



**Overview of the subordinate instruments proposed under the new environment protection legislation**  
**September 2019**

# Overview of the subordinate instruments proposed under the new environment protection legislation

---

## Publication 1754

Published September 2019

## Disclaimer

The information in this publication is for general guidance only. It does not constitute legal or other professional advice and should not be relied on as a statement of the law. As it is intended only as a general guide, it may contain generalisations. You should obtain professional advice for your specific circumstances.



# Overview of the subordinate instruments proposed under the new environment protection legislation

---

## Table of contents

About this guide .....	3
The new EP legislation.....	4
How is Victoria’s environment protection framework changing under the new EP legislation? .....	4
Abbreviations/acronyms.....	4
What new subordinate instruments are in development? .....	5
Which topics will be addressed in regulations rather than in the EP Act? .....	6
What will happen to SEPPs?.....	6
What will happen to WMPs? .....	7
What will happen to NCOs? .....	8
Next steps.....	8

## About this guide

This guide provides an overview of the subordinate instruments proposed to apply from (or after) 1 July 2020 under the *Environment Protection Act 2017*, as amended by the *Environment Protection Amendment Act 2018* (new EP legislation). It outlines:

- the purpose of these subordinate instruments
- how the subordinate instruments under the new EP legislation differ from current subordinate instruments under the *Environment Protection Act 1970* (EP Act)
- how some of the content from current subordinate instruments will be retained in the new subordinate instruments.

This document **does not** provide details about the changes in the content under each proposed subordinate instrument. The proposed changes to the content are outlined in the *Guide to the proposed Environment Protection Regulations* (Environment Protection Authority Victoria (EPA) publication 1753), *Guide to the proposed Environment Reference Standard* (EPA publication 1752), *Summary of proposed noise framework* (EPA publication 1757) and the *Summary of proposed waste framework* (EPA publication 1756).

Together with the above publications, this overview will help you to review and comment on:

- the proposed Environment Protection Regulations and Environment Protection Transitional Regulations (the proposed Regulations) and related Regulatory Impact Statement
- the proposed Environment Reference Standard (ERS) and related Impact Assessment.

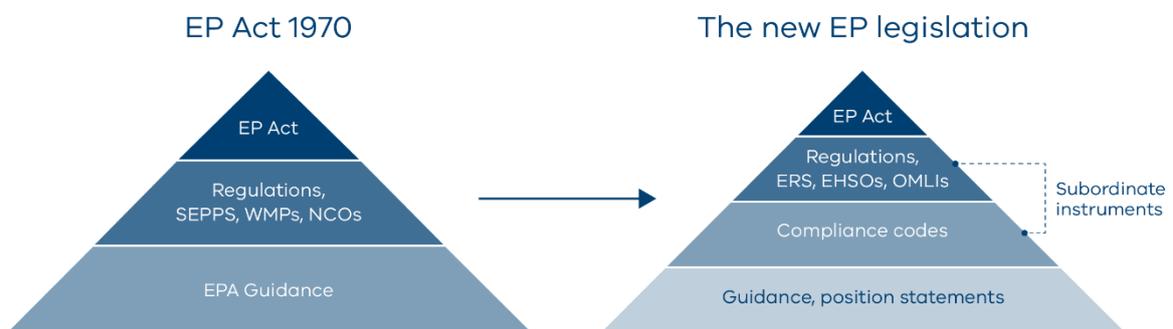
# Overview of the subordinate instruments proposed under the new environment protection legislation

---

## The new EP legislation

The new EP legislation includes a new approach to environment protection issues. It focuses on preventing waste and pollution impacts, rather than managing those impacts after they have occurred. The cornerstone of the new EP legislation is the general environmental duty (GED). The GED will focus how Victorian businesses, industry and the community can help prevent harm. The general environmental duty requires anyone conducting an activity that poses risks to human health and the environment to understand and minimise those risks.

## How is Victoria's environment protection framework changing under the new EP legislation?



## Abbreviations/acronyms

**SEPPs:** state environment protection policies

**WMPs:** waste management policies

**NCOs:** notifiable chemical orders

**ERS:** environment reference standard

**EHSOs:** environmentally hazardous substance orders

**OMLIs:** obligations on managers of land and infrastructure

Under the new EP legislation, there will be a different mix of subordinate instruments compared to the current EP Act. Some subordinate instruments are discontinuing (for example, SEPPs, WMPs and NCOs) and some new subordinate instruments are being introduced (for example, ERS, EHSOs, OMLIs, compliance codes).

The aim of these changes is to produce a simpler, more streamlined environment protection framework. The framework will support industry, government and the community to minimise the risks of harm to human health and the environment from pollution and waste.

## Overview of the subordinate instruments proposed under the new environment protection legislation

---

### What new subordinate instruments are in development?

Subordinate instruments are legal instruments made directly or indirectly under an Act. They include Regulations, legislative instruments and compliance codes.

The following subordinate instruments can be made under the new EP legislation:

1. **Regulations** – where appropriate, the proposed Regulations will support the new EP legislation by providing clarity and further detail for duty holders on how to fulfil their obligations. The proposed Regulations and a related Regulatory Impact Statement have been published for public comment until **31 October 2019**.
2. **Environment reference standards (ERS)** – the purpose of the ERS is to articulate community expectations about the state of the environment. The ERS will set out the uses of the environment that Victorians value, and the indicators and objectives needed to support them. The ERS will provide a foundation for environmental monitoring and reporting. ERS are reference standards, and therefore they are not mandatory. [More information on the role of the ERS is available on EPA's website.](#) The proposed ERS and a related Impact Assessment have also been published for public comment until **31 October 2019**.
3. **Orders** – the new EP legislation allows for the making of certain 'orders' to further clarify the duties and obligations of different parties. These orders include:
  - Orders for obligations on managers for land and infrastructure (OMLIs): the purpose of OMLIs will be to clarify the obligations on managers of land and infrastructure to manage human health and environmental risks associated with assets under their management. These obligations will supplement and operate concurrently with the GED and other obligations in the new EP legislation.
  - Environmentally hazardous substance orders (EHSOs): EHSOs will establish requirements to prohibit, control or regulate specific substances which are highly hazardous or pose a serious risk of harm to human health or the environment.
4. **Compliance codes** – the role of a compliance code is to provide practical advice to a person who is conducting an activity subject to environment protection duties, or obligations. While not mandatory, a person who follows a compliance code will – to the extent that it relates to their duties or obligations – be regarded as compliant with those duties or obligations.

In addition to these subordinate instruments, EPA will develop a suite of guidance, on the preventative focus of the new EP legislation, supporting duty holders to understand and comply with their environmental obligations.

Also, EPA position statements describing EPA's stance on specific situations or topics will be developed, as required.

## Overview of the subordinate instruments proposed under the new environment protection legislation

---

Which topics will be addressed in regulations rather than in the EP Act?



Some environment protection requirements currently addressed in the EP Act will instead be managed through regulations in the new framework. This includes elements of litter management, infringement offences, septic tanks and motor vehicles.

There are currently six sets of regulations under the EP Act. Under the new EP legislation, it is proposed to have one consolidated set of regulations (the proposed Environment Protection Regulations) and some separate transitional regulations (the proposed Environment Protection Transitional Regulations).

### What will happen to SEPPs?

There are [currently seven SEPPs](#).

They will formally 'switch off' on 1 July 2020, when the new EP legislation is expected to commence.

While the new framework seeks to ensure the same or better level of environment protection, some of the content in SEPPs will be 'rehoused' (with some changes), in more fit-for-purpose subordinate instruments, as follows:

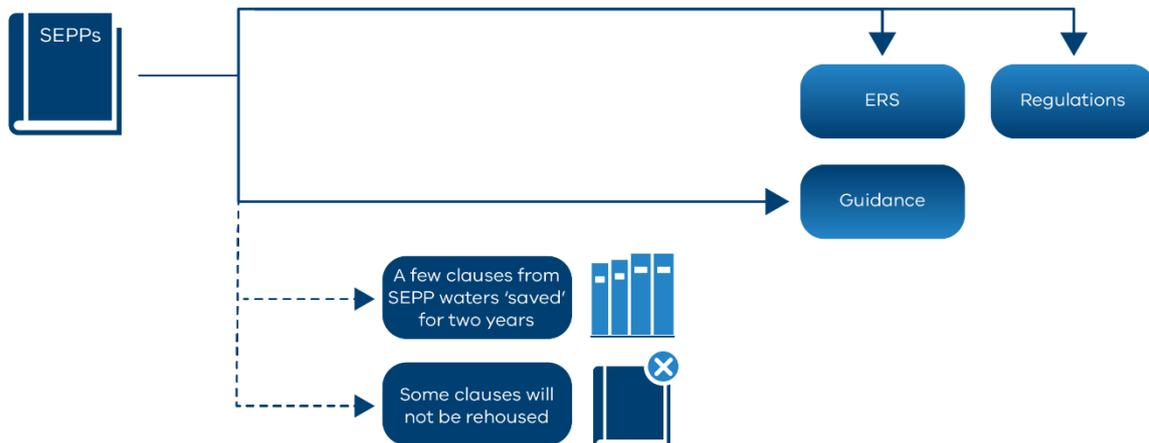
- As noted above, the proposed ERS includes environmental values, indicators and objectives – these are similar to the beneficial uses, indicators and objectives currently in SEPPs.
- Some clauses in SEPPs that are regulatory in nature are included (with changes) in the proposed Regulations (for example, where they set a clear requirement on a type of industry activity).
- Some other SEPP clauses that contain rules for EPA's decision-making are also (with some changes) in the proposed Regulations (for example, rules that EPA must follow when assessing a licence application).

In addition, the proposed Environment Protection Transitional Regulations save some specific clauses in SEPP (Waters) for two years from the commencement of the new EP legislation (anticipated to be from 1 July 2020 to 30 June 2022). This will provide more time for the Department of Environment, Land, Water and Planning (DELWP) and EPA to consult with duty holders on how the issues addressed in these clauses are best managed on a longer-term basis (for example, perhaps in an OMLI).

## Overview of the subordinate instruments proposed under the new environment protection legislation

Some SEPP clauses will not be rehashed in subordinate instruments. This is because they are not needed due to the characteristics of the new EP legislation – for example, the GED. Other clauses will be reframed as EPA guidance.

In some cases, even after the SEPPs have formally ‘switched off’, a SEPP clause may inform the ‘standard of care’ expected of a person conducting an activity for them to comply with the GED.



### What will happen to WMPs?

There are [currently nine WMPs](#).

WMPs will formally ‘switch off’ on 1 July 2020 when the new EP legislation is expected to commence.



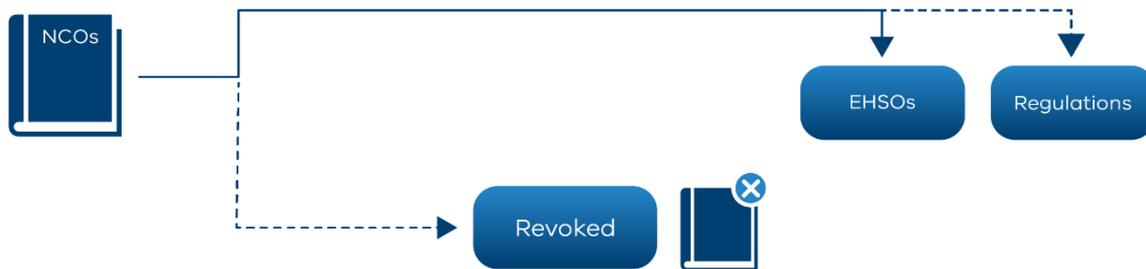
As with SEPPs, some clauses in WMPs are – with revisions – in the proposed Regulations (for example, where they set a clear requirement on an industry sector). Other WMP clauses may move, with changes, into guidance.

Some clauses of current WMPs are not proposed to be rehashed as they are not needed given other features in the new framework (such as the GED).

# Overview of the subordinate instruments proposed under the new environment protection legislation

---

What will happen to NCOs?



Unless they are revoked, NCOs automatically become EHSOs when the new EP legislation commences.

There are [currently four NCOs](#). Of these, it is proposed that:

- two NCOs, which cover Polychlorinated Biphenyls and Organotin Anti Fouling Paint will continue (as EHSOs)
- the remaining two NCOs, which cover Chlorine Compounds and Arsenic Compounds will be revoked.

The use of chlorine and arsenic compounds will be covered under the new EP legislation and proposed Regulations.

The Regulatory Impact Statement provides further details on the proposed changes to the NCOs.

## Next steps

EPA and DELWP have now released the following documents for public comment:

- the proposed Environment Protection Regulations, proposed Environment Protection Transitional Regulations and a related Regulatory Impact Statement
- the proposed Environment Reference Standard and a related Impact Assessment.

These documents and information on how to provide comments can be accessed through Engage Victoria: [engage.vic.gov.au](https://engage.vic.gov.au). We invite you to read these documents and provide your comments by **31 October 2019**.

Please contact EPA on 1300 372 842 (1300 EPA VIC) or email [sublegreform@epa.vic.gov.au](mailto:sublegreform@epa.vic.gov.au) if you require more information.