

# Information sheet

*Environmental Protection Act 1994*

## Internal review and appeals

*This information sheet gives a summary of the process for the review of decisions and appeals to the Land Court and the Planning and Environment Court under sections 519 to 539F of the Environmental Protection Act 1994 and subordinate legislation. This information sheet replaces the two information sheets (1) Internal review and appeal to Land Court (ESR/2015/1742) and (2) Internal review and appeal to the Planning and Environment Court (ESR/2015/1572).*

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### Version History

Version	Effective date	Description of changes
1.00	13 August 2015	First published version of the guideline.
2.00	13 August 2015	Minor changes and references to legislation updated.
3.00	10 October 2016	Updated to reflect latest version of <i>Environmental Protection Act 1994</i> .
3.01	6 July 2017	Replaced references to the <i>Sustainable Planning Act 2009</i> with <i>Planning Act 2016</i> (commenced 3 July 2017).
3.02	13 June 2018	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.
4.00	01 April 2019	Update of conditions relating to financial assurance to reflect the introduction of the Mineral and Energy Resources (Financial Provisioning) Act 2018 and the subsequent changes to the Environmental Protection Act 1994.
5.00	1 November 2019	Updated for the commencement of the progressive rehabilitation and closure plan framework.
6.00	15 September 2020	Updated to reflect changes introduced by the <i>Environmental Protection and Other Legislation Amendment Act 2020</i> .
6.01	14 April 2022	Facsimile number removed.

## **1 Introduction**

The *Environmental Protection Act 1994* (EP Act) includes provisions for the internal review and appeal of certain decisions made under the EP Act.

The decisions that are subject to internal review are referred to as 'original decisions' in Schedule 2 of the EP Act and subordinate legislation.

A person who is dissatisfied with an original decision made by the Department of Environment and Science (the department) may apply to have that decision internally reviewed<sup>1</sup>. Generally, an application for a review of an original decision must be:

- made within 10 business days of the receiving a notice about the original decision or from when the department is taken to have made the decision;
- supported by enough information to enable the department to decide the review application; and
- made using the approved form Application for review of original decision (ESR/2015/1573<sup>2</sup>).

Where an application has been made for a review of an original decision, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review and any later appeal.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days of receiving the notice about the review decision. Schedule 2, Part 3 includes original decisions for internal review only.

### **What is the relevant court?**

#### **Land Court**

Original decisions mentioned in Schedule 2, Part 1 are subject to Land Court appeal. These decisions generally relate to environmental authorities for resource activities.

The EP Act confers jurisdiction to the Land Court to hear and determine matters relating to natural resource issues, including appeals against decisions concerning the grant of mining tenures and other state land interests.

#### **Planning and Environment Court**

Original decisions mentioned in Schedule 2, Part 2 can be appealed against to the Planning and Environment Court. These decisions generally relate to environmental authorities for prescribed environmentally relevant activities.

The Planning and Environment Court is constituted by judges and hears matters including those relating to planning and development, environmental protection and management, nature conservation and heritage.

The relevant sections of Chapter 11, Part 3 of the EP Act that provide for the review of decisions and appeals are outlined below.

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<sup>1</sup> Note: In accordance with section 521(14) internal reviews are not undertaken for an original decision to issue a clean-up notice.

<sup>2</sup> This form is available on the Queensland Government website at [www.qld.gov.au](http://www.qld.gov.au), using the publication number ESR/2015/1573 as a search term.

## **Chapter 11—Administration, Part 3—Review of decisions and appeals**

### **Division 1—Interpretation**

#### **Section 519 Original decisions**

- (1) A decision mentioned in schedule 2 is an 'original decision'.
- (2) A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an original decision.

#### **Section 520 Dissatisfied person**

- (1) A dissatisfied person, for an original or review decision, is—
  - (a) if the decision is about an environmental impact statement (EIS) or the EIS process for an EIS—the relevant proponent under chapter 3, part 1, for the project to which the EIS relates; or
  - (b) if the decision is about an application for an environmental authority or proposed PRCP plan for the application—the applicant; or
  - (c) if the decision is about an environmental authority, including financial assurance for the environmental authority, or a PRCP schedule—the holder of the authority or schedule; or
  - (d) if the decision is about an application for registration of a person as a suitable operator—the applicant; or
  - (e) if the decision is about a registered suitable operator—the operator; or
  - (f) if the decision is about taking action after receiving an audit report for an audit of a PRCP schedule—the holder of the schedule; or
  - (g) if the decision is to refuse an application to recognise an accreditation program for an agricultural ERA – the applicant; or
  - (h) if the decision is about a recognised accreditation program for an agricultural ERA – the owner of the program; or
  - (i) if the decision is to give an audit notice under section 322, 322A or 323—the recipient; or
  - (j) if the decision is to conduct an environmental audit or prepare an environmental report for an audit under section 326—the relevant environmental authority holder; or
  - (k) if the decision is about an environmental investigation or environmental protection order – the recipient; or
  - (l) if the decision is about a transitional environmental program—the holder of an approval for the program or person or public authority that is required to submit, or submits, the program; or
  - (m) if the decision is about a temporary emissions licence—
    - (i) the applicant for the licence; or
    - (ii) the holder of the licence; or
  - (n) if the decision is to issue a direction notice, clean-up notice or cost recovery notice—the recipient; or

- (o) if the decision is about recording particulars of land in, or removing particulars of land from, the environmental management register or contaminated land register—the land’s owner; or
  - (o) if the decision is about a site management plan for contaminated land—
    - (i) the recipient for the notice to prepare or commission the site management plan, other than for a decision under section 399; and
    - (ii) the land’s owner; and
    - (iii) if another person prepares or commissions the plan—the other person, other than for a decision under section 399; or
  - (p) if the decision is about erecting signs on contaminated land—the land’s owner; or
  - (q) if the decision is about a disposal permit—the applicant for the permit; or
  - (r) if the decision is about an exemption under chapter 8, part 3F, division 3—the person applying for, or given, the exemption; or
  - (s) if the decision is to give a notice under section 451(1)—the person to whom the notice is given; or
  - (t) if the decision is about an application for approval as an auditor under chapter 12, part 3A, division 2—the applicant; or
  - (u) if the decision is about an auditor—the auditor; or
  - (v) if the decision is about a complaint under chapter 12, part 3A, division 5—the person who made the complaint; or
  - (w) if the decision is about a conversion application under section 695—the applicant; or
  - (x) if the decision is a decision under an environmental protection policy or a regulation that the policy or regulation declares to be a decision to which this part applies—the person declared under the policy or regulation to be a dissatisfied person for the decision.
- (2) A submitter for an application is also a dissatisfied person if the decision is about—
- (a) a site-specific application for an environmental authority for a petroleum activity; or
  - (b) an amendment application under chapter 5, part 7 for an environmental authority for a resource activity, other than a mining activity; or
  - (c) the submission of a transitional environmental program to which section 335 applies.

## **2 Internal review of decisions**

The relevant section of the EP Act regarding the process for the internal review of original decisions is outlined below.

### **Division 2—Internal review of decisions**

#### ***Section 521 Procedure for review***

- (1) A dissatisfied person may apply for a review of an original decision.

- (2) The application must—
  - (a) be made in the approved form to the administering authority within the following period (the ‘review application period’)—
    - (i) 10 business days<sup>1</sup> after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the ‘review date’);
    - (ii) the longer period the authority in special circumstances allows; and
  - (b) be supported by enough information to enable the authority to decide the application.
- (3) The administering authority must, within 5 business days after the end of the review application period or, if 2 or more applications are received in relation to the original decision, the end of the latest of the review application periods, send the following documents to the other persons who were given notice under this Act of the original decision—
  - (a) notice of the application (the ‘review notice’);
  - (b) either-
    - (i) a copy of the application and supporting documents; or
    - (ii) details of where a copy of the application and supporting documents may be inspected or accessed.
- (4) The review notice must inform the recipient that submission on the application may be made to the administering authority within 5 business days (the ‘submission period’) after the day the authority sends the review notice to the recipient.
- (5) If the administering authority receives only 1 application in relation to the original decision and is satisfied the applicant has complied with subsection (2), the authority must, within the decision period—
  - (a) review the original decision;
  - (b) consider any submissions properly made by a recipient of the review notice; and
  - (c) make a decision (the ‘review decision’) to—
    - (i) confirm or revoke the original decision; or
    - (ii) vary the original decision in a way the administering authority considers appropriate.
- (6) If the administering authority receives 2 or more applications in relation to the original decision and is satisfied the applicants have complied with subsection (2), the authority must, within the decision period-
  - (a) review the original decision; and
  - (b) consider any submissions properly made by a recipient of any of the review notices; and
  - (c) make 1 decision (also the ‘review decision’) in relation to the applications to-
    - (i) confirm or revoke the original decision; or
    - (ii) vary the original decision in a way the administering authority considers appropriate.
- (7) The application does not stay (i.e. suspend or stop) the original decision.

*Note-* See part 3, division 4 in relation to stays.

- (8) The application must not be dealt with by—
- (a) the person who made the original decision; or
  - (b) a person in a less senior office than the person who made the original decision.
- (9) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice under this Act of the original decision.
- (10) The notice must—
- (a) include the reasons for the review decision; and
  - (b) inform the persons of their right of appeal against the decision.
- (11) If the administering authority does not comply with subsection (5), (6) or (9), the authority is taken to have made a decision confirming the original decision.
- (12) Subsection (8) applies despite the *Acts Interpretation Act 1954*, s. 27A.
- (13) This section does not apply to an original decision made by—
- (a) for a matter, the administration and enforcement of which has been devolved to a local government—the local government itself or the chief executive officer of the local government personally; or
  - (b) for another matter—the chief executive personally.
- (14) Also, this section does not apply to an original decision to issue a clean-up notice.
- (15) In this section—
- 'decision period'*, for a review of an original decision, means—
- (a) if only 1 application is received in relation to the original decision and a submission is received within the submission period—
    - (i) 20 business days after the administering authority receives the application; or
    - (ii) the longer period, of not more than 5 additional business days, the authority in special circumstances decides; or
  - (b) if only 1 application is received in relation to the original decision and no submissions are received within the submission period—
    - (i) 15 business days after the administering authority receives the application; or
    - (ii) the longer period, of not more than 5 additional business days, the authority in special circumstances decides; or
  - (c) if 2 or more applications are received in relation to the original decision and a submission is received within the submission period for at least 1 of the applications—
    - (i) 20 business days after the administering authority receives the latest of the applications; or
    - (ii) the longer period, of not more than 5 additional business days, the authority in special circumstances decides; or
  - (d) if 2 or more applications are received in relation to the original decision and no submissions are received within the submission period for any of the applications—

- (i) 15 business days after the administering authority receives the latest of the applications; or
- (ii) the longer period, of not more than 5 additional business days, the authority in special circumstances decides.

### **3 Appeals to Land Court**

The relevant sections of the EP Act regarding the process for appealing against a decision to the Land Court are outlined below.

#### **Division 3—Appeals**

##### **Subdivision 1—Appeals to Land Court**

###### ***Section 523 Review decisions subject to Land Court appeal***

This subdivision applies if the administering authority makes a review decision for an original decision mentioned in schedule 2, part 1.

###### ***Section 524 Right of appeal***

A dissatisfied person who is dissatisfied with the review decision may appeal against the decision to the Land Court.

###### ***Section 525 Appeal period***

- (1) The appeal must be started within 22 business days after the appellant receives notice of the review decision.
- (2) However, the Land Court may at any time extend the time for starting the appeal.

###### ***Section 526 Land Court mediation***

- (1) Any party to the appeal may, at any time before the appeal is decided, ask the Land Court to conduct or provide mediation for the appeal.
- (2) The mediation must be conducted by the Land Court or a mediator chosen by the Land Court<sup>2</sup>.

###### ***Section 527 Nature of appeal***

The appeal is by way of rehearing, unaffected by the review decision.

###### ***Section 528 Land Court's powers for appeal***

In deciding the appeal, the Land Court has the same powers as the administering authority.

###### ***Section 530 Decision for appeals***

- (1) In deciding the appeal, the Land Court may—
  - (a) confirm the review decision; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the matter to the administering authority who made the decision, with directions the Land Court considers appropriate.
- (2) In setting aside or substituting the decision, the Land Court has the same powers as the authority unless otherwise expressly stated.
- (3) However, this part does not apply to a power exercised under subsection (2).



- (4) If the Land Court substitutes another decision, the substituted decision is taken for this Act, other than this subdivision, to be the authority's decision.

## **4 Appeals to the Court**

The relevant sections of the EP Act regarding the process for appealing against a decision to the Court are outlined below.

### **Division 3—Appeals**

#### **Subdivision 2—Appeals to Court**

##### ***Section 531 Who may appeal***

- (1) A dissatisfied person who is dissatisfied with a review decision may appeal against the decision to the Court.
- (2) However, the following review decisions cannot be appealed against to the Court—
  - (a) a review decision to which subdivision 1<sup>3</sup> applies;
  - (b) a review decision that relates to an original decision mentioned in Schedule 2, Part 3<sup>4</sup>.
- (3) The chief executive may appeal against another administering authority's decision (whether an original or review decision) to the Court.
- (4) A dissatisfied person who is dissatisfied with an original decision to which s. 521 does not apply may appeal against the decision to the Court.

##### ***Section 532 How to start appeal***

- (1) An appeal is started by—
  - (a) filing written notice of appeal with the registrar of the Court; and
  - (b) complying with rules of court applicable to the appeal.
- (2) The notice of appeal must be filed—
  - (a) if the appellant is the chief executive—within 33 business days after the decision is made or taken to have been made; or
  - (b) if the appellant is not the chief executive—within 22 business days after the day the appellant receives notice of the decision or the decision is taken to have been made.
- (3) The Court may at any time extend the period for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

**Section 533 Appellant to give notice of appeal to other parties**

- (1) Within 8 business days after filing the notice of appeal, the appellant must serve notice of the appeal on—
  - (a) if the appellant is the chief executive—all persons who were given notice under this Act of the original decision; or
  - (b) if the appellant is not the chief executive—the other persons who were given notice under this Act of the original decision.
- (2) The notice must inform the persons that, within 10 business days after service of the notice of appeal, they may elect to become a respondent to the appeal by filing in the Court a notice of election under rules of court.

**Section 534 Persons may elect to become respondents to appeal**

A person who properly files in the Court a notice of election becomes a respondent to the appeal.

**Section 536 Hearing procedures**

- (1) The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.
- (2) An appeal is by way of rehearing, unaffected by the administering authority's decision.

**Section 537 Assessors**

If the judge hearing an appeal is satisfied the appeal involves a question of special knowledge and skill, the judge may appoint 1 or more assessors to help the judge in deciding the appeal.

**Section 538 Appeals may be heard with planning appeals**

- (1) This section applies if—
  - (a) a person appeals against an administering authority's decision (whether an original or review decision) about an application for an environmental authority for a prescribed ERA; and
  - (b) a person appeals against the assessment manager's decision under the Planning Act about a planning or development matter for the premises to which the application for the authority relates.
- (2) The Court may order—
  - (a) the appeals to be heard together or 1 immediately after the other; or
  - (b) 1 appeal to be stayed until the other has been decided.
- (3) This section applies even though the parties, or all of the parties, to the appeals are not the same.

**Section 539 Powers of Court on appeal**

- (1) In deciding an appeal, the Court may—
  - (a) confirm the decision appealed against; or
  - (b) vary the decision appealed against; or
  - (c) set aside the decision appealed against and make a decision in substitution for the decision set aside.

- (2) If on appeal the Court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the administering authority.

## 5 Stays

### Division 4 — Stays

#### **Section 539A Stay of operation of original decisions for internal review**

- (1) If an application is made for internal review of an original decision mentioned in Schedule 2, Part 1 or 2, the applicant may immediately apply for a stay of the decision to—
- (a) for an original decision mentioned in Schedule 2, Part 1—the Land Court; or
  - (b) for an original decision mentioned in Schedule 2, Part 2—the Court.
- (2) The Land Court or the Court may stay the decision only if it considers the stay is desirable having regard to the following—
- (a) the interests of any person whose interests may be affected by the granting of the stay or the stay not being granted;
  - (b) any submission made to the Land Court or the Court by the entity that made the original decision;
  - (c) the public interest.
- (3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.
- (4) The period of a stay must not extend past the end of the period within which an appeal against the review decision may be started under section 525 or 532.
- (5) This section applies subject to sections 539C and 539D.
- (6) In this section—
- 'internal review'*, of an original decision, means a review of the decision under section 521.

#### **Section 539B Stay of operation of decisions appealed against to Land Court or Court**

- (1) This section applies to—
- (a) an original decision appealed against to the Court if section 521 does not apply to the decision; or
  - (b) an original decision appealed against to the Land Court or the Court if the decision is confirmed or varied by a review decision.
- (2) The Land Court or the Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.
- (3) A stay may be granted on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.
- (4) The period of a stay must not extend past the time when the Land Court or the Court decides the appeal.
- (5) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

- (6) This section applies subject to sections 539C to 539E.

**Section 539C Stay of decision about financial assurance**

- (1) This section applies to an application under section 539A or 539B for a stay of a decision about the amount of financial assurance required under a condition of an environmental authority.
- (2) The decision may not be stayed unless the administering authority has been given security for at least 75% of the amount of financial assurance that was decided by the administering authority.

**Section 539D Stay of particular decisions if unacceptable risk of environmental harm**

- (1) This section applies to an application under section 539A or 539B for a stay of a decision—
  - (a) to ask the scheme manager for a payment of costs and expenses under section 316G; or
  - (b) to make a claim on or realise an EPA assurance under section 316G; or
  - (c) to issue an environmental protection order under section 358.
- (2) The Land Court or the Court must refuse the application if satisfied there would be an unacceptable risk of serious or material environmental harm if the stay were granted.

**Section 539E Stay of decision to issue clean-up notice**

- (1) This section applies to an application under section 539B for a stay of a decision to issue a clean-up notice.
- (2) In deciding the application, the Court must have regard to—
  - (a) the quantity and quality of contamination of the environment that is likely to be caused if the stay is granted; and
  - (b) the proximity of the place at or from which the contamination incident is happening or happened to a place with environmental values that may be adversely affected by the contamination.

**Section 539F Effect of stay of ERC decision**

- (1) This section applies if 1 of the following decisions is stayed –
  - (a) an original decision that is an ERC decision;
  - (b) an original decision appealed against to the Land Court if the decision is an ERC decision that is confirmed or varied by a review decision.
- (2) Despite the stay the decision remains in effect for section 297 and the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.
- (3) However, if the holder of the environmental authority in relation to which the ERC decision has been made is required to give a surety under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, the holder is only required, during the period of the stay, to give a surety of 75% of the amount required.

## 6 Judicial review

Under the *Judicial Review Act 1991*, a person whose interests would be adversely affected by a decision made by the department has the right to:

- request a statement of reasons explaining a decision; and
- apply to the Supreme Court for a review of a decision if they are not satisfied with the statement of reasons for that decision.

### Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

### Approved:

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<sup>1</sup> Under the *Environmental Protection Act 1994* business days—‘generally, does not include a day between 20 December in a year and 5 January in the following year’.

<sup>2</sup> For information on how to start the appeal, see the *Land Court Rules 2000*. For information on the conduct of the mediation, see the *Land Court Act 2000*. Information is also available on the [Land Court website](#).

<sup>3</sup> Subdivision 1 is about appeals to the Land Court.

<sup>4</sup> Original decisions mentioned in Schedule 2, Part 3 are original decisions for internal review only.