



# Environmental Defenders Office

## **Enforcement of Environmental Offences under the *Environmental Protection Act 1994 (QLD)***

*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 on a public interest environmental or planning law issue, please visit our [website](#).*

*While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.*

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### What is this factsheet about?

This factsheet outlines how the government approaches enforcement and compliance of the [Environmental Protection Act 1994 \(Qld\)](#) (**EP Act**). It provides the process to be followed by individuals and community groups seeking to enforce these legislative requirements when they have been breached, and the possible outcomes from Court proceedings.

### Outline

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## Overview: What can I do about environmental offences?

If you believe that an environmental offence is being committed, or is about to be committed, the [Environmental Protection Act 1994 \(Qld\)](#) (**EP Act**) may provide you with legal rights to stop these offences. You may have several options available to try to stop the activity and have any damage rectified. These include reporting the activity to the Queensland Government's Department of Environment and Science (**DES**) and initiating Court proceedings where the Department is not taking action.

This factsheet outlines the offences that the EP Act creates, and what action you can take regarding their enforcement. However, it is best to contact DES first; it has an enforcement obligation and generally has larger resources, specialist staff and a better ability to obtain evidence.

Visit: [The QLD DES website](#) to learn more about the Department's role in enforcing the EP Act, particularly their page on [Compliance and Enforcement](#)

## What are environmental offences?

The [EP Act](#) is intended to protect the environment while still allowing for ecologically sustainable development.<sup>1</sup> To achieve this, it creates a range of obligations and makes it an offence to breach some of those obligations. In short, it is an offence to do certain kinds of activities without the required approval or for breaching the conditions of the approval.

Generally, an 'environmental value' is a characteristic of the environment relating to 'ecological health or public amenity or safety'.<sup>2</sup> This definition is relevant to the offences of **environmental nuisance** and **environmental harm**.

### Environmental Nuisance

Environmental nuisance is 'unreasonable interference or likely interference with an environmental value'.<sup>3</sup>

The EP Act makes it an offence to cause an environmental nuisance.<sup>4</sup> If a person 'wilfully' causes an environmental nuisance, a higher penalty is available.<sup>5</sup>

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<sup>1</sup> [Environmental Protection Act 1994 \(Qld\)](#) s 3 ('EP Act').

<sup>2</sup> Ibid s 9.

<sup>3</sup> Ibid s 15.

<sup>4</sup> Ibid s 440.

<sup>5</sup> Ibid s 440(1).

Examples of environmental nuisance include offensive odours, loud noises, excessive dustiness or an impact on light, which prevents a person from sleeping, studying or relaxing in their home.<sup>6</sup>

### **Environmental Harm**

Environmental harm is ‘any adverse effect, or potential adverse effect, on an environmental value, and includes environmental nuisance.’<sup>7</sup> This harm can be ‘caused’ by an activity when the harm is either a direct or indirect result of the activity.<sup>8</sup> The harm is said to be ‘caused’ by an activity even when it is the result of the combined effect of that activity and other activities or factors.<sup>9</sup>

There are two separate offences regarding environmental harm:

- (a) causing material environmental harm;<sup>10</sup> and
- (b) causing serious environmental harm.<sup>11</sup>

The difference between material and serious environmental harm is the severity of the harm, and the ‘quantum’ (amount) of the potential loss or damage caused.

#### Material environmental harm

Environmental harm that is not trivial or negligible in nature, extent or context, or environmental harm that causes actual or potential loss or damage to property of an amount between \$5,000 and \$50,000.<sup>12</sup>

#### Serious environmental harm

Environmental harm is irreversible, of a high impact or widespread; or harm caused to an area of high conservation value or an area of special significance, such as the Great Barrier Reef; or harm that causes actual or potential loss or damage to property of \$50,000 or more.<sup>13</sup>

If a person’s action is wilful, it is likely a higher penalty could be imposed.<sup>14</sup>

Examples of environmental harm include more severe adverse impacts on air quality, or polluting land or a waterway.

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<sup>6</sup> EP Act s 15(a)-(c); <https://www.qld.gov.au/environment/pollution/pollution-management/environmental-nuisance>.

<sup>7</sup> EP Act s 14(1).

<sup>8</sup> Ibid s 14(2)(a).

<sup>9</sup> Ibid s 14(2)(b).

<sup>10</sup> Ibid s 438.

<sup>11</sup> Ibid s 437.

<sup>12</sup> Ibid s 16.

<sup>13</sup> Ibid s 17.

<sup>14</sup> Ibid ss 437(1)-(2), 438(1)-(2).

## **Duty to notify environmental harm**

The EP Act imposes a duty on people to notify their employer, a land owner and/or DES in a range of situations where environmental damage may occur.<sup>15</sup> This includes when a person becomes aware that environmental harm is occurring or threatening to occur while they are carrying out an activity. Failure to notify environmental harm is an offence under the EP Act.

## **General environmental duty**

The ‘general environmental duty’ requires that people do not carry out any activity that causes, or is likely to cause, environmental harm (defined above), unless they take all reasonable measures to prevent or minimise the harm.<sup>16</sup>

If the person can show that they complied with this ‘general environmental duty’, their actions will not be unlawful.<sup>17</sup> However, it is not an offence to breach the duty.

Examples of breaching the general environmental duty is burning rubbish in your backyard (unless permitted by local government), pouring oil and other wastes down the stormwater drain or causing unreasonable noise.<sup>18</sup>

## **Breach of an environmental authority**

It is an offence under the EP Act to breach a condition of an environmental authority.<sup>19</sup> An environmental authority is essentially the licence or permit that authorises an activity to be carried out. The holder of the environmental authority must also ensure everyone acting under the authority complies with the conditions of the authority. If another person acting under the authority commits a breach of the environmental authority, generally the holder also commits an offence.<sup>20</sup>

You have a right to obtain copies of most environmental authorities from DES so that you can review the specific conditions that the holder must comply with. Most environmental authorities for resource activities and prescribed activities are now available on the QLD Government website. If the approval you seek is not on the register, you must contact DES to seek a copy of the approval.

Visit: [QLD Government’s Environmental Protection Act 1994 Public Register search to view environmental authorities](#)

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<sup>15</sup> EP Act ch 7 pt 1 div 2;

<https://environment.des.qld.gov.au/assets/documents/pollution/management/contaminated-land/cm-gl-duty-notify-environmental-harm.pdf>.

<sup>16</sup> EP Act s 319.

<sup>17</sup> Ibid s 493A(3).

<sup>18</sup> [https://environment.des.qld.gov.au/management/planning-guidelines/legislation/general\\_environmental\\_duty.html](https://environment.des.qld.gov.au/management/planning-guidelines/legislation/general_environmental_duty.html).

<sup>19</sup> EP Act s 430.

<sup>20</sup> Ibid s 431.

## How do I make a complaint?

To report an offence under the EP Act, or to report a significant environmental incident, call the Department's 24/7 Pollution Hotline on [1300 130 372](tel:1300130372) and select option 2.<sup>21</sup>

When calling, have as much information available as possible, such as the offender's details (name or business name, address, phone or website), the time and date of the incident, a description of the incident, and a description of how the incident affected the environment.

Your call will be logged and investigated, and you may be asked for additional information or evidence, including photos. If the incident you are reporting is found not to be within the Department's responsibilities, you will be referred to a local government or another authority.

The hotline is only intended to be used for 'significant' incidents, including (for example) breaches of certain licences/permits, incidents originating from certain regulated operations (such as mining, quarries, animal feedlots, sewage etc), fish kills, chemical spills/truck rollovers or major sewage spills.

Minor or nuisance environmental matters should be reported to your local council, who typically regulate those offences under the EP Act.

Reports can also be made online.

Visit: [The QLD Government's page on Report it to report incidents of littering or illegal dumping](#)

Visit: [The QLD Government's page on Reporting pollution to report environmental nuisance and other local issues](#)

## How will the Department respond to environmental offences?

DES has published Enforcement Guidelines, which outline how it will respond to environmental offences. Under these Guidelines, the seriousness of the breach will determine the appropriate enforcement action that DES responds with.

Visit: [DES' page on Compliance and enforcement to download and read the Enforcement Guidelines](#)

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<sup>21</sup> <https://www.qld.gov.au/environment/pollution/pollution-management/reporting>.

There are three criteria upon which the appropriate enforcement response is determined:

1. the objectives of legislation;
2. the actual or potential impact; and
3. the degree of culpability.

The factors to be considered regarding the severity of the impact include:<sup>22</sup>

- Whether the impact is a short-term or long term impact;
- Whether the impact is permanent or temporary;
- The scale and intensity of the impact on the environment or heritage areas, and whether it could have been prevented;
- The level of public concern;
- Whether the offence undermines a legislative scheme; and
- Whether the offender wilfully provides false and misleading information.

The factors to be considered in determining the degree of culpability include, but are not limited to:<sup>23</sup>

- Whether the action was intention or wilful;
- The length of time of non-compliance;
- Whether any attempt to clean up or fix their action has been made; and
- Whether any fraud or misleading conduct occurred.

The guidelines also set out when DES is likely to use various enforcement tools available to it under the EP Act – for example, an infringement notice, environmental protection order, or prosecution.

### Third party enforcement: Procedure

If DES fails to respond or take appropriate action following your complaint within an appropriate time, you may be able to take the matter further by starting proceedings in the Planning and Environment Court.<sup>24</sup> You would be essentially asking the Court for an order to remedy or ‘restrain’ the offending (or threatened/anticipated) conduct, which can also include the Court ordering the offender to restore any damage caused.

How this process works will depend on whether you have been directly or indirectly affected by the incident.

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<sup>22</sup> Department of Environment and Heritage Protection, ‘Enforcement Guidelines’ (State of Queensland, February 2016) 9 (**‘Enforcement Guidelines’**).

<sup>23</sup> Enforcement Guidelines, 10.

<sup>24</sup> EP Act sch 4 (definition of ‘court’).

### **If you are directly affected by the environmental offence...**

If you have been directly affected by the offence, you have the right to bring proceedings in the Planning and Environment Court that seek to have the activity restrained or remedied.<sup>25</sup> ‘Directly affected’ means, for example, that your property has been affected by the offence, or that you have suffered health or financial impacts because of the offence.

### **If you are *not* directly affected by the environmental offence but are concerned...**

If you do not have a direct interest in the matter but you still wish for action to be taken, you will first need permission (‘leave’) from the Court to start proceedings.<sup>26</sup> The Court must be satisfied that:<sup>27</sup>

- environmental harm has been or is likely to be caused;
- the proceeding would not be an abuse of process of the Court;
- there is a real or significant likelihood that the requirements for the making of an order would be satisfied;
- it is in the public interest for the proceeding to be brought;
- you have asked the Minister to apply for a court restraint order, but they have not done so within a reasonable time; and
- you are able to adequately represent the public interest in the conduct of the proceeding.

It is important to note that the *general* rule in the Planning and Environment Court is that each party bears their own costs, regardless of the outcome of the case. However, in granting permission, the Court *may* require you to give security to pay for the other side’s costs, or an undertaking about potential financial damages incurred, if you are unsuccessful.<sup>28</sup>

The Court can also consider other matters relevant to the person’s standing to bring and maintain the proceeding.<sup>29</sup>

Before going to Court seeking a restraint order, you will need legal advice and assistance, and usually the opinion of a relevant expert/s (for example, an air quality or water pollution expert) who is able to be your “expert witness” to support your case.

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<sup>25</sup> EP Act ss 502, 505.

<sup>26</sup> Ibid s 505(1)(d).

<sup>27</sup> Ibid ss 505(2).

<sup>28</sup> Ibid s 505(4)(a).

<sup>29</sup> Ibid s 505(2)(b)

## Commencing Court proceedings

Before taking action in Court, we recommend that you get advice from a lawyer or the EDO. However, please be mindful that EDO often does not have capacity to provide detailed advice on legal prospects to undertake litigation due to our limited resources. You will first need to ensure you have sufficient evidence and legal arguments to support your case.

Restraint order proceedings in the Planning and Environment Court are commenced by filing an originating application with the Planning and Environment Court Registrar<sup>30</sup> and paying the relevant filing fee. You will then need to serve the party you are seeking the enforcement against with the application and your supporting evidence, within 10 business days of filing the originating application.<sup>31</sup>

## What are the possible outcomes from Court proceedings?

If the Court is satisfied that an offence has been or will be committed unless restrained, the Court has broad powers to make any orders it considers appropriate to stop or restrain the offensive activity.<sup>32</sup> The court may make an order to:<sup>33</sup>

- (a) direct the defendant to stop the activity or to do anything required to comply with, or to cease a contravention of the EP Act; or
- (b) restrain the use of plant or equipment or a place; or
- (c) require the demolition or removal of plant or equipment, a structure or another thing; or
- (d) require the rehabilitation or restoration of the environment.

The Court cannot impose a fine or other monetary penalty; that can only be done if the offender is found or pleads guilty after being charged. Such a prosecution is a different court action and is almost always only taken by the Department.

## Example enforcement procedure

Landholder Mr Smith becomes aware of a pollution event occurring in the waterway that flows through his property, and from which he extracts water for irrigation purposes. Mr Smith traces the source of contamination to a neighbouring tyre factory that is discharging waste into the waterway.

Concerned about the level of contamination, Mr Smith contacts the DES Pollution Hotline and informs them of the pollution. Mr Smith also sends a letter to the Minister that contains photographic evidence of the discharge site and the mortal effects the discharge

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<sup>30</sup> *Planning and Environment Court Rules 2018* (Qld) s 6.

<sup>31</sup> *Ibid* s 12.

<sup>32</sup> EP Act s 505(5).

<sup>33</sup> *Ibid* s 505(6)(a); s 505(9).



is having on native fish species. In this letter Mr Smith asks the Minister to take enforcement action.

After 50 days, Mr Smith is yet to receive a response from DES, and is becoming increasingly concerned about the impacts of the discharge on the waterway and his property. After considering advice from his solicitor, engaging an expert and being made aware of potential costs risks, Mr Smith decides to pursue an action to restrain the illegal activity in the Planning and Environment Court.

### Where can I find more information?

- Visit the EDO [website](#) to read related factsheets, submissions and publications on this topic
- Read the EDO Factsheet on **Appealing, Enforcing DAs and Seeking Declarations**
- Visit the Planning and Environment Court Registry [website](#)
- Visit the DES [website](#) for more resources on this topic