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Administering your powers under the Environment Protection Act 2017

Guide for local government and litter authorities

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Regulatory Enablement Branch

[epa.vic.gov.au](https://www.epa.vic.gov.au/)

Environment Protection Authority Victoria

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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 the continuing connection to, and aspirations for Country.

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# Introduction

The Environment Protection Authority Victoria (EPA) has developed this guide to support local governments (councils) and other public sector bodies who are joint regulators with EPA of the Environment Protection Act 2017 (the Act) and Environment Protection Regulations 2021 (the Regulations).

This guide provides important information for:

* **Councils** who can regulate residential noise and on-site wastewater management systems with a design or actual flow rate of sewage not exceeding 5000 litres on any day (OWMS), and
* **Litter authorities, including councils,** who can regulate unlawful deposit of litter and other waste.

This guide is aimed at executives, managers, governance and legal departments and others who are responsible for corporate governance for councils and other litter authorities.

## About litter authorities

Litter authorities play an important role in litter and waste prevention. They are defined in section 3 of the Act and include councils and other land managers such as Parks Victoria, Conservation Regulator, VicRoads, rail authorities and water authorities. Litter authorities have powers under the Act and Regulations to deal with a broad variety of waste from domestic, commercial and industrial sources.

# How to use this guide

This guide explains the actions councils and other litter authorities need to take to properly exercise their powers under the Act and Regulations. This includes appointing officers to statutory roles.

**Part 1** - Direct powers of councils (OWMS & residential noise)

**Part 2** - Delegated powers from EPA to councils (OWMS and residential construction noise)

**Part 3** - Direct powers of litter authorities, including councils

# Resources

## Legislation

*Environment Protection Act 2017* – see [legislation.vic.gov.au/](https://www.legislation.vic.gov.au/)

Environment Protection Regulations 2021 – see [legislation.vic.gov.au/](https://www.legislation.vic.gov.au/as-made/statutory-rules/environment-protection-regulations-2021)

## EPA website

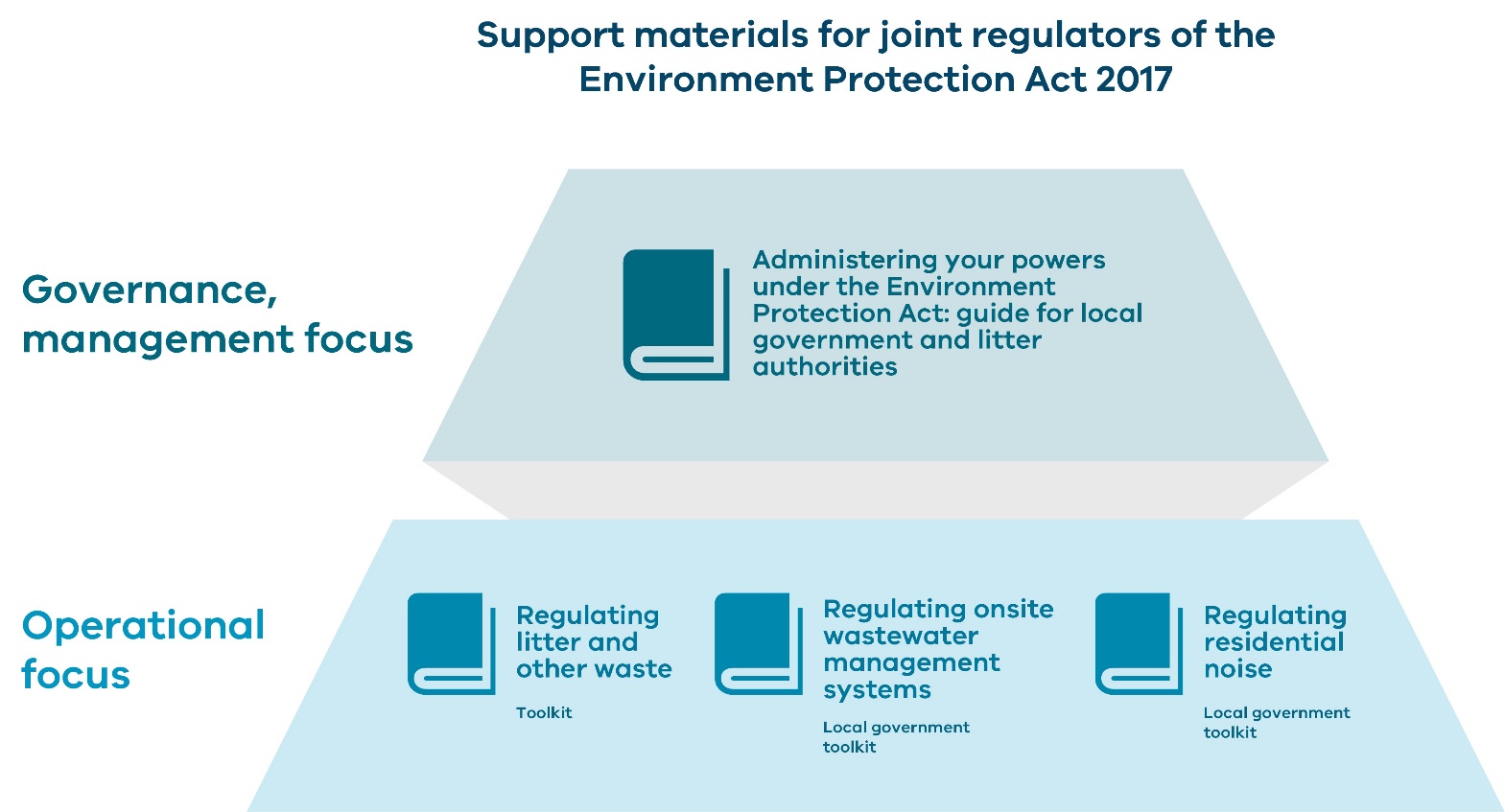
[Local government – how local government and EPA work together](https://www.epa.vic.gov.au/about-epa/who-epa-works-with/local-government/on-site-wastewater-management-systems)

Council Support Sharepoint

EPA hosts a Sharepoint Site to provide resources to council officers who regulate under the Environment Protection Act and Regulations. Council officers can become members of the site by emailing [jointregulator@epa.vic.gov.au](mailto:jointregulator@epa.vic.gov.au)

## Regulatory toolkits

* [Regulating litter and other waste: toolkit](https://www.epa.vic.gov.au/about-epa/publications/1927) (EPA publication 1927)
* [Regulating residential noise: local government toolkit](https://www.epa.vic.gov.au/about-epa/publications/1969) (EPA publication 1969)
* [Regulating onsite wastewater management systems: local government toolkit](https://www.epa.vic.gov.au/about-epa/publications/1974) (EPA publication 1974)



*Figure 1: Support materials for joint regulators of the Environment Protection Act 2017.*

# About the Environment Protection Act 2017

The ActisVictoria’skey environment protection legislation. EPA and joint regulators, including local government, use the Act to prevent and reduce harm from pollution and waste.

The Act is supported by the Regulations – subordinate legislation for regulating pollution and waste.

The Act works in conjunction with planning and other legislation. Public authorities, including councils, also use other legislation to respond to harm from pollution and waste including the *Public Health and Wellbeing Act 2018* and local laws under the *Local Government Act 2020*.

## Statutory powers of council and litter authorities

Statutory functions and powers under the Act and Regulations are provided to councils and other litter authorities in different ways:

1. Direct powers – legislation provides that a person, body or office holder (e.g. a Minister, a council, or a police officer) has certain powers or responsibilities. For example, the Act empowers councils to regulate noise from residential premises (Part 7.6). Similarly, the Act empowers a litter authority to appoint litter enforcement officers (Part 6.3).
2. **Powers through appointment** – the Act establishes statutory roles to which a person or class of person can be appointed. Persons appointed to these roles then have regulatory powers. Councils and litter authorities can appoint employees and other persons to certain statutory roles under the Act.
3. Powers through delegation – section 437(1) of the Act enables EPA’s Governing Board to delegate EPA’s powers and functions. This includes delegation to a council or public sector body.

EPA currently delegates powers and functions to councils for the purpose of regulating:

* OWMS, and
* noise from construction, demolition of residential premises.

Table 1 below sets out the sections of the Act and Regulations that councils and litter authorities can enforce.

Statutory appointments that councils and litter authorities can make to provide powers to employees and other persons, are explained throughout this guide and summarised in [Appendix 1](#_Appendix_1:_Statutory).

*Table 1: Source of powers for councils and litter authorities*

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| --- | --- | --- |
| **Source of harm** | **Environment Protection Act 2017** | **Environment Protection Regulations 2021** |
| Residential noise | Councils, residential noise enforcement officers (RNEOs) and police have powers to enforce the residential noise laws under Part 7.6 - Control of unreasonable and aggravated noise.  Section 307 provides RNEOs & police officers with power to issue infringement notices. | Regulation 114- Unreasonable noise from residential premises (use of certain items prescribed to be unreasonable noise during certain times). |
| Noise from residential construction and demolition | **Delegated powers from EPA.**  Councils can:   * appoint authorised officers (AO) under s242(2) or (2A) * appoint employees under s347(7) to take proceedings for delegated purposes   Council AOs have:   * limited powers of entry and inquiry under Part 9.3 * powers to issue improvement and prohibition notices under section 171 and 172 |  |
| Litter and other waste | Litter authorities and litter enforcement officers (LEO) have direct powers to enforce Part 6.3 - Litter and other waste.  Litter authorities and LEOs have the power to take proceeding for offense against Part 6.3 under 347(4).  LEOs have the power and issue infringement notices under 307. | Litter authorities LEOs can enforce Part 4 – Litter and unsolicited documents. |
| Onsite wastewater management systems  < 5,000 litres on any day (OWMS) | Councils administer and enforce permit requirements under Parts 4.2 & 4.3.  Sections 347(3) & (5) and 307 – Powers to take proceedings and issuing infringements notices in relation to OWMS requirements under Act and Regulations.  **Delegated powers from EPA**  Councils can:   * appoint AOs under s242(2) or (2A) * appoint employees under s347(7) to take proceedings for delegated purposes   Council AOs have:   * limited powers of entry and inquiry under Part 9.3 * powers to issue improvement and prohibition notices under section 171 and 172 | Councils enforce:   * regulations 33 & 34 in relation to OWMS permits. * Part 5.7 Onsite wastewater management systems.   Council AOs have the power to order maintenance of OWMS by notice under regulation 163. |

# Part 1 - Direct powers of council

## Regulating residential noise

Councils have direct powers to regulate noise from residential premises under Part 7.6 of the Act and Part 5.3 of the Regulations.

These laws do **not** include noise from the construction, demolition or removal of residential premises. EPA delegates additional powers to councils for residential construction noise – see [Part 2](#_Part_2-_Delegated).

Find detailed information for council officers who regulate residential noise in the [residential noise council toolkit](#Toolkits).

## Actions for councils - regulating residential noise

Actions that councils need to take in relation to regulating residential noise are explained below.

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| 1. Read and understand the transition provision for council officers currently authorised by council for residential noise. |

Council officers who were previously authorised under section 48A(1) of the *Environment Protection Act 1970* (the 1970 Act) for residential noise, don’t need to be reappointed as a residential noise enforcement officer (RNEO), under a transition provision of the new Act (section 496).

However, EPA recommends re-appointing officers who were previously. This will minimise the risk of administrative or decision making errors.

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| **Section 496 Residential noise enforcement officers**  *On the commencement day, a person who is a council officer within the meaning of section 48A(1) of the old Act is taken to be a residential noise enforcement officer appointed under section 171 of the new Act on the same terms as applied to that person immediately before that day.* |

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| 1. Appoint appropriate persons as residential noise enforcement officers (RNEO). |

Council can appoint an employee, class of employee, a person or class of person as a RNEO under section 171 of the Act. Council can appoint any person (not just employees) as RNEOs, for example council contractors.

Appointing RNEOs enables councils to take enforcement action under the Act when unreasonable noise from residential premises occurs.

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| **Section 171 Residential noise enforcement officers** | |
| *(1)* | *A council may appoint as a residential noise enforcement officer—*   1. *a person who is an employee, or each member of a class of employee, of the council; or* 2. *a specified person or each member of a specified class of persons.* |

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| 1. Delegate appropriate employee/s to issue residential noise improvement notice on behalf of council. |

A residential noise improvement notice (section 172 of the Act) is a key remedial tool to address residential noise issues, particularly ongoing issues. The Act allows council to issue this notice. Councils will need to decide who they will delegate this power to.

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| 1. Ensure relevant council officers have access to a residential noise improvement notice template. |

A residential noise improvement notice template has been provided by EPA. This template contains the legal elements for a residential noise improvement notice. Councils can add their logo to the template or adapt it to their existing notice formats.

The notice template can be found on the ‘Joint regulator support EP Act’ SharePoint site. Council officers can join the site my emailing jointregulator@epa.vic.gov.au.

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| 1. Ensure RNEOs understand council practice for giving an unreasonable noise direction. |

A RNEO can give a direction for unreasonable noise (section 175 of the Act).

The Act doesn’t specify how the direction must be given; however, if given verbally, it’s good practice to follow up with a written direction.

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| 1. RNEOs are aware of their powers to take proceedings and issue infringements for residential noise offences. |

RNEOs have powers under the Act to initiate court proceedings and issue infringement notices for certain residential noise offences. This includes offences against:

* Section 167(1) emitting unreasonable noise from residential premises
* Section 172(2) non-compliance with a residential noise improvement notice
* Section 175(4) non-compliance with a residential noise direction

These powers come from sections 170 and 307 of the Act.

RNEOs should follow their organisation’s processes for serving infringement notices. EPA doesn’t need to approve the format; however, the notice must include the prescribed information required by the *Infringements Act 2006* and relevant regulations.

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| 1. Ensure council and relevant council officers are aware of the power to apply for a court injunction relating to residential noise. |

Councils may apply to court for an injunction relating to residential noise – section 174 of the Act.

Councils may consider delegating the power to apply for an injunction to an appropriate council officer.

## Regulating on-site wastewater management systems

Councils have direct powers to regulate on-site wastewater management systems with an actual or design flow rate of less than 5,000 litres per day (OWMS). Councils are the sole regulator of these systems. Systems with a larger capacity are regulated by EPA.

The Act and Regulations provide councils with direct powers to:

* issue a permit for construction, installation and alteration of an OWMS
* regulate ongoing operation and maintenance of OWMS
* take proceedings for specified offences relating to OWMS

Additionally, councils can deal with OWMS problems using powers delegated from EPA. Actions relating to the delegation are explained in [Part 2](#_Part_2-_EPA) of this guide.

Find detailed information for council officers who regulate OWMS in the [OWMS council toolkit](#Toolkits).

## Actions for councils - regulating OWMS

Actions that councils need to take in relation to direct powers for OWMS are explained below.

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| 1. Relevant council officers understand the requirements around permits for construction, installation, or alteration an OWMS |

A permit from council is required to construct, install, or alter an OWMS with a design or actual flow rate of sewage not exceeding 5,000 litres on any day.

‘Alteration’ is explained in the council toolkit so that council officers understand the difference between alteration and maintenance.

The Act and Regulations set out:

* the requirements for permit applications
* what council must consider in making decisions about issuing or refusing to issue a permit
* council exemptions
* conditions councils can include in a permit
* amending, renewing or transferring a permit.
* statutory timeframes
* requirements for approving a system for use

There are serious penalties for not obtaining a permit or not complying with a condition of a permit that council and persons appointed by council can enforce.

Note that OWMS permits under the new Act are not an ongoing compliance tool. The permit stays in place until council approves the newly constructed or altered system. Then the permit is no longer in force. As such, permits will not include ongoing requirements for the operation or maintenance of a system. Instead, councils can regulate operation and maintenance issues under Part 5.7 of the Regulations.

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| 1. Relevant council officers read and understand transitional provisions for permits and permit applications |

Transition provisions under section 470 of the Act and regulations (219(2), mean that a OWMS permit issued by a council under section 53M of the 1970 Act, is equivalent to a permit to construct, install or alter an OWMS under the new Act.

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| 1. Relevant council officers have access to permit template that is approved by council |

Regulation 26(1) and (2) sets out the form and manner of a permit application and the information that must be included within it. Councils must create their own template that meet these requirements. EPA does not have to approve this.

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| 1. Relevant council officers are aware of the circumstances in which they must inspect and approve a system that is under permit, for use |

Once an OWMS is constructed, installed or altered in accordance with a permit, council must inspect the system. If permit conditions are met, council must issue a certificate approving the use of the system (Regulation 33).

Inspection for the purpose of regulation 33 can be undertaken by any council officer that has obtained the consent of the occupier to enter the premises. This person does not have to be an AO.

There are penalties for using a newly constructed or installed system without council approval.

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| 1. Relevant council officers have access to a certificate template that is approved by council |

Councils must create their own template to approve a system for use (regulation 33). EPA does not have to approve this.

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| 1. Relevant council officers are aware of the requirements under the Regulations that apply to owners and occupiers of land with OWMS |

Part 7.5 of the Regulations sets out obligations for the operation and maintenance of an OWMS. Some of these obligations apply to both owners and occupiers (e.g. renters). Others only apply to landowners. Council and persons appointed by council can enforce these requirements.

Obligations which apply to person in management or control of land with OWMS (e.g. owners and occupiers) are:

* take all reasonable steps to ensure the system is operated so as not to pose a risk of harm to human health or the environment
* ensure the contents of the septic tank system do not overflow
* take all reasonable steps to ensure the system is maintained in good working order (this requirement does not apply to renters)
* notify council as soon as practicable after the person becomes aware, or reasonably should have been aware, that the system poses a risk of harm to human health

Obligations which only apply to landowners are:

* provide information to the occupier on the correct operation of the OWMS
* keep records of maintenance, including any pump-out and service records
* if the council requests it, make any records of maintenance activities available for inspection

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| 1. Appoint appropriate persons to take proceedings for OWMS related offences |

Council may appoint a person for one or both of the following:

* section 347(3) of the Act, to take proceedings for OWMS permit related offences listed under regulation 171(1)
* section 347(5) of the Act, to take proceedings for OWMS operation and maintenance related offences listed under regulation 171(2)

A person appointed for the purpose of section 347(3) or (5) may issue an infringement notice for OWMS permit or operation and maintenance offences respectively.

Infringement offences are set out tin Schedule 10 of the Regulations and are also listed in the council toolkit.

Council officers should follow their organisation’s processes for serving infringement notices. EPA doesn’t need to approve the format; however, the notice must include the information outlined in the *Infringements Act 2006* and relevant regulations.

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| 1. Council AO appointed under the Act are aware of their powers to issue a notice ordering maintenance of an OWMS. |

Only AOs appointed by council under section 242(2) or (2A) of the Act, through delegation of powers from EPA, can issue a notice ordering maintenance of an OWMS (regulation 163).

Council AOs must be aware of the circumstances in which they can order mainteanace by notice- as set out in regulation 163.

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| 1. Ensure council AOs have access to notice to order maintenance of OWMS template. |

EPA has provided a template for the notice to order maintenance. Councils can add their logo to the template or adapt it to their existing notice formats.

The notice template can be found on the ‘Council Support Ep Act’ SharePoint site. Council officers can join the site my emailing [jointregulator@epa.vi.gov.au](mailto:jointregulator@epa.vi.gov.au)

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| 1. Councils should ensure all communication material for owners and operators of OWMS is consistent with the Act and Regulations. |

Ensure information provided by councils about OWMS requirements is up to date.

The EPA website provides information and resources that councils can reference. For example the fact sheet, ‘Guidance for owners and occupiers of land with an on-site wastewater management system up to 5,000 L per day (including septic tank systems)’ ([EPA publication 1976](https://www.epa.vic.gov.au/about-epa/publications/1976)).

# Part 2- Powers delegated to council

EPA has made a delegation of certain functions and powers of the Authority (EPA) under section 437(1) of the Act, to all Victorian councils. This delegation is for the purpose of regulating environmental and human health issues associated with:

* OWMS (in conjunction with direct powers of councils – see Part 1), and
* Noise from residential construction and demolition

Through the delegation, councils can appoint AOs to investigate and issue improvement and prohibition notices under the Act. Councils can also appoint an employee to take proceedings for non-compliance with those notices.

## Actions for delegated powers

This section lists the actions that councils need to take to effectively use the delegated powers from EPA.

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| 1. Read and understand the EPA instrument of delegation and instrument of direction in respect to the delegation |

Councils should carefully examine in the instrument of delegation and instrument of direction in respect to the delegation that EPA has issued to all Victorian councils.

These legal documents delegate powers and functions to councils and provide clear direction on how the powers can be used.

These documents are available from the ‘Council Support EP Act’ SharePoint site. To become a member of the site email [jointregulator@epa.vic.gov.au](mailto:jointregulator@epa.vic.gov.au).

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| 1. Decide who will be delegated the power to appoint AOs under s242(2) or (2A) of the Act |

Though the delegation, councils have the power to appoint a person as an AO under section 242(2) and (2A) of the Act. This power can be delegated to an appropriate council employee or officer.

For example, Councils may conclude that this power is appropriate to be sub-delegated to the Chief Executive Officer only.

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| 1. Appoint a person or class of person as an AO under s242(2) or (2A) of the Act |

Council can appoint a person or class of person as an AO. AOs do not need to be council employees and can include contractors. Councils can appoint AOs for delegated purposes only, i.e. OWMS and residential construction noise.

Section 242(3) of the Act enables Councils to place their own conditions or limitations on the appointment of an AO, as they see appropriate.

1. Read and understand EPA instrument of delegation, instrument of direction and accompanying documents.

As with any statutory appointment, councils should satisfy themselves that the employee they appoint is suitable and has the requisite knowledge and capacities to exercise these powers.

Note that AO powers come directly from the Act, subject to the direction with respect to the delegation. Council does not need to delegate specific powers to persons they appoint as AOs. AO powers are covered further in Action 22.

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| **Section 242 Authorised officers (AOs)** | |
| *(2)* | *A public sector body or council to which the authority has delegated a power or function under section 437(1) may by instrument appoint an employee or class of employee as an authorised officer for the purposes of the power or function delegated to the body or council.* |
| *(2A)* | *In addition to subsection (2), a council to which the Authority has delegated a power or function under section 437(1) may by instrument appoint a specified person or each member of a specified class of persons as an authorised officer for the purposes of the power or function delegated to the council.* |
| *(2B)* | *If so requested by the Authority, a public sector body or council who has appointed an authorised officer under subsection (2) or (2A), must prepare and give to the Authority a written report that contains—*   1. *details of the exercise of the powers or functions by the authorised person; and* 2. *any other information or matter required by the Authority.* |
| *(3)* | *An appointment under subsection (1) , (2) or (2A)—*   1. *is subject to any conditions or limitations specified in the appointment; and* 2. *is subject to any prescribed conditions or limitations; and* 3. *may at any time be varied, suspended, or revoked by the person or body who made the appointment.* |

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| 1. Ensure council AOs understand their powers |

Councils AOs have a limited set of powers under the Act that they can use to investigate OWMS and residential noise issues.

These AO powers are listed in the ‘direction with respect to the delegation’ (see Action 18 above). EPA expects council AOs to be familiar with their powers.

**AO powers to investigate OWMS and residential construction noise**

* Powers of entry
* Powers to obtain information
* Powers to issue improvement notices and prohibition notices

These powers are explained in the OWMS and residential noise [council toolkits](#_Resources).

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| 1. Ensure identity cards for council AOs officers are produced/or updated. |

Council must issue an identity card to every person it appoints as an AO under the Act. The identity cards must include the information listed in section 243 of the Act (see below).

Note: Identity cards are not a statutory requirement for residential noise enforcement officers and litter enforcement officers. However, council should consider how these officers can display their identity. Refer to the actions in Parts 1 and 3 for more information on these appointed roles.

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| **Section 243 Authorised officers' identity cards** | |
| *(1)* | *A person or body must issue an identity card to each person that the person or body appoints as an authorised officer.* |
| *(2)* | *An identity card issued under subsection (1) must—*   1. *contain the name of the person to whom it is issued; and* 2. *contain a photograph of the person; and* 3. *state that the person is an authorised officer for the purposes of this Act.* |
| *(3)* | *Authorised officers must produce their identity card for inspection if asked to do so when performing a function or exercising a power under this Act.* |
| *(4)* | *If a person to whom an identity card has been issued under subsection (1) ceases to be an authorised officer, the person must return the identity card to the person or body that issued the identity card as soon as practicable.* |

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| 1. Ensure a process is in place to manage any public complaints relating to AO conduct or use of powers. |

Councils are already required to have these processes in place under the *Local Government Act (2020)*. The same or similar process can be used for any complaint relating to AO conduct or use of powers.

1. Understand council contractors cannot be appointed as authorised officers for any purpose of the delegation, and ensure any contractors used by council are aware of this limitation.
2. Appoint appropriate council employees as authorised officers under s242(2) of the Act for the specific purposes set out in the instrument of delegation and instrument of direction.
3. Appoint appropriate council employees as authorised officers under s242(2) of the Act for the specific purposes set out in the instrument of delegation and instrument of direction.

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| 1. Ensure council AOs are aware of the requirement to issue entry reports and use a report template approved by council. |

The Act includes a requirement for authorised officers to issue an entry report to the occupier or apparent occupier when they use a power of entry or inspection. This requirement is under section 254 of the Act.

Councils may have an existing document that can be used for this purpose, which fulfils the requirements of the entry report. Due to this, EPA does not provide an entry report template.

**Note**: The entry report requirement relates to council authorised officers appointed under section 242 of the Act only, not other statutory roles relevant to councils.

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| **Section 254 Report to be given about entry and inspection of place or premises** | |
| *(1)* | *An authorised officer who enters and inspects a place or premises under this Division must give a report concerning the entry to the occupier or apparent occupier for the time being of the place or premises when, or as soon as practicable after, the authorised officer leaves the place or premises.* |
| *(2)* | *The report must be in writing and include the following—*   1. *the time of the entry and departure;* 2. *the purpose of the entry and inspection;* 3. *a description of any actions taken at the place or premises;* 4. *a summary of any observations of the authorised officer at the place or premises;*   *and*   1. *the procedure for contacting the Authority and the authorised officer for further details of the entry and inspection.* |

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| 1. Ensure relevant council officers have access to notice templates. |

EPA provides templates for improvement notices (section 271 of the Act) and prohibition notices (section 272 of the Act). These notices can be issued by council AOs for OWMS or residential noise issues.

Templates are available from the ‘Council Support EP Act’ SharePoint site – council officers can access the site by emailing [jointregulaotr@epa.vic.gov.au](mailto:jointregulaotr@epa.vic.gov.au).

Council can add their logos or adapt them to their existing notice formats.

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| 1. Ensure relevant council officers understand the rights of review associated with improvement notices or prohibition notices issued by council AOs. This includes review by EPA and VCAT review. |

**EPA review**

A person who has received an improvement notice or prohibition notice issued by a person appointed as an AO under the Act, may apply to EPA for a review of the notice under section 429 of the Act.

Notice recipients can apply to EPA for a review by calling 1300 372 842 (1300 EPA VIC).

If council receives review applications by mistake, email them to EPA immediately at [internalreviews@epa.vic.gov.au](mailto:internalreviews@epa.vic.gov.au).

Table 2: Review process roles responsibilities

| **Council** | **EPA** |
| --- | --- |
| Forward any requests for review by EPA to the EPA review unit [internalreviews@epa.vic.gov.au](mailto:internalreviews@epa.vic.gov.au)  The notice instructs the notice recipient to apply for a review through EPA; however sometimes requests may go back to the authorised officer who issued the notice. | Advise council when an internal review request is made to EPA. |
| Ensure council authorised officer is available to participate in review process. | Conduct review of notice when requested by notice recipient. |
| Implement any actions that are required from the review outcome. | Advise council authorised officer of outcome of review.  Use findings of reviews to provide support to councils, targeting areas for improvement in council authorised officer capability. |
| Provide reasonable assistance to EPA if the matter proceeds to VCAT. | Consult council if the matter proceeds to VCAT. |

**VCAT Review**

Following the review of an improvement or prohibition notice by EPA, the notice recipient can apply to VCAT for a review of the notice. Review rights and processes are explained on the notice templates provided by EPA.

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| 1. Ensure relevant council officers understand the requirement to send a copy of an issued improvement or prohibition notice to EPA |

EPA requests that councils email a copy any issued improvement or prohibition notices to [council\_issued\_notices@epa.vic.gov.au](mailto:council_issued_notices@epa.vic.gov.au). Having visibility notices issued under the delegation helps EPA forecast possible internal review requests and manage them promptly when they are received.

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| 1. Provide a written report to EPA when requested. |

EPA may require a written report from a Councils in relation to AOs appointed by the council under the delegation from EPA. This report may be requested by EPA under section 242(3) of the Act.

This reporting will provide EPA with visibility of the exercise of the powers or functions of persons appointed as AOs by a council. The information gathered will be general in nature. EPA will contact Councils with information about this reporting in late 2022/23.

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| 1. Appoint appropriate employees of the council as persons who may take proceedings under section 347(7) of the Act. |

Under section 347(7) of the Act, councils may appoint an employee to take proceedings for offences of the Act in relation to delegated functions.

This includes offences against sections 286, 287 or 288 - non-compliance with an improvement or prohibition notice issued by council or a council AO in relation to residential construction noise and OWMS issues.

A council employee with this appointment can initiate court proceedings for the above offences. They can also issue an infringement notice for breach of section 288.

# Part 3 - Direct powers of litter authorities

## Regulating litter and other waste

Councils and other litter authorities have direct powers to regulate litter and other waste under Part 6.3 of the Act and Part 4.1 of the Regulations.

A litter authority is defined in section 3 of the Act as:

* the Authority (EPA)
* any other body created by or under an Act
* a government department
* a council
* the Secretary, being the body corporate established by Part 2 of the *Conservation, Forests and Lands Act 1987*
* a body created by Order of the Governor in Council under section 113 to be a litter authority.

## Actions for litter authorities

The actions litter authorities need to take in relation to regulating litter and other waste are explained below.

Find detailed information for litter authorities and litter enforcement officers in the [litter and other waste toolkit](#Toolkits).

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| 1. Read and understand transition provisions for litter enforcement officers |

A transition provision in the 2017 Act means that litter enforcement officers (LEO) who were appointed under the *Environment Protection Act 1970* don’t need to be re-appointed (section 495).

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| **Section 495 Litter enforcement officers**  *On the commencement day, a person holding office as a litter enforcement officer under the old Act is taken to have been appointed as a litter enforcement officer under whichever of section 114(1, (2) or (3) of the new Act is applicable on the same terms as applied to that person immediately before that day.* |

Nevertheless, EPA suggest that a prudent approach is for all council officers appointed as litter enforcement officers under the 1970 Act to receive a new appointment under the Act. This will minimise the risk of administrative or decision making errors.

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| 1. Appoint appropriate employees as litter enforcement officers |

A litter authority may appoint an employee or class of employee as a LEO under section 114 of the Act, in relation to the situations set out in section 114(2).

LEOs have powers to enforce the litter and other waste laws under the Act and Regulations.

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| **Section 114 Litter enforcement officers** | |
| *(1)* | *The Authority may appoint a person as a litter enforcement officer.* |
| *(2)* | *A litter authority may appoint an employee of the litter authority, or each member of a class of employee of the litter authority, as a litter enforcement officer in relation to:*   1. *any bus, tram, watercraft, rail vehicle or aircraft owned or managed by the litter authority that is used for a public purpose; or* 2. *in the case of a litter authority that is a council, any land or waters in a council’s municipal district; or* 3. *any land or waters under the control or management of the litter authority; or* 4. *any offences under this Part that may result in waste appearing on land or waters under the control or management of the litter authority (regardless of where the offence occurs).* |

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| 1. Ensure LEOs understand their powers |

LEOs have powers under Part 6.3 of the Act to investigate litter and waste and act when an offence occurs.

**Powers to investigate and manage waste**

* Powers of entry
* Powers to obtain information
* Power to request waste removal
* Power to issue notices to manage waste

**Powers to take proceedings and issue infringement notices**

A litter authority or LEO can take proceedings for offences under Part 6.3 of the Act. This power comes from section 347(4) of the Act.

Litter and waste offences under the Act are summary criminal offences that are heard in the Magistrates’ Court. Court penalties are listed in the relevant provision.

LEOs can also issue infringement notices for infringement offences under Part 6.3 of the Act. This power comes from section 307(4)(e) of the Act. Infringement offences are listed in Schedule 10 of the Regulations and are also listed in the in the [Litter and other waste toolkit](#_Resources).

LEOs should follow their organisation’s processes for serving infringement notices. EPA doesn’t need to approve the format however the notice must include the information outlined in the *Infringements Act 2006* and relevant regulations.

LEO powers are explained in the [litter and other waste toolkit](#Toolkits). EPA expects LEOs understand their powers.

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| 1. Ensure LEOs and other relevant people have access to notice templates |

EPA provides templates for the waste abatement notice and waste information gathering notice, that satisfy the requirements in the Act.

Litter authorities can add their logo or adapt the templates to their existing notice formats.

These notice templates are available from:

* the ‘Council Support EP Act’ SharePoint site. Council officers can joint the site my emailing [jointregulator@epa.vic.gov.au](mailto:jointregulator@epa.vic.gov.au).
* the Litter Enforcement Officer Network website [litterenforcement.org](https://www.litterenforcement.org/).

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| 1. LEOs are aware of the requirement to show proof of identity when asked |

While exercising a power under Part 6.3 of the Act, a LEO must produce proof of their identity and official status if requested to do so. This requirement comes from section 126 of the Act.

# Appendix 1: Statutory appointments under the Act and regulations

Table 3 lists the provisions under the Act and Regulations that provide for statutory appointments that are relevant to councils and litter authorities.

*Table 3: Provisions under the Act and regulations for statutory appointments*

| **Act section** | **Appointment** | **Who can make this appointment** | **Who can be appointed** | **Transitional provision** |
| --- | --- | --- | --- | --- |
| S114 | Litter enforcement officer (LEO) | Litter authorities (as defined in section 3 of the Act) | \*Employee of the litter authority, or a member of a class of employee of the litter authority | Yes – section 495. On the (Act) commencement day, a person holding office as a litter enforcement officer (LEO) under the old Act\*\* is taken to be appointed as a LEO under section 114 of the new Act, on the same terms as applied to that person immediately before that day. |
| S171 | Residential noise enforcement officer (RNEO) | Council | An employee or class of employee, or a person or class of person | Yes – section 496. On the (Act) commencement day, a person who is a council officer within the meaning of section 48A(1) of the old Act\*\*\* is taken to be a RNEO under section 171 of the new Act, on the same terms as applied to that person immediately before that day. |
| S242(2) and s(2A) | Authorised officer (AO)  This appointment applies to regulating residential construction noise and OWMS. | A council or public sector body to which the Authority (EPA) has delegated a power or function. | An employee or class of employee, or a person or class of person | No |
| S347(3), for offence provisions listed in regulation 171(1) | A person may take proceedings for an offence against a permit provision that is enforced by council.  This appointment relates to taking proceedings for OWMS permit related offences listed in regulation 171(1). | Council | Any person | No |
| S347(5), for offence provisions listed in regulation 171(2) | A prescribed person may take proceedings for an offence against the regulations.  This appointment relates to taking proceedings for offences against the regulations for operation and maintenance of OWMS that are listed in regulation 171(2). | Council | Any person | No |
| S347(7) | Person who may take proceedings for offences in relation to sections 25, 27, 286, 287 or 288.  In relation to the current delegation to councils, this appointment only applies to taking proceeding on behalf of council for offenses related to improvement and prohibition notices (sections 286, 287 or 288) that a council AO has issued for OWMS and residential noise issues. | A council or public sector body that has been delegated powers or functions in relation to sections 25, 27, 286, 287 or 288 | An employee of a council or public sector body | No |

\*Employee:  The term ‘employee’ is not defined under the *Environment Protection Act 2017*, so can be interpreted within its ordinary meaning within the usage of English language.

The legal status of an employee and an independent (or private) contractor are different. The terms refer to different categories of working relationships between an employee and an employer, and a contract provider and contractor. A private contractor, unless also employed by council as an employee under an employment relationship, would not be eligible for appointment as a LEO under the Act.

\*\*1970 Act: Section 4 Definitions ─ litter enforcement officer means an officer of the council appointed by the council as a LEO, or an officer of the litter authority appointed by it as a LEO.

\*\*\*1970 Act: Section 48A Unreasonable noise from residential premises.

(1) In this section ─ council officer means a person who is authorised by a municipal council to enforce subsections (3) and (8).

# Accessibility

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