

Purpose

This document is a guide to council powers under the *Environmental Protection and Pollution Control Act 1994* (EMPCA) and its associated regulations for resolving common environmental complaints.

Scope

This document does not purport to be exhaustive of council powers generally. There may be conditions under a relevant permit or license, or provisions under the *Land Use Planning and Approvals Act 1993* (LUPAA) or other legislation that can be used to achieve a satisfactory outcome when handling a complaint.

Duty and jurisdiction to investigate environmental complaints

Local councils have a duty under EMPCA to use their best endeavors to prevent or control acts or omissions which cause or are capable of causing pollution (section [20A of EMPCA](#)). This duty applies unless the activity is a level 2 activity ([Schedule 2 of EMPCA](#)) or a major project under LUPAA that the council has not been made responsible for.

Where council receives a complaint regarding pollution within its municipal area, they are obliged to investigate whether any action is required.

The Environment Protection Authority (EPA) has a general duty to further the objectives of EMPCA irrespective of the level of activity or its location within the state. The EPA can assist councils with advice and support or can take carriage of a complaint if the matter is serious, complicated or beyond council's capability to manage.

Investigation of complaints

Everyone should be mindful of their safety and consider the risks involved in any investigation. If you have immediate concerns for anyone's safety, please contact Tasmania Police.

Initial enquiries should verify the information provided in the complaint. If the matter warrants further investigation, then more detailed information should be obtained with a view to collecting and recording the evidence of what has occurred.

Matters within council's jurisdiction should not be referred to the EPA without first verifying the complaint.

Investigation powers under EMPCA

The powers of council officers can be found at [section 92](#). They can assist in investigating offences under EMPCA or its regulations.

They include the ability to:

- Enter and inspect any place or vehicle
- Take samples, photos or recordings
- Require the production of records
- Seize and retain anything reasonably suspected of being evidence of an offence
- Direct any person who is reasonably believed to have committed an offence to cease whatever action constitutes that offence

Section 92 should be read carefully, and consideration given to whether the situation requires the use of these powers or if the same result can be achieved another way.

Often investigations can be conducted by communicating effectively with the people concerned and obtaining their voluntary cooperation. In circumstances where environmental harm may be occurring, council officers should not hesitate to use their section 92 powers if needed.

Enforcement Powers

Environment offences

Part 4 of EMPCA contains a number of enforcement provisions, including general offences and the ability to issue infringement notices as prescribed in the regulations. Where an offence occurs, unless there are unusual or extenuating circumstances, enforcement action should be taken.

Serious or material environmental harm are the most serious offences under EMPCA - they must be dealt with by the court, and they carry penalties of heavy fines or even imprisonment in the worst cases. If council suspect such crimes have occurred, the matter should be referred to the EPA.

Under section 62 of EMPCA, council officers may commence proceedings for any offence under EMPCA (or any of its regulations) relating to a level 1 activity or environmental nuisance.

Typically, council will be dealing with infringement offences which include:

- Contravene requirements of an environment protection notice (section 45(3))
- Contravene permit conditions environmental (section 51B)
- Hindering or obstructing a council officer in the exercise of their powers under EMPCA (section 95(1)).
- Regulatory offences under the noise regulations, smoke regulations, and waste management regulations.
- Offences under the Litter Act 2007 (which has its own investigation powers).

Environmental nuisance

Even if an activity is compliant with an existing permit and all regulations, the pollution caused may still amount to environmental nuisance if it unreasonably interferes with a person's enjoyment of the environment. A permit to conduct an activity is not free reign to ignore other legal obligations. What is 'unreasonable' will depend on the facts of the case.

Most nuisance will fall under section 53(2), unlawfully causing environmental nuisance, which can be dealt with by infringement notice (as prescribed in Schedule 3 of the EMPC (General) Regulations 2017).

There is another offence under 53(1), willfully and unlawfully causing environmental nuisance (deliberate action knowing that nuisance may result). This offence may be appropriate for more serious cases, but it cannot be dealt with by infringement notice. That should not deter investigation. The EPA can assist with reviewing the case and referral of court proceedings.

Other enforcement action

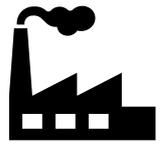
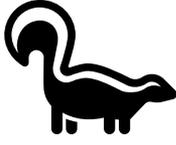
An infringement notice will often be sufficient to deter further breaches of the legislation. However, in some cases there are ongoing environmental concerns that require regulation of the activity.

Other enforcement options under EMPCA include:

- Issuing an environment protection notice (an EPN) - section 44(2). This can be used to regulate an activity or to require immediate cessation of an unlawful activity - especially useful where other legal mechanisms may be cumbersome or cause delay in response.
- Civil enforcement proceedings - section 48.
- Seeking assistance from the EPA

The Director, EPA has additional powers under EMPCA that may assist, such as in the investigation of contaminated sites or requiring a person to provide information (which might include obtaining a report into activities on the land).

Common environment complaints:

Type	Examples	Possible Enforcement Action/s	Additional Materials
Waste 	<ul style="list-style-type: none"> Unlawful disposal – illegal landfilling or stockpiling of waste Improperly handling controlled wastes – such as asbestos or fuel/oil 	Regulatory offence under the waste management regulations (unlawful disposal). Permit/EPN required. Investigation for contamination.	Approved management methods for certain waste types.
	<ul style="list-style-type: none"> Litter dumping 	Offence under the Litter Act 2007 (litter/dumping). Litter abatement notice , to prevent further littering or to remove the litter. Recovery of costs .	Report littering and dumping .
Noise 	<ul style="list-style-type: none"> Neighbour disputes Industrial/agricultural noise 	Regulatory offence under the noise regulations . Environmental nuisance . EPN required.	Environment Protection Policy (Noise) 2009 . Other EPA resources: <ul style="list-style-type: none"> Residential noise and hours of use Noise complaints fact sheet
Discharge to water 	<ul style="list-style-type: none"> Release of sewage Fish kills Odour/visible pollution in waterways 	Referral to relevant agency for serious pollution incidents. Breach of existing permit, EPN or other authority.	See EPA website for information on where to report water-related pollution incidents and complaints
Smoke/air emissions 	<ul style="list-style-type: none"> Fires Industrial releases 	Regulatory offence under the smoke regulations . Environmental nuisance . Breach of existing permit, EPN or other authority. EPN required.	Environmental Protection Policy (Air Quality) 2004 . Other EPA materials: <ul style="list-style-type: none"> Backyard burning Smoke regulations and wood heating
Odour 	<ul style="list-style-type: none"> Waste disposal/composting Industrial activity 	Regulatory offence under the waste management regulations . Breach of existing permit, EPN or other authority. Environmental nuisance . EPN required.	