

A SEISMIC SHIFT IN VICTORIA'S ENVIRONMENTAL LAW

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Legal Briefings - By **Heidi Asten, David Griffin, Thomas Ellicott**

The Victorian Government has tabled the *Environment Protection Amendment Bill 2018 (Vic)* in Parliament to introduce extensive reforms to environmental regulation in Victoria.

The Environment Protection Amendment Bill 2018 (Vic) (**Bill**) was introduced into the Victorian Parliament on 19 June 2018 and is proposed to replace the existing *Environment Protection Act 1970 (Vic)* (**Act**).

The new regime focuses on prevention of environmental harm and introduces a range of significant new powers, duties and compliance mechanisms.

The Bill is the second stage of the Victorian Government's response to the 2016 Inquiry into the EPA, after the *Environment Protection Act 2017 (Vic)* introduced new objectives and changes to the EPA's governance structure. On 23 May 2018 the EPA announced its new Governing Board led by Cheryl Batagol PSM to replace the Interim Advisory Board which was in place since January 2017.

If passed, the new regime will give effect to a fundamental change to the policy underpinning environmental regulation in the State, and introduce extensive reforms to the regulatory mechanisms and role of the Environment Protection Authority (**EPA**).

WHAT YOU NEED TO KNOW

The Bill proposes a complete overhaul of the environmental regulatory framework in Victoria. To assist you to navigate the implications of the Bill, we have distilled down some of the key reforms that are likely to affect you below. We will explore these further as the Bill is debated and detailed regulations and new environment reference standards are developed.

The Bill introduces a modernised framework for identifying potential and actual material harm to the environment, and a raft of duties on businesses and individuals and powers for the EPA to manage the response to the risks of that harm. Industry will be subject to heightened obligations to identify and actively take steps to respond to environmental risks.

Key Reforms	
New duties	<ul style="list-style-type: none"> • General environmental duty – A core element of the Bill, the <i>general environmental duty</i> requires risks of harm to human health or the environment from pollution or waste to be identified and steps taken to minimise the risks and impacts as far as reasonably practicable. This duty reflects the model under Victorian WHS legislation. • Pollution incidents – The Bill proposes a new <i>duty to notify</i> of pollution incidents as soon as practicable, and a <i>duty to restore</i> areas affected by a pollution incident. • Contaminated land – The Bill also introduces a stepped <i>duty to manage</i> contaminated land, requiring identification, investigation and implementation of measures in response to contamination, and a <i>duty to notify</i> the EPA of contamination, including historic contamination. • Waste management – Persons with management or control of certain priority waste categories will be under a <i>duty to investigate alternatives to waste disposal</i>, and a <i>duty to notify</i> of certain priority waste transactions.
New permissions	<ul style="list-style-type: none"> • Tiered permissions framework – A three-tiered permissions-based framework focussing is proposed to <u>replace</u> the existing ‘one-size-fits-all’ licenced premises framework. Activities will require either registration, a permit or a licence, depending on their risk profile. Some activities that fall outside the existing licensing regime are likely to be captured under the proposed framework.
New compliance and enforcement powers; a new notice regime.	<ul style="list-style-type: none"> • Pollution and contamination notices – The Bill proposes to <u>replace</u> pollution abatement notices (PANs) and clean up notices (CUNs) with a new multi-tiered notices regime similar to the WorkSafe model. New notices include improvement notices, prohibition notices, notices to investigate, environmental action notices, and site management orders (which may be registered on title and binding on successors). • Investigation and inquiry powers – The Bill includes strengthened investigation and inquiry powers, including the extension of the application of the <i>Surveillance Devices Act 1999</i> (Vic) to the EPA. We expect the EPA will continue to increase its use of drone technology in undertaking inspections.
New liabilities	<ul style="list-style-type: none"> • Related bodies corporate and officers – The Bill proposes to introduce a mechanism redirecting liability to comply with certain notices or orders if an entity is being, or has been wound up. In such circumstances, related or associated entities or individual officers of the entity may be made liable for compliance with the notice or order, depending on the extent of their knowledge, control and culpability with respect to the actions of the entity the subject of the notice or order. • Penalties – The Bill proposes to introduce criminal penalties for breaches of environmental duties, including a maximum fine of over \$3,000,000 for aggravated breaches of the general environmental duty, or five (5) years’ imprisonment for an individual. Under the Bill, privilege against self-incrimination does not extend to the duty to notify of incidents or contamination.
New third party rights	<ul style="list-style-type: none"> • Civil orders – The Bill introduces a mechanism for third parties affected by a breach of an environmental duty to apply for civil orders restraining the breach, but only in circumstances where the EPA has failed to take action, and the application is in the public interest.

WHAT’S NEXT?

The Bill was passed by the Legislative Assembly on Wednesday, 22 August 2018 with some minor amendments, and received Royal Assent on 28 August 2018.

The key amendments to the EP Act introduced by the Bill are to commence on a date to be fixed by proclamation, or by 1 December 2020 if not commenced by that date. The Government has stated that it intends the new legislation to take effect from 1 July 2020.

WHAT DOES IT MEAN FOR ME AND MY BUSINESS?

Many businesses will need to plan for these substantial changes, in particular taking steps to identify and address environmental risks from your activities, and ensuring that your HSE compliance and operations procedures are in alignment with the new environmental duties. Many landowners will need to undertake technical due diligence to understand their obligations in relation to any contamination affecting their land.

We are available to assist you in navigating the upcoming changes and to help you consider the potential impacts of the key reforms under the Bill. We will also be running workshops and seminars to assist you to manage the transition to these new regulatory requirements.

If you have any questions or would like to know more about the new regulatory framework, please contact:

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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