



The Victorian Government's new environment protection laws have passed Parliament.

The *Environment Protection Amendment Act 2018* provides the foundation for a transformation of Victoria's environment protection laws and Environment Protection Authority Victoria (EPA).

It includes a new approach to environmental issues, focusing on preventing waste and pollution impacts rather than managing those impacts after they have occurred.

The Victorian Government intends this new legislation will take effect from 1 July 2020.

This fact sheet provides a plain English outline of key reforms in the Act.

General Environmental Duty

The cornerstone of the *Environment Protection Amendment Act 2018* is the general environmental duty (GED). The GED will focus Victorian business, industry and the community on preventing harm. This will require people to undertake reasonably practicable¹

steps to eliminate, or otherwise reduce risks of harm to human health and the environment from pollution and waste.

Unlike similar laws in other states and territories, a breach of the GED could lead to criminal or civil penalties.

The GED aligns with the way many businesses and industries already manage risk—taking steps to identify and manage risks to the environment and human health in proportion to their likelihood and consequence before they cause harm. This concept is familiar to businesses through the well-established model of protection provided by Victoria's Occupational Health and Safety laws, which are also centred around a general duty to take reasonably practicable measures to reduce the risk of harm.

EPA will provide education, support and guidance to organisations and individuals to help them comply with the GED. Compliance Codes will make clear the best ways to identify, assess and manage risks for particular industries or activities. Compliance Codes will be developed by EPA in partnership with industry and technical experts and include public consultation.

¹ Reasonably practicable includes having regard to the likelihood of the risk of harm eventuating, degree of harm that would result if the risk eventuated,

actual and reasonable knowledge on that risk of harm and availability, suitability and cost of ways to eliminate or reduce the risk of harm.

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With this change in environment protection laws, Victorians will be less likely to be impacted by environmental disasters, pollution and waste.

Permissions

Under the current *Environment Protection Act 1970*, the only ongoing control EPA can impose on a high-risk activity is an EPA licence.

The new laws introduce a new three-tiered permissions framework allowing proportionate controls to be applied based on the nature of the risks. The tiers consist of:

- Registrations, which will be automatically granted and are suited to organisations posing significant risks but where simpler controls exist which can be standardised across a sector.
- Permits, which will have largely standardised assessment processes and are suited to medium-high risk activities with low complexity.
- Licences, to apply customised conditions to manage those complex activities that need the highest level of regulatory control to manage their significant risks to human health and the environment.

Licences will continue to be required to construct certain plant or equipment, or in the development and modification of specified high-risk processes or systems (development licences). They will also continue to be required for research, development and demonstration activities (pilot project licences).

Licences will be subject to regular reviews (around every five years) and will no longer be granted indefinitely.

Waste management

The *Environment Protection Amendment Act 2018* will modernise the current waste management framework.

The legislation introduces a new framework to reduce hazards from waste, while supporting waste material reuse, recovery and resource efficiency. It also establishes strong penalties for waste dumping and littering.

The new GED will require waste producers to identify and implement reasonably practicable means to minimise the risks associated with the management of wastes.

The application of landfill levies (renamed waste levies) will continue. All waste levies will be subject to annual indexation.

Priority waste duties

The one-size-fits-all prescribed industrial waste system under the current *Environment Protection Act 1970* will be replaced by a new system of 'priority wastes'.

Tailored controls will be introduced for specific hazardous industrial wastes and specified municipal and industrial wastes that have resource recovery, recycling and reuse potential. These will become priority wastes. These controls include:

- Classification of the priority waste.
- Containing the priority waste to prevent its escape and isolating it to ensure resource recovery remains practicable.
- Providing information about the composition and hazards of the priority waste during its collection, consignment, transfer or transportation.
- Recording and providing transaction details to allow tracking of that waste.

To better reduce risks from wastes, persons managing priority waste would also be required to take all reasonable steps to identify and consider alternatives to waste disposal, including waste avoidance, reuse and recycling.

Industrial waste duties

The legislation requires persons involved in the management of industrial waste to ensure the waste is not illegally dumped. This means that:

- those who deposit industrial waste must only do so at a lawful place;
- receivers of industrial waste must be authorised to do so; and
- generators of industrial waste must take reasonable steps to ensure the waste will be transported to a lawful place.

Litter

The legislation introduces increased penalties, and provisions and offences that are easier to administer and enforce. New volume-based litter offences, available to local government and Litter Enforcement Officers, will provide offences and penalties that are commensurate to the impact and the volume of waste. Additionally, a new dangerous littering offence will apply to persons who litter certain dangerous items (e.g. glass or syringes).

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Contaminated environments

Victorians expect to understand where there may be contamination from historic activities, the risks it may pose and that clean-up has been undertaken to appropriately manage the risks to human health and the environment.

The legislation introduces reforms to enable the actions of EPA and persons in management or control of land to be more proportionate to the risks posed by contaminated land (including groundwater). This would reduce costs to consumers, businesses and government.

Duties for Contaminated Land

The Act establishes a **duty to manage contaminated land**.

The 'Duty to Manage' creates an obligation on persons in management or control of land to minimise the risks of harm to human health and the environment from the contamination.

This includes obligations to:

- Identify any contamination a person should reasonably know about and assess that contamination.
- Manage the contamination by minimising the risks to human health and the environment so far as reasonably practicable.
- Notify people who may be affected by the contamination.

EPA will provide guidance on how to meet these obligations.

The Act also establishes a new **duty to notify of contaminated land**.

The 'Duty to Notify' requires a person in management or control of land to notify EPA as soon as practicable if the contamination may pose a significant risk to human health or the environment.

Contamination will be notifiable if it meets criteria set out in the proposed legislation and any future regulations.

Environmental audit

Under the current *Environment Protection Act 1970*, environmental audits are a one-size-fits-all assessment process that sometimes involves unnecessarily detailed investigation and excessive costs.

The new legislation will establish a more flexible process:

1. Preliminary risk screen (PRS) assessment: a rapid, low cost assessment based on a desktop study and site inspection, which may include sampling. The focus of a PRS is to determine if a detailed audit is necessary.
2. Scaled audit: to assess and manage the risks of harm to human health and the environment from contamination or industrial activities. Scaled audits would often be more cost effective than current audits as the PRS would help environmental auditors focus the audit on material risks. A scaled audit may result in remedial action being taken to manage risks to human health and the environment posed by a site or industrial activity.

This will ensure sites which do not have significant contamination risks can be assessed more efficiently.

Site Management Orders

A new tool, Site Management Orders, will allow the establishment of long-term controls to ensure the safe ongoing management of sites that would otherwise pose ongoing risks to the community and environment.

This new regulatory control allows more effective ongoing regulation of the risks associated with sites such as closed landfills and contaminated environments and will be registered on the title of the land

Better Environment Plans

The legislation includes 'Better Environment Plans' to enable EPA to recognise innovative approaches to environmental protection. EPA's endorsement of plans will be an important recognition of and support to that positive action by the partners.

Better Environment Plans could be used in many ways, for example:

- A business that is working to remediate a portfolio of contaminated sites could seek EPA's endorsement of a plan that manages the clean up over an agreed timescale, making sure the most significant risks are addressed first.
- Businesses operating within an industrial estate could develop a plan to reduce the collective impact on air quality from that estate's activities.

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Better access to environmental information

Through the Independent Inquiry into the EPA, stakeholders reported that access to information about the environment is very important, including in helping to make decisions about their health and the environment.

The legislation introduces requirements to make environmental information more transparent and accessible.

These changes mean:

- The EPA will be required to establish and maintain a Public Register of information such as licences, permits, registrations, environmental audits, Site Management Orders and Better Environment Plans;
- Holders of licences (and other permissions tools as appropriate) could be required by the EPA to make certain environmental information available;
- EPA will be able to easily obtain the information it needs to make regulatory decisions (for example, whether to issue a licence);
- EPA will be able to share information with other regulators and government bodies, to better enforce the law and inform decision-making.

More effective investigation, enforcement and compliance

Victorians made it clear, through the Independent Inquiry into the EPA, that they want EPA to better hold polluters to account.

The new compliance and enforcement measures include:

- Modernising, clarifying and strengthening powers for EPA Authorised Officers to enter premises and investigate suspected breaches of the law
- Improving investigation capability by providing EPA investigations access to search warrants, modern information gathering notices and access to the Surveillance Devices Act
- Higher penalties for obstructing, assaulting or impersonating an EPA Authorised Officer.

Increasing penalties and strengthening sanctions

The legislation will increase penalties for environmental offences from those in place now. This will bring the penalties into line with comparable laws. The penalties

also reflect the significance that harmful impacts can have on human health and the environment, and are intended to send the message that Victorians will not tolerate this behaviour.

The core offence of breaching the GED will attract a penalty of up to \$322,000 for an individual or \$1.6 million for a corporation. For an intentional or reckless breach of the GED that results in material harm, a higher penalty of up to \$644,000 and/or 5 years imprisonment for an individual, or \$3.2 million for a corporation will apply.

To support the transition to a risk-based scheme, a transitional **material harm offence** will apply to a person that causes material harm from pollution or waste, attracting the same penalty as breach of the GED. A person who can prove compliance with the GED will not be liable for this offence, which will be phased out within four years of commencement of the Act. Penalties for illegal dumping of industrial waste will also be increased, in line with the penalties for breach of the GED. Repeat illegal dumping offenders that are not deterred by financial penalties will also be able to be imprisoned.

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The Act also introduces a civil penalty scheme alongside criminal penalties that would allow EPA to take more timely and proportionate enforcement action for moderate breaches of the law.

New community rights for Victorians

For the first time in Victoria, community members directly affected by alleged breaches of the new environment protection laws will be able to seek action through a court to remedy or restrain the breach.

Community rights will help to ensure EPA is held to account in the way it enforces the laws.

Find out more

View the Act at the Parliament of Victoria website: parliament.vic.gov.au

More information about the Act and environment protection reform: environment.vic.gov.au/sustainability/independent-inquiry-into-the-epa/ep-bill-2018

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More information about how EPA is implementing the Victorian Government's vision of a more agile, modern environmental regulator: epa.vic.gov.au/about-us/response-to-epa-inquiry

You can also subscribe to our quarterly email newsletter by registering your interest: epa.reform@delwp.vic.gov.au

Contact us

You can contact DELWP's Environment Protection Branch by email: epa.reform@delwp.vic.gov.au, calling 136 186, or online delwp.vic.gov.au/our-department/contact-us

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