



EPA
VICTORIA

Remedial powers 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 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 role is to prevent and reduce harm from pollution and waste. We do this in several ways:

- > working with the community, industry, business and governments to prevent and reduce the harmful impacts of pollution and waste on Victoria's environment and people
- > taking proportionate regulatory action against those who fail to meet their obligations
- > supporting all Victorians to understand their obligations under the law
- > providing clear advice on the state of our environment so that people can make informed decisions about their health.

This policy explains how EPA and its authorised officers (AOs) will use the remedial powers provided in the EP Act. This policy should be read together with the following EPA documents:

- > *Compliance and enforcement policy*
- > *Inspection and inquiry powers guide*
- > *Sanction powers policy*
- > *Remedial notice review policy.*

1.1 Purpose of remedial powers

The EP Act provides EPA with wide discretion to deal with non-compliance and risks of harm to human health and the environment. Statutory remedial notices, orders and directions are legal directives to conduct works, stop activities, or carry out investigations. They give EPA the power to intervene earlier and more effectively to prevent harm.

Remedial notices are used to compel the recipient to comply with the actions outlined by EPA. They ensure that there is a formal record that EPA has required action to remedy a risk or prevent harm, and that duty holders are treated consistently. They hold notice recipients to a timeframe to comply with requirements.

EPA may use remedial powers to:

- › bring a person back into compliance with the law
- › set out the steps a person must take to deal with likely or actual harm
- › manage waste that has been unlawfully dealt with
- › remediate contaminated land.

EPA may use multiple remedial tools together or at the same time, especially where multiple risks, non-compliances or issues have been identified.

Remedial tools may be used in parallel with sanctions to deal with non-compliance where appropriate. EPA takes failure to comply with remedial tools seriously and may take sanction action such as issuing an infringement notice, a civil penalty proceeding, or a criminal prosecution to deal with non-compliance (refer to EPA's *Sanction powers policy*).

'Enforcement' is the use of influence, authority and statutory options in the EP Act to achieve or compel compliance.

'Remedy' is part of enforcement, and is defined as fixing a problem or 'making good'.

Remedial powers include the power to issue:

- › ***compliance advice***
- › ***statutory remedial notices***
- › ***orders***
- › ***directions***

2. EPA's remedial response

2.1 How and why are remedial powers used?

The first goal of remedy is to stop non-compliance with the law and prevent further harm. Remedial tools enable EPA to do this, for example by an AO issuing a prohibition notice or direction. EPA may require remedial action to address an activity that has not yet caused harm to human health or the environment, but is likely to do so.

Remedies aim to:

- › be responsive and stop non-compliance with the law, fix the problem, or 'make good'
- › prevent likely non-compliance by controlling risks and preventing future harm
- › be proportionate to the nature of the non-compliance or risk and require actions that are reasonably practicable
- › be focused on the outcome needed, and support the recipient to address the non-compliance or likely non-compliance.

Remedial powers are used by delegates of EPA, AOs and litter enforcement officers (LEOs) to enforce the EP Act. They can use remedial powers based on their reasonable belief, judgement, and an informed assessment of compliance. Their belief can be informed by the 'state of knowledge', which is what the duty holder knows or ought to have known about preventing the non-compliance, for example drawing on industry standards.

The actions an AO requires through a remedial tool are proportionate to what the duties would require – the duty holder will not be required to go beyond what would be considered reasonably practicable to minimise the risk of harm to human health and the environment.

AOs may use remedial powers during an inspection or at a later time. All remedial tools come into effect immediately. Some may require the duty holder to act immediately, such as directions and prohibition notices.

EPA will reflect the community's expectation and the EP Act principle that the polluter should pay the cost of cleaning up pollution they have caused, and be responsible for restoring the environment. The cost of clean up and restoration are not factors that are taken into consideration when EPA determines whether to pursue action towards a sanction or other punishment. EPA's sanction and remedial response options are shown in Figure 1.

EPA will revoke remedial notices once compliance with the requirements has been achieved, and the notice recipient will be notified by EPA in writing.



Relevant legislation
EP Act, section 6 'The concept of minimising risks of harm to human health and the environment'

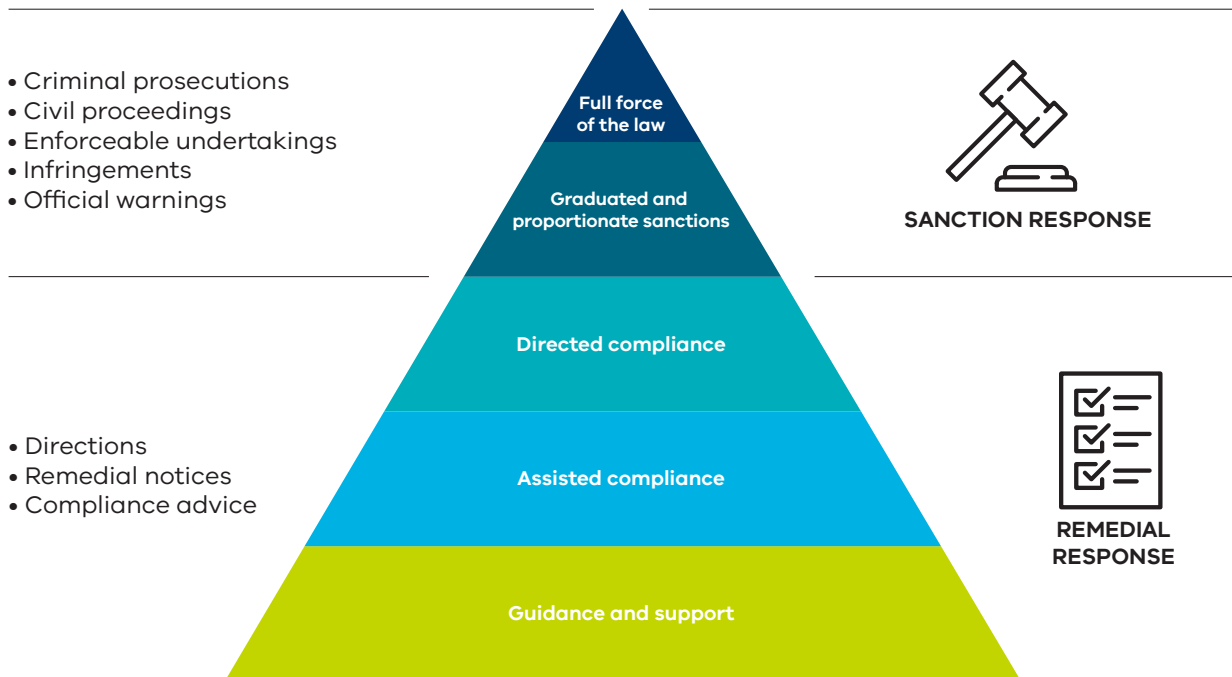


Figure 1 Sanction and remedial responses

2.2 What is the structure of a remedial notice?

The format of a remedial notice is designed to explain how to achieve a specific compliance outcome. A notice will usually include details of the:

- > notice recipient
- > clear legal grounds on which the notice has been issued
- > actions required
- > timeframes that must be met
- > any additional support materials (including examples of how to achieve compliance, industry standards, or relevant guidelines)
- > penalties for non-compliance with the notice
- > options to review a notice or to apply for an extension of time.

Remedial tools take effect immediately and EPA will expect compliance with the requirements, unless a decision is made to amend, stay or revoke the tool.

2.3 Who can remedial powers be applied to?

Remedial powers are exercised over duty holders to bring them into compliance or set out steps to deal with actual harm, waste or contamination.

From government to business to community, all Victorians have duties and obligations under the EP Act. Duties apply to a person engaging in an activity, including a person who is conducting, undertaking, managing, or in control of that activity. The general environmental duty (GED) requires anyone conducting an activity that poses risks of harm to human health and the environment to understand and minimise those risks.

This duty also applies to the design, manufacture, installation, or supply of a substance, plant, equipment, or structure. This means that those involved in those upstream activities must minimise the risks of harm to human health and the environment from pollution or waste that may arise from their design, manufacture, installation, or supply.

A single duty holder can have several duties arising out of the same activity, and multiple duty holders can have a duty in relation to a single activity in which they are participating. Where duties are shared between several persons with a different degree or level of management or control over the one activity (for example owner, operator etc.), then what is reasonably practicable to minimise risks associated with that activity may differ for each person. This means that EPA may issue multiple notices to multiple duty holders in relation to one non-compliance or one instance of harm to human health or the environment.

The EP Act allows EPA to issue a notice to a range of people, including a person engaging in an activity, a person in management or control of land, a current owner or occupier or a person who occupied a site when pollution occurred. A person who incurs costs when complying with a remedial notice issued to them by EPA regarding contaminated land may be entitled to recover their reasonable costs from any person responsible for causing or contributing to contamination of the land – for more information see section 4.

If you have received a remedial notice or order and someone else plans to become the occupier of your premises, you must inform them of the notice or order, provide them with a copy, as well as details of your progress towards compliance.



Relevant legislation
EP Act, section 280
'Notification of notices'

2.3.1 Redirection of obligations in some circumstances

EPA can, in some circumstances, redirect environmental action notices and site management orders issued to a company (that has failed to comply, or is being wound up) to another party (such as the officers of that company).



Relevant legislation
EP Act, part 10.7
'Redirection of corporate obligations'

Failure to comply with a remedial notice can also lead to EPA taking sanction action.

For more information about who EPA may take sanction action against, refer to EPA's *Sanction powers policy*.

3. Types of remedial powers

EPA's remedial powers and tools are explored in more detail in table 1 below.

Table 1: Overview of EPA's remedial tools

Remedial tool	Key features
<p>Compliance advice (EP Act, section 359)</p>	<p><i>What is it?</i></p> <p>Compliance advice is provided by EPA to give duty holders an opportunity to proactively manage their risks, and address issues in a timely and effective way. This advice will typically be given by AOs, or delegates of EPA.</p> <p>Compliance advice can include information about how to comply with the law, interpret standards and, where necessary, support on how to remedy a non-compliance. However, if the non-compliance or risks are significant enough then EPA may formalise the duty holder's obligations in a remedial notice.</p> <p>EPA recognises that use of advice helps to raise awareness, influence behaviour, promote good performance, and build constructive relationships.</p> <p>Where EPA or an AO gives compliance advice, it does not create any liability for EPA. The advice cannot extend a person's obligations or confer expectations on a person beyond what is imposed or conferred by the Act. The advice does not create any defence that would not otherwise be available to the person receiving the advice.</p> <p>The provision of advice is intended to increase the recipient's awareness and understanding of their obligations, and to support improvements in their level of compliance. It remains the responsibility of the person receiving advice from EPA or an AO to determine the relevance of such advice to their circumstances and how best to use that information.</p> <p><i>Who can it be given to?</i></p> <p>EPA can give compliance advice to any person who has a duty or obligation under the EP Act about complying with the duty or obligation.</p> <p>EPA officers will record the compliance advice, for example in an entry report. This will contribute to the duty holder's compliance history, as well as forming part of the 'state of knowledge' for that duty holder.</p>
<p>Improvement notice (EP Act, section 271)</p>	<p><i>What is it?</i></p> <p>Improvement notices are EPA's primary tool for compelling compliance with the duties of the EP Act. They can be used to require a duty holder to take any action that an AO reasonably considers necessary to remedy non-compliance.</p> <p>Improvement notices are issued when there has been a contravention of the EP Act (including the general environmental duty), Regulations, or a permission such as a licence. They can also be issued when there is an activity that is causing or likely to cause a risk to human health or the environment from pollution or waste.</p> <p>This means that an improvement notice does not require harm to have occurred. AOs may issue improvement notices during an inspection, for example to proactively address a risk at the time that a risk arises, requiring the recipient to take action to make their activities compliant.</p> <p><i>Who can it be issued to?</i></p> <p>An improvement notice can be issued to a duty holder to bring them into compliance with the general environmental duty and the other duties in the EP Act. It can also be issued to a person who has not complied with a permission they hold, or a duty holder conducting an activity that creates a risk of harm.</p>

Remedial tool	Key features
Prohibition notice (EP Act, section 272)	<p><i>What is it?</i></p> <p>Prohibition notices can be used as a timely intervention when an activity must be stopped to prevent or minimise an immediate risk of harm to human health or the environment. A prohibition notice may also require a person to do other things the AO considers necessary to prevent or minimise harm.</p> <p>These notices are issued by AOs only when the immediacy of the risk and degree of harm warrants immediately prohibiting a person from engaging in an activity. The prohibition comes into immediate effect.</p> <p><i>Who can it be issued to?</i></p> <p>In most cases, prohibition notices will be issued on the person that is conducting the relevant activity.</p>
Notice to investigate (EP Act, section 273)	<p><i>What is it?</i></p> <p>A notice to investigate can be used to investigate potential contamination or harm, to determine whether further remedial action needs to be undertaken. It can require the recipient to investigate whether:</p> <ul style="list-style-type: none"> › land is or may be contaminated › a pollution incident has occurred › industrial waste is at a place or premises unlawfully › there is a risk of harm to human health or the environment arising from pollution or the depositing, storing or handling of waste. <p>The notice can require the recipient to find out about the type of contamination or harm that is present, as well as the extent or scale. EPA may require specific information or a report back on the findings.</p> <p>A notice to investigate does not require remedial or restorative action to be undertaken, however if problems are identified, it may result in EPA issuing a notice compelling further action (or the person initiating voluntary remedial action).</p> <p><i>Who can it be issued to?</i></p> <p>A notice to investigate can be issued to the person who permitted the circumstances which triggered the need for the notice (for example was responsible for a pollution incident). It can also be issued to the current owner or a past owner of the land, or the current or a past occupier of the land.</p>

Remedial tool	Key features
Environmental action notice (EP Act, section 274)	<p><i>What is it?</i></p> <p>Environmental action notices can be used to address the impact of pollution, waste and contamination when:</p> <ul style="list-style-type: none"> › land is or may be contaminated › a pollution incident has occurred › industrial waste is at a place or premises unlawfully › there is a risk of harm to human health or the environment arising from pollution or the depositing, storing or handling of waste › a notice to investigate has not been complied with. <p>An environmental action notice may require a person to take action to clean up contamination, including active or passive remediation measures, or a mixture of both.</p> <p>To address issues relating to industrial waste they can require the recipient to stop accepting waste, reduce waste stockpiles, remove waste and take it to a place where it can be lawfully accepted.</p> <p>If an environmental action notice is issued in the circumstances of a person's failure to comply with a notice to investigate, it can require them to do any of the things specified in the notice to investigate that have not been done.</p> <p><i>Who can it be issued to?</i></p> <p>An environmental action notice can be issued to the person who permitted the circumstances which triggered the need for the notice (for example was responsible for a pollution incident). It can also be issued to the current owner or a past owner of the land, or the current or a past occupier of the land.</p> <p>Where the person responsible for complying with the notice did not cause or contribute to the contamination of the land, they may be eligible to recover costs in court – refer to section 274(6) of the EP Act for further details.</p>
Waste abatement notice (EP Act, section 121)	<p><i>What is it?</i></p> <p>Waste abatement notices can be used to address waste that negatively impacts the health, safety or welfare of the public, negatively impacts the proper use of a place, or is a hazard to the environment.</p> <p>Waste abatement notices may require a person to conduct a clean up to remove waste, restore places impacted by waste, modify activities that cause waste to be deposited, or to lawfully dispose of waste.</p> <p>Waste abatement notices can be used by EPA officers and litter enforcement officers (LEOs) from other agencies with powers to regulate litter, for example councils. They are used to manage waste, and ensure that waste is deposited in a lawful manner in accordance with the litter and waste legislation (Part 6.3 of the EP Act).</p> <p><i>Who can it be issued to?</i></p> <p>A waste abatement notice may be issued to a person who has engaged in or proposes to engage in an activity that has caused or is likely to cause the deposit of waste.</p> <p>Alternatively, if the person who caused the waste problem cannot be located, the notice may be issued to the occupier of the place or premises where waste has been deposited.</p>

Remedial tool	Key features
Site management order (EP Act, section 275)	<p><i>What is it?</i></p> <p>Site management orders are a remedial tool (like a remedial notice) that can be used by EPA to require the long-term management or rehabilitation of contaminated land, or to undertake a broad range of actions to manage risks of harm.</p> <p>EPA may use site management orders when land is contaminated, or where there is harm or risk of harm to human health or the environment from pollution or waste.</p> <p>EPA may use site management orders when harm is likely to occur if an existing measure is not maintained or modified, or a new measure is not put in place. They may also be used where harm may arise if a specific event, activity or land use takes place on the site.</p> <p>Measures required by a site management order may include long-term maintenance of environmental controls such as installing and maintaining infrastructure, monitoring of contamination on the site, and ongoing reporting requirements.</p> <p>Site management orders may not always have an end date, so can apply for a defined or an undefined period.</p> <p>A site management order will be attached to the land title and allows EPA to place clear obligations on the current, as well as any future, owners or occupiers of the land.</p> <p><i>Who can it be issued to?</i></p> <p>A site management order may be issued to the current owner or occupier of a site, or if the site is Crown land, to the person who has management or control of that land.</p> <p>Where the person responsible for complying with the order did not cause or contribute to the contamination of the land, they may be eligible to recover costs in court – refer to section 275(11) of the EP Act for further details.</p> <p>Where the land ownership changes while a site management order is in place, under section 276(1)(b) of the EP Act, any new owner or occupier must comply with the site management order, as if the order had been originally issued to them. The previous owner has an obligation to disclose information about the site management order to the new owner under section 280 of the EP Act.</p>
Directions (EP Act, section 260)	<p><i>What is it?</i></p> <p>Directions are a remedial power that can be used by AOs to deal with immediate risks to human health or the environment, for example during an emergency incident.</p> <p>Using a direction, an AO may direct any person to take any action or do anything that they reasonably believe is necessary to address the risk. Depending on the circumstances, AOs may also use a prohibition notice to deal with an immediate risk of harm. This notice is explained in more detail on page nine.</p> <p>Because directions are given at the time that a risk arises, EPA may first provide the direction verbally and then follow up in writing. Directions take immediate effect.</p> <p><i>Who can it be given to?</i></p> <p>A direction can be issued to any person – not just the person who may have caused or created the immediate risk. A person must, unless they have a reasonable excuse, comply with the direction. A failure to comply without lawful reason is a serious offence and may result in prosecution.</p>

Remedial tool	Key features
<p>Clean up powers (EP Act, section 294)</p>	<p><i>What is it?</i></p> <p>EPA can exercise powers to conduct a clean up where it is necessary to deal with an immediate or serious risk of harm to human health or the environment arising from pollution, waste or contaminated land.</p> <p>EPA will only take this level of intervention when all other attempts to have the person responsible address the immediate or serious risk have not worked. The EP Act provides other remedial tools to address both serious and immediate risks, in particular directions and prohibition notices, which will be preferentially used by EPA to hold polluters and duty holders to account.</p> <p>In most cases, any EPA clean up will be limited to reducing the immediacy or seriousness of the risk. Once the site is made safe, the responsibility for any further clean up remains with the person who owns or occupies the land.</p> <p><i>What can these powers enable EPA to do?</i></p> <p>Dealing with immediate or serious risk of harm may include conducting a clean up which allows EPA to take measures such as:</p> <ul style="list-style-type: none"> › investigating and assessing the nature and extent of pollution or waste › removing, dispersing, destroying, disposing of, abating, neutralising or treating pollution or waste › restoring the environment to a state as close as practicable to the state it was in immediately before the discharge, pollution or emission occurred › remediation of contaminated land › ongoing management of pollution or waste. <p><i>How does EPA enter the land to exercise these powers?</i></p> <p>Section 296 of the EP Act enables EPA to authorise any person to enter the land and do anything that is necessary for the clean up. Unless it is an emergency, EPA is required to give reasonable notice of the entry.</p>

4. Recovering the cost of complying with a remedy

In some circumstances, the EP Act allows for cost recovery following the use of remedial powers. The EP Act ensures that wherever possible, the person at fault will bear financial responsibility for the remedial action. Where this is not possible, table 2 gives an overview of the cost recovery options.

Table 2: Cost recovery options for remedial actions

Who incurs the costs of remedial actions?	Who can the costs be recovered from?	How are the costs recovered?
Recipient of a direction	EPA	EPA must pay the reasonable costs incurred by the person who has complied with the direction. This does not apply if the person caused or permitted the situation that gave rise to the authorised officer issuing the direction in the first place.
EPA - where costs have been recovered by the recipient of a direction	Person who caused or permitted the situation that gave rise to the direction	By recovering the costs as a due debt in court proceedings.
EPA – where clean up powers have been exercised	Person who holds a financial assurance relevant to the land OR Person responsible for the activity that caused or contributed to the contamination	By making a claim against the financial assurance. OR By recovering the costs as a due debt in court proceedings.
Person in management or control of a contaminated site	May have rights of recovery from any person who caused or contributed to contamination of the land	Consider seeking legal advice to pursue independent court proceedings

5. Review rights and extension of time

The EP Act makes it clear that a person has a legal obligation to comply with EPA’s remedial tools, but it also outlines review rights to make sure that the recipient may challenge EPA’s decisions.

The type of review that is available for each type of remedial tool is outlined in table 3 below. Note that where EPA internal review is available, the recipient must seek that review first, and may only apply for review at the Victorian Civil and Administrative Tribunal (VCAT) once the internal review has concluded.

Table 3: Summary of review rights

Remedy type	EPA internal review	Victorian Civil and Administrative Tribunal (VCAT) review	Supreme Court review (administrative law grounds only)
Compliance advice	X	X	X
Improvement notice	✓	✓	✓
Prohibition notice	✓	✓	✓
Notice to investigate	✓	✓	✓
Environmental action notice	✓	✓	✓
Waste abatement notice	X	✓	✓
Site management order	X	✓	✓
Direction	X	X	✓
Clean up powers	X	X	✓

The recipient of a site management order may also apply to EPA to amend or revoke that order under section 277 of the EP Act, if they believe that the measures are not reasonably practicable or proportionate to the grounds, or if long term management of the site is no longer necessary.

The review rights are bound by statutory timeframes, which means that they are only available for a limited time. For more information about the details of remedy review and the timeframes for application refer to EPA’s *Remedial notice review policy*.

EPA understands that when there are events outside of the person’s control, compliance dates become difficult to meet. For this reason, EPA may consider applications to extend or change compliance dates – for more information and timeframes for application refer to EPA’s *Remedial notice review policy*.

6. Communication of remedial information

Public disclosure of remedial information ensures the community is aware of remedial action taken by EPA. All published information is accurate and does not infringe privacy requirements. Publishing information aims to enhance the state of knowledge and promote any environmental requirements or standards.

References

Resource type	Title	Description	Publication
Policy	<i>Compliance and enforcement policy</i>	Outlines EPA's approach, method and priorities for ensuring compliance with our Acts and carrying out our compliance and enforcement powers.	EPA publication 1798
Guide	<i>Inspection and inquiry powers guide</i>	Explains how EPA authorised officers will use powers of inspection and inquiry to apply the EP Act.	EPA publication 1815
Policy	<i>Sanction powers policy</i>	Explains how EPA exercises its enforcement response and applies sanctions for breaching the law.	EPA publication 1814
Policy	<i>Remedial notice review policy</i>	Explains how EPA will conduct internal review of remedial notices and consider requests for extension of time.	EPA publication 1926