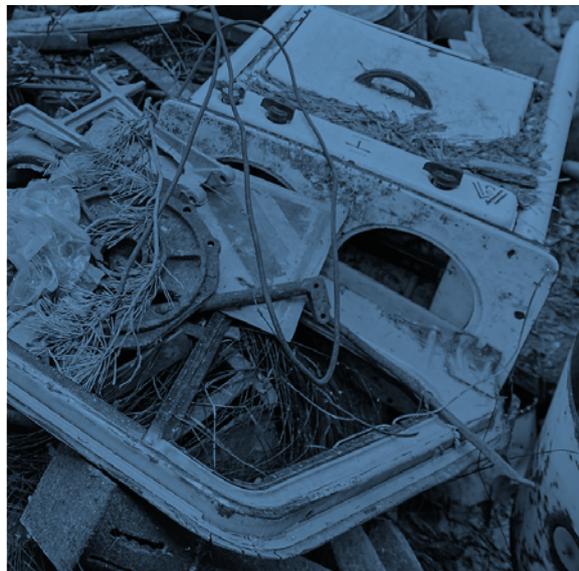


# VACC Submission: Proposed regulations and environment reference standards

31 October 2019



## About VACC

The Victorian Automobile Chamber of Commerce (VACC) is Victoria's peak automotive industry association, representing the interests of more than 5,500 members in over 20 retail automotive sectors, who employ over 50,000 Victorians.

VACC members range from new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, e.g. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture), and automotive dismantlers and recyclers.

VACC is also an active member of the Motor Trades Association of Australia (MTAA), Australia's peak national automotive association, with whom we contribute significantly to the national policy debate.

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## VACC Recommendations on Draft Environment Protection Regulations

### Recommendation 1:

*That further clarity is provided in the draft Environment Protection Regulations concerning the meaning of the statement “land under the management and control of a person” which is referenced in Chapter 2 Sections 8 (a), (b), (c), and Section 14.*

### Recommendation 2:

*That end-of-life vehicles and equipment be identified as a specific waste category and industry sector within Chapter 4 of the draft Environment Protection Regulations.*

### Recommendation 3:

*That end-of-life vehicles are explicitly referenced as residing within the scope of the definition of Industrial Waste in Chapter 4 Division 1 of the draft Environment Protection Regulations, and that appropriate punitive measures that discourage illegal and unlicensed waste recycling are incorporated within the Regulations.*

### Recommendation 4:

*That statutory write-offs be incorporated within the definition and classification of Priority Waste of the draft Environment Protection Regulations.*

### Recommendation 5:

- *The inclusion of end-of-life vehicle recycling within columns 1-5 of Schedule 1*
- *Provide further clarity regarding the Permission activities (column 3) and Operating Licence base fees (column 5) and who they apply to*
- *The requirement of Registration and possibly a Registration Fee for end-of-life vehicle recycling activity*
- *The application of effective punitive measures (fines) for non-registered operators*
- *That EPA “cease accepting waste” orders be placed on non-registered businesses*

### Recommendation 6:

*That an online public register of premises authorised to receive end-of-life vehicles and equipment be made available.*

### Recommendation 7

*That it is an offence to abandon end-of-life vehicles or equipment on public land*

*That it is an offence to dispose of end-of-life vehicles or equipment to a premise that is unlicensed, unregistered or unauthorised to receive and recycle end-of-life vehicles.*

## VACC Recommendations on Regulatory Impact Statement (RIS)

### VACC Recommendation 8

*That the unfair cost liability on current lease holders for sites with prior contamination be shared by the Victorian Government, and that significant fines are implemented for site owners that do not disclose or provide information on the status of their site, contaminated or not.*

### VACC Recommendation 9

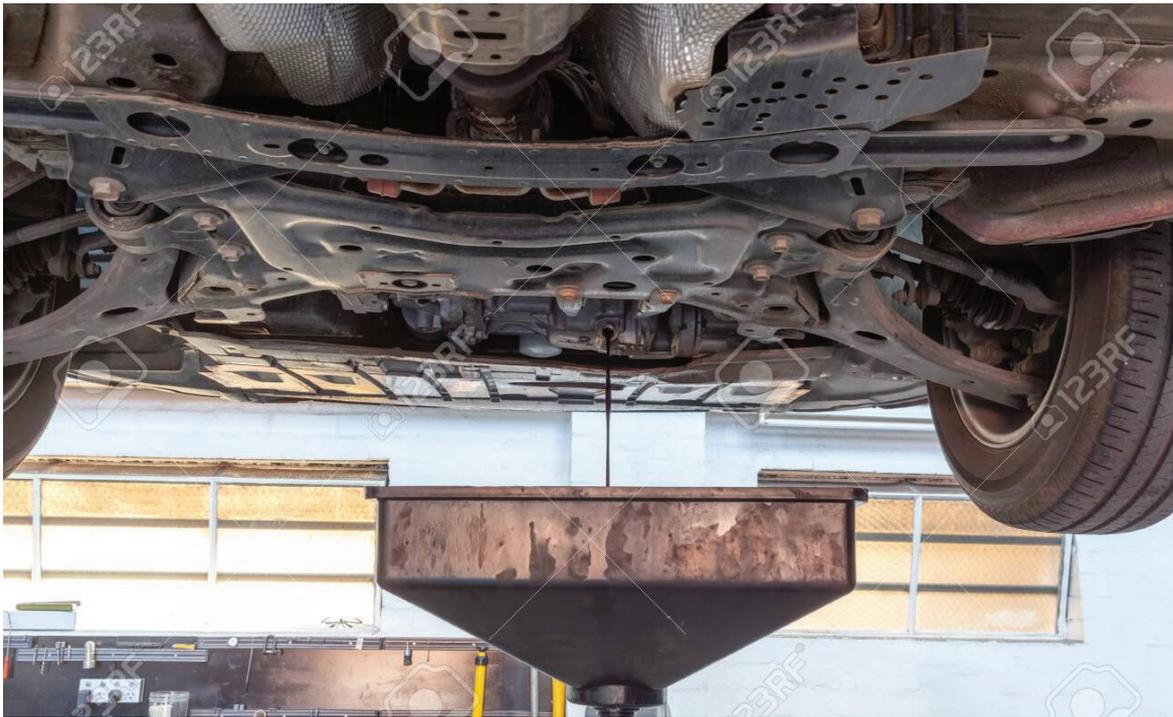
*That EPA Permission Holders disclose their EPA Permission and Permission Number in all advertising and external documentation (minimum 10-point font) to facilitate waste recycler identification, transparency and chain of responsibility under the new Act and Regulations.*

## Introduction

VACC welcomes the opportunity to provide feedback on the proposed Environment Protection Regulations and Regulatory Impact Statement (RIS), designed to support the operation of Victoria's new environment protection laws commencing 1 July 2020.

VACC is charged with the responsibility to communicate to government where regulatory and policy matters adversely affect operations within the automotive industry.

This submission provides representations on behalf of the industry in conjunction with the Automotive Dismantlers and Recyclers Division (ADRD), a division of VACC. ADRD members are responsible for the safe and legitimate dismantling, disposal and recycling of end-of-life vehicles (ELVs) and have a duty to comply with the EPA Act and Regulations accordingly.



## Overview

For several decades, state and federal governments have ignored the issue of ELV policy implementation. Unlike other developed countries, Australia has no policy to deal with ELVs and thus has no understanding of the impending environmental disaster that threatens our country.

The Automotive Dismantlers and Recyclers sector has suffered from a lack of official recognition from government and community. The sector provides an essential service by dealing with ELVs, however, the way in which ELVs are currently managed more broadly is having a negative impact on the community at large.

Regrettably, government failure to enact regulatory and compliance policies has led to the proliferation of a disorganised industry sector, where illegal, black-market outfits are allowed to flourish, ignoring their responsibilities to the environment and community standards.

This has been made evident in the 2014 Victorian Government inter-agency Task Force Discovery Report, of which EPA Victoria was a key signatory /stakeholder<sup>1</sup>. It was a watershed moment for the Australian community in its quest for better industry-based environmental outcomes. The lack of action in this regard has been disappointing. There is an imperative for a focus on the impact to the broader community.

It is a fact that many ELVs have little to no economic or recoverable value. Consequently, thousands of ELVs are abandoned on public land, imposing a huge financial burden on municipalities in associated cleanup costs.

It is estimated that in excess of 63k tonnes of plastics from ELVs are committed to landfill annually in Victoria, resulting in an unacceptable environmental outcome for the community<sup>2</sup>. On an international scale, Australians are the second highest producers of waste per person with each of us sending 690 kgs of waste to landfill per annum<sup>3</sup>. Nationally, 796,970<sup>4</sup> vehicles were sent to landfill in 2018. That's an area of 7,879,761.9 square meters – enough to fill the MCG 445 times<sup>5</sup>.

This can be arrested if those 796,970 vehicles that are taken off Australian roads are treated via a regulated and industry accredited system.

This submission addresses the need for the official environmental recognition of ELVs as a waste product within the draft EPA Regulations, including the need for greater clarity within the Regulations as they apply to the automotive dismantling and recycling sector.

This submission also argues that such measures must be made with appropriate enforcement and compliance provisions as well as incentives that support the objectives of legitimate waste recycling businesses accordingly, in order to attain positive environmental and social outcomes.

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1 Victoria Police Taskforce Discover Report September 2014

2 VACC ELV Research 2017

3 Plastic Bags: The Problem. Retrieved 22 October 2019 from <https://www.cleanup.org.au/more-information-on-plastic-bags>

4 ABS data 2018

5 VACC media release 2018

## VACC Feedback on Draft Environment Protection Regulations

### ISSUE: Chapter 2 – Contaminated Land

VACC notes that throughout Chapter 2 of the exposure draft Environment Protection Regulations, reference is made to the following statement:

*“land under the management and control of a person”*

More specifically, this statement appears in Sections 8 (a), (b), (c), and Section 14 of Chapter 2. VACC members are unclear as to the actual meaning of this statement. In particular, there is confusion as to whether this statement applies to the actual owner(s) of the property or the business that is currently leasing the site. VACC therefore requests that further clarity be provided in respect to this issue and statement, to aid understanding for businesses operating on contaminated land.

Many businesses are currently operating on land that has been used commercially in Victoria for the past 100 years or more. VACC is concerned that current business operators will bear the cost of land restitution for contamination for which they were not responsible for but happened to occupy or control at the time of the introduction of the new Environmental Act and Regulations.

### VACC Recommendation 1:

*That further clarity is provide in the draft Environment Protection Regulations concerning the meaning of the statement “land under the management and control of a person” which is referenced in Chapter 2 Sections 8 (a), (b), (c), and Section 14.*

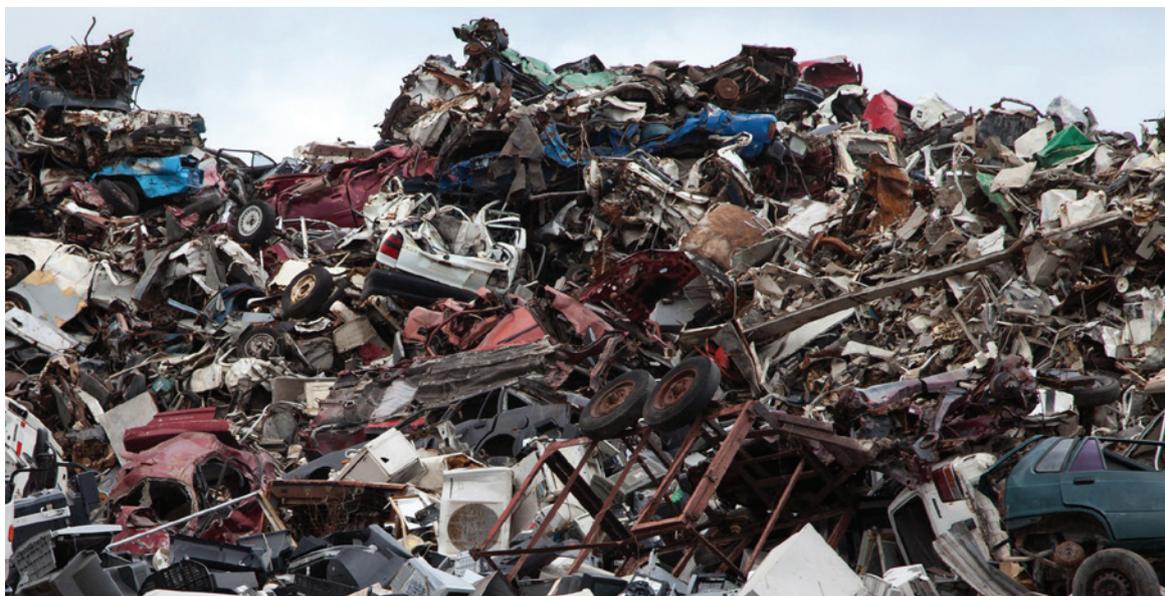
### ISSUE: Chapter 4 – Waste

A key issue of concern for VACC, is the complete omission or lack of recognition of ELVs within the definition of waste products in Chapter 4 of the draft Environment Protection Regulations.

ELVs constitute a significant product waste product in Victoria and nationally. VACC research completed in 2017 shows that over 63K tonnes of plastics derived from ELVs are sent to landfill every year. Nationally it is estimated that 243K tonnes are sent to landfill<sup>6</sup>.

ELVs include passenger vehicles, vans, 4wd vehicles, utilities, motorcycles.

Despite these facts, ELVs continue to be missed as an industry sector by EPA Victoria, and other government agencies. Alarminglly there is no reference made in the new EPA Act, Regulations and Schedules regarding ELVs and equipment. Ironically, Live Music Entertainment Venues and E-waste are referenced within Chapter 4, but not ELV recycling operations.



6 VACC ELV Research 2017

The 2014 Taskforce Discover Report also noted that the lack of recognition for ELVs and equipment as well as poor compliance settings have been an enduring feature of government policy for the past 30 years.

In a 2012 paper delivered by Sustainable Resource Use Pty Ltd that was prepared on behalf of and for the exclusive use of Department of Sustainability, Environment, Water, Population and Communities, a waste product in Victoria was defined as any otherwise discarded, rejected, abandoned, unwanted or surplus matter intended for – *recycling, reprocessing, recovery or purification by a separate operation from that which produced the matter*<sup>7</sup>

VACC considers the lack of recognition of ELVs within the draft Regulations as unacceptable and recommends the following:

#### **VACC Recommendation 2:**

***That end-of-life vehicles and equipment be identified as a specific waste category and industry sector within Chapter 4 of the draft Environment Protection Regulations.***

#### **ISSUE: Chapter 4, Division 1 – ELV's are Industrial Waste**

In terms of the definition of Industrial Waste provided on page 76 of the draft Environment Protection Regulations, it also remains unclear as to whether ELVs are covered within the scope of the definition.

VACC also seeks further clarity in regard to critically important matters that relate to Section 63 Authorised to receive industrial waste (p78). These include:

- How does Section 63 Authorised to receive industrial waste apply to automotive recyclers, and what are the applicable tests?
- How will the new regulations prevent unlicensed businesses and exporters from purchasing and dissecting ELVs for sale in unpermitted or non-endorsed factories or premises? Such unlicensed operators have no safety or environmental controls, unlike licenced and registered businesses. These vehicles should only be purchased by registered businesses.

VACC believes that at a minimum, the regulations should encourage unlicensed recyclers and vehicle exporters to partner with existing licensed automotive recyclers. Licenced recyclers are authorized to receive ELVs and are obligated to undertake the environmental requirements as detailed in the EPA Guidelines so that exporters can obtain the parts or scrap metal required for their overseas shipments.

VACC also recommends the introduction of significant punitive measures within the regulations that deter illegal vehicle recycling activity by unlicensed operators. Taskforce Discover identified that of the 432 wreckers (sic) that it audited, an aggregated total of 199 (or 46 per cent) were assessed as not holding the required authorisation to trade legally. Alarminglly, 41 of those businesses were referred for moderate environmental breaches causing serious pollution to soil and waterways<sup>8</sup>. Structuring the industry sector in this manner would have an added community benefit of reducing motor vehicle theft as registered automotive recyclers are required to screen vehicles for dismantling for theft and retain records which they have processed before exportation.

#### **VACC Recommendation 3: ELV's are Industrial Waste**

***That end-of-life vehicles are explicitly referenced as residing within the scope of the definition of Industrial Waste in Chapter 4 Division 1 of the draft Environment Protection Regulations, and that appropriate punitive measures that discourage illegal and unlicensed waste recycling are incorporated within the Regulations.***

<sup>7</sup> Australian Waste Definitions Defining waste related terms by jurisdiction in Australia (2012) Pg. 7, Pg. 25 Section 10.2. Retrieved 22 October 2019 .<https://www.environment.gov.au/system/files/resources/f3403579-8378-418d-8410-6578749189c6/files/australian-waste-definitions.pdf>

<sup>8</sup> Victoria Police Taskforce Discover Report September 2014 pg.2

## **ISSUE: Chapter 4, Division 2 – Statutory Write Off ELV's are Priority Waste**

In terms of the definition and classification of Priority Waste on page 84 Chapter 4 of the draft regulations, VACC recommends that this should be amended to incorporate Statutory Write-Offs.

A Statutory Write-Off is a vehicle that has been damaged so severely that it must not be repaired and are described in PART 2.9—WRITTEN-OFF VEHICLES of the Road Safety (Vehicles) Regulations 2009. These vehicles are not to be re-registered anywhere in Australia and can only be used for parts to repair other vehicles<sup>9</sup>.

### **VACC Recommendation 4: Statutory Write Offs are Priority Waste**

*That statutory write-offs be incorporated within the definition and classification of Priority Waste of the draft Environment Protection Regulations.*

## **Waste Generator Obligations and ELV's – Last owner or last registered owner**

Automotive vehicles represent a major source of waste generation and consequently there is an incumbent responsibility that applies to many parties. This may include the last owners of a vehicle, insurance companies, finance companies, auction houses, vehicle rental companies etc.

In relation to the obligations of these parties, VACC believes that key regulatory measures should apply. In the first instance, it must be ensured that priority waste Statutory Write-Offs are only able to be sold through EPA registered businesses. By contrast, Repairable Write-Offs - a vehicle deemed by an insurer to be uneconomical to repair - is Industrial Waste and can be sold to anyone.

For Priority Waste Category C (p256) of the draft Environment Protection Regulations, VACC advises that only registered recyclers should be authorised to receive such waste.

## **Authorised Premise to receive ELV's**

An authorised premise to receive is one that is permitted to, licensed or registered to receive waste.

VACC advises that some metropolitan council by-laws explicitly prohibit the repair or storage of dilapidated vehicles for a period of over 7 days of second-hand unregistered, dilapidated vehicles on residential property - e.g. Kingston City Council<sup>1</sup> Monash City Council<sup>10</sup>

## **ISSUE: Permissions & Public Register**

VACC recommends that in the interests of promoting legitimate and licensed business activity, Schedule 1 – Prescribed permission activities, exemptions and fees (page 194), of the draft regulations should be amended to incorporate the following:

### **VACC Recommendation 5: ELV's to be defined in Schedule 1**

- *The inclusion of end-of-life vehicle recycling within columns 1-5 of Schedule 1*
- *Provide further clarity regarding the Permission activities (column 3) and Operating licence base fees (column 5) and who they apply to*
- *The requirement of Registration and possibly a Registration Fee for end-of-life vehicle recycling activity*
- *The application of effective punitive measures (fines) for non-registered operators*
- *That EPA "cease to accept or receive" orders be placed on non-registered businesses*

<sup>9</sup> Vic Road Safety Regulations. (2009) S 2.9 pg. 85 Retrieved from [http://www5.austlii.edu.au/au/legis/vic/consol\\_reg/rsr2009309/](http://www5.austlii.edu.au/au/legis/vic/consol_reg/rsr2009309/)  
<sup>10</sup> Monash City Council Local Law No .3 retrieved 22 October 2019 from <https://www.monash.vic.gov.au/files/assets/public/about-us/laws-and-rules/local-law-no.3-community-amenity-amended-1-december-2017.pdf> pg.40

<sup>1</sup> Kingston City Council By-laws Sec 38-41

#### **VACC Recommendation 6: A Public Register be created for businesses authorised to receive ELVs**

*That an on-line public register of premises authorised to receive end-of-life vehicles and equipment be made available.*

This is essential. If there is no publicly accessible list there is no influence or avenue to monitor the improvement in industry standard and compliance.

#### **ISSUE: Schedule 5 – Waste classification to include reference to ELV's**

VACC is of the view that ELVs should be classified as a designated waste product within the draft Environment Protection Regulations. Consequently, ELVs should appear within Schedule 5 of the draft Regulations with an appropriate Waste code classification.

#### **ISSUE: Division 5 – General Motor Vehicle Offences**

As an adjunct to Division 5 General Motor Vehicle Offences of the draft Regulations, VACC recommends the addition of the following provisions:

#### **VACC Recommendation 7**

- *That it is an offence to abandon end-of-life vehicles or equipment on public land*
- *That it is an offence to dispose of end-of-life vehicles or equipment to a premise that is unlicensed, unregistered or unauthorised to receive and recycle end-of-life vehicles.*

An example of how these provisions could appear within Division 5 – *General Motor Vehicle Offences* of the draft Regulations is presented below:

#### ***Selling or supplying an end-of-life vehicle to another party not authorized to receive it***

*A person must not sell or supply end-of-life vehicles or equipment to a business or party that is not authorised to receive it.*

*Penalty: 60 penalty units for a natural person.  
300 penalty units for a body corporate.*

VACC believes that the inclusion of these provisions will help deter the disposal of ELVs to illegal and black-market operators. It would also ensure that ELVs are disposed of via licensed and registered businesses that are authorised to receive them, and who comply with the appropriate environmental standards for their disposal and recycling. In line with the definitions of the Motor Car Traders Act (1986), there is a limit of an aggregated 4 cars per annum that can be sold before licensing must occur.

#### **VACC Feedback on Regulatory Impact Statement (RIS)**

#### **ISSUE: Chapter 17 Preferred Options - Contaminated Land**

In relation to the preferred options for contaminated land that are listed on pages 255 and 262 of the RIS, VACC has the following queries and concerns as they apply to small business:

- Who is responsible for environmental damage caused by earlier land ownership or leaseholds?
- Who is responsible for environmental damage which occurred prior to the implementation of the EPA Act 1970 or prior to the EPA Act 2018?
- A long existing commercial site may have had multiple owners or lease holders. How would it be determined who is responsible for environmental clean-up costs at the end of the tenure?
- Is it deemed fair if a long-established commercial site's environmental costs fall upon the current owner or leaseholder, when the contamination damage was caused decades earlier?

To disprove liability will inflict considerable legal costs on small business owners, and potentially place many out of business. This has been demonstrated in a recent case involving a VACC member in Port Melbourne with land contamination. The member had to go through the court

system to prove the contamination was not caused during his time leasing the property. The member was successful in disproving this, however the associated legal fees resulted in the shutdown of the business and consequently the loss of employment for many staff.

VACC would like to see the government share some of the costs associated with unfair liability on current lease holders of contaminated sites. In all likelihood, these duty holders had no knowledge of the fact they were moving onto a contaminated site when acquiring the land to run their business. This could be a similar mechanism to that involving flammable cladding (2019), where Victorian taxpayers have funded the removal costs for flammable cladding installed in many apartment buildings over recent years.

It is also likely that in future, business owners would incur added costs when entering new contracts and through seeking legal and other professional advice when buying or leasing a site. This could pose a significant deterrent to future business start-ups, particularly in regional areas, and thus potentially compromising economic growth and employment. VACC believes that these added cost burdens for businesses could be recovered via significant fines for site owners that do not disclose and provide information on the status of their site, contaminated or not.

#### **VACC Recommendation 8**

*That the unfair cost liability on current lease holders for sites with prior contamination be shared by the Victorian Government, and that significant fines are implemented for site owners that do not disclose or provide information on the status of their site, contaminated or not.*

#### **ISSUE: Chapter 12 Air and Discharge of Ozone Depleting Gases**

In relation to Chapter 12 on Air pollution, pages 160-180 of the RIS, VACC seeks information and advice from EPA Victoria in regard to the following:

- How does EPA Victoria and Department of Environment, Land Water and Planning plan to handle the discharge of ozone depleting gases arising from ELVs and equipment under the EPA Act and the draft Regulations, if ELVs are not included in the Regulations?



### **ISSUE: Permissions – Licence, Permit or Registration Number on all Advertising**

VACC believes that there is a significant regulatory, social and environmental benefit in disclosing the identity of registered waste recycling businesses for the benefit of members of the public, regulators and other permission holders.

Furthermore, to ensure transparency in terms of marketing, monitoring, compliance and associated regulatory activities, VACC considers it essential that EPA Permission and the Permission Number is compulsory included in all advertising and external documentation involving registered waste recyclers.

Permission disclosure is currently being effectively used in many industry sectors including Motor Car Traders, Plumbers, Electricians and Sex Workers. This will aid the public, other permission holders, regulators and other stakeholders to identify businesses they should support and not unregistered/black economy operations that undermine Victoria's waste recycling system.

Permission and Permission Number format must be prescribed in a size such as minimum 10 point font to ensure information can be read. Significant Infringements should apply where a breach is found to have occurred.

### **VACC Recommendation 9: Permission and Permission number displayed**

*That EPA Permission Holders disclose their EPA Permission and Permission Number in all advertising and external documentation to facilitate waste recycler identification, transparency and chain of responsibility under the new Act and Regulations.*





**VACC**<sup>®</sup>  
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