



Environmental Law in Victoria

Supreme Court decisions on the GED

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General Environmental Duty (s 25)

“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*.”

Mandatory standards (will be applied by courts) – s 25

- for any business or undertaking
- for design, manufacture, installation or supply of a substance, plant, equipment or structure

‘Conducts a business or undertaking’

- whether or not for profit or financial gain
- whether or not a company (private or public) or government body

Person does not ‘conduct’ business or undertaking

- where primarily for domestic or private purpose and not for profit of financial gain
- solely in capacity as employee, officer or volunteer

Compliance Codes will prescribe further detail

- Compliance Code for Victoria’s Big Build Projects (Publication 1998, June 2021)

'Explanation' – what was reasonably practicable (s 6(2))

Minimise, so far as reasonably practicable, risks of harm to human health and the environment → eliminate, where cannot minimise

Determine what was reasonably practicable, must have regard to:

- likelihood of risk eventuating
- degree of harm if risk eventuated
- what the person knows, or ought reasonably know, about the harm or risk of harm and any ways of eliminating or reducing those risks → **'STATE OF KNOWLEDGE'**
- availability and suitability of ways to reduce risks
- cost of eliminating or reducing risks

Pleadings / charges and particulars

- *Vista Estate* decision – OH&S distinguishable; s 6(2) explanatory, nothing more; does not set a standard to establish breach of duty.
- standard must be established and proven by the Authority (to requisite standard – civil or criminal)
- Compliance with instrument (e.g. operating licence) or industry guidance for best practice may not be enough and is not a defence

Superior Court decisions

Environment Protection Authority v Vista Estate Pty Ltd [2023] VSC 552

- Judgement: 13 September 2023 (Justice Quigley)
 - Authority's statement of claim alleging breach of general environmental duty and other provisions
 - interim order restraining discharge of surface water drainage by consent November 2022; varied in September 2023 to require all things necessary to comply with endorsed plan environmental management plan under planning permit (residential subdivision)
 - defendants' application to strike out proceeding and to vary the interim order
 - duties regimes under the EP Act and the OH&S Act are not analogous and are distinguishable [29]
 - OH&S Act criminal sanction [30]
 - EP Act both criminal and civil sanction, case here civil remedies are sought [30]
 - procedural and practical matters different in EP Act and the OH&S Act [31]
 - level of materiality required to plead in civil proceeding for declaratory relief is distinct from criminal, governed by Court's Rules [32]
 - s 6 has an explanatory function, as opposed to establishing an element or elements of a cause of action [45]
 - onus is on the EPA to prove its case to the evidentiary burden in *Bringginshaw v Bringginshaw* [66]
- Hearing: 11 November 2024 (Justice Quigley, decision pending)
 - Authority application to amend statement of claim for breach of interim order and GED (clean water diversion drain and level spreader)

Superior Court decisions

Barr Corporation Pty Ltd v Justin Steven Roff [2023] VSC 692

- Judgement: 27 November 2023 (Justice Gorton)
 - plaintiff owned a factory in Braeside
 - defendants owned various waste disposal companies
 - defendants sought to sell business and agreed higher price removed from premise and returned after
 - removal of waste to bring premises into compliance with planning permit and EP Act
 - lease of plaintiffs' premises for 'logistics and storage'
 - defendant's business purchased, and purchaser refused to accept back the relocated waste (contains asbestos and PFAS)
 - Authority charged defendants
 - interpretation ss 25, 309 and 357
 - discretionary power of the Authority to enter land, carry out clean up and to recover cost from wrongdoer
 - civil remedies not open to compel the Authority to exercise discretionary power, but rather to allow the plaintiff to bring proceedings against the wrong doer if no intervention by the Authority

Superior Court decisions

Anderson v PWM (Lyndhurst) Pty Ltd [2024] VSC 417

- Judgement: 18 July 2024 (Justice McDonald)
 - plaintiffs, eligible persons, claimed civil remedies against owner and operator of landfill, and in separately claimed in nuisance
 - faults in design and operation of landfill waste cells on eastern boundary allowed subsurface landfill gas migration onto plaintiff's land
 - migration of landfill gas prevented obtaining planning approval for significant horticultural development
 - alleged breach of:
 - operating licence – 1% methane and 1.5% CO₂ at boundary
 - general environmental duty
 - held defendant (operator) failed to take practical measures to prevention emissions of landfill gas:
 - failed to place a final cap on cell 12
 - failed to ensure that its LFG extraction system operated at optimal efficiency
 - failed to prepare and implement remediation action plans
 - held defendant (operator) breached the general environmental duty on grounds above
 - ordered environmental auditor engaged, prepare and implement remediation action plan and prepare final cap detailed design for submission to the Authority
 - claim in nuisance dismissed, interference with potential/future use is not actionable.

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