



Tribunals and Courts

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice please visit our [website](#).

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This factsheet was last updated on 30 June 2019

Sometimes legal action is the most appropriate first step to prevent environmental harm. In other situations, it might be a necessary last resort.

Taking legal action can be an intimidating experience, but it doesn't need to be. This factsheet outlines how the legal system works, including information about:

- court procedures
- costs that may be incurred
- when and how to get legal assistance

Civil Enforcement

A person can apply to the Resource Management & Planning Appeal Tribunal (**RMPAT**) for orders requiring a person, company or a government agency to:

- take action;
- cease an activity, or;
- rehabilitate harm already done.

These actions are called “civil enforcement”.

Strict time limits exist for commencing civil enforcement actions. You must apply to the Tribunal within 2 years from the date of the unlawful planning activity, or 3 years of unlawful environmental harm or unlawful activities under the [Water Management Act 1999](#).

Enforcing planning laws

Under Section 64 of the [Land Use Planning and Approvals Act 1993](#) (**LUPAA**), a person with a proper interest can apply for orders against a person who:

- uses land, undertakes development or does any other act that is contrary to any State Policy or Planning Scheme, or;
- has breached, or is likely to breach, a condition of a development permit or a decision of the Tribunal.

The Tasmanian Planning Commission also has power to bring Civil Enforcement proceedings for actual or potential breaches that have been brought to their attention. In practice, the Commission rarely takes such proceedings.

Before commencing civil enforcement proceedings, you must send a [Notice of Suspected Contravention](#) to the relevant planning authority. The planning authority has up to 120 days to decide whether or not to take action in response to the notice. You cannot commence proceedings until:

- the 120 days is up, or
- the planning authority advises that it will not take any action, or
- the planning authority takes some action, but you are not satisfied that it has addressed the problem.

Enforcing environmental laws

Under Section 48 of the [Environmental Management and Pollution Control Act 1994](#) (**EMPCA**), a person with a proper interest can apply for orders against a person who:

- has engaged, is engaging, or is proposing to engage in conduct in contravention of EMPCA, or;
- has refused or failed, or is refusing or failing, to take any action required by EMPCA (for example, not complying with the conditions of an Environment Protection Notice), or;
- has caused environmental harm.

The Director of EPA Tasmania may also bring civil enforcement proceedings.

Commencing proceedings

Visit: [RMPAT's Practice Directions page](#) to read [Practice Direction 14: Civil Enforcement](#)

Visit: [RMPAT's Forms page](#) to download relevant application and/or notice forms.

Visit: [LIST](#)

Applications are made “ex parte” by completing the relevant application form. This means that you do not need to notify the alleged offender at the beginning (though, it is always a good idea to have tried to resolve the matter with the offender before you commence proceedings).

Your application should include a statutory declaration(s) providing details about what has happened, what actions you have taken (such as contacting DPIPW or reporting the incident to the Council), and any evidence of the extent of harm that has been caused (such as photographs or expert reports).

You should also provide evidence about the ownership of the land in question, such as a title deed or print out from the Land Information System Tasmania (**LIST**).

Directions hearing

After reading your application and any supporting documents, if the Tribunal is satisfied that there are sufficient grounds to proceed, the Tribunal will issue a summons requiring the person you say committed the offences to attend a directions hearing.

The date for this hearing is usually within 14 days of the date on which you lodged your application, but can be sooner if the matter is urgent.

At the directions hearing, the alleged offender will be asked if s/he wishes to show cause why the Tribunal should not make the orders that you have requested. If s/he does not attend, or chooses not to show cause, the Tribunal can rely on the evidence you provided and make any orders the Tribunal thinks are appropriate.

If the alleged offender does want to show cause, the matter will be set down for hearing at a later date. A date may also be set for a mediation conference to try to resolve the issue (for example, you may be able to reach agreement about reasonable operating hours for the neighbouring business, or getting the business to contribute to the costs of constructing a noise barrier).

Visit: [RMPAT's Practice Directions page to read Practice Direction 5: Alternative Dispute Resolution for more information about mediation conferences.](#)

In some circumstances, the Tribunal may make a temporary order to prevent the allegedly unlawful activity while the matter is being decided. Generally, a temporary order will not be made unless the applicant is willing to give an undertaking to pay any damages the alleged offender may suffer due to the temporary order.

For example, if you are seeking temporary orders to stop mining activities until your application is resolved, you may be required to give a commitment to pay compensation for any loss of revenue, payments to contractors or other penalties resulting from the shut-down if the mining company is ultimately found not to be in breach.

Civil Enforcement Orders

If the Tribunal is satisfied, on the balance of probabilities, that there has been a breach of the law, the Tribunal can make orders requiring a person to do a range of things, including:

- stop immediately the unlawful activity
- suspend activities until a permit has been obtained
- prohibiting future use of the land for particular activities
- taking action to “make good” (that is, repair or remediate) damage caused by the breach
- pay for repairs to be carried out by the relevant government agency or council, or by the applicant

The Tribunal may also order a polluter to pay compensation to any person who has suffered loss or property damage.

Costs

Unlike appeals in the Tribunal, the presumption in civil enforcement proceedings is that the unsuccessful party will pay the costs of the other party. This means that, if your application for enforcement orders is unsuccessful, you will generally be required to pay the legal costs of the person

Appealing against the Tribunal’s decision

Any party can appeal to the Supreme Court against civil enforcements orders made by the Tribunal, or a decision by the Tribunal not to make any orders. The appeal will be on legal grounds only, rather than reviewing the merits of the Tribunal’s decision.

This means that you cannot challenge a Tribunal decision about, for example, who was to blame for the pollution event or what measures are appropriate to address the pollution, unless you can show that the Tribunal made a mistake in the way that it made its decision (such as failing to consider a relevant document).

An appeal must be lodged within 30 days of the Tribunal’s decision.