

Chapter 10

Stopping environmental harm

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Stopping environmental harm

Introduction

Any given morning at around 5am the noise from the back of the commercial premises and laneway can be heard loudly from your new apartment. What can be done to stop this deafening racket? Is this noise at this time in the morning, or at any time of the day or night, beyond an acceptable level? Is this noise causing environmental harm?

The integrated framework for protecting the ACT environment from pollution and other forms of environmental harm is comprised of the *Environment Protection Act 1997* (ACT) ('the Act'), the *Environment Protection Regulation 2005* (ACT) ('*Environment Protection Regulation*') and the accompanying Environment Protection Policies (EPPs). Unless otherwise specified, references to sections of an Act in this chapter are references to sections of the *Environment Protection Act 1997* (ACT).

This chapter provides a brief overview of the Act by considering the underlying principles on which the Act is based and how the Act is implemented.

It then looks at the role of the Environment Protection Authority (EPA) and the policies and instruments used to prevent and control harm. Finally, it looks at enforcement and compliance issues.

Environment Protection Act 1997

Objects of the Act

The objects of the Act (s 3C) are extensive. They include:

- to protect and enhance the quality of the environment
- to prevent environmental degradation and risk of harm to human health by promoting pollution prevention, clean production technology, reuse and recycling of materials and waste minimisation programs
- to require people engaging in polluting activities to make progressive environmental improvements
- to achieve effective integration of environmental, economic and social considerations in decision-making processes

- to facilitate the implementation of national environment protection measures under the *National Environment Protection Council Act 1994* (Cth) and the *National Environment Protection Council Act 1994* (ACT)
- to provide for the monitoring and reporting of environmental quality on a regular basis
- to ensure that contaminated land is managed having regard to human health and the environment
- to coordinate activities needed to protect, restore or improve the ACT environment
- to establish a process for investigating and, where appropriate, remediating land areas where contamination is causing, or is likely to cause, a significant risk of harm to human health or of material environmental harm or serious environmental harm.

Definitions

The definition of environment is central to the effectiveness of these objects and of the Act. 'Environment' is broadly defined to include 'the social, aesthetic, cultural and economic conditions that affect or are affected by' and the 'interactions and interdependencies within and between' each and any of the following:

- the components of the earth, including soil, water, and the atmosphere
- any organic or inorganic matter and any living organism
- human made or modified structures and areas
- ecosystems and their constituent parts, including people and communities
- the qualities and characteristics of places and areas that contribute to their biological diversity and ecological integrity, scientific value and amenity (see Dictionary at the end of the Act).

The Act deals with gradations of environmental harm, ranging from any level of harm, from 'material' to 'serious', depending on its effect over time, its frequency, its cumulative effect, where it happened and the monetary value of the loss or damage caused or of the cost of remedial work. More detailed definitions are incorporated in the 'Offences and penalties' section below.

What is environmental harm?

Environmental harm means any impact on the environment as a result of human activity that has the effect of degrading the environment, whether temporarily or permanently (see Dictionary).

Importantly, a pollutant is taken to cause environmental harm if the measure of the pollutant entering the environment exceeds the prescribed measure or if it is a prescribed pollutant (s 5).

Pollute includes 'to cause or fail to prevent the discharge, emission, depositing, disturbance or escape of a pollutant', which includes the following:

- a gas, liquid or solid
- dust, fumes, odour or smoke
- an organism, whether dead or alive, including a virus or a prion
- energy, including heat, noise, radioactivity, light, or other electromagnetic radiation
- anything prescribed or any combination of the above elements (see Dictionary).

The *Environment Protection Regulation* contains provisions on many of the polluting agents: air (Part 2), noise (Part 3) and water (Part 4). Specific noise zones, standards and conditions are covered in Schedule 2, whilst pollutants prescribed as taken to cause environmental harm on entering waterways are listed in Schedule 3.

How the Environment Protection Act works

The Act protects the environment from pollution and other harms not by category (for example, as air or water or noise pollution, although there are specific offences under the regulation dealing with noise pollution and water pollution; see Parts 3 and 4 respectively) but rather by a hierarchy of tools, the choice of which depends on the seriousness of the problem and on whether the harm is material environmental harm or serious environmental harm. The Act controls potential and actual harms through:

- environmental authorisations (ss 41A-67A)
- environmental protection agreements (ss 38-41)
- accredited codes of practice (ss 31-33)
- environmental audits (ss 73-79)
- environmental improvement plans (ss 68-72)
- environment protection orders (ss 125-126)
- injunctive orders (ss 127-129).

The Act also implements obligations under the Inter-Governmental Agreement on the Environment (IGAE), which includes the principle of ecologically sustainable development (ESD). In the decision-making process, the EPA is required to look at the objects of the Act (s 12(2)) as well as ESD principles (s 3D(1)) which include:

- *the principle of shared responsibility for the environment* – through recognition of need to consider environmental needs in economic and social decision-making and public education and participation in decisions about protection, restoration and enhancement of the environment
- *the precautionary principle* – where there is a threat of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation

- *the principle of inter-generational equity* – the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations
- *the waste minimisation principle* – controlling the generation, processing and disposal of waste to reduce, minimise or eliminate harm to the environment
- *the polluter pays principle* – that the polluter should bear the appropriate share of the cost that arises from their activities.

It is expected that the decisions made by the EPA should reflect these principles in their documentation.

The EPA has authority over the administration of the Act (s 12). However, it must exercise its function in accordance with the minister's directions if given and as allowed under the Act (s 93(1)). The Minister for the Environment is the minister responsible for the Act.

The Environment Protection Authority

The Environment Protection Authority (EPA) is a statutory position held by the Director of Environment Protection and Water Regulation and sits within 'Access Canberra' as part of the Chief Minister, Treasury and Economic Development Directorate (see Contacts list at the back of this book).

One of the key functions of the EPA is to administer the Act and any other functions conferred on it by any other legislation; for example, the *Water Resources Act 2007* (ACT) (s 12). In administering the Act, the EPA must have regard to the principles set out under objects of the Act (above) as well as the ESD principles (s 3D(1)) listed above.

The EPA works in partnership with businesses and the community. The appointment of an industry liaison officer has led to a more cooperative approach; for example, the General Environment Protection Policy encourages activity managers to proactively propose regulatory mechanisms. The EPA facilitates a proactive co-regulatory approach tailored to specific activities. This can include non-binding environment protection agreements, accredited environmental improvement plans and voluntary environmental audits, which encourage businesses to meet environmental standards in their own way.

Environment Protection Policies (EPPs)

The Act is supported by EPPs (Part 4). EPPs are administrative instruments and are not directly legally enforceable. EPPs may provide:

- guidelines to which the EPA must have regard in administering this Act generally or in relation to specified functions of the EPA
- guidelines for effective environment protection and management within a particular industry or for the community generally

- matters that the EPA may take into account in relation to the making of a decision in the exercise of a discretion under the Act.

The Act requires EPPs to be in accordance with relevant best practice (s 24). Currently, there are seven specific EPPs and one general EPP containing information and policies common to several areas of environment protection. The specific EPPs cover air, noise, water quality, motor sport noise, outdoor concert noise, hazardous materials and contaminated sites. These are all public documents accessible on the [Environment and Planning Directorate website](#) (see Contacts list at the back of this book).

EPPs are initially issued as drafts. The EPA publishes a notice in the ACT legislation register and the *Canberra Times*, containing a brief description of the policy, information on where copies can be obtained and inviting anyone to make comments or suggestions within the consultation period of 40 working days (s 25). The draft EPPs are also automatically sent to the Conservation Council of the South-East Region and Canberra and to the Canberra Business Council (s 25(5)). Comments received during this period are considered and the EPA may revise the draft EPP in accordance with the suggestions received (s 26). Comments received in submissions then often form part of a working draft paper which may identify what comments have been adopted and why. The draft policy will then go to the minister for consent and a notice of this fact will then be published in the ACT legislation register and the *Canberra Times* (ss 27-28). The EPPs are available on the Environment and Planning Directorate website (see Contacts list at the back of this book).

General environmental duty

The Act encourages everyone to take responsibility for the environment by imposing a general environmental duty on the whole community to take all practicable and reasonable steps to prevent or minimise environmental harm or environmental nuisance resulting from their activities (s 22). Failure to comply with this general environmental duty is not in itself an offence and does not constitute grounds for action under the legislation. However, a failure to comply with the general environmental duty can result in an environment protection order being issued by the EPA (s 125) or, if this is impracticable, a notice requiring payment for clean-up costs incurred by the EPA (s 160). Conversely, compliance with the general duty can be used as a defence against certain offences under Part 15 of the Act (s 143).

This general environmental duty is the basis for a number of the EPA's factsheets. These include information on air pollution, including advice on open air fires, indoor fires and spray painting; information on noise, including advice on noise in residential areas, as well as excessive noise; information on hazardous chemicals, including tips on the safe use, handling and storage of household chemicals plus disposal options; and one on water, including advice on keeping storm water clean when gardening or washing the car. Copies of these factsheets are available at the EPA and on its [website](#) (see Contacts list at the back of this book).

A member of the public can contact the EPA about any environmental problem by calling Canberra Connect (see Contacts list at the back of this book). In the year 2013-14, the EPA responded to 495 public complaints on a range of issues, which resulted in 1,316 actions: 998 on noise; 42 on water; 143 on air; 84 on solid fuel heaters; 26 on light; 5 on other hazardous materials; 9 on waste collection; 1 on pesticides; one on land contamination; and 7 on other issues.

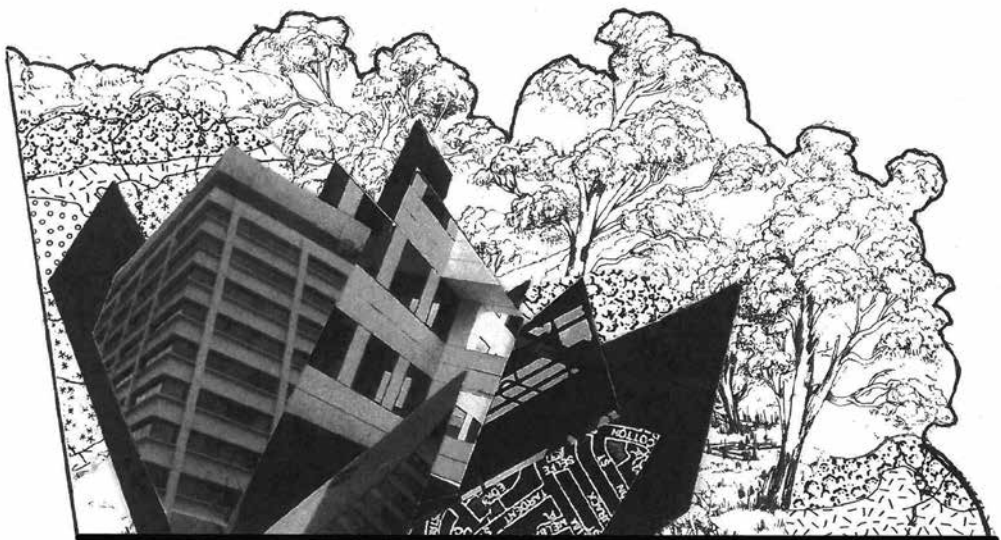
Environmental authorisations

There are certain prescribed activities, that carry the greatest environmental risk, which must not be carried out without legally binding authorisation (s 42; see Part 8 generally).

Activities requiring authorisation

Authorisations are required for Class A activities, that is, those involving the greatest risks. These include, but are not limited to:

- transport of hazardous waste within the territory
- transport of hazardous waste between states and territories
- motor racing events
- commercial use of chemical products, registered under the Commonwealth's Agricultural and Veterinary Chemical Code (AgVet), for pest control or turf management – this would include, for example, aerial spraying of pesticides
- operation of a commercial incinerator
- operation of sewage treatment plants (Table 1.2 of Schedule 1 to the Act).



The majority of current authorisations cover the use of AgVet chemicals and the storage of petroleum. A number of firewood merchants also have authorisations, covering the sale or supply of firewood under certain conditions and the cutting, storing and seasoning in preparation for sale of firewood in the territory. The public can view current authorisations at the EPA or in its annual report available on its [website](#) (see Contacts list at the back of this book).

Types of authorisations

There are three kinds of authorisation that may be granted:

- standard authorisation: to any prescribed activity for an unlimited period or a specified period of no longer than three years (ss 46(1)(a), 52(1)(a))
- accredited authorisation: to prescribed activities in relation to which effect has been given, or is being given, to an environmental improvement initiative aiming for best practice (ss 46(1)(b), 52(1)(a))
- special authorisation: to a prescribed activity conducted for the purposes of research and development, including a trial of experimental equipment, granted for a specified period not longer than three years (ss 46(1)(c), 52(1)(b)).

Standard authorisations most commonly authorise a named person to conduct the authorised activity in a specified location, subject to conditions set out in an attached schedule. On the other hand, an authorisation can be individually tailored for the activity it authorises, setting out specific conditions for the conduct of the activity. Under the co-regulatory approach, the applicant can assist with the development of these conditions.

As at 2015, the EPA was administering 304 environmental authorisations. Thirty-one applications for environmental authorisations were considered and 97 environmental authorisations were reviewed in the 2013-14 financial year. A fee is payable for an environmental authorisation. Fees vary substantially depending on the activity and the level of pollutants released to the environment. These fees are currently set out in *Environment Protection Fees Determination 2015 (No 1)* (Disallowable instrument DI2015-15), published on the ACT legislation register. However, fees may change so it is advisable to check the register for the latest fees determination.

Load-based licensing has been introduced into authorisations as a means of implementing the polluter-pays principle. Fees include a component, which is applied as a rate per kilogram of pollutant that the authorisation holder releases into the environment. The system is modelled on that used in New South Wales.

Conditions attached to authorisations

Section 51 of the Act provides for the types of conditions that can be attached to an authorisation to ensure compliance with the Act. These can include:

- commission an environmental audit on a specified matter and submit a report of the audit to the EPA

- prepare a draft environmental improvement plan and submit it to the EPA for approval
- prepare a draft emergency plan and submit it to the EPA for approval
- provide a financial assurance of a specified kind and amount to the EPA
- give specified information regarding the environmental impact of the activity at any specified time or times during the period of the authorisation to the EPA
- conduct specified environmental monitoring or testing
- comply with a specified provision of an industry standard or code of practice, being a provision that relates to minimising environmental harm or likely environmental harm
- comply with specified prescribed standards
- not commence the specified activity until the EPA is satisfied of a specified matter.

The decision to grant an environmental authorisation subject to a specified condition can be the subject of a review by the ACT Civil and Administrative Tribunal (ACAT) (see Chapter 12 in this Handbook for information on applying for an ACAT review).

Public consultation on authorisations

Under section 48 of the Act, the EPA is required to place a notice of an application for an authorisation in the ACT legislation register and the *Canberra Times*, inviting submissions on the application within 15 days.

However, the minister can make a declaration that public consultation is not required for a particular prescribed activity (s 48(6)). This declaration is a disallowable instrument and must be notified, presented and voted upon in the Legislative Assembly. So whilst certain notifications are not fully transparent, it is possible, with some detective work in the Legislative Assembly, to keep abreast of new applications for environmental authorisations.

A notice of the grant of an authorisation or review of an authorisation must be published in the ACT legislation register and the *Canberra Times* (ss 50, 59).

Varying an authorisation

Section 60 of the Act covers the variation of environmental authorisations. Such a variation does not have to be notified to the general public, but only the holder of the authorisation (s 136; sch 3 items 11-12). Whilst in many cases a variation is usually a minor change, having no real interest or effect to the broader public, a variation could include a change of ownership where the authorisation is transferred with the sale of a business to another person. A variation can also include a change in the type of activity carried out. This change could be a substantial one. Given that such changes are not publicly notified, there is less opportunity for individuals to be aware of these variations and to challenge them in the ACAT. The Act indicates that decisions made under section 60(1) are reviewable (sch 3 items 11-12).

Section 136D allows 'any other person whose interests are affected by the decision' to apply to ACAT for review. Groups and individuals working with this legislation in a public interest capacity need to be aware of the instances where notification of variations are not required, so as to avoid losing their review rights to the ACAT.

Breaching an authorisation

The EPA may, by notice in writing, suspend or cancel an environmental authorisation where it has reasonable grounds for believing that the holder, in conducting the authorised activity, has contravened the authorisation or an environment protection order, or a provision of the Act and that as a result serious or material environmental harm is occurring, is likely to occur, or has occurred (s 63(1)(a)).

An authorisation can also be suspended or cancelled on the grounds that the environmental authorisation was granted or varied on the basis of false or misleading information (s 63(1)(c)).

The notice of intention to suspend or cancel an authorisation must state the reasons for the proposed suspension or cancellation and invite a written response from the holder of the authorisation no later than 10 working days after the date of the notice (s 64).

Environmental protection agreements

Environmental protection agreements (Part 7) are designed to help businesses manage their environmental performance. Section 38 of the Act provides for the EPA to enter into environmental protection agreements and allows the agreements to be used instead of an environmental authorisation where people are conducting certain, less harmful activities (usually those listed in Schedule 1, Class B of the Act).

These agreements are formal, written agreements that have effect for a specific period of time. The agreement may contain terms providing consequences for breaches of the agreement; however, a breach of the agreement is not actionable. An agreement does not relieve a party from any obligation or duty under the Act or any other law (s 40). Agreements acknowledge that companies are motivated to ensure their businesses do not harm the environment. They could, for example, agree to adhere to an industry standard or code of practice. There is no fee payable for an agreement.

During the 2013-14 financial year, 58 environmental protection agreements were made. Fifty-seven were issued for land development and construction sites, while one was issued for municipal services.

Public consultation on agreements

All environmental protection agreements are notified in the ACT legislation register and in the *Canberra Times*. However, there is no public input by way of submissions as is provided with environmental authorisations (s 41). It is worth mentioning here, that the minister may declare that the notification requirements for agreements do not apply if the minister is satisfied that the implementation of the agreement is not likely to cause any environmental harm or any material environmental harm (s 41(5)). Such a declaration is a disallowable instrument scrutinised by the Legislative Assembly and notified in the ACT legislation register. To date no such declarations have been made.

Members of the public can view environmental protection agreements on the [EPA website](#) (see Contacts list at the back of this book).

Breaching an agreement

There is no statutory penalty for breaching the terms of an environmental protection agreement. However, the EPA is unlikely to enter into, or to maintain, an environmental protection agreement where the other party has proved unreliable and may instead require an environmental authorisation for an activity listed in Class B of Schedule 1. Also, if a breach of the Act has occurred, he or she may be prosecuted (s 40).

Environmental improvement plans

An environmental improvement plan (Div 9.1) is a formal plan to rectify problems, minimise environmental impacts and achieve best environmental practice over time. It can be put in place either to prevent harm or to rectify harm. The EPA can require a plan if there is, or is likely to be, serious or material environmental harm caused by a contravention of the Act, an environmental authorisation or an environment protection order and the EPA considers that an improvement plan will help to rectify the situation (s 69). These plans can also be required as part of an environmental authorisation. Equally they can be prepared on a voluntary basis. The plans have to have regard to relevant best practice. The EPA will either approve the draft plan or reject it and require it be amended and resubmitted (s 71). A decision to reject an environmental improvement plan is reviewable by ACAT (Sch 3 items 18-19). Between the commencement of the Act and 30 June 2014, four improvement plans were implemented. The public can view these plans at the EPA office (see Contacts list at the back of this book).

Environment protection orders

Where the EPA has reasonable grounds for believing that a person has contravened or is contravening an environmental authorisation or a provision of the Act, it may serve an environment protection order on the person (Div 13). The order may also be served on the occupier of contaminated land. Between the commencement of the Act and 30 June 2014, 36 protection orders were issued.

The order must be in writing and identify the person on whom the order is served, specify the provision of the Act or authorisation alleged to have been contravened, the nature of the contravention, plus the day, time and place where it happened. If the order relates to contaminated land, it must specify the nature of the substances in, on or under the land and the grounds the EPA has for believing the land is contaminated. The order will also state the action that must be taken, stopped or not commenced by the person, and sets out the maximum penalty on conviction for a failure to comply with an order (s 125(4)).

Orders can specify particular requirements of things to be done or not done, including:

- stopping or not commencing a specified activity for a period of time or indefinitely
- undertaking particular action to remedy the harm and, if appropriate, taking action to prevent or mitigate further harm
- restoring the environment in a public place or for the public benefit
- not conducting a particular activity except during specified times or subject to specified conditions
- providing specified information to the EPA on the environmental impact of an activity being conducted (see s 125(5)).

Offences and penalties

Infringement notices for minor environmental offences are issued under the *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005* ('*Magistrates Court Regulation*'). Under section 120 of the *Magistrates Court Act 1930* (ACT) ('*Magistrates Court Act*') and regulation 12 of the *Magistrates Court Regulation*, an authorised officer can serve an infringement notice on a person if the officer has reasonable grounds for believing that a person has committed certain minor environmental offences which are set out in Schedule 1 of the *Magistrates Court Regulation*. The infringement penalties range downward from currently \$1,000 for individuals and from \$5,000 for corporations for offences committed under the Act.

If the fine is not paid within 28 days a final infringement notice is issued that adds an administrative charge to the fine (*Magistrates Court Act* s 122(1)(g)). As at 30 June 2014, the EPA had issued a total of 502 infringement notices under the Act. The penalty for infringement notices is significantly less than the maximum penalty available if an offence is prosecuted under the *Environment Protection Act*. For example, the offence under section 44(1) of conducting activities, other than prescribed activities, has a maximum penalty if prosecuted of 200 penalty units and five times that amount if the offence is committed by a company (i.e., currently \$30,000 for an individuals and \$150,000 for a company).

General environmental offences are dealt with in Part 15 of the *Environmental Protection Act*. The main offences are: causing serious environmental harm or

likely serious environmental harm (s 137); causing material environmental harm or likely material environmental harm (s 138); causing environmental harm or likely environmental harm (s 139); causing an environmental nuisance (s 141); and placing a pollutant where it could cause harm (s 142).

The difference between material and serious environmental harm is a question of degree (see Dictionary at end of the Act). Material harm requires that it be ‘significant’ over time; due to its frequent recurrence or cumulative effect with other relevant events; in an area of high conservation value and the harm is not trivial or negligible; loss or damage to property is valued at more than \$5,000; or remedial action costs more than \$5,000. Serious environmental harm is the same as material harm except it covers where the harm is ‘very significant’ or where loss or damage or remedial costs are over \$50,000.

Serious environmental harm has a maximum penalty that is twice the amount for material environmental harm. Within each offence there are differing penalties. This is based on whether a person: knowingly or recklessly polluted; negligently polluted; or polluted the environment. The level of penalty therefore depends on both the seriousness of the harm and the offender’s state of mind (see ss 137-139 of the *Environment Protection Act*). Potential penalties are most clearly expressed in the Table below.

	Serious environmental harm or likely serious environmental harm	Material environmental harm or likely material environmental harm	Environmental harm or likely environmental harm
Knowingly or recklessly polluted	2,000 penalty units, prison for five years or both	1,000 penalty units, prison for two years or both	100 penalty units, prison for 6 months or both
Negligently polluted	1,500 penalty units, prison for three years or both	750 penalty units, prison for one year or both	75 penalty units
Polluted	1,000 penalty units	500 penalty units	50 penalty units

Under section 145, further specific offences can be prescribed under Schedule 2 of the Act. Currently these relate to the sale of articles that emit excessive noise, and offences relating to fuel burning equipment.

Since the inception of the Act, only four cases have been prosecuted by the EPA and one was settled out of court ([ACT Environment and Planning Directorate Annual Report 2013-14, p 257](#)).

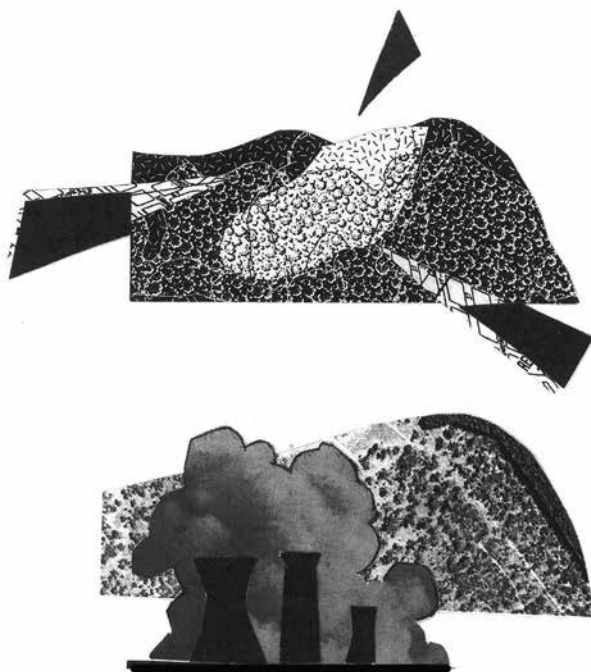
2014 amendments to the *Environment Protection Act* introduced civil penalties in the form of enforceable undertakings. These are dealt with in Chapter 14A of the Act.

Section 10 of the Act provides that the Territory government is liable for an offence against the Act and is not immune from criminal liability. There are no provisions for exceptions.

Review in ACAT or the ACT Supreme Court

Under section 136D of the Act an 'eligible person' may apply to the ACAT for review of a decision of the EPA. An eligible person is a person mentioned in column 4 of Schedule 3 to the Act or any other person whose 'interests are affected by the decision'. A person whose interests are affected by a decision includes unincorporated and government bodies in relation to which the objects and purposes of a body are relevant to the decision, which may qualify the organisation with standing to proceed with a matter (*ACT Civil and Administrative Tribunal Act 2008*, s 22Q). There is a long list of reviewable decisions set out in Schedule 3, including: exclusion of or refusing to exclude a document or part of a document from public inspection (item 1); granting an environmental authorisation subject to a specified condition (item 7); and varying an environmental authorisation (item 11) (see Chapter 12 in this Handbook for more information on ACAT).

In addition to lodging an appeal in the ACAT, persons working to protect the environment for the public interest should be aware of the much underutilised



tool of an injunction, available under Division 13.3 of the *Environment Protection Act*. Where there is a breach, or likely to be a breach, of an environmental authorisation, an environment protection order or of the Act itself, that has or is likely to cause serious or material environmental harm, the ACT Supreme Court may order the respondent to remedy the breach, to stop committing the breach or, where the breach is anticipated, to not commit the anticipated breach

(s 128 of the Act). If the matter is urgent, it is possible to seek an interim order, but the court must be convinced that there is a real or significant likelihood that serious or material damage will occur before the initial application is decided (s 129).

Applications for injunctive orders can be made by the EPA or by any other person. However, the court will only grant leave to any other person to make an application where the person has first asked the EPA to take action and it has failed to do so and where the proceedings will be in the public interest (s 127). The barriers to making an application in the ACT are much higher than those in NSW where *any person* can make an application to the Court under section 252 of the *Protection of the Environment Operations Act 1997* (NSW) plus they only have to establish a relevant breach of that Act.

It should be noted that there are risks associated with seeking such an injunction. The court may ask you to give security for costs, that is, proof that you will be able to pay the costs of the other party if your application fails (s 131). In addition, if you lose the proceedings, you may have to pay the other person's costs (s 132) (see Chapter 12 in this Handbook for more information on barriers to commencing litigation).

Human Rights Act 2004 and environment related rights

The EDO argued for a specific environmental right when submitting to the 12-month review of the *Human Rights Act 2004* (ACT) ('*Human Rights Act*');

'The *Human Rights Act* should provide that everyone has the right to an environment that is not harmful to health or wellbeing, and to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures, that (i) prevent pollution and ecological degradation (ii) promote conservation and (iii) secure ecologically sustainable development and use of natural resources which promote justifiable development'.

The review did not adopt this policy position.

The impact of environmental degradation on human rights is increasingly recognised in international jurisprudence. The European Court of Human Rights has found that environmental degradation can constitute a breach of the *European Convention on Human Rights* Article 8 which provides for respect for family and private life. Breaches of these rights were found where there was failure by the authorities to respond to contamination on residents by waste water (*Lopez Ostra v Spain* (1995) 20 EHRR 277); failure to provide information to the public about the risks from a nearby chemical factory (*Guerra v Italy* (1998) 26 EHRR 357); and failure to take action against vandalism and excessive road noise causing ill health (*Moreno Gomez v Spain* (2005) 41 EHRR 40).

A number of countries have adopted environmental protection in a human rights context. For example, section 24 of the Constitution of the Republic of South Africa 1996 states that everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected for the benefit of current and future generations by means of preventing pollution and environmental degradation, promoting conservation and securing ecologically sustainable development.

The French *Charter* for the Environment provides for the right to live in a balanced environment which shows due respect for health (Art 1) and the responsibility of all to protect the environment and, in the conditions provided for by law, prevent or avoid environmental degradation (Arts 2-3).

The Constitution of the Kingdom of the Netherlands 2008 provides that the government has a duty to keep the country habitable and to protect and improve the environment (Art 21). It was based on this provision that Urgenda, a Dutch NGO, brought successful proceedings against the Dutch government, for not committing to a stronger greenhouse gas emissions reduction target to address the impacts of climate change. In June 2015, the Hague District Court found that the Dutch authorities had a duty to pursue at least the minimum level of reduction required by the country in order to address the impacts of climate change.

Internationally, the public interest in access to information, public participation and access to justice in environmental matters are recognised, including the right to review procedures to challenge public decisions. For example, these rights are specifically protected under the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* ('Aarhus Convention') which provides for access to information about the environment and related activities or policies; right to participate in environmental decision-making that will affect a person's interests and/or life; and the right to an effective means of appeal for redress or remedy where a person's interests have not been adequately considered. Each of these rights are seen as fundamental principles of environmental democracy.

In Australia, there has been limited implementation of these rights within the environmental protection frameworks. It is vital that existing rights are not weakened by regressive laws introduced at the discretion of the government of the day. Rather, these rights should be regarded as foundational and strengthened. Respect for such rights not only demonstrates a commitment towards Australia's democratic and legal systems – including the government's openness to public and judicial scrutiny – but reflects Australia's commitment to its obligations pursuant to international law.