

Guideline

Environmental Protection Act 1994

Powers of authorised persons

This procedural guide sets out the powers of authorised persons in undertaking functions of the Department of Environment and Science (the department) under the Environmental Protection Act 1994 (the Act).

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Essential points

- In addition to any powers granted by the *Environmental Protection Act 1994* (the Act), authorised persons have the same rights as an ordinary member of the public.
- An authorised person is a person who has been appointed by the chief executive, enabling them to perform certain functions and exercise particular powers under the Act. Appointments are only made if, in the opinion of the chief executive, the person has the necessary expertise or experience. An authorised person may be an appropriately qualified public service officer, an employee of the department or a person declared by regulation.
- The powers of an authorised person under the Act can be limited by the person's instrument of appointment. Authorised persons should check their instrument of appointment to ensure that they possess the power to take a particular course or action.
- Authorised persons are issued with identity cards. Before exercising a power in relation to someone else, the authorised person must first produce their identity card for the person's inspection or have their identity card displayed so that it is clearly visible to the person. If, for any reason, it is not practicable to produce or display their identity card, the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.
- Provided an authorised person, or another person acting under an authorised person's direction, acts honestly and without negligence under the Act, they do not incur civil liability.

Powers of an authorised person generally

Outside the provisions of the Act, an authorised person retains the same rights as a member of the public, including liberty to go where a member of the public can go and the freedom to speak to people. In terms of an authorised person's right to enter upon premises other than under the Act, the public has the right to enter and be on public land. In relation to private land where a business is being conducted which is open to the public (e.g. a shopping centre), it is lawful for people to enter. In relation to private premises, in the absence of an indication (e.g. a sign) that the public are not to enter, persons can lawfully enter upon the property, but not enter any dwelling, in order to contact the occupiers of the property.

Powers of entry for places or vehicles

Under the Act, powers are granted to authorised persons (and other specified persons) to enter a place or a vehicle in certain circumstances. Authorised persons must perform their duties genuinely and without any ulterior motive.

Public place means any place the public is entitled to use or is open to, or used by, the public (whether or not on payment of an admission fee).

A premise includes a building and the land on which a building is situated.

Land includes:

- the airspace above the land;
- land that is, or is at any time, covered by waters; and
- waters.

Vehicle includes a train, boat and an aircraft.

Annexure A is a table outlining powers of entry under the Act.

Consent to entry

If an authorised person intends to seek the consent of an occupier of a place for an authorised person to enter the place, before seeking the consent, the authorised person must inform the occupier:

- of the purpose of the entry;
- that anything found and seized may be used in evidence in court; and
- that the occupier is not required to consent.

For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without consent or a warrant:

- enter land around the premises at the place to the extent that it is reasonable to contact the occupier; or
- enter part of the place that members of the public would ordinarily be allowed to enter.

If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent.

What an authorised person can do when they enter a place or vehicle

What an authorised person is authorised to do following entry depends on the particular sections of the Act, and if powers are authorised by a warrant, what the warrant says.

Annexure A is a table outlining what an authorised person can do after they have lawfully entered a place or vehicle under the Act.

It is an offence for a person to obstruct an authorised person in the exercise of their powers under the Act without a reasonable excuse.

- The maximum penalty for an individual is 165 penalty units.
- The maximum penalty for a corporation is 825 penalty units.

Section 2B of the Penalties and Sentences Regulation 2005 prescribes the monetary value of a penalty unit.

Power to seize evidence

An authorised person who enters a place with a warrant may seize the evidence for which the warrant was issued.

An authorised person who enters a place with the occupier's consent may seize the particular thing for which the entry was made if the authorised person believes on reasonable grounds that the thing is evidence of an offence against the Act.

An authorised person who enters a place with a warrant or the occupier's consent may also seize another thing if the authorised person believes on reasonable grounds the:

- thing is evidence of an offence against the Act (including an offence that was not the subject of a reasonable suspicion prior to entry)
- seizure is necessary to prevent the thing being:
 - concealed, lost or destroyed
 - used to commit, continue or repeat the offence.

If an authorised person enters a place other than with a warrant or with the occupier's consent or enters or boards a vehicle, the authorised person may seize a thing if the authorised person believes on reasonable grounds the:

- thing is evidence of an offence against the Act; and
- seizure is necessary to prevent the thing being:
 - concealed, lost or destroyed; or
 - used to commit, continue or repeat the offence.

Procedure after seizure of evidence

As soon as practicable after a thing is seized by an authorised person under this chapter, the authorised person must give a receipt for it to the person from whom it was seized.

The receipt must describe generally each thing seized and its condition.

If for any reason it is not practicable to give a receipt to the person at the time of seizure, the authorised person must:

- leave the receipt at the place of seizure; and
- ensure the receipt is left in a reasonably secure way and in a conspicuous position.

The authorised person must allow a person who would be entitled to the seized thing if it were not in the authorised person's possession to inspect it, and if it is a document, to take extracts from it or make copies of it.

The authorised person must return the seized thing to its owner at the end of:

- six months; or
- if a prosecution for an offence involving it is started within the six months – the prosecution for the offence and any appeal from the prosecution.

Despite the time limits above, if the authorised person stops being satisfied that the retention of the seized thing as evidence is necessary, the authorised person must return the seized thing to its owner immediately.

However, an authorised person may keep the seized thing if the authorised person believes, on reasonable grounds, it is necessary to continue to keep it to prevent its use in committing an offence.

If the owner of the seized thing is convicted of an offence against the Act, the Court may order that the thing is forfeited to the state or local government.

Damage to property and compensation

Where damage is caused to someone's property during the exercise of power to enter a place or vehicle, authorised persons must ensure that the damage is fully documented (including photographs and notes), to ensure that any compensation claimed by a person is limited to any damage caused by the department.

The authorised person must immediately give written notice of the particulars of the damage to the person who appears to be the owner of the thing.

Payment of compensation may be claimed in court proceedings other than for a contamination incident.

If damage occurs, an authorised person must inform their manager as soon as possible.

Powers to require name and address, answer questions and produce documents

If a person is found to be committing an offence against the Act, or if the authorised person reasonably believes that the person has committed an offence against the Act, the authorised person may require the person to state their name and address. When making the requirement, the authorised person must warn the person that it is an offence to fail to state the person's name and address unless the person has a reasonable excuse.

If an authorised person suspects that the name and address given are false, they may require the person to provide evidence of the correctness of the name and address given.

A requirement under section 465 of the Act to answer questions or produce documents may be made by an authorised person to obtain information about a suspected offence. A requirement under section 466 of the Act to produce documents may be made by an authorised person to obtain documents required to be held or kept under the Act.

A person must not give the department or an authorised person a document containing information that the person knows, or ought reasonably to know:

- is false or misleading in a material particular; or
- contains incomplete information in a material particular.

A person must also not state anything to an authorised person that the person knows is false or misleading in a material particular or omit anything from a statement made to an authorised person, without which the statement is, to the person's knowledge, misleading in a material particular.

Penalties for failing to give name and address, answer questions or produce documents

It is an offence to fail to comply with a requirement to give name and address or to give evidence of the correctness of a name or address unless the person has a reasonable excuse for not complying.

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Section 2B of the Penalties and Sentences Regulation 2005 prescribes the monetary value of a penalty unit.

Failing to answer questions or attend at a stated place at a stated time, to answer questions under section 465 of the Act is an offence unless the person has a reasonable excuse.

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Failing to produce a document under section 466 of the Act is an offence unless the person has a reasonable excuse.

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Giving the department or an authorised person a document containing information that the person knows, or ought reasonably to know is false or misleading in a material particular; or contains incomplete information in a material particular is an offence.

- The maximum penalty for an individual is 1665 penalty units or two years imprisonment.
- The maximum penalty for a corporation is 8325 penalty units.

Stating anything to an authorised person that a person knows is false or misleading in a material particular, or omitting anything from a statement made to an authorised person which makes the statement false or misleading in a material particular, is an offence.

- The maximum penalty for an individual is 1665 penalty units or two years imprisonment.
- The maximum penalty for a corporation is 8325 penalty units.

Other enforcement powers of authorised persons

Authorised persons have additional powers in an emergency.

An authorised person may direct any person to take specified reasonable action within a specified reasonable time, or take the action, or authorise another person to take the action if they are satisfied on reasonable grounds that an emergency exists.

Annexure A

Powers of an authorised person under the <i>Environmental Protection Act 1994</i>	
Under what circumstances	Powers after entry
<p>General power of entry</p> <p>An authorised person may enter a place if:</p> <ul style="list-style-type: none"> • the occupier consents to the entry and, if the entry is for exercising a power under chapter 7, part 5B (clean-up notice) or 8 (contaminated land) of the Act, its owner consents; • it is a public place and the entry is made when the place is open to the public; • it is a place to which an environmental authority (EA) relates and the entry is made when the: <ul style="list-style-type: none"> ○ activity to which the authority relates is being carried out; ○ place is open for conduct of business; ○ place is otherwise open for entry; • it is a place to which an agricultural environmentally relevant activity (ERA), or a prescribed condition for a small scale mining activity relates and the entry is made when the— <ul style="list-style-type: none"> ○ activity, or the activity to which the condition relates, is being carried out; ○ place is open for conduct of business; ○ place is otherwise open for entry; • it is a place where an industry is conducted and the entry is made when— <ul style="list-style-type: none"> ○ the place is open for conduct of business; ○ is otherwise open for entry; • the entry is authorised by a warrant where there are reasonable grounds for suspecting that there is evidence proving the commission of an offence • for land mentioned in chapter 7, part 5B (clean-up notice) or 8 (contaminated land)—the entry is authorised by an order of a magistrate under section 458 to carry out work on the land to: <ul style="list-style-type: none"> ○ prevent or minimise environmental harm or rehabilitate or restore the land because of an activity carried out under an EA, 	<ul style="list-style-type: none"> • search any part of the place or vehicle • inspect, examine, test, measure, photograph or film the place or vehicle or anything in or on the place or vehicle • take samples (including extracting a sample for further analysis) of any contaminant, substance or thing • record, measure, test or analyse the release of contaminants into the environment from the place or vehicle • take extracts from or make copies of any documents (this power does not apply for a preliminary investigation or site investigation) • take into or onto the place any persons, equipment and materials that are reasonably required to exercise the powers • install or maintain any equipment and materials in or on the place or vehicle that is reasonably required to conduct a monitoring program for the release of contaminants • require the occupier of the place, or any person to give reasonable help for the exercise of the powers mentioned above • by notice to a person in control of a vehicle, require the person to take the vehicle to a stated reasonable place by a stated reasonable time and if necessary, to remain in control of the vehicle at the place for a reasonable time to enable the exercise of the powers above.

<p>transitional environmental program (TEP) or site management plan</p> <ul style="list-style-type: none"> ○ remediate land managed under a site management plan ○ secure compliance with an accredited ERMP, EA, TEP, site management plan or any conditions of the authority, program or plan or development conditions of a development approval (DA) or prescribed condition for carrying out a small scale mining activity. Where an order is obtained under section 458 then departmental staff can enter the place but only to carry out the work themselves; ● the authorised person may enter the place under section 453 (entry to search, test, sample etc. for release of contaminant), 454 (entry of land for preliminary investigation) or 455 (entry of land for access). <p>Entry or boarding of vehicles</p> <p>An authorised person may enter or board a vehicle if they have reasonable grounds for suspecting it:</p> <ul style="list-style-type: none"> ● is being or has been used in the commission of an offence against the Act; ● is or a thing in it may provide evidence of an offence; or ● relates to the transporting of waste. 	
<p>Environmental harm</p> <p>An authorised person may enter land if the authorised person reasonably believes that unlawful environmental harm has been caused by the release of a contaminant.</p> <p>Land for this section means a parcel of land other than any part on which a building is erected.</p>	<p>An authorised person may enter land for the purpose of finding out or confirming the source of the release of the contaminant. For example, to search, test or sample for the release of a contaminant.</p>
<p>Contaminated land</p> <p>An authorised person may enter land if the department believes on reasonable grounds land is contaminated land.</p>	<p>Conduct a preliminary investigation with the agreement of the owner and occupier or if the department has given at least five days written notice to the owner and occupier.</p> <p>The general power to take extracts from, or make copies of, any documents on the</p>

	place or vehicle does not apply to preliminary investigations.
<p>Entry of land for access</p> <p>An authorised person may enter land if it is necessary or desirable in order to cross the land (access land) to enter the primary land under sections 452 (general entry of place), 453 (entry to search, test, sample etc. for release of contaminant) and 454 (entry of land for preliminary investigation)</p>	<p>Enter the access land and take into or over it anything reasonably required to exercise the general powers for places and vehicles under section 460 of the Act.</p> <p>Prior to entry, must either have the consent of the owner of the access land or have given the occupier at least five business days written notice.</p> <p>Consent or notice is not required if the authorised person reasonably believes that there is imminent risk of environmental harm being caused to or from the primary land and the authorised person has told or attempted to tell the occupier that they are permitted to enter.</p>
<p>Warrant for entry to a place in relation to evidence</p> <p>An authorised person may enter a place if the entry is permitted via a warrant from a magistrate under sections 456 or 457.</p>	
<p>Order to enter land to conduct investigation or conduct work</p> <p>An authorised person may apply to a magistrate for an order to enter land.</p>	<ul style="list-style-type: none"> • to carry out work on the land; • to take the actions required under a clean-up notice; • to conduct a site investigation of contaminated land; and • to conduct work to remediate land on the contaminated land register.