



# Obligations, duties and offences under the environmental protection regime in Queensland

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Queensland's environmental protection framework is primarily governed by the [Environmental Protection Act 1994](#) (EP Act). The regime is aimed at safeguarding the environment, balancing sustainable development with ecological preservation. A critical component of the EP Act is the ability for offenders to be charged with offences to deter harmful activities, ensure accountability, and promote compliance.

## Environmental protection legislative framework

The [object of the EP Act](#) is "to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends."

The EP Act is supported by several regulations, most notably the [Environmental Protection Regulation 2019](#), which specifies administrative procedures, prescribed contaminants, and fees. The regime also includes the [Nature Conservation Act 1992](#), [Water Act 2000](#), and [Waste Reduction and Recycling Act 2011](#), which focus on conservation and resource management.

Central to the enforcement of the EP Act is the Department of Environment, Tourism, Science and Innovation (DETSI), which is responsible for monitoring compliance, investigating breaches, and initiating enforcement action where appropriate.

## Environmental obligations and duties

The duty to meet general environmental protection obligations applies to all businesses and individuals in Queensland.

The EP Act lists obligations and offences to prevent environmental harm, nuisances and contamination.

There are three primary duties that apply to everyone in Queensland.

## 1. General environmental duty

Under [s 319 of the EP Act](#), you have a duty not to carry out an activity that may cause environmental harm without taking all reasonably practicable measures to prevent or minimise the harm.

## 2. Duty to notify of environmental harm

Under [Division 2 of the EP Act](#), you have a duty to inform the relevant authority and landowners when environmental harm has occurred, or might occur

## 3. Duty to restore the environment

Under [s 319C of the EP Act](#), where an incident has resulted in unlawful environmental harm, you have a duty to take measures to rehabilitate or restore the environment to its condition before the harm.

If you hold an environmental authority (EA) for an environmentally relevant activity (ERA), you must not only meet these general environmental obligations, but also the specific conditions noted in your EA. You can read more about [complying with an environmental authority here](#).

# Offences under the Environmental Protection Act

The EP Act creates a graduated hierarchy of offences reflecting the seriousness of environmental harm.

Examples of general environment offences include:

## Causing environmental harm

**[Serious environmental harm](#)**(s. 437) involves harm that is irreversible, of a high impact or on a wide scale, or causes substantial loss. It may also result in significant adverse effects on human health or safety.

•Maximum penalties:

- wilfully and unlawfully cause environmental harm: 6,250 penalty units (\$1,043,125) or 5 years imprisonment

- unlawfully cause environmental harm: 4,500 penalty units (\$751,050)

Following a trial for the offence, a court may find a defendant guilty of an offence of causing 'material environmental harm' (see below) if the charge of causing 'serious environmental harm' is not established.

**Material environmental harm**(s. 438) involves more than trivial or negligible harm but less than serious harm.

•Maximum penalties:

- wilfully and unlawfully cause material environmental harm: 4,500 penalty units ((\$751,050) or 2 years imprisonment
- unlawfully cause material environmental harm: 1,665 penalty units (4277,888.50)

### **Causing environmental nuisance**

**Section 440** creates an offence for causing 'environmental nuisance', which is any unlawful interference with an environmental value caused by noise, odour, light, or other contaminants.

Although less serious than harm offences, environmental nuisance is important for protecting local amenity and public health. Nuisance offences attract lower penalties but may still result in prosecution or enforcement notices.

### **Failure to comply with environmental authorities**

Businesses and individuals carrying out environmentally relevant activities (ERAs) must obtain environmental authorities (EAs) to lawfully undertake these activities.

It is an offence under **section 426** of the EP Act to carry out an ERA without holding or acting under an EA.

Sections 430 and 431 of the EP Act criminalise:

- contravening a condition of an EA
- failing to ensure compliance with conditions of the EA

Penalties vary depending on the severity of the breach but can reach substantial fines and, in egregious cases, imprisonment.

## **Executive officer liability**

The EP Act extends liability to the executive officers of corporations (**s 493A**). Under the EP Act, an executive officer is broadly defined and applies to anyone concerned with or taking part in the management of the corporation, regardless of their official title or whether they are a director.

If a corporation commits an offence, its executives may be personally liable unless they can prove they took reasonable steps to prevent the offence.

The impacts on a company and its executives for a conviction for an environmental offence can be catastrophic. Penalties can be in the millions of dollars, and individuals can be personally liable along with the company.

Upon conviction, the EA may be revoked on the basis that the EA holder is no longer a suitable operator, resulting in the prohibition to continue to undertake the particular activity.

## Enforcement tools for environmental protection

Queensland's environmental protection regime is comprehensive, with the EP Act at its core. The framework creates a broad array of offences ranging from administrative breaches to serious criminal conduct. Enforcement mechanisms are diverse, combining regulatory notices, civil remedies, and criminal prosecution to promote compliance.

For more serious breaches, prosecution through the courts is pursued. Significant environmental offences are prosecuted in the Magistrates Court or District Court (QLD), depending on the severity. In extreme cases, the regime allows for criminal sanctions, including imprisonment.

Civil enforcement is also possible, with the DETSI or third parties able to seek injunctions to restrain harmful conduct, although this mechanism is infrequently used.

## Aggravating factors and sentencing if convicted of breaching environmental protection laws

When sentencing environmental offenders, courts consider several factors:

- The extent of environmental harm caused;
- Whether the offence was wilful or negligent;
- Previous environmental compliance history;
- Cooperation with authorities;
- Efforts taken to remediate harm.

Recent cases demonstrate that Queensland courts are willing to impose substantial penalties, particularly for deliberate or repeated non-compliance. There is an increasing trend towards larger fines and greater emphasis on corporate responsibility.

## Get help from an environmental protection lawyer

Gilshenan &Luton are specialist criminal defence and environmental protection lawyers. We have expertise in defending individuals and companies charged with offences under the EP Act.

If you or your business are being investigated by DETSI or have been charged with an offence relating to environmental protection legislation, we can assist you by:

- providing advice regarding obligations, duties and the investigation process;
- reviewing the prosecution's brief of evidence to assess whether the charge is established on the evidence;
- advising on your prospects of successfully defending the charge(s);
- negotiating with the prosecution in attempt to have charge(s) substituted or withdrawn; and
- representing you in court at trial, sentence, and appeal if necessary.

## Contacting Gilshenan &Luton Lawyers

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