



# Environmental Defenders Office

## Responding to Pollution in lutruwita/Tasmania

*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?

The United Nations has recognised the human right to a clean, healthy and sustainable environment. Strong environmental laws regulating pollution are one of the key ways to protect this human right.

This factsheet provides information about how pollution is regulated in lutruwita/Tasmania. It also provides information on how to report pollution incidents, who to report them to, and what other legal options are available for people to respond to pollution.

There is a range of Acts that regulate different types of pollution, such as the [Litter Act 2007 \(Tas\)](#), however, this factsheet focuses on the processes established under the *Environmental and Pollution Control Act 1994 (Tas)*. Links to further resources about how to report these other forms of pollution are provided at the end of the factsheet.

### Outline

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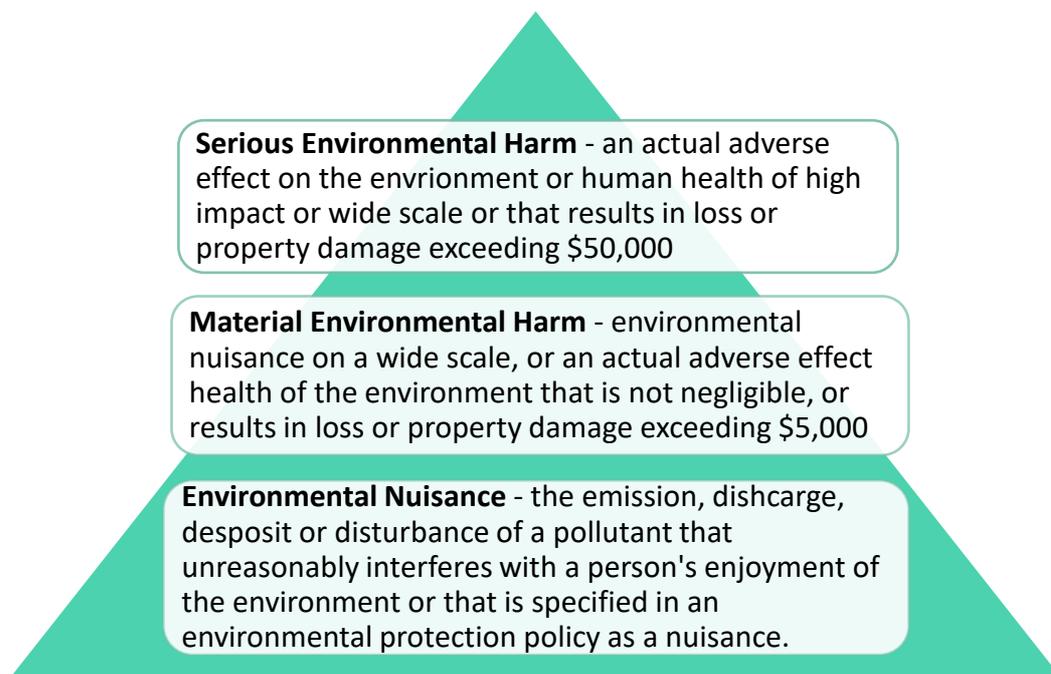
Read: EDO's report [A Healthy Environment is a Human Right: Report on the Status of the Human Right to a Healthy Environment in Australia](#)

## What is pollution?

In Tasmania, polluting activities are generally governed by the [Environmental and Pollution Control Act 1994 \(Tas\)](#) (the **Act**).

The Act defines “pollutant” as including gas, liquids, solids, odour, organisms (whether dead or alive – including viruses), energy (including noise, radioactivity and electromagnetic radiation), or a combination of pollutants, that may cause environmental harm.

“Environmental harm” is defined as any adverse effect on the environment (of whatever degree or duration). Under the Act, there are different degrees of environmental harm.



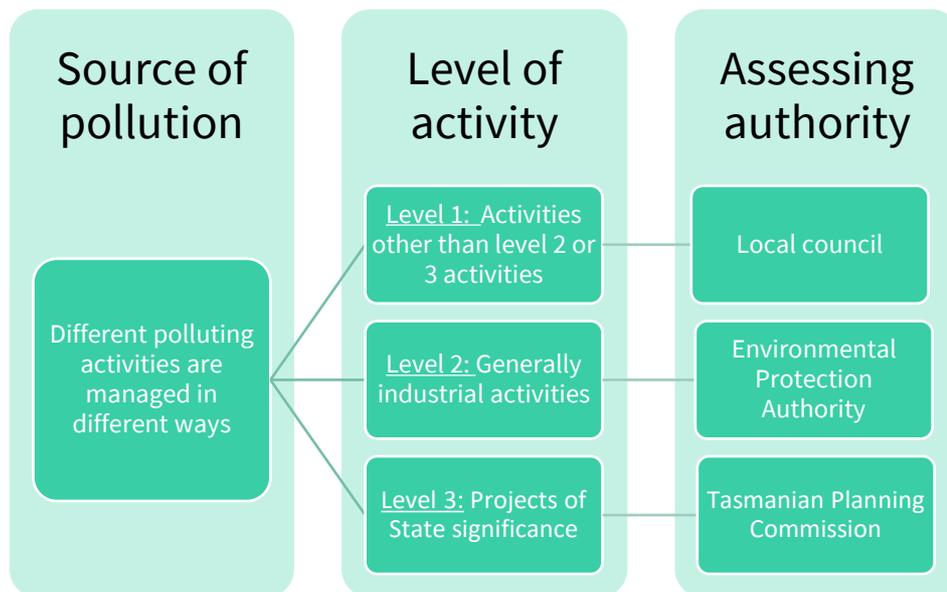
Under the Act, someone is polluting if they discharge, emit, deposit or disturb pollutants, or if they cause or fail to prevent the discharge, emission, deposit, disturbance or escape of pollutants.

It is an offence under the Act to deposit a pollutant where it could reasonably be expected to cause serious or material environmental harm. It is also an offence to cause serious or material environmental harm or environmental nuisance. It will generally be a defence to these offences where a person is complying with the conditions of a permit, licence or

other approval to pollute, or is polluting within limits allowed for under a State Policy or environment protection policy.

## How are polluting activities regulated?

The Act establishes a tiered system of assessments and approvals for polluting activities. This scheme can be represented on a simplified level in the following diagram.



As the above diagram indicates, how a polluting activity is regulated and approved depends on the type of activity it is. The Act provides for three levels of activity:

- **Level 1** activities are those that may cause environmental harm and require a planning permit but are not Level 2 or Level 3 activities. These activities are generally assessed and permitted by local councils under the *Land Use Planning and Approvals Act 1993* (Tas) (**LUPA Act**). Conditions on these permits are monitored and enforced by local councils.
- **Level 2** activities are those detailed in [Schedule 2](#) of the Act. These generally relate to industrial activities. When a proponent seeks a permit for such an activity, the council will refer the application to the Board of the Environmental Protection Authority (**EPA**) for assessment. Permits granted for level 2 activities will generally be issued by the relevant local council under the LUPA Act with the EPA conditions attached. The EPA is usually responsible for enforcing the conditions of its part of the permit.
- **Level 3** activities are those related to a Project of State Significance, as declared under the [State Policies and Projects Act 1993](#) (Tas). These activities tend to be of a large scale and high complexity and are assessed by the Tasmanian Planning Commission. Various agencies may be assigned to enforce the conditions of any associated licences permits or approvals.

Visit: For more information on the Project of State Significance assessment process, visit the Tasmanian Planning Commission website at — [Project of State Significance Assessment](#)

Visit: For more information about the EPA assessment process, visit the [EPA website](#)

## How do I report pollution?

If you are concerned about pollution coming from an activity, the Act provides for a range of offences and enforcement options to be taken wither by the relevant authority or in some cases, a person affected by pollution.

If you become aware of a pollution incident, you should report it as soon as possible to the relevant authority. Further information about which authority is the relevant authority is provided below.

In making your report, you should provide as much information as possible about the polluting activity, including:

Date, time and location of incident	The source of the pollution (if known)	The type of pollutant (if known)
Description of the pollution (e.g., size, smell, sound)	Weather conditions at time of incident	Health, environmental or property impacts
Your name and contact details	Names and contact details of witnesses	Supporting evidence (e.g., photos etc.)

Ask the relevant authority to investigate the incident and inform you of the outcome of the investigation.

**NB:** Write down the name of the person that you provide your pollution report to as this will help if you want to follow up with the outcome of any investigations. While it is not compulsory to provide your name and contact details with a pollution report, providing these details will allow the authority to ask any follow-up questions and let you know the outcome of their investigation.

## Who should I report pollution to?

### Contact the person or company responsible

In general, it is a good idea to contact the person or the company who you think is responsible for the polluting activity to let them know about what you have observed or experienced. The person or the company may not be aware of the pollution or how it affects you, and so this may provide for a quick resolution of the issue.

Any person (or company) who is responsible for an activity must report any pollution incidents that may give rise to environmental nuisance or harm to either the local council (for level 1 activities) or the EPA (for level 2 and 3 activities) (see [section 32](#) of the Act). All incidents should be reported as soon as possible, and no later than 24 hours after the incident.

### Report the incident to the relevant authority

If you cannot find the person or company responsible for the pollution, the pollution is serious, and/or the pollution is occurring over a wide scale or long time, you should report the polluting activity to the relevant authority. The two main authorities that respond to pollution incidents are local councils and the EPA, but a list of other relevant authorities for specific types of pollution is provided at the [end of this factsheet](#).

#### Local council

For most types of nuisance-level pollution, your local council will be the most relevant authority to hear your concerns. For example, the following issues should be taken up with the relevant council:

- excessive noise from construction sites;
- excessive noise from chainsaws or lawnmowers;
- smoke from domestic fires or backyard incinerators;
- stormwater contamination;
- excessive noise or smell from licenced premises.

Your local council website should have information about how to make a complaint about pollution. If you cannot locate this information, give the council a call and ask for more information about making a complaint.

#### EPA

The EPA is the relevant authority to deal with any complaints regarding pollution related to Level 2 activities. Examples of Level 2 polluting activities include:

- pollution from heavy industry factories and processing plants;
- odours from rendering works, sewage treatment plants, waste disposal sites and transfer stations;

- discharge from animal processing plants and fish farms;
- noise and dust from quarries.

You can report pollution to the EPA by calling the Pollution Incidents and Complaints Hotline on 1800 005 171 or emailing [incidentresponse@epa.tas.gov.au](mailto:incidentresponse@epa.tas.gov.au).

Visit: The [EPA website](#) has further information on how to make a pollution report

Visit: The [Department of Premier and Cabinet website](#) has a directory of local councils in lutruwita/Tasmania

### What happens after I report pollution?

After receiving your pollution report, the relevant authority will decide whether to investigate. An investigation might involve inspecting the location of the pollution incident, interviewing witnesses and suspects, taking samples of the pollution, seeking experts to comment on the impacts of the pollution etc.

Local councils have a statutory duty to use their best endeavours to prevent or control acts or omissions which cause or can cause pollution. However, councils have limited time and resources. For complaints about environmental nuisances, such as construction noise, noise from heat pumps or wood smoke, you may be asked to make a journal recording when the pollution is occurring and how it impacts you. The relevant council officer may then take this journal into account in determining whether there is sufficient evidence to take enforcement action.

If the relevant authority is satisfied that pollution has occurred or is occurring and that the pollution is unlawful (i.e., without a valid permit, licence or approval and/or exceeds limits set under State Policies or environment protection policies), they may take a range of enforcement actions, including:

- issuing warnings, directions or notices requiring the polluter to take a particular action
- issuing infringement notices (fines)
- issuing environmental protection notices requiring the person to stop or change the way they are polluting;
- bring civil proceedings seeking orders from Tasmanian Civil and Administrative Tribunal (**TASCAT**); and/or
- prosecuting the person responsible for the pollution.

## What happens if I am not satisfied with the response from the relevant agency?

### Civil enforcement orders

If you are not satisfied with the response to your pollution report from the relevant authority, you may be able to apply to the Resource and Planning Stream of TASCAT for civil enforcement orders that require a person, company or government agency to take action, cease an activity, or rehabilitate and/or compensate for harm already done.

#### Time limits

Strict time limits exist for commencing civil enforcement actions. You must apply to the Tribunal **within 3 years** of the unlawful environmental harm or other environmental offence that is the subject of the application.

#### Who can apply

As mentioned above, applications for civil enforcement orders filed in TASCAT may be brought by the EPA or local council. Applications can also be made by anyone who has, in the opinion of TASCAT, a “proper interest” in the subject matter of the proceeding.

N.B. TASCAT has interpreted the phrase “proper interest in the subject matter” of a proceeding, narrowly. In determining whether a person has the required level of interest to start civil enforcement proceedings, TASCAT will consider the nature and subject of the application and how the interests of the person seeking the orders are affected by the conduct of the subject of the proceedings.

#### How to apply

An application for civil enforcement orders must be made using the prescribed form and must be filed with TASCAT together with the application fee, currently \$353.60. Applications are made “ex parte” which means that, at least initially, you do not have to notify the alleged offender you have commenced the proceedings.

The application must set out who you are seeking orders against (i.e., the respondent), and the basis for the application, such as by outlining how the respondent has:

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

The application must also set out what orders you are seeking from TASCAT. For example, these orders might require the respondent to:

- stop the act or course of action that constitutes the offence under the Act;
- fix any environmental harm or damage within a fixed period;
- pay your reasonable costs and expenses for investigating the matter, and/or pay your legal expenses; and/or
- pay compensation for any injury, loss or damage you have suffered as a result of the offence, including costs and expenses incurred by you to mitigate any injury, loss or damage.

Your application should include a statutory declaration or affidavit providing details about what has happened, what actions you have taken (such as contacting the EPA or reporting the incident to the local 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 land title deed or printout from the Land Information System Tasmania (**LIST**).

Visit: The [Resource and Planning Stream \(TASCAT\)](#) website provides information sheets, practice directions, and prescribed forms

### What happens next

If, after reading your application and any supporting documents, TASCAT is satisfied that there are sufficient grounds to proceed, it will issue a summons requiring the respondent to attend a directions hearing. You will also be required to attend the 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 respondent will be asked if they wish to “show cause” why TASCAT should not make the orders that you have requested. If they do not attend, or choose not to show cause, TASCAT can rely on the evidence you provided and make any orders it thinks are appropriate.

If the respondent does want to show cause why the orders should not be made, 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.

If TASCAT is satisfied, on the balance of probabilities, that there has been a breach of the law, it can make the orders you are seeking or any other orders it sees fit. The

respondent must comply with these orders, and if they do not, you will have to seek the enforcement of the orders through the Magistrates Court.

#### Issues to consider before applying for civil enforcement orders

- Unlike in planning appeals before TASCAT, the presumption in civil enforcement proceedings is that the unsuccessful party will pay the costs of the other parties. In addition to the alleged offender, the EPA and/or the local council may also be joined as a party. This means that, **if your application for enforcement orders is unsuccessful, you will generally be required to pay the legal costs of the parties**. These costs can be substantial. For this reason, it is always worthwhile exhausting all other options before making an application to TASCAT.
- To have the best chance of success, you may need to engage experts (such as planners, environmental scientists, ecologists, or engineers) to give evidence, and/or a lawyer to represent you in the proceedings. This can be costly. While there is a possibility you may recover these costs if you are successful, there is no guarantee you will.

### **Make a complaint to the Ombudsman of Tasmania**

If you are not satisfied with the response to your pollution report from the relevant authority, you may be able to make a complaint to the Ombudsman of Tasmania about the matter.

While the Ombudsman's office is unlikely to investigate your complaint directly (i.e., verify the pollution incident etc.), it can look at the conduct of the relevant authority in responding to your pollution report to determine whether the authority has properly discharged its statutory functions and powers and has treated you fairly and reasonably. The Ombudsman's office is not obliged to investigate your complaint, but where it does, you may be invited to take part in conciliation with the relevant authority. This is a voluntary process, and you cannot be forced to take part.

Where conciliation fails or is considered to be inappropriate by the Ombudsman, and following the investigation, the Ombudsman is satisfied that the relevant authority has not properly discharged its statutory functions and powers or treated you fairly or reasonably, the Ombudsman may approach the relevant authority to try to resolve the identified problems informally.

The Ombudsman may otherwise prepare a formal report on the matter and provide a copy to the relevant authority, Minister and Premier. If the Ombudsman is not satisfied that the recommendations in their report have been adequately addressed by the relevant authority, the Ombudsman can table a report about the matter in Parliament.

Visit: The [Ombudsman Tasmania website](#) for further information about making a complaint and to access the complaint form

## Other relevant authorities for specific types of pollution incidents

In addition to local councils and the EPA, there are several different contact points for reporting specific types of pollution incidents. These include:

- **Agricultural Spray Drift** - call Agvet Chemical Program on (03) 6777 2133
- **Forestry Burn-Offs** - for State Forests, call the Forest Practice Authority on (03) 6233 7966. For all other fires contact the Tasmanian Fire Service on 1800 000 699 or view Tasmania Fire Service's [What's Burning Now](#) page for information on planned burns (non-bushfire related burns) carried out by the TFS, Parks and Wildlife and Sustainable Timbers Tasmania
- **Litter** – report litter to the EPA using the [online forms](#) or by calling the Litter Hotline on 1300 135 513
- **Noisy Trains** - call TasRail 1300 827 724
- **Aircraft Noise** - call Air Services Australia on 1300 301 120 or complete this [online form](#)
- **Noisy Car/Building Alarms** - contact Tasmania Police on Police Assist Line (non-emergencies) 131 444

Visit: The [EPA website](#) for further a comprehensive list of who to contact to report certain types of pollution

Read: EDO's [Factsheet Reporting Chemical Spray Drift in lutruwita/Tasmania](#)

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## Evaluate this resource

EDO welcomes feedback on this factsheet. Your feedback will help us ensure we are providing useful information.

If you have any concerns or suggestions regarding this factsheet, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:

