

# Information Sheet

## Environmental Protection Act 1994

### Duty to Restore the Environment – Overview

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*The purpose of this document is to respond to frequently asked questions regarding the duty to restore the environment that is stated in section 319C of the Environmental Protection Act 1994 (EP Act).*

#### 1 What is the Duty to Restore?

The duty to restore the environment (Duty to Restore) is contained in section 319C of the EP Act. It requires that, if a person causes or permits an incident that results in unlawful environmental harm through contamination of the environment, they must, as soon as reasonably possible, take measures, as far as reasonably practicable, to rehabilitate or restore the environment to its condition before the harm.

The duty clarifies that a person should not wait for instructions from the administering authority to clean-up or remediate contamination. Rather, they must respond appropriately; proactively remediating the environmental harm they have caused or permitted. The Duty to Restore reinforces a person's obligations under the general environmental duty to take all reasonably practicable measures to prevent or minimise environmental harm.

#### 2 What are incidents involving contamination?

The Duty to Restore is triggered by an incident involving contamination of the environment that results in unlawful environmental harm. Contamination is the release (whether by act or omission) of a contaminant into the environment. Contaminants can be a gas, liquid or solid, an odour, an organism, energy (including noise and heat), or a combination of these things. Incidents may vary in severity; small leaks or spills which can be easily contained or large-scale pollution incidents with the potential to cause significant environmental and human health impacts.

#### 3 Do I have other duties or obligations if land is contaminated?

Under section 320 of the EP Act, the department must be notified when a person becomes aware of the presence of a hazardous contaminant on the land that is causing, or is reasonably likely to cause, material or serious environmental harm. Other notification requirements relate to changes in contaminated land and the carrying out of notifiable activities (as defined in Schedule 3 of the EP Act).

Further information is available in the [Guideline - Duty to notify of environmental harm](#) (ESR/2016/2271)<sup>1</sup>.

#### 4 How do I meet my Duty to Restore?

It is the responsibility of the person who has caused or permitted the incident that caused unlawful environmental harm to occur to determine how best to comply with the Duty to Restore. In determining this, they

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<sup>1</sup> This guideline can be found at [www.qld.gov.au](http://www.qld.gov.au) using the search term 'ESR/2016/2271'.



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must have regard to several factors<sup>2</sup>, including:

- the nature and extent of the environmental harm caused by the contamination;
- the sensitivity of the receiving environment to remedial measures that might be taken in relation to the environmental harm;
- the current state of technical knowledge for remedial measures that might be taken in relation to the environmental harm;
- the likelihood of successful application of the different measures that might be taken in relation to the environmental harm; and
- the financial implications of the different measures that might be taken in relation to the environmental harm.

Where the nature and extent of contamination and associated risks to human health and the environment are not reasonably well known, successfully meeting the Duty to Restore would include actively seeking information to understand these risks and the most appropriate way to restore the environment; for example, by consulting a suitably qualified person in order to adequately characterise the contamination. Also, by taking this action prior to commencing work that may disturb contaminants. Notwithstanding, a person must act as soon as reasonably practicable to comply with the Duty to Restore.

When dealing with land that is, or may be contaminated, permits may be required to carry out work on the land or to remove contaminated soil. If unsure, please contact the department on 1300 130 372. The department's guideline [Disposal permit to remove, treat and dispose of contaminated soil](#) (ESR/2020/5353) provides more detailed information about when a disposal permit is needed, and how to apply.

### 5 How do I know when I have met my Duty to Restore?

If a person is unsure about whether they've met their Duty to Restore, there are several questions they could consider, including:

- Did I act immediately to contain contamination and reduce the potential for further environmental harm?
- Has the incident involving contamination been fully contained and brought under control?
- Have I expended all reasonably practicable resources in rehabilitating or restoring the environment?
- Is the environment in the same condition as it was in prior to the environmental harm, as far as I possibly can manage?

### 6 Can I access land that I don't own to clean up contamination?

The Duty to Restore does not provide a person with the automatic right to enter land that they do not own. However, in most circumstances it would be considered reasonable for a person to seek permission from the landowner to enter land, in order to comply with their Duty to Restore.

Where the incident has caused or threatened material or serious environmental harm, the responsible person has a duty to notify. Under this duty, both the administering authority and the owner or occupier of the affected land must be notified of the event. In the case that permission to enter the land cannot be obtained from the landowner, the department could, depending on the circumstances, consider issuing an Environmental

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<sup>2</sup> Regard must be had to these measures under section 319C(4) of the *Environmental Protection Act 1994*.

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Enforcement Order (EEO) or Emergency Direction, which then provide avenues for obtaining access to land.

### **7 Do I need to tell anyone when I finish rehabilitating or restoring the environment?**

The Duty to Restore does not in itself include any requirement to tell the department when rehabilitation or restoration work has been completed. Notwithstanding, the department may ask for further information (e.g. in response to a notification of the incident) and/or issue a notice requiring a person to take certain actions within specified timeframes.

### **8 What happens if I don't comply with the Duty to Restore?**

It is an offence to fail to comply with the Duty to Restore where the contravention of the Duty to Restore relates to harm that is serious or material environmental harm. A maximum penalty of 4,500 penalty units<sup>3</sup> or 2 years of imprisonment can apply for wilful contravention of the duty, or 1,655 penalty units otherwise.

Additionally, failing to comply with the Duty to Restore is grounds for the administering authority to issue an EEO. An EEO is a statutory notice that can be used if necessary to secure a person's compliance with the Duty to Restore. Failure to comply with an EEO also constitutes an offence which can carry a penalty of up to 6,250 penalty units or 5 years imprisonment for wilful contravention.

#### **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, Science and Innovation should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

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<sup>3</sup> The current value of a penalty unit can be found at [www.qld.gov.au](http://www.qld.gov.au) by searching 'penalty unit'.