



Environmental Controls

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Introduction

The [Environmental Management and Pollution Control Act 1994 \(EMPCA\)](#) controls pollution and environmental harm through the following key mechanisms:

- imposing a “general environmental duty” to take reasonable steps to prevent environmental harm;
- requiring development activities that are likely to cause pollution (called “level 2 activities”) to be assessed by the Board of the EPA;
- setting maximum limits for particular emissions, including noise and smoke;
- conducting environmental audits and entering into environmental agreements to improve environmental outcomes; and
- issuing Environment Protection Notices or civil enforcement orders requiring action to be taken.

Read: [EDO Factsheet on Development Controls](#) for more general information on development assessments.

What is ‘environmental harm’?

Environmental harm is defined as an ‘adverse effect on the environment’ of any degree or duration.

There are three categories of environmental harm:

1. Serious environmental harm: maximum penalty \$1,630,000 (corporation) or \$407,500 and 4 years prison (individual).
2. Material environmental harm: maximum penalty \$407,500 (corporation) or \$195,600 and 2 years prison (individual).
3. Environmental nuisance: maximum penalty \$48,900.

Serious Environmental Harm

- Actual adverse effect on the health or safety of human beings that is of a high impact or on a wide scale; or
- Actual adverse effect on the environment that is of a high impact or on a wide scale; or
- Actual “loss” or property damage of an amount, or amounts in aggregate, exceeding ten times the threshold amount (presently \$50,000).

N.B. “loss” includes the reasonable costs and expenses that would be incurred in taking reasonable steps to prevent or mitigate the environmental harm or to fix any environmental damage that occurs

Material Environmental Harm

- Environmental nuisance of a high impact or on a wide scale, or;
- Actual adverse effect on the health or safety of human beings that is not negligible, or;
- Actual adverse effect on the environment that is not negligible, or;
- Actual “loss” or property damage of an amount, or amounts in aggregate, exceeding the threshold amount (presently \$5,000).

Environmental nuisance

‘Environmental nuisance’ refers to the emission of a pollutant that unreasonably interferes with, or is likely to unreasonably interfere with, a person’s enjoyment of the environment. For example, an environmental nuisance may be caused where there is an unreasonable release of noise, smoke, dust, vibrations, or chemical pollutants. What is an unreasonable interference will depend on the location, time, duration and other circumstances.

What is pollution?

Pollution is the release of a pollutant that may cause environmental harm. ‘Pollutants’ include gases, liquids, solids, odours, organisms (such as viruses or GMO spores), noise, electromagnetic radiation, vibrations, or any combination of those things.

A company, person or group of people will be polluting if they:

- discharge, emit, deposit or disturb pollutants which cause environmental harm or may cause environmental harm, and / or
- fail to prevent the discharge, emission, deposit, disturbance or escape of pollutants that cause environmental harm or may cause environmental harm.

General environmental duty

Section 23A of [EMPCA](#) sets out a General Environmental Duty, requiring any person carrying out activities with the potential to cause environmental harm to take all reasonable steps to prevent that harm and to comply with permit or licence conditions, State Policies and relevant codes-of-practice.

Failing to meet this duty is not an offence in its own right (that is, you cannot be fined for failing to comply with your environmental duty). However, if you are charged with causing environmental harm and can show that you took reasonable steps to avoid environmental harm, that may provide a defence.

What is “reasonable” will depend on the circumstances, including the financial capacity of the person or company, the nature of the offence, the sensitivity of the receiving environment, whether the offender has been warned before, and the current state of technology.

In most cases, a person who is complying with all relevant Codes will be taken to comply with their General Environmental Duty. However, a court or Tribunal may also take into account whether the person knew, or should have known, that compliance with the Code alone would not prevent the specific environmental harm caused by their activities.

Regulating environmental impacts of development

There are three ‘levels’ of activities (operations or developments) used in Tasmanian environmental legislation, Levels 1, 2 and 3. If a permit for any level of development allows pollution, any harm caused by that pollution will be authorised (provided all permit conditions are complied with). For many activities regulated by EPA Tasmania, permit conditions are available on [TheLIST](#).

Where emissions authorised by a permit or environmental licence are out of date or need to be replaced with site-specific discharge limits, the EPA or planning authority may be able to issue an Environment Protection Notice or enter into an environmental agreement with the operator to bring a facility in line with modern standards.

Level 1 Activities

Activities that have a relatively low impact are defined as ‘Level 1’ under [EMPCA](#). Local councils are responsible for assessing, regulating and monitoring Level 1 activities under the [Land Use Planning and Approvals Act 1993](#) (**LUPAA**) and the relevant planning scheme. Regulation focuses on compliance with planning permit conditions under LUPAA but regulatory tools are also available to local Councils under EMPCA.

Where the Director of the EPA thinks it is necessary (because of the potential environmental impacts), an application for a Level 1 activity may be required to be

referred to the Board of the Environment Protection Authority (**the EPA Board**) and assessed as a [Level 2](#) activity.

If the activity is approved, the EPA Board will decide whether EPA Tasmania or the local council will be responsible for ongoing regulation of the activity.

Level 2 Activities

Schedule 2 of [EMPCA](#) lists a number of developments that are likely to have a significant environmental impact (such as wastewater treatment plants, wood processing facilities and large quarries). These developments are called ‘Level 2’ activities.

Level 2 activities (and Level 1 activities referred to the Director, EPA) are assessed by the EPA Board. Both EPA Tasmania and the relevant local council are responsible for ongoing regulation of Level 2 activities where the activity is regulated under a planning permit.

N.B. For a Level 2 activity that does not require a planning permit, the developer must refer the proposal directly to the EPA Board for assessment. If the development is approved the Board will issue an [Environment Protection Notice](#) or Environmental Licence.

Level 2 activities are subject to different levels of assessment, depending on the likely impacts of the activity. Three categories have been developed for assessment purposes:

- [Class 2A](#) – minor in scale or consequence, only have the potential for local environmental impacts that may be easily avoided or mitigated and which are unlikely to generate significant public interest.
- [Class 2B](#) – activities that are not Class 2A or 2C activities.
- [Class 2C](#) – activities that involve complex or multi-jurisdictional assessment or complex environmental issues, which require approval from another State of Federal government or are likely to generate a lot of public interest

For level 2 activities that require a permit, the developer may commence the environmental assessment process prior to submitting a development application through lodgment of a Notice of Intent with the EPA Board.

Visit: [EPA Tasmania's Assessment page](#) for more information on the assessment process (including relevant guidance documents)

Level 3 Activities

‘Level 3’ activities are those developments declared by parliament to be Projects of State Significance (**PoSS**). These activities are subject to a special integrated assessment process. Once approved, Level 3 activities are regulated like other level 1 and 2 activities.

Read: [EDO Factsheet on Development Controls](#) for more information on PoSS

Environmental Impact Assessments

An application for planning approval should provide enough information to allow the local Council to assess the likely environmental impacts of the proposed development against the relevant provisions of the planning scheme. Proposals may trigger development standards or codes that require some form of environmental impact assessment (e.g. a flora and fauna survey to satisfy requirements of the Biodiversity Code) or a contaminated site assessment to meet the Contaminated Land Code.

Sufficient information must also be provided to allow the Council to determine if referral to the EPA Board is required (for a Level 1 activity, Level 2 activities are automatically referred). In particular, the application should identify potential impacts on the environment and neighbouring properties and provide information about annual rates of production, transport requirements and operating hours.

If the application does not provide adequate information, the planning authority can make a request for further information.

A Notice of Intent lodged with the EPA Board must comply with the Guidance for Preparing a Notice of Intent. A final proposal document should be consistent with the information required for Notice of Intent, minus planning information.

Visit: [EPA Tasmania's Guidance Documents](#) page to download the Guide for Preparing a Notice of Intent

Environmental Assessment by the EPA Board

There are two types of impact assessments:

- Environmental Effects Report (**EER**) – this option is generally used for lower impact activities)
- Development Proposal and Environmental Management Plan (**DPEMP**)

The EPA Board will determine the level of assessment required and prepare guidelines which the proponent must address when preparing the assessment documents. In some cases, the EPA will seek public comments before finalising the guidelines, however this is not required by law.

Visit: [EPA Tasmania's Guidance Documents](#) page to download the standard Guides for Preparing an EER or EIS

Once the EPA Board is satisfied that a DPEMP or EER contains all the information required by the guidelines, the Board will direct the local council to advertise the application (or, if no planning permit is required, will advertise the proposal itself) by:

- Publishing a notice in the local newspaper (look for the EPA or Council logo in the Public Notices section)
- Displaying a notice at the Council office
- Placing a notice on the boundary of the development site (usually A4 signs with a red or bold border)
- Sending a copy of the notice to all adjoining neighbours (“adjoining” does not include people living across the street, only properties which share a boundary with the development site)

The EPA will also advertise the application on its website, however this is not required by law.

Visit: [EPA Tasmania’s Public Consultations page](#) to see the development proposals currently being assessed

Any person can make a representation regarding an advertised development application. Anyone with concerns about a development proposal should make a representation to help the decision-maker to understand their concerns.

In general, only people who have made a representation can appeal against a decision to approve (or refuse) the application.

Visit: [EPA Tasmania’s Guide for Preparing a Public Submission page](#) for more information

Before making a representation, check the notice carefully for the following information:

WHEN the representation is due (date and time)

The deadline will be between 14 – 42 days from the date of advertising, depending on how the development proposal is classified.

- For class 2A activities, 14 days
- For class 2B activities, 28 days
- For class 2C activities, 42 days

Make sure to also check the time for submissions – it may be 12pm, 5pm or midnight on the final day. Representations received after the deadline will not be valid, even if they are only 10 minutes late.

N.B. For class 2B or 2C assessments that include a planning application, EMPCA modifies and extends the period allowed for advertising under LUPAA. Public holidays and all dates between Christmas Day and New Year's Day are not included in calculating the deadline.

WHO the representation must be sent to

Check whether it is to be sent to the local council or the EPA, and whether it should be addressed to anyone in particular.

HOW the representation can be made

The Resource Management and Planning Appeal Tribunal (**RMPAT**) has previously held that representations can only be accepted by email if the public notice clearly provides an email address and invites representations to be made by email.

Be careful to check the notice. Even if Council accepts your email, it may not be a “valid” representation giving you a right of appeal unless the notice specifically allowed for email representations.

Unless the notice specifically says that email representations will be accepted (or includes an email address for sending representations), send a copy by post and allow extra time for it to arrive.

What happens next?

The EPA Board is satisfied the development should go ahead on environmental grounds. If the council approves the development, the permit must include any conditions that the EPA Board has specified must be included, except for environmental licence related activities.

Alternatively, the Board may direct Council to refuse a planning application. A planning authority cannot issue a permit for a development where the EPA Board has directed refusal.

How do I find out if a development has been assessed by the EPA Board?

During the public consultation phase, copies of assessment documents are available for inspection at Council chambers and certain Service Tasmania outlets. The information is generally also available on the EPA website and Council websites, but this is not legally required.

Visit: [EPA Tasmania's Public Consultations](#) page to see the development proposals currently being assessed

Permissible levels for emissions

EPA Tasmania and planning authorities use a number of benchmarks when assessing proposals to guide the level of emissions that are considered to be permissible. In most circumstances, if emissions are kept below these permissible levels, the general environmental duty will be met.

Environment Protection Policies

Environment Protection Policies (**EPPs**) are made under s 96 of [EMPCA](#) and provide guidance in relation to specific environmental issues. EPPs are not enforceable in their own right, but guide decision-makers in setting permit conditions.

Currently, there are two EPPs in force in Tasmania:

- [Environment Protection Policy \(Air Quality\) 2004](#); and
- [Environment Protection Policy \(Noise\) 2009](#).

Noise regulations

The [Environmental Management and Pollution Control \(Noise\) Regulations 2016](#) regulate the hours of operation for noisy equipment such as:

- lawnmowers, chainsaws, musical equipment, stereos and vehicles on residential premises
- fixed equipment on any premises (such as heat pumps, generators and wind turbines)

The Noise Regulations also impose restrictions on the use of motor vehicles or vessels operated near residential premises for the purposes of sport or recreation and the operation of chainsaws near residential premises.

Council or police officers can issue a person with a fine if they breach the Noise Regulations. In more serious cases, a person can be issued with an Environment Protection Notice requiring them to stop or reduce the noise (see below), or be prosecuted.

For noises that are not expressly regulated by the Noise Regulations, the police or council will consider whether the noise is unreasonable (s 53 of EMPCA). In deciding whether it is unreasonable, they will consider:

- the volume, intensity or duration of the noise;
- the time, place and other circumstances in which it is emitted; and
- in the case of noise emitted from residential premises, whether it is, or is likely to be, audible in a habitable room in any other residential premises.

Smoke regulations

The [Environmental Management and Pollution Control \(Distributed Atmospheric Emissions\) Regulations 2018](#) set rules for emission of smoke from wood heaters, fireplaces, barbecues and backyard burning. Under the Regulations, smoke must not be continuously visible for more than 10 minutes at a time and, during that 10 min period, must not be visible for more than 30 seconds at a distance greater than 10 metres from the point where the smoke is emitted.

The Regulations prohibit backyard burning on land with an area of less than 2,000 square metres, unless the fuel used is unpainted, untreated or uncontaminated wood, vegetation, paper, charcoal and/or peat AND the burning is permitted under a council by-law and/or a fire permit issued by the Fire Services, or for the sole purpose of reducing a fire hazard. Backyard burning of unpainted, untreated or uncontaminated wood, vegetation, paper, charcoal and/or peat on land with an area of more than 2,000 square metres is currently allowed under the Regulations.

Landowners must still ensure that any backyard burning does not cause an environmental nuisance. Complaints about smoke emissions in residential areas can be made to the police or council.

When smoke levels and particle matter in the air rise to levels that could be harmful to our health, the government can issue an 'air quality notification'. These notifications act as an early warning signal to help people who are sensitive to smoke emissions plan for an intense smoke event. Alerts are triggered after one hour when smoke levels are elevated in a particular location.

Ongoing monitoring and compliance

What is the role of councils?

Councils have duties and powers to address pollution. Councils must issue an abatement notice (s 200 of [Local Government Act 1993](#)) if they are satisfied that a nuisance exists, and must use their best endeavours to prevent or control activities likely to cause pollution (see s 20A of [EMPCA](#)).

What is the role of the EPA Tasmania?

The Tasmanian Department of Primary Industries, Parks, Water and Environment (**DPIPWE**) is the principal agency charged with ensuring that the state's pollution control laws are upheld. Within this Department, EPA Tasmania is specifically responsible for assisting the EPA Board with the assessment of 'Level 2' activities.

On-site inspections

Officers from the Council or EPA Tasmania can undertake inspections to satisfy themselves that licensed operations are complying with environmental controls in permits.

They have the powers to enter premises during normal business hours, and at other times in certain circumstances.

Environmental audits

Businesses can also be required to undertake environmental audits. If you receive a notice requiring you to carry out an audit, you can be prosecuted if you do not undertake an audit within a reasonable time.

Environmental Improvement Programs

If EPA Tasmania believes that standards at a licensed premises need to be improved (despite complying with permit conditions), they can require the operator to enter into an Environmental Improvement Programme (**EIP**).

One common example is where a permit was issued a long time ago and new technologies have since been introduced to manage emissions. Another example is where the law has changed since your permit was issued and maximum emission limits approved in your permit are no longer appropriate. In these situations, your company can enter into an EIP with EPA Tasmania.

The EIP sets out certain things that must be done within a certain time to reduce environmental harm. It is an offence not to comply with an EIP. However, provided you comply with the conditions of the EIP, you will not be prosecuted for environmental harm.

An EIP is publicly advertised and subject to public comment.

Visit: [EPA Tasmania's Regulatory Tools page](#) to read more about EIPs and other regulatory tools used by EPA Tasmania

Enforcement options

If a council or EPA Tasmania is satisfied that someone is polluting, it can:

- Issue a direction or abatement notice requiring the polluter to take particular action
- Issue an environmental infringement notice
- Serve an Environment Protection Notice on the person causing (or likely to cause) the pollution. The notice must state what the pollution is, how to stop that pollution, and the time limit for stopping it.
- Bring civil enforcement proceedings in the RMPAT
- Commence criminal prosecution proceedings

It is an offence not to comply with any notice issued by council or the EPA.

Read: EDO Factsheet on **Tribunals and Courts (Civil Enforcement)** for more information on commencing civil enforcement proceedings

Abatement Notice

The general manager of a council can issue an abatement notice to a person the GM is satisfied is causing a nuisance. The notice must specify what steps must be taken to stop or mitigate the nuisance.

A person issued with an abatement notice must comply with it, but can appeal to the Magistrates Court. If the person fails to comply with the notice, they may be liable for prosecution.

Environment Protection Notices

Councils and the Director of EPA Tasmania can issue Environment Protection Notices (EPNs) where an activity is likely to cause serious or material environmental harm or environmental nuisance. An EPN can also be issued where harm has been caused and remediation is required, or where new conditions are required to bring an activity into line with a State Policy, Environment Protection Policy or the general environmental duty (s 44, [EMPCA](#)).

An EPN may require a person to:

- discontinue, or not commence, a specified activity;
- limit the times or conditions under which the activity is carried on, or;
- take specified action (such as installing new biofilters at a plant, or relocating a discharge pipe).

If EPA Tasmania want to change the environmental conditions of a planning permit, an EPN with conditions which will override those in the planning permit. The proponent must comply with the changed conditions described in the EPN.

A person issued with an EPN can appeal against the notice within 14 days. A person who made a representation in relation to a development permit for an activity that has been varied by an EPN can apply to join the appeal.

If a person complies with the conditions of the EPN, the company is given a certificate of compliance. A copy of this certificate is placed on the EPN Register.

If a person does not comply with the conditions of an EPN, the council or Director may:

- seek orders from the Tribunal to enforce the EPN;
- commence prosecution proceedings against the polluter, or;
- do the work itself and bill the polluter for the cost of the work.

Civil Proceedings

A council or the Director of the EPA can apply to the RMPAT for orders requiring a person or company to take action, to cease an activity or to rehabilitate harm already done . These actions are called “civil enforcement”.

Civil enforcement actions can be complex and expensive, so councils often try to exhaust all other options before proceeding.

Read: EDO Factsheet on **Tribunals and Courts (Civil Enforcement)** for more information on commencing civil enforcement proceedings

Visit: RMPAT’s [Practice Directions](#) page and read [Practice Direction 14: Civil Enforcement Proceedings](#)

Criminal Proceedings

For the most part, the arrangements described above are applied cooperatively. However, if a person or business operator does not comply with environmental controls, they can be prosecuted under a wide range of offences listed in EMPCA. Directors can also be personally liable for pollution offences committed by their company, even if the director was not directly aware of the offence.

What do I do if I have witnessed or caused pollution?

If you are responsible for an activity, you (or your company) must report any pollution incidents to EPA Tasmania (see section 32 of [EMPCA](#)). All incidents should be reported to EPA Tasmania as soon as possible, and no later than 24 hours after the incident.

If you witness polluting by another person, you should still report it to the local council or EPA Tasmania’s hotline (1800 005 171).

Visit: EPA Tasmania’s [Make A Report](#) page to report pollution