



EPA  
VICTORIA

# Permissions scheme policy

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*EPA acknowledges Aboriginal people as the first peoples and Traditional custodians of the land and water on which we live, work and depend. We pay respect to Aboriginal Elders, past and present. As Victoria's environmental regulator, we pay respect to how Country has been protected and cared for by Aboriginal people over many tens of thousands of years. We acknowledge the unique spiritual and cultural significance of land, water and all that is in the environment to Traditional Owners, and recognise their continuing connection to, and aspirations for Country.*

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# 1. Purpose

Environment Protection Authority Victoria (EPA) is Victoria's environmental regulator.

As an independent statutory authority under the *Environment Protection Act 2017* (EP Act), our regulatory role is to prevent and reduce harm from pollution and waste.

The EP Act and Environment Protection Regulations 2021 (the Regulations) come into effect on 1 July 2021. They introduce a range of significant changes to environmental protection, including a range of new tools we call permissions.

As well as licences, there are two additional levels of permissions under the EP Act – permits and registrations. This new approach is risk-based and flexible, making it easier for businesses to meet their environmental obligations.

EPA's Permissions Scheme Policy sets out our approach to implementing the new permissions scheme. It also aims to provide clarity on how we will exercise our regulatory powers and be held to account for our decisions.

More specifically, this policy:

- › sets the context for permissions within the new legislative framework and the roles of the permission tiers
- › outlines at a high level the factors we will consider in assessing permissions
- › highlights the interactions between the permissions scheme and the regulatory framework for the management of waste.

The Permissions Scheme Policy complements other key policies, including our *Compliance and Enforcement Policy* (publication 1798) and *Charter of Consultation* (publication 1928). Together, these policies and associated guidelines set the platform for the implementation and delivery of the new EP Act.

## **What are permissions?**

*Licences, permits and registrations (known collectively as 'permissions') issued by EPA give permission, or allow an entity to undertake a particular activity. They also help to set performance standards under the general environmental duty (GED). The GED is an important part of Victoria's environment protection laws which take effect on 1 July 2021 and requires anyone conducting an activity that poses a risk to human health and the environment to understand and minimise those risks.*

*The requirement to hold a permission before undertaking a prescribed activity, and the conditions that EPA attaches, are designed to ensure that environment protection standards are met in a cost-effective manner, and that the aspects of the environment that Victorians value are protected.*

*EPA permissions are supported by guidance and compliance monitoring to encourage higher performance and investment in preventative measures.*

*EPA take a no tolerance approach to non-compliance and proportionate regulatory action against those who fail to meet their obligations.*

## 2. Our approach

The EP Act and Regulations provide a framework for protecting human health and the environment from the harmful effects of pollution and waste.

The cornerstone of the EP Act's focus on preventing harm is the general environmental duty (GED). The GED requires anyone conducting activities that pose risks of harm to human health or the environment from pollution or waste to understand those risks and take reasonably practicable steps to minimise them.

EPA uses a range of activities to hold duty holders accountable for these responsibilities and other obligations under the EP Act, including:

- › supporting people to understand, own and address their impacts on human health and the environment
- › working with others to address complex pollution and waste problems
- › taking a no tolerance approach to non-compliance and proportionate regulatory action against those who fail to meet their obligations
- › reviewing and refining our focus and approach based on risk, evidence and impact

When we use our regulatory tools, we ensure that they are focused on the problem and desired outcome.

This approach uses a mix of encouragement and deterrence to motivate action, deliver improved outcomes, and involves several key elements; inform and educate, set standards, support to comply, monitor compliance, enforce the law and encourage higher performance (see Figure 1).

### **Who is a duty holder?**

*From government to business to community, all Victorians have duties and obligations under the EP Act.*

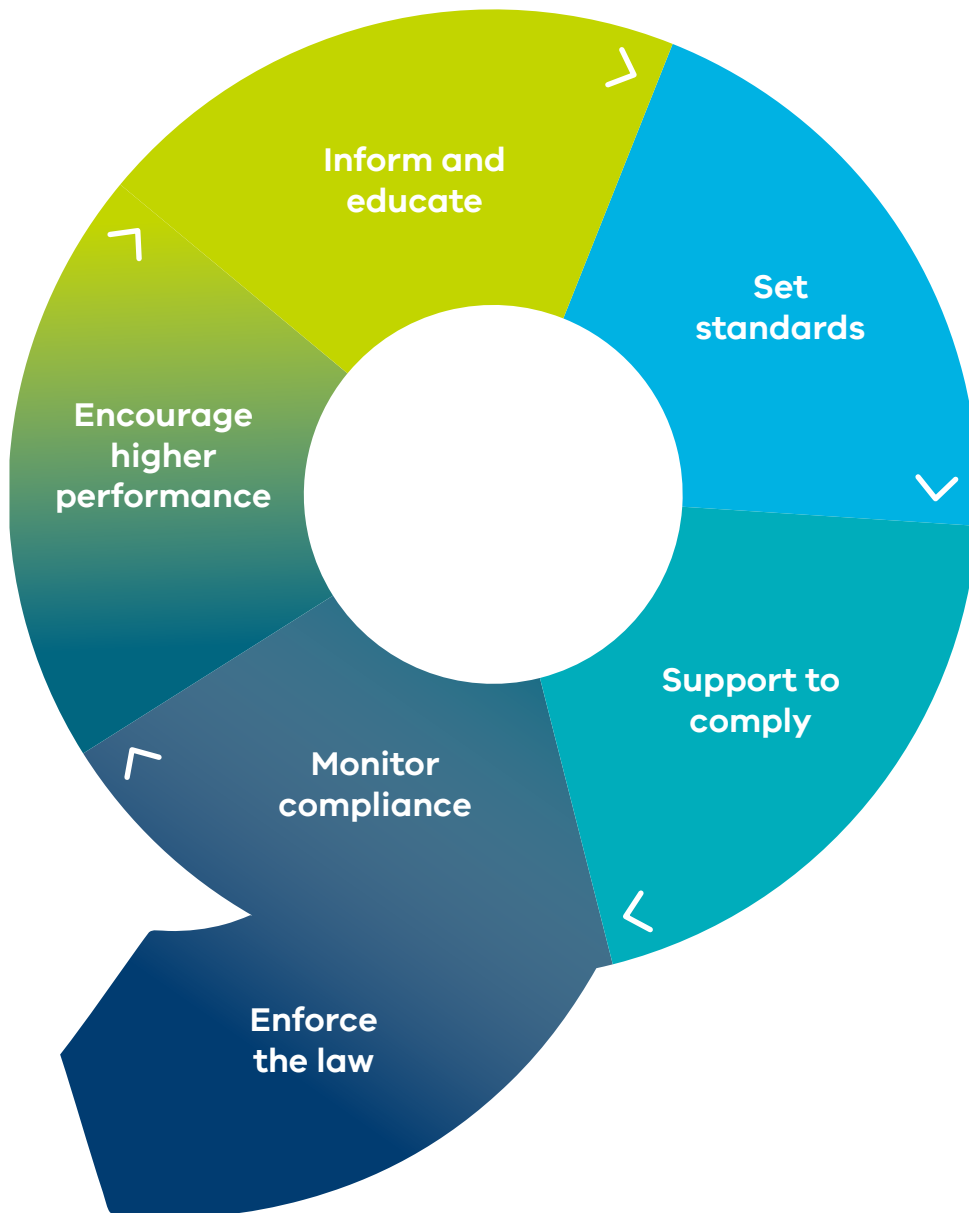
*Anyone who holds a duty under the EP Act may be subject to inspections by EPA authorised officers, in accordance with their powers under the Act. EPA may take action even if harm has not yet occurred, and responsibility for preventing harm rests with anyone in management or control of the activity that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

*The Act also includes additional powers that allow EPA to hold individual directors to account for the duties their company holds.*

*The duties under the EP Act may apply to:*

- *employers*
- *contractors*
- *company officers*
- *other persons who manage or control the activity*
- *persons who manage or control land*
- *designers, manufactures, suppliers or installers of plant or equipment*
- *individuals whose activities create a risk of harm.*

Figure 1 EPA's regulatory activities



**Encourage higher performance:**

*Work with leaders and partners to encourage higher performance, to raise industry practices and inform future standards.*

**Inform and educate:**

*Raise awareness of environmental duties of care, the human health and environmental risks and impacts of activities, environmental quality, and EPA's role and jurisdiction.*

**Set standards:**

*Set clear and authoritative health and environmental standards based on strong science, understanding of community aspirations and industry best practices.*

**Support to comply:**

*Provide advice, guidance and build partnerships to ensure duty holders know what compliance is and improve their capability in identifying and managing their risks.*

**Monitor compliance:**

*Determine the level of compliance with duties and standards and maintain a credible risk of detecting non-compliance.*

**Enforce the law:**

*Address non-compliance with the law by requiring parties to remedy non-compliance, seek redress for any harms, and where appropriate, pursuing a penalty or punishment.*

# 3. An overview of the permissions scheme

Industrial activities are a driver of Victoria’s economic prosperity but can pose a significant risk to human health and the environment when they are not effectively managed. A comparatively small number of industrial activities account for a considerable share of Victoria’s atmospheric emissions, as well as emissions to land and water. Such emissions can also have potentially significant impacts on community health and wellbeing (e.g. from noise and odour).

The EP Act introduces a new duties-based framework to target the risks of harm from pollution and waste in a more preventative manner, so that harms to human health and the environment are minimised.

The permissions scheme is an important part of EPA’s broader approach to setting performance standards, such as conditions, and supporting and monitoring compliance. The permissions scheme in the new EP Act complements and supports the GED and waste duties by providing greater assurance that key risks are being effectively managed. It does this by prohibiting persons from engaging in specified activities without the appropriate permission and setting standards and customised conditions, including reporting requirements for permission holders.

As these restrictions have the potential to cause additional burden on businesses and industry, permissions are limited to circumstances where there is a need for additional control on the basis of risk. This includes the need for:

- > greater certainty for EPA and community in the management and control of risks where the risks and consequences of harm to human health and the environment are the greatest, and when additional confidence in the management of risks is required
- > improved targeting of risks of non-compliance in sectors that attract criminal activity or are vulnerable to strong financial drivers to not comply with the law
- > certainty for business in regard to compliance, as well as monitoring and reporting requirements
- > enabling the regulatory framework for the management of waste through a simple and reliable means of providing authority to receive industrial waste.

**Likelihood:** considers the posture of regulated entities including (a) the track record of the business — past incidents, inspections, enforcement and pollution reports; (b) the systems and controls an activity may have in place to identify and manage risk; (c) competence of the business and its operators; and (d) the level of resources the business dedicates to environmental management, compliance and maintenance.

**Consequence:** considers the actual or potential impacts on human health (including psychological health) and environment (including amenity). It also considers the scale and duration of any harm or impact, the impact to the integrity of the regulatory regime, and the level of public concern.

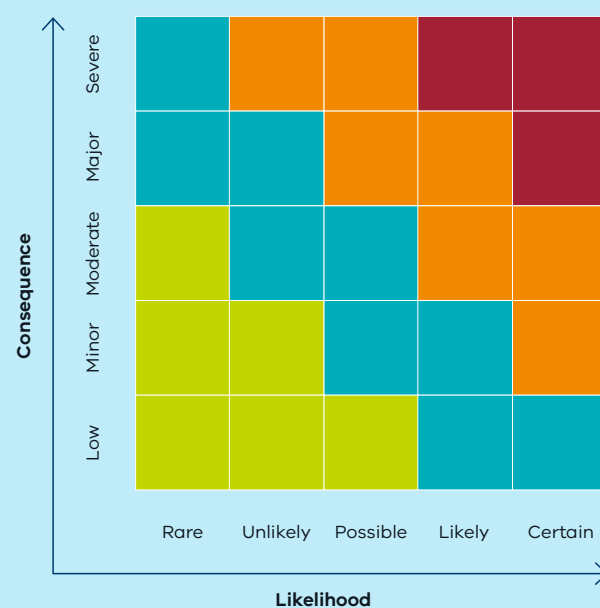


Figure 2 Model for risk-based prioritisation

# 4. Permissioning tools

The permissions scheme reinforces the GED and the prevention of harm through the control of who can conduct prescribed activities and participate in aspects of the waste industry, and the application of specific conditions for the conduct of prescribed activities.

The permissions scheme allows a risk-based and proportionate control of activities that present a significant risk to human health and the environment. Over time, the scheme will evolve along with the overall legislative framework, further utilising risk-based mechanisms to incentivise and sustain high performance.

The EP Act creates three broad tiers of permissions, consisting of licences, permits and registrations (see Figure 3).

The Environment Protection Regulations 2021 (the Regulations) specify which tier of permission is required for each activity specified in the regulations. The Regulations also set out those activities that will be required to provide a financial assurance as a condition of an EPA permission. A financial assurance is used to provide a security for the costs and expenses of remediation or clean up activities.

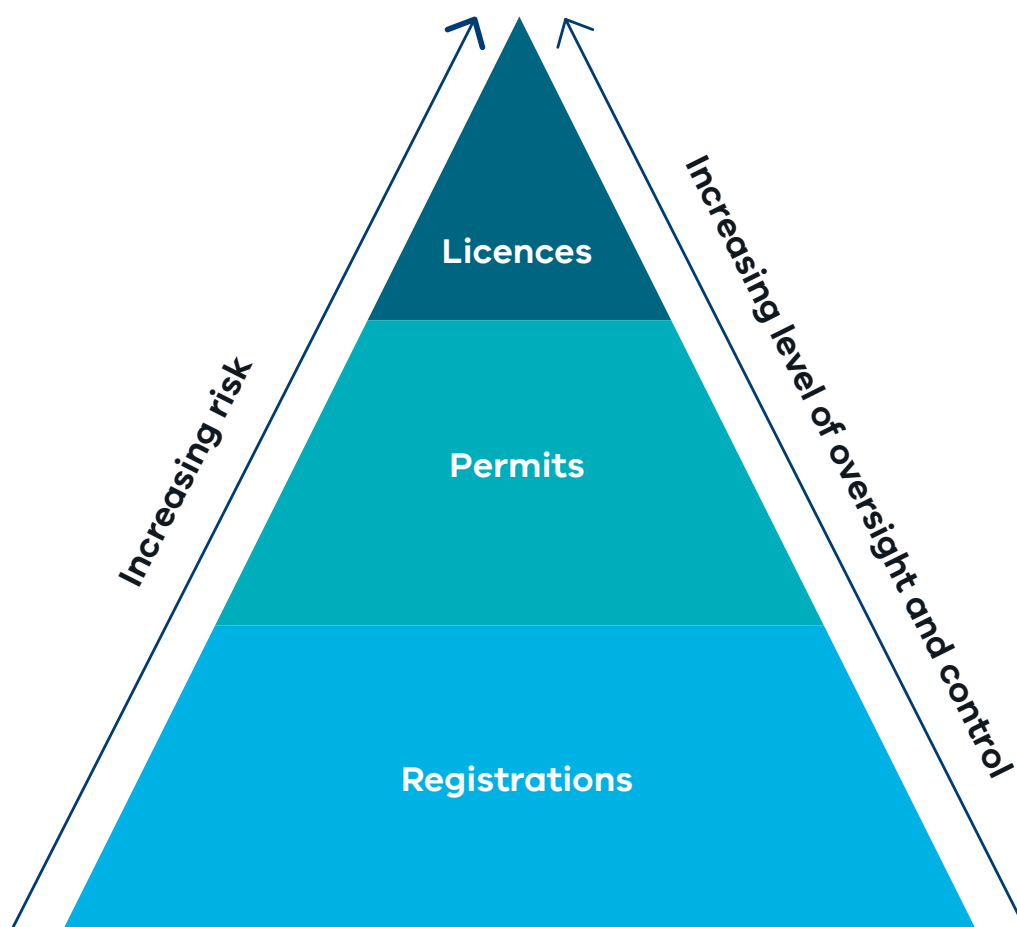


Figure 3 Tiers of the Permissions Scheme

## **Permission conditions**

*The setting of conditions in a permission for the conduct of prescribed activities supports and enhances the operation of the GED.*

*Permission conditions set minimum standards of performance under the GED, restrict certain actions or activities, or specify environmental outcomes for an activity to meet.*

*Most conditions are applied generally across a type of permission, or to a class of activity. In the case of licences, EPA may also develop customised site-specific conditions for complex sites associated with the particular licensed activity.*

*EPA will apply conditions in a targeted way. This means that where a risk is commonplace and an industry's state of knowledge is well developed (including general guidance or compliance codes), permission conditions will not directly address that risk.*

*EPA may apply a standard condition where it is necessary to establish a common standard of performance across an industry sector or for a given risk, such as where there is a history of non-compliances in that industry. Any risk-specific conditions are generally limited to the primary risk that is the basis for requiring a permission.*

*EPA will carefully consider the level of prescription and specificity of any conditions, to best balance the need to provide certainty about compliance expectations, with the continuous improvement expectations of the GED.*

## **4.1 Licences**

Licences are a category of permission that address complex activities that justify the highest level of regulatory control due to the significant risk of harm to human health and the environment or a high potential for mismanagement. Decisions on licence applications will involve a detailed assessment and a licence that is granted will include customised conditions and undergo ongoing oversight by EPA.

### **4.1.1 Pilot Project Licence**

A Pilot Project Licence (PPL) supports the research, development or demonstration of a novel technology or technique.

The standard assessment timeframe of PPL applications is 22 business days. The maximum duration for a PPL is five years. Following successful demonstration of the pilot, an applicant may seek a Development Licence (or occasionally an Operating Licence or Permit), for the next stage in the lifecycle of the activity.

### **4.1.2 Development Licence**

A Development Licence (DL) covers the design, construction and modification stages of complex, high-risk activities. The process allows EPA to make a science and evidence-based assessment of the design, seek the views of the community and interested stakeholders, and drive innovation and better practice. This is an important tool in preventing harm as it supports the proponent to more effectively seek options to mitigate risks and allows EPA to influence the design of works or a facility, including operating and management capability, before it is built.

DLs will lead to an Operating Licence or Permit where specified in the Regulations, and once the development activity has been completed, to enable the operational stage of the activity.

The statutory EPA assessment time of DL applications is up to four months. These licences can contain conditions specifically for the commissioning of the plant or equipment. DLs are subject to expiry dates which will be specified within the licence. DLs are subject to a public notification and consultation process set out in the EP Act and the *Charter of Consultation*.

### **4.1.3 Operating Licence**

An Operating Licence (OL) is required for certain ongoing operational activities. These licences follow directly from a DL where specified in the Regulations to enable the activity to operate. Customised conditions in an OL consider the site-specific risks of the activity and may cover the decommissioning stage of an activity.



If the duty holder has previously successfully completed its works in accordance with a DL, the assessment of an OL application will take up to 15 business days. A new application will take up to 42 business days.

These licences can, with the exception of landfill activities, be issued for up to a maximum of 20 years, after which time a new licence must be sought to lawfully continue the activity. Any landfill OL can be subject to a term of up to 99 years.

All OLs will be subject to a mandatory review approximately every five years to assess the performance of the duty holder and identify opportunities for improvement. Following each review, an assessment will be made as to whether a licence should be amended to reflect changes, such as to the Environment Reference Standard<sup>1</sup>, advances in reasonably practicable risk controls, and performance improvements across the sector.

## 4.2 Permits

Permits apply to activities that are of moderate risk or high risk with low complexity and are not adequately addressed through the GED alone. The conditions of a permit can also provide additional direction and clarity for duty holders on risk management using a lower-burden instrument than licensing.

Application for permits are subject to a standardised assessment process by EPA, and an approved permit will contain conditions that are largely standard across an industry sector. These conditions may be varied where greater risk controls are needed on the basis of cumulative impact or local environmental sensitivity. Permits will be assessed within 15 or 42 business days, as specified in the Regulations. A permit can be issued for a maximum of five years, with the option to renew the permission before it expires.

## 4.3 Registrations

Registrations are a simple mechanism that are automatically granted upon application and may include standard conditions for the relevant activity. They are suited to activities that pose moderate to low risks and in instances where applying standard controls across a sector may raise the standard of compliance and minimise risks to human health and the environment (including as a precautionary approach to the management of emerging risks).

A registration can be revoked like any other permission if EPA is not satisfied with the registration holder's standard of conduct.

Registrations are also an efficient and clear means of providing authorisation to receive industrial waste as required by the EP Act. A registration can enable other duty holders in the chain of waste custody (i.e. producers and transporters) to easily discharge their duty to take waste to a place which is authorised to receive it.

By registering to perform an activity, and accepting any conditions attached to the registration, the duty holder agrees to meet the minimum requirements for undertaking that activity, including implementing any applicable practices or controls. Conditions of a registration could also include a requirement to notify or report to EPA in certain circumstances (e.g. if approaching a specific threshold).

Registrations can be in force for a maximum of five years, after which the duty holder has the option to renew the permission.

<sup>1</sup> The Environment Reference Standard sets out the uses of the environment that Victorians value and indicators and objectives needed to support them.

## 4.4 Other approval tools

### 4.4.1 Exemptions

The EP Act sets out circumstances in which upon application, EPA may grant an exemption from the requirement to hold a permission. We may also decide that a person is not required to hold a permission despite undertaking a prescribed activity specified in the Regulations.

These powers enable us to ensure that the requirement to hold a permission is proportionate to the risk of the activity. For example, exemptions and determinations may be granted where an activity in certain contexts poses a low risk to human health and the environment or where the requirement to hold a permission would be unfairly burdensome.

The granting of an exemption and making of a determination may be subject to conditions or specific requirements which must be met by the duty holder. If these conditions are not complied with, the exemption or determination will not be considered valid or applicable and the duty holder may face penalties for conducting an activity without the required permission.

### 4.4.2 Authorisation of discharges or disposal

EPA has some limited power to authorise a temporary controlled discharge or disposal of waste in circumstances that would otherwise constitute a contravention of the EP Act. The EP Act prevents us from authorising a discharge or disposal in circumstances that would have significant adverse effects on human health or the environment. Further, we can only issue an authorisation for the purposes of:

- > meeting a temporary emergency; or
- > providing for the temporary relief of a public nuisance or community hardship; or
- > enabling the commissioning, repair, decommissioning or dismantling of any item of plant or equipment.

We anticipate that the use of these powers will be infrequent, and that applicants may need to consider seeking approval through existing permissions.

# 5. Assessment of permissions applications

Following receipt of an application for a permission, EPA will determine whether the application satisfies the requirements to qualify for a permission. Initially, we determine whether the application has been made correctly and contains all the necessary information to enable an assessment against the specific requirements set out in the EP Act and Regulations. The assessment of an application requires consideration of several factors depending on the type of permission being assessed, including:

- **GED and other duties of the EP Act** – how the applicant will comply with the GED and other duties under the EP Act, and what measures have been taken, or are proposed, to ensure compliance.
- **Protecting environmental values and risks to human health** – The degree to which the activity may impact environmental values<sup>2</sup> for each segment of the environment as identified in the Environment Reference Standards. We need to ensure that the activity does not pose an unacceptable risk of harm to human health or the environment, including potential cumulative impacts on pre-existing human health and environmental issues.
- **Principles of environmental protection** – In applying these principles, EPA focuses on achieving efficient and practicable outcomes that are in proportion to the significance of the risk of harm to human health and the environment. These principles are relevant to some extent to all applications (as per section 11(2) of the EP Act) and we must be considered in our assessment of permissions. However, the direct relevance of each principle depends on the issues arising in a proposal with none of the principles being treated as absolute or totally dominant in any given situation. The principles are commonly applied in an integrated fashion and may moderate and balance each other in the overall assessment process.
- **Best available technology and techniques** – the state of knowledge of best available technology and techniques (BATT) for a specific risk and the degree to which they are being used in an activity.
- **Stakeholder engagement** – the level of stakeholder engagement undertaken by the applicant to ensure the views and interests of the community and interested parties have been incorporated into the proposal.
- **Fit and proper person** – whether the applicant is deemed as a fit and proper person to undertake the activity. EPA has the power to refuse a person or body corporate from holding a permission based on our assessment of whether or not they are fit to hold the permission.

Consideration of these factors may result in an application being refused or inform the content of any conditions.

<sup>2</sup> Previously referred to as “beneficial uses” in State environment protection policies.

# 6 Ensuring compliance with permissions

Following the granting of a permission or exemption, EPA will monitor the compliance of activities through a variety of approaches to ensure compliance with legislative requirements. Compliance monitoring and site inspections are important to protect the integrity of the environmental protection scheme and to lift the performance across sectors over time.

## 6.1 Permission conditions

As the permissions scheme supports the operation of the GED, conditions of a permission will complement a permission holder's compliance with the GED and reinforce the state of knowledge around the management of risks of harm.

Conditions in a permission will focus on the key risks of the permissioned activity and may not be exhaustive of all measures that the holder needs to take to discharge their GED. Therefore, a permission may include conditions that address only a subset of the risks that a duty holder may need to manage under the GED, with guidance and good industry practices providing state of knowledge about how other risks should be managed.

Where compliance with a permission condition addresses a particular risk of harm, and the holder of the permission complies with that condition, they will be taken to have performed a duty or satisfied an obligation.

In some circumstances, including where the combined impact of multiple activities results in risks of a cumulative nature, EPA may raise the performance standards beyond the level of the GED by specifically requiring the use of best available techniques and technology.

Permissions may also include conditions that require administrative and management actions, such as:

- > consultation with the local community
- > reporting back to EPA on compliance with the conditions of a permission, or provide data on emissions to EPA and the community

- > pollution incident planning
- > provision of financial assurance in favour of the cost of remediating a site.

## 6.2 Performance statements

Performance statements are a way for permission holders to periodically demonstrate compliance and report their performance to EPA and the community. Such periodic statements will be a requirement for operating licences and relevant permitted activities to support ongoing engagement between permission holders and EPA regarding their performance and actions to manage risks and keep up to date with industry best practice.

The information in performance statements also helps EPA to analyse patterns and trends in risk controls and failures. This is used to target future compliance assessments, capacity building initiatives and periodically review the effectiveness of the permissions scheme.

Performance statements, record keeping and additional reporting requirements that may be specified in any permission operate in addition to duties under the EP Act to notify of pollution incidents and significant contamination issues.

## 6.3 Enforcement of permissions

All permission holders will be expected to know their legal obligations, operational risks and have the appropriate risk management controls in place. Non-compliance with the EP Act or a condition of a permission, will be enforced in line with EPA's *Compliance and enforcement Policy (publication 1798)*.

The EP Act provides for a range of enforcement measures including the power to suspend or revoke a permission. This has the effect of temporarily or permanently removing the right of the duty holder to operate the associated activity.

A permission may be suspended on the basis of non-compliance with the EP Act or Regulations, in addition to a breach of permission conditions.

# 7. Accountability in decision-making

Consistent with the principle of accountability in the EP Act, EPA believes that the public should have access to reliable information that supports a good understanding of the condition of the environment, risks of harms, and of how decisions are made in relation to environmental protection. This principle includes providing opportunities to be engaged in decision-making and have their interests taken into consideration.

Enabling consultation is vital in connecting EPA decision making, permission applications, environmental protection standards and the interests and concerns of Victorians. The engagement pathways for a permission application will depend on the type of permission, the level of public interest, and the nature of any risk of harm to human health and the environment. The *Charter of Consultation* sets out the commitments EPA makes to engagement during the assessment and administration of permissions.

All permissions granted by EPA will be made available on our website as part of the public register. Most of our permission decisions are also reviewable before the Victorian Civil and Administrative Tribunal (VCAT), giving the applicant or holder of the permission the opportunity to ask for an independent review of an EPA decision within 15 business days of the decision coming to the applicant's notice.

The issue of a development licence and the removal of the suspension of an operating licence are also reviewable by third parties whose interests are affected by the decision, which may include community members, under specific grounds laid out in section 434(3) of the EP Act.