crisis and Resilience Council (see below at [61]). DGS is the “Lead Response Support Agency”. This means that DGS supports the State to understand impacts to local councils during the response, relief and recovery stages of any emergency and provides advice and information to support impacted councils to undertake their emergency relief and recovery responsibilities.

## C.3 Department of Jobs, Skills, Industry and Regions

- 34 On 1 January 2023, the name of the Department of Jobs, Precincts and Regions (**DJPR**) was changed to the Department of Jobs, Skills, Industry and Regions (**DJSIR**).<sup>117</sup>
- 35 DJSIR has no specific role in relation to the prevention and management of landslides (or landslips) including in relation to any of the matters listed in [1.1] to [1.5] of the second list of questions. DJSIR has a role in funding the delivery of economic infrastructure and investment attraction projects across regional Victoria that may require essential

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<sup>115</sup> < <https://discover.data.vic.gov.au/dataset/victorian-coastal-cliff-hazard-assessment-2023> >

<sup>116</sup> Order in Council made under s 10 of the *Public Administration Act 2004* (Vic), “Order establishing and renaming Departments”, No. S 673, dated 5 December 2022 (**DGS.0001.0003.0001**).

<sup>117</sup> Order in Council made under s 10 of the *Public Administration Act 2004* (Vic), “Order establishing and renaming Departments”, No. S 673, dated 5 December 2022; (**DGS.0001.0003.0001**).



infrastructure works to be carried out by responsible authorities, however, its role is limited to funding. For example, funding may be provided through the Regional Jobs and Infrastructure Fund, or through specific projects such as funding (with the Commonwealth Government) for infrastructure improvements on the Great Ocean Road. Where funding is provided, DJSIR's role is limited to providing funding; the Department does not assume any role in managing or maintaining the relevant area.

#### **C.4 Department of Justice and Community Safety**

- 36 The Department of Justice and Community Safety (**DJCS**) delivers a broad program of justice and community safety services in Victoria. DJCS manages the development and implementation of laws, regulations and policy across multiple portfolios, including emergency management. DJCS has portfolio responsibility for Emergency Management Victoria (**EMV**) (see **Section C.12**). EMV provides support and advice on emergency management policy to the Minister for Emergency Management.
- 37 The Secretary of DJCS also participates in the State Crisis and Resilience Council (see below at [61]). DJCS otherwise has no specific role in relation to the prevention and management of landslides (or landslips) in relation to any of the matters listed in [1.1] to [1.5] of the second list of questions.

#### **C.5 Department of Premier and Cabinet**

- 38 The Department of Premier and Cabinet (**DPC**)'s role is to lead whole of government policy and service delivery. This is achieved through briefings to the Premier and Cabinet Ministers, and coordination of relevant State Departments and Agencies.
- 39 DPC has no specific role in relation to the prevention and management of landslides (or landslips) including in relation to any of the matters listed in [1.1] to [1.5] of the second list of questions.
- 40 DPC supports the Premier in the exercise of the Premier's legislative functions and powers.
- 41 The Premier has powers and functions related to emergencies and disasters which could, depending on the circumstances, be enlivened if there was a landslide of significant magnitude.

- 42 Pursuant to section 23(1) of the *Emergency Management Act 1986* (Vic),<sup>118</sup> if there is an emergency which the Premier (after considering the advice of the Minister for Emergency Services and the Emergency Management Commissioner) is satisfied constitutes or is likely to constitute a significant and widespread danger to life or property in Victoria, the Premier may declare a state of disaster to exist in the whole or in any part or parts of Victoria, as occurred with the State of Disaster declared during the 2019/2020 “Black Summer” bushfires in January 2020.<sup>119</sup>
- 43 The Premier also has power to declare that an “emergency situation” exists under s 105A of the *Public Administration Act 2004* (Vic),<sup>120</sup> as occurred with the State of Emergency declared in Victoria over COVID-19 in March 2020.<sup>121</sup> Heads of Government Departments and Agencies have specific powers in such an “emergency situation”, such as the power to assign any duties to an employee, or require an employee to perform duties with another public sector body.<sup>122</sup>
- 44 These powers were not exercised in response to the McCrae landslide.
- 45 The Secretary of the DPC is the Chairperson of the State Crisis and Resilience Council (see below at [61]).<sup>123</sup>
- 46 The joint Commonwealth Government-State Disaster Recovery Funding Arrangements (DRFA) enable the provision of assistance from the Commonwealth to the States and Territories following a natural disaster to alleviate financial burden. The DRFA was not enlivened in response to the McCrae Landslide, however, has been activated for major natural disasters such as floods and storms that have resulted in landslides (such as the June 2021 floods and storms, and the October 2022 floods). DPC’s role under the DRFA is to assist the Premier to communicate to the Prime Minister under the DRFA and to engage with relevant Government Departments and Agencies about the DRFA arrangements.

## C.6 Department of Transport and Planning

- 47 This section will be provided as part of the State’s forthcoming further submission (see above at [5]).

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<sup>118</sup> This submission refers to the Authorised Version No. 052 unless otherwise stated.

<sup>119</sup> < <https://www.premier.vic.gov.au/victorian-government-declares-state-disaster> >

<sup>120</sup> This submission refers to the Authorised Version No. 089 unless otherwise stated.

<sup>121</sup> < <https://www.premier.vic.gov.au/state-emergency-declared-victoria-over-covid-19> >

<sup>122</sup> *Public Administration Act 2004* (Vic) s 105E.

<sup>123</sup> *Emergency Management Act 2013* (Vic) s 8(3).

## C.7 Department of Treasury and Finance

- 48 The Department of Treasury and Finance (**DTF**) has no specific role in relation to the prevention and management of landslides (or landslips) or to any of the matters listed in [1.1] to [1.5] of the second list of questions. DTF provides general policy advice in relation to the State's financial assets and liabilities, and in relation to workplace safety. The Secretary of DTF also participates in the State Crisis and Resilience Council (see below at [61]).

## C.8 Essential Services Commission

- 49 The Essential Services Commission is established the *Essential Services Commission Act 2001* (Vic) (**Essential Services Commission Act**).<sup>124</sup> The purpose of the Essential Services Commission Act is to enable the Essential Services Commission to perform the regulatory and advisory functions that are conferred on it in a manner that provides incentives for dynamic, productive and allocative efficiency and promotes the long-term interests of Victorian consumers.<sup>125</sup> Its functions are set out in s 10 of the Essential Services Commission Act.
- 50 The Essential Services Commission has no direct role in the prevention and mitigation of landslides (or landslips) or any of the matters listed in [1.1] to [1.5] of the second list of questions. The Essential Services Commission's functions include the economic regulation of Victoria's water industry under the *Water Industry Act 1994* (Vic) and the *Water Industry Regulatory Order 2014* (Vic), however, these matters are limited to price regulation, developing water standards and guidelines for water businesses in the provision of water to consumers, monitoring water industry sector performance, audits of prescribed matters concerning standards and conditions of service and reliability and the quality of information provide by regulated entities and conducting inquiries into water pricing.
- 51 Water businesses provide submissions to the Commission as to prescribed water pricing for approval over a five-year period, and provide aggregate level forecasts of operational and maintenance costs.

## C.9 Victorian Building Authority (including contracted municipal building surveyors)

- 52 This section will be provided as part of the State's forthcoming further submission (see above at [5]).

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<sup>124</sup> This submission refers to Authorised Version No. 068 unless otherwise stated.

<sup>125</sup> Essential Services Commission Act s 1.

### C.10 Victorian Managed Insurance Authority

53 The Victorian Managed Insurance Authority (VMIA) is established<sup>126</sup> under the *Victorian Managed Insurance Authority Act 1996* (Vic) (VMIA Act).<sup>127</sup> The functions of the VMIA include:

- (a) to assist departments and participating bodies to establish programs for the identification, quantification and management of risks;<sup>128</sup>
- (b) to monitor risk management by departments and participating bodies;<sup>129</sup>
- (c) to act as an insurer for, or provide insurance services to, departments and participating bodies;<sup>130</sup>
- (d) to provide risk management advice to the State and to provide risk management advice and training to departments and participating bodies.<sup>131</sup>

54 The VMIA has only a limited role in relation to the prevention and mitigation of landslides (or landslips) in so far as it provides insurance coverage:

- (a) that may include restoration of State assets that are damaged, including by reason of a landslide (or landslip) occurring on public or private land; and/or
- (b) management of potential liability exposure to third parties arising from personal injury or property damage by reason of negligence in the management or occupation of State-managed land.

55 In carrying out these roles, the VMIA works with the relevant State entity with principal responsibility for managing the damaged asset or land. The VMIA has from time-to-time received insurance claims relating to damage to State assets (predominately roads) caused by landslides (or landslips), usually occurring in remote parts of Victoria following significant rain and/or flooding events.

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<sup>126</sup> VMIA Act s 5(1).

<sup>127</sup> This submission refers to [Authorised Version No. 040](#) unless otherwise stated.

<sup>128</sup> VMIA Act s 6(a).

<sup>129</sup> VMIA Act s 6(b).

<sup>130</sup> VMIA Act s 6(c).

<sup>131</sup> VMIA Act s 6(d).

### C.11 Victorian Planning Authority

56 This section will be provided as part of the State’s forthcoming further submission (see above at [5]).

### C.12 Emergency Management Victoria

57 Emergency Management Victoria (**EMV**) is a central body for emergency management in Victoria. It is established<sup>132</sup> under the *Emergency Management Act 2013* (Vic) (**the Emergency Management Act**).<sup>133</sup> The objectives of the Emergency Management Act are:

- (a) to foster a sustainable and efficient emergency management system that minimises the likelihood, effect and consequences of emergencies;<sup>134</sup>
- (b) to establish efficient governance arrangements<sup>135</sup> that:
  - (i) clarify the roles and responsibilities of agencies;
  - (ii) facilitate cooperation between agencies; and
  - (iii) ensure the coordination of emergency management reform within the “emergency management sector”;<sup>136</sup>
- (c) to implement an “all communities – all emergencies” approach to emergency management,<sup>137</sup> and to establish integrated arrangements for emergency management planning in Victoria at the State, regional and municipal levels.<sup>138</sup>

58 To inform emergency management arrangements in Victoria, the Emergency Management Act defines “emergency management” to mean the arrangements for or in relation to the mitigation of emergencies, the response to emergencies and recovery from emergencies.<sup>139</sup> An “emergency” is inclusively defined in s 3 of the Emergency Management Act to (relevantly) mean:

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<sup>132</sup> Emergency Management Act s 14.

<sup>133</sup> This submission refers to Authorised Version No. 020 unless otherwise stated.

<sup>134</sup> Emergency Management Act s 5(a).

<sup>135</sup> Emergency Management Act s 5(b).

<sup>136</sup> Emergency Management Act s 3 definition of “*emergency management sector*” “means the sector comprising all agencies, bodies, Departments and other persons who have a responsibility, function or other role in emergency management”.

<sup>137</sup> Emergency Management Act s 5(c).

<sup>138</sup> Emergency Management Act s 5(d).

<sup>139</sup> Emergency Management Act s 3 definition of “*emergency management*”.

...an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person in Victoria or which destroys or damages, or threatens to destroy or damage, any property in Victoria or endangers or threatens to endanger the environment or an element of the environment including, without limiting the generality of the foregoing –

(a) an earthquake, flood, wind-storm or other natural event;

...

(d) a road accident or any other accident;

...

(h) a disruption to an essential service.

59 The responsibilities, powers, duties and functions of EMV relate to the governance and coordination of the emergency management arrangements in Victoria to ensure clarity of roles and responsibilities and effective cooperation across agencies, rather than responsibilities for specific hazards. EMV otherwise has no role in relation to the prevention and mitigation of landslides (and landslips) in relation to any of the matters listed in [1.1] to [1.5] of the second list of questions.

60 EMV consists of a Chief Executive and the Emergency Management Commissioner.<sup>140</sup> EMV has the functions under s 17 of the Emergency Management Act (and other legislation), which are:

(a) to act as the agency responsible for the coordination of the development of the whole of government policy for emergency management in Victoria;<sup>141</sup>

(b) to provide policy advice to the Minister for Emergency Management in relation to emergency management;<sup>142</sup>

(c) to implement emergency management reform initiatives given to EMV by the Minister;<sup>143</sup>

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<sup>140</sup> Emergency Management Act s 16. See, too, Emergency Management Act ss 20-21 as to the Chief Executive, Emergency Management Victoria and Part 4 for of the Act for the Emergency Management Commissioner.

<sup>141</sup> Emergency Management Act s 17(2)(a).

<sup>142</sup> Emergency Management Act s 17(2)(b).

<sup>143</sup> Emergency Management Act s 17(2)(c).

(d) to liaise with the Commonwealth Government on emergency management;<sup>144</sup>

(e) to provide support to the Emergency Management Commissioner to enable them to perform their statutory functions under the Emergency Management Act.<sup>145</sup>

- 61 EMV is also required to have regard to decisions made by the State Crisis and Resilience Council,<sup>146</sup> which is the peak crisis and emergency management advisory board in Victoria for providing advice to the Minister for Emergency Management in relation to the whole of government policy and strategy for emergency management in Victoria and the implementation of that policy and strategy.<sup>147</sup> Chaired by the Secretary of the Department of Premier and Cabinet (DPC; see above at **Section C.5**),<sup>148</sup> the Council includes the Department Heads,<sup>149</sup> the Chief Commissioner of Police,<sup>150</sup> the Chief Executive of EMV<sup>151</sup> and the Emergency Management Commissioner.<sup>152</sup> It also includes the Chief Executive Officer of the Municipal Association of Victoria as a representative of Local Government.<sup>153</sup>
- 62 Part 5 of the Emergency Management Act provides for the roles for the “Regional Emergency Management Planning Committees”. Part 6 of the Emergency Management Act provides for Municipal Emergency Management Planning Committees.
- 63 The functions of the Emergency Management Commissioner include providing guidance to Regional Emergency Management Planning Committees in relation to Parts 5 and 6A of the Emergency Management Act.<sup>154</sup> The Emergency Management Commissioner may also share information with Regional Emergency Management Planning Committees to assist effective emergency management planning in accordance with Part 6A of the Emergency Management Act.<sup>155</sup>
- 64 Part 6A of the Emergency Management Act provides for “Emergency management plans”, which include the principles underlying the preparation and contents of emergency

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<sup>144</sup> Emergency Management Act s 17(2)(d).

<sup>145</sup> Emergency Management Act s 17(2) (e).

<sup>146</sup> Emergency Management Act s 17(3)(a).

<sup>147</sup> Emergency Management Act s 7(a).

<sup>148</sup> Emergency Management Act s 8(2).

<sup>149</sup> Emergency Management Act s 8(1)(a).

<sup>150</sup> Emergency Management Act s 8(1)(b).

<sup>151</sup> Emergency Management Act s 8(1)(c).

<sup>152</sup> Emergency Management Act s 8(1)(d).

<sup>153</sup> Emergency Management Act s 8(1)(f). The Inspector General for Emergency management is an observer on the Council: Emergency Management Act s 8(1)(e).

<sup>154</sup> Emergency Management Act s 32(1)(md).

<sup>155</sup> Emergency Management Act s 32(1)(me).

management (s 60AA) by the “relevant preparer” of emergency management plans at State (the Emergency Management Commissioner), Regional (the Regional Emergency Management Planning Committee for a region<sup>156</sup>) or Municipal (the Municipal Emergency Management Planning Committee for a municipal district<sup>157</sup>) level. For example, some of the principles underlying the contents of emergency management plans include:

- (a) the main aim of emergency management plans, which is to reduce the likelihood of emergencies, the effect and the consequences of emergencies on communities;<sup>158</sup>
- (b) emergency management plans are to promote appropriate interoperability and integration of emergency management systems;<sup>159</sup>
- (c) the needs of local communities are to be met by providing for flexibility in emergency management plans.<sup>160</sup>

65 All emergency management plans must contain provisions for the mitigation of, response to and recovery from emergencies, and specify the roles and responsibilities of agencies in relation to emergency management.<sup>161</sup>

66 The Emergency Management Commissioner has the specific function of preparation of the State Emergency Management Plan (SEMP).<sup>162</sup> The SEMP provides for an integrated, coordinated and comprehensive approach to emergency management in Victoria. The Emergency Management Act contains consultation obligations in relation to the preparation of the SEMP including with, for example, responder agencies,<sup>163</sup> each Department,<sup>164</sup>

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<sup>156</sup> For example, the Southern Metro Regional Emergency Management Plan is on the EMV website: < <https://www.emv.vic.gov.au/southern-metro-regional-emergency-management-plan> >

<sup>157</sup> For example, the Municipal Emergency Management Plan 2025-2028 for the Mornington Peninsula Shire is on its website < <https://www.mornpen.vic.gov.au/Your-Property/Fire-Emergency/Emergency-Management-Information/Municipal-Emergency-Management-Plan> >

<sup>158</sup> Emergency Management Act s 60AA(2)(a).

<sup>159</sup> Emergency Management Act s 60AA(2)(d).

<sup>160</sup> Emergency Management Act s 60AA(2)(e).

<sup>161</sup> Emergency Management Act s 60AE.

<sup>162</sup> Emergency Management Act s 60AD. See, too, s 32(1)(mb). The Emergency Management Commissioner also has other relevant functions in this context, such as, providing guidance to Regional Emergency Management Planning Committees in relation to compliance with the requirements of Part 5 and Part 6A of the Emergency Management Act: see, s 32(1)(md).

<sup>163</sup> Emergency Management Act s 60AF(1)(a)(i). Emergency Management Act s 3 definition of “*responder agency*”.

<sup>164</sup> Emergency Management Act s 60AF(1)(a)(ii).



Victoria Police<sup>165</sup> and the Municipal Association of Victoria<sup>166</sup>). Div 4 of Part 6A provides for the “Approval, publication and review process” for emergency management plans.

- 67 The SEMP was updated and republished in October-November 2024 on the EMV website<sup>167</sup> (**EMV.0001.0001.0001**). It includes information about the “State Emergency Management Priorities”<sup>168</sup> and “Emergency management tiers” (Incident, Region and State and Area of Operations)<sup>169</sup> and the “Emergency Management Phases” (Mitigation, Planning, Preparedness, Response, and Recovery and Funding).<sup>170</sup> There is no SEMP Sub-Plan that deals with landslides.
- 68 The relevant emergency management plans that apply to the McCrae area are:
- (a) The SEMP referred to above at [66];
  - (b) The Southern Metro Regional Emergency Management Plan (**EMV.0001.0001.0413**);
  - (c) The Mornington Peninsula Shire Municipal Emergency Plan (**EMV.0001.0001.0351**).
- 69 In 2023, EMV published its report into *Emergency Risks in Victoria* (**EMV.0001.0001.0093**) (**Emergency Risks 2023 Report**) and identifies 18 emergency risks.<sup>171</sup> An earlier report of the same nature had been published in 2020 (**Emergency Risks 2020 Report**) (**EMV.0001.0001.0259**). The Emergency Risks 2023 Report used the Victorian Emergency Risk Assessment (**VERA**)<sup>172</sup> methodology adapted from National Emergency Risk Assessment Guidelines (**NERAG**), which is a contextualised, emergency related risk assessment method consistent with Australian Standard 31000:2018.<sup>173</sup> The Emergency 2023 Risks Report was endorsed by the State Emergency Management Planning Committee and the State Crisis and Resilience Council.
- 70 The Emergency Risk 2023 Report identifies that natural hazards such as drought, flood, bushfire and landslides may coincide with a major water supply disruption emergency.<sup>174</sup>

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<sup>165</sup> Emergency Management Act s 60AF(1)(a)(iii).

<sup>166</sup> Emergency Management Act s 60AF(1)(a)(v).

<sup>167</sup> < <https://www.emv.vic.gov.au/responsibilities/state-emergency-management-plan-semp> >

<sup>168</sup> SEMP p 7 (**EMV.0001.0001.0001**).

<sup>169</sup> SEMP pp 8-9 (**EMV.0001.0001.0001**).

<sup>170</sup> SEMP pp 14-37 (**EMV.0001.0001.0001**).

<sup>171</sup> Emergency Risks 2023 Report p 14 (**EMV.0001.0001.0093**).

<sup>172</sup> Emergency Risks 2023 Report p 11 (**EMV.0001.0001.0093**).

<sup>173</sup> Emergency Risks 2023 Report p 10 (**EMV.0001.0001.0093**).

<sup>174</sup> Emergency Risks 2023 Report p 152 (**EMV.0001.0001.0093**).

Landslide risks did not otherwise meet the VERA review phase 1 criteria for inclusion in the Emergency Risks Report. Landslide risk was also not identified in the Emergency Risks 2020 Report.<sup>175</sup>

- 71 EMV has since engaged the Victoria State Emergency Services Authority (see below at **Section C.13**) as the control agency for landslide emergencies to coordinate a risk identification and scoping workshop scheduled in June 2025 as part of VERA phase 2.

### **C.13 Victoria State Emergency Service Authority**

- 72 The *Victoria State Emergency Service Act 2005* (Vic) (**VICSES Act**)<sup>176</sup> establishes the Victoria State Emergency Service Authority (**VICSES Authority**) to manage the Victoria State Emergency Service (**VICSES**).<sup>177</sup> The objectives of the VICSES Authority is to perform its functions and exercise its powers under the VICSES Act to contribute to a whole of sector approach to emergency management,<sup>178</sup> and to promote a culture within the emergency management sector of community focus, interoperability and public value.<sup>179</sup>
- 73 The VICSES Authority must collaborate and consult with Emergency Management Victoria (**EMV**; see **Section C.12**) when performing its functions and exercising its powers under the VICSES Act.<sup>180</sup> The VICSES Authority must also comply with the operational standards<sup>181</sup> and any incident management operating procedures<sup>182</sup> issued by the Emergency Management Commissioner. The VICSES Authority has the functions of emergency response<sup>183</sup> and emergency support,<sup>184</sup> and the duty to assist in response to any major emergency occurring in Victoria.<sup>185</sup>
- 74 The VICSES Authority may provide advice to the Minister for Emergency Services in relation to the administration of the VICSES Act and the VICSES.<sup>186</sup> It may also provide advice and assistance to, and promote awareness and understanding among, Government and

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<sup>175</sup> Emergency Risks 2020 Report pp 14-18 (**EMV.0001.0001.0259**).

<sup>176</sup> This submission refers to Authorised Version No. 025 unless otherwise stated.

<sup>177</sup> VICSES Act s (1)(a), s 4(1). Section 28(1) of the VICSES Act provides: “The Victoria State Emergency Service established under [s 4 of the *Victoria State Emergency Service Act 1987* (Vic)] continues to exist under [the VICSES Act]”.

<sup>178</sup> VICSES Act s 4A(a).

<sup>179</sup> VICSES Act s 4(b).

<sup>180</sup> VICSES Act s 4B.

<sup>181</sup> VICSES Act s 4C.

<sup>182</sup> VICSES Act s 4F.

<sup>183</sup> VICSES Act s 5(1)(b).

<sup>184</sup> VICSES Act s 5(1)(c).

<sup>185</sup> VICSES Act s 6A(1).

<sup>186</sup> VICSES Act s 6(2)(a).

non-government agencies in relation to emergency management,<sup>187</sup> and facilitate and participate in exercises to support emergency management arrangements.<sup>188</sup>

75 In September 2018, the VICSES Authority published on its website the *State Landslide Hazard Plan* as part of the suite of State Emergency Plans<sup>189</sup> (**SES.0001.0001.0146**) (**State Landslide Hazard Plan**). The State Landslide Hazard Plan outlines the arrangements for managing a landslide in Victoria,<sup>190</sup> provides sources of information and outlines arrangements for ensuring an integrated and coordinated approach to the State's management of landslide events.<sup>191</sup> It also provides strategic information about the Victorian arrangements for managing the response to a landslide emergency, including:<sup>192</sup>

- (a) an overview of what is known about the hazard in Victoria;
- (b) a description of potential risks and consequences of landslide to the wellbeing, liveability, viability, sustainability and community connectedness of Victorian communities;
- (c) the arrangements in place before, during and after a landslide event;
- (d) the positions with accountability and the agencies responsible for managing related strategies, and a coordinated approach to the use of resources;
- (e) the multi-agency management arrangements at the National, State, Regional and local levels;
- (f) links to sources of information for further detail.

76 The State Landslide Hazard Plan does not include detail about the specific operational activities of individual agencies. The State Landslide Hazard Plan is currently being reviewed. The current arrangements for managing a landslide emergency remain valid.

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<sup>187</sup> VICSES Act s 6(3)(b).

<sup>188</sup> VICSES Act s 6(3)(c).

<sup>189</sup> < <https://www.ses.vic.gov.au/about-us/state-and-regional-emergency-plans> >

<sup>190</sup> State Landslide Hazard Plan at Purpose [1.1] p 3 (**SES.0001.0001.0146**).

<sup>191</sup> State Landslide Hazard Plan at Objective [1.2] p 3 (**SES.0001.0001.0146**).

<sup>192</sup> State Landslide Hazard Plan at Scope [1.3] p 3 (**SES.0001.0001.0146**).

77 VICSES also publishes on its website<sup>193</sup> Regional Emergency Plans, for which there are there Emergency Response Plans for Landslides for the following five regions. These Emergency Response Plans were adapted from the State Landslide Hazard Plan (see above at [75]):

- (a) Southern Metro (formerly the Central Region) (**SES.0001.0001.0001**). The “Land Risk Overview” refers to Mornington Peninsula;<sup>194</sup>
- (b) Eastern Metro (formerly the Central Region) (**SES.0001.0001.0001**);
- (c) Hume (formerly the North-East (Hume) Region) (**SES.0001.0001.0093**);
- (d) Loddon Mallee (formerly the North-West (Loddon Mallee) Region) (**SES.0001.0001.0120**);
- (e) Grampians (formerly the Mid-West (Grampians) Region) (**SES.0001.0001.0057**).

78 The Emergency Response Plan for Central Region was adapted from the State Landslide Hazard Plan and written to contextualise the Landslide Risk in the Central Region (now aligning to “Southern Metro” which includes the Mornington Peninsula). This Emergency Response Plan is also scheduled to be reviewed after completion of the review of the State Landslide Hazard Plan (see above at [76]).

#### C.14 Victoria Police

79 The police force of Victoria is constituted as Victoria Police, the body established<sup>195</sup> under the *Victoria Police Act 2013* (Vic) (**Victoria Police Act**).<sup>196</sup> Victoria Police consists of the Chief Commissioner of Police, Deputy Commissioners, Assistant Commissioners, police officers, protective service officers, recruits, reservists and its employees.<sup>197</sup> The role of Victoria Police is to serve the Victorian community and uphold the law so as to promote a safe, secure and orderly society. The general functions of Victoria Police include protecting life and property<sup>198</sup> and helping those in need of assistance.<sup>199</sup>

<sup>193</sup> < <https://www.ses.vic.gov.au/about-us/state-and-regional-emergency-plans> >

<sup>194</sup> Emergency Response Plan applicable to Central Region (published in August 2019) at [2] pp 9-11 (**SES.0001.0001.0001**).

<sup>195</sup> Victoria Police Act s 6.

<sup>196</sup> This submission refers to the [Authorised Version No. 048](#) unless otherwise stated.

<sup>197</sup> Victoria Police Act s 7.

<sup>198</sup> Victoria Police Act s 9(1)(b).

<sup>199</sup> Victoria Police Act s 9(1)(e).

80 Victoria Police has no role in the prevention of landslides (or landslips) in relation to any of the matters listed in [1.1] to [1.5] of the second list of questions. Its role in the mitigation of landslides (or landslips) is indirect in the broader context of emergency management. For example:

- (a) the Chief Commissioner of Police is a member of the State Crisis and Resilience Council (see above at [61]);
- (b) Victoria Police is one of the bodies that must be consulted by the Emergency Management Commissioner in the preparation of the State Emergency Management Plan (see above at [64], and in any system wide review of emergency management functions that is undertaken by the Inspector-General of Emergency Management;<sup>200</sup>
- (c) the Chief Commissioner of Police (or their nominee) is required to be a member of a Regional Emergency Management Planning Committee<sup>201</sup> and a Municipal Emergency Management Planning Committee.<sup>202</sup>

81 Further, under the Emergency Management Act, for each region and municipal district, a Victoria Police officer is appointed the regional and municipal emergency response coordinator.<sup>203</sup> The Emergency Management Act also provides for the appointment of a senior police liaison officer to provide advice to the Emergency Management Commissioner and deal with requests to, and from, any police officer appointed as a regional or municipal emergency response coordinator.<sup>204</sup>

82 In the past, Victoria Police has responded to landslips, working with a range of government entities including VICSES but also municipal councils and other government entities. Victoria Police's role has included traffic management, evacuation incident management and incident emergency management.

83 Individual police officers may have a role under the Building Act in so far as they receive a request from a municipal building surveyor in evacuating a building, land or place of public entertainment in accordance with an emergency order<sup>205</sup> or in removing persons from a building, land or place of public entertainment in which the municipal building surveyor or

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<sup>200</sup> Emergency Management Act s 64(1)(b) & s 67(b).

<sup>201</sup> Emergency Management Act s 54(1)(a)(ii).

<sup>202</sup> Emergency Management Act s 59A(1)(a)(ii).

<sup>203</sup> Emergency Management Act s 40A(1).

<sup>204</sup> Emergency Management Act s 40B.

<sup>205</sup> Building Act s 124(1)(a).

any person assisting that surveyor is carrying out work or taking any action in accordance with an emergency order or building order<sup>206</sup> (see above at **Section** Error! Reference source not found. and the State’s forthcoming submission (see above at [5])).

### C.15 VicRoads

- 84 This section will be provided as part of the State’s forthcoming further submission (see above at [5]).

### C.16 Victorian WorkCover Authority (WorkSafe)

- 85 The Victorian WorkCover Authority (trading as **WorkSafe**) is Victoria’s workplace health and safety regulator and workplace injury insurer. It is established as a statutory authority under Part 11 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)<sup>207</sup>. WorkSafe has no specific role in relation to the prevention and management of landslides (or landslips) or to any of the matters listed in [1.1] to [1.5] of the second list of questions.
- 86 WorkSafe has the statutory functions identified in the *Occupational Health and Safety Act 2004* (Vic) (**OHS Act**). WorkSafe has the general functions (s 7) and powers (s 8) in the OHS Act. As the State’s OHS Regulator, it regulates employers and other persons to ensure compliance with duties and obligations under the OHS Act (including through attending workplaces and sites and making relevant inquiries). The General duties relating to health and safety in Part 3, such as the “Main Duties of employers” (Div 2) and “Duties of other persons (Div 5).
- 87 Part 5 of the OHS Act deals with “Duties relating to incidents”, which includes the obligation on an employer<sup>208</sup> to notify WorkSafe after they become aware of a relevant incident that has occurred at a workplace under their management or control, that is, incidents that result in death or serious injury,<sup>209</sup> and to any incident that exposes a person to a serious risk to a person’s health or safety emanating from an immediate or imminent exposure to specific

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<sup>206</sup> Building Act s 124(1)(b).

<sup>207</sup> Section 491(1) of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic): “The Victorian WorkCover Authority established under [s 18] of the *Accident Compensation Act 1985* [(Vic)] as in force immediately before 1 July 2014 continues in existence”. This submission refers to the Authorised Version No. 044 unless otherwise stated. OHS Act s 5(1) definition of “**Authority**” means “Victorian WorkCover Authority under the *Workplace Injury Rehabilitation and Compensation Act 2013* [(Vic)]”.

<sup>208</sup> OHS Act s 38(1).

<sup>209</sup> OHS Act s 37(1).

matters, such as the collapse or partial collapse of a building or structure.<sup>210</sup> Employers also have certain duties to preserve incident sites to enable inspection by WorkSafe.<sup>211</sup>

- 88 WorkSafe also has statutory functions under the *Dangerous Goods Act 1985* (Vic),<sup>212</sup> one of the purposes of that legislation being to ensure that adequate precautions are taken against certain fires, explosions, leakages and spillages of dangerous goods and that when they occur they are reported to the emergency services and the inspectors without delay.<sup>213</sup> WorkSafe also has statutory functions under the *Equipment (Public Safety) Act 1994* (Vic),<sup>214</sup> which has the legislative purpose of providing for public safety in relation to prescribed equipment and equipment sites.<sup>215</sup>
- 89 WorkSafe will work with State government entities in certain multiagency responses as is required. It has also established a *Memorandum of Understanding between WorkSafe and other parties* to clarify how WorkSafe will work with other regulators and government agencies to fulfil their responsibilities effectively. Memoranda of Understanding for each entity is listed on the WorkSafe website.<sup>216</sup>

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<sup>210</sup> OHS Act s 37(2)(f).

<sup>211</sup> OHS Act s 39(1).

<sup>212</sup> This submission refers to [Authorised Version No. 109](#) unless otherwise stated.

<sup>213</sup> *Dangerous Goods Act 1985* (Vic)s 4(b).

<sup>214</sup> This submission refers to the Authorised Version No. 045 unless otherwise stated.

<sup>215</sup> *Equipment (Public Safety) Act 1994* (Vic) s 1.

<sup>216</sup> < <https://www.worksafe.vic.gov.au/memorandum-understanding-between-worksafe-and-other-parties> >