

# Guideline

## Environmental Protection Act 1994

### Direction Notice

*This document is to assist authorised persons to complete and issue a direction notice pursuant to chapter 7, part 5A of the Environmental Protection Act 1994.*

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## **What is a direction notice?**

A direction notice is a statutory tool which may be used by the Department of Environment and Heritage Protection (the department) if it is reasonably satisfied that there has been a contravention of certain prescribed provisions of the *Environmental Protection Act 1994* (the Act). A direction notice requires a person contravening one of the prescribed provisions to remedy the contravention.

The purpose of a direction notice is to provide the person with an opportunity to remedy the situation before any further action is taken. Where a contravention of the prescribed provisions has resulted in serious or material environmental harm, a direction notice is not appropriate and other enforcement tools provided for by the Act should be considered.

## **Is this the appropriate statutory tool?**

Direction notices can be issued for offences relating to unlicensed environmentally relevant activities (ERAs) (section 426), environmental nuisance (section 440) for contravention of a noise standard (section 440Q), and for depositing prescribed water contaminants and related matters (section 440ZG). Direction notices can also be issued for contravening a provision of an accredited environmental risk management plan (ERMP) if the person is carrying out an agricultural ERA.

Direction notices can be issued if someone is committing an offence or if they have committed an offence and it is likely that they will continue or repeat the offence. Direction notices cannot be issued if an offence has happened and it is not likely that the offence will be repeated. In other words, they are designed to make sure that an ongoing offence stops, or that an offence does not happen again.

A direction notice may only be issued if the matter relating to the contravention can be remedied, it is known what action should be taken and if it is appropriate to give the person an opportunity to remedy the matter.

## **When to use a direction notice**

A direction notice may be issued by an authorised person.

Before issuing a direction notice, an authorised person should check whether responsibility for dealing with environmental nuisance complaints and breaches of noise standards or water contaminant provisions have been devolved to local government. These provisions are not devolved to local government if the provision is contravened by a State or local government entity, the ERA is operated by a State or local government entity, or the ERA is not prescribed as being devolved (i.e. it is an ERA regulated by the State). For further information refer to the devolved matters procedural guide (under development).

## **When an authorised person can use a direction notice**

A direction notice may be issued for a contravention of any of the following provisions of the Act (each of which is a prescribed provision):

- section 426—offence of carrying out an ERA without an environmental authority (EA);
- section 440—offence of causing environmental nuisance;
- section 440Q—offence of contravening a noise standard;
- section 440ZG—depositing prescribed water contaminants in water and related matters;
- a provision of an accredited ERMP for an agricultural ERA when the person contravening the provision is the person carrying out the agricultural ERA.

Section 363B states that an authorised person may issue a written notice (a *direction notice*) to a person, requiring the person to remedy the contravention, if the authorised person is satisfied on reasonable grounds that:

- a person:
  - is contravening a prescribed provision; or
  - has contravened a prescribed provision in circumstances that make it likely the contravention will continue or be repeated;
- a matter relating to the contravention can be remedied; and
- it is appropriate to give the person an opportunity to remedy the matter.

In the context of the direction notice, remedy includes cleaning up, fixing or rectifying any environmental harm (including nuisance) done by the person contravening the prescribed provision.

A direction notice may be given in writing or, if it is not practicable to issue a written notice, the direction may be made orally and confirmed by a written direction notice as soon as practicable.

The fact that a person has been given an oral direction, and is therefore aware of the contravention, is a consideration in the time given to the person to remedy the contravention by written notice.

### **Section 426—Offence of carrying out an ERA without an EA**

Under section 426 of the Act, it is an offence to carry out an ERA without an EA.

The Act states that ERAs include:

- prescribed ERAs – an activity prescribed under Schedule 2 the Environmental Protection Regulation 2008; and
- resource activities defined in section 107 of the Act as:
  - a geothermal activity;
  - a GHG (greenhouse gas) storage activity;
  - a mining activity;
  - a petroleum activity.

For more information on unlicensed ERAs, see the dealing with unlicensed ERAs procedural guide (EM1155).<sup>1</sup>

### **Section 440—Offence of causing environmental nuisance**

Under section 440 of the Act, it is an offence to wilfully and unlawfully cause an environmental nuisance or to unlawfully cause an environmental nuisance.

‘Environmental nuisance’ is defined in section 15 of the Act as any unreasonable interference or likely interference with an environmental value caused by:

- aerosols, fumes, light, noise, odour, particles or smoke;
- an unhealthy, offensive or unsightly condition because of contamination; or

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<sup>1</sup> This is the publication number. The publication number can be used as a search term to find the latest version of a publication at [www.ehp.qld.gov.au](http://www.ehp.qld.gov.au).

- another way prescribed by a regulation.

An 'environmental value' is defined in section 9 of the Act as:

- a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety, or
- another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation.

Particular types of environmental nuisance listed in schedule 1, part 1 and part 2 of the Act are excluded from section 440, these include environmental nuisance caused by any of the following:

- Safety and transport noise:
  - noise from an audible traffic signal, at pedestrian lights;
  - noise from a warning signal for a railway crossing;
  - safety signal noise from a reversing vehicle;
  - noise from operating a ship;
  - noise from aircraft movement;
  - noise from the ordinary use of a public road or State-controlled road;
  - noise from the ordinary use of a busway, light rail or rail transport infrastructure.
- Government activities and public infrastructure:
  - maintaining a public road, state-controlled road, railway or other infrastructure for public transport;
  - maintaining a public infrastructure facility, including:
    - infrastructure for a water or sewage service; and
    - a facility for a telecommunication or electricity system.
  - performing a function under the *Disaster Management Act 2003*;
  - in the case of the state or a local government—preventing or removing, or reducing the risk to public health from, a public health risk under the *Public Health Act 2005*.
- Nuisance regulated by other laws:
  - an act or omission that is a contravention of a local law;
  - an act done, or omission made, under an authority given under a local law;
  - noise to which the *Police Powers and Responsibilities Act 2000*, chapter 19, part 3 applies;
  - an emission of a contaminant at a workplace, within the meaning given by the *Work Health and Safety Act 2011*, section 8, that does not extend beyond the workplace;
  - a public health risk within the meaning given by the *Public Health Act 2005*, section 11;
  - development carried out under an approval under the *Sustainable Planning Act 2009* that authorises the environmental nuisance;
  - the use, for a fireworks display, of explosives within the meaning given by the *Explosives Act 1999*;
  - smoking within the meaning given by the *Tobacco and Other Smoking Products Act 1998*;

- noise from a special event prescribed under a regulation for the *Major Sports Facilities Act 2001*, section 30A that complies with any conditions prescribed under the regulation, for the use of the facility where the event takes place, about noise levels for the event;
- an act done, or omission made, under an approved compliance management plan under the *Transport Infrastructure Act 1994*, section 477G.
- Non-domestic animal noise, including:
  - animal noise from a non-domestic animal.
- Particular cooking odours, including:
  - a cooking odour from cooking carried out on land which a class 1, 2 or 3 building under the Building Code of Australia is constructed.

### **Matters that an authorised person must consider for particular emissions**

If there is an environmental nuisance involving an emission of aerosols, fumes, light, noise, odour, particles or smoke, before deciding to issue a direction notice, the authorised person must:

- consider the general emission criteria set out in section 363C(3);
- if the emission is of noise, consider the noise emission criteria stated in section 363C(4) of the Act; and
- taking those criteria into account, consider whether it would be appropriate to issue the direction notice or to first try to resolve the matter in another way.

### **General emission criteria section 363C(3)**

The general emission criteria, for a particular emission, are:

- the emission's characteristics or qualities;
- the emission's amount or rate;
- the duration and time of the emission;
- whether the emission is continuous or fluctuating;
- the nature of the receiving environment;
- the impact of the emission on the receiving environment;
- in relation to each person affected by the emission:
  - the views of each affected person, including views about the degree of interference caused or likely to be caused by the emission at that person's place of residence;
  - the order of occupancy between the person causing the emission and the affected person; and
  - any structural or other changes to the place from which the emission is generated and where the affected person lives or any change to the activities carried out at either of those places; and
- any mitigating measures that have been taken or could reasonably have been taken by the person causing the emission.

### **Noise emission criteria section 363C(4)**

If the particular emission under section 440 is noise, in addition to the general emission criteria, authorised persons must also consider the noise emission criteria, which are as follows:

- any measured sound pressure levels;
- the audibility of the noise;
- whether the noise is continuous, at a steady level or whether it has a fluctuating, intermittent, tonal or impulsive nature;
- whether the noise has vibration components.

### **Section 440Q—Offence of contravening a noise standard**

It is an offence under section 440Q of the Act to unlawfully contravene a noise standard. However, a person does not contravene a noise standard by causing an environmental nuisance mentioned in schedule 1, part 1 or part 2 of the Act (see ‘environmental nuisance’ above).

### **Application of noise standards**

Noise can include vibrations of any frequency, whether emitted through the air or another medium (section 12).

A local government may enact local laws which prescribe a noise standard by prohibiting the making of a stated noise or by referring to a default noise standard found in chapter 8, part 3B, division 3 of the Act. If there is a local law in force for which a section in division 3 is the nominated section, the local law provision applies as the noise standard.

The default noise standards are listed in sections 440R to 440ZC of the Act and include:

- building work (section 440R);
- regulated devices (section 440S);
- pumps (section 440T);
- air conditioning equipment (section 440U);
- refrigeration equipment (section 440V);
- indoor venues (section 440W);
- open-air events (section 440X);
- amplifier devices other than at an indoor venue or open-air event (section 440Y);
- power boat sports in a waterway (section 440Z);
- operating power boat engines at premises (section 440ZA);
- blasting (section 440ZB); and
- outdoor shooting ranges (section 440ZC).

If a local government is not the administering authority or there is no local law in place (as permitted by section 514) then the default noise standards will apply.

If a local government enacts a local law and is the administering authority then the prescribed standard in the local law applies and the local government is responsible for enforcing that standard. If the local government fails to enforce the noise standard, the department can take appropriate action under section 514(7).

It is important to note that if the noise standards are complied with, but the noise is still a nuisance, a direction notice may be available for a contravention of section 440.

Chapter 5, part 3 of the *Environmental Protection Regulation 2008* (the Regulation) states the prescribed standards for particular noise standards and provides for ways in which noise may be measured to help in deciding whether an environmental nuisance has been caused, or a noise standard has been contravened.

The prescribed standards for particular noise standards are as follows:

- For the definition of *background level* in section 440K, the prescribed standard is AS 1055.
- For the definitions of *Z Peak* and *Z Peak Hold* in section 440K, the prescribed standard is AS IEC 61672.

Background level and source noise may be measured by applying the relevant procedure under:

- AS 1055; or
- the noise measurement manual.

‘Source noise’ means a noise from a person, place or thing that:

- is measured over a time interval of at least 15 minutes, or if the noise continues for less than 15 minutes, the duration of the source noise;
- allows for adjustments under AS 1055 for tonal character and impulsiveness of sound; and
- is quoted to the nearest whole number of decibels.

Source noise for a noise standard under section 440T, 440U or 440V may be measured as  $L_{A90, T}$ .

$L_{A90, T}$  means the A-weighted sound pressure level obtained using time weighting ‘F’ that is exceeded for 90% of the measuring period (T).

Source noise for a noise standard under section 440W, 440X or 440Y may be measured as  $L_{Aeq, T}$ .

$L_{Aeq, T}$  means the value of the A-weighted sound pressure level of a continuous steady sound that within a measurement time interval (T) has the same mean square sound pressure as a sound under consideration, the level of which varies over time.

If two or more noises of the same type happen simultaneously at the same premises, they may be measured as if they are one noise of that type happening at the premises.

The instruments, equipment and installation identified in AS IEC 61672 must be used by authorised persons, where appropriate, to ensure any evidence is taken to be accurate and precise in the absence of evidence to the contrary (section 490(8)).

### **Section 440ZG—Depositing prescribed water contaminants in waters and related matters**

A prescribed water contaminant includes earth (defined as sand, soil, silt or mud) or any other contaminant listed under schedule 9 of the Regulation including:

- a chemical, or chemical waste containing a chemical (e.g. biocide, including herbicide, fungicide and pesticide);
- a gas other than oxygen;
- a liquid containing suspended or dissolved solids;
- animal matter, including dead animals, animal remains and animal excreta, and water used to clean animals, animal enclosures or vehicles used for transporting animals; and
- ashes, clay, gravel, sediment, stones and similar organic or inorganic matter.

A person must not:

- unlawfully deposit a prescribed water contaminant:
  - in waters;
  - in a roadside gutter or stormwater drainage;
  - at another place, and in a way, so that the contaminant could reasonably be expected to wash, blow, fall or otherwise move into waters, a roadside gutter or stormwater drainage (e.g. a building site where soil may be washed into an adjacent roadside gutter); or
- unlawfully release stormwater run-off into waters, a roadside gutter or stormwater drainage if that release will result in the build-up of earth in waters, a roadside gutter or stormwater drainage.

A person *deposits* a contaminant in waters or at another place if the person drops, places, throws the contaminant in the waters or onto the place, or releases or otherwise causes the contaminant to move into the waters or onto the place. A depositor of a contaminant includes the occupier of a place, or the person who is in control of the contaminant and who does not remove the contaminant within a reasonable time after becoming aware that it has been deposited at the place. A person *deposits* earth at a place if the person carries on earthworks or another activity that exposes the earth at the place. A depositor of earth includes the occupier of a place who does not stop the earth being exposed at the place within a reasonable time after becoming aware that the earth has been exposed at the place.

### **Contravention of an accredited ERMP prescribed provision**

In certain circumstances (see section 88 of the Act), a person who carries out an agricultural ERA must have an accredited ERMP for an agricultural ERA.

An agricultural ERA is defined in section 75 as:

- a commercial sugar cane growing activity;
- a cattle grazing activity carried out on an agricultural property of no more than 2000 ha (or where there are more than 100 standard cattle units, with one cattle unit being the live weight of cattle of more than 550 to 600 kg); or
- an activity which is carried out on an agricultural property in one or more of the following catchments (each a priority catchment):
  - the Wet Tropics catchment;
  - the Mackay–Whitsunday catchment;
  - the Burdekin dry tropics catchment.

A person who carries out an agricultural ERA must have an accredited ERMP for the agricultural ERA if:

- it consists of:
  - sugar cane growing on more than 70 ha in the Wet Tropics catchment;
  - cattle grazing on more than 2000 ha in the Burdekin dry tropics catchment; or
- the person is the recipient of a direction given under chapter 4A, part 3, division 1 (an ERMP direction).

An ERMP may also be voluntarily submitted for accreditation.

Section 363A provides that a direction notice may be issued for a contravention of a prescribed provision which includes, among other things, a provision of an accredited ERMP for an agricultural ERA. However, a provision of an accredited ERMP is only considered a prescribed provision if the person contravening the provision is the person who is carrying out the agricultural ERA.

### **If an approved transitional environmental program is in place**

Section 346 of the Act provides that if a person is authorised to do, or not to do, something under an approved transitional environmental program (TEP), the person may do, or not do, the thing despite anything in an accredited ERMP. Accordingly, a person will not be in contravention of a provision of an accredited ERMP if the person is doing (or not doing) something under an approved TEP, so a direction notice may not be issued in these circumstances. For more information on TEPs, see the transitional environmental program guideline (EM287).<sup>2</sup>

### **How does an authorised person issue a direction notice**

An authorised person must complete an assessment report to document the decision as well as completing the direction notice.

#### **Step 1—Completion of the assessment report**

Before completing the direction notice, authorised persons are required to complete a direction notice assessment report which sets out the facts and circumstances relating to the matter and documents the decision making process used by the department in determining to issue a direction notice.

The assessment report is not intended to replicate the department file. Rather it is designed to capture all critical aspects that have led to the department's decision. Accordingly, an authorised person is encouraged to limit the information included to relevant points only.

#### **1. Brief history of the matter**

Briefly outline any historical information relevant to this decision. This information should be presented in succinct chronological dot points and should include how the department became aware of the alleged breach.

#### **2. Grounds for issuing a direction notice**

Section 363B of the Act provides that a direction notice can only be issued if the department is satisfied on reasonable grounds that:

- a person:
  - is contravening a prescribed provision; or

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<sup>2</sup> This is the publication number. The publication number can be used as a search term to find the latest version of a publication at [www.ehp.qld.gov.au](http://www.ehp.qld.gov.au).

- has contravened a prescribed provision in circumstances that make it likely that the contravention will continue or be repeated;
- the matter relating to the contravention can be remedied; and
- it is appropriate to give the person an opportunity to remedy the matter.

Authorised persons must identify the relevant situation or 'grounds' upon which the decision to issue a direction notice is based.

### **3. Expand upon the grounds**

The purpose of this section is to clearly identify what the department must 'prove' before deciding to use a direction notice and should be used to expand upon the grounds which have previously been identified. This can include identifying the prescribed provision that is being, or has been, contravened. This should also include the statutory requirement listed in the Act which must be met by the department prior to issuing a direction notice.

In instances where there have been multiple contraventions, each contravention should be listed independently and will need to be proven on its own merits.

Each ground, including contraventions or requirements, should be allocated a separate number.

### **4. Detail the matters considered**

The purpose of the table in the assessment report is to link the elements of any alleged contravention to the evidence gathered and the conclusions formed. This is achieved by identifying:

- the elements of any specific contravention;
- the evidence which has been considered for each element; and
- the conclusion that has been reached by the authorised person after considering the information sourced.

When documenting the evidence considered an authorised person is encouraged to limit the information to relevant points only. This can include:

- notes recorded in an authorised person's official notebook;
- samples collected for analysis and any subsequent lab reports;
- photographs and copies of documents; and
- any observed actions and direct testimony received from relevant individuals.

When considering the facts and circumstances, authorised persons are encouraged to give attention to the accuracy and relevance of available evidence, historical details, professional expertise and the weight attributed to any direct testimony provided.

### **5. Reasonable steps**

The Act provides that the notice may state the reasonable steps the authorised person considers necessary to remedy the contravention, or avoid further contravention, of the prescribed provision.

The authorised person is responsible for developing the reasonable steps for consideration by the decision-maker. As the recipients are able to seek a review of the department's decision to impose one or more reasonable steps, it is necessary for an authorised person to provide justification for the inclusion of each step.

The required steps must be SMART: specific, measureable, achievable, relevant and time specific. Relevant steps must be relevant to the contravention.

<p><b>Example:</b></p> <p>By 24 July 2015 ABC Construction Pty Ltd must install a sediment fence made from heavy duty geofabric along the southern boundary of the building site at 123 Creek Road, Murphyville to prevent sediment from leaving the site and being deposited into Murphy Creek. All building works must cease until the sediment fence is in place and has been inspected by an authorised person who must be satisfied with its construction.</p>	<p>ABC Construction Pty Ltd is carrying out building works at a site at 123 Creek Road, Murphyville. Sediment from the building works has been leaving the site and is being washed into Murphy Creek where the sediment is smothering plants and animals that live at the bottom of the creek. ABC Construction Pty Ltd is required to install the sediment fence to prevent further polluting of Murphy Creek and to preserve the habitat of the animals and plants that live there. Building work must be halted on the site until the sediment fence is installed to prevent further environmental harm being caused to Murphy Creek.</p>
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## 6. Timeframe

Section 363D(2) of the Act provides that the time by which the person must remedy the contravention must be reasonable having regard to:

- the action required to remedy the contravention;
- the risk to human health or the natural environment, or risk of loss or damage to property, posed by the contravention; and
- how long the person has been aware of the contravention, for example, because an authorised person has previously made an oral requirement that the contravention be remedied.

An authorised person must consider these factors carefully when deciding on a timeframe.

## 7. Provide for natural justice

Prior to the department making a decision which may adversely impact on an individual or group, the department must:

- **Notify**—notify the individual that the department is considering making adverse findings;
- **Respond**—provide the individual with an opportunity to respond to the allegation; and
- **Consider**—consider any representations made by the affected person before finalising the decision.

The seriousness of the matter will dictate the process by which natural justice is provided and is likely to vary from case to case. Accordingly, an authorised person is encouraged to use their discretion in determining how to best ensure natural justice is afforded and the amount of time provided to the affected person to respond.

While in some circumstances it may be appropriate for an authorised person to discuss the above information with the affected person during a site inspection or a telephone interview and to take contemporaneous notes, in more serious circumstances a written notification which includes a specific closing date for submissions should be used.

Regardless of the manner in which natural justice is afforded, any information provided by the affected person is to be documented. The summary of information should include how natural justice was provided as well as any responses provided by the affected person.

## 8. Recommendation

An authorised person is required to make a decision in relation to any alleged contravention or relevant event or activity.

### **Example:**

It is the opinion of the department that sediment is leaving the building site at 123 Creek Road, Murphville and is being deposited into Murphy Creek in contravention of section 440ZG of the Act. A direction notice will be issued immediately to ABC Construction Pty Ltd requiring the company to cease all building works on the site until a sediment fence has been installed along the southern boundary of the site.

Administrative decisions, such as the decision to issue a direction notice, are made based upon the balance of probabilities. This means that the decision-maker must be able to determine whether, based upon the information available, it was more likely than not that the event occurred.

Authorised persons are encouraged to consider alternative actions/tools, departmental [enforcement guidelines](#), details of any consultations including site visit details and discussions with the proposed recipient of the direction notice. The reasonableness of proposed timeframes for the completion of requirements must also be considered. For example, if the location is geographically isolated the department should consider allowing additional time to secure appropriate contractors.

## 9. Approval

As a direction notice is issued by an authorised person, there is no delegated authority for section 363B of the Act. Accordingly, the assessment report is to be approved and signed by the authorised person's supervisor.

### **Step 2—Completion of the direction notice**

The notice must meet a number of legislative requirements in order to be legally binding.

Section 363D of the Act provides that a direction notice must include the following information:

- that the authorised person believes the person:
  - is contravening a prescribed provision; or
  - has contravened a prescribed provision in circumstances that make it likely the contravention will continue or be repeated;
- the particular prescribed provision that the authorised person believes is being, or has been, contravened;
- briefly, how it is believed the prescribed provision is being or has been contravened;
- the time by which the person must remedy the contravention;
- that it is an offence to fail to comply with the direction notice unless the person has a reasonable excuse;
- the maximum penalty for failing to comply with the direction notice; and
- the review or appeal details.

The notice may also state the reasonable steps the authorised person considers necessary to remedy the contravention, or avoid further contravention of the prescribed provision.

A copy of the information sheet—Internal review and appeal to the Planning and Environment Court (EM1866) should be attached to the direction notice.

The direction notice is signed by the decision-maker in conjunction with the assessment report which records a formal decision.

### **Recipient of a direction notice**

Each statutory notice must clearly identify who is the recipient of the notice. It is the recipient of the notice who is required to comply with the notice. Officers should avoid identifying or stating more than one person on a notice as this may affect the validity of the notice.

If the intended recipient of a notice is a company, officers should state only the company name and registered address in the notice. A letter *may* be sent to the director of the company attaching a *copy* of the notice, however the recipient of the notice and the entity that is required to comply is the company identified in the notice.

If both an individual person and a company are to be the subject of the same notice, individual notices should be served on each party. *For example*. 'Mr Bloggs' in his personal capacity is the recipient of notice 1 and 'Bloggs and Others Pty Ltd', being the company that Mr Bloggs is employed by, is the recipient of notice 2.

### **Service of a direction notice**

Service means delivery to the party who is the subject of the notice. Authorised persons are encouraged to use their discretion as to the most appropriate form of service, having regard to the recipient in question. Methods of service are provided for in sections 39 and 39A of the *Acts Interpretation Act 1954*. Where the Act requires a document to be served on (which includes given, delivered or sent to) a person, the document may be served:

- on an individual:
  - by delivering it to the person personally; or
  - by leaving at, or by sending it by pre-paid registered post to, the place of residence or business of the person.
- on a body corporate:
  - by leaving it at, or sending it by pre-paid registered post to, the head office, a registered office or a principal office of the body corporate.

The date, time and method of service should be documented by a contemporaneous file note. Depending on the method used, a photocopy of the addressed, prepaid envelope should be taken or any facsimile or email confirmations should be retained on the department's file.

### **Follow-up required by an authorised person**

It is important that the matter is appropriately followed up to make sure that the person to whom the direction notice is issued is complying with any requirements imposed. Follow-up is to be scheduled by the relevant authorised person and confirmed with the business area manager. The business area manager is responsible for ensuring follow-up is undertaken within the agreed timeframe.

This is usually achieved by a follow-up site inspection or telephone call to be conducted during or after the time period nominated in the notice for specific requirements to ensure the notice is being complied with. Authorised persons are encouraged to utilise tools such as diary reminders to ensure the matter is followed up in a timely manner.

If the person does not comply with the requirements of the direction notice, an authorised person must consider what further action should be taken. This may include enforcement action.

### **Record-keeping responsibilities**

Officers must record all allegations of non-compliance in the department's EcoTrack system. This includes creating a complaint report/compliance activity, uploading copies of any relevant documents, updating the run sheet with commentary on actions and recording any decisions made on the enforcement measure screen (this includes a decision to take no further action).

A hard copy of the direction notice, the assessment report and any accompanying documentation should be attached to the paper file. The department is required to make, and record, an informed decision about all allegations of non-compliance.

### **Amendments to an issued direction notice**

If changes to the notice are required to correct clerical mistakes and errors arising from accidental slips or omissions in the notice, officers should make the required changes to the notice and provide the corrected notice to the recipient.

A cover letter should be included with the corrected notice that clearly outlines the corrections that have been made, and the reasons for these corrections i.e. result of a typing error. The changed notice will not have a new decision date, as it is the same notice as the original.

The department is able to correct errors in an issued notice including errors of calculation, typing errors, errors of punctuation or of formatting which give rise to unintended changes of meaning. For example, the notice is issued with a requirement that a water quality parameter must not exceed 100mm, however the intended limit was 100ml. The department can correct errors such as this typing error by notifying the recipient in writing. Ideally, errors of this kind should be identified and corrected well within the review or appeal period for the notice. This allows the notice to be corrected by the department and the recipient to receive the corrections within sufficient time to request a review of the decision or lodge an appeal.

If significant changes to the notice are required, that are not simple clerical corrections, officers should issue a new notice which reflects the desired amendments. The issue of a new notice must be carried out in the same way as the issuing of the original notice. Accordingly, a new assessment report or equivalent record of assessment must be completed and endorsed by the appropriate delegate. The assessment will determine the grounds of the new notice, which may or may not be the same as the original notice, depending on the individual circumstances, as well as the new decision date of the notice.

Significant changes include amendments which effect the recipient's rights or liabilities. For example, a change to a requirement of a notice that results in stricter release limits, as well as extensions of time to due dates stated in a notice, even in situations where the recipient has initiated or requested the amendment. It is important to note that the issue of a new notice will result in renewed appeal rights and recipients should be advised of this accordingly.

Officers should include a cover letter which outlines the reasons for the decision to issue the new notice and clearly states the changes that have been made in the new notice, compared with the original notice.

It is preferable that the decision to issue a new notice as a result of a significant amendment is made by the original decision-maker. If this is not possible, the decision should be made by a person with the appropriate delegation who holds a position equal to or higher than that of the original decision-maker.

Officers must also update all relevant records to reflect the changes that have been made to a notice including the correction of clerical errors and where significant changes have been required that have resulted in the issue of a new notice. All documentation relating to the issue of a notice and the decision-making process must be uploaded to EcoTrack and placed on the hard copy file.

## **Review of decisions and appeals**

The provisions regarding review of decisions and appeals may be found in sections 519 to 539 of the Act.

A person who is dissatisfied with certain decisions of the department may be able to apply to have the department review that original decision. A decision to issue a direction notice is an original decision and can be reviewed. If a direction notice is issued, a dissatisfied person is the recipient of the notice.

Generally, a request to have a decision reviewed must be:

- made within 10 business days of the decision being notified to the person;
- supported by enough information to enable the department to decide the application for review; and
- made using the application for review of an original decision form (EM709).

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

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 after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the [information sheet—Internal review and appeal to the Planning and Environment Court \(EM1866\)](#).

## **Penalties for non-compliance with a direction notice**

Failure to comply with a direction notice is an offence unless the person has a reasonable excuse.

- The maximum penalty for an individual for wilfully contravening a direction notice is 1665 penalty units.
- The maximum penalty for a corporation for wilfully contravening a direction notice is 8325 penalty units.
- The maximum penalty for an individual contravening a direction notice is 600 penalty units.
- The maximum penalty for a corporation contravening a direction notice is 3000 penalty units.

Alternatively, in accordance with the department's [enforcement guidelines](#), the department may issue a penalty infringement notice (PIN) for the offence.

The State Penalties and Enforcement Regulation 2014 prescribes the PIN amount for the offence.

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

## **Other penalties**

The department may also consider alternative compliance or enforcement action in relation to the offences that are the subject of the direction notice.

**Section 426—offence of carrying out an ERA without an EA**

It is an offence for a person to carry out an ERA without an EA.

- The maximum penalty for an individual is 4500 penalty units.
- The maximum penalty for a corporation is 22,500 penalty units.

**Section 440—offence of causing environmental nuisance**

It is an offence for a person to wilfully and unlawfully cause an environmental nuisance.

- The maximum penalty for an individual is 1665 penalty units.
- The maximum penalty for a corporation is 8325 penalty units.

It is an offence for a person to unlawfully cause an environmental nuisance.

- The maximum penalty for an individual is 600 penalty units.
- The maximum penalty for a corporation is 3000 penalty units.

**Section 440Q—offence of contravening a noise standard**

It is an offence for a person to wilfully and unlawfully contravene a noise standard.

- The maximum penalty for an individual is 1665 penalty units.
- The maximum penalty for a corporation is 8325 penalty units.

It is an offence for a person to unlawfully contravene a noise standard.

- The maximum penalty for an individual is 600 penalty units.
- The maximum penalty for a corporation is 3000 penalty units.

**Section 440ZG—offence of depositing prescribed water contaminants**

It is an offence for a person to wilfully and unlawfully deposit a prescribed water contaminant:

- in waters;
- in a roadside gutter or stormwater drainage;
- at another place, and in a way, so that the contaminant could reasonably be expected to wash, blow, fall or otherwise move into waters, a roadside gutter or stormwater drainage;
- unlawfully release stormwater run-off into waters, a roadside gutter or stormwater drainage that results in the build-up of earth in waters, a roadside gutter or stormwater drainage.
  - The maximum penalty for an individual is 1665 penalty units.
  - The maximum penalty for a corporation is 8325 penalty units.

It is an offence for a person to unlawfully deposit a prescribed water contaminant:

- in waters;
- in a roadside gutter or stormwater drainage;
- at another place, and in a way, so that the contaminant could reasonably be expected to wash, blow, fall or otherwise move into waters, a roadside gutter or stormwater drainage;

- unlawfully release stormwater run-off into waters, a roadside gutter or stormwater drainage that results in the build-up of earth in waters, a roadside gutter or stormwater drainage.
  - The maximum penalty for an individual is 600 penalty units.
  - The maximum penalty for a corporation is 3000 penalty units.

**Approved by:**

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