

Session 1

The Regulatory Environment

Corporate and Individual Responsibility

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Environment Protection Act 2017 and Regulations 2021

- The Environment Protection Act 2017 and the Environment Protection Regulations 2021 aim to minimise the risk of harm to human health and the environment
- The general environmental duty (GED) is at the centre of the Environment Protection Act 2017 and it applies to all Victorians, and all businesses located in Victoria

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General Environmental Duty (GED)

The GED is contained in Part 3.2 of the EPA Act 2017. The GED states that:

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

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General Environmental Duty (GED)

- The GED makes it clear that businesses have a responsibility to reduce risk to human health and the environment
- It states that you must manage your activities to reduce the risk of harm:
 - to human health and the environment
 - from pollution or waste

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Deemed Contraventions

It is a deemed contravention under the EPA Act 2017 if a person who is conducting a business or undertaking fails to do any of the following, so far as reasonably practicable:

- Use and maintain plant, equipment, processes and systems in a manner that minimises risks from pollution and waste
- Use and maintain risk management systems
- Handle, store, use or transport substances in a manner that minimises risk
- Provide training and information to persons

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Minimising Risk of Harm

To determine what is reasonably practicable in relation to the minimisation of risks, regard must be had to:

- The likelihood of those risks eventuating
- The degree of harm that would result if those risks eventuated
- 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
- The availability and suitability of ways to eliminate or reduce those risks
- The cost of eliminating or reducing those risks

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Remedial Notices and Penalties

A breach or a threatened breach of the GED will trigger the Environment Protection Authority (EPA)'s capacity to issue a notice, such as improvement and prohibition notices or notices to investigate and environment action notices, so that the problem can be remedied quickly

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Penalties


Failure to comply with the GED results in civil liability and criminal penalties of:

- \$363,480 for a natural person
- \$1,817,400 for a body corporate

There are additional penalties if the breach of the GED is aggravated, meaning it is intentional or reckless:

- \$726,920 and/or 5 years imprisonment for a natural person
- \$3,634,800 for a body corporate


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Businesses and Organisations

- Must manage activities to avoid the risk of environmental damage
- Must respond if pollution does occur
- The GED just makes it clear your responsibility is to reduce risk to the environment

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Common Risks

- Business activities that produce noise, odour or runoff to stormwater
- Storage, use and disposal of liquids and chemicals
- Management of wastes and the choice of transporter or receiver of wastes

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Responsibilities under the GED

- Understand and assess your risks
- Eliminate or reduce risks, as far as reasonably practicable
- Taking reasonably practicable action means you have put in 'proportionate' controls to eliminate or minimise risks of harm
- Proportionate means the greater the risk of potential harm, the greater the expectation for you to manage it
- 'Controls' can include any or all of: elimination, engineering controls, training and safe site practices

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How to Comply with the Law

- Manage Environmental risk
- Build State of Knowledge
- Understand and assess your risks
- Eliminate or reduce them as far as reasonably practicable
- State of Knowledge is what is known about the risks from your activities and about the controls you can put in place to manage the risks

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Environmental Protection

- One of the main potential adverse impacts identified during construction is associated with soil and water due to erosion and sedimentation
- Such impacts are to be minimised by mitigating measures
- May be required to prepare a Construction Environmental Management Plan (CEMP) before construction commences

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Environmental Protection

- Erosion and Sediment Control Plan (ESCP) may be part of a CEMP
- ESCP sets out specific conditions to be met to achieve environmental outcomes
- Key objectives of a ESCP are to:
 - Minimise risk of erosion and sediment deposition
 - Prevent surface water degradation
 - Ensure compliance with all legislative water quality requirements

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How are E&SC rules applied?

- Two approaches to implementation:
 - "performance based", e.g. 50 mg/L discharge limit for suspended solids
 - "good practice", e.g. IECA Manual approach
- Responsibility
 - Organisations and individuals responsible for any actions reasonably or legally within their control
 - "Due Diligence" – To take care and be proactive

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Obligations

You have obligations to:

- Manage risks under the General Environmental Duty (GED)
- Notify EPA of a pollution incident
- Manage contaminated land
- Respond to harm caused by the pollution

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Obligations

- You may also need to meet specific conditions if your activity is a prescribed activity that falls under the permissions scheme
- This applies to businesses with a licence, permit or registration

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What is Harm?

Material harm is:

- An actual adverse effect on human health or the environment that is not negligible; or
- An actual adverse effect on an area of high conservation value or of special significance; or
- When the costs of preventing or minimising the harm, or restoring the environment, are likely to be \$10,000 or more

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Impacts of erosion and sediment if not properly managed

- Poor air quality created by airborne dust
- Damage to native plants
- Pollution in waterways resulting in harm to water quality and aquatic animals
- Build-up of sediment in waterways which changes the flow capacity, causing conditions that could bring about floods and further erosion

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Responsibilities of businesses and organisations

- Businesses should make sure that any erosion and sediment from their activities doesn't impact the local community
- Project Principal is responsible for contractors and tradespeople they may hire

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Activities that expose bare soil

- Building and maintaining roads, rail, bridges, utilities, drainage, embankments and clay dams
- Rehabilitating land
- Excavating material, stockpiling, handling and transferring
- Managing catchments

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Businesses that need to manage erosion and sediment

- Land development
- Construction and infrastructure
- Agriculture and forestry
- Landscaping
- Bulk material suppliers
- Earthworks builders and contractors
- Water suppliers

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Eliminating risks

Eliminating risks helps:

- Meet community expectations
- Prevent harm to human health and the environment
- Comply with your environmental duties and obligations

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Not eliminating risks

Not eliminating risks means you could face:

- Cleanup costs
- Lost work time
- Legal fees
- Fines
- Criminal charges

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Notifiable Incidents and Duty to Notify

- A pollution incident will be a 'notifiable incident' if it causes or threatens to cause material harm
- Where the duty is triggered, a failure to notify 'as soon as practicable' is an offence and fines may be imposed as either a criminal or a civil penalty, ranging from nearly \$22,000 for individuals to nearly \$110,000 for corporations

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Compliance and Directions

EPA uses various tools for compliance and enforcement:

- Remedial notices and directions: in response to non-compliance or risk at a site
- Financial assurances: setting requirements for sites with clean-up cost risks
- Orders for managers of land and infrastructure: defining obligations for those who manage land

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Penalties - Case Study

- Contractor John Holland, 9 October 2023
- Replacing three aging sections of water mains between Mitcham and Syndal
- EPA officers saw sediment laden liquid running into Norcal Road, Nunawading, and then to a stormwater drain
- Penalty: \$5,769 fine for failure to properly control sediment from leaving a construction site
- An EPA notice was also issued requiring the installation of controls to prevent sediment discharging from the site including from truck movements

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Penalties - Case Study

- Contractor Laing O'Rourke Australia Construction Pty Ltd, 29 March 2023
- Surrey Hills railway station construction site
- Complaint from the public
- Sediment-laden surface water running in the gutters and flowing into stormwater drains in Bedford Avenue, Union Road and Croydon Road. Unlawful deposit of waste of more than 50 litres, but not more than 1000 litres. Sediment traps on some drains to stop it entering the storm drains, but they were not effective and some drains had no stormwater or sediment controls at all
- Observed a 12-wheeler truck leaving the construction site onto Bedford Ave, with ineffective controls in place, leaving sediment tracks on the road
- Penalty: \$5,548 fine for failure to properly control sediment from leaving a construction site

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Remedial Notice - Case Study

- In May 2024 the Earth Resources Regulator issued a remedial notice to the holder of a work authority (quarry) in Central Victoria
- The notice was issued for failure to comply with a work plan condition that requires the authority holder to prevent discharge of sediment off site
- The notices require the authority holder to install sediment controls to prevent any discharge offsite

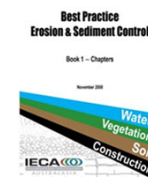
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Reference Materials

This course is based on material from:

- Best Practice Erosion and Sediment Control, IECA (2008)
- <https://www.austieca.com.au/publications/best-practice-erosion-and-sediment-control-bpesc-document>



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Useful EPA Publications

- Managing soil disturbance (publication 1894)
- Erosion, sediment and dust treatment train (publication 1893)
- Managing stockpiles (publication 1895)
- Managing truck and other vehicle movement (publication 1897)
- Managing how you work within or adjacent to waterways (publication 1896)