

The new Victorian environment protection legislation

The new Victorian environment protection legislation - are you ready for 1 July?

After a delayed start due to Covid-19 lockdowns and disruption in 2020, the Environment Protection Amendment Act 2018 (**new Act**) is commencing on **1 July 2021**.¹ Once the amendment Act commences it will amend and be included in the existing *Environment Protection Act 2017*. It will then be known and referred to as the 2017 Act.

Many companies with operations or properties in Victoria will already be prepared, or will be well underway preparing, for the new legislation. The new Act will affect all sectors. EPA has prepared guidance for different industry sectors as follows – agriculture; construction and infrastructure; energy, petroleum and extractive industries; manufacturing; planning; retail and small business; waste and recycling; and water.² EPA has also produced a set of guidance to explain and support compliance with the new Act for each of these sectors.³

The level of exposure, preparation and compliance required will depend on the nature of your company's operations and the associated environmental risks and hazards associated with pollution and waste. The new Act includes a range of new EPA enforcement powers, community rights, civil and criminal penalties (with maximum penalties for a corporation for aggravated offences up to \$3.3M and \$1.6M for other offences) – we have covered these in our earlier updates.⁴

This update references and builds on our earlier updates⁵ and provides a reminder of **three priority areas of focus** required under the new Act and a summary of the most recent significant guidance publications from EPA Victoria. EPA has recently upgraded its website and (while still a little difficult to navigate) includes a useful section on the new laws with links to the guidance referred to in this update.⁶

A shift in focus - proactive not reactive

As we have emphasised in our earlier updates, the new Act is focused on managing and preventing the risk of harm to human health and the environment from pollution and waste through positive duties and prevention mechanisms. This is a shift away from the more reactive protection and prohibitive measures of the current *Environment Protection Act 1970*.

This new focus requires preparation and proactive compliance. A duty holder can contravene the legislation without actually causing pollution or mishandling waste by failing to have proper environmental management systems or plans in place.

*As EPA states in its new draft Compliance and Enforcement Policy:*⁷

*Those who hold a duty under the EP Act may be subject to inspections by EPA authorised officers, in accordance with their powers under the Act. EPA may take action **even if harm has not yet occurred**, and responsibility for preventing harm rests with anyone in management or control of the activity that may give rise to risks of harm. [emphasis added]*

In considering its approach to enforcement under the new Act, the EPA will consider the characteristics of the duty holder. For example, section 3.3.2 of the draft *Compliance and Enforcement Policy* states that the EPA will consider the attitude, behaviour and actions of the duty holder when assessing the degree of culpability associated with non-compliance, specifically, whether the duty holder has:

- proactively identified risks and implemented controls to minimise those risks
- sought out and referred to industry and EPA guidance when they are unsure of how to manage risk
- notified EPA and acted to contain pollution, as soon as they are aware of an incident
- cooperated with EPA authorised officers during any inspections or investigations
- fully complied with directions and notices and promptly advised EPA of any issues that impeded compliance

1. The Victorian Governor in Council confirmed on 16 March 2021 that the *Environmental Protection Amendment Act 2018* will commence on 1 July 2021. See Victoria Government Gazette no. S 124 Tuesday 16 March 2021.

2. See the breakdown of industry sectors and guidance on the EPA website here <https://www.epa.vic.gov.au/for-business/find-your-industry>

3. EPA Publication 1819: Agriculture - guide to preventing harm to people and the environment; EPA Publication 1820: Construction - guide to preventing harm to people and the environment; EPA Publication 1823: Mining and quarrying - guide to preventing harm to people and the environment; EPA Publication 1822: Manufacturing - guide to preventing harm to people and the environment; EPA Publication 1824: Retail - guide to preventing harm to people and the environment; EPA Publication 1825: Waste and recycling - guide to preventing harm to people and the environment; various guidance for the water industry <https://www.epa.vic.gov.au/for-business/find-your-industry/water>; and guidance for planning authorities and interactions with the new Act <https://www.epa.vic.gov.au/for-business/find-a-topic/planning-guidance>

4. <https://www.kwm.com/en/au/knowledge/insights/next-victorian-environmental-protection-amendment-act-20200619>

5. <https://www.kwm.com/en/au/knowledge/insights/next-victorian-environmental-protection-amendment-act-20200619>

6. See EPA Victoria website 'New laws to better protect the environment' <https://www.epa.vic.gov.au/about-epa/laws/new-laws>

7. 1798.1 Compliance and enforcement – draft policy <https://www.epa.vic.gov.au/about-epa/publications/1798-1>

Transition to the new Act and the transitional provisions

While the new Act commences on 1 July 2021, and compliance is expected in relation to the parts of the Act that commence on that day, EPA has emphasised in public forums that there will be some time to adjust to the new regime and EPA will exercise its powers in accordance with its new draft *Compliance and Enforcement Policy*.⁸ For example, EPA state on their website:

Some parts of the law will come into effect gradually, while others will be enforceable from day one.

We'll support you if you've taken reasonable steps to understand and meet your obligations under the Act. We'll also support businesses that must make major changes to their compliance obligations.

*If you haven't tried to understand or follow the new laws, we'll act to make sure you meet your obligations.*⁹

A number of important transitional provisions are included to assist in the transition to the new Act.¹⁰ This includes the section 28 transitional duty requiring that a person must not engage in conduct that results in material harm to human health or the environment from pollution or waste.¹¹ The purpose of this transitional duty is to ensure that the new legislation can deal with environmental harm from the day it commences in a manner more consistent with the 1970 Act. Evidence of compliance with the section 25 GED is a defence. A person convicted of an offence under the GED cannot also be convicted of the section 28 transitional duty for the same or substantially the same conduct or vice versa.

If your business has an existing licence, works approval, RDD approval or emergency approval, received a clean-up notice or pollution abatement notice, direction, or you have a site contamination (s.53V or 53X) audit underway or complete, these will transition to the new Act as set out in the table below.

Topic	Existing EP Act provisions	EP Amendment Act 2018	Transitional provisions
Permissions (s.470)	Works approval. Research development of demonstration approval . Licence Emergency waste authorisation Permit to transport prescribed waste.	Development licence. Pilot project licence. Operational licence. Authorisation under s.157. Prescribed authorisation.	Continues as a permission under new Act, and within 12 months from commencement, EPA may amend, revoke or impose new conditions or make consequential amendments. Must be given 10 business days notice. May request extension of 6 months.
Notices (s.476)	Clean up notice. Pollution abatement notice, PC PAN. Minor works PAN.	Improvement notices. Prohibition notices. Notice to investigate. Environmental action notice. Site management order. Non-disturbance notices.	Continues for 2 years (then will be replaced with one of the new notices).
Exemptions	Works approval exemption (s.19A(4)). Exemption for transporting prescribed waste if authorised under another state or territory law (s.53). Exemption for licencing of certain premises (s.20).	Exemption for transporting reportable priority waste if authorised under another state or territory law (s.68). Exemption for prescribed operating activity (s.80). Exemption for permits (either by council (s.83) or EPA (s.82)). General exemption (s.459).	Exempt for a period of 5 years ¹² but you should check the details of exemptions and ensure there is still the same exemption under the new Act.
Environmental audits (s.478)	s.53X, s.53V audits .	Preliminary risk screen assessment (and statement) (PRSS). Environmental audit (and statement) (EAS) and environmental audit report.	If commenced prior to commencement of new Act, then continue under old Act. Where an audit is underway, the auditor may conduct the audit under the old Act or the new Act and subject to some conditions the audit report will be taken to satisfy the new Act. Right to compensation where not provided with statement (s.53ZE old Act) continues for 12 months from commencement.

8. 1798.1 Compliance and enforcement – draft policy <https://www.epa.vic.gov.au/about-epa/publications/1798-1>

9. See EPA Victoria website 'Changing to the Environment Protection Act 2017' <https://www.epa.vic.gov.au/about-epa/laws/new-laws/changing-to-the-new-act>

10. These transitional provisions are included in Chapter 16 of the new Act.

11. This duty will be to in effect for four years after the commencement date (1 July 2021) or on a date be proclaimed.

12. *Environment Protection Amendment Act 2018* (Vic) s 473.

For some existing licences and permits for managing and transporting industrial waste (including prescribed waste and prescribed industrial waste), you will likely have been contacted by EPA in relation to changes to waste codes and waste descriptions. EPA may have issued you a notice of amendment for your existing licence or permit. If that has occurred, you should ensure the draft notice is accurate.¹³

Officer liability - s.350 and s.349

The new Act includes new director and officer liability provisions not seen before in Victorian environment protection legislation.

One of these officer liability provisions mirrors director and officer liability provisions common in other environmental and work health and safety legislation, and similar provisions in the 1970 Act, making officers liable for contraventions by the company subject to a due diligence defence (s.350 officer liability).

However, for some offences, company directors and officers can be held personally liable for failing to exercise due diligence to prevent the commission of the offence by the company (s.349 officer liability) or authorising, permitting or being knowingly concerned in an act or omission by the company resulting in an offence.¹⁴ Section 349 officer liability includes contravention of the duty to notify contaminated land, breach of prescribed permission conditions and various waste duties.

What you should be doing now – 3 priority areas of focus

With less than a month until the commencement date, ensuring your business is prepared is critical. The level of preparation required will depend on your company's operations and the level of environmental risks and hazards associated with your business.

As a reminder, the following are three priority areas of focus for companies to consider and action recommended in preparation for the 1 July 2021 commencement date. These are:

- 1 **environment protection duties** (GED, pollution and contaminated land);
- 2 **waste duties**; and
- 3 **permissions**.

The new duties apply either to persons engaging in an activity (GED, pollution duties) or in management or control of land (contaminated land duties) or industrial waste.

Priority areas of focus Chapter 3 Environment protection duties | General environmental duty (GED)

Section 25 GED (engaging in an activity)

A person engaging in an activity that may give rise to risks of harm to human health or the environment from pollution or waste must minimise those risks, *so far as reasonably practicable*.

You can contravene the GED by failing to do any of the following, so far as reasonably practicable:

- use and maintain plant, equipment, processes and systems in a manner that minimises risks of harm to human health and the environment from pollution and waste;

- use and maintain systems for identification, assessment and control of risks of harm to human health and the environment from pollution and waste that may arise in connection with the activity, and for the evaluation of the effectiveness of controls; or
- use and maintain adequate systems to ensure that if a risk of harm to human health or the environment from pollution or waste were to eventuate, its harmful effects would be minimised; or
- ensure that all substances are handled, stored, used or transported in a manner that minimises risks of harm to human health and the environment from pollution and waste; or
- provide information, instruction, supervision and training to any person engaging in the activity to enable those persons to comply with the GED.¹⁵

The term 'reasonably practicable' is not defined in the Act, but is commonly used in WHS legislation. It means putting in controls that are proportionate to the risk. It relates to the chance of harm occurring and potential impacts on the environment, what controls are available, their cost, and considers what an industry generally knows about the risk and control options (the 'state of knowledge'). The EPA has released industry guidance to support compliance with the GED.¹⁶ This guidance states that the expression, 'state of knowledge', describes the body of accepted knowledge that is known or ought to be reasonably known about the harm or risks of harm to human health and the environment and the controls for eliminating or reducing those risks. The EPA guidance identifies sources for that 'state of knowledge' including:

- *Business and industry knowledge*: business documentation for safely performing activities, manuals and information from suppliers and contractors, safety data sheets and labelling, manufacturers' instructions for safe operating procedures, training provided in the use of equipment, contractual arrangements between parties participating in the activities. Standardised documents and manuals, guidance from industry associations and peak bodies distributed to members.
- *Regulatory and government agency knowledge*: EPA and other government authorities (including Sustainability Victoria, WorkSafe), guidance material, technical notes, compliance decisions and enforcement outcomes, advice (including advice given to your business specifically).¹⁷
- *Independent organisations' knowledge*: reports from independent organisations such as Standards Australia, universities, and environmental engineers.

In preparing for compliance with the GED, you should review sites and activities in your business that may present risks to human health or the environment from pollution and waste. If you do not already have one, you should prepare an environmental management plan or an environmental management system to identify and manage on site risks, and ensure that employees are trained on that system or plan and their role in implementing it. The complexity of your management plan or system will depend on your operations and the associated environmental risks and hazards. This could be relatively simple or require a more detailed and complex environmental management system prepared in accordance with (or accredited to) ISO 14001. EPA has provided guidance on managing environmental risk required to comply with the GED which identifies different approaches applicable to low-risk and medium to high risk business activities.¹⁸

13. See <https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/permissions/changes-to-licences-permits>

14. *Environment Protection Amendment Act 2018* (Vic) ss 349-251.

15. *Environment Protection Amendment Act 2018* (Vic) s 25(4)(a) - (d).

16. See EPA Publication 1741.1: Industry Guidance: Supporting you to Comply with the General Environmental Duty.

17. EPA Publication 1741.1: Industry Guidance: Supporting you to Comply with the General Environmental Duty.

18. See 'Managing your environmental risk' at <https://www.epa.vic.gov.au/for-business/how-to/manage-environmental-risk> and EPA Publication 1695.1: Assessing and controlling risk: a guide for business; and EPA Publication 1812.1: Self- assessment tool for small business.

As we have noted before, you can breach the GED and may face compliance and enforcement action under the new Act by not having the right plans or systems in place even where no actual pollution or waste incident occurs which causes harm to human health or the environment. In recent EPA seminars on the new Act, EPA has emphasised that inspectors will be attending sites and asking lots of questions about what actions have been taken to comply with the new Act and assess and manage risks.

The GED underpins all offences under the new Act and needs to be considered when undertaking any business activities. A failure to comply with a duty under the Act, for example, the duty to respond to harm caused by a pollution incident may also result in a breach of the GED.

Pollution duties

Section 31 responding to pollution incidents, section 32 duty to notify pollution incidents (engaging in an activity)

There are two main pollution duties under the new Act, the duty to respond to harm caused by a pollution incident and the duty to notify the EPA of a notifiable incident.

The duty to Respond concerns pollution incidents that cause or are likely to cause harm to human health or the environment.¹⁹ The duty to respond to a pollution incident requires duty holders to take reasonably practicable measures to restore the affected area to the state it was in before the pollution incident occurred.²⁰

If the pollution incident causes or threatens to cause material harm to human health or the environment or is a prescribed notifiable incident, the duty holder is also under an obligation to notify the EPA. Notification must be given to the EPA 'as soon as reasonable practicable after the person becomes aware or reasonably should have been aware of the occurrence of a notifiable incident'.²²

Material harm is defined to mean harm that:

- involves an actual adverse effect on human health or the environment that is not negligible;
- involves an adverse effect on an area of high conservation value or of special significance; or
- results in or is likely to result in costs in excess of the 'threshold amount' being incurred in order to take appropriate action to prevent or minimise the harm or to rehabilitate or restore the environment to the state it was in before the harm.²³ The 'threshold amount' is \$10,000.²⁴

In complying with these duties, you should implement and review policies, systems, procedures and management plans to reflect the duty to respond to harm caused by a pollution incident and the duty to notify incidents. Your environmental management plan or EMS should include a process for identifying, responding and reporting (where required) a pollution incident. While a pollution incident response plan is not required under the new Act (as it is in NSW),²⁵ to comply with these duties it would be sensible for you to have one in place.

Contaminated land

Contaminated land is defined as land where waste, a chemical substance or prescribed substance is present on or above the surface of the land and the waste, chemical substance or prescribed substance is in a concentration above the background level and creates a risk of harm to human health or the environment.²⁶

The contaminated land duties apply in addition to the GED and apply to persons in management and control of land. The EPA has released guidance on recommended steps to comply with the contaminated land duties.²⁷ Unlike the GED, contamination duties will apply regardless of whether the duty holder is undertaking an activity. A person in management or control of land is a person who holds a legal interest in the land, such as, a landowner and tenant or someone who has access or use of the land (e.g. a contract worker). This means that there can be more than one person in management or control of the land at once. EPA recognises that multiple parties can owe the duty (for example, a landlord and tenant or a principal and contractor), but in relation to the section 40 duty to notify, only one notification is required. The Contaminated *Land Policy* states:

While the duty to notify is shared between all persons with a level of management or control over land, once a valid notification is received the other duty holders are not required to make a separate notification, unless there is additional information to provide. Duty holders who share management or control are expected to consult one another on who will notify EPA, and to ensure the information provided to EPA is also shared among those sharing the duty.

The scope of the duties relates to what the person knows or ought reasonably to know about the status of contamination on the land. In the *Contaminated Land Policy*, EPA recognises that the nature of obligations changes in line with the following states of land with respect to the presence of contamination:

- No known or suspected contamination (most land in Victoria).
- Potential contamination (where the duty holder must consider and proportionately investigate risks).
- Known contamination (where the duty holder must manage the risks).
- Notifiable contamination (where the duty holder must notify EPA).
- Contamination that presents an unacceptable risk of harm (where compliance and enforcement action can be expected).

The *Contaminated Land Policy* sets out the expectations on duty holders in relation to each of these states of contaminated affecting land.

Section 39 duty to manage (management or control of land)

A person in management or control of land must 'minimise the risks of harm' arising out of contamination in land or groundwater. Related to the duty to manage, a person in management or control of the land must, so far as reasonably practicable, clean up non-aqueous liquid (NAPL) and if the source of the non-aqueous liquid is located on the land, remove or control the source.²⁸ The new Act provides that risks from contaminated land are minimised by:

19. *Environment Protection Amendment Act 2018* (Vic) s 31.

20. *Environment Protection Amendment Act 2018* (Vic) s 31.

21. *Environment Protection Amendment Act 2018* (Vic) s 30.

22. *Environment Protection Amendment Act 2018* (Vic), s.32(2).

23. *Environment Protection Amendment Act 2018* (Vic) s 5.

24. *Environment Protection Amendment Act 2018* (Vic) s 5(3)

25. *Protection of the Environment Operations Act 1997* (NSW) s 153A.

26. *Environment Protection Amendment Act 2018* (Vic), s.35.

27. See EPA Publication 1915: Contaminated Land Policy; EPA Publication 1940: Contaminated Land: Understanding Section 35 of the Environment Protection Act 2017.

- identifying any contamination the person knows or ought reasonably to know. This requires actual knowledge of the condition of the land, or what a person ought reasonably to know considering what other people in similar circumstances would know;
- investigating and assessing the contamination;
- maintaining reasonably practicable measures to minimise risks of harm to human health and the environment from the contamination, including undertaking clean-up activities where reasonably practicable;
- providing adequate information, such as, investigation results to any person that the person in management or control of the contaminated land reasonably believes may be affected by the contamination, including sufficient information to identify the contamination;
- providing adequate information to enable any person who is reasonably expected to become a person in management or control of the contaminated land to comply with the duty to manage contaminated land.²⁹

In complying with this duty, you should consider potential for contamination on sites over which you have management or control, for example, investigating any potentially hazardous substances on the land which could cause contamination. This could include understanding the history of the land and whether contamination could have occurred from past activities, and undertaking desktop investigations by looking into the Victoria Unearthed database and previous audits on the land.

If there is evidence of contamination or potential contamination (e.g. leaking tanks or recent spills), there is a duty to investigate, assess and manage the contamination in accordance with the section 39 duty. However, if there is no evidence of contamination, the duty does not require you to investigate the site to see if contamination is present. EPA have confirmed this in forums on the new Act.

Section 40 duty to notify (management or control of land)

The duty to notify only relates to 'prescribed notifiable contaminants' as defined in the Regulations.³⁰ Prescribed notifiable contamination is listed in Part 2.1 of the Regulations and includes soil contamination, asbestos in or on soil, actual or likely contamination of groundwater or surface water (for example, caused by NAPL³¹), vapour intrusion and on-site retention of contaminated soil.

The duty to notify of contaminated land does not apply if the EPA is aware that a notification has already been made in accordance with section 40,³² or if a statement of environmental audit has been issued where there has been no material change in the land since the audit was completed or where a remedial notice is in place.³³ The Regulations state that notifiable contamination is a prescribed exempt notifiable contamination when:

- stockpile of industrial waste at a place or premise authorised to receive industrial waste, other than retention of soil described in regulation 12;
- the contaminated land was served with a notice under s 31A, 31B or 62A of the current Act for land or groundwater contamination

and there has been no material change in the condition after the notice was served or revoked;

- Contamination of land in relation to which a certificate of environmental audit or a statement of environmental audit has been *if no potentially contaminating activities have been carried out on the land after the certificate or statement was issued and there has been no material change in the condition of the land and there are no adverse effects on land adjacent*; or
- Contamination of land arising from a particular water or chemical substance not specified in section 6 of Schedule B1 to the NEPM (ASC) other than contamination arising from asbestos or non-aqueous liquid.³⁴

In complying with the duty to notify you should collect and review all environmental reports and data for each property for which you are in management or control for the purposes of determining whether contamination may need to be notified to the EPA (this may include environmental baseline reports, due diligence reports, monitoring reports, and geotechnical reports which identify contamination).

As this is partly a technical assessment and partly a legal assessment, you may need to engage an environmental consultant and seek legal advice on whether the contamination is 'prescribed notifiable contamination' requiring notification to the EPA in accordance with the Regulations. The EPA has not yet released forms to assist with the duty to notify, but is expected to do so shortly. However EPA has indicated that in the EPA, you will need to explain what steps you are taking in relation to the identified contamination to comply with the section 39 duty to manage.

Chapter 6 Waste duties

Part 6.4 (industrial waste duties), Part 6.5 (priority waste duties)

The waste duties require duty-holders to correctly classify their waste as either industrial waste, priority waste or reportable priority waste. Classification of waste includes determining the relevant waste code or codes, determining whether waste is industrial, priority or reportable priority,³⁵ and if a disposal category applies.

If priority waste, it must be classified under Schedule 6 of the Regulations as Category A, B, C, D, soil containing asbestos only or packaged waste asbestos.

Some of the key duties in relation to industrial waste, priority waste and reportable priority waste are:

- **Industrial Waste:** Under section 133 a person can only deposit industrial waste at a place or premises which is authorised. A person in management or control of a premises must not receive industrial waste unless they are a lawful place or authorised.³⁶ A receiver of industrial waste can be classified a lawful place by a permission (licence, permit or registration), permission exemption, emergency authorisation under section 157, declaration of use, determination or deemed authorisation under regulation 63. Prior to relinquishing management or control of industrial waste, the person must take all reasonable steps to ensure that the industrial waste will be transported to a premise authorised to receive industrial waste.³⁷

28. *Environment Protection Regulations 2021 (Vic)* r 15.

29. Section 39(2); EPA Publication 1915: Contaminated Land Policy, 9.

30. Note that as the regulations define notifiable contamination, the monetary amount of \$50,000 in s 37(b) does not apply.

31. *Environment Protection Regulations 2021 (Vic)* r 15(b).

32. *Environment Protection Amendment Act 2018 (Vic)* s 40(4)(a).

33. EPA Publication 1915: Contaminated Land Policy, 15.

34. *Environment Protection Regulations 2021 (Vic)*, r 13.

35. See *Environment Protection Regulations 2021 (Vic)* Schedule 5.

36. *Environment Protection Amendment Act 2018 (Vic)* s 134.

- **Priority waste:** Deemed to be a higher risk than regular industrial waste and imposes additional obligations, including the duty to classify the priority waste,³⁸ and take reasonable steps to reuse and recycle the priority waste and avoid producing it in the future.³⁹
- **Reportable priority waste:** A person undertaking a prescribed transaction in connection with reportable priority waste must record and notify the transaction to a prescribed person.⁴⁰ Reportable priority waste transportation requires a permission.⁴¹

In complying with these duties, you should consider whether action is required in relation to management of industrial waste in order to minimise risk of harm to human health and the environment. In addition, identify any priority waste or reportable priority waste generated at sites, as outlined in Schedule 5 of the Regulations and ensure you have processes in place to comply with the duties relating to those wastes.

The Act includes offences for failing to properly dispose of industrial waste, manage priority waste, and notify and transport reportable priority waste without permission. If you manage or control priority waste, you must also consider alternatives to waste disposal, such as, reuse, recycling and avoiding production of similar waste. A failure to do so can result in a breach of the applicable waste duty and the GED.

Chapter 4 Permissions

Like the current Act, scheduled activities will require a permission to allow an entity to undertake certain activities. The prescribed permissions activities are listed in Schedule 1 of the Regulations and have increased from 50 under the current 1970 Act to 78 activities under the new Act. There are three tiers of permissions that relate to the level of risk to human health and the environment: licences for high-risk activities, permits for medium-risk activities, and registrations for low-risk activities.

To ensure that your activities comply with the new Act, you should identify any site activities that may require an application for a licence, permit or registration under the new Act, or whether an exemption may be appropriate. If you have not already, it is important to consider whether any of the new permissions apply to your activities now as the process may involve discussions with the EPA.

The Environmental Protection Framework

The duties and obligations under the new Act exist within a framework of sub-ordinate legislation and non-statutory guidance. Broadly, the environmental protection framework will include the Environmental Protection Regulations, Environmental Reference Standards (**ERS**), Ministerial and Governor in Council Orders, Compliance Codes and non-statutory guidance including publications by the EPA and position statements.⁴² The Regulations and ERS were recently finalised and will come into effect when the new Act commences. To date, no orders or compliance codes have been published. The EPA has published an interim position statement on PFAS.⁴³

Regulations and Environment Reference Standards

In December 2020, the Department of Environment, Land, Water and Planning (**DELWP**) and the EPA finalised the Regulations and ERS that support the implementation and interpretation of the new Act. The Regulations provide further detail for duty holders about how to fulfil obligations under the new Act. The Regulations focus on contaminated land, permissions, waste (including the new tiered waste classification system), environmental management, enforcement, fees and the new public register. The ERS creates a benchmark compliance standard and measurable indicators for the assessment and reporting of environmental conditions.

Guidance publications

The EPA has been releasing a large number of guidance documents across different topics and sectors to assist companies in understanding their obligations and duties under the new Act. The most significant recent guidance are in the table in the Annexure to this update.

Next Steps

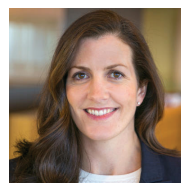
With the commencement of the new Act having been delayed for around 12 months, we expect the EPA will take the view that businesses will have no excuse for not being ready.

The EPA is running a number of webinars on the new legislation (the recordings and papers of these seminars are included on their website).⁴⁴ KWM is preparing a comprehensive guide on the new Act and associated regulations and guidance which we will share with our clients. We continue to run tailored workshops based on individual client needs and intend to run a number of sector-based workshops for clients later in the year after the commencement of the new Act. If you would like to register to receive the guide, arrange an individual workshop or attend one of our future sector workshops, please get in touch.



Mark Beaufoy

Partner | Environment, Planning & Native Title
Melbourne
T +61 3 9643 4111
M +61 409 797 364
mark.beaufoy@au.kwm.com



Bridget Phelan

Special Counsel | Environment, Planning & Native Title
Melbourne
T +61 3 9643 4426
M +61 437 836 125
bridget.phelan@au.kwm.com

37. *Environment Protection Amendment Act 2018 (Vic)* s 135.
38. *Environment Protection Amendment Act 2018 (Vic)* s 139.
39. *Environment Protection Amendment Act 2018 (Vic)* s 140.
40. *Environment Protection Amendment Act 2018 (Vic)* s 142.
41. *Environment Protection Amendment Act 2018 (Vic)* s 143.
42. See *Environment Protection Amendment Act 2018 (Vic)* ch 5.
43. EPA Publication 1669.4: Interim position statement on PFAS.
44. See <https://www.epa.vic.gov.au/about-epa/laws/new-laws>

Annexure – summary of EPA guidance publications

Table 1: Guidance released by the EPA

EPA Publication	Release date
1753.2 Guide to the Environment Protection Regulations (Note final Environment Protection Regulations have been released as of 1 June 2021)	27 May 2021
1978: Transition guidance for environmental auditors	3 June 2021
1884: Site planning and management	9 April 2021
GED	
1741.1: Industry Guidance: Support for GED Compliance	26 October 2020
1851.1: Implementing the general environmental duty: a guide for Licence Holders (which replaces 1851 released March 2020)	26 November 2020
1856: Reasonably practicable	22 September 2020
1976: Guidance for owners & occupiers of land with an OWMS ≤ 5000 litres on any day (including septic tank systems)	21 May 2021
Noise Duties	
1757.2: Summary of noise framework	27 May 2021
1826.4 Noise limit and assessment protocol for control of noise from commercial, industrial and trade premises and entertainment venues (which replaces 1826.3 released March 2021)	17 March 2021
1757.2 Summary of proposed noise framework	27 May 2021
1254.2: Noise control guidelines	20 May 2021
Waste Duties	
1756.2 Summary of proposed waste framework (replaces 1756.1 released in December 2020)	27 May 2020
1825: Waste and recycling – guide to preventing harm to people and the environment	2 October 2020
1827.2 Waste classification assessment protocol (which replaces the draft version published September 2019 on the Engage Victoria website)	17 March 2021
1828.2 Waste disposal categories – characteristics and thresholds (which replaces the draft version published September 2019 on the Engage Victoria website)	17 March 2021
1927: Regulating litter and other waste: toolkit	17 December 2020
1946: How to establish lawful place	30 March 2020
1753.1: Guide to the proposed final Environment Protection Regulations (final version to be released following final Environment Protection Regulations but to date EPA has not published an update)	16 December 2020
1967.1: Waste code transition to Environment Protection Regulations 2021	4 May 2021
1941.1: Accredited consigner application guidance	3 June 2021
1968: Guide to classifying industrial waste	22 April 2021
Contamination Duties	
1915 Contaminated land policy	22 February 2021
1940 Contaminated land: understanding s 35 of the Environment Protection Act 2017	22 February 2021
Permissions	
1850.1: Guidance for Operating Licences (which replaces 1850 released March 2020)	26 November 2020
Notices	
1418.5: Remedial notices policy	3 May 2021
1531.4: Remedial notice review policy (which replaces 1531.3 released May 2021)	12 May 2021
Industry Guidance	
1819 Agriculture – guide to preventing harm to people and the environment	2 October 2020
1820 Construction – guide to preventing harm to people and the environment	2 October 2020
1822 Manufacturing – guide to preventing harm to people and the environment	2 October 2020
1823 Mining and quarrying – guide to preventing harm to people and the environment	2 October 2020