

# Guideline

## Environmental Protection Act 1994

### Emergency powers

*This guideline has been prepared by the administering authority to provide information about the exercise of emergency powers under section 467 of the Environmental Protection Act 1994 (the Act) which is administered by the Department of Environment and Science (the department). This guideline is designed to provide information to industry about the way in which the administering authority considers and issues an emergency direction.*

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## **General information**

Where an emergency arises authorised persons have a number of powers which may deal with the emergency but should also be aware there are further powers which are designed to specifically address emergency situations. For example, if a toxic waste storage tank ruptures then action will likely be required immediately to mitigate the damage. Section 467 of the *Environmental Protection Act 1994* (the Act) provides authorised persons with the powers to act immediately in emergency situations.

### **What is an emergency direction?**

Where an authorised person is satisfied on reasonable grounds that an emergency exists, they may take or direct someone to take stated action.

An emergency direction is a direction to a person to take stated reasonable action within a stated reasonable time, including releasing a contaminant into the environment. Alternatively, an authorised person may take the action or authorise another person to take the action.

It is important to note that an emergency direction can only be issued for an emergency that is actually occurring. It is not appropriate to issue an emergency direction to deal with an anticipated emergency event.

The legislative provisions relating to emergency powers can be found in chapter 9, part 4 of the Act.

### **How an emergency direction is initiated**

The decision to give an emergency direction may be initiated proactively by the Department of Environment and Science (the department) in the event that it considers that an emergency exists, and that the emergency requires a reasonable action to be taken, including the release of a contaminant.

A customer (individual or company) can also contact the department and request that an emergency direction be given to them. For example, a direction may require the person to release a contaminant into the environment in order to protect the health or safety of persons.

If submitting a request for an emergency direction, a customer should consider the matters outlined in section 1.5 of this guideline.

If time permits, customers are encouraged to contact the department prior to requesting an emergency direction so that they can fully understand the information that they must provide. A list of all departmental business centres can be found on the department's website at [www.des.qld.gov.au](http://www.des.qld.gov.au).

### **What is an emergency?**

The Act states that an 'emergency' exists if:

- either human health or safety is threatened; or serious or material environmental harm has been or is likely to be caused; and
- urgent action is necessary to:
  - protect the health or safety of persons; or
  - prevent or minimise the harm; or
  - rehabilitate or restore the environment because of the harm.

As a direction is given in an emergency there are no particular requirements to consider (such as the standard criteria when issuing an EPO) other than being satisfied an emergency exists.

## **Material and serious environmental harm**

### **Environmental harm**

‘Environmental harm’ is defined in section 14 of the Act as 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.

### **Material environmental harm**

Section 16 of the Act defines ‘material environmental harm’ as environmental harm (other than environmental nuisance) that:

- is not trivial or negligible in nature, extent or context;
- causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount (\$5,000), but less than the maximum amount (\$50,000); or
- results in costs of more than the threshold amount (\$5,000) but less than the maximum amount (\$50,000) being incurred in taking appropriate action to:
  - prevent or minimise the harm; and
  - rehabilitate or restore environment to its condition before the harm.

When considering whether the harm is trivial or negligible, the context of the harm must be considered together with the long-term effects of the harm. Where the consequences of the harm are uncertain, the precautionary principle should be used to help determine the level of harm. This means that when the health of humans and the environment is at stake, it may not be necessary to wait for scientific certainty to take protective action.

### **Serious environmental harm**

Section 17 of the Act defines ‘serious environmental harm’ as environmental harm (other than environmental nuisance):

- that is irreversible, of a high impact or widespread;
- caused to an area of high conservation value or special significance, such as the Great Barrier Reef World Heritage Area;
- that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount (\$50,000); or
- that results in costs of more than the threshold amount (\$50,000) being incurred in taking appropriate action to:
  - prevent or minimise harm; and
  - rehabilitate or restore the environment to its condition before harm.

Where the consequences of the harm are uncertain, the precautionary principle should be used to help determine the level of harm. This means that when the health of humans and the environment is at risk, it may not be necessary to wait for scientific certainty to take protective action.

### **What are a reasonable action and a reasonable time?**

#### **Reasonable action**

An emergency direction may allow environmental harm to occur which would otherwise be unlawful. An authorised person must sufficiently investigate the facts and circumstances surrounding the situation to justify the decision to issue an emergency direction. When considering whether the legislative requirements have been met, an authorised person should consider the following factors:

- Does an emergency exist?
  - Is human health or safety threatened?
  - Has serious or material environmental harm been caused or is it likely to be caused?
  - What is the nature of the emergency?
  - What is the environmental harm that has been or is likely to be caused?
  - What is the value of the actual or potential loss or damage to property that would be caused by the environmental harm?
  - What would be the cost of preventing or minimising the harm and rehabilitation or restoring the environment to its condition before the harm?
  - Is urgent action necessary to protect the health or safety of persons; or prevent or minimise the harm; or rehabilitate or restore the environment because of the harm?
- Is the emergency direction reasonable and necessary?
  - Balance the risk to the environment versus the consequences of not taking the action.
  - Substantiate the need for the action. For example, a Queensland Health officer has identified that a contaminant will create a serious health risk if not released.
  - Consider the potential short-term and long-term impacts to the environment.
  - If the consequence of the harm is not known, the precautionary principle should be used. For example, if a body of water being used by people as drinking water is found to contain an unknown bacteria and the source of the contamination is strongly suspected to be cattle on a nearby property, but there is no scientific evidence presently available, an emergency direction may be issued to move the cattle from the property until the cause of the contamination is known.
  - Consider the reliability of the information received.
  - Identify and consider the nature of a contaminant, such as volume, mobility and toxicity to humans, livestock and the environment generally.
  - Consider weather factors that may influence the direction/course of a contaminant.
  - What is the location of the release? An authorised person should consider the environmental values of the surrounding area.
  - Is there infrastructure in place to manage, deal or cope with a release?

- Is it necessary to notify other government departments, local councils, residents or businesses?
- What are the risks and potential impacts to residents and businesses, and surrounding areas, for example, downstream?
- What other emergency directions within a geographical area or catchment have been given or are likely to be given?
- What proactive steps has the person taken to reduce the requirement of an emergency direction?
- In all the circumstances, is the action proportionate to the emergency?
- Are you satisfied that there are no other practicable alternatives to the action?
  - Is there an alternative course of action? Has a temporary emissions licence been considered?
  - What are the risks from the alternative course of action?
  - Did other pre-emptive options exist and why were they not established?
  - What impacts would the alternatives have on the receiving environment?
  - Do other storage facilities exist?
  - Demonstrate that to do nothing is not an option and that the emergency direction is otherwise necessary and reasonable.
- Consider the known impacts of the action or release and any steps to mitigate or manage it.

A request by persons seeking an emergency direction may be considered by the department. Decisions to give an emergency direction will be made once the department has all necessary information to make a sound judgement based on all known facts and legislation. The time taken to process requests will be dependent on the complexity and urgency of the matter. Applicants will be kept informed on the progress and outcomes of their applications by authorised persons within the department on a regular basis.

### **Reasonable time**

Urgency is a key element of whether an emergency exists. The Macquarie Dictionary provides a definition of urgent as 'pressing; compelling or requiring immediate action or attention; imperative'.

Where an emergency direction has been given, the time within which the action must be taken has to be appropriate in light of what the action requires.

To ensure that the time stated is an enforceable condition of the emergency direction, ensure that the condition is time specific, such as by specifying a date and time ('by 4pm, 1 January'), a specific period ('within seven days of service of this notice') or a specific event ('when a bushfire comes within 500 metres of flammable contaminants').

An authorised person must complete an assessment report to document the reasons for making the decision and also complete the emergency direction. If there is no time to complete the assessment report beforehand, the authorised person may issue an emergency direction without it, but he or she must make notes of the reasons and evidence and complete the assessment report as soon as possible. It should be noted in the assessment report that it was completed retrospectively and why.

## **What is a contaminant?**

The Act defines a 'contaminant' to include a gas, liquid or solid; an odour; an organism (whether alive or dead), including a virus; or energy, including noise, heat, radioactivity and electromagnetic radiation; or a combination of contaminants.

## **What happens if a contaminant is released without an emergency direction?**

In the event that a contaminant is released without an emergency direction, and such a release causes unlawful environmental harm, offences may have been committed.

Wilfully and unlawfully causing serious environmental harm is an offence.

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

Unlawfully causing serious environmental harm is also an offence.

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

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

## **Can a draft transitional environmental program be submitted requesting an emergency release?**

A transitional environmental program (TEP) is a regulatory tool under the Act and is used by the department to either reduce environmental harm or move an activity through transition from non-compliance to compliance with an environmental authority or other instrument. When complied with, a TEP achieves compliance with the Act for the activity to which the TEP relates to.

A TEP is not considered to be the most appropriate tool for an emergency direction to release a contaminant. Any TEP applications made to the department for a release of contaminant may still be considered.

For more information about the use of TEPs, please view the transitional environmental program guideline (ESR/2016/2277).<sup>1</sup>

## **Giving an emergency direction**

### **Who can give an emergency direction?**

An emergency direction may be given by an authorised person. An authorised person is a person who has been appointed by the chief executive, enabling them to perform certain functions and exercise particular powers under the Act. Appointments are only made if, in the opinion of the chief executive, the person has the necessary expertise or experience. An authorised person may be an appropriately qualified public service officer, an employee of the department or a person declared by regulation.

Authorised persons are issued with identity cards. Before exercising a power in relation to someone else, the authorised person must first produce their identity card for the person's inspection or have their identity card displayed so that it is clearly visible to the person. If, for any reason, it is not practicable to produce or display their identity card, the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

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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.des.qld.gov.au](http://www.des.qld.gov.au).

### **How an emergency direction is given**

The Act specifies that an emergency direction may be given verbally or by written notice. However, if the direction is given verbally, it needs to be followed up as soon as practicable with service of a written notice.

### **How an emergency power is exercised**

If authorised persons are exercising emergency powers, they must ensure that they:

1. Where possible, present their authorised person identity card for inspection prior to exercising the power;
2. Advise the person that they are authorised under the provisions of the Act;
3. Advise the person that they are exercising the emergency powers under section 467 of the Act and state the manner in which the power is being exercised;
4. Advise the person that:
  - a. they must comply with the emergency direction (including a condition of the direction) unless they have a reasonable excuse;
  - b. they must take all reasonable and practicable precautions to prevent or minimise environmental harm being caused, and the risk of death or injury to humans and animals and loss or damage to property;
  - c. that wilfully and unlawfully failing to comply with an emergency direction is an offence where the maximum penalty is 6250 penalty units or five years imprisonment for an individual or 31,250 penalty units for a company; and
  - d. they do not commit an offence against this Act merely because they take the action in compliance with an emergency direction;
5. Exercise emergency powers at the time, with the help, and using the force, that is necessary and reasonable in the circumstances;
6. Never under any circumstances compromise personal safety;
7. Ensure that appropriate personal protective equipment (PPE) is used;
8. If necessary, ask a police officer to use force that is necessary and reasonable to remove a person or a thing that is obstructing or preventing entry to, or action being taken at a place, and to take all reasonable measures to ensure that the thing obstructing or preventing the exercise of the power does not happen again.
9. Take all reasonable steps to ensure that as little inconvenience and damage is caused as possible.

In exercising an emergency power, an authorised person may also enter any place (other than premises, or the part of premises, used only for residential purposes) without a warrant and if the authorised person finds a thing that may provide evidence of the commission of an offence against the Act, they may seize the evidence. They may also exercise any other powers of investigation and enforcement available under the Act.

If the authorised person is authorising another person to take the stated reasonable action, the authorised person must also inform the person, before the person takes the action, of the following:

- the action that the other person is authorised to take;
- the person's powers under section 467 of the Act; and



- in general terms, the provisions of section 486 of the Act regarding what the person must do if the person seizes or damages anything while taking the action.

The authorised person must document the details of the authorising of the other person and the stated reasonable action required to be taken.

In all cases, authorised persons must ensure that they clearly identify and record all relevant issues or factors associated with the decision to exercise emergency powers under section 467. These notes will be of assistance when completing the assessment report and written notice.

### **Can conditions form part of an emergency direction?**

The Act specifies that an authorised person may impose reasonable conditions on an emergency direction. Conditions set out in an emergency direction are a legal requirement. Therefore failure to comply with a condition may be an offence. Conditions can require a person to do an act, refrain from doing certain things or take action to manage the consequences of certain activities, or can set limits on what can and cannot be done.

Any conditions that form part of an emergency direction should be SMART: specific, measureable, achievable, relevant and time specific. When setting conditions authorised persons must ensure that they are enforceable and comply with the general rules of administrative decision making by taking all relevant considerations into account and ensuring that sufficient evidence exists to justify imposing the conditions.

## **Completion of an assessment report by an authorised person**

### **What is an assessment report?**

An assessment report is an internal document used by an authorised person to record relevant information to support administrative decisions. The assessment report sets out the facts and circumstances relating to the matter and documents the decision-making process used by the authorised person in determining whether to give an emergency direction.

Where it is not possible to complete the assessment report before giving a direction because of the urgency of the situation, authorised persons may give the direction and then complete the assessment report as soon as practicable afterwards.

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

### **How an authorised person completes an assessment report**

#### **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 situation.

#### **Grounds for exercising an emergency power**

The Act specifies that an emergency power can only be exercised where the authorised person is satisfied on reasonable grounds that an emergency exists. Authorised persons must identify the grounds upon which the decision to exercise an emergency power is based.

#### **Expand upon the grounds**

The purpose of this section is to clearly identify what the authorised person must establish before exercising an emergency power. Sufficient details are to be provided to demonstrate the grounds upon which the decision to exercise an emergency power is based. An authorised person is required to document any expert advice sought

and provided by department personnel and/or external consultants (subject matter experts). The provision of advice from subject experts should be conducted in accordance with any relevant procedural guides.

### **The exercise of power**

An authorised person may exercise the powers under section 467 in different ways. The purpose of this section in the assessment report is to identify who exercised or will be exercising the emergency powers.

### **What is the emergency?**

An authorised person must specify the threat to human health or safety or the type of environmental harm that required or will require the exercise of emergency powers. The evidence upon which the reasonable belief was formed must also be documented.

### **Why is urgent action necessary?**

For the emergency powers to be exercised, the authorised person must be satisfied on reasonable grounds that an emergency exists. An authorised person must describe the facts and circumstances surrounding the matter and provide reasons why urgent action is necessary and list any supporting evidence.

### **What action is required?**

An authorised person must specify the type of reasonable action that was or will be required for example action to minimise the harm being caused the environment.

### **Proposed conditions**

An authorised person may impose reasonable conditions on the emergency direction. In instances where it is recommended that conditions are imposed, the authorised person must ensure that the conditions are enforceable and comply with the general rules of administrative decision-making. They must take into account all relevant considerations and ensure that sufficient evidence exists to justify imposing any conditions.

Conditions must be SMART: specific, measureable, achievable, relevant and time specific.

For example:

<b>Condition</b>	<b>Justification</b>
You are required to maintain a record of all quantities and quality of contaminants released and their release location. This information must be made available to the department within 48 hours of any request.	The department requires this information to review and assess the long and short-term environmental harm the contaminant may cause to the environment. If the level of environmental harm increases significantly, a decision to allow further releases of the contaminant may need to be considered.

### **Timeframe for completing the action**

An authorised person must complete an assessment report once they are aware that an emergency direction may be given, or as soon as practicable after a request has been received. An emergency direction is for a defined period of time and any timeframes (start and end dates and times) must be clearly stated on the emergency direction as well as any other timeframes that specifically relate to any conditions imposed as part of the emergency direction.

### **Will the direction be given orally or by written notice?**

An authorised person must provide details explaining why a direction will be given verbally and timeframes for confirming the direction by written notice.

### **Will the authorised person be taking action?**

An authorised person must detail what actions the authorised person will be taking.

If the authorised person is authorising another person to take the stated reasonable action, they must state what action the other person is authorised to take and why. These actions could include for example how entry will occur, whether other powers are to be used, what evidence will be sought and what reasonable force may have been or may be required to be used.

### **What items, if any, were seized or damaged?**

In instances where the assessment report is being completed retrospectively, the authorised person must identify whether any items were seized or damaged. Particulars must be recorded of all items seized or damaged in the exercise of an emergency power by the authorised person, or another person authorised.

The authorised person should provide justification for the items seized and/or outline the circumstances surrounding how the damage occurred.

### **Was a written notice of the particulars seized or damaged provided immediately?**

Pursuant to section 486, if an authorised person, or another person authorised, seizes or damages anything in the exercise of emergency powers, the authorised person must immediately give a written notice of the particulars of the seizure or damage to the person from whom the thing was seized or who appears to be the owner of the damaged item. If this is not practicable, the notice must be left at the place where the seizure or damage took place.

### **Natural justice**

As an emergency direction is given for matters of urgency, there may be insufficient time for authorised persons to observe formal natural justice procedures. The authorised person should still document and take into consideration any representations made by a person to whom an emergency direction is given. However, there is no requirement for the authorised person to specifically request representations from a person.

### **Recommendation**

An assessment report must contain a recommendation made by the authorised person based on the grounds identified in the report. An authorised person must be aware that administrative decisions are made based on the balance of probabilities. This means that the authorised person must be able to determine whether, based on the information available, an emergency direction should or should not be given.

#### **For example:**

Due to unprecedented heavy rainfall and imminent flash flooding, I am of the opinion that sewage ponds at ABC Sewage Treatment Pty Ltd will overflow within the next 14 days causing sudden and severe contamination to the local environment. I considered that the environmental harm would be significantly reduced by a controlled release of sewage from the ponds into Murphy Creek over a seven-day period. Accordingly, I am recommending that an emergency direction to release a contaminant be issued.

### **Approval**

The completed assessment report is to be approved by the authorised person's supervisor prior to an emergency power being exercised, if possible. The assessment report is to be retained on the departmental file.

## **Completion of an emergency direction notice by an authorised person**

### **Requirements of an emergency direction**

An emergency direction:

- may be given orally or by written notice, however if the direction is given orally, confirmed by written notice as soon as practicable. The written notice must be on the approved template;
- must specify accurately to whom the emergency direction is issued. An authorised person must identify the appropriate person to whom the notice should be issued;
- must give details of the circumstances which give rise to the emergency direction;
- must state any reasonable conditions imposed on the direction. These may include, for example:
  - locations at which contaminants can be released (release points);
  - locations to where contaminants can be released (receiving locations);
  - release volume limits;
  - locations and requirements for contaminant release monitoring;
  - ongoing reporting requirements (includes triggers, timing and frequency);
  - ongoing notification for events (emergencies, incidents and exceptions);
  - any practicable considerations as a result of the emergency;
- must state the date on which the direction takes effect and its duration (for example, this emergency direction remains current for 14 calendar days from the date of issue);
- must state that the person must comply with the emergency direction (including a condition of the direction), unless the person has a reasonable excuse;
- must provide the penalty for failing to comply with the emergency direction;
- must state that the person must also take all reasonable and practicable precautions to prevent or minimise environmental harm being caused, and the risk of death or injury to humans and animals and loss or damage to property;
- must be signed by an authorised person;
- must be copied and placed on the departmental file; and
- should be served on the person.

### **Recipient of an emergency 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 an emergency 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 it 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 an offence not to comply with the emergency direction and any condition(s) contained within it. An authorised person should diarise the start and finish times/dates of the emergency direction as well as any timeframes regarding conditions, such as reporting requirements and monitoring. An authorised person must closely monitor the situation for which the emergency direction was given for the entire duration of time that the notice is in force. Any follow-up that is required as part of the emergency direction is to be scheduled by the authorised person and monitored by their supervisor or manager. Authorised persons must continually liaise with their managers to identify the appropriate internal briefing process.

Authorised persons must also follow up on ongoing monitoring assessing the short, medium and long-term impacts to the environment.

## **Record keeping responsibilities**

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

A hard copy of the emergency direction notice, the signed assessment report, any notice of seizure or damage and any accompanying documents must be placed on the paper file. The department is required to make, and record, an informed decision about all allegations of non-compliance.

It is important that officers adequately respond to and report on all inquiries in order to assist in building a comprehensive compliance history.

## **Review of decisions and appeals**

The provisions regarding review of decisions and appeals are 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.

An emergency direction is not currently defined as an original decision which is reviewable under the Act and as such, a person dissatisfied with such a direction is not able to have that direction reviewed under the Act.

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

Further information about reviews and appeals see information sheet - Internal review and appeals (ESR/2015/1742)<sup>2</sup>. You may have other legal rights or obligations and should seek your own legal advice.

### **Penalties for non-compliance with an emergency direction**

Under section 478 of the Act, a person to whom an emergency direction is given must comply with the direction (including all conditions of the direction) unless the person has a reasonable excuse for not complying.

The person must also take all reasonable and practicable precautions to prevent or minimise:

- environmental harm being caused;
- the risk of death or injury to humans and animals; and
- loss or damage to property.

Wilfully and unlawfully failing to comply with an emergency direction is an offence.

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

Unlawfully failing to comply with an emergency direction is also an offence.

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

A person who takes an action in compliance with an emergency direction does not commit an offence merely because the person take the action, with the exception of the offence of failing to help an authorised person under section 473 and the offence of failing to comply with the emergency direction under section 478.

Under section 442 of the Act, a person must not release, or cause to be released, a prescribed contaminant into the environment other than under an authorised person's emergency direction.

- The maximum penalty for an individual for wilfully releasing a prescribed contaminant is 1665 penalty units.
- The maximum penalty for a company for wilfully releasing a prescribed contaminant is 8325 penalty units.
- The maximum penalty for an individual for releasing a prescribed contaminant is 600 penalty units.
- The maximum penalty for a company for releasing a prescribed contaminant is 3000 penalty units.

A 'prescribed contaminant' means a contaminant prescribed by an environmental protection policy or a regulation. These may include, for example scrap metal, ashes, gravel, clinical waste, plant matter and oil.

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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.des.qld.gov.au](http://www.des.qld.gov.au).

### **What happens if something is seized or damaged when exercising emergency powers?**

Section 486 of the Act provides that if an authorised person or a person authorised by them seizes or damages anything in the exercise of a power (including emergency powers under section 467), the authorised person must immediately give written notice of the particulars of the seizure or damage.

The notice must be given to the person from whom the thing was seized or the person who appears to be the owner of the thing that was damaged. If this is not possible, the authorised person must leave the notice at the place where the seizure or damage happened, ensuring that the notice is left in a reasonably secure way and in a conspicuous position. The authorised person must notify his or her supervisor of the particulars of the items seized or damaged as soon as practicable and retain a copy of the notice on the departmental file.

### **Compensation, costs and expenses**

A person may claim compensation in court proceedings if they incur loss or expense because of the exercise or purported exercise of an emergency power.

The department must reimburse a person's reasonable costs and expenses incurred in complying with an emergency direction, unless that person is a prescribed person for a contamination incident, for example a person who caused or permitted the incident to happen which gave rise to the use of emergency powers.

#### **Approved by:**

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#### **Version history**

Version	Effective date	Description of changes
1.00	23 January 2015	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	14 August 2018	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.

#### **Disclaimer**

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