



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Community rights and the Environmental Protection Act 1994

1. Summary

- The Queensland State of the Environment Report (2007) is a useful tool for you to use when lobbying on environmental matters.
- The Queensland Environmental Protection Agency (“EPA”) and local governments are required to run a public register which gives you access to various documents under the *Environmental Protection Act 1994* (“EP Act”).
- Generally the public does not have rights of submission in relation to the 85 Environmentally Relevant Activities (“ERAs”) that require licensing.
- The EPA and local government share the administration and enforcement of those ERAs as set out in the *Environmental Protection Regulation 1998*.
- If you ring the **EPA Pollution Hotline - 1300 130 372** you can report apparently illegal activity. Your call will be logged and investigated or you will be referred to local government if the matter is within their jurisdiction.
- Learn what powers the EPA has so that you can request particular action.
- Any person, including a member of the community or community group may go to go the Planning and Environment Court for an order to remedy or restrain illegal activity such as an environmental offence or lack of approval or breach of a condition of approval. The general rule in the Planning and Environment Court is that each side pays his or her own costs irrespective of who wins the case as it is a public interest jurisdiction.

2. Object and Scope of the EP Act 1994

The object of the Queensland *Environmental Protection Act 1994* (“EP Act”) is to protect Queensland’s environment while allowing for “ecologically sustainable development”. Ecological sustainable development is development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

In order to achieve this object, the EP Act provides for a range of matters including:

- Environmental Protection Policies (EPPs), for example on air and water;
- a licensing system for “environmentally relevant activities” (“ERAs”) for example chemical storage or dredging or mining;

- establishment of the “general environmental duty” that applies to a range of activities;
- a system for identifying and managing contaminated land;
- environmental offences and executive officer liability;
- civil enforcement provisions enabling any person in the community to restrain breaches of the Act;
- public reporting of information on the environment i.e. “State of the Environment Report”; and
- access to information provisions- the public register;

3. Environmental Protection Policies

A policy may be made under the EP Act by the Minister about almost anything to do with the environment. Those policies are then relevant when later decisions are made under the EP Act, for example licensing of activities.

There is no process set out in the EP Act for the public to propose that a policy be made. This means you will need to lobby the Minister to convince the Minister that a new policy is needed.

An Environmental Protection Policy (“EPP”) does not have effect until it is approved by the Governor in Council. Each EPP must be laid before Parliament where they can be subject to a motion for disallowance.

There are currently four EPPs:

- *Environmental Protection (Air) Policy 1997;*
- *Environmental Protection (Noise) Policy 1997;*
- *Environmental Protection (Water) Policy 1997;* and
- *Environmental Protection (Waste Management) Policy 2000.*

4. State of the Environment Report and the Public Register

Every four years under the EP Act the Queensland Government is required to prepare and publish a report on the state of Queensland’s environment. The SOE Report 2007 is a valuable reference document that community members can use in advocacy on environmental issues. SOE 2007 is available on the EPA website, along with the most recent data and information available on a range of indicators.

The EP Act also requires that a public register is kept by the administering authority which is the Queensland Environment Protection Agency (“EPA”) or local council which ever is administering the relevant ERA, as described below. Pursuant to the register, you are entitled to inspect and obtain copies of a range of listed documents. This is faster and cheaper than using the *Freedom of Information Act 1992*. The documents that you are entitled to access are listed in s540 of the EP Act and include copies of environmental authorities (i.e. licences), copies of development approvals for ERAs described below

and many other documents. When you contact your local council or Queensland Environmental Protection Agency office, you may need to be persistent in requesting access to the documents on the public register as many staff don't know about the register.

The EPA website has a section called "public consultation" which lists current and closed consultation processes: www.epa.qld.gov.au/about_the_epa/public_consultation/.

5. ERAS and Community input on ERAs

The EP Regulation contains a schedule of 85 activities called "environmentally relevant activities" ("ERAs") for example chemical storage or dredging or mining or receiving and treating regulated waste. Some ERAs are administered and enforced by the EPA, some by the local government and the EP Regulation identifies the division of responsibility. ERAs are divided into "level 1" with more risk to the environment and level 2 with less perceived risk to the environment. All operators of ERAS other than mining or petroleum activities must be "registered operators".

Before a business can conduct or expand one of those ERAS (apart from mining and petroleum) they must have either:

- a development approval for the activity; or
- operate under a code of environmental compliance.

Mining and petroleum have a different regime under the EP Act which is detailed in the EDO's Mining information Sheet.

The general public has no formal rights to make objections/submissions on proposals to carry out ERAs except certain mining activities and certain aquaculture activities.

If the ERA is assessed under the Integrated Development Assessment System (most are) you are entitled to see and copy the application and supporting materials. Even though you have no formal submission rights under the EP Act, you can write in a letter to the decision maker (usually EPA or local government) giving your opinion on whether the application ought to be approved or conditions attached. Your arguments should refer to the "standard criteria" which under the EP Act are relevant to the decision. The Standard Criteria includes a variety of matters, here are some:

- the principles of ecologically sustainable development
- any EPPs;
- the character, resilience and values of the receiving environment;
- best practice environmental management
- financial implications as they relate to the industry or type of activity.

Local planning schemes might contain additional community rights of submission and appeal on ERAs. If so, criteria set out in the planning scheme will be relevant to that decision.

6. Community input on Contaminated Land

Part 8 of the EP Act contains provisions for identifying recording and managing land that is affected by hazardous contaminants or which was the site for activities called notifiable activities, such as tanneries, which are likely to lead to contamination. Such land is placed on the Environmental Management Register.

The EPA might decide to require a site investigation to see the level of contamination and then either leave the land on the EM Register or put it on the Contaminated Land Register which is reserved for seriously contaminated sites that must be cleaned up.

The general public has no formal role in this process but can search both Registers and obtain copies of any site management plan.

Owners and occupiers of the land have a range of responsibilities in relation to the land.

7. Complaining and asking Government to act

The EP Act is mainly administered by the Queensland State Environment Protection Agency, (“EPA”) with some responsibilities for local governments.

According to the EPA Annual Report 2006/7 section about the administration of the EP Act, that year the EPA received 2,925 complaints (most commonly about air issues) and local government received 18,504 (most commonly about noise issues).

Look in the *Environmental Protection Regulation* 1998 to see if the administration and enforcement of the ERA you are concerned about is the responsibility of the EPA or council.

If you ring the **EPA Pollution Hotline - 1300 130 372** you can report apparently illegal activity. Your call will be logged and investigated or you will be referred to local government if the matter is within their jurisdiction. If a pollution incident relates to a residential property you should contact your local council.

If you can send in a letter with details and photographic evidence of the breach that will assist the EPA to investigate.

The EPA has various legal powers or administrative processes. For example, you could ask the EPA to:

- Send an inquiry or warning letter to the operator;
- Issue an infringement notice for a minor breach of the EP Act;
- Issue a noise abatement notice;
- Issue an environmental protection order requiring the operator to do or not do something for example, to stop breaching a condition of approval or to obey a direction to conduct an environmental investigation;
- Require the operator to conduct an environmental audit or investigation which in some cases gives the EPA power to tightening the development approval or environmental authority;
- Prosecute in court for an offence against the EP Act; or

- Seek a civil order of the Planning and Environment Court to remedy or restrain an offence against the EP Act or relevant parts of the *Integrated Planning Act 1997*.

8. Duty to notify of serious or material environmental harm

The *Environmental Protection Act* imposes a duty on people who become aware that unlawful serious or material harm is threatened by or is occurring because of an activity that they or their employer are conducting to notify the relevant administering authority for the activity (the “duty to notify of environmental harm”).

9. Environmental Offences

The EP Act creates a range of environmental offences, including provision for liability of executive officers of corporations.

In short, it is an offence if some type of approval is required but not obtained for an ERA or if an applicable condition is breached.

The *Environmental Protection Regulation 1998* (Qld) provides a series of low-level offences for noise, dust, odour, fumes, ash, light and smoke nuisances. The Regulations provide for environmental nuisance complaints to be made to the EPA, which may issue a noise abatement notice if the noise is an environmental nuisance. Failure to comply with a noise abatement notice will result in penalty, unless a reasonable excuse exists. In addition, the laws create specific offences for environmental noise. These provisions specify conditions, hours of operation and noise levels for a number of activities.

The EP Act also contains offence provisions relating to environmental harm. An act or omission that causes serious or material environmental harm or an environmental nuisance (those terms are defined) is unlawful (*unlawful environmental harm*) unless it is authorised to be done or omitted to be done under various instruments such as an EPP or a condition of a development approval etc.

However, it is a defence to a charge of unlawfully causing environmental harm to prove—

- (a) the harm happened while an activity (that is lawful apart from this Act) was being carried out; and
- (b) the defendant complied with the general environmental duty.

The defendant is taken to have complied with the duty if the defendant proves—

- (a) an approved code of practice (e.g. for Agriculture) applies to the causing of the environmental harm; and
- (b) to the extent it is relevant, the defendant complied with the code.

319 General environmental duty

*(1) A person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm (the **general environmental duty**).*

(2) In deciding the measures required to be taken under subsection (1), regard must be had to, for example—

(a) the nature of the harm or potential harm; and

(b) the sensitivity of the receiving environment; and

(c) the current state of technical knowledge for the activity; and

(d) the likelihood of successful application of the different measures that might be taken; and

(e) the financial implications of the different measures as they would relate to the type of activity.

10. Citizen Enforcement Provisions

Any person, including a member of the community or community group may go to the Planning and Environment Court for an order to remedy or restrain illegal activity such as an environmental offence or lack of approval or breach of a condition of approval. The general rule in the Planning and Environment Court is that each side pays his or her own costs irrespective of who wins the case as it is a public interest jurisdiction.

For certain environmental offences such as “causing serious environmental harm”, the person is required to first seek leave of the Court under s505 of the EP Act. Gaining leave of the Court is not necessary where an approval is lacking altogether or a condition is breached or if your interests are directly affected, for example if your health was affected by air pollution from a nearby factory.

In order to gain leave of the Court the following steps apply (1) ask the Minister to act and the Minister fails to act within a reasonable time; (2) the environmental harm must be serious.

Before going to Court over an environmental matter you will need legal advice and assistance and usually the opinion of a relevant expert, for example an air quality expert, who is able to be an “expert witness” for you in your case.

11. Further information

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Website: www.epa.qld.gov.au

Annual Report 2006/7 www.epa.qld.gov.au/register/p02241as.pdf