

# CHARTER OF CONSULTATION





Environment Protection Authority Victoria



## Introduction and context

#### Acknowledgement of Aboriginal Victorians

EPA acknowledges Aboriginal people as the first peoples and Traditional custodians of the land and water on which we live, work and depend. We pay respect to Aboriginal Elders past and present.

As Victoria's environmental regulator, we pay respect to how Country has been protected and cared for by Aboriginal people over many tens of thousands of years.

We recognise the unique spiritual and cultural significance of land, water and all that is in the environment and the continuing connection and aspirations for Country of Aboriginal people and Traditional custodians.

EPA Victoria is an independent statutory authority. Our role is to protect Victoria's environment and people from the harmful effects of pollution and waste.

#### We are Victoria's environmental regulator.

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- We monitor the health of the environment.
- We set standards to measure and maintain its health.
- We enforce compliance with these standards to protect the environment and deter polluters.
- We lead and support action across government, industry and the community to prevent harm.

But we cannot do this alone. We know that our actions must be informed by the aspirations of all Victorians. We rely on individuals, communities and businesses across Victoria to protect the environment, report pollution, and participate in environmental programs, working with us to achieve better environmental outcomes.

## Legislative and regulatory context

This Charter of Consultation is EPA's commitment to consultation with Victorians under section 53 of the *Environment Protection Act 2017 (the Act).* It outlines key parts of our laws that require or may benefit from consultation and describes how EPA may undertake such consultation.





Part 2.3 of the Act includes eleven *principles of environment protection* that represent vital considerations in environmental decision making. EPA is required to give regard to these principles in administering the Act and they must be applied in relation to certain decisions, discussed below.

The *principle of accountability* (s22) clearly expresses the purpose and value of consultation:

#### Principle of accountability

Members of the public should—

- (a) have access to reliable and relevant information in appropriate forms to facilitate a good understanding of issues of harm or risks of harm to human health and the environment and of how decisions are made under this Act; and
- (b) be engaged and given opportunities to participate in decisions made under this Act, where appropriate to do so; and
- (c) have their interests taken into account in decisions made under this Act.

This Charter also acknowledges the principle of shared responsibility (s16), which encourages EPA to provide opportunities for participation in environmental decision making.

#### Principle of shared responsibility

Protection of human health and the environment is a responsibility shared by all levels of Government and industry, business, communities and the people of Victoria.

The process for developing environmental rules and standards is prescribed by the *Subordinate Legislation Act 1994.* The Subordinate Legislation Act sets out a specific process for consultation, outlined below, which establishes the minimum consultation standards EPA must follow when developing statutory instruments such as policies and regulations.

# Why consultation matters

## Improving environmental and human health outcomes

A healthy environment provides the foundation for healthy people. Consultation processes aim to involve the Victorian community in improving outcomes for the environment and human health, supporting a more liveable Victoria.

Consultation is vital in connecting EPA's activities, standards and decisions, to the concerns and values of Victorians. It allows us to listen, learn and consider the best ways to protect our environment from the harmful effects of pollution and waste.

#### Informing decision making at EPA

Those whose interests are affected by decisions have a right to be involved in the decision-making process.

Our role is to:

- make the community aware and help them understand relevant matters and proposals
- provide suitable opportunities for public participation in decision-making.

Public scrutiny of proposals, including the involvement of community and industry advocates, contribute significantly to delivering robust outcomes.

People's concerns matter too. We also commit to explaining how matters raised during consultation have affected EPA decisions.

### Consultation scope

This Charter addresses the two central components of EPA consultation that are required by law.

#### Permissions

What: EPA assesses applications for activities that, without appropriate environmental management, could pose risks to human health and the environment (for example, the design, build and operation of an industrial facility). If applicants can demonstrate they understand and can manage these risks, EPA will grant formal 'permission' for them to proceed by issuing a licence, permit or registration, depending on the level of environmental risk.

#### How:

EPA seeks input from the community to determine whether applications for permissions meet all relevant environmental standards (below) and assessment criteria.

#### Standards

What: Environmental standards are used to benchmark environmental quality, implement environmental management programs, determine permissions (above), and undertake compliance and enforcement activity. EPA considers consultation with the Victorian community to be a foundational element of developing and reviewing environmental standards. Consultation is used by EPA to make Regulations – the rules that are used to manage pollution and waste- and establish Environment Reference Standards that are put in place to protect the environmental qualities Victorians value most.

**How:** EPA seeks input from the community to set standards at the appropriate levels, and sometimes for particular places.

We encourage all members of the Victorian public to participate in the setting of standards. EPA and our government partner, the Department of Environment Land, Water and Planning (DELWP), seek to undertake broad public engagement, as-well-as focusing on stakeholders with special interest, specialist expertise, or concern in relation to the matters in question.

# Our commitment to consultation

We welcome you to have your say as a part of our decision-making on environmental matters.

Where possible, we will seek to build partnerships with our stakeholders that bring opportunities for greater collaboration and empowerment in environmental decision-making.











access to information

participation

transparency

recognition

feedback

In keeping with the principle of accountability, our overarching commitments to consultation are:

- access to information producing accessible, informative, authoritative and timely information to support public awareness and participation
- participation creating appropriate and effective opportunities, as early as possible in decision-making processes, for the public to participate in consultation
- transparency giving clear direction on the scope and objectives of our decisions, the consultation processes that support them, and publishing our decisions
- recognition recognising the diversity of culture, language and ability in our community, and identifying the potential impacts of our decisions on stakeholder groups and the broader public
- **feedback** reporting back on how people's input has been taken into account in decision-making.

EPA makes many decisions under the Act. They are varied and encompass a wide range of environments, populations, circumstances, and risks. On some matters we are required to consult, while on other matters we choose to consult because of our commitment to accountable and inclusive governance. These are opportunities for us to work with and engage the public on the issues they care about and that affect them. In either case, we always endeavour to tailor consultation so that it suits the unique settings of decisions; and target our resources appropriately.

# Key components of consultation

#### Public notification

EPA seeks to ensure that all parties who may have an interest in proposed standards and permissions are given suitable opportunities to be informed and to comment/make submissions.

In particular, we publish notification of all development licence applications (outlined below) on our website and at least one other appropriate publication. Examples include state-wide, regional or local media, or websites such as Engage Victoria.

We may also use additional channels such as social media and direct mail, to reach interested and potentially affected parties according to a *permissions application profile assessment* (below) undertaken for that application. This takes into account aspects such as the geographic, social, and environmental circumstances of the application being assessed.

Decisions about what is the right balance of notification will be informed by our consultation commitments outlined above.

It is also possible to receive notifications of all new development licence applications. To register for email updates click the 'follow' button on our Engage Victoria page.

#### Consultation timelines

Our approach to timelines for consultation is guided by the unique circumstances of matters put before us. EPA considers the needs of both participants and decision makers, including other government agencies and regulatory processes, in setting consultation timelines. These are detailed in public notification at the start of a consultation process. Because we cannot predict these specific circumstances in advance, only the minimum timeframes provided by law are given below.

#### Permissions applications profile assessments

EPA may undertake or require consultation activities and events to support community understanding and discussion about specific applications. Such decisions are guided by a permissions application profile assessment, which considers several factors:

- potential for risk to human health and the environment
- potential for community impact and interest
- complexity of proposals
- relevant factors relating to operator and site history
- the strategic importance of a proposal, including state-wide significance.

Commonly used consultation mechanisms include Information Sessions at the start of the assessment period, and Conference of Interested Persons mid-way through the assessment period.



#### Information sessions

Information is the foundation for all consultation. EPA ensures that accessible information is available to the community for all consultation processes. We also run information sessions on some permissions proposals when recommended by the permissions application profile assessment for that proposal. An information session typically involves an interactive presentation from the applicant/proponent and EPA respectively, outlining the proposal and the relevant process of assessment and decision making. Participants can then seek further information about aspects of the proposal and discuss their concerns with the EPA team.

Feedback received at the Information Session may alert EPA to specific issues of concern or to gaps in the information provided for the assessment. EPA considers such feedback and reviews the proposed assessment approach as needed.

#### Conference of interested persons

A Conference of Interested Persons (s236) is a public consultation process. There are specific provisions in the Act that enable EPA to convene a conference of this kind to facilitate discussion, resolution and problem solving on any matter or decision under consideration.

The conference must be convened by a person who will facilitate discussions at the conference and make recommendations to the EPA arising from the conference. This is per provisions in the legislation.

We will use conferencing in a variety of situations to aid discussion and give confidence to the community that their knowledge, views and experience will be considered in decision-making.

#### Advisory Panels

EPA can appoint an *Advisory Panel* (s235) to provide advice to support its decisionmaking. An advisory panel is convened according to a Terms of Reference and led by a chairperson drawn from the group, with its members appointed for a set term. The Terms of Reference of an Advisory Panel can include receiving submissions on the matter for which the Advisory Panel is convened.

Advice from an Advisory Panel is not binding on EPA but provides an important avenue to incorporate independent specialist and expert knowledge into decision-making processes. EPA will be transparent in how it responds to advice from Advisory Panels.

#### Pre-application engagement

The best environmental and human health outcomes occur when businesses are proactive in managing their environmental risks and engage meaningfully with the concerns of their stakeholders, including those of local communities and government. EPA provides best practice guidance to support industry-led engagement that occurs during applications for permissions.

EPA encourages applicants for permissions to involve relevant stakeholders while developing their proposals so that key issues can be addressed prior to submission. In the very earliest stages this may be limited to regulators and local government. However, the local community should be engaged as early as possible so that their concerns are understood at a point where design and other elements of the proposal can easily be adjusted in response.

We will consider the nature and quality of pre-application engagement by the applicant during our permissions application profile assessment, including the need for further consultation.

We believe that part of our role when approving a licence under the Act is to provide consultation opportunities that support the development of a business's social licence. Businesses that proactively involve stakeholders regarding their operations and impacts - whether at application stage or during operations - open pathways of communication and engagement, improve relationships, build trust, and allow issues to be addressed at the earliest possible time.

#### Consultation with Aboriginal Victorians

EPA recognises the unique relationship that Traditional Owners and custodians have to Country and to the environment. We commit to building and strengthening our relationships with Traditional Owners and custodians by:

- developing relationships with Traditional Owner corporations and Recognised Aboriginal Parties
- working towards a shared understanding of the aspirations and priorities of Traditional Owners for Country, and EPA's work and role
- exploring opportunities for collaboration and working together
- understanding the ways that Traditional Owners and Recognised Aboriginal Parties want to participate in consultation processes.

Proponents, applicants, and duty holders also have a responsibility to ensure that impacts to Country and cultural values are identified and can be considered through an assessment process.

Yallourn Power Station

### **Consultation guidelines**

Our role is to bring about the best outcomes for all Victorians when it comes to the environment and human health. It requires us to balance opportunities for economic development with people's right to live in a clean and healthy environment. Consultation is not a tick-a-box exercise in our decision-making process, it is central to the formation of good decisions and accountable governance.

The Act requires a basic level of consultation, but it also gives us the freedom to go beyond this. We will work constructively with the Victorian community to ensure they have their say.

## Consultation on permissions

Development Licences (s52)						
What are they?	<ul> <li>Development licences are the principal type of environmental approval issued by EPA.</li> <li>They are designed to control the highest levels of risk to the environment and human health from pollution and waste.</li> <li>If approved, they give 'permission' for developments to proceed, sometimes with conditions.</li> <li>Examples include commissioning of industrial facilities, landfills, wastewater treatment plants.</li> <li>Development licence applications must meet all relevant environmental standards (pg. 18-19) to be accepted for EPA assessment.</li> <li>Assessment of proposals must consider Environment Protection Principles.</li> </ul> Joint consultation We may agree to combine the EPA consultation process with that of a planning permit, planning scheme amendment or Environment Effects Statement, as required.					
Consultation Approach	<ul> <li>EPA notifies the community See <i>Public notification</i> (above)</li> <li>Following notification, a period of at least 15 working days follows during which the public can make a submission/comment on the proposal. See <i>Consultation timelines</i> (above).</li> <li>Additional consultation and engagement processes are provided according to an EPA <i>Permissions application profile assessment</i> (above).</li> <li>See <i>Information sessions</i>, <i>Conference of interested persons</i>, <i>Advisory Panels</i> (above).</li> <li>Joint consultation</li> <li>Combining the consultation required for overlapping environmental and planning decisions can reduce the burden on stakeholders who would otherwise have to participate in separate processes for the same matter.</li> <li>We will work with other regulators, such as local councils, to ensure that there is a streamlined consultation process for the proposal, so that community members can participate in one process but have their issues addressed by the appropriate authority.</li> </ul>					
	<ul> <li>Requests for information (s50(4))</li> <li>EPA may require additional information from applicants in order to properly complete an assessment. EPA may pause the assessment until the required information is received.</li> <li>Consultation to address additional information will be considered according to an assessment of the degree of substantive change it represents to the application, and the nature of submissions already received.</li> </ul>					
Feedback	<ul> <li>EPA will prepare a summary of comments received outlining key issues raised and EPA's response, which will be published on the Engage Victoria web page for the proposal.</li> <li>EPA may publish communications outlining our decisions such as media releases, and the final assessment report.</li> </ul>					
Outcome See Appendix 3	<ul> <li>EPA approval or non-approval of development licence.</li> <li>EPA decisions are subject to appeal at VCAT by persons whose interests are affected by a decision, as set out in S434 of the Act.</li> <li>EPA's decision must be published to the <i>Public Register</i>.</li> </ul>					

Pilot project licences (s78)			
What are they?	<ul> <li>Pilot project licences are issued by EPA to allow short term projects (up to 5 years) for research, development and demonstration of new technologies and processes.</li> <li>The licence conditions ensure such projects are appropriate and conducted in a safe way that protects human health and the environment.</li> <li>The EPA assessment of the proposal must consider the Environment Protection Principles.</li> </ul>		
Consultation approach	<ul> <li>EPA is required to assess and decide on applications for a pilot project licence within 22 business days, which limits opportunity for consultation within the statutory assessment period. As such, EPA encourages applicants to demonstrate substantial stakeholder engagement prior to making their application, See <i>Pre-application engagement</i> (above)</li> <li>See <i>Permissions applications profile assessments</i> (above)</li> </ul>		
Feedback	- Where consulation occurs, feedback is provided to particpants.		
Outcome	<ul> <li>Approval or non-approval of pilot project licence. This may be subject to conditions on design or emissions if required.</li> <li>EPA decisions are subject to appeal at VCAT by persons whose interests are affected by a decision, as set out in S434 of the Act.</li> <li>Pilot project licence decisions must be published on the <i>Public Register</i>.</li> </ul>		

See Appendix 4.

Permits (s81)			
What are they?	<ul> <li>Permits are controls which are targeted at activities that may pose a 'moderate-risk' to the environment.</li> <li>They are intended for activities which are a tier of risk below development licences (above).</li> <li>Activities which require a permit are considered only to pose limited risks to the environment or public health. Higher risk concerns typically require a development licence (above).</li> </ul>		
Consultation approach	<ul> <li>There is no default notification process.</li> <li>EPA will not consult on permits except where we foresee significant public interest in a proposal. Any such decision will be guided by the <i>Permissions application profile assessment (above)</i>.</li> </ul>		
Feedback	- Where consultation occurs, feedback is provided to participants.		
Outcome	- Approval or non-approval of permit. - Permits must be published to the <i>Public Register.</i>		

See Appendix 4.

<b>Registrations</b> (s85)			
What are they?	<ul> <li>Activities requiring registrations represent the lowest level of environmental risk.</li> <li>EPA sets standard conditions to suit the activity being applied for.</li> </ul>		
Consultation approach	- As registrations are granted automatically when applications meet all relevant requirements, they are not subject to consultation.		
Feedback	- N/A		
Outcome	- Registrations must be published to the <i>Public Register</i> .		

Issuing operating licences (s74)			
What are they?	- EPA typically issues an operating licence, containing conditions for operation, following certified completion of works approved under the <i>development licence</i> .		
Consultation approach	- Consultation on proposals has a preventative focus and so occurs during the <i>development licence</i> phase (pg. 15).		
Feedback	- N/A		
Outcome	<ul> <li>EPA determines if an operating licence can be issued, subject to the <i>development licence</i> conditions.</li> <li>Operating licences must be published on the <i>Public Register</i>.</li> </ul>		
See Appendix 4.			

Review of operating licence (s76)			
What are they?	<ul> <li>EPA reviews a sample of operating licences each year, to ensure on-going compliance with the conditions of the licence and the general environmental duty. Operating licences to be reviewed are selected using a risk-based approach.</li> <li>Licences being reviewed must have been in place for at least 4 years.</li> <li>The operating licence review must consider measures taken to comply with the GED, Environment Protection Principles, impact of licence activity on human health and environment, best available techniques or technologies, consistency with the Act and regulations and any prescribed matter.</li> </ul>		
Consultation approach	<ul> <li>EPA must give 20 working days' notice to a licence holder before commencing a review.</li> <li>There is no default public notification process but we seek to identify and notify relevant stakeholders.</li> <li>Where an operating licence is being reviewed, additional consultation may be undertaken.</li> <li>See <i>Permissions applications profile assessments</i> above.</li> </ul>		
Feedback	- Where consultation occurs, feedback is provided to participants.		
Outcome	- EPA may vary, revoke or leave the licence unchanged. - Operating licences must be published on the <i>Public Register</i> .		

Exemptions (S80)			
What are they?	- An exemption for a development or operating licence may be applied for. EPA will seek to publish its criteria for determining exemptions.		
Consultation approach	<ul> <li>In determining an exemption, EPA considers whether an applicant has adequately engaged with persons whose interests may be affected by the proposed exemption.</li> <li>Where there are applications that may benefit from community awareness, we consider whether further consultation would be of benefit.</li> <li>See <i>Pre-application engagement</i>.</li> <li>See <i>Permissions applications profile assessments</i> above.</li> </ul>		
Feedback	- Where consultation occurs, feedback is provided to participants.		
Outcome	- Exemptions must be published on the Public Register.		

# Consultation on Standards and Regulations

<b>Regulations</b> (Subordinate Legislation Act 1994)			
What are they?	<ul> <li>Where a need is identified for further specific laws to protect the environment, regulations can be made to support the Act.</li> <li>Regulations often address specific areas of environment protection, such as permissions (above), air and water quality, waste management, or contaminated land.</li> <li>The formal consultation mechanism used to create regulations is a Regulatory Impact Statement (RIS).</li> <li>The RIS explores the environmental, social and economic impacts of proposed regulations.</li> <li>The RIS provides a structured process to assess the costs and benefits associated with the proposed regulation with a focus on social and economic consequences, and significant impacts.</li> </ul>		
Consultation approach	<ul> <li>Consultation is a fundamental part of the RIS process.</li> <li>Early information from stakeholders is invaluable in informing the scope of any regulatory review prior to the RIS.</li> <li>EPA (and relevant government partners) undertakes preliminary consultation with technical experts and potentially impacted sectors (e.g. community, business groups) where appropriate, to develop a RIS.</li> <li>A 'discussion paper' is usually drafted to help inform discussion and prompt feedback from the public and stakeholders on the options - including non-regulatory options - being considered to address the problem. This is typically released on EPA's Website, Engage Victoria, and via other suitable channels according to the subject, with instructions for responding. EPA analyses the feedback and uses the findings to inform development of the draft RIS.</li> <li>Once the draft RIS has been prepared, it is released for the final round of public comment.</li> </ul>		
Feedback	<ul> <li>EPA publishes a summary statement on our website, explaining the issues raised in public comments/submissions and how they have been addressed in the final RIS.</li> <li>Additional feedback tailored to stakeholders and the subject may also be provided.</li> <li>The final RIS is published on the EPA website.</li> </ul>		
Outcome	- Regulations may be revoked, or remade.		

Environment Reference Standards (s93)			
What are they?	<ul> <li>Environment Reference Standards (ERS) seek to identify particular uses of Victorian's environment (such as recreation, ecology, aesthetic), and to identify what indicators and objectives will be used to measure whether those environmental values are being achieved or maintained.</li> <li>The ERS replace some aspects of the former State Environment Protection Policies.</li> <li>They may apply to parts, or the whole of Victoria.</li> <li>ERS assessments must consider the Environment Protection Principles.</li> </ul>		
Consultation approach	<ul> <li>ERS must be reviewed every 10 years.</li> <li>ERS consultation culminates in the development of an impact assessment under the Subordinate Legislation Act 1994 (pg. 18), applying the notion 'significant impact' in replacement of 'significant social and economic burden'.</li> <li>A draft ERS and related impact assessment are released for public comment.</li> </ul>		
Feedback	- As for Regulations (pg. 18).		
Outcome	- As for Regulations (pg. 18).		

Position Statements (S108)			
What are they?	<b>Position Statements</b> are made by EPA to provide greater clarity of our interpretation of parts of the Act, or to describe the exercise of our discretion in particular circumstances or matters.		
Consultation approach	<ul> <li>EPA publishes a draft of the position statement in the Government Gazette, EPA's website, and other publications identified as suitable for reaching potentially interested stakeholders.</li> <li>Targeted notification of potentially interested stakeholders.</li> <li>EPA seeks comments and feedback from stakeholders on the draft position statement.</li> </ul>		
Feedback	<ul> <li>A summary statement explaining the issues raised in public comments/submissions and how they have been addressed is published on EPA's website.</li> <li>Additional feedback tailored to stakeholders and the subject may also be provided.</li> </ul>		
Outcome	- All position statements are published to the Public Register.		

#### Definitions

**Consultation** – *Consultation* is the act of seeking feedback, advice and intelligence to support deliberation and decision making. It may involve individuals, groups or organisations who are interested in, or whose interests may be affected by, the matter being consulted about. The term consultation, as used in the EP Act 2017, encompasses a broad set of engagement options that are not limited to 'consult' on the IAP2 spectrum (below).

Public - of or concerning the people of Victoria as a whole.

**Community** – A *community* is a group of people that may be associated or defined according to their common location, identity or interest. It is a broad term often used to associate individuals with common expectations, rules or forms of governance. Even though communities may include individuals with diverse interests and values, they often require common rules and expectations to function together, which must be collectively negotiated and managed. EPA typically uses the term community to associate individuals with a particular location or a set of civic interests, and to distinguish them from the business sector and government.

**Stakeholder** – A *stakeholder* is someone personally or professionally invested in outcomes from EPA's activities. Stakeholders may be from community, business/ industry and government sectors.

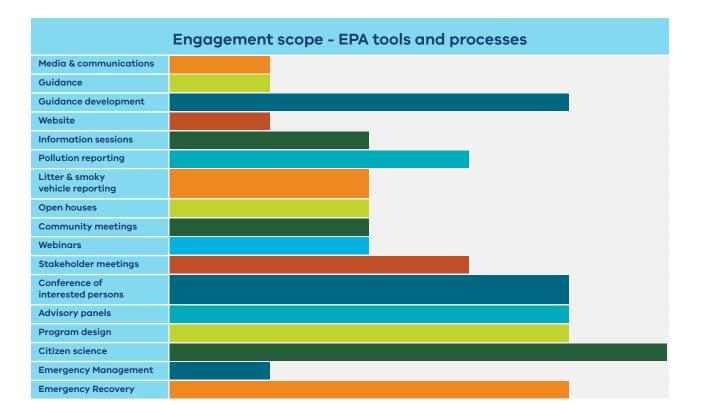
**Duty holder** – The term *duty holder* is used where someone holds a duty under the EP Act to understand and manage risks to human health and the environment from their activity, contamination or waste, or who has a duty of disclosure or reporting.

**Permissions** – EPA may provide permission for certain activities to proceed, conditional on environmental management measures being in place, that would otherwise pose a risk to the environment or human health. Permissions include development licences, operating licences, pilot project licences, permits, and registrations.

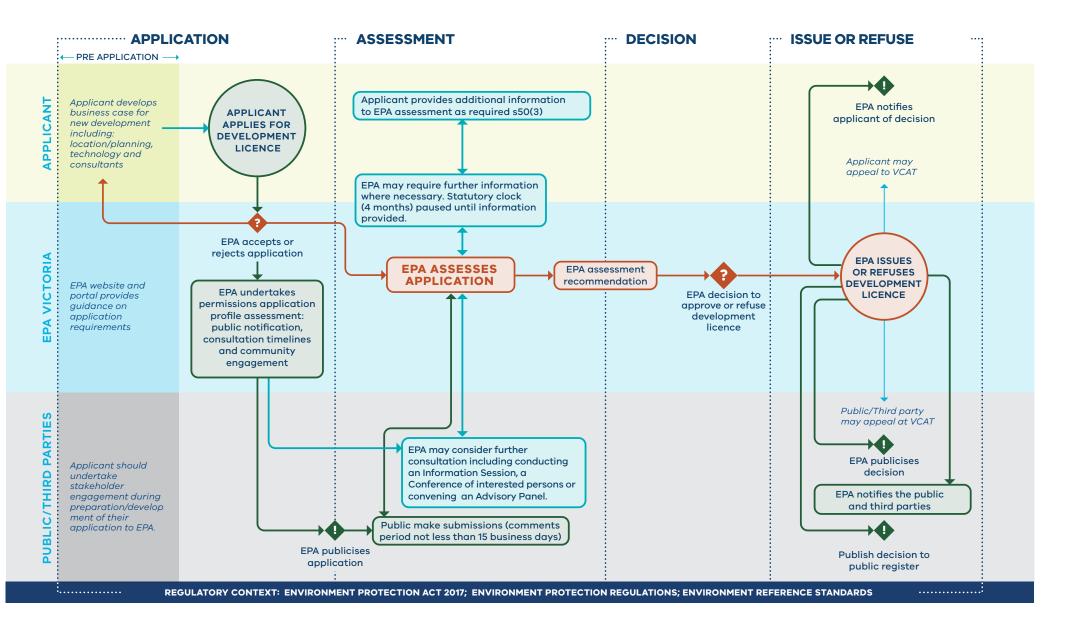
**Standards** – EPA sets standards to protect the environment and human health. They may include policies, regulations, codes, and guidance. Standards provide norms, limits, and benchmarks by which judgements, decisions and measurements of quality can be made.

The IAP2 spectrum is an internationally recognised way to describe public participation. The table below outlines the IAP2 spectrum and shows the scope for public participation offered by a range of EPA consultation tools and processes.

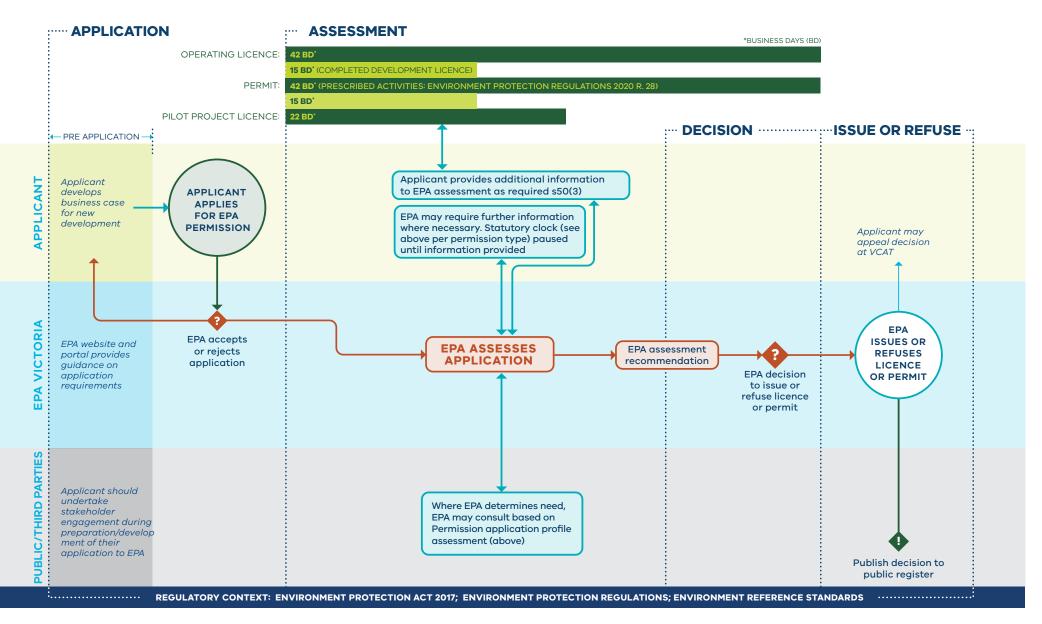
IAP2 Spectrum - EPA consultation activities					
	Inform	Consult	Involve	Collaborate	Empower
Goal	To provide balanced and objective information to support the public understand and engage with EPA and the environment.	To obtain feedback from stakeholders on analysis, alternatives, and/or decisions.	To work directly with stakeholders throughout the process to ensure that their issues and concerns are consistently understood and considered.	To partner with stakeholders during decision making, including in developing alternatives and identifying preferred solutions.	To place final decision-making in the hands of stakeholders.
Promise	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and provide feedback on how your input influenced the decision.	We will work with you to ensure that your concerns and issues are directly reflected in the alternatives developed and provide feedback on how your input influenced the decision.	We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.
Who?	<ul> <li>General public</li> <li>Community</li> <li>Business</li> <li>Government</li> <li>Stakeholders</li> <li>Duty holders</li> </ul>	<ul> <li>Community</li> <li>Business</li> <li>Government</li> <li>Stakeholders</li> <li>Duty holders</li> </ul>	<ul> <li>Community</li> <li>Business</li> <li>Government</li> <li>Stakeholders</li> <li>Duty holders</li> </ul>	<ul><li>Stakeholders</li><li>Duty holders</li></ul>	• Stakeholders



### DEVELOPMENT LICENCE PROCESS



### OPERATING LICENCE, PILOT PROJECT LICENCE AND PERMITS PROCESS



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