


VICTORIA'S NEW ENVIRONMENTAL PROTECTION LAWS

KEY ISSUES FOR DAIRY FARMERS



A close-up photograph of a person's lower legs and feet. They are wearing blue denim-style trousers and black rubber boots. The person is standing in a field of vibrant green grass. The lighting is bright, suggesting a sunny day. A white text box is overlaid on the left side of the image.

This note covers the most common issues facing the dairy farm sector and is for general information purposes only. It is not intended to be comprehensive of all situations facing dairy farms. It does not constitute legal advice. You may need to seek specialist advice for your particular circumstances.

INTRODUCING A NEW APPROACH TO ENVIRONMENTAL PROTECTION

On 1 July 2021, Victoria's new environmental protection laws came into force. These laws are contained in the *Environment Protection Act 2017* (Vic) and *Environmental Protection Regulations 2021*.

The new laws mark a shift in approach to environmental protection from a reactive and offence-based regime to a preventative and duties-based regime. The aim is to prevent pollution before it occurs.

The general environmental duty¹

At the core of the new laws is the **general environmental duty** or "GED". The GED applies to all Victorians (individuals and entities) engaging in activities that may give rise to risks of harm to human health or the environment from pollution or waste. The GED requires you to minimise those risks *so far as is reasonably practicable*. There are substantial penalties for failure to do so.

Minimising risks so far as is *reasonably practicable* means that you must take all reasonably practicable steps to *eliminate* risks of harm, or if elimination is not reasonably practicable, to take reasonably practicable steps to *minimise* risks of harm. When considering what is *reasonably practicable* you should consider:

- 1 the likelihood of the risks eventuating;
- 2 the degree of harm that would result if those risks eventuated;
- 3 what you know, or *ought reasonably know*, about the harms or risks of harm and the ways of eliminating or reducing those risks; and
- 4 the availability, suitability and cost of eliminating or reducing those risks. This is a balancing exercise and will depend on your circumstances. You should document this process.

What you 'ought reasonably know' refers to all the information you should reasonably know about managing your business's risks. This is referred to as the '**state of knowledge**' and includes knowledge about the risks of harm and ways of eliminating or minimising those risks.

This knowledge could be from a range of sources including Acts and Regulations, Codes of Practice, Guidelines, Standards, Technical Notes, Best Practice documents, previous decisions or cases, safety data, instructions, labels, and so on.²

In practice, to comply with the GED you will need to undertake a risk assessment to:

- 1 identify and assess the risks of harm from your activities;
- 2 (assess the options to eliminate and minimise those risks; and
- 3 implement reasonably practicable controls to manage those risk; and
- 4 regularly review and audit your processes and keep up to date with best practice in the dairy industry.



You must be able to demonstrate that you have the processes and systems in place to eliminate, or if elimination is not reasonably practicable, to minimise so far as is reasonably practicable, the risks of harm to human health and the environment from your pollution and waste.

¹ EPA resources: <https://www.epa.vic.gov.au/for-business/new-laws-and-your-business/general-environmental-duty>; [Reasonably practicable](#) (publication 1856); [Industry guidance: supporting you to comply with the general environmental duty](#) (publication 1741.1); [Agriculture – guide to preventing harm to people and the environment](#) (publication 1819); [Manufacturing – guide to preventing harm to people and the environment](#) (publication 1822).

² Key documents include: [How to manage effluent on dairy farms | Environment Protection Authority Victoria](#) (epa.vic.gov.au); <http://www.dairyingfortomorrow.com.au/wp-content/uploads/2008-DairyGains-Victorian-Effluent-Guidelines.pdf>; <https://www.epa.vic.gov.au/for-business/find-a-topic/manage-industrial-waste/waste-tyres>; [Safe use of tyres for fodder conservation on dairy farms factsheet | Dairy Australia](#); [Home](#) (dairysafe.vic.gov.au).

The new waste duties³

In **addition** to complying with the GED, you must also comply with the new industrial waste duties that will apply to **all waste** produced from on-farm (commercial) activities.

What is “waste”?

Waste is defined very broadly and will include all matter deposited, discharged, emitted, or disposed of into the environment in a manner that alters the environment. Waste also includes any matter that is discarded, rejected, abandoned, unwanted or surplus, including where it has potential reuse or future value.

What is “industrial waste”?

Industrial waste is all waste from commercial, industrial or trade activities and **includes waste produced during primary production activities**.

What duties must I comply with for “industrial waste”?

The industrial waste duties include:

- For waste producers – you must: (1) take reasonable steps to identify and classify your waste; (2) ensure your waste is going to a place that is authorised to receive that type of waste (called ‘**lawful place**’); and (3) provide sufficient information to the next person in the waste chain of custody to enable them to understand the risks of the waste and enable them to comply with their industrial waste duties.
- For waste transporters – you must contain the waste safely during transport and take it to a ‘lawful place’.
- For waste receivers – you must ensure that the place where waste is received or deposited is a ‘lawful place’.

There are a number of ways to establish ‘lawful place’. These are discussed [here](#).

Remember that you must continue to comply with the GED at all times.

What about high risk waste – priority waste and reportable priority waste?

Some industrial waste is high risk. *Priority waste* is higher risk industrial waste and *Reportable Priority Waste* is the highest risk industrial waste. The waste classifications are set out in Schedule 5 of the [Regulations](#).

If you are managing or have control of *priority waste*, after classifying it you must take all reasonable steps to ensure that the priority waste is: (1) contained in a manner that prevents its escape; and (2) isolated in a manner that ensures resource recovery remains practicable. You must also:

- ensure that the person who collects, consigns, transfers or transports the priority waste has reasonably available information about the nature and type of priority waste, the risk of harm to human health and the environment posed by the waste, and any other information required to enable them to meet the priority waste duties; and
- identify and assess alternatives to waste disposal including reuse and recycling of the priority waste and, if you are the waste producer, avoiding producing or generating similar priority waste in the future.

These obligations are in **addition to the GED and the industrial waste duties** discussed above.

If you are handling *reportable priority waste*, further duties apply (that is, in addition to the GED, the industrial waste duties and the priority waste duties). Depending on the type of reportable priority waste, you will need to enter the required information in ‘[Waste Tracker](#)’ the EPA’s new online waste tracking system. You may also need to use a licensed waste transporter.

³ EPA resources: [Waste duties](#); [Declaration of Use](#); [Industrial waste](#); [Guide to classifying waste](#) (publication 1968); [How to establish lawful place](#) (publication 1946); [Waste classification assessment protocol](#) (publication 1827); [Waste disposal categories – characteristics and thresholds](#) (publication 1828); [Managing industrial waste – your duties as a waste producer](#) (publication 1990.1).

Pollution incident duties

Although the new environmental protection laws are focussed on preventing pollution and environmental harm, *pollution incidents* may still occur. A pollution incident includes a leak, spill or other unintended or unauthorised deposit or escape of a substance which causes or is causing pollution.

If you cause a pollution incident (whether by an act or omission) where there is (or is likely to be) harm to human health or the environment, you must, *so far as reasonably practicable*, restore the affected area to the state it was in before the pollution incident occurred.

You must also notify the EPA as soon as practicable if the pollution incident causes or threatens to cause material harm to human health or the environment (call 1300 EPA VIC (1300 372 842) 24 hours/day).



The new permissions regime

The new environmental protection laws introduce a new and updated permissions framework.

High risk activities will require a development and operating licence (replacing the old works approval and operating licence respectively), while medium risk activities will require a permit, and some low risk activities will require a registration.⁴ The list of activities that require a permission is set out in Schedule 1 of the [Regulations](#).

In addition to complying with any conditions placed on a licence or permit, you must continue to comply with the GED.

For example, if you are operating a dairy freestall that has more than 5000 animals concentrated for the purposes of agricultural production **and** discharges or deposits wastes solely to land, you will require a permit (B01a). If you are operating a dairy freestall that has more than 5000 animals concentrated for the purposes of agricultural production **and** does **not** discharge or deposit wastes solely to land (for example, you have discharges to air or water), you will require an operating licence (B01b).

If you had a licence under the old regime, it has already been automatically transferred across to the new regime. The EPA will be updating and standardising the conditions on existing licences. Members of the dairy industry should expect to receive a letter from the EPA about this process from January 2022.

Many dairy farms use **waste tyres for silage production**. If you receive or store between 5m³ (or EPU) and 4999m³ (or EPU)⁵ of waste tyres, you must complete an online registration by 2 January 2022. If you receive or store 5000m³ of waste tyres you must apply to the EPA for a licence. Click [here](#) to access the waste tyre permission decision-making tool. Regardless of which waste tyre permission category you fall within, you **must comply with the GED**.⁶

Compliance and enforcement

The EPA has a range of enforcement tools that will allow it to take a proportionate response to enforcing the new environment protection laws.

For example, the EPA can issue an Improvement Notice, a Notice to Investigate, or an Environmental Action Notice, depending on the severity of the situation. The new laws also provides for a Site Management Order to be registered on title to contaminated land, which will detail ongoing management obligations and bind future owners of the land.

You should be aware that the new laws also provide for substantial penalties for breaches and deem directors and officers concerned in the management of a business guilty of the same offence as the business entity, unless they can establish a defence. Penalties include criminal prosecution as well as fines. Maximum penalties under the new laws are approximately \$3.6M for business entities and \$727,000 and up to five years imprisonment for individuals.

⁴ To register: Sign up for an EPA account: <https://portal365.epa.vic.gov.au/>;
Register: <https://www.epa.vic.gov.au/for-business/permissions/registrations/how-to-apply-for-a-registration>
Instructions: <https://www.epa.vic.gov.au/for-business/epa-portal/sign-up-to-the-epa-portal>

⁵ For EPU (equivalent passenger unit) calculations see Schedule 2 of the [Regulations](#). 1m³ = 1 standard passenger tyre. Larger tyres have higher EPUs.

⁶ See <https://www.epa.vic.gov.au/for-business/find-a-topic/manage-industrial-waste/waste-tyres>; [Safe use of tyres for fodder conservation on dairy farms factsheet | Dairy Australia](#).





Dairy Australia Limited ABN 60 105 227 987
Level 3, HWT Tower
40 City Road, Southbank Vic 3006 Australia
T +61 3 9694 3777 F +61 3 9694 3701
E enquiries@dairyaustralia.com.au
dairyaustralia.com.au