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Financial assurance for permissions and contaminated land management

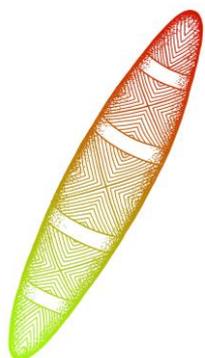
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EPA acknowledges Aboriginal people as the first peoples and Traditional custodians of the land and water on which we live, work and depend. We pay respect to Aboriginal Elders, past and present.

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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Purpose

The purpose of this guide is to set out when financial assurance may need to be provided by a person undertaking certain activities in relation to a permission (development licence, operating licence or permit), site management order or environmental action notice issued by Environment Protection Authority Victoria (EPA).

This guide:

- sets out the laws applying from 1 July 2021 relating to financial assurance under the *Environment Protection Act 2017* (the Act) and Environment Protection Regulations 2021 (the Regulations)
- identifies the activities that may require financial assurance
- explains how EPA determines if financial assurance is required.

Read more about financial assurance:

- [Forms of financial assurance](https://www.epa.vic.gov.au/about-epa/publications/1595-2) (publication 1595) (<https://www.epa.vic.gov.au/about-epa/publications/1595-2>)
- [Calculation of financial assurance for landfills, reportable priority waste management and waste resource recovery facilities](https://www.epa.vic.gov.au/about-epa/publications/2003) (publication 2003) (<https://www.epa.vic.gov.au/about-epa/publications/2003>)
- Information about financial assurances – [epa.vic.gov.au](https://www.epa.vic.gov.au)

What is financial assurance?

A financial assurance is used to provide security for the costs of remediation and cleanup associated with certain waste management and contaminated land activities.

Financial assurance was introduced to Victoria's environment protection legislation following several incidents where EPA conducted cleanup following business failures and pollution incidents. Financial assurance ensures that in the event remediation or cleanup is required, appropriate funds are available from the responsible person.

When EPA may require a financial assurance

Under section 219(1) of the Act, EPA may require a financial assurance:

- as a condition of a prescribed permission
- as a condition of a site management order
- as a condition of an environmental action notice
- for an Order relating to environmentally hazardous substances (not discussed in this guideline).

Prescribed permission activities

The activities from Schedule 1 of the Regulations that may be required to have a financial assurance as a condition of a permission are set out in regulation 167. They are:

- (a) Reportable priority waste management (A01)
- (b) Landfills - excluding municipal landfills servicing <5000 people (A05a)
- (c) Waste and resource recovery – large (A13a)
- (d) Waste and resource recovery - medium (A13b)
- (e) Bulk storage (G04)
- (f) Contaminated sites – onsite soil containment (L02).

EPA will determine if financial assurance is required as a condition of a permission (development licence, operating licence or permit - depending on the prescribed permission activity), by applying the risk assessment criteria in the Regulations (see Table 1 below).

Read more about EPA permissions in [Permissions scheme –policy](#) (publication 1799) (<https://www.epa.vic.gov.au/about-epa/publications/1799-1>).

Site management order

EPA may require financial assurance as a condition of a site management order (SMO).

An SMO can be issued by EPA under section 275 of the Act, in relation to:

- a site that requires long term management due to contamination, or
- there is risk of harm to human health or the environment from pollution or waste.

Some SMOs may require the current owner or occupier of land that may be contaminated to undertake a broad range of actions to manage risks of harm.

EPA will determine if financial assurance is required as a condition of an SMO by applying the risk assessment criteria in the Regulations.

Financial assurance as a condition of an SMO may be necessary to manage the risk of the owner, occupier or person in control or management not fulfilling their obligations under the SMO (for example, abandoning the site).

At the eventual cessation (surrender or revocation) of a landfill operating licence, an SMO will likely be issued by EPA for the ongoing management of the site, such as maintenance of the landfill cap, environmental monitoring and restrictions on use. In this case the financial assurance for the landfill can be transferred to the SMO.

Read more about SMOs on EPA's website epa.vic.gov.au

Environmental action notice

EPA may require financial assurance as a condition of an environmental action notice (EAN). An EAN can be issued by EPA under section 274 of the Act, to address the impact of pollution, waste and contamination.

They are used when land is or may be contaminated, a pollution incident has occurred, industrial waste is at a place or premises unlawfully, there is a risk of harm to human health or the environment arising from pollution or the depositing, storing or handling of waste, or a notice to investigate has not been complied with.

EPA will determine if financial assurance is required as a condition of an EAN by applying the risk assessment criteria in the Regulations.

Read more about EANs on the EPA website.

Risk assessment criteria

For prescribed permissions, SMOs and EANs, EPA will apply the risk assessment criteria set out in Regulation 168, to determine if a financial assurance is required. Table 1 lists the prescribed risk assessment criteria.

EPA will assess each case individually to determine if a financial assurance is required as a security for the costs and expenses of remediation or clean up in connection with a particular activity.

Table 1: Risk assessment criteria for financial assurance

Regulation 168	Risk assessment criteria
(a)	the risk or potential risk of harm to human health and the environment associated with the activity, including consideration of the location of the activity
(b)	compliance, whether current or historical, with the Act, the <i>Environment Protection Act 1970</i> (as in force immediately before its repeal), these Regulations and environment protection legislation of the Commonwealth, another state or a territory by— <ul style="list-style-type: none"> (i) the person undertaking the activity; and (ii) in the case of a natural person, anybody corporate of which the person was an officer (iii) in the case of a body corporate, any person who is an officer of the body corporate
(c)	whether the person undertaking the activity is a prohibited person under section 88(1) of the Act
(d)	the financial capacity of the person undertaking the activity
(e)	the likelihood of the person undertaking the activity abandoning the site of the activity, taking into account the ongoing profitability of the activity and the value of the investment in the site
(f)	the nature, duration, extent and costs of remediation or cleanup activities that may be required under the Act or these Regulations in connection with the activity.

Form of financial assurance

A finance assurance may be provided in the forms set out in section 220 of the Act. These are:

- bank guarantee
- bonds
- any other form of security that EPA considers appropriate
- any combination of the above.

EPA will determine the form of the financial assurance required in each individual case, having regard to the prescribed risk assessment criteria.

Read more about the forms of finance assurance EPA may accept in [Forms of financial assurance](https://www.epa.vic.gov.au/about-epa/publications/1595-2) (publication 1595) (<https://www.epa.vic.gov.au/about-epa/publications/1595-2>).

Amount of financial assurance

In determining the amount of financial assurance, EPA will have regard to the factors set out in section 221 of the Act. These are:

- a reasonable estimate of costs and expenses of remediation or cleanup activities
- any method for calculating the amount of financial assurance that EPA publishes
- an independent assessment of the amount of financial assurance, if required by EPA under section 222 of the Act.

EPA publishes its methods of determining the amount of financial assurance for certain permitted activities in [Calculation of financial assurance for landfills, reportable priority waste management and waste and resource recovery facilities](https://www.epa.vic.gov.au/about-epa/publications/2003) (publication 2003) (<https://www.epa.vic.gov.au/about-epa/publications/2003>).

EPA will determine the amount of financial assurance for landfills, reportable priority waste management and waste and resource recovery facilities in accordance with this publication unless:

- EPA determines that a tailored financial assurance calculation is required to better estimate the costs and expenses of remediation or cleanup associated with the activity or type of waste managed at the site; or
- the duty holder can sufficiently demonstrate to EPA that a different calculation method is appropriate. A different method would only be applicable in exceptional circumstances.

For activities not covered in the calculation method guide, EPA will determine the amount in consultation with the duty holder.

Financial assurance for prescribed permission activities

Financial assurance information for different prescribed permission activities is outlined in Tables 2-6.

Table 2: Financial assurance for reportable priority waste management

Reportable priority waste management (A01)	
Why financial assurance may be required	Sites that manage reportable priority waste (RPW) may be required to provide a financial assurance as a condition of a development or operating licence. The financial assurance will be equivalent to the cost of removing and either treating or disposing of the waste permitted to be stored on the site.
How the amount of financial assurance is calculated for RPW management	<p>The disposal or treatment costs used to calculate a financial assurance by EPA are set out in Calculation of financial assurance for landfills, reportable priority waste management and waste and resource recovery facilities (publication 2003) (https://www.epa.vic.gov.au/about-epa/publications/2003). The calculation method assumes that the maximum amount of permitted waste is stored at the site; and that the waste that is most expensive to dispose of is stored up to the licensed limit, including any sub-limits per waste type.</p> <p>During the permission application process, EPA will calculate the amount of financial assurance for the site, having regard to method it publishes for this activity. This calculation will be based on information provided by the duty holder.</p>
How duty holders can reduce their financial assurance amount	<p>To reduce their financial assurance amount, permission holders can consult with EPA:</p> <ul style="list-style-type: none"> • to reduce the amount of waste permitted to be stored on their site • to include sub-limits for wastes that are expensive or difficult to treat or dispose of • to nominate amounts of waste or containers that will have storage agreements in place and therefore would be returned to the waste owners if required.

Table 3: Financial assurance for landfills

Landfills (A05a)	
<p>Why financial assurance may be required</p>	<p>There are substantial costs associated with maintaining, capping, and monitoring landfills. Financial assurance for landfills also aims to ensure that there is adequate provision made by landfill operators for closure and aftercare, as well as providing an incentive for landfills to progressively rehabilitate and ultimately move into the closure phase.</p> <p>Operating licences for landfills may require financial assurance to address unexpected or contingent events at the landfill, as well as the anticipated closure and aftercare costs of rehabilitation, auditing, long-term monitoring and maintenance.</p> <p>Read more: Landfill licensing (publication 1323) (https://www.epa.vic.gov.au/about-epa/publications/1323-3)</p>
<p>How the amount of financial assurance is calculated for landfills</p>	<p>The calculation method used to determine the financial assurance amount for landfills is set out in Calculation of financial assurance for landfills, reportable priority waste management and waste and resource recovery facilities (publication 2003) (https://www.epa.vic.gov.au/about-epa/publications/2003).</p> <p>Financial assurance for landfills is calculated in two components:</p> <ul style="list-style-type: none"> • operational • closure and aftercare. <p>Both components are calculated for active landfills.</p>
<p>Financial assurance proposals</p>	<p>Landfills are required to provide a financial assurance proposal to EPA as part of the permission application process. This proposal calculates the amount of financial assurance required under the relevant method published by EPA.</p> <p>EPA requires that estimates of financial assurance for landfills are assessed and verified by an EPA appointed environmental auditor.</p> <p>Find more information about auditor assessment of landfill financial assurance proposals, and the assessment form Landfill financial assurance auditor assessment form (F1014) (https://www.epa.vic.gov.au/about-epa/publications/f1014).</p>
<p>How duty holders can reduce their financial assurance amount</p>	<p>Progressive rehabilitation of landfills in accordance with licence conditions will reduce the amount of financial assurance required.</p> <p>The operational component will generally be released for a cell once it has the final verified capping, infrastructure and controls in place, and EPA determines that the closure and aftercare component is adequate to address the remaining anticipated costs of closure and/or aftercare.</p> <p>The closure and aftercare component can be reduced gradually when EPA is presented with evidence that rehabilitation milestones have been met.</p>

Table 4: Financial assurance for waste and resource recovery facilities

Waste and resource recovery facilities			
<p>Why financial assurance may be required</p>	<p>Operators of medium and large waste and resource recovery facilities (WRRFs) may be required to provide financial assurance.</p> <p>The scale of the waste activity and the type of waste that is handled at the facility will determine the type of EPA permission that is required, as prescribed in Schedule 1 of the Regulations, and listed below.</p> <p>Financial assurance is required for WRRFs for a variety of scenarios; the more likely being that a site catches fire and the permission holder is unable to cover the cleanup costs, or the site is abandoned, and the State has to step in to remove waste and close the site.</p> <p>Read more about EPA permissions for WRRFs on the EPA website.</p>		
<p>Prescribed permission activities for WRRFs for which EPA may require financial assurance</p>			
	Activity type (Schedule 1)	Description of prescribed permission activity	Prescribed permission type
	A13a Waste and resource recovery -large	4,000 tonnes or more combustible, recyclable waste received in one month Or, 10,000m ³ of waste stored on the premises at any time	Development licence, operating licence
	A13b Waste and resource recovery -medium	1. 4,000 tonnes or more of waste excluding combustible, recyclable waste received in one month or, 10,000m ³ of waste stored on the premises at any time 2. Less than 4,000 tonnes of waste (including specified combustible, recyclable waste) received in any month and, between 5,000 m ³ and 10,000 m ³ of waste stored on the premises at any time.	Development licence, permit

<p>How the amount of financial assurance is calculated for waste resource recovery facilities</p>	<p>The calculation method used to determine the financial assurance amount for landfills is set out in Calculation of financial assurance for landfills, reportable priority waste management and waste and resource recovery facilities (publication 2003) (https://www.epa.vic.gov.au/about-epa/publications/2003).</p> <p>The financial assurance amount for WRRFs is based principally on:</p> <ul style="list-style-type: none"> • the licensed or permitted upper limit for stockpile volume or weight • whether the site is licensed to receive and store specified combustible waste material.
<p>Financial assurance proposal</p>	<p>WRRFs are required to provide a financial assurance proposal to EPA as part of the permission application process. This proposal estimates the amount of financial assurance required under the relevant method published by EPA.</p>
<p>How duty holders can reduce their financial assurance amount</p>	<p>The primary way a duty holder can reduce their financial assurance amount is to manage their site in a way that reduces their stockpile volumes and can operate under a licence or permit with a smaller maximum stockpile volume.</p> <p>A secondary way to reduce the financial assurance amount is to only receive and process non-combustible materials.</p>

Table 5: Financial assurance for bulk storage

<p>Bulk storage (G04)</p>	
<p>Why financial assurance may be required</p>	<p>Facilities undertaking bulk storage of hydrocarbons may be required to submit financial assurance as a condition of a development or operating licence.</p> <p>The nature of the liquids stored at these premises can lead to offsite contamination, including groundwater, or these sites may catch fire. Financial assurance may be required from these premises to ensure that these financial risks are addressed.</p>
<p>How the amount of financial assurance is calculated for bulk storage</p>	<p>EPA will work with the duty holder to determine an appropriate amount of financial assurance to cover the costs of remediation or clean up associated with land and groundwater contamination. This amount will likely be independently verified per Section 222 of the Act.</p>
<p>How duty holders can reduce their financial assurance amount</p>	<p>Duty holders can reduce their financial assurance amount by working with EPA to demonstrate that contamination and fire risks are identified and reduced, and financial risk mitigation is in place if there is a significant pollution event.</p>

Table 6: Financial assurance for contaminated sites – on-site contaminated soil retention

Contaminated sites – onsite contaminated soil retention (L02)	
Why financial assurance may be required	Where contaminated soil is contained onsite, a financial assurance may be required to cover the costs of completing soil containment infrastructure that mitigates the risk of contamination on the site.
How the amount of financial assurance is calculated	EPA will work with the duty holder to determine an appropriate amount of financial assurance to cover the costs of completing the required infrastructure. This amount will likely be independently verified per Section 222 of the Act.
How duty holders can reduce their financial assurance amount	As financial assurance for this activity is only required during construction of infrastructure to contain contaminated soil, it only needs to be held until the work is finished. Alternatively, effective soil treatment or disposal to an appropriate landfill may remove the need for a financial assurance.

Public entities and local government

Waste management activities including landfills and waste and resource recovery facilities, that are operated by public entities (as defined in the *Public Administration Act 2004 (Vic)*) or local government, may require financial assurance.

For public entity or local government landfill operators, EPA will accept internal provisioning of adequate funds to cover costs of decommissioning, rehabilitation and/or long-term costs in accordance with *Local government- Accounting for landfills* published by Local Government Victoria - localgovernment.vic.gov.au.

Evidence proving that the entity has appropriately evaluated and provided for the anticipated costs in their financial statements must be provided to EPA.

Requirements for financial assurances

The Act sets out requirements for both EPA and duty holders in relation to financial assurances. Table 7 explains additional requirements to those covered earlier in this guide.

Table 7: Financial assurance requirements

Act section	What is required
Costs associated with financial assurance – Section 224	<p>EPA may incur reasonable costs associated with the provision of the financial assurance, or with determining its form and amount. When this occurs, the person who is required to provide the financial assurance is responsible for these costs.</p> <p>Examples of costs that may be incurred by EPA include fees associated with obtaining property valuations and receiving legal services.</p>
Review of financial assurance - Section 225	<p>EPA may review the requirement for a person to hold a financial assurance, the amount or form of a financial assurance.</p> <p>EPA may review a financial assurance if:</p> <ul style="list-style-type: none"> • a permission with a financial assurance is reviewed or varied, for example if waste storage limits change or if additional landfill cells are approved • an SMO, EAN or Order relating to environmentally hazardous substances with a financial assurance is varied • an updated method of calculating the amount of financial assurance for the relevant activity is published by EPA • the person who provided the financial assurance requests a review of the amount • EPA is satisfied, having regard to the prescribed risk assessment criteria, that there is a change to the costs and expenses that the financial assurance is provided for. <p>Prescribed review fee for financial assurance</p> <p>EPA may charge a fee where a person who provided a financial assurance requests a review of the form of financial assurance. The fee is set out in regulation 204.</p>
Amendment of financial assurance- Section 226	<p>Following a review, EPA may amend the amount and/or form of a financial assurance.</p> <p>If EPA proposes an amendment, it will notify the person in writing and provide the opportunity for the person to make a submission regarding the proposed amendment.</p> <p>If EPA decides to amend a financial assurance it will notify the person in writing.</p> <p>An application form for the amendment of financial assurance is available from the EPA website epa.vic.gov.au.</p>

Act section	What is required
<p>Claiming on a financial assurance</p> <p>Sections 227-230</p>	<p>If a person with a financial assurance has failed to conduct clean up or remediation required under the Act or Regulations, or EPA has exercised clean up powers in relation to the activity the financial assurance was provided for, then EPA can make a claim on the financial assurance.</p> <p>If EPA makes a claim on a financial assurance, it can by notice, require a person to replenish the amount of financial assurance – section 230.</p>
<p>Specified conditions for release of finance assurance</p> <p>Section 231</p>	<p>EPA will release all or part of financial assurance if:</p> <ul style="list-style-type: none"> • the person who provided the financial assurance as a condition of a permission, no longer holds the permission • the SMO no longer applies to the person who provided the financial assurance as a condition of the SMO • the EAN no longer applies to the person who provided the financial assurance as a condition of the EAN • an Order relating to environmentally hazardous substances no longer applies to the person who provided the financial assurance as a condition of the Order • following a review, a financial assurance is no longer required • following a review, the financial assurance is amended. <p>If the duty holder requires the financial assurance for another reason, EPA may instead decide to transfer it – see section 233 below.</p> <p>EPA will notify the duty holder who provided the financial assurance if all or part of that financial assurance is released by EPA.</p> <p>Transfer of permission</p> <p>When a permission with a financial assurance is transferred from one duty holder to another, the financial assurance will be released to the duty holder who provided it. EPA will notify the person who held the financial assurance about their intent to release the financial assurance in writing.</p> <p>EPA will calculate the amount of financial assurance for the new permission holder based on current site conditions and any method of calculating financial assurance currently published by EPA.</p> <p>EPA won't transfer the permission until the new financial assurance is provided.</p>
<p>Application for release of financial assurance</p> <p>Section 232</p>	<p>A person who provided a financial assurance may apply to EPA at any time for the release of all or part of the financial assurance.</p> <p>In considering the application, EPA will have regard to the prescribed risk assessment criteria and notify the person of the decision within 40 business days.</p> <p>EPA may request further information as required and extend the period to decide on the application.</p>

Act section	What is required
	<p>Prescribed fee for requesting release of financial assurance</p> <p>EPA may charge a fee where a person who provides a financial assurance applies for the release of all or part of the financial assurance. The fee is set out in regulation 205.</p> <p>An application form for the release of financial assurance is available from the EPA website epa.vic.gov.au.</p>
<p>Transfer of financial assurance</p> <p>Section 233</p>	<p>Where a financial assurance may be released in part or full to a person under sections 231 or 232, but the person is required to provide another financial assurance, EPA may opt to transfer the financial assurance rather than releasing it.</p> <p>For example, where an operating licence is revoked and an SMO is issued for the site to address ongoing management of the site.</p> <p>On transferring the financial assurance EPA may make any changes necessary to implement the transfer. This may include providing a further amount of financial assurance.</p>
<p>Enforcement of financial assurance</p> <p>Section 234</p>	<p>If a person fails to provide a financial assurance, provide a further amount of financial assurance or replenish a financial assurance, within a specified period, EPA may take enforcement action. In deciding what action to take, EPA will apply its Compliance and enforcement policy (publication 1798) (https://www.epa.vic.gov.au/about-epa/publications/1798-1).</p> <p>Enforcement action that may be taken includes suspending a permission or issuing a prohibition notice in relation to the particular activity for which the financial assurance is required to be provided.</p> <p>Read more about enforcement of permissions in Permissions scheme – policy (publication 1799) (https://www.epa.vic.gov.au/about-epa/publications/1799-1).</p>

Decisions VCAT can review

A person required to provide financial assurance is eligible to apply to the Victorian Civil and Administrative Tribunal (VCAT) for the review of certain decisions made by EPA. Applications to VCAT must be made within 15 business days after the day on which the decision first came to the person’s notice (section 431 of the Act).

The financial assurance decisions that are reviewable by VCAT under section 430 of the Act, are:

- Section 219(1) Authority may require financial assurance
- Section 220(1) Form of financial assurance
- Section 221(1) Amount of financial assurance
- Section 226(1) Authority may amend financial assurance
- Section 227(2) Authority may make a claim on financial assurance
- Section 232(1) Application for release of financial assurance.

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