



# Environmental Defenders Office

## Enforcement of Environmental Offences in WA

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

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

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### Overview

This factsheet provides an overview about environmental offences, including pollution, and how compliance and enforcement action is taken in Western Australia.

In particular, this factsheet will outline:

1. What environmental offences are, including air, noise and water pollution.
2. How to report pollution and other environmental offences.
3. Government compliance and enforcement action.
4. Third party (civil) enforcement options.
5. Contacts and additional resources.

### Environmental Offences

It is an offence under the *Environmental Protection Act 1986* (WA) (**EP Act**) to take an action that causes pollution or environmental harm without the necessary approval or permit. The Department of Water and Environmental Regulation (**DWER**) is responsible for undertaking compliance and enforcement action for breaches of the EP Act.

These types of offences under the EP Act are generally called ‘environmental offences’.

### Pollution

‘Pollution’ is defined under the EP Act to mean direct or indirect alteration of the environment or an environmental value to its detriment or degradation, that involves an emission.<sup>1</sup>

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<sup>1</sup> See EP Act s 3A(1) for the full definition.

Types of pollution covered under the EP Act include air pollution (including odours),<sup>2</sup> noise pollution<sup>3</sup> and water pollution.<sup>4</sup>

Read: DWER's guideline on air emissions is available [here](#).

DWER's guideline on odour emissions is available [here](#).

DWER's guideline on noise emissions is available [here](#).

Under the EP Act, it is an offence to cause pollution or allow an unreasonable emission from any premises<sup>5</sup> or to dump or discharge waste, unless doing so:<sup>6</sup>

- was permitted under an approval or licence;<sup>7</sup>
- resulted from an emergency;<sup>8</sup> or
- was authorised by law, for example through the implementation of an approved proposal in accordance with the approval.<sup>9</sup>

In March 2023, a cement and lime manufacturer was fined \$290,000 after being found guilty of six counts of allowing unreasonable emissions (odour) from its premises in Munster.<sup>10</sup>

### **Environmental Harm**

'Environmental harm' is defined under the EP Act to mean indirect or direct harm to the environment, including:<sup>11</sup>

- damage to, or removal or destruction of, native vegetation;
- degradation, alteration or detriment to the environment or an environmental value; or
- any other prescribed alteration of the environment.

Environmental harm is generally divided into two categories, being material environmental harm and serious environmental harm.

#### Material environmental harm

Material environmental harm is defined as being environmental harm that is neither trivial nor negligible and results in actual or potential loss, property damage or damage costs exceeding \$100,000 (being the 'threshold amount').<sup>12</sup>

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<sup>2</sup> See e.g. EP Act ss 49 (causing unreasonable emissions) and 51 (emissions from premises).

<sup>3</sup> See e.g. EP Act ss 79 (unreasonable noise from premises), 84 (noise from vehicles or vessels) and 85 (noise from equipment)

<sup>4</sup> See e.g. EP Act ss 49A (dumping waste).

<sup>5</sup> EP Act s 49.

<sup>6</sup> EP Act ss 49A and 50.

<sup>7</sup> EP Act s 74A.

<sup>8</sup> EP Act s 75.

<sup>9</sup> EP Act s 74B.

<sup>10</sup> See Department of Water and Environmental Regulation, [Cockburn Cement fined for odour breaches](#) (10 March 2023).

<sup>11</sup> See EP Act s 3A(2) for the full definition.

<sup>12</sup> EP Act ss 3A(2) and 3A(3) 'material environmental harm' definition.

It is an offence under the EP Act to cause, or allow to be caused, material environmental harm, regardless of whether it was intentional, due to negligence or otherwise.<sup>13</sup>

For example, in May 2023 a gold mining company was fined \$41,000 plus costs for allowing a large quantity of saline water to be discharged from its mine into the environment.<sup>14</sup>

### Serious environmental harm

Serious environmental harm is defined as being environmental harm that is irreversible, high impact or wide scale, is significant or in an area of high conservation value, or results in actual or potential loss, property damage or damage costs exceeding \$500,000 (being five times the threshold amount).<sup>15</sup>

It is an offence under the EP Act to cause, or allow to be caused, serious environmental harm, regardless of whether it was done intentionally, due to negligence, or otherwise.<sup>16</sup>

## Reporting Pollution and other Environmental Offences

Pollution and environmental offences should be reported in the first instance to the relevant authority.

N.B. Pollution, illegal dumping and other environmental offences can be reported to the [Environment Watch hotline](#) on **1300 784 782** or via their online form.  
This hotline also provides information on relevant contacts for specific issues.

It will be useful when making your report to include as much information about the potential offence, including:

- details of the alleged offender;
- time and date of the incident (or date it started if ongoing);
- description of the incident and location affected; and
- details about the environment and how it was affected (including photographs where available).

## Government Compliance and Environmental Action

Read: DWER's Regulatory Principles under the EP Act Guideline is available [here](#).  
DWER's Compliance and Enforcement Policy is available [here](#).  
DWER's Prosecution Guideline is available [here](#).

DWER has various powers under the EP Act, including:

- issuing statutory notices and directions, such as environmental protection notices, prevention notices, or vegetation conservation notices;

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<sup>13</sup> EP Act s 50B.

<sup>14</sup> See Department of Water and Environmental Regulation, [Gold miner fined for hypersaline spill](#) (1 May 2023).

<sup>15</sup> EP Act ss 3A(2) and 3A(3) 'serious environmental harm' definition.

<sup>16</sup> EP Act s 50A.

- issuing modified penalty notices; and
- prosecuting offences.

## **Statutory Notices & Directions**

### Environmental Protection Notices

An environmental protection notice (**EPN**) is a notice issued where there is reasonable suspicion that there is, or is likely to be, an emission causing pollution, or any material or serious environmental harm, from a premises without approval.<sup>17</sup> This means an EPN can be issued for an existing emission or environmental harm, or where an emission or environmental harm is likely to occur.

An EPN can require the recipient to:<sup>18</sup>

- investigate the emission, pollution or environmental harm;
- prepare and implement a plan for the prevention, control or abatement of the emission, pollution or environmental harm; or
- take any measures deemed reasonable to prevent, control or abate the issue causing the pollution or environmental harm.

### Prevention Notices

A prevention notice (**PN**) can be issued where an authorised person reasonably suspects waste has been, or will be, discharged, pollution has or will occur, or there has been or will likely be material or serious environmental harm, without approval.<sup>19</sup>

A PN can require the recipient to:<sup>20</sup>

- deal with the waste being discharged; or
- prevent, control or abate the pollution or environmental harm.

### Vegetation Conservation Notices

A vegetation conservation notice (**VCN**) can be issued if DWER suspects that unlawful native vegetation clearing has taken place, or is likely to take place.<sup>21</sup>

VCNs are issued to ensure that no clearing, or no further clearing, takes place and can include conditions to:<sup>22</sup>

- repair any damage;
- re-establish and maintain native vegetation;
- prevent erosion or movement of sand, soil, dust or water; or
- ensure no further damage is caused by the clearing.

### Non-compliance with notices

Failure to comply with:

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<sup>17</sup> EP Act s 65.

<sup>18</sup> EP Act s 65(1a).

<sup>19</sup> EP Act s 73A.

<sup>20</sup> EP Act s 73A(2).

<sup>21</sup> EP Act s 70(2).

<sup>22</sup> EP Act s 70(4A).

- an EPN;<sup>23</sup> or
- a PN (without reasonable excuse);<sup>24</sup>

is an offence under the EP Act.

If a person fails to comply with an EPN, a PN or a VCN, and damage is caused to another person's property, and that damage would not have been caused if the notice had been complied with, then the person whose property was damaged may be able to pursue the person responsible for damages.<sup>25</sup> Legal advice should always be obtained before proceedings are commenced.

In other circumstances, third parties cannot prosecute a non-compliant party – see the [Third Party Enforcement Action](#) section below.

Visit: Details of EPNs, PNs and VCNs issued by DWER are available [here](#).

### Modified Penalty Notices

Under the EP Act, DWER can issue a 'modified penalty notice' (**MPN**) which is essentially a smaller fine where DWER believes that:<sup>26</sup>

- the person has committed a prescribed offence;
- there is sufficient evidence of the offence; and
- the offence can be adequately dealt with using an MPN instead of prosecuting the offence.

The fine on the MPN will be 10% of the maximum penalty that could be imposed by the Court if the offence was prosecuted for a first time offence and 20% for any subsequent offence.<sup>27</sup>

When determining if an MPN is appropriate, DWER must consider factors such as:<sup>28</sup>

- the potential or actual environmental impact of the offence;
- whether the offender notified DWER of the offence and cooperated with an investigations; and
- whether the offender has taken reasonable steps to ensure the circumstances causing the offence do not happen again.

Visit: A register of MPNs issued by DWER is available for public inspection at DWER's head office at Prime House, 8 Davidson Terrace, Joondalup WA 6027.

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<sup>23</sup> EP Act s 65(4a)-(5).

<sup>24</sup> EP Act s 73A(6), 73A(7).

<sup>25</sup> EP Act s 73B.

<sup>26</sup> EP Act s 99A.

<sup>27</sup> EP Act s 99B(2).

<sup>28</sup> EP Act s 99A(1A).

## Prosecutions

DWER can prosecute offences under the EP Act, including in pollution or environmental harm offences.

### N.B. **Limitation periods**

Prosecutions for Tier 1 proceedings can be commenced at any time.

Prosecutions for all other offences under the EP Act must be commenced within **24 months** from the date the alleged offence was committed.

It is important to report suspected offences as soon as possible to ensure that any prosecution can be commenced within the limitation period.

Under the [Prosecution Guideline](#), DWER will only prosecute if:

- there is sufficient evidence to establish a case; and
- it is in the public interest to prosecute, including that there are reasonable prospects of a conviction.

Visit: Details of prosecutions undertaken by DWER are available [here](#).

## Third Party Enforcement Action

Schedule 1 of the EP Act sets out whether an offence is a Tier 1, Tier 2, or Tier 3 offence. Prosecutions for offences can only be initiated by the CEO of DWER (for Tier 1 and 2 offences) or an authorised person (for Tier 3 offences only).<sup>29</sup> For certain offences, such as unlawful discharge of waste under s 49A of the EP Act, the CEO may also authorise a police officer or the CEO of the relevant Council to commence prosecution for the offence.<sup>30</sup>

This means that there are no rights for members of the public to bring civil enforcement proceedings for potential breaches of the EP Act, other than those discussed above. The only option available to the public is to report the potential offence and encourage DWER to take enforcement action.

N.B. There may be enforcement options available for environmental harm or pollution that is causing private nuisance, such as issues from noise or odours. For information on this, we recommend obtaining private legal advice.

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<sup>29</sup> EP Act s 114.

<sup>30</sup> EP Act s 114(3).

## Contacts and Additional Resources

<b>Department of Water and Environmental Regulation (DWER) (WA)</b>	<b>Environment Watch hotline:</b> P: 1300 784 782 W: <a href="#">Environment Watch</a>  <b>DWER:</b> P: 08 6364 7000 E: <a href="mailto:info@dwer.wa.gov.au">info@dwer.wa.gov.au</a> W: <a href="#">DWER contact information</a> A: Locked Bag 10, Joondalup WA 6919
<b>Environmental Protection Authority (EPA) (WA)</b>	For proposals and referred projects, including consultations and EIS processes.  <a href="#">Online contact form</a> W: <a href="#">EPA contact information</a> A: EPA, Locked Bag 10, Joondalup WA 6919
<b>Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) (WA)</b>	For matters relating to mining and petroleum applications, closures, fracking and hazardous materials.  P: 08 9222 3333 W: <a href="#">DEMIRS</a>
<b>Department of Biodiversity, Conservation and Attractions (DBCA) (WA)</b>	For matters relating to protection of native plants and animals, national parks and marine parks, prescribed burns and Rottnest Island.  E: <a href="mailto:enquiries@dbca.wa.gov.au">enquiries@dbca.wa.gov.au</a> W: <a href="#">DBCA</a>
<b>Department of Climate Change, Energy, the Environment and Water (DCCEEW) (Cth)</b>	Only for actions that have significantly impacted, or are likely to significantly impact <a href="#">matters of national environmental significance</a> .  Suspected breaches can be reported <a href="#">here</a> .

Read: You may wish to review our [Review of the EP Act](#), including areas we have identified as priority for reforms.

See also our factsheet on [Public Merits Review in WA](#), which includes information about appeals under the EP Act.

## Evaluate this resource

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