

Information Sheet

Environmental Protection Act 1994

General Environmental Duty

The purpose of this document is to provide information regarding the general environmental duty that applies under section 319 of the Environmental Protection Act 1994 (EP Act).

1 What is the General Environmental Duty?

Under section 319 of the EP Act, all persons in Queensland must fulfill their 'general environmental duty' (GED). This means that a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonably practicable measures to prevent or minimise the harm.

Environmental harm is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value. It can range from environmental nuisance right through to serious environmental harm. Examples of activities that may cause environmental harm include the storage, use and disposal of chemicals, management of waste products, or activities that may generate noise, odour or dust.

As a component of the EP Act since its inception, the GED is a well-established obligation. It imposes a legal obligation to proactively prevent and minimise the risk of environmental harm. The GED supports the environmental protection principle that prevention of harm to the environment is preferred to remedial or mitigation measures. It also reinforces the 'polluter pays' principle; that is, those who generate pollution and waste should bear the cost of containment, avoidance, or abatement.

2 Who does the GED apply to?

The GED applies to everyone. Any person who is undertaking an activity that may cause harm to Queensland's environment has a GED. This means identifying, understanding and controlling the potential risks of environmental harm from their activity, and taking all reasonably practicable measures to prevent or minimise those risks.

Some activities that are known to have a higher risk of causing environmental harm are identified as 'environmentally relevant activities' under the EP Act. An environmental authority (EA) is required to carry out these activities. The EA will include conditions that assist the holder to manage the key risks and impacts of their activity and in doing so to help them comply with their GED.



3 Complying with GED

In general, operators who are following good environmental management practices should easily meet their GED obligations. For those who are unsure, the following provides a framework to help determine what is required. As a first step, it is important to determine what measures are reasonably practicable to prevent or minimise environmental harm from the activity. This involves identifying and understanding the types of environmental risks that are associated with the activity, and determining how to best eliminate or mitigate these risks. Further information is provided below.

3.1 What are 'reasonably practicable measures'?

The following are examples of matters to consider when determining what are 'reasonably practicable measures'¹ to prevent or minimise environmental harm. No single matter determines what is (or was at a particular time) reasonably practicable. Each matter must be considered individually and in combination, with reference to the specific circumstances.

a) the nature of the harm or potential harm

A person should take into consideration the potential impacts that their activity could have on the environment, along with the likelihood and potential severity of these impacts. For example, consider whether the activity could cause any impacts (e.g. through contaminant release or disturbance) to the environmental values of:

- air
- waters
- wetlands
- groundwater and any associated surface ecological systems
- land, including soils, subsoils, landforms and associated flora and fauna; or
- the acoustic environment.

Also ensure that any wastes generated, transported, or received as part of carrying out the activity are managed in a way that protects environmental values.

b) The sensitivity of the receiving environment

A person must consider how their activity will or may affect the environmental values of the receiving environment. The environmental values of the receiving environment may be more or less sensitive to certain types of impact. This must be taken into account when determining how a person can comply with their general environmental duty when carrying out an activity in that area. For example, if an odorous activity is located adjacent to a residential area it is likely that greater measures will be required to mitigate the impacts of odour than if the same activity was located within an agricultural area where there are no sensitive receptors nearby.

More will reasonably be expected of a duty-holder to prevent or minimise a risk the greater the sensitivity of the receiving environment.

¹ These examples are provided in section 319(4) of the EP Act.

c) the current state of technical knowledge for the activity

The state of technical knowledge refers to what is known (e.g. across an industry or in the community) about how to undertake the activity, risks associated with undertaking the activity and measures available for preventing or minimising risks/environmental harm. It includes what reasonably ought to be known by someone undertaking the activity. GED requires that a person possess, actively seek and maintain knowledge about the risks and risk controls related to the activity. As technical knowledge evolves over time the required response to risks will also evolve.

In line with the precautionary principle, where there is a threat of environmental harm, lack of full scientific certainty should not be used as a reason for postponing measures to prevent this occurring. Decisions on appropriate measures should be guided by (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and (ii) an assessment of the risk weighted consequences of various options².

d) the likelihood of successful application of the different measures that might be taken

There may be several ways to prevent or minimise environmental harm. What needs to be done to comply with GED can depend on the scale or complexity of the activities and the nature or risk of the harm. Identifying the risks and methods of control may include listing options and prioritising risk controls from the highest level of effectiveness to the lowest. Some of the controls may lower the likelihood of harm occurring, others may lower the degree of harm that may result, and some may lower both. As the activity or receiving environment changes over time, controls which were previously suitable for a risk may no longer be adequate and may need to change.

e) Financial implications of the different measures as they would relate to the type of activity

The costs of preventing or minimising environmental harm may include costs to purchase, install, maintain, operate and decommission a control measure. It is appropriate to consider financial implications to ensure that measures adopted are cost-effective and not disproportionate to the level or significance of the environmental risk. Notwithstanding, financial implications should not be considered in isolation of other matters, such as those listed above.

The installation, operation, maintenance, and upgrade of plant and equipment necessary to protect environmental values is a cost that needs to be integrated into the activity. A person should not engage in an activity that gives rise to a risk of environmental harm if they cannot afford to implement the necessary controls to prevent the harm over the life of the activity.

3.2 Further advice for meeting the GED

There is a range of information available online to help identify the risks and appropriate management measures relevant to particular activities. This includes, but is not limited to:

² From the Intergovernmental Agreement on the Environment (IGAE) made on 1 May 1992 between the Commonwealth, the States, the Australian Capital Territory, the Northern Territory and the Australian Local Government Association.

- Best Practice Environmental Management Guidelines (for example, e.g. for ERA 53(a) Organic material processing by composting, available at [Best practice environmental management guideline ERA 53\(a\) Organic material processing by composting \(des.qld.gov.au\)](#)).
- Environmental Codes of Practice for Industry (refer [Environmental codes of practice for industry | Business Queensland](#)).
- Online tools such as those prepared by the Department, Master Builders Queensland, the Housing Industry Association (Qld) and Healthy Land and Water Ltd. to assist the building and construction sectors to meet their erosion and sediment control requirements. Refer [Urban stormwater quality | Environment | Department of Environment, Science and Innovation, Queensland \(desi.qld.gov.au\)](#) for further details.
- Other information on the Department's website; for example information about caring for our water, at [Caring for our water | Environment | Department of Environment, Science and Innovation, Queensland \(desi.qld.gov.au\)](#) or information about erosion and sediment control on construction sites ([Erosion and sediment control \(ESC\) on construction sites | Environment | Department of Environment, Science and Innovation, Queensland \(desi.qld.gov.au\)](#)).

Once a person has put in place appropriate measures to prevent or minimise environmental harm, they must ensure that the measures are, and remain, effective. This includes, but is not limited to, ensuring that:

- plant and equipment are properly maintained and serviced;
- systems are in place to monitor, review and respond to environmental risks;
- appropriate instruction, supervision and training is provided to any person engaging in the activity;
- records are kept of measures implemented.

It is important to understand that meeting the GED is ongoing. An activity's specific risk will change over time just as risk control measures change as new technology and techniques become available. Continual periodic review of environmental risks and measures to prevent harm is a good way of ensuring compliance with the duty.

3.3 Special provision for activities involving relevant industrial chemicals

The EP Act includes some special provisions relating to activities involving relevant industrial chemicals³.

To comply with their GED, a person must comply with any risk management measures for the chemical under a scheduling decision under the *Industrial Chemicals Environmental Management (Register) Act 2021 (Cwlth)*. IChEMS Minimum Standards can be found at [The IChEMS Minimum Standards - DCCEEW](#).

4 Contravention of the general environmental duty

Where a person has not met their GED and the contravention causes, or is likely to cause, serious or material environmental harm, they will have committed an offence under section 319(2) of the EP Act. Penalties of up to 4,500 penalty units or 2 years imprisonment may apply where the contravention was wilful, or 1,655 penalty units otherwise.

³ See the *Industrial Chemicals Environmental Management (Register) Act 2021 (Cwlth)*.

Non-compliance with the GED can also be grounds for the administering authority to issue an environmental enforcement order to secure compliance with the duty. This applies regardless of whether the contravention has caused or is likely to cause material or serious environmental harm.

Section 319(5) of the EP Act provides the following example of matters that may be considered in deciding whether the GED has been contravened:

Whether a person fails to do any of the following in carrying out an activity:

- a) install, use and maintain plant, equipment, processes or systems in a way that minimises risks of environmental harm that may arise in connection with the activity;
- b) use and maintain systems for the identification, assessment and control of risks of environmental harm that may arise in connection with the activity, and for the evaluation of the effectiveness of controls.
- c) use and maintain systems to ensure that all substances are handled, stored, used or transported in a way that minimises risks of environmental harm that may arise in connection with the activity
- d) use and maintain systems to ensure that information, instruction, supervision and training is provided to any person engaging in the activity in a way that minimises risks of environmental harm that may arise in connection with the activity.

4.1 Lawful acts and Codes of Practice

The EP Act acknowledges that environmental harm may sometimes be authorised⁴, for example under:

- a transitional environmental program;
- an environmental enforcement order
- an environmental authority or progressive rehabilitation and closure plan (PRC plan) schedule; or
- an emergency direction.

A person does not commit an offence for a contravention of their GED if an instrument mentioned in section 493A(2) authorises the act (or omission) and provides for reasonably practicable measures to be taken in relation to the doing of the act.

Further, a person will not have committed a GED offence if they were operating in accordance with a relevant code of practice that has been developed under the EP Act. Codes of practice provide guidance to operators to help them comply with the EP Act and meet their general environmental duty.

The department recommends that a code of practice for a particular industry be developed by representatives from that industry. The information sheet 'Developing codes of practice' (ESR/2015/1695)⁵ provides further information on this process. Codes of practice will only have effect (and provide a defence of complying with the general environmental duty) if they are approved by the Minister administering the EP Act and are gazetted. Existing codes of practice are available at www.business.qld.gov.au/business/running/environment/industry-codes.

A person is also taken to have complied with the GED if an agricultural ERA standard applies to the activity and they are compliant with that standard⁶.

⁴ Refer to section 493A(2) of the EP Act for the list of authorising instruments.

⁵ This information sheet can be found at www.qld.gov.au using the search term 'ESR/2015/1695'.

⁶ Refer section 493A(4) of the EP Act.

5 Related obligations and duties

The GED complements other duties and obligations under the EP Act, including the duty to restore⁷ and duty to notify⁸. Further information regarding these duties is available at www.business.qld.gov.au (search 'environmental obligations and duties').

Disclaimer

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⁷ Section 319C of the EP Act

⁸ Sections 320-320G of the EP Act