



Understanding the *Environment Protection Act 2017* (Vic)

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The New EP Act

Key changes

EP Act 1970	EP Act 2017
Reactive approach.	Proactive approach (introduction of the General Environmental Duty).
Specific approvals for different activities, ie works approval, discharge licence.	Tiered risk-based approach to approvals: <ul style="list-style-type: none"> • Operating licences • Permits • Registrations Works approvals are now called "development licences".
Prescribed industrial waste regime.	Replaced by a "priority waste" system, with new duties imposed.
No stand-alone obligation to notify or manage contamination	New obligations (duty to manage and duty to notify) imposed in relation to contaminated sites. EPA can issue site management orders (which become a charge on the land and bind future owners and occupiers).
One-size-fits all approach to environmental audits	Two stage environmental audit process introduced: preliminary risk screen and scaled audit.
Offence to pollute, but no positive obligation to notify EPA of an incident (unless a licence breach).	New duties imposed requiring remediation and notification of a pollution incident.
EPA can issue clean up and pollution abatement notices.	A range of new notices introduced, which replace CUN and PAN: <ul style="list-style-type: none"> • Improvement notice • Prohibition notice • Investigation notice • Environmental action notice • Non-disturbance notice. Increased penalty for non-compliance with a notice.
Financial penalties for criminal offences	Increase in financial penalty amount and inclusion of civil penalties
Standing to seek review of a decision limited.	Introduction of a new community review right for certain reviewable decisions.



The General Environmental Duty (GED)

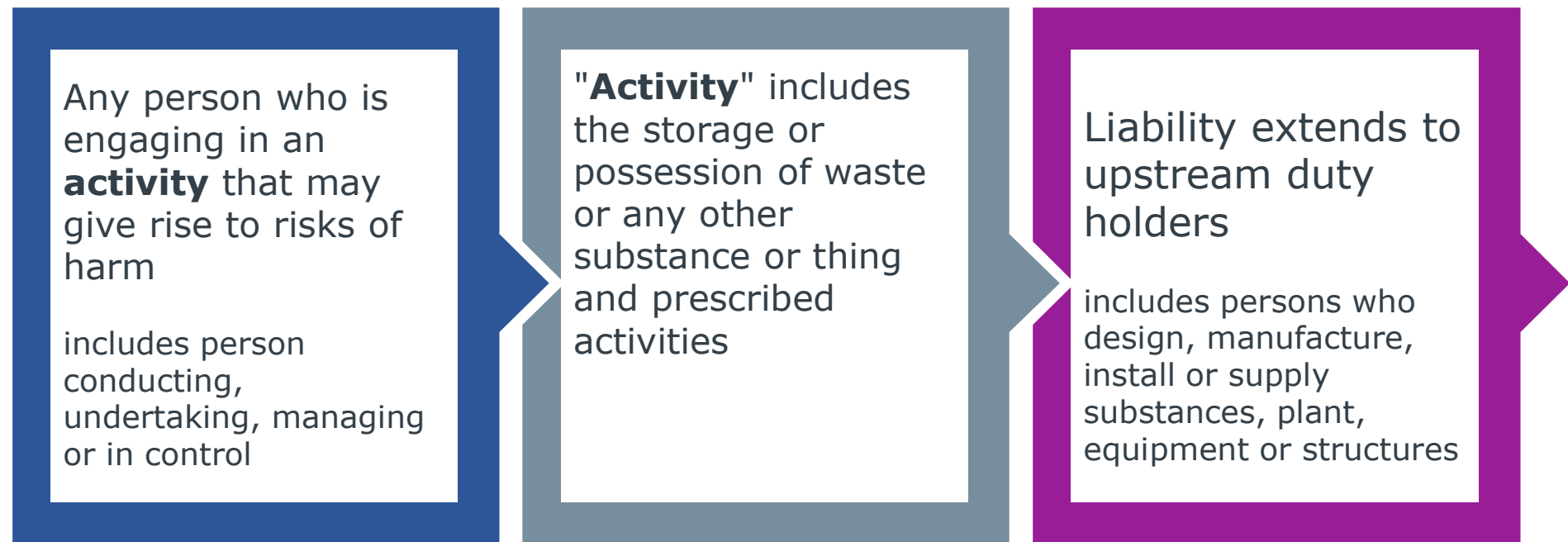
The General Environmental Duty

OVERVIEW



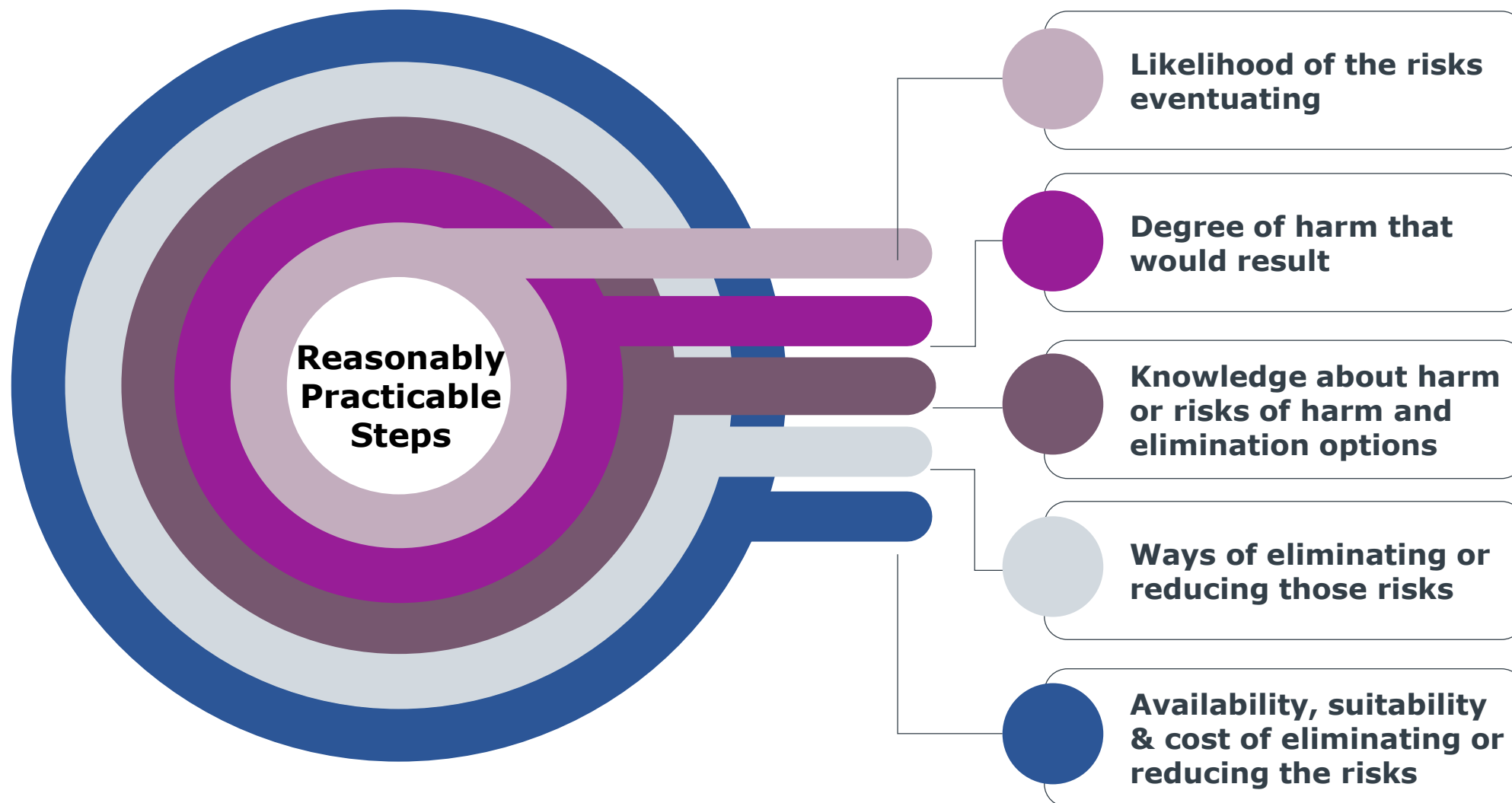
Who does the GED apply to?

FOCUS IS ON THE ACTIVITY



What is reasonably practicable?

THE GED



Transition to the GED

MATERIAL HARM OFFENCE

Transitional offence: *A person must not engage in conduct that results in material harm to human health or the environment from pollution or waste*

Material harm		
Involves an actual adverse effect on human health or the environment that is not negligible	Involves an actual adverse effect on an area of high conservation value or of special significance	Results in or is likely to result in cost in excess of \$10,000 (or such higher amount prescribed in Regulations) being incurred in order to take appropriate action to prevent or minimise the harm or to rehabilitate or restore the environment to the state it was in before the harm

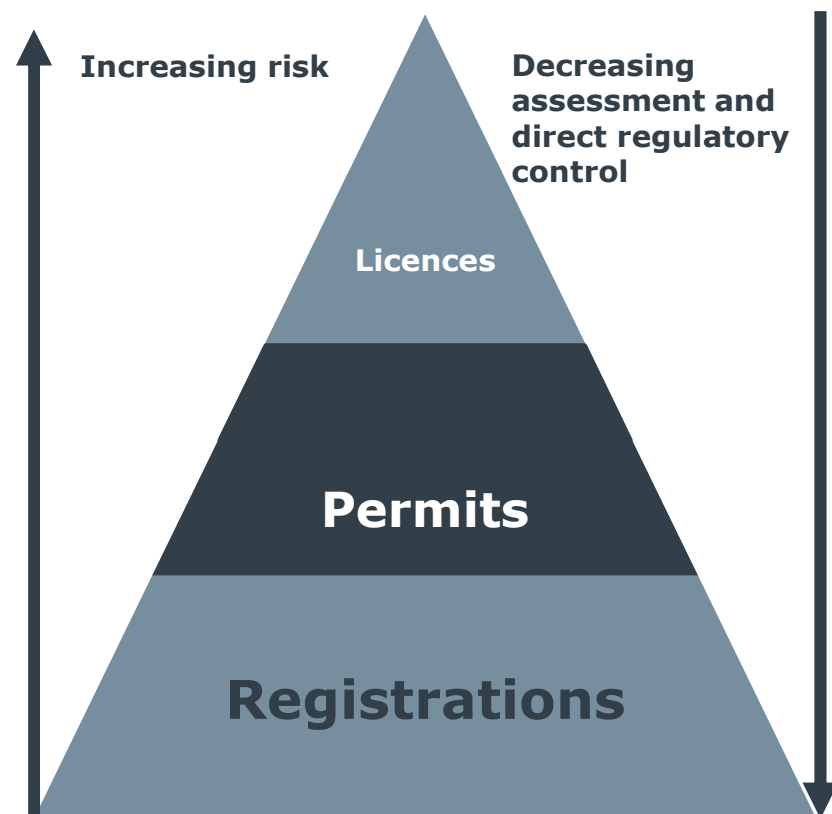
Automatically repealed after four years, but may be repealed sooner. Government has indicated will be reviewed after 2 years.



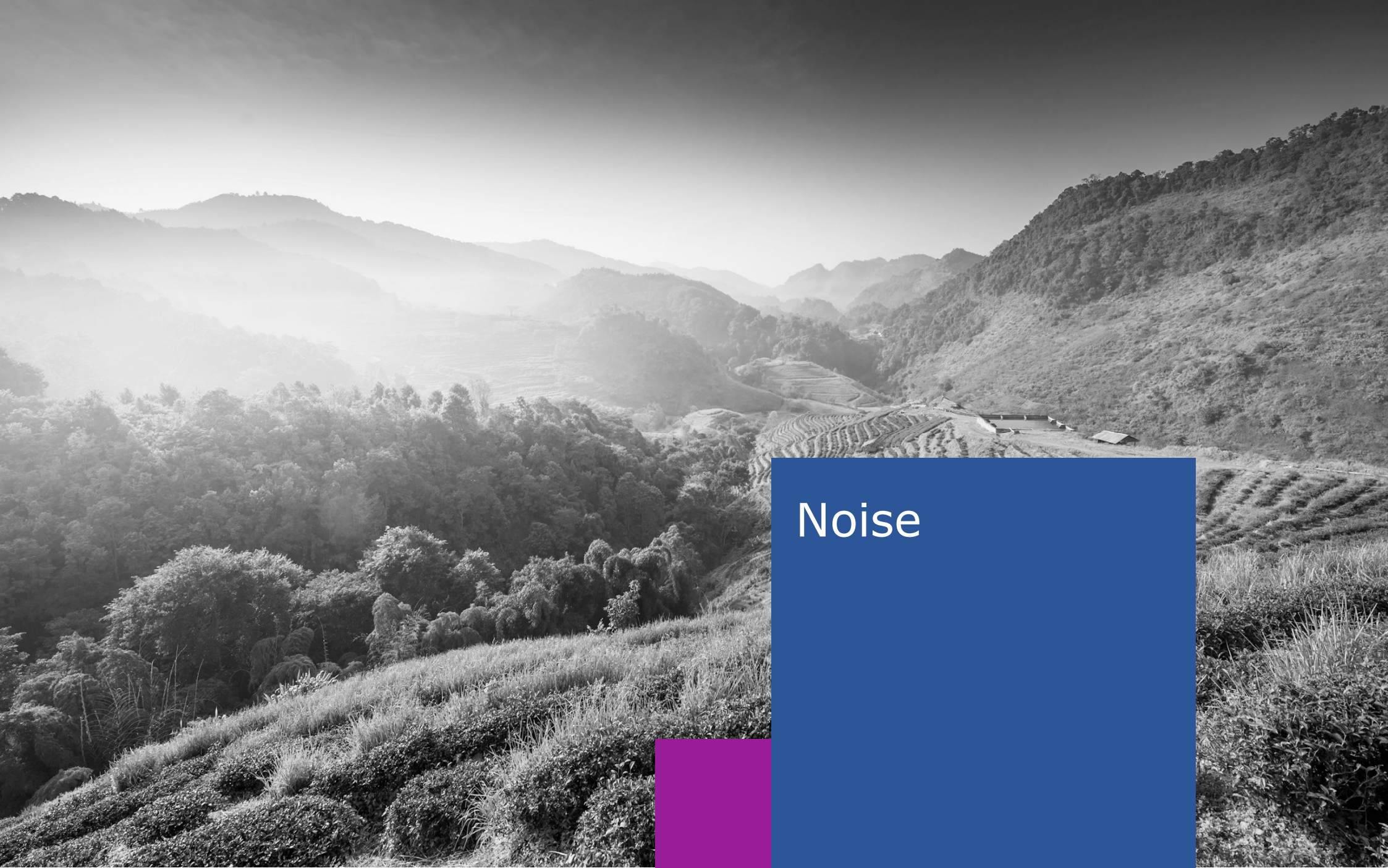
Permissions regime

Licences, permits and registrations

TIERS OF REGULATION

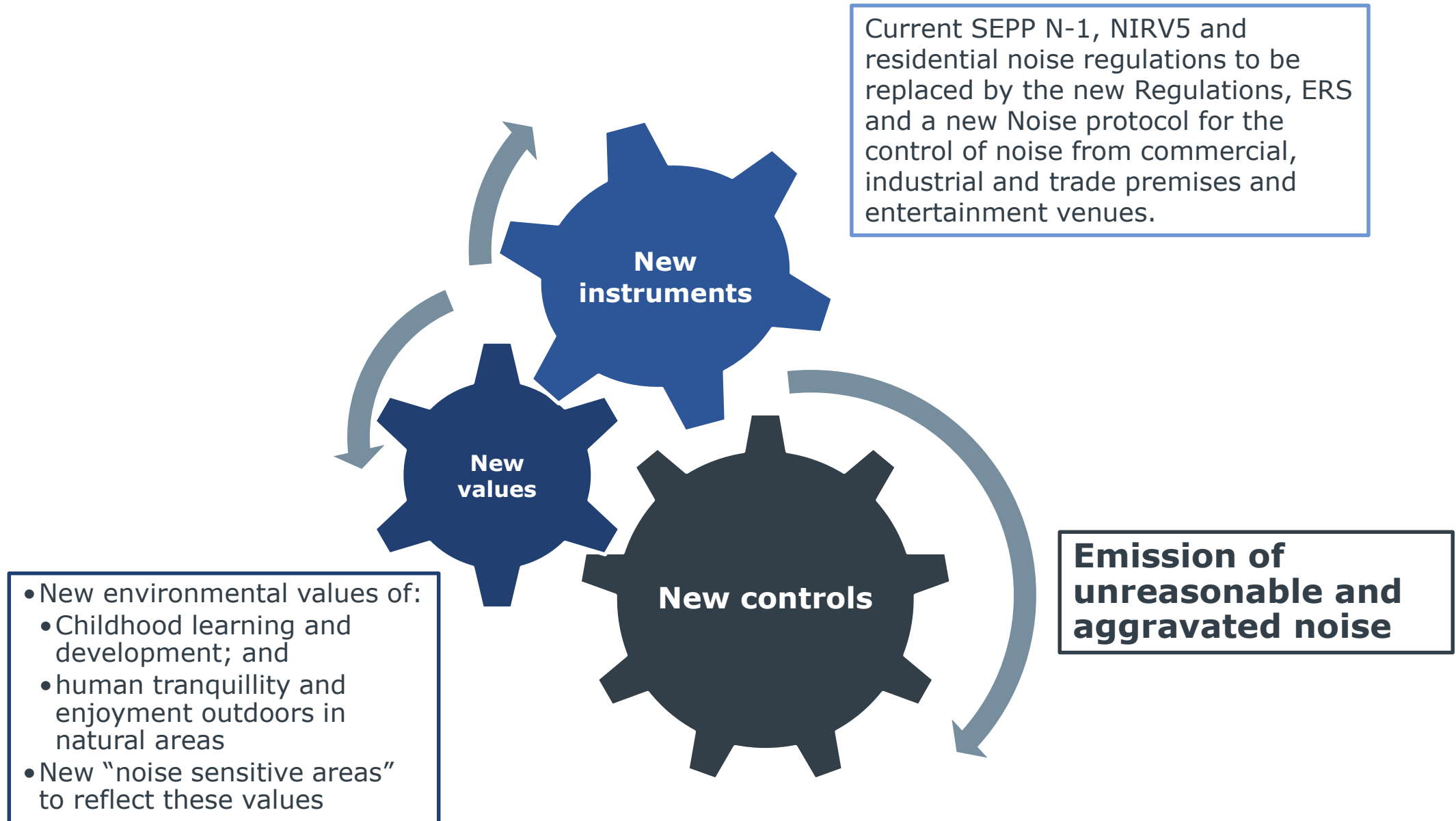


EP Act 1970	EP Act 2017	Examples (subject to any applicable exemptions)
Works approval	Development licences	<ul style="list-style-type: none"> Establishing an animal industry (ie piggery, cattle feedlot, sheep feedlot etc) Establishing livestock saleyards or holding pens
Licence	Operating licences	<ul style="list-style-type: none"> Animal industries - waste not solely to land Livestock saleyards or holding pens—waste not solely to land
Research, development or demonstration approval	Pilot project licences	<ul style="list-style-type: none"> Research, development or demonstration of a technology or technique
N/a	Permits	<ul style="list-style-type: none"> Animal industries - waste solely to land livestock saleyards or holding pens – waste solely to land Use of biosolids and reclaimed wastewater
N/a	Registrations	<ul style="list-style-type: none"> Small organic waste processing Waste tyre storage < 4000 EPU Temporary storage of certain wastes including manure



Noise

Noise



Exemptions

EMISSION OF UNREASONABLE AND AGGRAVATED NOISE

When the level of noise emitted from commercial, industrial and trade premises is assessed, the following sources of noise must not be taken into account—



Noise from equipment used in relation to an emergency



Construction activities



Mobile farm machinery (except for maintenance activities)



Scare and anti-hail guns and firearms



Livestock on farms or saleyards



Lawnmowing



Large fans used to circulate air over a wide area where crops such as citrus, stone fruit or vines are grown (frost fans)



Odour

Odour

COMMON SOURCES

Waste treatment

Sewage/septic, garbage/rubbish, waste landfill



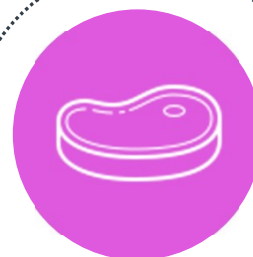
Animal farms and facilities

Manure (faeces), fish (amines), livestock, chicken/poultry, rendering, milk or dairy (rancid), feathers/hair, rotten eggs (hydrogen sulphide)



Agriculture

Compost/mulch (fresh), garlic/onion, yeast/fermented, cabbage (dimethyl sulphide), seaweed



Rendering plants

Tannery/skin & hides, rendering, feathers/hair, dead animal/meat (rotten)

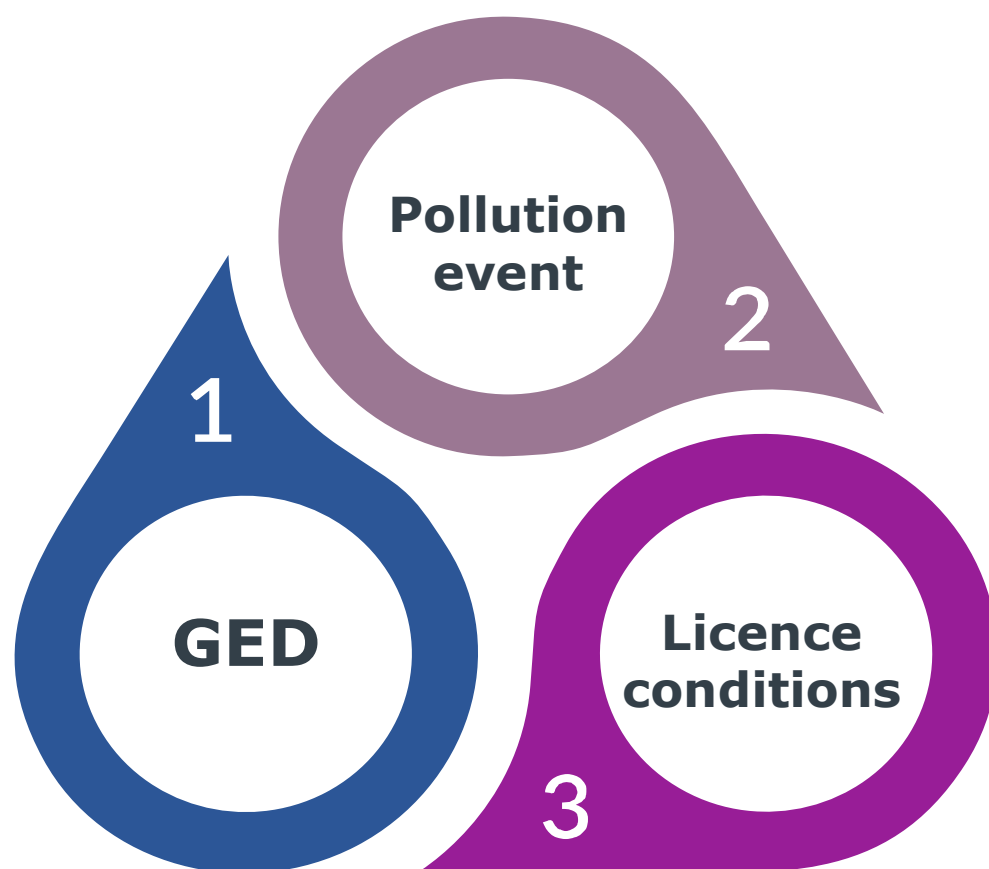
Composting facilities

Organic/compost (decayed), garbage/rubbish



Odour

REGULATION AND ENFORCEMENT



1 GED: You must take reasonable steps to minimise the risk of *harm* to the environment.

“Harm” means an adverse effect on human health or the environment and includes:

- An adverse effect on the amenity of a place or premises that unreasonably interferes with or is likely to unreasonably interfere with enjoyment of the place or premises
- Change to the condition of the environment so as to make it offensive to the senses of human beings

2 Pollution: The escape of odour may be a pollution incident if it causes harm to the environment or human health

3 Conditions: Offensive odour must not be emitted beyond the boundaries of your premises



Waste

Waste categories

INDUSTRIAL WASTE, PRIORITY WASTE AND REPORTABLE PRIORITY WASTE

industrial waste means—
(a) waste arising from commercial, industrial or trade activities or from laboratories; or
(b) waste prescribed to be industrial waste for the purposes of this definition

Examples: untreated timber incl. sawdust, manure, End-of-life vehicles



Examples:

- Septic tank waste
- Some industrial wastewaters
- Some biosolids
- Processed solid organic waste
- Timber treated with hazardous substances, including sawdust



- **Examples:**
Acids
- Pesticides including herbicides and insecticides
- Tannery wastes
- Highly odorous organic chemicals



New duties to manage waste

PROACTIVE OBLIGATIONS

Industrial waste

Duties of persons depositing industrial waste

Duties of persons receiving industrial waste ('lawful place')

Duty of persons involved in transporting industrial waste

Priority waste

Duties of persons managing priority waste

Duty to investigate alternatives to waste disposal

Reportable priority waste

Duty to notify of **transaction** in reportable priority waste

Duty of persons **transporting** reportable priority waste

Management of waste

KEY QUESTIONS

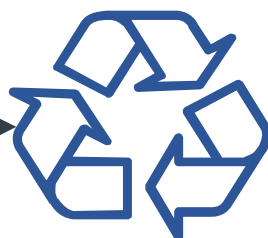


1. Classification

What waste have you generated or received?

3. Alternative uses for Priority Waste

- Can you re-use, recycle or identify other alternative ways of disposing of the waste other than to landfill?



2. Storage

- How much waste are you storing?
- Do you need a permission to store the waste?
- Are there storage guidelines on how to store the waste?



5. Authorised to receive waste

- Are you authorised to receive the waste?
- Is the person where the waste is being taken authorised?



4. Transport

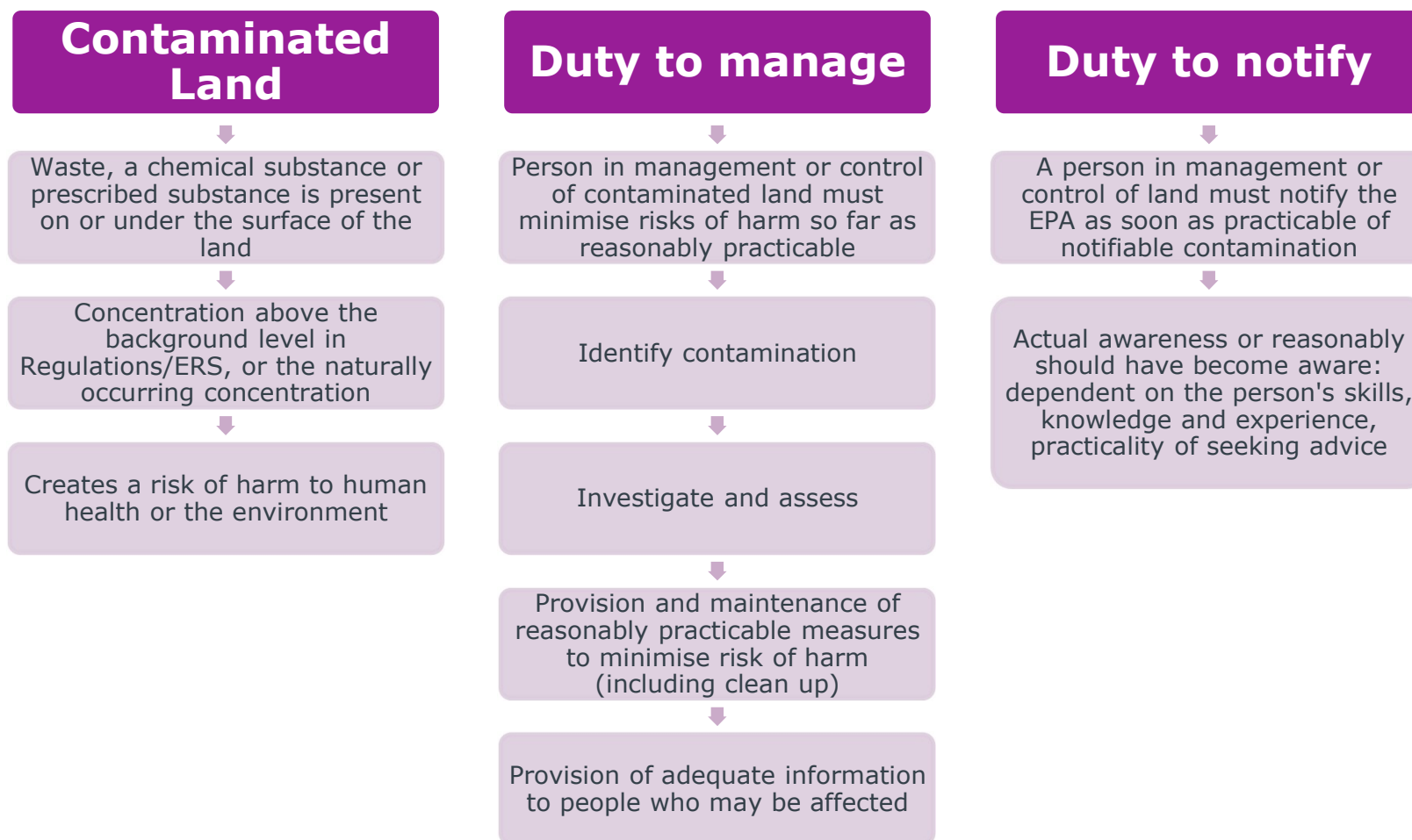
- Does the transporter need a permission to transport the waste?
- Where is the waste going? Is that place authorised to receive waste?



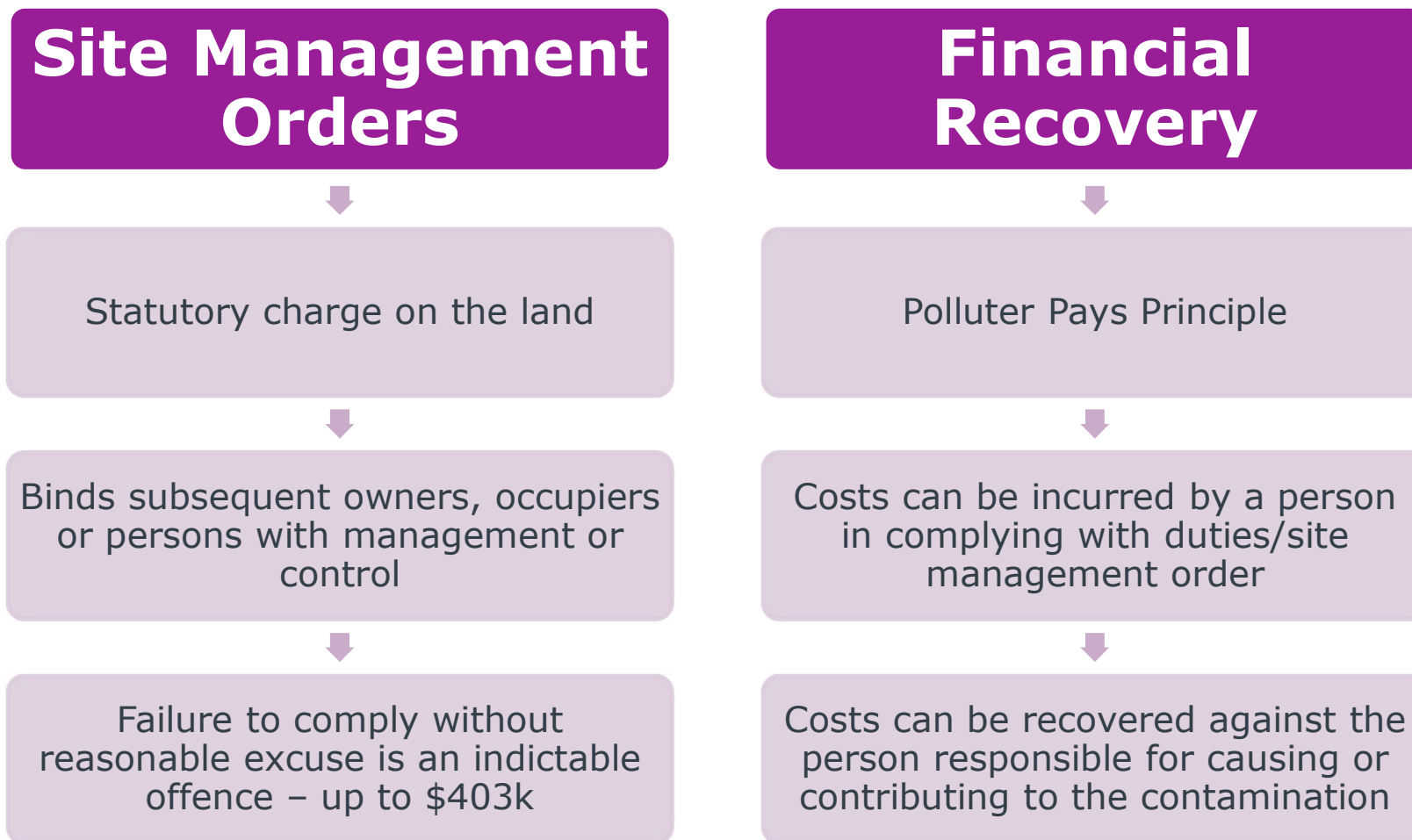


Contaminated land

Contaminated Environments: New Duties



Contaminated Environments: Orders & Recovery

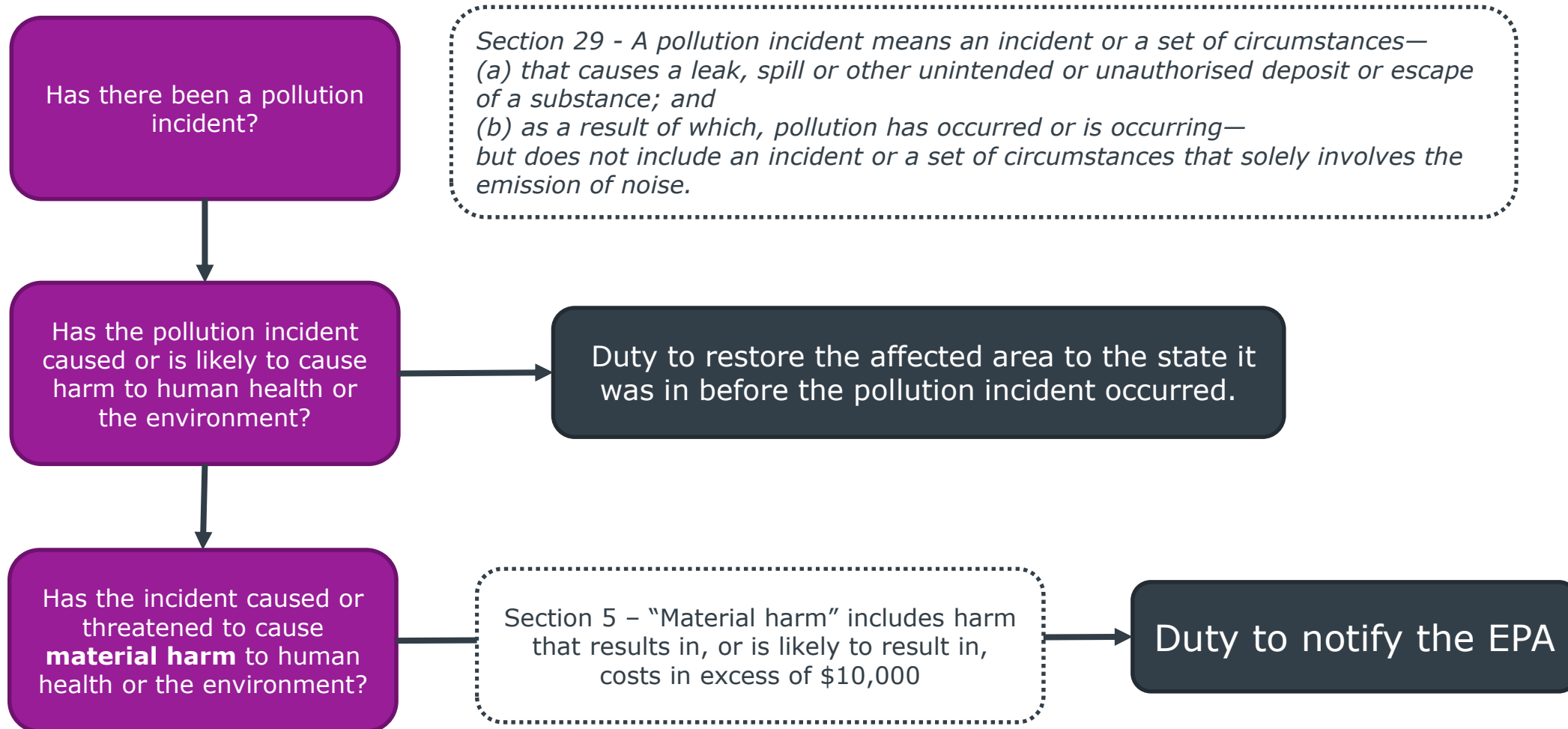




Pollution incidents

Pollution incidents

KEY QUESTIONS





EPA powers and penalties

EPA notices

1	Improvement notice	Respond to contravention of Act Orders: to take any action, remedy the harm
2	Prohibition notice	Respond to contravention of Act Orders: prohibit activity, take any action to prevent or minimise harm
3	Investigation notice	Investigate circumstances leading to potential contamination Orders: investigate if circumstances exist, nature and extent of harm, report to EPA
4	Environmental action notice	Clean up or remediate site, or reduce waste Orders: clean up and remediation measures specified, dispose of waste
5	Non-disturbance notice	Stop use or interference with equipment, plant or substance in a specified area to facilitate performance of functions or exercise powers under the Act. Orders: stop use of item, prevent disturbance of item or specified area
6	Information gathering notice	To gather information, at any time

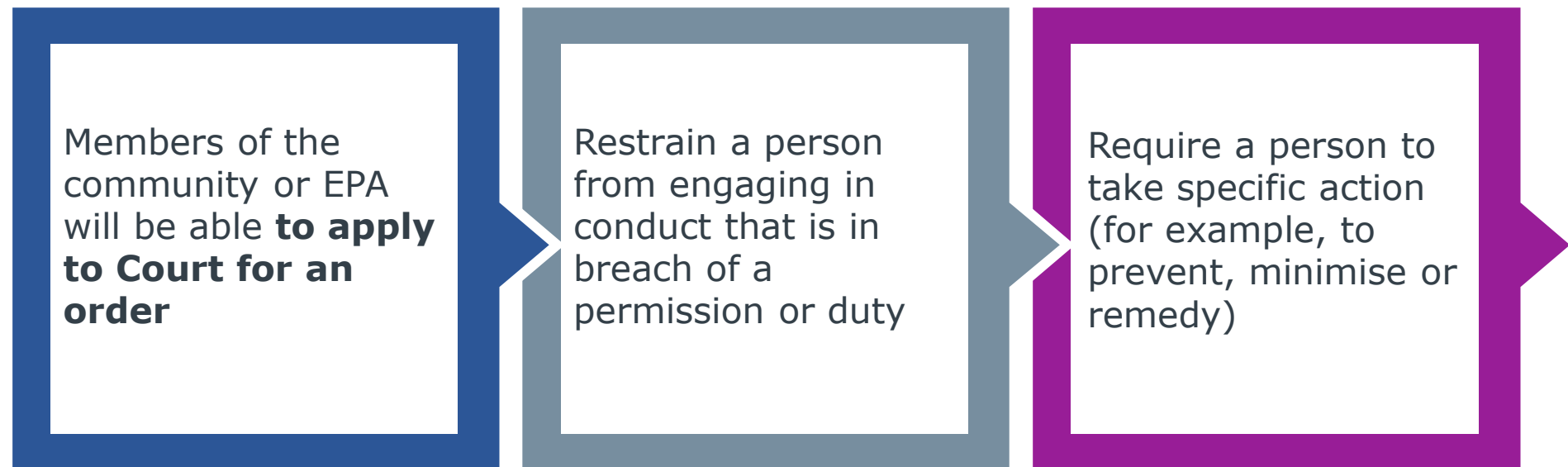
Changes to penalty regime

PENALTY APPLICABLE TO A BODY CORPORATE

	EP Act 1970	EP Act 2017
Breach of GED	N/A	Up to \$1.65 million Up to \$3.30 million for aggravated breaches
Breach of a condition of a permission	\$386,856, or a daily rate of up to \$194,292 (for ongoing contravention after notice or conviction)	Licences: \$1.65 million for a corporation Permits: \$826,100 for a corporation Registration: \$413,050
Operating without a permission	<u>Operating without a licence:</u> \$386,856, or a daily rate of up to \$194,292 (for ongoing contravention after notice or conviction) <u>Operating without a works approval:</u> \$386,856	Licences: \$1.65 million Permits: \$826,100 Registration: \$413,050
Breach of duty to notify in the event of a pollution event	N/A (noting that it is often a requirement of a licence to notify, in which case failure to notify may result in a penalty for a breach of a licence condition).	\$198,264
Breach of notice	\$386,856 (Pollution abatement notice and clean up notice)	\$413,050

Community Civil Remedies

WHAT'S THE RISK OF PROSECUTION?





Review rights

Internal reviews by the EPA

REVIEW OF REMEDIAL NOTICE

A person may apply to the EPA for:

- Review of decision to issue a notice
- To amend a notice

Timing

- 10 business days after the day on which the notice is served; or
- Any longer period allowed by the EPA

"Notice" means

- Improvement notice; Prohibition notice; Notice to investigate; Environmental action notice

What can the EPA DO?

- Affirm or vary the decision; or
- Set aside the decision and substitute another decision that the EPA considers appropriate

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Decisions are reviewable by VCAT

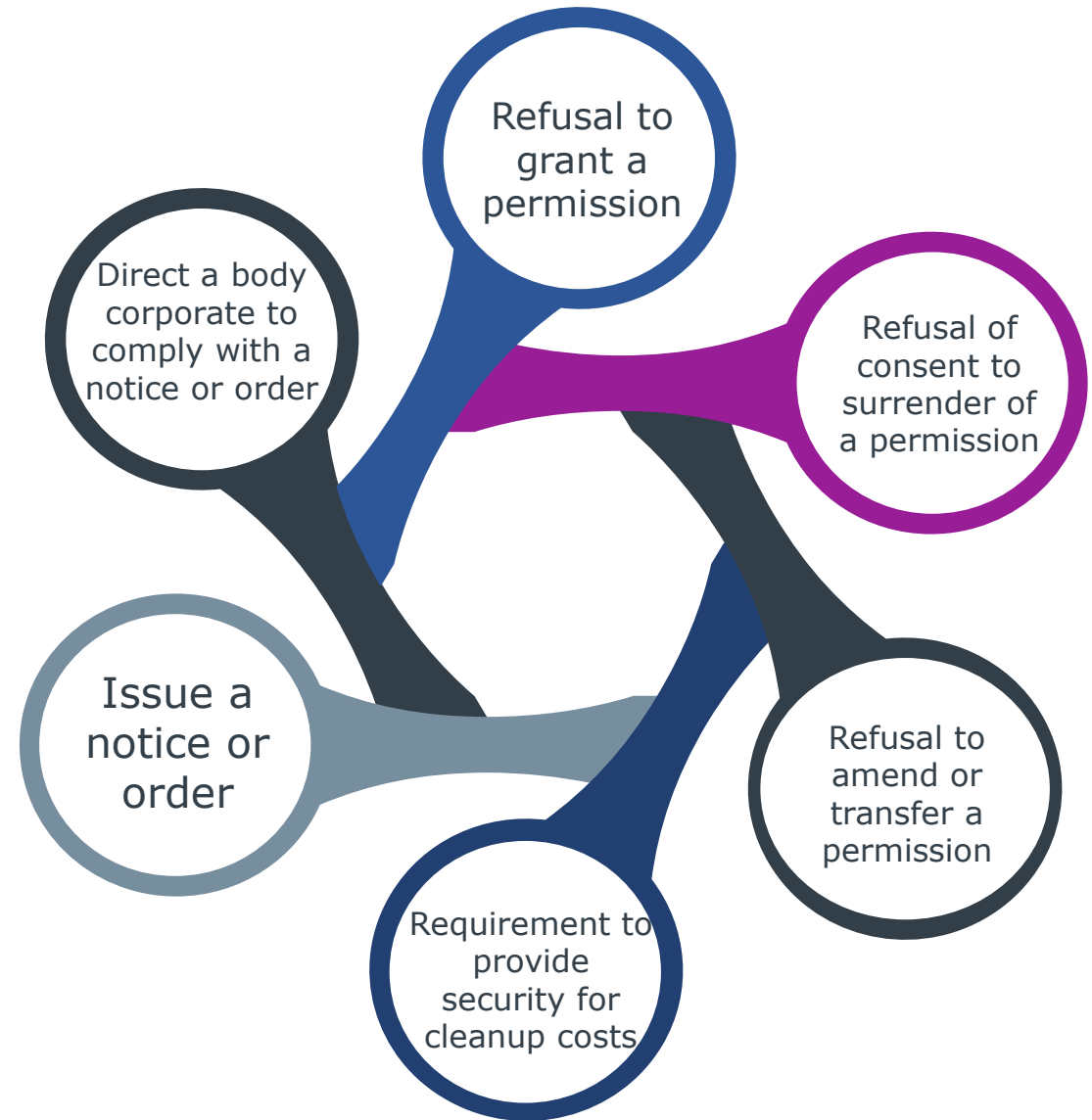
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Business days for an **eligible person** to apply for a review

Eligible person

Includes applicant, holder of licence etc.

Example of decisions that can be reviewed by VCAT





Case studies

Case study 1

DEALING WITH A FARM FIRE

- It's a very hot day and some dry grass catches fire at Sam's farm.
- The fire extends into the 500m fence that Sam has created out of waste tyres.
- Smoke from the fire has spread to Sam's closest neighbour, who calls the EPA.



GED

- Does Sam have a plan in place to ensure the waste tyres are stored in a manner to prevent them from catching fire?
- Does Sam have a system in place to keep track of how many EPU's Sam has on the farm? (ie regular audits, staff training etc)
- What is Sam's plan to store and dispose of the burnt tyres?



Managing waste & permissions

- Has Sam classified the waste tyres?
- Was Sam authorised to receive the waste tyres (if received from elsewhere)?
- Storage of waste tyres might require a licence or a registration



Enforcement

- Breach of the GED?
- Accepting waste when not authorised to receive it?
- Failure to have required permissions in place?
- Likely fine or enforcement notices



Pollution event

- The smoke have been discharged into the air
- Need to clean up the impact arising from the incident
- May need to notify the EPA if there has been "material harm"

Case study 2

RECEIPT OF WASTE

- Every month, farmer Alex takes a load of animal manure that is <1000L to farmer Jo.
- If there is manure left over after 20 days, Jo takes it to a friend's farm.
- Farmer Jo has no process in place to inspect the waste delivered by Alex.
- Farmer Jo discharges waste solely to land but doesn't have a permission to do so.



GED

- Does Alex have an environment plan for the storage, handling and transport of effluent?
- Does Alex have a system in place to make sure the waste is going to a place authorised to receive it?
- Does Jo apply the effluent to land in accordance with any applicable guidelines?



Managing waste

- Alex and Jo need to classify the waste
- Jo has not complied with the EPA's *Effluent Management Determination* because there is no process for inspecting effluent
- Alex must take the waste to place "authorised to receive it"



Enforcement

- Breach of the GED?
- Failure to classify waste?
- Failure to deliver waste to a place authorised to receive it?
- Failure to have required permissions in place?
- Likely fines and improvement notice



Permissions

- Does Alex need a permission to transport the waste?
- Jo may need a specific permission to accept effluent if she can't rely on the determination
- Registrable activity: A23 (Temporary storage— designated waste)
- Permit: B01a (Animal industries— waste solely to land)

Case study 3

EFFLUENT FLOWS INTO RIVER

- Neighbour reports that there are unusual odours coming from the road reserve
- EPA inspects and finds brownish-green liquid overflowing from the farm's stock containment area to the road reserve and into a nearby waterway
- EPA discovers effluent flows have been discharging for over a week



GED

- Has the farmer taken all practicable steps to minimise the risk of harm from the management of effluent?
- Are the effluent ponds / flushing systems well maintained and repaired on a regular schedule?
- Is there an effluent management plan that is specific to the farm? Are staff members trained in effluent management?



Enforcement

- Breach of the GED? Material harm transitional offence?
- Failure to restore and notify the EPA (pollution incident)?
- Breach of permission conditions?
- Likely fines and environmental action notice to remediate



Pollution incident

There has been a discharge or escape of a waste substance to land and waters that is likely to harm the environment both from the liquid and the odour emanating from that liquid

- *Duty to restore the land to the state it was before the incident*
- *Duty to notify the EPA if there has been material harm*



Questions