

Civil remedies under the *Environment Protection Act 1993* and associated legislation

Revised October 2023

This publication provides information about the forms of action that may be taken under section 104 (Civil Remedies) of the Environment Protection Act 1993. It also provides information about the timeframe and the process of how action can be taken under this section.

Introduction

The *Environment Protection Act 1993* (EP Act) is the primary pollution control legislation in South Australia. Broadly, the EP Act seeks to ensure that measures are taken to protect, restore and enhance the quality of the environment according to the principles of ecologically sustainable development and promote those principles. Industry and the community must provide for a standard of care for the environment and prevent any nuisance or harm to the environment. Every person has a 'general environmental duty' to protect the environment.

The EP Act allows for applications to be made to the Environment, Resources and Development Court for various measures, including orders requiring specific actions or restraining a person from specified conduct. In addition, the Court can order the payment of costs or expenses, compensation, or damages for loss resulting from a breach of the EP Act. The legislation seeks to minimise the risk of frivolous or vexatious actions by making provision for the Court to award costs against an applicant.

Who may commence enforcement action

An enforcement application may be made by one person on behalf of a group of people, but the consent of all of those other people must be obtained.

An enforcement application may be commenced but:

- the Environment Protection Authority (EPA)
- any person whose interests are affected by the subject matter of the application
- any other person, with the leave of the Court.

Timeframe

An enforcement order may be sought at any time within three years after the date of the alleged contravention, or at any later time with the consent of the Attorney-General.

What is the process

- 1 An application for an enforcement order must be lodged with the Registrar of the Court. The application must be in writing and signed by the applicant, give the full name of the applicant, and an address (including a telephone number, and facsimile number if available) to which documents can be sent to the applicant. The application must also identify the person(s) said to have contravened the EP Act.
- 2 The application should be accompanied by an affidavit¹ to tell the Court what is said to have happened to warrant an enforcement order, how the applicant has been affected and so forth.
- 3 The affidavit must set out the facts and circumstances upon which the applicant relies to support the application for an enforcement order. The affidavit should also include the name and address (including telephone number, and facsimile number if available) of any person who has, or might reasonably be expected to have, an interest in the land to which the application relates.
- 4 An application brought on behalf of a group of people should be accompanied by a memo. The memo should list all of the people and/or organisations on whose behalf the application is brought, and show that all of those people/organisations consent to the application being brought on their behalf.
- 5 A copy of the application and affidavit (and memo if applicable) must be provided to the EPA within the following three days. The EPA may ask the Court to allow it to be party to the application.
- 6 The Court will determine whether or not the application for enforcement orders has sufficient merit to proceed, and whether the application should be changed.
- 7 The Court may grant permission to serve a summons on the person who it is said has contravened the EP Act, requiring that person to come to Court to justify why an enforcement order should not be made (the form of the summons is set out in Rule 7.1.4 of the Court Rules).
- 8 The applicant must present the Court with a summons within one month of being granted this permission. The Court may also require that the summons be served on any person the applicant said may have an interest in the land to which the enforcement application relates.
- 9 Within three months of the summons being issued by the Court (unless that time is extended by the Court) the applicant must also provide the Court with a further affidavit indicating that the summons has been served on the person said to have contravened the Act. Another affidavit will be required to be filed as soon as possible if the Court also ordered that the summons be served on a person who may have an interest in the land to which the application relates.
- 10 The person(s) served with the summons must file a notice with the Court within 14 days of receiving the summons to indicate that they wish to be heard.
- 11 The Court will hold a confidential conference with all of the parties involved to see whether there is any way of resolving the issues by consent orders.
- 12 If no consent is reached, then the Court may consider it appropriate to grant temporary orders until the hearing of the issues can take place, and will list the application for hearing before the Court.
- 13 Alternatively, the Court may adjourn the application to allow the person said to have contravened the Act to make application to the EPA for an environmental authorisation, or to remedy any other contravention of the EP Act.
- 14 The Court may require the applicant to provide security for the payment of costs if the application is dismissed, or to give an undertaking to pay any amount that may be awarded against the applicant.

Costs

The Court can make any order it thinks is just and reasonable regarding the costs of the proceedings.

¹ An affidavit is a statement which is sworn or affirmed.

The Court may order an applicant to compensate the person said to have contravened the EP Act where the Court considers that:

- there has been no contravention of the Act; and
- the person said to have contravened the Act has suffered loss or damage as a result of the actions of the applicant; and
- it is appropriate to make the order.

What may be done to enforce the EP Act

The Court may grant an order:

- restraining a person from engaging in conduct in contravention of the EP Act
- for enforcement of the provisions of an environment performance agreement
- requiring a person who has engaged, or proposes to engage, in a contravention of the Act to take specified action
- requiring a person to take action required by the Act
- requiring a person who has contravened the Act to:
 - take specified action to make good environmental harm caused by their contravention of the Act
 - take specified action to prevent or minimise further environmental harm which may be caused by their contravention of the Act
 - pay the reasonable costs and expenses incurred by the EPA, or any other public authority in taking action to prevent or mitigate environmental harm caused by their contravention of the Act
 - pay compensation for injury, loss or damage to property caused by their contravention of the Act, or the reasonable costs and expenses incurred in taking action to prevent or minimise that loss
 - pay exemplary damages.

Further information

Legislation

[Online legislation](#) is freely available.

General information

Environment Protection Authority
GPO Box 2607
Adelaide SA 5001

Telephone: (08) 8204 2004
Facsimile: (08) 8124 4670
Freecall: 1800 623 445 (country)
Website: <https://www.epa.sa.gov.au>
Email: epainfo@sa.gov.au
