

Publication 1798.3 | January 2025

|  |
| --- |
| Compliance and enforcement policy |



Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne

epa.vic.gov.au

Environment Protection Authority Victoria

GPO BOX 4395 Melbourne VIC 3001

1300 372 84

This content is for general information only. Obtain professional advice if you have any specific concern. EPA Victoria has made reasonable effort to ensure accuracy at the time of publication. Except where noted at [epa.vic.gov.au/copyright](https://www.epa.vic.gov.au/copyright), all content in this work\* is licensed under the Creative Commons Attribution 4.0 Licence. To view a copy of this licence, visit [creativecommons.org](https://creativecommons.org/). EPA acknowledges Victoria’s First Nations peoples as the Traditional Owners of the land and water on which we live and work. We pay our respect to their Elders past and present.

****

Contents

[1 Purpose 4](#_Toc183618851)

[2 Our approach 5](#_Toc183618852)

[3 Risk-based approach 7](#_Toc183618853)

[4 Dynamic enforcement response 8](#_Toc183618854)

[4.1 Nature and seriousness of non-compliance and risk of harm 8](#_Toc183618855)

[4.2 Culpability and characteristics of the duty holder 9](#_Toc183618856)

[4.3 Other enforcement factors and criteria 9](#_Toc183618857)

[5 Compliance and enforcement tools 10](#_Toc183618858)

[5.1 Information, education and advice 10](#_Toc183618859)

[5.2 Directing and requiring follow-up action to remedy risk of harm or non-compliance 11](#_Toc183618860)

[5.3 Penalties and sanctions 12](#_Toc183618861)

[5.3.1 Warnings 12](#_Toc183618862)

[5.3.2 Infringement notice 12](#_Toc183618863)

[5.3.3 Enforceable undertaking 13](#_Toc183618864)

[5.3.4 Civil proceedings and criminal prosecution 13](#_Toc183618865)

[5.3.5 Court orders 14](#_Toc183618866)

[5.3.6 Suspension or revocation of permission 15](#_Toc183618867)

[6 Avenues for review and appeal 16](#_Toc183618868)

# Purpose

What is compliance and enforcement?

In this policy **compliance** is defined as a duty holders’ adherence to the legal requirements and obligations of the Act.

Compliance is an ongoing process. It requires people and businesses to regularly assess their risks of non-compliance and seek to improve their methods for eliminating or minimising those risks.

**Enforcement** is EPA’s use of influence, advice and statutory powers under the Act to encourage or compel compliance.

More information on EPA’s compliance and enforcement powers is available in the:

* Remedial Powers policy (publication 1813)
* Sanction Powers policy (publication 1814)
* Remedial notice review policy (publication 1926)
* Authorised office complaints management policy (publication 1454)
* Guide to inspection and inquiry powers (publication 1815).

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

EPA is an independent statutory authority under the Environment Protection Act 2017 (the Act). Our role is to prevent and reduce harm from pollution and waste.

We administer the Act and Environment Protection Regulations 2021 (the Regulations).

EPA’s Compliance and Enforcement Policy sets out how we will apply the law and use our compliance and enforcement powers.

This policy covers EPA's approach to:

* monitoring and assessing compliance
* supporting, assisting and directing compliance
* use of compliance and enforcement powers to remedy non-compliance and hold to account those that do not comply with the law.

The Compliance and Enforcement Policy guides our implementation of the Act, along with the:

* Permissions Scheme Policy (publication 1799)
* General Standards Policy (publication 1983)
* Regulatory Communications and Engagement Policy (publication 1929).

# Our approach

Who is a duty holder?

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

Anyone who holds a duty under the 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. 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 powers that allow EPA to hold company directors to account for the activities of their companies.

The duties under the Act may apply to:

* company directors and officers
* employers
* contractors
* 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 may give rise to a risk of harm.

The Environment Protection Act 2017 and regulations provide a legal framework for protecting human health and the environment from the harmful effects of pollution and waste.

The general environmental duty (GED) is central to the Act. It requires all Victorians to manage risks to human health and the environment that their activities create. Everyone must take steps to understand their obligations and minimise their risks, so far as reasonably practicable. This includes businesses, big or small.

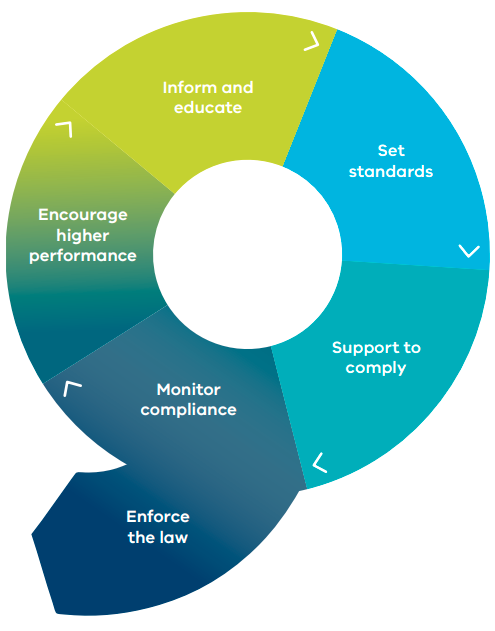
Our role is to ensure individuals, business and industry are complying with the laws. We do this through a mix of encouragement and deterrence. We aim to motivate action and deliver improved outcomes for Victorian communities and the environment (see Figure 1). This includes:

* Informing and educating - raising awareness of the impacts of pollution and waste and building a culture of care for the environment.
* Setting standards – providing clear and authoritative standards based on science and community aspirations.
* Supporting to comply – providing practical, constructive and authoritative advice on how to comply with the law.
* Monitoring compliance – assessing compliance with the law and monitoring risks across industries and sectors.
* Enforcing the law – requiring individuals and businesses to take actions to prevent harm, make good any harm caused, and deter non-compliance.
* Encouraging higher performance – recognising good performance, building the case for improved practices and influencing future standards.

When we use our regulatory tools, we focus on the problem and desired outcomes. We then apply our tools and powers in a consistent, transparent, and proportionate way.

You can read more about our regulatory approach on the [EPA website](https://www.epa.vic.gov.au/about-epa/what-we-do/epa-regulatory-approach).

Figure 1 EPA’s regulatory activities



# Risk-based approach

What are the powers of an EPA authorised officer?

EPA authorised officers can enter commercial and residential premises to conduct inspections and assess compliance with the Act.

These officers can:

* examine or test anything at the premises
* take samples away for analysis
* take pictures or recordings if required
* inspect documents
* request information
* take away anything that may be evidence of a breach of the Act.

It is an offence for anyone at the premises to fail to cooperate with the authorised officer.

We prioritise our effort where we can make the biggest difference to prevent harm.

EPA is a science-based regulator. We apply a risk-based approach that uses intelligence and evidence to prioritise our effort.

We use risk in the targeting of our compliance and enforcement effort. This means our response to incidents and non-compliance will change depending on the nature of the harm and where we can make the biggest difference. This is to make the best use of the resources available to us.

We monitor the condition of the environment and assess the threats to its quality. Our knowledge and understanding of risk will continue to evolve over time as we gain insights and intelligence from:

* the community and stakeholders
* Traditional Owners
* government partner agencies and co-regulators
* environmental and health monitoring programs
* research and scanning of emerging trends and issues
* our own regulatory activities and compliance monitoring.

How will EPA respond to a non-compliance?

If an authorised officer detects a non-compliance during an assessment or inspection, they will decide:

* what information or advice should be given to the duty holder
* what actions should be undertaken by the duty holder to make the situation safe and remedy the non-compliance (through remedial powers)
* whether the circumstances indicate that a penalty or other punishment is warranted (through the use of sanctions).

We expect individuals, businesses and government bodies to be open and honest in their interactions with EPA. We expect them identify and manage risk proactively, and continually seek to minimise risks to the environment.

These expectations to understand and manage their own risks will also evolve in line with:

* developments in industry practice and technology
* the aspirations of the Victorian community for improved environmental and health outcomes.

# Dynamic enforcement response

We take a proportionate and graduated approach to non-compliance. This means our response will depend on the seriousness of the offence, culpability of the offender and other relevant criteria and factors.



Figure 2 Responsive approach to enforcement

EPA can select from a wide range of regulatory tools to encourage compliance or enforce non-compliance (see Figure 2).

These tools may be used individually or in combination. We will first consider the effectiveness of lower order tools to guide and support compliance. However, depending on the circumstances we may immediately escalate to higher order tools, including the full force of the law, where this would be a reasonable and proportionate response.

When using our enforcement tools, we aim to:

* stop the unlawful activity or remedy any harm caused by the non-compliance (including using restorative justice outcomes)
* ensure future compliance is achieved and sustainable
* punish offenders and remove any commercial advantage from the non-compliance
* raise awareness of the law and consequences of non-compliance.

In determining the appropriate enforcement response, we consider:

* the nature and seriousness of the non-compliance, including any risk of harm
* the culpability and characteristics of the person engaging in the activity
* other relevant criteria and factors (e.g. the public interest to prosecute).

## Nature and seriousness of non-compliance and risk of harm

When assessing the nature and seriousness of a non-compliance, EPA may consider:

* the scale or extent of the risk of harm to human health and the environment. This can be actual or potential harm and includes psychological harm and impacts to amenity.
* the degree of commercial advantage or gain
* the impact of the omission or provision of false or misleading information
* the extent to which controls fail to meet expected standard of management for a given risk
* the impact to the integrity of the legal framework and objectives it supports
* the level of public concern arising from the alleged non-compliance.

## Culpability and characteristics of the duty holder

When assessing the culpability associated with non-compliance, EPA considers the behaviour and actions of the duty holder. This may include, whether the duty holder has:

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

EPA may also consider:

* how widely understood and foreseeable the risk was and how practicable it was to control the risk
* if the duty holder’s actions were reckless or deliberate
* the duty holder’s compliance history, including any previous advice, warnings, directions, notices, sanctions or response to pollution incidents and community reports
* the duration and/or frequency of non-compliance.

In taking a proportionate approach to non-compliance, duty holders can expect more severe enforcement responses where they are:

* resistant,
* evasive, or
* fail to genuinely account for their risks and legal obligations.

## Other enforcement factors and criteria

EPA will consider other factors and criteria in determining the most appropriate enforcement response. These may include:

* Principles of environment protection - when making certain decisions under the Act, EPA takes into account the principles of environment protection.
* Public interest - where EPA believes there is a reasonable prospect of conviction, we will consider whether prosecution in a criminal court or proceedings in a civil court is in the public interest. An alternative or complementary measure may be more appropriate to provide restorative outcomes.
* The deterrent impact of enforcement – EPA will consider whether enforcement action will deter the offender from re-offending or other duty holders from committing similar offences.
* EPA’s strategic priorities - EPA periodically sets areas of strategic priority for compliance and enforcement action.

Factors that may influence our choice to not pursue enforcement action include:

* one-off or isolated events of low impact or risk of harm
* matters that are more effectively dealt with by another agency.

# Compliance and enforcement tools

The Act provides EPA with a range of regulatory tools to encourage compliance or enforce non-compliance the law.

## Information, education and advice

Publication of enforcement action

EPA will promote the outcomes of enforcement action.

We promote this to be transparent about what enforcement action EPA is taking, why it is being taken and the outcomes we achieve.

Promotion of enforcement action also aims to deter repeat offending or deter others from offending more broadly.

Publicly available information includes details regarding:

* the offence
* the offender
* our regulatory action
* the action of the duty holder to resolve the matter.

Active investigations may also be announced. However, specific details may be limited to not compromise an active case.

EPA provides information and guidance to help duty holders understand how they can reduce their risk of harm to human health and the environment. Guidance supports compliance with duties under the Act. It provides practical approaches to identify and manage risks and comply with obligations without prescribing particular methods.

EPA’s authorised officers play a key role in providing information and advice to duty holders on how to comply with the Act. Where non-compliance is detected, EPA authorised officers will identify the steps the duty holder can take to remedy the situation. This includes referring duty holders to applicable EPA guidelines and other relevant information.

Information and guidance provided by EPA and authorised officers does not provide the duty holder with any additional rights or defences in relation to alleged non-compliance. The degree to which the duty holder has followed any EPA advice will be considered in determining our enforcement response.

In addition to the information EPA provides, we expect businesses to be proactive and seek out information to improve their own understanding of:

* the risks caused by their activities and
* how to manage them.

Over time, we expect the management of environmental risks to improve. As the capability and performance of businesses increases, those who fail to effectively manage their environmental risks will face more serious enforcement action.

## Directing and requiring follow-up action to remedy risk of harm or non-compliance

Where a risk of harm or non-compliance is detected, an EPA authorised officer will consider issuing a remedial notice or direction. This will aim to bring the duty holder into compliance or set out the steps to deal with:

* the risk of harm
* actual harm
* waste or contamination.

An authorised officer may give directions to a person in control of an activity to take an action if they reasonably believe that it is necessary to do so because of:

What is reasonably practicable?

Taking reasonably practicable action means you have put in ‘proportionate’ controls to eliminate or minimise risks of harm. If you can’t eliminate the risk, a reasonably practicable action will include consideration of the following factors:

(a) the likelihood of those risks eventuating

(b) the degree of harm that would result if those risks eventuated

(c) what the person concerned knows, or ought reasonably to know, about the harm or risks of harm and any ways of eliminating or reducing those risks.

(d) the availability and suitability of ways to eliminate or reduce those risks

(e) the cost of eliminating or reducing those risks.

To find out more on what might be considered [**reasonably practicable**](https://www.epa.vic.gov.au/about-epa/laws/laws-to-protect-the-environment-and-human-health/reasonably-practicable-under-the-laws) and ‘[**state of knowledge**](https://www.epa.vic.gov.au/about-epa/laws/laws-to-protect-the-environment-and-human-health/state-of-knowledge-and-industry-guidance) for your activity, see the EPA website.

* an immediate risk of material harm to the environment or
* the health or safety of any person.

The immediate or emergency nature of these situations mean that directions will normally be given verbally. Directions will then be confirmed in writing as soon as possible. Failure to comply with directions without lawful reason is a serious offence and may result in prosecution.

Remedial notices may be issued, for example where EPA or an authorised officer believes that:

* the duty holder is not complying with an aspect of the Act
* land is, or may be contaminated
* industrial waste is at a place or premises unlawfully or
* there is a risk to human health or the environment arising from pollution or the depositing, storage or handling of waste.

Notices are legal instruments which EPA can issue to require action by a duty holder. Notices can be issued for a range of reasons, including to remedy a non-compliance or a risk of harm. The types of notices and situations that they are generally used include:

* Improvement notice – requires a person to take action to remedy non-compliance or likely harm
* Prohibition notice – requires a person to stop an activity until a risk of harm has been addressed
* Notice to investigate – requires a person to investigate the nature and extent of potential contamination, pollution or waste
* Environmental action notice – requires a person to take action to clean-up contamination, pollution or waste
* Waste abatement notice – requires a person to remove waste, take action to remedy the cause of waste, or restore a place affected by waste.

Site management orders may require the owner or occupier of land to undertake a broad range of actions to manage risks of harm in certain situations where EPA believes that long term management of a site is necessary. Examples of what a site management order may require include:

* long-term maintenance of environmental controls

Working with Traditional Owners

EPA works with Traditional Owners across Victoria to protect and heal Country. We seek to learn from and include Traditional Owner cultural values as part of our work. It helps to strengthen EPA’s role in protecting human health and the environment.

Our engagement and collaboration with Traditional Owners occur across all areas of EPA’s regulatory work and activity. This includes during the assessment of compliance with duties and obligations.

EPA expects that duty holders have appropriately identified risks of their activities to Traditional owner cultural values and where relevant have taken steps to eliminate or reduce risks of harm.

An area of focus is the application of the Environment Reference Standard for water which recognises Traditional Owner cultural values, as an Environmental Value.

* monitoring of contamination on the site
* ongoing reporting requirements.

EPA will follow up to confirm compliance with directions, notices and orders. EPA will check to see if a duty holder has fulfilled their obligations by the specified date. If not, they may be prosecuted for that failure and for the alleged breach of the Act that was the reason for the direction, notice or order.

Alternatively, EPA may pursue a civil remedy in the Magistrates’, County or Supreme Court. A court ordered civil remedy may to require a person to undertake specified actions to:

* prevent, minimise or remedy a contravention or
* comply with a requirement.

## Penalties and sanctions

In some circumstances, and in line with the enforcement criteria outlined in section 4, EPA may determine that a sanction or punishment is warranted.

### Warnings

A range of warnings may be issued where:

* EPA has evidence of a low-risk or minor non-compliance and
* consider that the duty holder will learn from the experience and improve their compliance performance.

In some instances, an ‘official warning’ may be issued instead of an infringement notice.

The issuing of a warning will inform future compliance and enforcement decisions by EPA.

### Infringement notice

An infringement notice imposes a financial penalty for breaches of the laws and can be issued by an authorised officer.

Infringements allows specific contraventions of the Act to be dealt with by payment of a fine, rather than through court proceedings.

### Enforceable undertaking

Delivering justice for communities and the environment

Justice means that we enforce the law to hold polluters to account so that they are appropriately penalised.

Justice also allows those who are affected by non-compliance to have a voice and benefit from restorative enforcement processes.

The Act provides a variety of practical enforcement outcomes such as:

* enforceable undertakings
* court orders
* restorative project orders.

EPA has broad discretion to accept an enforceable undertaking from a person for any matter within our functions or powers. Under an enforceable undertaking, a duty holder accepts responsibility for their actions and voluntarily enters into a binding agreement with EPA. They agree to undertake actions in settlement of the matter, including any alleged contraventions.

An enforceable undertaking can be a constructive alternative to prosecution or civil penalty proceeding. It may contribute positively to the delivery of restorative justice outcomes.

EPA will consider accepting an enforceable undertaking where:

* it addresses the harm caused to the environment, human health or the community
* the duty holder takes responsibility for the contravention and its impacts.

It will generally involve taking agreed steps to remedy harm caused to the community or proactively manage the risk of harm, and should:

* help deliver systemic change within the duty holder’s activities to prevent future breaches of the law
* contribute to an improved level of understanding of the risks and means of controlling those risks within the duty holder’s sector.

### Civil proceedings and criminal prosecution

EPA will prosecute breaches of the Act when it is considered the most effective option. Prosecution can result in convictions, financial penalties and in some cases imprisonment. Prosecutions can also result in court ordered remedial action or restorative justice actions.

Examples of when criminal prosecution may be pursued include the following:

* Significant environmental damage or harm to human health or environment.
* Unlawful activity after a permission is suspended or revoked.
* Storage of industrial or priority waste without appropriate permission or approval.
* Repeated offending such as after repeated infringement notices.
* Failure to comply with a notice, direction or site management order, particularly where non-compliance results in imminent danger.
* Offending that results in a significant commercial advantage by failing to:
  + implement harm prevention measures, or
  + maintain adequate systems, processes or procedures in the manner that minimise risk of harm to the human health and the environment.
* Assaulting, obstructing, intimidating or attempting to bribe an authorised officer.

Impact statements

The court can consider a statement from people or organisation to assist with sentencing, penalties and the conditions of any of the court orders.

An impact statement can provide information to the court about the impact of an offence or contravention on:

* the risks to human health and environment
* the impacts to community
* environmental values and any associated loss, injury or damage.

This helps the court to better understand the consequences of an offence or contravention and can form an important part of proceedings.

The consideration of impact statements in criminal proceedings are in addition to the consideration of victim impact statements under the Sentencing Act 1991.

* Behaviour that involves dishonesty, such as providing false or misleading information.
* Offending that is the focus of a strategic priority.

In addition to, or as an alternative to initiating criminal proceedings, EPA may commence civil proceedings in the Magistrates’, County or Supreme Courts. A court can impose a civil pecuniary penalty of the same or similar amount as a fine which might be imposed in a criminal court.

EPA will consider civil proceedings where:

* it is likely to deliver action to address the risks
* result in a stronger deterrent impact and
* more effectively encompass the type and nature of the breach.

### Court orders

The Act makes a range of orders available to the court to prevent or restore harm or penalise an offence. EPA will seek court orders to reflect the expectations of the community in relation to environment protection. This may include one or more of the following:

* A financial penalty – a monetary fine that can be imposed by the court.
* Monetary benefits orders – a penalty that considers the monetary benefit obtained through the offending conduct. This includes a benefit that is acquired by delaying or avoiding compliance.
* Adverse publicity orders – an order to make the defendant take steps to publicise the offence and its impacts.
* General restoration and prevention orders – a broad discretion to make any orders to prevent, minimise or remedy any harm.
* Restorative project orders – broad discretion to order a person to carry out a project for the enhancement or restoration of the environment.
* Environment audit orders – an order to require a person to engage an environmental auditor and conduct an audit.

A court can also adjourn the sentencing for a criminal prosecution or the assessment of civil penalty in a civil matter so that a remedial or restorative process can take place. On conclusion of a case, a court can make orders for a restorative project for the public benefit or to enhance the environment.

The combination of these provisions ensures that:

* offenders are penalised
* harm to the environment is remedied, and
* offenders, including company directors, understand the impact of their activities on the surrounding environment and the community.

### Suspension or revocation of permission

Suspension or revocation of a permission temporarily or permanently prevents the permission holder from operating under the Act. EPA may suspend or revoke a permission such as an operating licence, permit or registration, where:

* we have reasonable grounds to believe that the holder of the permission has contravened the Act or Regulations
* we do not consider the holder of the permission to be a fit and proper person to engage in the permission activity

Compliance with approvals from other regulators

Your activity may also require approval from other regulators or statutory authorities. A permission, exemption, authorisation or other instrument issued by EPA does not meet your obligations from other laws and regulatory frameworks.

For example, if your activity requires an EPA permission it may also require you to hold a permit from your local Council.

EPA can suspend or revoke your EPA permission if you fail to hold or maintain the necessary approvals from other regulators. If EPA become aware of non-compliance with obligations under other laws, we may also share this information with other relevant regulators.

* we have been provided with materially incorrect or misleading information by the holder of the permission
* the holder of the permission has not paid any prescribed fee in relation to the permission.

# Avenues for review and appeal

The Act contains a range of compliance and enforcement tools, including powers to issue a remedial notice where harm has not yet occurred. In the interests of transparency and accountability, recipients of a remedial notice can seek review of an EPA authorised officer’s decision to issue or amend a notice.

An EPA internal review is available for these types of remedial notices:

* Improvement notice (section 271)
* Prohibition notice (section 272)
* Notice to investigate (section 273)
* Environmental action notice (section 274).

An internal review will be conducted by a person who was not involved in the decision to issue the notice. The internal review decision maker can affirm, vary or set aside and substitute the decision of the authorised officer. For more information on remedial notice reviews see EPA Publication 1926 Remedial notice review policy.

You may seek external review directly from the Victorian Civil and Administrative Tribunal (VCAT) if the notice has been issued by a delegate of the Authority. Also, if you are not satisfied with the outcomes of an EPA internal review, you may seek an external review by VCAT.

VCAT reviews provide duty holders and other affected parties with a fully independent avenue for reviewing a range of EPA decisions, including decisions to suspend or revoke a permission. VCAT reviews hold us accountable for core regulatory decisions affecting duty holders and other affected parties.

Accessibility

Contact us if you need this information in an accessible format such as large print or audio.   
Please telephone 1300 372 842 or email [contact@epa.vic.gov.au](mailto:contact@epa.vic.gov.au)

Interpreter assistance



If you need interpreter assistance or want this document translated, please call 131 450 and advise your preferred language. If you are deaf, or have a hearing or speech impairment, contact us through the National Relay Service.



[](https://twitter.com/EPA_Victoria) [](https://www.facebook.com/EPAVictoria) [](https://www.linkedin.com/company/epa---victoria/) [](http://www.youtube.com/channel/UCTH9sYvphkFxGlAsIyTecJQ)

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

Environment Protection Authority Victoria

GPO BOX 4395 Melbourne VIC 3001

1300 372 842



Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne