

# **Victoria's New Environment Protection Laws – Contaminated Land**

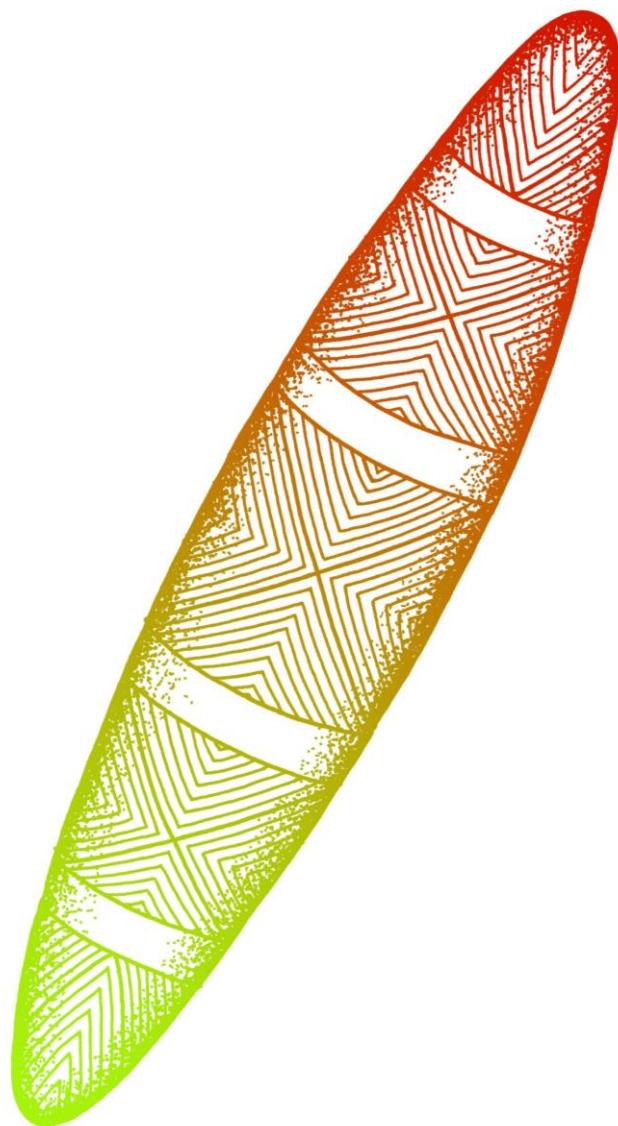
## **Australian Environment Business Network**

### **21 April 2021**



Environment  
Protection  
Authority Victoria





# Session Agenda



1. Environment Protection Act 2017
2. The Waste Framework – Soils Classification
3. Contaminated Land Policy and Guidance
4. Contaminated Land Obligations
5. Where to get more information

# Environment Protection Act 2017



Environment  
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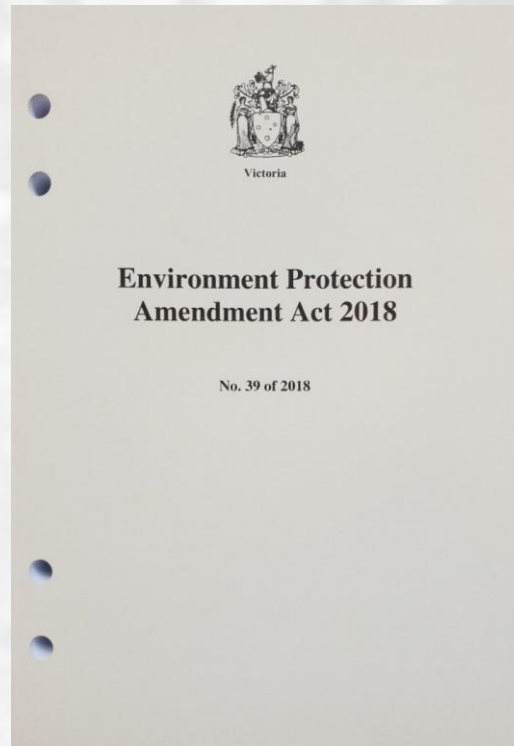


# Environment Protection Act 2017



## Consequence based:

The regulatory focus of the EP Act 1970 was **managing pollution**



## Prevention based:

Our new focus is **systems to reduce risk** to human health & environment

[epa.vic.gov.au/newlaws](http://epa.vic.gov.au/newlaws)

# General Environmental Duty (GED)

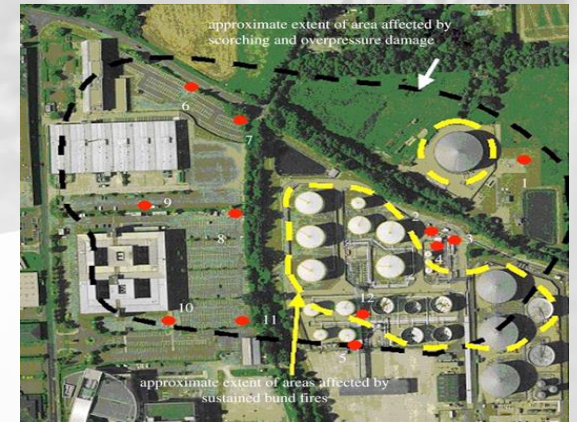
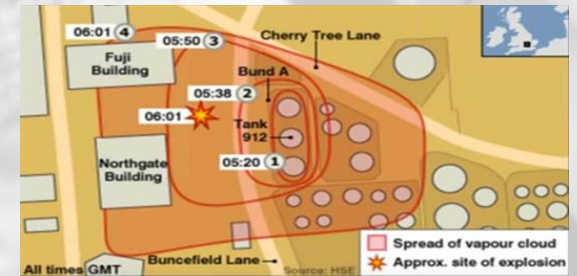
"A person who is engaging in an activity that may give rise to risks of harm to human health or the environment from pollution or **WASTE** must minimise those risks, so far as reasonably practicable."

- Modelled on the OHS Act (an approach adopted in Victoria since 1985)
- **Minimise** means to eliminate the risks (as far as reasonably practicable) and if not, reduce the risks.
- Criminal liability for a person conducting a business
- Serious criminal offence – maximum of approximately **\$1.6 million** for a company.

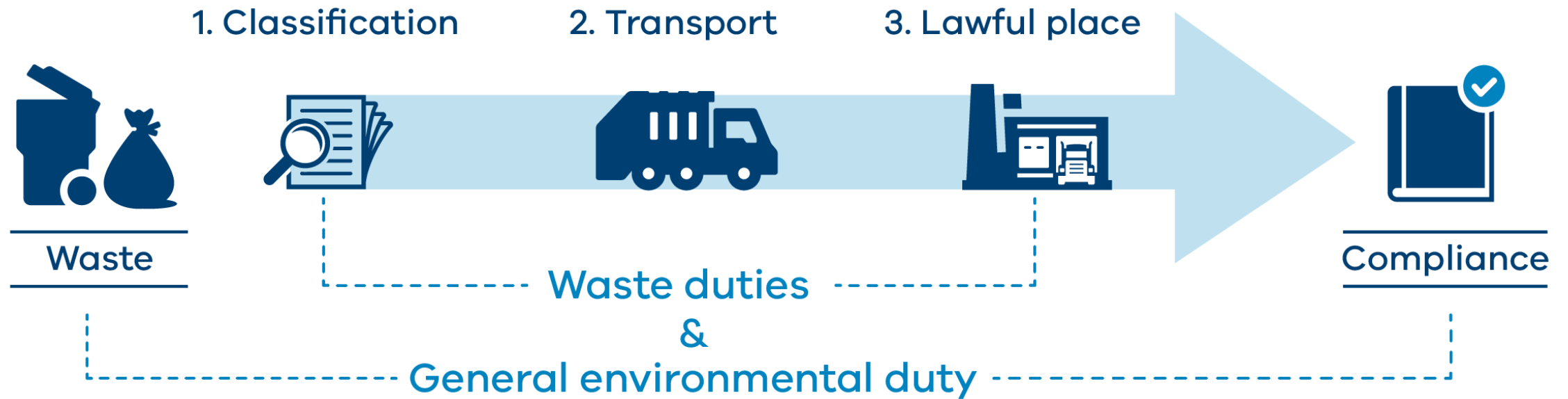


# A duties framework

- General environmental duty (preventative duty)
- Duty to restore
- Duty to notify of event
- **Duty to manage contamination**
- **Duty to notify of certain contamination**
- Duty to manage industrial waste disposal
- Duties for priority waste



# The Waste Framework



[epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste](https://epa.vic.gov.au/for-business/new-laws-and-your-business/manage-waste)

# Waste Framework & Duties



s135 Duties of persons **involved** transporting industrial waste

s133 Duty of persons **depositing** industrial waste

s134 Duties of persons **receiving** industrial waste

s139 Duties of persons **managing** priority waste

s140 Duty to investigate **alternatives** to disposal

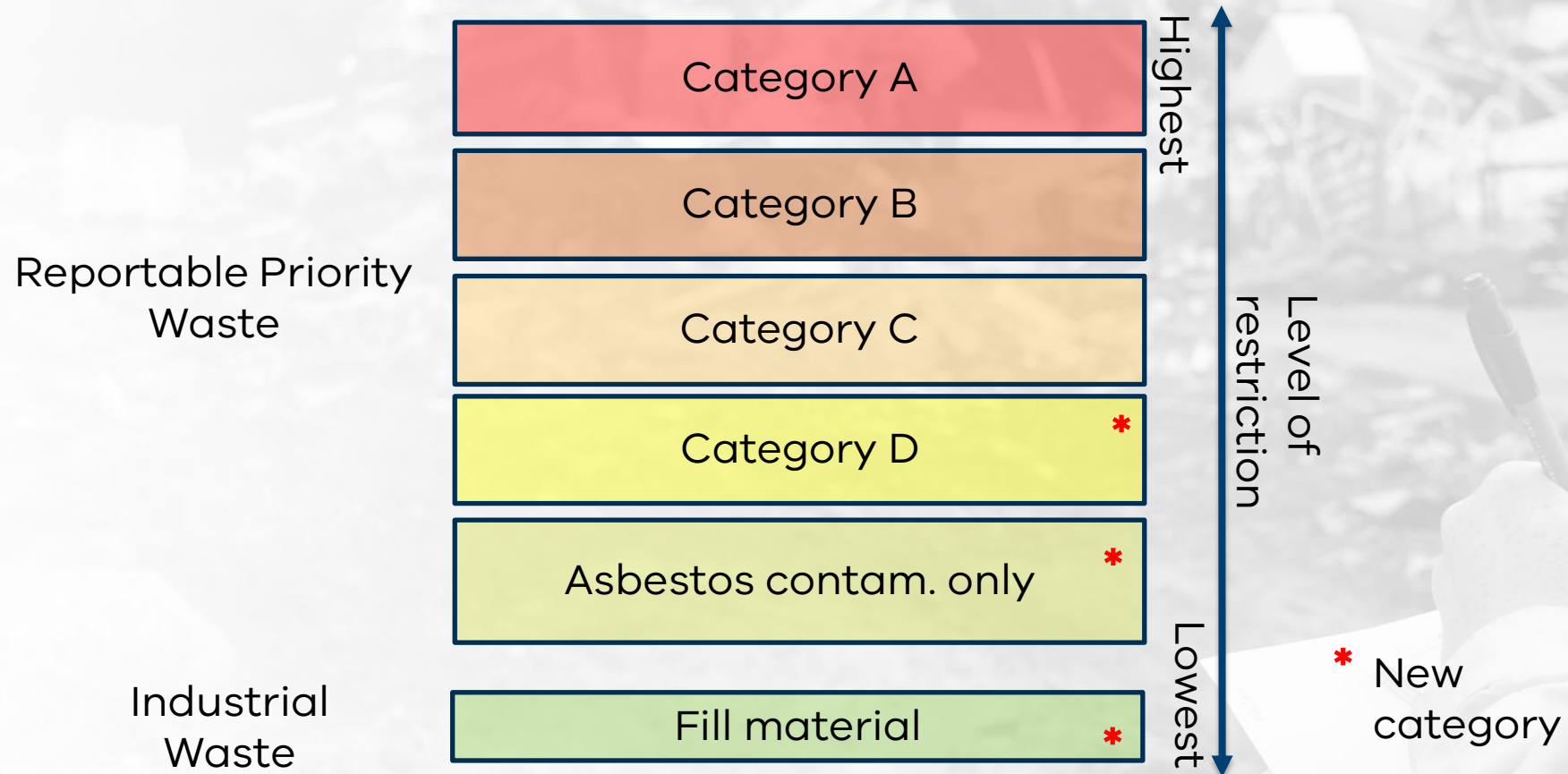
s143 Duties of persons **transporting** reportable priority waste

s142 Duty to notify of **transaction** in reportable priority waste

s25 General Environmental Duty



# Contaminated Soils Classification



# Contaminated Land Scheme

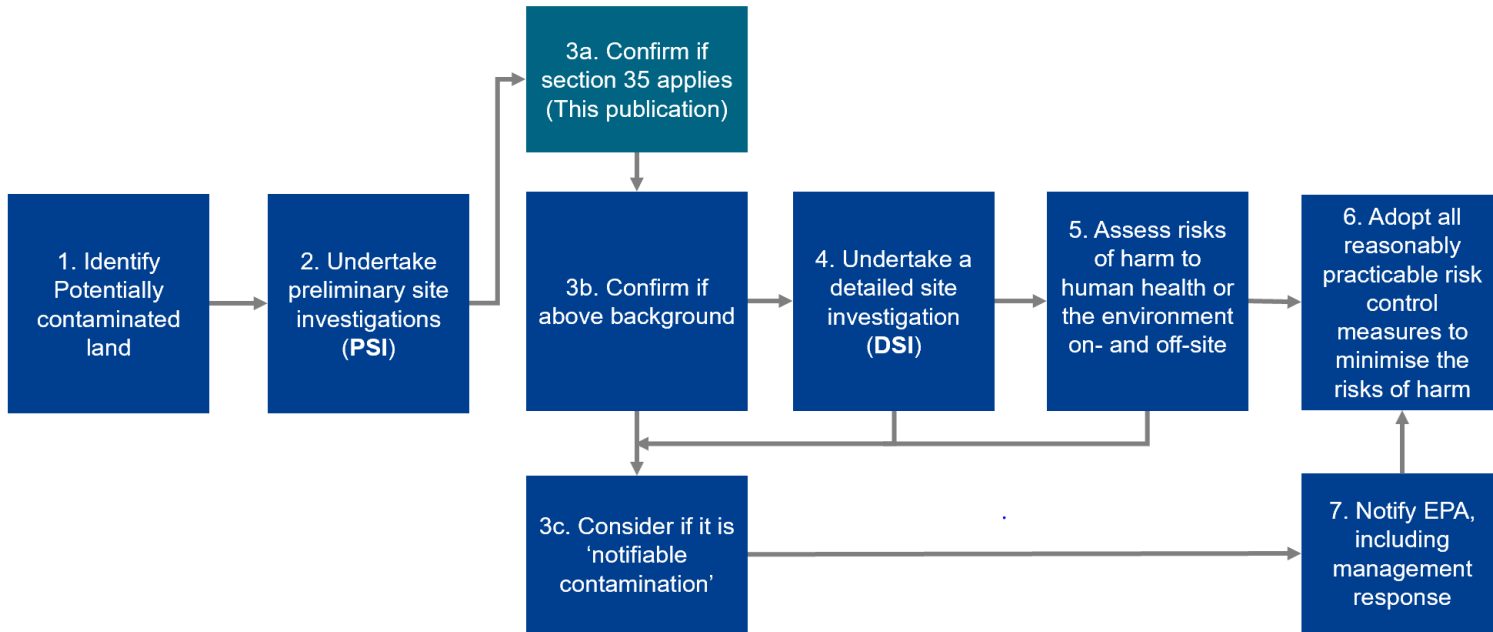


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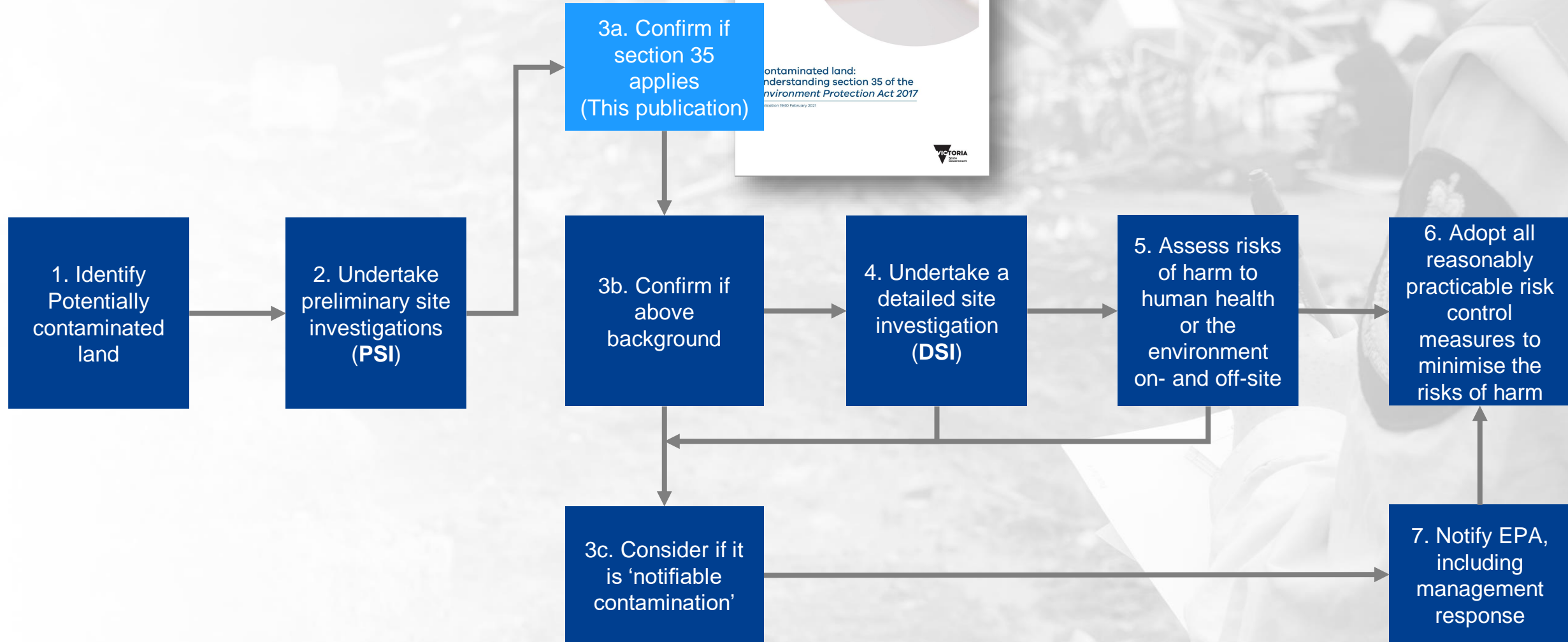


# Contaminated land supporting guidance

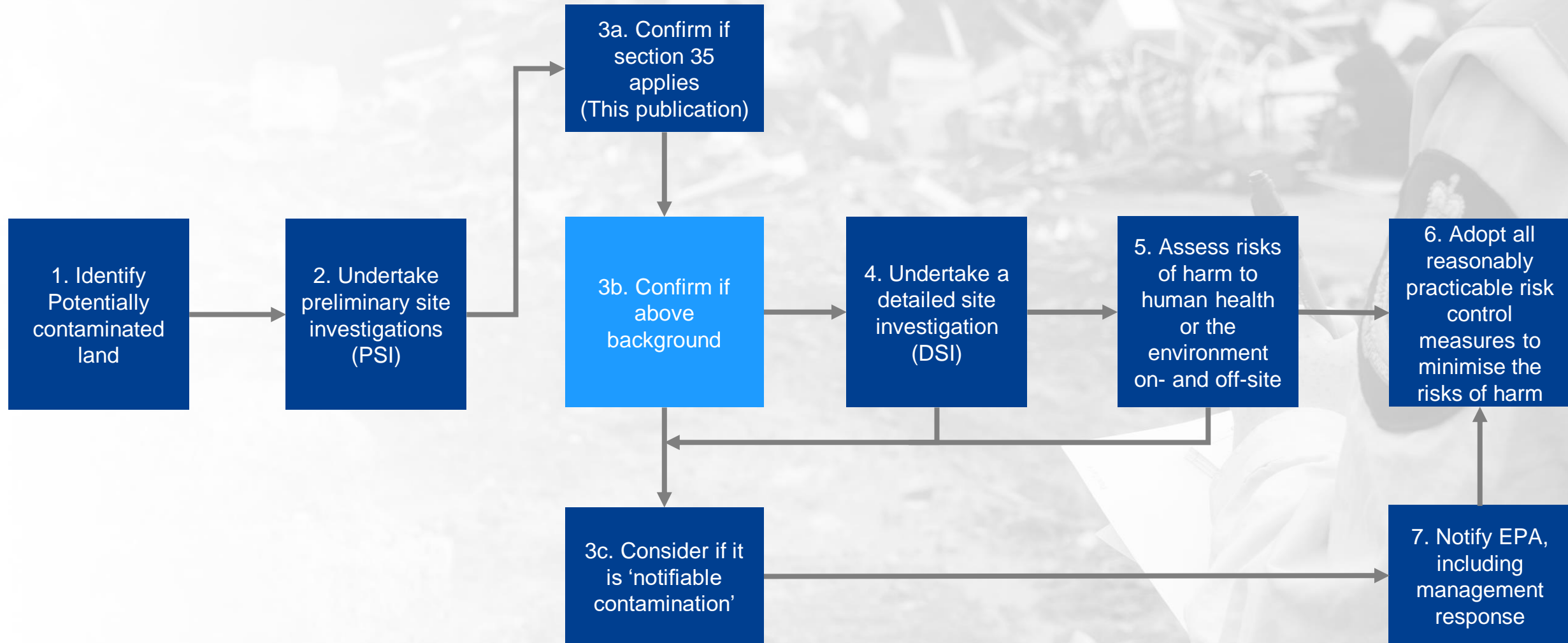
## Contaminated land policy



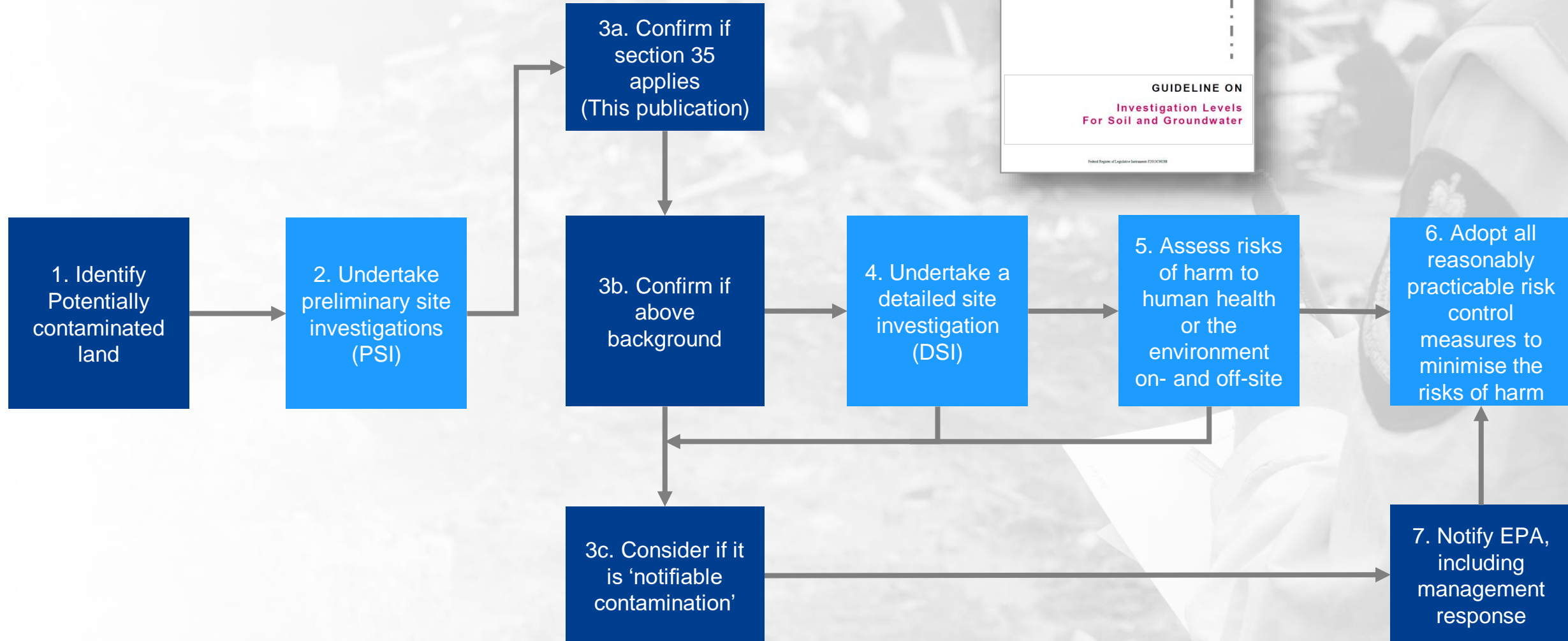
# Publication suite



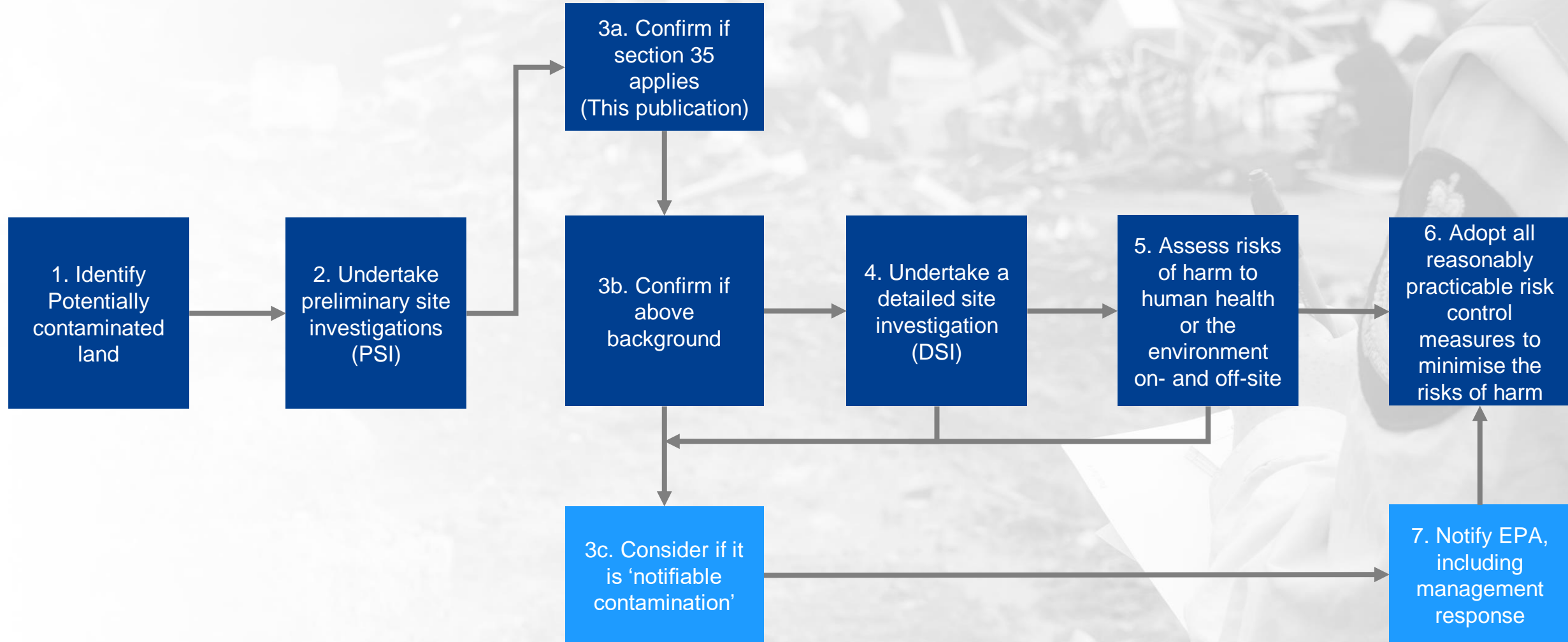
# Publication suite: Background levels



# Publication suite: Duty to manage



# Publication suite: Duty to notify



# What is *contaminated* land?



Contaminated land:  
understanding section 35 of the  
*Environment Protection Act 2017*

Publication 1940 February 2021



Section 35 of the Environment Protection Act 2017 defines **land to be contaminated** if:

waste, a chemical substance or a prescribed substance is present on or under the surface of the land, and the waste, chemical substance or prescribed substance—

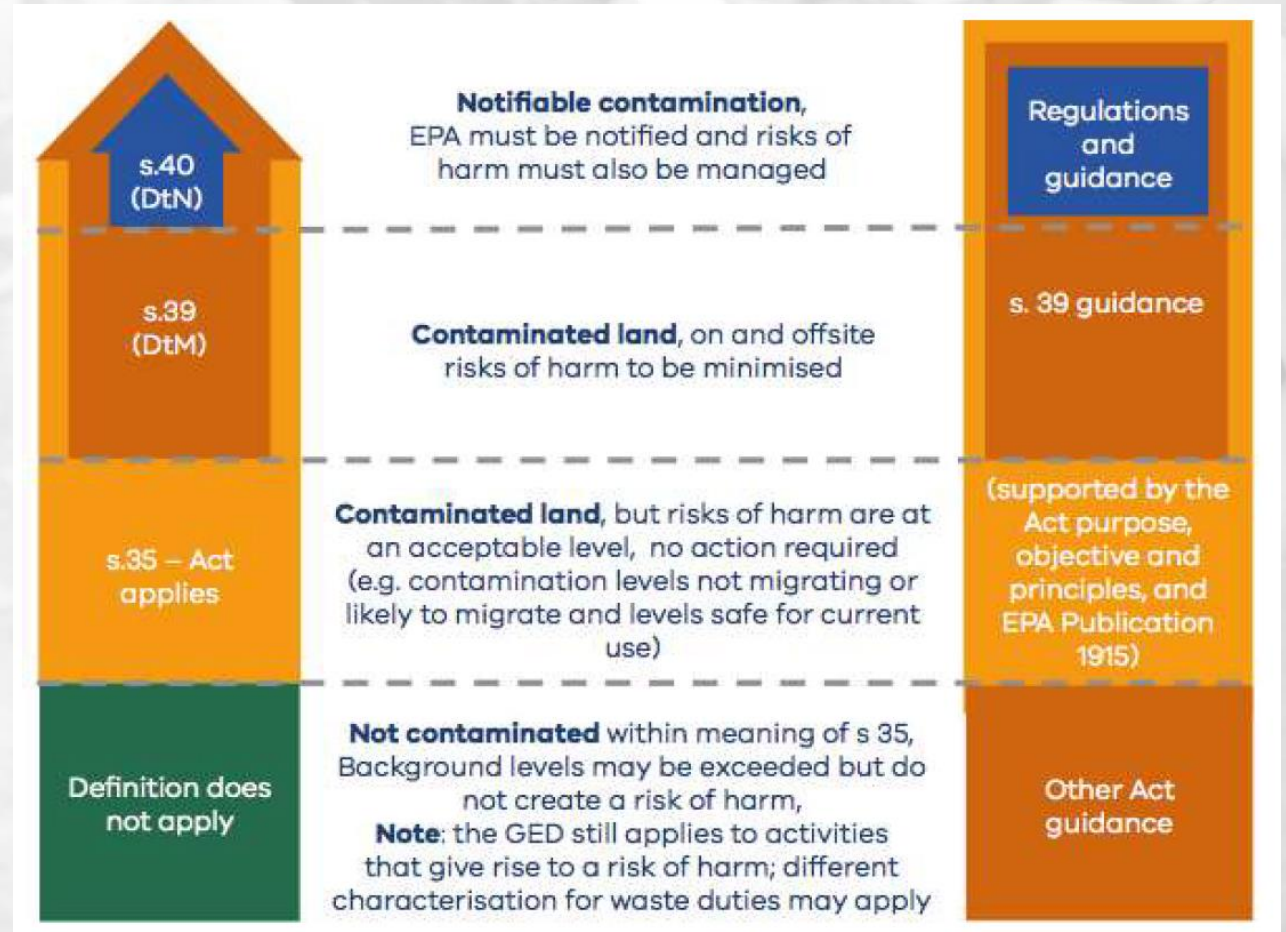
- (a) is present in a concentration above the **background level**; and
- (a) creates a risk of **harm** to **human health** or the **environment**.

# What is *contaminated* land?



Contaminated land:  
understanding section 35 of the  
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Publication 1940 February 2021



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Contaminated land:  
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Publication 1940 February 2021

## Example of section 35 using Lead (Pb)

No detectable presence or – naturally occurring levels	Detectable presence, but no known or reasonably expected adverse effects on human health for any reasonable use <b>or</b> local ecosystem functioning	"Contaminated land" within meaning of s.35	
< LOR	< HILA (also < lowest EIL)	>HILA, but < HIL for current use; > lowest EIL, but <than EIL for that environmental setting	>HIL and/or EIL for current use and environmental setting
Not contaminated with lead	Not contaminated with lead, unless the state of knowledge changes	Contaminated with lead, current use/local environment not at risk (but changes to use, pathways, or receptors could change risk of harm)	Contaminated with lead, current use and/or local environment at risk, action needed, may also be <b>notifiable</b>
Duty to manage does <b>not</b> apply	Duty to manage does <b>not</b> apply, unless state of knowledge changes	Duty to manage applies with limited scope – sharing information under 39(2)(d) only	Duty to manage applies, make safe for current use/disrupt impact on environment

# What is not *contaminated* land



Section 35 of the Environment Protection Act 2017 also defines that **land is not contaminated** –

- (a) merely because waste, a chemical substance or a prescribed substance is present in a concentration above the background level in water that is on or above the surface of the land; or
- (a) if any prescribed circumstances apply to the land.

# Publication 1915: Contaminated land policy

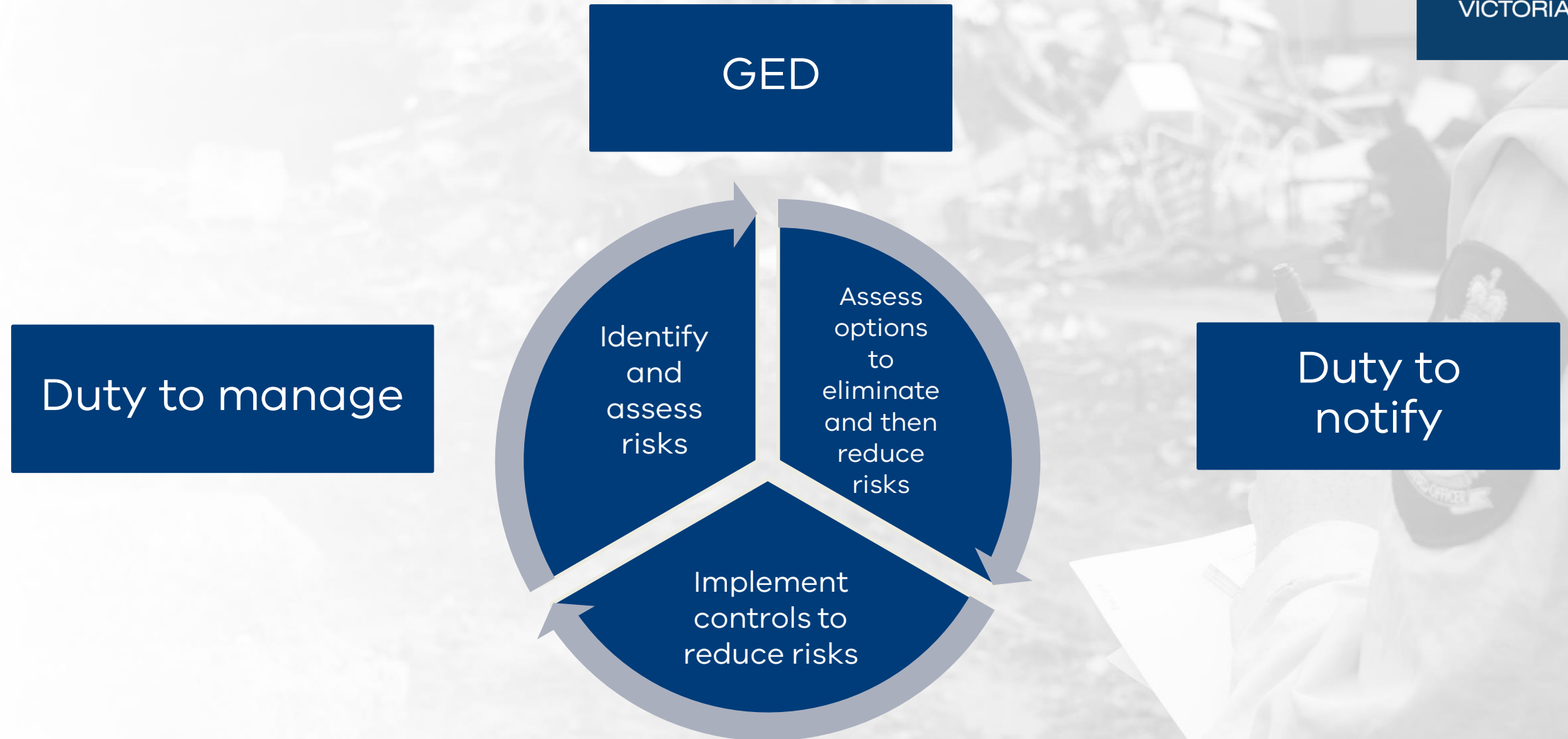


This policy covers:

- the new contaminated land duties in the Act - a duty to manage contamination risks and a duty to notify EPA in certain circumstances
- the role of the duties in minimising contaminated land risks of harm
- how EPA will implement the duties, and how EPA expects duty holders to approach compliance

<https://www.epa.vic.gov.au/about-epa/publications/1915>

# The new contaminated land duties



# Managing risk in a balanced way



Contaminated land duties work alongside the GED

The duties apply to persons 'in management or control' of land

'Management or control' is based on facts and the scope of your power

The duties relate to knowledge of contamination

Notification relates to reasonable awareness

The level of obligation changes with knowledge

# Risk and evidence-based responses



The duties address risk management, not just remediation

The duty to manage relates to current use of the land

The duty to manage promotes a proportionate, voluntary approach

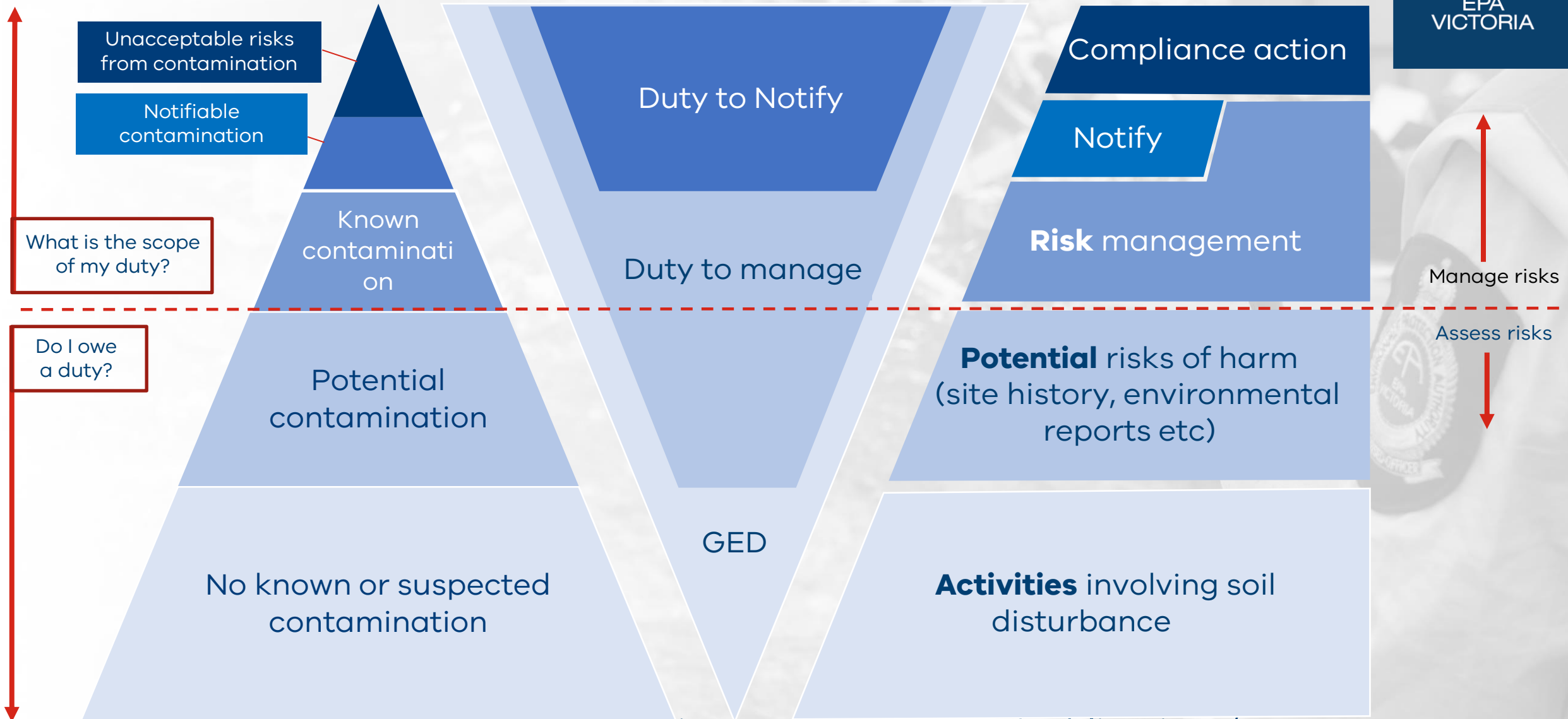
The duties provide for targeted EPA interventions

The pollution pays principle applies

## Status of Contamination

## Obligation(s)

## What EPA expects



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

- Where no contamination is suspected
- GED covers risks from activities such as excavating and handling soil, whether for reuse or as waste.
- Activities may uncover “unexpected finds”
  - Under GED, person must have a system for identifying and responding to such risks.

GED



Assess activities

**Duty to manage:**  
Minimise **risks of harm** from  
contamination *so far  
as is reasonably  
practicable*

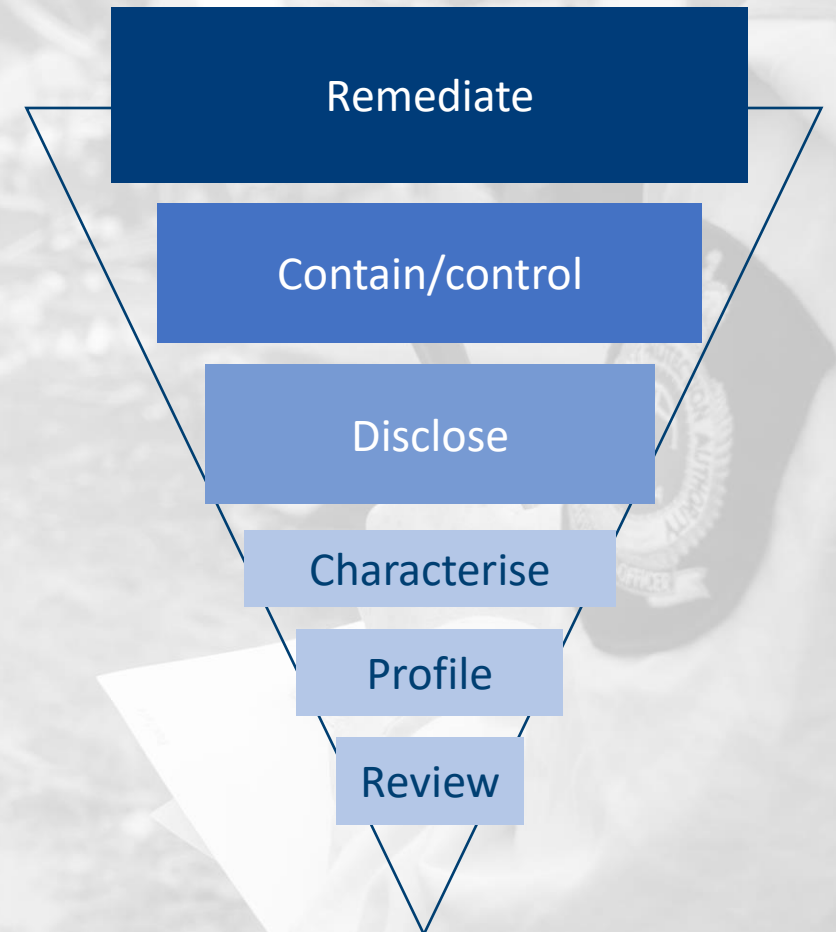
**Potential contamination**

- Consider potential for the presence of contamination by considering **current use** and **history of use** based on the information available to them (e.g. site history, environmental reports etc)

**Known contamination**

- Steps must be taken to manage the risks: from **disclosure** to potentially affected parties, through to **remediation**, depending on the **level of risk** in relation to **current use**

**Section 39(2)** sets out  
components



## Duty to Notify

Unacceptable risks from  
contamination

Notifiable contamination



Guidelines on the Duty to  
Report Contamination under  
the *Contaminated Land  
Management Act 1997*

[www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

### Purpose:

- Increase EPA's knowledge on distribution and extent of significant contamination
- Duty to notify **does not mandate investigation** solely for compliance:
  - Trigger for compliance is based on **actual** awareness or **reasonable** awareness

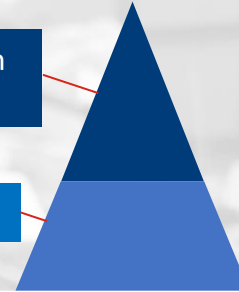
## Duty to Notify

### Three components:

1. One or more NEPM B1 contaminant (Section 6)
2. Exceed NEPM, ADWG or ANZG investigation level/value
3. Exposure pathway OR migration OR waste retained on site

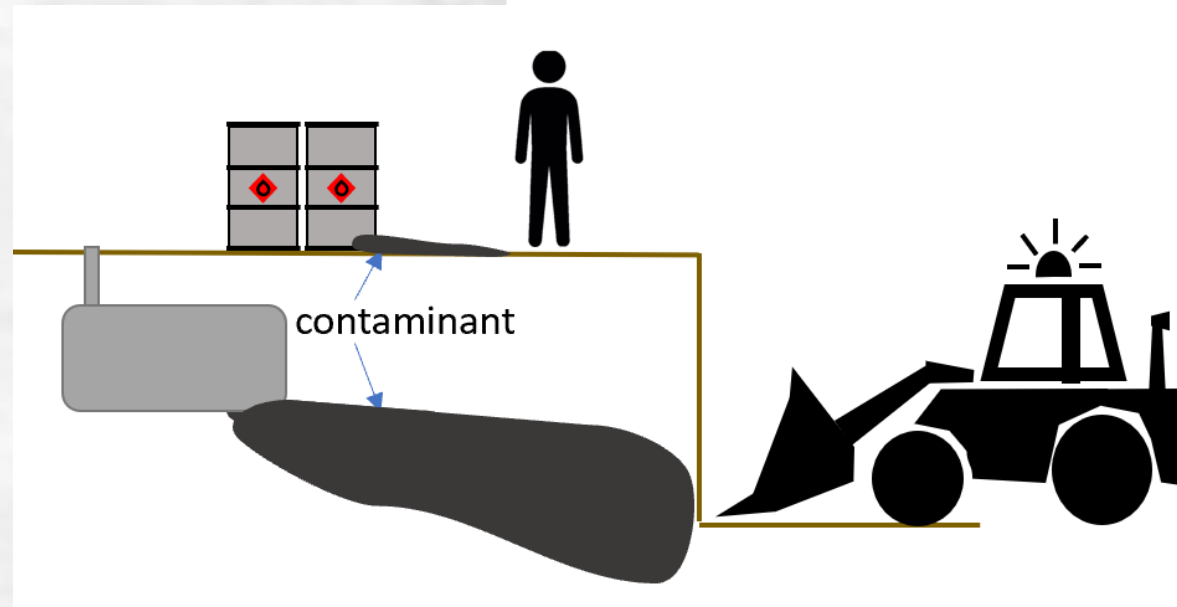
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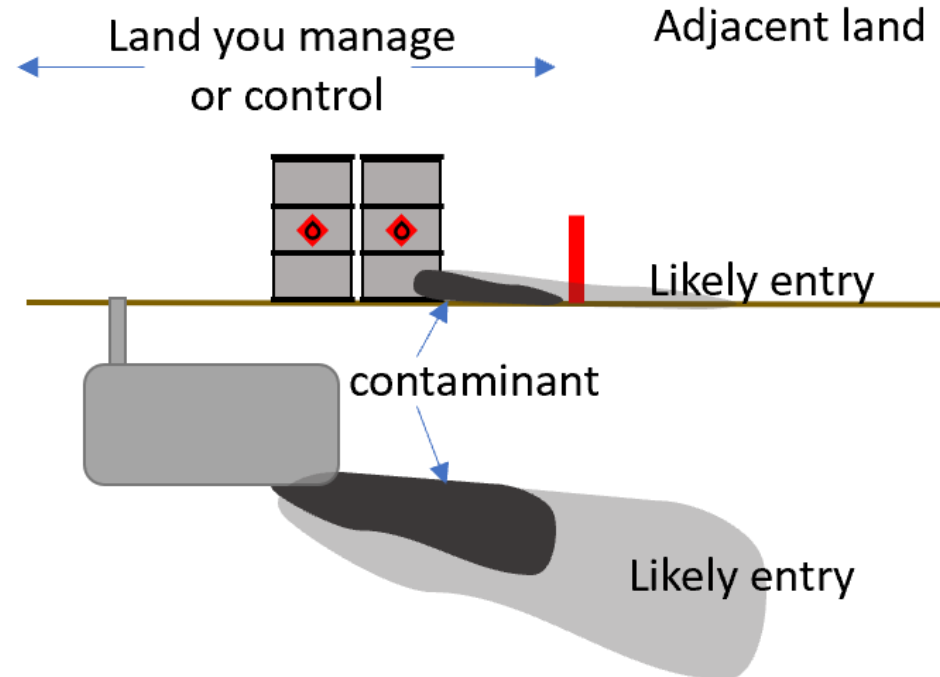
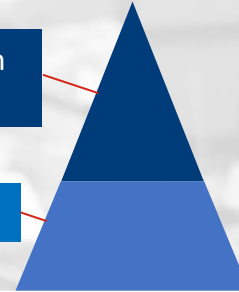
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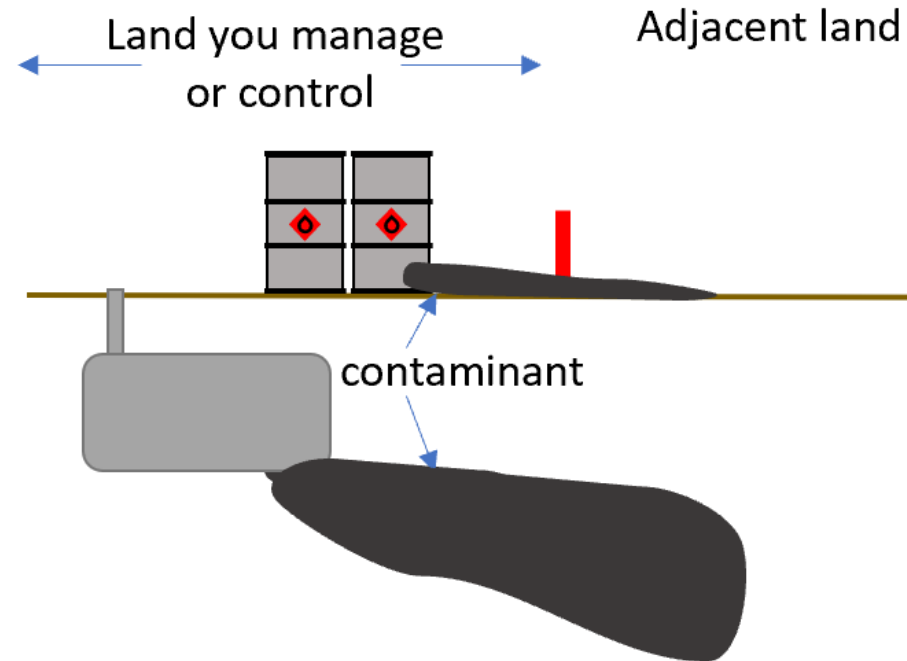
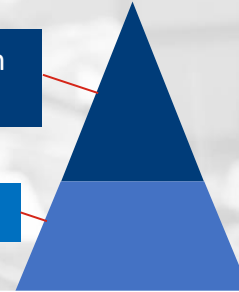
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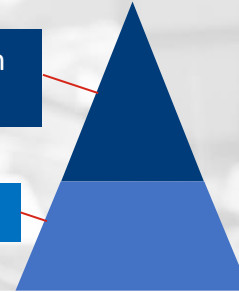
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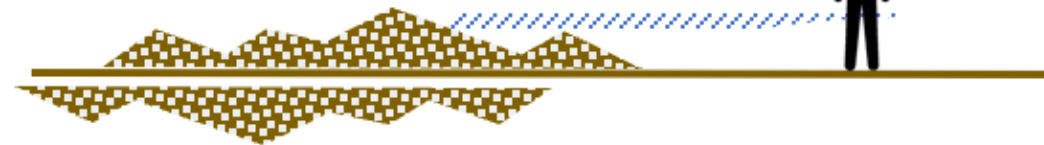


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[www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

Airborne asbestos fibres  
( $>0.01$  f/ml)

friable asbestos



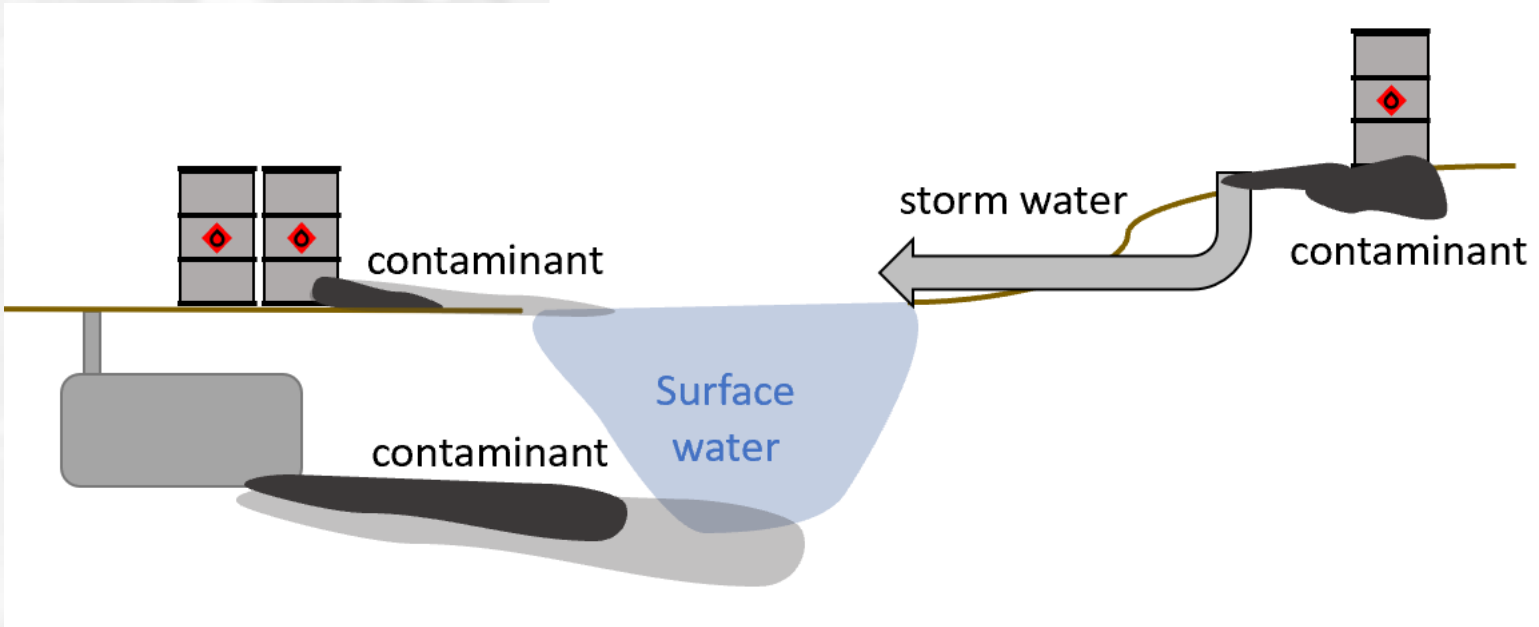
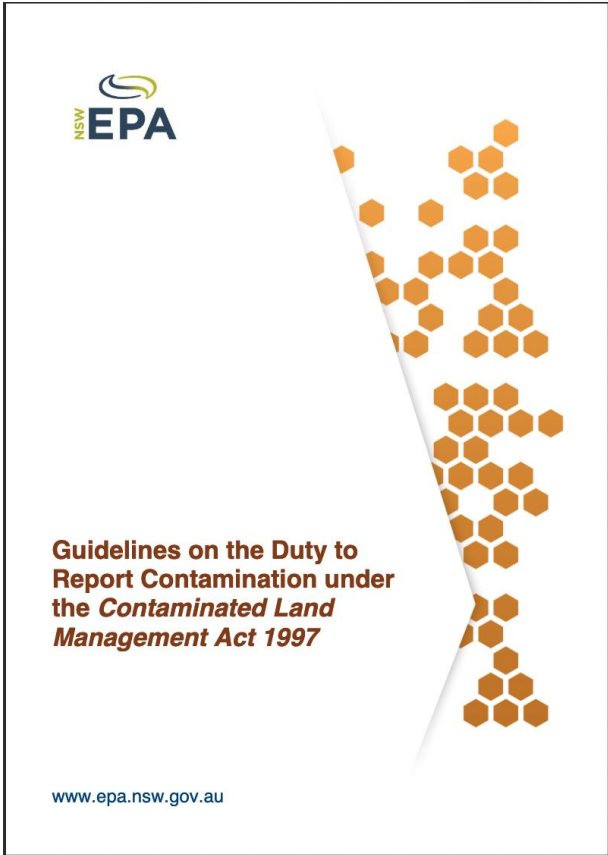
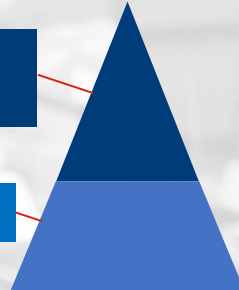
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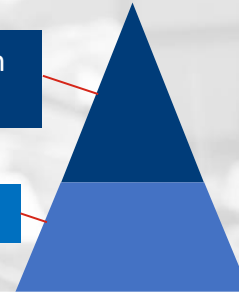
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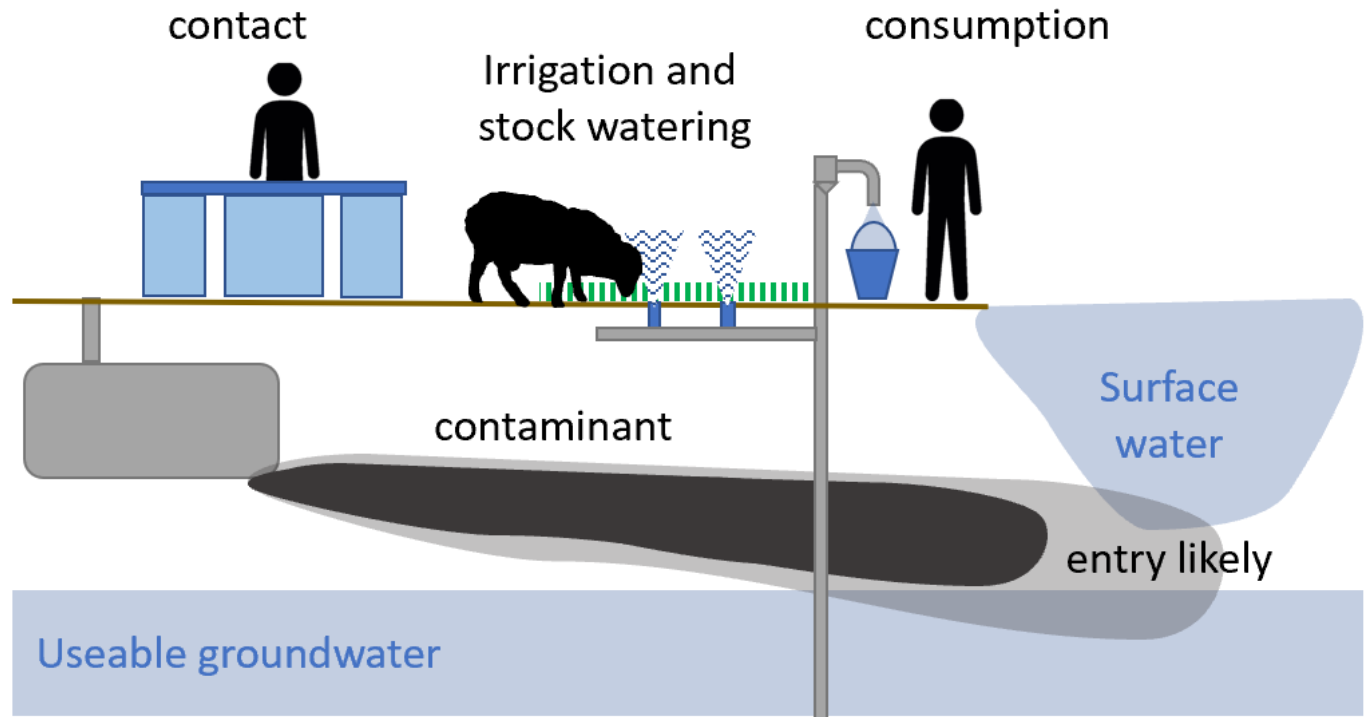
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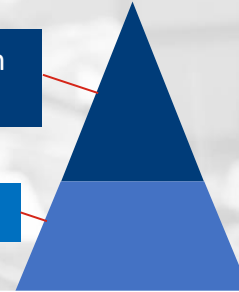
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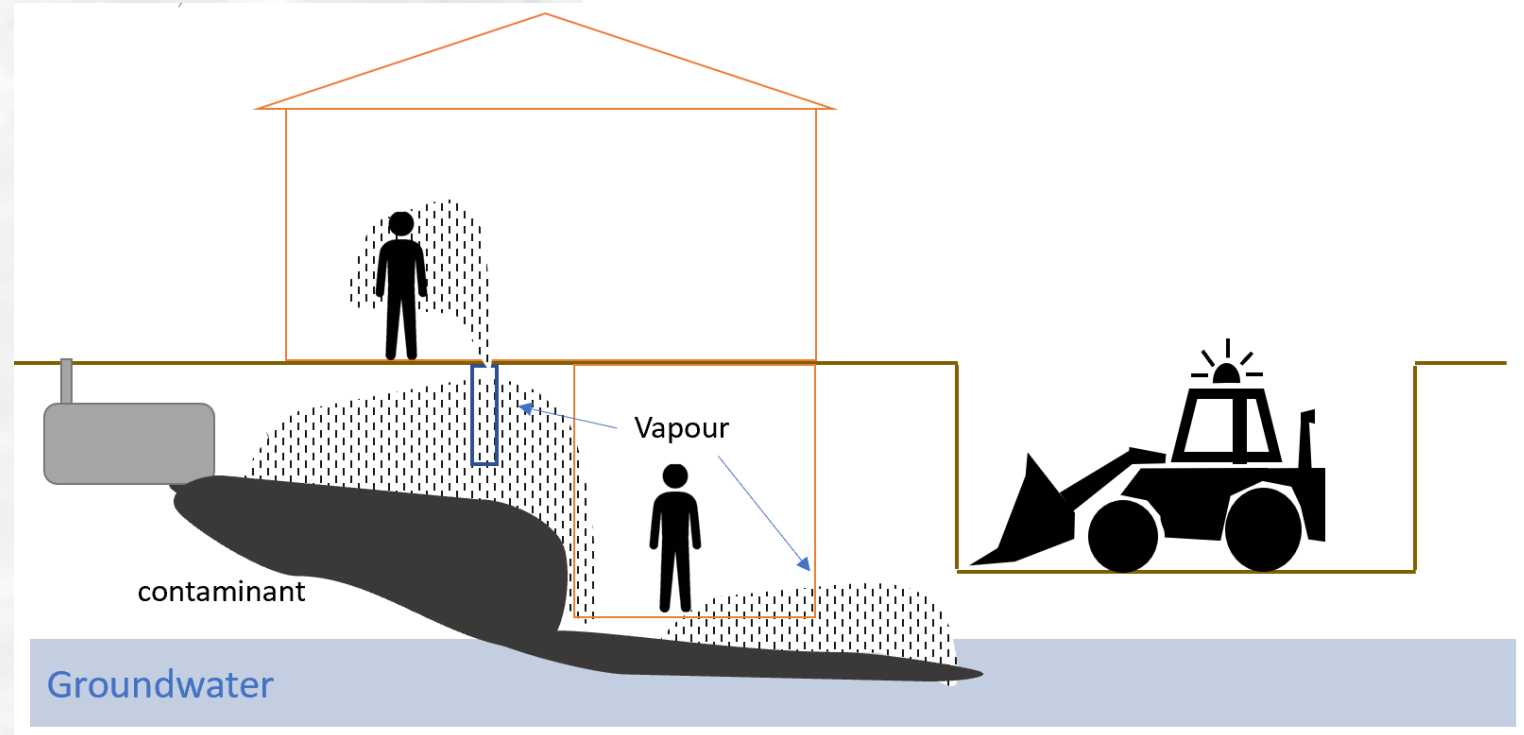
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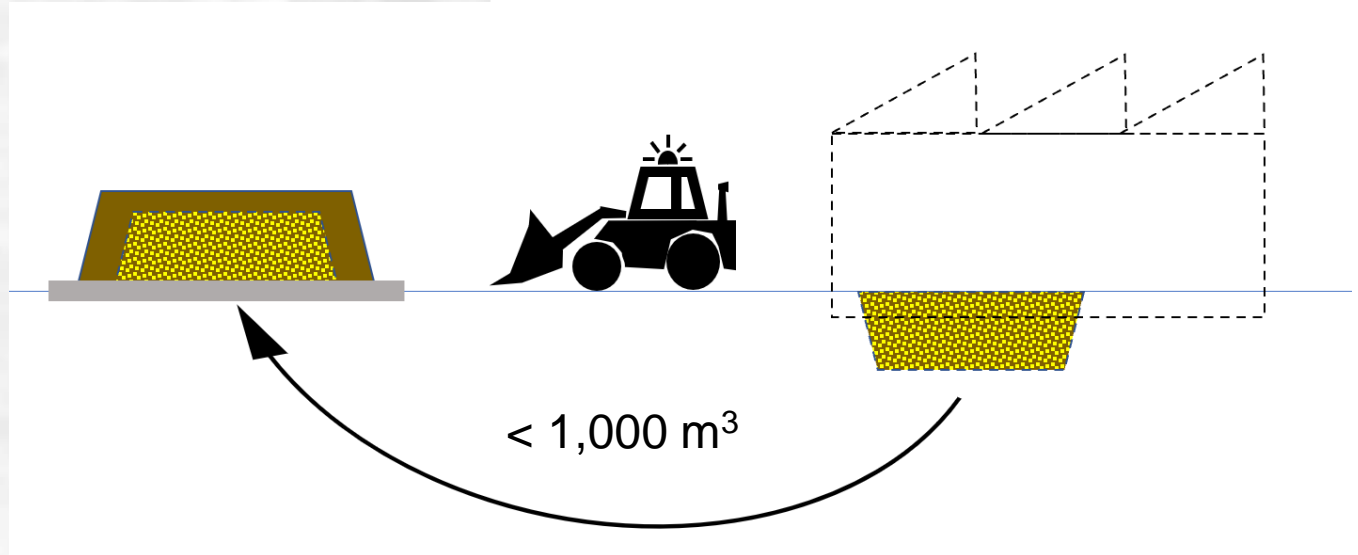
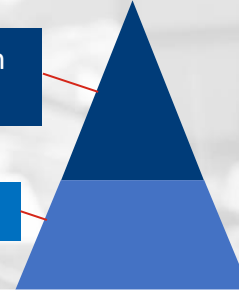
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Home &gt; For business &gt; New laws and your business &gt; Contamination in Victoria &gt; About contamination &gt; Contaminated land duties

[Summary of the contaminated land duties](#)

[Working out whether you're in management or control over land](#)

[About the duty to manage contaminated land](#)

[About the duty to notify](#)

[How the GED works with the new duties](#)

[How EPA understands the definition of contaminated land](#)

[Read more about contaminated land](#)

### Find out more about contamination

About  
contamination

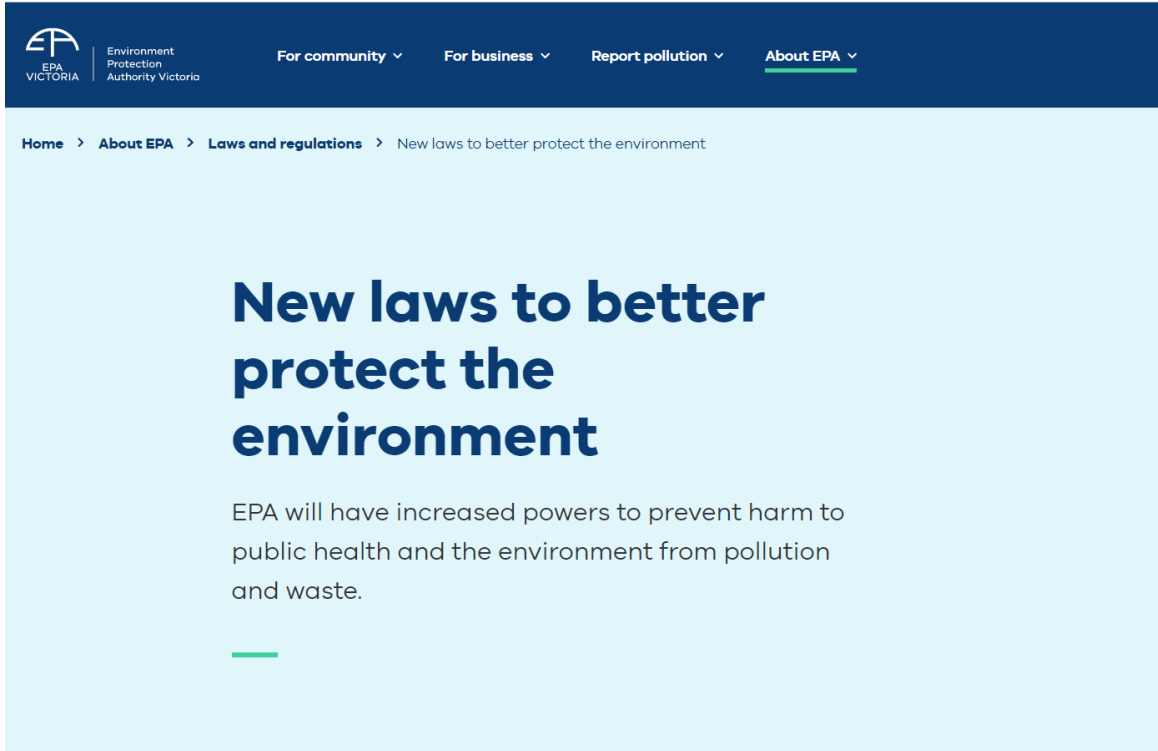
What causes  
contamination

Why its important  
to investigate  
contamination

Understanding  
your  
contaminated  
land duties

Databases and  
further  
information about  
contamination

# New laws information and support



[epa.vic.gov.au](https://epa.vic.gov.au)

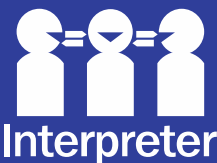
[1300 372 842 \(1300 EPA VIC\)](tel:1300372842) (24 hours)

[contact@epa.vic.gov.au](mailto:contact@epa.vic.gov.au)



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