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Environmental Liability in Australia

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STATE REFERENCE GUIDE



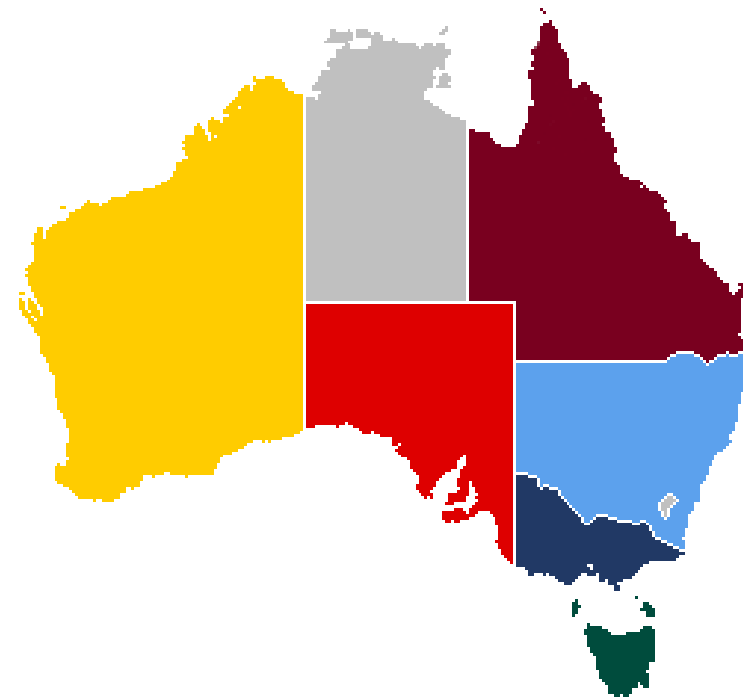
Environmental Liability in Australia

STATE REFERENCE GUIDE

This guide provides a summary of pollution offences, reporting and compliance obligations, regulatory actions, and penalties in the following jurisdictions in Australia.

CONTENTS

New South Wales (NSW)	3 – 6
Victoria (VIC)	7 – 12
Queensland (QLD)	13 – 18
Western Australia (WA)	19 – 23
Australian Capital Territory (ACT)	24 – 28
South Australia (SA)	29 – 34
Northern Territory (NT)	35 – 41
Tasmania (TAS)	42 – 47
Contacts	48



A. NOTIFYING THE REGULATORS

Under *the Protection of the Environment Operations Act 1997* (NSW) (**POEO Act**) and the *Contaminated Land Management Act 1997* (NSW) (**CLM Act**), you must notify the appropriate regulator if a pollution or contamination incident occurs.

What must be notified?

Pollution incidents causing or threatening material harm to the environment must be notified (POEO Act, s 148). A 'pollution incident' includes a leak, spill or escape of a substance, or circumstances in which this is likely to occur. Material harm includes on-site harm, as well as harm to the environment beyond the premises where the pollution incident occurred.

Contamination incidents occur when the criteria identified in the CLM Act, s 60(3) are met. These include the potential for the substance to spread, the level of the contaminant, and other thresholds.

The information that should be provided to the NSW Environmental Protection Authority (**NSW EPA**) include:

- the time, date, nature, duration and location of the incident
- the location of the place where pollution is occurring or is likely to occur
- the nature, the estimated quantity or volume and the concentration of any pollutants involved (if known)
- the circumstances in which the incident occurred (including the cause of the incident (if known)), and
- the action taken or proposed to be taken.

<p>Who must notify?</p>	<p>Under the POEO Act, the following people have a duty to notify a pollution incident occurring in the course of an activity that causes or threatens material harm to the environment:</p> <ul style="list-style-type: none"> • the person carrying on the activity • an employee or agent carrying on the activity • an employer carrying on the activity, and • the occupier of the premises where the incident occurs. <p>Notification must be given immediately after the person becomes aware of the incident. You do not have to report if you know that all relevant authorities have already been notified by the licensee: section 151. Only persons engaged in the activity resulting in the pollution incident and occupiers of the land where the incident occurs have a duty to report the incident.</p> <p>Under the CLM Act, a person whose activities have “contaminated the land” or an owner of land that has been “contaminated whether this occurred before or during that owner’s ownership” must notify the NSW EPA.</p>
<p>Who and when do you notify?</p>	<p>Pollution incidents posing material harm to the environment and contamination should be notified to each 'relevant authority' (POEO Act, s 148(8)) as soon as practicable after the person becomes aware of the pollution or contamination. 'Relevant authority' means:</p> <ul style="list-style-type: none"> • the NSW EPA – 131 555 • the Ministry of Health • SafeWork NSW • the local council, or • Fire and Rescue NSW. <p>You should also notify your broker and insurer about the pollution or contamination incident.</p>
<p>Are there penalties for not notifying?</p>	<p>Section 152 of the POEO Act makes it an offence to fail to notify relevant authorities of a pollution incident.</p> <p>The maximum penalty for a corporation is \$2,000,000 and in the case of a continuing offence, a further penalty of \$240,000 for each day the offence continues. The maximum penalty for an individual is \$500,000 and in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues.</p>

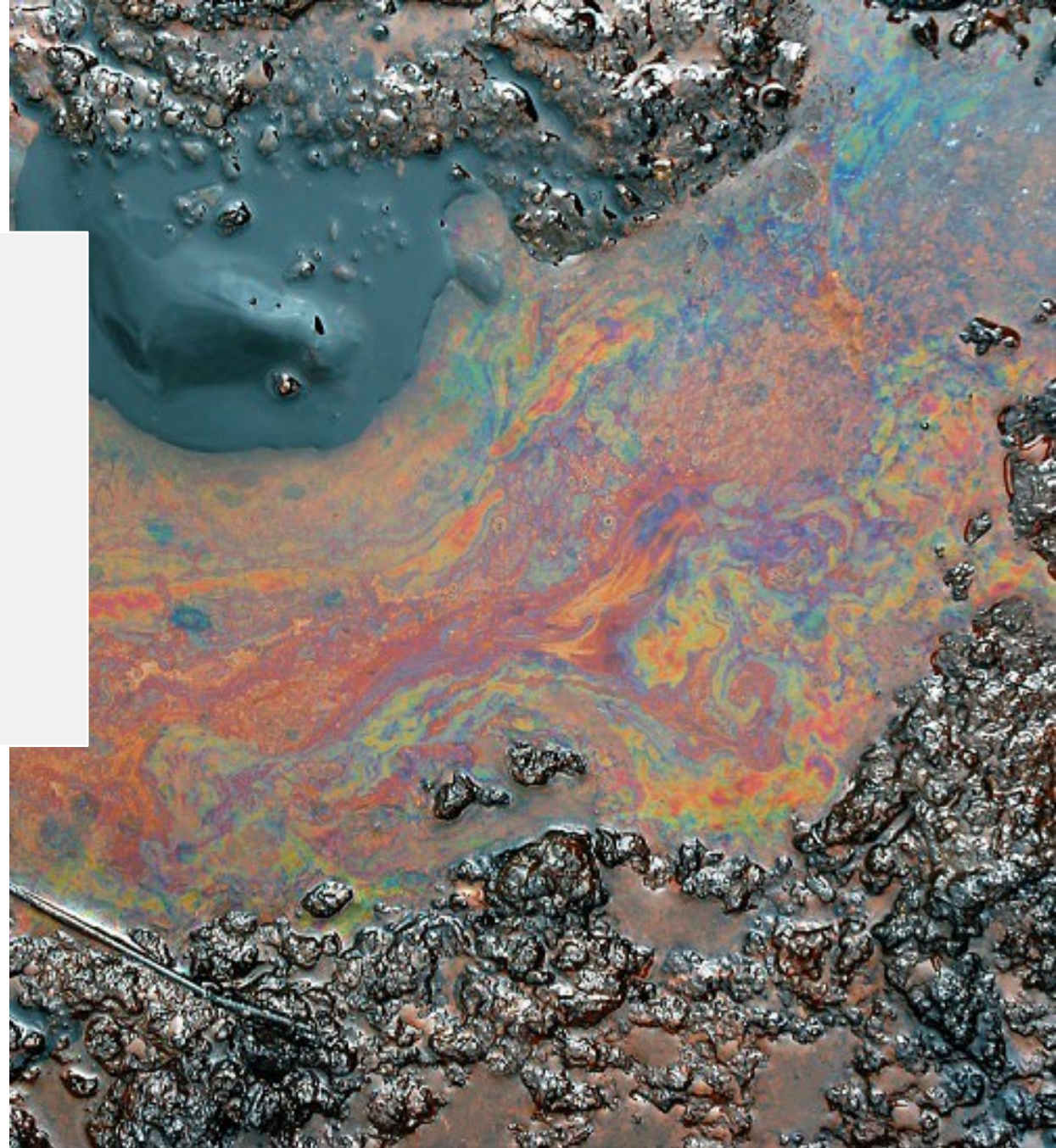
B. REGULATORY ACTIONS & PENALTIES

Under the POEO Act, the NSW EPA has several regulatory options in responding to a breach of environmental legislation including issuing an official warning letter, issuing a penalty notice, negotiating an enforceable undertaking and prosecution.

	ISSUING A PENALTY / CLEAN-UP NOTICE	ENFORCEABLE UNDERTAKINGS	PROSECUTION
What it is	<p>The NSW EPA can issue a clean-up notice when it “reasonably suspects” that a pollution incident has occurred, is occurring or is likely to occur.</p> <p>The NSW EPA triggers assessment and remediation of significantly contaminated land by issuing written notices to those responsible for cleaning up the contamination. These notices are publicly available.</p>	<p>If you have breached environmental legislation you can apply to the NSW EPA proposing an enforceable undertaking (POEO Act, s253A).</p>	<p>Nineteen offences involving serious breaches including:</p> <ul style="list-style-type: none"> • Tier 1 offences for the ‘disposal of waste’, ‘leaks, spillages and other escapes’ and the ‘emission of ozone depleting substances’, and • Tier 2 offences comprising breaches of licence conditions, ‘water pollution’, ‘air pollution’, ‘land pollution’, the ‘transport of waste’, the ‘use of land as a waste facility’ and failure to notify pollution incidents. <p>Both companies and officers can be prosecuted.</p> <p>Tier 1 offences maximum penalties are \$500,000 (negligence) or \$1 million (wilful conduct). The maximum jail term for Tier 1 offences committed negligently is four years. The maximum jail term for Tier 1 offences committed wilfully is seven years. Most tier 2 offences maximum penalties are \$250,000.</p>
When	<p>A clean-up notice may be given in writing or orally. If given orally it must be confirmed in writing within 72 hours.</p>	<p>An enforceable undertaking should be submitted within one month. The NSW EPA will respond within 28 days.</p> <p>Negotiations should be concluded within six months.</p>	
Outcomes	<p>Failure to comply with a clean-up notice is an offence. The maximum penalty for corporations is \$1 million and for continuing offences \$120,000 per day, or for individuals \$250,000 and \$60,000 per day.</p>	<p>An enforceable undertaking must:</p> <ul style="list-style-type: none"> • drive improvements • set out rectification actions and any environment /community consequences, and • contain monitoring and reporting commitments. 	<p>If the NSW EPA thinks you have not complied with a term of your enforceable undertaking, it may apply to the Land and Environment Court for appropriate orders. While the breach of an enforceable undertaking is not an offence under the Act, a breach of the court order may constitute contempt of court.</p>

C. RELEVANT LEGISLATION IN NSW

1. *The Protection of the Environment Operations Act 1997 (NSW)*
2. *Contaminated Land Management Act (NSW)*
3. *Biodiversity Conservation Act 2016 (NSW)*
4. *Dangerous Goods (Road and Rail Transport) Act 2008 (NSW)*
5. *Environmentally Hazardous Chemicals Act 1985 (NSW)*
6. *Ozone Protection Act 1989 (NSW)*
7. *Pesticides Act 1999 (NSW)*
8. *Radiation Control Act 1990 (NSW)*



A. NOTIFYING THE REGULATORS

The *Environment Protection Act 2017* (Vic) (**VIC EP Act**) came into effect on **1 July 2021** and includes significant changes to the existing land contamination regime governed by the previous 1970 EP Act.

The VIC EP Act imposes a general environmental duty (**GED**) requiring 'people engaging in activities that may give rise to risks of harm to human health or the environment from pollution or waste to understand those risks and take reasonably practicable steps to minimise them.'

Breaches of the GED could attract civil and/or criminal penalties of up to \$1.6 million, with intentional or reckless breaches attracting penalties of up to five years' imprisonment and \$3.2 million in fines.

What must be notified?

A pollution incident causing or threatening to cause 'material harm' to human health or the environment must be notified (VIC EP Act, s 30). A 'pollution incident' includes a leak, spill or other unintended or unauthorised deposit or escape of substance which results in pollution occurring or having occurred but does not involve the emission of noise (VIC EP Act, ss 29).

Contamination incidents occur when the criteria identified in the VIC EP Act, s 35 are met. These include the waste, chemical substance or prescribed substance is present on or under the surface of the land in a concentration above the background level and creates a risk of harm to human health or the environment.

The information that must be provided to the VIC EPA include:

- the time, date and location of the notifiable incident
- the nature of the notifiable incident
- the circumstances in which the incident occurred (including the cause (if known)), and
- any action taken or proposed to be taken to deal with the notifiable incident.

<p>Who must notify?</p>	<p>The person who is engaging or has engaged in an activity resulting in a notifiable incident <u>must</u> notify the VIC EPA ‘as soon as practicable’ <u>after</u> the person becomes aware or reasonably should have been aware of the occurrence of a notifiable incident (VIC EP Act, s 32).</p> <p>A person “<i>in management or control of contaminated land</i>” must notify the EP Act if the land has been contaminated by a notifiable contamination as soon as practicable after the person becomes aware of, or reasonably should have become aware of, the notifiable contamination (VIC EP Act, s 40). This person is generally the occupier of the land.</p> <p>Whether a person in management or control of land becomes aware of, or reasonably should have become aware of, notifiable contamination is determined having regard to:</p> <ul style="list-style-type: none"> • the person’s skills, knowledge and experience • whether the person could practicably seek advice regarding the contamination, and • any other circumstances of the contamination.
<p>Who and when do you notify?</p>	<p>Pollution incidents posing material harm to the health and environment and notifiable contamination should be notified to the relevant ‘<i>Authority</i>’ as soon as practicable after they become aware of the pollution incident or notifiable contamination. ‘<i>Authority</i>’ means the VIC EPA.</p> <p>You should also ensure your broker and insurer are notified about the pollution or contamination incident.</p>
<p>Are there penalties for not notifying?</p>	<p>Failure to notify of a notifiable incident is an offence and a natural person incurs 240 penalty units (\$39,652.80) and a body corporate incurring 1200 penalty units (\$198,264).</p> <p>Failure to notify of a notifiable contamination is an offence and a natural person incurs 120 penalty units (\$19,826.40) and a body corporate incurring 600 penalty units (\$99,132).</p> <p><u>Note</u>: 1 penalty unit = \$165.22 (as at 1 July 2020)</p>

B. REGULATORY ACTIONS & PENALTIES

Under the EP Act, the VIC EPA has several regulatory options in responding to a breach of environmental legislation including issuing a warning, infringement notice, enforceable undertakings, civil proceeding and court prosecutions or court orders.

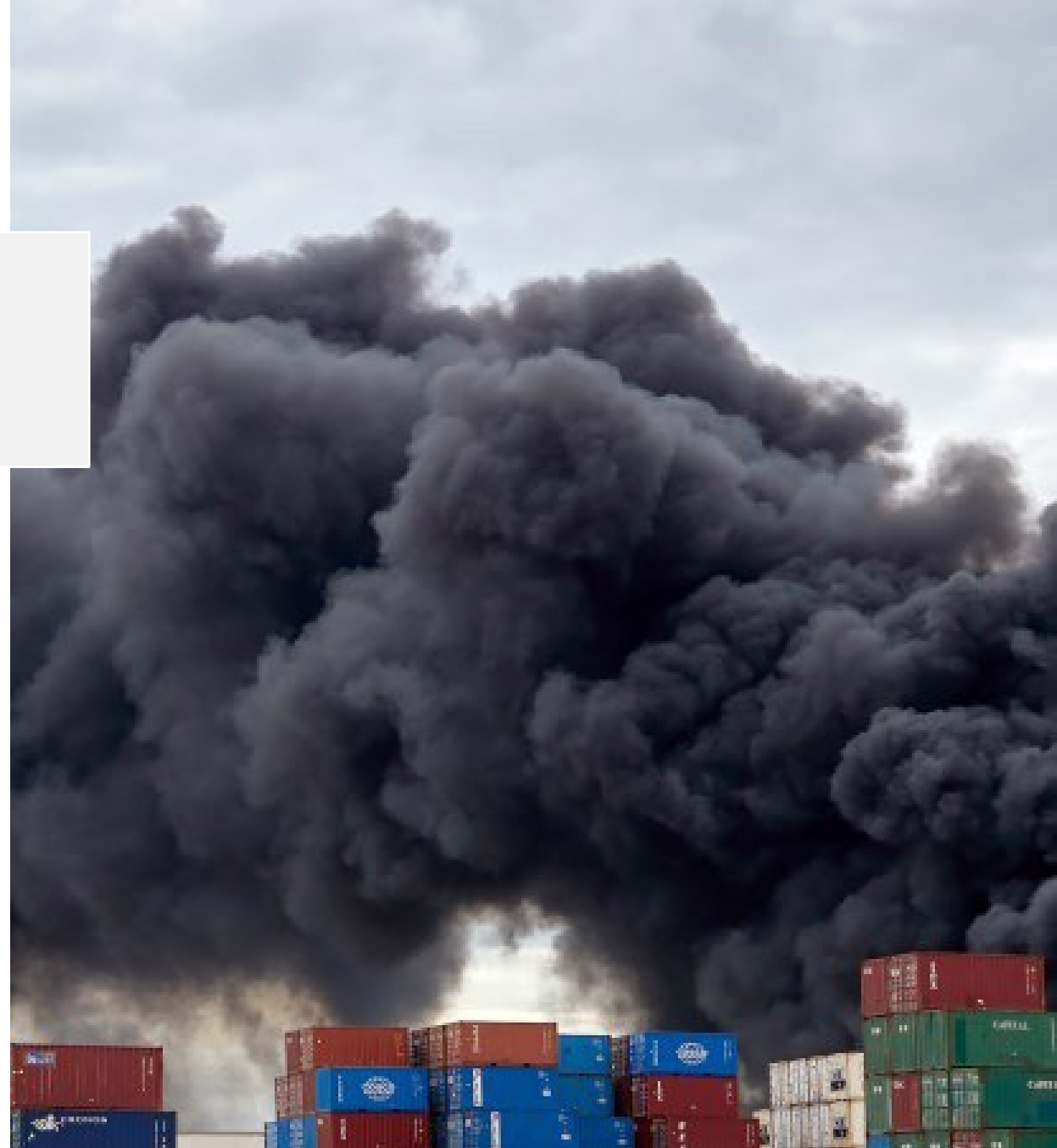
	ISSUING A REMEDIAL NOTICE	ENFORCEABLE UNDERTAKINGS	PROSECUTION
What it is	<p>The VIC EPA may issue a remedial notice or direction to bring the duty holder into compliance or set out the steps to deal with actual harm, waste or contamination.</p>	<p>The VIC EPA has broad discretion to accept an enforceable undertaking from a person for any matter within VIC EPA's functions or powers (VIC EP Act, s 300).</p> <p>An EU can be a constructive alternative to prosecution, or a civil penalty proceeding and may make a positive contribution to improving management of certain risks or help deliver restorative justice outcomes.</p>	<p>In addition to, or as an alternative to initiating criminal proceedings, the VIC EPA may commence civil proceedings in the Magistrates', County or Supreme Courts. The VIC EPA can seek the same penalty for a civil pecuniary penalty offence with civil action as well as criminal prosecution.</p> <p>The purpose of enforcement action is to:</p> <ul style="list-style-type: none"> • stop the unlawful activity and remedy any harm caused by the non-compliance • ensure future compliance is achieved and sustainable • raise awareness of the law and consequences of non-compliance, and • punish offender and remove any commercial advantage from the non-compliance.

	ISSUING A REMEDIAL NOTICE	ENFORCEABLE UNDERTAKINGS	PROSECUTION
When	<p>A remedial notice <u>may</u> be issued where an authorised officer forms the belief (based on reasonable grounds) that the duty holder is not complying with an aspect of the EP Act or there is the presence of a waste or contamination issue that needs treatment. Notices are a formal record that VIC EPA has required action by a duty holder and the range of notices include:</p> <ul style="list-style-type: none"> • improvement notice – take action to remedy non-compliance • prohibition notice – stop an activity that involves an immediate risk of harm • notice to investigate – investigate potential contamination or harm • environmental action notice – take action to clean-up contamination or industrial waste, and • waste abatement notice – remove, dispose or restore a place affected by litter or waste. 	<p>Under an EU, an alleged offender voluntarily enters into a binding agreement with VIC EPA to undertake actions in settlement of the alleged contraventions.</p> <p>In general, an EU:</p> <ul style="list-style-type: none"> • must help deliver systemic change within the duty holder’s activities to prevent future breaches of the law • must contribute to an improved level of understanding of the risks and means of controlling those risks within the duty holder’s sector • must address any harm caused to the community, and • requires the duty holder to take responsibility for the contravention and its impacts. 	

	ISSUING A REMEDIAL NOTICE	ENFORCEABLE UNDERTAKINGS	PROSECUTION
Outcomes	<p>Once a notice is served and takes effect, all requirements are legally binding and penalties may apply for non-compliance.</p> <p>A notice recipient may apply in writing to the VIC EPA to seek an <u>internal review</u> of a decision to issue or amend a notice.</p> <p>There is also a further option to seek <u>external review</u> in the VCAT. VCAT review provide duty holder and other affected parties with a fully independent avenue for reviewing EPA decisions and hold the VIC EPA accountable for regulatory decisions affecting duty holders and other affected parties.</p>	<p>The VIC EPA may apply to the Court for an enforcement order if the VIC EPA considers that a person has breached an enforceable undertaking.</p> <p>The VIC EPA <u>must not</u> take any action unless it gives the person written notice advising that it intends to take action and invites the person to respond within 10 days after the notice is issued.</p> <p>If an EU is accepted by the VIC EPA in relation to a contravention or alleged contravention of the 2018 VIC EPA Act, then the VIC EPA <u>must not</u> commence criminal proceedings for an offence that the undertaking is given in relation to (VIC EP Act, s 303).</p> <p>If an EU is withdrawn before the VIC EPA is satisfied the EU has been complied with, the VIC EPA <u>may</u> commence proceedings for any offence that the undertaking is given in relation to (VIC EP Act, s 304).</p> <p>If an EU is accepted by the VIC EPA and it is satisfied the EU has been complied with, the VIC EPA <u>must not</u> commence criminal proceedings for an offence that the undertaking is given in relation to (VIC EPA Act, s 305).</p>	<p>In deciding whether or not to prosecute, VIC EPA adopts the Guidelines of the Director of Public Prosecutions, which are based on the Australian Prosecutorial Guidelines.</p> <p>They guide VIC EPA in the exercise of its prosecutorial discretion and all EPA's prosecution-related activities are conducted in accordance with these Prosecution Guidelines.</p> <p>Further, in determining the appropriate enforcement response, VIC EPA take an escalating approach and consider:</p> <ul style="list-style-type: none"> • the nature and seriousness of non-compliance • the risk of harm that has arisen from the non-compliance • the characteristics of the person engaging in the activity, and • other relevant criteria and factors (e.g. public interest).

C. RELEVANT LEGISLATION IN VIC

1. *Environment Protection Act 2017 (VIC)*
2. *Pollution of Waters by Oil and Noxious Substances Act 1986 (VIC)*
3. *Environment Protection Regulations 2021 (VIC)*



A. NOTIFYING THE REGULATORS

The *Environmental Protection Act 1994* (**QLD EP Act**) lists obligations and duties to prevent environmental harm, nuisances and contamination. It also sets out enforcement tools that can be used when offences or acts of non-compliance are identified.

The QLD EP Act lists obligations and duties to prevent environmental harm, nuisances and contamination. It also sets out enforcement tools that can be used when offences or acts of non-compliance are identified.

What must be notified?

Pollution incidents and activities that cause or threaten to cause serious environmental harm or material environmental harm **must** be reported quickly to the Department of Environment and Science (QLD EP Act, ss 320 – 320G). Environmental harm relates to ‘any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.’ This may be caused by an activity ‘whether the harm is a direct or indirect result of the activity’ or ‘whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors’ (QLD EP Act, s 14).

An owner or occupier of contaminated land and an auditor performing an auditor’s function under section 568(b) of the QLD EP Act are required to notify when they are aware of the ‘happening of an event involving a hazardous contaminant on the land that is causing, or is reasonably likely to cause, serious or material environmental harm’. A hazardous contaminant means ‘a contaminant, other than an item of explosive ordnance, that, if improperly treated, stored, disposed of or otherwise managed, is likely to cause serious or material environmental harm because of—

- (a) its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, explosiveness, radioactivity or flammability, or
- (b) its physical, chemical or infectious characteristics.’ (QLD EP Act, Schedule 4).

A contaminated land includes any ‘land contaminated by a hazardous contaminant’ (QLD EP Act, Schedule 4).

The standard form (available [here](#)) may be used for providing written notice to the department and to owners or occupiers.

<p>Who must notify?</p>	<p>Under the QLD EP Act, the following people have a duty to notify a pollution incident occurring in the course of an activity that causes or threatens to cause serious environmental harm or material environmental harm:</p> <ul style="list-style-type: none"> • particular employees • employers • any other persons • an owner or occupier of contaminated land • an auditor who has been commissioned to perform an auditor’s function, in accordance with section 568(b) of the QLD EP Act, ie with respect to the certification of a Contaminated Land Investigation Document <ul style="list-style-type: none"> – from the time that they have been engaged to perform an auditor’s function, or – until either they provide an auditor’s certification, or their engagement ceases and they have advised the administering authority accordingly, and • a local government that has relevant statutory responsibilities with respect to land within a local government area.
<p>Who and when do you notify?</p>	<p>The relevant administering authority to notify is usually the Department of Environment and Science <u>unless</u> the administration and enforcement of which has been transferred to a local government under s 514 of the QLD EP Act (QLD EP Act, Schedule 4).</p> <p>You can provide a joint notice on behalf of different people. The notice should clearly state on whose behalf the notice is given.</p> <p>If a person becomes aware of an event which has caused, or threatens, serious or material environmental harm, the person should immediately call the pollution hotline on 1300 130 372 and report the event.</p> <p>Notification of an event must be made within 24 hours of any individual becoming aware of the event occurring. In some situations, the duty to notify extends beyond notifying the department, to notifying owners and occupiers of the affected land as well.</p> <p>Written notification to the department must be given by email (pollutionhotline@des.qld.gov.au) or facsimile (07 3330 5875). Include “Duty to notify of environmental harm” in the subject line and include details of the event, its nature, the circumstances in which it happened or attach a completed Notice. Written notification could also be provided by registered post by mailing the completed form to Permit and Licence Management, Department of Environment and Science, GPO Box 2454 Brisbane QLD 4001.</p> <p>You should also notify your broker and insurer about the pollution or contamination incident.</p>

Are there penalties for not notifying?

Sections 320B – 320DA of the QLD EP Act includes penalties for failing to notify.

An employee failing to notify their employer, or the department may incur a maximum of **100 penalty units. (\$13,345)**

An employer or other person failing to notify the department of a primary activity may incur a maximum of **500 penalty units. (\$66,725)**

An employer or other person failing to notify the department of a resource activity may incur a maximum of **100 penalty units. (\$13,345)**

An employer or other person failing to notify particular owners or occupiers of the affected land of a primary activity may incur a maximum of **500 penalty units. (\$66,725)**

An employer or other person failing to notify particular owners or occupiers of the affected land or a resource activity may incur a maximum of **100 penalty units. (\$13,345)**

An owner, occupier or auditor failing to notify the department of an event or change in the condition of the land may incur a maximum of **500 penalty units. (\$66,725)**

Note: 1 penalty unit = **\$143.75**

B. REGULATORY ACTIONS & PENALTIES

Under the QLD EP Act, the administering authority has several regulatory options in responding to a breach of environmental legislation including issuing an environmental protection order, issuing a penalty notice, negotiating an enforceable undertaking and prosecution.

	ENVIRONMENTAL PROTECTION ORDER	ISSUING A PENALTY/CLEAN-UP NOTICE	ENFORCEABLE UNDERTAKINGS	PROSECUTION
What it is	The Department of Environment and Heritage Protection (DEHP) can issue an EPO, which is a written statutory tool to a person or company to undertake specific actions within specific timeframes to remedy a risk or prevent further harm.	A clean-up notice is a written notice issued by the Department of Environment and Science (the department) to a person who is reasonably believed to be a prescribed person, to ensure that a contamination incident (that has caused or is likely to cause serious or material environmental harm) is cleaned up.	An EU is a voluntary binding agreement between the DES and a person who is alleged to have contravened the QLD EP Act. It is a tool capable of being entered into as an <u>alternative</u> to prosecution. An EU becomes binding once accepted and specifies the obligations and terms a person agrees to undertake to secure compliance with the QLD EP Act and enhance the protection of the environment.	Prosecutions may be an appropriate enforcement action in response to major or serious contraventions of the legislation. The decision to prosecute is generally made by the Deputy Director-General of the Environmental Services and Regulation division on behalf of the DES. The decision is based on: <ul style="list-style-type: none"> • whether the available evidence provides reasonable prospects of successfully obtaining a conviction, and • if so, whether it is in the public interest to exercise the discretion to commence a prosecution.
When	EPOs are issued on a case-by-case basis . The DEHP examines: <ul style="list-style-type: none"> • the type of environmental harm that is being or is likely to be caused • the extent to which an individual, corporation or environmental authority (EA) holder is not complying with their general environmental duty • if any previous compliance action has been taken by the DEHP in relation to the matter. 	A clean-up notice is used because the DEHP has formed a reasonable belief that a contamination incident has occurred or is occurring. The requirements of a clean-up notice are prepared on a case-by-case basis and will include a timeframe for the completion of each requirement. Requirements to take offsite actions may also be included, if the contamination incident spreads from the site of the incident into nearby watercourses or onto neighbouring land.	In relation to an alleged contravention, the DES <u>may accept</u> an EU at any time before proceedings end (QLD EP Act, s 507(6)). The DES <u>may refuse</u> to accept an EU if any delay in proposing an EU is considered to be unreasonable. The DES <u>must</u> only accept an EU <u>if</u> the DES reasonably believes that the EU will: <ul style="list-style-type: none"> • secure compliance with the QLD EP Act, and • enhance the protection of the environment. The QLD EP Act <u>does not</u> provide a timeframe for the administering authority to decide whether to accept or reject an EU.	

	ENVIRONMENTAL PROTECTION ORDER	ISSUING A PENALTY/CLEAN-UP NOTICE	ENFORCEABLE UNDERTAKINGS	PROSECUTION
Outcomes	<p>Following receipt of an EPO, you are obligated to complete the requirements and conditions stipulated in the EPO within the imposed timeframes.</p> <p>Failure to comply with an EPO is an offence.</p> <p>The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units.</p> <p>The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units.</p>	<p>Following receipt of a clean-up notice, you are obligated to complete the requirements stipulated on the notice, within the required timeframes.</p> <p>Failure to comply with a clean-up notice is an offence <u>unless</u> you have an excuse.</p> <p>Several compliance options and penalties are available to the department if a person fails to comply with a clean-up notice.</p>	<p>Contravening an EU is an offence (QLD EP Act, s 513).</p> <p>The maximum penalty for an individual who wilfully contravenes an EU is 6250 penalty units or 5 years imprisonment.</p> <p>The maximum penalty for a corporation that wilfully contravenes an EU is 31,250 penalty units.</p>	<p>Most of the legislation administered by the department enables it to apply for civil court orders requiring a person to stop committing an offence, or to remedy or rectify an offence. Applications for court orders are generally appropriate in circumstances where there has been a major or serious contravention of the legislation.</p> <p>These applications are civil proceedings (governed by civil procedures and burden of proof) as opposed to criminal proceedings as is the case with prosecutions.</p> <p>Prosecution is part of the department's strategy for achieving its legislative and policy objectives, however it is usually not the only enforcement action available and will be used after careful consideration. If an alternative to prosecution may be more effective in achieving the objects of the legislation, then that alternative will be considered. Prosecutions may be an appropriate enforcement action in response to major or serious contraventions of the legislation.</p>

C. RELEVANT LEGISLATION IN QLD

1. *Coastal Protection and Management Act 1995 (QLD)*
2. *Environmental Protection Act 1994 (QLD)*
3. *Environmental Offsets Act 2014 (QLD)*
4. *Fisheries Act 1994 (QLD)*
5. *Forestry Act 1959 (QLD)*
6. *Marine Parks Act 2004 (QLD)*
7. *Nature Conservation Act 1992 (QLD)*
8. *Queensland Heritage Act (QLD)*
9. *Planning Act 2016 (QLD)*
10. *Soil Conservation Act 1986 (QLD)*
11. *Recreation Area Management Act 2006 (QLD)*
12. *Waste Reduction and Recycling Act 2011 (QLD)*
13. *Water Act 2000 (Chapter 3) (QLD)*
14. *Wet Tropics World Heritage Protection and Management Act 1993 (QLD)*



A. NOTIFYING THE REGULATORS

Under the *Environmental Protection Act 1986* (WA) (**WA EP Act**) and the *Contaminated Sites Act 2003* (WA) (**CS Act**), you must notify the appropriate regulator if a discharges of waste or contamination incident occurs.

What must be notified?

Any “discharges of wastes” to the environment which causes or are likely to cause pollution, material environmental harm or serious environmental harm, the occupier of the premises must as soon as practicable notify the Chief Executive Officer of the Department. The failure to do so is an offence (WA EP Act, s 72(1)).

Discharges of waste may be a consequence of an emergency, accident or malfunction, or alternatively, may be of a prescribed kind, or occur otherwise than in accordance with a works approval, licence or requirement of an environmental protection notice.

In the event of a discharge of water, the details that must be provided include:

- the time and address of the premises on or from which the discharge occurred and a map showing the location of the discharge
- if the discharge was as a result of the operation of equipment, the name of the person operating the equipment
- the composition of the waste
- the quantity of waste discharged
- whether the discharge caused pollution and if so, the nature and extent of the pollution
- the action taken by the occupier to minimise the effect on the environment of the discharge, and
- whether the waste involved has been removed, dispersed, destroyed, disposed of or otherwise dealt with and if so, the manner in which it was removed, dispersed, destroyed, disposed of or otherwise dealt with.

A person may report to the CEO any site that a person knows or suspects is contaminated (CS Act, s 11).

Contaminated in relation to land, water or a site, means having a substance present in or on that land, water or site at above background concentrations that presents, or has the potential to present, a risk of harm to human health, the environment or any environmental value (CS Act, s 4).

For contaminated sites, a person is required report to the CEO any site that the knows is contaminated to within 21 days after the day on which the person first knew that the site was contaminated, or such later period as the CEO approves in writing before the expiry of that 21 days or suspects is contaminated, as soon as it is reasonably practicable to do so (CS Act, s 11).

<p>Who must notify?</p>	<p>Section 72(1) of the WA EP Act provides that an occupier of the premises (which may include vehicles, vessels and other equipment) on or from which a discharge of waste has taken place, has a duty to notify the CEO of the Department of Water and Environment Regulation of the discharge of waste that has caused or is likely to cause pollution, material environmental harm, or serious environmental harm</p> <p>The following persons have a duty to report a contaminated site:</p> <ul style="list-style-type: none"> a) an owner or occupier of the site b) a person who knows, or suspects, that he or she has caused, or contributed to, the contamination, and c) an auditor engaged to provide a report that is required for the purposes of this Act in respect of the site.
<p>Who and when do you notify?</p>	<p>Any discharge of waste must be reported as soon as practicable to the CEO of Department of Water and Environment Regulation.</p> <p>A person is required to report to the CEO any site that the knows is contaminated to within 21 days after the day on which the person first knew that the site was contaminated, or such later period as the CEO approves in writing before the expiry of that 21 days or suspects is contaminated, as soon as it is reasonably practicable to do so.</p>
<p>Are there penalties for not notifying?</p>	<p>Failure of an occupier to notify the CEO of Department of Water and Environment Regulation of a discharge of waste that has caused or is likely to cause pollution or environmental harm is a Tier 2 offence under Schedule 1, Part 2, Division 3, Item 5 of the WA EP Act.</p> <p>The maximum penalty upon conviction is \$50,000 for an individual or body corporate. A daily penalty of up to \$10,000 also applies.</p> <p>Failure to report a contaminated site may incur a penalty \$250,000, and a daily penalty of \$50,000.</p>

B. REGULATORY ACTIONS & PENALTIES

Under the WA EP Act and the CS Act, the Department of Water and Environment Regulation has several regulatory options in responding to a breach of environmental legislation including issuing an environmental protection notice, issuing a penalty notice / clean up notice, issuing an infringement notice and prosecution.

	ENVIRONMENTAL PROTECTION ORDER	ISSUING A PENALTY/CLEAN-UP NOTICE	INFRINGEMENT NOTICE	PROSECUTION
What it is	<p>An Environmental Protection Notice (EPN) is a statutory notice given where it is suspected that there is, or is likely to be, an emission that has caused, or is likely to cause, pollution or environmental harm.</p> <p>Notices are a formal record that the DER has required action by a duty holder and the range of notices include:</p> <ul style="list-style-type: none"> • caution notice / written warning • statutory notices and directions • environmental field notice • management letter, and • non-compliance notice. 	<p>A clean-up notice may be given in 'respect of a site classified as 'contaminated-remediation required' and 'if the CEO believes, on reasonable grounds, that appropriate action to remediate the site is not being, or has not been, taken'.</p>	<p>An Infringement Notice (IN) is a written allegation that a person has committed an offence which requires the payment of a fine or the election to have the matter heard in court.</p>	<p>Prosecution action commences when a prosecution notice is made under s 23 of the <i>Criminal Procedure Act 2004</i> that alleges an individual, corporation or other has committed an offence against the legislation.</p> <p>Before the department proceeds with prosecution, two essential conditions must be met:</p> <ul style="list-style-type: none"> • there is sufficient evidence to establish a <i>prima facie</i> case, and • it is judged to be in the public interest.

	ENVIRONMENTAL PROTECTION ORDER	ISSUING A PENALTY/CLEAN-UP NOTICE	INFRINGEMENT NOTICE	PROSECUTION
When	<p>The notice may require the persons served (being the owner or occupier or both) to take necessary measures in a specific time period to investigate, prevent and control the emissions from the premises.</p>	<p>A clean up notice may be issued to a ‘person responsible for the remediation for the site’, a ‘person responsible for remediation of the site if the land to which the notice relates was land that comprised all, or part, of a site classified as contaminated—remediation required’ and ‘an owner or occupier of land that comprises all, or part, of the site to which the notice relates’.</p> <p>If a notice is binding on the owner of a site, it will also become binding on a person who becomes an owner of the site during the period that the notice is in force.</p> <p>A notice given to a person, who is not the owner or occupier of a site, may become binding on an owner or occupier who refuses access to the site.</p>	<p>An IN may be issued when:</p> <ul style="list-style-type: none"> the offence is one that may be dealt with by issue of an IN under the legislation there is <i>prima facie</i> evidence of a legislative breach a legislative breach has occurred which is of minor impact and which can be remedied easily a breach is the result or failure to comply with normal operating procedures or requirements which are ordinarily in place and if used would have prevented that breach the facts are apparently sufficiently certain, and it is likely to be an adequate deterrent 	
Outcomes	<p>It is an offence for a person bound by an EPN to not comply with the notice.</p> <p>The person subject to an EPN, or a third party, may appeal a requirement in the EPN; however, pending the determination of the appeal the relevant requirement shall continue to have effect.</p>	<p>A person who receives a clean-up notice may appeal against a requirement of the notice. An appeal is determined by the Committee.</p> <p>Failure to comply with the requirements and timeframes specified in a notice is an offence.</p> <p>The penalty is \$500,000, with daily penalties of up to \$100,000 for an individual and five times those amounts for a body corporate.</p>		

C. RELEVANT LEGISLATION IN WA

1. *Environmental Protection Act 1986 (WA)*
2. *Environmental Protection Regulations 1987 (WA)*
3. *Contaminated Sites Act 2003 (WA)*



A. NOTIFYING THE REGULATORS

Under *Environment Protection Act 1997* (ACT) (**ACT EP Act**), you must notify the appropriate regulator of “actual or threatened environmental harm” or the “existence of contaminated land”.

What must be notified?

Activities that ‘has caused, is causing or is likely to cause serious or material environmental harm from pollution’ (an environmental situation) must be notified (s 23, ACT EP Act). An "environmental harm" means any has the effect of degrading the enimpact on the environment as a result of human activity that vironment (whether temporarily or permanently) (Definitions, ACT EP Act).

A person is also required to notify the existence of contaminated land that presents or to be likely to present a significant risk of harm to human health or a risk of material environmental harm or serious environmental harm (s 23A, ACT EP Act). A contaminated land means the presence in, on or under the land, or a building or structure on the land, of a substance at a concentration above the concentration at which the substance is normally present in, on or under land, or a building or structure on land, in the same locality, if the presence causes, or is likely to cause either or both of the following:

- a risk of harm to human health, and
- a risk of environmental harm (s 4, ACT EP Act).

The person must as soon as reasonably practicable in writing after becoming aware of the environment situation or contaminated, notify the Environment Protection Authority of ACT (ACT EPA) of:

- the environmental situation or contaminated land
- its nature and the action taken to deal with the situation, and
- any environmental harm that has been caused (s 23(4), ACT EP Act).

<p>Who must notify?</p>	<p>Under the ACT EP Act, the person conducting an activity that has caused, is causing or likely to cause environmental harm must notify the ACT EPA.</p> <p>The following people have a duty to notify the existence of contaminated land:</p> <ul style="list-style-type: none"> • occupier of the land • if the occupier is not the lessee, then the lessee, or • if the land is land under a land sublease and the occupier is not the sublessee, the sublessee.
<p>Who and when do you notify?</p>	<p>All notifications relating to “actual or threatened environmental harm” or the “existence of contaminated land”, need to be sent to the Environment Protection Authority (s 11, ACT EP ACT) practicable after the person becomes aware of the to “actual or threatened environmental harm” or the “existence of contaminated land”.</p> <p>You should also notify your broker and insurer about the pollution or contamination incident.</p>
<p>Are there penalties for not notifying?</p>	<p>The maximum penalty for failure to notify of actual or threatened environmental harm is 50 penalty units (\$8000) (s 23, ACT EP Act).</p> <p>The maximum penalty for failure to notify of the existence of contaminated land is 50 penalty units (\$8000) (s 23A, ACT EP Act).</p> <p><u>Note:</u> 1 penalty unit = \$160 (individual) (as at 23 June 2021)</p>

B. REGULATORY ACTIONS & PENALTIES

Under the ACT EP Act, the ACT EPA has several regulatory options in responding to a breach of environmental legislation including issuing environment protection orders, injunctive orders and enforceable undertakings.

	ISSUING ENVIRONMENT PROTECTION ORDERS	INJUNCTIVE ORDERS	ENFORCEABLE UNDERTAKINGS
What it is	<p>The environmental protection order requires the person to do, or not do, specified things to remedy the breach of the ACT EP Act or environmental authorisation.</p> <p>This may require the person to ‘stop or not commence certain action’, ‘provide information’ or ‘undertake environmental restoration of a public place’.</p>	<p>If you breach the ACT EP Act, the ACT EPA or another person with leave from the court can apply to the Supreme Court for an order under s 128 of the ACT EP Act.</p> <p>The court may make—</p> <ul style="list-style-type: none"> • an order requiring the respondent to remedy the contravention • an order restraining the respondent from continuing to commit the contravention, or • an order restraining the respondent from committing the threatened or anticipated contravention <p>and any other orders the court considers appropriate (s 128(1)(c)–(e), ACT EP Act).</p>	<p>If you have committed an environmental offence, you may give the ACT EPA a written undertaking. Once the ACT EPA accepts the environmental undertaking, it will become an enforceable undertaking. (s 136E,F, ACT EP Act)</p>

	ENVIRONMENT PROTECTION ORDERS	INJUNCTIVE ORDERS	ENFORCEABLE UNDERTAKINGS
When	<p>An environmental protection order is issued if a person contravenes an environmental authorisation condition or if the land is contaminated but “would not cause, or would not be likely to cause, a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm”.</p> <p>An environmental protection order must be in writing and must “identify the person on whom the order is served on”.</p> <p>It must also outline the provision of the Act it has contravened and the nature of and the day, time and place of, the alleged contravention.</p>	<p>Usually, these orders are granted if the Supreme Court is satisfied that:</p> <ul style="list-style-type: none"> the respondent has contravened or is contravening, or there is a significant likelihood that the respondent will contravene an environmental authorisation, an environment protection order or a provision of this Act, and that, as a result, serious or material environmental harm has happened, is happening or is likely to happen; the court may make (s 128(1)(a)–(b), ACT EP Act). 	<p>The environmental undertaking must—</p> <ul style="list-style-type: none"> state that, on acceptance by the authority, it is an enforceable undertaking under this Act acknowledge that the authority alleges that the person has committed an offence against a stated provision of this Act; and (c) identify the facts and circumstances of the alleged offence, and include 1 or more undertakings relating to the alleged offence. (s 136F, ACT EP Act). <p>Examples of some undertaking can be:</p> <ul style="list-style-type: none"> to stop a certain conduct to take steps to compensate other parties who may have been affected by the breach of the environmental legislation taking steps to ensure the breach does not happen again in the future, or implementing publicity or education programs.
Outcomes	<p>In the event of the contravention of an environment protection order a penalty is imposed.</p> <p>The maximum penalty is 200 penalty units (\$32,000) (s 126, ACT EP Act).</p>		<p>If ACT EPA believe that an enforceable undertaking has been contravening, the Court may make:</p> <ul style="list-style-type: none"> an order requiring the person who gave the undertaking to ensure that the undertaking is not contravened an order requiring the person who gave the undertaking to pay to the Territory the amount assessed by the court as the value of the benefits anyone derived, directly or indirectly, from the contravention of the undertaking, or an order that the court considers appropriate requiring the person who gave the undertaking to compensate someone who has suffered loss or damage because of the contravention of the undertaking; (d) any other order that the court considers appropriate. <p>Failure to comply with the above orders results in a maximum penalty of 200 penalty units (\$32,000) (s 136K, ACT EP Act).</p>

C. RELEVANT LEGISLATION IN THE ACT

1. *Environment Protection Act 1997*
2. *Environment Protection Regulation 2005*
3. *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005*
4. *Environment Protection (Fees) Determination*
5. *Environment Protection (Noise Measurement Manual)*
6. *Environment Regulation and Protection Compliance and Enforcement Guideline*





A. NOTIFYING THE REGULATORS

Under *Environment Protection Act 1993* (SA) (**SA EP Act**), you must notify the appropriate authority where “serious or material environmental harm caused or threatened” and “site contamination of underground water” has occurred.

What must be notified?

If any activity undertaken by a person causes or threatens serious or material environmental harm from pollution, the person must as soon as reasonably practicable after becoming aware of the harm or threatened harm, notify the Authority of the harm or threatened harm, its nature, the circumstances in which it occurred, and the action taken to deal with it. (s 83, SA EPA Act)

Environmental harm must be treated as ‘material environmental harm’ if it:

- consists of an environmental nuisance of a high impact or on a wide scale
- involves actual or potential harm to the health or safety of human beings that is not trivial, or other actual or potential environmental harm (not being merely an environmental nuisance) that is not trivial, or
- results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$5000. (s 5(3)(a), SA EP Act)

Environmental harm must be treated as ‘serious environmental harm’ if it:

- involves actual or potential harm to the health or safety of human beings that is of a high impact or on a wide scale, or other actual or potential environmental harm (not being merely an environmental nuisance) that is of a high impact or on a wide scale, or
- results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$50,000. (s 5(3)(b), SA EP Act).

A person must notify SA in writing as soon as reasonably practicable after becoming aware of the existence of site contamination at the site or in the vicinity of the site that affects or threatens water occurring naturally under the ground or introduced to an aquifer or other area under the ground. (s 83, SA EPA Act)

<p>Who must notify?</p>	<p>For serious or material environmental harm, the person who conducted the activity must notify SA EPA immediately.</p> <p>For site contamination of underground water:</p> <ul style="list-style-type: none"> • an owner or occupier of a site, or • a site contamination auditor or a site contamination consultant engaged for the purposes of making determinations or assessments in relation to site contamination on or below the surface of a site, <p>must notify SA EPA immediately.</p>
<p>Who and when do you notify?</p>	<p>All notifications where “serious or material environmental harm caused or threatened” and “site contamination of underground water” has occurred must be sent to the SA Environment Protection Authority (s 11, SA EP Act) as soon as practicable after the person becomes aware of the to “serious or material environmental harm caused or threatened” and “site contamination of underground water”.</p> <p>You should also notify your broker and insurer about the pollution or contamination incident.</p>
<p>Are there penalties for not notifying?</p>	<p>Failure to notify of a serious or material environmental harm cause of threatened is an offence and the maximum penalty for a body corporate is \$250,000 and a natural person is \$150,000.</p> <p>Failure to notify of site contamination of underground water is an offence and the maximum penalty for a body corporate is \$120,000 and a natural person is \$60,000.</p>

B. REGULATORY ACTIONS & PENALTIES

Under the SA EP Act, the SA EPA has several regulatory options in responding to a breach of environmental legislation including issuing environmental protection orders, clean up orders, injunctive orders and enforceable undertakings.

	ISSUING ENVIRONMENT PROTECTION ORDERS	CLEAN-UP ORDERS	CLEAN-UP AUTHORISATIONS
What it is	<p>The SA EPA issue written statutory orders known as environment protection orders (EPO) which require a person or company to undertake actions to remedy a risk or prevent further environmental harm.</p> <p>EPOs are issued for the purpose of securing compliance with:</p> <ul style="list-style-type: none"> • the general environmental duty • mandatory provisions of an environment protection policy • a condition of an environmental authorisation • a condition of a beverage container approval • any other requirement imposed by or under this Act, or <p>for the purpose of giving effect to an environmental protection policy.</p>	<p>A CUO is an administrative tool that can be used to rectify environmental harm that has been caused by non-compliance. A CUO is issued when Environment Protection Authority is satisfied that a person has “caused environmental harm”.</p> <p>When a person caused “caused environmental harm” and Environment Protection Authority is of the opinion that urgent action is required an emergency clean-up order may be issued.</p>	<p>If you have committed an environmental offence, the SA EPA can issue a clean-up authorisation which will include “authorisation for action to be taken to prevent or mitigate further environmental harm.” (s 100 of the SA EPA Act)</p>

	ISSUING ENVIRONMENT PROTECTION ORDERS	CLEAN-UP ORDERS	CLEAN-UP AUTHORISATIONS
When	<p>An EPO is issued in a written form and must:</p> <ul style="list-style-type: none"> • specify the person to whom it is issued, and • state the purpose and specify the environmental harm that it is directed towards preventing or minimizing • a condition or any other requirement imposed by or under the SA EPA Act—state the purpose and specify the mandatory provisions, or • state the purpose and specify the environment protection policy 	<p>The CUO requires the person to take “specified action within a specified period to make good any resulting environmental damage.”</p> <p>This CUO may include requirements for “preparing a plan of action in relation to the environmental harm” and need to comply with such plan of action. It may also outline requirements for “action to be taken to prevent or mitigate further environmental harm”, “specified testing or environmental monitoring”, “furnishing to the Authority or other administering agency specified test, monitoring or compliance reports” and need to “appoint or engage a person with specified qualifications to prepare a plan or report or undertake tests or monitoring required by the order”.</p> <p>The CUO must be in the” form of a written notice served on the person to whom it is issued” specifying “the person to whom it is issued (whether by name or a description sufficient to identify the person)” and “the contravention alleged to have caused the environmental harm”.</p> <p>An emergency CUO may be issued orally “in that event, the person to whom it is issued must be advised forthwith of the person's right to appeal to the Environment, Resources and Development Court against the order.”</p> <p>These orders will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written clean-up order issued by the Authority or another administering agency and served on the person.</p>	<p>The SA EPA can issue a clean-up authorisation to a person who “has caused environmental harm” for the “purpose [they] may take specified action on the Authority's behalf to make good any resulting environmental damage.”</p> <p>The clean-up authorisation must be in the” form of a written notice served on the person to whom it is issued” specifying “the person to whom it is issued (whether by name or a description sufficient to identify the person)” and “the contravention alleged to have caused the environmental harm”.</p> <p>The Authority must, as soon as practicable after issuing a clean-up authorisation, serve a copy of the authorisation on the person alleged to have caused the environmental harm. (s 100 of the SA EPA Act)</p>

	ISSUING ENVIRONMENT PROTECTION ORDERS	CLEAN-UP ORDERS	CLEAN-UP AUTHORISATIONS
Outcomes	<p>Failure to comply with an EPO is an offence and the penalties vary.</p> <p>If the order was issued in relation to a domestic activity:</p> <ul style="list-style-type: none"> • for the purpose of securing compliance with the general environmental duty—\$500. • in circumstances specified in an environment protection policy or for the purpose of giving effect to an environment protection policy—\$500 and in any other case—\$4000. 	<p>Failure to comply is an offence and the maximum penalty for a corporate body is \$120,000 and a natural person is \$60,000.</p>	

C. RELEVANT LEGISLATION IN SA

1. *Aquaculture Act 2001*
2. *Environment Protection Act 1993*
3. *Radiation Protection and Control Act 1982*
4. *Environment Protection Regulations 2009*



A. NOTIFYING THE REGULATORS

Under *Environment Protection Act 2019* (NT) (**NT EP Act**) and *Waste Management and Pollution Control Act 1998* (**WMPC**), you must notify the appropriate Authority where an incident “causes or threatens material environmental harm or significant environmental harm”.

What must be notified?

Under the NT EP Act any incidents that “causes or threatens material environmental harm or significant environmental harm” must be notified (s 224, NT EP Act). Environmental harm generally refers to “direct or indirect alteration of the environment to its detriment or degradation, of any degree or duration, whether temporary or permanent”. Material environmental harms means environmental harm that:

- is not trivial or negligible in nature, and
- is less serious than significant environmental harm. (s 4, NT EP Act)

Significant environmental harm means environmental harm that:

- is of major consequence having regard to:
 - the context and intensity of the harm, and
 - the sensitivity, value and quality of the environment harmed and the duration, magnitude and geographic extent of the harm, or
- would, or is likely to, cost more to remediate than the monetary amount prescribed by regulation. (s 4, NT EP Act)

Under the WMPC, if any incident causes, or is threatening or may threaten to cause, pollution resulting in material environmental harm or serious environmental harm, it must be notified (s 14, WMPC). Pollution means:

- a contaminant or waste that is emitted, discharged, deposited or disturbed or that escapes, or
- a contaminant or waste, effect or phenomenon, that is present in the environment as a consequence of an emission, discharge, deposition, escape or disturbance of a contaminant or waste. (s 4, WMPC)

Serious environmental harm is defined as environmental harm that is more serious than material environmental harm and includes environmental harm that:

- is irreversible or otherwise of a high impact or on a wide scale
- damages an aspect of the environment that is of a high conservation value, high cultural value or high community value or is of special significance
- results or is likely to result in more than \$50,000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment, or
- results in actual or potential loss or damage to the value of more than \$50,000 or the prescribed amount (whichever is greater). (s 4, WMPC)

<p>Who must notify?</p>	<p>Any specified person who observes or becomes aware of an incident causing material environmental harm or significant environmental harm must notify the CEO of the incident as soon as practicable after (and in any case within 24 hours after). Specified person, within the NT EP Act refers to:</p> <ul style="list-style-type: none"> • the approval holder for the action • a qualified person who is carrying out an environmental audit of the site • an owner of the site, and • an occupier of the site. (s 225(2), NT EP Act) <p>The person conducting the activity that causes, or is threatening or may threaten to cause, pollution resulting in material environmental harm or serious environmental harm has the duty to notify the proper Authority as soon as practicable after (and in any case within 24 hours after). (s 14(1), WMPC).</p> <p>You should also notify your broker and insurer about the pollution or contamination incident.</p>
<p>Who and when do you notify?</p>	<p>For incidents causing material environmental harm or significant environmental harm, the Chief Executive Officer (CEO) of NT EPA must be notified.</p> <p>In relation to any incidents causing or threatening to cause pollution, must be notified to the NT EPA, with the notification specifying:</p> <ul style="list-style-type: none"> • the incident causing or threatening to cause pollution • the place where the incident occurred • the date and time of the incident • how the pollution has occurred, is occurring or may occur • the attempts made to prevent, reduce, control, rectify or clean up the pollution or resultant environmental harm caused or threatening to be caused by the incident, and • the identity of the person notifying. (s 14(3), WMPC).

Are there penalties for not notifying?

If a person fails to report an incident which results in significant or material environmental harm, the person will incur a penalty of environmental offence level 2.

Failure to notify of activities causing or threatening to cause pollution results in a penalty of environmental offence level 4. If a person intentionally fails to notify the NT EPA of activities causing or threatening to cause pollution results in a penalty of environmental offence level 3 (s 14, WMPC).

Note: Under s 4-7 of the *Environmental Offences and Penalties Act 1996* (NT):

1 penalty unit = \$162 (as at 1 July 2021)

- For environmental offence level 1, the maximum penalty for:
 - an individual:
 - must be between 385 penalty units (\$60,445) to 3,850 penalty units (\$604,450), or
 - imprisonment for not more than 5 years
 - a body corporate must be between 1,924 penalty units (\$302,068) to 19,240 penalty units (\$3,020,680).
- For environmental offence level 2, the maximum penalty for:
 - an individual must be between 154 penalty units (\$24,178) to 1,540 penalty units (\$241,780), or
 - a body corporate must be between 770 penalty units (\$124,740) to 7,700 penalty units (\$1,247,400).
- For environmental offence level 3, the maximum penalty for:
 - an individual must be between 77 penalty units (\$12,089) to 770 penalty units (\$120,890), or
 - a body corporate must be between 385 penalty units (\$60,445) to 3,850 penalty units (\$604,450).
- For environmental offence level 4, the maximum penalty for:
 - an individual is 77 penalty units (\$12,089), or
 - a body corporate is 385 penalty units (\$60,445).

B. REGULATORY ACTIONS & PENALTIES

Under the NT EP Act, the NT EPA has several regulatory options in responding to a breach of environmental legislation including issuing environmental protection orders, closure notices, stop work notices and enforceable undertakings.

	ENVIRONMENTAL PROTECTION NOTICES	CLOSURE NOTICES (CN)	STOP WORK NOTICES (SWN)	ENFORCEABLE UNDERTAKINGS
What it is	<p>The CEO of NT EPA can issue an EPN to any person for the purpose of securing compliance with:</p> <ul style="list-style-type: none"> environmental approval, or a requirement prescribed by regulation. <p>The EPN may impose any requirement reasonably required by the EPN (s 178(1), NT EP Act).</p> <p>The CEO of NT EPA may issue an emergency environmental protection notice to a person if (s 182(1), NT EP Act):</p> <ul style="list-style-type: none"> an environmental approval has been granted for an action the CEO believes on reasonable grounds that the action is causing significant environmental harm the CEO believes on reasonable grounds that urgent action is required for the protection of the environment and to meet the objects of this Act, and the CEO believes on reasonable grounds that a ground specified in section 109 for revocation of an environmental approval exists. 	<p>The Minister may issue a closure notice to require a proponent of a project which required an environmental approval to undertake continued monitoring and management action at the project location after the environmental approval has expired or been revoked. (s 199, NT EP Act)</p>	<p>A SWN may be issued by the NT EPA for the purpose of preventing or minimising the environmental impact of an action and minimising any financial benefit to the proponent of proceeding with an action without an environmental approval. (s 194(1), NT EP Act)</p> <p>A stop work notice may impose any conditions the NT EPA considers necessary:</p> <ul style="list-style-type: none"> to prevent or minimise the environmental impact of the action to provide for the remediation of environmental harm or the rehabilitation of the site of the action, or to minimise any financial benefit to a proponent of proceeding with an action without an environmental approval. 	<p>The CEO may accept an enforceable undertaking made by a proponent of an action or an approval holder to:</p> <ul style="list-style-type: none"> carry out specified remediation or rehabilitation work to rectify environmental harm resulting from an action taken by the proponent or the approval holder that is allegedly in contravention of this Act or an environmental approval, or to do any other specified act or thing approved by the CEO. (s 215(1), NT EP Act)

	ENVIRONMENTAL PROTECTION NOTICES	CLOSURE NOTICES (CN)	STOP WORK NOTICES (SWN)	ENFORCEABLE UNDERTAKINGS
When	<p>The EPN must be:</p> <ul style="list-style-type: none"> • in writing, and • given to the person to whom it is issued. <p>The environment protection notice must:</p> <ul style="list-style-type: none"> • specify the person to whom it is issued, whether by name or a description sufficient to identify the person • if the notice is issued for the purpose of securing compliance with the conditions of an environmental approval: <ul style="list-style-type: none"> – state that purpose – specify the conditions to be complied with, and • if the notice is issued for the purpose of securing compliance with a requirement prescribed by regulation: <ul style="list-style-type: none"> – state that purpose, and – specify the requirement. 	<p>A CN must be in writing and may be issued if the Minister considers on reasonable grounds that as a result of anything done or that has occurred at a site may result in future contaminants if not appropriately managed (for example, old landfill sites).</p> <p>Closure certificates can be issued at the completion of a project to say that all necessary rehabilitation and remediation measures have been implemented to the Minister’s satisfaction.</p> <p>The intent is that where a closure certificate has been given, the land can be sold or handed back without the proponent incurring any further liability for remediation.</p>	<p>The NT EPA may issue a SWN to a proponent or approval holder who has referred an action or significant variation or is required to refer an action or significant variation, to the NT EPA under Part 4, Division 3.</p> <p>The stop work notice may direct the proponent or approval holder to stop taking the action while:</p> <ul style="list-style-type: none"> • a decision is being made as to whether the action or significant variation requires an environmental impact assessment, and • if the NT EPA considers it necessary – the environmental impact assessment and environmental approval process relating to the action or significant variation is completed. 	<p>The CEO may apply to the court for an enforcement order if the CEO considers that a proponent or an approval holder has contravened an enforceable undertaking accepted by the CEO. (s 216(1), NT EP Act)</p> <p>An enforceable undertaking must be in writing and signed by the CEO and the proponent or the approval holder. (s 215(2), NT EP Act)</p>

	ENVIRONMENTAL PROTECTION NOTICES	CLOSURE NOTICES (CN)	STOP WORK NOTICES (SWN)	ENFORCEABLE UNDERTAKINGS
Outcomes	It is considered an offence to contravene notice requirement and the maximum penalty is 100 penalty units (\$15,700).	It is considered an offence to contravene notice requirement and the maximum penalty is 100 penalty units (\$15,700).	<p>It is considered an offence if the person contravenes the notice and is reckless to that results and the contravention results in significant environmental harm . The maximum penalty for this offence is an environmental offence level 1.</p> <p>It is considered an offence if the person contravenes the notice and is reckless to that results and the contravention results in material environmental harm. The maximum penalty for this offence is an environmental offence level 2.</p> <p>It is considered an offence if the person contravenes the notice and the contravention results in significant environmental harm. The maximum penalty for this offence is an environmental offence level 2.</p> <p>It is considered an offence if the person contravenes the notice. The maximum penalty for this offence is an environmental offence level 3</p>	

C. RELEVANT LEGISLATION IN THE NT

1. *Environment Protection Act 2019*
2. *Environment Protection Regulations 2020*
3. *Environmental Offences and Penalties Act 1996*
4. *Environment Protection (National Pollutant Inventory) Objective 2004*
5. *Environment Protection (Beverage Containers and Plastic Bags) Act 2011*
6. *Environment Protection (Beverage Containers and Plastic Bags) Regulations 2011*
7. *Northern Territory Environment Protection Authority Act 2012*
8. *Waste Management and Pollution Control Act 1998*
9. *Waste Management and Pollution Control (Administration) Regulations 1998*



A. NOTIFYING THE REGULATORS

Under *Environmental Management and Pollution Control Act 1994* (TAS) (**EMPC**), you must notify the appropriate Authority where an incident “causes or threatens material environmental harm or significant environmental harm”.

<p>What must be notified?</p>	<p>Polluting activities are generally governed by the EMPC.</p> <p>A pollutant includes a gas, liquid or solid, odour, organisms, energy, radioactivity and electromagnetic radiation or a combination of pollutants that may cause environmental harm. It is an offence under the EMPC to cause environmental harm, which is defined as any adverse effect on the environment (of whatever degree or duration).</p> <p>The information that should be provided include:</p> <ul style="list-style-type: none"> • your full name, address and telephone contact details • date, time and duration of the incident • the type of pollutant or a description of the incident, discharge or emission • location of the incident, being as specific as possible • the source and cause of pollution (if known) • the extent or size of the area where the pollution is visible, and • anything else that is relevant to the incident.
<p>Who must notify?</p>	<p>Polluters and owners and occupiers of land have a responsibility to report pollution to either the Director, EPA or to Local Council.</p> <p>Under section 32 of the EMPC, persons responsible for an environmentally relevant activity which results in a pollutant being released into the environment are required to report the incident if the release causes, or may cause, environmental harm or environmental nuisance.</p> <p>Director, EPA must be notified (on 1800 005 171) – if the release has caused, or may cause, serious or material environmental harm, or if the activity is regulated by the EPA.</p> <p>Local Council must be notified – if the activity is regulated by Council or is a residential matter and is causing or may cause environmental nuisance.</p>

Who and when do you notify?	<p>Pollution incidents must be notified to the Director, EPA. The Incident Response Hotline is contactable on 1800 005 171 or incidentresponse@epa.tas.gov.au.</p> <p>Many environmental issues and complaints are also dealt with by local councils or other government agencies.</p> <p>To identify who to notify, the Tasmania EPA has listed on its website the relevant authority and contact details.</p> <p>You should also notify your broker and insurer about the pollution or contamination incident.</p>
Are there penalties for not notifying?	<p>Failure to notify of an incident is considered an offence and the maximum penalty for a body corporate is 1200 penalty units (\$207,600) and a natural person is 600 penalty units (\$103,800).</p> <p><u>Note:</u> 1 penalty unit = \$181 (individual) (as at 1 July 2021)</p>

B. REGULATORY ACTIONS & PENALTIES

Under the EMPC, the TAS EPA has several regulatory options in responding to a breach of environmental legislation including issuing warnings, environmental protection notices, litter infringement notice and prosecution by court action.

	ENVIRONMENT PROTECTION NOTICE (EPN)	LITTER INFRINGEMENT NOTICE (LIN)	CIVIL ENFORCEMENT
What it is	<p>The TAS EPA may issue an EPN on the person who is or was responsible for the environmentally relevant activity if they are satisfied that the activity may cause:</p> <ul style="list-style-type: none"> serious or material environmental harm or environmental nuisance is being, or is likely to be, caused serious or material environmental harm or environmental nuisance has occurred and remediation of that harm or nuisance is required it is necessary to do so in order to give effect to a State Policy or an environment protection policy it is desirable to vary the conditions or restrictions of a permit or major project permit, and it is necessary to secure compliance with the general environmental duty. (s 44, EMPC). 	<p>Under s 17 of the Littering Act 2007 (TAS) (Littering Act), an authorised officer may issue and serve an LIN on a person if he or she reasonably believes that an infringement offence has been committed.</p> <p>A LIN is issued in relation to infringement offence as detailed in s 9 of the Littering Act.</p>	<p>The Director, a council or a person who has, in the opinion of the Appeal Tribunal, a proper interest in the subject matter may apply to the Appeal Tribunal for an order against a person, if the person has:</p> <ul style="list-style-type: none"> engaged, is engaging or is proposing to engage in conduct in contravention of the EMPC refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by the EMPC, or caused environmental harm by contravention of the EMPC. (s 48(1), EMPC)

	ENVIRONMENT PROTECTION NOTICE (EPN)	LITTER INFRINGEMENT NOTICE (LIN)	CIVIL ENFORCEMENT
When	<p>A EPN needs to:</p> <ul style="list-style-type: none"> • specify the person to whom it is issued • specify the grounds on which it is issued • require the person on whom it is served to take the measures specified in the notice to prevent, control, reduce or remediate environmental harm within a period specified in the notice • impose any requirement reasonably required for the purpose for which the notice is issued, including one or more of the following requirements: <ul style="list-style-type: none"> – that the person discontinue, or not commence, a specified activity indefinitely or for a specified period – that the person not carry on a specified activity except at specified times or subject to specified conditions – that the person take specified action within a specified period • contain a statement that the person may, within 14 days from the date on which the notice is served, appeal to the Appeal Tribunal against the notice or against any requirement contained in the notice, and • takes effect on the day on which it is served. 	<p>An LIN is served on:</p> <ul style="list-style-type: none"> • the person who the authorised officer reasonably believes committed the relevant infringement offence • the registered operator of a motor vehicle or trailer if the relevant infringement offence relates to the use of the motor vehicle or trailer and the authorised officer does not have a reasonable belief as to the identity of the person who committed the infringement offence, or • on the registered owner of a vessel if the relevant infringement offence relates to the use of the vessel and the authorised officer does not have a reasonable belief as to the identity of the person who committed the infringement offence. (s 17(6), Litter Act) 	<p>The Appeal Tribunal require:</p> <ul style="list-style-type: none"> • the respondent to refrain, either temporarily or permanently, from the act or course of action that constitutes the contravention of, the potential contravention of, or the failure to comply with, this Act • preclude, for a period specified by the Appeal Tribunal, the respondent from carrying out any use or development in relation to the land in respect of which the contravention relates • the respondent to make good the contravention or default in a manner, and within a period, specified by the Appeal Tribunal • compliance with any environmental agreement, environmental improvement programme, environmental licence, environment protection notice, investigation notice, remediation notice or site management notice, and • the respondent to pay the reasonable costs and expenses incurred by the Board, the Director or a public authority as a result of taking action to prevent or mitigate environmental harm caused by a contravention of this, or any other, Act or to make good resulting environmental damage. <p>Further actions are stipulated in s 48(5) of the EMPC.</p>

	ENVIRONMENT PROTECTION NOTICE (EPN)	LITTER INFRINGEMENT NOTICE (LIN)	CIVIL ENFORCEMENT
Outcomes	Failure to comply with the EPN is an offence and the maximum penalty for a body corporate is 1000 penalty units (\$173,000) or 500 penalty units (\$86,500) in any other case.	Penalties for littering offences for which an LIN may be issued are detailed in s 4 of Litter (Infringement Offences) Regulations 2020.	It is considered an offence to contravene an order, or a temporary order issued under s 48 of the EMPC with a maximum penalty of 500 penalty units (\$86,500).

C. RELEVANT LEGISLATION IN TAS

1. *Environmental Management and Pollution Control Act*
2. *Littering Act 2007*
3. *Litter (Infringement Offences) Regulations 2020*
4. *Marine-related Incidents (MARPOL Implementation) Act 2020*
5. *Water Efficiency Labelling and Standards Act 2005*
6. *National Environment Protection Council (Tasmania) Act 1995*
7. *Plastic Shopping Bags Ban Act 2010*



Get in touch

If you have any legal questions about this topic, please reach out to a member of the team.



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