



General standards policy

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EPA acknowledges Aboriginal people as the first peoples and Traditional custodians of the land and water on which we live, work and depend.

We pay respect to Aboriginal Elders, past and present.

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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Contents

Purpose.....	4
General standards overview	5
1. Performance and conduct	8
1.1. Guidance	8
1.2. Compliance codes	9
1.3. Prescription in Regulations	10
2. Rulings and determinations	11
2.1. Permissions determinations	11
2.2. Waste determinations	11
2.3. Contamination determinations	12
2.4. Designations.....	12
2.5. Class exemptions	13
3. Alternative instruments.....	14
3.1. Orders for managers of land or infrastructure	14
3.2. Environmentally hazardous substances orders.....	14
3.3. Economic instruments	15
4. Environmental management or coordination tools	16
4.1. Environment Reference Standard	16
4.2. Issue of environmental concern.....	17
5. General standards summary	18
References	21
Appendix: Environment Protection Act 2017 framework	22

Purpose

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

As an independent statutory authority under the *Environment Protection Act 2017* (the Act), EPA's role is to prevent and reduce harm from pollution and waste. We do this in several ways:

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

The Act provides the new framework for environmental protection, underpinned by the General Environmental Duty (GED) and duties for waste, contaminated land and incident notification and management.

'General standards' support people to understand and meet their environmental obligations. They are a diverse collection of tools, ranging from instruments made under the Act that set legal requirements through to advisory guidance.

This policy provides an overview of general standards instruments and tools, and the high-level approach to developing and using the best instruments and tools to address a problem. Read the policy together with the following EPA documents:

- *Permissions scheme policy*
- *Compliance and enforcement policy*
- *Charter of consultation.*

General standards overview

The Act's duties-based framework targets the risks of harm from pollution and waste in a preventative manner, so that everyone can minimise the risks of harm to human health and the environment.

There are a broad range of general standard instruments and tools under the Act and its Regulations to deal with risks that the duties alone may not fully address.

Some of these establish mandatory requirements while others provide practical guidance on ways to minimise risks of harm.

General standards tend to have a broad affect and operation, in contrast to other instruments that are typically issued to a single entity or for a single activity or site.

An important part of the new environment protection framework, general standards support and work with the GED, other duties and permissions and compliance instruments under the Act (see Appendix).

For example, general standards may:

- set environmental objectives and values to guide environmental protection
- define or prescribe minimum standards of risk control
- provide for variations from, exemptions to, or a way of meeting a requirement of the Act or Regulations
- support understanding of obligations, the identification of risks and practices to minimise the risks of harm.

General standards tend to fall under one of four categories (see Figure 1):

- **Performance and conduct:** defining requirements for compliance or aiding understanding of the duties and approaches to identifying and managing risks
- **Rulings and determinations:** modifying requirements in a permission or regulation
- **Alternative instruments:** for issues that are unsuited to routine regulatory approaches under the duties
- **Environmental management or coordination tools:** supporting government and community environmental management.

Some general standard instruments and tools are developed collaboratively by the Department of Environment, Land, Water and Planning (DELWP) and EPA. EPA develops others directly.

Where relevant, general standard instruments and tools must also be developed in accordance with Better Regulation Victoria's *Victorian Guide to Regulation*, the *Subordinate Legislation Act 1994 Guidelines* and EPA's *Charter of Consultation* (see Table 1).

Consistent with good regulatory practice, EPA considers what type of general standard is the most appropriate to motivate action and achieve the desired outcome for an identified problem.

EPA will first consider if guidance to support duty holders to understand their obligations and ways they can manage their risks can achieve the desired outcome.

Where EPA forms a view that an identified problem cannot be adequately addressed through guidance, we look at what other instruments or tools are suitable.

EPA will consider the use of advisory general standards over mandatory standards where they can effectively be used to help duty holders understand and manage their particular risks and harms.

Where appropriate to the identified problem and instrument, EPA will work with our government partners and consult with relevant stakeholders when setting standards.

We also work with duty holders to ensure that the intent and expected requirements are clear.

EPA will monitor and review the effectiveness of general standards tools over time. This helps us to understand if they are achieving the desired outcomes.

Where necessary, EPA may adjust the tools used to address a problem to make sure they continue to be effective and have the greatest impact in achieving the desired outcomes.

As environmental conditions and risks of harm change and advances in technology occur, general standards will evolve over time. EPA will work with community, industry and our government partners to design solutions that promote better practice, aligned to our strategic priorities.

1. Performance and conduct

Standards of performance and conduct support people to understand and meet their environmental obligations.

This category of standards is the most commonly used for environmental issues and risks that are subject to duties under the Act. They will usually be developed collaboratively with industry or undergo formal stakeholder consultation processes.

1.1. Guidance

Guidance is an important part of the overall environment protection framework and is central to the operation of the duties under the Act.

Guidance provides information to help duty holders understand their obligations under the Act, approaches to identifying risks and practical measures that a duty holder can take to minimise risk of harm based on their individual circumstances. It does not impose compliance obligations.

Guidance can incorporate or reference documents produced by reputable standard setting bodies. It may give general advice, or suggestions on how to comply with a duty. Guidance may cover specific technologies or outline processes or measures for controlling risk.

Guidance may focus on:

- an industry (for example, construction)
- an impact (for example, odour),
- an activity that may lead to harm (for example, liquid storage and handling), or
- a combination of these.

EPA guidance may also refer to, restate or clarify EPA's approach to statutory obligations in general terms.

EPA will prioritise the use of guidance over mandatory general standards when it can achieve the desired outcome for an identified problem.

EPA Position statements

EPA may issue an EPA position statement under 'Performance and conduct' or 'Environmental management or coordination tools' general standards categories.

EPA uses these to provide our interpretation of how the law applies to different groups or circumstances, or to describe how we exercise our discretion in applying the law in particular circumstances or matters.

They will be considered where EPA's position is clear and relatively stable to help duty holders to understand our view and how they can expect us to act in relation to the issues a position statement covers.

While position statements are an instrument under the Act, they are not legally binding.

EPA may also prepare interim position statements. These can be useful where our position is still developing (such as evolving knowledge of the risk) or is transitional in nature (only in place for a defined period).

1.2. Compliance codes

Compliance codes provide practical guidance for people about how to meet specific duties and obligations under the EP Act or subordinate legislation, including the GED.

While they are not mandatory, they do provide a means of compliance and outline what EPA considers to be 'reasonably practicable' in a particular context. Where a duty-holder elects to follow a compliance code, EPA will assess the duty holder's compliance against the content of the compliance code.

If a compliance code sets out how to perform a duty or satisfy an obligation, and a duty holder complies with the compliance code then the duty holder is taken to perform that duty or satisfy that obligation under the Act.

Where different or additional risks not covered by the compliance code are identified, the duty holder must achieve compliance by other means otherwise that duty or obligation will not be satisfied.

A duty holder may adopt different means of achieving compliance than a compliance code, provided they can demonstrate that the control measures achieve an equal or greater level of performance.

Compliance codes may be used:

- to confirm a settled standard of conduct well-understood by EPA and industry
- where the methods are not likely to become outdated
- to standardise conduct across an industry or risk
- to provide detailed practical guidance on how to perform a duty or satisfy an obligation, that would not be suited to prescription in Regulations
- where the benefits of creating certainty through 'deemed compliance' outweigh the risks of not providing guidance on important elements of risk control.

Compliance codes will be used infrequently, compared to guidance.

Role of EPA permission conditions

Permission conditions are set in a permission to undertake an activity and are not included as a general standard in this policy. The *Permissions scheme policy* sets out EPA's approach to applying and managing permissions, including permission conditions.

Permission conditions support and enhance the operation of the GED. They set minimum performance requirements, restrict certain actions or activities, or specify environmental outcomes for an activity to meet.

EPA will apply conditions in a targeted way. This means that where a risk is commonplace and an industry's knowledge is well developed (including general guidance or compliance codes), permission conditions will not directly address that risk.

EPA may apply a standard condition where it is necessary to establish a common standard of performance across an industry sector or for a given risk, such as where there is a history of non-compliances in that industry. Any risk-specific conditions are generally limited to the primary risk that is the basis for requiring a permission. EPA may also develop site-specific conditions for complex sites associated with the particular licensed activity.

Under the Act, a person is taken to perform a duty or satisfy an obligation if the permission conditions set out how the person is to perform that duty, and they comply with the relevant conditions to the extent that they address the relevant duty.

1.3. Prescription in Regulations

Among other functions, Regulations set compliance requirements by:

- prescribing minimum standards of conduct for specific activities or risks
- setting required performance outcomes, such as maximum emissions levels
- prohibiting certain activities or actions
- requiring compliance with a specific standard.

These offer a duty holder no or limited discretion on the means of compliance.

Regulations may set out the standard of performance or conduct with an Act duty or create specific obligations. These obligations may carry associated offences and ability for EPA to access penalties, including penalty infringement notices for non-compliance.

DELWP and EPA may seek to develop Regulations where:

- a risk control failure may have significant negative consequences, and a Regulation is required to safeguard outcomes
- an obligation under the legislative framework cannot function or would not be enforceable without prescription
- there is a significant compliance and environment protection benefit in defining a rule for an area of conduct
- greater certainty is required to ensure consistent compliance with the duties and obligations under the relevant duty
- there is a known risk of mismanagement by duty holders that they can best address by specifying the standard of conduct, and the benefits of doing this outweigh the negative impacts of prescribing only one approach
- there are clear benefits to industry and the environment in creating standardisation and regulatory certainty
- there is an enforcement and deterrence benefit in establishing a requirement with associated offences, especially for access to penalties.

Regulations are statutory rules that usually expire and are reviewed every 10 years. They may also be amended at any time as required. They are subject to public consultation and regulatory impact assessment processes in their development.

The Regulations made under the Act (the Regulations) may also deal with a range of specific issues beyond setting performance standards. For example, they can:

- specify where a person is required to hold a permission to conduct an activity, under the framework set by the Act
- set categories for waste and requirements relating to lawful place
- regulate the way in which duties or obligations imposed by the Act or the Regulations are performed, such as the determinations and designations.
- set out a range of other requirements and subject areas such as for control of litter and residential noise.

2. Rulings and determinations

The Act and Regulations establish a range of legislative instruments that EPA can issue. These can modify duty holder requirements under a permission or Regulation, providing flexibility and responsiveness in the way issues are regulated.

For example, EPA may determine circumstances where a person won't have to hold a permission, subject to them applying certain risk controls.

Rulings and determinations are generally ways to reduce the burden on duty holders that operate by class of activity or circumstance. In setting out the scope and application of requirements, they provide broad-reaching certainty for duty holders about their conduct and obligations. EPA can revoke or modify these over time, to reflect changes to state of knowledge.

Where applied as a general standard to a class of people or circumstances, rulings and determinations are usually published in the Victorian Government Gazette. EPA will also generally consult on significant rulings and determinations.

2.1. Permissions determinations

The activities that require a person to hold a licence, permit or registration (permission) are set out in Regulations. Section 48 of the Act allows for EPA to make determinations that adjust the requirement to hold a permission.

These are designed to address situations where the burden associated with a permission is disproportionate to the risk of certain activities, or risk reduction may be better achieved through other means.

If a person meets the requirements of the determination and complies with it, they may not have to hold a permission, or may hold a lesser permission. For example, a determination might specify that:

- if a licensed activity falls under a certain production threshold and follows a standard set of risk control measures, it only requires a permit
- a site is not required to hold a licence for accepting small quantities of a waste stream for temporary storage, subject to adopting risk control measures
- facilities that already have a licence don't need a development licence for minor modification works to improve environmental outcomes or emergency preparedness.

In deciding whether to apply a permission determination, EPA will consider the nature of the regulatory burden compared to the risk, and any disadvantages to compliance, oversight or public review rights arising from varying from normal approval processes.

2.2. Waste determinations

The Regulations set out a framework for where industrial waste must be taken, such as to a permitted site, or managed under a Declaration of Use (DoU) completed by parties to the waste transaction.

The Regulations also allow EPA to make a waste determination. Through this, EPA can set specifications and conditions where industrial waste can be lawfully received without the requirement for duty holders to hold a permission or complete a DoU.

Waste determinations will generally be used where standard protocols can appropriately manage the waste risk, and where EPA oversight of further uses of the waste material is unnecessary. For example, for receipt of a common low risk construction waste intended for use or sale.

Waste determinations work along with the risk management requirements of the GED and the informational and other obligations of the industrial waste duties.

A waste determination may provide that a waste can be lawfully received, but storage or use of the waste must still comply with the GED.

EPA can also issue waste determinations that set out specifications for receiving waste with the additional requirement that the waste receiver makes a DoU.

2.3. Contamination determinations

EPA can make a determination to help distinguish land that has been contaminated from a particular activity or source, from land that has been contaminated by diffuse or non-point source activities.

These determinations are used to help focus the application of the contaminated land duties to site-specific activities and sources of contamination, rather than regionally elevated contamination levels.

There are two types of contamination determinations, specifying:

- the background level value for a single contaminant or waste in a location, and the circumstances and limitations to which that value applies, or
- a method to derive a background level in a range of circumstances.

2.4. Designations

The Regulations set out how to classify industrial waste which determines how the waste is managed and where it may be taken.

A designation can fill any gaps in waste classification or override the waste classification determined under the Regulations. While it allows EPA to account for novel circumstances and emerging issues around waste, it does not allow a waste to be excluded from the industrial waste duties in the Act.

Under a designation, EPA can classify or categorise a new waste or reclassify an existing waste. It may have state-wide, regional or site-specific application.

EPA may issue a designation of its own accord to a class of persons (a 'general designation') or to a single duty holder (a 'specific designation'). A duty holder may also apply for a specific designation.

For designations issued by EPA of its own accord, they continue to apply in lieu of any waste classification determined under the Regulations.

2.5. Class exemptions

Under section 459 of the Act, EPA can issue a class exemption subject to conditions specifying circumstances where a requirement of Regulations or a legislative instrument does not need to be met. Individual exemptions may also be granted under this provision on application.

Exemptions only apply to subordinate instruments and cannot exempt a person or class of persons from a requirement of the Act.

They are likely to be issued sparingly and EPA must not grant an exemption unless it is satisfied that the exemption:

- will not pose a serious risk of harm, and it is not practicable to comply with the requirement, or
- is necessary to enable the efficient administration of a regulation or legislative instrument.

While the approach to exemptions will evolve with experience in administering the Act, EPA will:

- preference the use of other instruments, where these are available to address the issue
- seek to avoid any risk of an exemption indirectly reducing the level of performance expected under the Act
- target exemptions to specific requirements, and ensure the risk control outcome achieved is equal to or greater than that set by regulations
- make its decision based on evidence about the nature of the regulatory problem and the risk, the risk controls provided by exemption conditions, and the level of residual risk or impact achieved with these controls
- use for administrative or other low-risk compliance requirements, rather than significant environmental risks.

EPA may choose to publicly consult on any proposed class exemptions.

3. Alternative instruments

The Act provides instruments for risks and issues not directly targeted by the duties and general standards of performance and conduct.

The use of these instruments will depend on the character of the issue, scope of the duties, and whether better environmental outcomes can be achieved through the alternative tool.

3.1. Orders for managers of land or infrastructure

Managers of land or infrastructure may be subject to a legislative order that sets out their mandatory duties and obligations under the Act.

An order for managers of land or infrastructure (OMLI) can set requirements on a council, public sector body or infrastructure manager (or similar duty holders) regarding how the land or infrastructure should be planned, managed, operated or controlled. It can also play a role in addressing responsibilities outside of the direct focus of the GED. For example, risk arising from third parties using the land, rather than direct activities of the manager.

An OMLI can require the manager to take certain actions to reduce risk. This may be to take a specific action, consider a specific matter, or comply with a specific document, code, standard or rule.

To set out how the obligation should be met, they may be complemented by:

- general standards of performance and conduct (for example, general guidance or compliance codes)
- agreements or other administrative instruments (for example, a better environment plan or remedial notices).

These types of orders are developed by DELWP, supported by EPA. They require formal consultation and regulatory impact assessment and are not expected to be frequently used.

3.2. Environmentally hazardous substances orders

The Act allows the Minister to recommend that an environmentally hazardous substance order (EHSO) be made to manage a substance if it is found to be highly hazardous or pose a serious risk of harm to human health or the environment. This might include hazardous waste streams, products made with or from hazardous substances, or hazardous substances in storage.

An EHSO imposes mandatory obligations, such as requirements to prohibit or control the hazardous substance, or follow particular standards of management, record keeping or notifications to EPA.

The EHSO is a legislative order that provides an alternative to setting minimum standards through Regulations.

The development of these types of orders by DELWP and EPA generally requires a regulatory impact assessment. They are not expected to be frequently issued.

They might be considered where the scope of the duties does not directly target the risk, or where there is a need to ensure record keeping or reporting around an emerging high-risk product or substance of concern.

3.3. Economic instruments

The Act provides for the creation of economic instruments, such as tradeable permit schemes and environmental offsets. Where created under Regulations, economic instruments can define how a person following the instrument is either complying with, or is exempt, from a regulatory requirement.

For instance, a Regulation could state that compliance with a trading scheme (for example, noise emissions in an industrial estate, or sulfur emissions in a regional airshed) is taken as compliance with permission discharge limits or the requirements of a regulation.

They are most likely to be considered where a market-based approach to coordinating environment protection responsibilities is an efficient way to allocate obligations across multiple duty holders within a defined area.

No economic instruments are in effect at commencement of the Act, and they are not expected to be applied in the early years of operation of the Act.

4. Environmental management or coordination tools

EPA's role in environment protection extends beyond issues directly targeted by the environmental duties.

As well as assessing and communicating environmental risks, standards may be set that describe the level of environmental protection the community expects.

4.1. Environment Reference Standard

The Environment Reference Standard (ERS) sets out the environmental values - uses and features of the environment - the Victorian community wants to achieve and maintain. For example, an ERS may describe the quality of water for swimming in a river.

Standards for the environmental values are made up of objectives to support different uses of the environment, and measurable indicators to tell us whether those objectives are being met. A standard specifies where it applies in Victoria. For example, a standard may apply to only Port Phillip Bay, or to all of Victoria.

The ERS provides a basis for assessing and reporting on environmental conditions in Victoria. It enables an understanding of the current condition of the environment, changes in those conditions over time, and a basis for assessing actual and potential risks to environmental values.

An ERS is a reference standard and not a mandatory compliance requirement. However, government decision makers must take the ERS into account when making certain decisions. For example, EPA must consider standards in the ERS when assessing a development, operating or pilot project licence application under the Act.

EPA can also use the ERS for making other decisions under the Act that may impact a location's environmental values, to set benchmarks and goals for maintaining long-term environmental values, and monitor changes in the environment over time.

When relevant, the ERS is also considered:

- in making Regulations
- when developing compliance codes
- when declaring issues of environmental concern
- when conducting environmental audits
- in review processes for EPA decisions
- by responsible authorities in planning decisions.

The development of an ERS by DELWP and EPA requires public consultation and, where the ERS or its amendment will impose a significant impact, an impact assessment.

While an ERS does not expire, it must be reviewed every 10 years. It can also be updated more frequently if new knowledge becomes available, for example, when our understanding of risks of harm change.

4.2. Issue of environmental concern

The Act allows the Minister to propose that an issue be declared as an issue of environmental concern (IEC) to raise the profile of an identified or emerging environmental challenge.

An IEC order can be a starting point for the development of new standards to address emerging issues, raise knowledge about risk and harms, and help determine what is reasonably practicable for that risk.

An IEC order is a statutory instrument under the Act. Development of an order is led by DELWP, supported by EPA, and requires statutory consultation on a proposal.

While this type of order is not mandatory, it may be accompanied by proposed prescriptive compliance requirements to address the issue under a statutory rule or other legislative instruments.

If the Minister declares an IEC, the order must invite the parties that are required to address the issue to develop a better environment plan¹ (BEP) and set out the actions that will be taken if the issue is not addressed.

When an issue of environmental concern is declared, it demonstrates to industry that the government is seeking voluntary action and identifies what actions the government will take towards regulatory intervention in the absence of credible voluntary action.

¹ Parties may also propose a BEP to EPA without the Minister declaring an issue of environmental concern. See [[link to EPA's BEP webpage](#)].

5. General standards summary

Category	General Standard	Legislative status	Mandatory obligation	Development requirements	Act or regulation ² reference
Performance and conduct	Guidance	Non-statutory	✗	EPA may develop with industry collaboration. Published on EPA public register.	Section 359
	EPA position statement	Statutory instrument	✗	EPA develops with statutory consultation. Published on EPA public register and in Government Gazette.	Part 5.4
	Compliance code	Statutory instrument	✗	Developed by DELWP and EPA, usually with industry collaboration. Approved by Governor in Council on recommendation of the Minister. Published on EPA public register and in Government Gazette.	Part 5.3
	Regulations	Statutory rules	✓	Developed by DELWP and EPA Statutory consultation and RIS (unless granted exemption). Made by Governor in Council on recommendation of the Minister.	Part 15.2 & Schedule 1

² Environment Protection Regulations 2021

Category	General Standard	Legislative status	Mandatory obligation	Development requirements	Act or regulation ² reference
Rulings and determinations	Permissions determination	Legislative instrument	✓	EPA administrative instrument. Published in Government Gazette.	Section 48
	Waste determination	Legislative instrument	✓	EPA administrative instrument. Published in Government Gazette and on EPA website.	Regulation 5(3)
	Contamination determination	Legislative instrument	✓	EPA administrative instrument. Published in Government Gazette and on EPA website.	Section 36 & regulation 5(1)
	Designation (EPA issued)	Legislative instrument	✓	EPA administrative instrument. Published on EPA public register.	Regulation 86
	Section s459 class exemption	Legislative instrument	✓	EPA administrative instrument. Published in Government Gazette.	Section 459
Alternative instruments	Order for managers of land or infrastructure (OMLI)	Legislative instrument	✓	Developed by DELWP and EPA. Statutory consultation and RIS (unless granted exemption). Made by Governor in Council on recommendation of the Minister. Published in Government Gazette.	Part 7.3
	Environmentally hazardous	Legislative instrument	✓	Developed by DELWP and EPA.	Part 7.2

Category	General Standard	Legislative status	Mandatory obligation	Development requirements	Act or regulation ² reference
	substance order (EHSO)			RIS (unless granted exemption). Declared by Governor in Council on recommendation of the Minister. Published in Government Gazette.	
	Economic instruments	Statutory instrument (if made under Regulations)	✓	In accordance with the Regulations under which they are made.	Part 15.2 & clause 16 of Schedule 1
Environmental management and coordination tools	Environment Reference Standard (ERS)	Legislative instrument	✗	Developed by DELWP and EPA. Statutory consultation and Impact Statement (unless granted exemption). Made by Governor in Council on recommendation of the Minister. Published in Government Gazette.	Part 5.2
	Issue of Environmental Concern (IEC)	Statutory instrument	✗	Developed by DELWP and EPA. Statutory consultation. Made by Governor in Council on recommendation of the Minister Published in Government Gazette and on EPA website.	Part 7.5

References

Resource type	Title	Description	Publication
Policy	<i>Permission scheme policy</i>	Permissions under the Act, the roles of the different permission tiers and EPA's approach to implementing the scheme.	EPA publication 1799
Policy	<i>Compliance and enforcement policy</i>	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>Charter of Consultation</i>	EPA's commitment to consult on the development of legislative standards and permissions applications assessment	EPA publication 1928
Guideline	<i>Victorian Guide to Regulation</i>	Preparing impact assessments for regulatory proposals using an evidence-based policy framework and best practice regulatory principles.	Better Regulation Victoria – ISBN 978-1-925551-12-9
Guideline	<i>Subordinate Legislation Act 1994 Guidelines</i>	Procedures to ensure consultation, co-ordination and uniformity in the preparation of statutory rules and legislative instruments	Department of Premier and Cabinet, Office of the General Counsel

Appendix: Environment Protection Act 2017 framework

