

Report

Alleged Breach Report

This Alleged Breach Report in conjunction with the departments Enforcement Guidelines will assist officers in recording information which supports a decision to take enforcement action i.e. issue a Penalty Infringement Notice (PIN) under the State Penalties Enforcement Act 1999 regime. This includes offences under the Environmental Protection Act 1994, Nature Conservation Act 1992, Forestry Act 1959, Recreation Areas Management Act 2006, Marine Parks Act 2004, Waste Reduction and Recycling Act 2011, Chapter 3 of the Water Act 2000 and the Queensland Heritage Act 2000, as listed within the State Penalties Enforcement Regulation 2000.

Note: For information on writing and the management of PINs please refer to the [PIN Manual](#) or contact infringement.notices@ehp.qld.gov.au.

1. Identifying details

Issuing Officer	<INSERT details>
Reference details	<INSERT details of database, Compliance Activity or Operation Name>
EcoTrack Number if used	<INSERT details>
Licence/Permit number	<INSERT details>
File number	<INSERT details>
Name of alleged offender	<INSERT full name of alleged offender >
Address	<INSERT residential and/or registered business address of alleged offender>
ACN/ABN	<INSERT details if applicable otherwise N/A>
Contact details	<INSERT phone, fax or email or N/A >

2. Background details of incident

Please outline any historical information relevant to this incident. This information may assist with the reasoning for the decision, assist in completing a review of the PIN and may be essential should the matter be referred to the Magistrates Court.

Date the department became aware of the offence.	<INSERT details THIS MUST BE COMPLETED FOR KPI REPORTING>
Date(s) & time of offence	<INSERT date(s) and time of incident(s)>

Day of the week	<INSERT day of the week e.g. Monday, Thursday>
Location	<INSERT Lot and plan, GPS or other>
Permit/ Authority details	<INSERT details>
Site activity	<INSERT details on background and activities being conducted on site>
Vehicle/vessel details	<INSERT details of make, model, registration, colour, VIN/chassis number>
Compliance history	<INSERT all details and results of compliance history searches >
Contact with alleged offender- have you notified them that PINS are being issued?	<INSERT summary details of the incident> <INSERT all details of contact had with alleged offenders/ ATTACH CORRESPONDENCE> <INSERT details of when you showed your authorised officer/conservation officer etc ID card if required>>
Possible mitigating circumstances	<INSERT these circumstances that should be considered by the decision maker>
Other information	<INSERT other details relating to the incident>

3. Alleged offence details

Please outline what offences are alleged to have been committed. Details include the legislation, section number, penalty units and limitation periods. Please also include the [PIN offence code](#) these can also be located on insite and Ecosteps.

Note: If there are more than three separate PIN-able offences being considered the matters should form the basis of a complaint and summons and be heard by a Magistrate.

No.	Section	PIN offence code	Legislation	Penalty Units	Statute Limitation
1	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>
2	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>
3	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>



4. Elements and supporting evidence

Please outline the elements of each of the offences listed above. Provide in detail what evidence is available to satisfy each and every element of the offence(s), the source, how it is/was obtained and when it will/was obtained.

Offence No.	Elements	Type of evidence	Source of evidence	How evidence was obtained
1.	<INSERT details>An element is a fact that must be proven and is integral to the offence. Eg. Identification of the offender, wilful action, with or without permission>	<INSERT details>eg.list all documentary (licence, statements)>	<INSERT details eg. department files, admissions from offender, witnesses>	<INSERT details via notice, site inspection, volunteered>
2.	<INSERT details>An element is a fact that must be proven and is integral to the offence. Eg. Identification of the offender, wilful action, with or without permission>	<INSERT details>eg. documentary (licence, statements)>	<INSERT details eg. department files, admissions from offender, witnesses>	<INSERT details via notice, site inspection, volunteered>
3.	<INSERT details>An element is a fact that must be proven and is integral to the offence. Eg. Identification of the offender, wilful action, with or without permission>	<INSERT details>eg. documentary (licence, statements)>	<INSERT details eg. department files, admissions from offender, witnesses>	<INSERT details via notice, site inspection, volunteered>
4.	<INSERT details>An element is a fact that must be proven and is integral to the offence. Eg. Identification of the offender, wilful action, with or without permission>	<INSERT details>eg. documentary (licence, statements)>	<INSERT details eg. department files, admissions from offender, witnesses>	<INSERT details via notice, site inspection, volunteered>

5. Alleged offender correspondence- relating to the alleged breach

Please detail correspondence related to the alleged breach that has been received from the alleged offender, or sent from the department to the alleged offender. Attach copies of the correspondence (including letters, emails, file notes of phone conversations, etc.).

Date	Type of Correspondence	Brief description of correspondence	Which alleged offence does the correspondence relate to?	Copy Attached?
<INSERT details>	<INSERT details> eg. email/letter/phone call	<INSERT details>	<INSERT details> Offence number should correspond with Part 3 where alleged offences are detailed	<INSERT details YES/NO. If no, explain why>
<INSERT details date>	<INSERT details eg. email/letter/phone call>	<INSERT details of what correspondence was about>	<INSERT details> Offence number should correspond with Part 3 where alleged offences are detailed	<INSERT details YES/NO. If no, explain why>
<INSERT details date>	<INSERT details eg. email/letter/phone call>	<INSERT details of what correspondence was about>	<INSERT details> Offence number should correspond with Part 3 where alleged offences are detailed	<INSERT details YES/NO. If no, explain why>

6. Other enforcement options

Please detail what other enforcement options have been considered for this matter as per the departments Enforcement Guidelines.

Have other enforcement options been considered?	<INSERT details YES/NO>
If yes, what are they and the reasons for using/not using them?	<INSERT details eg. warning letter, EPO>
If no, please advise why no other options have been considered?	<INSERT details>

7. Recommendation

The officer is required to make a recommendation in relation to the matter under investigation.

<INSERT details>

8. Acknowledgement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

9. Endorsement

The appropriate manager or supervisor is required to either support / not support the decision and sign and date below.

Decision for recommendation		<INSERT details support/ not support>
Reasons for decision <i><INSERT details>eg: I support this decision for the reasons set out above and I note Mr xxxx has previously received a warning letter in relation to this matter. ></i> <i><INSERT> eg: I do not approve the above recommendation as I consider it more appropriate for the Department to take an educational approach to this breach></i>		
Signature: <INSERT details>		Print Name: <INSERT details>
Position: <INSERT details>		Date: <INSERT details>

Please ensure that the PIN, cover letter and alleged breach report are saved into Ecotrack.



Assessment Report

Environmental Protection Act 1994
Environmental Evaluation

Part 1 - Notice to conduct or commission an environmental evaluation

This document is intended for internal use to assist Environmental Services officers to record the information considered by the Department of Environment and Heritage Protection (the Department) when forming the decision to issue a notice to

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date> Note: Within eight business days after deciding to require an environmental audit or an environmental investigation, the Department must give the intended recipient of the notice an information notice about the decision. This requirement may be met by issuing the notice within the eight business day period (refer ss322(2), 323(2) and 324).

conduct or commission an environmental evaluation under the Environmental Protection Act 1994 (the Act).

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the investigating environmental officer, supervisor (where possible) and the delegated decision-maker.

Part 1 - Notice to conduct or commission an environmental evaluation

1. Grounds to issue a notice to conduct or commission an environmental evaluation

Please identify the relevant grounds upon which the decision to issue a notice to conduct or commission an Environmental Evaluation is based. Officers are required to establish whether the Environmental Evaluation required should be an environmental audit (s322) or an environmental investigation (s323).

Environmental audit

☐ A person who holds or is acting under an environmental authority (EA) is breaching, or has breached, a condition of the authority.

OR

☐ A person is contravening, or has contravened, a development condition of a development approval (DA).

OR

☐ A person is, or has been, contravening a regulation, an environmental protection policy or a transitional environmental program (TEP).

OR

☐ A person is or has contravened provisions relating to:

- ☐ Depositing a prescribed water contaminant
- ☐ Releasing stormwater run-off
- ☐ Releases from boats into non-coastal waters
- ☐ Air contamination
- ☐ Fuel standards

Environmental investigation

☐ An event has happened causing environmental harm while an activity was being carried out.

OR

☐ An activity has caused, or a proposed activity is likely to cause, environmental harm.

2. Expand upon the grounds

Please expand upon the grounds identified for issuing the notice to conduct or commission an Environmental Evaluation. This can include identifying a specific alleged offence or any statutory requirement which must be met prior to the Department using the notice.

Each ground should be listed independently and be allocated a separate number.

<1. Example: ABC Pty Ltd , a company carrying out effluent irrigation activities, has caused environmental harm by releasing contaminants onto a neighbouring property.>

<2. Example: ABC Pty Ltd has breached its TEP by releasing contaminants onto land from premises situated at 123 Creek Road, Murphyville that are owned by ABC Pty Ltd.>

<3. Example: ABC Pty Ltd is contravening a DA condition by causing salt scald on a neighbouring property due to the carrying out effluent irrigation activities on premises situated at 123 Creek Road, Murphyville.>



Part 1 - Notice to conduct or commission an environmental evaluation

<INSERT additional grounds as required>

3. Brief history of the matter

Briefly outline any historical information relevant to this decision in chronological order.

< INSERT Briefly outline the historical information in chronological order.>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed. This section should also record how the Department has met any statutory requirements associated with the use of the statutory tool.

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement List the elements of any allegation or the grounds which must be met for issuing the notice to conduct or commission an environmental evaluation	Evidence Identify the information considered which is relevant to the elements or proving the grounds (i.e. statements, photographs, and recordings)	Facts and circumstances Detail the facts and circumstances that support the Department's findings
Number 1		
<INSERT 1 July 2010 at 9.30am>	<INSERT File note of telephone call on 1 July 2010 at 9.30am from Mr Flower, owner of the property adjacent to the northern boundary of 123 Creek Road, Murphyville.>	<INSERT Mr Flower has alleged that effluent irrigation activities carried out by a neighbour, ABC Pty Ltd at 123 Creek Road, Murphyville, are causing salt scald to his property.>
<INSERT 123 Creek Road, Murphyville (more particularly known as Lot 555 on RP 78987)>	<INSERT SLAM Data identifying property boundary.>	<INSERT Shows the northern boundary of 123 Creek Road, Murphyville where it borders onto Lots 1 and 2 on RP 45678 which are owned by Mr Flower.>
<INSERT JP Citizen>	<INSERT Title Search identifying Mr Citizen as owner of 123 Creek Road, Murphyville.>	<INSERT Mr John Paul Citizen is the registered owner of 123 Creek Road, Murphyville, more particularly known as Lot 555 on RP 78987.>
<INSERT ABC Pty Ltd>	<INSERT ASIC company extract for ABC Pty Ltd.>	<INSERT ASIC company extract shows Mr JP Citizen to be the sole director and secretary of ABC Pty Ltd.>

Part 1 - Notice to conduct or commission an environmental evaluation

<p><INSERT An activity is being carried out.....></p>	<p><INSERT Photographs (x 15) taken during site visit by Ms Green of the Department on 1 July 2010 showing a designated effluent irrigation area along the northern boundary of 123 Creek Road, Murphyville.></p>	<p><INSERT ABC Pty Ltd is carrying out effluent irrigation activities at 123 Creek Road, Murphyville which is inconsistent with its DA conditions.></p>
<p><INSERT An activity or proposed activity is causing, or is likely to cause environmental harm.....></p>	<p><INSERT File note of conversation with complainant Mr Flower during site visit on 1 July 2010 at 2.00pm to 4.00pm.></p>	<p><INSERT Mr Flower states that an area of his property adjacent to the northern boundary of 123 Murphy Road, Murphyville appears to have been affected by salt scald caused by effluent irrigation activities from mid 2009 and the following months.></p> <p><INSERT Mr Flower reported that the affected area had increased in size over a period of five to six months but had approximately doubled in size over the past three months.></p>
<p><INSERT It is alleged that contaminants have been released to land beyond the boundaries of 123 Creek Road, Murphyville.....></p>	<p><INSERT Photographs (x 16) taken of Lots 1 and 2 on RP 456 near northern boundary of 123 Creek Road, Murphyville by the Department officer Ms Green during site visit on 1 July 2010 during which Ms Green inspected the alleged salt affected area.></p>	<p><INSERT Ms Green noted what appeared to be a salt-affected area approximately 48 metres from north to south and approximately 37 metres from east to west on Lots 1 and 2 on RP 456.></p> <p><INSERT The area was approximately 10 metres down the slope from the northern boundary fence of 123 Creek Road, Murphyville.></p> <p><INSERT Photographs show the alleged salt-affected area has almost no living vegetation on it. Two trees upslope but adjacent to the affected area have recently died.></p>
	<p><INSERT Surface soil samples (0 to 10cm) were taken from two locations in the affected area and two other samples were taken nearby from which appears to be an unaffected area.></p>	<p><INSERT Results of the analysis carried out on the soil samples indicates salt scald of the alleged affected area on Lots 1 and 2 on RP 456.></p>

Part 1 - Notice to conduct or commission an environmental evaluation

		<p><INSERT It is the conclusion of Ms Green, a senior environmental officer of the Department, that the salt scald on Mr Flower's property has been caused by the release of contaminants to land as a result of effluent irrigation activities carried> <INSERT out by ABC Pty Ltd at 123 Creek Road, Murphyville.></p> <p><INSERT Based on a site inspection, analysis of soil samples and discussions with the complainant, Ms Green is of the opinion that effluent irrigation activities being carried out by ABC Pty Ltd are causing environmental harm,> <INSERT namely salt scald, on an adjacent property.></p> <p><INSERT In the circumstances it is appropriate to issue a notice to conduct or commission an environmental evaluation (environmental investigation or audit) to Mr John Paul Citizen as director of ABC Pty Ltd.></p>
Number 2		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>

5. Provide for natural justice

The Procedural Guide “Notice to conduct or commission an environmental evaluation” [\[insert link\]](#) identifies how best to ensure natural justice is afforded. Details should be recorded here:

- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ All information and/or defences provided have been considered.
<INSERT Please describe any information or defences provided.>
- ☐ the Department has considered the information or defences provided.
<INSERT What consideration was given and what conclusions has the Department formed?>

Part 1 - Notice to conduct or commission an environmental evaluation

- ☐ The decision-maker and the investigating environmental officer are free from bias or the perception of bias.

6. Relevant matters for the environmental evaluation

List any relevant matters for the environmental evaluation below – that is, the matters that the recipient of the notice will be required to investigate or audit.

The relevant matters must be SMART: specific, measureable, achievable, relevant and time specific. Refer to the [Writing effective and enforceable conditions procedural guide](#) for more information on writing conditions and/or requirements.

As the recipient can seek a review of the decision to require an environmental evaluation, to ensure the relevant matters are reasonable, officers are required to provide justification for their inclusion.

Proposed relevant matter	Justification
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>

7. Recommendation

The authorised person is required to make a recommendation in relation to the notice.

Example: It is the opinion of the Department that ABC Pty Ltd failed to comply with its development conditions by allowing storm water to leave 24 Jones Road and enter Murphy Creek. It is recommended that a notice to conduct or commission an Environmental Evaluation be issued.

8. Approval

--	--

Signature

Signature

Date: <INSERT Date>

Date: <INSERT Date>

<INSERT Name of authorised officer>

<INSERT Name of supervisor>

<INSERT Position of authorised officer>

<INSERT Position of supervisor>

Delegate of the Chief Executive

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

Part 1 - Notice to conduct or commission an environmental evaluation

<INSERT Based on the recommendations above/or reasons for rejection>.

RTI DL RELEASE - EHP

Assessment Report

Environmental Protection Act 1994

Part 1 - Notice to conduct or commission an environmental evaluation

This document is intended for internal use to assist Environmental Services officers to record the information considered by the Department of Environment and Heritage Protection (the department) when forming the decision to issue a notice to conduct or commission an environmental evaluation under the Environmental Protection Act 1994 (the Act).

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date> Note: Within eight business days after deciding to require an environmental audit or an environmental investigation, the department must give the intended recipient of the notice an information notice about the decision. This requirement may be met by issuing the notice within the eight business day period. (Refer ss322(2), 323(2) and 324)

Note:

1. Assessment Reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the investigating environmental officer, supervisor (where possible) and the delegated decision-maker.

1. Grounds to issue a notice to conduct or commission an environmental evaluation

Please identify the relevant grounds upon which the decision to issue a notice to conduct or commission an Environmental Evaluation is based. Officers are required to establish whether the Environmental Evaluation required should be an environmental audit (s322) or an environmental investigation (s323).

☐ **Environmental audit**

Re

Part 1 - Notice to conduct or commission an environmental evaluation

- ☐ A person who holds or is acting under an environmental authority (EA) is breaching, or has breached, a condition of the authority.

OR

- ☐ A person is contravening, or has contravened, a development condition of a development approval (DA).

OR

- ☐ A person is, or has been, contravening a regulation, an environmental protection policy or a transitional environmental program (TEP).

OR

- ☐ A person is or has contravened provisions relating to:

- ☐ Depositing a prescribed water contaminant
- ☐ Releasing stormwater run-off
- ☐ Releases from boats into non-coastal waters
- ☐ Air contamination
- ☐ Fuel standards

- ☐ **Environmental investigation**

- ☐ An event has happened causing environmental harm while an activity was being carried out.

OR

- ☐ An activity has caused, or a proposed activity is likely to cause, environmental harm.

2. Expand upon the grounds

Please expand upon the grounds identified for issuing the notice to conduct or commission an Environmental Evaluation. This can include identifying a specific alleged offence or any statutory requirement which must be met prior to the department using the notice.

Each ground should be listed independently and be allocated a separate number.

<1. Example: ABC Pty Ltd , a company carrying out effluent irrigation activities, has caused environmental harm by releasing contaminants onto a neighbouring property.>

<2. Example: ABC Pty Ltd has breached its TEP by releasing contaminants onto land from premises situated at 123 Creek Road, Murphyville that are owned by ABC Pty Ltd.>

<3. Example: ABC Pty Ltd is contravening a DA condition by causing salt scald on a neighbouring property due to the carrying out effluent irrigation activities on premises situated at 123 Creek Road, Murphyville.>

<INSERT additional grounds as required>

3. Brief history of the matter

Briefly outline any historical information relevant to this decision in chronological order.

< INSERT Briefly outline the historical information in chronological order.>

Part 1 - Notice to conduct or commission an environmental evaluation

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the statutory tool.

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement List the elements of any allegation or the grounds which must be met for issuing the notice to conduct or commission an Environmental Evaluation	Evidence Identify the information considered which is relevant to the elements or proving the grounds (i.e. statements, photographs, and recordings)	Facts and circumstances Detail the facts and circumstances that support the department's findings.
Number 1		
<INSERT 1 July 2010 at 9.30am>	<INSERT File note of telephone call on 1 July 2010 at 9.30am from Mr Flower, owner of the property adjacent to the northern boundary of 123 Creek Road, Murphyville.>	<INSERT Mr Flower has alleged that effluent irrigation activities carried out by a neighbour, ABC Pty Ltd at 123 Creek Road, Murphyville, are causing salt scald to his property.>
<INSERT 123 Creek Road, Murphyville (more particularly known as Lot 555 on RP 78987)>	<INSERT SLAM Data identifying property boundary.>	<INSERT Shows the northern boundary of 123 Creek Road, Murphyville where it borders onto Lots 1 and 2 on RP 45678 which are owned by Mr Flower.>
<INSERT JP Citizen>	<INSERT Title Search identifying Mr Citizen as owner of 123 Creek Road, Murphyville.>	<INSERT Mr John Paul Citizen is the registered owner of 123 Creek Road, Murphyville, more particularly known as Lot 555 on RP 78987.>
<INSERT ABC Pty Ltd>	<INSERT ASIC company extract for ABC Pty Ltd.>	<INSERT ASIC company extract shows Mr JP Citizen to be the sole director and secretary of ABC Pty Ltd.>
<INSERT An activity is being carried out.....>	<INSERT Photographs (x 15) taken during site visit by Ms Green of the department on 1 July 2010 showing a designated effluent irrigation area along the northern boundary of 123 Creek	<INSERT ABC Pty Ltd is carrying out effluent irrigation activities at 123 Creek Road, Murphyville which is inconsistent with its DA

Part 1 - Notice to conduct or commission an environmental evaluation

	Road, Murphyville.>	conditions.>
<INSERT An activity or proposed activity is causing, or is likely to cause environmental harm.....>	<INSERT File note of conversation with complainant Mr Flower during site visit on 1 July 2010 at 2.00pm to 4.00pm.>	<p><INSERT Mr Flower states that an area of his property adjacent to the northern boundary of 123 Murphy Road, Murphyville appears to have been affected by salt scald caused by effluent irrigation activities from mid 2009 and the following months. ></p> <p><INSERT Mr Flower reported that the affected area had increased in size over a period of five to six months but had approximately doubled in size over the past three months.></p>
<INSERT It is alleged that contaminants have been released to land beyond the boundaries of 123 Creek Road, Murphyville.....>	<INSERT Photographs (x 16) taken of Lots 1 and 2 on RP 456 near northern boundary of 123 Creek Road, Murphyville by the department officer Ms Green during site visit on 1 July 2010 during which Ms Green inspected the alleged salt affected area.>	<p><INSERT Ms Green noted what appeared to be a salt-affected area approximately 48 metres from north to south and approximately 37 metres from east to west on Lots 1 and 2 on RP 456.></p> <p><INSERT The area was approximately 10 metres down the slope from the northern boundary fence of 123 Creek Road, Murphyville.></p> <p><INSERT Photographs show the alleged salt-affected area has almost no living vegetation on it. Two trees upslope but adjacent to the affected area have recently died.></p>
	<INSERT Surface soil samples (0 to 10cm) were taken from two locations in the affected area and two other samples were taken nearby from which appears to be an unaffected area.>	<INSERT Results of the analysis carried out on the soil samples indicates salt scald of the alleged affected area on Lots 1 and 2 on RP 456.>
		<INSERT It is the conclusion of Ms Green, a senior environmental officer of the department, that the salt scald on Mr Flower's property has been caused by the release of

Re

Part 1 - Notice to conduct or commission an environmental evaluation

		<p>contaminants to land as a result of effluent irrigation activities carried><INSERT out by ABC Pty Ltd at 123 Creek Road, Murphyville.></p> <p><INSERT Based on a site inspection, analysis of soil samples and discussions with the complainant, Ms Green is of the opinion that effluent irrigation activities being carried out by ABC Pty Ltd are causing environmental harm,></p> <p><INSERT namely salt scald, on an adjacent property.></p> <p><INSERT In the circumstances it is appropriate to issue a notice to conduct or commission an environmental evaluation (environmental investigation or audit) to Mr John Paul Citizen as director of ABC Pty Ltd.></p>
Number 2		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>

5. Provide for natural justice

Officers are required to notify the affected person that the department is considering issuing a notice to conduct or commission an Environmental Evaluation and that the individual is welcome to make representation to the department as to why this action should not be taken. Any information provided by the affected person is to be documented and considered.

Sections 322(2) and 323(2) of the Act state that within eight business days after making a decision to require a person to conduct or commission an environmental audit or environmental investigation, the department must give the person an information notice about the decision. The legislative requirements in regard to the information notice will be met by serving the notice to conduct or commission an Environmental Evaluation upon the individual concerned within 8 business days.

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- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ All information and/or defences provided have been considered.
<INSERT Please describe any information or defences provided.>
- ☐ the department has considered the information or defences provided.
<INSERT What consideration was given and what conclusions has the department formed?>
- ☐ The decision-maker and the investigating environmental officer are free from bias or the perception of bias.

6. Relevant matters for the environmental evaluation

List any relevant matters for the Environmental Evaluation below – that is, the matters that the recipient of the notice will be required to investigate or audit.

The relevant matters must be SMART: specific, measureable, achievable, relevant and time specific. Refer to the [Writing effective and enforceable conditions procedural guide](#) for more information on writing conditions and/or requirements.

As the recipient can seek a review of the decision to require an Environmental Evaluation, to ensure the relevant matters are reasonable, officers are required to provide justification for their inclusion.

Proposed relevant matter	Justification
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>

7. Recommendation

The authorised person is required to make a recommendation in relation to the Direction Notice.

Part 1 - Notice to conduct or commission an environmental evaluation

Example: It is the opinion of the department that ABC Pty Ltd failed to comply with its development conditions by allowing storm water to leave 24 Jones Road and enter Murphy Creek. It is recommended that a notice to conduct or commission an Environmental Evaluation be issued.

8. Endorsement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

9. Approval

The appropriate manager or supervisor is required to make a decision and sign and date below.

Decision for recommendation		<INSERT details approve/not approve>
Reasons for decision <INSERT I endorse this recommendation based upon the information set out above>. <INSERT Or, I endorse this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>. <INSERT Or, I reject the above recommended decision as I consider it more appropriate for the department to take an educational approach to this breach>.		
Signature: <INSERT details>		Print Name: <INSERT details>
Position: <INSERT details>		Date: <INSERT details>

Assessment Report

Environmental Protection Act 1994 Environmental Evaluation

Notice to conduct or commission an environmental evaluation

This document is intended for internal use to assist Environmental Services officers (officers) to record the information considered by the Department of Environment and Heritage Protection (the department) when forming the decision to issue a notice to conduct or commission an environmental evaluation under the Environmental Protection Act 1994 (the Act).

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date>

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the investigating officer, supervisor (where possible) and the delegated decision-maker.

1. Grounds to issue a notice to conduct or commission an environmental evaluation

Please identify the relevant grounds upon which the decision to issue a notice to conduct or commission an environmental evaluation is based. Officers are required to establish whether the environmental evaluation required should be an environmental audit (sections 322 and 323 or 326) or an environmental investigation (section 326B).

An environmental evaluation means either an audit or an investigation and is used to determine:

- the source, cause or extent of environmental harm being caused, or likely to be caused, by the activity or event; and

Notice to conduct or commission an environmental evaluation

- the need for a transitional environmental program (TEP) for the activity or event.

☐ **Environmental audit - Audit about an environmental authority**

- ☐ Whether the conditions of the environmental authority (EA) have been complied with.

OR

- ☐ The environmental harm of the environmentally relevant activity may be causing greater harm than the environmental harm authorised under the EA.

OR

- ☐ To ensure the plan of operations for an EA complies with the conditions of the EA.

OR

- ☐ To ensure the accuracy of a final rehabilitation report given to the department by the person who holds the EA.

OR

- ☐ [INSERT other ground].

AND

- ☐ The audit is necessary or desirable.

☐ **Environmental audit - Audit about other prescribed matters**

- ☐ The department is satisfied that:

- ☐ A person is, or has been, contravening a regulation, an environmental protection policy or a transitional environmental program (TEP).

OR

- ☐ A person is or has contravened provisions relating to:

- ☐ a regulation
- ☐ an environmental protection policy
- ☐ a transitional environmental program (TEP)
- ☐ a direction notice
- ☐ a noise standard
- ☐ provisions relating to depositing a prescribed water contaminant in waters, in a roadside gutter or stormwater drainage, or at another place where it might move into waters, a roadside gutter or stormwater drainage
- ☐ provisions relating to releases from boats into non-coastal waters
- ☐ provisions relating to air contamination
- ☐ provisions relating to fuel standards

Notice to conduct or commission an environmental evaluation

☐ **Environmental audit - Audit by the department**

☐ The department will conduct or commission an audit about an EA for a resource activity.

OR

☐ The department will prepare an environmental report about the audit.

AND

☐ The audit is necessary or desirable.

OR

☐ The department will perform the functions of the auditor under section 574A (for any audit).

☐ **Environmental investigation**

☐ An event has happened causing environmental harm while an activity was being carried out.

OR

☐ An activity has caused, or a proposed activity is likely to cause, environmental harm.

AND

☐ The grounds for the investigation are reasonable.

2. Expand upon the grounds

Please expand upon the grounds identified for issuing the notice to conduct or commission an environmental evaluation. This can include identifying a specific alleged offence or any statutory requirement which must be met prior to the department using the notice.

Use this section to identify the information that will be relied upon by the decision-maker to satisfy themselves, based on the balance of probabilities, it was more likely than not that environmental harm occurred or is likely to occur. For example, what information do you have to demonstrate that an environmental audit is necessary or desirable or that the grounds are reasonable for the environmental investigation, or how are you satisfied that there has been a contravention of e.g. a noise standard which requires an audit?

Each ground should be listed independently and be allocated a separate number.

<1. Example: ABC Pty Ltd, a company carrying out effluent irrigation activities, has caused environmental harm by releasing contaminants onto a neighbouring property.>

<2. Example: ABC Pty Ltd has breached its TEP by releasing contaminants onto land from premises situated at 123 Creek Road, Murphyville that are owned by ABC Pty Ltd.>

<3. Example: ABC Pty Ltd is contravening an EA condition by causing salt scald on a neighbouring property due to the carrying out effluent irrigation activities on premises situated at 123 Creek Road, Murphyville.>

<INSERT additional grounds as required>

Assessment Report

3. Brief history of the matter

Briefly outline any historical information relevant to the decision in chronological order.

< INSERT Briefly outline the historical information in chronological order.>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the statutory tool.

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

Elements of the offence or legislative requirement List the elements of any allegation or the grounds which must be met for issuing the notice	Evidence Identify the information considered which is relevant to the elements or proving the grounds (i.e. statements, photographs, and recordings)	Facts and circumstances Detail the facts and circumstances that support the department's findings
Number 1		
<INSERT 1 July 2012 at 9.30am>	<INSERT File note of telephone call on 1 July 2010 at 9.30am from Mr Flower, owner of the property adjacent to the northern boundary of 123 Creek Road, Murphyville.>	<INSERT Mr Flower has alleged that effluent irrigation activities carried out by a neighbour, ABC Pty Ltd at 123 Creek Road, Murphyville, are causing salt scald to his property.>
<INSERT 123 Creek Road, Murphyville (more particularly known as Lot 555 on RP 78987)>	<INSERT SLAM Data identifying property boundary.>	<INSERT Shows the northern boundary of 123 Creek Road, Murphyville where it borders onto Lots 1 and 2 on RP 45678 which are owned by Mr Flower.>
<INSERT JP Citizen>	<INSERT Title Search identifying Mr Citizen as owner of 123 Creek Road, Murphyville.>	<INSERT Mr John Paul Citizen is the registered owner of 123 Creek Road, Murphyville, more particularly known as Lot 555 on RP 78987.>

Assessment Report

Notice to conduct or commission an environmental evaluation

<INSERT ABC Pty Ltd>	<INSERT ASIC company extract for ABC Pty Ltd.>	<INSERT ASIC company extract shows Mr JP Citizen to be the sole director and secretary of ABC Pty Ltd.>
<INSERT An activity is being carried out...>	<INSERT Photographs (x 15) taken during site visit by Ms Green of the department on 1 July 2012 showing a designated effluent irrigation area along the northern boundary of 123 Creek Road, Murphyville.>	<INSERT ABC Pty Ltd is carrying out effluent irrigation activities at 123 Creek Road, Murphyville which is inconsistent with its EA conditions.>
<INSERT An activity or proposed activity is causing, or is likely to cause environmental harm...>	<INSERT File note of conversation with complainant Mr Flower during site visit on 1 July 2012 at 2.00pm to 4.00pm.>	<p><INSERT Mr Flower states that an area of his property adjacent to the northern boundary of 123 Murphy Road, Murphyville appears to have been affected by salt scald caused by effluent irrigation activities from mid 2010 and the following months.></p> <p><INSERT Mr Flower reported that the affected area had increased in size over a period of five to six months but had approximately doubled in size over the past three months.></p>
<INSERT It is alleged that contaminants have been released to land beyond the boundaries of 123 Creek Road, Murphyville...>	<INSERT Photographs (x 16) taken of Lots 1 and 2 on RP 456 near northern boundary of 123 Creek Road, Murphyville by department officer Ms Green during site visit on 1 July 2012 during which Ms Green inspected the alleged salt affected area.>	<p><INSERT Ms Green noted what appeared to be a salt-affected area approximately 48 metres from north to south and approximately 37 metres from east to west on Lots 1 and 2 on RP 456.></p> <p><INSERT The area was approximately 10 metres down the slope from the northern boundary fence of 123 Creek Road, Murphyville.></p> <p><INSERT Photographs show the alleged salt-affected area has almost no living vegetation on it. Two trees upslope but adjacent to the affected area have recently died.></p>
	<INSERT Surface soil samples (0 to 10cm) were taken from two locations in the affected area and two other samples were taken nearby from which appears	<INSERT Results of the analysis carried out on the soil samples indicates salt scald of the alleged affected area on Lots 1 and 2 on

Re

Assessment Report

Notice to conduct or commission an environmental evaluation

	to be an unaffected area.>	RP 456.>
		<p><INSERT It is the conclusion of Ms Green, a senior environmental officer of the department, that the salt scald on Mr Flower's property has been caused by the release of contaminants to land as a result of effluent irrigation activities carried></p> <p><INSERT out by ABC Pty Ltd at 123 Creek Road, Murphyville.></p> <p><INSERT namely salt scald, on an adjacent property.></p> <p><INSERT In the circumstances it is appropriate to issue a notice to conduct or commission an environmental evaluation (environmental investigation or audit) to Mr John Paul Citizen as director of ABC Pty Ltd.></p>
Number 2		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>

5. Provide for natural justice

Any information provided by the recipient or EA holder is to be documented and considered.

- ☐ The person has been notified of the department's decision.
<INSERT Describe how and when the person was notified.>
- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ The department has considered the information or defences available.
<INSERT What consideration was given and what conclusions the department has formed.>
- ☐ The decision-maker and the investigating environmental officer are free from bias or the perception of bias.

6. Relevant matters for the environmental evaluation

List any relevant matters for the environmental evaluation below – that is:

[Redacted]

Notice to conduct or commission an environmental evaluation

- the matters that the recipient of the notice will be required to investigate or audit;
- when the audit or investigation must be conducted or commissioned; and
- when the report is due to the department.

The relevant matters must be SMART: specific, measureable, achievable, relevant and time specific. Refer to the writing effective and enforceable conditions procedural guide using (EM2417) for more information on writing conditions and/or requirements.

As the recipient can seek a review of the decision to require an environmental evaluation, to ensure the relevant matters are reasonable, officers are required to provide justification for their inclusion.

Proposed relevant matter	Justification
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>

7. Recommendation

Officers are required to make a recommendation in relation to the notice to conduct or commission an environmental evaluation.

Example: It is the opinion of the department that ABC Pty Ltd failed to comply with its environmental authority conditions by allowing storm water to leave 24 Jones Road and enter Murphy Creek. It is recommended that a notice to conduct or commission an environmental audit be issued.

--	--

Signature

Signature

Date: <INSERT Date>

Date: <INSERT Date>

<INSERT Name of environmental services officer>

<INSERT Name of supervisor>

<INSERT Name of environmental services officer>

<INSERT Position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

Notice to conduct or commission an environmental evaluation

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

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Assessment Report

Environmental Protection Act 1994 Environmental Evaluation

Notice to conduct or commission an environmental evaluation

This document is intended for internal use to assist Environmental Services officers (officers) to record the information considered by the Department of Environment and Heritage Protection (the department) when forming the decision to issue a notice to conduct or commission an environmental evaluation under the Environmental Protection Act 1994 (the Act).

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date>

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the investigating officer, supervisor (where possible) and the delegated decision-maker.

1. Grounds to issue a notice to conduct or commission an environmental evaluation

Please identify the relevant grounds upon which the decision to issue a notice to conduct or commission an environmental evaluation is based. Officers are required to establish whether the environmental evaluation required should be an environmental audit (sections 322 and 323 or 326) or an environmental investigation (section 326B).

Notice to conduct or commission an environmental evaluation

Environmental audit

- ☐ A person who holds or is acting under an environmental authority (EA) is breaching, or has breached, a condition of the authority.

OR

- ☐ The environmental harm of the environmentally relevant activity may be causing greater harm than the environmental harm authorised under the EA.

OR

- ☐ To ensure the plan of operations for an EA complies with the conditions of the EA.

OR

- ☐ To ensure the accuracy of a final rehabilitation report given to the department by the person who holds the EA.

OR

- ☐ A person is, or has been, contravening a regulation, an environmental protection policy or a transitional environmental program (TEP).

OR

- ☐ A person is or has contravened provisions relating to:
- ☐ a regulation
 - ☐ an environmental protection policy
 - ☐ a transitional environmental program (TEP)
 - ☐ a direction notice
 - ☐ a noise standard
 - ☐ provisions relating to depositing a prescribed water contaminant in waters, in a roadside gutter or stormwater drainage, or at another place where it might move into waters, a roadside gutter or stormwater drainage
 - ☐ provisions relating to releases from boats into non-coastal waters
 - ☐ provisions relating to air contamination
 - ☐ provisions relating to fuel standards

AND

The audit is necessary or desirable <INSERT reasons>.

Environmental investigation

- ☐ An event has happened causing environmental harm while an activity was being carried out.

OR

- ☐ An activity (or a proposed activity) is causing, or likely to cause, environmental harm.

Re

2. Expand upon the grounds

Please expand upon the grounds identified for issuing the notice to conduct or commission an environmental evaluation. This can include identifying a specific alleged offence or any statutory requirement which must be met prior to the department using the notice.

Each ground should be listed independently and be allocated a separate number;

<1. Example: ABC Pty Ltd , a company carrying out effluent irrigation activities, has caused environmental harm by releasing contaminants onto a neighbouring property.>

<2. Example: ABC Pty Ltd has breached its TEP by releasing contaminants onto land from premises situated at 123 Creek Road, Murphyville that are owned by ABC Pty Ltd.>

<3. Example: ABC Pty Ltd is contravening an EA condition by causing salt scald on a neighbouring property due to the carrying out effluent irrigation activities on premises situated at 123 Creek Road, Murphyville.>

<INSERT additional grounds as required>

3. Brief history of the matter

Briefly outline any historical information relevant to the decision in chronological order.

< INSERT Briefly outline the historical information in chronological order.>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the statutory tool.

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

Elements of the offence or legislative requirement List the elements of any allegation or the grounds which must be met for issuing the notice	Evidence Identify the information considered which is relevant to the elements or proving the grounds (i.e. statements, photographs, and recordings)	Facts and circumstances Detail the facts and circumstances that support the department's findings
Number 1		
<INSERT 1 July 2012 at 9.30am>	<INSERT File note of telephone call on 1 July 2012 at 9.30am from Mr Flower, owner of the property adjacent to the northern boundary of 123 Creek Road, Murphyville.>	<INSERT Mr Flower has alleged that effluent irrigation activities carried out by a neighbour, ABC Pty Ltd at 123 Creek Road, Murphyville, are causing salt scald to his property.>
<INSERT 123 Creek Road, Murphyville (more particularly	<INSERT SLAM Data identifying	<INSERT Shows the northern boundary of 123 Creek Road,

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Notice to conduct or commission an environmental evaluation

known as Lot 555 on RP 78987)>	property boundary.>	Murphyville where it borders onto Lots 1 and 2 on RP 45678 which are owned by Mr Flower.>
<INSERT JP Citizen>	<INSERT Title Search identifying Mr Citizen as owner of 123 Creek Road, Murphyville.>	<INSERT Mr John Paul Citizen is the registered owner of 123 Creek Road, Murphyville, more particularly known as Lot 555 on RP 78987.>
<INSERT ABC Pty Ltd>	<INSERT ASIC company extract for ABC Pty Ltd.>	<INSERT ASIC company extract shows Mr JP Citizen to be the sole director and secretary of ABC Pty Ltd.>
<INSERT An activity is being carried out.....>	<INSERT Photographs (x 15) taken during site visit by Ms Green of the department on 1 July 2012 showing a designated effluent irrigation area along the northern boundary of 123 Creek Road, Murphyville.>	<INSERT ABC Pty Ltd is carrying out effluent irrigation activities at 123 Creek Road, Murphyville which is inconsistent with its EA conditions.>
<INSERT An activity or proposed activity is causing, or is likely to cause environmental harm.....>	<INSERT File note of conversation with complainant Mr Flower during site visit on 1 July 2012 at 2.00pm to 4.00pm.>	<p><INSERT Mr Flower states that an area of his property adjacent to the northern boundary of 123 Murphy Road, Murphyville appears to have been affected by salt scald caused by effluent irrigation activities from mid 2010 and the following months.></p> <p><INSERT Mr Flower reported that the affected area had increased in size over a period of five to six months but had approximately doubled in size over the past three months.></p>
<INSERT It is alleged that contaminants have been released to land beyond the boundaries of 123 Creek Road, Murphyville.....>	<INSERT Photographs (x 16) taken of Lots 1 and 2 on RP 456 near northern boundary of 123 Creek Road, Murphyville by department officer Ms Green during site visit on 1 July 2012 during which Ms Green inspected the alleged salt affected area.>	<p><INSERT Ms Green noted what appeared to be a salt-affected area approximately 48 metres from north to south and approximately 37 metres from east to west on Lots 1 and 2 on RP 456.></p> <p><INSERT The area was approximately 10 metres down the slope from the northern boundary fence of 123 Creek Road, Murphyville.></p> <p><INSERT Photographs show the</p>

Assessment Report

Notice to conduct or commission an environmental evaluation

		alleged salt-affected area has almost no living vegetation on it. Two trees upslope but adjacent to the affected area have recently died.>
	<INSERT Surface soil samples (0 to 10cm) were taken from two locations in the affected area and two other samples were taken nearby from which appears to be an unaffected area.>	<INSERT Results of the analysis carried out on the soil samples indicates salt scald of the alleged affected area on Lots 1 and 2 on RP 456.>
		<INSERT It is the conclusion of Ms Green, a senior environmental officer of the department, that the salt scald on Mr Flower's property has been caused by the release of contaminants to land as a result of effluent irrigation activities carried> <INSERT out by ABC Pty Ltd at 123 Creek Road, Murphyville.> <INSERT namely salt scald, on an adjacent property.> <INSERT In the circumstances it is appropriate to issue a notice to conduct or commission an environmental evaluation (environmental investigation or audit) to Mr John Paul Citizen as director of ABC Pty Ltd.>
Number 2		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>

5. Provide for natural justice

Any information provided by the recipient or EA holder is to be documented and considered.

☐ The person has been notified of the department's decision.

<INSERT Describe how and when the person was notified.>

☐ The person has been provided with the opportunity to put their side of the story forward.

<INSERT Describe how this was achieved.>

Notice to conduct or commission an environmental evaluation

- ☐ The department has considered the information or defences available.
<INSERT What consideration was given and what conclusions the department has formed.>
- ☐ The decision-maker and the investigating environmental officer are free from bias or the perception of bias.

6. Relevant matters for the environmental evaluation

List any relevant matters for the environmental evaluation below – that is:

- the matters that the recipient of the notice will be required to investigate or audit;
- when the audit or investigation must be conducted or commissioned; and
- when the report is due to the department.

The relevant matters must be SMART: specific, measureable, achievable, relevant and time specific. . Refer to the writing effective and enforceable conditions procedural guide using (EM2417) for more information on writing conditions and/or requirements.

As the recipient can seek a review of the decision to require an environmental evaluation, to ensure the relevant matters are reasonable, officers are required to provide justification for their inclusion.

Proposed relevant matter	Justification
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>

7. Recommendation

Officers are required to make a recommendation in relation to the notice to conduct or commission an environmental evaluation.

Example: It is the opinion of the department that ABC Pty Ltd failed to comply with its development conditions by allowing storm water to leave 24 Jones Road and enter Murphy Creek. It is recommended that a notice to conduct or commission an environmental audit be issued.

Assessment Report

Notice to conduct or commission an environmental evaluation

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Signature

Signature

Date: <INSERT Date>

Date: <INSERT Date>

<INSERT Name of environmental services officer>

<INSERT Name of supervisor>

<INSERT Name of environmental services officer>

<INSERT Position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

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Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994

Clean-up Notice

This document is for internal use to assist Environmental Service officers to record the information considered by the Department of Environment and Heritage Protection (the department) when forming the decision to issue a clean-up notice.

Note:

1. Assessment reports recommending that a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the responsible officer, supervisor and the delegated decision maker.

1. Brief history of the matter

Outline any historical information relevant to this decision in succinct dot point form.

Outline the historical information in chronological order.

2. Grounds for use of clean-up notice

Identify the relevant grounds upon which the decision to use a clean-up notice is based:

- ☐ a prescribed person has been identified; **and**
- ☐ a contamination incident has occurred; **and**
- ☐ the contamination incident has caused or is likely to cause serious environmental harm; **or**
- ☐ the contamination incident has caused or is likely to cause material environmental harm.

3. Expand upon the grounds

The next step is to expand upon the grounds identified for issuing the clean-up notice. This can include identifying an alleged offence or any statutory requirement which must be met prior to the department using a clean-up notice.

Each ground should be listed independently and be allocated a separate number.

Number	Specific ground
1	On 1 July 2010, hydrocarbons were observed leaking from the premises of ABC Pty Ltd into Murphy Creek.

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the

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conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the tool.

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement	Evidence	Facts and circumstances
<i>List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department</i>	<i>Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs and recordings)</i>	<i>Detail the facts and circumstance that support the department's findings.</i>
Number 1 (Number taken from Section 2)		
1 July 2010	Notes from phone call from Mrs Green reporting the incident in file no: 1234	The Department received a telephone call from Mrs Green reporting that waste has been leaking into Murphy Creek.
Premises at 123 Creek Road, Murphyville.	Title search of Lot 123 on RP 45678, more particularly known as 123 Creek Road, Murphyville.	ABC Pty Ltd is the registered owner of 123 Creek Road, Murphyville.
2 July 2010	Photographs (x24) of Murphy Creek and the area to the rear of premises situated at 123 Creek Road, Murphyville.	Photographs show a thick, grey liquid flowing from the rear of the premises at 123 Creek Road, Murphyville.
2 July 2010	Water samples taken	Water samples indicate that the liquid escaping from the premises at 123 Creek Road is a crude oil containing a variety of toxic hydrocarbons that meet the definition of contaminant under s11 of the Act. This liquid is leaking from storage tanks situated on the premises owned by ABC Pty Ltd at 123 Creek Road, Murphyville.
Identified the prescribed person	ASIC company search of ABC Pty Ltd.	ASIC company search shows that Mr John Paul Citizen is the sole director/secretary of ABC Pty Ltd. Mr Citizen is the prescribed person for the contamination incident.

5. Natural justice

The responsible officer is required to notify the prescribed person that the department is considering issuing a clean-up notice and that the person is welcome to make representation to the department as to why this action should not be taken. Any information provided by the prescribed person is to be documented and considered.

☐ The person has been provided with the opportunity to put their side of the story forward.

Describe how this was achieved.

☐ All information and/or defenses provided were considered.

Describe any information or defenses provided.

☐ The Department has considered the information or defences provided.

What consideration was given and what conclusions has the department formed?

☐ The decision maker and responsible officer are free from bias or the perception of bias.

6. Recommended actions of the clean-up notice

List the proposed requirements of the clean-up notice below. In order to ensure conditions are enforceable, they should be SMART (specific, measureable, achievable, relevant and time specific). Refer to the *writing effective and enforceable conditions* procedural guide for more information on writing conditions and requirements.

To ensure the requirements are reasonable officers will need to provide justification for the inclusion of the requirement.

Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification

7. Recommended decision

Recommendation:

I, the responsible officer recommend a decision that a clean-up notice be issued in relation to the allegation.

8. Endorsement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

9. Approval

The appropriate manager or supervisor is required to make a decision and sign and date below.

Decision for recommendation	<INSERT details approve/not approve>
Reasons for decision <INSERT I endorse this recommendation based upon the information set out above>. <INSERT Or, I endorse this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>. <INSERT Or, I reject the above recommended decision as I consider it more appropriate for the department to take an educational approach to this breach>.	
Signature: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Date: <INSERT details>

Assessment Report

Environmental Protection Act 1994

Clean-up Notice

This document is for internal use to assist Environmental Service officers (officers) to record the information considered by the Department of Environment and Heritage Protection (the department) when forming the decision to issue a clean-up notice under the Environmental Protection Act 1994 (the Act).

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date>

Note:

1. Assessment reports recommending that a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the investigating environmental officer, supervisor and the delegated decision-maker.

1. Brief history of the matter

Outline any historical information relevant to this decision in succinct dot point form.

<INSERT Outline the historical information in chronological order.>

2. Grounds to issue a clean-up notice

Identify the relevant grounds upon which the decision to issue a clean-up notice is based:

Re

- ☐ a prescribed person has been identified; and
- ☐ a contamination incident has occurred; and
- ☐ the contamination incident has caused or is likely to cause serious environmental harm; or
- ☐ the contamination incident has caused or is likely to cause material environmental harm.

3. Expand upon the grounds

The next step is to expand upon the grounds identified for issuing the clean-up notice. This can include identifying an alleged offence or any statutory requirement which must be met prior to the department using a clean-up notice.

Each ground should be listed independently and be allocated a separate number.

Number	Specific ground
1	On 1 July 2013, hydrocarbons were observed leaking from the premises of ABC Pty Ltd into Murphy Creek.

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the tool.

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs and recordings)	Detail the facts and circumstance that support the department's findings.
Number 1		
<INSERT 1 July 2013>	<INSERT Notes from phone call from Mrs Green reporting the incident in file no: 1234.>	<INSERT The department received a telephone call from Mrs Green reporting that waste has been leaking into Murphy Creek.>
<INSERT Premises at 123 Creek Road, Murphyville.>	<INSERT Title search of Lot 123 on RP 45678, more particularly known as 123 Creek Road, Murphyville.>	<INSERT ABC Pty Ltd is the registered owner of 123 Creek Road, Murphyville.>
<INSERT 2 July 2013>	<INSERT Photographs (x24) of Murphy Creek and the area to the rear of premises situated at 123	<INSERT Photographs show a thick, grey liquid flowing from the rear of the premises at 123 Creek Road,

	Creek Road, Murphyville.>	Murphyville.>
<INSERT 2 July 2013>	<INSERT Water samples taken.>	<p><INSERT Water samples indicate that the liquid escaping from the premises at 123 Creek Road is a crude oil containing a variety of toxic hydrocarbons that meet the definition of contaminant under section 11 of the Act.></p> <p><INSERT This liquid is leaking from storage tanks situated on the premises owned by ABC Pty Ltd at 123 Creek Road, Murphyville.></p>
<INSERT Identified the prescribed person.>	<INSERT ASIC company search of ABC Pty Ltd.>	<p><INSERT ASIC company search shows that Mr John Paul Citizen is the sole director/secretary of ABC Pty Ltd.></p> <p><INSERT Mr Citizen is the prescribed person for the contamination incident.></p>

5. Natural justice

Any information provided by the recipient is to be documented and considered.

- ☐ The person has been notified of the department's decision.
<INSERT Describe how and when the person was notified.>
- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ The Department has considered the information or defences available.
<INSERT What consideration was given and what conclusions the department has formed?>
- ☐ The decision-maker and authorised officer are free from bias or the perception of bias.

6. Recommended actions of the clean-up notice

List the proposed requirements of the clean-up notice below. In order to ensure conditions are enforceable, they should be SMART (specific, measureable, achievable, relevant and time specific). Refer to the writing effective and enforceable conditions procedural guide (EM2417) for more information on writing conditions and requirements.

To ensure the requirements are reasonable officers will need to provide justification for the inclusion of the requirement.

Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification

7. Recommendation

Officers are required to make a recommendation in relation to issuing the clean-up notice.

Example: As the investigating officer, I am of the opinion that hydrocarbons leaked into the environment etc. and it is recommended that a clean-up notice be issued in relation to the contamination incident.

Signature	Signature

Date: <INSERT Date>

<INSERT Name of environmental services officer>

<INSERT Name of environmental services officer>

Date: <INSERT Date>

<INSERT Name of supervisor>

<INSERT Position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>
<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994

Clean-up Notice

This document is for internal use to assist Environmental Service officers (officers) to record the information considered by the Department of Environment and Heritage Protection (the department) when forming the decision to issue a clean-up notice under the Environmental Protection Act 1994 (the Act).

Identifying details	
Location description	<INSERT Location>
Client/Company name	<INSERT Name>
Trading as	<INSERT Trading as>
Compliance activity number	<INSERT Number>
Permit number	<INSERT Number>
File number	<INSERT File number>
Registered business address	<INSERT Address>

Note:

1. Assessment reports recommending that a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the investigating officer, supervisor and the delegated decision-maker.

1. Brief history of the matter

Outline any historical information relevant to this decision in succinct dot point form.

<INSERT Outline the historical information in chronological order.>

2. Grounds to issue a clean-up notice

Identify the relevant grounds upon which the decision to issue a clean-up notice is based:

- ☐ a prescribed person has been identified; and
- ☐ a contamination incident has occurred; and

- ☐ the contamination incident has caused or is likely to cause serious environmental harm; or
- ☐ the contamination incident has caused or is likely to cause material environmental harm.

3. Expand upon the grounds

The next step is to expand upon the grounds identified for issuing the clean-up notice. This can include identifying an alleged offence or any statutory requirement which must be met prior to the department using a clean-up notice.

Each ground should be listed independently and be allocated a separate number.

Number	Specific ground
1	On 1 July 2013, hydrocarbons were observed leaking from the premises of ABC Pty Ltd into Murphy Creek.

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the tool.

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs and recordings)	Detail the facts and circumstance that support the department's findings
Number 1		
<INSERT 1 July 2013>	<INSERT Notes from phone call from Mrs Green reporting the incident in file no: 1234.>	<INSERT The department received a telephone call from Mrs Green reporting that waste has been leaking into Murphy Creek.>
<INSERT Premises at 123 Creek Road, Murphyville.>	<INSERT Title search of Lot 123 on RP 45678, more particularly known as 123 Creek Road, Murphyville.>	<INSERT ABC Pty Ltd is the registered owner of 123 Creek Road, Murphyville.>
<INSERT 2 July 2013>	<INSERT Photographs (x24) of Murphy Creek and the area to the rear of premises situated at 123 Creek Road, Murphyville.>	<INSERT Photographs show a thick, grey liquid flowing from the rear of the premises at 123 Creek Road, Murphyville.>
<INSERT 2 July 2013>	<INSERT Water samples taken.>	<INSERT Water samples indicate that

		<p>the liquid escaping from the premises at 123 Creek Road is a crude oil containing a variety of toxic hydrocarbons that meet the definition of contaminant under section 11 of the Act.></p> <p><INSERT This liquid is leaking from storage tanks situated on the premises owned by ABC Pty Ltd at 123 Creek Road, Murphyville.></p>
<INSERT Identified the prescribed person.>	<INSERT ASIC company search of ABC Pty Ltd.>	<p><INSERT ASIC company search shows that Mr John Paul Citizen is the sole director/secretary of ABC Pty Ltd.></p> <p><INSERT Mr Citizen is the prescribed person for the contamination incident.></p>

5. Recommended actions of the clean-up notice

List the proposed requirements of the clean-up notice below. In order to ensure conditions are enforceable, they should be SMART: specific, measureable, achievable, relevant and time specific. Refer to the writing effective and enforceable conditions procedural guide (EM2417) for more information on writing conditions and requirements.

To ensure the requirements are reasonable officers will need to provide justification for the inclusion of the requirement.

Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification

6. Natural justice

Any information provided by the recipient is to be documented and considered.

- ☐ The person has been notified of the department's decision.
<INSERT Describe how and when the person was notified.>
- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ The department has considered the information or defences available.
<INSERT what consideration was given and what conclusions the department has formed?>
- ☐ The decision-maker and authorised officer are free from bias or the perception of bias.

7. Recommendation

Officers are required to make a recommendation in relation to issuing the clean-up notice.

Example: As the investigating officer, I am of the opinion that hydrocarbons leaked into the environment etc. and it is recommended that a clean-up notice be issued in relation to the contamination incident.

--	--

Signature

Signature

Date: <INSERT Date>

<INSERT Name of investigating officer>

<INSERT Position of investigating officer>

Date: <INSERT Date>

<INSERT Name of supervisor>

<INSERT Position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

--

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive
Department of Environment and Heritage Protection
Environmental Protection Act 1994

<INSERT Approve/reject recommendation>
<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994

Cost Recovery Notice

This document is intended for internal use to assist Environmental Services officers to record the information considered by the Department of Environment and Heritage Protection (the department) when deciding to issue a Cost Recovery Notice.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>

Note:

1. Assessment Reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the responsible officer, supervisor, and the delegated decision-maker.

1. Brief history of the matter

Please briefly outline any historical information relevant to this decision.

<INSERT Provide brief outline of the historical information.>

2. Grounds for use of a Cost Recovery Notice

The grounds for use of a Cost Recovery Notice can be found in s363N of the *Environmental Protection Act 1994* (the Act). Officers are required to identify the relevant grounds upon which the decision to use a Cost Recovery Notice applies.

☐ The prescribed person has been identified.

If a Clean-up Notice has been issued

☐ The recipient has failed to comply with the notice and an authorised person or contractor has carried out any of the actions stated in the Clean-up Notice (s363K).

Re



OR

- ☐ The decision to issue the Clean-up Notice has been stayed by the court and, during the period of the stay, an authorised person or contractor carried out the actions stated in the Clean-up Notice (s363K), and:
- ☐ the appeal has ended without an appeal decision being made by the court **OR**
 - ☐ the appeal decision confirms the decision to issue the Clean-up Notice and required the recipient to take the Clean-up action

AND

- ☐ The department has reasonably incurred costs and expenses for taking an action stated in the Clean-up Notice or monitoring compliance with the Clean-up Notice

OR

- ☐ The department has reasonably incurred costs and expenses in monitoring compliance by the recipient with the Clean-up Notice.

If a Clean-up Notice has not been issued

- ☐ The intended recipient of the Cost Recovery Notice is a person whom the department reasonably believes to be a prescribed person for a contamination incident

AND

- ☐ An authorised person has taken action under the department's emergency powers (s467 of the Act) in relation to serious or material environmental harm caused or likely to be caused by the incident

AND

- ☐ The department has reasonably incurred costs and expenses for taking action under s467.

Ensure that the costs and expenses incurred will be payable

Subsection 363N(5) of the Act lists the circumstances where the costs incurred are not payable by the recipient.

- ☐ None of the circumstances specified in s363N(5) where the costs incurred will not be payable by the recipient apply to this situation.

3. Expand upon the grounds

Expand upon the grounds identified for issuing the Cost Recovery Notice.

If a Clean-up Notice has been issued, officers will need to link the actions taken by the authorised person or contractor and the costs claimed by the department with the requirements set out in the Clean-up Notice, and provide reasons to justify why the department had to carry out the actions in place of the recipient of the Clean-up Notice.

If an authorised person has acted under the emergency powers pursuant to s467 of the Act, officers must provide an explanation as to why and how the actions were taken, the costs were incurred, the urgency of the situation and provide justification for the dollar value claimed.

Each ground should be listed independently and be allocated a separate number.

Re

Number	Specific ground
1	<INSERT ABC Pty Ltd failed to comply with the Clean-up Notice issued on 11th February 2009

	and actions stated in the Clean-up Notice were carried out by XYZ Pty Ltd.>
2	<INSERT Details>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support all of the grounds for using the tool. This is achieved by linking the elements of the grounds to the information gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the tool.

When analysing information or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirements	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department.	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings).	Detail the facts and circumstance that support the department's findings.
Number 1 (Number taken from Section 2)		
10 July 2010: The recipient of a Clean-up Notice.....	A Clean-up Notice was issued to Mr JP Citizen, sole director/secretary of ABC Pty Ltd on 10 July 2010.	The clean up notice required Mr Citizen to take action to clean up toxic sludge leaking from ponds at the site of ABC Pty Ltd by 10 August 2010.
Has failed to comply with the Clean-up Notice.....	A site inspection was carried out by senior environmental officer Mr Jack Green at 123 Creek Road, Greendale on 12 August 2010.	The site inspection revealed that Mr Citizen had not carried out the actions set out the Clean-up Notice in the required time frame.
An authorised person or person acting under the direction of an authorised person (the contractor) has taken the actions stated in the clean up notice.....	the department authorised contractor XYZ Pty Ltd to carry out the actions stated in the Clean-up Notice on 15 August 2010.	XYZ Pty Ltd was engaged by the department to clean up the toxic sludge leaking from ponds owned by ABC Pty Ltd.
the department incurred reasonable costs and expenses.....	XYZ Pty Ltd has issued an invoice to the department for the clean-up work carried out.(Copy attached to this Assessment Report).	XYZ Pty Ltd has invoiced the department for the amount of \$20,000.00 which is the cost to the department reasonably incurred when carrying out the actions stated in the Clean-up

		Notice that the recipient failed to carry out.
<INSERT Details>	<INSERT Details>	<INSERT Details>
<INSERT Details>	<INSERT Details>	<INSERT Details>
<INSERT Details>	<INSERT Details>	<INSERT Details>

5. Calculate the monetary value

Officers are required to identify the monetary amount being sought and show the calculations used to determine this amount. Costs and expenses claimed must be defensible and reasonable in the circumstances. They can include labour, equipment and administrative costs and expenses.

Costs claimed	Monetary value
For example: Cost of consultant	For example: Engaged for 20 hours @ \$330 per hour (including GST) = \$6,600
For example: Cost of full time equivalents (FTEs)	For example: \$10,000
For example: Cost of sampling/monitoring	For example: \$5,000
For example: Cost of works	For example: Contractors engaged for 18 hours @ \$1,100.00 per hour = \$19,800
<INSERT Details>	<INSERT Details>
<INSERT Details>	<INSERT Details>
For example: The total amount being sought by the State	For example: \$41,400

Note: A copy of the relevant documentation for each cost claimed must be attached to the Assessment Report.

To ensure the costs claimed are reasonable, officers are required to provide justification for the inclusion of the cost.

Costs claimed	Justification
For example: Cost of consultant	For example: It was necessary to hire a consultant to perform scientific testing to ascertain the nature and extent of the environmental damage.
Cost claimed	Justification
Cost claimed	Justification
Cost claimed	Justification
Cost claimed	Justification
Cost claimed	Justification

Cost claimed		Justification	
Cost claimed		Justification	
Cost claimed		Justification	

6. Natural justice

The Investigating Officer is required to notify the affected person that the department is considering issuing a Cost Recovery Notice and that the individual is welcome to make representation to the department as to why this action should not be taken. Any information provided by the affected person is to be documented and considered.

- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Please describe how this was achieved.>
- ☐ All information and/or defences provided were considered.
<INSERT Please describe any information or defences provided.>
- ☐ the department has considered the information or defences provided.
<INSERT What consideration was given and what conclusions has the department formed?>
- ☐ The decision-maker and responsible officer are free from bias or the perception of bias.

7. Recommendation

The responsible officer is required to make a recommendation in relation to the allegation.

Recommendation:

<INSERT details>

8. Endorsement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

9. Approval

The appropriate manager or supervisor is required to make a decision and sign and date below.

Decision for recommendation		<INSERT details approve/not approve>	
Reasons for decision <INSERT I endorse this recommendation based upon the information set out above>. <INSERT Or, I endorse this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>. <INSERT Or, I reject the above recommended decision as I consider it more appropriate for the department to take an educational approach to this breach>.			
Signature: <INSERT details>		Print Name: <INSERT details>	
Position: <INSERT details>		Date: <INSERT details>	

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Re

Assessment Report

Environmental Protection Act 1994

Cost Recovery Notice

This document is intended for internal use to assist Environmental Services officers (officers) to record the information considered by the Department of Environment and Heritage Protection (the department) when forming the decision to issue a cost recovery notice under the Environmental Protection Act 1994 (the Act).

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date>

Take notice:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the environmental officer, supervisor, and the delegated decision-maker.

1. Brief history of the matter

Please briefly outline any historical information relevant to this decision.

<INSERT Provide brief outline of the historical information.>

2. Grounds to issue a cost recovery notice

Identify the relevant grounds upon which the decision to issue a cost recovery notice are based.

☐

The prescribed person has been identified.

Re II

If a clean-up notice has been issued

- ☐ The recipient has failed to comply with the notice and an authorised person or contractor has carried out any of the actions stated in the clean-up notice (section 363K).

OR

- ☐ The decision to issue the clean-up notice has been stayed by the court and, during the period of the stay, an authorised person or contractor carried out the actions stated in the clean-up notice (section 363K), and:
- ☐ the appeal has ended without an appeal decision being made by the court; or
 - ☐ the appeal decision confirms the decision to issue the clean-up notice and required the recipient to take the clean-up action.

AND

- ☐ The department has reasonably incurred costs and expenses for taking an action stated in the clean-up notice or monitoring compliance with the clean-up notice.

OR

- ☐ The department has reasonably incurred costs and expenses in monitoring compliance by the recipient with the clean-up notice.

If a clean-up notice has not been issued

- ☐ The intended recipient of the cost recovery notice is a person whom the department reasonably believes to be a prescribed person for a contamination incident;

AND

- ☐ An authorised person has taken action under the department's emergency powers (section 467) in relation to serious or material environmental harm caused or likely to be caused by the incident;

AND

- ☐ The department has reasonably incurred costs and expenses for taking action under section 467.

Ensure that the costs and expenses incurred will be payable

- ☐ None of the circumstances specified in section 363N(5) where the costs incurred will not be payable by the recipient apply to this situation.

3. Expand upon the grounds

Expand upon the grounds identified for issuing the cost recovery notice.

If a clean-up notice has been issued, officers will need to link the actions taken by the authorised person or contractor and the costs claimed by the department with the requirements set out in the clean-up notice, and provide reasons to justify why the department had to carry out the actions in place of the recipient of the clean-up notice.

If an authorised person has acted under the emergency powers pursuant to section 467 of the Act, officers must provide an explanation as to why and how the actions were taken, the costs were incurred, the urgency of the situation and provide justification for the dollar value claimed.

Each ground should be listed independently and be allocated a separate number.

Number	Specific ground
1	<INSERT ABC Pty Ltd failed to comply with the clean-up notice issued on 10 July 2013 and actions stated in the clean-up notice were carried out by XYZ Pty Ltd.>
2	<INSERT Details>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support all of the grounds for using the notice. This is achieved by linking the elements of the grounds to the information gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the notice.

When analysing information or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirements	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department.	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings).	Detail the facts and circumstance that support the department's findings.
Number 1		
10 July 2013: The recipient of a clean-up notice.....	A clean-up notice was issued to Mr JP Citizen, sole director/secretary of ABC Pty Ltd on 10 July 2013.	The clean-up notice required Mr Citizen to take action to clean up toxic sludge leaking from ponds at the site of ABC Pty Ltd by 10 August 2013.
Has failed to comply with the clean-up notice.....	A site inspection was carried out by senior environmental officer Mr Jack Green at 123 Creek Road, Greendale on 12 August 2013.	The site inspection revealed that Mr Citizen had not carried out the actions set out the clean-up notice in the required time frame.
An authorised person or person acting under the direction of an authorised person (the contractor) has taken the actions stated in the clean up notice.....	The department authorised contractor XYZ Pty Ltd to carry out the actions stated in the clean-up notice on 15 August 2013.	XYZ Pty Ltd was engaged by the department to clean up the toxic sludge leaking from ponds owned by ABC Pty Ltd.
The department incurred reasonable costs and expenses.....	XYZ Pty Ltd has issued an invoice to the department for the clean-up work carried out. (Copy attached to this assessment report).	XYZ Pty Ltd has invoiced the department for the amount of \$20,000.00 which is the cost to the department reasonably incurred when carrying out the actions stated in the clean-up

		notice that the recipient failed to carry out.
<INSERT Details>	<INSERT Details>	<INSERT Details>
<INSERT Details>	<INSERT Details>	<INSERT Details>
<INSERT Details>	<INSERT Details>	<INSERT Details>

5. Calculate the monetary value

Officers are required to identify the monetary amount being sought and show the calculations used to determine this amount. Costs and expenses claimed must be defensible and reasonable in the circumstances. They can include labour, equipment and administrative costs and expenses.

Costs claimed	Monetary value	Copy of document attached
For example: Cost of consultant	For example: Engaged for 20 hours @ \$330 per hour (including GST) = \$6600	<INSERT Yes/No (if no, explain why)>
For example: Cost of full time equivalents (FTEs)	For example: \$10,000	<INSERT Yes/No (if no, explain why)>
For example: Cost of sampling/monitoring	For example: \$5000	<INSERT Yes/No (if no, explain why)>
For example: Cost of works	For example: Contractors engaged for 18 hours @ \$1,100.00 per hour = \$19,800	<INSERT Yes/No (if no, explain why)>
<INSERT Details>	<INSERT Details>	<INSERT Yes/No (if no, explain why)>
<INSERT Details>	<INSERT Details>	<INSERT Yes/No (if no, explain why)>
For example: The total amount being sought by the State	For example: \$41,400	<INSERT Yes/No (if no, explain why)>

To ensure the costs claimed are reasonable, officers are required to provide justification for the inclusion of the cost.

Costs claimed	Justification
For example: Cost of consultant	For example: It was necessary to hire a consultant to perform scientific testing to ascertain the nature and extent of the environmental damage.
Cost claimed	Justification
Cost claimed	Justification
Cost claimed	Justification

6. Provide for natural justice

Any information provided by the recipient is to be documented and considered.

- ☐ The person has been notified of the department's decision.
<INSERT Describe how and when the person was notified.>
- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Please describe how this was achieved.>
- ☐ The department has considered the information or defences available.
<INSERT What consideration was given and what conclusions the department has formed.>
- ☐ The decision-maker and authorised officer are free from bias or the perception of bias.

7. Recommendation

The investigating environmental officer is required to make a recommendation in relation to issuing the notice.

Example: A clean-up notice was issued on 10 July 2013 to ABC Pty Ltd, who failed to act. The department took the actions stated in the clean-up notice and incurred costs etc.

--	--

Signature

Signature

Date: <INSERT Date>

Date: <INSERT Date>

<INSERT Name of environmental services officer>

<INSERT Name of supervisor>

<INSERT Name of environmental services officer>

<INSERT Position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

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Assessment Report

Environmental Protection Act 1994

Cost Recovery Notice

This document is intended for internal use to assist Environmental Services officers (officers) to record the information considered by the Department of Environment and Heritage Protection (the department) when forming the decision to issue a cost recovery notice under the Environmental Protection Act 1994 (the Act).

Identifying details	
Compliance activity number	<INSERT Number>
Location description	<INSERT Location>
Client/Company name	<INSERT Name>
Trading as	<INSERT Trading as details>
Compliance activity number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date>

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the environmental officer, supervisor, and the delegated decision-maker.

1. Brief history of the matter

Please briefly outline any historical information relevant to this decision.

<INSERT Provide brief outline of the historical information.>

2. Grounds to issue a cost recovery notice

Identify the relevant grounds upon which the decision to issue a cost recovery notice are based.

RE

- ☐ The prescribed person has been identified.

If a clean-up notice has been issued

- ☐ The recipient has failed to comply with the notice and an authorised person or contractor has carried out any of the actions stated in the clean-up notice (section 363K).

OR

- ☐ The decision to issue the clean-up notice has been stayed by the court and, during the period of the stay, an authorised person or contractor carried out the actions stated in the clean-up notice (section 363K), and:
- ☐ the appeal has ended without an appeal decision being made by the court; or
 - ☐ the appeal decision confirms the decision to issue the clean-up notice and required the recipient to take the clean-up action.

AND

- ☐ The department has reasonably incurred costs and expenses for taking an action stated in the clean-up notice or monitoring compliance with the clean-up notice.

OR

- ☐ The department has reasonably incurred costs and expenses in monitoring compliance by the recipient with the clean-up notice.

If a clean-up notice has not been issued

- ☐ The intended recipient of the cost recovery notice is a person whom the department reasonably believes to be a prescribed person for a contamination incident;

AND

- ☐ An authorised person has taken action under the department's emergency powers (section 467) in relation to serious or material environmental harm caused or likely to be caused by the incident;

AND

- ☐ The department has reasonably incurred costs and expenses for taking action under section 467.

Ensure that the costs and expenses incurred will be payable

- ☐ None of the circumstances specified in section 363N(5) where the costs incurred will not be payable by the recipient apply to this situation.

3. Expand upon the grounds

Expand upon the grounds identified for issuing the cost recovery notice.

If a clean-up notice has been issued, officers will need to link the actions taken by the authorised person or contractor and the costs claimed by the department with the requirements set out in the clean-up notice, and provide reasons to justify why the department had to carry out the actions in place of the recipient of the clean-up notice.

If an authorised person has acted under the emergency powers pursuant to section 467 of the Act, officers must provide an explanation as to why and how the actions were taken, the costs were incurred, the urgency of the situation and provide justification for the dollar value claimed.

Each ground should be listed independently and be allocated a separate number.

Number	Specific ground
1	<INSERT ABC Pty Ltd failed to comply with the clean-up notice issued on 10 July 2013 and actions stated in the clean-up notice were carried out by XYZ Pty Ltd.>
2	<INSERT Details>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support all of the grounds for using the notice. This is achieved by linking the elements of the grounds to the information gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the notice.

When analysing information or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirements	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department.	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings).	Detail the facts and circumstance that support the department's findings.
Number 1		
10 July 2013: The recipient of a clean-up notice.....	A clean-up notice was issued to Mr JP Citizen, sole director/secretary of ABC Pty Ltd on 10 July 2013.	The clean-up notice required Mr Citizen to take action to clean up toxic sludge leaking from ponds at the site of ABC Pty Ltd by 10 August 2013.
Has failed to comply with the clean-up notice.....	A site inspection was carried out by senior environmental officer Mr Jack Green at 123 Creek Road, Greendale on 12 August 2013.	The site inspection revealed that Mr Citizen had not carried out the actions set out the clean-up notice in the required time frame.
An authorised person or person acting under the direction of an authorised person (the contractor) has taken the actions stated in the clean-up notice.....	The department authorised contractor XYZ Pty Ltd to carry out the actions stated in the clean-up notice on 15 August 2013.	XYZ Pty Ltd was engaged by the department to clean up the toxic sludge leaking from ponds owned by ABC Pty Ltd.
The department incurred reasonable costs and expenses.....	XYZ Pty Ltd has issued an invoice to the department for the clean-up work carried out. (Copy attached to this assessment report).	XYZ Pty Ltd has invoiced the department for the amount of \$20,000.00 which is the cost to the department reasonably incurred when carrying out the

		actions stated in the clean-up notice that the recipient failed to carry out.
<INSERT Details>	<INSERT Details>	<INSERT Details>
<INSERT Details>	<INSERT Details>	<INSERT Details>
<INSERT Details>	<INSERT Details>	<INSERT Details>

5. Calculate the monetary value

Officers are required to identify the monetary amount being sought and show the calculations used to determine this amount. Costs and expenses claimed must be defensible and reasonable in the circumstances. They can include labour, equipment and administrative costs and expenses.

Costs claimed	Monetary value	Copy of document attached
For example: Cost of consultant	For example: Engaged for 20 hours @ \$330 per hour (including GST) = \$6600	<INSERT Yes/No (if no, explain why)>
For example: Cost of full time equivalents (FTEs)	For example: \$10,000	<INSERT Yes/No (if no, explain why)>
For example: Cost of sampling/monitoring	For example: \$5000	<INSERT Yes/No (if no, explain why)>
For example: Cost of works	For example: Contractors engaged for 18 hours @ \$1,100.00 per hour = \$19,800	<INSERT Yes/No (if no, explain why)>
<INSERT Details>	<INSERT Details>	<INSERT Yes/No (if no, explain why)>
<INSERT Details>	<INSERT Details>	<INSERT Yes/No (if no, explain why)>
For example: The total amount being sought by the State	For example: \$41,400	<INSERT Yes/No (if no, explain why)>

To ensure the costs claimed are reasonable, officers are required to provide justification for the inclusion of the cost.

Costs claimed	Justification
For example: Cost of consultant	For example: It was necessary to hire a consultant to perform scientific testing to ascertain the nature and extent of the environmental damage.
Cost claimed	Justification
Cost claimed	Justification

Cost claimed	Justification
--------------	---------------

6. Provide for natural justice

Any information provided by the recipient is to be documented and considered.

- ☐ The person has been notified of the department's decision.
<INSERT Describe how and when the person was notified.>
- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Please describe how this was achieved.>
- ☐ The department has considered the information or defences available.
<INSERT What consideration was given and what conclusions the department has formed.>
- ☐ The decision-maker and authorised officer are free from bias or the perception of bias.

7. Recommendation

The investigating environmental officer is required to make a recommendation in relation to issuing the notice.

Example: A clean-up notice was issued on 10 July 2013 to ABC Pty Ltd, who failed to act. The department took the actions stated in the clean-up notice and incurred costs etc.

--	--

Signature

Signature

Date: <INSERT Date>

Date: <INSERT Date>

<INSERT Name of environmental services officer>

<INSERT Name of supervisor>

<INSERT Name of environmental services officer>

<INSERT Position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

Re

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

RTI DL RELEASE - EHP

Assessment Report

Environmental Protection Act 1994

Direction Notice

This document is for internal use to assist Environmental Services officers to document the information considered when forming the decision to issue a Direction Notice pursuant to Chapter 7, Part 5A of the Environmental Protection Act 1994.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>

Note:

1. Assessment Reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the investigating officer, supervisory review and the delegated decision maker.

1. Brief history of the matter

Briefly outline any historical information relevant to this decision.

<INSERT Outline the history of the matter in succinct dot point form.>

2. Grounds for use of direction notice

The grounds for issuing a Direction Notice are found in s363B of the *Environmental Protection Act 1994* (the Act).

Officers are required to identify the relevant grounds upon which the decision whether to use a Direction Notice is based.

A person;

☐ is contravening a prescribed provision

Re

OR

- ☐ has contravened a prescribed provision in circumstances that make it likely the contravention will continue or be repeated

AND

- ☐ a matter relating to the contravention can be remedied

AND

- ☐ it is appropriate to give the person an opportunity to remedy the matter.

3. Expand upon the grounds

Use this section to expand upon the grounds identified for issuing the Direction Notice. This should include identifying the alleged contravention and all statutory requirements which must be met prior to the department issuing a Direction Notice. If the Direction Notice relates to particular emissions, the matters listed in s363C must also be considered before issuing the Direction Notice.

The person has contravened the following prescribed provision;

- ☐ **Section 440 – Offence of causing environmental nuisance.**
- ☐ The person has wilfully and unlawfully caused an environmental nuisance

OR

- ☐ the person has unlawfully caused an environmental nuisance.

The type of environmental nuisance caused is:

<INSERT Describe the type of environmental nuisance caused by the person.>

- ☐ If the contravention of s440 involves an emission of aerosols, fumes, light, noise, odour, particles or smoke—the general emission criteria set out in subsection 363C(3) of the Act have been considered.
- ☐ If the contravention of s440 involves the emission of noise—both the general emission criteria set out in subsection 363C(3) of the Act and the noise emission criteria set out in subsection 363C(4) of the Act have been considered.
- ☐ Having given regard to the relevant criteria and considered whether to first try to resolve the matter in another way, it is appropriate in the circumstances to issue the Direction Notice.
- ☐ The environmental nuisance caused is not one of the particular types of environmental nuisance listed in Schedule 1 of the Act that are excluded from s440.

- ☐ **Section 440Q – Offence of contravening a noise standard.**

- ☐ The person has unlawfully contravened a noise standard.

The person has breached the following noise standard:

<INSERT State which noise standard has been contravened. The default noise standards are set out in ss440R to 440ZC of the Act.>

- ☐ The noise standard that has been contravened is not one of the particular types of environmental nuisance listed in Schedule 1, Part 1 of the Act which are excluded from s440Q.

Re

Details of the contravention of the noise standard are as follows:

<INSERT Describe how the noise standard has been contravened.>

☐ **Section 440ZG – Depositing prescribed water contaminants in waters and related matters.**

The person has unlawfully deposited a prescribed water contaminant—

- ☐ in waters or
- ☐ in a roadside gutter or stormwater drainage or
- ☐ 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 or

OR

- ☐ The person has unlawfully released 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.

Details of the contravention are as follows:

<INSERT Identify the prescribed contaminant (if applicable) and describe how the person has unlawfully deposited a prescribed water contaminant or released stormwater into waters or another place.>

☐ **A provision of an accredited environmental risk management plan (ERMP) for an agricultural environmentally relevant activity (ERA)**

- ☐ The person contravening the provision is the person carrying out the agricultural ERA.
- ☐ There person is not authorised by a transitional environmental plan (TEP) to do the thing which would otherwise be a contravention of the accredited ERMP.

<INSERT Describe the breach of the provision of the accredited ERMP for an agricultural ERA and the circumstances surrounding it.>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support each of the elements of the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the statutory tool.

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings)	Detail the facts and circumstance that support the department's findings.

Re

Number 1 (Number taken from Section 2)		
Time	Unknown	Unknown
Date - 1 July 2010	Notes from phone call from Mrs JP Citizen reporting the incident in file no: 987	the department received a noise complaint from Mrs JP Citizen regarding the site adjacent to her property.
Place - 123 Creek Road, Murphyville.	Officer notes dated 2 July 2010 from site inspection.	Confirmed adjacent site is owned by a government entity.
Person - Murphy Shire Council	Officer notes dated 2 July 2010 from site inspection.	Confirmed construction crew is employed by Murphy Shire Council.
Contravention - Murphy Shire Council Contravened Noise Standards	Site inspection and noise testing conducted	Noise testing conducted on site and on properties adjacent to site. Results indicated that the level of noise exceeds relevant standard.
Number 2		
Likely that the contravention will continue	Officer notes from meeting with Murphy Shire Council Engineer	Notes indicate there is a lack of clarity between Council and the on-site subcontractor regarding responsibility for adherence to the relevant noise standards. In this context the department considers it likely that the contravention of the noise standard is likely to continue.
Number 3		
Number 4		

5. Natural justice

The investigating officer is required to notify the affected person that the department is considering issuing a Direction Notice and that the individual is welcome to make representations to the department as to why this action should not be taken. Any information provided by the affected person is to be documented and considered.

☐ The person has been provided with the opportunity to put their side of the story forward.

<INSERT Describe how this was achieved.>

Re

- ☐ All information and/or defences provided were considered.
<INSERT Describe any information or defences provided.>
- ☐ the department has considered the information or defences provided.
<INSERT What consideration was given and what conclusions has the department formed?>
- ☐ The decision maker and investigator are free from bias or the perception of bias.

6. Reasonable steps

The Direction Notice may state the reasonable steps the authorised person considers necessary to remedy the contravention, or avoid further contravention, of the prescribed provision. If appropriate, please list any reasonable steps below.

In order to ensure actions are enforceable, they should be SMART, specific, measureable, achievable, relevant and time specific. Refer to the [Writing effective and enforceable conditions procedural guide](#) for more information on writing conditions and actions.

To ensure the required steps are reasonable, officers are required to provide justification for the inclusion of the action.

Reasonable steps	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification
Reasonable step	Justification

7. Time frame

The authorised person has had regard to;

- ☐ the action required to remedy the contravention and
- ☐ 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.

The time by which the person must remedy the contravention is:

<INSERT State the time frame by which the person must remedy the contravention.>

Justification for the time frame:

<INSERT Provide justification for the time frame.>

8. Recommendation

The authorised person is required to make a recommendation in relation to the Direction Notice.

Recommendation: <INSERT details>
--

9. Endorsement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

10. Approval

The appropriate manager or supervisor is required to make a decision and sign and date below.

Decision for recommendation	<INSERT details approve/not approve>
Reasons for decision <INSERT I endorse this recommendation based upon the information set out above>. <INSERT Or, I endorse this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>. <INSERT Or, I reject the above recommended decision as I consider it more appropriate for the department to take an educational approach to this breach>.	
Signature: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Date: <INSERT details>

Assessment Report

Environmental Protection Act 1994

Direction Notice

This document is for internal use to assist Authorised Persons to document the information considered when forming the decision to issue a direction notice pursuant to chapter 7, part 5A of the Environmental Protection Act 1994.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date>

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the authorised person and their supervisor.

1. Brief history of the matter

Briefly outline any historical information relevant to this decision.

<INSERT Outline the history of the matter in succinct dot point form.>

2. Grounds for use of direction notice

The grounds for issuing a direction notice are found in section 363B of the *Environmental Protection Act 1994* (the Act).

Officers are required to identify the relevant grounds upon which the decision whether to use a direction notice is based.



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;

AND

☐ a matter relating to the contravention can be remedied;

AND

☐ it is appropriate to give the person an opportunity to remedy the matter.

3. Expand upon the grounds

Use this section to expand upon the grounds identified for issuing the direction notice. This should include identifying the alleged contravention and all statutory requirements which must be met prior to the department issuing a direction notice. If the direction notice relates to particular emissions, the matters listed in s363C must also be considered before issuing the direction notice.

The person has contravened the following prescribed provision;

Section 440 – Offence of causing environmental nuisance

☐ The person has wilfully and unlawfully caused an environmental nuisance.

OR

☐ the person has unlawfully caused an environmental nuisance.

The type of environmental nuisance caused is:

<INSERT Describe the type of environmental nuisance caused by the person and the relevant statutory provision.>

- ☐ If the contravention of section 440 involves an emission of aerosols, fumes, light, noise, odour, particles or smoke—the general emission criteria set out in section 363C(3) of the Act have been considered.
- ☐ If the contravention of section 440 involves the emission of noise—both the general emission criteria set out in section 363C(3) of the Act and the noise emission criteria set out in section 363C(4) of the Act, including the prescribed standards for particular noise standards and ways in which noise may be measured under Chapter 5, part 3 of the Environmental Protection Regulation 2008 (the Regulation) have been considered.
- ☐ Having regard to the relevant criteria and whether to first try to resolve the matter in another way, it is appropriate in the circumstances to issue the direction notice.
- ☐ The environmental nuisance caused is not an excluded environmental nuisance, being:.
- Safety and transport noise;
 - Government activities and public infrastructure; or
 - Nuisance regulated by other laws.

Section 440Q – Offence of contravening a noise standard

☐ The person has unlawfully contravened a noise standard.

The person has breached the following noise standard:

<INSERT State which noise standard has been contravened. The default noise standards are set out in sections 440R to 440ZC of the Act and chapter 5, part 3 of the Regulation.>

Details of the contravention of the noise standard are as follows:

<INSERT Describe how the noise standard has been contravened.>

☐ The noise standard is not an excluded environmental nuisance, being:

- Safety and transport noise;
- Government activities and public infrastructure; or
- Nuisance regulated by other laws.

Section 440ZG – Depositing prescribed water contaminants in waters and related matters

The person has unlawfully deposited 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.

OR

- ☐ The person has unlawfully released 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.

Details of the contravention are as follows:

<INSERT Identify the prescribed contaminant (if applicable) and describe how the person has unlawfully deposited a prescribed water contaminant or released stormwater into waters or another place.>

A provision of an accredited environmental risk management plan (ERMP) for an agricultural environmentally relevant activity (ERA)

- ☐ The person contravening the provision is the person carrying out the agricultural ERA.
- ☐ There person is not authorised by a transitional environmental plan (TEP) to do the thing which would otherwise be a contravention of the accredited ERMP.

<INSERT Describe the breach of the provision of the accredited ERMP for an agricultural ERA and the circumstances surrounding it.>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support each of the elements of the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the statutory tool.

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings)	Detail the facts and circumstance that support the department's findings.
Number 1		
Time	Unknown	Unknown
Date - 1 July 2013	Notes from phone call from Mrs JP Citizen reporting the incident in file no: 987.	The department received a noise complaint from Mrs JP Citizen regarding the site adjacent to her property.
Place - 123 Creek Road, Murphyville.	Officer notes dated 2 July 2013 from site inspection.	Confirmed adjacent site is owned by a government entity.
Person - Murphy Shire Council	Officer notes dated 2 July 2013 from site inspection.	Confirmed construction crew is employed by Murphy Shire Council.
Contravention - Murphy Shire Council Contravened Noise Standards	Site inspection and noise testing conducted	Noise testing conducted on site and on properties adjacent to site. Results indicated that the level of noise exceeds relevant standard.
Number 2		
Likely that the contravention will continue	Officer notes from meeting with Murphy Shire Council Engineer	Notes indicate there is a lack of clarity between Council and the on-site subcontractor regarding responsibility for adherence to the relevant noise standards. In this context the department considers it likely that the contravention of the noise standard is likely to continue.
Number 3		
<INSERT details>	<INSERT details>	<INSERT details>
Number 4		
<INSERT details>	<INSERT details>	<INSERT details>

5. Reasonable steps

The direction notice may state the reasonable steps the authorised person considers necessary to remedy the contravention, or avoid further contravention, of the prescribed provision. If appropriate, please list any reasonable steps below.

In order to ensure actions are enforceable, they should be SMART, specific, measureable, achievable, relevant and time specific. Refer to the writing effective and enforceable conditions procedural guide (EM2417) for more information on writing conditions and actions.

To ensure the required steps are reasonable, officers are required to provide justification for the inclusion of the action.

Reasonable steps	Justification
Reasonable step	Justification
Reasonable step	Justification

6. Timeframe

The authorised person has had 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.

The time by which the person must remedy the contravention is:

<INSERT State the time frame by which the person must remedy the contravention.>

Justification for the time frame:

<INSERT Provide justification for the time frame.>

7. Natural justice

Any information provided by the affected person is to be documented and considered.

- ☐ The person has been notified of the department's decision.
<INSERT Describe how and when the person was notified.>
- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ The department has considered the information or defences available.
<INSERT What consideration was given and what conclusions has the department formed.>
- ☐ The decision-maker and authorised person are free from bias or the perception of bias.

8. Recommendation

The authorised person is required to make a decision in relation to the direction notice.

<INSERT details>

Signature

Date: <INSERT Date>

<INSERT Name of authorised person>

<INSERT Name of authorised person>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

9. Approval

The appropriate manager or supervisor is required to approve the decision and sign and date below.

Signature

Date: <INSERT date>

<INSERT name of supervisor>

<INSERT position of supervisor>

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994

Direction Notice

This document is for internal use to assist authorised persons to document the information considered when forming the decision to issue a direction notice pursuant to chapter 7, part 5A of the Environmental Protection Act 1994.

Identifying details	
Location description	<INSERT Location>
Client/Company name	<INSERT Name>
Trading as	<INSERT Trading as details>
Compliance activity number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Registered business address	<INSERT Address>

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the authorised person and their supervisor.

1. Brief history of the matter

Briefly outline any historical information relevant to this decision.

<INSERT Outline the history of the matter in succinct dot point form.>

2. Grounds for use of direction notice

The grounds for issuing a direction notice are found in section 363B of the *Environmental Protection Act 1994* (the Act).

Officers are required to identify the relevant grounds upon which the decision whether to use a direction notice is based.

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;

AND

- ☐ a matter relating to the contravention can be remedied;

AND

- ☐ it is appropriate to give the person an opportunity to remedy the matter.

3. Expand upon the grounds

Use this section to expand upon the grounds identified for issuing the direction notice. This should include identifying the alleged contravention and all statutory requirements which must be met prior to the department issuing a direction notice. If the direction notice relates to particular emissions, the matters listed in section 363C must also be considered before issuing the direction notice.

The person has contravened the following prescribed provision:

Section 440 – Offence of causing environmental nuisance

- ☐ The person has wilfully and unlawfully caused an environmental nuisance.

OR

- ☐ the person has unlawfully caused an environmental nuisance.

The type of environmental nuisance caused is:

<INSERT Describe the type of environmental nuisance caused by the person and the relevant statutory provision.>

- ☐ If the contravention of section 440 involves an emission of aerosols, fumes, light, noise, odour, particles or smoke—the general emission criteria set out in section 363C(3) of the Act have been considered.
- ☐ If the contravention of section 440 involves the emission of noise—both the general emission criteria set out in section 363C(3) of the Act and the noise emission criteria set out in section 363C(4) of the Act, including the prescribed standards for particular noise standards and ways in which noise may be measured under chapter 5, part 3 of the Environmental Protection Regulation 2008 (the Regulation) have been considered.
- ☐ Having regard to the relevant emission criteria and whether to first try to resolve the matter in another way, it is appropriate in the circumstances to issue the direction notice.
- ☐ The environmental nuisance caused is not an excluded environmental nuisance, being:
- Safety and transport noise;
 - Government activities and public infrastructure;
 - Nuisance regulated by other laws;
 - Non-domestic animal noise; or
 - Particular cooking odours.

Section 440Q – Offence of contravening a noise standard

- ☐ The person has unlawfully contravened a noise standard.

Re

The person has breached the following noise standard:

<INSERT State which noise standard has been contravened. The default noise standards are set out in sections 440R to 440ZC of the Act and chapter 5, part 3 of the Regulation.>

Details of the contravention of the noise standard are as follows:

<INSERT Describe how the noise standard has been contravened.>

☐ The noise standard is not an excluded environmental nuisance, being:

- Safety and transport noise;
- Government activities and public infrastructure; or
- Nuisance regulated by other laws.

Section 440ZG – Depositing prescribed water contaminants in waters and related matters

The person has unlawfully deposited a prescribed water contaminant—

☐ in waters.

OR

☐ in a roadside gutter or stormwater drainage.

OR

☐ 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.

OR

☐ The person has unlawfully released 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.

Details of the contravention are as follows:

<INSERT Identify the prescribed contaminant (if applicable) as defined in schedule 9 of the Regulation and describe how the person has unlawfully deposited a prescribed water contaminant or released stormwater into waters or another place.>

A provision of an accredited environmental risk management plan (ERMP) for an agricultural environmentally relevant activity (ERA)

☐ The person contravening the provision is the person carrying out the agricultural ERA.

☐ There person is not authorised by a transitional environmental plan (TEP) to do the thing which would otherwise be a contravention of the accredited ERMP.

<INSERT Describe the breach of the provision of the accredited ERMP for an agricultural ERA and the circumstances surrounding it.>

The prescribed provision is not devolved to local government

The prescribed provision is not devolved to local government as:

☐ the provision is contravened by a State or local government entity.

☐ the ERA is operated by a State or local government entity.

☐ the ERA is not prescribed as being devolved.



4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support each of the elements of the grounds for using the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the statutory tool.

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings)	Detail the facts and circumstance that support the department's findings
Number 1		
Time	Unknown	Unknown
Date - 1 July 2013	Notes from phone call from Mrs JP Citizen reporting the incident in file no: 987.	The department received a noise complaint from Mrs JP Citizen regarding the site adjacent to her property.
Place - 123 Creek Road, Murphyville	Officer notes dated 2 July 2013 from site inspection.	Confirmed adjacent site is owned by a government entity.
Person - Murphy Shire Council	Officer notes dated 2 July 2013 from site inspection.	Confirmed construction crew is employed by Murphy Shire Council.
Contravention - Murphy Shire Council Contravened Noise Standards	Site inspection and noise testing conducted.	Noise testing conducted on site and on properties adjacent to site. Results indicated that the level of noise exceeds relevant standard.
Number 2		
Likely that the contravention will continue.	Officer notes from meeting with Murphy Shire Council Engineer.	Notes indicate there is a lack of clarity between Council and the on-site subcontractor regarding responsibility for adherence to the relevant noise standards. In this context the department considers it likely that the contravention of the noise standard is likely to continue.
Number 3		

<INSERT details>	<INSERT details>	<INSERT details>
Number 4		
<INSERT details>	<INSERT details>	<INSERT details>

5. Reasonable steps

The direction notice may state the reasonable steps the authorised person considers necessary to remedy the contravention, or avoid further contravention, of the prescribed provision. If appropriate, please list any reasonable steps below.

In order to ensure actions are enforceable, they should be SMART: specific, measureable, achievable, relevant and time specific. Refer to the writing effective and enforceable conditions procedural guide (EM2417) for more information on writing conditions and actions.

To ensure the required steps are reasonable, officers are required to provide justification for the inclusion of the action.

Reasonable steps	Justification
Reasonable step	Justification
Reasonable step	Justification

6. Timeframe

The authorised person has had 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.

The time by which the person must remedy the contravention is:

<INSERT State the time frame by which the person must remedy the contravention.>

Justification for the time frame:

<INSERT Provide justification for the time frame.>

7. Natural justice

Any information provided by the affected person is to be documented and considered.

- ☐ The person has been notified of the department's decision.
<INSERT Describe how and when the person was notified.>
- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ The department has considered the information or defences available.

<INSERT What consideration was given and what conclusions has the department formed.>

☐ The decision-maker and authorised person are free from bias or the perception of bias.

8. Recommendation

The authorised person is required to make a decision in relation to the direction notice.

<INSERT details>

Signature

Date: <INSERT Date>

<INSERT Name of authorised person>

<INSERT Position of authorised person>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

9. Approval

The appropriate manager or supervisor is required to approve the decision and sign and date below.

Signature

Date: <INSERT date>

<INSERT Name of supervisor>

<INSERT Position of supervisor>

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994

Emergency powers

This document will assist authorised persons to document the information considered when making the decision to exercise the emergency powers pursuant to section 467 of the Environmental Protection Act 1994.

Identifying Details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>

Note:

1. An Assessment Report recommending a decision must be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the authorised person's manager.

Brief History of the Matter

Outline briefly any historical information relevant to this decision. This information should be provided in succinct chronological dot points.

- <INSERT Provide details of how you became aware of the situation and any historical information relevant to exercising the powers under s467.>
- <INSERT Provide details of how you became aware of the situation and any historical information relevant to exercising the powers under s467.>

- <INSERT Provide details of how you became aware of the situation and any historical information relevant to exercising the powers under s467.>

Grounds for issuing an emergency direction

An authorised person may exercise the powers under section 467 the *Environmental Protection Act 1994* (the Act). The legislation specifies that an emergency direction can only be used in certain circumstances. Please identify the relevant grounds upon which the decision to give an emergency direction is based.

An authorised person is satisfied that:

- ☐ an emergency exists; and
- ☐ the emergency requires a reasonable action to be taken.

Expand upon the grounds

The next step is to expand upon the grounds identified for giving the emergency direction. An authorised person is required to document any expert advice sought and provided by department personnel and/or external consultants (subject matter experts).

Each ground should be listed independently and be allocated a separate number. For example:

Number	Specific Ground
1	<INSERT Extremely heavy rains have caused sewage ponds to overflow at ABC Sewage Treatment Pty Ltd. Due to continuing heavy rain and flooding it is reasonable and necessary to allow controlled releases of the sewage into Murphy Creek to ><INSERT protect the town of Murphyville which is under immediate threat of being flooded with raw sewage from the overflowing ponds.>
2	<INSERT Alternatives to the controlled release of the contaminant have been considered, but there is no practicable alternative to the release.>
3	<INSERT list the alternatives considered and why they are not practicable>
4	<INSERT details>

The exercise of power

An authorised person may exercise the powers under section 467 of the Act in different ways. Specify how the emergency powers were exercised or will be exercised:

- ☐ a person was or will be directed to take specified reasonable action within a specified reasonable time;
<INSERT Provide details of the direction that [was] OR [will be] given to the person.>

OR

- ☐ the authorised person has taken or will take the action;
<INSERT Provide details of the action that [has been] OR [will be] taken by the authorised person.>

OR

- ☐ the authorised person has authorised or will authorise another person to take the action.
<INSERT Provide details of the person who [was] OR [will be] authorised to take the action and specify the action that [was] OR [will be] taken.>

What is the emergency?

Specify the type of emergency that <INSERT [required] OR [will require]> the use of the emergency powers.

- ☐ human health or safety is threatened;
- ☐ material environmental harm has been or is likely to be caused; or
- ☐ serious environmental harm has been or is likely to be caused.

<INSERT Advise how you formed the reasonable belief regarding the nature of the emergency.>

<INSERT List the evidence upon which the reasonable belief was based.>

Why urgent action is necessary?

For the emergency powers to be exercised, the authorised person must be satisfied on reasonable grounds that urgent action is necessary to:

- ☐ protect the health or safety of persons;
- ☐ prevent or minimise the harm; or
- ☐ rehabilitate or restore the environment because of the harm.

Describe the facts and circumstances surrounding the matter and provide reasons why urgent action is required and list any supporting evidence.

Facts and Circumstances	Evidence
<INSERT Why was urgent action necessary>	<INSERT Supporting evidence>
<INSERT Why was urgent action necessary>	<INSERT Supporting evidence>
<INSERT Why was urgent action necessary>	<INSERT Supporting evidence>

What action is required?

Specify the type of reasonable action that <INSERT [was] OR [will be]> required:

- ☐ protect the health or safety of persons;
- ☐ action to prevent or minimise the harm; or
- ☐ action to rehabilitate or restore the environment.

To ensure the actions are reasonable, officers are required to provide justification for the inclusion of the action.

Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given

Proposed conditions (if applicable)

Consider and identify what conditions, if any, should be included in the emergency direction.

List any proposed conditions in the table below. In order to ensure conditions are enforceable, they should be SMART: specific, measureable, achievable, relevant and time specific. Refer to the writing effective and enforceable conditions procedural guide (EM2417) for more information on writing conditions.

To ensure the conditions are reasonable, officers are required to provide justification for the inclusion of the condition:

Proposed conditions	Justification
<INSERT Proposed condition>	<INSERT Justification>
<INSERT Proposed condition>	<INSERT Justification>
<INSERT Proposed condition>	<INSERT Justification>
<INSERT Proposed condition>	<INSERT Justification>

What is the timeframe for completing the action?

The authorised person must specify a reasonable time for the person to take the specified reasonable action.

<INSERT Provide details of the time frame given and why it was considered reasonable in the circumstances.>

Will the direction be given orally or by written notice?

<INSERT Provide details explaining why a direction will be given verbally and timeframes for confirming direction by written notice>

Will the authorised person be taking action?

<INSERT Provide details explaining how entry will occur, other powers to be used, what evidence will be sought, what reasonable force may have been used.>

What items, if any, 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.

Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances

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

☐ Written notice of the particulars of the seizure or damage was given to the person.

- ☐ Written notice of the particulars of the seizure or damage was left in a secure and conspicuous position at the place where the seizure or damage happened.

<INSERT If applicable, provide details of the person to whom the notice was given. If no one was available, provide details of the place the notice was left and whether it was placed in a secure and conspicuous position.>

- ☐ N/A – there were no items seized or damaged.

Natural justice

Due to the urgent nature of an emergency direction, there is no requirement for the authorised person to specifically ask the recipient of the emergency direction to put their side of the story forward. However, if any information is provided by the recipient it should be documented and/or considered if circumstances allow.

- ☐ If the recipient of the emergency direction provided information, it was documented and considered.

<INSERT details.>

- ☐ The decision-maker and authorised person are free from bias or the perception of bias.

Recommendation

If this assessment report is being completed prior to an officer using their emergency powers a recommended decision and the proposed action to be taken is to be recorded. In instances where the assessment report is being completed retrospectively, record the decision made and the action taken.

<INSERT Recommended approval of [action to be taken] OR [action already taken].>

Approval

--	--

Signature

Signature

Date: <INSERT Date>

Date: <INSERT Date>

<INSERT Name of authorised officer>

<INSERT Name of supervisor>

<INSERT Position of authorised officer>

<INSERT Position of supervisor>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994

Emergency powers

This document will assist authorised persons to document the information considered when making the decision to exercise the emergency powers pursuant to section 467 of the Environmental Protection Act 1994.

Identifying Details	
Location description	<INSERT Location>
Client/Company name	<INSERT Name>
Trading as	<INSERT Trading as details>
Compliance activity number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Registered business address	<INSERT Address>

Note:

1. An Assessment Report recommending a decision must be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the authorised person's manager.

Brief History of the Matter

Outline briefly any historical information relevant to this decision. This information should be provided in succinct chronological dot points.

- <INSERT Provide details of how you became aware of the situation and any historical information relevant to exercising the powers under section 467.>
- <INSERT Provide details of how you became aware of the situation and any historical information relevant to exercising the powers under section 467.>
- <INSERT Provide details of how you became aware of the situation and any historical information relevant to exercising the powers under section 467.>

Grounds for exercising an emergency power

An authorised person may exercise the powers under section 467 the *Environmental Protection Act 1994* (the Act). The legislation specifies that an emergency power can only be exercised in certain circumstances. Please identify the relevant grounds upon which the decision to exercise an emergency power is based.

An authorised person is satisfied that:

- ☐ an emergency exists; and
- ☐ the emergency requires reasonable action to be taken.

Expand upon the grounds

The next step is to expand upon the grounds identified for exercising the emergency power. An authorised person is required to document any expert advice sought and provided by department personnel and/or external consultants (subject matter experts).

Each ground should be listed independently and be allocated a separate number. For example:

Number	Specific Ground
1	<INSERT Extremely heavy rains have caused sewage ponds to overflow at ABC Sewage Treatment Pty Ltd. Due to continuing heavy rain and flooding it is reasonable and necessary to allow controlled releases of the sewage into Murphy Creek to ><INSERT protect the town of Murphyville which is under immediate threat of being flooded with raw sewage from the overflowing ponds.>
2	<INSERT Alternatives to the controlled release of the contaminant have been considered, but there is no practicable alternative to the release.>
3	<INSERT list the alternatives considered and why they are not practicable>
4	<INSERT details>

The exercise of power

An authorised person may exercise the powers under section 467 of the Act in different ways. Specify how the emergency powers were exercised or will be exercised:

- ☐ a person was or will be directed to take specified reasonable action within a specified reasonable time;
<INSERT Provide details of the direction that [was] OR [will be] given to the person.>

OR

- ☐ the authorised person has taken or will take the action;
<INSERT Provide details of the action that [has been] OR [will be] taken by the authorised person.>

OR

- ☐ the authorised person has authorised or will authorise another person to take the action.
<INSERT Provide details of the person who [was] OR [will be] authorised to take the action and specify the action that [was] OR [will be] taken.>

What is the emergency?

Specify the type of emergency that <INSERT [required] OR [will require]> the exercise of the emergency powers.

- ☐ human health or safety is threatened;
- ☐ material environmental harm has been or is likely to be caused; or
- ☐ serious environmental harm has been or is likely to be caused.

<INSERT Advise how you formed the reasonable belief regarding the nature of the emergency.>

<INSERT List the evidence upon which the reasonable belief was based.>

Why is urgent action necessary?

For the emergency powers to be exercised, the authorised person must be satisfied on reasonable grounds that urgent action is necessary to:

- ☐ protect the health or safety of persons;
- ☐ prevent or minimise the harm; or
- ☐ rehabilitate or restore the environment because of the harm.

Describe the facts and circumstances surrounding the matter and provide reasons why urgent action is required and list any supporting evidence.

Facts and Circumstances	Evidence
<INSERT Why was urgent action necessary>	<INSERT Supporting evidence>
<INSERT Why was urgent action necessary>	<INSERT Supporting evidence>
<INSERT Why was urgent action necessary>	<INSERT Supporting evidence>

What action is required?

Specify the type of reasonable action that <INSERT [was] OR [will be]> required:

- ☐ protect the health or safety of persons;
- ☐ action to prevent or minimise the harm; or
- ☐ action to rehabilitate or restore the environment.

To ensure the actions are reasonable, officers are required to provide justification for the inclusion of the action.

Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given

Proposed conditions (if applicable)

Consider and identify what conditions, if any, should be included in the emergency direction.

List any proposed conditions in the table below. In order to ensure conditions are enforceable, they should be SMART: specific, measureable, achievable, relevant and time specific. Refer to the writing effective and enforceable conditions procedural guide (EM2417) for more information on writing conditions.

To ensure the conditions are reasonable, officers are required to provide justification for the inclusion of the condition:

Proposed conditions	Justification
<INSERT Proposed condition>	<INSERT Justification>
<INSERT Proposed condition>	<INSERT Justification>
<INSERT Proposed condition>	<INSERT Justification>
<INSERT Proposed condition>	<INSERT Justification>

What is the timeframe for completing the action?

The authorised person must specify a reasonable time for the person to take the specified reasonable action.

<INSERT Provide details of the time frame given and why it was considered reasonable in the circumstances.>

Will the direction be given orally or by written notice?

<INSERT Provide details explaining why a direction will be given verbally and timeframes for confirming direction by written notice>

Will the authorised person be taking action?

<INSERT Provide details explaining how entry will occur, other powers to be used, what evidence will be sought, what reasonable force may have been used.>

What items, if any, 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.

Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances

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

☐ Written notice of the particulars of the seizure or damage was given to the person.

- ☐ Written notice of the particulars of the seizure or damage was left in a secure and conspicuous position at the place where the seizure or damage happened.

<INSERT If applicable, provide details of the person to whom the notice was given. If no one was available, provide details of the place the notice was left and whether it was placed in a secure and conspicuous position.>

- ☐ N/A – there were no items seized or damaged.

Natural justice

Due to the urgent nature of an emergency direction, there is no requirement for the authorised person to specifically ask the recipient of the emergency direction to put their side of the story forward. However, if any information is provided by the recipient it should be documented and/or considered if circumstances allow.

- ☐ If the recipient of the emergency direction provided information, it was documented and considered.

<INSERT details.>

- ☐ The decision-maker and authorised person are free from bias or the perception of bias.

Recommendation

If this assessment report is being completed prior to an officer using their emergency powers a recommended decision and the proposed action to be taken is to be recorded. In instances where the assessment report is being completed retrospectively, record the decision made and the action taken.

<INSERT Recommended approval of [action to be taken] OR [action already taken].>

Approval

--	--

Signature

Signature

Date: <INSERT Date>

Date: <INSERT Date>

<INSERT Name of authorised officer>

<INSERT Name of supervisor>

<INSERT Position of authorised officer>

<INSERT Position of supervisor>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994
Environmental Evaluation

Part 2 – Considering and acting on environmental reports

This document is intended for internal use to assist the Department of Environment and Heritage Protection (the department) Environmental Services officers to record the information considered by the department when reviewing and considering environmental reports and deciding whether an environmental evaluation or additional relevant information is required.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant Number	<INSERT Number>
Trading As	<INSERT Trading as details>
Registered Business address	<INSERT Address>
Date report received:	<INSERT Date> Note: the department has 20 business days in which to make a decision whether or not to accept the Environmental Report.

Note:

1. Assessment Reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the investigating environmental officer, supervisor (where possible) and the delegated decision maker.

Environmental evaluation Part 2 - considering and acting on environmental reports

The legislative provisions in regard to Environmental Evaluations may be found in ss321 to 329 of the *Environmental Protection Act 1994* (the Act).

After receiving an Environmental Report from a person who has received a notice to conduct or commission an Environmental Evaluation, the department has 20 business days to consider the report and decide whether or not to accept it. If the report is accepted, it is not necessary to complete this Assessment Report. If the report is



accepted and another tool is to be used, refer to the appropriate procedural guide and assessment report for that tool.

If the department does not accept the Environmental Report, officers should consider whether to:

- ☐ not accept the report and require another Environmental Evaluation to be completed and a further Environmental Report submitted; or
- ☐ require additional relevant information to be provided; or
- ☐ accept the report.

1. Grounds for issuing a Notice to Conduct or Commission another Environmental Evaluation or a Notice Requiring Additional Relevant Information

Identify the relevant grounds upon which the decision whether to use a Notice to Conduct or Commission another Environmental Evaluation or a Notice Requiring Additional Relevant Information is based.

1.1. Grounds for Issuing a Notice to Conduct or Commission another Environmental Evaluation

- ☐ The report does not adequately address the relevant matters for the Environmental Evaluation to which the report relates.

If another Environmental Evaluation is required, the appropriate type is an:

- ☐ environmental audit (s322); or
- ☐ environmental investigation (s323).

1.2 Grounds for Issuing a Notice Requiring Additional Relevant Information

- ☐ the department is satisfied additional relevant information is required.

2. Expand upon the grounds

The next step is to expand upon the grounds identified for Issuing a Notice to Conduct or Commission another Environmental Evaluation or a Notice Requiring Additional Relevant Information.

In the case of a notice to conduct or commission another Environmental Evaluation, refer to the requirements in the original notice and list the relevant matters for the Environmental Evaluation which has not been adequately addressed in the report.

For a Notice Requiring Additional Relevant Information, consider what further information is required to enable the department to ascertain the source, cause or extent of environmental harm being caused or likely to be caused and/or to decide whether a Transitional Environmental Program (TEP) for the activity or event is required.

Each ground should be listed independently and be allocated a separate number

Number	Specific ground
1	Example: The report does not adequately address the relevant matters for the environmental evaluation because it does not contain an assessment of affected soils and comparison with unaffected soils as required by the original notice.
2	Example: The report does not adequately address the relevant matters for the Environmental Evaluation because it does not contain an analysis of groundwater potentially affected by the

	activities of ABC Pty Ltd as required by the original notice.
3	Example:
4	Example:
5	Example:
6	Example:

3. Brief history of the matter

Briefly outline any historical information relevant to this decision in chronological order.

<INSERT Briefly outline the historical information in chronological order.>

4. Detail the matters that were not adequately addressed in the initial environmental evaluation and report or what further information is required

Refer to the original Notice to Conduct or Commission an Environmental Evaluation and list in the table below any matters that were included in the original notice but have not been adequately addressed by the Environmental Evaluation and the Environmental Report. Explain why you consider that these matters were not addressed properly in the original Environmental Evaluation and Report. If the department requires additional relevant information, outline the information that will be listed in the Notice Requiring Additional Relevant Information and explain why the information is required.

Elements of the grounds for issuing the notice	Matters that were not adequately addressed in the original Environmental Evaluation Report or Additional Relevant Information Required
List the elements of the grounds for issuing the notice (i.e. the requirements listed in the original Notice to Conduct or Commission an Environmental Evaluation that were not addressed or the Additional Relevant Information Required).	Detail the facts and circumstances that support the department's decision to issue a notice to conduct or commission another Environmental Evaluation or a notice requiring additional relevant information. (i.e. explain how the matters in the original notice have not been addressed).
Number 1	
<INSERT 1 September 2010>	<INSERT Environmental report was submitted to the department by ABC Pty Ltd on 1 September 2010.>
<INSERT The original notice required the recipient to provide an assessment of affected soils and comparison to unaffected soils which addressed the following matters:> <INSERT (i) an analysis of affected soils, and comparable unaffected soils, for a range of analytes sufficient to identify any impacts that may have	<INSERT The recipient of the original notice has provided adequate information in the environmental report in respect to items (ii) and (iii).> <INSERT However, the recipient did not arrange for adequate analysis to be carried out of the affected soils and comparable unaffected soils to ascertain any

Part 2 – Considering and acting on environmental reports

<p>resulted from the irrigation of effluent on ABC Pty Ltd; and></p> <p><INSERT (ii) a description of the contaminants contained in the effluent irrigated and sludges applied on the ABC Pty Ltd site,> <INSERT including the results of a recent analysis of effluent and sludge for analytes found at elevated levels in soils from the affected><INSERT; and></p> <p><INSERT (iii) the date, quality and quantity of effluent and sludge applied for each irrigation run in the area known as Lot 123 on RP 45678 from 1 June 2008 to 1 June 2010><INSERT and an analysis of rainfall records and soil moisture records at the times of irrigation for the same period; and></p> <p><INSERT (iv) an assessment of the quantity of contaminants applied per hectare in the area known as Lot 123 on RP 45678 from 1 June 2008 to 1 June 2010.></p>	<p>environmental impacts resulting from effluent irrigation ><INSERT However, the recipient did not arrange for adequate analysis to be carried out of the affected soils and comparable unaffected soils to ascertain any environmental impacts resulting from effluent irrigation ><INSERT carried out at the premises of ABC Pty Ltd as required by item (iii). Consequently, this matter has not been addressed in the environmental report.></p> <p><INSERT Further, the recipient has not provided an assessment of the quantity of contaminants applied per hectare in the area known as Lot 123 on RP 45678 from 1 June 2008 to 1 June 2010 at required by item (iv).></p> <p><INSERT Without the above information the department will be unable to fully ascertain the source, cause or extent of the environmental harm being caused.></p> <p><INSERT details></p>
<INSERT details>	<INSERT details>
Number 2	
<p><INSERT The original notice to conduct or commission an environmental evaluation required the recipient to carry out an assessment of groundwater potentially affected by the activities of ABC Pty Ltd which ><INSERT would include (among other things) an assessment of the stratigraphy in the area and its relationship to hydrogeological conditions.></p>	<p><INSERT Some assessment of the groundwater was carried out during the environmental evaluation, but the report did not contain the results of the required assessment of the stratigraphy in the area and its relationship to hydrogeological conditions. ><INSERT Some assessment of the groundwater was carried out during the environmental evaluation, but the report did not contain the results of the required assessment of the stratigraphy in the area and its relationship to hydrogeological conditions. ><INSERT This information is required to ascertain the source, cause or extent of environmental harm being caused, or likely to be caused, by the activity (effluent irrigation). ></p>
	<p><INSERT The authorised person who has carriage of this matter has come to the conclusion that another environmental evaluation and report are required for this information to be obtained.></p>
Number 3	
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>

Assessment Report

Part 2 – Considering and acting on environmental reports

<INSERT details>	<INSERT details>
------------------	------------------

Number 4	
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>

5. Natural justice

Officers are required to notify the affected person that the department is considering issuing a notice to conduct or commission another environmental evaluation, or a notice requiring additional relevant information, and that the individual is welcome to make representation to the department as to why this action should not be taken. Any information provided by the affected person is to be documented and considered.

- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Please describe how this was achieved.>
- ☐ All information provided has been considered.
<INSERT Please describe any information or defences provided.>
- ☐ the department has considered the information.
<INSERT What consideration was provided and what conclusions have the department formed?>
- ☐ The decision-maker and investigating environmental officer are free from bias or the perception of bias.

6. Relevant matters for the environmental evaluation or required additional relevant information

List any relevant matters for the additional environmental evaluation – that is, the matters that the recipient is required to investigate or audit that were not adequately addressed in the original report. Or, if additional relevant information is necessary, list the information required.

The relevant matters must be SMART: specific, measureable, achievable, relevant and time specific. Refer to the Writing Effective and Enforceable Conditions Procedural Guide for more information on writing conditions and/or requirements.

As the recipient can seek a review of the decision to issue a notice requiring further relevant information, to ensure the relevant matters are reasonable, officers are required to provide justification for their inclusion.

Proposed requirement	Justification
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>



Assessment Report

Part 2 – Considering and acting on environmental reports

<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>
<INSERT Proposed relevant matter or additional relevant information required>	<INSERT Justification>

7. Recommendation

Officers are required to make a recommendation in relation to issuing a Notice to Conduct or Commission another Environmental Evaluation or a Notice Requiring Additional Relevant Information.

Recommendation:

Example: It is the opinion of DERM that ABC Pty Ltd failed to comply with its development conditions by allowing storm water to leave 24 Jones Road and enter Murphy Creek. It is recommended that a notice to conduct or commission an Environmental Evaluation be issued.

8. Endorsement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

9. Approval

The appropriate manager or supervisor is required to make a decision and sign and date below.

Decision for recommendation		<INSERT details approve/not approve>
Reasons for decision <INSERT I endorse this recommendation based upon the information set out above>. <INSERT Or, I endorse this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>. <INSERT Or, I reject the above recommended decision as I consider it more appropriate for the department to take an educational approach to this breach>.		
Signature: <INSERT details>	Print Name: <INSERT details>	
Position: <INSERT details>	Date: <INSERT details>	

RTI DL RELEASED

Assessment Report

Environmental Protection Act 1994 Environmental Evaluation

Considering and acting on environmental reports

This document is intended for internal use to assist to Environmental Services officers (officers) to record the information considered by the Department of Environment and Heritage Protection (the department) when reviewing and considering environmental reports and deciding whether an environmental evaluation or further information is required.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant Number	<INSERT Numbers>
Trading As	<INSERT Trading as details>
Registered Business address	<INSERT Address>
Date report received	<INSERT Date> Note: The department has 20 business days in which to make a decision whether or not to accept the environmental report. The department has 10 business days in which to request further information.

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the investigating environmental officer, supervisor (where possible) and the delegated decision maker.

Environmental evaluation - considering and acting on environmental reports

If the department receives an environmental report, officers should consider whether to:

- ☐ accept the report;
- ☐ not accept the report and require another environmental evaluation to be completed and a further environmental report submitted; or
- ☐ require further information to be provided.

1. Grounds for issuing a notice to conduct or commission another environmental evaluation or a notice requiring further information

Identify the relevant grounds upon which the decision whether to use a notice to conduct or commission another environmental evaluation or a notice requiring further information is based.

1.1. Grounds for issuing a notice to conduct or commission another environmental evaluation (investigation)

- ☐ The report does not adequately address the relevant matters for the environmental investigation to which the report relates.

1.2 Grounds for issuing a notice requiring further information

- ☐ Further information is needed to decide whether to approve the environmental investigation report.

2. Expand upon the grounds

Please expand upon the grounds identified for issuing a notice to conduct or commission another environmental evaluation or a notice requiring further information.

In the case of a notice to conduct or commission another environmental evaluation, refer to the requirements in the original notice and list the relevant matters for the environmental evaluation which have not been adequately addressed in the report.

For a notice requiring further information, consider what further information is required to enable the department to ascertain the source, cause or extent of environmental harm being caused or likely to be caused and/or to decide whether a transitional environmental program (TEP) for the activity or event is required.

Each ground should be listed independently and be allocated a separate number

Number	Specific ground
1	Example: The report does not adequately address the relevant matters for the environmental evaluation because it does not contain an assessment of affected soils and comparison with unaffected soils as required by the original notice.
2	Example: The report does not provide sufficient information to determine whether to approve the report because it does not address the extent of the environmental harm being caused.
3	Example:
4	Example:
5	Example:
6	Example:

3. Brief history of the matter

Briefly outline any historical information relevant to the decision in chronological order.

<INSERT the historical information in chronological order.>

4. Detail the matters that were not adequately addressed in the initial environmental evaluation and report or what further information is required

Refer to the original notice to conduct or commission an environmental evaluation and list in the table below any matters that were included in the original notice but have not been adequately addressed by the environmental report. Explain why you consider that these matters were not addressed properly in the original environmental evaluation and report. If the department requires further information, outline the information that will be listed in the notice requiring further information and explain why the information is required

Elements of the grounds for issuing the notice List the elements of the grounds for issuing the notice (i.e. the requirements listed in the original notice to conduct or commission an environmental evaluation that were not addressed in the report or the further information required).	Matters that were not adequately addressed in the original environmental report or further information required Detail the facts and circumstances that support the department's decision to issue a notice to conduct or commission another environmental evaluation or a notice requiring further information. (i.e. explain how the matters in the original notice have not been addressed).
Number 1	
<INSERT 24 July 2013>	<INSERT Environmental report was submitted to the department by ABC Pty Ltd on 24 July 2013.>
<INSERT The original notice required the recipient to provide an assessment of affected soils and comparison to unaffected soils which addressed the following matters:> <INSERT (i) an analysis of affected soils, and comparable unaffected soils, for a range of analytes sufficient to identify any impacts that may have resulted from the irrigation of effluent on ABC Pty Ltd; and> <INSERT (ii) a description of the contaminants contained in the effluent irrigated and sludges applied on the ABC Pty Ltd site,> <INSERT including the results of a recent analysis of effluent and sludge for analytes found at elevated levels in soils from the affected><INSERT; and> <INSERT (iii) the date, quality and quantity of effluent and sludge applied for each irrigation run in the area known as Lot 123 on RP 45678 from 1 June 2011 to 1 June 2013><INSERT and an analysis of rainfall records and soil moisture records at the times of irrigation for the same period; and> <INSERT (iv) an assessment of the quantity of contaminants applied per hectare in the area known	<INSERT The recipient of the original notice has provided adequate information in the environmental report in respect to items (ii) and (iii).> <INSERT However, the recipient did not arrange for adequate analysis to be carried out of the affected soils and comparable unaffected soils to ascertain any environmental impacts resulting from effluent irrigation> <INSERT carried out at the premises of ABC Pty Ltd as required by item (iii). Consequently, this matter has not been addressed in the environmental report.> <INSERT Further, the recipient has not provided an assessment of the quantity of contaminants applied per hectare in the area known as Lot 123 on RP 45678 from 1 June 2011 to 1 June 2013 at required by item (iv).> <INSERT Without the above information the department will be unable to fully ascertain the source, cause or extent of the environmental harm being caused.> <INSERT details>

Assessment Report

Considering and acting on environmental reports

as Lot 123 on RP 45678 from 1 June 2011 to 1 June 2013.>	
<INSERT details>	<INSERT details>
Number 2	
<INSERT The original notice to conduct or commission an environmental evaluation required the recipient to carry out an assessment of groundwater potentially affected by the activities of ABC Pty Ltd which ><INSERT would include (among other things) an assessment of the stratigraphy in the area and its relationship to hydrogeological conditions. >	<INSERT Some assessment of the groundwater was carried out during the environmental evaluation, but the report did not contain the results of the required assessment of the stratigraphy in the area and its relationship to hydrogeological conditions. ><INSERT Some assessment of the groundwater was carried out during the environmental evaluation, but the report did not contain the results of the required assessment of the stratigraphy in the area and its relationship to hydrogeological conditions. ><INSERT This information is required to ascertain the source, cause or extent of environmental harm being caused, or likely to be caused, by the activity (effluent irrigation). >
	<INSERT The authorised person has come to the conclusion that another environmental evaluation and report are required for this information to be obtained.>
Number 3	
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
Number 4	
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>

5. Provide for natural justice

Any information provided by the recipient or EA holder is to be documented and considered.

☐ The person has been notified of the department's decision.

<INSERT Describe how and when the person was notified.>

☐ The person has been provided with the opportunity to put their side of the story forward.

<INSERT Describe how this was achieved.>

Assessment Report

Considering and acting on environmental reports

☐ The department has considered the information or defences available.

<INSERT What consideration was given and what conclusions the department has formed.>

☐ The decision-maker and the investigating environmental officer are free from bias or the perception of bias.

6. Relevant matters for the environmental evaluation or required further information

List any relevant matters for the additional environmental evaluation – that is:

- the matters that the recipient is required to investigate that were not adequately addressed in the original report;
- if further information is necessary, list the information required; and
- when the report or information is due to the department.

The relevant matters must be SMART: specific, measureable, achievable, relevant and time specific. Refer to the writing effective and enforceable conditions procedural guide using (EM2417) for more information on writing conditions and/or requirements.

As the recipient can seek a review of the decision to issue a notice requiring further information, to ensure the relevant matters are reasonable, officers are required to provide justification for their inclusion.

Proposed relevant matter	Justification
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>

7. Recommendation

Officers are required to make a recommendation in relation to issuing a notice to conduct or commission another environmental evaluation or a notice requiring further information.

Example: It is the opinion of the department that the environmental report does not adequately address the source of the environmental harm to which the report relates. It is recommended that a notice to commission an environmental investigation be issued.

Assessment Report
Considering and acting on environmental reports

Signature	Signature

Date: <INSERT Date>

<INSERT Name of environmental services officer>

<INSERT Name of environmental services officer>

Date: <INSERT Date>

<INSERT Name of supervisor>

<INSERT Position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive
Department of Environment and Heritage Protection
Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994 Environmental Evaluation

Considering and acting on environmental reports

This document is intended for internal use to assist to Environmental Services officers (officers) to record the information considered by the Department of Environment and Heritage Protection (the department) when reviewing and considering environmental reports and deciding whether an environmental evaluation or further information is required.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant Number	<INSERT Numbers>
Trading As	<INSERT Trading as details>
Registered Business address	<INSERT Address>
Date report received	<INSERT Date> Note: The department has 20 business days in which to make a decision whether or not to accept the environmental report. The department has 10 business days in which to request further information.

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the investigating environmental officer, supervisor (where possible) and the delegated decision maker.

Environmental evaluation - considering and acting on environmental reports

If the department receives an environmental report, officers should consider whether to:

- ☐ accept the report;
- ☐ not accept the report and require another environmental evaluation to be completed and a further environmental report submitted; or
- ☐ require further information to be provided.

1. Grounds for issuing a notice to conduct or commission another environmental evaluation or a notice requiring further information

Identify the relevant grounds upon which the decision whether to use a notice to conduct or commission another environmental evaluation or a notice requiring further information is based.

1.1. Grounds for issuing a notice to conduct or commission another environmental evaluation (investigation)

- ☐ The report does not adequately address the relevant matters for the environmental investigation to which the report relates.

1.2 Grounds for issuing a notice requiring further information

- ☐ Further information is needed to decide whether to approve the environmental investigation report.

2. Expand upon the grounds

Please expand upon the grounds identified for issuing a notice to conduct or commission another environmental evaluation or a notice requiring further information.

In the case of a notice to conduct or commission another environmental evaluation, refer to the requirements in the original notice and list the relevant matters for the environmental evaluation which have not been adequately addressed in the report.

For a notice requiring further information, consider what further information is required to enable the department to ascertain the source, cause or extent of environmental harm being caused or likely to be caused and/or to decide whether a transitional environmental program (TEP) for the activity or event is required.

Each ground should be listed independently and be allocated a separate number

Number	Specific ground
1	Example: The report does not adequately address the relevant matters for the environmental evaluation because it does not contain an assessment of affected soils and comparison with unaffected soils as required by the original notice.
2	Example: The report does not provide sufficient information to determine whether to approve the report because it does not address the extent of the environmental harm being caused.
3	Example:
4	Example:
5	Example:
6	Example:

3. Brief history of the matter

Briefly outline any historical information relevant to the decision in chronological order.

<INSERT the historical information in chronological order.>



4. Detail the matters that were not adequately addressed in the initial environmental evaluation and report or what further information is required

Refer to the original notice to conduct or commission an environmental evaluation and list in the table below any matters that were included in the original notice but have not been adequately addressed by the environmental report. Explain why you consider that these matters were not addressed properly in the original environmental evaluation and report. If the department requires further information, outline the information that will be listed in the notice requiring further information and explain why the information is required

Elements of the grounds for issuing the notice List the elements of the grounds for issuing the notice (i.e. the requirements listed in the original notice to conduct or commission an environmental evaluation that were not addressed in the report or the further information required).	Matters that were not adequately addressed in the original environmental report or further information required Detail the facts and circumstances that support the department's decision to issue a notice to conduct or commission another environmental evaluation or a notice requiring further information. (i.e. explain how the matters in the original notice have not been addressed).
Number 1	
<INSERT 24 July 2013>	<INSERT Environmental report was submitted to the department by ABC Pty Ltd on 24 July 2013.>
<INSERT The original notice required the recipient to provide an assessment of affected soils and comparison to unaffected soils which addressed the following matters:> <INSERT (i) an analysis of affected soils, and comparable unaffected soils, for a range of analytes sufficient to identify any impacts that may have resulted from the irrigation of effluent on ABC Pty Ltd; and> <INSERT (ii) a description of the contaminants contained in the effluent irrigated and sludges applied on the ABC Pty Ltd site,> <INSERT including the results of a recent analysis of effluent and sludge for analytes found at elevated levels in soils from the affected><INSERT; and> <INSERT (iii) the date, quality and quantity of effluent and sludge applied for each irrigation run in the area known as Lot 123 on RP 45678 from 1 June 2011 to 1 June 2013><INSERT and an analysis of rainfall records and soil moisture records at the times of irrigation for the same period; and> <INSERT (iv) an assessment of the quantity of contaminants applied per hectare in the area known as Lot 123 on RP 45678 from 1 June 2011 to 1	<INSERT The recipient of the original notice has provided adequate information in the environmental report in respect to items (ii) and (iii).> <INSERT However, the recipient did not arrange for adequate analysis to be carried out of the affected soils and comparable unaffected soils to ascertain any environmental impacts resulting from effluent irrigation> <INSERT carried out at the premises of ABC Pty Ltd as required by item (iii). Consequently, this matter has not been addressed in the environmental report.> <INSERT Further, the recipient has not provided an assessment of the quantity of contaminants applied per hectare in the area known as Lot 123 on RP 45678 from 1 June 2011 to 1 June 2013 at required by item (iv).> <INSERT Without the above information the department will be unable to fully ascertain the source, cause or extent of the environmental harm being caused.> <INSERT details>

Assessment Report

Considering and acting on environmental reports

June 2013.>	
<INSERT details>	<INSERT details>
Number 2	
<INSERT The original notice to conduct or commission an environmental evaluation required the recipient to carry out an assessment of groundwater potentially affected by the activities of ABC Pty Ltd which ><INSERT would include (among other things) an assessment of the stratigraphy in the area and its relationship to hydrogeological conditions. >	<INSERT Some assessment of the groundwater was carried out during the environmental evaluation, but the report did not contain the results of the required assessment of the stratigraphy in the area and its relationship to hydrogeological conditions. ><INSERT Some assessment of the groundwater was carried out during the environmental evaluation, but the report did not contain the results of the required assessment of the stratigraphy in the area and its relationship to hydrogeological conditions. ><INSERT This information is required to ascertain the source, cause or extent of environmental harm being caused, or likely to be caused, by the activity (effluent irrigation). >
	<INSERT The authorised person has come to the conclusion that another environmental evaluation and report are required for this information to be obtained.>
Number 3	
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
Number 4	
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>

5. Provide for natural justice

Any information provided by the recipient or EA holder is to be documented and considered.

☐ The person has been notified of the department's decision.

<INSERT Describe how and when the person was notified.>

☐ The person has been provided with the opportunity to put their side of the story forward.

<INSERT Describe how this was achieved.>

☐ The department has considered the information or defences available.

Re I

- ☐ The decision-maker and the investigating environmental officer are free from bias or the perception of bias.

6. Relevant matters for the environmental evaluation or required further information

List any relevant matters for the additional environmental evaluation – that is:

- the matters that the recipient is required to investigate that were not adequately addressed in the original report;
- if further information is necessary, list the information required; and
- when the report or information is due to the department.

The relevant matters must be SMART: specific, measureable, achievable, relevant and time specific. Refer to the writing effective and enforceable conditions procedural guide using (EM2417) for more information on writing conditions and/or requirements.

As the recipient can seek a review of the decision to issue a notice requiring further information, to ensure the relevant matters are reasonable, officers are required to provide justification for their inclusion.

Proposed relevant matter	Justification
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>
<INSERT Proposed relevant matter>	<INSERT Justification>

7. Recommendation

Officers are required to make a recommendation in relation to issuing a notice to conduct or commission another environmental evaluation or a notice requiring further information.

Example: It is the opinion of the department that the environmental report does not adequately address the source of the environmental harm to which the report relates. It is recommended that a notice to commission an environmental investigation be issued.

Assessment Report
Considering and acting on environmental reports

Signature	Signature

Date: <INSERT Date>

<INSERT Name of environmental services officer>

<INSERT Name of environmental services officer>

Date: <INSERT Date>

<INSERT Name of supervisor>

<INSERT Position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994

Environmental Protection Order

This document is intended for internal use to assist Environmental Service officers (officers) to document the information considered by the Department of Environment and Heritage Protection (the department) when forming the decision whether to issue an environmental protection order (EPO) under the Environmental Protection Act 1994.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date>

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the environmental service officer, supervisor (where possible) and the delegated decision maker.

1. Grounds for use of an EPO

The legislation specifies that the EPO can only be used in certain circumstances (see section 358). Please identify the relevant grounds upon which the decision whether to use an EPO is based:

- ☐ A person did not comply with a requirement to conduct or commission an environmental evaluation and submit it to the department;
- ☐ A person did not comply with a requirement to prepare a transitional environmental program and submit it to the department;

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- ☐ As a result of an environmental evaluation, the department is satisfied that an activity being carried out, or that is likely to be carried out, or is proposed to be carried out, has caused or is likely to cause unlawful environmental harm;
- ☐ Alleged breach of:
- ☐ general environmental duty;
 - ☐ an environmental protection policy (EPP);
 - ☐ a condition of an environmental authority (EA) or a development approval (DA);
 - ☐ a prescribed condition for carrying out a small scale mining activity;
 - ☐ a condition of a site management plan;
 - ☐ an audit notice;
 - ☐ a surrender notice;
 - ☐ a rehabilitation direction;
 - ☐ a regulation;
 - ☐ an accredited environmental risk management plan (ERMP);
- ☐ The person is, or has been, contravening any of the following provisions:
- ☐ direction notices (section 363E);
 - ☐ noise standards (section 440Q);
 - ☐ depositing prescribed water contaminants in waters (section 440ZG);
 - ☐ releases from boats into non-coastal waters (chapter 8, part 3D);
 - ☐ air contamination (chapter 8, part 3E);
 - ☐ fuel standards (chapter 8, part 3F).

2. Expand upon the grounds

Please expand upon the grounds identified for issuing the EPO, including identifying an alleged offence, any statutory requirement which must be met prior to the department using an EPO, or any instance of non-compliance.

Each ground should be listed independently and be allocated a separate number.

Number	Specific ground
1	The department seeks to secure compliance with condition G-12 of environmental approval (EA) MIN12365478.
2	To secure compliance with the General Environmental Duty under s319 of the Act.
3	<INSERT details>
4	<INSERT details>

3. Brief history of the matter

Please briefly outline any historical information relevant to this decision.

Provide a succinct history of the matter in dot point form.

4. Detail the matters considered

Link the elements of the alleged breach or instance of non-compliance to the evidence gathered and the conclusions formed. This section should also record how the department has met any statutory requirements associated with the use of the statutory tool.

Consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by the department.	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings)	Detail the facts and circumstance that support the department's findings.
Number 1		
<i>Time</i>	Unknown	Unknown
1 July 2013	Notes from phone calls received from residence in and around 123 Creek Road x10 in file no: 123	The department received a number of telephone calls regarding the level of dust/materials coming from the ABC Pty Ltd site on 123 Creek Road.
ABC Pty Ltd, proprietor Mr. Green	Company search of ABC Pty Ltd.	Company search shows that Mr Green is the sole director/secretary of the company.
<INSERT details>	<INSERT details>	Condition 47 of EA number 123 held by the ABC Pty Ltd provides that they must have in place a dust suppression system which details how they will minimise the release windblown or site traffic generated dust/or particulate matter.
Number 2		
The general environmental duty requires individuals to take reasonable steps to prevent or minimise environmental harm	Air samples taken	Sampling confirmed high levels of dust and particulate matter in the atmosphere at the area surrounding or near the site location.
	Site inspection was carried out at 123	The site inspection revealed

Assessment Report Environmental Protection Order (EPO)

	Creek Road on 4th July 2013.	that Mr. Green had not put in place any mechanisms to minimise the release of dust and/or particulate to the atmosphere.
Number 3		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
Number 4		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>

Standard Criteria Checklist

Provide brief details of your consideration of each of the standard criteria in supporting and substantiating the relevant grounds purposed. If a criterion is not applicable, write "N/A".

Standard criteria	Detailed comments
Environmental policy	<INSERT details>
Plans, standards or agreements	<INSERT details>
Wild river declaration	<INSERT details>
Environmental impact study, assessment or report	<INSERT details>
Receiving environment	<INSERT details>
Submissions received	<INSERT details>
Best practice environmental management	<INSERT details>
Financial implications	<INSERT details>

Public interest	<INSERT details>
Site management plan	<INSERT details>
Any relevant integrated environmental management (IMS) system or IMS	<INSERT details>
Any other matter prescribed under a regulation	<INSERT details>

5. Recommended conditions

List any proposed conditions below. In order to ensure conditions are enforceable, they should be SMART; specific, measureable, achievable, relevant and time specific. Refer to the writing effective and enforceable conditions procedural guide using (EM2417) for more information on writing conditions.

To ensure the conditions are reasonable officers are required to provide justification for the inclusion of the condition.

Proposed requirement	Justification
(1) As soon as practicable but not later than 5pm on 28 February 2011 you are required to cease any curshing or screening activity at the said premises until such time as a dust suppression system is installed and operational and has been approved by the department.	(1) To secure compliance with condition G-12 of EA XYZ98765432.
<INSERT Proposed requirement>	<INSERT Justification>
<INSERT Proposed requirement>	<INSERT Justification>
<INSERT Proposed requirement>	<INSERT Justification>
<INSERT Proposed requirement>	<INSERT Justification>

6. Natural justice

Any information provided by the affected person is to be documented and considered.

- ☐ The person has been notified of the department's decision.
<INSERT Describe how and when the person was notified.>
- ☐ The person has been provided with the opportunity to put their side of the story forward.

<INSERT Describe how this was achieved.>

- ☐ The department has considered the information or defences available.

<INSERT What consideration was given and what conclusions the department has formed.>

- ☐ The decision-maker and environmental service officer are free from bias or the perception of bias.

7. Recommendation

Officers are requirement to make a recommendation in relation to the issue of an EPO.

Example: A site inspection of the ABC Site on 4 July 2013 reveals that ABC Pty Ltd are in breach of condition 47 of their EA. It is recommended that an EPO be issued.

Signature	Signature

Date: <INSERT Date>

Date: <INSERT Date>

<INSERT Name of environmental services officer>

<INSERT Name of supervisor>

<INSERT Name of environmental services officer>

<INSERT Position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

RTI DL RELEASE - EHP

Assessment Report

Environmental Protection Act 1994

Part 1 - Notice requiring a draft TEP

This document is intended for internal use to assist Environmental Services officers to record the information considered by the department when deciding to issue a notice requiring a draft TEP.

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the responsible officer, supervisor and the delegated decision-maker.

1. Brief history of the matter

Briefly outline any historical information relevant to this decision in chronological order.

[Detail the historical information in this space]

2. Grounds for issuing a notice requiring a draft TEP

Section 332 of the *Environmental Protection Act 1994* provides that the department may require the submission of a draft Transitional Environmental Program (TEP) in certain circumstances. Identify on which of the following grounds the decision to issue a notice requiring a draft TEP is based.

The department may require a person or public authority to prepare and submit to it for approval a draft TEP:

☐ As a condition of an environmental authority (EA).

OR

☐ As a development condition of a development approval (DA).

The department may also require a person or public authority to prepare and submit a draft TEP if it is satisfied:

☐ An activity carried out, or proposed to be carried out, by the person or authority is causing, or may cause, unlawful environmental harm.

OR

☐ It is not practicable for the person or public authority to comply with an environmental protection policy or regulation on its commencement.

OR

☐ That a condition of an environmental authority held by the person or public authority is, or has been, contravened.

OR

☐ That a standard environmental condition of a code of environmental compliance for a Chapter 4 activity is, or has been, contravened by the person or public authority.

OR



- ☐ A development condition of a development approval is, or has been, contravened and the person or public authority is:
- ☐ an owner of the land for which the approval is granted; or
- ☐ another person in whom the benefit of the approval vests.

3. Expand upon the grounds

Expand upon the grounds identified for issuing the notice requiring a draft TEP. This can include identifying an alleged offence or any statutory requirement which must be met prior to the department issuing the notice.

Each ground should be listed independently and allocated a separate number.

Number	Specific Ground
1	Example: ABC Pty Ltd is a timber preservation/treatment operator. While conducting timber preservation/treatment activities, ABC Pty Ltd has released stormwater from its operating site that does not comply with release limits, thereby causing unlawful environmental harm. If ABC Pty Ltd does not upgrade its site and improve its stormwater management system, it is likely that non-compliant releases of stormwater from the site will continue, thereby causing further environmental harm.
2	<INSERT details>
3	<INSERT details>
4	<INSERT details>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support the use of the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed (i.e. the facts and circumstances).

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement	Evidence	Facts and Circumstances
<i>List the elements of any grounds for issuing the notice requiring a TEP</i>	<i>Identify the evidence considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings)</i>	<i>Detail the facts and circumstance that support the department's findings.</i>
Number 1 (Number taken from Section 2)		
An activity carried out, or proposed to be carried out by the person.....	Compliance Inspection CA123: Notes from officer's official notebook taken during site inspection on 20 May 2008.	ABC Pty Ltd carries out timber preservation and treatment activities at its site at 123 Creek Road, Murphyville. The inspection has shown that whilst the operators have some stormwater controls in place, it is apparent that the

Assessment Report
Part 1 - Notice requiring a draft TEP

		current system would not be able to effectively manage an increase in production and/or increased rain levels.
	Photographs (x20) of the ABC Pty Ltd site taken during the site inspection on 20 May 2008.	Photographs taken of the existing stormwater management infrastructure, including the stormwater catchments show that the catchments are 80% full. An increase in production or heavy rain is likely to fill the catchments to overflowing.
Is causing, or may cause, unlawful environmental harm.....	Compliance inspection CA456: Notes from officer's official notebook taken during compliance inspection on 3 May 2009.	A visual inspection of the stormwater catchments show that they are 90% full.
	Copy of letter to ABC Pty Ltd from the Department dated 12 May 2010.	Letter to ABC Pty Ltd outlining the Department's concerns in relation to stormwater controls and management on the site and reminding the site operator of its responsibilities.
	Copy of the company's stormwater quality monitoring results for the past 12 months.	The stormwater quality monitoring results indicate that ABC Pty Ltd has exceeded its release limits on 2 occasions in the past 12 months.
	Compliance inspection CA780: Copy of the site operator's stormwater quality monitoring results for the previous 12 months collected from the operator during compliance inspection on 15 May 2010.	The stormwater quality monitoring results indicate that the operator has exceeded stormwater release limits on 6 occasions in the past 12 months.
	Compliance inspection CA780: Notes from officer's official notebook taken during compliance inspection on 15 May 2010.	During the site inspection, departmental officer Mary Green had further discussions with the site operator regarding the implications of the repeated exceedances of the stormwater release limits. The site operator says that ABC Pty Ltd has made significant investment in stormwater management infrastructure in 2005. However, the business has

Assessment Report
Part 1 - Notice requiring a draft TEP

		<p>grown substantially since this time.</p> <p>During the discussions the site operator indicated an acceptance of the need to investigate and pursue further stormwater management improvements and included a commitment to consider drafting a voluntary TEP.</p>
	<p>File note written by environmental officer Mary Green on 23 June 2010.</p>	<p>ABC Pty Ltd is carrying out timber preservation/treatment activities at a site at 123 Creek Road, Murphyville.</p> <p>Visual inspections of the site in 2008, 2009 and 2010 have indicated that the business has grown substantially and the stormwater management system and infrastructure are no longer coping and require improvements.</p> <p>Annual stormwater release quality monitoring records for 2009 and 2010 indicate that ABC Pty Ltd has exceeded its stormwater release limits on a number of occasions.</p> <p>The repeated exceedences of the stormwater release limits by ABC Pty Ltd are causing unlawful environmental harm and may cause further unlawful environmental harm. The operator indicated that it would voluntarily submit a draft TEP. However, a voluntary draft TEP has not been submitted.</p> <p>In the circumstances, the department considers that a notice requiring a draft TEP should be issued to ABC Pty Ltd.</p>
Number 2		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
Number 3		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>

5. Natural justice

The investigating officer is required to notify the affected person that the department is considering issuing a notice requiring a TEP and that the individual may make representations to the department as to why this action should not be taken. Any information provided by the affected person is to be documented and considered.

- ☐ The person has been provided with the opportunity to put their side of the story forward.
Describe how this was achieved.
- ☐ All information and/or defences provided were considered.
Describe any information or defences provided.
- ☐ The department has considered the information or defences provided.
Describe the consideration given and the conclusions formed by the department based on the information provided.
- ☐ The decision-maker and the environmental officer are free from bias or the perception of bias.

6. Recommended conditions (if appropriate)

If appropriate, please list any proposed conditions below. In order to ensure conditions are enforceable, they should be SMART - Specific, Measureable, Achievable, Relevant and Time-specific. Refer to the [Procedural Guide - Writing effective and enforceable conditions](#)

To ensure the conditions are reasonable, officers are required to provide justification for the inclusion of the condition.

Proposed Requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification

7. Recommendation

The responsible officer is required to make a recommendation in relation to the allegation.

Recommendation:

<INSERT details>

8. Endorsement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

9. Approval

The appropriate manager or supervisor is required to make a decision and sign and date below.

Decision for recommendation		<INSERT details approve/not approve>
Reasons for decision		
<p><INSERT I endorse this recommendation based upon the information set out above>.</p> <p><INSERT Or, I endorse this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>.</p> <p><INSERT Or, I reject the above recommended decision as I consider it more appropriate for the department to take an educational approach to this breach>.</p>		
Signature: <INSERT details>		Print Name: <INSERT details>
Position: <INSERT details>		Date: <INSERT details>

Assessment Report

Environmental Protection Act 1994

Part 2 - Considering and making a decision about a draft TEP

This document is for internal use to assist users in critically evaluating the content of a draft TEP and making a decision to either approve (with or without conditions) or refuse a draft TEP.

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be signed by the investigating officer, supervisor and the delegated decision-maker.

Considering and making a decision about a draft TEP

The legislative provisions in regard to transitional environmental programs (TEPs) are found in Chapter 7, Part 3 of the *Environmental Protection Act 1994* (the Act).

A person or public authority may submit a draft TEP to the Department of Environment and Heritage Protection (the department) for consideration, either voluntarily under s333 of the Act or pursuant to a notice requiring a draft TEP issued by the department under s332 of the Act. Once a draft TEP is received, the department must consider it and decide whether or not to approve it within 20 business days after the application date or, if public notice is required under s335, within 20 business days of the day stated in the notice as the day by which submissions must be made to the department. Detailed below are the matters that the department must consider when making a decision about a draft TEP.

1. Brief history of the matter

Briefly outline any historical information relevant to this decision.

[Provide historical information relating to the matter in succinct, dot point form.]

2. Matters that must be considered when making a decision about the draft TEP

Achieving compliance with the Act (s330)

Identify how, if approved, the draft TEP will achieve compliance with the Act by doing one or more of the following things:

- ☐ 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 or code of environmental compliance; or

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Part 2 - Considering and making a decision about a draft TEP

- ☐ a development condition.

Content of the TEP (s331)

To be approved, the draft TEP, for the activity to which it relates, must state the following:

(a) Objectives to be achieved and maintained under the TEP

- ☐ The draft TEP clearly sets out the objectives to be achieved and maintained under the TEP (i.e. what the draft TEP is trying to achieve).

Provide a brief summary of the objectives to be achieved and maintained under the TEP.

(b) State the particular actions required to achieve the objectives

- ☐ The draft TEP states the particular actions required to achieve the objectives, and the date by which each action must be completed.

Briefly state the actions required to achieve the objectives and the dates by which each action must be completed.

- ☐ When stating the required actions, the draft TEP takes into account:

- ☐ the best practice environmental management for the activity; and

Provide brief notes about how, when stating the required actions, the draft TEP takes into account the best practice environmental management for the activity.

- ☐ the risks of environmental harm being caused by the activity.

Provide brief notes about how, when stating the required actions, the draft TEP takes into account the risks of environmental harm being caused by the activity.

(c) Prevention and minimisation of environmental harm

- ☐ The draft TEP must 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.

Briefly describe 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.

(d) Transition to an environmental standard

- ☐ If an objective of the draft TEP is for the activity to transition to an environmental standard, the draft TEP states:

- ☐ details of the standard; and

- ☐ how the activity is to transition to the standard before the TEP ends.

Provide details of the standard and briefly describe how the activity is to transition to the standard before the TEP ends.

OR

- ☐ It is not an objective of the draft TEP for the activity to transition to an environmental standard.

Part 2 - Considering and making a decision about a draft TEP

(e) Transition to comply with a condition of an environmental authority or code of environmental compliance, or a development condition

- ☐ If an objective of the draft TEP is for an activity to transition to comply with a condition of an environmental authority or code of environmental compliance, or a development condition, the draft TEP provides:

- ☐ details of the condition and how the activity does not comply with it; and
- ☐ how compliance will be achieved before the end of the TEP.

Provide details of the relevant condition and how the activity does not comply with it, and describe briefly how compliance will be achieved before the end of the TEP.

OR

- ☐ It is not an objective of the draft TEP for the activity to transition to compliance with an environmental authority, or code of environmental compliance or a development condition.

(f) Period over which TEP is to be carried out

- ☐ The draft TEP states the period over which the TEP is to be carried out.

State the period over which the TEP is to be carried out.

(g) Performance indicators

- ☐ The draft TEP states appropriate performance indicators at intervals of not more than 6 months.

Provide brief details of the performance indicators.

(h) Monitoring and reporting

- ☐ The draft TEP adequately provides for monitoring and reporting on compliance with the program.

Briefly describe how the draft TEP provides for monitoring and reporting on compliance with the program.

If the department has issued a notice under s332 requiring a person to prepare and submit a draft TEP to it for approval

- ☐ If the draft TEP was submitted in response to a written notice issued by the department under s332 of the Act, the draft TEP has addressed all of the requirements stated in the notice.

If the draft TEP was submitted in response to a written notice under s332, and it does not address all of the matters required to be addressed, provide details of the matters that the draft TEP does not adequately address.

OR

- ☐ The draft TEP was not submitted in response to a written notice issued under s332 of the Act.

Regulatory requirements (s338(1)(a))

Chapter 4 (ss46-64) of the *Environmental Protection Regulation 2008* (the Regulation) sets out the regulatory requirements that the department is required to comply with when making a decision whether to accept (with or without conditions) or reject a draft TEP.

- ☐ When deciding whether accept (with or without conditions) or reject the draft TEP, the department has complied with all relevant regulatory requirements stipulated in ss46-64 of the Regulation.

Briefly describe the relevant sections of the Regulation that were considered and how they relate to the draft TEP.

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Part 2 - Considering and making a decision about a draft TEP

Note that regulatory requirements may also be contained in environmental protection policies.

- ☐ All relevant regulatory requirements contained in environmental protection policies have been considered by the department.

If applicable, briefly describe any regulatory requirements contained in environmental protection policies and how they relate to the draft TEP.

OR

- ☐ There are no applicable regulatory requirements contained in environmental protection policies.

Standard criteria (s338(1)(b)(i))

- ☐ The department has considered all relevant matters in the standard criteria.

Provide brief details in the table below of each standard criterion and how it relates to the department's consideration of the draft TEP. If a particular criterion is not applicable, write 'N/A'.

Standard criterion	Details
Ecologically sustainable development	
Environmental protection policies (EPPs)	
Plans, standards or agreements	
Environmental impact study, assessment or report	
Receiving environment	
Submissions made by the applicant and submitters	
Best practice environmental management	
Financial implications	
Public interest	
Site management plan	
Environmental management systems (EMS)	

Additional information (s338(1)(b)(ii))

- ☐ The department has considered additional information (if any) given in relation to the draft TEP.

If applicable, briefly describe the additional information provided.

OR

- ☐ No additional information has been provided.

Part 2 - Considering and making a decision about a draft TEP

Views expressed at a conference (s338(1)(b)(iii))

- ☐ If a conference has been held in relation to the draft TEP, the department has considered the views expressed at the conference.

If applicable, provide brief notes of the views expressed at the conference and the consideration given to those views.

OR

- ☐ No conference has been held.

Consistency with development conditions of a development approval (s338(2))

- ☐ If the draft TEP has been prepared because of a development condition of a development approval, the draft TEP is consistent with other conditions of the development approval.

If applicable, describe how the draft TEP is not consistent with the other conditions of the development approval.

OR

- ☐ The draft TEP has not been prepared because of a development condition of a development approval.

Public notice of submission of draft TEP (s337(2)) and substantial compliance with the Act (s342)

- ☐ If public notice is required to be given at the submission of the draft TEP, the department is satisfied that the public notice has been properly given.

OR

- ☐ The department is not satisfied that the required public notice has been properly given, but is satisfied that there has been substantial compliance with the Act and will accept this as compliance.

Provide brief details of how the public notice has not been properly given and why the department is satisfied that there has been substantial compliance with the Act which it will accept as compliance.

OR

- ☐ Public notice is not required.

Is the department satisfied with the draft TEP?

For the draft TEP to be approved, at least one box should be checked next to each of the above matters for consideration. If any of the matters remain unchecked, then the draft TEP cannot be approved.

- ☐ If a box has been checked next to each requirement - Proceed to section 3.
- ☐ If a box has not been checked next to each requirement - Proceed to section 4.

3. Request for further information and/or amendments to a draft TEP

If the draft TEP substantially addresses all of the relevant matters listed in s331 of the Act, but cannot be approved unless further information is provided or some amendments are made, the department may request that the person or public authority provide further information or an amended TEP. If there are significant problems with the draft TEP that will require major changes or re-writing before it can be approved, the department should refuse to approve it.

If it is appropriate that further information or a request for amendments be made, officers should consider the following alternatives:

Part 2 - Considering and making a decision about a draft TEP

☐ Further information is required.

Officers are to list the further information required about the draft TEP and suspend the assessment report process while waiting for the further information to be provided.

☐ Minor amendments are required.

Officers are to list the minor amendments required and suspend the assessment report process while waiting for the person to provide the amended TEP.

☐ More substantial amendments are required.

Officers are to list the more substantial amendments required and present them to the delegate for approval.

4. Approval of the draft TEP

Prior to making a recommendation to issue a notice of decision approving the draft TEP (with or without conditions), it is important to take into account that a TEP is a program that achieves compliance with the Act by reducing environmental harm caused by the activity to which it relates, and/or by detailing the transition of the activity to comply with an environmental standard, and/or a condition of an environmental authority or code of environmental compliance, or a development approval.

If the draft TEP does **not** meet the requirements of the Act it must be refused. Whilst the Act does make provision for the approval to be subject to conditions, the conditions should address relatively minor issues only. Conditions stated in a notice of decision must not be used to rectify significant issues with a draft TEP.

A notice of decision must be issued within 8 business days of making the decision to approve the TEP. If the approval is subject to conditions, the notice of decision must be an information notice.

☐ The notice of decision identifies the documents forming the approved TEP, including any amendments under section 339(1)(a)(ii).

☐ The notice of decision sets out any conditions imposed on the approval by the department.

☐ The notice of decision states the day the approval ends.

☐ If conditions have been imposed on the approval, the notice of decision is in the form of an information notice.

If the notice is in the form of an information notice, it must include:

☐ the decision and

☐ the reasons for the decision and

☐ any available rights of internal and external review.

5. Refusal to approve a draft TEP

The draft TEP cannot be approved unless at least one checkbox has been checked beside each of the matters required to be addressed by the draft TEP. If the draft TEP does not meet all of the requirements, and any deficiencies will not be addressed by a request for further information and/or amendments to the draft TEP, then the Department should refuse to approve the draft TEP.

If the Department refuses to approve the TEP, the notice of decision must be an information notice.

Consequently, the notice of decision must include:

☐ the decision and

Part 2 - Considering and making a decision about a draft TEP

- ☐ the reasons for the decision and
- ☐ any available rights of internal and external review.

6. Provide for natural justice

In order to provide natural justice, the department must advise the person that submitted the draft TEP if it intends to do one of the following things:

- request further information about the draft TEP; and/or
- request amendments to the draft TEP; or
- refuse to approve the draft TEP.

The department must also provide the person with the opportunity to make submissions in response to the department's intentions.

- ☐ The person has been provided with the opportunity to put their side of the story forward.
Describe how this was achieved. |
- ☐ All information provided has been considered.
Describe any information or submissions provided. |
- ☐ The department has considered the information.
What consideration was provided and what conclusions have the department formed? |
- ☐ The decision-maker and environmental officer are free from bias or the perception of bias.

6. Recommendation

The environmental officer is required to make a recommendation in relation to the draft TEP.

Recommendation:

[For example, "I recommend that the draft TEP be approved OR I recommend that the draft TEP be approved with the amendments agreed in the letter to the company dated XXX OR I recommend that the draft TEP be refused.]

8. Endorsement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

9. Approval

The appropriate manager or supervisor is required to make a decision and sign and date below.

Decision for recommendation		<INSERT details approve/not approve>	
Reasons for decision <INSERT I endorse this recommendation based upon the information set out above>. <INSERT Or, I endorse this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>. <INSERT Or, I reject the above recommended decision as I consider it more appropriate for the department to take an educational approach to this breach>.			
Signature: <INSERT details>		Print Name: <INSERT details>	
Position: <INSERT details>		Date: <INSERT details>	

RTI DL RELEASE - EHP

Assessment Report

Environmental Protection Act 1994

Part 2 - Considering and making a decision about a draft TEP

This document is for internal use to assist users in critically evaluating the content of a draft TEP and making a decision to either approve (with or without conditions) or refuse a draft TEP.

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be signed by the investigating officer, supervisor and the delegated decision-maker.

Considering and making a decision about a draft TEP

The legislative provisions in regard to transitional environmental programs (TEPs) are found in Chapter 7, Part 3 of the *Environmental Protection Act 1994* (the Act).

A person or public authority may submit a draft TEP to the Department of Environment and Heritage Protection (the department) for consideration, either voluntarily under s333 of the Act or pursuant to a notice requiring a draft TEP issued by the department under s332 of the Act. Once a draft TEP is received, the department must consider it and decide whether or not to approve it within 20 business days after the application date or, if public notice is required under s335, within 20 business days of the day stated in the notice as the day by which submissions must be made to the department. Detailed below are the matters that the department must consider when making a decision about a draft TEP.

1. Brief history of the matter

Briefly outline any historical information relevant to this decision.

[Provide historical information relating to the matter in succinct, dot point form.]

2. Matters that must be considered when making a decision about the draft TEP

Achieving compliance with the Act (s330)

Identify how, if approved, the draft TEP will achieve compliance with the Act by doing one or more of the following things:

- ☐ 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 or code of environmental compliance; or

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Part 2 - Considering and making a decision about a draft TEP

- ☐ a development condition.

Content of the TEP (s331)

To be approved, the draft TEP, for the activity to which it relates, must state the following:

(a) Objectives to be achieved and maintained under the TEP

- ☐ The draft TEP clearly sets out the objectives to be achieved and maintained under the TEP (i.e. what the draft TEP is trying to achieve).

Provide a brief summary of the objectives to be achieved and maintained under the TEP.

(b) State the particular actions required to achieve the objectives

- ☐ The draft TEP states the particular actions required to achieve the objectives, and the date by which each action must be completed.

Briefly state the actions required to achieve the objectives and the dates by which each action must be completed.

- ☐ When stating the required actions, the draft TEP takes into account:

- ☐ the best practice environmental management for the activity; and

Provide brief notes about how, when stating the required actions, the draft TEP takes into account the best practice environmental management for the activity.

- ☐ the risks of environmental harm being caused by the activity.

Provide brief notes about how, when stating the required actions, the draft TEP takes into account the risks of environmental harm being caused by the activity.

(c) Prevention and minimisation of environmental harm

- ☐ The draft TEP must 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.

Briefly describe 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.

(d) Transition to an environmental standard

- ☐ If an objective of the draft TEP is for the activity to transition to an environmental standard, the draft TEP states:

- ☐ details of the standard; and

- ☐ how the activity is to transition to the standard before the TEP ends.

Provide details of the standard and briefly describe how the activity is to transition to the standard before the TEP ends.

OR

- ☐ It is not an objective of the draft TEP for the activity to transition to an environmental standard.

Part 2 - Considering and making a decision about a draft TEP

(e) Transition to comply with a condition of an environmental authority or code of environmental compliance, or a development condition

- ☐ If an objective of the draft TEP is for an activity to transition to comply with a condition of an environmental authority or code of environmental compliance, or a development condition, the draft TEP provides:

- ☐ details of the condition and how the activity does not comply with it; and
- ☐ how compliance will be achieved before the end of the TEP.

Provide details of the relevant condition and how the activity does not comply with it, and describe briefly how compliance will be achieved before the end of the TEP.

OR

- ☐ It is not an objective of the draft TEP for the activity to transition to compliance with an environmental authority, or code of environmental compliance or a development condition.

(f) Period over which TEP is to be carried out

- ☐ The draft TEP states the period over which the TEP is to be carried out.

State the period over which the TEP is to be carried out.

(g) Performance indicators

- ☐ The draft TEP states appropriate performance indicators at intervals of not more than 6 months.

Provide brief details of the performance indicators.

(h) Monitoring and reporting

- ☐ The draft TEP adequately provides for monitoring and reporting on compliance with the program.

Briefly describe how the draft TEP provides for monitoring and reporting on compliance with the program.

If the department has issued a notice under s332 requiring a person to prepare and submit a draft TEP to it for approval

- ☐ If the draft TEP was submitted in response to a written notice issued by the department under s332 of the Act, the draft TEP has addressed all of the requirements stated in the notice.

If the draft TEP was submitted in response to a written notice under s332, and it does not address all of the matters required to be addressed, provide details of the matters that the draft TEP does not adequately address.

OR

- ☐ The draft TEP was not submitted in response to a written notice issued under s332 of the Act.

Regulatory requirements (s338(1)(a))

Chapter 4 (ss46-64) of the *Environmental Protection Regulation 2008* (the Regulation) sets out the regulatory requirements that the department is required to comply with when making a decision whether to accept (with or without conditions) or reject a draft TEP.

- ☐ When deciding whether accept (with or without conditions) or reject the draft TEP, the department has complied with all relevant regulatory requirements stipulated in ss46-64 of the Regulation.

Briefly describe the relevant sections of the Regulation that were considered and how they relate to the draft TEP.

Part 2 - Considering and making a decision about a draft TEP

Note that regulatory requirements may also be contained in environmental protection policies.

- ☐ All relevant regulatory requirements contained in environmental protection policies have been considered by the department.

If applicable, briefly describe any regulatory requirements contained in environmental protection policies and how they relate to the draft TEP.

OR

- ☐ There are no applicable regulatory requirements contained in environmental protection policies.

Standard criteria (s338(1)(b)(i))

- ☐ The department has considered all relevant matters in the standard criteria.

Provide brief details in the table below of each standard criterion and how it relates to the department's consideration of the draft TEP. If a particular criterion is not applicable, write 'N/A'.

Standard criterion	Details
Ecologically sustainable development	
Environmental protection policies (EPPs)	
Plans, standards or agreements	
Environmental impact study, assessment or report	
Receiving environment	
Submissions made by the applicant and submitters	
Best practice environmental management	
Financial implications	
Public interest	
Site management plan	
Environmental management systems (EMS)	

Additional information (s338(1)(b)(ii))

- ☐ The department has considered additional information (if any) given in relation to the draft TEP.

If applicable, briefly describe the additional information provided.

OR

- ☐ No additional information has been provided.

Part 2 - Considering and making a decision about a draft TEP

Views expressed at a conference (s338(1)(b)(iii))

- ☐ If a conference has been held in relation to the draft TEP, the department has considered the views expressed at the conference.

If applicable, provide brief notes of the views expressed at the conference and the consideration given to those views.

OR

- ☐ No conference has been held.

Consistency with development conditions of a development approval (s338(2))

- ☐ If the draft TEP has been prepared because of a development condition of a development approval, the draft TEP is consistent with other conditions of the development approval.

If applicable, describe how the draft TEP is not consistent with the other conditions of the development approval.

OR

- ☐ The draft TEP has not been prepared because of a development condition of a development approval.

Public notice of submission of draft TEP (s337(2)) and substantial compliance with the Act (s342)

- ☐ If public notice is required to be given at the submission of the draft TEP, the department is satisfied that the public notice has been properly given.

OR

- ☐ The department is not satisfied that the required public notice has been properly given, but is satisfied that there has been substantial compliance with the Act and will accept this as compliance.

Provide brief details of how the public notice has not been properly given and why the department is satisfied that there has been substantial compliance with the Act which it will accept as compliance.

OR

- ☐ Public notice is not required.

Is the department satisfied with the draft TEP?

For the draft TEP to be approved, at least one box should be checked next to each of the above matters for consideration. If any of the matters remain unchecked, then the draft TEP cannot be approved.

- ☐ If a box has been checked next to each requirement - Proceed to section 3.
- ☐ If a box has not been checked next to each requirement - Proceed to section 4.

3. Request for further information and/or amendments to a draft TEP

If the draft TEP substantially addresses all of the relevant matters listed in s331 of the Act, but cannot be approved unless further information is provided or some amendments are made, the department may request that the person or public authority provide further information or an amended TEP. If there are significant problems with the draft TEP that will require major changes or re-writing before it can be approved, the department should refuse to approve it.

If it is appropriate that further information or a request for amendments be made, officers should consider the following alternatives:

Part 2 - Considering and making a decision about a draft TEP

- ☐ Further information is required.

Officers are to list the further information required about the draft TEP and suspend the assessment report process while waiting for the further information to be provided.

- ☐ Minor amendments are required.

Officers are to list the minor amendments required and suspend the assessment report process while waiting for the person to provide the amended TEP.

- ☐ More substantial amendments are required.

Officers are to list the more substantial amendments required and present them to the delegate for approval.

4. Approval of the draft TEP

Prior to making a recommendation to issue a notice of decision approving the draft TEP (with or without conditions), it is important to take into account that a TEP is a program that achieves compliance with the Act by reducing environmental harm caused by the activity to which it relates, and/or by detailing the transition of the activity to comply with an environmental standard, and/or a condition of an environmental authority or code of environmental compliance, or a development approval.

If the draft TEP does **not** meet the requirements of the Act it must be refused. Whilst the Act does make provision for the approval to be subject to conditions, the conditions should address relatively minor issues only. Conditions stated in a notice of decision must not be used to rectify significant issues with a draft TEP.

A notice of decision must be issued within 8 business days of making the decision to approve the TEP. If the approval is subject to conditions, the notice of decision must be an information notice.

- ☐ The notice of decision identifies the documents forming the approved TEP, including any amendments under section 339(1)(a)(ii).
- ☐ The notice of decision sets out any conditions imposed on the approval by the department.
- ☐ The notice of decision states the day the approval ends.
- ☐ If conditions have been imposed on the approval, the notice of decision is in the form of an information notice.

If the notice is in the form of an information notice, it must include:

- ☐ the decision and
- ☐ the reasons for the decision and
- ☐ any available rights of internal and external review.

5. Refusal to approve a draft TEP

The draft TEP cannot be approved unless at least one checkbox has been checked beside each of the matters required to be addressed by the draft TEP. If the draft TEP does not meet all of the requirements, and any deficiencies will not be addressed by a request for further information and/or amendments to the draft TEP, then the Department should refuse to approve the draft TEP.

If the Department refuses to approve the TEP, the notice of decision must be an information notice. Consequently, the notice of decision must include:

- ☐ the decision and

Part 2 - Considering and making a decision about a draft TEP

- ☐ the reasons for the decision and
- ☐ any available rights of internal and external review.

6. Provide for natural justice

In order to provide natural justice, the department must advise the person that submitted the draft TEP if it intends to do one of the following things:

- request further information about the draft TEP; and/or
- request amendments to the draft TEP; or
- refuse to approve the draft TEP.

The department must also provide the person with the opportunity to make submissions in response to the department's intentions.

- ☐ The person has been provided with the opportunity to put their side of the story forward.
Describe how this was achieved. |
- ☐ All information provided has been considered.
Describe any information or submissions provided. |
- ☐ The department has considered the information.
What consideration was provided and what conclusions have the department formed? |
- ☐ The decision-maker and environmental officer are free from bias or the perception of bias.

6. Recommendation

The environmental officer is required to make a recommendation in relation to the draft TEP.

Recommendation:

[For example, "I recommend that the draft TEP be approved OR I recommend that the draft TEP be approved with the amendments agreed in the letter to the company dated XXX OR I recommend that the draft TEP be refused.]

8. Endorsement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

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Part 2 - Considering and making a decision about a draft TEP

9. Approval

The appropriate manager or supervisor is required to make a decision and sign and date below.

Decision for recommendation		<INSERT details approve/not approve>	
Reasons for decision <INSERT I endorse this recommendation based upon the information set out above>. <INSERT Or, I endorse this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>. <INSERT Or, I reject the above recommended decision as I consider it more appropriate for the department to take an educational approach to this breach>.			
Signature: <INSERT details>		Print Name: <INSERT details>	
Position: <INSERT details>		Date: <INSERT details>	

RTI DL RELEASE - EHP

Environmental Protection Act 1994**Notice requiring a draft transitional environmental program**

This document is intended for internal use to assist environmental services officers (officers) to record the information considered by the department when deciding to issue a notice requiring a draft transitional environmental program (TEP).

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date>

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the responsible officer, supervisor and the delegated decision-maker.

1. Brief history of the matter

Briefly outline any historical information relevant to this decision in chronological order.

<INSERT Detail the historical information in chronologic order.>

2. Grounds for issuing a notice requiring a draft transitional environmental program

Section 332 of the *Environmental Protection Act 1994* (the Act) provides that the department may require the submission of a draft transitional environmental program (TEP) in certain circumstances. Identify on which of the following grounds the decision to issue a notice requiring a draft TEP is based.

The department may require a person or public authority to prepare and submit to it for approval a draft TEP:

☐ As a condition of an environmental authority (EA).

OR

☐ As a development condition of a development approval (DA).

Re

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Notice requiring a draft transitional environmental program

The department may also require a person or public authority to prepare and submit a draft TEP if it is satisfied:

- ☐ An activity carried out, or proposed to be carried out, by the person or authority is causing, or may cause, unlawful environmental harm.

OR

- ☐ It is not practicable for the person or public authority to comply with an environmental protection policy or regulation on its commencement.

OR

- ☐ That a condition of an environmental authority held by the person or public authority is, or has been, contravened.

OR

- ☐ That a prescribed condition for carrying out a small scale mining activity is, or has been, contravened by the person or public authority carrying out the activity.

OR

- ☐ A development condition of a development approval is, or has been, contravened and the person or public authority is:

- ☐ an owner of the land for which the approval is granted; or
- ☐ another person in whom the benefit of the approval vests.

3. Expand upon the grounds

Expand upon the grounds identified for issuing the notice requiring a draft TEP. This can include identifying an alleged offence or any statutory requirement which must be met prior to the department issuing the notice.

Each ground should be listed independently and allocated a separate number.

Number	Specific Ground
1	Example: ABC Pty Ltd is a timber preservation/treatment operator. While conducting timber preservation/treatment activities, ABC Pty Ltd has released stormwater from its operating site that does not comply with release limits, thereby causing unlawful environmental harm. If ABC Pty Ltd does not upgrade its site and improve its stormwater management system, it is likely that non-compliant releases of stormwater from the site will continue, thereby causing further environmental harm.
2	<INSERT details>
3	<INSERT details>
4	<INSERT details>

4. Detail the matters considered

The purpose of the following table is to ensure that there is evidence to support the use of the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed (i.e. the facts and circumstances).



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Notice requiring a draft transitional environmental program

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement List the elements of any grounds for issuing the notice requiring a TEP	Evidence Identify the evidence considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings)	Facts and Circumstances Detail the facts and circumstance that support the department's findings.
Number 1		
An activity carried out, or proposed to be carried out by the person.....	Compliance inspection CA123: Notes from officer's official notebook taken during site inspection on 20 May 2011.	ABC Pty Ltd carries out timber preservation and treatment activities at its site at 123 Creek Road, Murphyville. The inspection has shown that whilst the operators have some stormwater controls in place, it is apparent that the current system would not be able to effectively manage an increase in production and/or increased rain levels.
	Photographs (x20) of the ABC Pty Ltd site taken during the site inspection on 20 May 2011.	Photographs taken of the existing stormwater management infrastructure, including the stormwater catchments show that the catchments are 80% full. An increase in production or heavy rain is likely to fill the catchments to overflowing.
Is causing, or may cause, unlawful environmental harm.....	Compliance inspection CA456: Notes from officer's official notebook taken during compliance inspection on 3 May 2012.	A visual inspection of the stormwater catchments show that they are 90% full.
	Copy of letter to ABC Pty Ltd from the department dated 12 May 2013.	Letter to ABC Pty Ltd outlining the department's concerns in relation to stormwater controls and management on the site and reminding the site operator of its responsibilities.
	Copy of the company's stormwater quality monitoring results for the past 12 months.	The stormwater quality monitoring results indicate that ABC Pty Ltd has exceeded its release limits on 2 occasions in the past 12 months.
	Compliance inspection CA780: Copy of the site operator's stormwater quality monitoring results for the previous 12 months collected from the operator during	The stormwater quality monitoring results indicate that the operator has exceeded stormwater release limits on 6 occasions in the past 12 months.

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Notice requiring a draft transitional environmental program

	compliance inspection on 15 May 2013.	
	<p>Compliance inspection CA780: Notes from officer's official notebook taken during compliance inspection on 15 May 2013.</p>	<p>During the site inspection, departmental officer Mary Green had further discussions with the site operator regarding the implications of the repeated exceedances of the stormwater release limits.</p> <p>The site operator says that ABC Pty Ltd has made significant investment in stormwater management infrastructure in 2011. However, the business has grown substantially since this time.</p> <p>During the discussions the site operator indicated an acceptance of the need to investigate and pursue further stormwater management improvements and included a commitment to consider drafting a voluntary TEP.</p>
	<p>File note written by environmental officer Mary Green on 23 June 2013.</p>	<p>ABC Pty Ltd is carrying out timber preservation/treatment activities at a site at 123 Creek Road, Murphyville.</p> <p>Visual inspections of the site in 2011, 2012 and 2013 have indicated that the business has grown substantially and the stormwater management system and infrastructure are no longer coping and require improvements.</p> <p>Annual stormwater release quality monitoring records for 2012 and 2013 indicate that ABC Pty Ltd has exceeded its stormwater release limits on a number of occasions.</p> <p>The repeated exceedances of the stormwater release limits by ABC Pty Ltd are causing unlawful environmental harm and may cause further unlawful environmental harm. The operator indicated that it would voluntarily submit a draft TEP. However, a voluntary draft TEP has not been submitted.</p> <p>In the circumstances, the department considers that a notice requiring a draft TEP should be issued to ABC Pty Ltd.</p>

Assessment Report

Notice requiring a draft transitional environmental program

Number 2		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>
Number 3		
<INSERT details>	<INSERT details>	<INSERT details>
<INSERT details>	<INSERT details>	<INSERT details>

5. Recommended conditions (if appropriate)

If appropriate, please list any proposed conditions below. In order to ensure conditions are enforceable, they must be SMART: specific, measureable, achievable, relevant and time-specific. Refer to the writing effective and enforceable conditions procedural guide using the search term (EM2417) for more information on writing conditions and/or requirements.

To ensure the conditions are reasonable, officers are required to provide justification for the inclusion of the condition.

Proposed conditions	Justification
Proposed condition	Justification
Proposed condition	Justification
Proposed condition	Justification
Proposed condition	Justification

6. Provide for natural justice

Any information provided by a person or public authority in relation to the draft TEP is to be documented and considered.

- ☐ The person has been notified of the department's decision.
- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ The department has considered the information or defences available.
<INSERT what consideration was given and what conclusions the department has formed.>
- ☐ The decision-maker and the authorised officer are free from bias or the perception of bias.

7. Recommendation

Officers are required to make a recommendation in relation to the allegation.

Recommendation:

<INSERT details>

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Notice requiring a draft transitional environmental program

Signature	Signature

Date: <INSERT date>

Date: <INSERT date>

<INSERT Name of environmental services officer>

<INSERT name of supervisor>

<INSERT Position of environmental services officer>

<INSERT position of supervisor>

8. Approval

The relevant delegate is required to make a decision and sign and date below.

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

Assessment Report

Environmental Protection Act 1994

Considering and making a decision about a draft transitional environmental program

This document is for internal use to assist Environmental Services Officers (officers) to evaluate the content of a draft transitional environmental program (TEP) and making a decision to either approve (with or without conditions) or refuse a draft TEP.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>
Date decision made	<INSERT Date>

Note:

1. Assessment reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be signed by the officer, supervisor and the delegated decision-maker.

1. Brief history of the matter

Briefly outline any historical information relevant to this decision.

Provide historical information relating to the matter in succinct, dot point form.

2. Matters that must be considered when making a decision about the draft TEP

Achieving compliance with the Act

Identify how, if approved, the draft TEP will achieve compliance with the Act by doing one or more of the following:

Assessment Report

Considering and making a decision about a draft transitional environmental program

- ☐ 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 of an environmental authority (EA) for the activity;
 - ☐ a development condition; or
 - ☐ a prescribed condition for carrying out a small scale mining activity.

Content of the TEP

To be approved, the draft TEP, for the activity to which it relates, must state the following:

(a) Objectives to be achieved and maintained under the TEP

- ☐ The draft TEP clearly sets out the objectives to be achieved and maintained under the TEP (i.e. what the draft TEP is trying to achieve).

Provide a brief summary of the objectives to be achieved and maintained under the TEP.

(b) State the particular actions required to achieve the objectives

- ☐ The draft TEP states the particular actions required to achieve the objectives, and the date by which each action must be completed.

Briefly state the actions required to achieve the objectives and the dates by which each action must be completed.

- ☐ When stating the required actions, the draft TEP takes into account:

- ☐ the best practice environmental management for the activity; and

Provide brief notes about how, when stating the required actions, the draft TEP takes into account the best practice environmental management for the activity.

- ☐ the risks of environmental harm being caused by the activity.

Provide brief notes about how, when stating the required actions, the draft TEP takes into account the risks of environmental harm being caused by the activity.

(c) Prevention and minimisation of environmental harm

- ☐ The draft TEP must 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.

Briefly describe 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.

(d) Transition to an environmental standard

- ☐ If an objective of the draft TEP is for the activity to transition to an environmental standard, the draft TEP states:

- ☐ details of the standard; and

- ☐ how the activity is to transition to the standard before the TEP ends.

Provide details of the standard and briefly describe how the activity is to transition to the standard before the TEP ends.

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Considering and making a decision about a draft transitional environmental program

OR

- ☐ It is not an objective of the draft TEP for the activity to transition to an environmental standard.

(e) Transition to comply with a condition of an EA, a development condition or a prescribed condition for carrying out a small scale mining activity

- ☐ If an objective of the draft TEP is for an activity 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, the draft TEP provides:
- ☐ details of the condition and how the activity does not comply with it; and
 - ☐ how compliance will be achieved before the end of the TEP.

Provide details of the relevant condition and how the activity does not comply with it, and describe briefly how compliance will be achieved before the end of the TEP.

OR

- ☐ It is not an objective of the draft TEP for the activity to transition to compliance with an EA, a development condition or a prescribed condition for carrying out a small scale mining activity.

(f) Period over which TEP is to be carried out

- ☐ The draft TEP states the period over which the TEP is to be carried out.

State the period over which the TEP is to be carried out. Be specific in relation to dates and times

(g) Performance indicators

- ☐ The draft TEP states appropriate performance indicators at intervals of not more than 6 months.

Provide brief details of the performance indicators.

(h) Monitoring and reporting

- ☐ The draft TEP adequately provides for monitoring and reporting on compliance with the program.

Briefly describe how the draft TEP provides for monitoring and reporting on compliance with the program.

If the department has issued a notice under section 332 requiring a person to prepare and submit a draft TEP to it for approval

- ☐ The draft TEP has addressed all of the requirements stated in the notice.

If the draft TEP was submitted in response to a written notice under section 332, and it does not address all of the matters required to be addressed, provide details of the matters that the draft TEP does not adequately address.

OR

- ☐ The draft TEP was not submitted in response to a written notice issued under section 332 of the Act.

Regulatory requirements

In making the decision whether to accept (with or without conditions) or reject a draft TEP.

- ☐ The department has complied with all relevant regulatory requirements stipulated in sections 46-63 of the Regulation.

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Considering and making a decision about a draft transitional environmental program

Briefly describe the relevant sections of the Regulation that were considered and how they relate to the draft TEP.

Note: that regulatory requirements may also be contained in environmental protection policies.

- ☐ All relevant regulatory requirements contained in environmental protection policies have been considered by the department.

If applicable, briefly describe any regulatory requirements contained in environmental protection policies and how they relate to the draft TEP.

OR

- ☐ There are no applicable regulatory requirements contained in environmental protection policies.

Standard criteria

- ☐ The department has considered all relevant matters in the standard criteria.

Provide brief details in the table below of each standard criteria and how it relates to the department's consideration of the draft TEP. If a particular criteria is not relevant, write 'N/A'.

Standard criteria	Details
Environmental policy	<INSERT details>
Plans, standards or agreements	<INSERT details>
Wild river declaration	<INSERT details>
Environmental impact study, assessment or report	<INSERT details>
Receiving environment	<INSERT details>
Submissions received	<INSERT details>
Best practice environmental management	<INSERT details>
Financial implications	<INSERT details>
Public interest	<INSERT details>
Site management plan	<INSERT details>
Any relevant integrated environmental management system or proposed integrated environmental management system (IMS)	<INSERT details>
Any other matter prescribed under a regulation	<INSERT details>

Recommended conditions (if appropriate)

If appropriate, list any proposed conditions below. In order to ensure conditions are enforceable, they should be SMART; specific, measureable, achievable, relevant and time specific.

Re

Assessment Report

Considering and making a decision about a draft transitional environmental program

To ensure the conditions are reasonable officers are required to provide justification for the inclusion of the condition.

Proposed requirement	Justification
<INSERT Proposed requirement>	<INSERT Justification>
<INSERT Proposed requirement>	<INSERT Justification>
<INSERT Proposed requirement>	<INSERT Justification>
<INSERT Proposed requirement>	<INSERT Justification>

Financial assurance

- ☐ Financial assurance as a condition is required as security for compliance with the TEP.

Provide details of why the financial assurance is considered necessary.

OR

- ☐ Financial assurance is not required.

Public notice of submission of draft TEP and substantial compliance with the Act

- ☐ If public notice is required to be given at the submission of the draft TEP, the department is satisfied that the public notice has been properly given.

OR

- ☐ The department is not satisfied that the required public notice has been properly given, but is satisfied that there has been substantial compliance with the Act and will accept this as compliance.

Provide brief details of how the public notice has not been properly given and why the department is satisfied that there has been substantial compliance with the Act which it will accept as compliance.

OR

- ☐ Public notice is not required.

Views expressed at a conference

- ☐ If a conference has been held in relation to the draft TEP, the department has considered the views expressed at the conference.

If applicable, provide brief notes of the views expressed at the conference and the consideration given to those views.

OR

- ☐ No conference has been held.

Consistency with development conditions of a DA

- ☐ If the draft TEP has been prepared because of a development condition of a DA, the draft TEP is consistent with other conditions of the DA.

Re

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Considering and making a decision about a draft transitional environmental program

If applicable, describe how the draft TEP is not consistent with the other conditions of the DA.

OR

- ☐ The draft TEP has not been prepared because of a development condition of a DA.

Additional information

- ☐ The department has considered additional information given in relation to the draft TEP.

If applicable, briefly describe the additional information provided.

OR

- ☐ No additional information has been provided.

Is the department satisfied with the draft TEP?

For the draft TEP to be approved, at least one box should be checked next to each of the above matters for consideration. If any of the matters remain unchecked, then the draft TEP cannot be approved.

- ☐ If a box has been checked next to each requirement - Proceed to section 4.
- ☐ If a box has not been checked next to each requirement - Proceed to section 3.

3. Request for further information and/or amendments to a draft TEP

There are some matters that the draft TEP does not adequately address and the draft TEP cannot be approved unless further information is provided or some amendments are made.

Officers are to identify the requirements that have not been met and how it is proposed to address the matter:

Requirement not met	How this will be addressed
<INSERT Requirement>	<INSERT Request for further information/minor or major amendment>
<INSERT Requirement>	<INSERT Request for further information/minor or major amendment>
<INSERT Requirement>	<INSERT Request for further information/minor or major amendment>
<INSERT Requirement>	<INSERT Request for further information/minor or major amendment>

- ☐ Further information is required.

Officers are to list the further information required about the draft TEP and suspend the assessment report process while waiting for the further information to provide.

- ☐ Minor amendments are required.

Officers are to list the minor amendments required and suspend the assessment report process while waiting for the person to provide the amended TEP.

- ☐ More substantial amendments are required.

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Considering and making a decision about a draft transitional environmental program

Officers are to list the more substantial amendments required and present them to the delegate for approval.

4. Provide for natural justice

Any information provided by a person or public authority in relation to the draft TEP is to be documented and considered.

- ☐ The person has been notified of the department's decision.
- ☐ The person has been provided with the opportunity to put their side of the story forward.

<INSERT Describe how this was achieved.>

- ☐ The department has considered the information or defences available.

<INSERT what consideration was given and what conclusions the department has formed.>

- ☐ The decision-maker and the authorised officer are free from bias or the perception of bias.

5. Recommendation

The environmental officer is required to make a recommendation in relation to the draft TEP.

Recommendation:

For example, "I recommend that the draft TEP be approved OR I recommend that the draft TEP be approved with the amendments agreed in the letter to the company dated XXX OR I recommend that the draft TEP be refused.

--	--

Signature

Signature

Date: <INSERT date>

Date: <INSERT date>

<INSERT Name of environmental services officer>

<INSERT name of supervisor>

<INSERT Position of environmental services officer>

<INSERT position of supervisor>

6. Approval

The relevant delegate is required to make a decision and sign and date below.

Signature

Date: <INSERT Date>

<INSERT Name of delegate>

<INSERT Position of delegate>

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

<INSERT Approve/reject recommendation>

<INSERT Based on the recommendations above/or reasons for rejection>.

RTI DL RELEASE - EHP

Report

Alleged Breach Report

This Alleged Breach Report in conjunction with the departments Enforcement Guidelines will assist officers in recording information which supports a decision to take enforcement action i.e. issue a Penalty Infringement Notice (PIN) under the State Penalties Enforcement Act 1999 regime. This includes offences under the Environmental Protection Act 1994, Nature Conservation Act 1992, Forestry Act 1959, Recreation Areas Management Act 2006, Marine Parks Act 2004, Waste Reduction and Recycling Act 2011, Chapter 3 of the Water Act 2000 and the Queensland Heritage Act 2000, as listed within the State Penalties Enforcement Regulation 2000.

Note: For information on writing and the management of PINs please refer to the [PIN Manual](#) or contact infringement.notices@ehp.qld.gov.au.

1. Identifying details

Issuing Officer	<INSERT details>
Reference details	<INSERT details of database, Compliance Activity or Operation Name>
EcoTrack Number if used	<INSERT details>
Licence/Permit number	<INSERT details>
File number	<INSERT details>
Name of alleged offender	<INSERT full name of alleged offender >
Address	<INSERT residential and/or registered business address of alleged offender>
ACN/ABN	<INSERT details if applicable otherwise N/A>
Contact details	<INSERT phone, fax or email or N/A >

2. Background details of incident

Please outline any historical information relevant to this incident. This information may assist with the reasoning for the decision, assist in completing a review of the PIN and may be essential should the matter be referred to the Magistrates Court.

Date the department became aware of the offence.	<INSERT details THIS MUST BE COMPLETED FOR KPI REPORTING>
Date(s) & time of offence	<INSERT date(s) and time of incident(s)>

Day of the week	<INSERT day of the week e.g. Monday, Thursday>
Location	<INSERT Lot and plan, GPS or other>
Permit/ Authority details	<INSERT details>
Site activity	<INSERT details on background and activities being conducted on site>
Vehicle/vessel details	<INSERT details of make, model, registration, colour, VIN/chassis number>
Compliance history	<INSERT all details and results of compliance history searches >
Contact with alleged offender- have you notified them that PINS are being issued?	<INSERT summary details of the incident> <INSERT all details of contact had with alleged offenders/ ATTACH CORRESPONDENCE> <INSERT details of when you showed your authorised officer/conservation officer etc ID card if required>>
Possible mitigating circumstances	<INSERT these circumstances that should be considered by the decision maker>
Other information	<INSERT other details relating to the incident>

3. Alleged offence details

Please outline what offences are alleged to have been committed. Details include the legislation, section number, penalty units and limitation periods. Please also include the [PIN offence code](#) these can also be located on insite and Ecosteps.

Note: If there are more than three separate PIN-able offences being considered the matters should form the basis of a complaint and summons and be heard by a Magistrate.

No.	Section	PIN offence code	Legislation	Penalty Units	Statute Limitation
1	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>
2	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>
3	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>	<INSERT details>

4. Elements and supporting evidence

Please outline the elements of each of the offences listed above. Provide in detail what evidence is available to satisfy each and every element of the offence(s), the source, how it is/was obtained and when it will/was obtained.

Offence No.	Elements	Type of evidence	Source of evidence	How evidence was obtained
1.	<INSERT details>An element is a fact that must be proven and is integral to the offence. Eg. Identification of the offender, wilful action, with or without permission>	<INSERT details>eg. list all documentary (licence, statements)>	<INSERT details eg. department files, admissions from offender, witnesses>	<INSERT details via notice, site inspection, volunteered>
2.	<INSERT details>An element is a fact that must be proven and is integral to the offence. Eg. Identification of the offender, wilful action, with or without permission>	<INSERT details>eg. documentary (licence, statements)>	<INSERT details eg. department files, admissions from offender, witnesses>	<INSERT details via notice, site inspection, volunteered>
3.	<INSERT details>An element is a fact that must be proven and is integral to the offence. Eg. Identification of the offender, wilful action, with or without permission>	<INSERT details>eg. documentary (licence, statements)>	<INSERT details eg. department files, admissions from offender, witnesses>	<INSERT details via notice, site inspection, volunteered>
4.	<INSERT details>An element is a fact that must be proven and is integral to the offence. Eg. Identification of the offender, wilful action, with or without permission>	<INSERT details>eg. documentary (licence, statements)>	<INSERT details eg. department files, admissions from offender, witnesses>	<INSERT details via notice, site inspection, volunteered>

5. Alleged offender correspondence- relating to the alleged breach

Please detail correspondence related to the alleged breach that has been received from the alleged offender, or sent from the department to the alleged offender. Attach copies of the correspondence (including letters, emails, file notes of phone conversations, etc.).

Date	Type of Correspondence	Brief description of correspondence	Which alleged offence does the correspondence relate to?	Copy Attached?
<INSERT details>	<INSERT details> eg. email/letter/phone call	<INSERT details>	<INSERT details> Offence number should correspond with Part 3 where alleged offences are detailed	<INSERT details YES/NO. If no, explain why>
<INSERT details date>	<INSERT details eg. email/letter/phone call>	<INSERT details of what correspondence was about>	<INSERT details> Offence number should correspond with Part 3 where alleged offences are detailed	<INSERT details YES/NO. If no, explain why>
<INSERT details date>	<INSERT details eg. email/letter/phone call>	<INSERT details of what correspondence was about>	<INSERT details> Offence number should correspond with Part 3 where alleged offences are detailed	<INSERT details YES/NO. If no, explain why>

6. Other enforcement options

Please detail what other enforcement options have been considered for this matter [as per the departments Enforcement Guidelines](#).

Have other enforcement options been considered?	<INSERT details YES/NO>
If yes, what are they and the reasons for using/not using them?	<INSERT details eg. warning letter, EPO>
If no, please advise why no other options have been considered?	<INSERT details>

7. Recommendation

The officer is required to make a recommendation in relation to the matter under investigation.

<INSERT details>

8. Acknowledgement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature: <INSERT details>	Signature: <INSERT details>
Print Name: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Position: <INSERT details>
Date: <INSERT details>	Date: <INSERT details>

9. Endorsement

The appropriate manager or supervisor is required to either support / not support the decision and sign and date below.

Decision for recommendation		<INSERT details support/ not support>	
Reasons for decision <INSERT details>eg: I support this decision for the reasons set out above and I note Mr xxxx has previously received a warning letter in relation to this matter. > <INSERT> eg: I do not approve the above recommendation as I consider it more appropriate for the Department to take an educational approach to this breach>			
Signature: <INSERT details>		Print Name: <INSERT details>	
Position: <INSERT details>		Date: <INSERT details>	

Please ensure that the PIN, cover letter and alleged breach report are saved into Ecotrack.

Introduction

This regulatory powers guide is a quick summary to help authorised officers manage the risks faced while carrying out site inspections.

This guide outlines the available statutory powers and the associated responsibilities that must be met when exercising those powers. They do not replace the requisite knowledge of the relevant Act or Acts and, especially, an understanding of the specific terms used in the legislation.

EHP officers should know the relevant statutory provisions and only use these summaries as a guide and prompt. They outline the regulatory powers expected 'in the field'. There may be additional ones, especially in regard to handling seized things, which are not in these guides.

EHP officers must also ensure that they are correctly appointed as an 'authorised officer' or 'authorised person' under the relevant legislation and that they are aware of any restrictions when exercising regulatory powers.

In these guides, the acronym 'AO' stands for 'authorised officer' or 'authorised person'.

Each guide has a reprint number and date. Always check that the information in the guide reflects current legislation.

Also, at any reasonable time, the authorised officer (AO) may enter land:

- If unlawful environmental harm has occurred for the purpose of finding out or confirming the source of the release of a contaminant (s453).
- To conduct a preliminary investigation if the AO believes the land is contaminated (s454). Note: the AO may only enter the land with the consent of the owner and occupier or if 5 business days written notice has been given. The AO must take all reasonable steps to cause as little inconvenience and as little damage as practicable.
- To do work (need an Order of a Magistrate before entry to do work in the absence of a specific power to enter and conduct work) (s 458). Written notice must be given to the owner or occupier of the land.
- To carry out a site investigation if the site is listed in the environmental management register as being contaminated and the contaminant has the potential to cause serious environmental harm and a person, animal or other part of the environment may be exposed to the contaminant (s458)
- If it is necessary or desirable to cross land to access other land (i.e. landlocked land), entry may occur (s 455). Note: the AO may only enter the land with the consent of the occupier or if 5 business days written notice has been given. However, if the AO has a reasonable belief there is an imminent risk of environmental harm being caused to or from the primary land, they can cross the land without the consent of, or notice to, the occupier, provided the AO has told, or has made a reasonable attempt to tell the occupier that the person is permitted to enter the access land. The AO must take all reasonable steps to cause as little inconvenience and as little damage as practicable.

An AO may enter or board a vehicle if the AO has reasonable grounds (s459):

- For suspecting the vehicle has been used in the commission of an offence against the EP Act
- The vehicle or a thing in or on the vehicle can be used as evidence of the commission of an offence against the EP Act
- If the vehicle is a train or a type prescribed by regulation and is being used to transport waste of a type prescribed by regulation

The AO may stop the vehicle and act with necessary and reasonable force to board the vehicle (s459 (3)).

General Powers

An authorised person who enters a place, or enters or boards a vehicle may (s460):

- Search any part of the place or vehicle
- Inspect, examine, test, measure, photograph or film the place or vehicle or anything in or on the place or vehicle
- Take samples of any contaminant, substance or thing in or on the place or vehicle
- Record, measure, test or analyse the release of contaminants into the environment from the place or vehicle
- Take extracts from, or make copies of, any documents in or on the place or vehicle (this does not apply if a place has been entered for purpose of conducting a preliminary investigation)
- Take into or onto the place or vehicle any persons, equipment and materials the authorised person reasonably requires for the purpose of exercising any powers in relation to the place or vehicle
- Install or maintain any equipment and materials in or on the place or vehicle the authorised person reasonably requires for the purpose of conducting a monitoring program for the release of contaminants into the environment from the place or vehicle
- Require the occupier of the place, or any person in or on the place or vehicle, to give to the authorised person reasonable help for the exercise of the powers mentioned above
- If the authorised person enters or boards a vehicle—by written notice (or orally and confirmed by written notice as soon as possible) given to the person in control of the vehicle, require the person:
 - o to take the vehicle to a stated reasonable place by a stated reasonable time
 - o if necessary, to remain in control of the vehicle at the place for a reasonable time to enable the authorised person to exercise the powers mentioned above.

Environmental Protection Act 1994

Current as at 23 September 2013

Powers of entry

The AO may enter a place (s452) if:

- The occupier consents to the entry
- Please note that if the entry (with consent) is for exercising a power under chapter 7, part 5B (Clean Up Notices) or 8 (Contaminated Land) of the EP Act, the **occupier** and **owner** of the property must consent to the entry
- It is a public place and the entry is made when the place is open to the public
- It is a place to which an environmental authority relates and the entry is made when:
 - o the activity to which the authority relates is being carried out
 - o the place is open for conduct of business
 - o the place is otherwise open for entry
- It is a place to which an agricultural ERA relates and the entry is made when—
 - o the activity is being carried out
 - o the place is open for conduct of business
 - o the place is otherwise open for entry
- It is a place to which a prescribed condition for a small scale mining activity relates and the entry is made when—
 - o the activity to which the condition relates is being carried out
 - o the place is open for conduct of business
 - o the place is otherwise open for entry
- It is a place where an industry is conducted and the entry is made when—
 - o the place is open for conduct of business
 - o is otherwise open for entry

Responding to obstruction-type offences

Generally, 'obstruction' is defined as 'to obstruct, hinder, assault or threaten to obstruct' an authorised officer. Staff should ensure they are aware of the statutory definition of 'obstruction' as it relates to the Act(s) under which they are appointed as an authorised officer or authorised person.

Statement

I consider what you are doing is ...<state offence, e.g. 'obstructing an authorised officer'>.

I warn you that this is an offence. Is there anything I can do or say so that you will allow me to...? <state the power to be exercised or the requirement>

Procedure

Safety

Are you or other staff at risk of harm?

Authority

Are you an authorised officer and is your appointment 'restricted'?

Lawful

Is the exercise of the power lawful and permitted under the Act?

Communicate

Have you clearly explained your authority and intended action?

Excuse

Does the person have a reasonable excuse for non-compliance?

Responsibilities

Have the statutory responsibilities relating to the entry been met?

- Have you identified yourself as an authorised officer or authorised person?
- Have you allowed an opportunity for compliance?
- Is a written notice of the regulatory power required?

– Are there any other statutory requirements?

Always remember to maintain situational awareness when conducting compliance inspections (think meerkat) and keep safe.

Seizure

A thing may be seized (s461) if there is evidence:

- For which a warrant was issued
- Consistent with the purpose of consensual entry
- Where seizure will prevent the loss, destruction or concealment of a thing or prevent repetition or continuation of the offence, or where the AO has a reasonable belief that the thing has been used in committing an offence against the EP Act.

After a thing is seized by an AO a receipt must be given as soon as practicable to the person, from whom it was seized or left at the place of seizure in a conspicuous secure position, describing the condition of the seized thing (s462).

If the seized thing is not forfeited (s463), return it to the owner at the end of six months or, if a proceeding is started within six months, at the end of the proceeding or appeal (s462 (5)).

Return the seized thing immediately when satisfied that it is no longer needed to be retained as evidence (s462 (6)).

Allow the owner access to the seized thing to inspect or copy it (if it is a document) unless it is impracticable or unreasonable (s462 (4)).

Coercive powers

An AO can

- Require a person to state the person's name and address if the AO finds the person committing an offence or finds the person in circumstances that lead, or has information that leads the AO to suspect on reasonable grounds that the person has committed an offence against the EP Act (s464).
- Require a person to answer a question about an offence against the EP Act if the AO suspects, on reasonable grounds, that the person may be able to give information about the offence (s465).
- Require a person to produce for inspection a document required to be held or kept under the EP Act or a development condition of a development approval (s466).

- Give written direction (emergency direction) to a person to release a contaminant into the environment if satisfied that it is necessary and reasonable to release the contaminant because of an emergency and there is no other practicable alternative to the release (s467(1)).

Other responsibilities

The AO must produce their identity card for inspection and keep it clearly displayed if exercising a power on a person (s449).

Written notice of damage must be given immediately to the owner of the thing or, if this is not practicable, secure the notice in a conspicuous spot at the place of damage (s486).

Introduction

This regulatory powers guide is a quick summary to help authorised officers manage the risks faced while carrying out investigations.

This guide outlines the available statutory powers and the associated responsibilities that must be met when exercising those powers. They do not replace the requisite knowledge of the relevant Act or Acts and, especially, an understanding of the specific terms used in the legislation.

Staff should know the relevant statutory provisions and only use these summaries as a guide and prompt. They outline the regulatory powers expected 'in the field'. There may be additional ones, especially in regard to handling seized things, which are not in these guides.

Staff must also ensure that they are correctly appointed as an 'authorised officer' or 'authorised person' under the relevant legislation and that they are aware of any restrictions when exercising regulatory powers.

In these guides, the acronym 'AO' stands for 'authorised officer' or 'authorised person'.

Each guide has a reprint number and date. Always check that the information in the guide reflects current legislation.

The AO may also enter a place (s452) where

- The occupier consents to the entry and, if the entry is for exercising a power under chapter 7, part 5B or 8 of the EP Act, its owner consents
- It is a public place and the entry is made when the place is open to the public
- It is a place to which an environmental authority relates and the entry is made when:
 - o the mining or chapter 5A activity to which the authority relates is being carried out
 - o the place is open for conduct of business
 - o the place is otherwise open for entry
- It is a place to which an agricultural ERA, a registration certificate, a development approval subject to a development condition or a code of environmental compliance relates and the entry is made when—
 - o the chapter 4 activity to which the certificate, approval or code relates is being carried out
 - o the place is open for conduct of business
 - o the place is otherwise open for entry
- It is a place where an industry is conducted and the entry is made when—
 - o the place is open for conduct of business
 - o is otherwise open for entry
 - o the entry is authorised by a warrant
 - o for land mentioned in chapter 7, part 5B or 8—the entry is authorised by an order under section 458
 - o or under section 453, 454 or 455.

An AO may enter or board a vehicle if the AO has reasonable grounds (s459):

- For suspecting the vehicle has been used in the commission of an offence against the EP Act
- The vehicle or a thing in or on the vehicle can be used as evidence of the commission of an offence against the EP Act
- If the vehicle is a train or a type prescribed by regulation and is being used to transport waste of a type prescribed by regulation

The AO may stop the vehicle and act with necessary and reasonable force to board the vehicle (s459 (3)).

General Powers

An authorised person who enters a place, or enters or boards a vehicle may (s460):

- Search any part of the place or vehicle
- Inspect, examine, test, measure, photograph or film the place or vehicle or anything in or on the place or vehicle
- Take samples of any contaminant, substance or thing in or on the place or vehicle
- Record, measure, test or analyse the release of contaminants into the environment from the place or vehicle
- Take extracts from, or make copies of, any documents in or on the place or vehicle (this does not apply if a place has been entered for purpose of conducting a preliminary investigation)
- Take into or onto the place or vehicle any persons, equipment and materials the authorised person reasonably requires for the purpose of exercising any powers in relation to the place or vehicle
- Install or maintain any equipment and materials in or on the place or vehicle the authorised person reasonably requires for the purpose of conducting a monitoring program for the release of contaminants into the environment from the place or vehicle
- Require the occupier of the place, or any person in or on the place or vehicle, to give to the authorised person reasonable help for the exercise of the powers mentioned above
- If the authorised person enters or boards a vehicle—by written notice (or orally and confirmed by written notice as soon as possible) given to the person in control of the vehicle, require the person:
 - o to take the vehicle to a stated reasonable place by a stated reasonable time
 - o if necessary, to remain in control of the vehicle at the place for a reasonable time to enable the authorised person to exercise the powers mentioned above.

Environmental Protection Act 1994

Reprint 9L (10.06.2011)

Powers of entry

At any reasonable time, the authorised officer (AO) may enter land:

- If unlawful environmental harm has occurred for the purpose of finding out or confirming the source of the release of a contaminant (s453). The AO may use the force and help that is necessary and reasonable in the circumstances.
- To conduct a preliminary investigation if the AO believes the land is contaminated (s454). The AO may only enter the land with the consent of the owner and occupier and if 5 business days written notice has been given. The AO must take all reasonable steps to cause as little inconvenience and as little damage as practicable.
- To do work (need an Order of a Magistrate before entry to do work in the absence of a specific power to enter and conduct work) (s 458). Written notice must be given to the owner or occupier of the land.
- To carry out a site investigation if the site is listed in the environmental management register as being contaminated and the contaminant has the potential to cause serious environmental harm and a person, animal or other part of the environment may be exposed to the contaminant (s458)
- If it is necessary or desirable to cross land to access other land (i.e. landlocked land), entry may occur (s 455)

If it is authorised by a warrant (456) —the AO must identify self, provide a copy of the warrant and tell the person that it authorises entry, and give the occupier the opportunity to allow entry. If no person is present, make a reasonable attempt to contact the owner or occupier, tell them that entry is permitted by warrant and provide an opportunity to allow entry without force. If the AO reasonably believes that warrant execution may be frustrated, immediate entry may be made; special warrants (s457).

Responding to obstruction-type offences

Generally, 'obstruction' is defined as 'to obstruct, hinder, assault or threaten to obstruct' an authorised officer. Staff should ensure they are aware of the statutory definition of 'obstruction' as it relates to the Act(s) under which they are appointed as an authorised officer or authorised person.

Statement

I consider what you are doing is ... <state offence, e.g. 'obstructing an authorised officer'>.

I warn you that this is an offence. Is there anything I can do or say so that you will allow me to...? <state the power to be exercised or the requirement>

Procedure

Safety

Are you or other staff at risk of harm?

Authority

Are you an authorised officer and is your appointment 'restricted'?

Lawful

Is the exercise of the power lawful and permitted under the Act?

Communicate

Have you clearly explained your authority and intended action?

Excuse

Does the person have a reasonable excuse for non-compliance?

Responsibilities

Have the statutory responsibilities relating to the entry been met?

- Have you identified yourself as an authorised officer or authorised person?
- Have you allowed an opportunity for compliance?
- Is a written notice of the regulatory power required?

– Are there any other statutory requirements?

Seizure

A thing may be seized (s461) if there is evidence:

- For which a warrant was issued
- Consistent with the purpose of consensual entry
- Where seizure will prevent the loss, destruction or concealment of a thing or prevent repetition or continuation of the offence, or where the AO has a reasonable belief that the thing has been used in committing an offence against the EP Act.

After a thing is seized by an AO a receipt must be given as soon as practicable to the person, from whom it was seized or left at the place of seizure in a conspicuous secure position, describing the condition of the seized thing (s462).

If the seized thing is not forfeited (s463), return it to the owner at the end of six months or, if a proceeding is started within six months, at the end of the proceeding or appeal (s462 (5)).

Return the seized thing immediately when satisfied that it is no longer needed to be retained as evidence (s462 (6)).

Allow the owner access to the seized thing to inspect or copy it (if it is a document) unless it is impracticable or unreasonable (s462 (4)).

Coercive powers

An AO can

- Require a person to state the person's name and address if the AO finds the person committing an offence or finds the person in circumstances that lead, or has information that leads the AO to suspect on reasonable grounds that the person has committed an offence against the EP Act (s464).
- Require a person to answer a question about an offence against the EP Act if the AO suspects, on reasonable grounds, that the person may be able to give information about the offence (s456).
- Require a person to produce for inspection a document required to be held or kept under the EP Act or a development condition of a development approval (s466).

- Direct any person to take urgent action, where material environmental harm has been, or is likely to be, caused, to prevent or minimise the harm being caused or rehabilitate or restore the environment because of the harm (s467).
- Give written direction (emergency direction) to a person to release a contaminant into the environment if satisfied that it is necessary and reasonable to release the contaminant because of an emergency and there is no other practicable alternative to the release (468).

Other responsibilities

The AO must produce their identity card for inspection or clearly display it before exercising a power. If this is not practicable, produce the identity card for the person's inspection at the first reasonable opportunity (s449).

Written notice of damage must be given immediately to the owner of the thing or, if this is not practicable, secure the notice in a conspicuous spot at the place of damage (s486).

RTI DL RELEASE - EHP

Assessment Report

Environmental Protection Act 1994

Emergency Powers

This document will assist Environmental Services officers to document the information considered when forming the decision to exercise the emergency powers pursuant to s467 of the Environmental Protection Act 1994.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>

Note: An Assessment Report recommending a decision must be structured in the format shown below. Explanatory notes for completing the report are given under each heading. The report is to be approved by the authorised person's manager.

Brief History of the Matter

Outline briefly any historical information relevant to this decision. This information should be provided in succinct chronological dot points.

<INSERT Provide details of how you became aware of the situation and any historical information relevant to exercising the powers under s467.>

How the Powers Were/Will be Exercised

An authorised person may exercise the powers under s467 of the *Environmental Protection Act 1994* (the Act) in different ways. Specify how the emergency powers were exercised or will be exercised;

- ☐ A person <INSERT [was] OR [will be]> directed to take specified reasonable action within a specified reasonable time.

<INSERT Provide details of the direction that [was] OR [will be] given to the person.>

OR



- ☐ The authorised person <INSERT [has taken] OR [will take]> the action.
<INSERT Provide details of the action that [has been] OR [will be] taken by the authorised person.>

OR

- ☐ The authorised person <INSERT [has authorised] OR [will authorise]> another person to take the action.
<INSERT Provide details of the person who [was] OR [will be] authorised to take the action and specify the action that [was] OR [will be] taken.>

What is the environmental harm that has been or is likely to be caused?

Specify the type of environmental harm that <INSERT [required] OR [will require]> the use of the emergency powers.

- ☐ Material environmental harm.
☐ Serious environmental harm.

<INSERT Advise how you formed the reasonable belief regarding the nature of the harm.>

<INSERT List the evidence upon which the reasonable belief was based.>

Why urgent action is necessary?

For the emergency powers to be exercised, the authorised person must be satisfied on reasonable grounds that urgent action is necessary to prevent or minimise the harm being caused or to rehabilitate or restore the environment because of the harm. Describe the facts and circumstances surrounding the matter and provide reasons why urgent action is required.

<INSERT Describe the facts and circumstances that indicate urgent action is necessary.>

<INSERT List any evidence supporting the belief that the matter is urgent.>

What action is required?

Specify the type of reasonable action that <INSERT [was] OR [will be]> required:

- ☐ action to prevent or minimise the harm being caused
☐ action to rehabilitate or restore the environment.

To ensure the actions are reasonable officers are required to provide justification for the inclusion of the action.

Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
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Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given
Action taken or direction given	Justification for the action taken or direction given

What is the timeframe for completing the action?

The authorised person must specify a reasonable time for the person to take the specified reasonable action.

<INSERT Provide details of the time frame given and why it was considered reasonable in the circumstances.>

Will the direction be given orally or by written notice?

<INSERT Provide details explaining why a direction will be given verbally and timeframes for confirming direction by written notice>

Will the authorised person be taking action?

<INSERT Provide details explaining how entry will occur, other powers to be used, what evidence will be sought, what reasonable force may have been>

What items, if any, were seized or damaged?

Note: In instances where this 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 a person authorised by the authorised person. The authorised person should provide justification for the items seized and/or outline the circumstances surrounding how the damage occurred.

Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances
Items seized or damaged	Justification and circumstances

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

Pursuant to s486, if an authorised person, or a person authorised by an authorised person, seizes or damages anything in the exercise of the 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.

- ☐ Written notice of the particulars of the seizure or damage was given to the person OR
- ☐ written notice of the particulars of the seizure or damage was left in a secure and conspicuous position at the place where the seizure or damage happened OR
- ☐ N/A.

<INSERT If applicable, provide details of the person to whom the notice was given. If no one was available, provide details of the place the notice was left and whether it was placed in a secure and conspicuous position.>

Recommendation/Action Taken

The authorised person must provide either a recommendation for action to be taken, or an account of action already taken, action for approval by the authorised person's supervisor.

<INSERT Recommended approval of [action to be taken] OR [action already taken].>

<p>Signature:</p>	<p>Date:</p>
--------------------------	---------------------

<INSERT Name of authorised person or completing officer>

<Insert Position of authorised person or completing officer>

Approval

<p>Signature:</p>	<p>Date:</p>
--------------------------	---------------------

<INSERT Name of authorised person>

< Position of authorised person>

<INSERT Delegate of administering authority>

<INSERT Relevant legislation>

Enquiries:

<INSERT Permit & licensing mgt or local office.>

Ph. <INSERT local no>

Fax. <INSERT local no>

Assessment Report

Environmental Protection Act 1994

Cost Recovery Notice

This document is intended for internal use to assist Environmental Services officers to record the information considered by the Department of Environment and Resource Management (DERM) when deciding to issue a Cost Recovery Notice.

Identifying details	
Compliance activity number	<INSERT Number>
EcoTrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant number	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered business address	<INSERT Address>

Note:

1. Assessment Reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be approved by the responsible officer, supervisor, and the delegated decision-maker.

1. Brief History of the Matter

Please briefly outline any historical information relevant to this decision.

<INSERT Provide brief outline of the historical information.>

2. Grounds for Use of a Cost Recovery Notice

The grounds for use of a Cost Recovery Notice can be found in s363N of the *Environmental Protection Act 1994* (the Act). Officers are required to identify the relevant grounds upon which the decision to use a Cost Recovery Notice applies.

☐ The prescribed person has been identified.

If a Clean-up Notice has been issued

☐ The recipient has failed to comply with the notice and an authorised person or contractor has carried out any of the actions stated in the Clean-up Notice (s363K).

Re

OR

- ☐ The decision to issue the Clean-up Notice has been stayed by the court and, during the period of the stay, an authorised person or contractor carried out the actions stated in the clean up notice (s363K), and:
- ☐ the appeal has ended without an appeal decision being made by the court **OR**
 - ☐ the appeal decision confirms the decision to issue the Clean-up Notice and required the recipient to take the clean up action

AND

- ☐ DERM has reasonably incurred costs and expenses for taking an action stated in the cleanup notice or monitoring compliance with the Clean-up Notice

OR

- ☐ DERM has reasonably incurred costs and expenses in monitoring compliance by the recipient with the Clean-up Notice.

If a clean up notice has not been issued

- ☐ The intended recipient of the Cost Recovery Notice is a person whom DERM reasonably believes to be a prescribed person for a contamination incident

AND

- ☐ an authorised person has taken action under DERM's emergency powers (s467 of the Act) in relation to serious or material environmental harm caused or likely to be caused by the incident

AND

- ☐ DERM has reasonably incurred costs and expenses for taking action under s467.

Ensure that the costs and expenses incurred will be payable

Subsection 363N(5) of the Act lists the circumstances where the costs incurred are not payable by the recipient.

- ☐ None of the circumstances specified in s363N(5) where the costs incurred will not be payable by the recipient apply to this situation.

3. Expand Upon the Grounds

Expand upon the grounds identified for issuing the Cost Recovery Notice.

If a Clean-up Notice has been issued, officers will need to link the actions taken by the authorised person or contractor and the costs claimed by DERM with the requirements set out in the Clean-up Notice, and provide reasons to justify why DERM had to carry out the actions in place of the recipient of the Clean-up Notice.

If an authorised person has acted under the emergency powers pursuant to s467 of the Act, officers must provide an explanation as to why and how the actions were taken, the costs were incurred, the urgency of the situation and provide justification for the dollar value claimed.

Each ground should be listed independently and be allocated a separate number.

Number	Specific ground
1	<INSERT ABC Pty Ltd failed to comply with the clean-up notice issued on 11th February 2009 and actions stated in the clean-up notice were carried out by XYZ Pty Ltd.>

2	<INSERT Details>
---	------------------

4. Detail the Matters Considered

The purpose of the following table is to ensure that there is evidence to support all of the grounds for using the tool. This is achieved by linking the elements of the grounds to the information gathered and the conclusions formed. This section should also record how DERM has met any statutory requirements associated with the use of the tool.

When analysing information or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirements	Evidence	Facts and circumstances
List the elements of any alleged offence or (for grounds which are not offences) list the legislative requirement to be met by DERM.	Identify the information considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings).	Detail the facts and circumstance that support DERM's findings.
Number 1 (Number taken from Section 2)		
10 July 2010: The recipient of a Clean-up Notice.....	A Clean-up Notice was issued to Mr JP Citizen, sole director/secretary of ABC Pty Ltd on 10 July 2010.	The clean up notice required Mr Citizen to take action to clean up toxic sludge leaking from ponds at the site of ABC Pty Ltd by 10 August 2010.
Has failed to comply with the Clean-up Notice.....	A site inspection was carried out by senior environmental officer Mr Jack Green at 123 Creek Road, Greendale on 12 August 2010.	The site inspection revealed that Mr Citizen had not carried out the actions set out the Clean-up Notice in the required time frame.
An authorised person or person acting under the direction of an authorised person (the contractor) has taken the actions stated in the clean up notice.....	DERM authorised contractor XYZ Pty Ltd to carry out the actions stated in the Clean-up Notice on 15 August 2010.	XYZ Pty Ltd was engaged by DERM to clean up the toxic sludge leaking from ponds owned by ABC Pty Ltd.
DERM incurred reasonable costs and expenses.....	XYZ Pty Ltd has issued an invoice to DERM for the clean-up work carried out.(Copy attached to this Assessment Report).	XYZ Pty Ltd has invoiced DERM for the amount of \$20,000.00 which is the cost to DERM reasonably incurred when carrying out the actions stated in

		the Clean-up Notice that the recipient failed to carry out.

5. Calculate the Monetary Value

Officers are required to identify the monetary amount being sought and show the calculations used to determine this amount. Costs and expenses claimed must be defensible and reasonable in the circumstances. They can include labour, equipment and administrative costs and expenses.

Costs claimed	Monetary value
For example: Cost of consultant	For example: Engaged for 20 hours @ \$330 per hour (including GST) = \$6,600
For example: Cost of full time equivalents (FTEs)	For example: \$10,000
For example: Cost of sampling/monitoring	For example: \$5,000
For example: Cost of works	For example: Contractors engaged for 18 hours @ \$1,100.00 per hour = \$19,800
For example: The total amount being sought by the State	For example: \$41,400

A copy of the relevant documentation for each cost claimed must be attached to the Assessment Report.

To ensure the costs claimed are reasonable, officers are required to provide justification for the inclusion of the cost.

Costs claimed	Justification
For example: Cost of consultant	For example: It was necessary to hire a consultant to perform scientific testing to ascertain the nature and extent of the environmental damage.
Cost claimed	Justification
Cost claimed	Justification
Cost claimed	Justification
Cost claimed	Justification

Cost claimed		Justification	
Cost claimed		Justification	
Cost claimed		Justification	
Cost claimed		Justification	

The Investigating Officer is required to notify the affected person that DERM is considering issuing a Cost Recovery Notice and that the individual is welcome to make representation to DERM as to why this action should not be taken. Any information provided by the affected person is to be documented and considered.

- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Please describe how this was achieved.>
 - ☐ All information and/or defences provided were considered.
<INSERT Please describe any information or defences provided.>
 - ☐ DERM has considered the information or defences provided.
<INSERT What consideration was given and what conclusions has DERM formed?>
 - ☐ The decision-maker and responsible officer are free from bias or the perception of bias.

The responsible officer is required to make a recommendation in relation to the allegation.

<INSERT Recommendation.>

Responsible officer	Supervisor
Print name:	Print name:
Date:	Date:

Delegate decision-maker	Approve/reject recommendation (circle one)

Reasons for decision

I endorse this recommendation based upon the information set out above.

Or, I endorse this decision for the reasons set out above and I note Mr JP Citizen has previously received a warning letter in relation to this matter.

Or, I reject the above recommendation as I consider it more appropriate for DERM to take an educational approach to this breach.

Print name:

Date:

DRAFT
RTI DL RELEASE - EHP

Assessment Report

Environmental Protection Act 1994

Part 1 – Notice Requiring a Draft Transitional Environmental Program (TEP)

This document is intended for internal use to assist Environmental Services officers to record the information considered by DERM when deciding to issue a notice requiring a draft TEP.

Identifying details	
Compliance activity number	<INSERT Number>
Ecotrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant name	<INSERT Number>
Trading as	<INSERT Trading as details>
Registered office or place of business	<INSERT Registered office or place of business>

Note:

1. Assessment Reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be endorsed by the responsible officer, supervisor and the delegated decision-maker.

1. Brief History of the Matter

Briefly outline any historical information relevant to this decision in chronological order.

<INSERT Briefly outline the historical information in chronological order.>

2. Grounds for Issuing a Notice Requiring a Draft TEP

Section 332 of the *Environmental Protection Act 1994* provides that DERM may require the submission of a draft Transitional Environmental Program (TEP) in certain circumstances. Identify on which of the following grounds the decision to issue a notice requiring a draft TEP is based.

DERM may require a person or public authority to prepare and submit to it for approval a draft TEP:

☐ As a condition of an Environmental Authority (EA).

OR

Re l

Part 1 – Notice Requiring a Draft Transitional Environmental Program (TEP)

☐ As a development condition of a Development Approval (DA).

DERM may also require a person or public authority to prepare and submit to it for approval a draft Transitional Environmental Program if it is satisfied:

☐ An activity carried out, or proposed to be carried out, by the person or authority is causing, or may cause, unlawful environmental harm.

OR

☐ It is not practicable for the person or public authority to comply with an environmental protection policy or regulation on its commencement.

OR

☐ That a condition of an Environmental Authority held by the person or public authority is, or has been, contravened.

OR

☐ That a standard environmental condition of a code of environmental compliance for a Chapter 4 activity is, or has been, contravened by the person or public authority.

OR

☐ A development condition of a Development Approval is, or has been, contravened and the person or public authority is:

☐ an owner of the land for which the approval is granted or

☐ another person in whom the benefit of the approval vests.

3. Expand Upon the Grounds

Expand upon the grounds identified for issuing the notice requiring a draft TEP. This can include identifying an alleged offence or any statutory requirement which must be met prior to DERM issuing the notice.

Each ground should be listed independently and allocated a separate number.

Number	Specific Ground
1	Example: ABC Pty Ltd is a timber preservation/treatment operator. While conducting timber preservation/treatment activities, ABC Pty Ltd has released stormwater from its operating site that does not comply with release limits, thereby causing unlawful environmental harm. If ABC Pty Ltd does not upgrade its site and improve its stormwater management system, it is likely that non-compliant releases of stormwater from the site will continue, thereby causing further environmental harm.
2	<INSERT>
3	<INSERT>
4	<INSERT>

Part 1 – Notice Requiring a Draft Transitional Environmental Program (TEP)

4. Detail the Matters Considered

The purpose of the following table is to ensure that there is evidence to support the use of the statutory tool. This is achieved by linking the elements of the breach to the evidence gathered and the conclusions formed (i.e. the facts and circumstances).

When analysing evidence or developing the facts and circumstances, officers are encouraged to consider the accuracy and relevance of the information available, historical details, professional expertise and the weight attributed to any direct testimony provided.

Elements of the offence or legislative requirement	Evidence	Facts and Circumstances
List the elements of any grounds for issuing the notice requiring a TEP	Identify the evidence considered which is relevant to the elements or requirement (i.e. statements, photographs, and recordings)	Detail the facts and circumstance that support DERM's findings.
Number 1 (Number taken from Section 2)		
An activity carried out, or proposed to be carried out by the person.....	Compliance Inspection CA123: Notes from officer's official notebook taken during site inspection on 20 May 2008.	ABC Pty Ltd carries out timber preservation and treatment activities at its site at 123 Creek Road, Murphyville. The inspection has shown that whilst the operators have some stormwater controls in place, it is apparent that the current system would not be able to effectively manage an increase in production and/or increased rain levels.
	Photographs (x20) of the ABC Pty Ltd site taken during the site inspection on 20 May 2008.	Photographs taken of the existing stormwater management infrastructure, including the stormwater catchments show that the catchments are 80% full. An increase in production or heavy rain is likely to fill the catchments to overflowing.
Is causing, or may cause, unlawful environmental harm.....	Compliance inspection CA456: Notes from officer's official notebook taken during compliance inspection on 3 May 2009.	A visual inspection of the stormwater catchments show that they are 90% full.
	Copy of letter to ABC Pty Ltd from DERM dated 12 May 2010.	Letter to ABC Pty Ltd outlining DERM's concerns in relation to stormwater controls and

Part 1 – Notice Requiring a Draft Transitional Environmental Program (TEP)

		management on the site and reminding the site operator of its responsibilities.
	Copy of the company's stormwater quality monitoring results for the past 12 months.	The stormwater quality monitoring results indicate that ABC Pty Ltd has exceeded its release limits on 2 occasions in the past 12 months.
	Compliance inspection CA780: Copy of the site operator's stormwater quality monitoring results for the previous 12 months collected from the operator during compliance inspection on 15 May 2010.	The stormwater quality monitoring results indicate that the operator has exceeded stormwater release limits on 6 occasions in the past 12 months.
	Compliance inspection CA780: Notes from officer's official notebook taken during compliance inspection on 15 May 2010.	<p>During the site inspection, Departmental officer Mary Green had further discussions with the site operator regarding the implications of the repeated exceedances of the stormwater release limits.</p> <p>The site operator says that ABC Pty Ltd has made significant investment in stormwater management infrastructure in 2005. However, the business has grown substantially since this time.</p> <p>During the discussions the site operator indicated an acceptance of the need to investigate and pursue further stormwater management improvements and included a commitment to consider drafting a voluntary TEP.</p>
	File note written by environmental officer Mary Green on 23 June 2010.	<p>ABC Pty Ltd is carrying out timber preservation/treatment activities at a site at 123 Creek Road, Murphyville.</p> <p>Visual inspections of the site in 2008, 2009 and 2010 have indicated that the business has grown substantially and the stormwater management system and infrastructure are no longer coping and require improvements.</p>

Part 1 – Notice Requiring a Draft Transitional Environmental Program (TEP)

		<p>Annual stormwater release quality monitoring records for 2009 and 2010 indicate that ABC Pty Ltd has exceeded its stormwater release limits on a number of occasions.</p> <p>The repeated exceedences of the stormwater release limits by ABC Pty Ltd are causing unlawful environmental harm and may cause further unlawful environmental harm. The operator indicated that it would voluntarily submit a draft TEP. However, a voluntary draft TEP has not been submitted.</p> <p>In the circumstances, the Department considers that a notice requiring a draft TEP should be issued to ABC Pty Ltd.</p>
Number 2		
<INSERT>	<INSERT>	<INSERT>
<INSERT>	<INSERT>	<INSERT>
Number 3		
<INSERT>	<INSERT>	<INSERT>
<INSERT>	<INSERT>	<INSERT>

5. Natural Justice

The investigating officer is required to notify the affected person that DERM is considering issuing a notice requiring a TEP and that the individual may make representations to DERM as to why this action should not be taken. Any information provided by the affected person is to be documented and considered.

- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ All information and/or defences provided were considered.
<INSERT Describe any information or defences provided.>
- ☐ DERM has considered the information or defences provided.
<INSERT Describe the consideration given and the conclusions formed by the Department based on the information provided.>
- ☐ The decision-maker and the environmental officer are free from bias or the perception of bias.

Part 1 – Notice Requiring a Draft Transitional Environmental Program (TEP)

6. Recommended Conditions (if appropriate)

If appropriate, please list any proposed conditions below. In order to ensure conditions are enforceable, they should be SMART - Specific, Measureable, Achievable, Relevant and Time-specific. Refer to the [Procedural Guide - Writing Effective and Enforceable Conditions](#)

To ensure the conditions are reasonable, officers are required to provide justification for the inclusion of the condition.

Proposed Requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification
Proposed requirement	Justification

7. Recommendation

The responsible officer is required to make a recommendation in relation to the allegation.

Recommendation:<INSERT>

7. Approval

Signature:

Date:

<INSERT Name of environmental officer>

< Position of environmental officer>

<INSERT Delegate of administering authority>

<INSERT Relevant legislation>

Enquiries:

<INSERT Permit & licensing mgt or local office.>

Ph. <INSERT local no>

Fax. <INSERT local no>

Part 1 – Notice Requiring a Draft Transitional Environmental Program (TEP)

Delegate decision maker	<INSERT Approve/reject recommendation.>
Reasons for decision <INSERT I approve this recommendation based upon the information set out above>. <INSERT Or, I approve this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>. <INSERT Or, I reject the above recommended decision as I consider it more appropriate for DERM to take an educational approach to this breach>.	

Signature:	Date:
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<INSERT Name of delegate decision maker>

< INSERT Position of delegate>

<INSERT Relevent legislation>

Enquiries:

<INSERT local office.>

Ph. <INSERT local no>

Fax. <INSERT local no>

Assessment Report

Environmental Protection Act 1994

Part 2 - Considering and Making a Decision about a Draft TEP

This document is for internal use to assist users in critically evaluating the content of a draft Transitional Environmental Program (TEP) and making a decision to either approve (with or without conditions) or refuse a draft TEP.

Identifying details	
Compliance activity number	<INSERT Number>
Ecotrack number	<INSERT Number>
Permit number	<INSERT If applicable>
File number	<INSERT File number>
Applicant name	<INSERT Number>
Registered office or place of business	<INSERT Registered office or place of business>
Date draft TEP received.	<INSERT Date> Note: DERM has 20 business days after the application date in which to make a decision in relation to the draft TEP.

Note:

1. Assessment Reports recommending a decision be made are to be structured in the format shown below.
2. Explanatory notes for completing the report are given under each heading.
3. The report is to be signed by the investigating officer, supervisor and the delegated decision-maker.

Considering and Making a Decision about a Draft TEP

The legislative provisions in regard to Transitional Environmental Programs (TEPs) are found in Chapter 7, Part 3 of the *Environmental Protection Act 1994* (the Act).

A person or public authority may submit a draft TEP to DERM for consideration, either voluntarily under s333 of the Act or pursuant to a notice requiring a draft TEP issued by DERM under s332 of the Act. Once a draft TEP is received, DERM must consider it and decide whether or not to approve it within 20 business days after the application date or, if public notice is required under s335, within 20 business days of the day stated in the notice as the day by which submissions must be made to DERM. Detailed below are the matters that DERM must consider when making a decision about a draft TEP.

Re

Part 2 – Considering and Making a Decision about a Draft TEP

1. Brief History of the Matter

Briefly outline any historical information relevant to this decision.

<INSERT Provide historical information relating to the matter in succinct, dot point form.>

2. Matters that must be Considered when Making a Decision about the Draft TEP

Achieving compliance with the Act (s330)

Identify how, if approved, the draft TEP will achieve compliance with the *Environmental Protection Act 1994* (the Act) by doing one or more of the following things;

- ☐ 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, or an environmental authority or code of environmental compliance or
 - ☐ a development condition.

Content of the TEP (s331)

To be approved, the draft TEP, for the activity to which it relates, must accomplish the following;

A. Objectives to be Achieved and Maintained under the TEP

- ☐ The draft TEP clearly sets out the objectives to be achieved and maintained under the TEP (i.e. what the draft TEP is trying to achieve).

<INSERT Provide a brief summary of the objectives to be achieved and maintained under the TEP.>

B. State the Particular Actions

- ☐ The draft TEP states the particular actions required to achieve the objectives, and the date by which each action must be completed.

<INSERT Briefly state the actions required to achieve the objectives and the dates by which each action must be completed.>

- ☐ When stating the required actions, the draft TEP takes into account;
 - ☐ the best practice environmental management for the activity and

<INSERT Provide brief notes about how, when stating the required actions, the draft TEP takes into account the best practice environmental management for the activity.>
 - ☐ the risks of environmental harm being caused by the activity.

<INSERT Provide brief notes about how, when stating the required actions, the draft TEP takes into account the risks of environmental harm being caused by the activity.>

C. Prevention and Minimisation of Environmental Harm

- ☐ The draft TEP states 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.

<INSERT Briefly describe 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.>

Re1

Part 2 – Considering and Making a Decision about a Draft TEP

D. Transition to an Environmental Standard

- ☐ If an objective of the draft TEP is for the activity to transition to an environmental standard, the draft TEP states;
- ☐ details of the standard and
 - ☐ how the activity is to transition to the standard before the TEP ends.
- <INSERT Provide details of the standard and briefly describe how the activity is to transition to the standard before the TEP ends.>

OR

- ☐ It is not an objective of the draft TEP for the activity to transition to an environmental standard.

E. Transition to Comply with a Condition of an Environmental Authority or Code of Environmental Compliance, or a Development Condition

- ☐ If an objective of the draft TEP is for an activity to transition to comply with a condition of an environmental authority or code of environmental compliance, or a development condition, the draft TEP states—
- ☐ details of the condition and how the activity does not comply with it and
 - ☐ how compliance will be achieved before the end of the TEP.
- <INSERT Provide details of the relevant condition and how the activity does not comply with it, and describe briefly how compliance will be achieved before the end of the TEP.>

OR

- ☐ It is not an objective of the draft TEP for the activity to transition to compliance with an environmental authority, or code of environmental compliance or a development condition.

F. Period over which TEP is to be Carried Out

- ☐ The draft TEP states the period over which the TEP is to be carried out.
- <INSERT State the period over which the TEP is to be carried out.>

G. Performance Indicators

- ☐ The draft TEP states appropriate performance indicators at intervals of not more than 6 months.
- <INSERT Provide brief details of the performance indicators.>

H. Monitoring and reporting

- ☐ The draft TEP adequately provides for monitoring and reporting on compliance with the program.
- <INSERT Briefly describe how the draft TEP provides for monitoring and reporting on compliance with the program.>

If DERM has Issued a Notice under s332 Requiring a Person to Prepare and Submit a Draft TEP to it for Approval

- ☐ If the draft TEP was submitted in response to a written notice issued by DERM under s322 of the Act, the draft TEP has addressed all of the requirements stated in the notice.
- <INSERT If the draft TEP was submitted in response to a written notice under s322, and it does not address all of the matters required to be addressed, provide details of the matters that the draft TEP does not adequately address.>

REL

Part 2 – Considering and Making a Decision about a Draft TEP

OR

- ☐ The draft TEP was not submitted in response to a written notice issued under s322 of the Act.

Regulatory Requirements (s338(1)(a))

Chapter 4, Part 1 (ss46-64) of the *Environmental Protection Regulation 2008* (the Regulation), sets out the regulatory requirements that DERM is required to comply with when making a decision whether to accept (with or without conditions) or reject a draft TEP.

- ☐ When deciding whether accept (with or without conditions) or reject the draft TEP, DERM has complied with all relevant regulatory requirements stipulated in ss46-64 of the Regulation.

<INSERT Briefly describe the relevant sections of the Regulation that were considered and how they relate to the draft TEP.>

Note that regulatory requirements may also be contained in environmental protection policies.

- ☐ All relevant regulatory requirements contained in environmental protection policies have been considered by DERM.

<INSERT If applicable, briefly describe any regulatory requirements contained in environmental protection policies and how they relate to the draft TEP.>

OR

- ☐ There are no applicable regulatory requirements contained in environmental protection policies.

Standard Criteria (s338(1)(b)(i))

- ☐ DERM has considered all relevant matters in the standard criteria.

Provide brief details in the table below of each relevant standard criterion and how it relates to DERM's consideration of the draft TEP. If a particular criterion is not applicable, write 'N/A'.

Standard criterion	Details
Ecologically sustainable development	<INSERT>
Environmental protection policies (EPPs)	<INSERT>
Plans, standards or agreements	<INSERT>
Environmental impact study, assessment or report	<INSERT>
Receiving environment	<INSERT>
Submissions made by the applicant and submitters	<INSERT>
Best practice environmental management	<INSERT>
Financial implications	<INSERT>
Public interest	<INSERT>

Part 2 – Considering and Making a Decision about a Draft TEP

Site management plan	<INSERT>
Environmental management systems (IEMS)	<INSERT>

Additional Information (s338(1)(b)(ii))

- ☐ DERM has considered additional information (if any) given in relation to the draft TEP.

<INSERT If applicable, briefly describe the additional information provided.>

OR

- ☐ No additional information has been provided.

Views Expressed at a Conference (s338(1)(b)(iii))

- ☐ If a conference has been held in relation to the draft TEP, DERM has considered the views expressed at the conference.

<INSERT If applicable, provide brief notes of the views expressed at the conference and the consideration given to those views.>

OR

- ☐ No conference has been held.

Consistency with Development Conditions of a Development Approval (s338(2))

- ☐ If the draft TEP has been prepared because of a development condition of a development approval, the draft TEP is consistent with other conditions of the development approval.

<INSERT If applicable, describe how the draft TEP is not consistent with the other conditions of the development approval. >

OR

- ☐ The draft TEP has not been prepared because of a development condition of a development approval.

Public Notice of Submission of Draft TEP (s337(2)) and Substantial Compliance with the Act (s342)

- ☐ If public notice is required to be given at the submission of the draft TEP, DERM is satisfied that the public notice has been properly given.

OR

- ☐ DERM is not satisfied that the required public notice has been properly given, but is satisfied that there has been substantial compliance with the Act and will accept this as compliance.

<INSERT Provide brief details of how the public notice has not been properly given and why the Department is satisfied that there has been substantial compliance with the Act which it will accept as compliance. >

OR

- ☐ Public notice is not required.

Part 2 – Considering and Making a Decision about a Draft TEP

Is DERM satisfied with the draft TEP?

For the draft TEP to be approved, at least one box should be checked next to each of the above matters for consideration. If any of the matters remain unchecked, then the draft TEP can not be approved.

- ☐ If a box has been checked next to each requirement - Proceed to section 3.
- ☐ If a box has not been checked next to each requirement - Proceed to section 4.

3. Request for Further Information and/or Amendments to a Draft TEP

If the draft TEP substantially addresses all of the relevant matters listed in s331 of the Act, but cannot be approved unless further information is provided or some amendments are made, DERM may request that the person or public authority provide further information or an amended TEP. Note that if there are significant problems with the draft TEP and it will require major changes or re-writing before it can be approved, DERM should refuse to approve it.

If it is appropriate that further information or a request for amendments be made, officers should consider the following alternatives;

- ☐ Further information is required.
<INSERT Officers are to list the further information required about the draft TEP and suspend the assessment report process while waiting for the further information to provided.>
- ☐ Minor amendments are required.
<INSERT Officers are to list the minor amendments required and suspend the assessment report process while waiting for the person to provide the amended TEP.>
- ☐ More substantial amendments are required.
<INSERT Officers are to list the more substantial amendments required and present them to the Delegate for approval.>

4. Approval of the Draft TEP

Prior to making a recommendation to issue a notice of decision approving the draft TEP (with or without conditions), it is important to take into account that the Act stipulates that a TEP is a program that achieves compliance with the Act for the activity to which it relates.

If the draft TEP does **not** meet the requirements of the Act it must be refused. Whilst the Act does make provision for the approval to be subject to conditions, the conditions should address relatively minor issues only. Conditions stated in a notice of decision must not be used to rectify significant issues with a draft TEP.

A notice of decision must be issued within 8 business days of making the decision to approve the TEP. If the approval is subject to conditions, the notice of decision must be an information notice.

- ☐ The notice of decision identifies the documents forming the approved TEP, including any amendments under section 339(1)(a)(ii).
- ☐ The notice of decision sets out any conditions imposed on the approval by DERM.
- ☐ The notice of decision states the day the approval ends.
- ☐ If conditions have been imposed on the approval, the notice of decision is in the form of an information notice.

Part 2 – Considering and Making a Decision about a Draft TEP

If the notice is in the form of an information notice, it must include;

- ☐ the decision and
- ☐ the reasons for the decision and
- ☐ any available rights of internal and external review.

5. Refusal to Approve a Draft TEP

The draft TEP cannot be approved unless at least one checkbox has been checked beside each of the matters required to be addressed by the draft TEP. If the draft TEP does not meet all of the requirements, and any deficiencies will not be addressed by a request for further information and/or amendments to the draft TEP, then DERM should refuse to approve the draft TEP.

If DERM refuses to approve the TEP, the notice of decision must be an information notice. Consequently, the notice of decision must include;

- ☐ the decision and
- ☐ the reasons for the decision and
- ☐ any available rights of internal and external review.

6. Provide for Natural Justice

In order to provide natural justice, DERM must advise the person that submitted the draft TEP if it intends to do one of the following things;

- request further information about the draft TEP and/or
- request amendments to the draft TEP or
- refuse to approve the draft TEP.

DERM must also provide the person with the opportunity to make submissions in response to DERM's intentions.

- ☐ The person has been provided with the opportunity to put their side of the story forward.
<INSERT Describe how this was achieved.>
- ☐ All information provided has been considered.
<INSERT Describe any information or submissions provided.>
- ☐ DERM has considered the information.
<INSERT What consideration was provided and what conclusions have DERM formed?>
- ☐ The decision-maker and environmental officer are free from bias or the perception of bias.

6. Recommendation

The environmental officer is required to make a recommendation in relation to the draft TEP.

Recommendation;

<INSERT For example, "I recommend that the draft TEP be approved OR I recommend that the draft TEP be approved with the amendments agreed in the letter to the company dated XXX OR I recommend that the draft TEP be refused.>

Part 2 – Considering and Making a Decision about a Draft TEP

7. Approval

Signature:

Date:

<INSERT Name of environmental officer>

< Position of environmental officer>

<INSERT Delegate of administering authority>

<INSERT Relevant legislation>

Enquiries:

<INSERT Permit & licensing mgt or local office.>

Ph. <INSERT local no>

Fax. <INSERT local no>

Delegate decision maker	<INSERT Approve/reject recommendation.>
<p>Reasons for decision</p> <p><INSERT I approve this recommendation based upon the information set out above>.</p> <p><INSERT Or, I approve this decision for the reasons set out above and I note Mr Citizen has previously received a warning letter in relation to this matter>.</p> <p><INSERT Or, I reject the above recommended decision as I consider it more appropriate for DERM to take an educational approach to this breach>.</p>	

Signature:

Date:

<INSERT Name of delegate decision maker>

< INSERT Position of delegate>

<INSERT Relevant legislation>

Enquiries:

<INSERT local office.>

Ph. <INSERT local no>

Fax. <INSERT local no>

Please tick one box only, see note below for explanation:

Formal Investigation Request ☐

Investigation Support ☐

Note: Select Formal Investigation Request (FIR) for matters that require a formal investigation with a view to prosecution. Select Investigation Support where assistance is requested to address non-compliance issues not proceeding to prosecution eg issue of PIN.

Send this request and all supporting documentation to investigation.requests@ehp.qld.gov.au.

1. Contact details

Date of request	<INSERT date this request is submitted>
Name of officer submitting FIR	<INSERT name, phone number and position of officer completing this form>
Location of officer and Region	<INSERT office location of department officer & Region South/North/Central>
Other relevant department officers	<INSERT name, position and contact details of any other department officers who have had significant involvement with the matter and indicate their involvement with the matter>

2. Incident details

Source of notification of incident (inc method)	<INSERT details of how the department became aware of the incident including the names, dates and details supplied; plus method of notification eg; email, phone, etc.>
Date(s) incident and/or offence detected by the department	<INSERT date of alleged incident and / or date offence detected by department officers>
Alleged offender(s)	<INSERT details of alleged primary offender (individual and / or business)>
Property details	<INSERT street address and Lot/Plan of the incident site/affected property and tenure eg. national park, freehold>
Alleged offence Details	<INSERT description of actions that have caused the alleged incident/breach/contravention and how matter came to department's attention>
Other persons involved	<INSERT details of any other persons involved in the the incident e.g. staff members, contractors>

IRE

3. Alleged offence details

Primary legislation and section	<INSERT legislation primarily applicable and refer to any specific sections>
--	--

4. Records

Ecotrack reference	<INSERT current file reference number>
---------------------------	--

5. Primary considerations

Considerations for comment	Y/N	Comments (If 'yes' please include facts/relevant information/circumstances of the conduct as support)
Has the department been given false or misleading information by the alleged offender?		<INSERT comments>
Was the conduct wilful (i.e. was it intentional, reckless or negligent)?		<INSERT comments>
Was the conduct motivated wholly or partly by commercial considerations?		<INSERT comments>
Was actual or potential severe or irreversible harm caused to the environment, natural resources, human health or property?		<INSERT comments>

6. Other considerations (tick if applicable)

☐ Serious offence	☐ Other <provide details>
☐ Previous offences/history with the department	☐ Two or more years since the offence
☐ Site inspection conducted (attach copy of Report)	☐ Offence is continuing/ongoing
Comments: : <INSERT details relevant to the above considerations>	

7. Additional information

Details	Y/N	Comments (include facts, relevant information and circumstances of the conduct etc)
Has alleged offender provided any excuse or justification for the alleged offence?		<INSERT details>
Has the department taken any enforcement action against the alleged offender for the alleged		<INSERT details>

Form

Formal Investigation Request/Investigation Support

offence (e.g. warning, EPO issued)?		
-------------------------------------	--	--

8. Requesting officer

Name	Position, Business unit and Department	Date
<INSERT Name>	<INSERT Position, BU & Department>	<Insert Date>

9. Attachments

Attached documents include:			
☐	Historical title search	☐	Photos
☐	Company search	☐	Correspondence—emails, faxes and letters
☐	Business name search	☐	Previous notices/history
☐	Motor vehicle search	☐	Other —
☐	Relevant approval/authority/code		
☐	Maps		

10. Communication contacts for status updates and reporting

List all officers to receive status updates (e.g. ground staff, management, regional manager, director, etc)

Name	Position	Email
<INSERT Contact 1>	<INSERT Contact 1 Position>	<INSERT Contact 1 Email>

11. Business unit approval *(endorsement by email is sufficient)*

Business unit staff involved in this matter will be required to assist in the conduct of this investigation through the provision of witness statements and technical information.

Manager supports request ☐	Signature	Date
<INSERT name of approving Manager>	<INSERT signature>	<INSERT>
Comments <INSERT comment>		

Regional Manager/Director supports request ☐	Signature	Date
<INSERT name of Regional Manager/Director>	<INSERT signature>	<INSERT>
Comments <INSERT comment>		

Executive Director supports request ☐	Signature	Date
<INSERT name of Executive Director>	<INSERT signature>	<INSERT>
Comments <INSERT comment>		

Enforcement Services and Litigation

Service Delivery Document

Formal Investigations, Investigation Support and Prosecutions

Service Delivery

Enforcement Services (ES) and the Litigation Unit (Litigation) are committed to delivering timely and professional investigation, compliance support and prosecution services to our internal and external clients in line with the policy and legislation of the Department of Environment & Heritage Protection (EHP).

ES and Litigation are committed to continuous improvement in our service delivery. The process associated with the conduct of formal investigations, investigation support and prosecutions will be frequently reviewed in consultation with our clients to ensure efficiency and quality in our service delivery.

Roles and Responsibilities

To ensure clarity of roles associated with the commencement and conduct of a formal investigation and subsequent prosecution, the following has been prepared to assist our clients to understand those roles, and to manage expectations accordingly. This document is intended to provide a framework describing how a Formal Investigation Request (FIR) or Investigation Support Request (ISR) will be considered, how the associated investigation or compliance support will be conducted, and how prosecution action will be considered and conducted.

Formal Investigations – where litigation is foreseeable

The FIR process is initiated where a client decides an investigation is required with a view to prosecuting an alleged offence(s). Once the FIR is approved, the investigation will be project managed with a project leader (Senior Investigator) and project team sourced with nominees from the relevant business unit. The Manager of Investigations will perform the role of project manager. As such, the investigation project team has the benefit of incorporating the investigative skills and experience of the investigator and the subject matter knowledge and expertise from within the relevant business unit.

The role of the investigator will be to identify and gather evidence required to prove alleged offences to enable prosecution and/or other suitable compliance action. Additionally, the investigator will identify those persons who can provide that evidence and any expert witnesses who are able to sufficiently address the technical and/or scientific components of those offences. Assistance with obtaining this evidence will be sought from the business unit staff on the project team.

In order to clearly establish the responsibilities of the team members, the project manager will advise the client in writing of the commencement of the investigation and the proposed process that the investigation is to follow. Consultation between investigations section and the client will then take place to modify this plan, if required. This consultative approach ensures that the goals of the investigation are clear, and that it fulfils the evidentiary requirements to enable the commencement of prosecution proceedings. This process will also provide the basis from which the business unit can address other associated statutory requirements that may arise, and which have not been identified in the original FIR.

Re

This project team model aims to ensure a collaborative and consultative approach is taken with the conduct of investigations to heighten the likelihood of a positive outcome.

ES will aim to submit a brief of evidence to the Litigation Unit for consideration within 15 weeks of the FIR being approved by the Compliance Steering Committee.

Formal Investigation Process and Timeframes

The following outlines the existing investigations process and timeframes.

Non-compliance is identified by the client. A decision is then made by the business unit to manage this non-compliance by submission of a FIR. This decision can be made by the business unit in consultation with Enforcement Services who may seek advice from Litigation.

For those clients within EHP, the investigation process and FIR template can be found at the following link: <http://intranet.ehp.govnet.qld.gov.au/enforcement/investigations/index.html>.

A business unit will submit a FIR to its respective Executive Director who will decide if the FIR should be directed to the Compliance Steering Committee ('CSC') for consideration. The CSC will meet on a fortnightly basis to assess FIR's to determine what matters should be formally investigated with a view to producing a full brief of evidence for litigation proceedings, or whether alternative enforcement options would be more appropriate. The purpose of the CSC assessment process is to ensure that EHP delivers proportionate, consistent, transparent, accountable and effective enforcement decisions

Where the FIR is referred to the CSC for consideration, the assessment takes the form of a meeting between the Executive Directors and the Directors of Enforcement Services and Litigation. Here, the following is considered:

- the nature and seriousness of the alleged offence;
- whether false or misleading information has been given by the alleged offender;
- whether the conduct was wilful (i.e. was it intentional, reckless or negligent);
- was the conduct motivated wholly or partly by commercial considerations;
- whether the conduct has the potential to result in severe or irreversible harm to the environment, natural resources, human health or property;
- the EHP Enforcement Guidelines; and
- whether the alleged offender has previous criminal or other history

Affirmative answers to one or more of the above suggests that a formal investigation is warranted. A formal investigation is generally required where the conduct concerned is of a serious nature and warrants high level enforcement action. Decisions to commence formal investigations will vary depending on the particular circumstances of each case.

Where a FIR does not meet the criteria for investigation action, alternative enforcement tools are evaluated considering the following:

- Is there an alternative enforcement tool to litigation proceedings that would be an effective means of responding to the non-compliance? (eg. education/warning letters, Penalty Infringement Notices, Environmental Protection Orders, Transitional Environmental Programs), or a combination of tools;
- Whether the alternative enforcement action would be effective in achieving the object of the Act being administered;

- How the alternative enforcement action may be perceived by the public;
- Whether the alternative enforcement action would be a sufficient deterrent (general and specific); and
- Whether compliance support may be more appropriate in the circumstances.

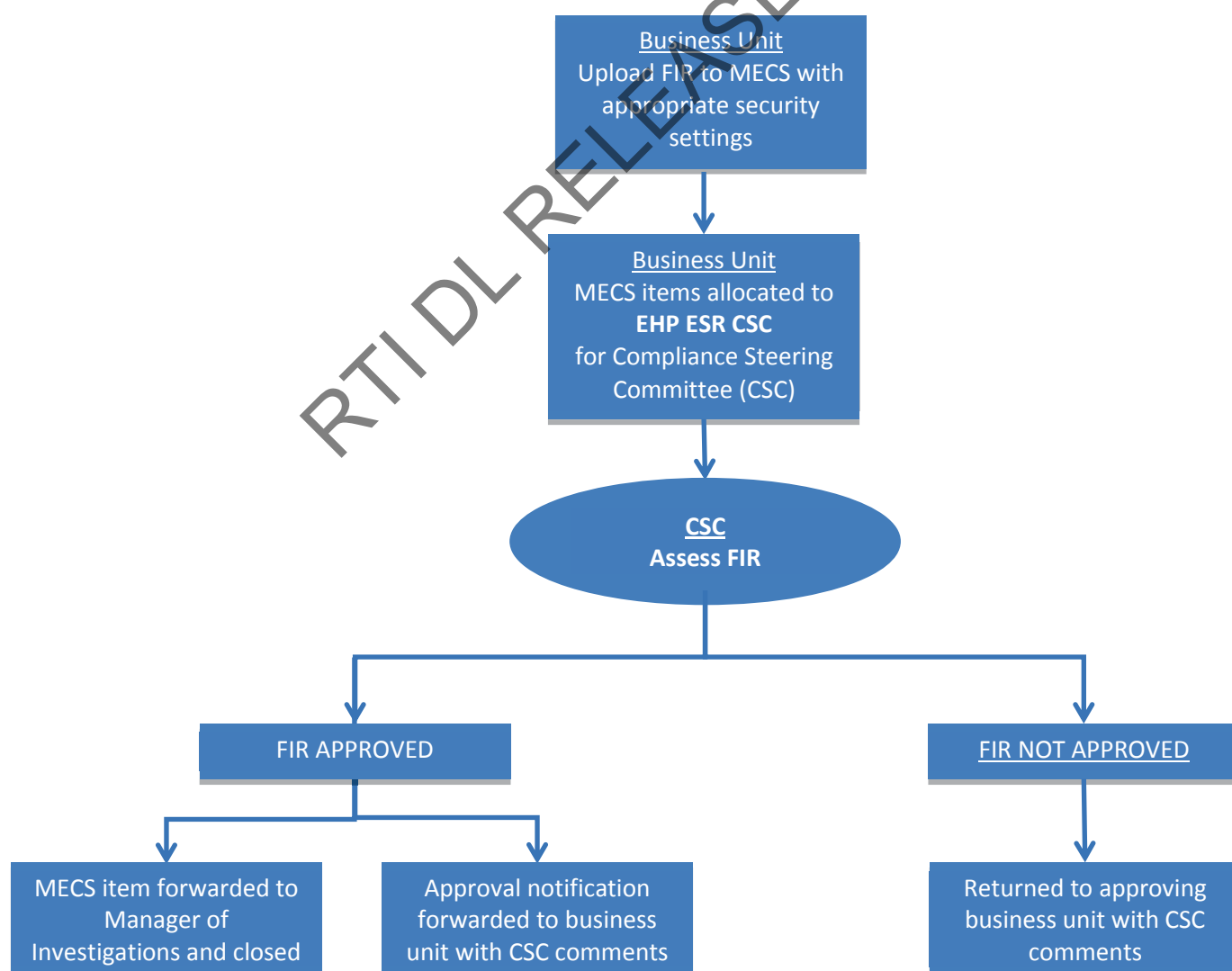
Availability of resources within ES is also a consideration when assessing a FIR. Matters are prioritised using a State-wide perspective of EHP's compliance priorities.

Process of Lodgement of Formal Investigation Request

FIR should be approved by relevant client Executive Director prior to uploading to MECS. Assessment of FIR will be completed by the Compliance Steering Committee.

Client uploads FIR and any supporting documents to the MECS system as follows:

- Action type: *Formal Investigation Request*
- Signatory: MECS should default to *EHP ESR CSC*
- Security Classification: *EHP Restricted / NPRSR QPWS Restricted*



Completion of the Assessment when a FIR is referred to ES

The CSC will make a determination of the FIR. Comment may also be made on the type of litigation proceedings or alternative enforcement action that may be appropriate in light of the recommendation.

The FIR is then allocated to the Investigations Unit for actioning.

Using Concurrent Statutory Tools

The outcomes of the investigation and prosecution process can be of a protracted nature and it may be the case that additional statutory tools such as an environmental protection order may be required to achieve the objectives of the Act. The commencement of the formal investigation or investigation support process does not prohibit any activities associated with the ongoing management of the client by the relevant business unit. If the referring business unit deems it appropriate to utilise other statutory tools to achieve the objectives of the relevant Act, these tools should be utilised at the discretion of the business unit. Enforcement Services requests that the business units liaise with the allocated Senior Investigator prior to the implementation of these tools to ensure a professional and effective departmental response. Additionally, Enforcement Services can assist in the gathering of information to support the implementation of these statutory tools.

Investigation Timeframes

Every attempt will be made to achieve the following timeframes, however flexibility will be applied where statutory timeframes are an issue or the matter is otherwise urgent.

Working Day KPIs	Description	Action
	Client Submitting FIR: Uploads to MECS system	<p>Client uploads FIR and any supporting documents to the MECS system as follows:</p> <ul style="list-style-type: none"> - Action type: <i>Formal Investigation Request</i> - Signatory: MECS should default to <i>EHP ESR CSC</i> - Security Classification: <i>EHP Restricted / NPRSR QPWS Restricted</i> <p>FIR should be approved by relevant client Executive Director prior to uploading to MECS.</p> <p>Assessment of FIR will be completed by the Compliance Steering Committee.</p> <p>If approved the below timeframes for the investigation commence.</p>
Day 1	Upon allocation of the FIR	<p>The FIR will be allocated to a Senior Investigator - formation of Investigation Project Team</p> <p>ES will provide a minimum of one Senior Investigator. The investigation will be overviewed by the Manager of Investigations;</p> <p>The client will supply a minimum of one Manager and a relevant business unit contact officer (site contact or</p>

Service Delivery Document

Formal Investigations, Investigations Support and Prosecutions

Working Day KPIs	Description	Action
		<p>officer who completed the initial assessment);</p> <p>Litigation may provide a lawyer if appropriate. (for advice only at this stage.); and</p> <p>Other parties to be considered in the formation of the project team include any other employee with relevant experience – e.g. specialists in waste, cultural heritage, wildlife, etc.</p>
By working Day 5	Meeting between client, Senior Investigator and Manager of Investigations	Meeting to discuss the FIR and scope of proposed investigation.
By working Day 10 (2 weeks)	Investigation plan submitted by Senior Investigator	Manager of Investigations will review and disseminate investigation plan to Client and key contacts.
By working Day 20 (4 weeks)	First Status Update on investigation	Senior Investigator to submit first of two status updates on investigation process to Manager of Investigations for dissemination to Client and key contacts.
By working Day 40 (8 weeks)	2 nd Status Update on investigation	Senior Investigator to submit the second status update on the investigations process to the Manager of Investigations for dissemination to Client and key contacts.
By working Day 60 (12 weeks)	Brief of Evidence (BOE) submitted to Brief Checker	Senior Investigator to submit the brief of evidence to Brief Checker notifying the Client and key contacts.
By working Day 70 (14 weeks)	Review of Brief of Evidence completed	Brief Checker reviews and submits the brief of evidence to the Litigation Unit.

Prosecution Timeframes

The timeframes below represent the longest amount of time that is acceptable, but the Litigation Unit will aim to complete steps in shorter time-frames where possible. Two key steps, which are new and are designed to enhance efficiency and ensure better client consultation are:

1. Upon referral of a brief of evidence, the Director of Litigation, Director of Enforcement Services, the investigator and the lawyer will meet to discuss the matter. The investigator will explain the case and evidence to the lawyer, pointing out any issues that require attention. The Directors of ES and Litigation, being members of the Compliance Steering Committee, will also inform the lawyer of the context of the matter and reasons why it was decided that it warranted investigation and prosecution. The investigator will add any relevant information that has emerged since the investigation commenced. The lawyer will identify any difficulties with the matter that are immediately apparent so that appropriate action can be taken quickly.

Service Delivery Document

Formal Investigations, Investigations Support and Prosecutions

2. Once the lawyer has reviewed the brief of evidence, the lawyer will convene a meeting with the investigator and client to discuss any impediments to proceeding with referred offences and alternative options. This step in the process is intended to identify early where further investigation may be necessary or alternative enforcement options may be appropriate.

The Litigation Unit will continue to consult with ES and the client through the process of reviewing the brief of evidence and the court process. Periodic status reports will also be provided to clients.

Working Days	Description	Action
Day 1	Brief of evidence formally handed to Litigation Brief assessment commences Limitation date established	The investigator will brief the lawyer on the offence, evidence and other relevant information including matters of importance to the business unit and the client case officer. Investigations will seek to provide any additional evidence required by Litigation to prove the relevant offence(s) during the 'brief assessment' process.
By working Day 10 (2 weeks)	Review of brief of evidence and consultation with investigator and client	The lawyer will read the brief of evidence in its entirety and form an opinion about prospects of success with respect to relevant offences. The lawyer will then hold a meeting with the investigator and client to discuss the matter.
Monthly update	Litigation will provide the current status and limitation dates applicable to each matter that is brief assessment.	This will be done by providing a cut down copy of the Litigation Unit's 'Deadlines register', to the Compliance Steering Committee
By Working Day 60 (12weeks)	Advice on evidence provided to instruction givers (For less complex matters this will be done earlier)	The advice on evidence will be provided to the client, Executive Director ERE and Director Litigation for instructions. The lawyer will have foreshadowed with the project team any difficulties with proving offences prior to the written advice being finalised.
Within 1 week of advice	Obtain instructions	Lawyer will follow up with instruction givers if instructions not received
Within 2 weeks of instructions (and within 3 months of brief being handed to Litigation)	Commence prosecution	Lawyer will seek approval of the Deputy Director-General to commence prosecution. If given, the lawyer and investigator will arrange for the prosecution to be commenced. The lawyer will then notify the client of the first court date.

Service Delivery Document

Formal Investigations, Investigations Support and Prosecutions

Working Days	Description	Action
Before first court date	Sentencing advice	Lawyer will provide advice on sentence to instruction givers except in matters where there is insufficient information to provide useful advice – in which case it will be provided no later than 2 weeks before the sentence date. (Lawyers will also have drafted Statement of Facts, prepared defence brief of evidence and obtained costs certificates from investigator)

Post Investigation Review (PIR)

30 Days after Completion of Matter		<p>Once the matter is completed, either by prosecution or other method of concluding the matter, the Manager of Investigations will establish with the client and the Director Litigation if a review meeting with the project team and other stakeholders identified by the client is required.</p> <p>The purpose of the review will be to analyse what was done well and identify any potential improvements. A post investigation/prosecution report will be produced for all stakeholders by the investigator and lawyer. Accordingly, future investigations and prosecution procedures will be adapted if necessary.</p> <p>Each investigation and prosecution will be reviewed at the completion of the matter for its compliance with the above timelines.</p>
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Request Process in Emergent Circumstances

Circumstances may arise where a client responds to an incident that is assessed as very high risk, emergent and/or is a high profile issue. In these instances where emergent assistance of an investigator is required to collect critical evidence, the following suggested process should occur:

- The client can contact the Manager of Investigations or the Director of ES, and outline the nature of the incident and the assistance required. A Senior Investigator will be nominated and that person will liaise directly with the client.
- As soon as practicable after this process has commenced, the client will arrange for a FIR to be submitted to the CSC and the investigation process and timeframes described above will commence.

Investigation Support

Where a Formal Investigation is not deemed appropriate or necessary, investigation support may be utilised. ES provides support services to EHP business units to assist them in managing lower level compliance issues pertinent to the legislation administered by this department. That support covers the spectrum of work associated with proactive and reactive actions a business unit is considering to take. This support includes (but

Re

Service Delivery Document

Formal Investigations, Investigations Support and Prosecutions

is not limited to) assistance with attending site inspections and audits, review and drafting of statutory notices and warning letters and advice on various enforcement options.

Investigation support from investigations staff can be obtained informally through direct contact with regional and central office staff or through a more formal process with the use of the FIR / ISR template that can be accessed at <http://ehpintranetdev.dnr.qld.gov.au/enforcement/investigations/>. Where an informal request is made, there will be a review of the request in consultation with the business unit as soon as possible and the milestones associated with that request will commence.

In circumstances where a client is encountering difficulty in achieving compliance with the statutory tools it has issued, the client can approach Compliance Advisory Team (CAT) for advice and assistance. That team does not act as a decision maker however every effort will be made to provide statutory options that are available to a client and advice as to the appropriateness of each decision. By using this consultative approach, avenues can be explored to rectify non-compliance at an early stage.

Investigation Support Request Timeframes

Working Day KPIs	Description	Action
	Client Submitting FIR: Uploads to MECS system	FIR should be approved by relevant Executive Director prior to uploading to MECS. Client uploads FIR and any supporting documents to the MECS system as follows: <ul style="list-style-type: none"> - Action type: <i>Formal Investigation Request</i> - Signatory: MECS should default to <i>EHP ESR CSC</i> - Security Classification: <i>EHP Restricted / NPRSR QPWS Restricted</i> Assessment of FIR will be completed by the Compliance Steering Committee.
Day 1	Upon allocation of the Investigation Support	The Investigation Support will be allocated to a Senior Investigator who will make direct contact with the submitting officer on the FIR.
By working day 5	Meeting between client, Senior Investigator and Manager of Investigations	Meeting to discuss the FIR and scope of proposed investigation support.
By working Day 20 (4 weeks)	Investigation Support Status Update	Senior Investigator submit first of two status updates on the investigation process to the Manager of Investigations for dissemination to Client and key contacts.
By working Day 40 (8 weeks)	Investigation Support Status Update	Senior Investigator to submit the second status update on the investigations process to the Manager of Investigations for dissemination to Client and key contacts.
By working Day 60	Investigation Support Finalised/Review	Senior Investigator is to finalise Investigation Support matters within 60 days. However if the Client requests for support to continue the matter is reviewed and the

Service Delivery Document

Formal Investigations, Investigations Support and Prosecutions

Working Day KPIs	Description	Action
(12 weeks)		timeframe reset to a further 60 day period.

RTI DL RELEASE - EHP

Site Inspections

Great state. Great opportunity.



Site inspections (purpose)

- Reactive...responding to a complaint
- Proactive...auditing
- Gather information to determine compliance
 - What is permitted
 - What is 'on the ground'
- Promote compliance
 - Client understanding of the regulatory frameworks
- Ultimately information (evidence) gathered during a site inspection could be used to fill out an assessment report (Statutory tool/PIN), help you produce a Formal Investigation Request (FIR) or help produce your witness statement if the matter ends up as a prosecution.

Site inspections (preparation)

- Complain - Effluent spill into creek
- *Identify...*
 - *Possible offences*
 - *Sources of information for the desktop investigation*
 - *'Facts' to be determined*
 - *Equipment needed (i.e. water sampling etc)*
 - *Considerations for the inspection plan*



Site inspections (preparation)

- Set objectives
- Understand
 - Technical aspects
 - Compliance history
 - Legislation / Regulation
 - Site layout
- Validate complaint
 - Contact complainant to confirm details and location
- Practical preparation
 - Safety
 - Equipment
 - Methods

Why conduct desktop research and analysis?

Old military adage "time spent in reconnaissance is never wasted"

RTI DL RELEASE - EHP

Sources of information available to EHP officers for 'desk-topping'?

- Ecotrack
- Ecosteps
- Ecomaps
- SmartMap
- Case files, Annual Returns, Complaints,
- Intelligence Team – Intel requests - ROI personal and company profiles?
- Bureau of Meteorology (BOM site)
- Google
- Face book
- Media outlets – online & print

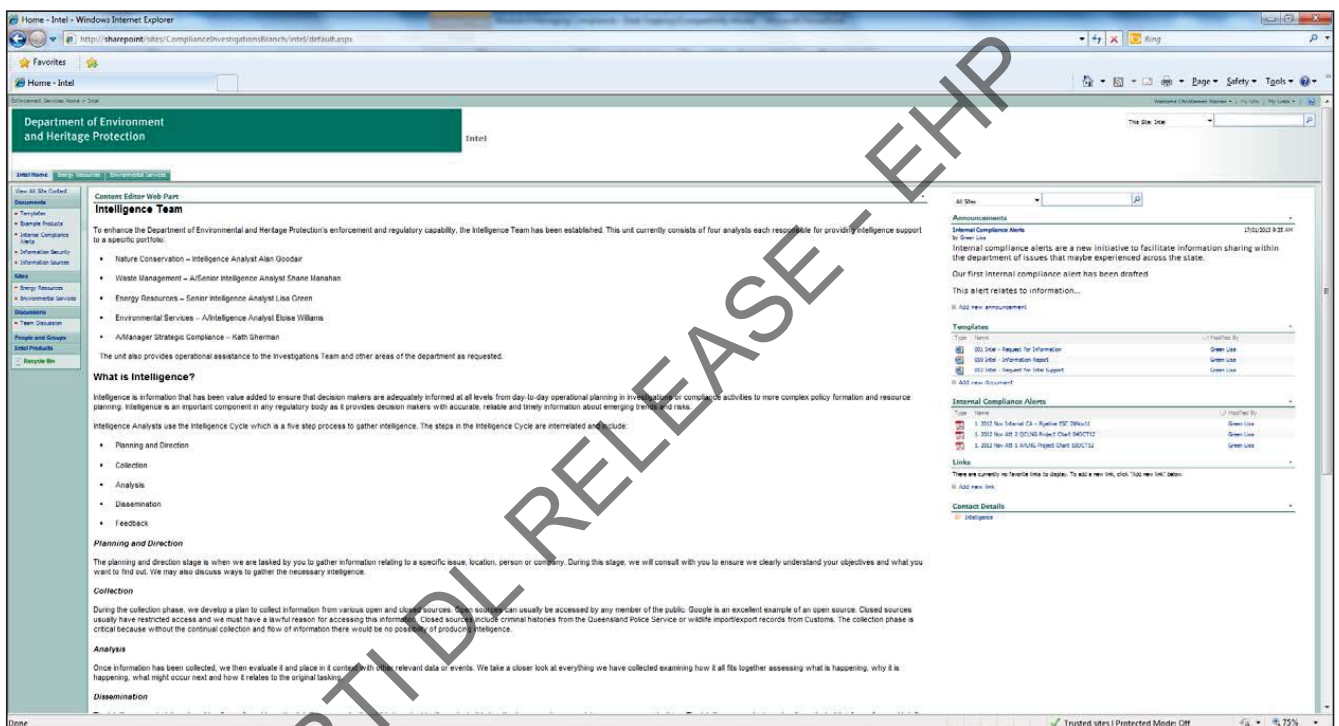
- **Ecotrack** is an Agency-wide database for recording integrated permit and licence applications and the corresponding decisions.
- **Ecosteps** is the repository for internal and external core business documents, processes and procedural guides particularly relating to licences and permitting.

Note: Regularly check Ecosteps for changes to procedural guides. You must ensure that what you are using is current!

- **Ecomaps** is a user-friendly geographical information system providing environmental information to support decision making.

- **SmartMap** provides geographic related information on any land located in Queensland and will:
 - Locate a 'parcel of land' by lot on plan, address or feature
 - Provide information on the tenure of the land, title holder and any easements/interests/encumbrances
 - Create a detailed property map
 - Locate imagery (Aerial Photography, Topographic Map Images etc)
 - Also is used to locate Permanent Survey Marks for GPS verification

Intelligence Team – SharePoint Site



<http://sharepoint/sites/ComplianceInvestigationsBranch/intel/default.aspx>

Bureau of Meteorology

Australian Government
Bureau of Meteorology

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Bureau Home > Australia > Queensland Weather and Warnings

Queensland Weather and Warnings

No warnings for Queensland

Forecasts	Observations	Past Weather
All forecasts	All observations	MSLP analysis maps
Brisbane forecast	Brisbane area latest observations	Maps of recent & past conditions
Southeast coast	QLD latest observations	Data and graphs
Provincial cities	Latest rainfall & river conditions via clickable map	Cigrate averages
District forecasts via clickable map		Maps
Weather and wave maps		Monthly statistics
Short-term forecast map		
Forecast maps for next 4 days		

Raiders

Brisbane radar

Why is observing space weather important?

READ MORE

Outlooks

Rainfall

Temperature

Water Storage

Discover how much water we have in our storages nationwide.

Metecological Offices

- Calms weather
- Charleville weather
- Longreach weather
- Macquary weather
- Mount Isa weather
- Rockhampton weather
- Townsville weather
- Wega weather

Other Information

- About Weather Forecast Services
- About Warning Services

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Daily Weather Observations for Queensland

There are 139 locations in Queensland for which Daily Weather Observations are routinely prepared. They are listed alphabetically in groups:

A B C D G H J K L M N Q R S T V W Z

Daily Weather Observations are also available from other locations in Australia. Individual index pages are available for:

Australian Capital Territory New South Wales Victoria Queensland
South Australia Western Australia Tasmania Northern Territory
Antarctica Australian Offshore Islands Key locations

To get other places, contact us

IDCJDW0400 Prepared at 00:36 UTC on Tuesday 2 April 2013

WARNINGS

CLIMATE

ENVIRONMENT

Radar Sat Maps

National Weather Services

Aviation Weather Services

Defence Services

Space Weather Services

Registered User Services

Commercial Weather Services

Careers Sitemap Feedback

Freedom of Information

Indigenous Weather Knowledge

Glossary

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<http://www.bom.gov.au/qld>

<http://reg.bom.gov.au/climate/dwo/IDCJDW0400.shtml>

Great state. Great opportunity.



Site inspections (a plan)

Why are you going?

What are you looking for?

Where are you going?

The property itself, and
within the property

How are you going to find out?

Sources of information
Methods of obtaining
Powers of entry / seizure /
inspection

What do you know?

Desktop preparation
need?

Known facts

What equipment might you

Who is going?

What do you need to find out?

Facts to be determined – Any
known unknowns!?

Who are you meeting?

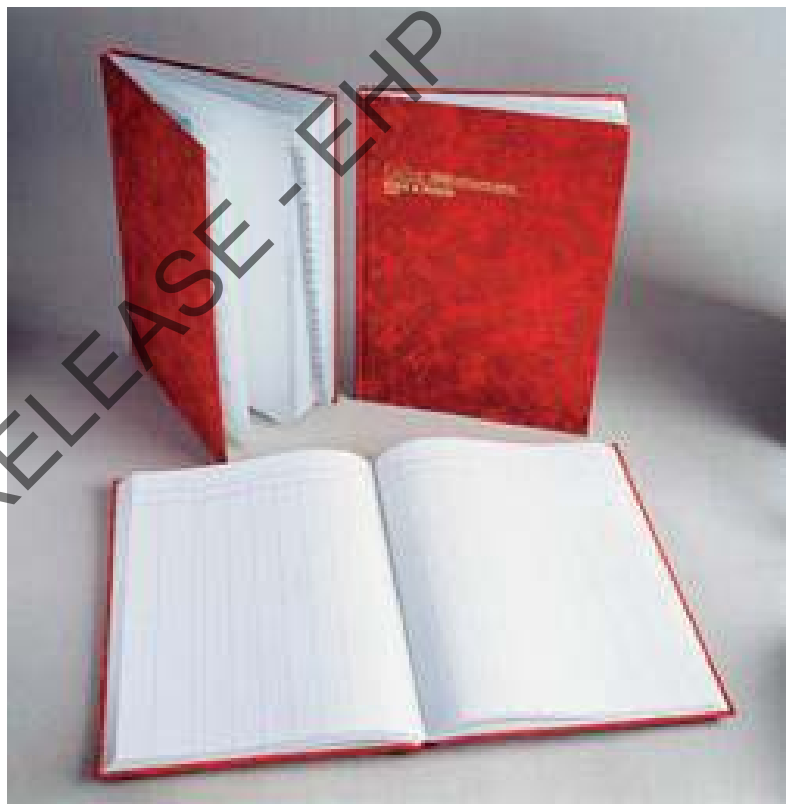
Site Inspection Equipment

- **YOU!**
- **Your Eyes**
- **Your Ears**
- **Your Nose**
- **Your ability to think on your feet**
- **Your ability to ask questions**
- **Your sense of curiosity**

RTI DL RELEASE - EHP

Official Notebook

Collins 3880 Account Book
MINUTE 10905



Official Notebook

- No such thing as a 'mental note' = 'written note'
- Bound, page numbered, 'book numbered'
- Should be issued to you and date of issue recorded on a central register
- Stored securely when completed
- Objective – notes relating to the inspection
 - Date / time / location of any action
 - Persons present
 - Name and address and versions of any person spoken to
 - Your observations and actions
 - Sketches

Official Notebook

- Legible (neat & precise)
- Only write on the numbered pages (for later reference and continuity)
- Objective / factual notes – I saw, I heard, I smelt – Remember the five faithful servants
 - Who
 - What
 - When
 - Where
 - How
- Errors / corrections crossed out with a single line (still able to be read)
- No gaps
- Blue or black pen
- Adopted by corroborator
- Line under 'end of incident'

Note book example

24/10/2007 Wednesday

Smith

1040hr

201 Sandy Creek Rd, Sandy Creek - Lot 4/RP12345 RP12346

Complaint re pumping of sewage into Sandy Creek

Entered, TUW Bill Jones (Registered Title Owner). Voice Recorder activated.

Declined to accompany, drove from house to Site 1

Site 1 - 55J 267929/ 7055395 Acc 4.5m, 11.05hr

330mm Davey pump, suction pipe in holding dam, outlet pipe running into creek

Serial # AC98765

Photo 1 - 3 of pump, Photo 4 closeup of manufacturer's plate

Site 2 - 55J 268804 / 7055454 Acc 6.2m, 11.24hr

Approx 300m NE of pump, SW corner of property

'Series of 8' photos starting north & moving clockwise (Ph 5 - 12)

Site 3 55J 265849 / 7055370 Acc 7.2m, 11.35hr

Approx 70 - 80m North (upstream) of pump

Photo 13 North, Ph 14 South

11.55hr, tuw Mr Jones at house, voice recorder on, declined interview.

12.05hr, left property

Note book example – Q&A

24/10/2007 Wednesday

1040hr

201 Sandy Creek Rd, Sandy Creek - Lot 4/RP12345

Complaint re pumping of sewage into Sandy Creek

Entered, TUW Bill Jones (Registered Title Owner).

Q - Hi Bill is it?

A - Yes

Q - Tom Brown from EHP, this is Alan Smith, we're with the Compliance group in EHP.

A - What do you want?

Q - Firstly, this is my ID, it shows that I'm an Authorised Officer under the Environmental Protection act. We've had a complaint about a pump on your property that is putting sewage into the creek and we've come to have chat about that and look at your pump and any sewage works you've got here

A - I've got nothing to say to you. Who made the complaint?

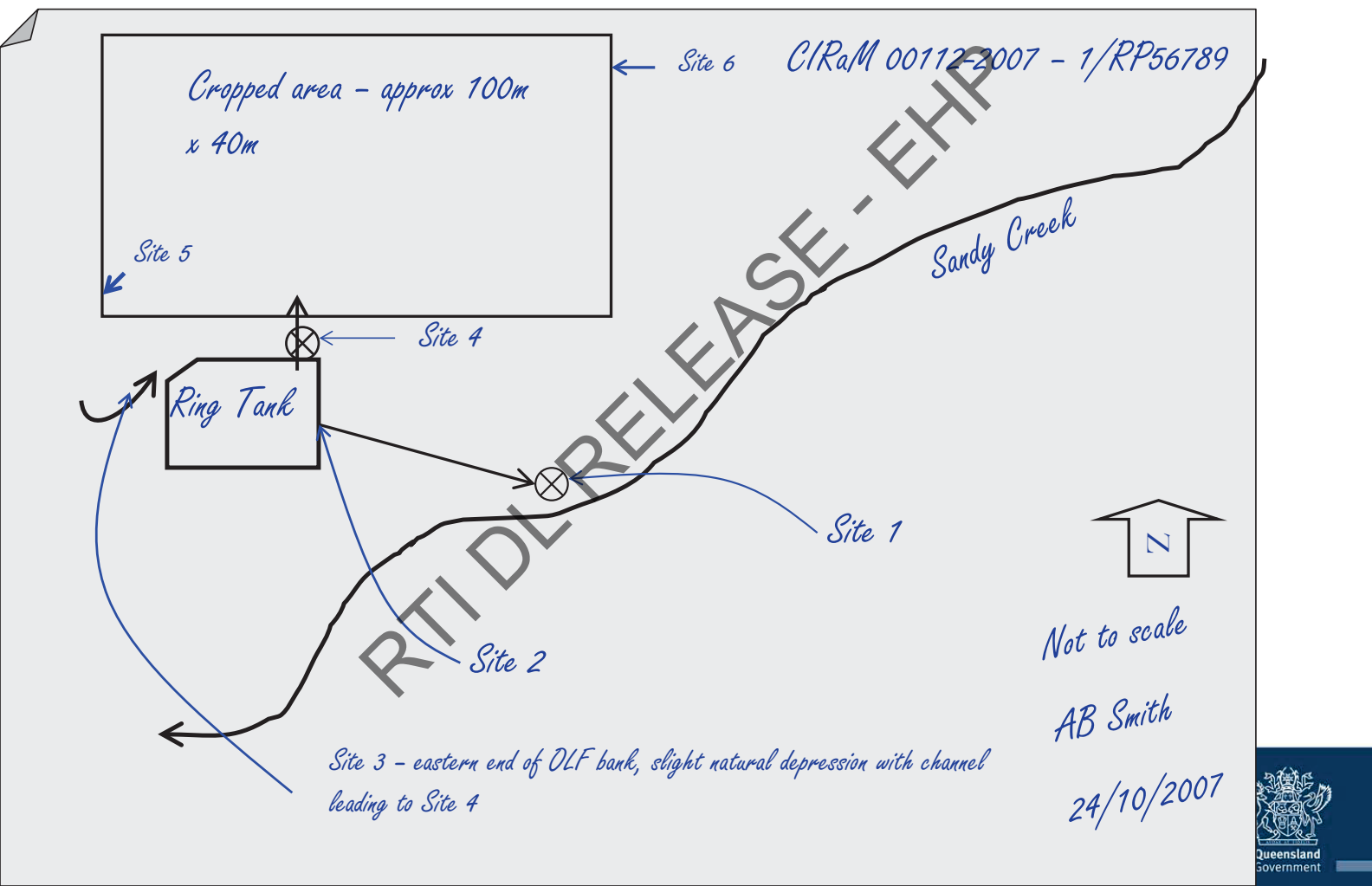
Q - We can't provide details of who makes complaints, what we need to do is have a look at any sewage works on your place. I checked our computers and you don't have any permits or authorisations to pump sewage here. Do you have anything in place?

A - I don't want to talk to you

Q - OK fair enough, what we're going to do and have a look up along the creek. We'll call in once we're done and let you know that we're leaving.

A - (no response, Jones turned and walked off)

Sketches



Digital Voice Recorders



Digital Voice Recorders

- Best practice for regulation - accurate, impartial and contemporaneous
- Can you write as fast as someone speaks?
- How well could you recall a ten minute conversation, five minutes after it happened, let alone the next day?
- Increased trend for members of the community to record conversations with government officers and others

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Digital Voice Recorders

- ***Invasion of Privacy Act 1971***
 - Offence to use listening device to overhear, record, monitor etc. a private conversation
 - No offence to record a conversation you are a party to
- **EHP policy**
 - Unless exceptional circumstances exist, the 'suspect' must be advised of the conversation being recorded. If the recording is to be done covertly, the reason must be recorded in the officer's notebook
- Start with time / date / location / file reference and 'voice ID' persons present
- Taping telephone calls
 - The recording device must not come into contact with the telephone receiver (i.e. use 'speaker phones')

Digital Still Cameras



Digital Still Cameras (and film cameras)

- 'A picture paints a 1000 words'
- Photos corroborate your observations and provide simple pictures for the Court and management to understand
- Photographs of
 - Anything and everything of interest to the inspection
 - Scene overview (distance)
 - Individual items
 - Close-ups (serial numbers)
 - Use scale (ruler, vehicle, notebook)
 - 'Series of 8' to show entire scene - Start facing 'north' and then take 8 photos (North, NE, East, SE, South...) in clockwise direction
 - Before and after shots of damage
- Record date/ time / location / direction & description in notebook as well as 'photo number'

Photographs

- Start 'broad' and move in
- Series of 'panned' photos might be required



Great



Queensland
Government

- If 'zooming' in, use a wider shot to also show location
- Record details of each photo
 - Photo number
 - Site number
 - Description
 - Who took it (if not the note taker)



Great state. Great opportunity.

Digital Video Cameras



RTI DL RELEASE - EHP

Digital Video Cameras

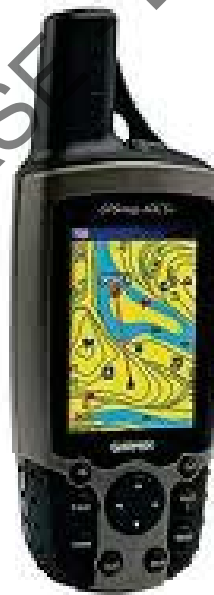
- Not used as much as it should be
- Good to show landscapes or machinery operating
- Chance to include (objective) commentary
- Record same details in notebook as for still photos

RTI DL RELEASE - EHP

Hand Held Global Positioning Systems (GPS)

RTI DL RELEASED EHP

Hand Held Global Positioning Systems (GPS)



GPS units – vital tool for:

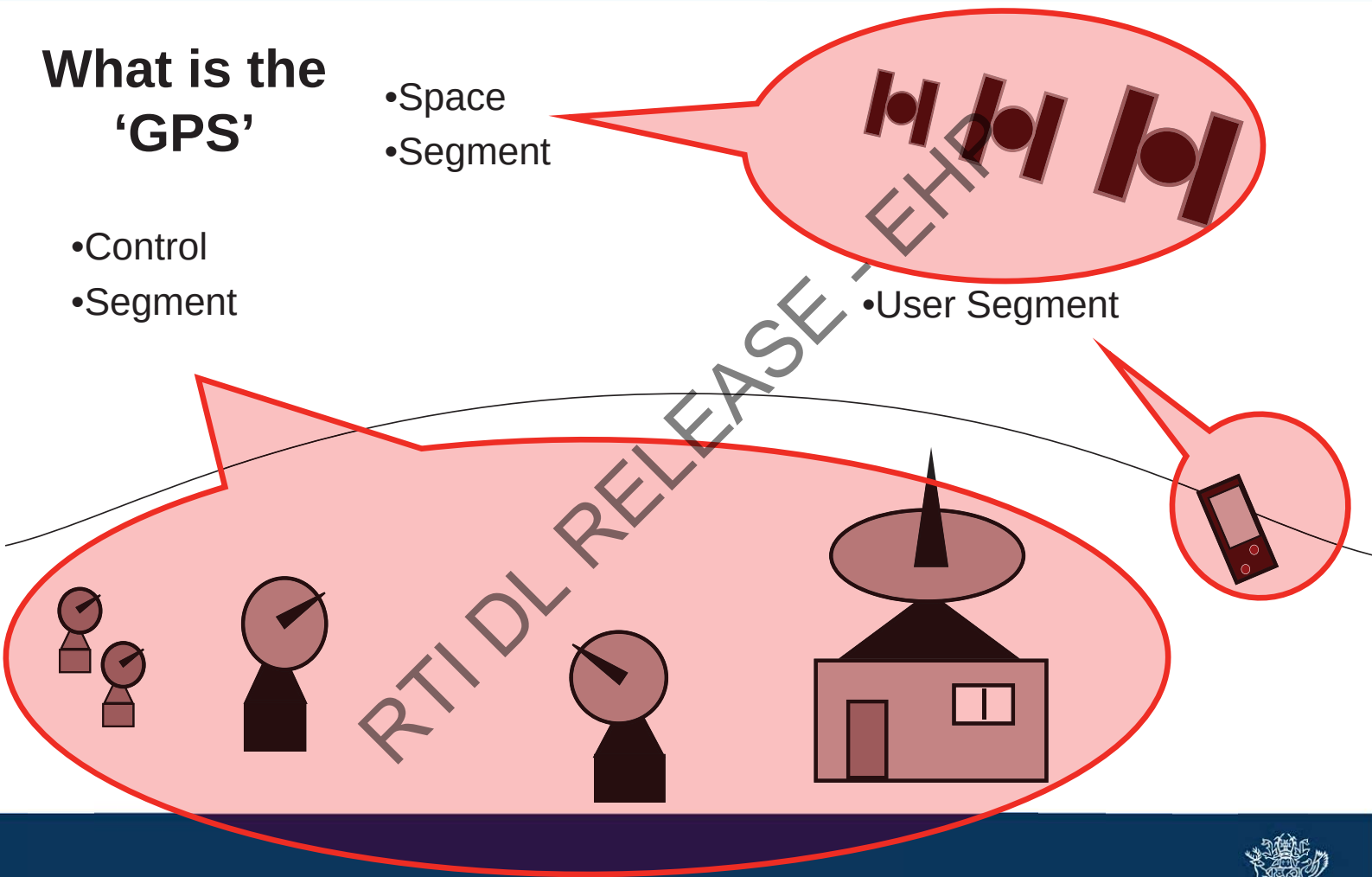
- Accurately defining the site of an incident
- Measuring and plotting extent of incident
- Determining distances between objects
- Recording the coordinates of objects
- Recording sampling locations
- Identifying the environmental values
- Determining pathways for contaminant movement
- Assessing risk to surrounding areas
- Planning & assessing response options

What is the 'GPS'

- Space
- Segment

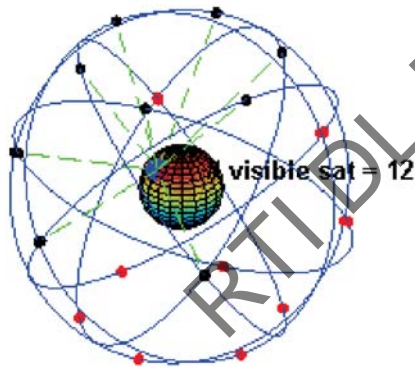
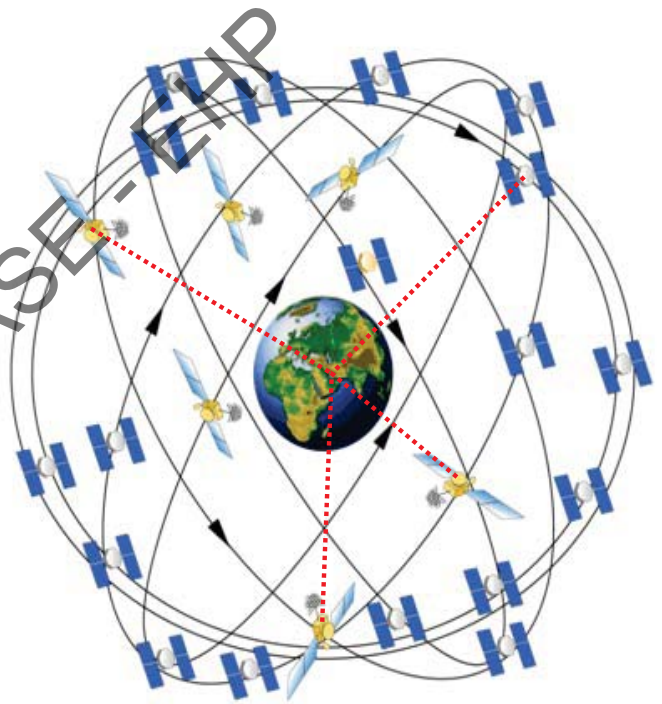
- Control
- Segment

- User Segment

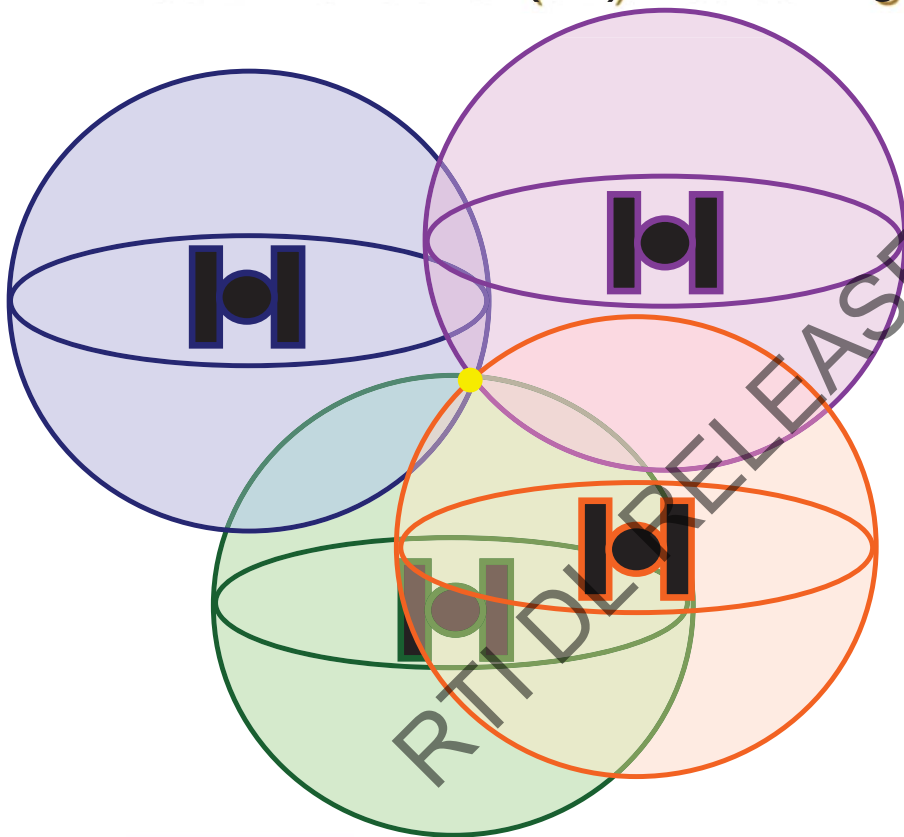


GPS - How does it work

- Known satellite positions
- Distance to 4 satellites used
- Accuracy ~ 4m-10m



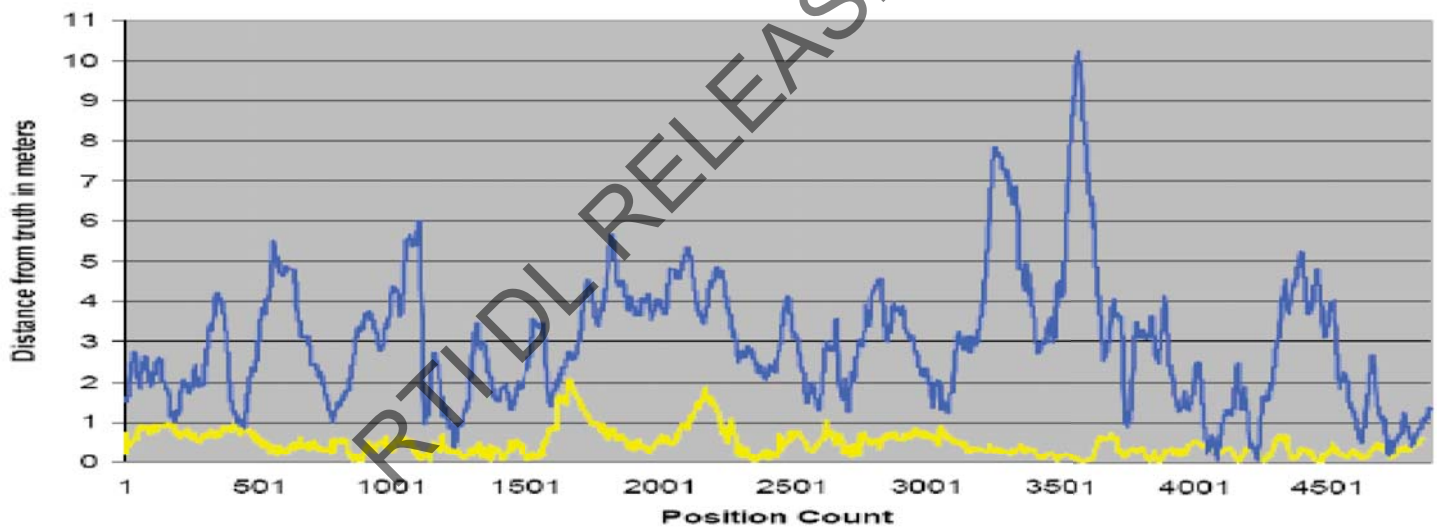
Three Dimensional (3D) Positioning



- At least four satellites providing more accurate positional locations (longitude, latitude & elevation)
- GPS unit needs to be 'multi-channel' to track more than one satellite at a time

Sources of Error

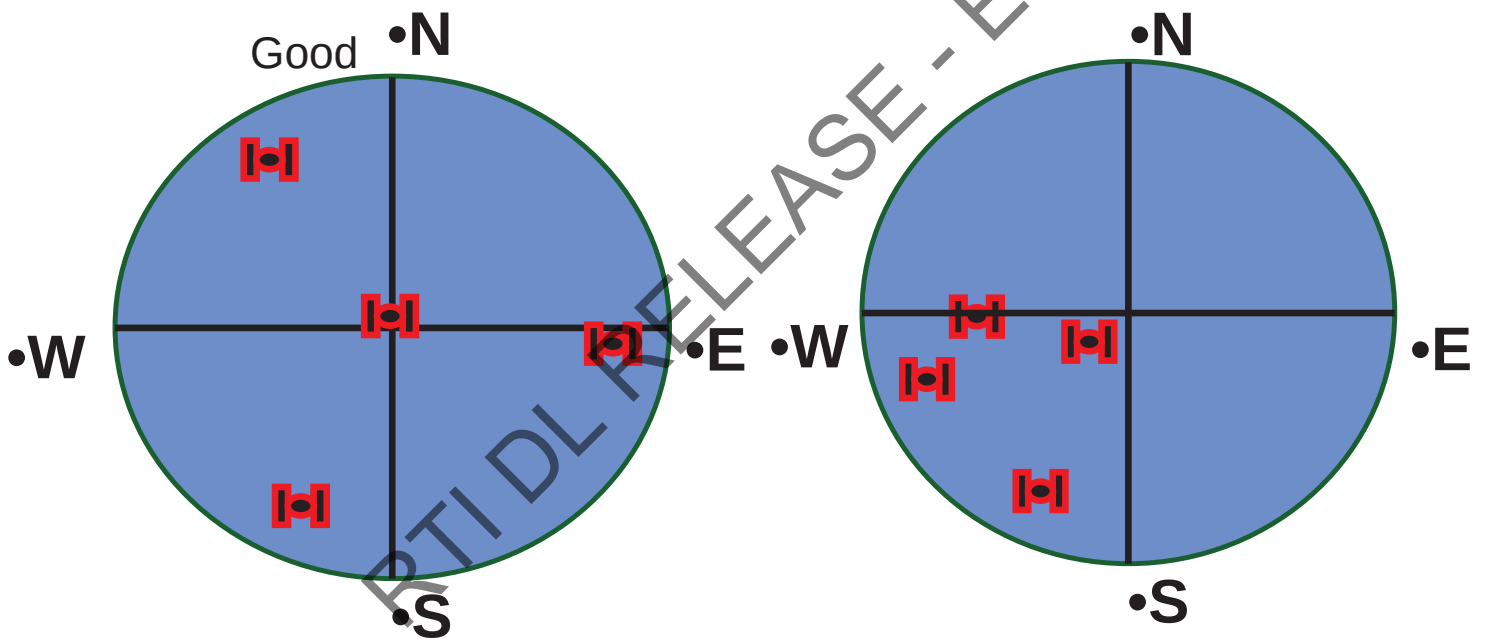
- Over time, due to this range of factors, the accuracy of the reading will vary
- GPS units typically calculate a position every few seconds



Sources of Errors

- Satellite Geometry and 'Dilution of Precision' (DOP)
 - Measurement of the position of each satellite in the constellation being used (i.e. visible to the receiver) relative to the other satellites
 - A 'spread' of satellites vs a closely grouped constellation

DOP



Sources of Errors

- Satellite and Other Errors
 - Uncorrected errors in the satellite clocks or position predictions
 - Role of the 'control' segment
 - 'Unhealthy' satellites
 - Status signal transmitted to the GPS unit and the satellite is removed from position calculations

RTI DL RELEASE - EHP

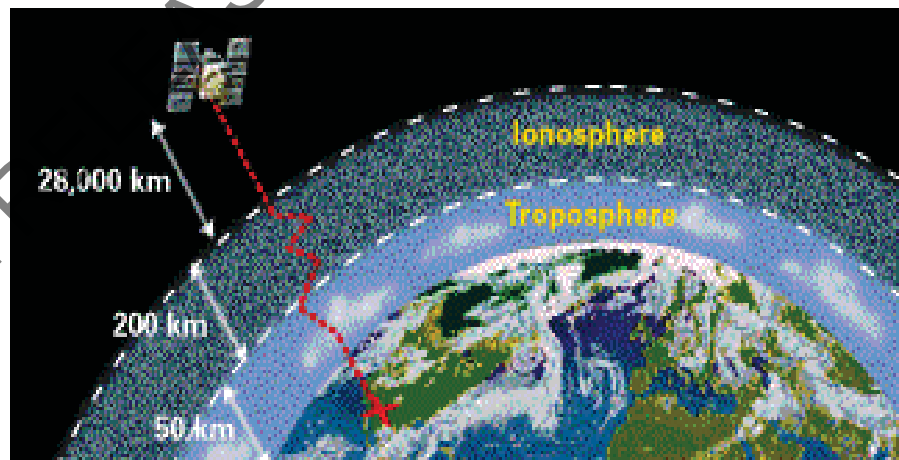
Sources of Errors

- User Operating Errors
 - Use whilst stationary... remain in place for at least 30 seconds before taking a waypoint
 - Method of carrying... keep the unit 'stable' with the antennae relatively free from obstructions

RTI DL RELEASE - EHP

Sources of Errors

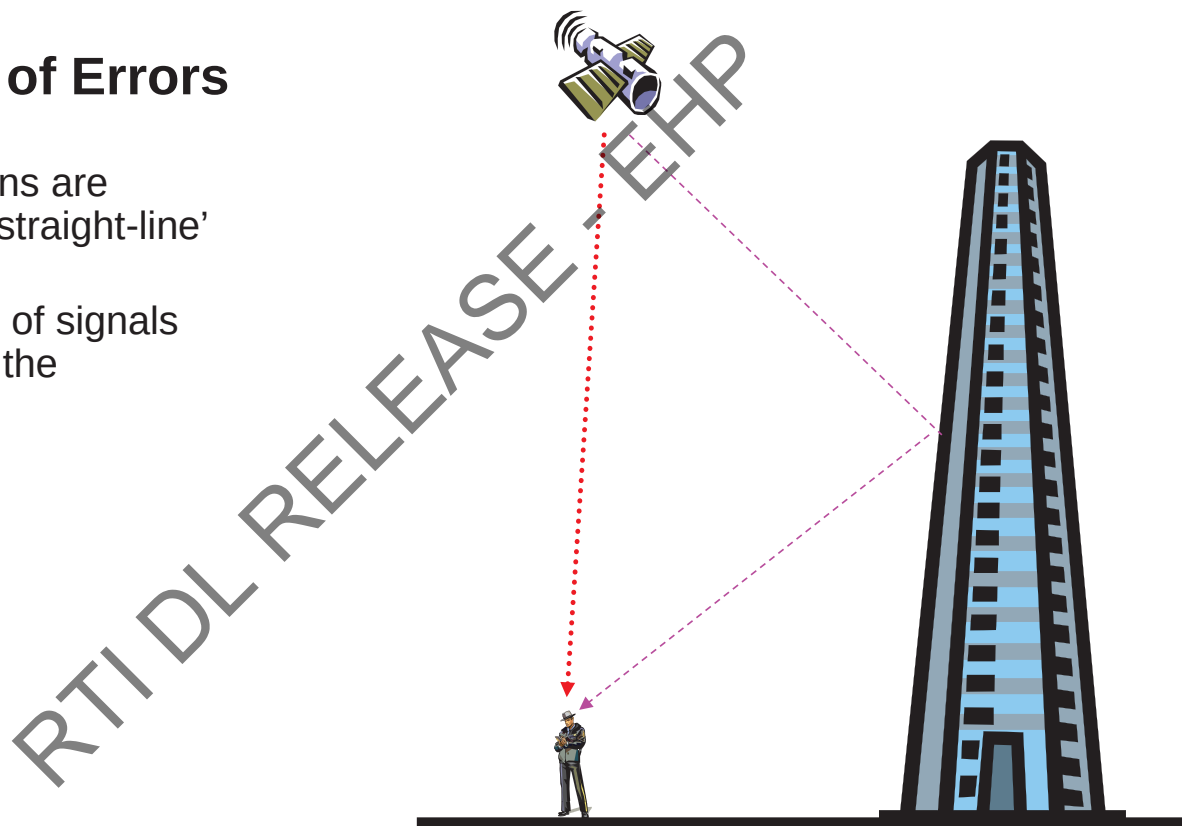
- Ionospheric & Tropospheric Effects
 - Signals must travel through these layers and can be affected
 - Charged particles
 - 'Weather'



•Accessed from www.trimble.com

Sources of Errors

- Multipath
 - Calculations are based on 'straight-line' travel
 - Reflection of signals enroute to the antennae



Sources of Errors

- RF Interference
 - Microwave transmitters
 - Radar signals
 - UHF radio signals
 - Intentional jamming



GPS Unit Settings

- Units = 'metric'
- Datum = 'GDA'
- Location Format = UTM UPS
- North Reference = True

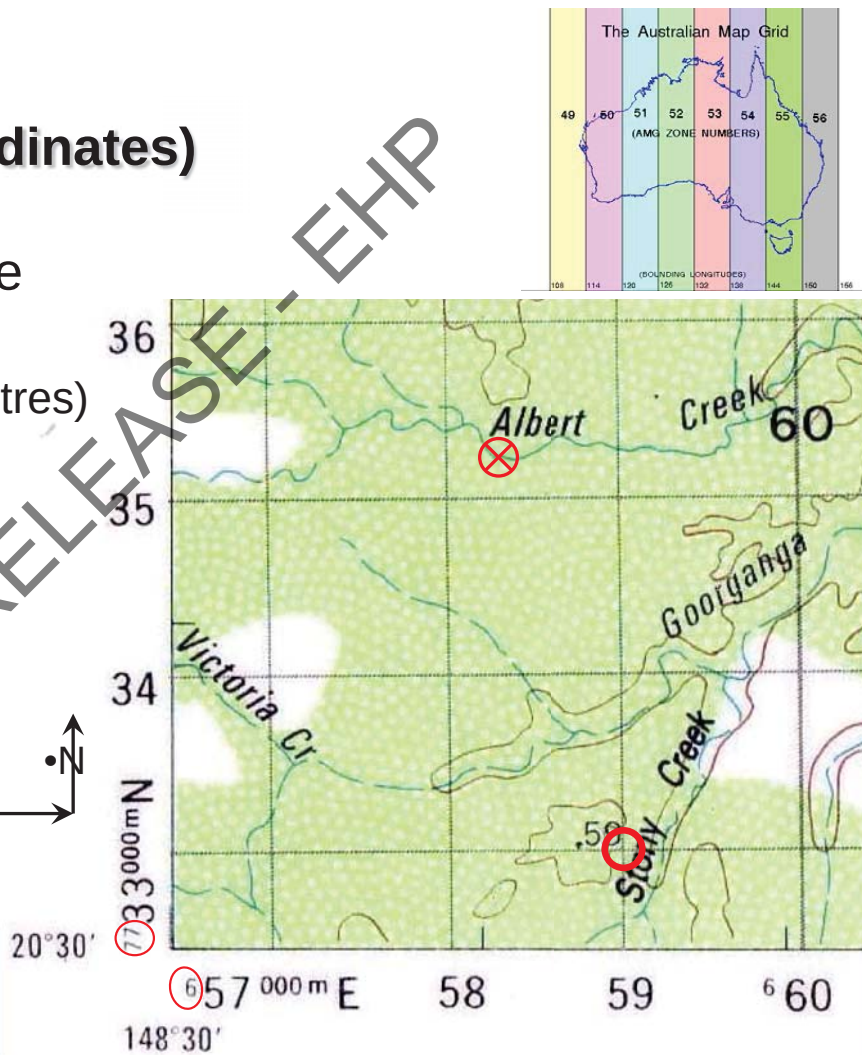
RTI DL RELEASE - EHP

Datum

- New Aust Datum GDA94 (Geocentric Datum of Australia)
- GPS - World Geodetic System WGS84
- WGS84 = GDA94
- Old Datums for mapping and GPS (AGD, AGD66-AUS66, AGD84-AUS84)
- Set Datum to WGS84 by preference (=GDA94)
- Check the datum of maps being used
- RECORD the datum you have used
- Positions in different datums or different coordinates can be converted by the GPS or software (e.g. UTM-LL)

Positioning (Coordinates)

- AMG/UTM grid reference needs:
- Zone Easting & Northing (metres)
- E.g. Stony Creek
- Z55 E659,000 N7,733,000
- Grids are 1,000 m square
 - Albert Creek
 - Z55
 - E658,300 (read across)
 - N7,735,200 (read up)
 - Z55 E658,300 N7,735,200



Great state. Great opportunity.

Pre-Inspection Checklist

- Office preparation
 - Clear GPS memory
 - Data Collection Plan
 - Data that needs to be collected
 - number of sites
 - locations within the subject area
 - Reference points

RTI DL RELEASE - EHP

In the Field

- Identify suitable sites
- Remain aware of your surroundings – safety first
- Remember potential error sources
 - Multipath
 - Satellite Geometry
 - RF & other interference



In the Field

- At the site
 - Keep the unit stable (don't swing around whilst walking)
 - Keep the antennae clear of obstructions
 - Wait for '3D'
 - Wait at least 30 – 60 seconds before 'marking' the 'waypoint'
 - Write your field notes whilst waiting

Verify your GPS...Permanent Survey Mark (PSM)



SmartMap Survey Report and PSM Sketch

First Order Class A PSM

Current Information		Administrative	
Alternate Name(s)	HERITAGE	Mark Condition	GOOD
Parish	NORTH BRISBANE	Installed Date	21/03/1997
Town	BRISBANE	Sketch Available	YES
Local Authority	BRISBANE CITY		
Locality Description	GARDEN EDGE STAMFORD HOTEL-CBD		
Related Information	MARK IS A SCREW IN CONCRETE NUMBERED BRASS TAG ATTACHED TO CONC 22/03/97 OBSTRUCTIONS BLD 320-347 48E BLD 247-264 23E TREE 105-138 27E ***** DNR VISIT 22-06-98, PM IN GOOD COND		
Mark Details			
Mark Type	R/INF	Mark Condition	GOOD
Installed By	DAWSON / DNR	Installed Date	21/03/1997
Last Visited	01/12/2009	Sketch Available	YES
Connection(s)	SP233945 SP228581 RC221168 IS166653 SP121587		
Horizontal			
Datum	GDA94	Longitude	153°1' 51.7690° E
Latitude	27°28' 18.9566° S	Northing	6961291.762
Easting	503067.365		
Zone	56		
Order	1st ORDER	Class	CLASS A
Adjustment Name	GDA - BRISBANE TO IPSWICH CONTROL	Fixed By	GPS
Prominent Feature	NO		
Vertical			
Height	5.312	Datum	AHD D
Order	4th ORDER	Class	Class D
Fixed By	GPS	Origin	9610
Geoid/Ellipsoid Separation(N)	12.179		
Model	AUSGEOD93 INTERPOLATED		

[illegible]

Backup gear...

- Batteries, 'in car chargers, inverters etc. and all the things you may overlook

RTI DL RELEASE - EMP

Site Inspections – evidence gathering

- Remember your inspection plan...
 - What are you looking for?
 - What is 'permitted' to be there?
 - Where are you going to look?
 - What are you going to do with it if you find it?

RTI DL RELEASE - EHP

Site Inspections – evidence gathering

- Do you need the primary evidence? Can you photograph / video the item or use seize and leave (restrict access) powers to achieve the same purpose? If we seize we must give a receipt!



DARLING DOWNS ZOO ANIMAL REGISTER JUNE 2006

Species	Sex	Name	DOR	Birth Location	Identification	Parents	Transfer Date	From/To
Dingo	F	Dee Dee	1/12/2003	Gunnedah	As per photo submitted		25/12/2004	Gunnedah to DDZ
	M	Dugg	27/05/2000		As per photo submitted		17/06/2006	to DDZ
BABOONS	F	Rahmah	20/09/1985	Perth Zoo	Tattoo P12, MC 00-00F7-8FB9	670001 Sire 710006 Dam	13/04/2001	Perth Zoo to DDZ
	F	Upender	15/01/1971	Perth Zoo	Tattoo P11, MC 00-012A-8869	810001 Sire, 810002 Dam	13/06/2005	DDZ to Rockhampton
	M	Rameses		Alma Park Zoo			17/06/2006	Rockhampton to DDZ
TIGER	M	Tuffy	1/01/1982	Bullens	Only Tiger, very old		1/05/1982	Bullens to SR
JAGUAR	F	Kera			Only Jaguar, Short Tail, Blind		1/05/1987	to DDZ
CRAB-EATING MACAQUE	F	Bab's	15/01/2001	DDZ	As per photo submitted, no injuries	George & Mildred DDZ		
	F	Geeta	0/0/1985		MC 986-000-000-197-659	George & Mildred		
	M	George	0/0/1983	Natureland Zoo	MC 956-000-000-188-218		0/0/1984	Natureland to SR
	F	Johanna	18/08/2002	DDZ	Deformed right hand, as per photo	George & Mildred		
	M	Kent	24/11/1959	DDZ	Castrated, as per photo	George & Mildred		
	M	Nick	12/01/2005	DDZ		Kent & Bab's		
RHESUS MACAQUE	F	Caspem	0/0/1983	Natureland Zoo	Largest female, with Spunky & MH		25/07/2004	U. Macdonald to DDZ
	F	Cassie	4/10/1993	DDZ	Wounded hands, both		0/0/1984	Natureland to SR
	M	Hannibal	21/04/2005	DDZ	Solitary Male, has canines	Rastus & Casse		
	M	Rastus	0/0/83	Natureland Zoo	Baby male	Caspem & Herbert	0/0/1984	Natureland to SR
	F	Sally	23/02/2005	DDZ	10 male, with Cassie & Sally			
	M	Spunky	1/11/1994	DDZ	Baby female	Cassie & Herbert		
					With Caspem & Mr H, no canines	Rastus & Casse		
AFRICAN LION	F	Deliah	17/07/2003	DDZ	Nick in right ear	Xena & Fred	12/01/1998	Lennox to DDZ
	M	Fred	0/0/1983	Bullens	Darkest, golden coat, cataracts	Sheba & Fred		
	F	Irene	24/11/1998	DDZ	Solitary old male, largest female	Sheba & Fred		
	M	Khan	1/05/2004	DDZ	Darkest, golden coat, largest female	Xena & Fred	10/06/2004	DDZ to Lennox
	M	Leo	28/11/2002	DDZ	In group, light mane, largest male	Sheba & Fred		
	M	Locke	24/05/2001	DDZ	With Robbie, light mane, long face	Sheba & Fred		
	F	Mayzie	1/05/2004	DDZ	With Robbie, light mane, long face	Sheba & Fred	10/06/2005	DDZ to Lennox
	M	Robbie	24/05/2001	DDZ	With Locke, dark mane	Xena & Fred		
	F	Sheba	26/11/2002	DDZ	In group, short face, short nose	Sheba & Fred		
	M	Simba	13/08/1997	DDZ	In group, dark mane, small male	Sheba & Fred		
	F	Xena	11/04/1998	DDZ	In group, lightest mane	Sheba & Sultan		
THREE-THIGHED TORTOISE	F	Houdini	1/03/2001	Perth Zoo	Medium, bumpy shell	Dam 950841 Perth Zoo	25/11/2001	Perth to DDZ
	M	Malcolm			MC 00-0211-50DE left hind leg		25/11/2001	Perth to DDZ
	F	Itany	1/03/2001	Perth Zoo	Smallest	Dam 950841 Perth Zoo	25/11/2001	Perth to DDZ

23 3:18PM

Questions?

RTI DL RELEASE - EHP

Responding to non-compliance

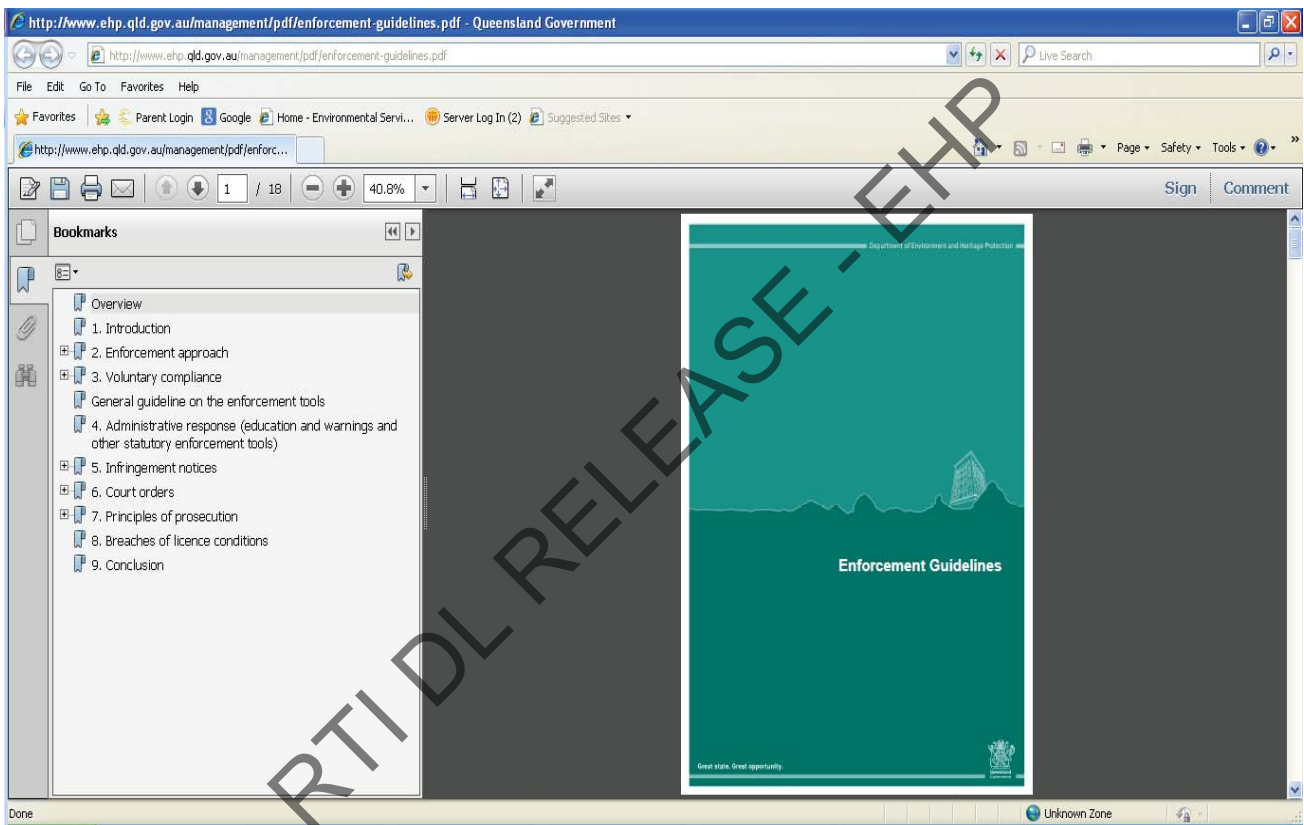
Great state. Great opportunity.



Objectives of enforcement

- Remedial – rectify or make good
- Punitive – inflict punishment
- Deterrent – to deter similar events
- The use of any regulatory tool could be one step in the compliance strategy
- Use in combination
- EHP Enforcement Guidelines – on the EHP internet site or via Ecosteps

RTI DL RELEASE - EHP



Enforcement Guidelines

- **READ THEM!**
- Explains how EHP determines the enforcement action it will take in any given situation
- Ensures EHP's enforcement responses are:
 - Proportionate to the conduct
 - Consistent with past responses for similar conduct
 - Occur in a timely fashion
- Starting point – also look at specific guidance material produced for enforcement tools

Finding guidance material

- Compliance Support intranet page

http://insite2.dnr.qld.gov.au/compliance_coordination/cpip_trial.html

- Compliance Support team

Compliance.Training.Support@ehp.qld.gov.au

- Ecosteps

RTI DL RELEASE - EHP

Compliance Support Materials - Queensland Government

http://state2.dvr.qld.gov.au/compliance_coordination/csp_3rd.html

File Edit View Favorites Tools Help

Home - Environmental Services Server Log In (0) suggested links

http://www.legislation.qld.gov.au/ Acts and Subordinate legislation Compliance Support Materials

[intranet] Other sites: EMP intranet | NPSRS intranet | QSS | Govnet | Phone directory

my home A-Z Index Feedback Help

search

Departmental Indexes

Enforcement Services Unit

Compliance and Investigations > CPIP > Compliance Support Material

Environmental Services
Heritage
Sustainable Planning Act
Indigenous Cultural Heritage

Compliance Support Materials

The following packages of compliance support materials have been developed by the Compliance Support team following consultation with working groups from each functional area. Most of the packages contain a procedural guide, assessment report, notices and other documents.

The link below will lead you to the set of support packages for each business area and the relevant legislation.

The documents listed in each support package are currently being reviewed and updated by the Compliance Support team. If you have any queries regarding these documents, please contact Tracy Bridge on 07 3330 5552 or email tracy.bridge@ehp.qld.gov.au.

Specific support material is currently available for the following business areas:

- [Environmental Services](#)
- [Heritage](#)
- [Sustainable Planning Act](#)
- [Indigenous Cultural Heritage](#)

General Compliance Support Material

These documents have been prepared to assist staff in making decisions in relation to non-compliance.

[Appointment of Authorised Officers](#)
[Compliance and Enforcement Guidelines](#)
[Formal Investigation Request](#)
[Powers of Authorised Officers Procedural Guide](#)
[Powers of Authorised Officers \(external version\)](#)
[Reviewing a decision in response to non-compliance](#)
[Understanding legal entities](#)
[Warning Notices Procedural Guide](#)
[Warning Notice](#)
[Warning effective and enforceable conditions](#)

Last updated: 26 March 2013

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Trusted sites 100%

The screenshot shows the EHP Intranet website in a web browser. The browser's address bar displays the URL <http://intranet.ehp.govnet.qld.gov.au/>. The website's header features a large banner with the text "EHP Intranet" and a navigation menu with links to "Home", "Feedback", and "Search". Below the banner, there is a horizontal menu with links to "Our department", "Human resources", "Information technology", "Business operations", and "Communications". The main content area is divided into several sections. On the left, there is a large green banner for the "2013 Premier's Sustainability Awards" with a "Nominate now" button. To the right of this banner, there are several news items, including "2013 Queensland Reconciliation Awards", "Visit our heritage attractions", "EHP Reward and Recognition Framework", and "Follow us". Below these, there is a section titled "Premier's Sustainability Awards" with a brief description and a "Read more" link. On the right side of the page, there is a "Staff contacts" section with links to "Phone directory (1Contact)", "GovNet", and "White Pages". Below this is a "Featured links" section with a list of links, including "Applications", "Library Services", "Daily News Alert (DNA)", "QSS", "Disasters and critical incidents", "Right to information", "IT Service Desk", "Employee Self Service (ESS)", "MIS Timesheets", "Worksafe Workingwell", "Corporate training calendar", and "Corporate Procurement". A black arrow points to the "Applications" link in the "Featured links" section. At the bottom of the page, there is a "News" section with a link to "Risk Management Policy and Risk Management Procedure" and a "From the Director General" section with a quote and a small photo of a man.

EHP Intranet - Queensland Government

<http://intranet.ehp.govnet.qld.gov.au/>

File Edit View Favorites Tools Help

Home - Environmental Servi... Server Log In (2) Suggested Sites

EHP Intranet

Home Feedback Search

Our department Human resources Information technology Business operations Communications

News Forms & templates Policies & procedures Easy find Delegations

2013 Premier's Sustainability Awards

Friday 14 June | Brisbane Convention and Exhibition Centre [Nominate now](#)

2013 Queensland Reconciliation Awards

Visit our heritage attractions

EHP Reward and Recognition Framework

Follow us

Premier's Sustainability Awards

Award nominations are open until Friday 15 March 2013. The awards recognise Queensland's sustainability champions who are showing environmental leadership in business, industry, schools and our communities. If you know of any business or departmental customers that might qualify or are involved in a community or school project that could qualify consider an application. [Read more](#)

Staff contacts

- [Phone directory \(1Contact\)](#)
- [GovNet](#)
- [White Pages](#)

Featured links

- [Applications](#)
- [Library Services](#)
- [Daily News Alert \(DNA\)](#)
- [QSS](#)
- [Disasters and critical incidents](#)
- [Right to information](#)
- [IT Service Desk](#)
- [Employee Self Service \(ESS\)](#)
- [MIS Timesheets](#)
- [Worksafe Workingwell](#)
- [Corporate training calendar](#)
- [Corporate Procurement](#)

News

[Risk Management Policy and Risk Management Procedure](#)

The Risk Mananement Polciv and Risk Mananement Procedure have

From the Director General

I am committed to working across the Department to grow us into Australia's most

Trusted sites 100%

Intranet Applications - Queensland Government

http://insite2.dnr.qld.gov.au/departamental/applications.html

File Edit View Favorites Tools Help

Google Home - Environmental Servi... Server Log In (2) Suggested Sites

Intranet Applications

Welcome to Ecosystem@.

Ecosystem@ comprises the suite of information tools to support corporate environmental decision-making as part of the Ecoaccess initiative.

Business process help
Permit and Licence Management (formerly ECSU)
1300 130 372
palm@derm.qld.gov.au

 **eco steps**

Ecosteps Queries
steps.admin@derm.qld.gov.au
Ecosteps stores business processes and associated reference materials, including forms, letters, notices and guidelines.

 **ecomaps**

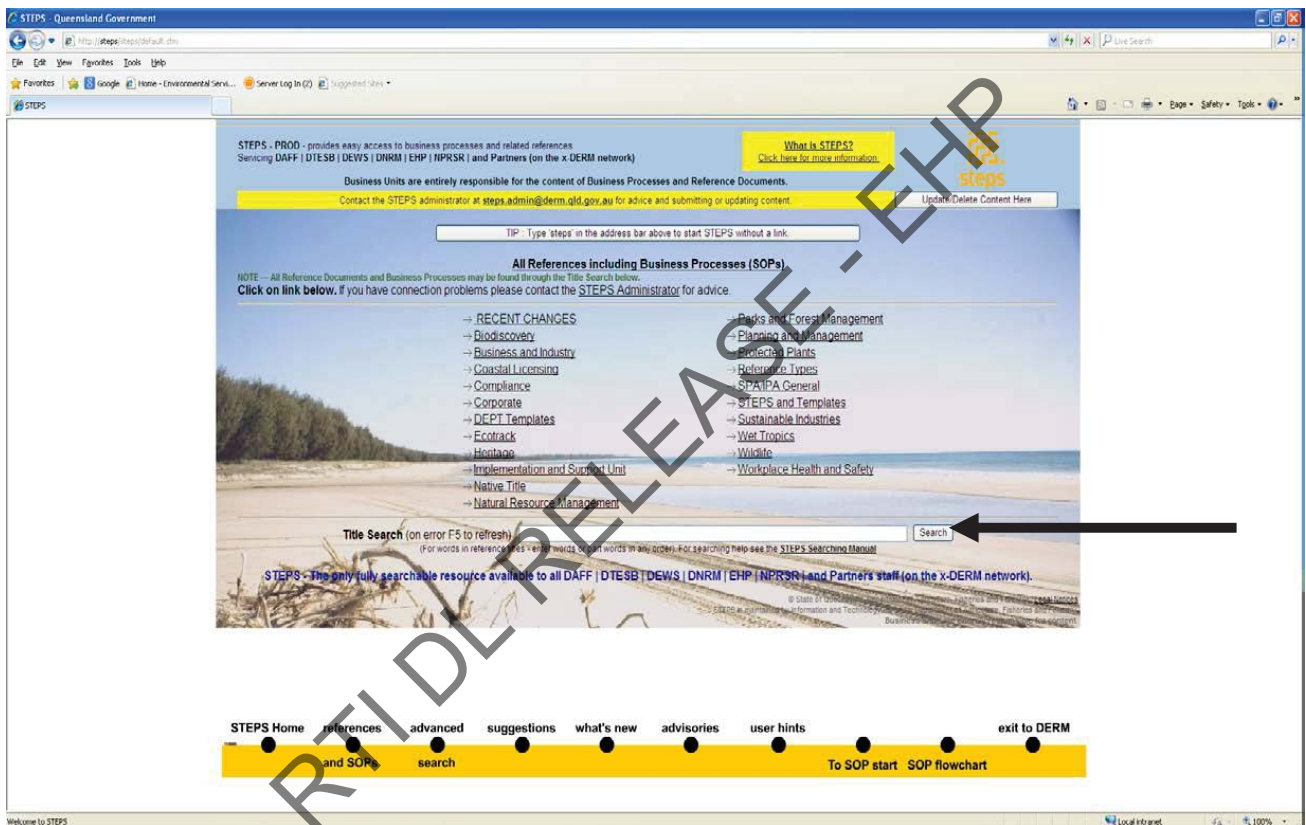
Technical Support
Ecomaps Help Desk
eco.maps@derm.qld.gov.au
Ecomaps is a user-friendly geographical information system providing environmental information to support decision making.

 **ecotrack**

Technical Support
Ecosystem Help Desk
eco_track@derm.qld.gov.au
3330 4020

- 1) [Request information or provide feedback](#)
- 2) [Deletion or Status Change Request](#)
- 3) [New/Update Ecotrack User Request](#)
- 4) [Discoverer Access Request \(Word 247K\)](#)

Trusted sites 100%



STEPS - Queensland Government

http://steps/steps/default.cfm

File Edit View Favorites Tools Help

STEPS

steps

Reference Documents
[Search words: 451 Legislation: ALL Reviewer: ALL Type: ALL]

Results 1 - 2 displayed of 2 matches found

[1336 EP Act - s451 - Notice Requiring Relevant Information \(26Feb13\) \(R\)](#)

Legislation: Environmental Protection Act 1994;
Owner / Review required by: EHP, ERE Branch, Compliance Support not later than: 20-Feb-2015

[300 Water Act 2000 - s451 - Notice - Direction notice to take Emergency Direction \(20-Sep-12\) \(R\)](#)

Legislation: Water Act 2000;
Owner / Review required by: EHP, Energy Resources not later than: 21-Sep-2014

Results 1 - 2 displayed of 2 matches found

Key Specials (P) = Text message (BP) = Business Process (SOP)
(SY) = Special system file - usually password to open
Locality: (IR) = Internal STEPS Reference (E) = External reference (eg Intranet or Internet)

© State of Queensland, Department of Agriculture, Fisheries and Forestry [Legal Notices](#)
STEPS is maintained by Information and Technology Partners: Department of Agriculture, Fisheries and Forestry

[STEPS Home](#) [references](#) [advanced](#) [suggestions](#) [what's new](#) [advisories](#) [user hints](#) [exit to DERM](#)

[and SOPs](#) [search](#) [To SOP start](#) [SOP flowchart](#)

Welcome to STEPS

Local intranet 100%

Principles of enforcement

- Response must be **proportional** to the issue
- Response must be **timely**
- Response is guided by the desired **outcome**
- Sometimes this requires **multiple** actions

RTI DL RELEASE - EHP

The tool box

- Warning
- Penalty infringement notice (PIN)
- Environmental protection order (EPO)
- Transitional environmental program (TEP)
- Environmental evaluation (investigation or audit)
- Direction notice
- Clean up notice
- Cost recovery notice
- Emergency direction
- Restraint orders / Enforcement orders
- Prosecution
- Withdrawal of registration

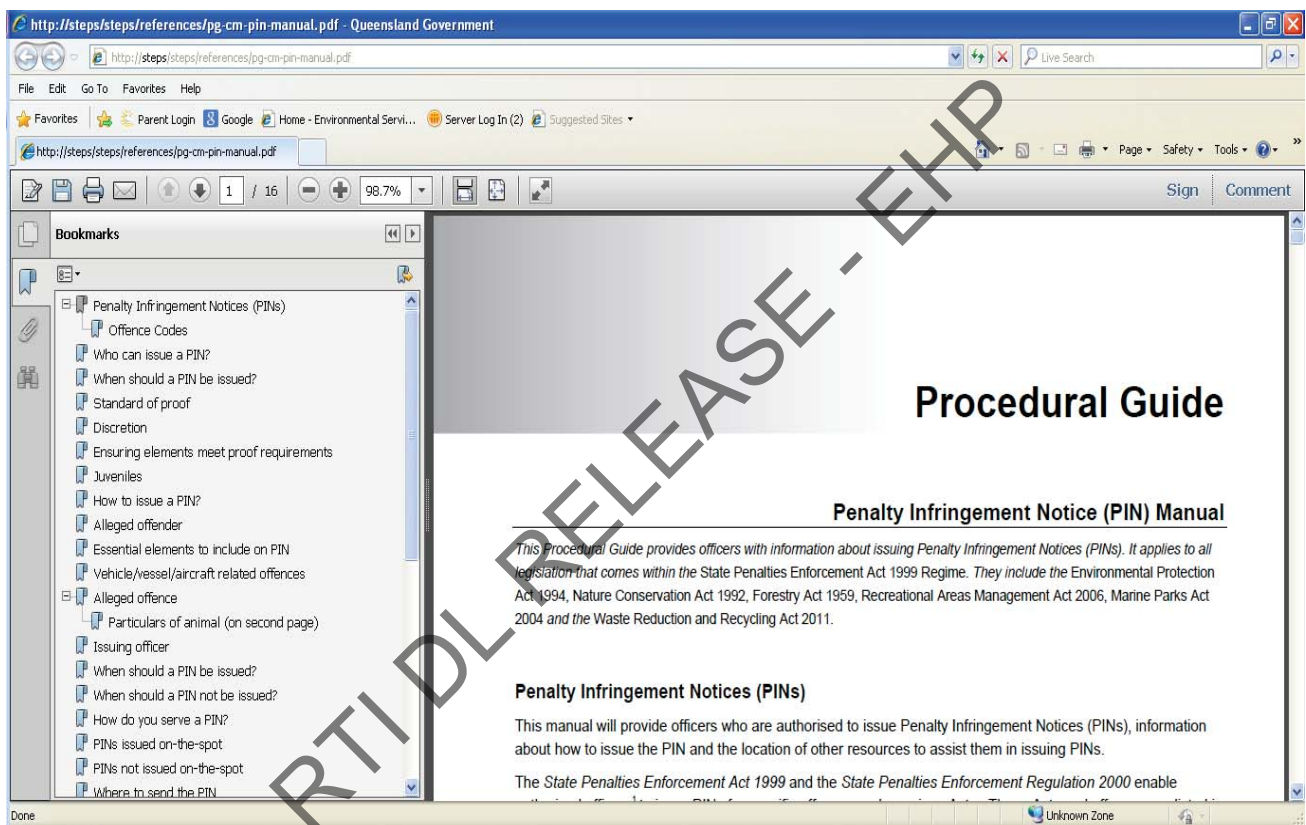
Warnings

- Used for minor non-compliance only
 - One off situation
 - Offence / breach is minor or technical in nature
 - Harm or potential harm to the environment is minimal
 - The use of a warning letter / notice is likely to be a deterrent
- As simple as a letter identifying detected non-compliance
- The issuing of a warning notice / letter **must** be recorded in Ecotrack
- If checks reveal a previous warning has been issued to the same person / organisation for similar breaches, further action should be considered

Penalty Infringement Notice

- Address common breaches where impacts are not serious enough for prosecution
- Enforcement guidelines and Penalty Infringement Notice (PIN) Manual on Ecosteps
- Standard of proof for PIN
 - All offences for which a PIN are issued should be treated as potentially defended matters
 - Each element of the offence needs to be proved beyond reasonable doubt

RTI/DI RELEASE - EHP



Environmental Protection Orders

- Chapter 7 Part 5 of the Act
- Procedural Guide
- An EPO is used to legally force people / industry to stop, not start or start a particular activity at stated times on stated conditions or by a certain date
- Useful when it is known what action needs to be taken and the timeframe during which the action needs to be undertaken
- Not suitable when extensive work is required over a long period of time

Environmental Protection Orders *continued*

- Some key points
 - Must have appropriate grounds for issuing an EPO
 - Used when the outcome required is clear and needed swiftly
 - Must be served on the recipient
 - Failure to comply with the terms of an EPO is an offence

RTI DL RELEASE - EHP

Transitional Environmental Programs

- Chapter 7 Part 3
- Procedural guide
- A specific program that, when complied with, achieves compliance with the Act for the activities that it deals with by reducing environmental harm, detailing the transition to an environmental standard, detailing the transition of the activity to comply with a condition (for example of an EA)

Transitional Environmental Programs *continued*

- Allows people to come up with their own solutions to issues
- Often used when a program of work is required to fix a problem
- Can be voluntarily undertaken or required by EHP
- An approved program notice may protect the person from prosecution for any continuation of the original offence
- Section 350 Program notice
- Section 351 Program notice privileged
 - The program notice and any documents submitted with it are not admissible in evidence
 - Does not prevent other evidence being obtained because of the giving of the program notice or any documents being admitted in any legal proceeding

Transitional Environmental Programs *continued*

- What does a TEP contain?
 - Objectives that are to be achieved and maintained;
 - How the objectives are to be achieved;
 - Timetable for achieving the objectives;
 - Appropriate performance indicators at not more than 6 month intervals; and
 - Provision for monitoring and reporting compliance with the program.

RTI DL RELEASE - EHP

Environmental Evaluations

- Chapter 7 Part 2
- An evaluation of an activity/event to decide the source, cause or extent of environmental harm being caused or likely to be caused by the activity or event and the need for a transitional environmental program for the activity or event.
- Environmental audit
 - Grounded on contravention of EA, DA, EPP or TEP
- Environmental investigation
 - Grounded on event / activity causing actual or potential harm

Environmental Evaluations *continued*

- Notice to undertake environmental evaluation must state the facts and circumstances forming the basis of the grounds for requiring the environmental evaluation
- The environmental report must be accompanied by a statutory declaration
- 20 days to make a decision to accept or not the environmental report once it is received by EHP
- An EE report provides a basis for reviewing EA conditions

Environmental Evaluations *continued*

- Once an environmental report is accepted, EHP may do one or more of the following:
 - require preparation and submission of a TEP;
 - amend conditions of an environmental authority;
 - add, change or cancel a development condition of a development approval;
 - serve an Environmental Protection Order on the recipient;
 - Take any other action considered appropriate

Direction Notices

- Chapter 7 Part 5A
- Limited application for EHP
 - Environmental nuisance (s440) **devolved to local government**
 - Contravention of a noise standard (s440Q) **devolved to local government**
 - Depositing prescribed water contaminants (s440ZG) **devolved to local government**
 - Contravention of provision of an accredited ERMP if the person is carrying out an agricultural ERA

Direction Notices *continued*

- Designed to make sure ongoing offences stop or that an offence does not happen again
- Issued if the matter relating to the contravention can be remedied, it is known what actions should be taken and it is appropriate to give a person the opportunity to remedy the matter
- Check if your office has any business rules!
- Refer to the Procedural Guide

Clean-up Notices

- Chapter 7 Part 5B
- Written notice issued to a **prescribed person** for a **contamination incident**
- Issued to ensure that a contamination incident that has caused serious or material environmental harm, or is likely to, is cleaned up
- Can be issued to a wider range of people than an EPO
- Intended to operate separately from other powers including emergency directions and EPOs

Clean-up Notices *continued*

- Choose the most appropriate person to clean up the incident
 - Capacity
 - Resources
 - Degree of responsibility
- Procedure if recipient is not the owner of land on which action is required
- Refer to the Procedural Guide
 - Includes information for successfully issuing a Clean-up notice

Cost Recovery Notice

- Chapter 7 Part 5C
- Written notice for recovering costs that EHP incurred cleaning up a contamination incident if:
 - A prescribed person failed to comply with a clean-up notice
 - A prescribed person failed to comply with an emergency direction
 - A prescribed person on whose behalf the state took emergency action
- Costs must be defensible – **Record keeping is essential!**

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Emergency Direction

- Authorised person is satisfied on reasonable grounds that an emergency exists
- Authorised person may give an emergency direction to a person or take action or authorise another person to take action
- If an emergency direction is given orally it must, as soon as practicable, be confirmed by written notice
- Voice recorder or notebook entry and countersigned (Just get a voice recorder!)

Restraint and Enforcement Orders

- Court orders are amongst the strongest enforcement tools available to EHP
- Used when alternative measures have failed or when the conduct is of such a serious nature that EHP considers it necessary.
- Maximum penalty 3000 penalty units or 2 years imprisonment
- Issued by the Court after considering an application
- EHP's Litigation Unit will be involved

Prosecution

- May be the preferred option where
 - Severe and irreversible environmental harm has occurred
 - Offence was caused by wilful, grossly negligent or reckless behaviour
 - False and misleading information
 - Authorised person obstructed
- Talk to the Investigators early
- Formal Investigation Request (FIR)
- Record keeping

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Understanding Legal Entities

- 'a person' generally includes a natural person and an artificial body such as a company, body corporate or incorporated association
- Not a legal entity
 - Business
 - Joint venture
 - Trusts
- Examples

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Understanding Legal Entities *continued*

- Why is this important?
 - Licences, permits and statutory notices can only be issued to legal entities
 - They must be addressed to the person or entity that you want to be subject to the legal requirements
 - If a licence, permit or notice is not issued to the correct legal entity then it is not enforceable

Understanding Legal Entities *continued*

- Sources of information
 - Company search using Australian Securities and Investment Commission (ASIC)
 - CITEC
 - Intel Unit
- Procedural Guide on Ecosteps
- If in doubt, contact Litigation Unit or Intel Unit

Understanding Legal Entities *continued*

- Serving statutory notices
 - Acts Interpretation Act 1954
 - For an individual
 - at their last known place of business or residence
 - Use full name
 - For a corporation
 - serve the notice at the registered office
 - A copy can also be sent to the principal place of business
 - Use registered post with confirmation of delivery

Assessment Reports

- An internal document that sets out the facts and circumstances relating to the matter and documents the decision-making process used by EHP for issuing a statutory notice
- Succinctly captures the information that has led to EHP's decision
- Does not replicate the department file
- Templates are available on Ecosteps

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Assessment Reports *continued*

- An assessment report will document:
 - Grounds for issuing notice
 - Brief history of matter
 - Expand upon the grounds
 - Detail the matters considered (this is the evidence matrix)
 - Calculate the monetary value (Cost Recovery Notice only)
 - Proposed requirements of notice
 - Provide for natural justice
 - Recommendation
 - Approval

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Drafting Statutory Notices

- Statutory notices must meet legislative requirements to be legally binding
- Always refer to the Act to ensure all legislative requirements are met
- Don't forget the Procedural Guides on Ecosteps
 - There are Procedural Guides for each statutory tool
 - Writing effective and enforceable conditions
 - Understanding legal entities
- Use the templates on Ecosteps

Drafting Statutory Notices *continued*

- A condition is a legal requirement
- Conditions assist those that EHP regulate to comply with EHP's directions and requirements
- Influence the departments ability to monitor compliance and undertaken enforcement action
- If conditions are not enforceable, the document is useless
- Be **SMART** when writing conditions

Drafting Statutory Notices *continued*

- SMART – **Specific**
 - What must be done or what must not be done
 - Who must or must not do it
 - Be consistent with words
 - Define words with special or technical meanings
 - Should and must
 - The condition should be capable of only one interpretation

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Drafting Statutory Notices *continued*

- **SMART – Measurable**

- How do we work out whether a condition has been complied with?
- We need to be able to measure compliance with a condition to be able to take action for failing to comply with the condition
- Think about how you will measure compliance when writing conditions
 - Site inspection
 - Sampling
 - Monitoring
- Is there room for any argument
- What are the elements of non-compliance, how will you collect the evidence?

Drafting Statutory Notices *continued*

- SMART – **Achievable**

- Can it be done? Are you asking for the impossible?
- Is the time allowed reasonable?
- If a condition can't be complied with, then it will not be enforceable
- Achievable doesn't have to be mean easy to comply!

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Drafting Statutory Notices *continued*

- SMART – **Relevant and Reasonable**
 - Realistic and proportionate way of achieving your objective
 - What are you trying to achieve and what would be reasonable requirement to place on someone to achieve this
 - Is the requirement relevant to what you want to achieve
 - Do you require someone shutdown their operation to stop them causing environmental harm, if the harm can be stopped by requiring them to modify the operation?
 - If its not reasonable it will not be enforceable

Drafting Statutory Notices *continued*

- SMART – **Time specific**
 - Clearly state when something must be done by
 - Date / period of time / specific event
 - Don't use 'immediately' or 'as soon as possible'
 - See previous slides...specific, subject to only one interpretation, measureable

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Internal Review and Appeal

- Well drafted notice – enforceable conditions, SMART conditions
- Completed internal assessment report – document your decision making process
- Good record-keeping – able to demonstrate comprehensive compliance history, substantiate how you came to a decision

Succeeding at this stage depends on getting it right from the beginning!

Questions?

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Procedural Guide

Compliance and Investigations

Use of official note books

The objective of this guideline is to clarify when and how authorised persons should use an official note book. Where it is not reasonably practicable to use an official note book, you need to ensure that accurate, comprehensive and contemporaneous notes are made of any incident and that those notes are saved and stored on file.

Reasons for taking notes

Taking notes of incidents is important for ensuring that there is a record for later reference, and to assist in proving what happened during an incident.

Note-taking not only helps in remembering the details of an incident later, but it assists in focusing on relevant points and to make later processes more efficient (such as preparing briefing notes or giving evidence in court).

If an authorised person is investigating an incident or complaint and is later called on to give evidence about it, your notes can be relied on in court only if they are accurate and contemporaneous (made at the same time as the incident or as soon as possible after it). Without these notes, you will need to rely on your memory of the incident without any assistance.

Part of the role of an authorised person is to use his or her official notebook when taking notes. If for some reason it is not possible to use the official notebook it is important that:

- accurate and contemporaneous notes are taken (on whatever paper is available);
- as soon as practicable after the incident, notes are made of the incident in the official notebook based on the field notes; and
- the field notes are placed on file.

Essential requirements

- All entries in the official notebook must be made in ink and be in chronological order.
- Every entry must state the time and date on which it was made.
- At the end of each entry a line must be drawn and the next entry must commence immediately below the line. (Do not leave spaces in the official note book to fill in later).
- Pages must not be torn out of any official notebook.
- If an alteration is necessary then the proper procedure is to draw a line through the original notes and insert the new notes, in such a manner as to leave the original entry in legible form.
- All entries in an official notebook should be made in the handwriting of the authorised person who the official notebook was issued to. If an authorised person makes entries in another authorised person's notebook, they must make it clear the reasons and who is making the entry in the notebook.

Use of official notebooks

An official notebook is issued to an authorised person for use for Departmental matters.

Official note books are to be used only for the purpose of recording notes about the person's official duties and must not be used to record notes or private matters.

An incident that may not seem like a compliance or investigation issue at the time may become an issue at a later date. Authorised persons should, whenever in doubt, record information in the official notebook.

For the purpose of accuracy of references and admissibility of the notes as evidence, notes should be made at the time the events being recorded are taking place, or as soon as possible afterwards so that the facts are still fresh in the memory of the person making the notes.

Where an alteration to an authorised person's official note book is likely to be significant, the person should bring the alteration to the notice of another authorised person or a manager and obtain that person's signature next to a statement in the official note book explaining fully what has been done.

Use of notes to refresh witness' memory

A witness giving evidence in court is usually allowed to refer to notes, or other records, for the purpose of refreshing their memory provided that:

- the facts or conversation cannot be accurately recalled without reference to the notes;
- either the authorised person made the notes, or read the notes of the partner at a time when the facts were still fresh in the memory of the authorised person.

The witness must testify to these facts and may be cross-examined regarding the manner, time and other circumstances relating to the making of the notes.

The usual procedure is for the witness to give as much evidence as possible from memory. When the authorised person cannot accurately remember the facts or conversation, the permission of the court will be sought for the authorised person to refer to the notes. The prosecutor will usually lead the authorised person through this process.

Notes may be used to refresh the memory at any time prior to a court hearing and a witness should have no hesitation in saying that notes have been referred to prior to the hearing to refresh the person's memory. If any of the persons interviewed during the course of the investigation are to be called as a witness, that person may also refer to the original statement if they have been given the opportunity to read the statement and sign it as a correct record whilst the facts were still fresh in their memory.

How to obtain an official notebook

Each regional office may have its own internal procedures for obtaining official notebooks. Check with your manager.

Identification of an official notebook

Authorised persons issued with official note books must immediately:

- enter their name inside the front cover;
- sign the cover page;
- record the name of the person who issued the official note book; and
- the location and date it was issued.

The authorised person being issued the official notebook must also sign the register identifying the number of the official notebook and the authorised person it was issued to.

When the official notebook is filled, it must be stored in a safe place for a period of at least three years.

Approved By

Omar Ameer

21 May 2010

Manager Strategy and Planning
Department of Environment and Resource
Management

Enquiries:
Strategy and Planning Team
Compliance and Investigations Branch
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Procedural guide

Official notebook procedures

The objective of this procedural guide is to clarify when and how authorised persons should use an official note book. Where it is not reasonably practicable to use an official note book, officers need to ensure that accurate, comprehensive and contemporaneous notes are made of any incident and that those notes are saved and stored on file.

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Introduction

Official notebooks are important tools used in compliance. They are issued to an authorised person for use in departmental matters and are to be used only for the purpose of recording notes about the person's official duties and must not be used to record notes on private matters.

Reasons for taking notes

Taking notes of incidents is important for ensuring that there is a record for later reference, and to assist in proving what happened during an incident.

Note-taking not only helps in remembering the details of an accident later, but it assists in focusing on relevant points and to make later processes more efficient (such as preparing briefing notes or giving evidence in court).

If an authorised person is investigating an incident or complaint and is later called to give evidence about it, their notes can be relied on in court only if they are accurate and contemporaneous (made the same time as the incident or as soon as possible after it). Without these notes, an authorised person will need to rely on their memory of the incident without any assistance.

Part of the role of an authorised person is to use his or her official notebook when taking notes. If for some reason it is not possible to use the official notebook it is important that:

- accurate and contemporaneous notes are taken (on whatever paper available);
- as soon as practicable after the incident, notes are made of the incident in the official notebook based on the field notes; and
- the field notes are placed on file.

Essential requirements

- All entries in the official notebook must be made in blue or black ink, in chronological order.
- Every entry must state the time and date on which it was made.
- At the end of each entry a line must be drawn and the next entry must commence immediately below the line (do not leave spaces in the official note book to fill in later).
- Pages must not be torn out of any official notebook.
- If an alteration is necessary then the proper procedure is to draw a line through the original notes and insert the new notes, in such a manner as to leave the original entry in legible form.
- All entries in an official notebook should be made in the handwriting of the authorised person who the official notebook was issued to. If an authorised person makes entries in another authorised person's notebook, they must state the reasons for this and identify themselves in the notes.
- Each page must be numbered.



Notebook example 1:

ABC Company, 123 Smith St, Riversleigh. 12.45PM Wednesday 21/03/2013.
Response to incident notification of spill of acid into stormwater drain at rear of
premises. Sampling of stormwater drain for pH levels conducted by EHP
authorised officer John Doe. Sample location 1 – GPS: S 27° 23.242' E
153°04.992'. Upstream sample. Water meter read at 12:50. pH = 6.5. Sample
location 2 – GPS: S 22° 23.242' E 150°04.992'. Downstream sample. Water
meter read at 13:00. pH = 1.4. -----

Notebook example 2:

24/10/2007 Wednesday. 10:40 at 201 Sandy Creek Rd, Sandy Ck. Lot
4/RP1234. Investigating complaint re: pumping sewage into Sandy Ck. Entered
premises with EHP officer John Doe and spoke to Bob Green (registered owner
of property). Presented my Authorised officer ID. Told BG about complaint.
Asked BG if we could look at any sewage works on site. BG told us to he didn't
have anything to say to us. We told BG that we were going to have a look at the
creek at the back of his premises and come back and speak to him again. BG
didn't reply and walked off. -----

Use of official notebooks

An official notebook is issued to an authorised person for use for Departmental matters.

An incident that may not seem like a compliance or investigation issue at the time may become an issue at a later date. Authorised persons should, whenever in doubt, record information in the official notebook.

For the purpose of accuracy of references and admissibility of the notes as evidence, notes should be made at the time the events being recorded are taking place, or as soon as possible afterwards so that the facts are still fresh in the memory of the person making the notes.

Where an alteration to an authorised person's official note book is likely to be significant, the person should bring the alteration to the notice of another authorised person or a manager and obtain that person's signature next to a statement in the official note book which explains what has been done.

Use of notes to refresh witness' memory

An authorised person may be required to attend court as a witness and give evidence in a prosecution matter. A witness giving evidence in court is usually allowed to refer to notes, or other records, for the purpose of refreshing their memory, provided that:

- the facts or conversation cannot be accurately recalled without reference to the notes; and
- either the authorised person made the notes, or read the notes of the partner at a time when the facts were still fresh in the memory of the authorised person.

The witness must testify to these facts and may be cross-examined regarding the manner, time and other circumstances relating to the making of the notes.

The usual procedure is for the witness to give as much evidence as possible from memory. When the authorised person cannot accurately remember the facts or conversation, the permission of the court will be

sought for the authorised person to refer to the notes. The prosecutor will usually lead the authorised person through this process.

Notes may be used to refresh a person's memory at any time prior to a court hearing and a witness should have no hesitation in saying that notes have been referred to prior to the hearing.

Identification of an official notebook

Authorised persons issued an official notebook must immediately fill out the 'COMPLETE WHEN ISSUING' section inside the front cover of the notebook, with the exception of the 'Notebook #' which is assigned prior to issue.

<p><u>COMPLETE WHEN ISSUING</u></p> <p>Issued to:</p> <p>Signature of Recipient:</p> <p>Issued by:</p> <p>Signature of issuing officer:</p> <p>Office or Location:</p> <p>Date:</p> <p>Notebook #:</p>
--

Once an official notebook is filled, the authorised person who was issued the notebook must complete the 'COMPLETE WHEN BOOK IS RETURNED' section on the back inside cover of the notebook. Returned official notebooks must be stored in a secure place in the relevant regional office for a period of at least three years.

<p><u>COMPLETE WHEN BOOK IS RETURNED</u></p> <p>Returning Officers Name:</p> <p>Signature of Returning Officer:</p> <p>Receiving Officers Name:</p> <p>Signature of Receiving Officer:</p> <p>Office or Location:</p> <p>Date:</p>
--

Official notebook register

Each regional office is required to maintain their own official notebook register which records at least the following details for each issued notebook:

- the date of issue;
- the notebook number;
- the name of the officer issued to;



- the signature of the receiving officer; and
- the signature of the returning officer once it is full.

How to order an official notebook

Official notebooks can be ordered by filling in the official notebook order form [EM1224](#) that can be found on either [STEPS](#) or on the [Compliance support materials intranet page](#) and emailing the completed form to compliance.support@ehp.qld.gov.au. The compliance support team are responsible for processing official notebook orders and supplying notebooks to requesting officers. The compliance support team maintain a register for official notebook orders which records details of the requesting officer, date issued, postal address and individual book identification number/s.

What if an official notebook is lost or stolen?

If an official notebook is lost or stolen, the authorised person is required to complete a statutory declaration form and report the matter to their manager so that it can be noted in the official notebook register. The manager must then decide whether to report the matter to the police.

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Procedural Guide

Environmental Protection Act 1994

Powers of authorised persons

This procedural guide sets out the powers of authorised persons in undertaking functions of the Department of Environment and Heritage Protection (the department) under the Environmental Protection Act 1994 (the Act).

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Essential points

- In addition to any powers granted by the *Environmental Protection Act 1994* (the Act), authorised persons have the same rights as an ordinary member of the public.
- Before relying on the powers granted under the Act, authorised persons should see if the person they are dealing with is willing to cooperate. It is a trap to think that statutory powers make investigations easy. Good manners, an inquisitive mind and diligence are always far more effective than statutory powers.
- 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. For further information, see the appointment of authorised officer's procedural guide (EM1269).¹
- The powers of an authorised person under the Act can be limited by the person's instrument of appointment. Authorised persons should look at their instrument of appointment to ensure that they possess the power to take a particular course or action.
- 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.
- Provided an authorised person, or another person acting under an authorised person's direction, acts honestly and without negligence under the Act, they do not incur personal civil liability.

Powers of an authorised person generally

Outside the provisions of the Act, an authorised person retains the same rights as a member of the public, including liberty to go where a member of the public can go and the freedom to speak to people. In terms of an authorised person's right to enter upon premises other than under the Act, the public has the right to enter and be on public land. In relation to private land where a business is being conducted which is open to the public (e.g. a shopping centre), a general licence exists to allow people to enter. In relation to private homes, in the absence of signs to the contrary a presumed licence exists to allow persons to enter upon the property in order to contact the occupiers of the property.

Powers of entry for places or vehicles

Under the Act, powers are granted to authorised persons (and other specified persons) to enter a place or a vehicle in certain circumstances.

Public place means any place the public is entitled to use or is open to, or used by, the public (whether or not on payment of an admission fee).

Premises includes a building and the land on which a building is situated.

Land includes:

- the airspace above the land; and

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <http://steps/steps/default.cfm>.

- land that is, or is at any time, covered by waters; and
- waters.

Vehicle includes a train, boat and an aircraft.

Annexure A is a table outlining powers of entry under the Act. **Always check the specific provisions of the Act before entering a place or vehicle.**

Consent to entry

If an authorised person intends to seek the consent of an occupier of a place to an authorised person entering the place, before seeking the consent, the authorised person must inform the occupier:

- of the purpose of the entry;
- that anything found and seized may be used in evidence in court; and
- that the occupier is not required to consent.

For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without consent or a warrant:

- enter land around the premises at the place to the extent that it is reasonable to contact the occupier; or
- enter part of the place that members of the public would ordinarily be allowed to enter.

If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent.

What an authorised person can do when they enter a place or vehicle

What an authorised person is authorised to do following entry depends on the particular sections of the Act, and if powers are authorised by a warrant, what the warrant says.

Annexure A is a table outlining what an authorised person can do after they have lawfully entered a place or vehicle under the Act. **Always check the specific provisions of the Act before exercising a power.**

It is an offence for a person to obstruct an authorised person in the exercise of their powers under the Act without a reasonable excuse.

- The maximum penalty for an individual is 165 penalty units, totalling \$18,150.
- The maximum penalty for a corporation is 825 penalty units, totalling \$90,750.

Power to seize evidence

An authorised person who enters a place with a warrant may seize the evidence for which the warrant was issued.

An authorised person who enters a place with the occupier's consent may seize the particular thing for which the entry was made if the authorised person believes on reasonable grounds that the thing is evidence of an offence against the Act.

An authorised person who enters a place with a warrant or the occupier's consent may also seize another thing if the authorised person believes on reasonable grounds:

- the thing is evidence of an offence against the Act; and
- the seizure is necessary to prevent the thing being:
 - concealed, lost or destroyed; or

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- used to commit, continue or repeat the offence.

If an authorised person enters a place other than with a warrant or with the occupier's consent or boards a vehicle, may seize a thing if the authorised person believes on reasonable grounds:

- the thing is evidence of an offence against the Act; and
- the seizure is necessary to prevent the thing being:
 - concealed, lost or destroyed; or
 - used to commit, continue or repeat the offence.

Procedure after seizure of evidence

As soon as practicable after a thing is seized by an authorised person under this chapter, the authorised person must give a receipt for it to the person from whom it was seized.

The receipt must describe generally each thing seized and its condition.

If for any reason it is not practicable to give a receipt to the person at the time of seizure, the authorised person must:

- leave the receipt at the place of seizure; and
- ensure the receipt is left in a reasonably secure way and in a conspicuous position.

The authorised person must allow a person who would be entitled to the seized thing if it were not in the authorised person's possession to inspect it, and if it is a document, to take extracts from it or make copies of it.

The authorised person must return the seized thing to its owner at the end of:

- 6 months; or
- if a prosecution for an offence involving it is started within the 6 months – the prosecution for the offence and any appeal from the prosecution.

Despite the time limits above, if the authorised person stops being satisfied that the retention of the seized thing as evidence is necessary, the authorised person must return the seized thing to its owner immediately.

However, an authorised person may keep the seized thing if the authorised person believes, on reasonable grounds, it is necessary to continue to keep it to prevent its use in committing an offence.

If the owner of the seized thing is convicted of an offence against the Act, the Court may order that the thing is forfeited to the State or local government.

Damage to property and compensation

Where damage is caused to someone's property during the exercise of power to enter a place or vehicle, authorised persons need to ensure that the damage is fully documented (including photographs and notes), to ensure that any compensation claimed by a person is limited to any damage caused by the department.

The authorised person must immediately give written notice of the particulars of the damage to the person who appears to be the owner of the thing.

Payment of compensation may be claimed in court proceedings other than for a contamination incident.

If damage occurs, an authorised person must inform their manager as soon as possible.

Powers to require name and address, answer questions and produce documents

If a person is found to be committing an offence against the Act, or if there is a reasonable belief that they have committed an offence against the Act, an authorised person may require the person to state their name and address. When making the requirement, the authorised person must warn the person that it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

If an authorised person suspects that the name and address given are false, they may require the person to provide evidence of the correctness of the name and address given.

A requirement under section 465 answer questions or produce documents may be made by an authorised person to obtain information about a suspected offence. A requirement under section 466 to produce documents may be made by an authorised person to obtain documents required to be held or kept under the Act. For further information regarding the use of these notices, see the requiring relevant information, answers to questions and documents procedural guide (EM1154).

A person must not give the department or an authorised person a document containing information that the person knows, or ought reasonably to know:

- is false or misleading in a material particular; or
- contains incomplete information in a material particular.

A person must also not state anything to an authorised person that the person knows is false or misleading in a material particular or omit anything from a statement made to an authorised person, without which the statement is, to the person's knowledge, misleading in a material particular.

Penalties for failing to give name and address, answer questions or produce documents

It is an offence to fail to comply with a requirement to give name and address or to give evidence of the correctness or a name or address unless the person has a reasonable excuse for not complying.

- The maximum penalty for an individual is 50 penalty units, totalling \$5,500.
- The maximum penalty for a corporation is 250 penalty units, totalling \$27,500.

Failing to answer questions or attend at a stated place at a stated time, to answer questions under section 465 of the Act is an offence unless the person has a reasonable excuse.

- The maximum penalty for an individual is 50 penalty units, totalling \$5500.
- The maximum penalty for a corporation is 250 penalty units, totalling \$27,500.

Failing to produce a document under section 466 of the Act is an offence unless the person has a reasonable excuse.

- The maximum penalty for an individual is 50 penalty units, totalling \$5500.
- The maximum penalty for a corporation is 250 penalty units, totalling \$27,500.

Giving the department or an authorised person a document containing information that the person knows, or ought reasonably to know is false or misleading in a material particular; or contains incomplete information in a material particular is an offence.

- The maximum penalty for an individual is 1665 penalty units, totalling \$183,150 or 2 years imprisonment.
- The maximum penalty for a corporation is 8325 penalty units, totalling \$915,750.

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Stating anything to an authorised person that a person knows is false or misleading in a material particular, or omitting anything from a statement made to an authorised person which makes the statement false or misleading in a material particular, is an offence.

- The maximum penalty for an individual is 1665 penalty units, totalling \$183,150 or 2 years imprisonment.
- The maximum penalty for a corporation is 8325 penalty units, totalling \$915,750.

Other enforcement powers of authorised persons

Authorised persons have additional powers in an emergency.

An authorised person may direct any person to take specified reasonable action within a specified reasonable time, or take the action, or authorise another person to take the action if they are satisfied on reasonable grounds that an emergency exists.

For further information on the powers of authorised persons in emergencies, see the emergency powers procedural guide (EM717).

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Annexure A

Powers of an authorised person under the <i>Environmental Protection Act 1994</i>	
Under what circumstances	Powers after entry
<p>General power of entry</p> <p>An authorised person may enter a place if:</p> <ul style="list-style-type: none"> the occupier consents to the entry and, if the entry is for exercising a power under chapter 7, part 5B (clean-up notice) or 8 (contaminated land) of the Act, its owner consents; it is a public place and the entry is made when the place is open to the public; it is a place to which an environmental authority relates and the entry is made when: <ul style="list-style-type: none"> the activity to which the authority relates is being carried out; the place is open for conduct of business; the place is otherwise open for entry; it is a place to which an agricultural environmentally relevant activity (ERA), a prescribed condition for a small scale mining activity relates and the entry is made when— <ul style="list-style-type: none"> the activity, or the activity which the condition relates, is being carried out; the place is open for conduct of business; the place is otherwise open for entry; it is a place where an industry is conducted and the entry is made when— <ul style="list-style-type: none"> the place is open for conduct of business; is otherwise open for entry; the entry is authorised by a warrant; for land mentioned in chapter 7, part 5B (clean-up notice) or 8 (contaminated land)—the entry is authorised by an order of a magistrate under section 458; or the authorised person may enter the place under section 453 (entry to search, test, sample etc. for release of contaminant), 454 (entry of land for preliminary investigation) or 455 (entry of land for 	<ul style="list-style-type: none"> search any part of the place or vehicle; inspect, examine, test, measure, photograph or film the place or vehicle or anything in or on the place or vehicle; take samples (including extracting a sample for further analysis) of any contaminant, substance or thing; record, measure, test or analyse the release of contaminants into the environment from the place or vehicle; take extracts from or make copies of any documents (this power does not apply for a preliminary investigation or site investigation); take into or onto the place any persons, equipment and materials that are reasonably required to exercise the powers; install or maintain any equipment and materials in or on the place or vehicle that is reasonably required to conduct a monitoring program for the release of contaminants; require the occupier of the place, or any person to give reasonable help for the exercise of the powers mentioned above; by notice to a person in control of a vehicle, require the person to take the vehicle to a stated reasonable place by a stated reasonable time and if necessary, to remain in control of the vehicle at the place for a reasonable time to enable the exercise of the

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<p>access).</p> <p>Entry or boarding of vehicles</p> <p>An authorised person may enter or board a vehicle if they have reasonable grounds for suspecting:</p> <ul style="list-style-type: none"> • it is being or has been used in the commission of an offence against the Act; • it is or a thing in it may provide evidence of an offence; or • it relates to the transporting of waste. 	<p>powers above.</p>
<p>Environmental harm</p> <p>Entry to land may occur if the authorised person reasonably believes that unlawful environmental harm has been caused by the release of a contaminant.</p> <p>Land for this section means a parcel of land other than any part on which a building is erected.</p>	<p>An authorised person may enter land for the purpose of finding out or confirming the source of the release of the contaminant. For example, to search, test or sample for the release of a contaminant.</p>
<p>Contaminated land</p> <p>May enter land if the department believes on reasonable grounds land is contaminated land.</p>	<p>Conduct a preliminary investigation with the agreement of the owner and occupier or if the department has given at least 5 days written notice to the owner and occupier.</p> <p>The general power to take extracts from, or make copies of, any documents on the place or vehicle does not apply to preliminary investigations.</p>
<p>Entry of land for access</p> <p>If it is necessary or desirable for an authorised person to cross other land (access land) to enter the primary land under sections 452 (general entry of place) 453 (entry to search, test, sample etc. for release of contaminant), 454 (entry of land for preliminary investigation)</p>	<p>Enter the access land and take into or over it anything reasonably required to exercise the general powers for places and vehicles under section 460.</p> <p>Prior to entry, must either have the consent of the owner of the access land or have given the occupier at least 5 business days written notice.</p> <p>Consent or notice is not required if the authorised person reasonably believes</p>

	that there is imminent risk of environmental harm being caused to or from the primary land and the authorised person has told or attempted to tell the occupier that they are permitted to enter
Warrant for entry to a place in relation to evidence Entry for a place may be obtained via a warrant from a magistrate under section 456 or 457 (if the application for the warrant is made other than in person because of urgent or other circumstances).	
Order to enter land to conduct investigation or conduct work An authorised person may apply to a magistrate for an order to enter land.	<ul style="list-style-type: none"> • to carry out work on the land; • to take the actions required under a clean-up notice; • to conduct a site investigation of contaminated land; and • to conduct work to remediate land on the contaminated land register.

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Procedural Guide

Environmental Protection Act 1994

Powers of authorised persons

This procedural guide sets out the powers of authorised persons in undertaking functions of the Department of Environment and Heritage Protection (the department) under the Environmental Protection Act 1994 (the Act).

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Essential points

- In addition to any powers granted by the *Environmental Protection Act 1994* (the Act), authorised persons have the same rights as an ordinary member of the public.
- Before relying on the powers granted under the Act, authorised persons should see if the person they are dealing with is willing to cooperate. It is a trap to think that statutory powers make investigations easy. Good manners, an inquisitive mind and diligence are always far more effective than statutory powers.
- 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. For further information, see the appointment of authorised officer's procedural guide (EM1269).¹
- The powers of an authorised person under the Act can be limited by the person's instrument of appointment. Authorised persons should check their instrument of appointment to ensure that they possess the power to take a particular course or action.
- 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.
- Provided an authorised person, or another person acting under an authorised person's direction, acts honestly and without negligence under the Act, they do not incur civil liability.

Powers of an authorised person generally

Outside the provisions of the Act, an authorised person retains the same rights as a member of the public, including liberty to go where a member of the public can go and the freedom to speak to people. In terms of an authorised person's right to enter upon premises other than under the Act, the public has the right to enter and be on public land. In relation to private land where a business is being conducted which is open to the public (e.g. a shopping centre), it is lawful for people to enter. In relation to private premises, in the absence of an indication (e.g. a sign) that the public are not to enter, persons can lawfully enter upon the property, but not enter any dwelling, in order to contact the occupiers of the property.

Powers of entry for places or vehicles

Under the Act, powers are granted to authorised persons (and other specified persons) to enter a place or a vehicle in certain circumstances. Authorised persons must perform their duties genuinely and without any ulterior motive.

Public place means any place the public is entitled to use or is open to, or used by, the public (whether or not on payment of an admission fee).

Premises includes a building and the land on which a building is situated.

Land includes:

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <http://steps/steps/default.cfm>.

- the airspace above the land; and
- land that is, or is at any time, covered by waters; and
- waters.

Vehicle includes a train, boat and an aircraft.

Annexure A is a table outlining powers of entry under the Act. **Always check the specific provisions of the Act before entering a place or vehicle.**

Consent to entry

If an authorised person intends to seek the consent of an occupier of a place for an authorised person to enter the place, before seeking the consent, the authorised person must inform the occupier:

- of the purpose of the entry;
- that anything found and seized may be used in evidence in court; and
- that the occupier is not required to consent.

For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without consent or a warrant:

- enter land around the premises at the place to the extent that it is reasonable to contact the occupier; or
- enter part of the place that members of the public would ordinarily be allowed to enter.

If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent.

What an authorised person can do when they enter a place or vehicle

What an authorised person is authorised to do following entry depends on the particular sections of the Act, and if powers are authorised by a warrant, what the warrant says.

Annexure A is a table outlining what an authorised person can do after they have lawfully entered a place or vehicle under the Act. **Always check the specific provisions of the Act before exercising a power.**

It is an offence for a person to obstruct an authorised person in the exercise of their powers under the Act without a reasonable excuse.

- The maximum penalty for an individual is 165 penalty units, totalling \$18,150.
- The maximum penalty for a corporation is 825 penalty units, totalling \$90,750.

Power to seize evidence

An authorised person who enters a place with a warrant may seize the evidence for which the warrant was issued.

An authorised person who enters a place with the occupier's consent may seize the particular thing for which the entry was made if the authorised person believes on reasonable grounds that the thing is evidence of an offence against the Act.

An authorised person who enters a place with a warrant or the occupier's consent may also seize another thing if the authorised person believes on reasonable grounds:

- the thing is evidence of an offence against the Act (including an offence that was not the subject of a reasonable suspicion prior to entry); and

- the seizure is necessary to prevent the thing being:
 - concealed, lost or destroyed; or
 - used to commit, continue or repeat the offence.

If an authorised person enters a place other than with a warrant or with the occupier's consent or enters or boards a vehicle, the authorised person may seize a thing if the authorised person believes on reasonable grounds:

- the thing is evidence of an offence against the Act; and
- the seizure is necessary to prevent the thing being:
 - concealed, lost or destroyed; or
 - used to commit, continue or repeat the offence.

Procedure after seizure of evidence

As soon as practicable after a thing is seized by an authorised person under this chapter, the authorised person must give a receipt for it to the person from whom it was seized.

The receipt must describe generally each thing seized and its condition.

If for any reason it is not practicable to give a receipt to the person at the time of seizure, the authorised person must:

- leave the receipt at the place of seizure; and
- ensure the receipt is left in a reasonably secure way and in a conspicuous position.

The authorised person must allow a person who would be entitled to the seized thing if it were not in the authorised person's possession to inspect it, and if it is a document, to take extracts from it or make copies of it.

The authorised person must return the seized thing to its owner at the end of:

- 6 months; or
- if a prosecution for an offence involving it is started within the 6 months – the prosecution for the offence and any appeal from the prosecution.

Despite the time limits above, if the authorised person stops being satisfied that the retention of the seized thing as evidence is necessary, the authorised person must return the seized thing to its owner immediately.

However, an authorised person may keep the seized thing if the authorised person believes, on reasonable grounds, it is necessary to continue to keep it to prevent its use in committing an offence.

If the owner of the seized thing is convicted of an offence against the Act, the Court may order that the thing is forfeited to the State or local government.

Damage to property and compensation

Where damage is caused to someone's property during the exercise of power to enter a place or vehicle, authorised persons must ensure that the damage is fully documented (including photographs and notes), to ensure that any compensation claimed by a person is limited to any damage caused by the department.

The authorised person must immediately give written notice of the particulars of the damage to the person who appears to be the owner of the thing.

Payment of compensation may be claimed in court proceedings other than for a contamination incident.

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If damage occurs, an authorised person must inform their manager as soon as possible.

Powers to require name and address, answer questions and produce documents

If a person is found to be committing an offence against the Act, or if the authorised person reasonably believes that the person has committed an offence against the Act, the authorised person may require the person to state their name and address. When making the requirement, the authorised person must warn the person that it is an offence to fail to state the person's name and address unless the person has a reasonable excuse.

If an authorised person suspects that the name and address given are false, they may require the person to provide evidence of the correctness of the name and address given.

A requirement under section 465 to answer questions or produce documents may be made by an authorised person to obtain information about a suspected offence. A requirement under section 466 to produce documents may be made by an authorised person to obtain documents required to be held or kept under the Act. For further information regarding the use of these notices, see the requiring relevant information, answers to questions and documents procedural guide (EM1154).

A person must not give the department or an authorised person a document containing information that the person knows, or ought reasonably to know:

- is false or misleading in a material particular; or
- contains incomplete information in a material particular.

A person must also not state anything to an authorised person that the person knows is false or misleading in a material particular or omit anything from a statement made to an authorised person, without which the statement is, to the person's knowledge, misleading in a material particular.

Penalties for failing to give name and address, answer questions or produce documents

It is an offence to fail to comply with a requirement to give name and address or to give evidence of the correctness or a name or address unless the person has a reasonable excuse for not complying.

- The maximum penalty for an individual is 50 penalty units, totalling \$5,500.
- The maximum penalty for a corporation is 250 penalty units, totalling \$27,500.

Failing to answer questions or attend at a stated place at a stated time, to answer questions under section 465 of the Act is an offence unless the person has a reasonable excuse.

- The maximum penalty for an individual is 50 penalty units, totalling \$5,500.
- The maximum penalty for a corporation is 250 penalty units, totalling \$27,500.

Failing to produce a document under section 466 of the Act is an offence unless the person has a reasonable excuse.

- The maximum penalty for an individual is 50 penalty units, totalling \$5500.
- The maximum penalty for a corporation is 250 penalty units, totalling \$27,500.

Giving the department or an authorised person a document containing information that the person knows, or ought reasonably to know is false or misleading in a material particular; or contains incomplete information in a material particular is an offence.

- The maximum penalty for an individual is 1665 penalty units, totalling \$183,150 or 2 years imprisonment.
- The maximum penalty for a corporation is 8325 penalty units, totalling \$915,750.

Stating anything to an authorised person that a person knows is false or misleading in a material particular, or omitting anything from a statement made to an authorised person which makes the statement false or misleading in a material particular, is an offence.

- The maximum penalty for an individual is 1665 penalty units, totalling \$183,150 or 2 years imprisonment.
- The maximum penalty for a corporation is 8325 penalty units, totalling \$915,750.

Other enforcement powers of authorised persons

Authorised persons have additional powers in an emergency.

An authorised person may direct any person to take specified reasonable action within a specified reasonable time, or take the action, or authorise another person to take the action if they are satisfied on reasonable grounds that an emergency exists.

For further information on the powers of authorised persons in emergencies, see the emergency powers procedural guide (EM717).

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Annexure A

Powers of an authorised person under the <i>Environmental Protection Act 1994</i>	
Under what circumstances	Powers after entry
<p>General power of entry</p> <p>An authorised person may enter a place if:</p> <ul style="list-style-type: none"> the occupier consents to the entry and, if the entry is for exercising a power under chapter 7, part 5B (clean-up notice) or 8 (contaminated land) of the Act, its owner consents; it is a public place and the entry is made when the place is open to the public; it is a place to which an environmental authority (EA) relates and the entry is made when: <ul style="list-style-type: none"> the activity to which the authority relates is being carried out; the place is open for conduct of business; the place is otherwise open for entry; it is a place to which an agricultural environmentally relevant activity (ERA), or a prescribed condition for a small scale mining activity relates and the entry is made when— <ul style="list-style-type: none"> the activity, or the activity to which the condition relates, is being carried out; the place is open for conduct of business; the place is otherwise open for entry; it is a place where an industry is conducted and the entry is made when— <ul style="list-style-type: none"> the place is open for conduct of business; is otherwise open for entry; the entry is authorised by a warrant where there are reasonable grounds for suspecting that there is evidence proving the commission of an offence; for land mentioned in chapter 7, part 5B (clean-up notice) or 8 (contaminated land)—the entry is authorised by an order of a magistrate under section 458 to carry out work on the land to: <ul style="list-style-type: none"> prevent or minimise environmental harm or rehabilitate or restore the land because of 	<ul style="list-style-type: none"> search any part of the place or vehicle; inspect, examine, test, measure, photograph or film the place or vehicle or anything in or on the place or vehicle; take samples (including extracting a sample for further analysis) of any contaminant, substance or thing; record, measure, test or analyse the release of contaminants into the environment from the place or vehicle; take extracts from or make copies of any documents (this power does not apply for a preliminary investigation or site investigation); take into or onto the place any persons, equipment and materials that are reasonably required to exercise the powers; install or maintain any equipment and materials in or on the place or vehicle that is reasonably required to conduct a monitoring program for the release of contaminants; require the occupier of the place, or any person to give reasonable help for the exercise of the powers mentioned above; by notice to a person in control of a vehicle, require the person to take the vehicle to a stated reasonable place by a stated reasonable time and if necessary, to remain in control of the vehicle at the place for a reasonable time to enable the exercise of the

<p>an activity carried out under an EA, transitional environmental program (TEP) or site management plan;</p> <ul style="list-style-type: none"> ○ remediate land managed under a site management plan; ○ secure compliance with an accredited ERMP, EA, TEP, site management plan or any conditions of the authority, program or plan or development conditions of a development approval (DA) or prescribed condition for carrying out a small scale mining activity. Where an order is obtained under section 458 then departmental staff can enter the place but only to carry out the work themselves; or • the authorised person may enter the place under section 453 (entry to search, test, sample etc. for release of contaminant), 454 (entry of land for preliminary investigation) or 455 (entry of land for access). <p>Entry or boarding of vehicles</p> <p>An authorised person may enter or board a vehicle if they have reasonable grounds for suspecting:</p> <ul style="list-style-type: none"> • it is being or has been used in the commission of an offence against the Act; • it is or a thing in it may provide evidence of an offence; or • it relates to the transporting of waste. 	<p>powers above.</p>
<p>Environmental harm</p> <p>An authorised person may enter to land if the authorised person reasonably believes that unlawful environmental harm has been caused by the release of a contaminant.</p> <p>Land for this section means a parcel of land other than any part on which a building is erected.</p>	<p>An authorised person may enter land for the purpose of finding out or confirming the source of the release of the contaminant. For example, to search, test or sample for the release of a contaminant.</p>
<p>Contaminated land</p> <p>An authorised person may enter land if the department believes on reasonable grounds land is contaminated land.</p>	<p>Conduct a preliminary investigation with the agreement of the owner and occupier or if the department has given at least 5 days written notice to the owner and</p>



	<p>occupier.</p> <p>The general power to take extracts from, or make copies of, any documents on the place or vehicle does not apply to preliminary investigations.</p>
<p>Entry of land for access</p> <p>An authorised person may enter land if it is necessary or desirable in order to cross the land (access land) to enter the primary land under sections 452 (general entry of place) 453 (entry to search, test, sample etc. for release of contaminant), 454 (entry of land for preliminary investigation)</p>	<p>Enter the access land and take into or over it anything reasonably required to exercise the general powers for places and vehicles under section 460.</p> <p>Prior to entry, must either have the consent of the owner of the access land or have given the occupier at least 5 business days written notice.</p> <p>Consent or notice is not required if the authorised person reasonably believes that there is imminent risk of environmental harm being caused to or from the primary land and the authorised person has told or attempted to tell the occupier that they are permitted to enter</p>
<p>Warrant for entry to a place in relation to evidence</p> <p>An authorised person may enter a place if the entry is permitted via a warrant from a magistrate under section 456 or 457.</p>	
<p>Order to enter land to conduct investigation or conduct work</p> <p>An authorised person may apply to a magistrate for an order to enter land.</p>	<ul style="list-style-type: none"> • to carry out work on the land; • to take the actions required under a clean-up notice; • to conduct a site investigation of contaminated land; and • to conduct work to remediate land on the contaminated land register.

Procedural guide

Enforcement Services Brief of Evidence Procedure SOP004

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

This document requires the following approval.

Name	Title

1.4 Distribution

This document has been distributed to the following sections.

Section	Date

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3. INTRODUCTION

3.1 Purpose

The purpose of this procedure is to provide direction on the process and documents required when compiling a brief of evidence and how the brief of evidence is to be reviewed. Direction is on the specific requirements of the evidential documents in the brief of evidence, such as statements and records of interview can be obtained from other procedures.

3.2 Scope

This procedure will apply to all Enforcement Services and Regulation Branch Authorised Officers operating under EHP legislation whose duties require them to conduct investigations and produce brief of evidence.

3.3 Prerequisites

The prerequisite for this procedure is that all investigators will be Authorised Officers.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Essential Points

- Identifies the steps in submitting a Brief of Evidence.
- Identifies the documentation required and the important points to be covered.

3.6 References

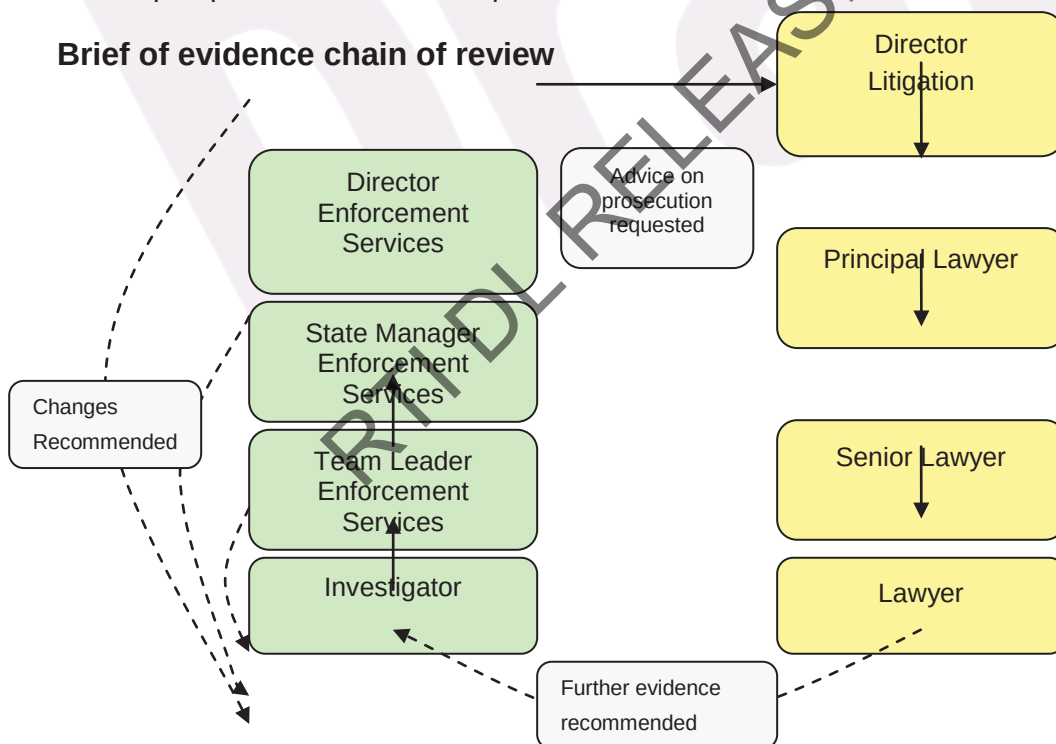
Lists the resources that have been used/ referenced in the construction of the document or which need to also be applied when performing the procedure e.g. government standards

- Australian Government Investigation Guidelines (2003)
- Tips and Traps For Regulators (2009)
- EHP Investigation Manual – Briefs of Evidence
- Procedural Guides 03, 06a, 06b, 11, 14, 21 and 27

4. PROCEDURE

4.1 Timeframe and process for submitting a brief of evidence

- All briefs of evidence are to be compiled by the assigned Investigator within **3 months of receipt of FIR/CIRaM Notification**. If this timeframe is exceeded, a briefing note (Refer SOP 31 Briefing Up) is to be prepared for the Director to consider as soon as the need for an extension becomes apparent. The Director must consider statutory time limitations for starting a prosecution, the complexity of the matter and remaining outstanding evidence before making a decision to grant an extension. It may be possible for a partial brief of evidence to be submitted for consideration pending the gathering of further evidence.
- Note: The same process applies for the return of seized items (Refer SOP06a)
- When a brief of evidence has been compiled, the Investigator should submit a copy of it to the Regional Brief Checker. (This is not reflected in the diagram below). The brief will then be passed to the State Brief Checker, Manager Investigations and to the Director Compliance & Investigations (Diagram needs an arrow to Director). The Director Compliance & Investigations will then submit the brief of evidence to the Litigation Unit for advice on evidence and the prospects of success of a prosecution.



4.2 Brief Checker's Sheet / IF17

- Briefs of evidence should be provided to the brief checker with the brief checklist which can be obtained [here](#). Completing this checklist should prompt the Investigator to ensure that the brief contains all the relevant evidence available.

4.3 Brief Cover Sheet

- All briefs of evidence require a cover sheet which provides a easy reference point to key information such as the defendant's name, the offence(s), the prosecution limitation period, and company details. The brief of evidence cover sheet can be obtained [here](#).

4.4 Index to brief

- The [brief index](#) should be up-to-date and clearly indicate the tab and volume of brief that each document is located. Other information in the index should include any exhibit labels, for example "ABC01", and the date of the document. Refer to SOP 006 Seizure and Handling of Exhibits. It is the Investigator's responsibility to ensure that the index is updated each time a new document is added to the brief, even after the brief has been referred to the Litigation Unit for review. For the latter, how is this to be done? Amended and then emailed to Lit?

4.5 Summary of Evidence

The [summary of evidence](#) should include a summary of the:

- Defendant's details, including full name, date of birth or ACN, address and prior criminal and compliance history (if known)
- Details of the offence(s) investigated
- Chronological description of the conduct or incident giving rise to the investigation, taking into account the elements of any offence considered; evidence supporting each of the elements of the offence; explanation / justification / excuse for the conduct and evidence in response to the explanation / justification / excuse;
- Prosecution considerations, such as witness statements not in brief; proposed further investigation if the matter proceeds to a hearing;
- Environmental considerations;
- Any alternatives to prosecution (e.g. Compliance Notice, EPO etc.);
- Any investigation costs sought as restitution – the investigations costs record should be annexed to the summary of facts if costs are to be sought;
- Any other relevant considerations.

4.6 Witness and exhibit lists

- The [witness list and exhibit list](#) provides a good outline of the kind of evidence each witness provides, in conjunction with each exhibit and the element of the offence that the exhibit proves or disproves.

4.7 Witness statements

The brief of evidence should contain signed statements from:

- all eyewitnesses to the event;
- all employee witnesses that can testify about the incident, the explanation / justification / excuse for the conduct, the EHP response to the explanation / justification / excuse for the conduct, the harm, the level of awareness, the authority of witnesses to speak on behalf of a business entity, etc;
- any EHP officer that has interacted with the person of interest;
- any other person that has interacted with the person of interest;
- any person adversely affected by the conduct;
- experts on industry standards;



- experts on the level of environmental harm; and
- any other significant witnesses.

Refer to the procedural guide on taking witness statement for further information on how to take and format a witness statement (SOP 014). There is also specific guidance for expert witness statements (SOP 027).

4.8 Witness Availability

- This document should provide a list of all witnesses internal, external and expert including their contact details and place of employment. This list should also provide all up coming leave so that should the matter proceed to hearing the court does not set a date where the witnesses will not be available.

4.9 Exhibits

- Normally exhibits are tendered through witnesses and are attachments to statements. If the purpose of tendering the document is to prove the truth of the statements contained in the document or as proof that it was sent to the recipient, consideration should be given to what exactly the witness can swear to. Generally speaking, witnesses should only exhibit evidence about which they have direct personal knowledge.
- The exhibits of each witness should be placed behind that witness' statement in the brief. Each exhibit should be individually labelled for easy identification, for example: "ABC01" where "ABC" are the initials of the witness.

Examples of the kinds of exhibits that should be included in a brief of evidence are:

- Transcript of the record of interview;
- Maps, sketches and/or photographs of the scene or the incident;
- Records of non-documentary evidence – e.g. laboratory analysis results, chain of custody for;
- Evidence in response to the explanation / justification / excuse;
- Admissible copies of licences;
- Property searches for the land upon which the event occurred;
- Documents that outline the commercial operations of the business entity;
- Admissible copies of correspondence between the person of interest and the EHP;
- Details of all costs of the investigation, remediation and compensation;
- Any material relevant to the credit of the person of interest; and
- All relevant policies, guidelines and information sheets published by the Agency prior to and at the time of the alleged offence.

4.9.1 Transcript of record of interview with defendant

- A key exhibit in any brief of evidence is the transcript of the record of interview with the defendant. If the defendant was offered a record of interview and refused to take part, this should be clearly noted in the summary of facts.
- The record of interview should be electronically recorded and should then be uploaded to the investigation file as soon as possible. An original copy of the recording should be attached in the brief and a second copy used for transcription. Refer to SOP 009 Covert, overt recordings
- The original brief of evidence should also contain the original recording of the record of interview which should be on CD.

- Provided that the transcript has been provided, there is no need to copy the record of interview for the Litigation copy of the brief unless specifically requested to do so by the Lawyer reviewing the brief.

4.9.2 Maps, sketches and/or photographs of the scene or the incident

- Often the layout or profile of the scene is going to rapidly change, making it necessary for good records of the location to be obtained. These can be in the form of maps, sketches, photographs and video
- As far as practicable, the scene should be photographed and sketches or maps of the site composed by direct witnesses.
- Where evidence is going to be preserved through photography, consideration should be given to the composition of the photograph and whether the assistance of a professional photographer should be sought.
- Where third parties (e.g. media) take photographs, copies of those photographs should be obtained so that consideration can be given to tendering the original. A statement may also need to be obtained from the third party.
- When changing sites/moving locations it is recommended that you take photos and prepare sketches at regular intervals. The investigator should also consider the use of GPS units to record locations and map areas.

4.9.3 Records of non-documentary evidence

- Often there will be evidence that cannot readily be included in a brief of evidence, such as scientific samples of materials or large seized items. To ensure that the lawyer reviewing the brief is fully aware of all the evidence available, the Investigator should include records of this evidence in the brief. This may be through photographs, video, and/or laboratory analysis results and certificates.
- Where evidence is going to be preserved through photography, consideration should be given to the composition of the photograph and whether the assistance of a professional photographer should be sought.
- Where third parties (e.g. media) take photographs, copies of those photographs should be obtained so that consideration can be given to tendering the original.
- Documents showing the chain of custody should be included in this section.

4.9.4 Evidence in response to a explanation / justification / excuse provided by the defendant

- Where there are defences, justifications or excuses plainly open to the defendant, the Investigator should include all evidence regarding those issues in the brief of evidence.
- Such evidence may consist of admissible copies of maintenance records, logbooks, training manuals, procedural manuals, tax returns, employee records, etc. If there is any concern that these will be altered or fabricated, their existence (or non-existence) should be established as a priority. This is particularly relevant where the defence of general environmental duty (as defined in section 319 *Environmental Protection Act 1994*) is available.

4.9.5 Admissible copies of licences etc

- The brief should include all relevant development approvals, environmental authorities, licences and/or permits related to the defendant or the land where the incident occurred.
- It should also include any applications for those approvals, authorities, licences and/or permits and any other relevant applications and authorities issued by other government instrumentalities.
- Some of the legislation administered by EHP allows for these records to be tendered by certificate (and hence there is no need to enter them into evidence by statement). See for example section 490 of the *Environmental Protection Act 1994*, and section 66B *Vegetation Management Act 1999*.

4.9.6 Property searches for the land upon which the event occurred

- To prove the element of 'location' and sometimes 'person', it may be necessary to conduct a land title search about the lot(s) on which the incident being investigated occurred.
- A 'Smartmap' search may be used initially, but certified copies of the title deeds may be required if the matter proceeds to a hearing.
- GPS readings are also important in this regard.

4.9.7 Documents that outline the commercial operations of the business entity

- To prove the element of 'person' it may be necessary to exhibit company documents.
- As a general rule, all briefs of evidence documenting offences committed by a company or companies should have a copy of the historical company extract obtainable through CITEC.
- If there are a number of related companies revealed by these searches, historical company extracts should be exhibited for all companies.
- To assist the Lawyer reviewing the brief, Investigators might consider compiling a company flowchart or diagram as an evidentiary aid to show relationships between individual and companies.
- Other documents that should be considered are business name records (obtainable through CITEC or Office of Fair Trading), annual reports, financial statements, or trust deeds etc.

4.9.8 Correspondence between the defendant/ person of interest and the EHP

- The Investigator should ensure that any relevant, probative correspondence between the defendant or other person of interest and EHP is exhibited in the brief of evidence.
- It is ideal if the person who authored or received the correspondence exhibits it, however for a matter that has been ongoing over a number of years, it is sufficient to exhibit the correspondence through a statement of the officer who currently has knowledge and carriage of the relevant file.
- Whilst evidence that shows prior non-compliances with legislation may not be admissible against the defendant at trial, it may be relevant to any sentencing submissions and therefore should be in the brief of evidence.
- The brief should contain any documentation showing EHP's efforts to raise the non-compliance with the defendant in an effort to bring the defendant into compliance through other means such as correspondence and statutory tools. The defendant's response to these efforts is also particularly relevant.

- It may be productive to show the EHP lawyer assigned to review the brief of evidence the relevant EHP regional files which outline the compliance history of a person or company.

4.10 Details of all costs of the investigation, remediation and compensation

- The investigation costs record does not have to be exhibited in the brief per se, but should be referred to in the summary of facts. Costs are to be added as a separate tab at the end of the brief.
- Any costs related to the remediation of environmental harm caused by an incident should be included as exhibits in the brief of evidence. The evidence may come in the form of insurance documentation, or quotes for clean up or restoration.
- Other information that should be included in the brief particularly relevant to vegetation or heritage offences is documents or reports demonstrating any increases in land valuations as a result of the offence.

4.11 Any material relevant to the credit of the person of interest

- The Investigator should provide all material relevant to the credit of the person of interest (regardless of whether the investigator considers it relevant or admissible).

4.12 All relevant policies, guidelines and information sheets published by EHP

- The brief of evidence should contain all relevant policies, guidelines and information sheets published by EHP. Whilst they do not necessarily bind the defendant, but they may be relied upon by the defendant in an attempt to demonstrate that their conduct was reasonable.
- If there is evidence (date and method of delivery) that this material was provided to the defendant, it can be relied upon by EHP to indicate the state of knowledge of the defendant.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for
State Manager - Enforcement Services	Shall ensure that all investigators are trained in the procedure.	
Team Leader– Enforcement Services	Shall ensure that all investigators under their command follow the procedure and annually conduct a audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Kelli Ready
A/Director Enforcement Services
Department of Environment and Heritage
Protection

Date

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Procedural guide

Enforcement Services Covert and Overt Recordings SOP009

This document sets out the circumstances in which investigators may covertly and overtly record a conversation; sets the approvals required for the use of covert recording and establishes guidelines to ensure the integrity of recorded evidence.

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision
5 April 2013	

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

This document requires the following approval.

Name	Title
Kelli Ready	A/Director Compliance and Investigations

1.4 Distribution

This document has been distributed to the following sections.

Section	Date
Investigation Teams Cairns, Townsville, Nambour, Brisbane, Toowoomba, Mackay, Rockhampton	

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3. INTRODUCTION

3.1 Purpose

Investigators must apply best practice investigative techniques in gathering evidence for alleged offences of legislation administered by EHP. The use of audio recording devices is recognised as an essential tool in gathering and recording factual information during an investigation, as its use can:

- provide an accurate and true account of a conversation between the investigator and the other party;
- provide evidence of natural justice, courtesy and fairness; and
- negate allegations of harassment, threats or the offer of inducements.

The purpose of this document is to provide guidance about when and how investigators may undertake overt and covert recordings of conversations.

3.2 Scope

This procedure relates to EHP investigators in the Enforcement Services Branch.

3.3 Prerequisites

All persons who are required to record persons are to be 'Authorised Officers' and to have been trained in this procedure. From time to time this may be extended to other members of the EHP workforce with the prior approval of their manager and for the purpose of extending an investigation.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Essential Points

Prior to covert recording, the investigator **must** obtain permission through the State Manager Enforcement Services to the Director of Enforcement Services.

To use a recording device, to record a private conversation, the investigator must be a party to the conversation.

Conversations can **only** be recorded, if the investigator is carrying out an investigation into an alleged offence under EHP legislation

Ensure the integrity of the recorded evidence

3.6 Definitions

Overt recording – is when all parties to a conversation are fully aware the conversation is being recorded.

Covert recording – is when one or more parties to a conversation are unaware the conversation is being recorded.

Listening Device - any instrument, apparatus, equipment or device capable of being used to overhear, record, monitor or listen to a private conversation simultaneously with its taking place.

Authorised Officer – is a person appointed under the relevant legislation such as an authorised officer, a conservation officer, or a forestry officer.

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3.7 References

- Australian Government Investigation Guidelines (2003)
- Tips and Traps For Regulators (2009)
- Procedural Guide -SOP 006b Evidence Handling

4. PROCEDURE

4.1 Privacy Considerations

Recording conversations may be perceived as an invasion of privacy; however the use of recording devices is established practice amongst law enforcement agencies throughout Australia to assist in the collection of evidence. The *Invasion of Privacy Act 1971* (Qld) regulates the use of listening devices (recording devices) and section 43 of the *Invasion of Privacy Act 1971* prohibits the use of listening devices in certain circumstances.

Section 43 states:

(1) A person is guilty of an offence against this Act if the person uses a listening device to overhear, record, monitor or listen to a private conversation and is liable on conviction on indictment to a maximum penalty of 40 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply—

(a) where the person using the listening device is a party to the private conversation...

This means that an investigator may record a private conversation (either overtly or covertly), only when the investigator is a party to that conversation.

4.2 Overt Recording

Investigators may overtly record a conversation to which they are party **only** when they are carrying out an investigation into an alleged breach of EHP legislation.

Electronic recording devices are not to be used for any other purpose within EHP, under any circumstance.

Prior to overtly recording a conversation, the investigator must:

- advise all parties that he or she intends to record the conversation; and
- offer a copy of recording to all parties of the conversation.

4.3 Covert Recording

If an authorised officer believes on reasonable grounds that an investigation may be compromised unless he or she covertly records the conversation, he or she must use the following procedure:

- The investigator **MUST** make a covert recording request through the State Manager Enforcement Services to the Director Enforcement Services prior to covertly recording a conversation. Director approval at this stage removes the risk of allegations of inappropriate behaviour by the investigator.

- The covert recording request may be made via memorandum, email, or if urgent, by telephone. Where the approval has been given verbally, the approval must be confirmed by the Director Compliance and Investigations in writing as soon as possible.
- A covert recording of a telephone conversation must be done using the loud speaker. Electronic recording devices must not be connected, attached or be in contact with any telecommunications device.
- The investigator must make a notebook record of the covert recording event.

4.4 Handling of Digital Recordings

- Once an investigator has recorded a conversation (either an overt or covert recording), the investigator must upload the recording to the electronic investigations file on the network drive as soon as practicable.
- The investigator must then ensure that the recording is saved to a compact disk without any modification.
- This compact disk must be labelled with the date of the conversation, the parties to the conversation and where the conversation was conducted.
- This compact disk must be dealt with in accordance with the evidence handling SOP.
- If copies of the recording are required for transcription or for the brief of evidence, they may be made from the electronic document in the investigations electronic file on the network drive.
- Where criminal proceedings are instituted against a party to a conversation which has been recorded (either overtly or covertly), the recorded conversation must be disclosed to their defence lawyer. Therefore, it is important to include any recorded conversations as exhibits in the investigator's statement.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for Covert and Overt Recording of Conversations
State Manager - Enforcement Services	Shall ensure that all investigators are trained in the procedure.	Training Documents
Team Leader – Enforcement Services	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	Audit Document
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

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Procedural guide

Enforcement Services Dealing with Abusive and Aggressive Persons

The purpose of this procedural guide is to instruct Investigators in the processes EHP has put in place to ensure Investigators behave ethically during the conduct of investigations.

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

Date of this Version	Date of Next Revision
March 2013	March 2014

Rev No.	Rev Date	Summary of Changes	Author
Mar 2013	Mar 2014		Investigations

1.3 Approval

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Name	Title
Kelli Ready	A/Director, Enforcement Services

1.4 Distribution

This document has been distributed to the following sections.

Section	Date
Investigation Teams Cairns, Townsville, Maroochydore, Brisbane and Toowoomba. Director of Litigation	

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3. INTRODUCTION

3.1 Purpose

EHP Staff have the right to work in an environment that is free of violence and aggression. The purpose of this procedure is to provide guidance and options for officers when confronted with aggressive behaviour. Some examples of what is considered aggressive behaviour are contained in Appendix A.

3.2 Scope

This procedure is applicable to all EHP Investigation staff when they are operating both in the field and in office environments.

3.3 Prerequisites

There are no prerequisites for this procedure. It is noted that only authorised officers will conduct field inspections.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years.

Officers should consider whether they require any further training in communication or interpersonal skills to better equip them to deal with confrontational situations. For example, the verbal judo course provides skills in dealing with aggressive or abusive behaviour.

3.5 Definitions

EHP – Department of Environment and Heritage Protection

Aggressive Behaviour – this type of behaviour can take a number of forms as outlined in appendix A. It can be further classified as being major or minor event as detailed in Appendix B

3.6 References

- Australian Government Investigation Guidelines (2003)
- Tips and Traps For Regulators (2009)
- EPA and QPWS Guideline – Dealing with Aggressive and Abusive Behaviour
- NRM Prevention of Workplace Violence and Aggression HRS/2006/2126-Version 1

4. PROCEDURE

- EHP staff should undertake every reasonable effort to provide a service to all customers.
- EHP staff have the right to work in a safe and healthy work environment free of harassment and aggressive behaviour.

4.1 Procedure

- Where a EHP officer thinks that they will be faced with aggressive behaviour they should enlist the support of a colleague and ensure there are two officers present in the meeting. The advantages include the ability to corroborate each other's evidence should an assault or other offence occur. Guidelines for interviewing a High-risk client are provided in Appendix E
- In extreme situations, officers should consider enlisting the support of the police.
- Staff should always conduct themselves in a professional manner in the face of aggressive behaviour, and use appropriate interpersonal skills to attempt to move back to a more productive discussion. Appendix C provides information on personal behaviours which help minimise aggression.

E.g. an officer can often diffuse a situation by explaining the reasons behind a decision or course of action. It may also be helpful to point out the appeal mechanisms available to the customer.

- Where an attempt to quell the unreasonable behaviour is unsuccessful, it may be appropriate to politely caution the customer that the discussion will be terminated should the aggressive behaviour continue.
- If the aggressive behaviour continues after the caution, an officer may terminate the discussion. If this occurs on-site at a EHP premises, an officer may politely but assertively request that the customer leave the premises. Where such action is necessary, the assistance of a more senior officer should be sought.
- If a discussion with a customer deteriorates into aggressive behaviour and the discussion is terminated for this reason, the officer should document what happened and forward it to their immediate manager as soon as possible.
- **All threats by a member of the public of physical violence or stalking against EHP staff must be taken seriously with appropriate measures taken and management informed immediately.**
- Where the discussion occurs off-site or on private property, an officer may leave the premises immediately if the aggressive behaviour or verbal abuse continues.
- Where a EHP Officer is physically assaulted, and there is no opportunity for escape, they can use reasonable force to **defend** themselves or another person. **Staff do not have the right to retaliate, physically or verbally.**
- Staff safety is paramount. Where a EHP employee is in a situation where there is any likelihood of physical danger, they should leave the situation as quickly as possible.
- **All staff have the right to leave a situation if they face a personal risk.**
- Where an officer has faced aggressive behaviour or verbal abuse they should document the events surrounding this as soon as possible after the event.
- Officers should consider whether to take action following an event of aggressive behaviour.

If a decision is made to report the aggressive behaviour to police this must be briefed up to an immediate manager and the Director of Compliance and Investigations.

- Officers who have been the subject of abusive, aggressive or threatening behaviour should consider using the EHP Employee Assistance counselling services.

4.2 Options for further action

Where an officer has been subject to threatening and offensive behaviour, verbal abuse or physical violence, and the situation is sufficiently serious to warrant further action and cannot be resolved at the time, there are a number of options available including:

- Alternative dispute resolution;
- Prosecution by the EHP for obstructing an officer on duty;
- Prosecution by the Police for assault.

Alternative dispute resolution

- The Department of Justice and Attorney General runs the Dispute Resolution Centre, which provides dispute resolution, and mediation services throughout Queensland. Dispute resolution services have the potential to resolve differences between the EHP and abusive and aggressive customers without the need for costly court cases. Dispute resolution can be an effective and confidential means of voluntarily settling a dispute.

- The following website provides the contact details for the Dispute Resolution Centre

<http://www.justice.qld.gov.au/mediation/contacts.htm>

Prosecution by the EHP for obstructing an officer on duty

- EHP administers a number of pieces of legislation. Some of these pieces of legislation contain specific offences for the obstruction of an officer carrying out their duties. Depending upon the circumstances and the evidence gathered, the EHP may consider it appropriate to take action for these offences.

Prosecution by the Police for assault

- Another option available to staff is to make a complaint to the Police for assault. **An aggrieved employee may make a complaint to the Police at any time.** Depending upon the evidence and circumstances, the Police may choose one of a number of offences.

Factors to consider in deciding what action to take

Some of the factors to consider when considering further action:

- Is there likely to be a solution? – if it is likely that both parties could come to some agreement about the issue, the matter may be resolved without any further action or it may be worth considering alternative dispute resolution.
- How serious is the offence? – Offences administered by the Police tend to have higher penalties and therefore complaints about more serious matters should be forwarded to the Police. For example, if a EHP officer was assaulted and significantly injured, the more serious offences such as assault under the Criminal Code should be considered.
- Should a proposed compliance action report be completed? – if an officer decides to recommend further action that constitutes a potentially significant legal compliance action, they should complete the Proposed Compliance Action Report (PCAR). This report should describe the circumstances; make a recommendation as to whether the matter should be dealt with by the Police or the EHP, together with the reasons for the recommendation.

4.3 Reporting – WHS

- All occasions of Workplace Aggression and Violence are to be reported to the Workplace Health and Safety Officer in the required form. This can be completed by the supervisor of the officer concerned in order to establish the facts surrounding the incident.
- Copies of the report should be posted on that client's file for the warning of future staff.

4.4 Employee Assistance Service (EAS)

- It shall be the immediate supervisor's responsibility to provide support to those affected by workplace aggression or violence, including ensuring the Employee Assistance Service is notified and available where relevant.
- In the event of an incident that involves violence a critical incident stress debrief for the staff involved should be arranged with the assistance of the EAS. This should be arranged immediately before the employees go home or within 72 hours.

4.5 Harassment Outside Work Hours

- EHP employees may also be identified as such in social settings or public areas outside of work hours.
- Where clients are persistent staff are entitled to draw the distinction with clients between an "at work versus off duty role". Staff should politely point out the circumstances and offer to resume the conversation during work hours.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Dealing with Aggressive and Abusive Behaviours
State Manager - Investigations	Shall ensure that all investigators are trained in the procedure.	Training Package
Team Leader – Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure. Where subjected to workplace violence ensure that support is provided to those affected	Audit Document
Investigators	Shall follow the procedure Report all instances of workplace violence in the appropriate form.	

6. APPROVED BY

Signature

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Department of Environment and Resource
Management

Date

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Examples of Aggressive Behaviour (Appendix A)

Behaviour	Examples
Threatening or offensive behaviour	Vulgar noises or gestures, threats of physical harm, racist remarks, either stated directly or implied, or possession of any kind of weapon, regardless of the lack of any overt threat to use it.
Verbal abuse	Swearing of an abusive nature, innuendo, raised voice, or vulgar expressions or obscenities.
Physical violence against a person	Any type of unwanted physical contact, including hitting, kicking, grabbing or punching, or assault causing actual or grievous bodily harm.
Stalking	Client waiting outside the office, or clients following staff home.
Harassment in public places both during and outside office hours	At the shops, or in the street.
Physical violence against objects	Kicking, defacing or destroying property, or throwing objects.

Categorising Severity of Aggression (Appendix B)

Behaviour	Major	Minor
Threatening or offensive behaviour Vulgar noises or gestures, threats of physical harm, racist remarks, either stated directly or implied, or possession of any kind of weapon, regardless of the lack of any overt threat to use it.	 ✓ ✓	 ✓
Verbal abuse Swearing of an abusive nature, innuendo, raised voice, or vulgar expressions or obscenities.		✓
Physical violence against a person Any type of unwanted physical contact, including hitting, kicking, grabbing or punching, or assault causing actual or grievous bodily harm.	✓	
Stalking Client waiting outside the office, or clients following staff home.	✓	
Harassment in public places both during and outside office hours At the shops, or in the street.	✓	
Physical violence against objects Kicking, defacing or destroying property, or throwing objects.	✓	

Personal Conduct to Help Minimise Aggression (Appendix C)

It is suggested that these practices help to defuse potentially violent situations. If at any time a person's behaviour starts to escalate beyond your comfort zone, withdraw from the situation:

DO

- ☒ Project calmness: move and speak slowly, quietly, and confidently
- ☒ Be a good listener encourage the person to talk, and listen patiently
- ☒ Focus your attention on the other person to demonstrate your interest in what they have to say
- ☒ Maintain a relaxed yet attentive posture and position yourself at an angle rather than directly in front of the other person
- ☒ It can be safer to stand on the side of their 'non-dominant' hand; usually the one on which their watch is worn
- ☒ Acknowledge the person's feelings by gestures such as nodding your head
- ☒ Ask the person to move to a less public, quiet area, if appropriate and safe, having regard to Section 1.5
- ☒ Establish ground rules if unreasonable behaviour persists. Calmly, describe the consequences of any violent behaviour
- ☒ Use delaying tactics which will give the person time to calm down. For example, offer a drink of water (in a disposable cup)
- ☒ Be assuring and point out choices. Identify and deal with specific issues
- ☒ Accept criticism in a professional manner
- ☒ Ask for their recommendations. Repeat back to them what you feel they are requesting of you
- ☒ Position yourself so that a visitor cannot block your access to an exit

DO NOT

- ☒ Make false statements or promises you cannot keep
- ☒ Use jargon or complicated information when emotions are high
- ☒ Take sides or agree with distortions
- ☒ Invade the individual's personal space. Make sure there is a space of one to two metres between you and the person
- ☒ Use styles of communication which generate hostility, such as apathy, brush off, coldness, condescension, robotism, going strictly by the rules, or giving the run-around
- ☒ Reject all of an individual's demands from the start
- ☒ Adopt challenging stances such as standing directly opposite someone, hands on hips or crossing your arms. Avoid any physical contact, finger pointing, or long periods of fixed eye contact
- ☒ Make sudden movements which can be seen as threatening. Notice the tone, volume, and rate of your speech
- ☒ Challenge, threaten, or dare the individual. Never belittle the person or make them feel foolish
- ☒ Criticize or act impatiently toward the agitated individual
- ☒ Attempt to bargain with a threatening individual
- ☒ Try to make the situation seem less serious than it is

Guidelines for Interviewing a High-risk Client On-site (Appendix E)

- Make sure the interview or treatment is not conducted in isolation and others know where you are and who you are interviewing.
- Do not arrange to meet anyone if you will be alone in the building.
- Make sure the client knows their presence has been recorded.
- Use a room in which you are visible to others, for example glass windows, but where confidential discussions cannot be overheard.
- Should a room where you can be seen is not be available, ensure someone else drops in to check on you frequently, for example bring cup of tea (but keeping disruptions to a minimum).
- Stay near the door—preferably use a room with two doors.
- Keep equipment in the room to a minimum as many things can be used as a weapon.
- At the first sign you feel you are under stress indicate this to a person who has been alerted to respond to this situation and determine what immediate action should be taken.
- Keep waiting time to a minimum. If the interview is delayed, ensure client is informed.
- Shake hands and introduce yourself by name and explain your job task.
- Use language the client will understand.
- If escorting a client to a room walk beside them on the same level, in front going upstairs, and behind them going downstairs.
- If the client is reacting badly to you because of your age, sex, ethnicity, try (if client agrees), to match the client with a more appropriate staff member. Make the situation clear to staff ensuring that this is no reflection on them, nor an endorsement of any prejudice harboured by the client, but rather an attempt to defuse the situation.
- If the client has a history of aggression, find out about prior incidents to aid your interview process.
- Attempt to have equal height seating with the client, at an angle, and leave greater inter-personal space with aggressive people.
- Maintain eye contact and adopt a relaxed posture rather than a closed arms posture.
- Maintain empathy/sympathy and paraphrase client comments.
- Try to solve some problems immediately to demonstrate that you are trying to find solutions.
- If you are governed by rules of some kind try to explain them.
- Avoid expressions that may provoke them, such as “calm down”.
- Never get drawn into aggression.
- Listen, and show you are listening by nodding and using words such as “I see”.
- Avoid tapping pens, fiddling or doodling.
- Don't set deadlines if you cannot keep them.
- If the situation is escalating take a break to diffuse aggression.

Guidelines to Prevent Client-initiated Violence When Working Off-site (Appendix F)

- Detailed timetables are kept of where staff are, whom they are with, how long they should be, and when they are expected back.
- Clients are assessed for violence potential before staff visit them off-site.
- Diaries are kept at the central site of information that may be available: client name, car registration etc, and the reason that the worker is visiting the client/accompanying the client to another destination.
- Procedures are in place for staff who feel at risk, change plans, or are delayed.
- Procedures are in place and followed if staff cannot be contacted or do not return or check in when expected.
- Additional precautions are made, and records kept if staff are likely to be unwelcome at site to be visited, or if the client has some history of aggression; for example staff go in pairs and alert police prior to the visit taking place.
- Before any off-site visit, a code word or signal (a phrase or sentence) is agreed that can be incorporated in a telephone conversation to indicate danger.
- Off-site clients are visited in daylight only if possible.
- When staff arrive at destination, parking location is assessed for nearest exit route.
- Staff always park cars in well-lit areas when possible, and lock doors.
- Staff take only what is essential with them to visit a client. Staff do not carry information that clients should not read. Also, if a client is violent, a diary can provide private information about the staff member and their friends.
- Staff carry a mobile phone with a charged battery with them into the house.
- When staff knock on the door, they stand to one side and not in a position where the opening of a screen door can trap them.
- On arrival staff ensure the client/s know who they are and why they are there.
- Staff wait to be asked inside, and let the client lead the way.
- Inside the house, staff try to ensure they have a clear exit line.
- If staff receive an aggressive reception, assess whether they should reschedule and leave.
- Staff try to avoid reacting to house, for example smell, surroundings, and untidiness.
- At all times staff remain alert to sudden changes in client mood.
- While inside client's home, staff are to maintain respect toward the client as they may be perceived to be invading the client's personal space.
- On leaving the client or site, staff approach their car with keys in hand.
- The back seat of the car is checked before staff climb into the driving seat.
- If there are people hanging around the car as staff approach, staff do not go and ask them what they are doing, as this will identify staff as the driver/owner. It may be better to walk away and call the police.
- Staff are instructed to do whatever is necessary to protect themselves, within reason, and not to worry about failure of task.

Refer to [Guidelines for Remote Area Operations](#) for further information.

Procedural guide

Enforcement Services

Service of complaint and summons SOP005

The purpose of this document is to provide direction with regards to the process that the Department of Environment and Heritage Protection undertakes when issuing a complaint and summons

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

Date of this Version	Date of Next Revision
5 April 2013	April 2014

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

This document requires the following approval.

Name	Title
Kelli Ready	A/Director Enforcement Services

1.4 Distribution

This document has been distributed to the following sections.

Section	Date
Investigation Teams Cairns, Townsville, Brisbane, Toowoomba,	

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3. INTRODUCTION

3.1 Purpose

The purpose of this procedure is to provide instruction on the service and legislative requirements of investigators when commencing proceedings by Complaint and Summons and summoning of witnesses.

3.2 Scope

This procedure is relevant to all EHP authorised officers who are involved in the swearing and service of summons for the commencement of a prosecution and in order to secure the attendance of witnesses.

3.3 Prerequisites

All persons swearing complaint and summons are required to be an authorised officer or person under the respective legislation.

3.4 Training

All Investigators will be trained in this procedure upon commencement of duties and further training will be provided when required

3.5 Essential Points

- Litigation will prepare the complaint and summons.
- Investigator will review and check the complaint and summons, forwarding any corrections required back to the litigation area.
- Once correct, the investigator will print 3 copies to be sworn in front of a Justice of the Peace.
- The investigator is required to file one copy of the complaint and summons within 2 working days with the court where the defendant is required to appear
- The Investigator will issue the original complaint and summons to the person at least 21 days before the date on which they are required to appear
- Discuss with Litigation and your State Manager any issue relating to the complaint and summons.

3.6 Definitions

Complaint – A complaint is a legal document that outlines a charge or an offence under legislation, used to initiate all prosecutions by EHP.¹ It is generally sworn by the 'complainant' (who is generally the Investigator) before a Justice of the Peace or Magistrate.² section 4 of the Justices Act 1886 - a 'complaint' includes the terms 'information', 'information and 'complaint', and 'charge' when used in any Act, and means an information, complaint or charge before a Magistrates Court.

Public officer - (a) an officer or employee of the public service of the State or the Commonwealth; or

(b) an officer or employee of a statutory body that represents the Crown in right of the State or the Commonwealth; or

(c) an officer or employee of a local government; who is acting in an official capacity.

¹ Section 42 (1) *Justices Act 1886*.

² Section 51 *Justices Act 1886*.

Summons - The summons is a legal document that is generally issued by a Justice of the Peace or Magistrate upon a complaint in writing.³ A summons outlines the time date and location that the defendant is required to appear to answer the charge set out in the complaint.

3.7 References

- Australian Government Investigation Guidelines (2003)
- *Justices Act 1996 (Qld)*

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³ Section 53 *Justice Act 1886*.

4. PROCEDURE

4.1 Timeframes for Proceedings

- The *Justices Act 1886* provides that in the absence of any other legislative provision a complaint for a summary offence must be made within **1 year** from the time the matter of complaint arose.⁴ Note that this refers to the making (or swearing) of the complaint and not service or filing of the complaint.
- **Most** of the legislation administered by EHP, however, provides that summary proceedings must start either within **1 year** of the commission of the offence; or within 1 year of the offence coming to the knowledge of the complainant and within 2 years (or 5 years for Vegetation Management Act) of the commission of the offence. This means that the complaint must be made within 1 year of the time that EHP was notified or made aware of the issue (provided that this was within 2 years of the incident), rather than within 1 year of the date the actual incident took place. **Investigators should always refer to the specific legislative provisions to determine the limitation period for their investigation.**
- The limitation period for each investigation should be assessed on its particular facts, and if an investigator is unsure about a limitation date they should contact the Litigation Unit for clarification and assistance.
- Note that even where it is proposed to proceed on an indictment matter, it is standard to commence via complaint and summons.
- To prevent any issues with statutory timeframes, all investigations should be completed within a 60 working day (3 month) timeframe with a copy of the briefs of evidence provided to the Litigation Unit **6 months prior to the expiry of the limitation period and within 6 months of seizure of evidence at a minimum.** This allows time for a thorough review of the brief by the Litigation Unit and the opportunity for any further investigative steps recommended by the Litigation Unit to be completed in time for the expiry of the limitation period.

4.2 Litigation Unit Role

- At the conclusion of an investigation, a copy of the brief of evidence will be provided to the Litigation Unit (through the Directors of Compliance and Investigation, and Litigation) for review and advice on whether a *prima facie* case exists and the prospects of success of any proposed litigation.
- The lawyer assigned to review the brief will prepare a memorandum of legal advice and provide that to the Directors of Litigation, and Compliance and Investigation, and the relevant regional director. This advice will indicate whether the lawyer considers that a prosecution should be initiated, in consideration of the evidence and EHP's enforcement guidelines.

⁴ Section 56 *Justices Act 1886*.

- Should the Directors support a recommendation for commencement of a prosecution, a briefing note to the Director General will be prepared by the Litigation Unit requesting the Director General's approval to commence proceedings.
- Only once the Director General approves the commencement of proceedings may a complaint be made.

4.3 Drafting of Complaint and Summons

- Following the approval of the commencement of a prosecution by the Director General, the complaint and summons will be drafted by the Litigation Unit lawyer assigned to the investigation.
- The documents drafted by the lawyer will comprise of the particulars for the complaint, and summons.
- The lawyer will determine the available court dates and include that information in the summons

4.4 Swearing of the Complaint

- Once finalised, these documents will be forwarded in electronic format to the Investigator. The Investigating Officer on receiving the summons should check the complaint and summons to ensure;
 - o Correct name and address details;
 - o Correct offence details; and
 - o The date and time of appearance and Court of appearance is consistent with the Magistrates Court sittings.
- Any changes that the Investigator believes are required should be referred back to the lawyer before the Investigator makes them. No changes should be made without the lawyer's knowledge.
- Once the documents have been finalised, the Investigator should then print out three (3) copies of the documents (one for the Court, one for the defendant and one for EHP). These copies should remain unsigned until the next step.
- Complaints should be sworn in front of a Justice of the Peace or Magistrate.⁵
- Generally, Justices of the Peace can be found at the Magistrates Courts or post offices.
- Again the complainant has a responsibility to ensure that they are satisfied with the contents of the complaint and have a reasonable belief that an offence has been committed.
- When swearing or affirming the complaint, you must satisfy the Justice of the Peace that the allegations are sufficient to found the offence alleged in the complaint. That is, you should briefly but succinctly describe what has occurred and what it is alleged that defendant has done which is an offence. Note this does not mean that the Justice of the Peace needs to review the evidence; just that what is alleged would appear to amount to an offence.

⁵ Section 51 *Justices Act 1886*.

- Swear or affirm all three copies of the complaint in front of the Justice of the Peace, and get them to sign and stamp the attached summons.
- If the Justice of the Peace will only issue one copy of the documents (that is they will not sign and stamp all three copies), save the original copy for filing with the Court, and make two copies of it for service on the defendant and for EHP records.
- The Investigating Officer/Complainant should make a record of the date, time and name of the Justice of the Peace in their official notebook.

4.5 Filing of the Complaint and Summons

NOTE – Important Legislative Requirement

4.5.1 What must I do after the summons is issued by the court?

Before a hearing (of a complaint and summons) will take place, every complaint and summons (other than an entry of a charge on a bench charge sheet), must be filed within three (3) working days of the date the complaint and summons being issued by the Justice of the Peace. This requirement is regardless of whether or not you have served a copy on the defendant.

This means that you have three (3) working days after the date of issue to file (the date of issue is the date that you swear or affirm all three copies of the complaint in front of the Justice of the Peace, and get them to sign and stamp the attached summons).

For example if it was issued to you on 3 April 2011, you will have till close of the Registry (which is normally 4:00pm) on 6 April 2011 to file the complaint summons.

Therefore as soon as you receive the summons from the court, you should make preparations to file the document before the three (3) working day time limit expires.

4.5.2 Where do I have to file the complaint and summons?

The complaint and summons must be filed in the court where the defendant is required to appear.

For example the summons may be issued to you by the Brisbane Court, but that does not necessarily mean that the hearing will take place in the Brisbane court. The summons might state that the defendant needs to appear at the Townsville court, so you will need to file the summons at the Townsville court.

4.5.3 What do I do if I am not located near the court where the Summons has to be filed in?

First contact the court registry (you will find a list of the phone numbers for each court here <http://www.courts.qld.gov.au/539.htm>). Ask the registry staff if they will allow you to file your summons by fax or by emailing it to them. If you are permitted to email the document, you should ensure that the scan of the summons is a PDF (not an image) A4 size and clear and legible.

If they will not allow you to file it by electronic means then you will need to enquire as to whether they will accept a copy by mail. If they will, then you should mail it to the court registry via express post or express post platinum. If the court will not accept a copy by mail, it is recommended that you contact an investigator or other staff member in that region and ask if they will receive the summons by email and file the document for you. (You may also wish to consider this option if you are concerned that it will not arrive in the mail on time e.g. the registry you are sending it to is not in the Australia Post express network or there are reasons why Australia Post cannot get to the location such as extreme weather conditions.)

4.5.4 Please note the following:

- If you do not file the summons within the three (3) days, you will need to have a new summons issued by a Justice of the Peace.
- Always check your limitation date; if the limitation date on your matter has expired you cannot swear a summons nor will you be able to obtain new summons should you fail to file in the three (3) day time limit.

4.6 Service of the Complaint and Summons

The summons shall be served by the Investigating Officer upon the person to whom it is directed in the following methods -

4.6.1 Personal Service – a person

- In all cases the preferred method of service is by delivering a copy thereof to the person personally or, if the person cannot reasonably be found, by leaving a copy of the summons with an adult who accepts service for the person at the person's usual place of business or residence.⁶
- It is also acceptable to serve the summons on the legal representative of that person if the legal representative has been so instructed to accept service. This point must be confirmed with the legal representative.

4.6.2 Personal Service – a company

- The summons shall be served by delivering a copy of the summons personally to the registered office of the company, or by personal service on a person who is a director or a person that has been identified as a person able to accept service of the summons on behalf of the company.
- It is also acceptable to serve the summons on the legal representative of the company if the legal representative has been so instructed to accept service. This point must be confirmed with the legal representative.
- Refer to Procedural Guide – Understanding Legal Entities and Obtaining Evidence from Companies.

4.6.3 By Post

- Where a summons directs a person to appear to answer a complaint of a simple offence or breach of duty, this may be served by posting (by means of registered post) a copy of the summons to the person to their place of business or residence last known to the complainant.
- Service by post must arrive at least **21 days** before the date on which the defendant is required to appear.⁷
- The authorised officer should ensure that the summons has been received by this method through the return of a Registered Post receipt.

4.6.4 By Post for Offences that Arise out of the Use of a Motor Vehicle

- In the case of an offence arising out of the driving or use of a motor vehicle, service of the summons may be effected by posting the same (by Registered Post) to the address

⁶ Justices Act 1886 Section 56 (1)

⁷ Ibid

appearing as the address of the person on a driver licence produced by the person at or about the time of the alleged offence.⁸

4.6.5 By Post for any Licence or Registration

- In the case of any other offence or breach of duty, the address appearing as the address of the person on any licence or registration for the time being in force pertaining to such person, or to any property of which the person appears to be the owner or occupier and which licence or registration such person holds or has effected under the Act against or under a provision of which the offence or breach is alleged to have been committed.⁹

Please Note: When posting a complaint and summons a letter must be forwarded with the documents. Template letters are available for this purpose.

Following service of the summons the Investigating Officer shall complete the deposition on oath in writing on the endorsed copy of the summons, stating the time, place and upon whom the summons was served if served personally. This should be completed with a Justice of the Peace at the Magistrates Court where the served summons is lodged.

If posted, the deposition on oath in writing on the endorsed copy of the summons, stating

- the time and place at which the Investigating Officer posted the copy of the summons;
- the address to which a copy of the summons was posted which is (if such be the case) the defendant's address last known to the person and as to the person's means of knowledge.¹⁰

4.7 Anticipated Problems with Service

- Where a summons has not been served upon a defendant prior to the time at which the defendant is required to appear before a Magistrates Court, the Litigation Unit should first be advised by email and the request made for a new date.
- The Investigating Officer should take the unserved complaint and summons to the Clerk of the Court or a Justice of the Peace authorised by the Clerk of the Court, at the Magistrates Court where the defendant is to be required to appear in order to have the time of appearance extended to a date suited to both the Litigation Unit and the Magistrate.
- This can occur before, at or after the time appointed by the summons for the appearance of the defendant. All efforts must be made to extend the old date before the date of appearance.
- In the case that the Investigating Officer cannot attend the Magistrates court before the date of appearance both the Clerk of the Court and the Litigation Unit should be advised.
- The Investigating Officer must ensure that the complaint and summons is properly endorsed with the new date.
- When the extension of the complaint and summons has been granted the new date of appearance must be forwarded to the Litigation Unit immediately.

4.8 Right of Entry

- The *Justices Act 1886* allows for limited powers to the public officer for the purpose of

⁸ *Justices Act 1886* Section 56 (2)

⁹ *Ibid*

¹⁰ *Justices Act 1886* Section 56 (4)

service of a summons.

- A public officer, and a person acting in aid of the public officer, may enter, and stay for a reasonable time in or on a place for the purpose of serving a summons.
- If the place is a premises, or the part of premises, used exclusively for residential purposes, a public officer, and a person acting in aid of the public officer, may enter the place only with the consent of the occupier.
- The officer must produce the officer's identification to any person requesting proof of the officer's authority to be in or on the place.¹¹

4.9 Summons to Witness

- All witnesses for the prosecution must be served with a Summons to Witness to appear at the prosecution hearing in order to secure their appearance.
- Summons to Witnesses may also be issued through the use of a Summons to Witness Form. The form should be completed for each witness required by the prosecutor (Litigation Unit).
- The Investigating Officer should ensure that the correct name and address and time and place of appearance appears on the Summons to Witness.
- The Summons to Witness should then be taken to the Magistrates Court where the matter is to be heard so as to have the Summons issued by a justice and registered on the Court file.
- A Summons to a Witness requires the service endorsement completed under oath and the Summons be lodged at the relevant Magistrates Court after service and prior to the matter being heard.¹²

4.10 Notice to a Witness

- In an adjourned hearing a Clerk of the Court may give to any witness or person sought to be made a witness a notice in the prescribed form requiring the person to attend the court at the time and place to which the hearing is adjourned or specified in the notice or that is to be determined or at all times and places to which the hearing is adjourned from time to time or specified in the notice.
- From time to time the Clerk of the Court may ask the Investigating Officer to assist the Court and serve such documents.
- These may be served personally or sent by post to the person to whom it is addressed at the person's address last known. These shall have the same effect as a summons to the witness or person sought to be made a witness issued out of the court that the witness or person is by the notice required to attend.

4.11 Witness Expenses

- Witnesses who attend court on behalf of the department may incur out of pocket expenses for travel, accommodation, meals or loss of earnings. Witnesses who are not employed by Local, State or Commonwealth Governments are entitled to a set schedule of

¹¹ *Justices Act 1886* Section 56A

¹² *Justices Act 1886* Section 78

remuneration and allowances for witnesses in lieu of their attendance at Court.

- Witness expenses shall be the responsibility of the Investigating Officer who brings an action to Court.
- Investigating Officers should refer to “*Fees, Allowances and disbursements payable to Witness*” and the relevant “*Witness Allowance Claim*” forms.

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5. RESPONSIBILITIES

Person	Responsibility	Documents
Director Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Service of Summons Procedure
State Manager Enforcement Services	Shall ensure that all investigators are trained in the procedure.	Training Package
Manager Enforcement Services	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	Audit Document
Investigators	Shall ensure they follow the procedure	Complaint and Summons Form Summons to Witness Form

6. APPROVED BY

Signature

Kelli Ready
A/Director Enforcement Services
Department of Environment and Heritage
Protection

Date

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Procedural guide

Enforcement Services Obtaining Evidence SOP006

The purpose of this procedural guide is to provide investigators with guidance in obtaining and the appropriate treatment of evidence while undertaking investigations pursuant to legislation administered by EHP.

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision
11/03/2013	

Rev No.	Rev Date	Summary of Changes	Author
2	11/03/2013	Updated to reflect departmental restructure.	Sean Madigan

1.3 Approval

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Name	Title
Kelli Ready	A/Director – Enforcement Services

1.4 Distribution

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3. INTRODUCTION

3.1 Purpose

The purpose of this document is to provide instruction for the proper handling of the various exhibits that come into the possession of Investigators at the Department of Environment and Heritage Protection (EHP). The procedure will step through the process required from the seizure to disposal of the exhibit.

3.2 Scope

This procedure will apply to all Enforcement Services Investigators operating under EHP legislation whose duties require them to search and seize exhibits; and who conduct electronically recorded interviews.

3.3 Prerequisites

Legislation requires that all property is seized by an "Authorised Officer or Person". Investigators are to ensure they have the "Authorised Officer or Person" delegation for the statute that they intend to use.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years or earlier as necessary.

3.5 Essential Points

- Evidence should only be obtained in a manner that meets the legislative requirements under which the investigator is operating. This includes seizing items as well as obtaining information powers.
- Items should only be seized in order to preserve evidence of an offence or to prevent the commission, continuation, or repetition of an offence.
- Property **must not** be seized as a punishment or threat.
- Property seized normally must be returned and the investigators should check the relative legislation as to these timeframes. Compensation may be ordered by a court for loss or expense suffered as the result of property being seized.
- Care must be taken to make a record of what was seized, what condition the seized item was in and whether steps were taken to minimise the inconvenience to the person caused by the seizure. The person from whom the property was seized should sign this record.
- Care must be taken to ensure that the property seized is preserved in exactly the condition it was at the time of the seizure.
- The investigator should keep the appropriate records as how, where, who and why they obtained items. They should also record all movement to prove continuity of evidence at a future date.

3.6 Definitions

Evidence – Any statement, record, testimony or other things, apart from legal submissions, which tends to prove the existence of a fact in issue¹.

Exhibit – An object received by the Court in evidence when tendered by one of the parties to a case. Two types of non-testimonial evidence can become exhibits: document evidence and real evidence.

Case Officer – the Investigator who has control of the case

Receiving Officer – the person who is seizing the evidence. In small operations this is usually the Investigator however it may also be another investigator or other support staff

Property Officer – officer who's responsible for ensuring all exhibits are recorded during seizure

3.7 References

- Australian Government Investigation Guidelines (2003)
- Queensland Ombudsman, Tips and Traps For Regulators (2009)
- AFP National Guidelines on Property and Exhibits (2003)
- Procedural Guide SOP 001 – Obtaining and executing warrant
- Procedural Guide SOP 006b – Evidence handling
- Procedural Guide SOP 021 – Obtaining evidence that a company has committed an offence
- STEPS Procedural Guide – Seizure of wildlife

¹ Butterworths Australian Criminal Law Dictionary

4. PROCEDURE

4.1 Background

During an investigation there are a number of methods that an investigator will use to obtain information necessary to prove the case in a legal proceeding. Some information will be readily accessible through public sources and databases, some will be available from Departmental databases. Where this information is in the form of a document or real object that proves an element, or negates a defence, the investigator should identify it as an exhibit and follow procedures for the treatment and continuity of the evidence.

4.2 Internal Document Exhibits

For documents which are generated from Inter-department databases (i.e. a document taken from SmartMap under *s. 95 of Evidence Act*) the investigator should organise for a section 95 Certificate to accompany the document. At this point the document must be treated as evidence and entered into the Exhibit Register.

4.3 Voluntarily surrendered exhibits

During an investigation the investigator may have evidence given to them by parties involved. These may include documents, photographs, videos, letters, emails, notices, digitally recorded information and so on. Upon receiving these items, the investigator determines those that are evidence and must treat them as such.

The following steps should also be undertaken:

- Obtain the name, address and contact details of the person surrendering the items
- Establish where and how the exhibit came into possession of that person
- Clarify who is the owner of the item
- Ascertain if the owner wants the item returned
- If the exhibit is a document determine if it is the original
- Clarify if the person is willing to provide a statement regarding the item
- Record the details of the exchange in your official notebook
- Complete the evidence handling procedures as per Procedural Guide SOP006b – Handling Evidence

4.4 Coercive Powers

Much of the legislation administered by EHP has provisions that can be used to coerce both information and documentation from people and companies. Investigators should review the particular legislation under which they are operating, before exercising these powers. Templates are available and must be used in order to ensure that the particular legislative requirements of these notices are met.

Where these provisions apply individuals may have protection against self incrimination. Investigators should keep this in mind and discuss with their Manager or Litigation if there is any doubt regarding this aspect.



Upon receiving documents via this manner the investigator should treat all of them as evidence. The investigator should arrange for certified copies of the documents to be made and the original documents returned as soon as possible. While particular legislation may not include any specific timeframes, these documents should not be kept for more than one month unless the investigator has specific reasons.

4.5 Power to seize property

Most legislation administered by EHP gives officers authorised under that legislation the power to seize property in certain circumstances. Before seizing any property, investigators **must**:

1. know which Act they are acting under;
2. be sure that the Act gives them the power to seize property;
3. have satisfied all requirements for exercising the power (for example, have you lawfully entered the place where the property is located?); and.
4. check the reasons for which you can seize the property (for example, to preserve evidence of an offence).
5. Check the source of the evidence and other possible locations. Also does another agency hold the information for on or behalf of the suspect?

4.5.1 Purpose of seizure

Property should only be seized to preserve evidence of an offence. Reasons why property may be seized include the following:

1. The property is needed for testing and a sample will not suffice or it is too difficult to obtain a sufficient sample (for example, residue at the bottom of a container).
2. To ensure that the property will be available for use as an exhibit in court if a prosecution is commenced.
3. The property is evidence and it may be used to commit, continue or repeat an offence.

Property **must not** be seized simply by way of punishment whether for the suspected offence or for a perceived lack of cooperation on behalf of the owner during an investigation. Most importantly, property **must not** be seized as a threat in order to secure cooperation whether during a search or an interview.

4.5.2 Before seizing property

Before seizing property, the investigator should ask themselves the following questions:

- Do I have the power to seize the property?
- Have I considered alternatives to exercising the power of seizure?
- Is it reasonable in these circumstances for me to seize the property?
- Is it safe for me to seize the property? **If your safety cannot be assured, you must NOT seize the property.**
- Am I able to transport the seized property, and keep it safe and secure following seizure?



- If I am not able to transport the seized property, am I able to render the property inoperable (if applicable), prevent it from being interfered with by the owner, and ensure that it is kept safe and secure?

The investigator should take photographs of the property when it is being seized, to establish the condition of the property before it is seized and the place where it was seized from. This will help to prevent disputes about whether the property is damaged while in the department's custody.

4.5.3 Seizure of Exhibits of a particular nature

- **Seizure in situ provisions**

The Investigating Officer should consider the seizure provisions of legislation or the use of secondary evidence collection (e.g. visual recording) where a particular item may be difficult to seize and secure. In some circumstances the investigator may decide to leave evidence in place. Indeed some evidence may require specialised equipment for its transportation. Where the investigator has left evidence in place they should record all actions, including directions given, as to how they have made that evidence secure. This may be cordoning off an area, putting up sign or dismantling key component of a mechanical device.

With some legislation the investigator can require the person in control of the item to undertake action that supports the seizure of that item. This may be remaining in control of the evidence or to take it to a specified place within a set timeframe.

- **Alternative storage locations**

If, due to the nature or size of the exhibit, it is not practicable to use an existing Exhibit Facility, the Investigating officer must consult with the Team Leader Investigations and identify an alternate appropriate location for storage.

- **Wildlife and animals**

For specific requirements relating to the seizure of wildlife under the *Nature Conservation Act 1992*, refer to the procedural guide "Seizure of wildlife" located on Ecosteps.

For animals seized under other Acts the investigator should contact the appropriate business unit and adhere to their procedures.

- **Vegetation samples**

The Investigating Officer shall take into consideration storage requirements of vegetation seized. Vegetation should not be heat-sealed but retained in a paper bag to prevent rapid deterioration. Expert assessment needs to be immediately organised and suitable photographs of the identifying characteristics of the sample taken for taxonomic identification.

- **Perishable exhibits**

The Investigating Officer shall seek advice as to the appropriate storage requirements for perishable items (i.e. vegetation and morbid animal specimens). Perishable items must be photographed as soon as practicable after seizure, to record the original condition of the exhibit.

- **Hazardous samples**



The Investigating Officer must take into consideration health and safety issues regarding the exhibit i.e. contaminated water samples may contain hazardous components. Advice from relevant experts must be sought and complied with within the parameters of maintaining security of the exhibit. The Regional Manager is to be advised of the situation and approve the method of security of the exhibit whilst ensuring the safety of staff and other persons who could be affected by the hazard.

4.5.4 Seized item receipts

The Receiving Officer must give the person from whom the property was seized a receipt for the seized property as soon as possible. Property seizure receipt templates are available for this purpose.

You should also check the provisions of the Act under which you are seizing the property to determine whether there is any information that is required to be included in the receipt. If there are no specific requirements set out in the Act, the receipt should include, at a minimum, a description of each item seized, its condition, the date, time and place of seizure and the name of the officer seizing the property. If possible, have person from whom the property is seized, sign the receipt.

The receipt must be given to the person from whom the property is seized. If that is not possible, leave the receipt at the place where the property was seized. Also check the Act under which you are seizing the property for any particular requirements for giving receipts, where the person entitled to the property is not present. Keep a copy of the receipt for the file.

Some Acts give the person from whom the property is seized rights to inspect the property, or to take copies of documents that have been seized. Ensure that you are familiar with any such requirements for the Act under which you are seizing the property.

The Department has a responsibility to ensure that seized property is cared for. You must ensure that the property is securely and safely stored. Because the property may be used as evidence, you must ensure that the continuity of evidence procedures are followed and that property is kept in a secure, locked location.

If the seized property is to be left in situ, you must ensure that it is secured and protected from the elements.

4.5.5 Recording of Exhibits

Regardless of the manner in which an exhibit comes into the possession of the investigator, the exhibits should be treated in a similar manner.

- For each exhibit there should be a unique identifying number or code which can be used to differentiate the exhibit from similar items. In the case of documents and general items the investigator should attach such this by manner of a sticker. For machines or electronic devices the investigator may choose to use the item's serial number.
- The exhibit should be photographed in situ. As discussed earlier, this can assist the investigator later proving where the exhibit was seized from and the condition it was in when seized.
- A record is made of the seized item. In cases such as the execution of a warrant, where it is known that multiple items will be seized, this record may be the Evidence Located Slip. If the item is seized during a field inspection, then it may be more appropriate for the investigator to make the record in their official notebook.
- The item should be stored in a manner that will ensure its continuity and prevent it from getting contaminated or mixed up with other items. Being placed in a plastic bag that can be sealed,



would be preferable for most items. See previous Chapter 4.5.3 Seizure of exhibit of particular nature, for other examples.

- A receipt for the items seized is signed by the investigator and the occupant of the property to acknowledge the items that the investigator has seized. Depending on the circumstances of the seizure, this may be either via a Property Field Receipt booklet or a printed version of the Property Seizure Record.
- From this point the investigation should ensure the continuity of evidence as referenced in the **Procedure Guide – Exhibit handling**.

4.6 Damage and compensation

Most Acts provide for the payment of compensation for property that is damaged by departmental officers. This can include damage that occurs after property is seized or otherwise taken into possession of departmental officers. Compensation may also be payable if the person suffers loss because of the item was seized.

If property is damaged before, during or after seizure you must inform the person from whom the property was seized about the damage. Check the Act under which the property was seized for any particular requirements about notification. Damage notification templates are available for this purpose. You must also inform your manager or supervisor. If the damage is significant, you should also consider informing the Litigation Branch.

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 Resource Management should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure
State Manager Investigations	Shall ensure that all investigators are trained in the procedure.	Training Package
Team Leader - Investigations	Shall ensure that all investigators under their command follow the procedure	
Investigators	Shall follow the procedure Ensure records exist in relation to where the property was located, and time and date seized Provide receipts for any and all evidence seized Prepare all lists of exhibits where a large	Field Property Receipts

	amount are taken Ensure exhibits are photographed in situ where practicable	
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6. APPROVED BY

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Signature

Kelli Ready
A/Director Enforcement Services
Department of Environment and Heritage
Protection

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Date

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Procedural guide

Enforcement Services

Interviewing Potential Defendants SOP007

This document is to assist Investigators of the Enforcement Services of EHP the undertaking of Records of Interview and that of obtaining witness statements.

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision
11/03/2013	

Rev No.	Rev Date	Summary of Changes	Author
2	11/03/2013	Updated to reflect departmental restructure	Sean Madigan

1.3 Approval

This document requires the following approval.

Name	Title
Kelli Ready	A/ Director of Enforcement Services

1.4 Distribution

This document has been distributed to the following sections.

Section	Date
Investigation Teams Cairns, Townsville, Maroochydore, Brisbane, Toowoomba	



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3. INTRODUCTION

3.1 Purpose

This document outlines the manner in which investigators of this department should prepare, conduct and finalise records of interview with potential suspects.

3.2 Scope

This procedure is relevant to all Enforcement Service Investigators who have dealings with potential defendants on a formal and informal basis. Investigators should also understand the procedural guide – Witness Statements.

Below is the paragraph out of Witness statements for the scope;

The procedure is relevant to all EHP authorised officers who are involved in the taking of witness statements for the purpose of inclusion in a Brief of Evidence. Investigators should also understand the procedural guide – Interviewing Potential Defendants.

3.3 Prerequisites

Whilst this procedure deals with both companies and individuals Investigators must be authorised persons under the relevant act when exercising coercive or any other powers granted under that act.

3.4 Training

All employees will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Essential Points

- Utilise the Interview Plan template to prepare for the interview
- Ensure that all aspects (location, time, equipment, et al) of the interview are considered during the planning stage
- Check any equipment required is working correctly and have a back up plan in the event that it fails
- Prepare all exhibits that may be used during the interview
- Review the legislation regarding powers to require information/documentation
- Consider what information is required from the person being interviewed
- Contemplate the best approach will engage the interviewee while still being professional
- Allow the person to give an uninterrupted account of the event
- Clarify and challenge any information given that may be ambiguous or inconsistent with other information gathered
- Stay in control of the interview
- Understand the role of solicitors and support people that may be involved in the interview

- Identify when an interpreter is required and arrange for the interpreter to be available

3.6 Definitions

Investigator/Investigating Officer - This term as used in this procedure shall refer to the EHP authorised officer in charge of, or delegated a task during an investigation of an indictable or simple offence or a breach of duty.

Suspect – this is a person who the investigator believes may have committed an offence against the legislation governed by EHP.

Witness - A witness is a person who has some knowledge of a matter being investigated. A witness can be anyone, from a member of the public to another government employee who is able to provide admissible evidence in relation to a matter.

Witness statement - This term as used in this procedure shall refer to a written document that contains the evidence a person may give as a witness in a matter.

3.7 References

- Procedure Guide – Obtaining Evidence from Companies
- Procedure Guide – Witness Statements
- *Justices Act 1986* (Qld)
- Interview Plan Template
- *Evidence Act 1977*

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4. PROCEDURE

4.1 Procedure introduction

Interviewing of a witness or suspect of an alleged offence is a critical skill in investigations. This skill is one that can be continually refined and developed over time. Interviewing is the process of listening and talking to people in order to establish the facts of the matter and record these findings as an accurate version of events. The investigator must establish quickly who witnesses are and who suspects are. Although many of the principles of an interview are the same, they can be separated into two different types - the witness interview and the suspect interview. An interview with the suspect is similar to the witness interview and therefore the approach is also similar. Both formats require thorough preparation and planning to identify the purpose of the interview and determine the appropriate content and lines of questioning. A progressive evaluation of information received during the interview is also essential to maximise the amount and quality of information obtained. Obviously, the two formats may also possess differences in the level of formality, methods used to obtain and record information, and the rights of the interviewee. For more information on taking statements from witnesses please refer to **Procedural Guide – Witness Statements**.

In both instances, it is important for investigators to evaluate their performance after an interview by reviewing the electronic record of interview or critically assessing the statement obtained. Investigators should review interviews they have conducted to identify their strengths and areas for improvement in their interviewing techniques. In listening to and reviewing their interviews, investigators should adopt an objective view of how the interview progressed and how the line of questioning dealt with the issues or information provided by the interviewee. A review of the interview also provides an opportunity to identify how individual questions may have been more effectively worded or composed. Using regular evaluations, an investigator can identify areas and alternatives to improve their performance and become a more effective interviewer.

4.2 Guiding Principles of Interviews

Interviews should be conducted in a courteous and sensitive manner with an emphasis on portraying a professional image of the investigator and the Department, and at all times the investigator should attempt to establish and maintain a rapport with the person he or she is interviewing.

In all instances, aim to be fair and courteous to the interviewee while at the same time be firm and persistent in carrying out your duties thoroughly, lawfully, ethically and effectively. In order for the investigator to do this is encouraged that the investigator utilise the interview model known as P.E.A.C.E. which provides for an effective method for conducting interviews.

4.3 Interview Model – P.E.A.C.E.

The P.E.A.C.E model is utilised by other Queensland Govt. agencies for investigative interviewing. This model is effective and has also been adopted by EHP. The model set out the following format:

Re

- **Plan and prepare**
- **Engage and explain**
- **Account Clarify and Challenge**
- **Closure**
- **Evaluation**

4.3.1 Plan and Prepare

This is where the investigator creates the plan for the interview with the following four considerations: existing factors, tactics, contingencies and planned responses. Each person interviewed will have different information about the event, so it is necessary to determine prior to the interview what information is needed from the interviewee to establish the elements of the offence. Each person interviewed will have information that will lead to or confirm the proofs required. Therefore, it is necessary to prepare a list of relevant areas to be covered.

Effective interviews will be the result of efficient planning and preparation by investigators. There are a number of areas to be considered. Planning and preparation for an effective interview includes the following steps:

- Define the objectives of the interview
- Identify all possible offences that have been committed and separating them into their elements
- Pinpoint other issues that may be relevant to those elements
- Ascertain possible defences, exculpations, excuses
- When dealing with a company representative and /or employee, determine in what capacity they are being interviewed – refer to **Procedure Guide – Obtaining Evidence from Companies**
- Figure out what materials are needed before and during the interview e.g. documents, maps, exhibits etc.

- Determine what necessary resources/equipment are required and /or available

Make sure that you know how to use the equipment and have a backup plan ready in the event that the equipment fails.

- Prepare a list of the areas/questions to be covered in a logical sequence (chronological order, where appropriate)
- Consider what are the likely answers that the interviewee will provide and what questions need to be asked as a result of those answers

It may be helpful to map out various lines of questioning relating to the direction of the interviewee's potential answers. Have a contingency plan if the interviewee does not provide the expected answers. The investigator must have the ability to adapt to alternative lines of questioning in response to information or issues raised by the interviewee.

Rel

- Explore the possibility that an interpreter is required or some other specialist assistance e.g. Aboriginal Elder, parent/guardian etc
- Examine the fairness and objectivity the preparation

If time permits it can be helpful to rehearse the interview and go over the various questions that the investigator determines necessary. Various answers and lines of questioning can then be analysed to determine if the interview can achieve its objectives.

4.3.2 Engage and Explain

This is the first stage of the actual interview. Engagement is the time to establish and build a rapport with the suspect that will encourage conversation. Given that the majority of people that are interviewed are strangers the investigator should be flexible in their manner of engaging the interviewee. Some points that influence the effectiveness of the engagement stage and which should be considered are covered later in the section on **"Effective Communication"**.

The investigator should explain the process of the interview, the reason of the interview and a basic outline that the interview will take. This is the appropriate time to ask the introductory questions and provide the caution to the interviewee.

It is vital during this process that the investigator actively listens and observes the interviewee. In addition to determining that the interviewee possesses the capacity to understand the interview process, the investigator may be able to establish a baseline to determine how a suspect may truthfully answer questions. By recognising non-verbal cues the Investigator can identify areas of interest where a suspect's reaction suggests that additional questions should be posed to explore an area further.

4.3.3 Account Clarification and Challenge

The investigator now obtains an uninterrupted account from the interviewee. Once the interviewee has provided this account the investigator goes over the version with interviewee to clarify or expand on comments. The investigator may also introduce points, through proper questioning, to expand on the information. Encourage the interviewee to recount the event to their fullest.

Note: Investigators may find that sometimes it is helpful to suspend the interview at this point to analyse the information supplied by the interviewee. The investigator may then discuss the information with more experienced investigators or other relevant people to ensure all the elements and defences are covered.

Nevertheless, if the interviewee is being cooperative and readily discussing the issues it is advisable that the interview is not paused as the interviewee may, on reflection, have a change of attitude. Ensuring that possible defences have been 'negated' is a critical part of the interview process.

Once the interviewee has finished telling you their account the investigator should begin exploring those issues by breaking the account down into different stages, points or topics and exploring them further with the interviewee. The investigator should make sure that they fully understand what the interviewee is telling them and there should be no ambiguity in the account. Use appropriate questioning techniques to gain the maximum

amount of information from the interviewee. Different Questioning techniques, suggestions and pitfalls are discussed late in the section on **“Questioning Techniques and Question Types.”**

4.3.4 Closure

Ensure both the interviewer and interviewee understands the process that had just taken place. In order to ensure a continued rapport the interviewer should explain the future process and what the next stage in the investigation involves.

When interviewing a suspect care should be taken when explaining any future process. Whilst investigators should always give honest answers when questioned, the investigator should not supply information in relation to the available evidence or the likely outcome of the investigation. The suspect should only be advised of the reporting or decision making process. For more information regarding this refer to the section on **“Responding to Questions from a Suspect.”**

4.3.5 Evaluation

After the interview has been completed the investigator should take the time to analysis the information provided, and then if necessary reinterview witnesses or suspects. The investigator also determines what the next step in the investigation should be. A self analysis of the interview should be conducted so the investigator can improve on his/her technique and skills. The investigator should encourage feedback from their corroborator regarding the interview and take onboard any constructive advice.

4.4 Suspects and Records of interview (ROI)

4.4.1 Purpose of ROIs

Wherever possible, a formal interview should be used as the best practice to obtain the evidence of a suspect but it is recognised that many suspects are reluctant to participate in formal processes and may prefer a more informal process on-site.

The reason to interview a suspect is not simply to prove that they committed an offence. RIO are to provide the suspect with the opportunity to provide an account of his/her actions. It may be that the ROI provides the opportunity for a suspect to prove their innocence. Similarly a ROI may identify additional avenues of enquiry required to progress the investigation. From this account and the available evidence the investigator may be able to decide whether the suspect can be prosecuted for the offence.

Whilst planning the interview the investigator should consider what the suspect might say.

Generally a suspect will adopt one of four different courses during an interview. These are:

- Refuse to comment.
- Deny committing the offence.
- Make admissions (either complete or partial).

- Make admission; however attempt to provide an excuse or defence.

The investigator should develop a tactical response to the course that the suspect has adopted. There are various methods that can be used by an investigator. Some of these are as follows:

- Commit the suspect to a version;
- Direct confrontation;
- Record-unequivocal admission;
- Display empathy for the emotional suspect. Identify inconsistencies and. confront the suspect. Record false denials, prove the truth; or
- Change the method of questioning.

4.4.2 Recording ROIs

It is very important that this interview is recorded in the correct manner (recorded contemporaneously and as an exact record of what was said by both parties to the interview).

There are two methods of performing a record of interview. They are as follows;

- The electronic record of interview (ERI); and
- The written record of interview.

Electronic ROIs

Where resources are available an electronic recording device is to be used when conducting ROIs. This format provides the most efficient and accurate method of recording an interview. It also provides the greatest safeguard to the investigator against allegations of unfair or illegal activity by the suspect.

After the ROI is completed, the investigator should ensure that the master copy of the interview is secured in their Evidence Storage Area. The investigator should obtain a working copy of the interview for use and, if requested, arrange for another copy of the interview record to be forwarded to the interviewee. For more information on handling evidence see Procedural Guide – Evidence Handling.

Where a suspect has refused to participate in an electronic ROI, the refusal should be recorded electronically before commencing any written ROI.

Written ROIs

This type of record should only be done when the suspect refuses to be electronically recorded or where resources have failed and there is no recording facility available. If the suspect will only agree to do a written ROI the investigator should use their official notebook to record the interview in question and answer format.

This form of interview is slow and methodical, as all the conversation must be written down verbatim in the official notebook. It is recommended that the investigator write the question in his/her notebook and then ask the question. This allows the investigator to listen and record the suspect's answer without having to scribble down the question.

Once the investigator is satisfied that all questioning has been exhausted, to close the ROI he/she must request the suspect do the following:

- Read the interview record;
- State that the record is correct or indicate that an alteration or clarification is required (and include this as a last question and answer);
- Sign or initial each page of the record of interview; and
- Sign the last page of the record of interview and endorse that with the date and time.

If the interviewee does not wish to sign the statement or record of interview then this should be recorded at the end of the document. They should be asked why, and if a reason is given, then this is also recorded. Where the interviewee cannot sign the record of interview, for any reason (e.g. injury or disability), that reason must be recorded as well.

The investigator should ensure that the suspect is able to read and understand their record of interview. If a suspect cannot read their record of interview, this must be noted. The investigator should have someone else read the record of interview back to the interviewee or do so themselves. If someone other than the interviewee reads the record of interview back, including the investigator, then the name of the reader should also be recorded. Refer below the section on **"Difficult Interview Situations."**

4.4.3 "Rights" of Persons being interviewed

It is a fundamental tenet of our legal system that an individual suspected of having committed an offence is afforded certain basic rights. Two of these rights are summarised as being:

- The right to silence; and
- The presumption of innocence.

The implication of this is that people are not obliged to defend themselves in the face of an accusation of wrongdoing. It is for the accuser (investigator) to prove that their allegation is supported by the facts. Therefore, a person suspected of committing an offence cannot be forced to incriminate themselves unless a specific statutory provision exists to the contrary.

Right to silence

Since talking to authority figures, such as the police or an investigator, can be intimidating and may result in people who are unsure of their rights to unwittingly providing allegedly incriminating material, it has become the practice in Common Law jurisdictions to warn suspects that they are not obliged to answer any questions. This practice extends back at least to the beginning of the last century and it was later formalised by the English Judges in 1912 in what is known as the Judges' Rules. The Judges' Rules relate to the rights of a

suspect when being questioned by the Police and established that the suspect must be cautioned when the police have decided to institute proceedings against the suspect.

A suspect need not be cautioned during questioning in relation to a simple offence. However, Judges and Magistrates have a common law discretion, which enables them to rule as inadmissible evidence that has been unfairly obtained. Therefore, evidence obtained during an interview in which the suspect was not cautioned might be deemed inadmissible.

Generally Investigators are required to caution suspects when they have sufficient evidence to develop the belief that the suspect has committed an offence. Nevertheless, it is prudent at the commencement of an interview to provide the suspect with a clear explanation of the investigator's objective and enquire whether the person is prepared to answer questions.

Despite an investigator's best efforts to establish a neutral climate for the interview and to engage people in a non-threatening manner, there may be instances where individuals invoke their right to silence, for any number of reasons.

If before or during an interview this does occur the individual will need to be told that the investigation will continue and a recommendation will be made at the end of the investigation based on the information available to the Department.

Powers to Require Information

Investigators are frequently provided the statutory authority to require certain information from person(s) and entities that they reasonably believe may possess information relating to an offence. Similarly, an Investigator may require a person to provide their name and address and evidence of the correctness of that information in certain circumstances. These authorities often override a person's 'right to silence' or protection from self-incrimination. Investigators should refer to and fully understand the provisions of the legislation that they are operating under to determine when these provisions can be used. In using these authorities, Investigators should warn the person(s) being compelled to provide this information if they would commit an offence by failing to comply with the requirement unless they have a reasonable excuse.

A reasonable excuse does not include a matter of mere convenience.

A person may claim privilege as a reasonable excuse whereby giving the information might tend to incriminate the individual. Some legislation (Section 51 of the *Vegetation Management Act 1999*) provides further qualification to this privilege. Where an interviewee claims this privilege it should be objectively examined to see whether it is valid as a reasonable excuse. However, if a person has **not committed** an offence under that Act (or any other Act) a claim for privilege on the basis that the information will incriminate them would not be available to them.

The High Court of Australia held in *Environment Protection Authority v Caltex Refining Co. Pty. Limited* (1993) 178 CLR 477 that an incorporated company cannot claim the privilege against self-incrimination.

That position is confirmed by sections such as s51 (4) of the *Vegetation Management Act 1999* which refers to an "individual" being able to claim the privilege against self-incrimination. The term "individual" is defined in the *Acts Interpretation Act 1954* as

meaning "a natural person" as opposed to a corporate entity. For more information regarding the interviewing of companies and representatives of companies see refer to **Procedural Guide – Investigating Companies**.

Anunga Rules

The Anunga Rules (or guidelines) resulted from the decision of the Northern Territory Supreme Court in *R v Anunga and others* and *R v Wheeler and another* 11 ALR 412 where guidelines were provided to ensure the fair treatment of suspects of Aboriginal or Torres Strait Islander descent. It is a general view held by many courts that the guidelines are also appropriate wherever a suspect may not understand the English language very well. In light of these guidelines, and when interviewing a person who may not have a complete understanding of the English language, Investigators should ensure the following:

- The interviewee has access to an interpreter or support person including legal representation;
- Great care is taken in administering the caution and in explaining the meaning of the individual components of the caution and that the suspect fully understands that caution;
- Great care is taken in the format or wording of questions to avoid leading or suggestive questions by virtue of the format, wording or the interviewer's tone;
- Even when a confession is offered, that the investigator continue to investigate the matter to obtain independent evidence; and
- The interview does not occur at a time when the interviewee is tired, affected by drugs or alcohol, hungry or ill.

The legislation administered by EHP does not require compulsory legal representation when people are being interviewed as part of an incident investigation. However, if an interviewee requests that their solicitor be present, arrangements should be made for a solicitor to attend the interview, as for any other criminal offence. A reasonable amount of time to postpone the interview is approximately 2 hours unless the Investigators considers that rescheduling the interview is more appropriate action.

4.4.4 Administration aspects of the interview

Getting the Interview started

After the recorder has commenced recording, the investigator must orally:

- State his/her full name and indicate that he/she is an authorised officer under the relevant Act;
- State the location where the interview is taking place;
- State the date and time the interview began and ask the interviewee to confirm this;
- Request that all other persons in the room state their name;
- Request that all persons state their reasons for being there;

- Have the interviewee identify themselves by stating their name, occupation, home address and telephone number;
- Inform the interviewee of the reason for the interview.
- Explain the purpose of the interview to the interviewee including a caution.
- Present their Authorised Officer card and if necessary explain its meaning.

It is recommended that investigator commence an interview of a suspect with the following caution:

"I wish to ask you some questions in relation to (alleged offence). Do you understand what I want to talk to you about?

Before I ask you any questions I must warn you that you have a right to silence and do not have to answer my questions. Any answer you give or statement you make will be recorded and may be used as evidence. Do you understand this warning?

Are you willing to answer my questions in relation to this matter?

Are you taking part in this interview of your own free will?

Has any threat, promise or inducement been provided or made to make you take part in this interview (and have the interviewee explain what they understand an inducement to be)?"

If during an interview a suspect appears to be uncertain about his/her rights it may be appropriate to explain the caution in separate sections, i.e. state each part of the caution and ask the interviewee if they understand that part of the caution before stating the next part of the caution. It may also be appropriate to ask the interviewee to explain to you what they understand the caution to mean.

Additional preliminary issues that the investigator should cover are explaining:

- The procedure of the interview;
- To the interviewee that he/she must answer all questions orally, rather than by gestures such as nodding or shaking the head as the recording device requires verbal responses;
- That if the interviewee wants to stop the interview for a break he/she should tell the investigator while the tape is still operating and the investigator will confirm with them the time the interview has been stopped and restarted.

During the interview the investigator should make notes of the answers to questions in an official notebook. The details of the interview, including times, date, place of the interview as well as the persons present- names and addresses may be recorded in the official notebook. This doesn't need to be a complete account of the interview but should contain the key points as a guide and later reference.

Interruptions during the interview

If there are interruptions, or if the interviewee wishes to suspend the interview, the intention to stop the recording device must be recorded before stopping the recording device. In doing so, the investigator must ask the interviewee to confirm the time at which the interview was stopped, and the time that the recording of the interview was resumed:

“I will suspend the interview now for a short break. [Interviewee's name], do you agree that the time is now [state the time]?”

When resuming the interview, the intention to recommence the interview must be recorded immediately after starting the recorder:

e.g.: “The interview will now resume. [Interviewee's name], do you agree that the time is now [state the time]? Did we discuss anything connected with this interview during the break?”

If it becomes necessary to change CD/tape that has nearly expired, the intention to suspend the interview to replace the CD/tape with a new one must be recorded:

e.g.: “[Interviewee's name] the CD/tape has nearly finished. I will suspend the interview to replace the CD/tape with a new one. Do you agree that the time is now [state the time]?”

Whenever resuming the interview, the intention to recommence the interview must be recorded immediately after starting the recorder:

e.g.: The interview will now resume. This is CD/tape number two of the recorded interview between [interviewee's name] and [investigator's name]. [Interviewee's name], do you agree that the time is now [state the time] and the date is [state the date]? [If relevant] I remind you of the caution I gave you earlier, which still applies. Do you understand? Do you agree that whilst the recorder was stopped, I did not ask you any questions about this matter?

It is important that the interviewee 'adopts' any conversation that occurred without being recorded. This may have occurred on arrival at a NRM&W office or whilst a tape was being changed. This can be adopted by asking the interviewee:

“Do you agree that whilst the CD/tape was being changed over that I asked you if you'd like a cup of tea or coffee.”

or if the interviewee made admissions prior to the interview:

“Do you agree that when you first arrived at this office you told me”

If someone enters or leaves while an interview is being conducted, it must be recorded:

“[Person's name] has now entered/left the room, at [time].”

Conclusion of an Interview

When concluding the interview, the following should be asked:

“Is there anything further that you wish to say or do in relation to this matter?”



Have the answers you have given during this interview been made of your own free will? Have you told the truth?"

It is also recommended, to dispel any doubt that the suspect did not understand the caution, to cover the caution at the end of the interview by stating:

"At the start of the interview I gave you a warning about your rights, can you tell me what you understood this to mean?

Did you take part in this interview of your own free will?

Do you agree that the time is now [state the time]?"

4.5 Effective Communication

Good communication involves more than asking appropriate questions to elicit information; it also involves listening skills and appropriate non-verbal behaviour. These skills, as well as questioning techniques, are discussed briefly below

There are a number of fundamental components to effective communication. To effectively obtain information from both the witnesses and suspects an investigator must possess good communication skills. Factors that influence communication are detailed below:

- Put the interviewee at ease. They may be upset, nervous or anxious. Show interest, attempt to allay their fears; sit them down and discuss issues of a non-threatening nature.
- Refrain from suggesting answers. Allow the interviewee to tell you in their own words their version of events.
- Where there is more than one interviewee, separate them. Do not attempt to interview more than one person at a time.
- Actively listen to the interviewee's answers. Listen carefully to the responses of the interviewee. Be prepared to ask follow-up questions related to their responses. Be prepared also to exclude questions that, on the basis of the interviewee's responses, have become irrelevant.
- Be aware of non-verbal cues. Be careful about the impression that you are creating through tone of voice, facial expression and gesture. These can inadvertently signal disinterest, hostility etc., or may intimidate the interviewee and negatively influence the communication.
- Listen without judgment. Practice non-evaluative listening techniques, so that you can fully understand the interviewee's perspective.

4.5.1 Location

The location chosen to conduct an interview may set the tone for an interview. Whilst it is best practice to conduct any interview in a private area free from distractions and interruptions, it is recognised that some interviewees may request or insist on the interview occurring at a location set by themselves (e.g. in their home or at their workplace).

Conducting an interview at a Departmental office or other government office is likely to have a psychological effect on the interviewee. Whilst the setting may be unfamiliar to the interviewee and provide greater control to the Investigator, it also reinforces the importance of the interview. By selecting a private location to conduct the interview, the investigator can minimise distractions and background noise that may affect concentration and reduce the quality of any recording to the point it becomes indecipherable and worthless.

Factors that investigators should be aware of include:

- Noisy telephones or PA systems
- Third parties, including an interviewee's family, if at their residence or colleagues and staff if at their workplace
- Vehicles or other machinery operating nearby
- Temperature, lighting and other environmental consideration

4.5.2 Developing Rapport

It is important that investigators establish a rapport with the person being interviewed. Communication in interviews can be significantly improved when a level of rapport is established between the investigator and the interviewee at the start of the interview. Investigators must adopt a professional approach to all interviews and ensure the interviewee understands the purpose and format of an interview. Investigators should recognise that an interviewee may be suffering anxiety and stress; investigators should acknowledge these responses at the beginning of an interview and should attempt to allay fears and anxieties. The investigator should reassure people, for example, that they are not being interrogated and should explain the role of the Department and the purpose of the inquiries.

Investigators should maintain a positive approach in their dealings with people during an investigation. A negative approach should be resisted at all times - for example, it is inappropriate to tell the occupier at the beginning of an investigation that he/she will be prosecuted. A negative approach will alienate suspects or witnesses and could lead to a lack of cooperation and possible judicial or public criticism of the Investigator and EHP. This would only hinder the investigator in gathering all the facts of the matter. It is essential that objectivity be maintained at all times. An opinion is formed only after all the facts have been gathered.

4.5.3 Active Listening

Competent communication in an interview context involves active listening. The ability to listen effectively is a skill that has to be learned and practiced. It is a process that involves carefully interpreting and analysing what a speaker is saying. In order to obtain the best information possible in interviews, investigators must attend to, interpret and analyse the responses given by interviewees. These responses may open up new areas of information for questioning, or, alternatively, they may make particular pre-planned questions irrelevant.

Whilst 'proforma' questions and interview structures are important in planning an effective interview, the investigator should remain flexible and be prepared to deviate from that format to further explore and clarify issues and responses provided by the interviewee. Good listening ensures that the investigators questions can logically build upon the answers given by the interviewee.

4.5.4 Non-verbal Cues

It will be easier to listen attentively to the interviewee if the environment for the interview is relatively free of noise and visual distractions (see above section on the location of interviews).

The relationship between the investigator and interviewee can also be affected by non-verbal behaviour. Facial expressions, vocal tone, posture, gestures, etc. can either help or hinder communication. Showing attitudes openly such as disagreement and/or dislike etc. through non-verbal behaviour can cause inhibition or defensiveness on the part of the interviewee. Investigators should be aware of the impression that they are creating through non-verbal cues, and should attempt to avoid behaviour that may alienate or intimidate the interviewee.

Non-verbal cues from the interviewee whilst responding to questions or making statements may also provide indicators of an interviewee attempting to mislead the interviewer during later questions. Reading non-verbal cues is a specific skill that can be developed through experience.

The importance of an experienced corroborator is evident in this area as the lead interviewer can concentrate on the material evidence and line of questioning whilst the corroborator can focus on the interviewee and non-verbal cues as well as supporting the line of questioning.

4.5.5 Unbiased Attitude

Skilful communication in interviews also involves the ability, on the part of the investigator, to suspend judgement about the interviewee, and the interviewee's words. It is essential that investigators approach and conduct interviews with an unbiased attitude, for judgemental listening and body language can trigger defensiveness, resistance and inhibition on the part of the interviewee.

Judgemental listening reduces the likelihood that the interviewee will express their true feelings about, and responses to, the incident. It also makes it more likely that the investigator will "hear" what he/she wants or expects to hear rather than what was actually stated. Prejudices and stereotyping can lead to judgemental listening, and accordingly investigators should be aware of these pitfalls.

Investigators should listen actively to comprehend fully what the interviewee is saying. This involves trying to understand the intentions of the speaker. Where there is any ambiguity about the interviewee's meaning, a useful strategy is for the investigator to repeat the message that she/he has just heard, exactly as she/he thinks the speaker intended it to be understood. This can be helpful in preventing or clearing up possible misunderstandings and misinterpretations. Investigators should regularly check and clarify

their interpretations of the interviewee's words, to ensure that they truly understand the interviewee's version of the incident.

4.6 Questioning Techniques and Question Types

In the majority of cases it is better not to ask questions at first, but simply to allow the interviewee to state what they perceived in the form of an independent recall. Witnesses and suspects should be allowed to tell their version of events without interruption. Questions to clarify or challenge the interviewee's account should be posed after the account has been given. For this reason the investigator should ensure they take notes regarding any points that they think will require follow up after the account has been given.

Any omissions, errors or ambiguities should be raised with the interviewee and, if possible, resolved. Likewise, longwindedness or digressions should be avoided, while keeping in mind the need to include all relevant information. The interviewee may not understand what information the Investigator is seeking and may include extraneous or irrelevant information that they believe is important or exclude other information that they don't regard as important.

It is essential that any technical terms, jargon and/or names used by interviewees get clarified during the course of the interview. If interviewees refer to people by their first names, the investigator must ask for their full name, and if that is not known, then their title or job should be ascertained in order to establish clearly the identity of the person being referred to.

The investigator should ask specific and relevant questions that will build a picture of the events being investigated. These questions should be:

- Direct;
- Incisive;
- Relevant;
- Easily understood;
- Precise; and
- Specific.

Some other aspects that the investigator should explore during the interview include:

- Existence of documentation relating to the event: emails, receipts, contracts, manuals correspondence, etc;
- Previous incidents: when, who, what was done, outcome/impact of that incident;
- Other issues surrounding the incident: people involved and their roles, issues leading up to the incident; and
- Changes after the incident: Have any changes occurred since, when were those changes made, who decided to make the change, why.

4.6.1 Leading Questions

Leading questions are closed questions that invite or suggest a particular response from the interviewee. Leading questions restrict and control the responses of the interviewee rather than allowing them to give their own interpretation of what happened in their own words.

“Did you see X operating the bulldozer?” vs “Who was operating the bulldozer?”

“The bulldozer was pulling trees, wasn't it?” vs “What did you see?” and “Where did it occur?”

“Were you concerned that the owner was absent at that time?” vs “What concerns did you have?” and/or “Where was the owner?”

4.6.2 Multiple Questions

Multiple questions (where more than one question is asked in a single sentence) are also to be avoided. This type of question is confusing for the interviewee and can lead either to information being left out or to responses that are ambiguous.

Q: This water pump of yours on the creek near the holding paddocks is run continuously isn't it?

Make into distinct questions and ask separately:

Q: Where is the water pump located?

A: [interviewee answers]

Q Who owns this pump?

A: [interviewee answers]

Q: When is the pump operated?

A: [interviewee answers]

Q: How long does it remain on?

A: [interviewee answers]

Note the use of questions which begin with who, what, when, where, why and how. They are known as the "6 faithful servants" and provide an excellent way to frame questions that are short, precise and non-leading and in addition act as a prompt to the investigator by suggesting lines of inquiry.

4.6.3 Questions that reveal attitude or opinion

Questions that reveal uncertainty and/or that express the investigator's attitude towards the interviewee or the matter at hand should be avoided. These questions could influence the responses of the interviewee in various ways: they will either know that the investigator is unsure of his/her ground or they will question the investigator's objectivity. If the question reveals uncertainty on the investigator's part, it could give the interviewee a psychological advantage, or if the question reveals a negative attitude towards the

interviewee, it may put them offside. Even expressing an inclination in the interviewee's favour (such as in the boxed example below) compromises the objectivity of the investigator,

4.6.4 Dealing with possible Defences

The specific legislation may contain a number of defences or exemptions to particular offences but Chapter Five of the Queensland Criminal Code provide common provisions in regard to Criminal Responsibility. A guide to addressing these provisions is provided below. These questions are not exhaustive but do provide a basis to explore each section.

Section 22 - Ignorance Of Law: Bona fide Claim of Right

Did you honestly believe that when ... [describe offence] you were authorised by the law?

Did you honestly believe that when ... [describe offence] you were justified by the law?

Did you honestly believe that when ... [describe offence] you were excused by the law?

Section 23 - Intention: Motive

Did you know what you were doing when you ... [describe offence]

Did you believe that [describe result of action / omission] would probably occur from what you did?

Considering what has happened, do you believe that as a result of what you did ... [describe result of action / omission] was a likely result?

Considering what has happened, and if you could redo ... [action / omission] what would you do differently? ... Why?

Section 24 - Mistake of Fact

What were you thinking when ... [describe act/omission]

Do you believe that your actions were reasonable? ... Why?

Section 25- Extraordinary Emergencies

"Was there any emergency at the time... ?"

"Was there anything you could have done to avoid this occurring?"

Section 26 - Presumption of Sanity

Every person is presumed to be of sound mind until the contrary is proven.

Section 27- Insanity

"Did you understand what you were doing?"

"Was there anything that prevented you from controlling your actions?"

"Did you know it was wrong to ... [describe actions/omission]?"

"Were you suffering from any delusion at the time? (If 'Yes', have the interviewee explain that delusion)"

"If I, as an Investigator of EHP, was standing beside you at the time, would you have done the same thing? ... Why?"

Section 28- Intoxication

At the time, were you under the influence of any alcohol, drugs or other medication or substance? If 'Yes',

"How did you get into that condition?"

"How many/much did you have?"

Section 29 - Immature Age (possible questions for Juveniles)

"At the time, did you know it was wrong? ... How did you know that?"

"At the time, did you know you could be punished? ... How?"

Section 30 - Justification and Excuse: Compulsion

- Was there any lawful reason for you to do this?
- Were you required by any person to do this? (If 'Yes', Why?)
- Was any threat made to you or your property by any person for you to do this? If 'Yes':
- Who made this threat?
- What was the threat?
- Why do you believe the person would carry out that threat?
- What could you have done to protect yourself?

4.6.5 Common Mistakes in ROIs

Overuse of Closed Questions

The investigator may put a series of 'closed questions' to a suspect with resultant 'yes' or 'no' answers. This does not encourage the suspect to speak or offer additional information or explanation.

Interviewer and Interviewee both speaking at the same time

The recording becomes unintelligible and a key point of evidence may be lost. At the start of the interview, ask the interviewee not to speak when someone else is speaking and don't interrupt their responses. Ensure the corroborating interviewer has the opportunity to

ask questions or have input and that they are aware of when the lead interviewer will offer this opportunity.

Not listening to answers

When an interviewer is not listening to an interviewee's answer, they may miss a critical point that requires further enquiry. This may occur due to the interviewer planning their next questions.

Cross-examination

Investigators should never cross-exam an interviewee. The investigator's job during the interview is to build on and strengthen evidence during the investigation process, not pass judgement on a particular witness or suspect. There is a fine line between challenging the information given and cross-examination. The main different between the two is that when challenging the interviewee the investigator simply outlines the facts that don't match the account and ask the interviewee if they would like to comment, whereas cross-examination pushes the interview to provide an explanation for inconsistencies.

Uncertainty on the part of the Investigator

Whereas cross-examination pushes the interview to provide an explanation.

Wording to be Avoided

"I'm not suggesting you know anything about this, but..."

"I'm not suggesting you're responsible for the incident, but..."

"This probably won't be important, but..."

"I would have done the same thing in your position but..."

"In my opinion what you've done is not reasonable..."

4.7 Use of Exhibits in ROIs

Often, exhibits obtained during an investigation will be relevant to proving certain points. These exhibits may have more 'weight' if the suspect has the opportunity to comment on them during an interview or used as an aid during an interview. Exhibits, which are shown to the interviewee, must be clearly and fully described by the investigator.

e.g.: I will now show you photograph number [state photograph number] taken on [date] of [describe contents of photograph].

Investigators should ensure the security of exhibits during interviews. Wherever possible an investigator should use a copy of any original document or show photographs of physical items to ensure an exhibit is not damaged by a suspect who wishes to obstruct or hinder an investigation. Copies of documents or photographs used during an interview should be 'adopted' by the interviewee to provide proof of what was shown to and commented on by the suspect. This is achieved by the interviewee initialling and dating the copy and the exhibit described for the record.

4.8 Interviewing Representatives of Companies or other Entities

Investigators will encounter corporate entities responsible for offences under EHP legislation. Investigators need to be aware that only a legal entity can be held responsible for an offence. This can be a 'natural person' (individual) or a 'body corporate' as created under statute law. Usually, the corporate entity will be recognised under the *Corporations Act 2001* (C'wealth) but may be recognised as an overseas registered company or under state 'Associations' legislation.

When a company has allegedly breached the legislation, the only people who may speak on behalf of the company are those nominated by the Board of Directors of the Company or those people nominated by the Directors. With respect to corporations other than companies, advice from the Team Leader Investigations or Litigation Unit should be sought regarding who can speak on that the corporation's behalf.

For information regarding interviewing Companies and company representatives please refer to **Procedure Guide – Obtaining Evidence from Companies**.

4.9 Conflicting Versions

When, in the course of interviewing, it appears that there is a conflict in evidence, it is not sufficient simply to leave the evidence in this state.

Where there are discrepancies between two or more witnesses, all of them should be re-interviewed and the alternative version put to them for their response. It may also be necessary to interview others. If possible, third parties who may have knowledge of, or witnessed, an event should be interviewed to determine whether or not the conflict can be resolved.

In these situations, investigators should bear in mind that individuals may have different perceptions of events and that these differences should be respected. The object is to clarify the facts within the alternative versions, not to conduct interrogations. The investigator's job during the interview is to build on and strengthen evidence during the investigation process, not pass judgement on a particular witness or suspect.

Where co-defendants provide alternative versions of events, the Investigator should outline the alternative version to each suspect and offer them the opportunity to comment of the alternative version.

4.10 Providing an advance List of Questions

Questions are not normally forwarded to a suspect in advance of the interview as:

- There is no legal requirement to do so;
- Interference of evidence could result;
- Collusion could take place; and
- Interviews are an exploration of facts and evidence and many questions will relate to answers previously provided.

As such a single line of questioning is not effective and may fail to address all relevant issues.

On the rare occasion where circumstances require that the interview questions issues need to be forwarded in advance, this should be done with the approval of the appropriate Team Leader Investigations. It may be appropriate to forward possible questions to an interviewee is where the interviewee is the Director or Chief Executive of a government department or large company. This person may not have the answers to the questions readily available, therefore it may be prudent to forward a list of interview questions to allow preparation. The interviewee should be made aware that the list is not exhaustive and additional questions may be asked based on responses provided.

There are legislative provisions that provide a requirement for certain persons to provide information to investigators. A person or entity may commit an offence if they fail to provide the required information. Whilst these provisions are effective investigative tools, they should not be relied upon in lieu of completing a formal record of interview with a suspect. A suspect should always be offered the opportunity to participate in a record of interview before an investigator considers using a requirement to provide information.

4.11 Responding to Questions from a Suspect

Questions from the suspects or witnesses regarding the incident or possible outcomes need to be handled with discretion and restraint. The investigator should avoid giving immediate responses to questions about what the outcomes of the investigation will be. For example, even though the investigator may believe that a prosecution will definitely proceed, it is never advisable to indicate this.

Instead the investigator should explain that his/her role is simply to gather the facts and submit the information for consideration.

The investigator must not offer legal opinions or advice to a suspect whilst conducting an investigation.

When planning for interviews, the investigator should also anticipate that interviewees will want to ask questions of their own.

During initial inspections following an incident, investigators are frequently asked such questions as:

"What will happen with this investigation?"

While it may be tempting to state directly, "You're going to be prosecuted", it must be remembered that this kind of approach can severely prejudice a potential case. In the past, suspects have legitimately complained of bias or lack of objectivity in these circumstances.

It is only to be expected that suspects or others who are worried about the consequences of an incident will ask such things as, "Where is all this going?" Whgile they deserve an answer the investigator should respond by reinforcing the practical and positive aspects of his or her role in the investigation, while at the same time resisting answering specific questions.

Possible Replies to Questions about Investigation Outcomes:

- I'm here now to gather information, not to make any judgments.
- We need to gather and understand all the facts before forming any opinion.

- I can't comment on that as I haven't even begun to look at what's happened.
- I'm here to investigate whether or not an offence has been committed.

Other questions from suspects may include:

- What would you have done in my position?
- Don't you think this is unfair?

The investigator must not be drawn into providing personal opinions or providing comment on the legislation, government, courts or investigative process.

4.12 Difficult Interview Situations

At times, investigators will need to make decisions about the best way to conduct an interview given the particular circumstances of the interviewee. There may be communication difficulties, which will require sensitivity on the part of the investigator and a need to adapt the interview situation to achieve the best results. Before an interview is commenced it must be established that the interviewee can fully understand the investigator and can be fully understood themselves. An investigator may need to interview a person who is regarded as having an impaired capacity to understand their rights and the purpose of an interview, or the interviewee may feel intimidated dealing with a person in authority. Typically this includes juveniles (persons under seventeen years of age), Intellectually Impaired Persons, persons for whom English is a second language and some Indigenous persons.

4.12.1 Literacy

It is important to remember that more than 10% of Australia's population has some difficulties with reading and writing. Investigators must be aware that interviewees may have such difficulties. Investigators must also understand that some interviewees may not be aware of, or may be embarrassed, about their literacy difficulties. Investigators need to be sensitive to signals that may indicate problems with literacy. For example, a common indication that there may be literacy difficulties is that the interviewee makes excuses when asked to read documents, notes etc (for instance, that they have not brought their glasses etc).

In cases where it becomes apparent that an interviewee cannot read their statement/record of Interview or other written material, the investigator should:

- obtain the assistance of an independent person not involved in the matter to read aloud the statement or record of interview to the interviewee;
- request that the person making the statement or record of interview either sign it or makes their mark on the last page and also all other pages and all alterations or additions; and
- set out, under the signature of the witness, an endorsement signed by the person reading it in the following format:

e.g.: "Is what I have read to you from this document true, to the best of your knowledge? Is there anything further you wish to add?"

4.12.2 Intellectually or Physically Impaired Persons

There may be instances where an investigation involves a person with impairment. Such impairments include people who are:

- visually impaired;
- hearing or speech impaired;
- intellectually disabled;
- psychiatrically impaired; and
- physically impaired.

If an investigator experiences communication difficulties with someone with an impairment of any sort, then he/she will need to identify the appropriate resources to assist them with the interview. It may be necessary for other people to be present during an interview of someone with a disability. Refer to the section on 'Other Support Persons' for more information.

4.12.3 Juveniles

When interviewing persons under the age of 17, a parent, guardian or Justice of the Peace must be present. If considering that a juvenile may be responsible for an offence, investigators must be aware of s29 of the Queensland Criminal Code as to when a juvenile is criminally responsible and the *Juvenile Justice Act 1999* as to enforcement options. A person under ten years cannot be held criminally responsible for their actions. A person under fourteen years can be held criminally responsible if, at the time of the offence, they had the capacity to know their actions were wrong. Refer to the section on 'Other Support Persons' for more information.

4.12.4 Medical / Psych Conditions

Sensitivity to medical or psychological conditions needs to be maintained. Consideration needs to be given in these situations, to the appropriateness of conducting an interview and the admissibility of evidence taken. Refer to the section on 'Other Support Persons' for more information.

4.12.5 Drug / Alcohol

An interviewee needs to understand the questions put to them and to be aware of what they are saying in response. If the investigator believes a person is under the influence of drugs or alcohol, the interview must not proceed. A more appropriate time must be arranged. If incriminating responses are given by people under the influence of alcohol or drugs, then it must be remembered that their evidence may be inadmissible in court. Intoxication or drug use could be suggested by the following:



- smell of liquor;
- slurring of speech, and other physical signs, such as swaying;
- evasiveness or inability to focus on the questions;
- inappropriate responses, e.g. laughing; and aggressiveness; or
- lassitude.

4.12.6 Cultural Diversity and non English speaking interviewees

People from a non English speaking background comprise approximately 25% of Australia's population, and there are more than 200 different ethnic, racial and linguistic groups currently residing in Australia. Naturally, the workplace will reflect this diversity. Levels of English may vary widely. Some people may understand English better than they can speak it, while others may be able to speak English well, but be unable to read or write it. Refer to the section on 'Use of Interpreters' for more information.

4.13 The Role of Solicitors in interviews

Investigators are to allow suspects contact with legal representation if they request it prior to or during an interview. When a solicitor is present, it is important for the investigator to set the parameters for the interview and clarify:

- Who the solicitor is representing (if the solicitor is representing both the suspect and a witness or more than one suspect, the investigator should warn the solicitor of potential for conflict of interest);
- It would be preferable that the interviewee consults with their solicitor to clarify any legal implications of their answers prior to the commencement of the interview;
- That during the interview, the interviewee will be asked the questions and only the interviewee can answer the questions;
- That only for situations where the solicitor is designated as a companies representative and therefore has been given authority to speak on behalf of the company can they answer questions;
- Where the interviewee chooses to consult with his/her solicitor during an interview it will be recorded unless a request is made to adjourn the interview;
- Who the solicitor is by asking them to state their name and firm and that they understand their role in the interview. This should done at the commencement of the interview, after the preliminary questions and caution but before the interviewee begins their account.

4.13.1 What should a solicitor be told before an interview commences?

Prior to the commencement of an interview, the solicitor should be informed of the purpose of the interview. The solicitor should also be advised that, while he/she is entitled to be present to provide advice to the client, it is preferable that the solicitor speaks to the client before the interview commences so as to prevent any unnecessary interruptions.

4.13.2 What happens if the same solicitor is representing both the suspect and a Witness or more than one suspect?

This could be considered a conflict of interest. The solicitor should be asked before the interview which party he or she is representing. The discussion should be recorded, and the responses of the solicitor and the individual noted. If the solicitor is representing both parties, he/she should be told that there could be a potential conflict. If necessary the investigator should then contact their Team Leader - Investigations for advice.

4.13.3 Can a solicitor answer the questions on behalf of the client?

The answer, in almost every case, is No. The exception is where the interviewee is a company representative and the solicitor is authorised to speak on behalf of the company.

4.13.4 Can a solicitor instruct the investigator on questions to be asked?

Legal representatives are allowed to be present to advise their client. Under no circumstances should an investigator allow a solicitor dictate the format of a question. If a suspect or solicitor does not understand a question, they should ask for clarification but not interrupt the interview or interject.

4.13.5 If the solicitor interrupts, how should the investigator handle the interruption?

The investigator should determine the purpose of the interruption. If it is the case that the solicitor requires speaking to his/her client and advising them of their legal rights, then the interview should be stopped and sufficient time given to the solicitor so that he/she may speak to the client. It should be noted by both the solicitor and the client that, having taken that advice, the interview will proceed without further interruption.

4.13.6 What happens if the interviewee or the solicitor wishes to have an 'off-the-record' conversation with the investigator?

There is no such thing as an off-the-record conversation during an investigation. The solicitor should always be permitted to speak with their client in private and away from the investigator's recording devices if requested however any other requests should be directed to the relevant Team Leader Investigations or, if a prosecution had been commenced, to the relevant Legal Officer.

4.14 Other Support Persons

Interviews are preferably conducted with the interviewee alone. Where a person may be a witness or is another suspect in the investigation, they should not be present. Information can also easily be distorted, contaminated, or even withheld by the presence of inappropriate persons. Cases have occurred where a spouse of family member has tried to influence the interviewee or wanted to be present at the interview. An interviewee may

later allege that their responses during the interview were provided under compulsion from the third person.

An interviewee has the right to have another person, or a support person present during the interview, however, this person cannot be a suspect, co-offender or party to the offence. Where a third person is present at the request of the interviewee; the investigator should explain the purpose of the interview and role of the third person to that person.

Prior to the interview and during an electronic record of interview the investigator should explain the procedures and conditions to both the interviewee and support person. The support person is there to support the interviewee. If the support person believes that the form of questioning is intimidating or harassing then the Support person may request that the investigator adopt a different approach. Likewise, if the support person believes that the interviewee does not understand a question or the procedure then he/she may request that the investigator reword the question or statement.

A suggested wording to be used at the commencement of the interview, after the third person has identified themselves and their relationship to the interviewee in the record, is:

"I will be asking <interviewee name> a series of questions about this incident, <Interviewee name> has asked for you to be present during this. Your role is to provide support to <interviewee name> and ensure that they understand what I am asking and what their rights are. The questions are for <interviewee name> and you cannot answer the questions for them. I ask you not to interrupt the interview or answer any of the questions but if you wish to clarify anything with <interviewee name> at any time, I'll suspend the interview to allow you the opportunity to speak in private. Do you understand this?"

Under no circumstances is the support person to answer questions for the interviewee. The support person is not to interrupt or adversely interfere with the interview. If the investigator believes that the support person is interfering or obstructing the interview then this person should be warned. The warning should explain that it is an offence under the particular legislation to obstruct an Authorised Officer in exercising their duties, namely obtaining information about an offence, and that the investigator considers their conduct to be an obstruction. If the support person continues to obstruct the interview then they must be excluded from the interview and prosecutorial action may be taken.

4.15 Presence of Third Parties as support persons

In addition to solicitors and interpreters, others attending an interview could be an officer of a trade union, agricultural association, or other lobby group etc. If such a person is present, then the rules for solicitors also need to be understood by both them and the interviewee.

Additional advice needs to be given that:

- the other person may not speak during the interview;

- if the other person insists on speaking during the interview then he/she could be obstructing the investigator in the exercise of the investigator's power, which is an offence.

If the investigator believes that the action is an obstruction then the investigator must warn the person that their conduct is an obstruction in the exercise of an authorised officer's powers under the act. This conduct is an offence and if he/she does not immediately stop he/she will be excluded from the interview and/or prosecution action may be taken. If interference continues, the date, time, location, name and address of the person and the nature of the interference must be recorded.

If the support person requests a private conversation with the interviewee, the investigator must arrange for the conversation to be held where the content, of the conversation cannot be monitored nor recorded. Investigators are to remember that a private conversation is not to be recorded without the prior consent of one of the parties to the conversation.

4.16 Use of interpreters

In Queensland, access to qualified professional interpreters is a right of anyone who has difficulties with the English language. If, in any situation, an investigator suspects a witness may be disadvantaged without the services of an interpreter, either in comprehending or communicating in English, then he or she should always err on the side of caution and use one.

Investigators should keep in mind the fact that different languages reflect different cultures. If a witness can neither read nor understand spoken English then it will be up to an interpreter to translate information from one language to the other, while maintaining the essential meaning and substance of the information. This translation process is a difficult and complex one.

Where an Interpreter is used during a record of interview or statement, the process should be electronically recorded to retain a record of the translation. At times, a bilingual person, such as a child, other relative, friend or even another Departmental staff member, may be on hand to act as an interpreter. Under no circumstances should these people be used as interpreters, for a number of important reasons:

- fluency in two languages is not the same as interpreting;
- their language capacity may be restricted when it comes to complex matters;
- using children or other relatives may place the person being interviewed in a difficult situation, and may later adversely affect family relations;
- the person being interviewed may be unwilling to address certain matters through a child/relative/friend;
- unqualified interpreters may not recognise the importance of confidentiality; and
- unqualified interpreters may not be objective and may take sides.

A professional interpreter, on the other hand, will carry out the interpretation as accurately as possible, without omissions or additions to what is being said. He or she will also treat all information conveyed with complete confidence and will not divulge any information to

anybody other than those officially involved in the matter. The interpreter is also an impartial participant free of bias and avoiding personal opinion or involvement in the matter.

If an interpreter is used, he or she will be required to sign the statement or record of interview after it is taken. The following wording should be used:

“Certification of interpreter for statement or ROI

My name is [interpreter's name]

I am a NAATI Accredited Interpreter, Level 3, Registration # (interpreter's number)

I hereby certify that the above statement/record of interview has been a true and accurate record of the interview between [investigator's name] and [interviewee's name]

Signed:

Dated:”

Interpreters are available from private agencies (refer to the Yellow Pages) however it is preferred that investigators use the government Translation and Interpreter Service (T.I.S.) on 131450. This service operates 24 hours a day, 7 seven days a week. Further information may be found from the Commonwealth Department of Immigration and Multicultural Affairs (www.immi.gov.au/tis).

4.16.1 Preparing an interpreter

Prior to the interview the interpreter should be briefed on the background of the case, issues and technical language as well as photos shown. This is so they have time to think about how they will explain certain technical language and other consideration of the case.

Ensure that enough time has been allocated so that the interpreter does not have to leave for another job while the interview is still in progress. Interviews using interpreters can take 1 to 2 hours longer than usual. Ensure that there is enough time for the interpreter to read back questions and answers to the interviewee. Ensure that the interpreter signs the statement or record of interview as a true and accurate record of proceedings, including their NAATI number.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for Interviewing Potential Defendants
State Manager - Investigations	Shall ensure that all investigators are trained in the procedure.	
Team Leader - Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Kelli Ready
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Procedural guide

Enforcement Services Intelligence Search Functions SOP008

Purpose of the Document – The purpose of this guide is to provide a procedure on Internal Intelligence Search Functions as they apply to investigators attached to the Compliance and Investigations Unit, EHP.

1. DOCUMENT HISTORY

1.1 Document Location

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1.2 Revision History

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Name	Title
Kelli Ready	A/Director, Compliance and Investigations

1.4 Distribution

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3. INTRODUCTION

3.1 Purpose

The purpose of this guide is to provide a procedure on Internal Intelligence Search Functions as they apply to investigators attached to Enforcement Services, EHP.

3.2 Scope

This procedure is relevant to all EHP Compliance and Investigations authorised officers who are involved in planning, managing and conducting investigations.

3.3 Prerequisites

It is highly recommended that all persons utilising this procedure are authorised officers under relevant EHP legislation or their role and function within EHP requires them to obtain and or access intelligence relevant to assisting EHP investigators.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Essential Points

3.6 Definitions

Internal Intelligence Search Functions- This term is used in this procedure to describe a range of processes and or systems available to search for intelligence information relevant to EHP investigations that are available from within EHP,

Intelligence- The product resulting from the collection, processing, integration, analysis, evaluation and interpretation of available information.

3.7 References

Nil

4. PROCEDURE

At the commencement of or during approved investigations EHP investigators will require a broad range of intelligence information to assist and or support the conduct of those investigations. A wide variety of intelligence information is available from existing EHP systems as well as external Government and non Government agencies and organisations. The type of intelligence information required will be dependant upon the type of investigation being conducted so not all available Intelligence Search Functions are required to be utilised for each EHP investigation. This SOP does not address 'external' intelligence search functions other than widely available internet searches which can also provide a good source of intelligence.

EHP Investigators may conduct formal investigations into and enforcement of the below listed Legislation. Much of this Legislation has specific 'systems or programs' associated with the collation and storage of information relevant to the administration of those Acts. Current and Historical information relevant to specific persons, places and organisations is contained on these systems. Information available includes but is not limited to maps, licenses, applications, requests, departmental contact and personal details are available and may provide a good source of intelligence information relevant to many EHP investigations. Investigators should also be aware that some intelligence information may also be 'evidence' (maps - documentary evidence) and should be managed according to evidentiary policy and procedure.

- Coastal Protection and Management Act 1995
- Environmental Protection Act 1994
- Sustainable Planning Act 2009 (with respect to those parts relevant to EHP business)
- Land Act 1994
- Marine Parks Act 2004
- Nature Conservation Act 1992
- Queensland Heritage Act 1992
- Recreational Areas Management Act 2006
- Water Act 2000



Internal Intelligence search systems.

A wide range of internally available 'systems' can be used to conduct internal intelligence searches that may be relevant to the investigation being conducted. Some of these systems are external internet based systems that can be made available to EHP employees (google, Facebook, ABN, white pages). Many other internal systems that are administered by EHP are also available. Access to these systems may be available to all EHP employees or will require special access and possibly training. Direct contact may also be required with the department who administers that system in order to retrieve necessary information. A non-exhaustive list of available EHP systems that may be of use to investigators is listed below.

System/ Program	Full Name	Searches
SMIS	SmartMap Information System	Smart Maps, owner & additional details; admin area report; internal title search; aerial photos & satellite images.
QVAS	Queensland Valuations and Sales	Property details report; sales report.
eLVAS	Electronic Land and Vegetation Administration System	Vegetation related interaction history (Including documents), permits and case information.
VIN	Vegetation Information Network	Regional ecosystem mapping showing regional ecosystem and regrowth mapped using lot/plan and vegetation median index search.
TRACK JOB	Integrated Development Assessment System	Concurrence & Advice Agency development applications.
ABR	Australian Business Research	Registered company details, ABN details.
WERD	The Water Entitlements Registration Database	Registered water entitlements using names, addresses, dates, permits & licences.
WMS	Water Management System	Registered water entitlements using names, addresses, dates, permits & licences.
ATS	Automated Tiles System	Registered title dealings.
RST	Remote Sensing Team	Proofing, mapping & imagery.
DIP	Department of Infrastructure and Planning	Land zoning checks.

Procedural guide Intelligence Search Functions

ECOSYSTEM- ECOTRACK	Ecotrack	Queensland Parks and Wildlife permits and licences
White Pages	White Pages	Public telephone number search.
Yellow Pages	Yellow Pages	Business telephone number search.
MINDA	Mobile Integrated Network Data Access	Vehicle registration search
CITEC	Centre for Information Technology and Communications	Corporate searches & reports; Land searches.
QNTIME	Queensland Native Title Native Information Management Environment	Title data search.
eBAY	eBAY	Buy/Sell search, e.g. artefacts.
FACEBOOK	Facebook	Social networking search, e.g. person of interest.
MYSPACE	MySpace	Social networking search, e.g. person of interest.
GOOGLE	Google	Miscellaneous search, e.g. person/association of interest.
YouTube	Utube	Social sharing video network, e.g. person of interest.
AEC	Australia Electoral Commission	Electoral Role search.

4.1 Process to search relevant internal intelligence system.

Internal intelligence searches are to be conducted at a local level. Officers who require access to an internal search system or process for which they do not have access or training should

- a) Obtain assistance from another officer or staff member who can assist them in conducting the internal intelligence search, or if no such person is available;
- b) Request access or training in that system through their Team Leader.

The Team Leader is to consider any such requests on their merits and determine whether access or training should be provided or whether the information can be obtained in another way

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for Behaving Ethically
State Manager – Enforcement Services	Shall ensure that all investigators are trained in the procedure.	
Team Leader – Enforcement Services	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Kelli Ready
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RTI DL RELEASE - EHP

Procedural guide

Enforcement Services

Obtaining and Executing Search Warrants

This document is to assist investigators with their understanding of the procedures for obtaining and executing search warrants.

1. DOCUMENT HISTORY

1.1 Document Location

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1.2 Revision History

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3. INTRODUCTION

3.1 Purpose

The various legislation administered by EHP provides a range of general powers including the power for authorised officers to enter a place for the purpose of conducting searches and gathering of evidence. The purpose of this procedure is to provide instruction for obtaining and execution of the various warrants that are provided by legislation.

3.2 Scope

This procedure will apply to all investigators within the Environmental Resources & Enforcement Branch whose duties require them to obtain and execute warrants to enter a place for the purpose of search or monitoring.

3.3 Prerequisites

Legislation requires that all warrants are applied for and executed by an "Authorised Officer". Investigators are to ensure they have the "Authorised Officer" delegation for the statute that they are to use.

3.4 Training

All investigators will be trained in this procedure upon commencement of employment and such training will be refreshed every two years or when changes to the procedure justify the necessity.

3.5 Essential Points

- Discuss with Team Leader Investigations why you want to take out a warrant
- Compile a warrant action plan
- Submit briefing note requesting approval
- Prepare the warrant application and warrant
- Apply to the court
- Conduct a pre-warrant briefing with staff
- Execution of warrant
- Conduct a post-warrant briefing
- Review and follow up as necessary

3.6 Definitions

Authorised Officer – a person appointed under the relevant legislation that can apply for and execute a warrant. For the purpose of this procedure it also includes a conservation officer and a forest officer.

EHP – Department of Environment and Heritage Protection.

Place – Investigators should check the legislation as to the definitions of place. For the purpose of this procedure it includes residential dwellings, sheds, offices and/or other buildings, lands, worksites, waters, vehicles and/or machinery.

Warrant - under the legislation administered by EHP is a form of order granted by a Magistrate upon a sworn application, which authorises the applicant to enter a place with necessary reasonable help and force to exercise their powers under the relevant Act, which may include searching for and seizing particular evidence for which the warrant has been issued.

3.7 References

- Legislation that has provisions for warrants:
 - o *Aboriginal Cultural Heritage Act 2003*
 - o *Environmental Protection Act 1994*
 - o *Forestry Act 1959*
 - o *Marine Parks Act 2004*
 - o *Nature Conservation Act 1992*
 - o *Queensland Heritage Act 1992*
 - o *Recreational Areas Management Act 2006*
 - o *Torres Strait Islander Cultural Heritage Act 2003*
 - o *Vegetation Management Act 1999*
 - o *Waste Reduction and Recycling Act 2011*
 - o *Water Act 2000*

Note – The *Land Act 1994* and the *Coastal Management and Management Act 1995* do **not** have provisions for warrants.

- Warrant Action Plan Template
- Operation Order Template
- Job Safety Analysis Template
- Procedural guide – Obtaining evidence
- Procedural guide – Evidence handling
- Procedural guide – Briefing up

4. PROCEDURE

No authorised officer will

- Enter any place belonging to another;
- Search any such place ;
- Seize anything; or
- Authorise or ask any other person to do any of the abovementioned unless a statutory authority exists.

Special attention should be made when seizing anything that the investigators understand and adhere to SOP 006 – Seizure and evidence handling. Investigators should have reviewed the legislation under which they are enacting and be aware of the particulars that is required in the execution of the warrant and the seizure of anything.

4.1 Decision to apply for a warrant

An Investigator **must** seek approval before they can apply for and execute a warrant. Prior to an Investigator seeking approval to apply for a warrant, they must be satisfied that:

- the evidence of the offence cannot be obtained any other way; and/or

- there is a risk that evidence may be destroyed, lost or concealed.

Investigators should discuss with their Team Leader the investigation and the merits of conducting a warrant execution including the broad plan of how the execution would be conducted, the resources necessary and how the evidence is pertinent to the investigation. The investigator also needs to outline what evidence is already available and be able to discuss what is required.

4.2 Planning and Safety

4.2.1 Warrant Action Plan

Once the Team leader has agreed that taking out a warrant is best option and necessary for the investigation, the investigator should start planning by completing a **Warrant Action Plan**. The warrant plan is used in a number of the processes and therefore investigators should be prepared to update the document during the process.

A Warrant Action Plan includes but is not limited to:

- The description of the place to be searched (include lot and plan details);
- The description of the evidence being searched for and where it may be located;
- An aerial image or map of the place;
- The search sequence to be adopted during the search (specifically areas of interest);
- Roles and Responsibilities of the team members during the search;
- Specific powers under the Act for which the warrant relates;
- Known potential hazards and associated risks that members may be exposed to during the search;
- Control measures to be adopted, e.g. personal protective equipment to be used to manage the level of exposure to a hazard;
- The type and location of first aid equipment and /or personnel;
- Post contamination exposure procedures to be followed, when appropriate.

In larger operations, where more than three search teams or multiple sites are involved in a common purpose, an **Operational Order** is required. The investigator is required to compile the order in accordance with the SMEAC formula (Situation, Mission, Execution, Administration and Logistics, Command and Communication). The Operational Order will incorporate of, and therefore replace, the warrant action plan. It should be used to brief all management and staff involved in the operation.

4.2.2 Safety

In the planning stage of a search the Investigator in charge should conduct a risk assessment of the search in the form of a **Job Safety Analysis**. Investigators may need to consult with officers from the business unit in this matter particularly in matters involving potential chemical hazards. This includes but is not limited to:

- Where the subject place contains, or is likely to contain, environmental hazards scientific staff or environmental officers **must** be consulted prior to executing the warrant. Advice should be sought relating to evidence that may exist investigators ensure that staff from these areas be included in the execution of the warrant in order to appropriately address any OHS issues and evidence gathering procedures.
- If there is a reasonable risk that the occupier of the place will refuse entry or that they will be aggressive towards EHP officers, the assistance of the Queensland Police Service **must** be sought. Investigators must perform a background search with the Intelligence Unit.

- The team leader must ensure that all staff have the appropriate PPE, safety equipment and training for those risks that can be identified. Some sites may require an induction before they can enter which should be taken into account as well.
- A **job safety analysis must** be completed and provided to the Regional Manager Investigations **prior to** the execution of the warrant.

4.3 Approval for warrant

Before executing a warrant the investigator must receive approval for the Director of Enforcement Services. The request for approval must be in the approved **Briefing Note form**, and provide:

- the background of the matter;
- the offence being investigated;
- the reasons why a warrant is considered necessary by the Investigator;
- any information of significance which may have a negative impact on EHP; and
- a prepared Warrant Action Plan or Operational Plan.

The Briefing Note is sent via the Team Leader, Investigators through to the State Manager Investigations and on to the Director of Enforcement Services. Investigators should also be aware that the Briefing Note may go to other internal stakeholders to inform them that a warrant is about to be executed. A warrant can not be executed without the approval of the Director Enforcement Services.

The Assistant Director-General, Operations and Environmental Regulator **must** be advised of the proposed execution of a warrant at least two days **prior to** the warrant being executed. For routine matters, where significant conflict, public interest or media interest is not anticipated, briefing will take the form of a general briefing note^[2] sent by email to the Director, Enforcement Services and Assistant Director-General. For matters that are not routine, briefing will be by Associate Director-General Briefing Note.

The relevant Senior Director (QPWS) or Regional Service Director (RSD) **must** also be advised of the intended execution of the warrant.

On a case by case basis the EHP Media services are also advised of the warrant execution. A draft media response is prepared in consultation with the relevant Business Unit. Media enquiries regarding the warrant should be referred to the EHP Media services where officers in the field or head office are contacted.

If a warrant is **urgently**^[1] **required** and the Director of Enforcement Services is unavailable, it is appropriate for the State Manager Investigations to seek advice and assistance from the Director, Litigation and escalate to one of the following:

- Regional Service Director, Regional Service Delivery
- General Manager, Operations, Environment and Natural Resource Regulation
- Assistant Director-General, Environment and Natural Resource Regulation
- Assistant Director-General, Queensland Parks and Wildlife Service
- Associate Director-General.

^[2] This briefing note will usually be the same content (with minor changes) as the application briefing note.

^[1] "Urgently" means that evidence will be lost, or material or serious environmental harm or other another significant adverse impact is likely, if the application is delayed until the Director Enforcement Services is available

4.4 Warrant applications and court process

4.4.1 Application

The Investigator applying for the warrant should prepare both the application for the warrant and the warrant using the correct template for that particular piece of legislation. The investigator should also consider obtaining assistance from the Investigation Support Unit.

In preparing both the Warrant Application and Warrant the investigator should take special care regarding the following points:

- The grounds of the application **must** show a connection between the place, the evidence sought and the offence(s) nominated. In order to assist Investigators Appendix A has a list of common connections between the place, the evidence sought and different offences. While the list is comprehensive, it should only be used as a guide as it is the responsibility of the Investigator to ensure the grounds address the statutory requirements for the particular type of warrant being applied for.
- The grounds should be set out in a chronological or otherwise logical order and the paragraphs should be numbered.
- All available, accessible and relevant EHP information should be considered in terms of the grounds for the application.
- The offences nominated in the application and the warrant should be included as section number and name of Act. The full wording of the offence should then follow.
- The application must include sufficient detail to accurately describe the place to be entered. It is mandatory that both a street address and the lot on plan description of the place are used on the warrant. In addition the Investigator should also include other appropriate descriptions of the place, for example "Windermen Station", "Industrial premises owned by Bloggs Pty Ltd" or "residential dwelling of one J Bloggs".
- If the premises or place is located on a site owned by another entity; ie vessel on a private wharf, or sheds inside a secure area; careful checks will be required to ascertain the correctness and validity of the address in relation to the warrant.
- Determining ownership, occupier and custody/control of the warrant site and evidence reasonably suspected of being on the warrant site is of paramount.
- The Intelligence Unit must be consulted prior to completing the application to ascertain whether there is any relevant intelligence about the place or occupier. Any relevant information should be referred to in the warrant application. This includes, but is not limited to, checks with the Queensland Police Service regarding WH&S issues for violence, firearms and other risk factors.
- Check with local councils regarding animal registration (particularly dogs) and recognised that any animal may be a potential risk.

4.4.2 Court process

Once the investigator has received approval and has prepared the warrant application and warrant they will need to take it to a Magistrate to be heard. The investigator should make an appointment only one or two working days before they plan to execute the warrant. Warrants are only valid for seven days after a Magistrate has signed off on it.

- The Investigator making the application should make contact with the nearest Magistrates Court to the place of the alleged offence(s) to make an appointment for the application for warrants to be heard.

- Departmental officers attending court are to be mindful that they are representing the Department and should be dressed accordingly and portray a professional image. (Refer also to the Code of Conduct.)
- The Investigator **must** take his or her authorised officer identification card to Court.
- The Investigator **must** take a copy of the relevant Act to Court.
- The investigator must be prepared to discuss aspects of the warrant, such as the grounds and issues and parameters regarding the execution (e.g. clarify the necessity of executing the warrant afterhours).
- Departmental officers are to address a magistrate as “Your Honour.”
- The practice in most Magistrates Courts is to hear applications for warrants in private in chambers (the Magistrate’s office). The following procedures apply if the application is being heard in open court:
 - Upon entering and leaving the Court, officers are to follow appropriate court etiquette (such as bowing towards the Coat of Arms as a courtesy).
 - Officers are to correctly swear as to the contents of the warrant. Officers are to be guided by the Clerk of the Court or Magistrate as to which oath or affirmation to swear. The form of the basic oath is “*I swear that the contents of this document and any further information I may supply either orally or in writing are true and correct, so help me God.*”
 - In the instance of officers being asked complex or legally-based questions that they are unable to answer, officers should request an adjournment and make immediate contact with the Director Enforcement Services, Director Litigation (Ph No.) or a Principal Lawyer in relation to the issue.

4.5 Warrant execution

4.5.1 Pre-warrant briefing

- Conduct a briefing with all staff involved prior to the execution of the warrant. The main outcome of the briefing is that all attending staff should be aware of their respective roles and responsibilities (executing officer, property officer, searching officers, assisting officers, scientific officers, miscellaneous officers) and address any questions, concerns, issues or uncertainties that they may have.
- Where applicable maps should be used so that staff have a greater understanding of the place and designate areas of responsibilities. They should be up-to-date, highlight areas of significance and include the property boundaries.
- In the execution of large-scale warrants operations, consideration should be given to conducting a separate briefing with Team Leaders and delegating responsibility and tasks to such persons.
- An appropriate form-up point or parking spot should be used in attending the subject place.
- Copies of the Warrant Action Plan should be provided to key personnel and used as a briefing tool in order to ensure that all personnel understand both their roles and that of others which are taking part in the execution of the warrant. The investigator should also confirm that staff have the necessary PPE, equipment and ready to participate in the execution of the warrant.
- The property officer should have at least one search warrant bag containing appropriate search-related resources prepared, checked and taken on search warrants. See Appendix B for search bag contents)

4.5.2 Entrance

- On arriving at the place the warrant holder should introduce him/herself as the warrant holder and identified themselves as the lead person. They should then introduce any other persons accompanying him/her, and explain the purpose of the warrant and the powers under it.
- The warrant holder should establish contact with the occupant or manager to arrange the cooperation and assistance from the occupiers of the place during the execution of the warrant where necessary.
- A **copy of the warrant must** be given to the occupier of the premises. The original warrant should be on hand and shown on request, but not physically given to the occupier of the premises.
- The basic details of the warrant should be read out to the occupier of the premises (outline the offence(s), the property sought, the expiry date of warrant, and the powers under the warrant).
- The warrant holder **must** inform the Team Leader (or other person as per the Warrant Action Plan) when they have entered the place and again when they leave.
- During or just after the execution of the warrant at least one Situation Report (SitRep) must be provided to the Director, Enforcement Services. In the case of complex warrant scenarios (such as where multiple related warrants are executed at the same time, and/ or a large number of exhibits are seized, and/ or the execution of the warrant has significant consequences for the occupier of the premises, and/ or there is significant conflict, public interest or media interest) then multiple SitReps (by email) and formal briefing may later be required. The Team Leader should determine this in consultation with the Director, Enforcement Services.
- Once on the property the warrant holder **must not** leave the place while the warrant is still being executed. Re-entering the place after having left may be unlawful.
- Where entry is prevented by means of a lock, of any means, the services of a local locksmith should be engaged. Alternatively the investigator may consider it necessary to cut a lock or chain to gain access to a place. If the investigator does cut a lock or chain they must be in a position to replace that item with items of the same nature e.g. if the investigator cuts a padlock then they should replace that padlock with one of equal quality.

4.5.3 Search

- Officers **must** display their authorised officer identification cards with them when executing warrants. Where supporting personnel are not authorised officers under that legislation they must be teamed with an authorised officer for the duration of the search.
- The warrant holder (and other officers involved) must make detailed notes of the warrant execution. Official notebooks should be used for recording observations, occurrences and events in relation to the warrant.
- Officers should electronically record the entire execution of the warrant. Unless operational circumstances require otherwise, the warrant execution should be overtly recorded with the knowledge of all people present.
- The execution of a warrant can only be covertly recorded with the **prior approval** of the Director Enforcement Services, Assistant Director-General or Associate Directorate General as described in **Procedural Guide – Overt and Covert Recording**.
- Consideration should be given to overt audio and video recording the execution of the warrant.
- Officers questioning alleged offenders in relation to an offence should first caution the alleged offender about their right not to answer questions or make statements that may tend to incriminate

them. The caution should be electronically recorded as per the Procedural Guide SOP 022 – Issuing Cautions.

- If an occupier of the place (or any employees or other persons present) refuses to give reasonable help for the exercise of powers under the warrant, officers should warn them that it is an offence to obstruct an Investigator during the performance of his or her duties. If further resistance is encountered that person's details should be obtained and notes made of the incident.
- The execution of the warrant should not be stopped simply because the occupier or occupier's solicitor requests (over the telephone or in person) that the execution stop. In these circumstances they should be referred to the Director Litigation or a Principal Lawyer, Litigation Branch.
- The evidence handling guidelines should be followed when seizing property. A centrally designated exhibit point at the site and an appointed exhibit officer should be used in the management of exhibits in accordance to Procedural Guideline SOP 006 - Seizure and evidence handling
- Any damage caused during the execution of the warrant must be noted and recorded, and the record signed by the occupier. In this case a Notice of Damage form is to be completed and served on the owner or owner's representative or left in a conspicuous location at the place if the owner is not present.
- Any media that approach Investigators during the execution of a warrant should be directed straight to Media Services (Telephone: (07) 3339 5831) and the reporter's contact details should be taken.
- Communication and interaction with any person present at the premises where a warrant is executed must be managed by the officers executing the warrant so that execution of the warrant is cooperative to the extent possible and conflict is minimised. However, it is not appropriate to enter into a formal agreement with an alleged offender, the occupier of the place where a warrant is being executed or any representative of those persons regarding the way in which the warrant will be executed.

4.5.4 Other Safety Considerations

- The search of various places, buildings and vehicles or vessels can expose the officer to a variety of hazards, including hypodermic syringes, body fluids and contaminated materials, and in extreme cases, booby traps. These potential hazards should be addressed in the pre-search job safety analysis. This risk assessment shall identify and select the appropriate level of control measures to eliminate or reduce the level of risk or exposure to the risk by the officers involved.
- Each officer is responsible for identifying potential hazards and bringing them to the lead investigators, or team leaders, attention.
- If an officer's health or safety is threatened at any time during the execution of the warrant, officers **must** immediately leave the premises. At a later point the threat or incident should be
- Where identified, appropriate PPE **must** be worn during the execution of the warrant.

4.5.5 Conclusion and exist

- The execution of the warrant should conclude with the warrant holder checking that all evidence has been gathered and labelled; that all officers are accounted for and ready to depart. In situations where there are multiple teams the warrant holder should check with each individual team leader and confirm that the team is ready to depart.
- Finally the warrant holder should inform the occupier that the execution of the warrant is ending and that the officers are leaving the premises.

- Where applicable officers should meet at a nearby offsite location and confirm that all equipment and staff are accounted for.
- A quick debrief maybe be undertaken depending on the size and complexity of the warrant execution.

4.6 Post- warrant

- The original warrant should be treated as an exhibit and retained for court purposes. Details regarding the execution of the warrant should be recorded by the warrant holder on the last page of the warrant form.
- A de-briefing should be conducted at the conclusion of the warrant at an appropriate location.
- The Team Leader should be briefed in relation to the outcome of the warrant. If requested a “Lessons Learnt” may be requested in relation to the warrant process.
- All seized property should be handled with care. Contamination and continuity issues should be considered at every stage of property handling and management. Refer to Procedural Guide SOP 006 – Seizure and handling of exhibits.
- Comprehensive file notes/notebook entries should be made in regard to the execution of the warrant.
- The digital recordings made during the execution of the warrant are to be treated as exhibits. A copy of the recordings should be made for back-up and transcription purposes.
- The result of the execution of the warrant should be included in the Search Warrant Register.
- Consideration should be made, especially at the end of the warrant process of advising the Media Services of the outcome. This is briefing is for the Media Services information rather than for the purposes of a ‘media release’ and it allows Media Services to be prepared should they subsequently be contacted by media about the warrant.

4.7 Alternate means of application (Special Warrants)

In urgent or special circumstances, and where permitted by legislation, a warrant may be applied for by phone, fax, radio or other form of communication. Investigators need to be aware of the individual requirements of the applicable legislation when applying for, obtaining and executing warrants in these situations.

These Acts provide for such circumstances and therefore provides for the authorised officer to apply for a warrant (may be referred to as a “**Special Warrant**”) by phone, fax, radio or another form of communication if the Investigator considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the Investigator's remote location.

Before applying for a warrant in this situation, the Investigator must still discuss the request with their Team Leader in order to receive the approval from the Director Enforcement Services. The Investigator, or another officer, must prepare an application stating the grounds on which the warrant is sought. Due to the circumstances the Investigator may apply for the warrant before the application is sworn however at the next available opportunity the investigation must swear the application.

In seeking a warrant in this manner the Investigator must still satisfy the magistrate that there are reasonable grounds for suspecting:

- there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against the Act; and
- the evidence is at the place or, within the next 7 days, may be at place.

There are two processes for applying for the warrant, depending of the circumstances. These processes are listed below.

4.7.1 When there is access to communications and a fax

- Conduct the preliminary phase of the investigation and determine the grounds for a warrant application.
- Telephone the Team Leader or State Manager Investigations to advise the reason why a warrant is required urgently and obtain approval.
- Complete the standard **Warrant Application** to ground the **Warrant Form**. Complete the details on the Warrant.
- Telephone a Magistrate and advise them that you wish to make an application for a Warrant under special circumstances.
- Fax the Warrant Form and Warrant Application to the Magistrate.
- The Magistrate may call back and request further information.
- The Magistrate will advise you if the Warrant is not granted.
- If the Warrant is granted then the Magistrate will fax it to you.
- Read over the Warrant to determine what entry or other powers the Magistrate has provided.
- If the Warrant Application has not been sworn previously sign and swear the document before a Justice of the Peace.
- At the first reasonable opportunity send the sworn application (original) to the Magistrate by mail or safe hand.

4.7.2 When there is no access to a fax or the matter is extremely urgent

- Conduct the preliminary phase of the investigation and determine that grounds exist for a warrant application.
- Telephone the Team Leader or State Manager Investigations to advise the reason why a special warrant is required and obtain approval.
- Prepare, in writing, the grounds the **Warrant**.
- Telephone a Magistrate and advise them that you wish to make an application for a Warrant over the telephone.
- You will then need to provide the Magistrate with the grounds for the application over the telephone. Be prepared for questions from the Magistrate.
- The Magistrate may refuse to grant you the Warrant.
- If the Magistrate grants the Warrant then they will tell you -
 - (i) what the terms of the Warrant are; and
 - (ii) the date and time the Warrant was issued.
- You must complete a **Warrant Form** with the following information –
 - (i) the Magistrate's name; and



- (ii) the date and time the Magistrate issued Warrant; and
- (iii) the terms of the Warrant.

- The Warrant Form authorises the entry and exercise of the other powers stated in the Warrant issued.
- Execute the Warrant.
- At the first available opportunity complete an Application to Ground a Warrant Form and then swear it before a Justice of the Peace.
- At the first available opportunity send the sworn application (original) and the Warrant Form (original) to the Magistrate by mail or safe-hand.

4.8 Assistance

Queensland Police Service

The legislation generally allows the warrant holder to use reasonable assistance in executing it. This means that other persons can assist in the execution of the warrant. If resistance is expected during the execution of the warrant, the assistance of the Queensland Police Service **must** be sought prior to the execution of the warrant. Once the place is considered safe it may be appropriate for the Police to leave however this should be done on a case by case basis.

It is also prudent to contact the local police station before a warrant is executed even if no resistance is expected, to advise them of the time and place you will be executing the warrant in case difficulties are encountered.

If resistance is encountered during the execution of the warrant, and there is **any** threat of violence, the officer **must** immediately leave the place and contact the Queensland Police Service and their Team Leader, Investigations.

Other situations where evacuation of the place is considered necessary include

- Likely escalation of threatened violence;
- Savage and unrestrained animals (dogs);
- An illicit drug laboratory;
- Significant find of firearms or unsafe explosives; or
- Electrical, gas or chemical issues that may lead to an unsafe exposure.

In these cases the Team Leader, Investigations must be advised of the situation before leaving the place and an appropriate response or involvement of other relevant agencies shall be investigated and determined.

Police must be advised immediately when a search locates items which are known to be illegal such as

- Weapons
- Explosives
- Drugs (including sharps i.e. syringes)
- Suspected stolen property
- Illegal immigrants

Investigators should be guided by the Police requirements in each case.



Other Consultants or Experts

Consideration should also be given as to whether other EHP officers, other government officers or external experts should be taken to the premises to assist with technical matters (for example, sample taking or species identification).

If dealing with a planned search of a place where it is likely that evidence will be located on computers, consideration should be given to obtaining the services of personnel who have had formal training and are competent to deal with the seizure and handling of computer-based evidence. In some circumstances, the case officer may feel it necessary to secure the services of an independent consulting witness to attend the scene of a search and subsequent examination. In these cases the investigator should refer to Procedural Guide SOP 003 – Computer based evidence.

Where these consults or experts are to be involved in the warrant execution they should be paired with an investigator during the search. The investigator should take the appropriate records, such as notes, photographs, and video to ensure that the evidence is seized correctly as to the legislation requirements.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director - Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation. Approve applications for warrants.	SOP 001 Brief Notes
State Manager Investigations	Shall ensure that all investigators are trained in the procedure. Approve and forward applications and execution briefing notes. Ensure that the Search Register is kept Require Annual Audits of this procedure	Training Plan & Matrix Briefing Notes Search Register Audit Plan and Documents
Team Leader Investigations	Shall ensure that all Investigators under their command follow the procedure. To annually conduct an audit of the adherence to the procedure. Provide advice and guidance in hazardous situations.	Briefing Notes Warrant Plans & Operational Orders Job Safety Analysis
Investigators	Shall follow the procedure	Briefing Notes Warrant Applications Warrant Warrant Plans & Operational Orders Job Safety Analysis

Director – Enforcement Services
Department of Environment and Heritage
Protection

Enquiries:
Investigations Unit
Ph. (07) 3330 5564
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Appendix A – General Search Kit Contents

- Digital Camera and/or Video Camera
- Digital Voice Recorder
- Investigation Note Book
- Consent to Enter Forms
- Property Receipt Book
- Notification of Damage Forms
- Plastic Gloves
- Exhibit sealing tags/labels
- Assortment of Plastic Bags – zip lock style
 - o 20 x A3 size
 - o 50 x A4 size
 - o 50 x A5 size
- Crime Scene No.
- Tape measure and measuring stickers
- Crime Scene Tape
- Torch
- Compass
- GPS Unit
- Extra Batteries

RTI DL RELEASE - EHP

Procedural guide

Enforcement Services Use of Notebooks SOP011

Purpose of the Document is to provide guidance and assist investigators in the use of notebooks in investigations.

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

Date of this Version	Date of Next Revision
11/03/2013	

Rev No.	Rev Date	Summary of Changes	Author
	11/03/2013	Updated to reflect departmental restructure.	Sean Madigan

1.3 Approval

This document requires the following approval.

Name	Title
Kelli Ready	Acting Director – Enforcement Services

1.4 Distribution

This document has been distributed to the following sections.

Section	Date
Investigation Teams Cairns, Townsville, Maroochydore, Brisbane, Toowoomba	

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3. INTRODUCTION

3.1 Purpose

The purpose of this procedure is to provide direction for authorised persons on the use of an official note book.

3.2 Scope

This procedure relates to all EHP authorised persons who are issued official notebooks for the purpose of recording noteworthy observations and activities which may be required to be later referred to.

3.3 Prerequisites

This procedure assumes that the person issued an official notebook is an "Authorised Officer" under legislation and has been issued an official notebook for use in their official duties.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Essential Points

- Contemporaneous notes made in an official notebook at the time or soon after the event can be used to refresh your memory in Court.
- The proper use of notebooks can ensure that the notes are admissible in Court.
- Notebooks can protect the integrity of investigation notes and form part of future statements made by the investigator.

3.6 Definitions

Notebook - an official blank page book for the purpose of writing in. All note books will be consecutively numbered and have numbered pages.

3.7 References

- Australian Government Investigation Guidelines (2003)
- Tips and Traps For Regulators (2009)

4. PROCEDURE

4.1 Essential requirements

- All entries in the official notebook must be made in ink and be in chronological order.
- All entries should be legible.
- Abbreviations should not be used.
- Notes must properly express the facts and observations.
- Entries should be comprehensive.
- Every entry must state the date, time and place on which it was made.
- At the end of each entry a line must be drawn and the next entry must commence immediately below the line. (Do not leave spaces in the official note book to fill in later).
- Pages must not be torn out of any official notebook.

If an alteration is necessary then the proper procedure is to draw a line through the original notes and insert the new notes, in such a manner as to leave the original entry in legible form. All entries in an official notebook should be made in the handwriting of the authorised person who the official notebook was issued to. If an authorised person makes entries in another authorised person's notebook, they must make it clear the reasons and who is making the entry in the notebook.

For statements and records of interview, there must be no gaps between the end of the statement/record of interview and where the interviewee signs. Signatures are to be obtained at the conclusion of any statement or record of interview taken in a notebook and each page of the statement or record of interview should be initialled. This provides that the witness or interviewee has 'adopted' the record. Where a corroborating officer may need to refer to the notes, they should review the notes taken and if satisfied with their accuracy, 'adopt' the notes by initialling each page.

Once the matter to which the notes are taken is finalised the entry should be crossed out with a single diagonal line.

4.2 Use of official notebooks

An official notebook is issued to an authorised person for use for Departmental matters.

Official note books are to be used only for the purpose of recording notes about the person's official duties and must not be used to record notes or private matters. An incident that may not seem like a compliance or investigation issue at the time may become an issue at a later date. Authorised persons should, whenever in doubt, record information in the official notebook.

For the purpose of accuracy of references and admissibility of the notes as evidence, notes should be made at the time the events being recorded are taking place, or as soon as possible afterwards so that the facts are still fresh in the memory of the person making the notes.

Where an alteration to an authorised person's Official note book is likely to be significant, the person should bring the alteration to the notice of another authorised person or a manager and obtain that person's signature next to a statement in the official note book explaining in full what has been done.

4.2.1 Taking Notes without Notebook

Part of the role of an authorised person is to use his or her official notebook when taking notes. If for some reason it is not possible to use the official notebook it is important that:

- accurate and contemporaneous notes are taken (on whatever paper is available);

- as soon as practicable after the incident, notes are made of the incident in the official notebook based on the field notes; and
- the field notes are placed on file.

4.3 Use of notes to refresh witness' memory

If an authorised person is investigating an incident or complaint and is later called on to give evidence relating to it, the notebook can be relied on in court where the notes are accurate and contemporaneous (made at the same time as the incident or as soon as possible after it).

Witness (authorised officer) giving evidence in court is usually allowed to refer to notes, or other records, for the purpose of refreshing their memory provided **that**:

- the facts or conversation cannot be accurately recalled without reference to the notes;
- either the authorised person made the notes, or read the notes of the partner at a time when the facts were still fresh in the memory of the authorised person.

The authorised officer must testify to these facts and may be cross-examined regarding the manner, time and other circumstances relating to the making of the notes.

Once in the witness box, Authorised Officers can only refer to a notebook to refresh their memory.

It is not an automatic right and to refer to notes requires the court's permission. Officers must therefore know their case thoroughly. Failure to do so can severely impact on the credibility of the evidence and potentially the outcome of the prosecution. A court may require a witness to first demonstrate independent recollection of an event prior to granting permission to refer to notes.

The suggested words used to request permission from the court to use notes to refresh your memory are;

Your Honour, throughout this investigation I have made notes in my official notebook on my observations and conversations. Those notes were recorded (state time notes taken - e.g. at the time/20 minutes after) the observations or conversations. Although I have some independent recollections of those occurrences, I have not committed them all to memory. For the purposes of accuracy and to refresh my memory I seek permission to refer to those notes. These notes are contained within (state page numbers and notebook number or other reference for the notes).

Where a corroborating officer wishes to refer to notes in Court that the Investigating Officer prepared, the corroborating officer should review the notes immediately after they are made and, if satisfied with their accuracy and comprehensiveness, initial each page to adopt those notes. To request permission to then refer to those notes in Court, the corroborating officer should state the following:

Your Honour, throughout this investigation (name of person who prepared the notes) made notes in his/her official notebook of his/her/our observations and conversations. Those notes were recorded (state time notes taken- e.g. at the time/20 minutes after) the observations or conversations. I reviewed those notes (state when the review occurred) and was satisfied with their accuracy. Although I have some independent recollections of those occurrences, I have not committed them all to memory. For the purposes of accuracy and to refresh my memory I seek permission to refer to those notes. These notes are contained within (state page numbers and notebook number or other reference for the notes)

The witness when using the notebook should refrain from reading the notes verbatim. The notes should be read and then given as evidence.

Notes may be used to refresh the investigators memory at any time prior to a court hearing and a witness should have no hesitation in saying that notes have been referred to prior to the hearing to refresh the person's memory.

If any of the persons interviewed during the course of the investigation are to be called as a witness, that person may also refer to the original statement if they have been given the opportunity to read the statement and sign it as a correct record whilst the facts were still fresh in their memory.

4.4 How to obtain an official notebook

Managers are able to issue official notebooks.

4.5 Identification of an official notebook

Authorised persons issued with official note books must immediately:

- enter their name inside the front cover;
- sign the cover page;
- record the name of the person who issued the official note book; and
- the location and date it was issued.

The authorised person being issued the official notebook must also sign the register identifying the number of the official notebook and the authorised person it was issued to.

When the official notebook is filled, it must be stored in a safe place for a period of at least three years.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for
State Manager Investigations	Shall ensure that all investigators are trained in the procedure.	
Team Leader Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Kelli Ready
A/Director Enforcement Services
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Date

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Procedural guide

Enforcement Services

Risk Assessment and Working in Remote Locations SOP012

This document outlines the actions to be followed by investigators for safe operational procedures, assessing and controlling risks and safety when operating in remote locations.

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision
14 January 2013	January 2014

Rev No.	Rev Date	Summary of Changes	Author
1	21 st April 2011	Amendment of definitions to include, workplace incident, workplace injury and workplace caused illness. Procedures for responsibilities of employees to report workplace incidents have been added.	Reuben Carlos
2	1 st February 2012	Update to new format. Reflect changes responding to the new <i>Work Health and Safety Act 2011</i>	

1.3 Approval

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Name	Title
Kelli Ready	A/Director, Enforcement Services

1.4 Distribution

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3. INTRODUCTION

3.1 Purpose

The Enforcement Services Branch of EHP is committed to providing a safe and healthy work environment for all of its workers. This means eliminating hazards or minimising risks of injury/illness in the workplace. Effective workplace health and safety (WH&S) should be managed through safety procedures and a systematic risk management process.

This SOP is to be read in conjunction with EHP Corporate Workplace Health and Safety Policies, Procedures and Standards.

Due to the diverse nature of the circumstances and locations of persons of interest who are being investigated by EHP, officers may be tasked to attend a diverse range of locations, many of which create specific WH&S risks for staff. Coupled with this are risks created by the conduct of regulatory compliance activities in regards to the cooperation and demeanour of persons of interest and potential exposure to/chance discovery of other criminal behaviour.

This SOP deals primarily with risks created by the locations that investigators have course to attend and also those risks created by interaction with persons of interest in the conduct of criminal investigations.

3.2 Scope

This SOP identifies important WHS procedures which should be followed by investigators in particular areas of risk assessment and management for investigations personnel and working in remote locations.

This document operates in addition to and should be read in conjunction with EHP WH&S and Risk Management support material such as Policies, Standards and Guidelines.

3.3 Prerequisites

Officers are to acquaint themselves fully with [EHP WH&S Policies, Procedures, Standards and Guidelines](#), prior to consideration of additional matters pursuant to this policy. This SOP provides operational guidance in regards to additional considerations for officers engaged in the conduct of criminal investigations and the necessary prerequisite knowledge of EHP Workplace Health & Safety policies, standards and procedures.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every year.

Investigators should always determine if they require any site specific training and/or inductions at the place that they are visiting. Specific safety training is available to investigators upon request (e.g. Construction Site Blue card).

3.5 Essential Points

- Workplace health and safety is everyone's responsibility
- Remember safety is paramount
- No investigators are to be deployed into unsafe areas or situations
- A risk assessment must be conducted for all investigations
- All employees must report all workplace incidences
- Investigators should they always carry the correct equipment especially if working in remote areas
- Properly plan investigation activities and ensure the plans and contact arrangements are made for remote areas

3.6 Definitions

Employee (or staff/personnel) - People (workers as defined by the Workplace Health and Safety Act 1995) engaged by the department under the *Public Service Act 2008* in a permanent or temporary nature, inclusive of trainees and cadets.

Call-in time - The time that the investigator will phone or contact the contact officer as listed in a contact schedule.

Contact officer - An officer at a base or office appointed as the primary contact for a party in a remote area. The contact officer is responsible for maintaining the contact schedule and instigating the overdue response procedure if the party doesn't return on time or missed a call-in.

District/Regional office Contact Officer (DOCO/ROCO) - A Contact Officer either located at or representing a district/regional office, who undertakes co-ordination within the district/region during critical incident responses, including implementation of the overdue response procedure. The DOCO/ROCO may also be the Contact Officer for a remote party.

Hazard - A source or situation with the potential for harm or damage.

Remote location/area - A location or area that is situated an hour or more travel (by the proposed method) from the resources (support infrastructure) required to respond to an emergency situation.

Remote area trip approval form - Is a form that will be completed by investigators and contains all relevant information about an investigators' trip to a remote location including any emergency plans.

Risk - The likelihood that death, injury or illness may result from a hazard.

Risk Assessment - A technique for determining the level of risk associated with particular hazard/s.

Risk Management - The systematic process to identify, assess, control, and review hazards and risks.

WHS - Acronym used for Workplace Health and Safety.

Workplace incident - An incident resulting in a person suffering;

- a work injury; or
- a work caused illness; or
- an incident resulting in a dangerous event; or
- another matter decided by the Minister to be a workplace incident.

Work caused illness means;

- an illness contracted by a person to which a workplace, a relevant workplace area, a work activity, or plant or substances for use at a relevant place was a significant contributing factor; or
- the recurrence, aggravation, acceleration, exacerbation or deterioration in a person of an existing illness if a workplace, a relevant workplace area, a work activity, or plant or substances for use at a relevant place was a significant contributing factor to the recurrence, aggravation, acceleration, exacerbation or deterioration.

Work injury - An injury to a person that requires first aid or medical treatment if the injury was caused by a workplace, a relevant workplace area, a work activity, or plant or substances for use at a relevant place; or

- the recurrence, aggravation, acceleration, exacerbation or deterioration of an existing injury in a person if—
- first aid or medical treatment is required for the injury; and
- a workplace, a relevant workplace area, a work activity, or plant or substances for use at a relevant place caused the recurrence, aggravation, acceleration, exacerbation or deterioration; or
- any serious bodily injury, if the injury was caused by a workplace, a relevant workplace area, a work activity, or plant or substances for use at a relevant place.

Working in isolation - Any situation where an employee expects they will not be seen by, or be in contact with, anyone for an extended period, such an illness or injury suffered by the employee could go unnoticed by others. For example, an employee working alone for three hours in an outbuilding should be considered to be working in isolation, just as would an employee working alone in remote terrain.

Zero harm - Queensland government WHS strategy aimed at building a positive safety culture in Queensland workplaces to help reduce the number and seriousness of workplace health and safety incidents in Queensland.

3.7 References

This procedure does not replace the following EHP Standards/policies/procedures and officers are to read this document in conjunction with the following relevant material:

- ***Work Health and Safety Act 2011***
- [Field Operations](#)
- [WHS Risk Management Procedure](#)
- [WHS Incident Reporting and Recording Procedure](#)
- [WHS Incident Investigation Procedure](#)
- [WHS Risk Management Procedure](#)



- **Personal Protective Equipment**

Some EHP regions have specific remote operations procedures and officers are to liaise with relevant business unit staff when operating with such regional staff.

Where a region has specific field operation and/or remote operations procedures the Investigator must also incorporate them when planning, as long as there is no conflict with this procedure.

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4. PROCEDURE

4.1 Safety is Primary Consideration

EHP has a guiding principle of Zero Harm in regards to WHS; no investigators are to be deployed into unsafe areas or into situations where appropriate controls are unable to be implemented to provide for the health and safety of staff. It is the responsibility of Investigators to ensure that they

- work with due care and consideration to safeguard their own health and safety, and the health and safety of others;
- comply with all safe working practices and procedures set in place by management;
- report any potential hazards identified in the workplace or any near hits, incidents or injuries that may occur during the course of work;
- to attend, when directed, any course of training or instruction relating to health & safety;
- be available for formal training in remote area operations as required;
- be aware of the particular workplace health and safety requirements and inductions of the sites that they visit;
- to use any equipment that is issued for personal protection, and ensure that it is maintained in proper order; and
- act in a responsible manner, and within the requirements of the EHP health and safety material including this SOP.

The procedures in this document are not exhaustive, and may not cover all situations or locations. If you are unsure how to proceed when faced with unknown circumstances, please remember that the safety of staff is the dominant factor when making a determination about taking action or discontinuing action at a place. You should always consider the health and safety of staff prior to all other factors.

4.2 Reporting and Recording Workplace Incidents

It is the responsibility of all employees to report all workplace incidents. If an investigator is involved in a workplace incident, the investigator's supervisor **must** be notified immediately or as soon as practicable after the workplace incident has occurred. This will depend on the seriousness of the incident and the availability of communications.

Supervisors are to report the workplace incident to their relevant managers to ensure that the Director, Enforcement Services is then informed. This process of reporting from time of occurrence of workplace incident until the Director, Enforcement Services is informed will be required to be completed within 24 hours. Some incidents will require further reporting to higher management and should also be completed within 24 hours.

Due to potential investigation of the workplace incident, it is necessary to record the following information;

- Time, date, place and type of the incident. (Minimum requirement)
- Record details of the workplace incident. (At the scene or as practicable thereafter)
- Identify and record any potential witnesses.

4.3 Risk Assessment

Assessments of risks must be conducted as prescribed by the EHP Risk Management Procedure Workplace Health and Safety Risk Management (HRS/2011/4909) for all investigation activities. The conduct of operational law enforcement activities requires the assessment and management of risks to personnel. Many of these risks are unique to investigators and are not faced by the majority of EHP officers. Unique factors relating to investigations work that carry additional risks include:

- the adversarial nature of investigations work;
- the motivation of person/s to conceal their activities and obstruct officers in executing powers and obtaining evidence;
- the operation in this context in remote locations;
- discovering other illicit activities and persons so engaged;
- operating on rural/remote properties and industrial and mine sites, and
- presence of firearms, chemicals and animal on rural properties etc.

In summary, risk management involves:

Stage 1 - identifying hazards;

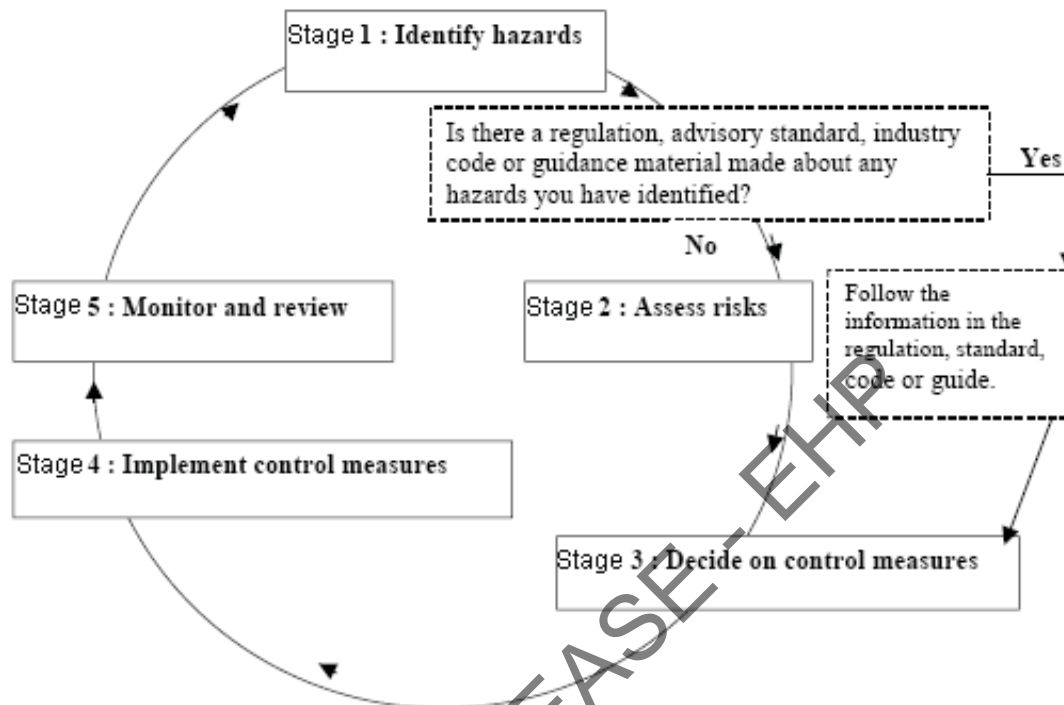
Stage 2 - assessing the risks associated with those hazards;

Stage 3 - developing control measures to eliminate hazards or minimise the associated risks;

Stage 4 - putting control measures in place, and

Stage 5 - monitoring and reviewing the effectiveness of control measures.

When identifying and managing risks you should complete the recommended following processes:



The risk assessment conducted must, at a minimum, have consideration and assessment in regards:

- Environment/location – the place/site to be visited and any risks to health and safety created by presence at that place and or travel to and from that place;
- Actions - proposed (or likely) to be conducted at the place (for example: sampling; seizing evidence; interactions with known violent offenders; forced entry actions);
- Persons - thought (or likely) to present at the place (including property owners; known associates etc)

All staff should make themselves responsible for:

- reporting all hazards and risks to managers or supervisors to initiate the risk management process;
- following instructions given to them regarding the control of risks; and
- participating in development of safe work practices.

To assist you when conducting a Risk Assessment you may use the following Risk Assessment tools:

[ON-SITE RISK ASSESSMENT](#)

[Workplace Health and Safety Risk Register](#)

[Risk Assessment \(ERA and non-ERA industry/business activities\)](#)

In addition to conducting a risk assessment in regards to the hazards most likely to be encountered at the location/s to be visited, that investigators need to fully consider other factors relating to property owners; persons likely to be at the place and previous adverse conduct by these persons.

4.4 Changes to Situation

If there is a change of circumstances, or environmental conditions, in regards to the operations to be carried out, the officer in charge of the situation should conduct a new risk assessment, having regard to the changed situation.

Any changes to the situation require risk assessment in to whether or not additional control measures are necessary, and available, or if the operation should be suspended and staff members removed from the place until the new risk assessment has been complete.

Examples include arriving at a location/situation and determining that the initial assessment does not apply.

Examples include:

- a change in environmental circumstances (bad weather, deterioration of incident etc);
- unexpected aggression exhibited by persons at the site;
- the presence of a firearm or other weapon.

4.5 Specialist/technical Advice

It may be necessary to seek and comply with specialist advice in regards WH&S considerations created by visits to certain places. This is particularly the case in regards to remote locations, industrial/hazardous sites and when attending at emergency situations.

In emergency situations or when conducting joint operations, the staff member in charge of an operation (or in charge of the investigators participating in joint operation) is to seek this advice from a relevant person (e.g. appropriate EHP expert or senior members from other emergency services present) prior to allowing any investigations staff into the site.

4.6 Equipment

Any risk assessment is to identify appropriate equipment for staff being deployed into a situation/site/place. Appropriate equipment may include (but will not be limited to):

▪ Basic Equipment

- Day packs
- Rain Cover/waterproof liner
- Tents, sleeping bags and other camping equipment

▪ Navigational Equipment

- Topographic Map
- Compass
- Route Guide
- GPS Unit
-



▪ **Communications Equipment**

- Mobile Phone
- Satellite phone
- AM radio
- Radio distress beacon
- Contact schedule
- Emergency and general contact lists
- Whistle and other emergency signalling devices

▪ **Emergency Equipment**

- First aid kit
- Torch
- Matches wrapped in waterproof plastic
- Pocket knife
- Notebook/pen/pencil
- Water purification tablets
- Batteries
- Emergency signalling devices

▪ **Food and Cooking Equipment**

- Food
- Emergency food
- Water bottle
- Plates/cutlery/cups
- Fuel/gas for stove
- Can/bottle opener

▪ **Personal Protective Equipment (PPE)**

- Gloves
- Reflective vest;
- Long sleeved shirt;
- Trousers;
- Boots;
- Eye protection;
- Broad brimmed hat
- Parka/weather gear



- Warm over-clothing
- Sunscreen
- Sunglasses
- Insect repellent

When determining what equipment is needed you should consider all aspects of the operation and not just that equipment necessary for specific risks created by the operations conducted at industrial, mining and other regulated sites.

Specialist EHP staff (Technical) should be canvassed as to appropriate equipment for necessary sites proposed to be visited also.

Officers are to be provided with equipment, particularly PPE, that is appropriate for the situation having regard to industry standards and the risk assessment conducted for the exercise.

Officers should also report equipment requirements to their supervisor or the officer in charge of the investigation/exercise during the planning stage of the operation.

All employees are to check equipment and supplies prior to departure. Particular attention should be paid to PPE, water and food containers, navigation aids, first aid equipment and signal aids. Deficiencies and defects should be reported to the appropriate manager immediately and rectified prior to departure.

4.7 Background Checks on Persons of Interest

The officer coordinating any operational activity is responsible for ensuring that appropriate inquiries are made into persons who are the subject of investigation.

This includes (but is not limited to):

- criminal history checks (where available by statute) which identify, to the extent it is reasonably practicable to do so, offences involving the use of a weapon or violence.
- enquiries with local law enforcement personnel in the areas to be visited.

Information from additional searches can be obtained through the Enforcement Services Intelligence Unit. Refer to Procedural Guide - Intelligence Search Functions.

Where concerns are identified as a result of information received, the officer leading the investigation is to ensure that officer safety is provided for. This may entail seeking assistance from the Queensland Police Service in regards entry to the property and officer safety whilst executing duties at the place.

4.8 Attendance at Emergencies

Investigators may be required to attend emergency situations involving environmental or other incidents. Such situations might involve any number of hazards, including but not limited to: fires, explosions, spills or emissions of hazardous materials, heavy machinery, unstable structures, or floods. Investigators may be directed to attend such emergencies where it is believed that critical evidence may be destroyed or lost, or may be gathered only at that time.



Prior to attending any emergency, Investigators should seek information from relevant regional EHP staff to be briefed on the situation, including reporting arrangements and liaison points between EHP any other responding authorities such as the Queensland Police Service (QPS) or the Queensland Fire and Rescue Service (QFRS).

Once at the location of the emergency, Investigators should ensure that they follow all the directions of the attending emergency services personnel. EHP's Incident Response group may already be in attendance and as they are trained in responding to emergency situations, EHP Investigators should identify themselves to such personnel and jointly develop a plan to ensure that investigators are able to appropriately and safely carry out their functions at the emergency, without compromising emergency response activities or placing investigations staff in danger.

It is also important to be cognisant of the fact that other emergency services may be in attendance at the scene. It is also critical that investigations staff liaise with these agencies. EHP Incident Response members (if in attendance) will be able to identify appropriate persons in other agencies to have such contact with. This is particularly the case when other law enforcement agencies are in attendance.

4.9 Aggressive, abusive or obstructive behaviour

Investigators may often encounter aggressive and abusive behaviour when interacting with persons of interest in investigations. Whilst every effort can be made to predict these situations, people are inherently unpredictable therefore Investigators need to be prepared to respond with these situations whenever they arise. Investigators should always apply the following principles to these situations:

- Staff safety is paramount. If an Investigator is in a situation where there is any likelihood of physical danger, they should leave the situation as quickly as possible and should then seek the advice from their Manager Regional Investigations as to what steps to take next.
- All Investigators have the right to work in a safe and healthy work environment free of harassment, such as unreasonable abuse.
- Unreasonable abuse should be determined on the basis of the reasonable expectations of an ordinary person. Unreasonable abuse is generally behaviour that staff find personally threatening, offensive, humiliating or intimidating in some way. Behaviour that is considered unreasonable abuse will depend upon the circumstances and the tolerance levels of the staff involved.
- Investigators should always ensure that they have another Investigator with them if they think it is likely they may be faced with aggressive or abusive behaviour. There are a number of advantages to this including the ability of both Investigators to corroborate each other's evidence should an assault or other offence (for example obstruction) occur.
- Staff should always conduct themselves in a professional manner in the face of unreasonable behaviour from customers and use their interpersonal skills to attempt to move back to a more productive discussion. For example, an Investigator can often diffuse a situation by explaining the reasons behind a decision or course of action. It can also be helpful to point out the appeal mechanisms available to the person. If this is unsuccessful, it may be appropriate to politely caution the customer that the discussion will be terminated should the abuse continue. It is also appropriate to administer appropriate cautions to persons where behaviour exhibited is

likely to constitute obstruction of an authorised officer and may give rise to summary charges for same.

- As discussed above, Investigators should consider requesting the assistance of the police.
- If a discussion with a person of interest deteriorates into unreasonably abusive behaviour, and the discussion is terminated for this reason, the Investigator should document what happened and forward it to the Team Leader, Investigations as soon as possible.
- Investigators who have been the subject of abusive, aggressive or threatening behaviour should consider using the EHP counselling services. Officers should also report incidents to their local Workplace Health and Safety Officer.
- Threats or actual harm to EHP staff will not be tolerated. Where such action breaches the law, EHP will consider all options for further action including prosecution. Officers may also exercise their right to institute proceedings independent of EHP through civil or criminal channels.

4.10 Right to Defence

If an investigator is unlawfully assaulted by a person or persons (and has not provoked the assault) they should always try to remove themselves from the situation as quickly as possible. However, where employees may be physically assaulted, and there is no opportunity for escape, they can use reasonable force to defend themselves or another person. The force used should only be enough to ward off an attack; that is, only sufficient to protect themselves from assault and injury. Unreasonable force can result in the aggressor successfully bringing legal action against the employee.

For more information please refer to the [Prevention of Workplace Violence and Aggression Policy](#)

4.11 Remote Locations

If you are more than one hour away from help, then you are in a remote location. However, a well travelled road, at any time of day when another vehicle will arrive within the hour, is not a remote location, irrespective of the distance from a settlement.

Remote locations are broken down by remote area zones:

Zone	Remoteness	Landscape	Communication	Assistance
A	<div style="text-align: center;"> Very remote ↓ ↓ Less remote </div>	Generally roads and tracks are rare or non-existent and/or support infrastructure does not exist.	Communication systems generally not available or very poor.	Support and assistance would generally be many hours away, possibly overnight or longer.
B		Generally roads or tracks are limited and/or support infrastructure is difficult to reach.	Communications systems may be patchy and unreliable.	Support or assistance would not generally be available within a five hour period
C		Generally roads and tracks are available and well defined and support infrastructure is readily accessible.	Communications systems are highly operable.	Access to support or assistance would be readily available within five hours.

4.11.1 Zones A and B

Any location more than 5 hours from “help” will fall into remote area Zones A or B. General procedures for these zones include:

- A remote area trip approval is required. Generic approvals for common journeys can be kept on record and re-used each time.
- Two 2-way communication devices (mandatory) and an emergency position indicating radio beacon (EPIRB) or personal locating beacon (PLB) (mandatory in Zone A).
- Additional vehicle/personal equipment including extra fuel supplies, two spare tyres or tyre repair capacity, dual battery system or recharge capability, GPS and emergency food and water supplies.
- Emergency signalling devices.

4.11.2 Zone C

Zone C is an area between 1 and 5 hours from “help”. The following general procedures apply:

- A remote area trip approval form only needs to be completed if the manager or supervisor requests it or other risks identified by the risk assessment deem it to be advisable.
- For a party of three or more people on a trip of less than a day, at least one reliable 2-way communication system with spare batteries; otherwise at least two 2-way systems (e.g. a combination of radio and telephone).

- Standard vehicle/personal equipment including a vehicle jack, fire extinguisher, first aid kit and adequate drinking water.

4.11.3 Remote Location Planning

A risk assessment must be completed for trips to all remote areas. This will assist in the identification of associated risks and in turn will help to improve both Agency-wide and local procedures.

The trip leader must ensure that party members have appropriate skills for the potential conditions, and a training needs analysis may be required prior to the trip.

A party that intends working in Zones A or B (more than 5 hours from “help”) must submit a [remote area trip approval form](#) detailing all relevant information about the trip. The relevant supervisor must approve this form. A completed risk assessment must accompany the remote area trip approval form.

For Zone C, a remote area trip approval form only needs to be completed if the manager or supervisor requests it or other risks identified by the risk assessment deem it to be advisable.

If not completing a trip approval form, please ensure the Manager/Supervisor or Contact officer knows the following:

- Estimated time of departure;
- Estimated time of arrival at the location of interest;
- How long you expect to spend at this location and the object of the investigation;
- Any particular risks that you expect to encounter at the location (e.g. heavy machinery, aggressive or abusive behaviour of a person of interest; or wildlife);
- What you will do in the event of an emergency (e.g. the location of the nearest hospital or town to which you will evacuate);
- How you can be contacted when on the mission, and
- When you expect to arrive back.

As a general rule, each vehicle of the remote area party should carry a copy of the remote area trip approval form and another copy should be kept in the base or office. If the base is not a district office, a third copy should be faxed to the district office. The office copies must be kept in a central location well known to employees, such as on a clipboard adjacent to a ‘whereabouts notice board’ and be available for reference at all times. If the Contact Officer or anyone else needs to take a form away from the office, a photocopy should be taken so the original is available in the office.

4.11.4 Seven key practices for safety in remote area operations

The seven key practices are:

- 1) thorough information gathering;
- 2) appropriate skills and training;



- 3) appropriate equipment;
- 4) good communications systems;
- 5) appropriate emergency planning;
- 6) good teamwork, team communications and leadership, and
- 7) good decision-making and judgement.

In addition to the seven key practices, before travelling to and conducting investigations in remote locations, an investigator should consider the following issues:

a) You should never travel to a remote location alone

Investigators in remote area operations should be accompanied when working in remote locations. Managers and supervisors must use their best judgement to determine whether an employee or group of employees are appropriately skilled, experienced, trained and equipped for operating in specified remote locations.

Contact officer and contact schedule

A party that intends working in a remote area must have a nominated Contact Officer either at their base or in a location relevant to the remote area operation (e.g. their regional office), as well as have an approved contact schedule with the Contact Officer. The Contact Officer is responsible for checking on the contact schedule and instigating the overdue procedure if the party doesn't return on time or misses a scheduled call-in.

Contact schedules help ensure that employees who become injured, ill, lost or overdue are not overlooked. In turn, this allows assistance to be deployed in a prompt and appropriate manner. Two contacts a day is the standard arrangement, with one contact a day usually being the minimum requirement. However, the frequency of contact should be determined as part of the risk assessment process, since it will be influenced by the remoteness of the area, the level of risk of the activity, the size of the party, the experience of the party and the amount of emergency resources and supporting infrastructure close at hand. The impracticality of communications from the remote location may also be considered as a reason for a less frequent contact schedule, but usually only if it is an experienced party with good emergency resources and appropriate emergency and contingency plans. If this is not the case, the risk assessment process must include other strategies to mitigate the risk.

Generally a contact schedule will involve contact at preset times. However, this may not be possible if a party is travelling in a remote rugged area where communication is only available at infrequent times and sites. In these circumstances, an arrangement suitable to the local conditions must be formulated. For example, if the remote party cannot contact the Contact Officer by telephone or radio, they may be able to communicate via a pager service, providing a time window for the Contact Officer to telephone them in the field.

The contact schedule must also be determined considering the availability of staff to receive the call. To ensure that those who are receiving call-ins remember when they are due, some form of reminder system should be put in place (e.g. a watch alarm). Where possible, more than one person should be involved in checking that a scheduled call-in has occurred. This will decrease

the likelihood of a scheduled call-in going unanswered if the primary contact has to leave the workplace, as well as the chance of an overdue call-in being overlooked.

In some areas, an employee's spouse, housemate or neighbour may monitor the contact schedule. This is an acceptable arrangement provided that the person has a reliable means of communication to receive the call and a copy of the overdue procedure and emergency contact list. They will also require a copy of the completed remote area trip approval form.

b) Estimated Time of Return (ETR) and Latest Estimated Time of Return (LETR)

A party that intends working in a remote area must establish an ETR and a LETR, which has been approved by their supervisor, with the Contact Officer. The ETR and LETR set an agreed time frame for activation of Stages 1 and 2 of the overdue response procedure (see below). The LETR should not be more than two hours after the ETR unless there is a compelling reason and the supervisor approves it (e.g. some very unusual circumstances about the trip itinerary or available communication methods).

c) Overdue response procedure

This is a three stage escalating process that ranges from attempting to contact overdue officers and preparing in case a search is required, to contacting emergency services to instigate a full search.

- **Stage 1** - Overdue response procedure: if the remote party has not returned/called in, Stage 1 is activated. The objectives of Stage 1 are to set-up an alert procedure, reinforce the contact system and put local reserve EHP resources on standby.
- **Stage 2** - This stage of the Overdue Response Procedure is activated if the party has not returned/called in by the latest estimated time. It involves advising the police of the situation and, if appropriate and approved by the police, deploying other EHP personnel to investigate the situation. Stage 2 may be omitted, depending on the circumstances and the assessment of police.
- **Stage 3** - Emergency response: this is the stage when the police take full control of the situation.

d) How will you be travelling to the location?

Checks should be made that the vehicle has the necessary safety and recovery equipment and to ensure that it is in good working order. If travelling by car, ensure that it has been recently serviced and always check the oil, water and tyre pressure (including the pressure of the spare tyre) prior to starting out.

The type of vehicle should be carefully considered dependant on the remoteness of the location. Where it is intended to travel off well formed roads, a four wheel drive vehicle with appropriate remote area kit including adequate recovery gear should be utilised.

e) Communications

The communications equipment standard for staff operating in remote locations should be as follows:

Minimum standard for communications equipment

Zone	Minimum Standard
C	For a party of two or more people on short duration trip (up to 2 days), at least one reliable two-way communications system with spare batteries. For solo operations (in isolation) and/or extended durations (3 days or more) at least two two-way systems (e.g. a combination of a radio and phone) and an EPIRB or PLB if possible.
B	Two two-way communications systems (e.g. a combination of a radio and phone) known to be effective in most of the terrain, with spare batteries, and an EPIRB or PLB if possible.
A	Three communications systems known to be effective in most of the terrain, including at least two two-way systems, all with spare batteries. An EPIRB or PLB is mandatory as the third system.

f) Have you got all the necessary equipment?

Correct personal and protective equipment (PPE) can minimise safety risks. It can also mean the difference between an effective mission and a waste of time. For example, if you travel to a mine site, there are very specific PPE requirements, which if you cannot comply with, you will not be allowed onsite.

Remember to check that your equipment is in good working order before you leave. The investigation objectives may be compromised if your camera batteries are flat, for example. Always take spares of essential items (such as batteries or even cameras and recorders)

Ensure that you have more than sufficient food and water. Do not assume you will have access to either of these things at the location or nearby. You will also want to be prepared for an unforeseen event, such as a car breakdown which may result in you being stuck for a long period of time.

g) Do you have first aid equipment?

You should make sure that your vehicle is equipped with a first aid kit, and that the kit has been replenished after use and kept up to date.

You should also make sure you have up to date first aid training prior to going to any field operation or remote location.

For a further information about WHS at remote locations please read the [Safety and Risk management Remote Area Operation Procedural Guide](#)

4.12 Operation Orders

All Operation Orders must comply with this standard

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5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for Risk Assessment and Working in Remote Locations Procedure
State Manager - Investigations	Shall ensure that all investigators are trained in the procedure.	
Team Leader – Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Kelli Ready
A/Director Enforcement Services
Department of Environment and Heritage
Protection

Date

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Procedural guide

Enforcement Services

Dealing with Internal and External Lawyers SOP013

Purpose of the Document is to assist investigators in dealing with Internal and External Lawyers.

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

Date of this Version	Date of Next Revision

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

This document requires the following approval.

Name	Title

1.4 Distribution

This document has been distributed to the following sections.

Section	Date

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3. INTRODUCTION

3.1 Purpose

The purpose of this procedure is to outline the roles and responsibilities of Investigators and Lawyers in order to facilitate effective dealings between both parties and ensure that the investigations process flows smoothly into a prosecution process.

3.2 Scope

This procedure is relevant to all EHP authorised officers involved in investigative matters.

3.3 Prerequisites

Nil.

3.4 Training

All Investigators will be trained in this procedure upon commencement of duties and further training will be provided when required.

3.5 Essential Points

Nil.

3.6 Definitions

Investigator- This term as used in this procedure shall refer to the EHP authorised officer in charge of, or delegated a task during an investigation of an indictable or simple offence or a breach of duty.

Lawyer - This term as used in this procedure shall refer to a EHP Lawyer within the Litigation Unit that has been assigned to an investigation.

3.7 References

Roles and responsibilities of Investigators and Lawyers - Procedural Guide

4. PROCEDURE

4.1 Introduction

It is important for an Investigator to understand the respective roles and responsibilities of Investigators and Lawyers, in order to ensure that the investigations process flows smoothly into a prosecution process. By having a clear understanding of these defined roles, an Investigator is better placed to communicate and deal effectively with lawyers.

4.2 Roles and responsibilities of investigators

The Investigator's primary role is to gather evidence in preparation for a decision regarding appropriate enforcement action to be undertaken by EHP. It is not an Investigator's role to make the final decision with respect to the appropriate enforcement action, if any action is warranted. An Investigator may however recommend an appropriate response through their Manager, Regional Investigations to State Manager, Investigations and finally to Director, Enforcement Services (refer to attached flowchart).

An Investigator's responsibilities include:

- Planning investigations and identifying all possible investigative avenues;
- Following investigation plans and gathering all necessary and available evidence;
- Engaging experts as required;
- Managing evidence and maintaining chain of custody evidence;
- Preparing briefs of evidence;
- Finalising investigations within statutory timeframes and timeframes established by internal EHP policy;
- Providing copies of briefs of evidence to Litigation and EHP's Counsel (if any) and update
- copies of brief as required;
- Swear, serve and file complaints and summons;
- Manage witnesses until trial.

4.3 Roles and responsibilities of Lawyers

The Litigation Unit lawyers are primarily concerned with providing legal advice with respect to regulatory and enforcement functions of EHP. They are responsible for managing and conducting all regulatory litigation by EHP. It is not a Lawyer's role to make the final decision with respect to the appropriate enforcement action, if any action is warranted, however they can recommend an appropriate response when seeking instructions from their clients. It is not a Lawyer's role to direct or plan investigations.

It is a Lawyer's responsibility to:

- Review briefs of evidence and provide advice whether a prima facie case has been established and the prospects of success for litigation based on the available evidence;
- Manage the approvals process for prosecutions and other regulatory litigation;

- Draft complaints, summons and particulars (or other originating applications) to commence litigation;
- Provide feedback on brief of evidence to Investigators;
- Manage the court process, including ensuring all court appearances are attended by EHP;
- Correspond and liaise with defence solicitors;
- Engage and brief counsel (when appropriate); and
- Provide advice to Investigators on preliminary legal questions that may arise through the course of an investigation.

It is important to note that it is the Lawyer's role to correspond and liaise with defence solicitors. An Investigator should not have direct contact with external solicitors unless authorised by the Lawyer. If an Investigator is contacted by an external solicitor, the Investigator should refer them to the relevant Lawyer.

4.4 Areas of mutual responsibility

There are necessarily areas where the work of Investigators and Lawyers will overlap. It is in these particular areas that there is the potential for miscommunication and conflict between Investigators and Lawyers. It is therefore important that Investigators understand the potential for these common problems and are aware of ways to overcome or resolve these problems.

For high profile or complex investigations, the State Manager, Investigations will recommend to the Directors of Compliance and Investigations and Litigation that a Lawyer be assigned to the investigation. This will ensure that any legal issues that arise during the investigation can be referred to a Lawyer with knowledge of the background of the matter to be dealt with as a priority. The fact that a Lawyer has been assigned to an investigation does not abrogate the Investigator of responsibility for adequately planning and executing their investigation in a timely manner. Investigators **should not** consult Lawyers to obtain recommendations that an investigation be abandoned - these directions are only given by the Director, Enforcement Services and/or the Region who referred the investigation.

4.5 Legal advice during an investigation

Sometimes the situation will arise where an Investigator requires legal advice during the course of an investigation. Often this will occur during the planning stages of the investigation, where the elements of an offence are unclear or open to different interpretations. As this can impact on the types of evidence required to prove the offence, the Investigator should seek legal advice. An Investigator must seek legal advice by completing a legal advice request form which outlines the following:

- The background of the matter and background materials such as a copy of the Development Approval or licence;
- Relevant statutory or EHP timeframes;
- The statutory provisions the Investigator considers relevant to the issue; ~
- The specific questions that the Investigator requires legal advice about;
- The date the Investigator requires the legal advice; and

- Any other matter that the Investigator considers relevant.

This request for legal advice must be sent through the Team Leader, Investigations to the Director, Litigation.

However, for high profile or complex investigations where a Lawyer has been assigned to the investigation, the Investigator should correspond directly with the relevant Lawyer when requesting legal advice.

4.6 Briefs of evidence

It is the Investigator's responsibility to prepare and maintain briefs of evidence and any copies to be provided to the Litigation Unit, EHP counsel and defence. The obvious reason for briefs of evidence to be the responsibility of Investigators is that the Investigator has knowledge, control and access to all the relevant evidence in an investigation. The Litigation Unit may be able to provide administrative assistance for preparing copies of briefs or recommendations as to the format of briefs of evidence - however Investigators must ensure that they are available to direct the copying of any brief.

Investigators should ensure that they include the steps of brief preparation and copying in the investigation plans, in order to ensure that they can manage their time with respect to these steps effectively.

4.7 Witness management

The management of witnesses is initially an Investigator's responsibility, however, as a matter draws closer to trial, the conferencing of witnesses by EHP lawyers and counsel transfers more of the responsibility to the Lawyers. As the initial contact and rapport is built by the Investigator, they should continue to update key witnesses for an investigation until the matter is finalised (either by proceeding to trial or other enforcement measure is taken). For matters which have a large number of witnesses, it is important for the Investigator to ensure that they allocate time to witness management on a bi-monthly or monthly basis. A spreadsheet indicating witness availability over a number of months can assist the Lawyers in the setting of dates for trial or committal. Communication concerning these matters between the Investigators and Lawyers is vital as the loss of contact with a key witness or the unavailability during trial can result in a prosecution failing. Towards the trial, Investigators will be required to serve any summons or subpoenas and organise for witnesses to attend conferences with EHP lawyers and counsel.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for
State Manager - Investigations	Shall ensure that all investigators are trained in the procedure.	
Team Leader – Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Kelli Ready
A/Director Enforcement Services
Department of Environment and Heritage
Protection

Date

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Procedural guide

Enforcement Services Behaving Ethically

The purpose of this procedural guide is to instruct Investigators in the processes EHP has put in place to ensure Investigators behave ethically during the conduct of investigations.

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

Date of this Version	Date of Next Revision
January 2013	January 2014

Rev No.	Rev Date	Summary of Changes	Author
Jan 2013	Jan 2014		Investigations

1.3 Approval

This document requires the following approval.

Name	Title
Kelli Ready	A/Director, Enforcement Services

1.4 Distribution

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Section	Date
Investigation Teams Cairns, Townsville, Caboolture, Brisbane and Toowoomba. Director of Litigation	

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RTI/DL RELEASE - EHP

3. INTRODUCTION

3.1 Purpose

The purpose of this procedure is to provide investigators with information about their obligation to behave ethically during the conduct of investigations.

3.2 Scope

This procedure is for the instruction of Compliance and Investigation Branch staff so that they are aware of their obligations to behave ethically.

3.3 Prerequisites

All DERM Compliance and Investigations Branch staff are required to adhere to this procedure.

3.4 Training

All Compliance and Investigation staff will be trained in this procedure upon commencement and such training will be refreshed every five years

3.5 Essential Points

3.6 Definitions

EHP – Department of Environment and Heritage Protection

Authorised officer – is a person appointed under the relevant legislation such as an authorised officer, a conservation officer or a forestry officer.

3.7 References

Lists the resources that have been used/ referenced in the construction of the document or which need to also be applied when performing the procedure e.g. government standards

- Australian Government Investigation Guidelines (2003)
- NRW Compliance Investigations Manual 2008
- The *Public Service Ethics Act 1994*
- The *Public Service Act 1996*
- The EHP Code of Conduct 2009

4. PROCEDURE

4.1 Obligations of Queensland Public Servants

Not only must the Department act lawfully in relation to the discharge of its regulatory compliance obligations, it must also act ethically. In essence, acting ethically is about fairness and being seen to be fair. Ethical conduct is important because it maintains the integrity of public administration promotes accountability and protects the individual officer and their organisation from adverse consequences.

In Queensland, the ethical obligations of public servants are set out in legislation. The two primary pieces of legislation are the *Public Service Act 1996* (PSA) and the *Public Sector Ethics Act 1994*.

4.2 The Public Service Act 1996

The vast majority of employees within DERM are employed under the *Public Service Act 1996* (The PSA). The PSA provides the framework within which Queensland Government departments operate. The objectives of the PSA are set out in section 3 of the Act and include:

- a) establishment of the public service as an apolitical entity
- e) provide principles on which departments are to be administered
- f) to maintain integrity and appropriate standards

Particular note should be taken of the references to impartiality and integrity. These concepts are further developed by later sections in the PSA and link to the *Public Sector Ethics Act 1994*. The principles of public service management are set out in section 23 of the PSA, and include relevantly:

- a) providing responsive, effective and efficient services to the community and Government
- d) maintaining impartiality and integrity in informing, advising and assisting the Government
- h) managing public resources efficiently, responsibly and in a fully accountable way
- i) maintaining proper standards in creating, keeping and managing public records.

The broad principles set out in section 23 provide guidance to senior executives regarding the management of public sector entities, and the importance of impartiality and integrity is again emphasised. Section 25 provides guidance to the individual public servant and it also reinforces the importance of impartiality:

- d) providing sound and impartial advice to the Government
- e) carrying out duties impartially and with integrity.

4.3 The Public Sector Ethics Act 1994

The *Public Sector Ethics Act 1994* (the PSEA) takes the broad principles of the PSA a step further and creates ethical principles and obligations for all public servants.

Section 4 of PSEA declares the ethics principles that are required for good public administration, namely:

- Respect for the law and the system of government
- Respect for persons

- Integrity
- Diligence
- Economy and efficiency

These principles reflect and expand on the concepts of impartiality and integrity outlined in the PSA. Section 5 of the PSEA creates ethics obligations based on these principles. The obligations are drawn from the principles, and provide greater detail as to how public officials are to put them into practice.

Section 6 makes it clear that the ethics obligations apply to all public officials. However, the obligations are not themselves legally binding; they provide the basis for Departmental Codes of Conduct, which are legally binding. Codes of Conduct provide the specific rules for each Department's officers, and these rules are based on the ethics obligations. They are the standard of conduct which must be followed by public officials in performing their official functions. Section 18 of the PSEA provides that a public official must comply with the conduct obligations relevant to their Department. A breach of a code of conduct is open to disciplinary action under the PSA.

4.4 The EHP Code of Conduct

The EHP *Code of Conduct* is available on the department's internet site. It addresses each of the ethics obligations obtained in the PSEA and sets out the rules that must be followed by each officer employed by EHP. It provides guidance as to the appropriate course of action in many situations (for example, speaking on behalf of the Department when attending conferences or seminars; what to do if you receive an unlawful instruction from a supervisor, conflicts of interest and personal conduct in and outside the workplace).

It also provides a model and a checklist for ethical decision making and provides guidance on determining if a breach of the codes has occurred and what may happen to a person who breaches the Code.

It is the responsibility of each officer of the Department to be aware of, and familiarise themselves with the department's Code of Conduct.

4.5 Test of Ethical Conduct

Investigators should be aware that they work within a culture of internal and external accountability, in which any decision made or action taken may be reviewed or questioned by other individuals or bodies. These include, but are not restricted to:

- The Crime and Misconduct Commission;
- Office of the Ombudsman;
- Courts;
- Persons seeking information or making requests under the Right to Information Act (RTI);
- Legal practitioners;
- Employers and employee associations;
- The Minister; and
- Senior departmental management.

EHP is committed to ensuring that all its regulatory compliance activities are conducted in a lawful, ethical, consistent and accountable manner.

As an aid to ensuring their conduct is at all times ethical, investigators may find the SELF test developed by the Queensland Police Service helpful. The SELF test comprises four separate questions, namely:

Scrutiny – will my actions withstand scrutiny?

Ethical – are my actions ethical?

Lawful – are my actions lawful?

Fair – are my actions fair to everyone concerned?

4.6 Guiding Principles for Authorised Officers

- The investigator's primary duty is to the Courts of Queensland and an investigator shall not knowingly mislead a court.
- The investigator's primary task is to identify the truth about an allegation and not to either implicate or exonerate any person or entity.
- Investigators will conduct all investigations in a lawful and ethical manner.
- Investigations will be conducted as expeditiously as possible.
- Investigators shall declare to their immediate supervisor any personal conflict of interest that arises as soon as practicable.

4.7 Recognising and dealing with conflicts of interest

All departmental staff need to be alert to the possibility of conflicts of interest. Public confidence in the public sector is put at risk when the conduct of an employee does, or appears to; involve a conflict between private interests and public duty. Officers should be aware that there can be an apparent conflict of interest, even if that officer does not allow their private interests to affect their professional conduct.

Some situations in which a conflict could arise are:

- A departmental officer holds shares in a company providing goods or services to the department;
- An officer is involved in an investigation of someone related to them; or
- Active involvement by an officer in a community group whose purposes are relevant to the functions of the department.

If you believe you may have a conflict of interest, you should consult the Code of Conduct for guidance, and then discuss the situation with your manager or supervisor. A failure to declare a conflict of interest or allowing a conflict of interest to affect the conduct of your professional duties will be a breach of the Code of Conduct.

4.8 Privacy considerations

The ethical obligations of public officials include an obligation to follow relevant laws, policies and standards. The Department has obligations under the *Information Privacy Act 2009* to manage the personal information it collects and holds in line with the 11 Information Privacy Principles contained in the Act. The application of these 11 Principles can be quite complex, and guidance should be sought from the Privacy Contact Officer (Manager, Administrative Review) in relation to specific situations. However, the basic rules are as follows:

- Personal information within the meaning of the Act is any information or opinion about an individual, living person whose identity is apparent or may be readily ascertained from the information.
- The collection of all personal information must be lawful, related to a lawful function of the agency, and must not intrude unreasonably on the personal affairs of an individual.
- When soliciting information from the person whom it is about, a privacy statement must be supplied, that tells the person why it is being collected, to whom it may be disclosed and authority for collecting it.
- Personal information may only be used for the purpose for which it was collected, and must not be disclosed to a third party. There are exceptions to these rules, but they must be applied with caution.
- The rules about storage, use and disclosure apply only to personal information that is not held in a 'record', which encompasses all personal information not publicly available (e.g.: personal information held in a publicly searchable databases or files, published in a newspaper or available from a library).

The privacy contact officer can be contacted at AdminReview@derm.qld.gov.au or by phone on (07) 3896 3705.

The Administrative Review Unit is also responsible for reporting privacy matters to the Director-General and for preparing relevant statistical reports for senior management

The Department's Information Privacy Plan (July 2009) can be accessed at:

<http://www.ehp.qld.gov.au/about/pdf/privacyplan.pdf>

The Office of the Information Commission (OIC) website can be accessed at:

www.oic.qld.gov.au (OIC Helpline – Phone 007 3234 7373)

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for Behaving Ethically
State Manager – Enforcement Services	Shall ensure that all investigators are trained in the procedure.	
Team Leader Investigations Enforcement Services	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. **APPROVED BY**

Signature

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RTI DL RELEASE - EHP

Procedural guide

Environmental Services and Regulation Application of the criminal code

Purpose of the Document – for example: This document will assist users in appropriately completing a [Name of tool]

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

This document requires the following approval.

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3. INTRODUCTION

3.1 Purpose

The purpose of this guide is to outline how The Queensland Criminal Code applies to legislation administered and investigated by investigators attached to the Enforcement Services and Regulation, EHP.

3.2 Scope

This procedure is relevant to all EHP authorised officers who are conducting and managing their own investigations.

3.3 Prerequisites

All persons conducting their own investigations and exercising any powers under legislation are required to be an authorised officer or person under the respective legislation.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Essential Points

3.6 Definitions

The Code – *Queensland Criminal Code 1899*

Investigator / Investigating Officer – This term as used in this procedure shall refer to the EHP authorised officer in charge of, or delegated a task during an investigation of an indictable or simple offence or a breach of duty.

Investigation – An investigation is a thorough, logical gathering of information and the objective, unbiased assessment of that information to reach a valid conclusion.

An investigation should identify:

- any breaches of legislation and causes of an incident;
- the persons or entities responsible for the breach(es);
- aggravating or mitigating circumstances relating to the commission of the offence.

3.7 References

The Criminal Code 1899

4. PROCEDURE

4.1 Application of the Criminal Code to Legislation

EHP Investigators must be aware of how the Criminal Code applies to their investigations and ensure they are fully conversant with this procedure. Section 12 of the Criminal Code 1899 states:

(1) This Code applies to every person who does an act in Queensland or makes an omission in Queensland, which in either case constitutes an offence.

The provisions of the Criminal Code therefore apply to legislation administered by EHP.

4.2 Definition of an Offence

Section 2 of the Criminal Code defines an offence as "an act or omission which renders the person doing the act or making the omission liable to punishment."

4.3 Classification of Offences

Section 3 of the Criminal Code provides that offences are of two types, namely Criminal Offences and Regulatory Offences. Criminal Offences include the following:

- Crimes;
- Misdemeanours; and
- Simple Offences.

Crimes and misdemeanours are known as indictable offences. This means that they cannot, unless expressly stated, be prosecuted or convicted except upon indictment. An indictment is the document used to prefer a charge against an accused person in order to bring his or her trial before some court other than justices exercising summary jurisdiction, usually a Judge and Jury.

Simple and regulatory offences can be dealt with summarily in a Magistrates Court. Section 3 of the Criminal Code provides that an offence not otherwise designated is a simple offence. Regulatory offences are offences defined in the Regulatory Offences Act 1985. Offences investigated by EHP include both indictable and simple offences.

4.4 Application of the Code to Investigators

Whilst investigating legislation administered by EHP it is important to be aware of any statutory defences, excuses or exculpations that exist with respect to the suspect or incident. The investigator must negate any possible statutory defence that may be raised by the suspect through proper questioning and evidence gathering.

EHP Investigators may conduct formal investigations into incidents relating to the following Legislation:

- Coastal Protection and Management Act 1995
- Environmental Protection Act 1994
- Sustainable Planning Act 2009 (with respect to those parts relevant to EHP business)
- Nature Conservation Act 1992
- Queensland Heritage Act 1992
- Waste Reduction and Recycling Act 2011
- Water Act 2000 (chapter 3)

4.5 Criminal Responsibility

Section 36(1) Part V of the *Criminal Code* provides that the provisions of Chapter 5 of the Criminal Code apply to all persons charged with any criminal offence against the statute law of Queensland.

(1) The provisions of this chapter apply to all persons charged with any criminal offence against the statute law of Queensland.

(2) Except for sections 22(3), 29 and 31, this chapter does not apply to regulatory offences.

Chapter 5 of The Criminal Code 'Criminal Responsibility' provides a number of circumstances or defences whereby a person may do an act or make an omission that would otherwise have been an offence. If the investigator does not negative the Criminal Code defences, there is a risk of a prosecution failing.

4.5.1 Section 22 – Ignorance of Law: Bona fide claim of right

- (1) Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.
- (2) But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by the person with respect to any property in the exercise of an honest claim of right and without intention to defraud.
- (3) A person is not criminally responsible for an act or omission done or made in contravention of a statutory instrument if, at the time of doing or making it, the statutory instrument was not known to the person and had not been published or otherwise reasonably made available or known to the public or those persons likely to be affected by it.
- (4) In this section --**"publish"**--
 - (a) in relation to a statutory instrument that is subordinate legislation--means notify in accordance with section 47 (Notification) of the Statutory Instruments Act 1992; and
 - (b) in relation to a statutory instrument that is not subordinate legislation--means publish in the Gazette.

4.5.2 Section 23 – Intention/motive

- (1) Subject to the express provisions of the Code relating to negligent acts and omissions, a person is not criminally responsible for--
 - (a) An act or omission that occurs independently of the exercise of the person's will; or
 - (b) An event that occurs by accident.
- (1A) However, under subsection (1)(b), the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness, or abnormality even though the offender does not intend or foresee or cannot reasonably foresee the death or grievous bodily harm.
- (2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

This section provides that a person is criminally responsible only for his or her 'willed acts' and then only for the 'foreseeable consequences' of those willed acts.

An act which occurred whilst a person was in the state of an "automaton" e.g. whilst sleep walking or suffering from altered consciousness due to a head injury, would be said to occur "independently of the exercise of the person's will." An event can be said to have occurred by accident if "it was a consequence which was not in fact intended or foreseen by the accused and would not reasonably have been foreseen by an ordinary person." Per Gibbs J in *Kaporonovski v R* (1973) 133 CLR 209 at 231.

It should be noted that the test has both a subjective and objective aspect. The fact that the accused must not have intended or foreseen the consequence is a subjective test. The additional requirement, that an ordinary person would not have foreseen the consequence, is an objective test.

4.5.3 Section 24 – Mistake of fact

(1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.

(2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

The defence of Mistake of Fact overlaps to an extent with the s22 Bona Fide Claim of Right defence discussed above. The most common application of the defence is in relation to the issue of consent where the accused claims that they believed on reasonable grounds that the complainant consented to the act being performed on them.

It is important to note the word "reasonable" within s24. Failing to take reasonable steps to check the accuracy of a belief may mean that the defence cannot be relied on.

4.5.4 Section 25 – Extraordinary emergencies

Subject to the express provisions of this Code relating to acts done upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act or omission done or made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise.

For this defence to be used the emergency must be both sudden and extraordinary. For example, clearing that would otherwise be illegal would be permitted if it was necessary to clear a landing pad to enable an injured person to be evacuated by helicopter to a medical facility.

4.5.5 Section 26 – Presumption of sanity

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved. This is a rebuttable presumption of law and if raised by the defence they must produce evidence from which the contrary (defendant is not of sound mind) can be reasonably inferred. During the course of the investigation, the investigator must attempt to assess whether the suspect was sane at the time the commission of the offence.

Any concerns regarding the mental capacity of a suspect, for example possible dementia with an elderly suspect, should be communicated to the Regional Compliance Manager.

4.5.6 Section 27 – Insanity

(1) A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission the person is in such a state of mental disease or natural mental infirmity as to deprive the person of capacity to understand what the person is doing, or of capacity to control the person's actions, or of capacity to know that the person ought not to do the act or make the omission.

(2) A person whose mind, at the time of the person's doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of subsection (1), is criminally responsible for the act or omission to the same extent as if the real state of things had been such as the person was induced by the delusions to believe to exist.

For subsection (1) there must be a mental disease or infirmity whereby there is a deprivation of the capacity to do the following:

- understand what he/she is doing;
- control his/her actions; and
- know he/she ought not to have acted.

An anti-social disorder does not amount to a disease of the mind nor, at law, does it amount to a natural mental infirmity.

4.5.7 Section 28 – Intoxication

(1) The provisions of section 27 apply to the case of a person whose mind is disordered by intoxication or stupefaction caused without intention on his or her part by drugs or intoxicating liquor or by any other means.

(2) They do not apply to the case of a person who has, to any extent intentionally caused himself or herself to become intoxicated or stupefied, whether in order to afford excuse for the commission of an offence or not and whether his or her mind is disordered by the intoxication alone or in combination with some other agent.

(3) When an intention to cause a specific result is an element of an offence, intoxication, whether complete or partial, and whether intentional or unintentional, may be regarded for the purpose of ascertaining whether such an intention in fact existed. This section does not afford a person a defence if the intoxication was self induced, intentional or voluntary.

4.5.8 Section 29 – Immature age

(1) A person under the age of 10 years is not criminally responsible for any act or omission.

(2) A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission the person had capacity to know that the person ought not to do the act or make the omission.

4.5.9 Section 31 – Justification and excuse - compulsion

(1) A person is not criminally responsible for an act or omission, if the person does or omits to do the act under any of the following circumstances, that is to say—

- (a) In execution of the law;
- (b) In obedience to the order of a competent authority which he or she is bound by law to obey, unless the order is manifestly unlawful;
- (c) When the act is reasonably necessary in order to resist actual and unlawful violence threatened to the person, or to another person in the person's presence;

(d) When--

(i) The person does or omits to do the act in order to save himself or herself or another person, or his or her property or the property of another person, from serious harm or detriment threatened to be inflicted by some person in a position to carry out the threat; and

(ii) The person doing the act or making the omission reasonably believes he or she or the other person is unable otherwise to escape the carrying out of the threat; and

(iii) Doing the act or making the omission is reasonably proportionate to the harm or detriment threatened.

(2) However, this protection does not extend to an act or omission which would constitute the crime of murder, or any of the crimes defined in sections 81(2) and 82, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, nor to a person who has by entering into an unlawful association or conspiracy rendered himself or herself liable to have such threats made to the person.

(3) Whether an order is or is not manifestly unlawful is a question of law. This section offers a defence for persons who perform an act or make an omission in the execution of the law that would otherwise have been an offence. However, it does not exclude them from negligence or other civil action.

4.5.10 Section 34 – Offences by partners and members of companies with respect to partnership or corporate property

A person who, being a member of a co-partnership, corporation, or joint stock company, does or omits to do any act with respect to the property of the co-partnership, corporation, or company, which, if the person were not a member of the co-partnership, corporation, or company, would constitute an offence, is criminally responsible to the same extent as if the person were not such a member.

4.6 Attempts

Even though a person has not actually committed an offence, a person may still be prosecuted for the offence if they had attempted to carry it out. There are however specific criteria that must be met before proceedings can commence against a person who is alleged to have attempted to commit an offence.

These criteria are contained in Chapter 1, Section 4 of the Criminal Code and it is outlined below.

4.6.1 Section 4 – Attempts to commit offences

(1) When a person, intending to commit an offence, begins to put the person's intention into execution by means adapted to its fulfilment, and manifests the person's intention by some overt act, but does not fulfil the person's intention to such an extent as to commit the offence, the person is said to attempt to commit the offence.

(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on the offender's part for completing the commission of the offence, or whether the complete fulfilment of the offender's intention is prevented by circumstances independent of his or her will, or whether the offender desists of his or her own motion from the further prosecution of the offender's intention.

(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

(4) The same facts may constitute one offence and an attempt to commit another offence.

4.7 Parties to Offences

Chapter 2, section 7 of the Code 'Principle Offenders' details the circumstances in which a second or more persons may be linked to the offence. This section is detailed below.

4.7.1 Section 7- Principal Offenders

(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say

- (a) Every person who actually does the act or makes the omission which constitutes the offence;
- (b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) Every person who aids another person in committing the offence;
- (d) Any person who counsels or procures any other person to commit the offence.

(2) Under subsection (1)(d) the person may be charged either with committing the offence or with counselling or procuring its commission.

(3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(4) Any person who procures another to do or omit to do any act of such a nature that, if the person had done the act or made the omission, the act or omission would have constituted an offence on the person's part, is guilty of an offence of the same kind, and is liable to the same punishment, as if the person had done the act or made the omission; and the person may be charged with doing the act or making the omission.

Consider the example of an unlawful vegetation-clearing incident in a protected area. The driver of the bulldozer is the principal offender since they are the person who actually does the act: [s 7(1)(a)]. The owner of the lease may have procured a clearing contractor to undertake the clearing: [s 7(1)(d)]. The contractor may have transported the bulldozer to the site and directed the driver as to what was to be cleared: [s 7(1)(b) & (d)]. An employee of the landholder may have assisted the bulldozer driver by opening gates and assisting with equipment: [s 7(1)(c)].

It is important that investigators ensure that all potential parties to an alleged offence are interviewed and considered when framing their recommendations. All persons identified as a party to the offence should be investigated and an appropriate recommendation provided to ensure consistency, the proper application of the law and to remove any opportunity to suggest bias.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for
State Manager - Enforcement Services	Shall ensure that all investigators are trained in the procedure.	
Regional Manager – Enforcement Services	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. **APPROVED BY**

Signature

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Procedural guide

Enforcement Services

Obtaining an expert witness

The purpose of this document is to provide instruction to ensure that protocol and procedures are followed when dealing with the media.

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

This document requires the following approval.

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1.4 Distribution

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3. INTRODUCTION

3.1 Purpose

The objective of this guideline is to formalise the way in which investigators obtain experts, both internal to the Agency and external. The aim is to ensure that:

- An appropriate expert is chosen;
- The expert provides objective advice to enable the Agency to determine whether or not an offence has been committed; and
- The expert's advice is, and is seen to be, impartial and unbiased.

3.2 Scope

This procedure is relevant to all EHP authorised officers who are conducting and managing their own investigations.

3.3 Prerequisites

All persons conducting their own investigations and exercising any powers under legislation are required to be an authorised officer or person under the respective legislation.

3.4 Training

All Investigators will be trained in this procedure upon commencement of duties and further training will be provided when required.

3.5 Essential Points

- Ensure that you engage an appropriately qualified expert witness.
- Ensure that you comply with procedural guide – for deed of confidentiality.

3.6 Definitions

Investigator / Investigating Officer – This term as used in this procedure shall refer to the EHP authorised officer in charge of, or delegated a task during an investigation of an indictable or simple offence or a breach of duty.

Investigation - An investigation is a thorough, logical gathering of information and the objective, unbiased assessment of that information to reach a valid conclusion.

An investigation should identify:

- any breaches of legislation and causes of an incident.
- the persons or entities responsible for the breach(es)
- aggravating or mitigating circumstances relating to the commission of the offence.

Expert - An expert is a person in a particular field who can contribute to or verify the accuracy of specific information required by an investigator. Experts can be either internal (within EHP) or external (outside of EHP).

RTI - From 1 July 2009, the Right to Information Act 2009 replaced the Freedom of Information Act 1992. The Queensland *Freedom of Information Act 1992* (the FOI Act) is designed to extend as far as possible the right of access to information held by the Queensland Government. Through FOI, every person has a legally enforceable right to documents of agencies and official documents of Ministers, subject to certain exemptions and exclusions in the FOI Act.

The RTI Act:

- Gives people a right to apply for access to documents held by government agencies.
- Gives people a right to apply for amendment of personal information about you held by government agencies
- Requires government agencies to publish information about their structure, what they do and what documents they hold.

3.7 References

Australian Government Investigation Guidelines (2003).

EHP Investigation Manual - Investigations Planning and Management.

EHP Investigations Manual - Obtaining Expert Evidence.

Investigation Compliance and Enforcement Training Systems (ICETS) Certificate IV in Government Investigations

Queensland Government Freedom of Information Website <http://www.foi.qld.gov.au>

Procedural Guide – Deed of Confidentiality.

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4. PROCEDURE

4.1 Choosing an expert

If expert evidence is needed, the lead investigator for an investigation is responsible for choosing an appropriate expert. The environmental officer or ranger involved with the matter may be able to assist in identifying an appropriate expert.

The Agency experts may have the necessary knowledge and expertise, and will be more cost effective than using an external expert but bear in mind that they may be perceived by a court or defence counsel to be less independent than an external expert.

Points to consider when choosing an expert include:

- Is the proposed expert an expert in the specific field that you require evidence in? The expert's credibility and ability to give expert evidence depends on their having expertise that is relevant to the question that you want answered.
- Has the expert had any prior involvement with the alleged offender or the incident? Any such involvement could lead to suggestions that the expert has already formed a view on the matter based on that prior involvement, particularly if the expert has previously formed a negative view of the conduct of the alleged offender.
- Has the expert given evidence before? How well will he or she present in the witness box? It is preferable to engage an expert who is familiar with the court process and the requirements for the preparation of expert reports and giving evidence. The weight to be attached to the expert's evidence will often be affected by how credible and competent the expert appears when giving evidence under cross-examination. A good expert will not necessarily make a good witness.
- Is the expert prepared to attend court and give evidence if required? Make it clear to the expert that they may be required to attend court, and consider what their fees are for court appearances.
- Expert evidence will often be crucial to proving that an offence has been committed (particularly in cases involving environmental harm). Accordingly, it is important to choose carefully and to secure the services of an expert who will be able to give credible, impartial evidence.
- Ensure that you have consulted and complied with procedural guide – deed of confidentiality.

4.2 The procurement process

To begin the procurement process when engaging an external expert, a document should be formulated clearly outlining the services required by the Agency and the qualifications that must be held by the expert. Also consider whether the Agency has a standing offer arrangement (SOA) with a suitable expert. All other considerations being equal, preference should be given to someone using a SOA.

This document is sent to appropriate experts requesting a written quote for their services and a copy of their CV and qualifications. The document should provide sufficient information to enable the experts to accurately estimate their costs.

If possible, a minimum of three quotes should be obtained. The quotes will be evaluated to determine which one represents quality and value for money for the Agency. The most suitable quote is chosen. Note that the cheapest quote will not always be the best value for money.

In some instances, it may be necessary to depart from competitive procurement practices (refer to *General Purchasing Policy and Procedures* found on Robin at *Fast Find – P – Purchasing*

(Financial Management) - Policy, Purchasing, PURO01 - General Purchasing Policy and Procedures). For example:

- Only one individual may possess the necessary skills and qualifications;
- Often expert witnesses are required on short notice and there is insufficient time to undertake the procurement process; or
- Given the time constraints, only one expert witness may be available.

In some circumstances, it may be appropriate to consider entering into an ongoing arrangement with an expert, particularly if they possess skills that may be of continued use to the Agency.

4.3 Formulating the instructions to the expert

The quality of the advice from an expert will depend on the quality of the instructions that he or she receives. Before instructing an expert, be clear on exactly what advice you require. Consider what elements of the offence the expert's evidence will prove, and exactly what evidence is required to prove those elements.

- Formulate the request into questions, being as specific with your questions as possible.
- The instructions to the expert must include all of the facts you have that will be relevant to the expert's opinion, including facts that may tend to disprove the charges or exculpate the alleged offender.
- The facts provided to the expert must be able to be proved by admissible evidence.
- Consider whether site visits or samples will be required, and whether it will be possible to arrange them.
- It may be desirable to give the expert copies of witness statements or records of interviews, to ensure that the facts on which he/she will base his/her opinion are as accurate as possible.
- Give your instructions in neutral, non emotive language. Do not suggest a particular view that you may have, or a response that you may require. The expert's opinion must be unswayed by your opinion.
- Be clear about the timeframe for providing the report and ensure that you give the expert sufficient time to prepare the report before any limitation period is due to expire.
- Instructions to the expert must be in writing using the *Instructions to Expert* template.
- The expert must receive a copy of the *Guide to Expert Witness Roles and Responsibilities* factsheet.
- The instructions must be reviewed and signed off by the relevant Manager Regional Investigations.

4.4 Engaging/Communicating with the expert

Any written communication that the investigator has with the expert will be subject to disclosure to the defence or obtainable through RTI. The investigator and/or the expert may be cross-examined on conversations that they have with each other.

Accordingly, no unnecessary communication is to take place between the investigator and the expert. Once an expert has been engaged, communication initiated by the investigator is to be limited to:

- The initial provision of instructions.
- Providing the expert with any information that comes to light after the initial instructions have been given, and that is likely to impact on the expert's advice.
- Checking on progress of the expert's report if the due date provided to the expert is approaching.

Any change to the instructions or further information to be given to the expert must be provided in writing.

All conversations between the investigator and the expert must be recorded in the running sheet, official notebook or file note as appropriate.

The investigator should take a corroborator with him/her to any meeting or site visit with the expert.

4.5 Presenting the evidence

On receipt of the expert's report, the investigator should prepare a statement that:

- Sets out the expert's qualifications that establish that he/she is an expert in the relevant field;
- Exhibits the expert's CV;
- Exhibits the instructions to the expert;
- Exhibits the expert's report; and
- Refers to the evidence considered by the expert and any site visits undertaken by the expert if they are not referred to in the report.

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5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for
State Manager - Investigations	Shall ensure that all investigators are trained in the procedure.	
Team Leader – Compliance and Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Director Enforcement Services
Department of Environment and Heritage
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Procedural Guide

Environmental Services and Regulation Requesting remote sensing support for investigations

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

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1.3 Approval

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3. INTRODUCTION

This Standard Operating Procedure (SOP) is the first in a series of three that detail the procedure to request remotely sensed and spatial information products and services to support the *Vegetation Management Act 1999* from EHP Remote Sensing Team (RST). This SOP relates to sourcing remotely sensed spatial information for investigations not intended for court. Refer to SOP XX2 and SOP XX3 for requests pertinent to court proceedings.

The support outlined in this document extends across a number of different information request types. Products and services resultant from SOP XX1 information requests are more basic than those generated from requests issued under SOP XX2 and SOP XX3.

3.1 Purpose

The objective of this guideline is to formalise the way in which investigating officers request remote sensing information from RST. The aims are to ensure that:

- the appropriate sort of information is requested;
- adequate time and notice are allowed to complete the work; and
- the information RST provides best supports the investigating officer.

3.2 Scope

This procedure is relevant to all EHP authorised officers who are conducting and managing their own investigations into breaches of the *Nature Conservation Act 1992*, *Environmental Protection Act 1994* and any other legislation administered by the department that requires remote sensing and spatial analysis support for an investigation

This procedure is relevant to all EHP authorised officers who are conducting and managing their own investigations into breaches of the legislation administered by the department that require expert evidence for trial following the defendant(s) entering a not guilty plea at the plea/hearing mention.

If a suitable expert is not available from the Remote Sensing Team, an expert external to the Agency should be appointed using "Obtaining an Expert Witness – SOP 027" in collaboration with the Manager of the Remote Sensing Team.

3.3 Prerequisites

All persons conducting their own investigations and exercising any powers under legislation are required to be an authorised officer or person under the respective legislation.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every two years.

3.5 Definitions

Expert –

An expert is a person who, by virtue of education, training, skill, or experience, is believed to have expertise and specialised knowledge in a particular subject beyond that of the average person, sufficient that others may officially and legally rely upon the witness's specialised (scientific, technical or other) opinion about an evidence or fact issue within the scope of his expertise. Experts can be either internal (within EHP) or external (outside of EHP).

Investigation –

An investigation is a thorough, logical gathering of information and the objective, unbiased assessment of that information to reach a valid conclusion.

An investigation should identify:

- any breaches of legislation and causes of an incident;
- the persons or entities responsible for the breach(es)
- aggravating or mitigating circumstances relating to the commission of the offence

Investigator / Investigating Officer –

This term as used in this procedure shall refer to the EHP authorised officer in charge of, or delegated a task during an investigation of an indictable or simple offence or a breach of duty.

State Manager Investigations –

This term as used in this procedure shall refer to the EHP Manager who delegated a task to an authorised officer during an investigation of an indictable or simple offence or a breach of duty.

Remote Sensing Team –

This term as used in this procedure shall refer to the EHP team of remote sensing scientists that support regional vegetation compliance.

RSTO –

Remote Sensing Team Officer (RSTO) is the RST officer to whom an information request is allocated. The RST manager is responsible for allocating and managing information requests to ensure they are delivered in a timely fashion.

RTI –

From 1 July 2009, the Right to Information Act 2009 replaced the Freedom of Information Act 1992. The Queensland *Freedom of Information Act 1992* (the FOI Act) is designed to extend as far as possible the right of access to information held by the Queensland Government. Through FOI, every person has a legally enforceable right to documents of agencies and official documents of Ministers, subject to certain exemptions and exclusions in the FOI Act.

The RTI Act:

- Gives people a right to apply for access to documents held by government agencies
- Gives people a right to apply for amendment of personal information about you held by government agencies
- Requires government agencies to publish information about their structure, what they do and what documents they hold.

3.6 References

- Australian Government Investigation Guidelines (2003).
- EHP Investigation Manual – Investigations Planning and Management.
- EHP Investigations Manual – Obtaining Expert Evidence.
- Investigation Compliance and Enforcement Training Systems (ICETS) Certificate IV in Government Investigations.
- Queensland Government Right to Information Website <http://www.rti.qld.gov.au>

RTI DL RELEASE EHP

4. PROCEDURE

4.1 The procurement process

If remote sensing information is needed, the lead investigator for an investigation is responsible for preparing and submitting the request for information to RST. All requests are to be submitted using the approved form which is accessible from the Forms template folder. The form lists the standard actions that can be requested and provides scope to provide further information where necessary. The standard actions and products delivered are listed and described below.

The investigator and State Manager Investigations will both need access to the form template folder.

Upon receipt of the information request, the RST manager will negotiate an appropriate date for delivery. Communication of the agreed deadline will include an email to the RSTO to whom the request is allocated and a posting in the CIRaM running log.

4.2 Standard Actions and Products

- Analysis for Investigation Aid
- Analysis for Interview Aid
- Remnant Verification where required
- Regional Ecosystem Amendment where required
- Purchase High-Resolution Imagery
- Clearing Polygon Verification where required
- Analysis of Old Tree Clearing Permits where required
- Cadastral update where required

4.2.1 Analysis for Investigation Aid

This request relates to the Standard Operating Procedure that refers to recording information in the form of maps.

- The RSTO will map all areas of interest on the subject land by analysing remotely sensed imagery captured during the assessable time frame.
- In the case of cleared remnant vegetation areas the RSTO will use historical imagery to determine if any mapped remnant vegetation needs assessment by the Queensland Herbarium to confirm its remnant status. If some mapped vegetation is questionable, the RSTO will submit a remnant verification request to the Queensland Herbarium via the RST manager. If the Investigating Officer has reason to discount any question of remnant status, the RSTO should be notified.
- A set of "Investigation" maps will be created to assist the Investigating Officer in their field

inspection.

- The RSTO may provide a list of field sites to be targeted by the Investigating Officer in the field. These sites are “areas of uncertainty” for which field verification will assist.
- The RSTO may collaborate with the Investigating Officer prior to field inspection and may provide a history of the areas of interest.
- The RSTO may also provide a list of ground features and/or cadastral marks that need to be captured using GPS to increase mapping accuracy.
- After agreement, the RSTO may accompany the Investigating Officer on field inspections to assist in ground-truthing satellite interpretation and to collect cadastral control data.

4.2.2 Analysis for Interview Aid

This request relates to the Standard Operating Procedure that refers to recording information in the form of maps.

- The RSTO will communicate with the Investigating Officer to identify where required what information is required for the interview process.
- A set of “Interview” maps will be created to assist the Investigating Officer during their interviews.
- The RSTO may collaborate with the Investigating Officer prior to the interview and provide a history of areas of interest.

4.2.3 Remnant Verification

- If the remnant status of an area of mapped vegetation is in doubt, the Queensland Herbarium may conduct an assessment to determine if the vegetation meets the criteria for remnant status. All requests to the Queensland Herbarium are managed by the RST manager.
- Reason to dispute the remnant status is to be provided in the approved form by the Investigating Officer with evidence attached which can be accessed by the RSTO.
- Prior to sending requests to the Queensland Herbarium, the RSTO will analyse historical remotely sensed imagery to see if there is evidence of prior clearing.
- If prior clearing is found, the RST manager will include these areas in the request to the Queensland Herbarium.
- If no prior clearing is found and the evidence provided by the Investigating Officer cannot be confirmed, the RST manager will advise the Investigating Officer that there are no grounds to dispute the remnant status of the vegetation and the request will be finalised without the Herbarium’s involvement.

4.2.4 Regional Ecosystem Map Verification

- Where the composition (as opposed to remnant status) of the Regional Ecosystem (RE) mapping is under scrutiny, the Queensland Herbarium may conduct an assessment to determine if the mapping accurately represents what is on the ground. All requests to the Queensland Herbarium are managed by the RST manager.
- Reason to dispute the RE mapping is to be provided in the approved form by the Investigating Officer with evidence attached in an email.
- Prior to sending requests to the Queensland Herbarium, the RSTO will analyse historical remotely sensed imagery to see if there is evidence of prior clearing that may have contributed to mapping errors.
- If prior clearing is found, the RST manager will include these areas in the request to the Queensland Herbarium.
- If no prior clearing is found and the evidence provided by the Investigating Officer cannot be confirmed, the RST manager will advise the Investigating Officer that there are no grounds to dispute the remnant status of the vegetation and the request will be finalised without the Herbarium's involvement. Note: for any matter going to a court hearing, the Herbarium will conduct a RE map verification.

The investigating officer should include the evidence that refutes the mapped remnant status in the approved form. **Note:** If an investigation progresses to a hearing mention or a full hearing, this action will automatically be done as part of the "Presentation for Hearing" action

4.2.5 Purchase High-Resolution Imagery

- To prove temporal elements of an alleged offence, an Investigating Officer may purchase high-resolution remotely sensed imagery. All costs associated with the purchase of high-resolution imagery are to be borne by the requesting officer's work unit or another nominated work unit; RST will neither cover these costs directly, nor through advancement until reimbursement.
- The RSTO will search for, source and order suitable imagery.
- The RSTO will liaise with the Investigating Officer to confirm suitability and pricing of imagery before purchase.
- Upon receipt of imagery, the RSTO will ensure that the imagery is geometrically and radiometrically corrected.
- If requested, the RSTO will use the newly acquired imagery to generate a map to depict elements of the alleged offence as specified by the Investigating Officer.

The investigating officer must advise RSTO of the alleged offence dates for the imagery required.

Note: the requesting officer must provide a cost centre (WBSE) to which all costs of the image purchase will be charged before any approval can be submitted by the manager.

4.2.6 Clearing Polygon Verification

This action may be requested in the following circumstances:

- The issue of a Penalty Infringement Notice (PIN) requires confirmation of areas.
- When investigation or interview maps created by a regional GIS Officer or Investigating Officer require checking by a RSTO.
- Illustrating areas of interest (eg. allegedly cleared areas) during an interview.
- Verifying areas to attend during a field inspection

4.2.7 Analysis of Old Tree Clearing Permit

This action applies when a permit not recorded in Departmental digital databases is discovered. These are often “back pocket” permits discovered during interviews or old hardcopy permits found in regional files.

- The Investigating Officer will provide a scanned or digitally photographed copy of the permit.
- The Investigating Officer must provide any attachments to the permit including maps or plans or conditions of the permit. Start and expiry dates of permits are particularly useful.
- The RSTO will digitise, rectify and analyse the permit against mapped areas of clearing to determine if potentially unlawful clearing has taken place.
- If requested, the RSTO will use the permit data to generate a map to depict elements of the alleged offence as specified by the Investigating Officer.

4.2.8 Fodder Assessment

- Request for a Queensland Herbarium botanist to indicate suitable sites for the Investigating Officer to conduct or coordinate field work to determine biomass of leaf available for fodder (mass in kg/ha).
- This request should be triggered by evidence of suspected clearing for fodder.
- Checks include the clearing of valid fodder species (shown by desktop analysis) and an indication by suspects (via phone calls/interviews) that clearing was for fodder. RST will measure the rate of clearing and refer to Herbarium staff if necessary.

4.2.9 Cadastral Update

- This action applies if the departmental Digital Cadastral Database (DCDB) has a poor accuracy for the subject block(s)
- The RSTO will assess the DCDB against the base imagery used in the analysis; the accuracy of the line work will be assessed against visible boundary lines and the registered

Plan

- If the DCDB spatial accuracy is within its stated accuracy with no adjacent clearing and minimal visible shift from the imagery the request may not be actioned
- A departmental DCDB upgrade will be requested if the DCDB Spatial accuracy has either: clearing adjacent to the boundary and visible shift from imagery; or the shift from imagery is significantly greater than the stated accuracy for the subject block
- If the investigating officer has an upcoming field inspection to the subject block the RSTO may request some specific GPS points to be recorded to assist in the cadastral update
- If needed a departmental survey may be sent to the property to conduct a survey of the subject block(s) which should be prearranged with NRM.

4.3 Timeframe

The timeframe for all information requests is negotiable. As a guide, most requests will be delivered upon with 4 weeks. Factors that can impact timeframes for delivery of the actions detailed above include:

- availability of RST resources
- size and complexity of the subject property
- complexity of information request (eg. multiple actions requested in one request)
- whether a site inspection is required
- availability of Queensland Herbarium resources
- imagery supplier

Upon receipt of the information request, the RST manager will take the above factors into consideration and negotiate an appropriate date for delivery. Communication of the agreed deadline will include an email to the RSTO to whom the request is allocated.

4.4 Communication

All communication regarding approval, submission, allocation and completion of remote sensing information requests should be recorded in the running log relevant for the case. Any changes to the nature of a request or the negotiation of timeframes must be in writing and sent to the team leader for consultation with the RSTO.

4. PROCEDURE

In general, the procedure for obtaining remote sensing expertise support should adhere to the guidelines set out in "Obtaining an Expert Witness – SOP 027". The current document focuses on how to obtain remote sensing expertise, what products and services can be delivered, and timeframes for same.

When an investigation is at final hearing mention it is important that the procurement procedure detailed in this document is considered if the defence enters a not-guilty plea. The request should be made to the magistrate to set a trial date keeping to the timeframes detailed in this SOP. Commencement of the procurement procedure should begin at the earliest possible time after setting the court date.

4.1 The procurement process

To seek remote sensing evidence for a contested matter, the investigator is responsible for preparing and submitting the request for information to the State Manager Investigations, who may endorse the request and submit it to RST. All requests are to be submitted using the approved form which is accessible from the forms template.

The process of submitting, approving and negotiating the details of a request comprises a contract between the requesting officer and RST. If a suitable expert is not available from RST, an expert external to the Agency should be chosen using "Obtaining an Expert Witness – SOP 027" in collaboration with the Manager of the Remote Sensing Team.

4.2 Requesting "Presentation for Hearing"

- If a hearing date has been set, specify the date. If a court date has not yet been set, advise that it has not been set and notify RST when a date has been set.
- The actions "Purchase High Resolution Imagery" and "RE amendment" should be stated as required where relevant. If there is reason these actions are not required, please advise the RST manager of the reasons that these are not required.
- To purchase a high resolution image, the requesting officer must provide a cost centre, (WBSE) to which all costs of the image purchase will be charged, before the form can be submitted by the manager. All costs associated with the purchase of high-resolution imagery are to be borne by the requesting officer's work unit or another nominated work unit; RST will neither cover these costs directly, nor through advancement until reimbursement. See SOP XX1 Section 4.2.5 for further detail on this action.
- The "RE Amendment" action entails Queensland Herbarium staff assessing the Regional Ecosystem mapping over the subject block to determine if the mapping accurately represents what is on the ground. The time required for this assessment is dependent on the size of the subject block, the complexity of vegetation RE's, and Herbarium staff availability. See SOP XX1 Section 4.2.4 for further detail on this action.

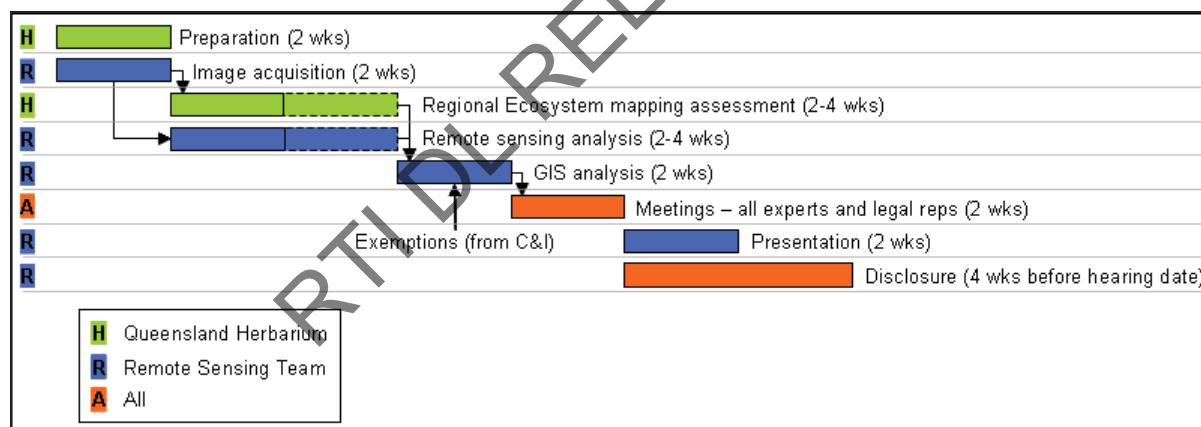
4.2 Formulating the instructions to the expert

As described in the Obtaining an Expert Witness SOP, the quality of the expert analysis depends partly on the quality of the instructions and the provisions of facts of the matter which may have a bearing on the remote sensing analysis. Important facts of the matter that will assist the remote sensing expert include, but are not limited to: dates of alleged offence, claimed exemptions, statutory exemptions, any spatial data gathered by the defence, any spatial data gathered by the investigating officer; and any printed or digital maps.

The approved form provides the framework to request expert remote sensing analysis. A document entitled "Instructions to Expert", generated using the "Instructions to Expert" template (see SOP 027) should be sent to supplement the approved form. It is important to clearly convey what products need to be generated from the analysis and what elements of the matter require discussion in the report.

Although unlikely for the remote sensing expert, if Queensland Herbarium assistance is engaged for regional ecosystem mapping consider whether site visits will be required, and whether it will be possible to coordinate them. It may be desirable to give the expert copies of witness statements or records of interviews, to ensure that the facts on which he/she will base his/her opinion are as well-informed as possible.

Be clear about the timeframe for providing the report and ensure that you give the expert sufficient time to prepare the report before any statutory limitation period is due to expire. Refer to the time line below to estimate how much time the remote sensing expert requires for a typical analysis.



The expert must receive a copy of the [Guide to Expert Witness Roles and Responsibilities](#) factsheet. You should specify the date the analysis and maps are to be completed to allow for time lines to be adjusted to cater for matters to meet statutory time frames.

The instructions must be reviewed and signed off by the State Manager Investigations.

4.3 Engaging/Communicating with the expert

Any written communication (including emails) that the investigator has with the expert will be

subject to disclosure to the defence or obtainable through RTI. The investigator and/or the expert may be questioned on email conversations they have had with each other.

Accordingly, no unnecessary or inappropriate communication is to take place between the investigator and the expert. Once an expert has been engaged, communication initiated by the investigator is to be limited to:

- the initial provision of instructions;
- providing the expert with any information that comes to light after the initial instructions have been given that is likely to impact on the expert's advice; or
- checking on progress of the expert's analysis when the due date is approaching or has been passed.

Any change to the instructions or further information to be given to the expert must be provided in writing.

All conversations between the investigator and the expert must be recorded in the running sheet, official notebook or file note as appropriate. A corroborator should accompany the investigator during any meeting with the expert.

4.4 Presenting the evidence

Following their analysis, a senior and appropriately qualified and experienced RST officer will present their expert opinion in court. Below is a list of products commonly derived during analysis:

- A series of maps identifying the location, timing, nature and extent of clearing on the subject block.
- A report detailing:
 - o facts provided to assist analysis;
 - o data used in the analysis;
 - o the procedure used to map changes to vegetation cover;
 - o the procedure used to determine areas of clearing potentially in breach of legislation; and
 - o summary statistics about the areas cleared, including conservation status.
- DVD(s) containing:
 - o A copy of all remotely sensed imagery regarded during analysis;
 - o a copy of all spatial data regarded during analysis;
 - o a software package allowing the data to be viewed;
- A current curriculum vitae (CV).
- An electronic presentation showing the data used in the analysis and providing visual evidence of why clearing was mapped and its potential legal status.

All of the expert's evidence listed above, except the presentation, will be disclosed 4 weeks prior to

the hearing in order for the defence to examine the evidence.

The expert should prepare a statement that:

- Sets out the expert's qualifications that establish that he/she is an expert in the relevant field;
- Exhibits the expert's CV;
- Exhibits the instructions to the expert;
- Exhibits the expert's report; and
- Refers to the evidence considered by the expert and any site visits undertaken by the expert if they are not referred to in the report.

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5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Planning and managing investigations
State Manager - Enforcement Services	Shall ensure that all investigators are trained in the procedure.	Training Package
Team Leader – Enforcement Services	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	Audit Document
Investigators	Shall follow the procedure	“Requesting remote sensing information for investigations” standard operating procedure
Remote Sensing Team Manager	Shall ensure all requests are addressed and negotiate provision of support.	???

6. APPROVED BY

Signature

Kelli Ready

A/Director

Enforcement Services

Department of Environment and Heritage
Protection

Date

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Procedural guide

Enforcement Services Computer-Based electronic Evidence

This procedure is intended to assist investigators who have no specialist training in computers, to carry out searches and ensure that their actions in relation to the seizure of such material are correct.

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

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Name	Title

1.4 Distribution

This document has been distributed to the following sections.

Section	Date

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3. INTRODUCTION

3.1 Purpose

There are many data storage devices/media that may be encountered whilst searches are being conducted during investigations. These are often valuable sources of evidence which, if dealt with in an evidentially acceptable manner, may enhance the investigation. This procedure is intended to assist authorised officers who have no specialist training in computer forensics, to carry out such searches and ensure that their actions in relation to the seizure of such material are correct.

3.2 Scope

This procedure will apply to all authorised officer under DERM legislation whose duties require them to obtain and execute warrants to enter a place for the purpose of searching or taking possession of computer-based electronic evidence.

3.3 Prerequisites

Legislation requires that all warrants are applied for and executed by an "Authorised Officer". Investigators are to ensure they have the "authorised officer" delegation for the warrant statute that they are to use.

3.4 Training

All authorised officers will be trained in this procedure upon commencement of employment and such training will be refreshed every two years.

3.5 Essential Points

- Determine if an expert in computer forensics should be included in the search team.
- Determine if the computer or electronic device has information pertaining to the warrant before seizing it
- Consider alternative manner of obtaining the evidence required, e.g. copying the information to an external source
- When seizing computers and electronic devices check if there is a password and ensure that the password is kept with that item
- When seizing electronic devices ensure that recharge units, power packs and cables are also seized and clearly marked for later reference
- Transport and store in a manner that does not expose the items to extremes of hot or cold or any form of magnetic source

3.6 Definitions

Documents - includes, but is not restricted to, agreements, records of internal and external communications, computer printouts, computer records, videos, photographs, internal and external correspondence, diaries, emails, facsimiles, files, file notes, financial records, handwritten notes, invoices, letters, purchase records, receipts, magnetic or electronic storage media, disks, tapes, flash drives, memory sticks, hard drives, servers, notepads, laptops, hand-held electronic media capable of receiving and transmitting emails (e.g. Palm Pilot) and any other storage medium or mirror image of the above storage medium.



Persistent data - is the data that is stored on a local hard drive and is preserved when the computer is turned off.

Volatile data - is any data that is stored in memory, or exists in transit, that will be lost when the computer loses power or is turned off. Volatile data resides in registries, cache and random access memory (RAM).

3.7 References

- Computer Forensics by US-CERT (2008)
- HB 171-2003 Guidelines for the Management of IT evidence, Standards Australia
- Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations, 2002, Office of Legal Education Executive Office for United States Attorneys
- Good Practice Guide for Computer-Based Electronic Evidence, 2009, England, Wales and Ireland Association of Chief Police Officers
- Forensic Plan – A technical guide to aid in the preservation of digital evidence following a computer security incident, 2004, West Australian Government, Office of e-Government.

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4. **PROCEDURE**

4.1 **Pre-Search**

4.1.1 **Application for a Warrant to Enter a Place**

Computers can often contain evidence in the form of information stored on the hard drive. An application for a warrant to search a place and take possession of a computer needs to establish that reasonable grounds exist for suspecting that evidence of an offence is present on the computer.

The warrant application should focus on two general steps;

- (i) establish the reasonable suspicion to search the computer or storage media and
- (ii) the describing the particular data or information to be taken from the computer or the computer hardware.
- (iii) It should also be established that the search of the hard drive or other media requires too much time to be conducted on-site, during the execution of the warrant and the application should explain why it is necessary to image an entire hard drive (or physically seize it) and later examine it for the record types detailed.

4.1.2 **Pre-Search**

When a search is to be conducted and where computer based electronic evidence may be encountered, preliminary planning is essential. As much information as possible should be obtained beforehand about the type, location and connection of any computer systems.

If medium or large network systems are involved that may yield vital evidence for the investigation, then relevant expert advice should be sought before proceeding. Single computers with an internet connection are those most commonly found and can usually be seized by staff that have received the basic level of training in digital evidence recovery. The IT literacy of the suspect and the known intelligence should be considered when seeking specialist assistance or advice and in any risk assessment/policy decision.

4.1.3 **Briefing**

It is essential that all personnel attending the search scene be adequately briefed in respect of the intelligence, information and also in respect of the specific matter of computer evidence.

Personnel should be encouraged to safeguard computer based electronic evidence in the same way as any other material evidence. Briefings should make specific mention, of any specialist support that exists and how it may be summoned. Strict warnings should be given to discourage tampering with equipment by untrained personnel.

4.1.4 **Resources to Take On Searches**

This basic tool-kit should be considered for planned searches for the proper dismantling of computer systems as well as for their packaging and removal:

- Property register
- Exhibit labels
- Labels and tape to mark and identify component parts of the system, including leads and sockets
- Tools such as screw drivers (flathead and crosshead), small pliers, wire cutters for removal of cable ties

- A range of packaging and evidential bags fit for the purpose of securing and sealing heavy items such as computers and smaller items such as PDAs and mobile phone handsets
- Cable ties for securing cables
- Flat pack assembly boxes - consider using original packaging if available
- Coloured marker pens to code and identify removed items
- Camera and/or video to photograph scene in situ and any on-screen displays
- Torch

4.1.5 Specialist Persons

If dealing with a planned search of a place where it is known that computers will be present, consideration should be given to obtaining the services of personnel who have had formal training and are competent to deal with the seizure and handling of computer-based evidence. In some circumstances, the case officer may feel it is necessary to secure the services of an independent consulting witness to attend the scene of a search and subsequent examination.

4.1.6 Search Records to be Kept

In order to record all steps taken at the scene of a search, specific notes should be completed contemporaneously under the following headings:

- Sketch map of scene.
- Details of all persons present where computers are located.
- Details of computers - make, model, serial number.
- Display details and connected peripherals.
- Remarks/comments/information offered by user(s) of computer(s).
- Actions taken at scene showing exact time.

Remember, a computer or associated media should not be seized just because it is there. The person in charge of the search must make a conscious decision to remove property and there must be justifiable reasons for doing so.

4.2 Scene Search

The following guidance deals with the majority of scenarios that may be encountered. The general principles, if adhered to, will ensure the best chance of evidence being recovered in an uncontaminated and acceptable manner.

It is acknowledged that there may be circumstances during a search, where there may be more appropriate options available than those that in this document. However, these alternative options will not be addressed in this procedure, as that course of action should only be undertaken by individuals who have received appropriate training in this specialised area of work.

If in any doubt as to the correct action to be taken, seek specialist advice.

The majority of computers found during searches are desktop or laptop PCs. These machines usually consist of a screen, keyboard and main unit. Other machines are becoming more widespread, in particular, personal organisers, palmtop computers, portable media players and mobile phones incorporating: software, removable storage and significant processing power. These can hold large amounts of data, often in storage areas not immediately obvious to the investigator.

4.2.1 Seizing Desktop and Laptop Computers

Upon discovery of computer equipment which appears to be switched off:

- Secure and take control of the area containing the equipment.
- Move people away from any computers and power supplies.
- Photograph or video the scene and all the components including the leads in situ. If no camera is available, draw a sketch plan of the system and label the ports and cables so that system/s may be reconstructed at a later date.
- Allow any printers to finish printing.
- **DO NOT**, in any circumstances, switch the computer on.
- Make sure that the computer is switched off – some screen savers may give the appearance that the computer is switched off, but hard drive and monitor activity lights may indicate that the machine is switched on.
- Be aware that some laptop computers may power on by opening the lid.
- Remove the main power source battery from laptop computers. However, prior to doing so, consider if the machine is in standby mode. In such circumstances, battery removal could result in avoidable data loss.
- Unplug the power and other devices from sockets on the computer itself (i.e. not the wall socket). A computer that is apparently switched off may be in sleep mode and may be accessed remotely, allowing the alteration or deletion of files.
- Label the ports and cables so that the computer may be reconstructed at a later date.
- Ensure that all items have completed and signed exhibit labels attached to them. Failure to do so may create difficulties with continuity and cause the equipment to be rejected by the forensic examiners.
- Search the area for diaries, notebooks or pieces of paper with passwords on which are often attached or close to the computer.
- Consider asking the user about the setup of the system, including any passwords, if circumstances dictate. If these are given, record them accurately.
- Make detailed notes of all actions taken in relation to the computer equipment.

Upon discovery of computer equipment which is switched on:

- Secure the area containing the equipment.
- Move people away from computer and power supply.
- Photograph or video the scene and all the components including the leads in situ. If no camera is available, draw a sketch plan of the system and label the ports and cables so that system/s may be reconstructed at a later date.
- Consider asking the user about the setup of the system, including any passwords, if circumstances dictate. If these are given, record them accurately.
- Record what is on the screen by photographing and by making a written note of the content of the screen.
- Do not touch the keyboard or click the mouse. If the screen is blank or a screen saver is present, the case officer should be asked to decide if they wish to restore the screen. If so, a short movement of the mouse should restore the screen or reveal that the screen saver is password protected. If the screen restores, photograph or video it and note its content.
- If password protection is shown, continue as below, without any further touching of the mouse. Record the time and activity of the use of the mouse in these circumstances.
- possible, collect data that would otherwise be lost by removing the power supply e.g. running processes and information about the state of network ports at that time. Ensure that for actions performed, changes made to the system are understood and recorded. See section on Network forensics and volatile data.
- Consider advice from the owner/user of the computer but make sure this information is treated with caution.
- Allow any printers to finish printing.
- If no specialist advice is available, remove the power supply from the back of the computer without closing down any programs. When removing the power supply cable, always remove the end attached to the computer and not that attached to the socket. This will

avoid any data being written to the hard drive if an uninterruptible power protection device is fitted.

- Remove all other connection cables leading from the computer to other wall or floor sockets or devices.
- Ensure that all items have signed exhibit labels attached to them. Failure to do so may create difficulties with continuity and cause the equipment to be rejected by the forensic examiners.
- Allow the equipment to cool down before removal.
- Search area for diaries, notebooks or pieces of paper with passwords on which are often attached or close to the computer.
- Ensure that detailed notes of all actions are taken in relation to the computer equipment.

What should be seized for the retrieval of evidence (examples):

- Main unit: usually the box to which the monitor and keyboard are attached
- Monitor, keyboard and mouse (only necessary in certain cases. If in doubt, seek expert advice)
- Leads (again only necessary in certain cases. If in doubt, seek expert advice).
- Hard disks not fitted inside the computer
- External drives and other external devices
- Wireless network cards
- Digital cameras
- Floppy disks
- Back up tapes
- Jaz/Zip cartridges
- CDs.
- DVDs.
- PCMCIA cards
- Memory sticks, memory cards and all USB/firewire connected devices.

If the power is removed from a running system, any evidence stored in encrypted volumes will be lost, unless the relevant key is obtained. Also, note that potentially valuable live data could be lost, leading to damage claims, e.g. corporate data.

4.3 Seizure of mobile phones, electronic organisers and personal digital assistants

4.3.1 Introduction

Mobile phones, electronic organisers and personal data assistants or organisers (PDAs) range from very small, very cheap devices that hold a few telephone entries to expensive devices that are as powerful as some desktop PCs and can hold large amounts of text, email, sound, graphics and other files.

4.3.2 Personal Organisers (PDAs)

Although each may perform differently in detail, all organisers (PDAs) follow a similar basic design. They contain a small microcomputer with a miniature keyboard (often part of the touch screen display) and a display screen, together with memory chips in which all the information is stored.

In older models the memory is kept active by batteries and, if these fail, all information contained in the organiser (PDA) may be lost. However, data may be recovered from flash memory. Often, there are two sets of batteries: a main set which is designed to run the display and keyboard when the organiser is switched on and a backup battery which maintains information in the memory, if and when the main batteries fail. Some organisers (PDAs) have a single rechargeable battery, which is normally kept topped up by keeping the organiser (PDA) in its cradle connected to a PC. This battery tends to fail very quickly when not kept charged. Standard batteries will also fail at some time. When seizing PDAs, seek specialist advice at an early stage in relation to battery charging, in order to prevent loss of evidence.

Remember to seize all power cables, leads and cradles associated with the PDA.

4.3.3 Procedures

Upon seizure, the organiser/PDA should not be switched on or off depending on how it is found. It should be placed in a sealed envelope before being put into an evidence bag. This procedure prevents the organiser from being opened and/or accessed whilst still sealed in the evidence bag, a situation that can easily arise with smaller organisers and those with touchscreen technology. Many mobile phones now incorporate PDA functionality. If a device suspected of having WiFi or Bluetooth or mobile phone capability is recovered at the scene, investigators should consider turning the device off.

When seizing any of these devices the investigator should determine if a password exists and where known keep the password and the device together.

A search should also be conducted for associated memory devices, such as IC Cards, Solid State Disks, CF Cards, SmartMedia Cards and Memory Sticks, as well as any leads or cradles used for connecting the organiser to a PC.

The organiser/PDA should never be returned to the accused at the scene or prior to the evidence recovery procedures being completed. Remember, pressing the RESET button or the removal of all batteries can result in the complete loss of all information held in the device.

A competent person should examine the organiser (PDA) at an early stage and batteries replaced or kept recharged as necessary to prevent any loss of evidence. Batteries must be checked at regular intervals to preserve the evidence until all examinations are complete. A competent person who understands the specific implications of the particular model should access the

organiser. As recommended in the explanation of the principles, it is essential that a witness who is competent to give evidence in a court of law makes this access.

Due to the wide variety of different organiser models, no attempt has been made here to outline the procedures that should be adopted by persons in accessing organisers/PDAs. The procedure will vary greatly from model to model, particularly in respect of the kind of operating system used and in obtaining access to password-protected areas.

It is of paramount importance that anyone handling electronic organisers/PDAs prior to their examination, treat them in such a manner that will give the best opportunity for any recovered data to be admissible in evidence in any later proceedings.

4.3.4 Other storage media

It should be borne in mind that a number of electronic devices encountered at searches might contain evidence relevant to your criminal investigation. These include:

- Pagers
- Land line telephones
- Answering machines
- Facsimile machines
- Dictating machines
- Digital cameras
- Telephone e-mailers
- HD recorders

If any of these items are to be seized and disconnected from a power supply, their memory may be erased. Seek expert advice before taking any action.

4.4 Transportation

4.4.1 Main computer unit

Handle with care. If placing in a car, place upright where it will not receive serious physical shocks. Keep away from magnetic sources (loudspeakers, heated seats & windows and two-way radios).

4.4.2 Monitors

These are best transported screen down on the back seat of a car and belted in.

4.4.3 Hard disks

As for the main unit, protect from magnetic fields. Place in anti-static bags or in tough paper bags or wrap in paper and place in aerated plastic bags.

4.4.4 Floppy Disks, Jaz & Zip cartridges, Memory Sticks and PCMCIA cards

As for the main unit, protect from magnetic fields. Do not fold or bend. Do not place labels directly onto floppy disks.

4.4.5 Personal Digital Organisers, Electronic Organisers and Palmtop computers

Place in plastic bag with its power pack or recharge unit where they have been identified. Protect from magnetic fields.

4.4.6 Keyboards, leads, mouse and modems

Place in plastic bag. Do not place under heavy objects.

4.4.7 Other Considerations

Transport equipment in conditions of normal humidity and temperature. Avoid conditions of excessive heat, cold, dampness or humidity.

4.5 Storage after seizure

The computer equipment should be stored at normal room temperature, without being subject to any extremes of humidity and free from magnetic influence such as radio receivers. Some computers are capable of storing internal data by use of batteries. If the battery is allowed to become flat, internal data will be lost. This is an important consideration if storing a computer for long periods before forensic examination. Dust, smoke, sand, water and oil are harmful to computers.

4.6 The Internet

The Internet is a medium through which material can be stored, relayed or shared. Despite its size and complexity, it is nothing more than a large computer network. Ultimately, any information on the Internet physically resides on one or more computer systems and, therefore, it could be retrieved through a forensic examination of those physical devices. However, some of this information may be volatile, e.g. instant messaging content; or it could be altered or deleted prior to the location and examination of those devices, e.g. website content. In such cases, it may be necessary to capture evidence directly from the Internet, possibly during 'live' interaction with a suspect or by capturing live website content.

E-mail

E-mail is increasingly seen as the communications medium of choice, amongst a technically aware population. E-mail can be forensically retrieved from physical machines, although in certain circumstances it may be that only a small number of e-mails require retrieval and examination. Investigators may wish to obtain these from a computer system, without having to address possible delays in obtaining a forensic examination or causing significant inconvenience to the person. In such circumstances, printed copies of the e-mails themselves, including header information, would be sufficient to evidence the sending / receipt and content of the e-mail. Header information is not normally visible to the reader of the e-mail, but it can be viewed through the user's e-mail client program. The header contains detailed information about the sender, receiver, content and date of the message.

Investigators should consult staff within their Information Technology Section if they are under any doubt as to how to retrieve or interpret header information. Clearly any such evidential retrievals need to be exhibited in the conventional manner i.e. signed, dated and a continuity chain established.

Websites / Forum Postings / Blogs

Evidence relating to an offence committed in Queensland may reside on a website, a forum posting or a web blog. Capturing this evidence may pose some major challenges, as the target machine(s) may be cited outside of the Queensland jurisdiction or evidence itself could be easily changed or deleted. In such cases, retrieval of the available evidence has a time critical element and investigators may resort to time and dated screen captures of the relevant material or 'ripping' the entire content of particular Internet sites.

When viewing material on the Internet, with a view to evidential preservation, investigators should take care to use anonymous systems. Advice on the purchase and use of such systems should be obtained from a forensic computer expert. Failure to utilise appropriate systems could lead to the compromise of current or future operations. Investigators should consult a forensic computer expert if they wish to 'rip' and preserve website content.

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5. RESPONSIBILITIES

Person	Responsibility	Documents
Director - Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for Computer-based electronic evidence
State Manager Investigations	Shall ensure that all investigators are trained in the procedure.	
Team Leader Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Senior Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Director Enforcement Services
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RTI DL RELEASE - EHP

Procedural guide

Enforcement Services Understanding legal entities

This document is to assist investigators with their understanding of the different types of legal entities in order to assist with the investigation process and gather evidence regarding the persons who may have committed an offence.

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

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1.3 Approval

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Name	Title
Kelli Ready	A/Director, Enforcement Services

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3. INTRODUCTION

3.1 Purpose

The purpose of this procedure is to assist with the understanding of the individuals and businesses that EHP regulates and ensuring that the licences/permits and statutory notices are issued to the correct legal entity to ensure their enforceable.

3.2 Scope

This procedure is relevant to the work of the Investigators attached to Enforcement Services Branch of EHP

3.3 Prerequisites

In order for the EHP investigators to exercise powers that are referred to in this procedure investigators are required to be delegated as an "Authorised Officer" by the relevant statutory instrument.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Definitions

A Person - Section 32D of the *Acts Interpretations Act 1954* provides that references to "a person" generally include an individual and a corporation.

3.6 References

- Procedural Guide – Evidence on Companies
- Australian Government Investigation Guidelines (2003)
- Tips and Traps For Regulators (2009)
- *Acts Interpretation Act 1954 (Qld)*
- *Environmental Protection Act 1994 (Qld)*
- *Corporations Act 2001 (Comm)*

4 **GUIDANCE NOTES**

4.1 Legal Entities

- A legal entity is an entity on which a legal system confers rights and imposes duties.
- A legal entity includes a natural person (“an individual”), and artificial bodies such as a company (also commonly referred to as a “corporation”), a body corporate and an incorporated association. Incorporation of a company, body corporate or association has the effect of creating a legal “person”.
- For other entities created by legislation (statutory bodies), you will need to refer to the specific legislation to understand its status.

4.2 Not Legal Entities

The following are not regarded as legal entities:

- A business
- A partnership
- A joint venture
- A division of a corporation
- A management committee that is not a body corporate
- A community group that is not an incorporated association
- An unincorporated association
- Trusts that are not bodies corporate
- Any unincorporated body

4.3 Understanding Business Structures and Terms

Many of the clients EHP regulates are commercial. They carry out activities and/or otherwise conduct business for fee or profit.

However **a business is not a legal entity**. It is the person or incorporated body that carries on the business venture that is a legal entity, and to which notices can be issued.

The information in this section is designed to help you understand the most common business structures and the terms used to describe them. In some instances it refers to provisions in the *Environmental Protection Act 1994* (EP Act) as the legislation is commonly applied to commercial clients carrying on environmentally relevant activities. The principles apply equally to all of the other legislation administered by EHP.

As a preliminary point, in most (not all) instances, EHP deals with **individuals** and **companies**.

This can be a complicated area of the law. If you are in doubt, you should seek further advice from the Litigation Unit.



4.3.1 Sole Trader

When dealing with a sole trader, **you are dealing with an individual.**

This is one of the simplest business structures. It is where an individual (the sole trader) owns and controls the business as an independent individual. There is no requirement for a sole trader to register a business name, although they may choose to do so.

Licences, permits and notices **must** be issued in the name of the person. It is optional to also include the business name or trading name.

Example 1

John Smith operates a drum reconditioning business at 123 Main Road, Brisbane, Qld, 4123. The business is known as "Smith's Drum Exchange".

Correct Name

Mr John Smith

Or

Mr John Smith trading as Smith's Drum Exchange

Or

Mr John Smith T/as Smith's Drum Exchange

Wrong Name

Smith's Drum Exchange – do not use business name only

4.3.2 Partnership

A partnership is not a legal entity. A partnership is two or more people carrying on a business in common with a view to profit. This partnership can be (but is not always) established by a partnership deed or partnership agreement. EHP deals with the legal entities (they can be individuals and/or companies) that make up the partnership.

Example 2

John Smith and Paul Thomson operate a drum reconditioning facility at 123 Main Road, Brisbane, Qld, 4123. The facility is known as "Smith's Drum Exchange".

Correct Name

Mr John Smith and Mr Paul Thomson

Or

Mr John Smith and Mr Paul Thomson trading as Smith's Drum Exchange

Or

Messrs John Smith and Paul Thomson (in partnership) T/as Smith's Drum Exchange

Wrong Name

Smith's Drum Exchange – do not use business name only

Example 3

John Smith and Thomson's Drums Pty Ltd operate a drum reconditioning facility at 123 Main Road, Brisbane, Qld, 4123. The facility is known as "Smiththom's Drum Exchange".

Correct Name



Mr John Smith and Thomson's Drums Pty Ltd T/as Smiththom's Drum Exchange

Or

Individual names as outlined in example 2 is also be acceptable

Wrong Name

Smiththom's Drum Exchange – do not use business name

4.3.3 Joint Venture

JVs are not legal entities. A joint venture (JV) is an association of persons for particular trading or other financial endeavours with a view to mutual profit. Commonly they can be used to undertake a commercial activity such as a development project. Rights are conferred on, and duties/liabilities flow to the joint venturers. DERM deals with the legal entities that form the joint venturers, in other words those that make up the JV (they can be individuals and/ or companies).

Example 4

Qld Big Road Builders Pty Ltd and Qld Tunnelling Ltd successfully win a tender to build a tunnel from the Gold Coast to the Sunshine Coast. The project is known as "The Brisbane Bypass Tunnel". The two companies trade as "The Brisbane Bypass Alliance".

Correct Name and Address

Qld Big Road Builders Pty Ltd and Qld Tunnelling Ltd

Or

Qld Big Road Builders Pty Ltd and Qld Tunnelling Ltd Joint Venture

Or

Qld Big Road Builders Pty Ltd and Qld Tunnelling Ltd Joint Venture t/as The Brisbane Bypass Alliance

Wrong Name

The Brisbane Bypass Alliance – do not use joint venture name only

4.3.4 Trusts

Trusts are not legal entities. A trust is an arrangement and relationship where a person holds property for the benefit of another. A trust can impose an obligation upon a person (the "trustee") to deal with property for the benefit of another person (the "beneficiary"). A trustee may be a natural person or a body corporate. When dealing with trusts, EHP deals with the trustee, and in particular the person or company that is the trustee.

4.3.5 Co-operative

A co-operative is given legal standing and effect in Australia through state government legislation, being the Cooperatives Act 1997 and regulations. It is a business enterprise organised, owned and controlled by the persons who use its services. Some sugar mills are structured as co-operatives.

Example 5

Correct Name (as listed on ASIC and is incorporated)



Mackay Sugar Co-operative Association Ltd

4.3.6 Companies

Companies and corporations are a creation of law, and are separate legal entities. As stated above under the *Acts Interpretation Act 1954* a company is a legal 'person'.

A corporate body that is registered under the *Corporations Act 2001* may be a licence holder. Corporate bodies registered under the *Corporations Act 2001* are issued an Australian Company Number (A.C.N.) and are required to provide this. They are registered with Australian Securities and Investment Commission (ASIC). The A.C.N. will form part of the corporate body's Australian Business Name (A.B.N.).

A public company has "Limited" (Ltd) after its name. A private company has "Propriety Limited" (Pty Ltd) after its name. Private companies have a minimum of 1 Director. In a public company, the board runs the day to day business in accordance with its constitution.

Directors have duties, and the owners are the shareholders or "members", who influence the company through voting rights. Under the *Environmental Protection Act 1994* there are provisions that extend executive officer liability to those people who influence the company and/ or are in positions of control. This extends beyond the directors.

It is important to ensure that the correct and full title of companies is used on any paperwork, as there can sometimes be a number of companies with similar names. To help avoid confusion, the company's A.C.N. should be included after its name.

For further information see Procedural Guide for Obtaining Evidence from Companies.

4.3.7 Incorporated Association

An association (incorporate or not) is any group of persons who have agreed to join together in pursuit of one or more common objects or purposes.

Incorporation of an association means that it becomes a legal entity in its own right (similar in effect to incorporation of a company), which is separate from the individual members. Put another way, the association is considered at law to have a distinct identity that continues regardless of changes to the membership. This type of association has rules and is a separate legal entity. Any notice would be issued to the association itself.

4.3.8 Unincorporated Association

DERM does not often deal with unincorporated associations. An **unincorporated association is not separate from its members** and it would be rare for EHP to deal with the individuals that make up this association (e.g. sporting club). Any notice would need to be sent to the individuals that together form the association.

4.3.9 Body Corporate

The major difference between a body corporate and an unincorporated body is that **a body corporate is a legal identity** separate from the people who are members of the body corporate.

A body that is not a corporate body does not have a separate legal identity to its members and therefore its members must carry any liability incurred by the association.

4.3.10 Business Names

A business name is a name under which a legal entity conducts its business. Business names are sometimes called “trading names”. It is important to remember that a **business is not a separate legal entity**. A licence or notice should be issued to the registered owner of the name (often called “registered proprietor”) if it is registered. Not all business names are registered. The registered owner is the individual or corporate body that can be held responsible for activities carried out under that business name.

For example -

XYZ Pty Ltd (a corporation)

XYZ Pty Ltd trading as ABC Paints (a corporation which operates under trading name)

John Smith trading as ABC Paints (an individual who operates under a trading name)

In this example, a licence or notice should not be issued to ABC Paints as it is only the trading name used by a legal entity (individual or corporation) and not a legal entity on its own.

4.4 Statutory Notice Requirements

When issuing a statutory notice pursuant to legislation, it is critical that the requirements set out in the legislation are understood in order to identify who the notice can be issued to, and also to ensure that all procedural requirements have been followed. Sometimes there are a number of entities to whom a notice could potentially be addressed.

If a licence, permit or statutory notice is not issued to the correct legal entity (or entities), then it is not enforceable and any information gleaned due to the notice maybe not be admissible either. This means that DERM may not be able to take legal action in the event of non-compliance at a later stage.

4.5 Other Matters

An applicant at the time of an application for an Environmental Authority (EA), Development Approval (DA) or Registration Certificate is the first source of information for details on who to issue a notice to, but it is important to be aware of the terms above and understand who it is that should be named on the document.

However, it is also important to conduct the proper search to confirm that the entity who applied for a licence is in fact the same that is operating on the land. Sometimes there are changes in ownership and EHP is not always notified. Or it may be that the holder of a DA is different to the person operating on the land. When in doubt, it is best to carry out a search on ASIC (company names and details) or CITEC (title searches for ownership of property) - see below under “searching”. Another important consideration is time. When issuing a notice be sure to understand the time period for which you wish to regulate and who was in charge at that time of the alleged non-compliance. This may alter who is to be served and issued with the notice.

In understanding **who** EHP regulates, it is important to assess each situation on its own merits and be aware of all potential parties involved. Do not assume they will be the same.

4.6 Multiple Parties

Difficulties can also arise where there are multiple parties who may be responsible for a particular non-compliance. An example would be where you have a main company as well as a contractor conducting an activity. Another common example is where one family owned the land, and another family owned the company (with the same office holders and members)

which carries on the business activity on the land. In this instance it is necessary to make enquiries to establish where legal / environmental responsibility lies. Where there are **two or more entities**, it is usually necessary to issue multiple notices. For example, where two parties were equally responsible for a particular non-compliance, the same notice may be issued to both (but addressed to the separate entities). If there are different levels of responsibility, the requirements of the notices may differ to reflect this. You still may wish to send copies to the respective parties.

In some circumstances a company may be in **liquidation**. When this occurs an administrator is appointed to manage the affairs of the company. Therefore should a notice need to be issued, you must serve the company as well as the administrator. Details should be available from a CITEC search or for further advice send a request to the Litigation Unit within EHP (details on ROBIN)

5 PROCEDURE

5.1 Search Procedure – Land & Title Search

In order to establish the correct entity it is important to conduct a thorough search of the named entities pertaining to the situation, a land title search may be useful in a range of situation, in order to understand who owns the land on which the licensed or unlicensed activities are taking place.

5.2 Company Search

A **company search** will provide information on the director/s, the registered office (for service of documents), the shareholder/members and details of any external administration.

For company searches, use ASIC – it is a free service but is only limited and does not always provide all the detail you require.

<http://www.search.asic.gov.au>

Using CITEC

For other searches, such as business names, company and land title searches, as well as motor vehicle registration searches – use CITEC. There is a fee for this searches and most divisions will have their own log in and password.

<http://www.confirm.citec.com.au/>

The starting point will depend upon the situation and what you need to know. The name that you may recognise is the business name or trading name, through doing a business name search; this will confirm the trading name and who is carrying out the business. If the search indicates that a business is carried on by a company, then a company search is often the next logical step.

For further information regarding company searches refer to Procedural Guide – Information and Intelligence.

5.3 Addressing Statutory Notices

See examples provided above

For an individual, address the notice to their full name.

E.g John Smith

For a corporation, address notice with the full organisation name and the ACN

E.g Bolten Industries Pty Ltd (ACN 555 662 481)

5.4 Serving Statutory Notices

Under the *Acts Interpretation Act 1954* –

- For an individual at their last known place of business or residence (usually place of business if it is a DERM matter which we regulate)
- For a corporation, serve the notice at the registered office (as listed on CITEC or ASIC search). It may also be necessary to serve a copy at the principal place of business, especially if the main office is in another State. It is also important to be aware of other parties involved, such as lawyers or consultants and depending on the circumstances serving a copy with these parties may be useful and/or practically necessary.

Service of notices – Registered post to track and confirm receipt (signed receipt option). For letters, normal post is sufficient.

5.5 Issuing Notices to Government Bodies

- Statutory notices can be issued to both state and local government bodies. Under Section 22 of the *Environmental Protection Act 1994* it is outlined that the Act binds all persons, which includes the State, other States and the Commonwealth.
- If a situation arises where enforcement action is to be taken against these bodies, it is important to be aware of the parties involved and brief up where appropriate. Refer to the Procedural Guide – Briefing up for further details. This also extends to when there has been any non-compliance of previous enforcement action that involves these bodies (such as failure to undertake or complete works in accordance with a notice). The Ombudsman's Good Decision Making guide and the Department's Enforcement Guidelines are both important documents that must be considered in this process.
- In issuing a notice to a State Government Department or Agency, it should be addressed to the Chief Executive of the Department. State Departments are government entities and therefore it is advisable to address to the individual in charge of the governing body. For full names and details of the Acts each Department administers, refer to the Administrative Arrangements Order (No 1) 2009 (accessed via the Department of the Premier and Cabinet Website - <http://www.premiers.qld.gov.au/publications/admin-arrange-order.aspx>).
- Where a corporation is a government owned body the notice is to be issued to the relevant corporation. An ASIC search will assist with obtaining the correct details of the Government Owned Corporation (GOC). While these types of corporations are owned by Government bodies, such as Ergon for example, they are incorporated and therefore legal entities in their own right. For further information refer to *Government Owned Corporations Act 1993* and *Corporations (Queensland) Act 1990*.

5.6 Issuing Notices to Local Government

- Under the *Local Government Act 1993*, as per section 35 and 36 any proceedings brought against a local government are to be brought in the name of the relevant council e.g Brisbane City Council.

- The name of a local government is the 'City of', 'Town of ' or 'Shire of' followed by the name of the local government area; or the name of the local government area followed by 'City', 'Town' or 'Shire' (s.34).
- Where there are local government business units, such as Gold Coast Water within Gold Coast City Council, the correct name to be used is the name of the Council (Gold Coast City Council, in the above example).

6 RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Procedure for Understanding Legal Entities
State Manager – Enforcement Services	Shall ensure that all investigators are trained in the procedure.	Training Package
Team Leader Investigations Enforcement Services	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	Audit Documents
Investigators	Shall follow the procedure	

7 APPROVED BY

Signature

Kelli READY
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Date

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Procedural guide

Enforcement Services Litigation “Electronic Drop Box”

The purpose of this procedural guide is to instruct Investigators in the processes EHP has put in place to ensure that briefs of evidence are delivered in an appropriate and timely manner to Litigation Section.

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

Date of this Version	Date of Next Revision
14 September 2012	September 2013

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

This document requires the following approval.

Name	Title
Kelli Ready	A/Director, Enforcement Services

1.4 Distribution

This document has been distributed to the following sections.

Section	Date
Investigation Teams Cairns, Townsville, Caboolture, Brisbane and Toowoomba. Director of Litigation	

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3. INTRODUCTION

3.1 Purpose

The purpose of this document is to provide instruction on the processes EHP has put in place to ensure that Briefs of Evidence (BOE) are delivered in an appropriate and timely manner to Litigation Section. This is to be carried out via the "electronic litigation drop box".

3.2 Scope

This procedure will apply to all Enforcement Services Investigators operating under EHP policies and procedures.

3.3 Prerequisites

All investigators are to complete briefs of evidence according to Key Performance Indicator (KPI) milestones.

3.4 Training

All Investigators will be instructed in the procedures and further training will be provided if required.

3.5 Essential points

- A BOE should be completed by investigators in accordance with KPI milestones.
- All brief documents are to be scanned and stored in the designated folder for the investigation on the investigations file server.
- A hard copy of the BOE will be printed and the State Manager Investigations, Team leader or a delegate will then conduct a review of the BOE.
- The BOE will then be forwarded to the Director of Enforcement Services for endorsement and on forwarded to the Director of Litigation and the electronic BOE files will be copied into the Litigation electronic drop box.
- BOE's with critical deadlines will be placed into the Litigation electronic drop box and the Director of Litigation will be advised.

4. PROCEDURE

4.1 Electronic Litigation Drop Box facility

4.1.1 Role of Investigating Officer

It is the Investigating Officer's responsibility to:

- Complete BOE's in accordance with KPI milestones and statutory timeframes.
- Once complete, the investigator is to notify the State Manager and Team Leader, Investigations, that the BOE is completed.
- The investigator will provide the State Manager and Team Leader the electronic directory location of the BOE.
- All brief documents are to be scanned and stored in the designated folder for the investigation on the investigations file server.

4.1.2 Role of State Manager and Team Leader Investigations

It is the State Manager and Team Leader's responsibility to:

- Conduct a review of the BOE upon completion by the investigator.
- Complete the brief checking section of the cover sheet and a memorandum for consideration by the Director of Enforcement Services.
- Upon approval of the BOE, the State Manager, Team Leader or delegate will contact a nominated Administrative Officer(s) to print-out and compile the relevant hard copy BOE.
- The BOE will be provided to the Director of Enforcement Services for endorsement and on forwarding to the Director of Litigation.
- At this time the electronic BOE will be copied into the electronic litigation drop box.
- In instances where deadlines are critical and/or operational circumstances dictate, arrangements can be made between Director of Litigation and State Manager or Team Leader Investigations for BOE's to be placed in the litigation drop box as evidence is obtained.

4.1.3 Role of Director, Enforcement Services

It is the Director's responsibility to:

- Consider the contents of the BOE memorandum completed by the State Manager or Team Leader Investigations.
- Endorse or seek further clarification on the recommendation of the State Manager or Team Leader Investigations regarding the BOE and on forward to the Director of Litigation.

4.1.4 Role of Director, Litigation

It is the Director's responsibility to:

- Acknowledge receipt of an electronic BOE in the litigation drop box via email to the Director, State Manager, or Team Leader Investigations.
- Allocate a case lawyer and provide them access to the electronic BOE in a timely manner.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Upon completion of the BOE review, the Director will consider the any recommendations and on forward to the Director of Litigation	Hard copy BOE
State Manager and Team Leader Investigations	Upon receipt of the BOE, the State Manager, Team leader or a delegate will conduct a review of the BOE. Arrange for a nominated Administrative Officer(s) to print-out and compile the relevant hard copy BOE. This will be forwarded to the Director of Enforcement Services. In instances where deadlines are relatively pressing and operational circumstances dictate, arrangements can be made between Director of Litigation and State Manager or Team Leader investigations for BOE's to be placed in the litigation drop box prior to a review being complete.	Electronic BOE
Investigators	A BOE should be completed by investigators in accordance with KPI milestones. Once complete, the investigator is to notify the State Manager and Team Leader, Investigations, that the BOE is completed. The investigator will provide the State Manager and Team Leader the electronic directory location of the BOE. All brief documents are to be scanned and stored in the designated folder for the investigation on the investigations file server.	Electronic BOE
Director - Litigation	Allocate a case lawyer, supply BOE to them and access to the electronic BOE.	Electronic BOE Hard copy of BOE

6. APPROVED BY

Kelli Ready

Director Enforcement Services
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21/9/12

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Procedural guide

Enforcement Services

Responding to oil discharges impacting Queensland Coastal Waters

This document is to assist Investigators when investigating oil spills in Coastal Waters

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

This document requires the following approval.

Name	Title
Kelli Ready	Director of Enforcement Services

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3. INTRODUCTION

3.1 Purpose

This document outlines a procedure for investigators to consider when investigating oil discharges in Queensland Coastal Waters.

3.2 Scope

This procedure is relevant to all Enforcement Service Investigators who investigate discharges into Queensland Coastal Waters. It is also relevant to Environmental Services Staff, Incident Response, National Parks and Wildlife Services and Scientific officers. It should be read in conjunction with the MOU between EHP and Department of Transport and Main Roads (MSQ). Investigators should have a thorough understanding of this procedural guide.

3.3 Prerequisites

Investigators must be authorised persons under the relevant act when exercising coercive or any other powers granted under that act. This is particularly relevant when conducting interviews to determine the source, cause and environmental impact of a discharge.

3.4 Training

All employees will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Essential Points

- Oil spill investigations require a joint response across a number of Departments to minimise the environmental impact, investigate and potentially prosecute offenders.
- Communication between Departments from the outset is imperative to ensure appropriate samples are taken, recorded and stored appropriately for potential prosecution.
- Understand the potential offence under investigation and have a thorough knowledge of your powers to enter / board / search / sample and seizure.
- Make contact with MSQ investigators at earliest opportunity to share information and participate in a joint record of interview if possible.
- There may be issues gaining access to certain areas without escort from appropriately authorised personnel.
- Management of the exhibits / samples obtained is crucial to any prosecution that results from an oil discharge investigation.
- Analysis of samples is a costly exercise; approval for analysis is required from Director Enforcement Services before analysis is completed. It is important to consider that MSQ samples may have been analysed and could be utilised, preventing duplication of analysis.

3.6 Definitions

Investigator/Investigating Officer - This term as used in this procedure shall refer to the EHP authorised officer in charge of, or delegated a task during an investigation of an indictable or simple offence or a breach of duty.

Suspect – this is a person / Company who the investigator believes may have committed an offence against the legislation governed by EHP.

Witness - A witness is a person who has some knowledge of a matter being investigated. A witness can be anyone, from a member of the public to another government employee who is able to provide admissible evidence in relation to a matter.

Queensland Coastal Waters has the definition given by TOMPA; '**coastal waters** means the coastal waters of the State, and includes other waters within the limits of the State that are subject to the ebb and flow of the tide. Note— Coastal waters of the State is defined in the Acts Interpretation Act 1954, section 36.'

Ship Sourced Discharge includes a 'transfer operation' as defined by section 59 of TOMPA, that being any operation involved in preparing for, or starting, carrying on or finishing, a transfer of a pollutant between a ship and another ship or place.

3.7 References

- Procedure Guide – Briefing up
- Procedure Guide – Obtaining evidence
- Procedure Guide – Dealing with experts
- Procedure Guide – WHS
- Procedure Guide – Brief of Evidence

4. PROCEDURE

4.1 Procedure introduction

Where a discharge occurs in Queensland Coastal Waters, the first priority should be to minimise the Environmental Impact of the event. MSQ are primarily first response and isolate and contain incidents. EHP incident response will usually be required to attend and assist with technical and environmental management of the incident. As per the MOU, EHP is the lead agency with respect to land based discharges to water and MSQ are the lead agency for discharges from ships.

In both instances, it is important for investigators to make prompt contact with MSQ investigators to establish the roles of each organisation and establish priorities. Investigators will usually receive a brief from the State Manager prior to making contact with MSQ investigators.

The local Environmental Services section of EHP in the area where the discharge occurs is primarily responsible for attending the scene and gathering the appropriate samples for analysis. At the commencement of the investigation, if not already advised, the investigator should contact the relevant Environmental Services section to ascertain what if any involvement they have had with the incident and where appropriate advise what support is required as part of the investigation.

If possible, and dependant upon location and timeframe between incident occurring and being allocated to an investigator, the Investigator may wish to attend the scene and make notes, take photos and observations. This may be helpful in understanding the environment and the extent of the surrounds affected by the discharge.

If a vessel is involved in the discharge MSQ will be responsible for taking appropriate samples from the ship. EHP will have access to sample results obtained by MSQ.

4.2 Management of Investigation

Incidents of these types will generally attract significant media attention. There will be a number of Government organisations involved in the co-ordination of the clean up and subsequent identification of the responsible party. The Investigator needs to be across all areas to ensure that any evidence gathered during the management of the incident is able to be utilised for potential court action at a later date.

4.2.1 Allocation of Investigation

The investigator will initially be contacted and assigned to investigate the matter with a view of potentially prosecuting any offenders for any potential breaches of legislation. Generally speaking these types of incidents relate to offences of causing Environmental harm under the *Environmental Protection Act 1994*. Each incident should be investigated on its merits and consideration given to the most appropriate offences. At the first briefing obtain as much information as possible regarding the incident and determine what if any other resources are required to assist with the investigation. Contact details should be obtained for relevant people involved with managing the incident.

4.2.2 Communication

Once the briefing has been completed, the Investigator should make contact with the relevant people to introduce themselves and clarify what assistance if any is required. Provide contact details and request updates on any developments. If possible depending on location of the incident and the allocated investigator, make arrangements to attend the scene.

[Re]

4.2.3 Incident Response Unit EHP

Incident response unit is generally the first on scene from EHP perspective. Contact with this unit will assist in determining the extent of the discharge and potential causes if known. Investigators should determine if Incident Response has taken any samples and whether or not they are liaising with the Environmental Services section where the spill occurred. Incident response will generally provide a written briefing when available.

4.2.4 Environmental Services

Contact should be made with the Local Environmental Services to establish who has been assigned to assist with management of the discharge. Determination needs to be made with them as to what if any samples are taken. Whilst Environmental Services officers are trained in water sampling, it may be prudent to liaise with DSITIA staff regarding the type of contaminant discharged and what samples they require to conduct their analysis and report. Encourage direct contact with sample takers and scientists to ensure that the correct methods are obtained to secure and store appropriate samples. This is imperative to a successful prosecution.

4.2.5 National Parks / Wildlife Officers

In these types of incidents wildlife may be exposed to the contaminant. National Parks and Wildlife Rangers will actively search for affected wildlife in the area. Contact should be made to determine if any wildlife have been affected. Wildlife affected will usually be taken to a management area where they will be assessed and cleaned of the contaminant. It is imperative that samples are collected from wildlife to compare against the environment and the potential responsible party. If possible, determine if there is a contact for an exhibit officer at the scene who is responsible for the collection and safe storage of the exhibit. Once again, it would be considered appropriate to discuss the obtaining and storage of these exhibits with scientists from DSITIA to ensure that they are being obtained and stored appropriately for any potential court action in the future. If possible, attend the location of the wildlife recovery centre and ensure that all samples are appropriately labelled and stored for continuity.

4.2.6 DSITIA

Regularly seek advice in writing from scientists at DSITIA. At the outset, determine if the scientists are qualified to assess the type of discharge or if external experts are required. There are issues in regard to holding times, laboratory access, storage of exhibits etc. Investigators should also consider that MSQ Investigators may have also obtained samples during their investigation. DSITIA staff should be advised and if possible the same laboratory should be considered for ease of comparison and duplication of analysis. Sampling and analysis is a costly exercise and all scientific analysis needs to be approved by the Director Enforcement Services prior to being conducted. Retention times of exhibits will determine the urgency of analysis. In some instances, where the responsible party may not be known, consideration should be given to holding samples for as long as possible without compromising the investigation. Always seek advice from the scientists in regard to the samples.

4.2.7 Notification of investigation / interviews in conjunction with MSQ

If a responsible party is identified in the process, Investigators should make contact with them or their legal representatives and inform them of the investigation. Arrangements should be made to conduct interviews with the relevant parties. Consideration may be given to requiring answers to questions under the *Environmental Protection Act 1994*. Interviews may be conducted in conjunction with MSQ Investigators depending on the origin of the spill. If from a vessel, there

Procedural guide

Responding to oil discharges impacting Queensland Coastal Waters

may be some urgency to conduct these inquiries as the vessels and crew are usually in port for a minimal time. MSQ has powers to detain vessels for a reasonable time to conduct these investigations.

4.2.8 Briefing up

Investigators should keep in regular contact with all involved. Daily briefing should be provided to Team leader Investigations and State Manager Investigations to ensure continual stream of information is provided.

4.2.9 Running log

As with all investigations, it is important to document all interactions, conversations, times and dates as a record of your management of the investigation. This information will be useful for any potential court action in the future or discussions over internal decision making.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for Interviewing Potential Defendants
State Manager - Investigations	Shall ensure that all investigators are trained in the procedure.	
Team Leader - Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Kelli Ready
A/Director Enforcement Services
Department of Environment and Heritage
Protection

Date

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Enforcement ServicesPre-site visit contact

The aim of this policy is to assist investigators carrying out inspections, visit or audits and clarify when prior notification of visits may be appropriate.

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version		Date of Next Revision	
14 January 2013		January 2014	
Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

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1.4 Distribution

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3. INTRODUCTION

3.1 Purpose

The purpose of this procedure is to provide investigators with information about when it is appropriate to notify a potential person of interest of an intended site visit, audit or inspection.

3.2 Scope

This procedure is for the instruction of Investigation officers with a view to improving the relationship between investigators and occupants and land owners of property of interest.

3.3 Prerequisites

All persons executing search warrants or conducting investigations using EHP need to be delegated an authorised person under the respective legislation.

3.4 Training

All Investigators will be trained in this procedure upon commencement of duties and further training will be provided when required.

3.5 Essential Points

- Determine the correct entry provisions for the site visit.
- Justify whether pre-visit notice should be given, bearing in mind the potential loss of evidence.
- Where pre-visit notification is given ensure that appropriate time is given to the landholder to comply, however ensuring that the length of time does not affect the timeliness of the investigation.

3.6 Definitions

Authorised officer- is a person appointed under the relevant legislation such as an authorised officer, a conservation officer or a forestry officer.

Land holder – a person who is either the occupant or land owner of a property of interest.

3.7 References

Lists the resources that have been used/referenced in the construction of the document or which need to also be applied when performing the procedure e.g. government standards

- Australian Government Investigation Guidelines (2003)
- Tips and Traps For Regulators (2009)
- NRW Compliance Work Practice - Contact with Landholders before Inspection of Properties of Interest 2006-006
- Investigation Manual - Pre-visit Contacts and Disclosures (2010)

4. OVERVIEW

EHP administers a range of legislation relating to the protection of Queensland's environment and managing Queensland's resources. These pieces of legislation give authorised officers powers and responsibilities to assist them to ensure compliance. Each piece of legislation contains its own specific suite of powers for authorised officers, however there are powers such as the power of entry and the power to require information that are common to most pieces of legislation.

As part of their duties, investigators often need to visit the land, homes or business premises, or speak to their clients. In some cases these clients may also be potential suspects.

In most cases it is good practice and common courtesy to contact a person prior to visiting their premises and there are many advantages including:

- Ensuring the safety of authorised officers;
- Ensuring productive site visits by having the necessary people, equipment etc available at the time of the visit; and
- Allowing the person to better manage their time and involvement in the process.

However, there are some occasions where it may be best not to forewarn a person of an impending visit or site inspection. If informing a person of a pending visit is likely to put the integrity of evidence or other information at risk, then an authorised officer should not contact the person prior to the visit and should ensure confidentiality of the operation.

5. PROCEDURE

5.1 No Risk to Potential Evidence

Where there is no risk to potential evidence if a land holder is forewarned of a site visit, audit or inspection, authorised officers must consider whether to notify the land holder of their proposed visit. In making the decision to notify the client of the proposed visit, the authorised officer should consider natural justice, fairness and public perception.

The investigator must consider that sometimes the quickest and easiest method of obtaining entry to a property of interest is the ask permission of the land holder and getting their consent. Where the investigator decides to request consent of entry it should be a minimum of 2 days prior to the visit. It is recommended that the day prior to the visit the investigator again confirms the arrangements that they have made with the land holder.

All contact with the land holder the investigator should keep a record in both their notebook and on the Investigation Running Log. All written correspondence should be attached to the file.

5.2 Risk to Potential Evidence

Where there is a risk to potential evidence if a land holder is forewarned of a site visit, audit or inspection, authorised officers should not notify the land owner of the proposed visit and should maintain confidentiality in relation to the operation. In these situations the investigator should consider those options detailed in the legislation for the offence that they are investigating. Some legislation sets out when an authorised officer does not need the occupant's permission to enter the property. Most legislation includes the option of taking out a warrant in order to gain access to the property. Refer the Procedural Guide - Obtaining and executing warrant for more information.

6. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	
State Manager - Investigations	Shall ensure that all investigators are trained in the procedure.	
Team Leader – Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

7. APPROVED BY

Signature

Director Compliance and Investigations
Department of Environment and Resource
Management

Date

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Procedural guide

Enforcement Services Deed of Confidentiality

The purpose of this document is to provide instruction to ensure documents passed to a service provider is used for that purpose it is provided and the confidential information is not disclosed to any third party.

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

Date of this Version	Date of Next Revision

Rev No.	Rev Date	Summary of Changes	Author
	15 January 2013		C Sargent

1.3 Approval

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Name	Title
Kelli Ready	A/Director, Enforcement Services

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3. INTRODUCTION

3.1 Purpose

The purpose of this standard operating procedure is to provide instruction on the “Deed of Confidentiality” requirements by the Department of Environment and Heritage Protection (EHP). The “Deed of Confidentiality” is an instrument used by EHP to ensure documents passed to a service provider for a purpose is in fact used for that purpose and the confidential information is not disclosed to any third party.

3.2 Scope

The procedure is intended to relate to the EHP Investigation Staff and Investigators who deal with confidential information. Examples of situations which may prompt the need for a confidentiality agreement include transcriptions of Records of Interviews, translation services for investigations and such confidential information.

3.3 Prerequisites

There are no prerequisites for this procedure. This document should be read in conjunction with the **NRW Contract Guide v.7.**

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Essential Points

- Establish if a contract exists between EHP and the recipient
- Where no contract exists get approval from the Director Enforcement Services to initiate a contract between EHP and the recipient
- Obtain forms and support from Litigation as to the parameters of the contract
- Ensure that the recipient signs the contact
- Obtain the original documents for EHP's records

3.6 Definitions

Confidential Information: has the meaning given to it as found in the Clauses 1.2, 1.3 and 1.4 in the EHP *Deed of Confidentiality*.

Contract is an agreement between two or more parties. A contract obliges the parties to the contract to do those things as specified in the contract. Once a contract is made, each of the parties has a legal right to insist that the other parties do those things specified in the contract. If a party does not do those things specified in the contract or does not do them satisfactorily, the other party may call upon the Court to enforce the doing of the obligations. There is no difference between a "contract" and an "agreement" and the terms can and are used interchangeably in this guide¹

Deed is a legal name given to a special kind of written agreement which does not contain a consideration and is signed by all the parties.²

Documents: includes

- Anything on which there is writing: and
- Anything on which there are marks, figures, symbols, codes, perforations or anything else having a meaning for a person qualified to interpret them; and
- a record;³

Record: means any thing or process –

- on or by which information is recorded or stored; or
- by means of which sounds, images, writings, messages or anything else having meaning can be conveyed in any way in a visible or recoverable form;

even if the use or assistance or some electronic, electrical, mechanical, chemical or other devices or process is required to recover or convey the information or meaning.²

¹ NRW Contract Guide v.7

² Ibid

³ Queensland Criminal Code 1899

Service Provider is taken to mean an individual or organisation that provides a service to EHP for a consideration by written contract or otherwise. The term “recipient” is used in the “Deed of Confidentiality”

3.7 References

- Australian Government Investigation Guidelines (2003)
- Tips and Traps For Regulators (2009)
- **NRW Contract Guide v.7**
- EHP Deed of Confidentiality [individual & organisation]

4. PROCEDURE

4.1 Deed of Confidentiality Must Exist

- Whenever an EHP employee enters into a contract with a service provider which involves the passing of documents from the department to the service provider the EHP officer concerned must ensure that a current “*Deed of Confidentiality*” exists between the department and the service provider before handing over any documents.
- The existence of a “*Deed of Confidentiality*” must be established before any “offer” is made to the service provider. (See Part 1 of **NRW Contracts Guide**).

4.2 Where a Deed of Confidentiality Does Not Exist

- Where a service provider has not signed a “*Deed of Confidentiality*” or that document is not current then it is the EHP’s officer’s responsibility to construct and get approval from the State Manager Investigations to have a copy signed by the service provider a “*Deed of Confidentiality*” in the applicable form (individual or organisation).
- The form “*Deed of Confidentiality*” (Individual /Organisational) is to be obtained from Litigation.
- Where the service provider (“recipient”⁴) is an organisation the EHP employee must ensure that the (“recipient”) as entered on the “*Deed of Confidentiality*” is a legal entity and able to enter into a contract.
- Legal entities include
 - o Companies
 - o Incorporated Associations
 - o Statutory Corporations
 - o Partnerships and
 - o Joint Ventures
- Things that are not legal entities
 - o Business Names
 - o Committees/Associations/Community Organisations
 - o Other State Government Departments/ Local Governments
 - o Trusts

⁴ Term used in the Deed of Confidentiality

- The original signed “*Deed of Confidentiality*” must be retained by the EHP Officer concerned and approved then forwarded to the State Manager Investigations.
- A signed copy of the “*Deed of Confidentiality*” must be made available to the service provider.
- If there are any problems securing a “*Deed of Confidentiality*” with the service provider then the assistance and advice of Legal Services shall be sort before any offer or agreement is made. No “offer” will be made if a “*Deed of Confidentiality*” between the parties does not exist.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director - Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for Deed of Confidentiality
State Manager – Investigations	Shall ensure that all investigators are trained in the procedure.	Training package
Team Leader – Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	Audit
Investigators	Shall follow the procedure	Deed of Confidentiality
Litigation	Shall provide advice and update versions of the Deed of Confidentiality Review the versions of the Deed of Confidentiality prepared by the Investigator	

6. APPROVED BY

Date xx/xx/2013

Kelli Ready

A/Director Enforcement Services
Department of Environment and Heritage
Protection

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Procedural guide

Enforcement Services

Obtaining evidence from companies

This document is to assist investigators with their understanding of the different types of legal entities in order to assist with the investigation process and obtaining evidence regarding the persons who may have committed an offence.

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

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4 January 2013	4 January 2014

Rev No.	Rev Date	Summary of Changes	Author
2	04/01/13	Determining who is an executive officer	Investigations

1.3 Approval

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Name	Title
Kelli Ready	A/Director Enforcement Services

1.4 Distribution

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3. INTRODUCTION

3.1 Purpose

The purpose of this document is to provide instruction to investigators on the procedures necessary to determine who is an executive officer and who can speak for a company to obtain evidence that is necessary in order to prove that a company has committed an offence.

3.2 Scope

This procedure is relevant to the work of the Investigators attached to Enforcement Services of EHP.

3.3 Prerequisites

In order for the EHP investigators to exercise powers that are referred to in this procedure investigators are required to be delegated as an "Authorised Officer" by the relevant statutory instrument.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every two years.

3.5 Essential Points

- Identify the company and the people that directly or indirectly control the company (Executive officers).
- Initial contact with the company must be with the executive officers, company secretary and/or directors.
- If you receive correspondence from solicitors representing the company ensure you obtain written confirmation that they represent the executive officers of the company.
- Establish the chain of command and the identity of the most senior person that has both a supervisory responsibility for the events in question and authority to speak on behalf of the company. Consider that this person may be declared as an executive officer under the *Environmental Protection Act 1994* due to their role or responsibility.
- Establish the instructions given to any employees and the level of supervision.
- Remember that companies have no privilege against self-incrimination unless given by legislation.
- Be aware that with larger companies, the board of directors may be genuinely eager to assist investigations in remedying inappropriate conduct in the workplace.

3.6 Definitions

For the purpose of this SOP a company includes a body corporate, partnership, trust, unincorporated body and incorporated body. For a legal definition of a company refer to Section 9 of the *Corporations Act 2001* (Commonwealth).

3.7 References

- Australian Government Investigation Guidelines (2003)
- Tips and Traps For Regulators (2009)
- EHP Procedural Guide – Understanding Legal Entities Procedure Guide
- *Corporations Act 2001* - C'Wth

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- *Acts Interpretation Act 1954*

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4. **PROCEDURE**

4.1 **Understanding what is a company**

A basic explanation of a company is that it is an artificial entity which is granted certain legal rights, capabilities and obligations of a real person.

A business name does not constitute a separate legal entity and therefore is not capable of being sued or issued notices.

To better understand different business structures and terms refer to **Procedure Guide – Understanding Legal Entities** e.g. types of companies, partner ships or sole traders.

While companies have their own legal identity, it is through people that they make decisions and take actions. Identifying which people have made decisions or taken actions is important for establishing whether a company has committed an offence.

There are a number of groups of people who comprise a company.

Directors and executive officers are the controllers of a company and have the authority to speak on behalf of a company. Any admissions that these officers may make while being asked questions are admissions of the company itself. Directors and executive officers may also be personally liable for offences committed by a company.

Shareholders are the owners of the company, and hold one or more shares in the company. A company will not normally be liable for the acts or omissions of its shareholders.

Employees take actions on behalf of a company, and a company can be liable for things that its employees do or fail to do. Employees (except very senior employees) normally cannot speak on behalf of a company – that means that things that employees say when being asked questions about an alleged offence will not normally be admissions of the company.

Some Acts may provide a specific definition for an **executive officer** e.g. the *Environmental Protection Act 1994* Schedule 4, which defines “executive officer, of a corporation” as a chief executive or a chief executive officer or a member of the governing body of the corporation or a person who is “concerned with, or takes part in, the corporation’s management, whatever the person’s position is called and whether or not the person is a director of the corporation”.

The *Acts Interpretation Act* section 32D defines **person** to include “a reference to a corporation as well as an individual”.

4.2 **General rules on liability**

There are some general rules which can be used to identify whether someone is responsible for a criminal or other act. You must first identify the actual act or omission which is the subject of the investigation or query, in order to be able to identify who is responsible for that act or omission.

Once you have identified the act or omission, establish who did the act, or had the responsibility to take an action (in cases of offence arising from an omission to take an action). A company is liable for acts or omissions committed by its officers or employees when they were acting in the course of their employment.

Criminal liability for an offence can only rest with a legal entity on which a legal system confers rights and imposes duties. At times there is confusion about criminal liability, particularly when Companies, Trusts (of all varieties), Business Names, Associations (Incorporated and unincorporated) or Partnerships are involved.

An Act may prescribe that executive officers are liability for offences the company commits. E.g. Section 493 of the *Environmental Protection Act 1994*.

4.3 Who can speak for a company

Directors, executive officers (such as the chief executive officer or secretary) and some senior employees are able to speak on behalf of the company. A person can also be authorised to speak on behalf of the company.

Regardless of the size and nature of the company's operations, investigators need to ensure that they identify the executive officers whenever they deal with companies. In smaller companies, partnerships and sole traders this may be easy as the executive officer also manages and runs the day-to-day business.

Investigators should, in the first instance, speak with the executive officer, a partner or the sole trader when dealing with companies. During this first contact the investigator should confirm who the appropriate and authorised person is who can assist with inquiries. It may follow that a person such as a senior employee can be nominated by the executive officer to speak to EHP on behalf of the company.

Investigators must not go straight to an employee to organise interviews and gain information about the company without the appropriate authorisation from an executive officer. Note that this does not mean that employees can not be interviewed with respect to the information they know about the alleged offence.

4.4 Determining who is an executive officer

To determine if a person is an executive officer and/or has sufficient authority within the company to speak on behalf of it, an investigator should make inquiries to ascertain the following matters:

- The person should be asked to identify their role and position in the company.
- The person should be asked to identify who they report to and the nature of their responsibilities.
- The person should be asked are they concerned with, or do they take part in the management of the company.
- The person should be asked to explain what authority they have to speak on behalf of the company for the purposes of the interview.

If a person states they are authorised to speak on behalf of the company, an investigator should establish the actual or implied authority of the person to be interviewed as a company representative. Suitable forms of proof include:

- a written authority under the hand of a responsible officer of the company such as a Board Chairperson, CEO or Executive officer of the company; or
- a copy of the minutes of a company meeting where authority was given to the person to attend and make statements on behalf of the company at interview; or
- the recording of an oral statement to the effect that the person is authorised to make statements on behalf of the company. However, if this is the only form of proof provided the investigator should explore the validity of the statement.

4.5 Proving a company has committed an offence

Identify the company

You can identify which company you are investigating by:

- interviewing workers on site to identify their employer and superiors;

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- reviewing employees' pay slips and group certificates;
- determining the ownership of the land (if the offence occurred on private land);
- performing an ASIC business name search (if a business name has been identified);
- searching licences issued by the department or relevant local authority; and
- searching motor vehicle registrations.

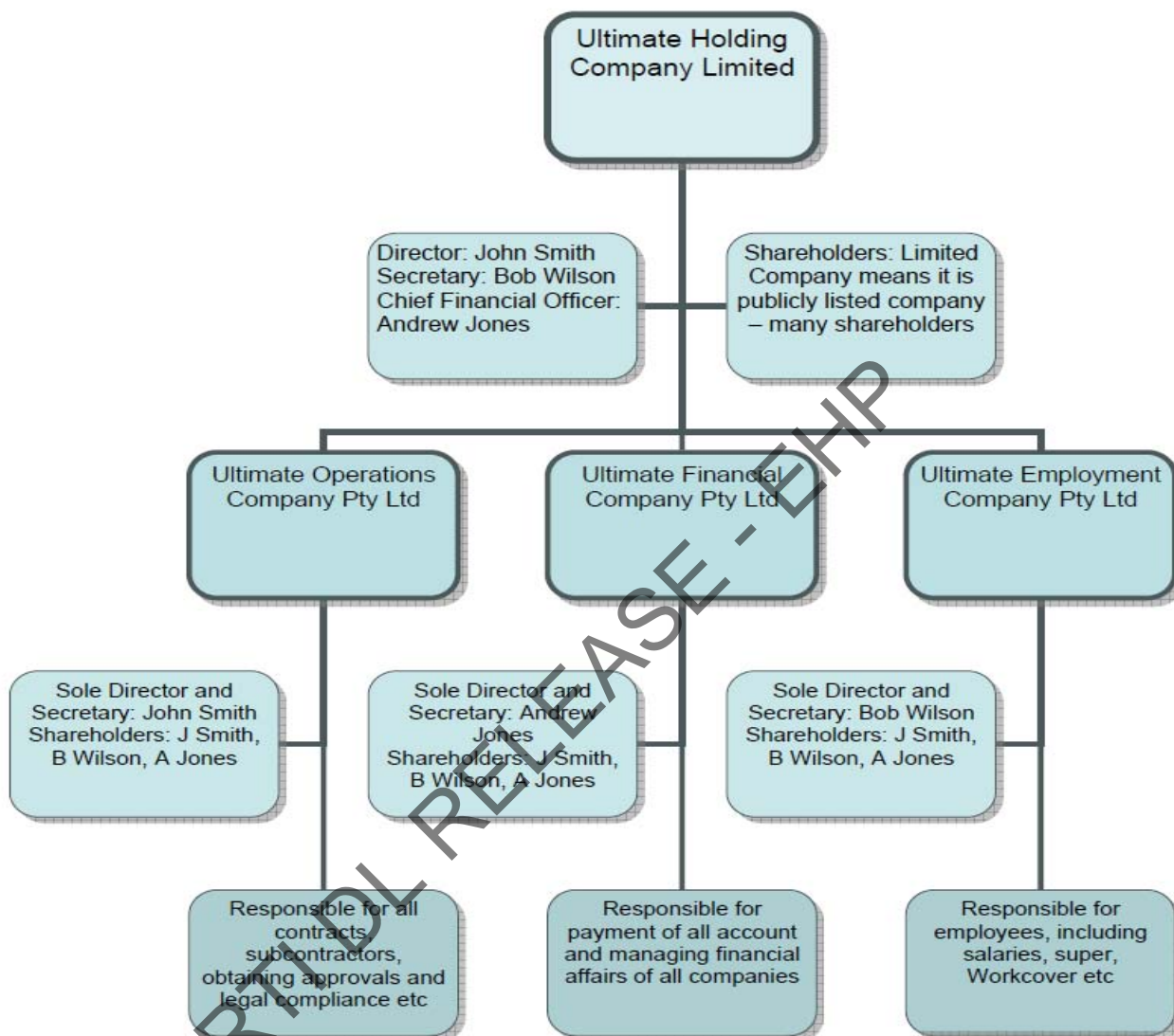
Often for tax reasons, businesses split their identity between companies. If this appears to be the case, collect as much information as you can (including doing company searches, identifying related entities and holding/subsidiary companies) and seek legal advice from the Litigation unit.

The ownership, custody or control of documents and/or things that can be seized or produced by a company needs to be carefully considered for the purposes of establishing that documents and/or things were in fact in the possession of the company in the commission of an offence eg. where a company leases a site inside a larger premises, or the lessee is still the occupier even though they don't own the site, or a company is in voluntary administration through an insolvency company may effect who owns or is in control of documents and/or things, where are they located and how EHP can access the documents and/or things.

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Where multiple companies are involved, prepare a chart to explain the structure, for example:



Performing a company search

- A company search will tell you important information about the company such as the identity of the directors, secretaries and shareholders, whether the company is a wholly owned subsidiary of another company (or is a holding company itself), the registered office of the company and other important information.
- Best practice to undertake a company search is to use several online sources such as;
 - o The ASIC database at <http://www.search.asic.gov.au/gns001.html>
 - o The ABR website <http://www.abr.com.au/site/live/index.htm>
 - o The CITEC website <http://www.confirm.com.au/citecConfirm/index.shtml>
- To obtain a **certified** copy of a Certificate of Registration of a Company (Form 204) or;
- To obtain a certified copy of a Current Company Extract (Provides details of registration, office addresses, officeholders, share structure, top 20 proprietary company members external

administrators, documents lodged & basic charges information.) or;

- To obtain a certified copy of a Historical Company Extract (Provides details of registration, office addresses, officeholders, share structure, top 20 proprietary company members external administrators, documents lodged & basic charges information.)

Send an email request to EHP Intelligence section through the generic email address intel@ehp.qld.gov.au. There is a cost connected with this search which will be charged to the investigations cost code.

Interviewing a company, employees, agents and subcontractors

Points to consider when dealing with a small company with few employees include:

- Speak to the most senior officer possible such as the Director, Secretary or Shareholders as in the ASIC search (In small business cases it is likely to be the same person who holds all of these roles).
- Establish that they are authorised to speak on behalf of the company and have a suitable form of proof of this authorisation as outlined above.
- Ask the nature of the business conducted by the company.
- Establish that the company was at the place of the offence (e.g. were they engaged to clear bush along the boundary of a national park?).
- Ask whether the company is undertaking work on behalf of another person. If so, ascertain who this is and if there is any formal agreement in place to undertake the activity.
- If the act or omission has been done by someone other than the person that you are speaking to, determine whether the person is an employee, subcontractor or agent of the company, or is another officer or director of the company.
- Determine the extent of instructions given to employees, subcontractors or agents and the level of supervision.
- If admissions have been made by employees these should be put to the representative of the company to confirm, adopt or dispute.
- If the relevant act or omission was done by an employee or agent of the company determine whether the act or omission was within the scope of that person's authority. If employees ignore directions or procedures put in place by the company, this may mean that the company is not liable for the employee's actions.

Points to consider when dealing with large companies with many employees or multiple offices include:

- Talk to the people doing the work – find out who do they report to. Try to find out what the chain of command is in the company (investigate from bottom up when on site) and what their relationship is with the company (such as subcontractor or employee).
- Determine who is the most senior person in the area who can speak to you (this can be done through on site investigations, a company search and other enquiries).
- If you are not at the main office of the company, ask whether the person you are speaking to has the authority to speak on behalf of the company in relation to the matter being investigated.



Environmental officers

Persons employed by companies to ensure that the company complies with environmental legislation can be a good source of information, and you should consider asking them questions about the incident, and similar past incidents and the systems that are in place to manage environmental risks. Depending on the persons level of responsibility particular legislation may also define them as an executive officers.

For more complex matters, you may also consider interviewing former environmental officers to see whether they had made recommendations relevant to the matter being investigated.

Requiring information from Corporations

Any notice can be directed to the Registered Office of the Corporation as shown on the ASIC extract (See s.109X Corporations Act 2001 - C'Wth) or it can be served upon a director. Details for service of Companies can be found in the *Corporations Act 2001*.

As stated earlier, Corporations are 'artificial' persons and can only act through the medium of a Natural Person. In investigating a Corporation, it is necessary to conduct an initial investigation to determine who is the "mind and will" of the company. That can be a variety of people according to the size, structure and workings of the Corporation.

As Corporations do not enjoy the privilege against self-incrimination, subject to statutory provisions, they cannot refuse to answer the questions put to them.

As a guide, an investigator has to establish who the director/s are, what their responsibilities are, whether they can speak on behalf of the Corporation, whether they have authorised someone else to speak on behalf of the Corporation, what their knowledge and involvement in the company is, what instructions they have given, what part they play in the day to day running of the corporation etc.

In most cases, the corporation has been set up as a vehicle for a small business enterprise and its day to day running is managed by the Director.

In public companies, the Directors are remote from the operations, and the relevant manager, duly authorised, may be the appropriate person – or he/she may be a witness.

Use of compulsory powers and the privilege against self-incrimination

In the absence of a specific legislative provision, a company does not have the right to decline to answer questions or to provide information or documents under a compulsory legislative power on the basis that to do so might tend to incriminate it. Investigators should review the legislation that they are utilising to clarify if companies have privilege against self-incrimination.

Changes to the *Environmental Protection Act 1994* have clarified that only for individuals is it a reasonable excuse to fail to answer a questions on the grounds that answering it may tend to incriminate that individual. The Queensland Law Reform Commission clarified that where legislation enacted before 1993 refers to a "person" having protection against self-incrimination this relates to individuals and excludes corporations. This is consistent with the common law position that self-incrimination does not apply to corporations.

Investigators need to be conscious that individuals could also be personally responsible for an offence, which means that they have a right to decline to answer questions. Executive officers may be able to decline to answer questions on the basis of self-incrimination as they are potentially liable for offences committed by the company. The investigator should establish from the outset of the interview whether the interviewee is being interviewed as a duly authorised representative of the company, an executive officer of the company or in a personal capacity.



It has been suggested that where an investigator determines that an executive officer has information of particular benefit to the investigation, and it is unlikely that they will be charged as an executive officer, the investigator should clarify this at the outset of the interview in the following manner.

"You are being interviewed as a duly authorised representative of the company to make statements on behalf of the company. You are not being interviewed in a personal capacity or in the capacity of an executive officer of the company. Are you prepared to continue with this interview on that understanding?"

5. **RESPONSIBILITIES**

Person	Responsibility	Documents
Director - Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Procedure for Investigating Companies
State Manager Investigations	Shall ensure that all investigators are trained in the procedure.	Training Package
Operations Manager Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	Audit Documents
Investigators	Shall follow the procedure	

6. **APPROVED BY**

Signature

Director Enforcement Services
Department of Environment and Heritage
Protection

Date

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Procedural guide

Enforcement Services Issuing Cautions

This document is to assist Investigators with their understanding of the different types of legal entities in order to assist with the investigation process and to aid in gathering evidence pertaining to the persons who may have committed an offence.

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

Date of this Version	Date of Next Revision

Rev No.	Rev Date	Summary of Changes	Author
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1.3 Approval

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Name	Title
Kelli Ready	A/Director, Enforcement Services

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3. INTRODUCTION

3.1 Purpose

The purpose of this procedure is to provide instructions on when and how an investigator is to provide cautions to suspects in the course of an investigation.

3.2 Scope

This procedure is relevant to all EHP authorised officers who are involved in the interviewing or questioning of witnesses and persons of interest during the course of an investigation.

3.3 Prerequisites

All persons that are interviewing witnesses are required to be authorised officers, or persons, under the relevant legislation.

3.4 Training

Investigators will be trained in this procedure upon commencement of duties. Further training will be provided as required to reflect policy and legislative requirements and investigators' skill-set.

3.5 Essential Points

While it is not a requirement to caution a person in relation to a simple (summary) offence, investigators are required to caution under departmental policy as Judges and Magistrates have a common law discretion which enables them to rule as inadmissible evidence that is seen to have been 'unfairly obtained'. So failure to provide proper cautioning may result in the loss of evidence and eventual case failure.

3.6 Definitions

Caution – shall refer to a warning issued by an investigator to a person about to be interviewed outlining their rights, specifically their right to remain silent and right to the privilege against self-incrimination.

Investigator – shall refer to an EHP authorised officer undertaking a lead or assisting role in the investigation of an offence or breach of duty under legislation within the department's jurisdiction.

Suspect – shall refer to a witness or person of interest that is to be interviewed or questioned by an EHP investigator during the lawful performance of the investigator's duties.

3.7 References

Environmental Protection Act 1994 and *Nature Conservation Act 1992* - (specific provisions requiring a person to answer questions or provide information about an offence as well as various references to verbal & documentary evidence being inadmissible where it tends to incriminate an individual)

4. PROCEDURE

4.1 What is a caution?

A caution is a warning issued by an investigator to a person about to be interviewed outlining their rights, specifically their right to remain silent and right to the privilege against self-incrimination. The purpose of the caution is to advise the person of their rights, so as to ensure that any interview is conducted fairly and any confessions or incriminating information is provided voluntarily.

These rights have long been recognised at law and effectively mean that a person is not required to participate in a record of interview, make any statement or provide any information, unless required to do so under statute. In particular, investigators should note that the *Environmental Protection Act 1994* and the *Nature Conservation Act 1992* contain specific provisions requiring a person to answer questions or provide information about an offence.

4.2 Purpose of issuing a caution

It is a fundamental tenet of our legal system that a person suspected of having committed an offence is afforded certain basic rights, essentially the right to silence and the presumption of innocence. The purpose of issuing a caution is to advise the person of these rights which assists in demonstrating to the court that an interview was conducted *fairly* and any confessions or incriminating information were provided *voluntarily*. The court has discretion to exclude confessions where:

- The confession was obtained involuntarily;
- It would be unfair to use it against the accused; or
- It would be contrary to public policy to use the confession.



So by issuing a caution, this demonstrates to the court that the person was aware of their rights and the court is therefore less likely to exclude any confessional evidence on the basis of the grounds set out above.

4.3 When to issue a caution

An investigator must exercise their discretion on a case-by-case basis when determining whether it is necessary to issue a caution and should generally provide a caution *after* they develop the belief that the suspect has committed an offence. Nevertheless, it is prudent at the commencement of an interview to provide the suspect with a clear explanation of the investigator's objective and enquire whether the person is prepared to answer questions.

In exercising their discretion, an investigator should consider the following:

- Whether the person is a suspect - if the person being interviewed is a suspect or becomes a suspect during interview, the investigator must issue a caution.
- Whether a corporation is being interviewed (i.e. an officer acting on behalf of the corporation) - a caution is not required when interviewing a corporation since the privilege against self-incrimination does not extend to corporations. This means that if an employee of a company claims privilege against self-incrimination, the investigator may probe as to why they feel the need to claim privilege. However, an investigator must also be wary that executive officers may be able to decline to answer questions on the basis of self-incrimination, as they may be held personally liable for offences as an executive officer of the company.
- The person's vulnerability - if the person appears to have poor education, immaturity or cultural differences and the investigator believes that the person does not understand that they are not required to speak, then the investigator should issue a caution.
- The person's general demeanour - it is possible that a person may be intimidated by the presence of an investigator (particularly if in uniform) and may be unaware that they are not required to speak. In this instance a caution should be issued.
- Whether there has been Queensland Police Service involvement - if an investigator is aware that the QPS have been involved in an investigation, and the investigator later interviews, it is best practice to issue a warning to the person in case it is assumed that the police presence has caused the person to participate rather than the exercise of his or her own free will.

4.4 How to issue a caution

Where an investigator decides to issue a caution, it should be expressed in the following terms:

"Before I ask you any questions I must tell you that you have the right to remain silent. This means you do not have to say anything, answer any question or make any statement unless you wish to do so.

However, if you do say anything or make any statement, it will be recorded and may later be used as evidence.

Do you understand?"

[It is important to explore the suspect's understanding of the caution given. This can be achieved by asking the person to explain what the caution means to them in their own words.]

Where a lawyer is present, the investigator should issue the following address:

Re

At the close of the interview I will allow you to place on the record any submissions you wish. Throughout the interview you will be permitted to advise your client and call brief adjournments to talk to your client in private. However, I direct that you not answer questions addressed to your client or otherwise obstruct me in the exercise of my duties. You are here today to look after the interests of this witness. Any submissions or objections not relating to this witness will be disregarded."

4.5 Special cases - Cautions to be issued when exercising compulsory powers

There are certain circumstances where an investigator may exercise compulsory powers, under statute, to require a person to answer questions or give information. These statutory powers override the general right to silence. These powers may be found:

- Under section 465 of the *Environmental Protection Act 1994*, which provides that an authorised officer may require a person to answer questions; and
- Under section 152 of the *Nature Conservation Act 1992*, which provides that an authorised officer may require a person to give information.

However, an investigator may *only* exercise these powers where they suspect on reasonable grounds that:

- An offence against the relevant Act has occurred; and
- The person may be able to give information about the offence.

When an investigator seeks to exercise these powers, the relevant Acts require that they issue a warning to the person that it is an offence to fail to comply with the requirement unless the person has a reasonable excuse. The warning should be expressed as follows:

"I now require you pursuant to section of the Act to provide me information about [description of offence]. I must warn you that it is an offence under that Act to fail to comply with this requirement unless you have a reasonable excuse. The Act provides that it is a reasonable excuse for you to fail to give the required information if the giving of it may tend to incriminate you. Do you understand?"

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director - Compliance and Investigations	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for
State Manager - Compliance and Investigations	Shall ensure that all investigators are trained in the procedure.	
Regional Manager – Compliance and Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

Date xx/xx/2013

Kelli Ready

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Procedural guide

Enforcement Services Right to Information (RTI)

The purpose of this procedural guide is to assist Investigators to identify their responsibilities with respect to the release of information and documents.

1. DOCUMENT HISTORY

1.1 Document

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision

Date of this Version	Date of Next Revision
8 January 2013	January 2014

Rev No.	Rev Date	Summary of Changes	Author

1.3 Approval

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Name	Title
Kelli Ready	A/Director, Enforcement Services

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Section	Date
Investigation Teams Cairns, Townsville, Maroochydore, Brisbane and Toowoomba. Director of Litigation	

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3. INTRODUCTION

3.1 Purpose

The objective of this guideline is to assist investigations staff to identify their responsibilities with respect to the governing legislation relating to the release of information and documents to the Queensland public, *Right to Information Act 2009* (RTI) Act.

3.2 Scope

This procedure will apply to all Enforcement Services Investigators operating under EHP policies and procedures. This procedure is relevant to all public officers of a prescribed *Agency* under the Act. Any document produced, received or held as a result of EHP business is subject to RTI legislation.

3.3 Prerequisites

All persons conducting their own investigations and exercising any powers under legislation are required to be an authorised officer or person under the respective legislation.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every two years.

3.5 Essential points

- People have the legislative right to access information held by the Queensland Government.
- It is important not to record anything inappropriate about any investigation.
- Most of the information collected throughout the investigation is subject to a RTI application.

3.6 Definitions

Right to Information (RTI) - From 1 July 2009, the Right to Information Act 2009 replaced the Freedom of Information Act 1992. The Queensland *Freedom of Information Act 1992* (the FOI Act) is designed to extend as far as possible the right of access to information held by the Queensland Government. Through RTI, every person has a legally enforceable right to documents of agencies and official documents of Ministers, subject to certain exemptions and exclusions in the RTI Act.

The RTI Act:

- Gives people a right to apply for access to documents held by government agencies.
- Gives people a right to apply for amendment of personal information about you held by government agencies.
- Requires government agencies to publish information about their structure, what they do and what documents they hold.

Any document produced, received or held as a result of EHP business is subject to RTI legislation. There are some exceptions to what may be released, but in essence there is an expectation that the document and information it contains will be made freely available for public scrutiny.

Administrative Review - Compliance with the RTI Act by EHP is managed by Administrative Review. They are responsible for meeting the Agency's publishing obligations under the RTI Act. Information should be released unless there is an overriding public interest reason for *not*

releasing it. Administrative Review will pay regard to the principles above with a view to publishing all meaningful information where possible.

3.7 References

- Australian Government Investigation Guidelines (2003).
- Investigation Compliance and Enforcement Training Systems (ICETS) Certificate IV in Government Investigations.
- Queensland Government Freedom of Information Website <http://www.foi.qld.gov.au>
- Administration Review's *Right to Information Guidelines 2009*.

4. PROCEDURE

Methods of Access to information

There are several different methods for members of the public to access department held information. Some of these methods involve the release of information through specific delegated positions or offices while others rely on the discretion of Executive Directors, General Managers and Directors.

These methods are divided into three groups:

- Right to Information, Information Privacy and Court Processes;
- Public Registers and Public Service Regulations; and
- Administrative Access.

4.1 Right to Information, Information Privacy and Court Processes

Certain requests for access to information must be processed under legislation and/or performed by specific officers within the department. These requests for information should not be processed via Administrative Access but should be referred to the appropriate area. The specific legislation and court processes covering these matters are:

- Right to Information Act 2009 (RTI Act);
- Information Privacy Act 2009 (IP Act)
- Section 134A of the Evidence Act 1997 (EVD Act); and
- Discovery requests (preliminary discovery, subpoenas or non-party discovery).

Right to Information and Information Privacy matters must be referred to the Administrative Review Unit. Court ordered requests and requests under the *Evidence Act 1997* should be referred to the Legal Services Unit in the first instance.

4.2 Grounds on which the agency or Minister may refuse access

The two schedules relevant to investigators are Schedules 3 and 4 of the *Right to Information Act 2009*.

- Schedule 3 contains the only exemptions from RTI
- Schedule 4 contains circumstances where it may be argued that is favourable not to disclose the documents. This essentially this is a "public interest" test on the information.

4.2.1 The document is otherwise available

For example from a public library or in an agency's disclosure log or is reasonably available for public inspection under the *Public Records Act 2002*

4.2.2 The document is not able to be located or does not exist

Where all reasonable steps have been taken to find the document but the document can not be found, for example from a public library or in an agency's disclosure log or is reasonably available for public inspection under the *Public Records Act 2002*.

4.2.3 Disclosure of the Information would be contrary to the public interest.

Part 4 of Schedule 4 lists factors favouring nondisclosure that must be given additional weight in assessing whether disclosure would be contrary to the public interest (e.g. affecting relations with other governments, disclosing deliberative processes of government, disclosing personal information or disclosing trade secrets or information about commercial or business affairs).

4.3 Administrative Review Unit

The *Right to Information Act 2009* is the latest iteration of legislation previously covered in the *Freedom of Information Act 1992*. Where the previous legislation might be explained as a mechanism to "pull" information; RTI is a mechanism that "pushes" information into the public domain.

Compliance with the RTI Act by EHP is managed by Administrative Review. They are responsible for meeting the Agency's publishing obligations under the RTI Act. The following information is taken from Administration Review's *Right to Information Guidelines 2009*.

The overarching principle is that information should be released unless there is an overriding public interest reason for *not* releasing it. Administrative Review will pay regard to the principles above with a view to publishing all meaningful information where possible.

4.3.1 Assessment classes and criteria considered by Administrative Review

- Information that, if released would be in breach of the *Privacy Information Act 2009*
- Information that is **prevented by law** from disclosure or is exempt under the *Right to Information Act 2009*
- Information in draft form
- Archived or difficult to access information

Published versions of documents should also not include anything which:

- Would breach Cabinet collective ministerial responsibility
- Relates to deliberate processes of CBRC
- Is commercially sensitive
- Contains or alludes to information received in confidence from a third party
- Would otherwise cause substantial harm if disclosed

4.4 EHP Investigations documents

Other than the brief of evidence, there are a number of other investigation documents that may be requested through the RTI process.

Diary entries, running logs and emails are often included in a RTI request and may be requested before, during or after an investigation. It is important that these documents are used for the purpose in which they are intended. For example a running log should contain only relevant facts relating to chronology of events; times, dates, place and names. It should reflect the direction the investigation took and demonstrate that all avenues were followed including exculpatory leads. It may also record the reasons for gaps or changes in direction of an

investigation such as the relevant leave periods of the investigator or scientific testing and analysis down time.

4.5 Investigations Running Logs

An investigation running log is a document held by EHP that may be requested under RTI provisions before, during or after an investigation. Regardless of any perceived or assumed protection status, it is another example of a document containing work product that should reinforce integrity; but that has the potential to damage the credibility of an investigation.

Investigators solely control the information entered into a running log. The purpose of a running log is to accurately record relevant facts relating to chronology of events; times, dates, place and names. It should reflect the direction the investigation took and demonstrate that all avenues were followed including exculpatory leads. It may also record the reasons for gaps in the investigation such as the relevant leave periods of the investigator or scientific testing and analysis down time.

The purpose of a running log as outlined above documents an investigation and is a formal document used in this process; it is therefore not to contain flippant remarks, opinions, obscure references or acronyms, or anything potentially disparaging or offensive to a reader.

4.6 Preventing administrative release of investigations documents under RTI

The legislation does, in some circumstances, provide for the protection of documents related to law enforcement or documents otherwise included in Schedules 3 and 4. Documents that are generated by the investigation process (and beyond) are subject to the RTI legislation and as such *will* be released at some point and become public record.

Essentially investigators should be concerned only with documents that may be sensitive prior to the full disclosure of a brief pending court action. Such documents may identify witnesses, investigative technique, or contain information that may impede *completion* of an investigation.

Under s10 (1) (a) RTI Act, documents relating to an ongoing investigation are exempt. If an investigator is sufficiently concerned enough about the content of documents they can flag the document on a *Search Tracer Form* through the *Director C&I* that the documents be protected from RTI release prior to the completion of the investigation. (Note: investigation is considered complete at the end of the investigative stage i.e. when matter has been sent to litigation or before the courts).

The onus of identifying documents for protection is on the investigator and not the Administrative Review Unit. Please review Schedule 4 parts 2 and 3 (page 155) of the *Right to Information Act 2009* for factors which will be taken into consideration for non-disclosure in the public interest.

4.7 Time Frames

The *Right to Information Act 2009* significantly reduced the amount of time available to agencies to process RTI requests (from FOI Act by 30%). Requests must be completed within 25 business days; this requires investigators responsible for documents to complete their response to request within 5 working days.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Planning and managing investigations
State Manager and	Shall ensure that all investigators are trained in the	Training Package

Team Leader Investigations	procedure. Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	Audit Document
Investigators	Shall follow the procedure.	Procedure guide – Right to Information.

6. **APPROVED BY**

Kelli Ready

Director Enforcement Services
Department of Environment and Resource
Management

Date

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RTI DL RELEASE - CLIP

Procedural guide

Compliance and Investigation Branch

Legal Professional Privilege – SOP 002

1. DOCUMENT HISTORY

1.1 Document Location

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	<i>Environmental officers</i>	Error! Bookmark not defined.
	<i>Requiring information from Corporations</i>	Error! Bookmark not defined.
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3. INTRODUCTION

3.1 Purpose

The purpose of this document is to provide the EHP authorised officers with a procedure for the situation when documents are obtained lawfully and a claim Legal Professional Privilege is made.

3.2 Scope

This procedure will apply to all authorised officer under EHP legislation whose duties require them to obtain and execute warrants to enter a place for the purpose of search.

3.3 Prerequisites

Legislation requires that all warrants are applied for and executed by an "Authorised Officer". Investigators are to ensure they have the "Authorised Officer" delegation for the statute that they are to use.

3.4 Training

All authorised officers will be trained in this procedure upon commencement of employment and such training will be refreshed every two years

3.5 Essential Points

- Actions to be taken after a claim of legal privilege – records to be made and sealing of documents.
- Actions taken when executing a warrant at a lawyer's premise who claims legal professional privilege – explanation, records to be made and sealing of documents
- Advice if the lawyer is uncooperative – official warning

3.6 Definitions

Legal Professional Privilege - pertains to certain oral and written communications between lawyers and their clients which cannot be used by EHP as evidence by virtue of legal professional privilege. The privilege exists to serve the public interest in the administration of justice by encouraging full and frank disclosure by clients to their lawyers.

The privilege attaches to confidential communications passing between-

- (i) a client and their legal adviser for the purpose of obtaining or giving legal advice (legal advice privilege)
- (ii) a client and the legal adviser and third parties for the dominant purpose of use in, or in relation to, litigation which is either pending or in contemplation (litigation privilege)
- (iii) a client and another client if it can be established that the dominant purpose of the communication was for the purposes of obtaining legal advice.

Privilege does not extend to advice sought or given in the furtherance of, or to facilitate criminal fraudulent or other unlawful purposes. Whether or not the lawyer was a party to or ignorant of those purposes is immaterial.

Not all communications between a legal adviser and a client are privileged. To attract legal professional privilege, the communication must be **confidential**. Legal professional privilege exists to protect the confidentiality of communications between lawyer and client. It is the client who is entitled to the benefit of such confidentiality,

Authorised Officer - a person appointed under the relevant legislation that can apply for and execute a warrant. For the purpose of this procedure it also includes a conservation officer and a forest officer.

3.7 Reference

- Australian Government Investigation Standards (2003)

4. PROCEDURE

4.1 Warrants Executed Generally

Where a claim of legal professional privilege is raised by a claimant as a result of the execution of a search warrant, authorised officers should adopt the following course of action

- (i) Record the number of pages of the document(s) and place the documents(s) subject to the claim of legal professional privilege in a sealed container, (Refer to the SOP 006 – Seizure and Handling of Evidence. Each document should be identified and receipted as per the Acts);
- (ii) Obtain from the claimant
 - a. A description as to the nature of each document placed in the sealed container; and
 - b. The grounds upon which the claim is based as advised by their legal representation.The answers provided by a claimant should be recorded;
- (iii) The claimant should be allowed to copy the documents before they are placed in the box if they wish, and if that is possible and practicable.
- (iv) Ensure that the container is sealed in the presence of the claimant. The container seals should then be signed by both the authorised officer investigating and the claimant;
- (v) Advise the claimant that the documents have been seized provisionally and will be dealt with in accordance with the law;
- (vi) Ensure that anything seized is dealt with as prescribed by the respective act under which the warrant was issued and place an endorsement on the executed warrant that the documents are subject to a claim of legal professional privilege;
- (vii) The Team Leader Investigations, Director Enforcement Services or Director Litigation should be advised as soon as practicable about the seizure and the claim of legal professional privilege.

4.2 Executing Warrants on Lawyer's Premises

When an authorised officer intends to search the premises of a lawyer for documents, they are to prepare the application and search warrant in terms

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which are as specific as possible and not vague or generalised. The documents or items sought are specifically described.

After obtaining the warrant the following steps should be taken:-

- (i) The senior authorised officer present should explain the purpose of the search and invite the lawyer to cooperate in the conduct of the search. The lawyer can be present whilst the search is being conducted. They are to be considered the same as any other occupier. Identification of all authorised officers present should be provided to the lawyer. The search team should be adequate for the type of search, for example, consideration of the size of the premises.
- (ii) If no lawyer is present or in attendance at the premises, then if it is practicable to do so, the premises or the part of interest should be sealed or locked to deny normal access and the execution of the warrant deferred for a reasonable period to allow the lawyer to attend given their circumstance.
- (iii) Where access to the office index system is required, request that the lawyer explain how the system functions so that all necessary documents can be located with a minimum of disturbance;
- (iv) The documents subject of the search will normally be located and handed over by the lawyer. The lawyer should compile a list of all the documents, which should include;
 - a. General information as to the nature of each document
 - b. The number of pages in each document
- (v) reasonable time should also be allowed for the lawyer to obtain legal advice where such a request is made
- (vi) similarly reasonable time should be allowed for the lawyer to consult with the relevant client;
- (vii) Where a claim of legal professional privilege is made by the lawyer concerning the documents, the authorised officer should ask the lawyer on whose behalf and on what grounds the claim is made. The answers to these questions should be recorded.
- (viii) If a claim of legal professional privilege is made concerning any of the documents, the list made by the lawyer should be noted and the documents placed in a sealed container which should then be signed by both the officer and the lawyer. The lawyer should be advised that the documents are provisionally seized pursuant to the search warrant and will be dealt with in accordance with the law.

4.3 When the Lawyer is Uncooperative

- (i) When the lawyer elects not to cooperate with the authorised officer in the execution of the warrant, the officer is to advise the lawyer that the search will proceed. The lawyer should be warned that as the officer is not familiar with the office systems, a search of all files and documents may be necessary to give full effect to the authority conferred by the warrant.
- (ii) Where the lawyer still refuses to assist then the search they should be advised that a document will not be seized unless, in the opinion of the officer, it falls within the scope of the warrant; and
- (iii) Where the lawyer is intent on obstruction of hindering the investigator he should be

warned that such conduct is considered an obstruction. This warning should be recorded electronically.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Procedure for Legal Professional Privilege.
State Manager – Enforcement Services	Shall ensure that all investigators are trained in the procedure.	Training Package
Team Leader – Enforcement Services	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	Audit Documents
Investigators	Shall follow the procedure	

6. APPROVED BY

Signature

Director Enforcement Services
Department of Environment and Heritage
Protection

Date

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Procedural guide

Enforcement Services Witness Statements SOP014

This document is to assist Investigators of the Enforcement Services of EHP the undertaking of Records of Interview and that obtaining Witness statements

1. DOCUMENT HISTORY

1.1 Document Location

This is an online document. Paper copies of the document are valid only for the day that they are printed.

1.2 Revision History

Date of this Version	Date of Next Revision
01 March 2012	18 th May 2013

Rev No.	Rev Date	Summary of Changes	Author
1	18 th May 2011	Update to reflect the change in legislation for section 110A of the <i>Justices Act 1886</i> for signing statements. Minor amendments to section 4.11 regarding use of contemporaneous notes and records of conversations (taped or digital).	Reuben Carlos
2	13/03/2012	Update to new format and link relevant procedural guides	Investigation Support

1.3 Approval

This document requires the following approval.

Name	Title
Kelli Ready	Director Enforcement Services

1.4 Distribution

This document has been distributed to the following sections.

Section	Date
Investigation Teams Cairns, Townsville, Toowoomba, Caboolture, Brisbane	New date

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3. INTRODUCTION

3.1 Purpose

The purpose of this procedure is to provide Instruction on the format, content and drafting requirements to be adopted in witness statements.

3.2 Scope

The procedure is relevant to all EHP authorised officers who are involved in the taking of witness statements for the purpose of inclusion in a Brief of Evidence. Investigators should also understand the procedural guide – Interviewing Potential Defendants.

3.3 Prerequisites

It is highly recommended that all persons taking a witness statement are authorised officers under the respective legislation.

3.4 Training

All authorised officers will be trained in this procedure upon commencement and such training will be refreshed every five years.

3.5 Essential Points

- Statements should be taken by the investigator and include all relevant facts regarding their knowledge of the event
- The information within the statement should make in a clear and logical format with words and language style written as adopted by the witness
- Witness statements should be completed on the appropriate template, paragraphs must be numbered and Exhibits introduced using the correct format
- Additional statements on the matter by the same person must be in the form of an addendum statement which make reference to the original statement

3.6 Definitions

Investigator/Investigating Officer - This term as used in this procedure shall refer to the EHP authorised officer in charge of, or delegated a task during an investigation of an indictable or simple offence or a breach of duty.

Witness - A witness is a person who has some knowledge of a matter being investigated. A witness can be anyone, from a member of the public to another government employee who is able to provide admissible evidence in relation to a matter.

Witness statement - This term as used in this procedure shall refer to a written document that contains the evidence a person may give as a witness in a matter.

3.7 References

- Procedural Guide – Interviewing Potential Defendants
- *Justices Act 1986* (Qld)



- Witness Statement Template
- *Evidence Act 1977*

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4. PROCEDURE

4.1 What is a witness statement?

Taking statements is an essential part of an investigation and is the way investigators record versions of events. It is an important form of communication that transforms oral accounts of events into written accounts so that others may later read and understand what may have occurred at a particular time, date and place.

The circumstances and locations for investigators taking statements can vary. The ability to take a comprehensive statement for any matter will not only help the investigation at the time, it also creates a valuable history of an event that others may refer to if the need arises.

A witness is a person that has some knowledge that is relevant to a matter being investigated - and it need not necessarily be a person who physically observed an offence. A witness can be anyone from a member of the public the government employee (e.g. Vegetation Management Officer, Water Licensing Officer or an employee of another government department).

It is the investigator's role to identify any witnesses and obtain any relevant information from them. Initially, the investigator should make preliminary inquiries in order to determine whether a witness possesses any information that is relevant to an investigation. Where the investigator forms the view that the witness holds information that is relevant and admissible, the investigator must record the information formally as a statement.

When an investigator is evaluating the information provided by a witness to determine whether it is relevant to an investigation, the investigator should consider:

- All currently known facts surrounding the incident;
- The elements of any potential offence/s alleged to have been committed;
- Any information provided by witnesses relevant to the investigation;
- Any information that can provide further evidence or witnesses to the investigation; and
- The potential disclosure of the witness or information to the defence regardless of the relevance of information provided by the witness.

It is important that an investigator obtains a statement from a witness at the earliest practicable opportunity, while the events or information remains fresh in the witness' memory.

Remember the accuracy of eyewitness accounts depend on a number of different factors. The leading case in regards of eyewitness identification is *R v. Turnbull* [1976] that gave guidance on what should be considered when assessing eyewitness testimony. It may be helpful to remember the advice using the mnemonic ADVOKATE:

- A Amount of time under observation.
- D Distance from the eyewitness to the person / incident.
- V Visibility - including time of day, street lighting etc.
- O Obstructions - was there anything obstructing the view?
- K Known or seen before - did the witness know, or had they seen the suspect before?
- A Any reason to remember - was there something specific that made the person / incident memorable?
- T Time lapse - how long since the witness last saw the suspect?
- E Errors or material discrepancies.

These points must be recorded as part of a witness statement.

4.2 Purpose of a witness statement

Witness statements are generally used for the following purposes:

- To determine whether the witness has information relevant to an investigation;
- To ascertain the facts of an investigation;
- As a basis for the lawyers in the Litigation Unit to determine whether there is sufficient evidence to support an enforcement action for breach of legislation;
- To assist the lawyers in establishing the elements of a potential offence, potential defences and potential responsibility of other parties;
- To assist the lawyers in conducting examination-in-chief and to minimise the possibility of new and unexpected evidence being presented in court; and
- For witnesses to refresh their memory prior to giving evidence in court.

4.3 Types of witness statements

Witness statements can be categorised into two types - preliminary statements and formal statements.

A **preliminary statement** is a document that contains a witness' evidence in the form of notes, or recordings pending a formal statement being taken. A preliminary statement does not follow any particular format and it will often contain inadmissible evidence (e.g. hearsay, opinion, etc). It should be noted that any notes or recordings taken are subject to disclosure.

A **formal statement** is a document that captures a comprehensive account of the facts and events that are known or witnessed by a person relevant to an investigation. A formal statement includes all relevant and admissible evidence within the knowledge of a witness and is used to service the needs of the lawyers and possibly the courts. As a matter of best practice, it is required that a formal statement follows the requirements set out under 110A of the Justices Act 1886, thereby making it capable of being tendered in a committal proceeding in the Magistrates Court.

4.4 Content of a witness statement

A witness statement should include the following:

- The name and position of the investigator taking the statement;
- The name, date of birth and occupation of the witness;
- Where the witness is an expert witness, the witness's qualifications and experience must be included.
- Where there is a relationship between the witness and the suspect, a description of the relationship should be included. For example, "I know Tom Smith who was my employer for the last two years."
- The address of the witness should be included in the statement. However, the witness' address should not be included in circumstances where the defendant is unaware of the witness' address. If the matter proceeds to prosecution, this information will be disclosed to the defendant. Accordingly, where it is necessary to withhold the witness' address the statement should state that the witness *"resides at an address known to the Department of Environment and Heritage Protection."*
- The statement should address the 'who, what, where, when, why and how' questions

pertaining to the knowledge of the witness

4.5 Exhibits

As part of the witness' account of events, the witness may refer to documents that he or she has *received or prepared*, which may need to be tendered through the witness if the matter proceeds to court. Examples of such documents include photographs, records of interview, reports, letters, emails etc - any documents that are relevant to establishing the facts in issue. These documents should be exhibited to the witness statement provided that the document is *relevant* and *admissible*.

The witness statement should explain the relevance of the exhibit in the context of the witness' experience and the exhibit should be clearly identified as follows:

"EXHIBIT: I am able to produce [name of exhibit] referred to in my statement and marked '[witness' Initials – 01]' for identification."

4.6 Addendum statement

There are occasions when a witness may wish to amend or add to a statement that has already been completed and signed. This can be for a variety of reasons, for example, the witness may wish to add further information to the statement, they may recall further details requiring clarification of a section of the statement or they may realise that they made a mistake. In such circumstances, an addendum statement must always be used - the original statement **must not** be amended after it has been signed.

The addendum statement should be drafted to include an explanation of the amendments or additions to the original statement. It must also be clearly labelled as an addendum statement in the introductory paragraph, which should read as follows.

"This is an addendum statement to a statement which I signed and dated on [date] in relation to [description of incident]."

4.7 Drafting a witness statement

The following matters should be considered when drafting a formal witness statement:

- It should be drafted in a **clear and logical format**. Generally, in order to achieve this, a witness statement should be set out in chronological order. However, where the statement does not read logically in this way, it may be appropriate to order the statement by subject matter.
- The language used in the witness statement should be the **words and language style adopted by the witness**. When drafting the statement, investigators should avoid the use of jargon and departmental terminology unless the witness actually uses that jargon or terminology.
- The body of the witness statement should be **comprehensive** and include all relevant matters within the witness' knowledge.
- The statement should be broken up into numbered paragraphs.
- If the witness has a recollection or version of events that differs from other witnesses, the statement should reflect this. Colluding of witnesses is not an ethical practice that will be tolerated by EHP.
- Do not use words such as "defendant," "offender," or "accused" in the statement. Refer to the person in the same way as referred to by the witness.

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- The statement should contain only **admissible evidence**, which is evidence that is relevant and is not excluded by one of the rules of evidence. The witness should limit his or her evidence to matters that he or she knows first hand (as opposed to information that another person has told them). Where any type of inadmissible evidence needs to be included in the statement to provide a link or explanation for certain actions, that information should be included in italics.
- When including conversation, the witness should attempt to **describe the entire conversation**. The witness may not be able to recall the exact words used in a conversation, yet it is good practice to include the conversation in direct speech and acknowledge that the conversation reflects the substance of what was said.

For example:

On [date] I carried out a site inspection at [location]. During that inspection I had a conversation with Mr Tom Smith (Smith).

I said, "Should you have the pump operating during the day, aren't there restrictions at the moment?"

Smith said, "I don't care about the restrictions - I need the water".

- However if the exact words cannot be recalled it is suitable to phrase the conversation to the best recollection of the witness. As they may not be the exact words the best way to express the conversation should be as follows:

I said words to the effect of, "Should you have the pump operating during the day, aren't there restrictions at the moment?"

Smith said words to the effect of, "I don't care about the restrictions, I need the water."

4.8 Signing a witness statement

After the investigator has drafted the witness statement, the document should be given to the witness to read over for accuracy, spelling and grammar. Should the witness require any amendments to the statement, these should be made accordingly.

Once the witness is satisfied that the statement is accurate, it must be signed. The bottom of each page of the statement should be signed and witnessed. Also, the pages should be numbered, stating:

"This is page X of a statement comprising Y pages."

The final page of the statement must include an acknowledgement that the statement is accurate. This acknowledgement must reflect 110A (6C) (c) (i) & (ii) of the Justices Act 1886 and should read as follows:

"I acknowledge by virtue of section 110A (6C) (c) (i) & (ii) of the Justices Act 1886 that:

(1) This written statement by me dated and contained in the pages I to is true to the best of my knowledge and belief, and

(2) I make this statement knowing, I may be liable for prosecution for stating in it anything I know to be false."



The witness should be provided with a copy of their statement once it is completed and signed.

Note that the acknowledgement must not be on a page by itself. The last page must also include a least one paragraph as well as the acknowledgement.

4.9 Unsigned witness statements

It is possible that a witness may refuse to sign a witness statement. If this situation arises, the investigator should record all the information that the witness has provided and document the time and date of signature refusal. While an unsigned statement is by no means as persuasive as a signed witness statement, it may still be used for the following purposes:

- It may offer the prosecution information that will assist with the matter;
- It may indicate to the prosecution whether it will be necessary to summons the witness to provide evidence during the course of proceedings; or
- It may be tendered as evidence only where the witness is declared as a 'hostile witness' and there is a recording of the same evidence from the same witness.

4.10 Negative or 'tied' statements

A negative or tied statement is a statement outlining the limit or lack of knowledge that a person has in relation to an incident. If a person indicates that they are unable to assist an investigator, it may be appropriate to obtain a statement from them as a precautionary measure to ensure that they do not change their version of events at some later stage and provide favourable information for the defence. In this circumstance, this type of statement may be used by the prosecution as a tool to discredit a witness based on his or her lack of consistency in recalling the event. (Refer to Section 18 *Evidence Act 1977* 'Prior inconsistent statement')

It is appropriate for an investigator to obtain a negative or tied statement, for example, where a suspect has nominated a third person as an alibi or person who could corroborate their version of events. By obtaining a statement from this third person, it serves to ensure that the third person remains committed to the evidence provided so as not to compromise the investigation at a later date. Furthermore, negative and tied statements should be regarded as a valuable safeguard to ensure that the investigator recommends the most appropriate action based on all available evidence.

4.11 Statements by EHP officers

There are often times when departmental officers will possess information that is relevant to an investigation - for example, officers conducting site inspections within their normal course of duties may detect possible offences based on observations or conversations. The officer is required to compile notes of their observations and conversations at the time of the event or as soon as practicable after the event. If in doubt, the officer should err on the side of caution and make notes documenting the relevant information or, alternatively, they should contact their Manager.

- Where the witness or investigators have made **contemporaneous notes** in their investigator's notebooks, these notes should be used in the preparation of the statement. These contemporaneous notes will also allow the investigator to make application to use these notes in Court where their memory has been exhausted. Any conversation recorded in investigators notebooks must correlate with the statement. A copy of the notes should be attached to the statement for checking. **Remember notes are evidence and is subject to disclosure to the Court. NOTE: See Procedural Guide - Use of Notebook for further information.**
- If a witness or investigator has made a tape or digital recording of a conversation relevant and

admissible to the statement, depending on the recording length, the conversation should be included 'word for word' in the statement or a transcript is required for production as an 'aid memoire' to the Court. **Remember recordings are evidence and is subject to disclosure to the Court. See Procedural Guide - Covert and Overt Recording for further information.**

If a statement is required from the officer, this should be obtained by an investigator in order to ensure that a relevant, accurate and comprehensive statement is prepared. It is strongly suggested that the investigator not allow EHP officers to provide their own statement without assistance for the investigator. The investigator should also be aware that the EHP officer has a history of interaction with either the people and/or event and that this may be relevant to the case. For example Water Unit officer may have had numerous interactions with a property owner regarding the requirement not to exceed their entitlement as authorised their water licence.

5. RESPONSIBILITIES

Person	Responsibility	Documents
Director – Enforcement Services	Shall ensure that a procedure exists and make available all necessary resources for the implementation.	Operations Procedure for Workplace Health & Safety: Risk Assessment and Working in Remote Locations Procedure
State Manager - Investigations	Shall ensure that all investigators are trained in the procedure.	
Team Leader – Investigations	Shall ensure that all investigators under their command follow the procedure and annually conduct an audit of the adherence to the procedure.	
Investigators	Shall follow the procedure	

6. APPROVED BY

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Procedural Guide

Enforcement Services

Writing effective and enforceable conditions

The purpose of this procedural guide is to assist with drafting quality and enforceable conditions for any statutory document whose purpose is to regulate an individual or corporation to enable them to meet the objectives of the legislation that the Department of Environment and Heritage Protection (the department) administers.

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Introduction

Writing effective and enforceable conditions or requirements for statutory documents (licences, permits, development approvals and statutory tools) is important. These documents are only as good as the conditions contained in them. If the conditions are not enforceable, then the department may have no power to require a person to comply with the condition or to take enforcement action if the condition is breached. In a very real sense, if the condition is not enforceable, the document is useless.

The department places conditions on approvals which clearly state the environmental outcomes the client must meet, not “how” the client must meet them. It is the responsibility of the client to assess the most efficient and effective way to achieve their environmental outcomes. Where a condition has already been developed by the department these must be used where appropriate.

Where there is a high risk of environmental harm occurring there may be a need to draft appropriate site or activity specific conditions to reduce the risk to an acceptable level. The enforceability of conditions drafted for high risk sites will be essential.

This guide sets out the SMART principles for writing conditions. If you follow these principles, you will likely write a condition that is enforceable.

What is a condition?

A condition is a legal requirement. Failure to comply with the requirement may be an offence.

A condition 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 be done.

Conditions are used in development approvals, licences and permits to regulate what people can or cannot do. They are also used in statutory tools such as restoration notices and environmental protection orders to require people to do or not do certain things. The principles in this guide apply to all of these uses of conditions.

Power to condition

The power to impose conditions on environmental authorities to carry out environmentally relevant activities (ERAs) is given by Chapter 5 (Part 5, Division 6) of the *Environmental Protection Act 1994* (the Act).

The power to condition is also contained in other legislation that the department administers, including the *Nature Conservation Act 1992*, the *Waste Reduction and Recycling Act 2011*, the *Coastal Protection and Management Act 1995* and the *Queensland Heritage Act 1992*.

Importance of quality statutory documents

Placing an effective set of conditions on statutory documents is one of the most important roles undertaken by an environmental regulator. It is a tool that allows the department to manage environmental and heritage issues. Effective conditions assist those that we regulate to comply with the department's directions and requirements.

Conditions also influence the department's ability to undertake compliance and enforcement actions, and the types of tools we can utilise in doing so. It is for this reason that conditions imposed must be enforceable. This is why particular care should be taken to draft conditions in the most effective manner.

General rules to follow in writing good conditions

In writing conditions, there are a lot of legal rules explaining what can, and cannot be required by a condition. Rather than going into detail about those rules, most of them can be summed up by the acronym “SMART”. A condition will be SMART (and enforceable) if it is:

S – Specific

M – Measurable

A – Achievable

R – Relevant

T – Time specific

Letter	Rule	Details of the rule
S	Specific	What must be done (including details of where it must be done) or what must not be done (and details)? Who must or must not do it?
M	Measurable	It must be possible to know whether the person has complied with the condition.
A	Achievable	Is it capable of being complied with?
R	Reasonable/Relevant	There is a connection between the requirement and the operation/development/activity proposed. The requirement cannot be an unreasonable obligation, having regard to the activity proposed.
T	Time Specific	When it must be completed by (or, if it is an ongoing obligation, clearly state that).

Specific

A condition is specific if it clearly sets out details of who must comply with the condition, what that person needs to do or must not do, where it needs to be done (if relevant) and how it must be done (also if relevant). The condition should not be ambiguous or vague – that is, it should be capable of only one interpretation or meaning. If the condition could be read in two or more different ways, it is not specific enough.

You should be consistent with the words that you use. If you use two different words to mean the same thing, a magistrate or judge is likely to assume that you meant to say something different each time which could affect the enforceability of the condition. For example, referring to the same pond as a “settling pond” in one place in a document and as a “pond” in a different place could lead to an argument that you meant two different things.

If words have special or technical meanings, you should define them. This will avoid any arguments about what the word means, and will help both the person who has to comply with the condition and a judge or magistrate to know what you mean.

Where possible, write using the active voice rather than the passive voice. For example, say “the holder of this licence must not use more than 50 mega litres of water per year” instead of “more than 50 mega litres per year must not be used”. Using the active voice makes it clear who has to comply with the condition. Also avoid using “may” or “should” when you want someone to do something – use “must” instead to make it clear that you are imposing an obligation.

Measurable

It must be possible to work out whether the person has complied with the condition. That is, it must be possible to measure compliance. Ask yourself the question, “how will I know whether they have done what they have to

do?”. If it is not possible to measure compliance with a condition, it is not possible to know whether they have complied or not, and so it is not possible to take action against a person for failing to comply with the condition. The condition will be unenforceable.

When writing a condition, think about how compliance with it will be measured. Will you know from a site inspection or from sampling or monitoring? Is there room for argument about whether a condition has or has not been complied with? Have you considered what the possible elements of non-compliance might be? What parts of the condition would you need to collect evidence for to prove the condition has been breached?

Achievable

Is the condition capable of being complied with? Is it possible for the person to do what the condition requires? Does the condition give them a reasonable amount of time? Does it ask them to do the impossible? If a condition cannot be complied with, then it will not be enforceable. For example, requiring someone to comply with a discharge limit for a contaminant, at a level that is below the level of detection, is not achievable. The person cannot know whether he or she has achieved the required level, because the level is below the level of detection, and so they cannot comply with the condition.

Being achievable does not mean that it has to be easy to comply, or that complying must have no negative effect on a person. It is acceptable for a condition to restrict someone's ability to do something, and it may even be acceptable for it to be expensive to comply with (although see “Reasonable” below). But if the condition cannot be complied with, it will not be enforceable.

If you are setting a time limit on when something must be done, you must make sure that the thing can be done within that time. That may mean that you have to do some work to determine what is a reasonable amount of time. Giving someone one day to do something that will take at least a week is not achievable.

Reasonable/Relevant

A condition must be both reasonable and relevant. To be reasonable, it must be a realistic and proportionate way of achieving your objective. For example, requiring someone to shut down their operations may be a realistic and effective way of stopping them from causing environmental harm, but if the harm can be stopped by requiring them to modify their operations then a requirement to shut down the operations would not be reasonable.

Consider what you are trying to achieve, and what would be a reasonable requirement to place on someone. Many pieces of legislation specifically require that a condition or requirement be reasonable, and may state what you must consider when deciding reasonableness. A condition that is unreasonable will not be enforceable.

The condition must also be relevant. Again, ask yourself what you are trying to achieve and then ask whether the proposed condition is relevant to achieving that. A clean up notice under the Act, for example, may have a condition requiring an area to be fenced to prevent access for 1 year after the date of the incident. But if there is no risk of people entering the area, a requirement to fence may not be relevant.

Time specific

An enforceable condition will clearly state when something must be done by. This can either be a specific date (“by 1 January”), a specific period (“within 7 days of service of this notice”) or a specific event (“before receiving any waste”). With time periods like these, it is easy to know whether something has or has not been done by the due date. This then makes it easy both for the person who has to comply with the condition to know when they have to do something, and for the department to prove that a breach has occurred.

Do **not** use words such as “immediately” or “as soon as possible”. These terms have no clear meaning. It is not possible to say with certainty whether someone has done something “immediately”. If you want something to

happen quickly, work out when it needs to happen by and then specify that date or time in the document.

Also do not use “regularly” or “frequently”, as these words are also open to interpretation – there could be a number of views about how often something needs to be done if it is to be done “regularly”. Instead, work out how often you want the thing to happen (for example, once a month) and then specify when the thing is to happen by reference to a date, period or event (for example, “submit monitoring reports to the department on the last business day of every month”).

An example of a good condition is as follows:

The operator must:

- carry out noise monitoring to investigate a complaint of noise nuisance, if required to do so by the department;
- commence the noise monitoring within 48 hours of receiving the department’s requirement; and
- provide the results of the noise monitoring to the department within 14 days of completing the monitoring.

You will see that it complies with the general rules for drafting conditions, for the reasons below.

Rule	Compliant?
Specific	The condition clearly puts an obligation on the operator. The condition is specific in telling the operator what he/she must do. Note that the condition could be more specific by defining how the noise monitoring is to be carried out.
Measurable	It is possible to measure compliance with the condition – you can work out whether or not the operator has done what he/she is required to do.
Achievable	The timeframes seem to be reasonable, and what is required to be done should be achievable by the operator.
Reasonable/Relevant	This will depend on the nature of the operation, but assuming that it is for an operation that is likely to generate sufficient noise to cause a complaint of nuisance, the condition will be reasonable and relevant.
Time Specific	The condition clearly states when the noise monitoring has to commence, and when the report has to be given to the department.

Legal principles in drafting conditions

To ensure that conditions are lawful, they must be drafted in a particular manner and meet a number of legal requirements. Unlawful conditions cannot be made lawful on the basis that they have been accepted by the applicant.

In addition to the other tests outlined previously in this guide, the following legal principles apply to drafting conditions.

Necessary and desirable conditions

For the department, the Act requires that any condition be necessary and desirable (in addition to the other tests outlined previously in this guide).

In order to be a necessary and desirable condition, the condition must have a clear purpose and there must be a need for the condition. Further, the condition must be fair and appropriate.

Finality

In deciding whether to approve an application for an environmental authority with or without conditions, the department must deal with an application fully and finally. This is known as the “finality principle”. A condition will be invalid because it breaches the finality principle if either:

- it has the effect of **significantly altering a development** in respect of which a development application is made; or
- where a condition leaves for **later decision** an **important aspect of the development**, and the decision on that aspect could alter the proposed development in a fundamental way, then the approval with that condition cannot be regarded as final.

Conditions may impose requirements for further management plans or similar documents to be submitted, provided that the matters dealt with in the plans are not an ‘important aspect of the development’ (i.e. they can fairly be described as incidental or ancillary to the overall development, or deal with technical details).

If a condition defers the final approval of the overall development or use to a later time, that will likely to offend the finality principle (i.e. that is an ‘important aspect of the development’).

A condition should also not impose an unnecessary responsibility on the department or a third party. An example of an unnecessary responsibility is where a condition imposes monitoring obligations on the department for a development, i.e. the department must check whether siltation fences have been installed every month.

Approved Conditions

The department has developed approved conditions for use on environmental authorities. Model conditions for site specific environmental authorities for mining activities and site specific environmental authorities for coal seam gas have been developed and should be used for these activities. The model mining conditions are available from Ecosteps. The CSG conditions are available from Energy Regulation and Implementation Unit.

A conditions library has been developed for prescribed environmentally relevant activities. If a condition that you need appears in the library, you must use it unamended. The conditions library is still being developed, so you might find that it doesn't have all of the conditions that you need. If this is the case, you may use the wording of a condition that has been used previously, as long as it meets the SMART criteria.

The appropriateness of these conditions should be assessed on a case by case basis and not automatically included in all approvals. This means that you need to look at the particular activity, and determine whether each condition proposed is reasonable and relevant and does not offend any of the other restrictions concerning conditions (i.e. does not offend the finality or certainty principles).

General points

Legal proceedings

When a condition is breached, the department can start legal proceedings for the breach. Typical examples of legal proceedings include prosecution (for example section 435A of the Act) or seeking an order that the

offender remedy the breach and/or be restrained from committing any future breaches.

When drafting conditions, always remember that conditions are often the basis for legal proceedings, and badly drafted conditions can mean that legal actions can fail.

The department has a range of other options available if conditions are breached, including issuing penalty infringement notices and using statutory tools. However, these options are also only available if the conditions have been well-drafted and are enforceable.

Administrative decision-making

Conditions should not affect or otherwise depart from existing obligations imposed by legislation, without a clear and obvious justified reason for the departure. This is because, in addition to the legislative obligations under the Act, conditions are imposed by the department on approvals to clearly state the environmental outcomes that the client must meet. As such, a condition is not required to re-state the legislation, but rather, should specifically relate to an environmental outcome.

In drafting conditions you must comply with the general rules of administrative decision-making, taking all relevant considerations into account (legislation guidelines for example) and making sure that you have sufficient evidence to justify imposing the condition.

Administrative decisions 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. For further information regarding administrative decisions, view the administrative decision-making in response to non-compliance procedural guide (EM1014).¹

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <http://steps/steps/default.cfm>.

Procedural Guide

Enforcement Services

Writing Effective and Enforceable Conditions

The purpose of this Procedural Guide is to assist with drafting quality and enforceable conditions for any statutory document whose purpose is to regulate an individual or corporation to enable them to meet the objectives of the legislation that the Department of Environment and Heritage Protection (the Department) administers.

Introduction

Writing effective and enforceable conditions or requirements for statutory documents (licences, permits, development approvals and statutory tools) is important. These documents are only as good as the conditions contained in them. If the conditions are not enforceable, then the Department has no power to compel a person to comply with the condition or to take enforcement action if the condition is breached. In a very real sense, if the condition is not enforceable, the document is useless.

This guide sets out the SMART principles for writing conditions. If you follow these principles, you will likely write a condition that is enforceable. The appendix sets out some specific legal rules that apply to drafting conditions for development approvals for environmentally relevant activities. These principles apply to the *content* of the conditions, rather than to the way that they are written.

What is a condition?

A condition is a legal requirement. Failure to comply with the requirement may be an offence.

A condition 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 be done.

Conditions are used in development approvals, licences and permits to regulate what people can or cannot do. They are also used in statutory tools such as restoration notices and environmental protection orders to require people to do or not do certain things. The principles in this guide apply to all of these uses of conditions.

Power to condition

The power to impose conditions on development applications for environmentally relevant activities (ERAs) are given by Part 1 (Assessing Development Applications), Chapter 4 of the *Environmental Protection Act 1994* (EP Act); as well as under Chapter 6 (IDAS), Part 5, Division 6 of the *Sustainable Planning Act 2009* (SP Act).

Under the SP Act, conditions can be imposed by the Department as either the assessment manager, or more commonly as a concurrence agency.

The power to condition is also contained in other legislation that the Department administers, including the *Vegetation Management Act 1999*, the *Water Act 2000* and the *Coastal Protection and Management Act 1995*.

Importance of quality statutory documents

Placing an effective set of conditions on statutory documents is one of the most important roles undertaken by an environmental regulator. It is a tool that allows the Department to manage environmental and natural resource issues. Effective conditions assist those that we regulate to comply with the Department's directions

and requirements.

Conditions also influence the Department's ability to undertake compliance and enforcement actions, and the types of tools we can utilise in doing so. It is for this reason that conditions imposed must be enforceable. This is why particular care should be taken to draft conditions in the most effective manner.

General rules to follow in writing good conditions

In writing conditions, there are a lot of legal rules explaining what can, and cannot be required by a condition. Rather than going into detail about those rules, most of them can be summed up by the acronym "SMART". A condition will be SMART (and enforceable) if it is:

S – Specific

M – Measurable

A – Achievable

R – Relevant

T – Time specific

Letter	Rule	Details of the rule
S	Specific	What must be done (including details of where it must be done) Who must do it?
M	Measurable	It must be possible to know whether the person has complied with the condition.
A	Achievable	Is it capable of being complied with
R	Reasonable/Relevant	There is a connection between the requirement and the operation/development proposed That requirement is not reasonable obligation, having regard to the activity proposed
T	Time Specific	When it must be completed by (or, if it is an ongoing obligation, clearly state that)

Specific

A condition is specific if it clearly sets out details of who must comply with the condition, what that person needs to do, where it needs to be done (if relevant) and how it must be done (also if relevant). The condition should not be ambiguous or vague – that is, it should be capable of only one interpretation or meaning. If the condition could be read in two or more different ways, it is not specific enough.

You should be consistent with the words that you use. If you use two different words to mean the same thing, a magistrate or judge is likely to assume that you meant to say something different each time which could affect the enforceability of the condition. For example, referring to the same pond as a "settling pond" in one place in a document and as a "pond" in a different place could lead to an argument that you meant two different things.

If words have special or technical meanings, you should define them. This will avoid any arguments about what the word means, and will help both the person who has to comply with the condition and a judge or magistrate to know what you mean.

Where possible, write using the active voice rather than the passive voice. For example, say “The holder of this licence must not use more than 50 megalitres of water per year” instead of “More than 50 megalitres per year must not be used”. Using the active voice makes it clear who has to comply with the condition. Also avoid using “may” or “should” when you want someone to do something – use “must” instead to make it clear that you are imposing an obligation.

Measurable

It must be possible to work out whether the person has complied with the condition. That is, it must be possible to measure compliance. Ask yourself the question, “How will I know whether they have done what they have to do?”. If it is not possible to measure compliance with a condition, it is not possible to know whether they have complied or not, and so it is not possible to take action against a person for failing to comply with the condition. The condition will be unenforceable.

When writing a condition, think about how compliance with it will be measured. Will you know from a site inspection? Or from sampling or monitoring? Is there room for argument about whether a condition has or has not been complied with?

Achievable

Is the condition capable of being complied with? Is it possible for the person to do what the condition requires? Does the condition give them a reasonable amount of time? Does it ask them to do the impossible? If a condition cannot be complied with, then it will not be enforceable. For example, requiring someone to comply with a discharge limit for a contaminant, at a level that is below the level of detection, is not achievable. The person cannot know whether he or she has achieved the required level, because the level is below the level of detection, and so they cannot comply with the condition.

Being achievable does not mean that it has to be easy to comply, or that complying must have no negative effect on a person. It is acceptable for a condition to restrict someone’s ability to do something, and it may even be acceptable for it to be expensive to comply with (although see “Reasonable” below). But if the condition cannot be complied with, it will not be enforceable.

If you are setting a time limit on when something must be done, you must make sure that the thing can be done within that time. That may mean that you have to do some work to work out what a reasonable amount of time is. Giving someone one day to do something that will take at least a week is not achievable.

Reasonable/relevant

A condition must be both reasonable and relevant. To be reasonable, it must be a reasonable or proportionate way of achieving your objective. As an extreme example, requiring someone to shut down their operations may be an effective way of stopping them from causing environmental harm, but if the harm can be stopped by requiring them to modify their operations then a requirement to shut down the operations would not be reasonable.

Consider what you are trying to achieve, and what would be a reasonable requirement to place on someone. Many Acts specifically require that a condition or requirement be reasonable, and may state what you must consider when deciding reasonableness. A condition that is unreasonable will not be enforceable.

The condition must also be relevant. Again, ask yourself what you are trying to achieve and then ask whether the proposed condition is relevant to achieving that. A restoration notice under the *Vegetation Management Act 1999*, for example, may have a condition requiring an area to be fenced. But if there is no danger of pests or people entering the area, a requirement to fence may not be relevant.

Time specific

An enforceable condition will clearly state when something must be done by. This can either be a specific date ("by 1 January"), a specific period ("within 7 days of service of this notice") or a specific event ("before receiving any waste"). With time periods like these, it is easy to know whether something has or has not been done by the due date. This then makes it easy both for the person who has to comply with the conditions to know when they have to do something, and for the Department to prove that a breach has occurred.

Do **not** use words such as "immediately" or "as soon as possible". These terms have no clear meaning. It is not possible to say with certainty whether someone has done something "immediately". If you want something to happen quickly, work out when it needs to happen by and then specify that date or time in the document.

Also do not use "regularly" or "frequently", as these words are also open to interpretation – there could be a number of views about how often something needs to be done if it is to be done "regularly". Instead, work out how often you want the thing to happen (for example, once a month) and then specify when the thing is to happen by reference to a date, period or event (for example, "submit monitoring reports to the Department on the last business day of every month").

An example of a good condition is as follows:

- The operator must:
 - o carry out noise monitoring to investigate a complaint of noise nuisance, if required to do so by the Department;
 - o commence the noise monitoring within 48 hours of receiving the Department's requirement; and
 - o provide the results of the noise monitoring to the Department within 14 days of completing the monitoring.

You will see that it complies with the general rules for drafting conditions, for the reasons below:

Rule	Compliant?
Specific	The condition clearly puts an obligation on the operator. The condition is specific in telling the operator what he/she must do. Note that the condition could be tightened up by defining how the noise monitoring is to be carried out.
Measurable	It is possible to measure compliance with the condition – you can work out whether or not the operator has done what he/she is required to do.
Achievable	The timeframes seem to be reasonable, and what is required to be done should be achievable by the operator
Reasonable/Relevant	This will depend on the nature of the operation, but assuming that it is for an operation that is likely to generate sufficient noise to cause a complaint of nuisance, the condition will be reasonable and relevant
Time Specific	The condition clearly states when the noise monitoring has to commence, and when the report has to be given to the Department

General points

Legal proceedings

When a condition is breached, the Department can start legal proceedings for the breach. Typical examples of legal proceedings include:

- prosecution – for example section 435 of the EP Act;
- seeking any of the following:
 - o an injunction;
 - o an order that the offender remedy the breach and/or be restrained from committing any future breaches; or
 - o a declaration that an offence has occurred or is continuing.

When drafting conditions, always remember that conditions are often the basis for legal proceedings, and badly drafted conditions can mean that legal actions can fail.

The Department has a range of other options available if conditions are breached, including issuing penalty infringement notices and using statutory tools. However, these options are only available if the conditions have been well-drafted and are enforceable.

Administrative decision-making

Conditions should not affect or otherwise depart from existing obligations imposed by legislation, without a clear and obvious justified reason for the departure.

In drafting conditions you must comply with the general rules of administrative decision-making, taking all relevant considerations into account (legislation guidelines for example) and making sure that you have sufficient evidence to justify imposing the condition.

Refer to the [Queensland Ombudsman's Good Decision Making Guide](#) if you need more information about good administrative decision making.

Appendix 1 – Principles relating to development approval conditions

Legal principles in drafting conditions

For conditions to be 'lawful conditions' for a development approval, the statutory rules set out in Chapter 6, Part 5, Division 6 SP Act must be complied with. The statutory rules concerning conditions set out in that part of the SP Act are summarised as follows:

- conditions must:
 - o be within the Department's jurisdiction or powers given to it under legislation;
 - o be relevant to the development or use of premises as a consequence of the development;
 - o be reasonably required in relation to the development or use of premises as a consequence of the development;
 - o not be an unreasonable imposition on the development or use of premises as a consequence of the development;
 - o not be inconsistent with a condition of an earlier development approval or compliance permit still in effect for the development;
 - o not state that works required to be carried out for a development must be undertaken by an entity other than the applicant;
 - o not require an access restriction strip;
 - o not limit the time a development approval has effect for a use or work forming part of a network of community infrastructure, other than State-owned or State-controlled transport infrastructure;
- A condition may:
 - o place a limit on how long a lawful use may continue or works may remain in place;
 - o state that a development may not start until certain prerequisites have been achieved (i.e. obtained further development approvals);
 - o require compliance with an infrastructure agreement relating to the land;
 - o require a document or work to be subject to compliance assessment;
 - o require development;
 - o require an aspect of a development to be completed within a particular time;
 - o require the payment of security under an agreement under section 348 SP Act to support a condition mentioned above (aspect of development completed within a particular time).

Necessary and desirable conditions

For the Department, the EP Act requires that any condition also be necessary and desirable (in addition to the other tests outlined previously in this guide).

In order to be necessary and desirable condition, the condition must have a clear purpose and need for the condition. Further, the condition must be fair and appropriate.

Finality

In deciding whether to approve development with or without conditions, the Department must deal with the application fully and finally. This is known as the "finality principle". A condition will be invalid because it

breaches the finality principle if either:

- it has the effect of **significantly altering the development** in respect of which the development application is made; or
- where a condition leaves for **later decision** an **important aspect of the development**, and the decision on that aspect could alter the proposed development in a fundamental way, then the approval with that condition cannot be regarded as final.

Conditions may impose requirements for further management plans or similar documents to be submitted, provided that the matters dealt with in the plans are not an 'important aspect of the development' (i.e. they can fairly be described as incidental or ancillary to the overall development, or deal with technical details).

If a condition defers the final approval of the overall development or use to a later time, that will likely to offend the finality principle (i.e. that is an 'important aspect of the development').

A condition should also not impose an unnecessary responsibility on the Department or a third party. An example of an unnecessary responsibility is where a condition imposes monitoring obligations on the Department for a development, i.e. the Department must check whether siltation fences have been installed every month.

Conditions in Ecotrack

Ecotack contains various approved 'model conditions' for certain activities.

If you use these model conditions, they should only be treated as model conditions for consideration and not automatically included in a development approval.

This means that you need to look at the particular approval, and determine whether each condition proposed is reasonable and relevant and does not offend any of the other restrictions concerning conditions (i.e. does not offend the finality or certainty principles).

Performance based conditions

Performance-based conditions are conditions that specify a result or outcome and allow the person subject to the condition to decide for themselves how they will reach the outcome.

Advantages

Advantages of performance based conditions include:

- They can be an effective way to address risks when there are a number of possible controls, or knowledge about the risks is quickly changing;
- They can encourage compliance by allowing industry to take different and appropriate approaches;
- They accommodate technological change and the emergence of new hazards.

When drafting licence conditions, performance-based conditions are often? More appropriate than prescriptive conditions (see below) which can be inflexible and require frequent amendment as circumstances change.

Disadvantages

Disadvantages of performance based conditions include:

- It does not focus on procedural compliance, only a stated specific outcome sought;

- It identifies the desired performance indicator, which can be indirectly inflexible or counterproductive to development of new technologies or methodologies in managing the particular aspect of the operation(s);
- It will encourage compliance with the specific performance criteria (i.e. the installation of siltation fences), rather than a particular desired outcome (i.e. stopping siltation and erosion from a site);
- The merit assessment of performance is typically subjective, and can be difficult to enforce unless properly drafted;
- It will make everyone behave in the same way, regardless of whether this is appropriate in the circumstances;
- It does not encourage implementation of further measures once the performance criterion are satisfied;
- It can often require a higher level of resources of effort in ascertaining compliance.

Prescriptive conditions

Prescriptive conditions are conditions that specify how something must be done.

Advantages

Advantages of prescriptive conditions include:

- Prescriptive conditions are often easier to enforce as it can be easier to prove that they have been breached. They also provide more certainty that something will be done in the prescribed manner.
- They can be effective to address higher risks when clear direction is needed.
- They can be easier for clients to understand and implement.

Disadvantages

Disadvantages of prescriptive conditions include:

- They are inflexible;
- It does not focus on the desired outcome, rather what must be implemented;
- It will make everyone behave in the same way, regardless of whether this is appropriate in the circumstances;
- It can be counterproductive to development of new technologies or methodologies in managing the particular aspect of the operation(s);
- It will encourage compliance with the specific performance criteria (i.e. the installation of siltation fences), rather than a particular desired outcome (i.e. stopping siltation and erosion from a site);
- It does not encourage implementation of further measures once the condition has been complied with.

Procedural guide

Compliance

Writing Effective and Enforceable Conditions

The purpose of this procedural guide is to assist with drafting quality and enforceable conditions for any statutory document whose purpose is to regulate an individual or corporation to enable them to meet the objectives of the legislation that the Department of Environment and Resource Management (DERM) administers.

Introduction

Writing effective and enforceable conditions or requirements for statutory documents (licences, permits, development approvals and statutory tools) is important. These documents are only as good as the conditions contained in them. If the conditions are not enforceable, then DERM has no power to compel a person to comply with the condition or to take enforcement action if the condition is breached. In a very real sense, if the condition is not enforceable, the document is useless.

This guide sets out the SMART principles for writing conditions. If you follow these principles, you will likely write a condition that is enforceable. The appendix sets out some specific legal rules that apply to drafting conditions for development approvals for environmentally relevant activities. These principles apply to the *content* of the conditions, rather than to the way that they are written.

What is a condition?

A condition is a legal requirement. Failure to comply with the requirement may be an offence.

A condition 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 be done.

Conditions are used in development approvals, licences and permits to regulate what people can or cannot do. They are also used in statutory tools such as restoration notices and environmental protection orders to require people to do or not do certain things. The principles in this guide apply to all of these uses of conditions.

Power to condition

The power to impose conditions on development applications for environmentally relevant activities (ERAs) are given by Part 1 (Assessing Development Applications), Chapter 4 of the *Environmental Protection Act 1994 (EP Act)*; as well as under Chapter 6 (IDAS), Part 5, Division 6 of the *Sustainable Planning Act 2009 (SP Act)*.

Under the SP Act, conditions can be imposed by DERM as either the assessment manager, or more commonly as a concurrence agency.

The power to condition is also contained in other legislation that DERM administers, including the *Vegetation Management Act 1999*, the *Water Act 2000* and the *Coastal Protection and Management Act 1995*.

Importance of quality statutory documents

Placing an effective set of conditions on statutory documents is one of the most important roles undertaken by an environmental regulator. It is a tool that allows DERM to manage environmental and natural resource issues. Effective conditions assist those that we regulate to comply with DERM's directions and requirements.

Conditions also influence DERM's ability to undertake compliance and enforcement actions, and the types of tools we can utilise in doing so. It is for this reason that conditions imposed must be enforceable. This is why particular care should be taken to draft conditions in the most effective manner.

CR2

General rules to follow in writing good conditions

In writing conditions, there are a lot of legal rules explaining what can, and cannot be required by a condition. Rather than going into detail about those rules, most of them can be summed up by the acronym "SMART". A condition will be SMART (and enforceable) if it is:

- S** – Specific
- M** – Measurable
- A** – Achievable
- R** – Relevant
- T** – Time specific

Letter	Rule	Details of the rule
S	Specific	What must be done (including details of where it must be done) Who must do it
M	Measurable	It must be possible to know whether the person has complied with the condition.
A	Achievable	It is capable of being complied with
R	Reasonable/Relevant	There is a connection between the requirement and the operation/development proposed That requirement is not unreasonable obligation, having regard to the activity proposed
T	Time Specific	When it must be completed by (or, if it is an ongoing obligation, clearly state that)

Specific

A condition is specific if it clearly sets out details of who must comply with the condition, what that person needs to do, where it needs to be done (if relevant) and how it must be done (also if relevant). The condition should not be ambiguous or vague – that is, it should be capable of only one interpretation or meaning. If the condition could be read in two or more different ways, it is not specific enough.

You should be consistent with the words that you use. If you use two different words to mean the same thing, a magistrate or judge is likely to assume that you meant to say something different each time which could affect the enforceability of the condition. For example, referring to the same pond as a "settling pond" in one place in a document and as a "pond" in a different place could lead to an argument that you meant two different things.

If words have special or technical meanings, you should define them. This will avoid any arguments about what the word means, and will help both the person who has to comply with the condition and a judge or magistrate to know what you mean.

Where possible, write using the active voice rather than the passive voice. For example, say "The holder of this licence must not use more than 50 megalitres of water per year" instead of "More than 50 megalitres per year must not be used". Using the active voice makes it clear who has to comply with the condition.

Writing Effective and Enforceable Conditions

Also avoid using “may” or “should” when you want someone to do something – use “must” instead to make it clear that you are imposing an obligation.

Measurable

It must be possible to work out whether the person has complied with the condition. That is, it must be possible to measure compliance. Ask yourself the question, “How will I know whether they have done what they have to do?”. If it is not possible to measure compliance with a condition, it is not possible to know whether they have complied or not, and so it is not possible to take action against a person for failing to comply with the condition. The condition will be unenforceable.

When writing a condition, think about how compliance with it will be measured. Will you know from a site inspection? Or from sampling or monitoring? Is there room for argument about whether a condition has or has not been complied with?

Achievable

Is the condition capable of being complied with? Is it possible for the person to do what the condition requires? Does the condition give them a reasonable amount of time? Does it ask them to do the impossible? If a condition cannot be complied with, then it will not be enforceable. For example, requiring someone to comply with a discharge limit for a contaminant, at a level that is below the level of detection, is not achievable. The person cannot know whether he or she has achieved the required level, because the level is below the level of detection, and so they cannot comply with the condition.

Being achievable does not mean that it has to be easy to comply, or that complying must have no negative effect on a person. It is acceptable for a condition to restrict someone’s ability to do something, and it may even be acceptable for it to be expensive to comply with (although see “Reasonable” below). But if the condition cannot be complied with, it will not be enforceable.

If you are setting a time limit on when something must be done, you must make sure that the thing can be done within that time. That may mean that you have to do some work to work out what a reasonable amount of time is. Giving someone one day to do something that will take at least a week is not achievable.

Reasonable/relevant

A condition must be both reasonable and relevant. To be reasonable, it must be a reasonable or proportionate way of achieving your objective. As an extreme example, requiring someone to shut down their operations may be an effective way of stopping them from causing environmental harm, but if the harm can be stopped by requiring them to modify their operations then a requirement to shut down the operations would not be reasonable.

Consider what you are trying to achieve, and what would be a reasonable requirement to place on someone. Many Acts specifically require that a condition or requirement be reasonable, and may state what you must consider when deciding reasonableness. A condition that is unreasonable will not be enforceable.

The condition must also be relevant. Again, ask yourself what you are trying to achieve and then ask whether the proposed condition is relevant to achieving that. A restoration notice under the *Vegetation Management Act 1999*, for example, may have a condition requiring an area to be fenced. But if there is no danger of pests or people entering the area, a requirement to fence may not be relevant.

Time specific

An enforceable condition will clearly state when something must be done by. This can either be a specific date (“by 1 January”), a specific period (“within 7 days of service of this notice”) or a specific event (“before receiving any waste”). With time periods like these, it is easy to know whether something has or has not been done by

the due date. This then makes it easy both for the person who has to comply with the conditions to know when they have to do something, and for DERM to prove that a breach has occurred.

Do **not** use words such as “immediately” or “as soon as possible”. These terms have no clear meaning. It is not possible to say with certainty whether someone has done something “immediately”. If you want something to happen quickly, work out when it needs to happen by and then specify that date or time in the document.

Also do not use “regularly” or “frequently”, as these words are also open to interpretation – there could be a number of views about how often something needs to be done if it is to be done “regularly”. Instead, work out how often you want the thing to happen (for example, once a month) and then specify when the thing is to happen by reference to a date, period or event (for example, “submit monitoring reports to DERM on the last business day of every month”).

An example of a good condition is as follows:

- The operator must:
 - carry out noise monitoring to investigate a complaint of noise nuisance, if required to do so by DERM;
 - commence the noise monitoring within 48 hours of receiving DERM’s requirement; and
 - provide the results of the noise monitoring to DERM within 14 days of completing the monitoring.

You will see that it complies with the general rules for drafting conditions, for the reasons below:

Rule	Compliant?
Specific	The condition clearly puts an obligation on the operator. The condition is specific in telling the operator what he/she must do. Note that the condition could be tightened up by defining how the noise monitoring is to be carried out.
Measurable	It is possible to measure compliance with the condition – you can work out whether or not the operator has done what he/she is required to do.
Achievable	The timeframes seem to be reasonable, and what is required to be done should be achievable by the operator.
Reasonable/Relevant	This will depend on the nature of the operation, but assuming that it is for an operation that is likely to generate sufficient noise to cause a complaint of nuisance, the condition will be reasonable and relevant.
Time Specific	The condition clearly states when the noise monitoring has to commence, and when the report has to be given to DERM.

General points

Legal proceedings

When a condition is breached, the Department can start legal proceedings for the breach. Typical examples of legal proceedings include:

- prosecution – for example section 435 of the EP Act;
- seeking any of the following:
 - an injunction;
 - an order that the offender remedy the breach and/or be restrained from committing any future breaches; or
 - a declaration that an offence has occurred or is continuing.

When drafting conditions, always remember that conditions are often the basis for legal proceedings, and badly drafted conditions can mean that legal actions can fail.

DERM has a range of other options available if conditions are breached, including issuing penalty infringement notices and using statutory tools. However, these options are only available if the conditions have been well-drafted and are enforceable.

Administrative decision-making

Conditions should not affect or otherwise depart from existing obligations imposed by legislation, without a clear and obvious justified reason for the departure.

In drafting conditions you must comply with the general rules of administrative decision-making, taking all relevant considerations into account (legislation guidelines for example) and making sure that you have sufficient evidence to justify imposing the condition.

Refer to the [Queensland Ombudsman's Good Decision Making Guide](#) if you need more information about good administrative decision making.

Appendix 1 – Principles relating to development approval conditions

Legal principles in drafting conditions

For conditions to be 'lawful conditions' for a development approval, the statutory rules set out in Chapter 6, Part 5, Division 6 SP Act must be complied with. The statutory rules concerning conditions set out in that part of the SP Act are summarised as follows:

- conditions must:
 - be within the Department's jurisdiction or powers given to it under legislation;
 - be relevant to the development or use of premises as a consequence of the development;
 - be reasonably required in relation to the development or use of premises as a consequence of the development;
 - not be an unreasonable imposition on the development or use of premises as a consequence of the development;
 - not be inconsistent with a condition of an earlier development approval or compliance permit still in effect for the development;
 - not state that works required to be carried out for a development must be undertaken by an entity other than the applicant;
 - not require an access restriction strip;
 - not limit the time a development approval has effect for a use or work forming part of a network of community infrastructure, other than State-owned or State-controlled transport infrastructure;
- A condition may:
 - place a limit on how long a lawful use may continue or works may remain in place;
 - state that a development may not start until certain prerequisites have been achieved (i.e. obtained further development approvals);
 - require compliance with an infrastructure agreement relating to the land;
 - require a document or work to be subject to compliance assessment;
 - require development;
 - require an aspect of a development to be completed within a particular time;
 - require the payment of security under an agreement under section 348 SP Act to support a condition mentioned above (aspect of development completed within a particular time).

Necessary and desirable conditions

For DERM, the EP Act requires that any condition also be necessary and desirable (in addition to the other tests outlined previously in this guide).

In order to be necessary and desirable condition, the condition must have a clear purpose and need for the condition. Further, the condition must be fair and appropriate.

Finality

In deciding whether to approve development with or without conditions, the Department must deal with the application fully and finally. This is known as the "finality principle". A condition will be invalid because it breaches the finality principle if either:

- it has the effect of **significantly altering the development** in respect of which the development application is made; or
- where a condition leaves for **later decision an important aspect of the development**, and the decision on that aspect could alter the proposed development in a fundamental way, then the approval with that condition cannot be regarded as final.

Conditions may impose requirements for further management plans or similar documents to be submitted, provided that the matters dealt with in the plans are not an 'important aspect of the development' (i.e. they can fairly be described as incidental or ancillary to the overall development, or deal with technical details).

If a condition defers the final approval of the overall development or use to a later time, that will likely to offend the finality principle (i.e. that is an 'important aspect of the development').

A condition should also not impose an unnecessary responsibility on DERM or a third party. An example of an unnecessary responsibility is where a condition imposes monitoring obligations on the Department for a development, i.e. the Department must check whether siltation fences have been installed every month.

Conditions in Ecotrack

Ecotrack contains various approved 'model conditions' for certain activities.

If you use these model conditions, they should only be treated as model conditions for consideration and not automatically included in a development approval.

This means that you need to look at the particular approval and determine whether each condition proposed is reasonable and relevant and does not offend any of the other restrictions concerning conditions (i.e. does not offend the finality or certainty principles).

Performance based conditions

Performance-based conditions are conditions that specify a result or outcome and allow the person subject to the condition to decide for themselves how they will reach the outcome.

Advantages

Advantages of performance based conditions include:

- They can be an effective way to address risks when there are a number of possible controls, or knowledge about the risks is quickly changing;
- They can encourage compliance by allowing industry to take different and appropriate approaches;
- They accommodate technological change and the emergence of new hazards.

When drafting licence conditions, performance-based conditions are often? More appropriate than prescriptive conditions (see below) which can be inflexible and require frequent amendment as circumstances change.

Disadvantages

Disadvantages of performance based conditions include:

- It does not focus on procedural compliance, only a stated specific outcome sought;
- It identifies the desired performance indicator, which can be indirectly inflexible or counterproductive to development of new technologies or methodologies in managing the particular aspect of the operation(s);
- It will encourage compliance with the specific performance criteria (i.e. the installation of siltation fences), rather than a particular desired outcome (i.e. stopping siltation and erosion from a site);

- The merit assessment of performance is typically subjective, and can be difficult to enforce unless properly drafted;
- It will make everyone behave in the same way, regardless of whether this is appropriate in the circumstances;
- It does not encourage implementation of further measures once the performance criterion are satisfied;
- It can often require a higher level of resources of effort in ascertaining compliance.

Prescriptive conditions

Prescriptive conditions are conditions that specify how something must be done.

Advantages

Advantages of prescriptive conditions include:

- Prescriptive conditions are often easier to enforce as it can be easier to prove that they have been breached. They also provide more certainty that something will be done in the prescribed manner.
- They can be effective to address higher risks when clear direction is needed.
- They can be easier for clients to understand and implement.

Disadvantages

Disadvantages of prescriptive conditions include:

- They are inflexible;
- It does not focus on the desired outcome, rather what must be implemented;
- It will make everyone behave in the same way, regardless of whether this is appropriate in the circumstances;
- It can be counterproductive to development of new technologies or methodologies in managing the particular aspect of the operation(s);
- It will encourage compliance with the specific performance criteria (i.e. the installation of siltation fences), rather than a particular desired outcome (i.e. stopping siltation and erosion from a site);
- It does not encourage implementation of further measures once the condition has been complied with.