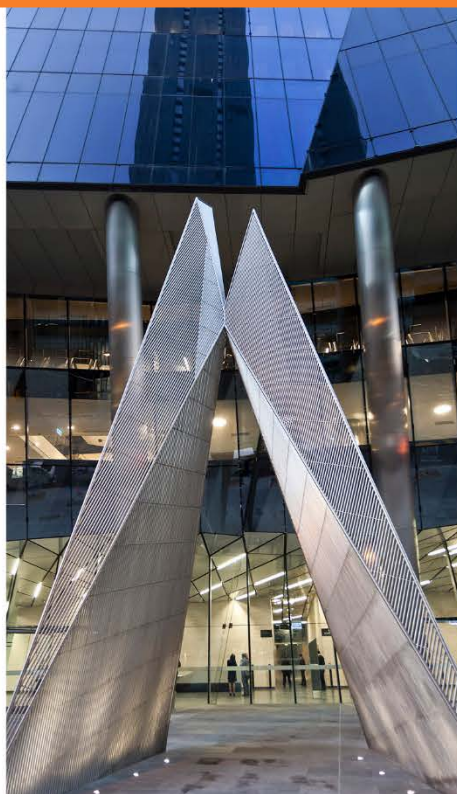


ENVIRONMENT PROTECTION LEGISLATION REFORMS IN VICTORIA

10 August 2018



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OVERVIEW

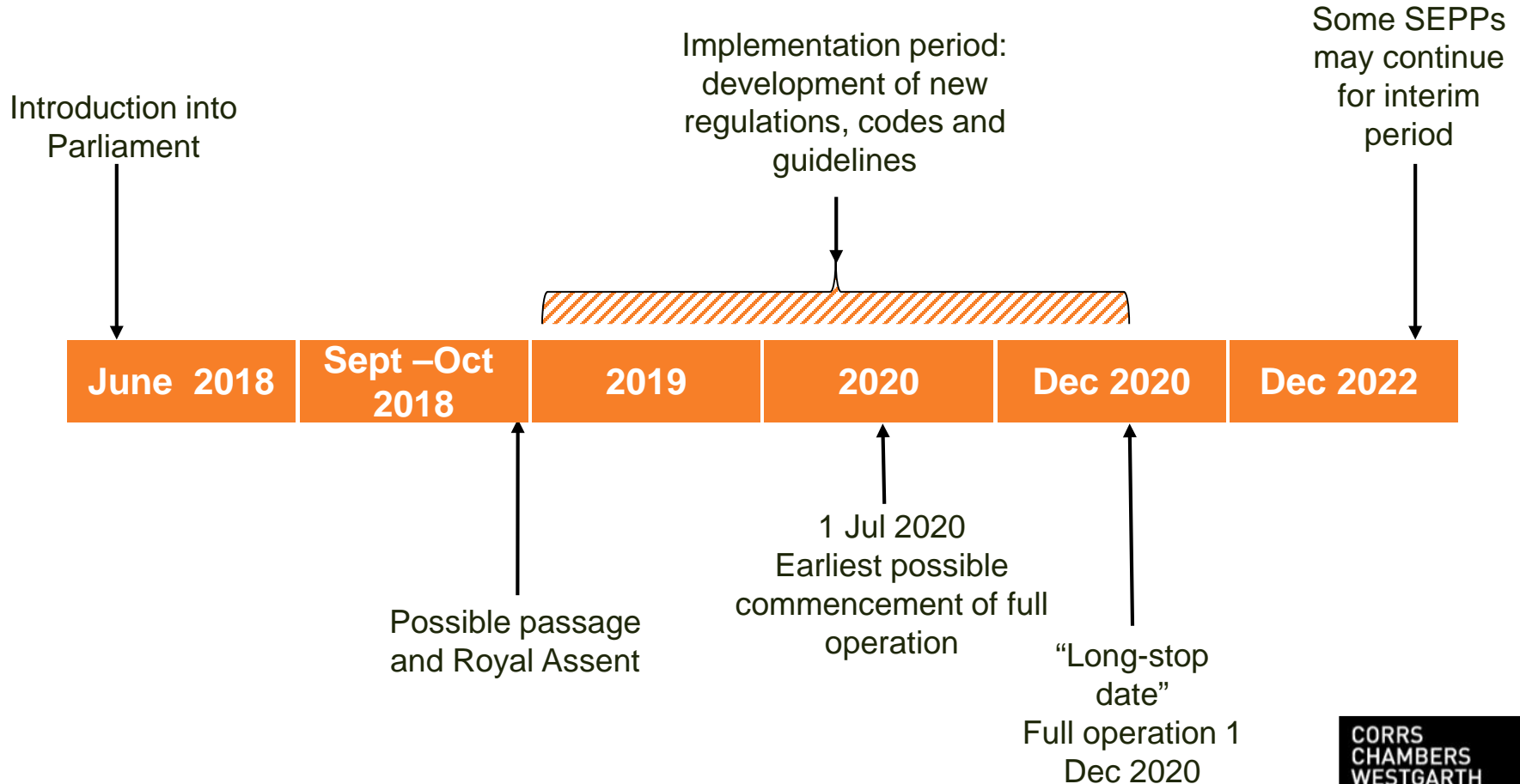
- The Victorian Minister for Environment and Climate Change has introduced the Environment Protection Amendment Bill 2018 into State Parliament, which:
 - Completely replaces the *Environment Protection Act 1970 (Vic)*.
 - Introduces a new scheme for the regulation of the impacts of pollution, waste and contaminated land on human health and the environment.
 - Central to this scheme is a **general preventative duty** to minimise the risks of harm to human health and the environment arising from pollution and waste.
- If passed this year the scheme has a long implementation period ending no later than 1 December 2020.



Environment
Protection
Authority Victoria

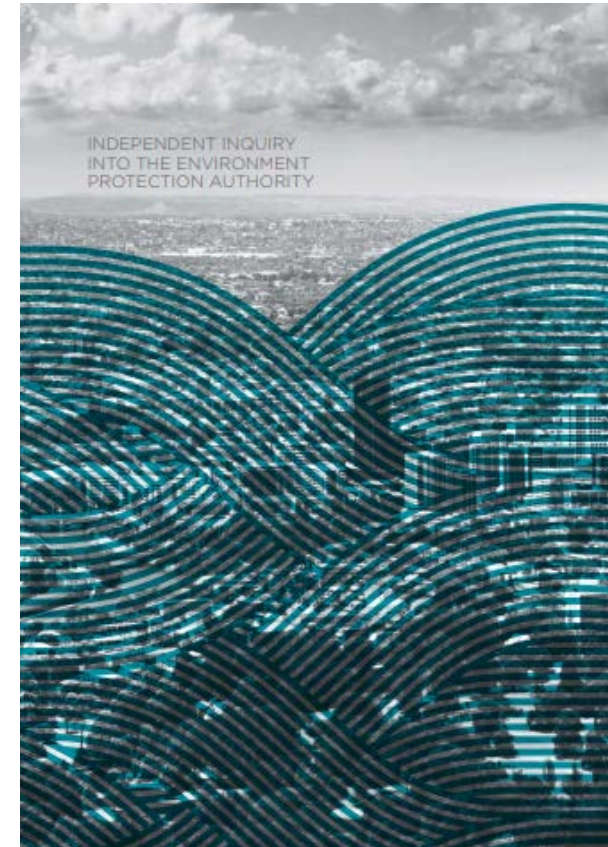
REFORM TIMELINE

TIMELINE SUBJECT TO PARLIAMENTARY APPROVAL



MAIN OBJECTIVES

- Main objective – to implement the Government’s response to the recommendations set out in Independent Inquiry into the EPA (2016)
- The Inquiry found that:
 - EPA is not equipped to deal with current and future environment and public health issues in a growing Victoria; and
 - the *Environment Protection Act 1970* needs a complete rewrite in order to address these problems.
- Key recommendation arising from the Inquiry:
 - refocus EPA on managing risks; and
 - a general duty of care to minimise risk of harm to human health and environment from pollution and waste



KEY REFORM THEMES

1 Prevention

- Introduce new general duty to minimise risk of harm to human health and environment from pollution and waste
 - based on OHS legislation
 - to replace the current “after the harm has been caused” approach

2 Flexible and risk-based approach

- Greater flexibility and proportionality in:
 - regulatory controls (e.g. authorisations)
 - compliance
 - audits

3 Information sharing

- Greater information sharing obligations
- More transparency
- New third party rights (limited)

FIRST STAGE OF REFORM – THE ENVIRONMENT PROTECTION ACT 2017

- Commenced 1 July 2018
- Established:
 - new skills based governing board of directors to run the EPA and repeals statutory office of Commissioner
 - new statutory office of CEO reporting to the Board
 - new statutory office of Chief Environmental Scientist – reports to CEO
- Appointment of the new 8-person Governing Board announced on 23 May 2018 lead by **Chair, Ms Cheryl Batagol**.
- The current non-statutory CEO could be appointed by the Board to the new statutory office of CEO but there is no legal obligation on the Board to do so



SECOND STAGE ENVIRONMENT PROTECTION AMENDMENT BILL 2018

- This Bill will amend the *Environment Protection Act 2017* to include the substantive reformed provisions to regulate environment protection, pollution, contaminated land and waste management matters in Victoria in the future and will repeal all of the remaining EP Act 1970.
- These reforms have a long forced commencement date - no later than 1 December 2020
- This will allow for -
 - An extensive range of new regulations and other statutory instruments such as compliance codes to be put in place to support the operation of the reforms;
 - The EPA to reorganise its procedures and retrain its staff;
 - Affected industries and businesses to review their practices in relation to the management of the risks arising from pollution and waste from their activities, and, if necessary, put in place new compliance procedures.

OVERVIEW OF KEY ASPECTS OF REFORMS

THE GENERAL ENVIRONMENTAL DUTY

Part 3.2—General environmental duty

25 General environmental duty

- (1) A person who is engaging in an activity that may give rise to risks of harm to human health or the environment from pollution or waste must minimise those risks, so far as reasonably practicable.

- (4) Without limiting subsection (1), a person who is conducting a business or an undertaking contravenes that subsection if the person fails to do any of the following in the course of conducting the business or the undertaking, so far as reasonably practicable—
 - (a) use and maintain plant, equipment, processes and systems in a manner that minimises risks of harm to human health and the environment from pollution and waste;
 - (b) use and maintain systems for identification, assessment and control of risks of harm to human health and the environment from pollution and waste that may arise in connection with the activity, and for the evaluation of the effectiveness of controls;
 - (c) use and maintain adequate systems to ensure that if a risk of harm to human health or the environment from pollution or waste were to eventuate, its harmful effects would be minimised;
 - (d) ensure that all substances are handled, stored, used or transported in a manner that minimises risks of harm to human health and the environment from pollution and waste;
 - (e) provide information, instruction, supervision and training to any person engaging in the activity to enable those persons to comply with the duty under subsection (1).

THE GENERAL ENVIRONMENTAL DUTY (GED)

- Based on the general duty to provide and maintain a safe workplace in OHS legislation
- Forms the 'core' of the reformed EP regulatory framework, with all other aspects of the EP Act revised to ensure consistency with this approach.
- A similar duty exists in Qld and SA. However, unlike other jurisdictions, under the Victorian EP Bill a breach of the GED may trigger criminal penalties (similar to the OHS regime).

Penalties:

- However, direct criminal sanctions will not apply to private or domestic non-business activities. In the case of private individuals, not carrying on a business or other undertaking (eg not for profits and public sector bodies), the first sanction for breach of the duty would be the issue of an EPA direction.
- A breach of the general environmental duty would attract a penalty of up to \$317,000 for an individual or \$1.6 million for a corporation. For an intentional or reckless breach of the duty that results in material harm, a higher penalty of up to \$635,000 and/or 5 years imprisonment for an individual, or \$3.2 million for a corporation would apply.

MINIMISING RISK

A duty imposed on a person under this Act to **minimise**, so far as reasonably practicable, risks of harm to human health and the environment requires the person—

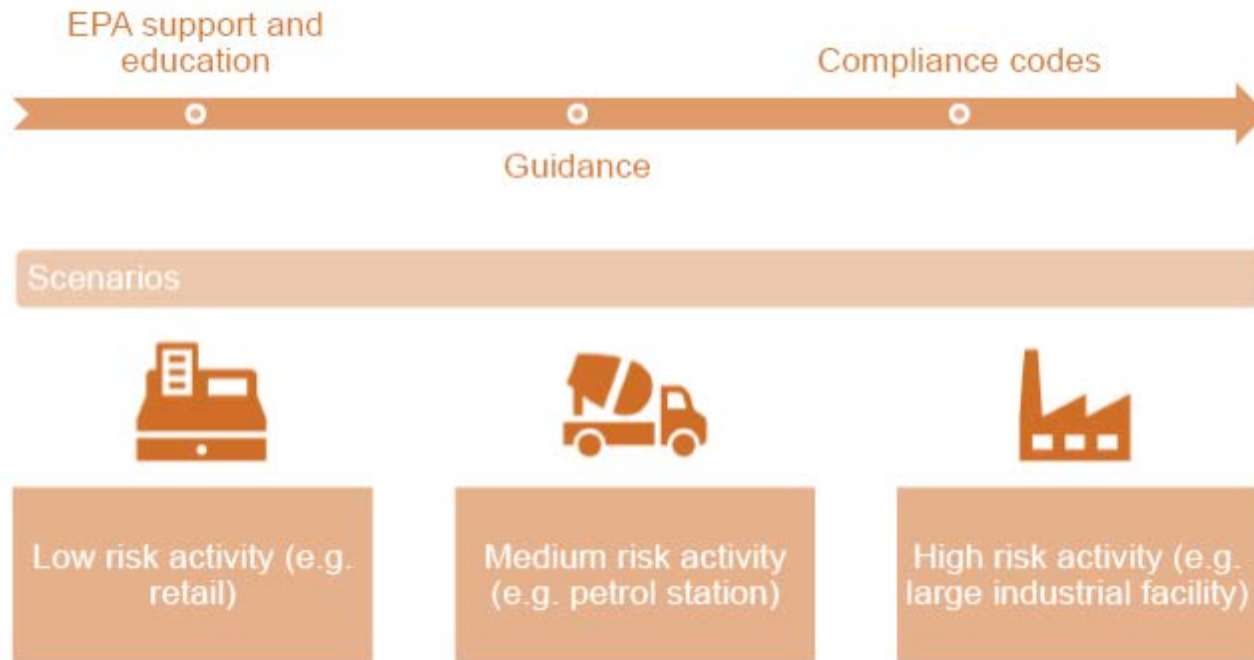
- (a) to eliminate risks of harm to human health and the environment so far as reasonably practicable; and
- (b) if it is not reasonably practicable to eliminate risks of harm to human health and the environment, to reduce those risks so far as reasonably practicable.

To determine what is (or was at a particular time) **reasonably practicable** in relation to the minimisation of risks of harm to human health and the environment, regard must be had to the following matters—

- (a) the likelihood of those risks eventuating;
- (b) the degree of harm that would result if those risks eventuated;
- (c) what the person concerned knows, or ought reasonably to know, about the harm or risks of harm and any ways of eliminating or reducing those risks;
- (d) the availability and suitability of ways to eliminate or reduce those risks;
- (e) the cost of eliminating or reducing those risks.

COMPLIANCE WITH THE GENERAL ENVIRONMENTAL DUTY

- Flexible range of ways to achieve compliance with the GED
 - Holding and complying with environmental authorisations
 - Compliance with EPA Guidance, or industry Compliance Codes
 - Non-binding position statements issued by EPA



NEW AUTHORISATIONS - SCOPE

- The new scheme focuses on authorisations to carry out prescribed permission **activities**, rather than licensing of prescribed **premises**.
- **Activity**
 - Inclusive definition
 - Includes relatively passive “actions” such as storage
 - Includes any activities prescribed by regulations
- “Prescribed activity” much wider than current concept of prescribed / scheduled premises – can accommodate mobile activities that carry risk and can deal with wider class of activities than just industrial premises etc.



NEW AUTHORISATIONS

- Need a permission to conduct a prescribed permission activity

Authorisation	Description
Development licence	Will be required to construct certain plant or equipment. Similar to current works approval
Operating licence	Will be required to undertake prescribed activities, subject to conditions, to manage risks to human health and the environment. Similar to current licence
Pilot project licence	Similar to current research, development or demonstration approval
Permit	New. Standardised assessment process for more discreet, low-complexity activities with medium-high risk.
Registration	New, for medium-low risk activities. Envisaged to apply in situations where there is a benefit in the EPA having line-of-sight, such as where a particular industry sector has a generally low level of compliance. Registration generates automatic set of standardised conditions

- Different categories of activities to be prescribed by regulation for each class of permission.
- Terms of authorisations no longer to be unlimited.

NEW AUTHORISATIONS – TRANSITION

- Transitional sections of the Bill provide for the creation of regulations that will convert current works approvals, licences and RD&D approvals into development licences, operating licences or pilot project licences under the new Act.
- These regulations will need to be in place by the commencement date, and will have to comply with the consultation and Regulatory Impact Statement procedures in the *Subordinate Legislation Act 1994*. Opportunity for input from affected industries and organisations.
- On the commencement date, a licence-holder is deemed to hold a transitioned authorisation subject to the same conditions as those to which the old approval was subject immediately before the commencement day.
- However, some scope for EPA to adjust, within 12 months of the commencement day, conditions of these new permissions to ensure compatibility with the new scheme.

CONTAMINATED LAND

- Significant changes to Victoria's contaminated land regime which apply irrespective of whether the land was contaminated before or after the commencement of the new regime.

Contaminated land

- Contaminated land: where waste/chemical substance present above background levels and creates risk of harm to human health or environment
 - a) Duty to manage contaminated land to minimise risks as far as reasonably possible
 - b) Duty to notify EPA of contaminated land:
 - which involves prescribed contamination, or where reasonable cost of remediation likely to exceed \$50,000; and
 - as soon as reasonably practicable after becoming aware of that contamination.
 - c) Long-term Site Management Orders: Applied where long-term management of contamination required. Likely to be applicable to landfills, operational and former industrial sites, and contaminated land, and other sites. Orders run with the land and may be notified on title.

CONTAMINATED LAND

- d) Improved environmental audit system: An improved audit system to simplify the current environmental audit system. The new system will allow for assessment, management and remediation to be scaled to the needs of the individual site and its (current or intended) use; (Note the continuation of the current triggers for the conduct of an environmental audit in planning schemes under the *Planning and Environment Act 1987*)
- Preliminary Risk Screening (**PRS**)
 - Desktop assessment (likely to cost around ~\$5000), with limited sampling
 - PRS assessment outcomes:
 - Statement - auditor states whether site is suitable for the proposed use
 - If not suitable, outlines the recommended scope for a subsequent audit.
 - Scaled assessment audits

Notifiable incidents

- Incidents that causes or threatens material harm to human health or the environment
 - Must take action to restore to state before incident so far as reasonably practicable
 - Must report to the EPA as soon as practicable

NEW CONTAMINATED LAND DATABASES AND MAPPING

VICTORIA State Government
Environment, Land, Water and Planning

Historical Land Use

Search... Sign out

Tools: Advanced

Home Zoom In Zoom Out Pan Initial View Identify Export Print Help

**Dummy data - used for test purposes only*

Groundwater Quality Restricted U... x

I want to... Search for Address or SPI or PNumber (e.g. 42PP1357 or P1224)

Details

EPA CARMS ID: 64781-1
EPA EIS ID: 7000303

SITE HISTORY
Automotive repair/engine works

SITE ADDRESS
214 - 216 NICHOLSON ST FITZROY VIC 3065

RESTRICTED USES
Drinking water;Irrigation of crops (including domestic gardens) and parks;Livestock water supply;Water used for industrial purposes;Water used for recreational purposes (e.g. swimming)

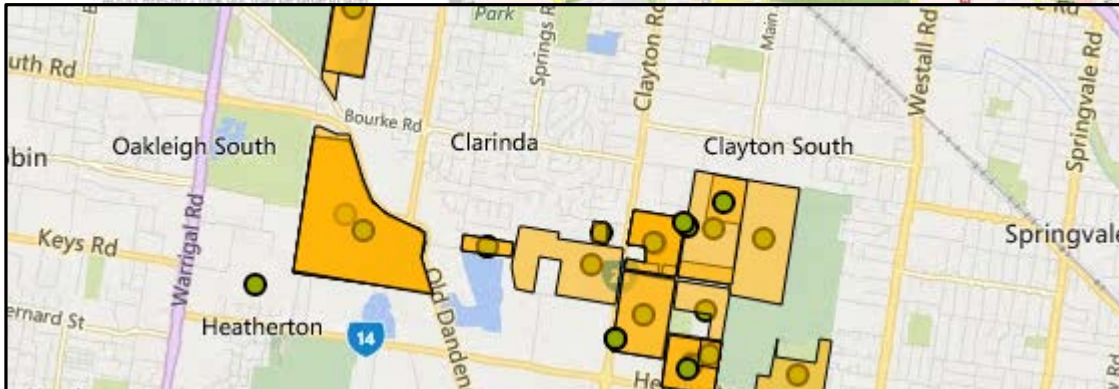
MAP LINK
http://apps.epa.vic.gov.au/EnvAuditFiles/GQRUZMaps/EXT/GQRUZ_map_0007000303.pdf

EAO data point

GQRUZ data point

TEST

Sands & McDougall data point



WASTE MANAGEMENT FRAMEWORK

- Together with GED, reforms are intended to improve EPA ability to apply targeted regulatory controls to priority and industrial wastes.
- Intention: to provide the EPA with oversight over the passage of waste between multiple people and businesses.
- Improved tiered waste concepts and a more tailored set of obligations that attach to them are introduced under the EP Bill 2018:
 - **Litter**
 - **Industrial waste** – New duties will be imposed on people involved in the management of industrial waste to ensure illegal dumping does not occur, including duty imposed on industrial waste generators to take reasonable steps to ensure that the waste will be transported to a lawful place.

WASTE MANAGEMENT FRAMEWORK

- **Priority waste** – A new category of priority waste will apply to specific hazardous industrial wastes that have resource recovery, recycling and reuse potential. Subject to a further layer of requirements which include duties relating to:
 - classification, management and prevention of leaks/escape
 - providing information about the composition and hazards of the priority waste during its collection, consignment, transfer or transportation
 - recording and providing transaction details to allow tracking
 - taking all reasonable steps to identify and consider alternatives to waste disposal, including reuse, recycling and resource efficiency.
- The current ban on sending Category A priority waste to landfill is maintained under the new regime.

REMEDIAL AND OTHER NOTICES

Remedial and other notices that may be issued by the EPA

- notice to investigate
- environmental action notice
- improvement notice
- prohibition notice
- non-disturbance notice

REMEDIAL AND OTHER NOTICES

Notice to investigate

- Can be issued where the Authority believes that—
 - land is or may be contaminated; or
 - a pollution incident has occurred; or
 - industrial waste is at a place or premises unlawfully; or
 - there is a risk to human health or to the environment arising from pollution or the depositing, storage or handling of waste.
- Notice may require person to investigate and report back to EPA

Environmental Action Notices

- Can be issued in respect of contaminated land, pollution incidents that are likely to cause harm, unlawful industrial waste, failure to comply with notice to investigate.
- Actions that can be ordered include but are not limited to measures that are similar to those in the old clean up notices.

REMEDIAL AND OTHER NOTICES

Improvement and prohibition notices

- Can be issued in circumstances where the Authority believes that a person
 - is contravening this Act; or
 - is not complying with a permission under this Act; or
 - is likely to cause harm to human health or the environment from pollution or waste .

Non-disturbance notice

- Would be issued, by way of example, to prohibit any person from disturbing an instrument that the EPA has left on-site to monitor or assess pollution during an investigation.

Civil penalties regime

- The EP Bill 2018 also introduces a civil penalty regime which will sit alongside criminal penalties. The civil penalty regime will allow the EPA to impose lesser sanctions in a more time-effective and proportionate manner for moderately serious offences.

THIRD PARTY ENFORCEMENT

- Brings Victoria into line with most other Australian jurisdictions.
- Allows an “eligible person” to apply to the Court for enforcement of an environmental permission or the Act.
 - “Eligible person” = a person whose interests are affected by the contravention, or otherwise has leave of the Court (only when it is in the public interest)
- Court may make orders to remedy or restrain a breach of any requirement of the Act or any permission.
- Delayed start – 12 months after full operation of Act commences.

ENVIRONMENT REFERENCE STANDARDS

Deletion of State Environment Protection Policies and Waste Management Policies



To be replaced in part by ESRs which will set out the attributes of the environment Victorians value, and the ambient standards required to protect them



The GED and complimentary regulations would pick up design standards and other controls to support meeting these standards

QUESTIONS?

10 August 2018



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