



EPA
VICTORIA



Guide to inspection and inquiry powers

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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

This guide explains how Environment Protection Authority Victoria (EPA) authorised officers (AO) will use powers of inspection and inquiry that are provided in the *Environment Protection Act 2017* (EP Act).

The guide should be read in conjunction with the following EPA documents:

- > *Compliance and enforcement policy*
- > *Remedial powers policy*
- > *Sanction powers policy.*

1.1 Who is an authorised officer for the purposes of the EP Act?

EPA may appoint an employee of:

- > EPA
- > local council, or
- > another Victorian public sector body

to be an authorised officer.

EPA can also appoint an employee of Environment Protection Authorities of New South Wales and South Australia. This is necessary to ensure that EPA has full regulatory coverage where its state boundaries touch New South Wales and South Australia.

EPA may delegate the power to appoint authorised officers under the EP Act to a Victoria public sector body or local council.

The role of the authorised officer is vital to how EPA administers the EP Act. This is because many powers and functions within the EP Act are either granted to authorised officers or can be delegated to authorised officers.

This guide covers authorised officer inspection and inquiry powers. Authorised officers also have a broad range of remedial powers (including issuing notices) and enforcement powers. These are covered in the *Remedial powers policy* and the *Sanction powers policy*.

2. Powers of entry

2.1 Powers to enter and inspect a place or premises – section 246

Section 246 of the EP Act gives an authorised officer the power to enter and inspect a place or premises. This entry and inspection should be linked to the authorised officer performing a function, duty or exercising a power under the EP Act. The authorised officer may enter and inspect a place or premises to:

- › determine if a person has contravened the EP Act or regulations
- › monitor compliance with the EP Act or regulations
- › determine if there is a risk of harm to human health or the environment from pollution, waste or contaminated land
- › inspect or test equipment (or a vehicle).

2.2 Times that the authorised officer can enter and inspect – section 246

Section 246(3) states that an authorised officer may enter and inspect premises at a reasonable time. This generally means, in the case of a business, during the ordinary operating hours of that business. However, if the authorised officer believes there is an immediate risk of material harm to human health or the environment, entry and inspection can occur at any other time.



24/7 entry for immediate risks

2.3 Locations that authorised officers can inspect – section 247 and 248

Other than residential premises, there are no restrictions on the type of premises authorised officers may enter and inspect. This means that an authorised officer may enter and inspect a place or premises (including businesses) that is, at the time of inspection, open to the public.

Authorised officers must not enter residential premises:

- › without the consent of the occupier
- › without the authority of a search warrant
- › unless the authorised officer reasonably believes a person has contravened (or is about to contravene) the EP Act or regulations
- › unless the authorised officer reasonably believes there is an immediate risk of material harm to human health or the environment.

Section 248(2) places an additional restriction on entry into residential premises. Where the authorised officer enters the premises on a reasonable belief of a contravention or immediate risk, the officer can enter or inspect only the part of the premises necessary for the purpose of determining whether there is a contravention or an immediate risk.

You don't need consent if you really believe there's a risk to the environment or human health

2.4 Announcement on entry – section 249

When an authorised officer has entered a place, they must take all reasonable steps to immediately notify the occupier. This includes the authorised officer producing their identity card for the occupier to inspect.



However, an authorised officer is not required to notify the occupier or produce the identity card if:

- > to do so would unreasonably interfere with or delay what the officer is doing
- or
- > the person has been notified in advance of the entry.

2.5 Persons assisting authorised officers – section 250

Section 250 of the EP Act allows an authorised officer to request the assistance of any person for the purpose of entry and inspection. This means an authorised officer can bring any person onsite to assist with the inspection. For example, this could be another EPA employee (such as a scientist), a local council officer, police officer or interpreter. The person in management or control of the premises must allow the person assisting the authorised officer access. Failure to do so may result in a criminal penalty.



3. Powers on entry

3.1 General powers on entry – section 251

An authorised officer who enters a place or premises can do anything the officer reasonably believes is necessary to perform their function or duty, including:

- > inspect, examine and make enquiries about a thing at the premises
- > take or remove samples
- > carry out testing and examination
- > take photographs or any other type of recording
- > examine, copy or take extracts from a document
- > inspect, examine or test any equipment
- > bring equipment or materials to the place
- > seize and remove a thing that is connected to a suspected contravention
- > request the assistance of a person at the place or premises.

In using these powers, an authorised officer must take reasonable steps to minimise disruption and not remain at the place any longer than is reasonably necessary.

To assess compliance with the EP Act, it is important for authorised officers to carry out testing and examination. In rare cases, this may result in the destruction of the thing that is being tested. Where possible, authorised officers avoid destructive testing. However, it is within an authorised officer's power to conduct this type of testing (section 251(3)).



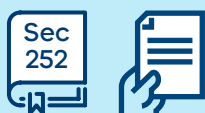
AOs should only stay as long as they need to.

3.2 Production of documents – section 252

In addition to the general powers on entry, an authorised officer may:

- > require a person to produce a document that is located at the place (and is in the person's possession)
- > examine the document or part of the document
- > retain the document or part of the document for as long as is reasonably necessary
- > take extracts from and make copies of the document.

A person who does not have a reasonable excuse must comply with this request. Failure to do so may result in a criminal penalty.



3.3 Authorised officer may require information or answers – section 253

In addition to the general powers of entry and power to require production of documents, an authorised officer may require a person at the place to give information or answer any question. To do so, the authorised officer must reasonably believe that the person has knowledge of a matter or thing relevant to **another person's** compliance with the EP Act or regulations.

For example, an authorised officer can ask questions and require answers from a person who has witnessed a possible contravention of the EP Act. This may include an employee(s) of the business that may have contravened the EP Act. In such a case, the authorised officer can require answers to questions about the systems the business had in place to identify, assess and control risks of harm to human health or the environment. A person who does not have a reasonable excuse must comply with this request. Failure to do so may result in a criminal penalty.

Did someone onsite witness what happened? As an AO you may be able to question them.

3.4 Entry reports – section 254

An authorised officer is required to give a report about entry to the occupier of the place or premises. Where possible, the entry report will be provided before the authorised officer leaves the place or premises. The entry report will include:

- > the time of entry and departure
- > the purpose of entry and inspection
- > a description of the actions taken
- > summary of any observations
- > how to contact the authorised officer or EPA for further details of the entry.

Section 254 of the EP Act does not limit an authorised officer to only providing an entry report. In some cases, an authorised officer may provide a more detailed inspection report to the person.



4. Inquiry powers

4.1 Information gathering notices – sections 255 to 258

EPA (or any person delegated, such as an authorised officer) may serve an information gathering notice on a person requiring that person to do one or more of the following:

- > provide any information (or class of information) specified in the notice
- > produce a document (or class of document) specified in the notice that is in the person's possession
- > appear and give the information (verbally or in writing) or produce the document specified in the notice.

An information gathering notice will:

- > be in writing
- > specify who the notice is served to, its purpose and the period for compliance (which must be at least 10 business days from serving)
- > explain that a natural person may refuse to give the information if doing so would tend to incriminate the person.

A person who does not have a reasonable excuse must comply with this request. Failure to do so may result in a criminal penalty. It is a reasonable excuse for a natural person to fail to give information if doing so would tend to incriminate that person. However, that excuse does not apply to the production of a document.

EPA or an authorised officer may extend the period for compliance, amend or revoke a requirement in the notice.

EPA may do so:

- > in response to an application by the person who was served the notice
- > after its own consideration.

Unlike many other notices, an information gathering notice is not subject to internal review (part 14.1) or VCAT review (part 14.2).

Section 258 of the EP Act enables EPA to apply to the Court for an order compelling a person to comply with an information gathering notice. An application can be made even if EPA has not commenced any other proceeding in Court.

4.2 Power to ask person's name and address – section 259

An authorised officer may ask a person to state their name and address if the authorised officer reasonably believes:

- > that person is able to assist in the investigation of an indictable offence against the EP Act
- > that person is committing or has committed an offence.

The authorised officer must give the person:

- > the reasons for asking for their name and address
- > in some cases, sufficient details about the relevant offence.

A person must comply with a request made under section 259 of the EP Act. Failure to do so or providing false information may lead to a criminal penalty.

Do you believe someone committed an offence? As an AO you can ask for their name and address.

4.3 Power to give directions – section 260

An authorised officer may give a direction to any person to take any action the authorised officer reasonably believes is necessary to address an immediate risk or likely risk of material harm to human health or the environment. This direction can be given irrespective of whether the person has caused or contributed to the existence of the immediate risk.

A person who does not have a reasonable excuse must comply with the direction. Failure to do so may result in a criminal penalty.

A direction may be given verbally or in writing. In some cases, the situation may be so urgent that a direction will be given verbally. However, a verbal direction will be confirmed in writing as soon as possible. A direction given under section 260 of the EP Act is not subject to internal review or external review by VCAT.

EPA must pay the reasonable costs incurred by the person in complying with the direction. However, this does not apply where the person caused or permitted the situation that led to the authorised officer's reasonable belief about the immediate risk or likely risk.

Where EPA has paid the costs incurred by a person in complying with a direction, it may recover those costs as a due debt in a court if that person caused or permitted the situation that led to authorised officer's reasonable belief about the immediate risk or likely risk.

As an AO you can direct people to take action, even if they didn't cause the harm themselves.

4.4 Search warrants – sections 261, 262 and 263

Section 251 of the EP Act provides authorised officers with very broad powers of entry and inquiry. In addition to these powers, section 261 enables an authorised officer to apply to the Magistrates' Court for a search warrant. This applies in relation to a place or premises if the officer reasonably believes that there is (or may be within 72 hours) a particular thing (including a document) that may be evidence of an offence against the EP Act or regulations.

Section 261(2) of the EP Act states that a magistrate should only issue the search warrant if the magistrate is satisfied of the authorised officer's reasonable belief. The search warrant may authorise the authorised officer (and any assistants) to enter the premises named in the warrant and search for the thing named or described in the warrant.

All search warrants are issued according to the *Magistrates' Court Act 1989* (MC Act). They are issued in the form prescribed under that Act. The rules in relation to search warrants apply to all search warrants. A search warrant issued under section 261 of the EP Act must state the following information:

- > the offence suspected
- > the place or premises to be searched
- > a description of the thing the search is made for
- > any conditions that the warrant is subject to
- > the time of authorised entry
- > the warrant authorises entry on only on one occasion
- > the day the warrant ends (not later than seven days after issue).

Before executing a search warrant, the authorised officer must announce that they are authorised by warrant to enter and search the premises. The authorised officer must give any person at the place or premises an opportunity to allow entry. However, this does not apply if the authorised officer reasonably believes to do so would restrict the effective execution of the search warrant.

If the occupier (or apparent occupier) is present at the place or premises named or described in a search warrant when it is executed, the authorised officer must:

- > produce their identity card
- > give that person a copy of the execution copy of the warrant.

**As an AO you
have to declare
that you are
using a warrant
if you have one.**

4.5 Return and forfeiture of seized things – sections 264 and 265

Section 251 of the EP Act gives authorised officers broad powers of seizure. EPA (in most cases an authorised officer) is required to return the seized thing as soon as possible unless:

- › it is necessary to retain the thing as evidence of an offence against the EP Act or regulations
- › the thing has been forfeited by EPA
- › EPA is otherwise authorised (by other law or court order) to retain, destroy or dispose of the thing.

EPA can impose terms and conditions (to minimise the risk of harm to human health and the environment) on the return of the thing. If EPA does so, the owner must comply with those terms and conditions. A failure to do so may result in criminal penalty.

Section 265 of the EP Act states three circumstances when a thing seized and retained by an authorised officer is forfeited to EPA:

- › despite reasonable enquiries, the owner cannot be found
- › despite making reasonable efforts, the thing cannot be returned to the owner
- › it is necessary for EPA to retain the thing to prevent the commission of an offence against the EP Act or regulations.

In the third circumstance, EPA must provide written notice to the owner (unless EPA cannot find the owner despite reasonable enquiries). This decision to forfeit is reviewable by VCAT and the notice will specify this right to review.

4.6 Power to issue a non-disturbance notice – section 278

EPA or an authorised officer can issue a non-disturbance notice to a person if the authorised officer reasonably believes it necessary to perform a function or exercise a power at a premises or place. A non-disturbance notice may require the person to:

- › stop the movement of or interference with any specified plant or equipment at the premises
- › prevent the disturbance of specified plant or equipment, or a specified area of the place or premises where it is located.

In most cases, a non-disturbance notice will be used by an authorised officer to ensure that evidence of a potential offence is preserved. A non-disturbance notice will prevent a person from changing, tampering in any way disturbing the specified plant. While the non-disturbance notice applies, the authorised officer will attend the premises to take samples, measurements, photographs etc. of the evidence.

Non-disturbance notices must specify the period for which they apply, which must be no more than seven days. If the authorised officer concludes the work prior to the end date specified in the notice, the non-disturbance notice will be removed. Otherwise, the non-disturbance notice will automatically cease at the end of the specified period.

A non-disturbance notice can be given verbally, and then confirmed in writing by the authorised officer as soon as possible. A non-disturbance notice will specify:

- > the period (no more than seven days) for which it applies
- > the obligations on the person to whom the notice is issued
- > penalty for contravening the notice
- > how the person may seek review of the notice.

In most cases, the non-disturbance notice will apply for seven days as this will give the authorised officer enough time to assess the evidence. However, if this is not possible, an authorised officer may issue subsequent non-disturbance notices.

5. Offences relating to authorised officers

The EP Act details several serious offences that relate to authorised officers. It is essential that authorised officers can exercise the powers granted to them by the EP Act free of any interference, obstruction, intimidation and even assault. Any such instances will be treated extremely seriously by EPA.

5.1 It is an offence to obstruct an authorised officer – section 266

Where an authorised officer is performing a function or duty, or exercising a power under the EP Act a person must not:

- > hinder, delay or obstruct the authorised officer or any person assisting
- > conceal from the authorised officer the location or existence of any person or thing
- > use abusive, threatening or insulting language to the authorised officer or any person assisting.

Any person who commits an offence under section 266 may face a criminal penalty.

AOs have the right to work free from violence and abuse.

5.2 Assault, intimidation or threatening of an authorised officer – section 267

Where an authorised officer is performing a function or duty, or exercising a power under the EP Act a person must not:

- > assault the authorised officer or any person assisting
- > directly or indirectly intimidate or threaten the authorised officer or any person assisting
- > attempt to assault, intimidate or threaten the authorised officer or any person assisting.

Any person who commits an offence under section 267 may face a criminal penalty. In the case of a natural person this may include two years imprisonment.

6. Other matters

6.1 Protection against self-incrimination – section 268

Section 268(1) of the EP Act deals with the protection against self-incrimination. Many of the powers described in this guide are subject to the person having a reasonable excuse not to comply. For a natural person it is a reasonable excuse to refuse or fail to give information or do any other thing that the person is required to do, if doing so would tend to incriminate that person. For the avoidance of doubt, section 268(1) does not apply to a body corporate.

Section 268(2) of the EP Act provides an exception to section 268(1) – the protection against self-incrimination does not apply to the production of a document. Accordingly, it is not a reasonable excuse for a natural person to refuse or fail to produce a document that is required even if to do so would tend to incriminate that person.

6.2 Motor vehicle compliance – section 269

Authorised officers do not have the power under section 13 of the *Road Safety Act 1986* (Road Safety Act) to stop a motor vehicle. However, if a motor vehicle is lawfully stopped by a police officer or another officer authorised under section 13 of the Road Safety Act, an EPA authorised officer can conduct any inspection, measurement or test on the motor vehicle.

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
Policy	<i>Remedial powers policy</i>	Explains how EPA and its authorised officers (AOs) will use the remedial powers provided in the EP Act.	EPA publication 1813
Policy	<i>Sanction powers policy</i>	Explains how EPA exercises its enforcement response and applies sanctions for breaching the law.	EPA publication 1814