

This guide sets out how members of the public can use the law to enforce the provisions of the *Environment Protection Act 1993 (SA)* or appeal against decisions of the Environment Protection Authority.

The *Environment Protection Act 1993 (SA)* (*'the Act'*) is the main piece of legislation covering pollution and waste in South Australia. The Act sets up an Environment Protection Authority (*'EPA'*) which is responsible for licensing and other aspects of pollution control. The Act applies to large industrial enterprises as well as to individuals, although the bulk of EPA resources are directed to large polluting industries rather than ordinary citizens.

The Act also sets out the rights and responsibilities of individuals and companies in relation to waste and pollution and allows for the development of Environment Protection Policies which identify minimum standards that must be met. The right of individuals to take action to protect the environment from waste and pollution is also set out in the Act.

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The Environment Resources and Development Court (*'ERD Court'*) is a specialist Court created to deal with issues that arise under environment and planning legislation. The Court is made up of Judges and Commissioners. Judges are usually also experienced lawyers, whilst Commissioners are experts in fields such as local government, urban planning, heritage and environment protection. Cases can be heard by a single Judge or a Commissioner or by a Full Bench (usually a Judge and two Commissioners). Normally, a Full Bench will hear the most complex matters.

The ERD Court is designed to keep proceedings as simple and inexpensive as possible and many people choose to represent themselves rather than use a lawyer. Brochures outlining the workings of the Court are available from the Court Registry, Samuel Way Building, Victoria Square, Adelaide (See also EDO fact sheet no. 5).

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This is the term used to describe the range of actions that can be brought by individuals. A typical type of action is one that seeks to restrain the conduct of a person who is causing or threatening environment harm. Other actions may be to enforce compliance with a pollution licence or to force a polluter to repair any damage caused by pollution. These types of actions are different from criminal prosecutions which are generally only brought by the police or government agencies.

If you want the court to make an order enforcing compliance with the Act or to restrain a potential breach of the Act, you must apply in writing to the Court setting out full details about yourself, the land, the project or building or other activity that is the subject matter of your application and the type of orders you want the court to make.

An action relating to an alleged contravention of the Act can be brought by the EPA or the police. In addition, any person whose immediate interests are put at risk by the activity complained of can also apply to the ERD Court. Anyone else (such as a conservation group or interested individual) must seek the leave of the Court. Before leave will be granted, the Court must be convinced that you have a good case and that it is in the public interest that the matter be brought before the Court. Permission will not be granted if your case is seen as frivolous or vexatious.

An appeal is an action brought by a person who is dissatisfied with a decision made by the EPA or some other government authority. The types of decisions that are most commonly appealed relate to decisions to approve or reject a development application. Other appeals can relate to EPA licences or conditions, however, usually only the licence holder or an applicant for a licence can appeal. Members of the public cannot appeal against an EPA decision to grant a licence, however, they may be able to challenge any failure on the part of the EPA to follow due legal process by way of 'judicial review' to the Supreme Court.

What kinds of orders can the ERD Court make?

The Court has wide ranging powers to order remedies. It has the power to:

Restrain someone from engaging in action that is contravening the Act.

Require a person to make good any environmental damage (this may involve the payment of expenses and damages relating to any clean-up operation).

Set an environment performance agreement which requires a company or an individual to undertake certain environmental measures.

In assessing damages and expenses, the cost of public detriment will be considered by the Court.

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You also need a supporting statement in the form of an 'affidavit' which sets out the details of your complaint. It is important to get this documentation right. The Court staff or EDO will be able to help you with your application.

Under the Act, there are no guaranteed rights of appeal for persons who are not directly involved in the matter complained of. These are called 'third party' appeals. This means that whilst a factory owner can appeal against an EPA refusal to grant a licence, there is no automatic right for a next-door-neighbour to appeal if the licence **is** granted. That is not to say that the neighbour cannot bring an action in Court, rather, the type of action would need to be some other form of civil action that is not strictly an appeal.

In some cases it is possible to challenge a decision of the EPA to grant a licence where the subject matter of the dispute is a development only and the application must be brought under the *Development Act 1993* (SA) rather than the *Environment Protection Act 1993* (SA). The matter however would still be heard in the ERD Court. You can appeal against the approval of a development (and conditions attached to it) only if you were officially notified and you made a written submission in response to it.

To lodge an appeal, you must provide the following details to the ERD Court:

Details of the activity/building/site/project concerned.

The name of the authority (eg. local council) who made the decision you want to challenge.

The details of the decision you wish to appeal against.

The grounds and reason for your appeal.

Your full name and contact details.

Applications should be lodged at the Registry of the ERD Court where a filing fee is payable.

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must be lodged within fifteen business days of the decision concerned.

Whilst this guide focuses on individuals' rights to use the Courts to help protect the environment, there are many other opportunities to influence decisions outside the judicial process. These include:

a right to participate in the setting of environmental standards through Environment Protection Policies [see EDO fact sheet no. 9];

a right to comment on proposed pollution and waste licences; [see EDO fact sheet no. 9]
a right to comment on land-use planning policy through Development Plan amendment or review [see EDO fact sheets no. 1 & 2];

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a right to comment on or object to some types of development application [see EDO fact sheets no. 3 & 4];

a right to comment on environmental impact assessment documents.

For more information

The *Environment Protection Act 1993* (SA) and the *Development Act 1993* (SA) can be purchased from Service SA 108 North Tce Adelaide .(ph 13 2324). All South Australian legislation is also available on the internet at: <http://www.austlii.edu.au>

The Environmental Defenders Office (SA) inc, (EDO) is a non-profit community legal centre offering free advice to individuals and groups on all matters of environmental law.

The EDO operates an advisory service from its offices at:

408 King William St
Adelaide SA 5000 Fax +61 (08) 8410 3855

Appointments are necessary and must be made by ringing 8410 3833 or freecall 1800 337 566
This guide is not a substitute for proper legal advice. Important legal details have been omitted to provide a brief overview of this law. Contact the EDO or your solicitor for more detailed legal advice about your specific problem.

This fact sheet was funded by a grant from the Law Foundation of South Australia.

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The ERD Court is generally thought of as a 'no-cost jurisdiction'. This means that the parties bear their own costs of litigation, whether they win or lose. In some cases, costs can be awarded against an unsuccessful applicant or an applicant may be required to provide 'security' to the Court in the event of an unsuccessful application. In other cases, a party may have to pay 'damages' in addition to costs if they lose. Whilst this is unlikely, in 'public interest' cases, this is a constantly changing area of law and specific legal advice should be sought before commencing any court proceedings.

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