

Information sheet

Environment Protection Act 1994

Matters devolved to local government

The purpose of this information sheet is to provide guidance for local governments and other stakeholders on where matters under the Environment Protection Act 1994 (the Act) are devolved to local government. The information sheet also outlines where the administration and enforcement of a matter remains the responsibility of the Department of Environment and Heritage Protection (the department).

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1 Matters devolved to local government

If a matter is devolved, the local government becomes responsible for the administration and enforcement of those devolved matters for its local government area. Local government have powers to use statutory instruments under the Act in relation to the devolved matter. The *Environmental Protection Regulation 2008* (EP Regulation) states that the following matters are devolved to local government:

- environmental nuisance – section 440 and 443 of the Act (to the extent it relates to environmental nuisance), including offences relating to nuisance
- noise standards – section 440Q and chapter 8, part 3B, division 3 of the Act, including the offence of contravening a noise standard under section 440Q
- water contamination – chapter 8, part 3C of the Act, including the offence of depositing prescribed water contaminants in waters under section 440ZG

1.1 Environmentally relevant activities devolved to local governments

Section 101 of the EP Regulation lists the following environmentally relevant activities (ERAs) as being devolved to local governments to administer and enforce:

ERA no.	ERA description
6	Asphalt manufacturing
12(1) and 12(2)	Plastic product manufacturing
19	Metal forming
20(1) and 20(2)(a)	Metal recovery
38(1)(a)	Surface coating
49	Boat maintenance or repair
61(1)	Waste incineration and thermal treatment

1.2 Local governments without devolved environmentally relevant activities

Schedule 8A of the EP Regulation lists the following local governments that do not have devolution for the above ERAs:

Local governments without a devolution for ERAs		
Balonne Shire Council	Charters Towers Regional Council	Lockyer Valley Regional Council
Barcaldine Regional Council	Cook Shire Council	Longreach Regional Council
Barcoo Shire Council	Croydon Shire Council	Mareeba Shire Council*
Bulloo Shire Council	Diamantina Shire Council	Scenic Rim Regional Council
Carpentaria Shire Council	Gympie Regional Council	Tablelands Regional Council
Central Highlands Regional Council	Hinchinbrook Shire Council	Winton Shire Council

* Mareeba Shire Council is not listed in schedule 8A, but was part of Tablelands Regional Council

Administration of the ERAs, including any associated statutory instruments, by the above local governments was effectively transferred to the department from 1 January 2014.

1.3 Other circumstances where the matter would be devolved to local government

If the department is unable to form a reasonable belief that the environmental impact was directly caused by an ERA that the department is responsible for regulating, then the powers remain devolved to local government. The local government will therefore be responsible for the devolved matter and determining who the offender/s of the alleged offence is.

For example: If it is alleged that an ERA carried out by a local government has caused an offence against section 440ZG by releasing sediment off-site, the department is responsible for enforcing section 440ZG and managing the sediment issue (extending to wherever the sediment has moved to e.g. road, stormwater infrastructure or waterway).

However, if the department cannot prove that the ERA carried out by the local government was the cause of the sediment, then the administration and enforcement of section 440ZG remains devolved to local government.

Private contractors conducting work for the State or a local government are not an instrumentality or agency of the State or a local government and as such, are not a State or local government entity. Therefore, where a private contractor is engaged to undertake an activity that relates to a devolved matter it remains the responsibility of local government to administer and enforce the devolved matter.

For example: If it is alleged that a private earthmoving contractor, Company Pty Ltd X, engaged by City Council Y or State Department Z to undertake road works, is releasing sediment laden water to stormwater infrastructure, then the administration and enforcement of the water contamination provisions of the Act remain devolved to local government.

2 Matters not devolved to local government

In certain circumstances a matter may not be devolved to local government. Where this occurs, the department retains responsibility for the administration and enforcement of an otherwise devolved matter. A local

government may not be responsible for regulating a devolved matter under the following sets of the circumstances.

2.1 Ancillary ERA

If a devolved ERA is being undertaken in conjunction with an agricultural ERA or resource activity as an ancillary ERA, the administration and enforcement of those ancillary ERAs remains the responsibility of the department.

The administration and enforcement of the environmental nuisance, noise standards and water contamination provisions for an ancillary ERA remains the responsibility of the department.

For example: The department regulates a resource activity which includes the surface coating of gas pipelines, under the relevant ERA which is ordinarily devolved to local government. However, the complaint of water contamination caused by the surface coating would be investigated by the department (instead of referring to local government) as the ERA activity is an ancillary activity and is carried out as part of the resource activity, which is regulated by the department.

2.2 Particular acts, omission or activities by State or local government entity

The department is responsible for administering and enforcing the environmental nuisance, noise standards and water contamination provisions relating to an activity that is (or is claimed to have been) done, or omitted to be done, by a State or local government entity.

For example: If a local government is allegedly causing an environmental nuisance, the department is responsible for the administration and enforcement of the nuisance provisions of the Act.

2.3 State or local government entities

The department also retains responsibility for the administration and enforcement of a prescribed ERA if the ERA is operated by a State or local government entity, such as an instrumentality or agency of the State or a local government; a Government Owned Corporation; or a rail government entity.

2.3.1 Instrumentality or agency of the State or a local government

Under section 106 of the EP Regulation a State or local government entity can be an instrumentality or agency of the State or a local government. A public university, for example, will be an instrumentality or agency of the State if the public university discharges functions for the State under specific legislation.

As mentioned previously, private contractors conducting work for the State or a local government are not a State or local government entity and, therefore, where a private contractor conducts an activity relating to a devolved matter on behalf of a State or local government entity it remains the responsibility of local government to administer and enforce the devolved matter.

2.3.2 Government owned corporation

ERAs operated by a Government Owned Corporation are regulated by the department; they are defined in Schedule 1 of the Government Owned Corporations Regulation 2014; and are listed below:

- C S Energy Limited ACN 078 848 745;
- Energex Limited ACN 078 849 055;
- Ergon Energy Corporation Limited ACN 087 646 062;
- Far North Queensland Ports Corporation Limited ACN 131 836 014;
- Gladstone Ports Corporation Limited ACN 131 965 896;
- North Queensland Bulk Ports Corporation Limited ACN 136 880 218;

- Port of Townsville Limited ACN 130 077 673;
- QIC Limited ACN 130 539 123;
- Queensland Electricity Transmission Corporation Limited ACN 078 849 233;
- Stanwell Corporation Limited ACN 078 848 674;
- SunWater Limited ACN 131 034 985.

2.3.3 Rail government entity

A rail government entity is:

- a government entity whose principal business is managing a railway and/or operating rolling stock on a railway directly or indirectly through its subsidiaries;
- if a rail government entity has one or more subsidiaries, a reference in an Act to a rail government entity includes a reference to each of its subsidiaries.

Being a State or local government entity, activities conducted by a rail government entity are not devolved to local government and remain the responsibility of the department to regulate.

2.4 Mobile and temporary activities

If an activity is mobile and temporary, and carried out across more than one local government area, it is not devolved to local government and the department is responsible for administration and enforcement of the activity. The Act defines a mobile and temporary activity as a prescribed ERA, other than an activity that is dredging material, extracting rock or other material, or the incinerating of waste:

- carried out at various locations using transportable plant or equipment, including a vehicle; and
- that does not result in the building of any permanent structures or any physical change of the landform at the locations (other than minor alterations solely necessary for access and setup including, for example, access ways, footings and temporary storage areas); and
- carried out at any one of the locations:
 - for less than 28 days in a calendar year; or
 - for 28 or more days in a calendar year only if the activity is necessarily associated with, and is exclusively used in, the construction or demolition phase of a project.

2.5 Activities carried out at a facility with a non-devolved activity

An ERA is not devolved if the ERA (the subject activity):

- includes carrying out another ERA (the coextensive activity) at the same facility; and
- the administration and enforcement of the Act for the coextensive activity is not devolved to a local government.

In other words, if a devolved ERA is being carried out at a facility with another, non-devolved ERA, then the administration and enforcement of the Act in relation to both ERAs is the responsibility of the department.

3 Other matters that are not devolved to local government

The administration and enforcement of the following matters are not devolved to a local government, regardless of whether or not a matter to which the below activities or instruments relate is otherwise devolved:

- clean-up notices – a written notice issued to a prescribed person for a contamination incident;
- cost recovery notice – a written notice that requires the recipient to pay all reasonable expenses the department incurred in relation to the clean-up of the contamination incident;
- record keeping for particular fuel suppliers – defined under section 440ZY of the Act;
- enforcing compliance with the National Environment Protection (National Pollutant Inventory) Measure 1998

4 Powers of the department if a local government fails to act

If the local government fails to take action in relation to a devolved matter, the department may then take action to address the devolved matter and recover the reasonable costs and expenses incurred by the department as a debt, payable by the local government to the State under section 514(7) of the Act. Local government is given the opportunity to address an issue (relating to a devolved matter) prior to the department attempting to recover costs.

The chief executive has the power to take the action under section 514(7) of the Act. The decision to undertake compliance and enforcement action in relation to a devolved matter under section 514(7) is not an original decision and as such there are no review or appeal rights available to the local government. However, the person who is the subject of enforcement action taken regarding a devolved matter may have review and appeal rights depending on the enforcement tool used.

For example: If an environmental protection order (EPO) is issued by the department to the operator of a devolved ERA, the local government cannot appeal the department's decision to take action under section 514(7). However the operator of the ERA will have review and appeal rights in relation to the decision to issue the EPO.

The department must be satisfied on the basis of sufficient evidence that the local government has failed to take action. The local government is provided the opportunity to address any deficiencies in its actions in relation to the devolved matter.

5 Approved:

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6 Enquiries:

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Disclaimer

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