

# Simplified structure of the *Environmental Protection Act 1994* (Qld)

Dr Chris McGrath (22 April 2015)

## Object

The protection of the environment while allowing for ESD (s3).

## Key Definitions

- Environment (s8)
- Environmental value (s9)
- Environmental harm (s14)
- Material environmental harm (s16)
- Serious environmental harm (s17)

## Core Concept

### General environmental duty (s319)

A person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm.

### Unlawful environmental harm (s493A)

An act or omission that causes serious or material environmental harm is unlawful unless ... the defendant complied with the general environmental duty.

## Environmental Planning and Management Tools

Environmental Protection Policies (EPPs) ss26-34

Environmental Impact Statement (EIS) ss37-72

Environmentally relevant activities (ERAs), Ch 5 ss106-318

Environmental evaluations and audits ss321-329

Transitional Environmental Programs ss330-357

Environmental Protection Orders (EPOs) ss358-363

Financial Assurances ss364-367

Contaminated land management system ss370-425

Environmental Offences ss426-444; 493\*

Investigative powers for authorised officers ss445-

Civil enforcement provisions ss504-513

Public reporting of information on the environment ss540-547

\*Penalty infringement notices (PINs) are also available for many offences under the *State Penalties Enforcement Act 1999* (Qld)

There are many terms used in the EP Act but five key definitions are critical to understand the operation of the Act, what activities are regulated by it, and when offences may be committed against it. These are:

**8 Environment** includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) all natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c).

**9 Environmental value** is ... a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety ... [or stated under an EPP].

**14 Environmental harm** is any adverse effect ... on an environmental value ... .

**16 Material environmental harm** is environmental harm:

- (a) that is not trivial or negligible in nature, extent or context; or
- (b) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than [\$5000] but less than [\$50,000];
- (c) that results in costs of more than [\$5000] but less than [\$50,000] being incurred in taking appropriate action to—
  - (i) prevent or minimise the harm; and
  - (ii) rehabilitate or restore the environment to its condition before the harm.

**17 Serious environmental harm** is environmental harm:

- (a) that causes actual or potential harm to environmental values that is irreversible, of a high impact or widespread; or
- (b) that causes actual or potential harm to environmental values of an area of high conservation value or special significance; or
- (c) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than [\$50,000]; or
- (d) that results in costs of more than the threshold amount being incurred in taking appropriate action to—
  - (i) prevent or minimise the harm; and
  - (ii) rehabilitate or restore the environment to its condition before the harm.

These concepts are particularly important for understanding the general offence provisions in ss426-444. Within the wide jurisdiction created for the prevention of environmental harm, the conceptual fulcrum of the Act is the relationship between ss319 and 493A. Section 319 states the general environmental duty:

**319 General environmental duty**

- (1) A person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm (the *general environmental duty*).
- (2) In deciding the measures required to be taken under subsection (1), regard must be had to, for example-
  - (a) the nature of the harm or potential harm; and
  - (b) the sensitivity of the receiving environment; and
  - (c) the current state of technical knowledge for the activity; and
  - (d) the likelihood of successful application of the different measures that might be taken; and
  - (e) the financial implications of the different measures as they would relate to the type of activity.

The general environmental duty forms a central tenor for liability under the EP Act by forming the general defence to unlawful environmental harm contained in s493A, which is then used as an element in the offences of causing serious or material environmental harm contained in ss437 and 438.