

# Guideline

## Environmental Protection Act 1994

### Transitional environmental programs (TEPs)

*This guideline has been prepared by the administering authority to provide information about TEPs issued under the Environmental Protection Act 1994 (the Act). The administering authority is the Department of Environment and Science (the department). This guideline is designed to assist in preparing TEPs and to outline how the department will assess a program notice and decide whether or not to approve a draft TEP.*

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## What is a TEP?

Section 330 of the Act provides that a TEP is a specific program which, when complied with, achieves compliance with the Act for the activity to which the TEP relates, by doing one or more of the following:

- reducing environmental harm caused by the activity;
- detailing the transition of the activity to an environmental standard;
- detailing the transition of the activity to comply with:
  - a condition (including a standard environmental condition) of an environmental authority (EA); or
  - a development condition; or
  - a prescribed condition for carrying out a small scale mining activity; ; or
  - an agricultural ERA standard that applies to an agricultural ERA.

TEPs are a useful tool to use when it is known what needs to be done to achieve a solution to an environmental problem, and the solution is likely to take a long period of time. As such, a TEP is not considered appropriate where an emergency situation exists.

A TEP must not be used to achieve compliance with a PRCP schedule or an enforceable undertaking (EU). For more information in relation to EUs, refer to the Enforceable Undertakings Statutory Guideline ([ESR/2016/2272](#))<sup>1</sup>.

The legislative provisions in respect to TEPs can be found in Chapter 7, Parts 3 and 4 (sections 330–357) of the Act.

## What is environmental harm?

‘Environmental harm’ is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.

It may be caused by an activity whether the harm is a direct or an indirect result of the activity or whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors.

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.

## Who can enter into a TEP?

A person (you) or public authority may enter into a TEP voluntarily, give the department a program notice under section 350 of the Act, or be required to submit a draft TEP by the department.

The term ‘person’ includes an individual or corporation.<sup>2</sup> A public authority includes the following;

- an entity established under an Act;

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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 on the department’s website at [www.des.qld.gov.au](http://www.des.qld.gov.au).

<sup>2</sup> Section 32D of the *Acts Interpretation Act 1954*.

- a government owned corporation; and
- Queensland Rail Limited ACN 132 181 090.

### **When can the department require a TEP?**

TEPs are specific programs that achieve compliance by reducing environmental harm or detailing the transition to an environmental standard. The department may require you or a public authority to prepare and submit for approval a draft TEP in the following circumstances:

- as a condition of an EA; or
- if the department is satisfied that:
  - an activity carried out, or proposed to be carried out, is causing, or may cause, unlawful environmental harm;
  - it is not practicable for you or a public authority to comply with an environmental protection policy (EPP) or regulation on its commencement;
  - a condition of an EA or DA has been contravened;
  - a prescribed condition for carrying out a small scale mining activity is, or has been, contravened; or
  - an environmental protection order has been amended or withdrawn.<sup>3</sup>

### **When can a TEP be used?**

TEPs may be used to progressively achieve compliance.

**For example:** a TEP could be used where an operator of an activity (you) is unable to meet effluent discharge limits because of a number of mitigating circumstances. You may consider submitting a TEP where it will take some time to implement measures that will bring the effluent discharge into compliance with your EA. The TEP will state the length of time that the upgrades will take, and how these measures will achieve compliance.

A TEP should not involve an extensive investigation to work out what needs to be done.

### **When is a TEP not appropriate?**

TEPs are not appropriate and will typically not be considered by the department in circumstances where you are not in compliance because of a choice or decision that you have made about managing your environmental risk.

**For example:** if you choose to under-invest in a control measure and that control measure fails, the department will not approve a TEP to allow you to return to compliance. To do so would be to reward a decision which put the environment at risk, and put other operators who have invested in appropriate control measures at a disadvantage.

A TEP may also not be appropriate where you have been in non-compliance with the Act for an extended period, or where a TEP will seriously undermine the environmental outcomes you are required to achieve.

**For example:** if you have never complied with your EA conditions and have been given previous opportunities to remedy the non-compliance (through warnings or other compliance actions), a TEP will not generally be approved, as this would enable you to continue the non-compliance whilst other operators have been complying with their obligations.

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<sup>3</sup> Section 332 of the Act.

A TEP must be refused as per s41AA of the Environmental Protection Regulation 2019 (the Regulation) if it is considered that the relevant activity will, or may have a residual impact in Great Barrier Reef catchment waters; and having regard to the matters mentioned in the [Point Source Water Quality Offsets Policy 2019](#), the residual impact will not be adequately counterbalanced by offset measures for the relevant activity.

A residual impact of a relevant activity is the presence of fine sediment, measured as total suspended solids, or dissolved inorganic nitrogen in Great Barrier Reef catchment waters, or waters mention in s41AA(1)(b) of the Regulation that:

- a) was released to the water because of the relevant activity; and
- b) remains, or will or is likely to remain, (whether temporarily or permanently) in the water despite mitigation measures for the relevant activity.

**For example:** You are undertaking an activity that has resulted in the release of fine sediment to the Great Barrier Reef catchment that remains in the water despite mitigation measures, a TEP must not be approved, as this activity has had a residual impact on the Great Barrier Reef catchment waters.

### **What is the effect of a TEP?**

Once approved, a TEP gives you the ability to do, or not do, the thing under the TEP despite, and without being in contravention of:

- a regulation;
- an EPP;
- their EA or DA;
- a prescribed condition (small scale mining activity); or
- an accredited environmental risk management plan (ERMP).

### **How will I know if I am required to prepare and submit a draft TEP?**

You will receive a written notice from the department if you are required to prepare and submit a draft TEP. The written notice will state:

- the grounds on which the requirement is made;
- the matters to be addressed by the TEP;
- the period over which the TEP is to be carried out;
- the day (at least a reasonable period after the notice is given) by which the TEP must be prepared and submitted to the department; and
- the review or appeal details.

### **Who can I contact?**

The notice requiring you to prepare and submit a draft TEP will include the name and telephone number of a departmental officer than you can contact for assistance in relation to the notice or the matters surrounding the issuing of the notice.

### **Can a notice requiring a draft TEP be amended?**

A notice requiring you to prepare and submit a draft TEP can be amended by the department if there have been minor errors or omissions identified. The department will advise you by way of written correspondence when a minor amendment has occurred to correct those errors.

More serious errors that include errors of calculation, typing errors, errors of punctuation or of formatting which give rise to unintended changes of meaning can also be corrected by the department. If these are corrected, the department will advise you by way of written correspondence.

Significant amendments that affect your rights or liabilities will be detailed to you by way of a new notice, accompanied by a cover letter clearly stating the changes that have been made in the new notice. Significant amendments include, for example, imposing stricter requirements or an extension of time for requirement due dates.

### **What happens if I do not prepare and submit a draft TEP after receiving a notice?**

Failure to comply with a notice to prepare and submit a draft TEP is an offence under the Act, unless you have a reasonable excuse.

- The maximum penalty for an individual is 100 penalty units.
- The maximum penalty for a corporation is 500 penalty units.

The State Penalties Enforcement Regulation 2014 prescribes the number of penalty units for an offence. Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit.

The department will respond and may take further action in relation to non-compliance with a notice requiring a draft TEP. The following issues will be considered:

- **Providing extra time**—if extra time to comply has been granted, the details of the extra time allowed and the reasons for giving the extension of time will be provided in writing to you.
- **Other tools**—consideration will be given as to whether another statutory tool would be more likely to achieve compliance. For example, issuing an environmental protection order (EPO) in relation to the issue may be a more appropriate way to achieve compliance.
- **Prosecution**—if no other action is likely to be effective, prosecution may be considered for both the alleged failure to comply with the notice, and for any alleged environmental harm being caused.

### **What is a program notice?**

If you are carrying out an activity that is lawful apart from the Act, you may give notice (a program notice) to the department about an action or a failure to act on your part, that has caused or threatened environmental harm (the relevant event). A program notice informs the department of the relevant event and your intention to prepare and submit a draft TEP.

The legislative provisions regarding program notices may be found in chapter 7, part 4 (sections 350–357) of the Act.

## **What must a program notice contain?**

A program notice must be in the approved form ([ESR/2016/2219](#))<sup>4</sup> and must:

- give full details of the act or omission;
- declare your intention to prepare a draft TEP for the activity and submit it to the department; and
- state the other information prescribed by regulation.

You may submit with the notice any report, or the results of any analysis, monitoring program, test or examination, carried out by or for you for the relevant event.

## **Program notice privileged**

If the relevant event stated in the program notice amounts to an offence against the Act (the original offence), the following are not admissible as evidence against you in a prosecution for the original offence:

- the giving of the program notice;
- the program notice itself; and
- any documents submitted with the program notice.

However, this does not prevent the department obtaining other evidence as a result of the information contained in the program notice and documents submitted with the notice, and using that other evidence in any legal proceeding against the person.

## **What happens once the department receives my program notice?**

Within 10 business days after receiving a program notice, the department will give you a written notice:

- acknowledging receipt of the notice; and
- advising the day by which you must submit a draft TEP dealing with the activity to the department for approval, being a day not more than three months after the date the department received the program notice.

## **The effect of a program notice**

Once the department receives a program notice, you cannot be prosecuted for a continuation of the original offence that occurs after the department receives the notice. This remains the case until any one of the following things happens:

- you receive an approval of a TEP from the department;
- you receive a notice of refusal to approve a draft TEP from the department; or
- if you do not submit a draft TEP for the activity to the department by the day stated in the receipt of program notice —the end of the stated day.

A program notice provides you with protection from prosecution while you are developing a draft TEP and if submitted, until an approval or a refusal is received from the department.

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<sup>4</sup> This is the publication number. The publication number can be used as a search term to find the latest version of a publication on the department's website at [www.des.qld.gov.au](http://www.des.qld.gov.au).

It is important to note that the department may take other compliance action against you, such as issuing an EPO, even if a program notice is submitted. The information in the program notice can be used to support the use of an EPO or other statutory tool.

If the approved TEP is not complied with, the program notice submitted in relation to the original offence ceases to apply, and therefore the holder of the TEP is not provided immunity from prosecution for the original offence (the subject of the program notice).

### **Setting aside the effect of a program notice**

The department is also able to apply to the Planning and Environment Court (the Court) for an order setting aside the effect of a program notice, in accordance with section 355 of the Act. The making of an application to the Court does not in itself automatically stop the program notice's effect.

The Court may set aside the effect of a program notice if satisfied that:

- the relevant act or omission has been wilfully done (or not done), with the intention of relying on the program notice as an excuse; or
- because of the nature and extent of the environmental harm caused, or threatened by a continuation of the offence, it is not appropriate for the effect of the program notice to apply.

The department must make an application to the Court within 20 business days of receiving the program notice unless the Court allows a longer period if there are special circumstances.

The Court may make any orders it considers appropriate pending a decision on the application, including anything to prevent a continuation of the original offence.

Failure to comply with an order of the Court is an offence.

- The maximum penalty for an individual is 3000 penalty units or two years imprisonment.
- The maximum penalty for a corporation is 15,000 penalty units.

The State Penalties Enforcement Regulation 2014 prescribes the number of penalty units for an offence. Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit.

### **What must a draft TEP include?**

Section 331 of the Act requires that a draft TEP must be in the approved form ([ESR/2016/2220](#))<sup>5</sup> and for the activity to which it relates:

- state the objectives to be achieved and maintained under the TEP for the activity;
- state the particular actions required to achieve the objectives, and the day by which each action must be carried out, taking into account:
  - the best practice environmental management for the activity; and
  - the risks of environmental harm being caused by the activity;
- state how any environmental harm that may be caused by the activity will be prevented or minimised, including any interim measures that are to be implemented;
- if the activity is to transition to an environmental standard, state:

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- details of the standard; and
- how the activity is to transition to the standard before the TEP ends;
- if the activity is to transition to comply with a condition of an EA, a development condition or a prescribed condition for carrying out a small scale mining activity, state:
  - details of the condition and how the activity does not comply with it; and
  - how compliance with the condition will be achieved before the TEP ends;
- state the period over which the TEP is to be carried out;
- state appropriate performance indicators at intervals of not more than 6 months; and
- provide for monitoring and reporting on compliance with the TEP.

Best practice environmental management is defined in section 21 of the Act as the management of the activity to achieve an ongoing minimisation of the activity's environmental harm through cost-effective measures assessed against the measures currently used nationally and internationally for the activity. In deciding what is best practice environmental management of an activity, regard must be had to the following measures (without limitation):

- strategic planning by the person carrying out, or proposing to carry out, the activity;
- administrative systems put into effect by the person, including staff training and monitoring and review of the systems;
- public consultation carried out by the person;
- product and process design; and
- waste prevention, treatment and disposal.

If the draft TEP relates to Great Barrier Reef catchment waters, please refer to Reef discharges for industrial activities guideline (ESR/2021/ 5627) <sup>6</sup> for information on how applicants can adequately address the requirements for an application for a draft TEP.

### **Public notice requirement**

The requirements in relation to public notice are detailed in section 335 of the Act. Public notice is required where you submit a draft TEP for approval that states the TEP is to be carried out over a period of longer than three years. The public notice must be given in the approved form ([ESR/2016/2286](#))<sup>6</sup>.

Within 12 business days after the draft TEP is received by the department, you must give public notice of the submission by an advertisement published in a newspaper circulating generally in the area in which the activity subject to the draft program relates is, or is proposed to be, carried out. If the program relates to a premises, a notice must also be placed on the premises and served on the occupiers of all adjoining premises.

If further information is requested by the department to decide whether to approve the draft program, the public notice must be given within two business days of the response to the request for further information.

If the draft TEP requires public notification, the department must invite submissions on the draft TEP, and nominate a day by which submissions may be made to the department.

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## **What happens once the department receives a draft TEP?**

If you submit a draft TEP to the department, the department must consider the draft TEP and make a decision whether to approve or refuse the draft TEP, or to approve it with conditions.

Section 339 of the Act provides that the department may:

- approve a draft TEP as submitted;
- approve a draft TEP as amended at the request, or with the agreement, of the department; or
- refuse to approve a draft TEP.

If the department approves the draft TEP it may impose:

- any conditions the department must impose under a regulatory requirement;
- a condition requiring an amount of financial assurance (FA) as security for compliance with the TEP; and
- any other conditions considered appropriate by the department.

Section 340 of the Act provides that within eight business days of making a decision, the department must give you a written notice of the decision.

If the draft TEP is approved (with or without conditions), the notice of decision will:

- state the decision and reasons for the decision;
- state the review or appeal details;
- identify the documents forming the approved TEP, including any amendments;
- state any conditions imposed on the approval by the department; and
- state the day the approval ends.

If the draft TEP is refused, the notice will state:

- the decision;
- the reasons for the decision; and
- the review or appeal details.

## **Request for further information**

In some cases a draft TEP cannot be approved because some matters have not been adequately addressed. In this situation, the department may ask for further information to be provided or that particular amendments are made to the draft TEP. If further information is required, you will receive an information request from the department. A request for further information will be made within 10 business days after the draft TEP is received. You must respond to the request for further information within the timeframe stated in the request. A failure to do so within the timeframe will be taken as your response and the decision-making process will continue.

## **Circumstances when the department may call a conference**

The department may invite you (the person who submitted the draft TEP), and another person who has made a submission under section 335 of the Act about the TEP, to a conference to help the department decide whether or not to approve the draft TEP.

## **What is the timeframe for the department in making a decision to approve a draft TEP?**

Section 337(1) of the Act provides that the department must make its decision within 20 business days after:

- if a public notice is required under section 335—the day stated in the notice as the day by which public submissions may be made to the department;
- if public notice is not required and further information is not requested under section 334A(1)—the day the draft program is received by the department; or
- if public notice is not required and further information is requested under section 334A(1)—the day a response to the request for further information is received.

The department may extend the decision-making period if, before the extension starts, it gives an information notice about the decision to extend to:

- the person or public authority (you) that submitted the draft TEP; and
- any submitters.

The department may decide the length of the extension, and if necessary, whether any further extensions are required.

**Note:** If a public notice is required under section 335, the department must be satisfied public notice has been properly given before making a decision.

If the department fails to decide whether to approve or refuse a TEP in the required timeframe, the failure is, at the end of the time, taken to be a decision by the department to refuse to approve the program (section 343 of the Act).

### **What does the department consider in deciding whether to approve a draft TEP?**

When deciding whether or not to approve a draft TEP or the conditions (if any) of an approval, the department:

- must comply with any relevant regulatory requirement; and
- subject to the above, must also consider (but is not limited to considering):
  - the standard criteria;
  - additional information given in relation to the draft TEP;
  - the views expressed at a conference held in relation to the draft TEP.

### **What is the standard criteria?**

The definition of 'standard criteria' in Schedule 4 of the Act includes:

- a) the following principles of environmental policy as set out in the Intergovernmental Agreement on the Environment:
  - i) the precautionary principle;
  - ii) intergeneration equity; and
  - iii) conservation of biological diversity and ecological integrity;
- b) any Commonwealth or State government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development;
- c) any relevant environmental impact study, assessment or report;
- d) the character, resilience and values of the receiving environment;
- e) all submissions made by the applicant and submitters;

- f) the best practice environmental management for activities under any relevant instrument or proposed instrument as follows, and their financial implications as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument:
  - i) an EA;
  - ii) a TEP;
  - iii) an EPO;
  - iv) a disposal permit; and
  - v) a DA;
- g) the public interest;
- h) any relevant site management plan;
- i) any relevant integrated environmental management systems or proposed integrated environmental management system; and
- j) any other matter prescribed under a regulation.

### **Can a draft TEP be amended?**

If only very minor amendments are necessary, the department will provide the opportunity to the person submitting a draft TEP to make the requested amendments.

However, if amendments are significant or complicated, the required amendments will be documented, and the department will formally ask you to provide further information, or make amendments and resubmit the draft TEP.

### **What is the content of an approved TEP?**

An approved TEP consists of the following:

- the draft program as submitted under sections 332 or 333 of the Act, including any amendments made to the draft program at the request, or with the agreement of, the department;
- any conditions imposed on the program by the department.

### **Fees associated with TEPs**

A fee is payable to the department for:

- assessment of a draft TEP;
- assessment of an annual return for a TEP;
- amendment of a TEP; and
- monitoring compliance with a TEP.
- Fees for the assessment of a draft TEP can be found on the department's website <https://www.des.qld.gov.au/our-department/fees-services?category=224>. The reasonable cost for analysis will be the actual cost of the analysis to the department, plus GST.
- The reasonable cost of travel will be the cost of travel, plus GST.

An invoice will be issued by the department for the fees associated with the consideration of the draft TEP, at the time when the notice stating the department's decision is issued.<sup>7</sup>

### **Annual returns**

As the holder of a TEP, you must submit an annual return (on the approved annual return form [ESR/2016/2961](#))<sup>8</sup> and pay an annual fee within 22 business days after the anniversary of the TEP approval date. It is your responsibility to ensure that you submit an annual return to the department, and pay the corresponding fee.

Details on where to submit your annual return, and what payment methods are available, are outlined on the approved annual return form ([ESR/2016/2961](#)).

Note: if your TEP exists for less than 12 months, the department will still calculate the reasonable cost of monitoring compliance against the TEP within the period of the TEP and issue a tax invoice.

### **What happens if a TEP is approved and it relates to an EA?**

Section 343A of the Act applies for TEPs relating to an EA. If a TEP is approved, the department must:

- include a note in the EA which states:
  - details of the approved TEP; and
  - that it is an offence to contravene a requirement of the TEP or a condition of an approval of a TEP; and
- give the EA holder a copy of the EA including the note.

The note is not an amendment to the EA.

### **Can an approved TEP be amended?**

You may apply to amend an approved TEP under section 344 of the Act. The procedure for considering the amendment application is the same as for an approval of a draft TEP, except the public notice requirements only apply in certain circumstances. If the amendment will extend the period over which the TEP applies to longer than five years, the public notice requirements under section 335(2) and (3) apply to the amended submission as if the submission were for an approval of a draft TEP.

The department may approve the amendment only if it is reasonably satisfied that it will not result in an increase in environmental harm caused by the carrying out of the activity under the amended approval.

When deciding whether to approve an amendment the department must consider:

- the period under the original TEP;
- the period that remains under the original TEP;
- any change to the period under the original approval; and
- the nature of the risk of environmental harm being caused by the activity.

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<sup>7</sup> NOTE: Fees will increase incrementally on 1 July each year. Contact Permit and Licencing Management on [palm@des.qld.gov.au](mailto:palm@des.qld.gov.au) or 1300 130 372 (and select option 4) for further information on fees.

<sup>8</sup> This is the publication number. The publication number can be used as a search term to find the latest version of a publication on the department's website at [www.des.qld.gov.au](http://www.des.qld.gov.au).

## **Review of decisions and appeals**

The provisions regarding reviews of decisions and appeals are found in sections 519–539 of the Act.

A person who is dissatisfied with an original decision of the department may be able to apply to have the department review that original decision. The following decisions are original decisions and can be reviewed:

- the requirement by the department for a draft TEP;
- extension of time for the department to make a decision about whether to approve a draft TEP;
- decision on whether to approve, or to approve an amendment of an approval of, a draft TEP;
- approving a draft TEP with conditions;
- decision to make claim on, or realise, FA;
- cancelling a TEP approval; and
- removal of immunity from prosecution for a person under a refusal to approve a draft TEP.

A dissatisfied person is the holder of the TEP approval or person or public authority that is required to submit, or submits the program.

Generally, an application for review of an original decision must be:

- provided to the department within 10 business days after the day on which the person receives notice of the original decision;
- 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 ([ESR/2015/1573](#))<sup>9</sup>.

Where an application has been made for an original 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.

The court may grant a stay of the review decision until such time as the appeal is decided. An appeal against a review decision does not affect the operation or the carrying out of a review decision unless that decision is stayed by the court.

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 ([ESR/2015/1742](#)).

## **Can a TEP be cancelled?**

Section 344E of the Act gives the department the power to cancel approvals for TEPs for any of the following reasons:

- you agree in writing to the cancellation;

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<sup>9</sup> This is the publication number. The publication number can be used as a search term to find the latest version of a publication on the department's website at [www.des.qld.gov.au](http://www.des.qld.gov.au).

- you give the department notice under section 347(6) of the Act stating that you have disposed of the place or business to which the program relates;
- you give the department a notice under section 348 of the Act stating that you have ceased the activity to which the program relates;
- the department is otherwise satisfied that you have disposed of the place or business to which the program relates; or
- the department is otherwise satisfied that you have ceased the activity to which the program relates.

If the department decides to cancel an approval for a TEP, the department will:

- give you a notice that states the details of the cancellation; or
- if the department cannot locate you after making reasonable enquiries – record details of the cancellation in the register of TEPs.

The details of the cancellation that must be included in a notice or record include:

- that the approval is cancelled;
- the reason for the cancellation; and
- the date on which the cancellation takes effect.

Cancellation of a TEP approval takes effect on the date stated in the notice or record. The date for cancellation must be:

- at least 20 business days after the department gives the notice or makes the record; and
- if the approval is being cancelled after receiving a notice given under section 347(6) - after the place or business is disposed of.

If the department stops being satisfied that you have disposed of the place or business to which the program relates, or ceased the activity to which the program relates, the department must:

- give a notice under section 344F of the Act to withdraw the cancellation notice; or
- remove the record.

If a note about the TEP was included in an EA under section 343A of the Act, and that EA is still in force, the department must give the holder of the EA a copy of the EA that does not include the note.

## **Finalisation of a TEP**

Once a TEP is complete, you should receive a finalisation letter as a courtesy to advise you that the department considers the TEP is finalised and is satisfied that all requirements have been met.

## **Penalties**

The State Penalties Enforcement Regulation 2014 prescribes the number of penalty units for an offence. Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit.

### **Penalties for a contravention of a requirement of a TEP**

Failure to comply with a requirement of an approved TEP is an offence.

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

The holder of an approved TEP, or a person acting under a TEP, must not wilfully contravene a requirement of the program.

- The maximum penalty for an individual is 6250 penalty units or five years imprisonment.
- The maximum penalty for a corporation is 31,250 penalty units.

The holder of an approved TEP must ensure that everyone acting under the program complies with the program. If another person acting under the TEP contravenes a requirement of the TEP, then the holder of the TEP also commits an offence, namely the offence of failing to ensure the other person complies with the program. The same maximum penalty applies to the offence of failing to ensure another person complies with the requirements of the TEP and the offence of contravention of a requirement of a TEP.

### **Penalties for contravention of a condition of approval**

Failure to comply with a condition of an approved TEP is an offence, unless the person has a reasonable excuse.

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

Wilfully contravening a condition of an approved TEP is an offence.

- The maximum penalty for an individual is 6250 penalty units or five years imprisonment.
- The maximum penalty for a corporation is 31,250 penalty units.

### **Other penalties**

Failure to give the department an annual return within 22 business days after each anniversary of the day of approval of the TEP is an offence.

- The maximum penalty for an individual is 100 penalty units.
- The maximum penalty for a corporation is 500 penalty units.

If the holder of an approved prescribed TEP proposes to dispose of the place or business to which the program relates to someone else (the buyer), the holder must give written notice of the existence of the TEP to the buyer before agreeing to dispose of the place or business. A prescribed TEP is a program that does not relate to an EA.

Failure to give written notice of the existence of the TEP to the buyer before agreement is an offence.

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

Failure to give written notice of the disposal to the department, within 10 business days after agreeing to dispose of the place or business, is an offence.

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

Failure to give the department written notice of ceasing to carry out the activity to which a TEP relates, within 10 business days of ceasing the activity, is an offence.

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

### **Other obligations for the holder of an approved TEP**

In addition to the requirements of the TEP and any conditions imposed by the department, the holder must also meet their obligations under the Act, and the regulations made under the Act. For example:

- the holder must comply with the following provisions of the Act:
  - general environmental duty (section 319); and
  - duty to notify environmental harm (sections 320–320G);
- the holder must also ensure that they do not commit offences of:
  - causing serious or material environmental harm (sections 437–439);
  - causing environmental nuisance (section 440);
  - depositing prescribed water contaminants in waters and related matters (section 440ZG); and
  - placing contaminant where environmental harm or nuisance may be caused (section 443).

Penalties apply for each of these offences and the department will determine the appropriate compliance and enforcement response in accordance with its [Enforcement Guidelines](#).

**Approved by:**

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Date: 31 May 2021

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**Version history**

Version	Effective date	Description of changes
1.01	3 March 2016	Initial upload.
2.00	18 July 2016	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.
2.01	20 April 2018	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements. Fee amounts have been updated.
2.02	1 July 2018	Updated 2018-19 fees as per DES non-regulatory fees indexation.
2.03	31 July 2018	Updated to correct hyperlinks.
3.00	31 May 2021	Updated fees and include reef protection regulation provisions.

**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. This document will be reviewed on an ongoing basis and is subject to change without notice.