

Transition guidance for environmental auditors

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EPA acknowledges Aboriginal people as the first peoples and Traditional custodians of the land and water on which we live, work and depend. We pay respect to Aboriginal Elders, past and present.

As Victoria's environmental regulator, we pay respect to how Country has been protected and cared for by Aboriginal people over many tens of thousands of years.

We acknowledge the unique spiritual and cultural significance of land, water and all that is in the environment to Traditional Owners, and recognise their continuing connection to, and aspirations for Country.



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This guidance has been prepared to assist EPA appointed environmental auditors understand the transitional provisions relating to environmental audits and auditor appointments that apply upon the commencement of the *Environment Protection Act 2017* (Vic) (New Act) on 1 July 2021.

This guidance also addresses the approach EPA will take to Clean Up to the Extent Practicable (CUTEP) submissions that have not been determined by EPA by 1 July 2021.

Transition of auditor appointments

The New Act outlines the functions of auditors and provides a statutory framework for the appointment and reappointment of auditors, and the revocation and suspension of auditor appointments. Further detail on these matters will be outlined in *Environmental Auditor Guidelines for Appointment and Conduct* (publication 865), which is currently under revision.

As outlined in section 497 of the New Act, auditor appointments under the *Environment Protection Act 1970* (Vic) (Old Act) transition automatically upon the commencement of the New Act on 1 July 2021. No action by EPA or auditors is required for this transition to occur.

Specifically, section 497 states:

On the commencement day, a person who is an environmental auditor appointed under section 53S of the old Act is taken to have been appointed as an environmental auditor under Division 1 of Part 8.3 of the new Act on the same terms as applied to that person immediately before that day.

The three categories of auditor appointment – contaminated land, industrial facilities and natural resources are also to be maintained in the transitioned appointments.

While under the New Act (section 195) the period of appointment for an auditor is not to exceed 3 years, transitioned appointments continue on the same terms that applied before 1 July 2021, that is existing appointment terms continue.

It is important to note that under section 190 of the New Act, new functions of auditors apply to the transitioned appointments. These functions are:

- a) to conduct preliminary risk screen assessments and environmental audits;
- b) to prepare preliminary risk screen assessment statements, preliminary risk screen assessment reports, environmental audit statements and environmental audit reports;
- c) to perform any function conferred on an environmental auditor under this or any other Act;
- d) to perform any prescribed function of an environmental auditor.

The prescribed functions of auditors referred to in section 190(1)(d) are outlined in Regulation 164 of the Environment Protection Regulations 2021 (Vic).

Transition of environmental audits

Part 16.4 of the New Act provides transitional provisions to address environmental audits where an auditor has notified EPA that they have been engaged to conduct an audit under section 53U of the Old Act, but the audit has not been completed by 1 July 2021.

Audits can be completed under the Old Act or the New Act

Section 478 of the New Act provides that an environmental auditor may conduct an environmental audit under the Old Act or the New Act (where an auditor has been engaged to conduct an audit prior to 1 July 2021 and the audit has not been completed at 1 July 2021). There is no fixed time period for audits that are in-progress as of 1 July 2021 to be completed under the Old Act or New Act.

Under section 478(3)(a), if an auditor proceeds to continue to conduct an audit under the Old Act, then Part IXD of the Old Act continues in effect as if it had not been repealed. An environmental audit report and certificate or statement of environmental audit issued under Part IXD of the Old Act after 1 July 2021 are also taken to satisfy the requirements of Part 8.3 of the New Act, and to have been issued under the New Act.

However, given EPA's upgrade of digital systems (including the new portal for auditors), and to facilitate the early adoption of the audit system under the New Act, EPA encourages auditors to transition any in-progress audits to the New Act within the first few months after commencement. It is also recommended that, where possible, auditors aim to complete and submit audits which are conducted under the Old Act to EPA by 1 November 2021, due to further changes to digital systems that are expected in December 2021.

Auditors should note that section 479 of the New Act details the transitional provisions regarding the process for withdrawal or amendment of certificates or statements of environment audit.

Audit scopes continue under the Old Act

If an auditor has been engaged to conduct an audit prior to 1 July 2021, and proceeds to conduct a transitioned audit under the Old Act after 1 July 2021, the scope of the audit can remain as developed under section 53V of the Old Act, or as developed under section 53X of the Old Act in accordance with *Environmental auditor (contaminated land): Guidelines for issue of certificates and statements of environmental audit* (publication 759). For these audits, auditors do not need to submit a new proposed scope of audit to EPA under section 208(3) of the New Act.

If an auditor has been engaged to conduct an audit prior to 1 July 2021, but the audit is to be conducted under the New Act and has not yet commenced at 1 July 2021, auditors should comply with section 208(3) of the New Act and submit a proposed scope to EPA.

Where an auditor has been engaged and has commenced an audit prior to 1 July 2021, and proceeds to conduct a transitioned audit under the New Act where there has been an agreed scope in place, auditors should ensure that the scope of the audit is appropriate to fulfill the outcomes required in section 211 of the New Act. This is because the transitioned audit which is completed under the New Act will result in an environmental audit statement and environmental audit report being issued under section 210 of the New Act.

EPA-determined CUTEPs under the SEPP (Waters)

After 1 July, EPA will not be able to invoke clause 58 of the State Environment Protection Policy (SEPP)(Waters) to make CUTEP determinations. Therefore, EPA will not be making any CUTEP determinations after 1 July 2021. Auditors may proceed to finalise an audit (undertaken under the Old Act or the New Act) without obtaining a CUTEP determination from 1 July 2021.

SEPP (Waters) and other relevant guidance material which is not revoked or superseded will continue to exist as an advisory or guidance resource. The intent of clause 58 of SEPP (Waters) can be maintained for any 53X audit which continues to be conducted under the old Act. However, the administrative approach under clause 58, whereby EPA has made a formal CUTEP determination will not continue.

Where a 53X audit is continuing to be conducted under the Old Act after 1 July 2021, auditors ideally should continue to follow the advisory guidance in *Environmental auditor (contaminated land): Guidelines for issue of certificates and statements of environmental audit* (publication 759) regarding the consideration of groundwater in the auditing of contaminated land. As such, auditors can form and document their opinion as to the achievement of CUTEP in their audit report. Further information on how to document this opinion is provided in *The cleanup and management of polluted groundwater* (publication 840). It is recommended that auditors discuss their opinions on CUTEP achievement with EPA.

Similarly, where a 53X audit is continuing to be conducted under the Old Act after 1 July 2021, auditors should ideally continue to include details on restrictions to groundwater use in their audit reports. In relation to Groundwater Quality Restricted Use Zones (GQRUZs), auditors can continue to make a recommendation that EPA consider that a GQRUZ be identified. EPA intends to continue making information identifying areas with restrictions to groundwater use available to the broader community, however EPA is in the process of determining the best way of sharing of this information.

As part of the transition process, for CUTEP submissions which are currently being finalised and are submitted to EPA prior to 30 June 2021, EPA can provide a letter of advice in relation to CUTEP until 30 June 2021. In circumstances where EPA has received a CUTEP submission and is unable to provide a letter of advice before 30 June 2021, the auditor will be contacted so that we can discuss the best approach. As EPA will not be accepting CUTEP submissions from 1 July 2021, EPA will continue to encourage auditors to discuss their audit with EPA to ensure a smooth transitional process and provide regulatory support where needed.

Imminent state of danger

Section 216 of the New Act states that an auditor, when carrying out any function under the New Act or any other Act, must notify EPA as soon as practicable after the auditor becomes aware of an imminent state of danger to human health or the environment from pollution or waste, or any circumstances which are likely to become such a state of danger if not addressed.

This requirement for auditors to notify EPA also applies in relation to transitioned audits which are continuing to be conducted under the Old Act after 1 July 2021, due to the operation of section 478(3)(b) in Part 16.4 of the New Act.

Further details on this will be provided in *Environmental Auditor Guidelines for Appointment and Conduct* (publication 865).

Public Register

Since environmental audit reports and certificates or statements of environmental audit issued under the Old Act after 1 July 2021 are taken to have been issued under the New Act, it is intended that the details of these audits will appear in the Public Register that EPA is to establish and maintain from 1 July 2021.

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