

# Powers of Authorised Officers

A guide to your powers under environment protection legislation



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# Glossary

Unless otherwise indicated, definitions are taken from the Dictionary of the *Protection of the Environment Operations Act 1997* (POEO Act) and apply only in relation to that Act.

**Appropriate regulatory authority**—the appropriate regulatory authorities for particular activities are shown in the following table:

Appropriate regulatory authority	Responsible for:
NSW Environment Protection Authority (EPA), now part of the Department of Environment and Conservation NSW (DEC)	<ul style="list-style-type: none"> <li>• all scheduled activities</li> <li>• activities and premises regulated by environment protection licences, including all licences to control water pollution from non-scheduled activities</li> <li>• activities carried on by the state or a public authority whether at premises occupied by the state or a public authority or otherwise</li> <li>• matters arising under Chapter 3B, clause 57R (Burning of Biomaterials in electricity generating works) of the Protection of the Environment Operations (General) Regulation 1998</li> <li>• premises occupied by, or activities carried on by, the Sydney Organizing Committee for the Olympic Games (SOCOG) (cl 65 of the Protection of the Environment Operations (General) Regulation 1998)</li> <li>• non-scheduled activities on the route of the light rail system declared under section 104N(2) of the <i>Transport Administration Act 1988</i> (except for buildings or other structures that are included in the route of the light rail system by clause 13(1)(b) of the Transport Administration (General) Regulation 2000);</li> <li>• outdoor entertainment activities, being concerts, festivals, cinematic and theatrical events and sporting events, and any rehearsals, sound checks or other preparations for activities carried on outdoors and involving the use of sound amplification equipment, and 200 or more people, at any of the following venues (cl 67 of the Protection of the Environment Operations (General) Regulation 1998):             <ul style="list-style-type: none"> <li>– the Trust lands within the meaning of the <i>Royal Botanic Gardens and Domain Trust Act 1980</i>, <i>Centennial Park and Moore Park Trust Act 1983</i>, <i>Parramatta Stadium Trust Act 1988</i> or <i>Sydney Cricket and Sports Ground Act 1978</i></li> <li>– the Darling Harbour area within the meaning of the Sydney Harbour Foreshore Authority Regulation 1999</li> <li>– Homebush Bay within the meaning of the <i>Homebush Bay Operations Act 1999</i></li> <li>– the Opera House within the meaning of the Opera House Trust By-law 1998</li> </ul> </li> </ul>

Marine authority (that is, the Minister administering the <i>Ports Corporatisation and Waterways Management Act 1995</i> or the Waterways Authority)	<ul style="list-style-type: none"> <li>noise control notices regarding vessels in navigable waters, and premises used in connection with vessels that are situated adjacent to, or partly or wholly over, navigable waters (POEO Act, s 263)</li> </ul>
Waterways Authority	<ul style="list-style-type: none"> <li>non-scheduled activities involving a non-piloted vessel in navigable waters, except those in marine parks or those for which the EPA is appropriate regulatory authority; or for which a public authority other than a local authority or the Waterways Authority is declared under s 6(3) of the POEO Act to be the appropriate regulatory authority (cl 64A, Protection of the Environment Operations (General) Regulation 1998)</li> </ul>
Marine Parks Authority	<ul style="list-style-type: none"> <li>non-scheduled activities in marine parks except those for which the EPA is appropriate regulatory authority (see above) or for which a public authority, other than a local authority or the Marine Parks Authority, is declared under s 6(3) of the POEO Act to be the appropriate regulatory authority (cl 64, Protection of the Environment Operations (General) Regulation 1998)</li> </ul>
Director General of the Department of Environment and Conservation NSW (the DG of DEC)	<ul style="list-style-type: none"> <li>non-scheduled activities in Kosciuszko National Park except those for which the EPA is the appropriate regulatory authority (see above) or for which a public authority, other than a local authority or the DG of DEC, is declared under s 6(3) of the POEO Act to be the appropriate regulatory authority</li> </ul>
Local councils	<ul style="list-style-type: none"> <li>all other non-scheduled activities in a council area</li> </ul>
Lord Howe Island Board	<ul style="list-style-type: none"> <li>all other non-scheduled activities on Lord Howe Island</li> </ul>
Western Lands Commissioner	<ul style="list-style-type: none"> <li>all other non-scheduled activities in the Western Division of the state, except in local council areas</li> </ul>
Sydney Catchment Authority (SCA)	<ul style="list-style-type: none"> <li>certain functions of the EPA or any other regulatory authority (including appropriate regulatory authorities) in relation to certain non-scheduled activities carried out or proposed to be carried out within or outside a catchment area which may affect that catchment area. The SCA can exercise these functions only to protect, or protect and enhance, the water quality in catchment areas. The SCA cannot exercise these functions in relation to premises or activities licensed under an environment protection licence (including non-scheduled activities) or for activities carried on by the SCA (Part 2 of the Sydney Water Catchment Management (Environment Protection) Regulation 2001).</li> </ul>

**Note:** Where there is no other appropriate regulatory authority, the EPA is the default appropriate regulatory authority.

**Dangerous situation** means a situation involving the transport of dangerous goods by road or rail that is causing or is likely to cause imminent risk of death or injury to a person, or harm to the environment or property (s 6(1) of the *Road and Rail Transport (Dangerous Goods) Act 1997*).

**Local authority** means:

- (a) a local council (being the council of an area under the *Local Government Act 1993*), or
- (b) the Lord Howe Island Board in relation to Lord Howe Island, or
- (c) the Western Lands Commissioner in relation to the Western Division, except any part of the Western Division within the area of a local council, or
- (d) an authority prescribed by the Regulations for the purposes of this paragraph for any place not covered above, or
- (e) an authority prescribed instead by the Regulations for the purposes of this paragraph for any place wholly or partly covered above.

**marine authority** means the Minister administering the *Ports Corporatisation and Waterways Management Act 1995* or the Waterways Authority.

**marine park** has the same meaning as in the *Marine Parks Act 1997*.

**motor vehicle** has the same meaning as in the *Road Transport (General) Act 2005*.

**navigable waters** means all waters that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a fee or otherwise, but does not include flood waters that have temporarily flowed over the established bank of a watercourse.

**offensive noise** means noise:

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
  - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
  - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a level, nature, character or quality prescribed by the Regulations or that is made at a time, or in other circumstances, prescribed by the Regulations.

**penalty unit**—as at March 2006 the value of a penalty unit is \$110—s 17 of the *Crimes (Sentencing Procedure) Act 1999*).

**plant** means any plant, equipment, apparatus, device, machine or mechanism, and includes any vessel, dredge, railway locomotive or crane, but does not include a motor vehicle.

**premises** includes:

- (a) a building or structure, or
- (b) land or a place (whether enclosed or built on or not), or
- (c) a mobile plant, vehicle, vessel or aircraft.

**public authority** means a public or local authority constituted by or under an Act, and includes:

- (a) a government department, or
- (a) a statutory body representing the Crown, a state-owned corporation or a local council, or
- (c) a member of staff or other person who exercises functions on behalf of a public authority.

**records** include plans, specifications, maps, reports, books and other documents, whether in writing, in electronic form or otherwise. This definition also applies to records under s 4 of the *Contaminated Land Management Act 1997*.

**regulatory authority** means the EPA, a local authority or a public authority prescribed for the purposes of section 6(3) of the POEO Act.

**scheduled activity** means an activity listed in Schedule 1 of the POEO Act.

**vessel** means any kind of vessel used in navigation.



# 1 Introduction

The *Protection of the Environment Operations Act 1997* (POEO Act) broadly allocates responsibilities for pollution prevention and control to the NSW Environment Protection Authority (EPA), local councils and other public authorities. The EPA, now part of the Department of Environment and Conservation (DEC) is made the appropriate regulatory authority for:

- ensuring environment protection licences are adhered to
- regulating scheduled activities and premises where scheduled activities are carried out
- regulating activities carried out by the state or a public authority, whether at premises occupied by the state or a public authority or otherwise
- monitoring other activities an environment protection licence regulating water pollution is issued for.

In nearly all other cases, the appropriate regulatory authority is the relevant local council. A local council may exercise its powers under the POEO Act only in or in relation to the local council's area. The glossary at the beginning of this guide includes a table providing more detailed information about who the appropriate regulatory authority is for particular activities and premises.

Authorised officers may be appointed to help regulatory authorities exercise their functions under the POEO Act. These guidelines should help officers to better understand their powers as authorised officers under the POEO Act and other key environment protection legislation.

This chapter introduces some general principles and explains the statutory basis for the powers of authorised and enforcement officers. Chapter 2 explains the key powers of authorised officers and Chapter 3 gives more information on the power to issue penalty notices. Chapter 4 explains some other powers of authorised offices, while Chapter 5 provides guidance on issuing, serving and enforcing notices, and collecting evidence. Chapter 6 comprises two tables that contain sections from relevant Acts pertaining to the powers of authorised officers, with a summary of each of these.

## 1.1 General principles

### **Powers exercised by authorised officers are different to powers exercised on behalf of an organisation**

The environment protection legislation gives some powers specifically to individuals referred to in the legislation as 'authorised officers'. However, the legislation also gives general powers to organisations such as the EPA and other regulatory authorities.

It is important that officers exercising powers under the environment protection legislation ensure they have the authority to do so. If you wish to exercise a power that may be exercised only by an authorised officer, you should make sure your appointment as an authorised officer includes the exercise of that power. If you wish to exercise a power on behalf of an organisation, you should make sure you have been delegated authority to exercise that power.

As an authorised officer, you are expected to exercise your powers in a fair and reasonable manner, so any evidence you obtain cannot be said to have been obtained unfairly or improperly. As an authorised officer, you can always ask people to answer questions voluntarily regarding environmental incidents, but anything you do that is not authorised by

legislation or that exceeds your powers is done illegally. Any evidence obtained in this way is potentially inadmissible (see section 4.4 'Illegally or improperly obtained evidence').

Unlike police officers, authorised officers have only limited powers of arrest under the environment protection legislation. Section 204(3) of the POEO Act allows authorised officers to arrest only people who refuse to state their names or residential addresses, or who provide names and addresses that in the opinion of the authorised officers are false.

## Enforcement officers

Officers who can issue penalty notices under the POEO Act and Regulations are now called 'enforcement officers' rather than 'authorised officers'. This change of terminology was made on 1 July 2002 by the *Environment Protection Legislation Amendment Act 2002*.

Enforcement officers who are not also appointed as authorised officers will only have the function of authorised officers in respect of their responsibilities or functions as enforcement officers under the POEO Act and Regulations (s 189A of the POEO Act).

As an enforcement officer, any authorised officer powers you exercise for the purposes of issuing a penalty notice must be authorised by legislation. Anything you do that is not so authorised is done illegally, and may make any evidence supporting the penalty notice inadmissible if the case goes to court.

Enforcement officers have, in respect of their power to issue penalty notices, all the functions of an authorised officer under Chapter 7 of the POEO Act other than:

- under s 204(2), which is the power to require a person's name and address in relation to a proposed noise control notice or a noise abatement direction
- under Part 7.6, which relates to powers with respect to vehicles, vessels and other articles.

## 1.2 Authorised officers appointed by the Environment Protection Authority (EPA)

### The role of the EPA

The *Protection of the Environment Administration Act 1991* (the Act that set up the EPA) makes the EPA responsible for investigating, reporting and prosecuting alleged non-compliance with environment protection legislation—s 7(2)(e).

The NSW Environment Protection Authority (EPA) is now part of the Department of Environment and Conservation NSW (DEC). DEC staff exercise certain functions of the EPA under environmental legislation.

### The environment protection legislation

Environment protection legislation is defined in s 3(1) of the *Protection of the Environment Administration Act 1991* as the following Acts (including any Regulations or other instruments made under these Acts):

- *Contaminated Land Management Act 1997*
- *Environmental Trust Act 1998*
- *Environmentally Hazardous Chemicals Act 1985*
- *Ozone Protection Act 1989*
- *Pesticides Act 1999*
- *Protection of the Environment Operations Act 1997*
- *Radiation Control Act 1990*
- *Recreation Vehicles Act 1983*
- *Road and Rail Transport (Dangerous Goods) Act 1997*
- *Waste Avoidance and Resource Recovery Act 2001.*

### **Who is an EPA authorised officer?**

The term 'authorised officer' is generally defined in most of the above Acts as a person authorised or appointed by the EPA. Some of the definitions are set out in full in chapter 6.

In the case of the POEO Act, s 187 permits the EPA to appoint any person, including a class of persons, as an authorised officer under the Act. In most cases, the people appointed by the EPA would be DEC employees, although this need not be the case.

### **Powers of authorised officers appointed by the EPA**

The Director General (DG) of DEC has delegated to senior staff the authority to appoint authorised officers to exercise any or all of the powers and functions of an authorised officer under the above Acts and any Regulations made under those Acts.

The key sections and clauses of Acts relating to authorised officer powers are reproduced in chapter 6.

## **1.3 Authorised officers appointed by other organisations**

Section 187 of the POEO Act permits other appropriate regulatory authorities to appoint any officer or employee of the authority, including a class of such officers or employees, as an authorised officer under the Act. Local councils can also appoint officers or employees of another local council as authorised officers under the Act for the appointing local council's area. The powers of these other authorised officers are explained below.

### **Powers of council authorised officers**

Section 6(2) of the POEO Act states that a local authority, usually a local council, is the appropriate regulatory authority for non-scheduled activities in its area, except in relation to matters specifically excluded by s 6(2).

Councils are generally responsible for appointing their own officers and deciding which staff may exercise all or some of the powers of an authorised officer under the POEO Act. Section 187(2) of the Act allows councils to 'appoint any officer or employee ... (including a class of such officers or employees) as an authorised officer for the purposes of this Act'. Appointments of authorised officers may be subject to conditions, limitations or restrictions, or given only for a limited purpose (s 188).

An officer may also be authorised by the POEO Act and the Protection of the Environment Operations (Penalty Notices) Regulation 2004 to issue certain penalty notices as specified under Schedule 1 of that Regulation (see chapter 3). Officers who can issue penalty notices under the POEO Act and Regulations are now called 'enforcement officers' rather than 'authorised officers' (see section 1.1 'General principles').

To undertake their regulatory responsibilities fully, councils should have on staff officers who have been appointed to exercise authorised officer powers under the POEO Act and those appointed as enforcement officers to issue penalty notices under the Protection of the Environment Operations (Penalty Notices) Regulation 2004. Depending on the choice of the council, a council officer may be appointed as both an authorised officer and an enforcement officer, or alternatively may be appointed as only an authorised officer or enforcement officer.

### **Statutory restrictions on council-appointed authorised officer powers**

The POEO Act provides that, subject to any additional limitations imposed by the appointing council, an authorised officer appointed by a council is limited to matters concerning the functions of the council under the POEO Act (s 188(3)).

The functions of the council may be exercised beyond its local government area, provided the powers are being exercised in relation to the local authority's area (s 6(4)). For example, a council authorised officer who is appointed to exercise powers under s 203(1) of the POEO Act may rely on this power to interview suspects located outside the officer's local government area, if the suspects have allegedly been involved in an offence committed in the officer's local government area.

### **Powers of authorised officers of other NSW government departments and authorities**

Section 6(3) of the POEO Act states that a public authority may be the appropriate regulatory authority for any matter for which it has been declared to be so by the Regulations. As noted above, in most circumstances the EPA and local councils will be the regulatory authorities under the POEO Act, although the Waterways Authority or relevant Minister is the appropriate regulatory authority for noise control notices and noise abatement directions relating to vessels (see ss 263 and 275 of the POEO Act and section 4.2 'Inspecting and testing vehicles, vessels and other articles'). However, a public authority, including a local authority, cannot be the declared appropriate regulatory authority for activities carried on by that public authority. In these circumstances, the EPA is the appropriate regulatory authority.

Officers of NSW government departments and authorities listed in clause 5 of the Protection of the Environment Operations (Penalty Notices) Regulation 2004 may be duly authorised as enforcement officers by their organisations to issue certain penalty notices as specified under Schedule 1 of the Regulation, even if the organisation is not the appropriate regulatory authority for the activity or premises (see chapter 3).

## **1.4 Identification card**

Regulatory authorities are required to provide each authorised and enforcement officer they appoint under the POEO Act with an identification card (s 189(1)). There are no specific requirements in the POEO Act regarding the type or content of such a card. However, the EPA recommends that identification cards produced by other regulatory authorities should contain the name and photo of the officer and the name of the issuing authority, with the powers granted to the officer listed on the back.

When exercising the functions of an authorised or enforcement officer, the officer must produce the card 'if requested to do so by any person affected by the exercise of any such

## Powers of Authorised Officers

function' (s 189(2)). This means, for example, that you have to show your identification card to an occupier of premises, if they ask for it, before you enter the premises, or to an individual you are proposing to issue with a penalty notice, if they ask for it.

## 2 Key powers of authorised officers

The key powers of authorised officers, which also apply to enforcement officers for the purposes of issuing penalty notices, are described in Chapter 7 of the POEO Act (ss 187–212). These powers are discussed in this chapter and in chapter 3, and include:

- powers of entry and search (section 2.1)
- powers to disable noisy alarms (section 2.2)
- powers to question and identify persons (section 2.3)
- powers to issue notices (section 2.4 and chapter 3).

The main powers of authorised officers are under the POEO Act. However, the powers contained in Chapter 7 of the POEO Act may also be exercised under the following Acts:

- the *Waste Avoidance and Resource Recovery Act 2001* and the Regulations under that Act
- the *Ozone Protection Act 1989* and the Regulations under that Act
- the *Pesticides Act 1999* and the Regulations under that Act
- the *Radiation Control Act 1990* and the Regulations under that Act
- any repealed provision of any Act or Regulation amended or repealed by the POEO Act, for offences committed against the Act or Regulation before its repeal
- any repealed provision of any Act or Regulation amended or repealed by the POEO Act, for any other matter that continues to have force or effect, subject to any savings or transitional regulations (see s 186 of the POEO Act).

### 2.1 Powers of entry and search

Part 7.4 of the POEO Act gives authorised officers broad-ranging powers to enter and search premises. In general, an authorised officer may enter (by foot, in a vehicle or in any other manner) any premises where they reasonably suspect that:

- any industrial, agricultural or commercial activity is being carried out—in this case the officer may enter at any time during which the activity is being carried out, or
- pollution is, has been, or is likely to be caused—in this case the officer may enter at any time (see s 196(1) of the POEO Act).

Authorised officers may also enter any other non-residential premises, or parts of premises used for non-residential purposes, at any reasonable time. To enter any part of a premises used only for residential purposes, an authorised officer must have the permission of the occupier, or be in possession of a search warrant issued under s 199 (see ss 196(1) and 197 of the POEO Act).

In gaining entry to a premises, an authorised officer may use reasonable force and enlist the aid of other authorised officers or police officers (s 196(3)). Any person may accompany an authorised officer and take all reasonable steps to help them exercise their functions under Part 7.4, if the authorised officer believes that the person can help them exercise those functions (s 199A). Authorised officers must do as little damage as possible while exercising their powers of entry and search (s 201). Regulatory authorities are liable to pay compensation for any damage caused by their authorised officers in exercising a power of entering a premises **unless** the occupier has obstructed or hindered the authorised officers in gaining entry (s 202), but not for any damage caused by the exercise of any other power.

After lawfully entering a premises, an authorised officer may do anything at the premises that they believe is necessary for the following purposes under s 184 (for which they may exercise powers under Chapter 7 (s 198(1)):

- (a) determining whether there has been compliance with or a contravention of the POEO Act or the Regulations or any environment protection licence, notice or requirement issued or made under this Act
- (b) obtaining information or records for purposes connected with the administration of the POEO Act
- (c) generally administering the POEO Act and protecting the environment.

Actions may include:

- taking samples
- inspecting and testing any equipment
- taking photographs or recordings
- examining or copying records
- seizing anything connected with an offence or suspected offence.

Wilfully delaying or obstructing authorised officers during the exercise of any of their powers is an offence under s 211(3) that is subject to a penalty of up to:

- \$1,000,000 for a corporation, with a further \$120,000 for each day the offence continues for continuing offences
- \$250,000 for an individual, with a further \$60,000 for each day the offence continues for continuing offences.

## 2.2 Power to disable noisy alarms

An authorised officer has the power to turn off or otherwise disable a building intruder alarm or a motor vehicle intruder alarm that is or has been sounding in breach of the Act or the Regulations—s 198A(1). A 'motor vehicle intruder alarm' is defined under s 198A(2) as:

a device that:

- (a) incorporates or connects to a sounding device, and
- (b) on being triggered, causes the sounding device to emit sound, being a device that is attached to or forms part of the motor vehicle for use as an intruder alarm, whether or not the device is also designed to be used for any other purpose.

Officers should note that a search warrant will be needed to enter residential premises (see s 197). The appropriate regulatory authority that appointed the authorised officer will be liable to compensate all interested parties for any damage that the authorised officer caused in exercising a power of entering a premises unless the occupier obstructed or hindered the authorised officer in gaining entry (s 202), but not for any damage caused by the exercise of any other power.

## 2.3 Powers to question and identify persons

### Questioning individuals

Part 7.5 of the POEO Act gives authorised officers the power to require anyone they reasonably suspect of knowing about any relevant matters to answer any questions

concerning those matters—s 203(1). An authorised officer may, by notice in writing, require a person to attend a specified place at a specified time to answer questions, if attendance at that place is reasonably required so the questions can be properly put and answered—(s 203(5). The place and time should be nominated by the person, or if the place and time they nominate are not reasonable under the circumstances or they do not nominate a place and time, the authorised officer can nominate a place and time that are reasonable under the circumstances—s 203(6).

An authorised officer may record questions and answers on tape, video or any other method, provided that they have informed the person being questioned that the record is being made—(s 203A). The authorised officer must give a copy of the recording to the person that has been questioned as soon as practicable after it is made—s 203A(3).

Authorised officers have the power to require a person whom they reasonably suspect has committed or is committing an offence to state their full name and residential address—(s 204(1). They may also arrest such a person if the person refuses to state their name or residential address, or states a name and address that in the opinion of the authorised officer is false—s 204(3).

Authorised officers may **request** a person to provide proof of their name and address—(s 204(2A). It is **not** an offence for a person to fail to provide proof of their name and address. An authorised officer does not have the power to arrest a person for failing to provide proof of their name and address.

The required warnings referred to below should also be given when questioning a person or requiring them to state their name and address.

## Questioning representatives of corporations

When dealing with corporations, which are bodies incorporated under the *Corporations Act 2001* (Cth), an authorised officer needs to know that the person they are speaking to is authorised to speak on behalf of the corporation. If the person is not so authorised, the officer needs to ask who is in charge or who can speak for the corporation, and then speak to that person. Even if a person is not authorised to speak on behalf of the corporation, they may provide useful information or be a valuable witness in any legal action.

The POEO Act gives the EPA and other regulatory authorities the power to issue a notice in writing requiring a corporation to nominate in writing, within a specified time period, a director or officer to be the corporation's representative for the purpose of answering questions—(s 203(2). Answers given by this representative bind the corporation—s 203(3). The corporation is not protected by the privilege against self-incrimination, so a company representative, director or employee cannot decline to answer questions on the grounds that it might incriminate the corporation—s 212(2). The privilege of self-incrimination applies only to individuals, and must be claimed by the person in question and not by someone else on their behalf. See 'Give the required warnings' under section 2.4 for more information.

## 2.4 Powers to issue notices

The POEO Act allows designated officers to issue written notices. The principal types of notices are:

- notices to provide information and records
- noise abatement directions
- smoke abatement notices
- penalty notices—see chapter 3.



Only officers who have been appointed as ‘authorised officers’ for these purposes under the POEO Act, and where applicable enforcement officers carrying out these activities for the purpose of issuing a penalty notice, may issue notices to provide information and records, and noise abatement directions. Police officers can also issue noise abatement directions. Smoke abatement notices can only be issued by authorised officers of local authorities.

## Notices to provide information and records

Authorised officers may issue written notices that require a person to provide them with any information or records they need in connection with any matter for which the regulatory authority that appointed them is responsible—s 193(1). Such notices may be issued by EPA authorised officers whether or not the EPA is the appropriate regulatory authority in the circumstances—s 193(2).

Notices requiring information or records must:

- require a person to provide only records that are within their possession or power to obtain lawfully—s 195(1)
- unless otherwise specified, require records to be provided in written form—s 195(3)
- specify the manner in which the information or records must be provided, and give a reasonable time by which the request must be met—s 194)
- contain the required warnings (see below).

### Give the required warnings

When asking questions, or issuing notices requiring information or records to be provided, the authorised officer should warn the person, whether an individual or a corporation, that failure to answer such questions, or to provide information or records, is an offence (s 212(1)). If this warning is not given, the individual or corporation cannot be guilty of an offence if they fail to answer the question or provide information or records—s 212(1).

In the case of an individual, the authorised officer should also warn them that they may object to answering questions or providing information on the grounds that it might incriminate them—s 212(3). Note that the privilege against self-incrimination applies only to individuals (called ‘natural persons’ in Part 7.7 of the POEO Act), and must be claimed by the person in question and not by someone else on their behalf. A person cannot object to providing **records** on the grounds that the records might incriminate them—s 212(4).

Note that even when an individual does object to answering questions or providing information, they are still required to provide the answers or information—s 212(2). Although answers and information may not be used against the individual, they may be used in proceedings against a corporation or other individuals, or used to obtain further information—s 212(5).

If the individual does object to answering questions or providing information, or was not warned that they may object on the ground that the information to be provided or the answer to be given might incriminate them, the answers or information that they provide at that time may not be used in criminal proceedings against them (except for proceedings for an offence under Chapter 7 of the POEO Act—s 212(3)).

The warnings relating to non-compliance and the privilege against self-incrimination referred to above also need to be given when an authorised officer requires a person to state their name and address—s 212(6).

## Noise abatement directions

An authorised officer or police officer may issue noise abatement directions when they believe that offensive noise is being, or has at any time within the past seven days been, emitted from any premises (s 276). An officer or employee of the marine authority that has been authorised by the marine authority may issue a noise abatement direction if the offensive noise is being emitted from a vessel in navigable waters.

Also, only authorised officers of the EPA can issue noise abatement directions:

- to the state or a public authority
- that affect any activity carried out by the state or a public authority, any scheduled activity, or an activity or work that is subject to an environment protection licence (s 278).

The Regulations may prescribe other people or activities that cannot be subject to noise abatement directions (s 278).

The authorised officer or police officer may direct one person or all people the officer believes to be the occupier(s) of the premises, including a vessel, or the persons the officer believes to be making or contributing to the noise, to cease making or contributing to making offensive noise (s 276). Noise abatement directions remain in force for 28 days, unless a shorter period is specified in the notice (s 277). The following people are guilty of an offence:

- a person who does not promptly stop making offensive noise at the premises
- a person who does not promptly cease making or contributing to making offensive noise
- a person who causes or permits or makes or contributes to the making of offensive noise during the period specified in the notice without reasonable excuse.

For the purposes of issuing a noise abatement direction, an authorised officer may require a person to state their name and residential address (see 'Questioning individuals' under section 2.3 above.)

Note that a noise abatement direction does not mean that all noise from the premises must cease—only offensive noise.

## Smoke abatement notices

Details of issuing smoke abatement notices under s 135B of the POEO Act are provided in chapter 6.

## 3 Penalty notices

Please note: penalty notices are also known as PINs.

### 3.1 Who may issue penalty notices and for what offences?

Penalty notices may be issued by enforcement officers for offences committed under certain legislation, including the POEO Act.

Schedule 1 of the Protection of the Environment Operations (Penalty Notices) Regulation 2004 (Penalty Notice Regulation) details which classes of enforcement officer may issue penalty notices and for what offences. It is worth obtaining a copy of this schedule and becoming familiar with it. You should also consult DEC's website regularly for any updates to the list of offences in the Penalty Notice Regulation.

Schedule 1 of the Penalty Notice Regulation is divided into either three or four columns for each of the various Acts and Regulations, as follows:

- column 1: all the offence provisions for which a penalty notice may be issued. These offence provisions are listed under the headings of the various Acts and Regulations
- column 2: the class of enforcement officer that may issue the penalty notice for that particular offence, indicated by a number, if they are authorised by their organisation to do so
- columns 3 and 4 : the amount (in dollars) of the penalty. In some cases the amount differs depending on whether the penalty notice is issued to an individual or a corporation.

Clause 5(6) of the Penalty Notice Regulation sets out the 14 classes of enforcement officer that may issue penalty notices. Each class of enforcement officer is given a separate number, depending on the authority that employs them. References to an officer or employee of an organisation include officers and employees of body corporates, and persons who otherwise act under the direction and control of the organisation in providing services that are subject to an arrangement between the body corporate and the organisation (cl 5(7)):

- number 1 means an officer or employee of a local authority (that is, a local council, the Lord Howe Island Board or the Western Lands Commissioner, as appropriate) or, in relation to penalty notices for offences alleged to have been committed in Kosciuszko National Park, an officer or employee of DEC
- number 2 means an officer or employee of DEC
- number 2A means an officer or employee of DEC who is employed within a group of staff that is designated by the DG of DEC as EPA regulatory staff
- number 3 means an officer or employee of a Port Corporation
- number 4 means a police officer
- number 5 means an officer or employee of Sydney Water Corporation, Hunter Water Corporation or a water supply authority within the meaning of the Water Management Act 2000, other than a water supply authority that is also a local authority
- number 6 means an officer or employee of the Department of Primary Industries
- number 7 means an officer or employee of the Sydney Harbour Foreshore Authority

- number 8 means an officer or employee of the Department of the Arts, Sport and Recreation in relation to penalty notice offences allegedly committed on land vested in the Centennial Park and Moore Park Trust or in the Parramatta Park Trust, or an officer or employee of the Parramatta Stadium
- number 9 means an officer or employee of an Australian university
- number 10 means an officer or employee of the Sydney Olympic Park Authority
- number 11 means an officer or employee who is a marine park ranger within the meaning of the *Marine Parks Act 1997*
- number 12 means an officer or employee of the Sydney Catchment Authority
- number 13 means an officer or employee of the Waterways Authority.

For some offences, only one or two numbers appear in the 'officer' column. This means that only those classes of enforcement officer can issue penalty notices for those offences. For other more common offences, such as littering (s 145 of the POEO Act) or polluting waters (s 120 of the POEO Act), a wider range of enforcement officers may issue penalty notices, including those from councils, DEC, the Waterways Authority and the police.

If in doubt, take the following steps to check if you can issue a penalty notice for a particular offence under the environment protection legislation:

1. Confirm that you have been appointed by your organisation to exercise the functions of an enforcement officer under s 226 of the POEO Act. If the answer is 'yes', go to step 2. If 'no', go no further until you are appointed. If you do not know, before you go any further find out from your employer if you are authorised to issue penalty notices.
2. Locate the particular offence in column 1 of Schedule 1 of the Penalty Notice Regulation.
3. Go across the page of the schedule to column 2 and look at the officers' number(s) listed there.
4. Refer to clause 5(6) of the Penalty Notice Regulation to see whether one of the numbers listed under the 'officer' column for that offence applies to you.

**Note:** Penalty notices may be issued by officers or employees of an organisation even if that organisation is not an appropriate regulatory authority for the particular activity. However, an officer from a particular organisation may not issue a penalty notice for an offence allegedly committed by that organisation or one of its officers or employees (cl 5(4) of the Penalty Notices Regulation). Only enforcement officers of the EPA can issue penalty notices for:

- an offence allegedly committed for activities or work authorised or controlled by an environment protection licence, other than littering,
- an offence alleged to have been committed for activities carried on by the state or a public authority, other than littering (s 226).

## 3.2 When should penalty notices be issued?

Penalty notices:

- are issued for minor breaches, when the facts appear obvious and a penalty notice is likely to be a viable deterrent
- allow the person served with the notice to pay a fine rather than have the alleged offence dealt with in court
- are designed primarily to deal with one-off breaches that can be remedied easily.

Penalty notices are not appropriate when:

- situations are ongoing and further inquiries are needed to ascertain the nature of the problem and to develop an effective long-term solution
- the breach is not within the alleged offender's capacity to remedy quickly
- the penalty prescribed on the notice would be inadequate for the severity of the offence committed
- the extent of the harm to the environment cannot be assessed immediately
- the evidence is controversial or insufficient, so if a court heard the matter it would be unlikely to convict
- a period of substantially more than 14 days has elapsed since the alleged breach
- the EPA is already involved in the matter and is attempting to resolve the problem in another way
- multiple breaches have occurred and several penalty notices have already been issued.

It is inappropriate to issue simultaneous or successive penalty notices for multiple breaches of the legislation. In such an instance, there is obviously a continuing environmental or compliance problem, even though each breach may be comparatively minor. Such problems need to be dealt with by issuing an appropriate notice, or through court proceedings. This can ensure that the appropriate directions or orders can be made and enforced. As a general guide, no more than two penalty notices should be issued simultaneously or successively to the same, or closely related, alleged defendant, unless the matter has been approved by a senior officer of the appropriate regulatory authority.

The officer issuing the penalty notice needs to ensure that the infringement does not incur a penalty in excess of the amount of the penalty notice. This is particularly the case with water pollution offences arising under s 120 of the POEO Act, which can attract fines of up to \$1,000,000 for a corporation or \$250,000 for an individual if heard in court—as compared with a maximum \$1500 fine for corporations or \$750 fine for individuals through penalty notices.

There is a safeguard provision in s 228 of the POEO Act for a penalty notice to be withdrawn within 28 days of service, even if the penalty required by the notice has been paid. While some error in judgment is catered for through this provision, its use should be viewed as a safety net rather than as a mechanism to be applied regularly. If there is any doubt about the seriousness of the offence and therefore whether to issue a penalty notice or start court proceedings, the matter should be reviewed by legal staff or a senior officer before proceeding.

The EPA can direct an enforcement officer to withdraw a penalty notice (s 228).

There is no specific timeframe set out in the legislation within which penalty notices have to be issued. However, since the penalty notice may be the first notification that a person has of the alleged breach, they must receive the notice soon enough to allow them to recall the events so they can make an informed decision about whether to defend the matter in court. As a matter of fairness, the penalty notice should be issued within 14 days of the alleged breach.

It would be inappropriate for another regulatory authority to issue a penalty notice in a situation where the EPA was already involved in the matter. It may be that the EPA has decided to deal with the problem in another way—for example, by issuing an emergency clean-up notice specifying that work be performed. In any event, when the EPA is already involved, it would be appropriate for another authority, before taking action, to consult with the EPA so a coordinated and constructive approach can be adopted. Similarly, if a matter has

been jointly investigated, the EPA will need to consult with the other authority before issuing a penalty notice.

### **3.3 What evidence is required for penalty notices?**

A person issued with a penalty notice has the right to have the alleged offence dealt with by a court. Therefore, before issuing the penalty notice, you need to be sure of the facts and collect evidence that the person has committed the offence (see section 4.3, 'Collecting evidence'). As a bare minimum, you must know the answers to the following questions and keep written notes about them before issuing a penalty notice:

- What particular offence was committed?
- Who committed the offence?
- What is the person's address? (If it is a company, find out its registered office address.)
- Where did the offence take place?
- When did the offence take place?
- Have I collected enough evidence to prove the elements of the offence?

If you have any doubts, seek advice from the legal staff of your organisation before proceeding.

### **3.4 What happens after a penalty notice is issued?**

In most cases a person issued with a penalty notice will simply pay the fine. Often this is because the person knows that they have committed the offence and realises that it is cheaper to pay the fine than go to court. However, if the person elects to defend the penalty notice or refuses to pay it, the matter will usually be dealt with in the local court (usually the court that is closest to where the alleged offence occurred). The steps are:

1. Your organisation has to start court proceedings. This involves preparing a Court Attendance Notice (CAN). If by this time you have not already spoken with your organisation's legal staff, now is the time to do so. The CAN sets out to the court the type of offence, the brief facts, and the date on and place at which the matter will be heard by the court.

One copy of the CAN must be filed with the court and a second copy be served on the alleged offender (the 'defendant'). As with other types of notices (see section 4.1, 'Issuing other types of notices'), it is important that the correct person or corporation be named as the defendant on the CAN. You should seek legal advice to ensure this.

The CAN is a legal document that requires the individual (or the authorised representative of a corporation if the offender is a corporation) to attend court at the time and place specified on it.

2. Your organisation's legal representative will attend the court on the day listed on the CAN (the first 'return date' for the CAN) and advise you what to do next. You may be required to attend court as a witness.

## 4 Other powers of authorised officers

Other powers of authorised officers, under certain circumstances, are to:

- issue clean-up notices, prevention notices, compliance cost notices and noise control notices (section 4.1)
- inspect and test vehicles, vessels and other articles (section 4.2)
- regulate waste authorities (section 4.3).

### 4.1 Issuing other types of notices

The POEO Act allows appropriate regulatory authorities to issue several other types of notices. These include clean-up notices, prevention notices, compliance cost notices and noise control notices. These must all be issued by a person with delegated authority from the appropriate regulatory authority to issue the notice. This person does not necessarily have to be an authorised officer under the POEO Act. See section 3.1 'Who may issue penalty notices and for what offences?' for previous comments on powers exercised on behalf of organisations. While clean-up directions may be issued orally and then confirmed in writing, prevention, compliance cost and noise control notices must always be issued in writing.

In specific circumstances, the EPA can also recommend that the Minister issue a prohibition notice.

For further information on these types of notices see *Guide to Notices* (DEC 2006a), which DEC has prepared for the information of regulatory authorities.

### 4.2 Inspecting and testing vehicles, vessels and other articles

EPA authorised officers have various other powers that they can exercise under the POEO Act and other environment protection legislation. These include inspecting and testing vehicles, vessels and other articles (see Part 7.6 of the POEO Act).

EPA authorised officers may issue notices requiring the owner or person in possession of any article to have it tested within a specified timeframe to determine whether it complies with the POEO Act and Regulations (s 207).

EPA authorised officers, police officers or, in relation to vessels only, an officer or employee of the marine authority that has been authorised by the authority or, in relation to vessels situated within marine parks, a marine park ranger appointed under s 35A of the *Marine Parks Act 1997* who has been authorised by the Marine Parks Authority for the purpose of s 206 may:

- for the purposes of inspecting and testing any article, enter and operate any article or lawfully enter the premises where it is located—s 206(2)
- take photographs or video film or inspect, test or sample any substance being carried by the article or in any container on the article—s 206(2)
- stop vehicles and vessels for the purpose of inspecting or testing them.

Under Part 7.6 the powers of officers or employees of the marine authority are limited to stopping, inspecting and testing vessels, and the powers of marine park rangers are limited to vessels situated in marine parks.

The inspection and testing must be carried out:

- as soon as practicable and at least within one hour after the vehicle or vessel has been stopped—s 208(2)(b)
- at or as near as practicable to the place where the direction to stop is given—s 208(2)(a).

Authorised officers also have the power to require a vehicle or vessel to be moved to a suitable place for inspection or testing—s 208(1)(c). If the inspection or testing is not to take place at the time of apprehension, a direction must be given by notice in writing specifying the date, time and place for its inspection or testing—s 208(2A).

EPA authorised officers may also seize any article, except for vehicles or vessels, and take it to a place approved by the EPA to measure its noise level or its noise emission characteristics—s 209(1). The officer must provide a receipt to the person they took it from, and the article must be returned to that person or the owner before the date specified in the receipt for its return, which must be no later than 21 days—s 209(2) and (3).

### 4.3 Requirements regarding waste

Authorised officers also have the power to regulate waste authorities under some circumstances. Authorised officers should be aware of:

- the environment protection requirements specified for operators of non-licensed waste activities and waste transporters, who are generally required to store and transport waste in an environmentally safe manner
- the waste tracking requirements for consignors of waste, waste transporters and receivers of certain types of waste, who have certain obligations including records that must be kept.

Transporters must ensure that incompatible wastes are not mixed or transported together and that wastes segregated for recycling are not mixed with other wastes. Vehicles must be kept secure, and have their loads covered to prevent spillage. Special requirements also exist for the transport, storage and disposal of asbestos waste and for the disposal of clinical waste. Further details on all these requirements are provided in the appendices of *Guide to Licensing* (DEC 2006b).

Council officers should also be aware that they have the power under item 22 of Table 1 to s 124 of the *Local Government Act 1993* to give orders to the owners or occupiers of land or premises, or the owner of or person responsible for the waste or for any receptacle or container in which the waste is contained. Such an order can only be made where waste, which is not regulated or controlled by, or subject to, a licence or notice granted or issued under the POEO Act, is present or generated on the land or premises and is not being dealt with satisfactorily. The order can require the person to store, treat, process, collect, remove, dispose of or destroy waste on their land or premises, provided that the orders are not inconsistent with Regulations made under the POEO Act.



# 5 Issuing, serving and enforcing notices

This chapter provides some guidance on procedures involved in issuing, serving and enforcing notices, and collecting evidence to ensure notices are legally enforceable.

## 5.1 Issuing notices

### Drafting tips

Authorised officers should ensure that all notices they issue:

- are clear and certain as to what needs to be done and by when it needs to be done
- require only what is reasonable, proper and within the power of the notice to require
- use plain English, consistent terminology and explain any technical terms
- advise the recipient of the notice that non-compliance with the notice may lead to enforcement action being taken against them (in relation to notices to provide information or records, see 'Give the required warnings' under section 2.4)
- warn the recipient that it is an offence to fail to comply with the notice if the notice relates to providing records or information (see 'Give the required warnings' under section 2.4)
- warn the recipient that they can object to providing information on the ground that the information might incriminate them (if the notice relates to providing information and is issued to an individual, see 'Give the required warnings' under section 2.4)
- are signed by a person who is appropriately authorised (for notices issued by authorised officers) or who has delegated legal authority to issue the notice (in the case of a notice issued by an organisation)
- are issued to the correct legal entity.

### The correct legal entity

Notices may be enforced only if they are issued to a legal entity. The law recognises two legal entities: an individual, and an incorporated body such as a company, statutory authority, incorporated association, cooperative or other body corporate, collectively termed 'corporation' in this guide. A corporation is usually identified by the abbreviation Inc, Ltd or Pty Ltd and always has an Australian Company Number (ACN). Corporations may operate under a business name or trading name that is different from the name of this corporation. Similarly, a business may be operated by something other than a corporation, that is, by a partnership or sole trader with a business name or trading name. **Business or trading names are not legal entities—they are just names under which legal entities do business.** If a notice is issued to a registered business name or trading name, for example, to XYZ Australia or XYZ Traders, rather than the corporation or individual that runs them, the notice will have no legal effect.

If the owner of a business or trading name is an individual, the legal entity to which the notice is issued should be written as 'Mr/Ms Z Smith trading as XYZ Australia'. If the owner of the business or trading name is a corporation, the legal entity should be written as 'XYZ Pty Ltd trading as XYZ Australia'.

You can obtain basic details about business and company names and Australian Company Numbers (ACNs) free from the National Names Index maintained on the internet by the Australian Securities and Investments Commission ([www.search.asic.gov.au](http://www.search.asic.gov.au)).

Notices may be issued to any of the following:

- an individual
- a company, for example, XYZ Pty Ltd or XYZ Ltd
- another type of incorporated body
- a public authority (for example, a government trading enterprise) constituted by an Act as a corporate entity.

If you have any doubt about the legal status of the person to whom the notice is to be issued, seek advice from your organisation's legal staff.

## 5.2 Serving notices

Under the POEO Act (s 321), a notice or any other document may be served on a person by:

- delivering it personally
- leaving it with another person at the place of residence or business of the person
- sending it by post addressed to the person at the place last shown in the records of the appropriate regulatory authority as the person's place of residence or business
- sending it by post or leaving it addressed to the person at a document exchange or other place indicated by the person through which correspondence may be forwarded to them
- sending it by fax or electronic transmission, including by email or over the internet, in accordance with arrangements indicated by the person as appropriate for transmitting documents.

It is recommended that you keep appropriate documentary records, such as file or diary notes, a correspondence register, or postal or fax receipts, that can, if required, provide evidence that the notice was served in accordance with the POEO Act. Important notices, especially when issued to corporations, should be sent by registered post so the officer has documentary evidence that the notice was received.

### Issuing a handwritten notice on the spot

Although notices have to be in writing, they do not have to be typed. Where necessary, authorised officers may issue handwritten notices on the spot and keep a copy for their records. For example, handwritten notices to produce documents can be issued at the time of the preliminary investigation of a pollution event. By doing this, an officer can prevent valuable evidence from being lost, misplaced or even destroyed, and, if necessary, keep it for later use.

## 5.3 Enforcing notices

After a notice is issued, it is important to keep track of the date when compliance with the notice must be reviewed. If the notice requirements are not fully met, prompt follow-up action should be taken to ensure that the notice requirements are complied with. In some cases, a penalty notice or prosecution for failing to comply with a notice may be warranted. Where necessary, seek further legal or technical advice.

## 5.4 Collecting evidence

Collecting and recording evidence at the time of an offence is critically important. You must collect evidence that can prove each element of the offence beyond reasonable doubt. Also, try to collect any evidence that may help to disprove any other explanation for the observed pollution, for example, by sampling upstream.

This publication does **not** attempt to be a comprehensive guide to collecting evidence. You should ensure that your organisation gives you appropriate training in collecting and recording evidence. Nevertheless, here are a few basic tips:

- Always record what you have seen, heard or smelled as soon as possible by noting it down in your field book. Make sure you include the time, the date and location, and the names and addresses of any other people present.
- Speak with the alleged offender, eyewitnesses and other relevant people, and note down in your field book any conversations with them, using the exact words given if possible. Especially note if the alleged offender admits the offence. Give the required warnings (see 'Give the required warnings' under section 2.4), and make a written record of the interviews if possible. Read your notes back to the people you have interviewed and if possible get them to sign the notebook.
- If the offence has been committed by a corporation or at the premises of a corporation, find out who is in charge, and speak to them in addition to any other relevant employees.
- Take photographs or video evidence of what you see. Do not forget to note in your field book the photos you have taken, so you can properly identify each photo when you return to it.
- If the offence involves pollution of waters, try to get samples from several locations. Ideally obtain samples upstream; at the point of any pollutant discharge; and downstream from the discharge. Clearly label each sample so that it is obvious where it came from and on what date it was taken. Ensure each sample is completely sealed.

It is not always possible to take all the steps listed above. Authorised officers need to judge whether they have enough evidence to prove the elements of the offence. In the case of penalty notices, it is essential for an officer to be familiar with the wording of the particular offence provision before issuing the notice. If in doubt about your evidence, ask for help from your organisation's legal staff.

## 5.5 Illegally or improperly obtained evidence

### **Evidence that you obtain unlawfully will probably be inadmissible in court**

It is important that authorised officers act within their powers at all times, for two reasons:

- 1 All regulatory authorities want their staff to operate within the law.
- 2 All regulatory authorities do not want to risk losing important evidence when they are prosecuting a person or corporation for what may well be a serious offence with serious environmental consequences.

Anything an authorised officer does that is not authorised by the legislation, or that exceeds the powers given, is done illegally. Any evidence obtained in this way may be challenged in court. For example, if an authorised officer enters premises without the right to do so, for example, by entering residential premises without permission or a search warrant, the

evidence obtained will probably be excluded if the defendant or their legal representative objects in court that the officer exceeded their powers in obtaining the evidence.

As a matter of law, if illegally or improperly obtained evidence is relevant, it is admissible but the court can still reject it. There are two competing principles involved. The first is the interest of citizens in being protected from illegal or irregular invasion of their liberties by the authorities. The second is the interest of the state in not having evidence concerning an offence withheld from the court on formal or technical grounds.

These principles will be balanced by a court when deciding, in accordance with the rules for admitting evidence set out in the *Evidence Act 1995*, whether it will admit the evidence.

## **Listening Devices Act 1984**

Authorised officers should be aware of the provisions of the *Listening Devices Act 1984*. This Act makes it illegal to use a listening device to secretly record or listen to a private conversation to which the person is not a party or to secretly record a private conversation to which the person is a party, and makes the evidence obtained by such a device potentially inadmissible in any legal proceedings. In practical terms, an authorised officer would commit an offence if they were to record an interview with another person on a dictaphone, and the other person was unaware that the recording was taking place. For the purposes of the Listening Devices Act, dictaphones, tape recorders, video cameras and the like are considered to be listening devices. If you wish to record a conversation on a dictaphone, tape recorder or video camera, the safest course is to ask permission first. If a person knows that a tape recorder or video camera is operating and then speaks with you, it could be suggested that the person has implicitly consented to the conversation being recorded.

Section 203A(1) of the POEO Act allows an authorised officer to record any questions and answers given under Part 7.5 ('Power to require answers to questions and power to demand name and address') if the officer has informed the person to be questioned that the record is being made. This record can be made using equipment such as a tape recorder or video camera, or any other method (s 203A(2)). The authorised officer must give a copy of any such record to the person who has been questioned as soon as possible after it is made (s 203A(3)). A record can be made under s 203A despite the provisions of any other law, including the *Listening Devices Act 1984*.

## **5.6 The key legislation**

This section provides a brief commentary on the key environment protection Acts. Relevant provisions from the Acts are listed in chapter 6, with a summary of each provision.

### **Protection of the Environment Operations Act 1997 and Regulations**

The POEO Act simplified, modernised and toughened environmental law in NSW, making it easier to understand and enforce. The Act replaced the *Clean Air Act 1961*, the *Clean Waters Act 1970*, the *Environmental Offences and Penalties Act 1989*, the *Noise Control Act 1975* and the *Pollution Control Act 1970*, all of which have been repealed. It also incorporated the major regulatory provisions of the *Waste Minimisation and Management Act 1995* (though there is also still a standalone *Waste Avoidance and Resource Recovery Act 2001*) and the *Ozone Protection Act 1989*, including the powers of authorised officers under those Acts.

Under the old Acts, authorised officer powers varied greatly. However, the POEO Act has taken the best features of the powers of authorised officers under the previous legislation and consolidated them into a single Act. In most circumstances, authorised officers will exercise their powers under the POEO Act and its Regulations. EPA authorised officers however, may

exercise powers under all the environment protection legislation if they are authorised to do so.

### **Other legislation**

Only the EPA can appoint authorised officers to exercise powers and functions under the *Contaminated Land Management Act 1997* and the *Environmentally Hazardous Chemicals Act 1985*. Only the EPA and the WorkCover Authority may appoint authorised officers to exercise powers and functions under the *Road and Rail Transport (Dangerous Goods) Act 1997* (see chapter 6).

The EPA has appointed police and Department of Transport officers to exercise powers under the *Road and Rail Transport (Dangerous Goods) Act 1997*, subject to completion of appropriate training. The regulatory provisions of the *Ozone Protection Act 1989*, including the powers of authorised officers under the Act, have been incorporated into the POEO Act and are therefore not included in chapter 6.

## 6 Schedule of powers of authorised officers and enforcement officers

This chapter contains two tables. The first table explains the powers of all authorised and enforcement officers under the POEO Act. The second explains powers that may **only** be exercised by authorised officers appointed by the EPA, under various Acts.

Note that in table 1, powers under subsections of certain provisions can also **only** be exercised by authorised officers appointed by the EPA. Such subsections are in **shaded text**.

As at March 2006, the value of a penalty unit is \$110—s 17 of the *Crimes (Sentencing Procedure) Act 1999*.

**Table 1. Powers of authorised officers and enforcement officers under the *Protection of the Environment Operations Act 1997***

Sections of legislation relevant to authorised officers	Summary
<p><b>134 Directions by authorised officers concerning fires</b></p> <p>(1) This section applies if an authorised officer is of the opinion that a fire is burning in or on any premises and:</p> <p>(a) the fire is prohibited by an order of the EPA under this Division or by the regulations, or</p> <p>(b) air pollution from the fire is injurious to the health of any person or is causing or is likely to cause serious discomfort or inconvenience to any person.</p>	<p>The powers under s 134 may be used when an authorised officer believes that a fire is burning on premises, and:</p> <ul style="list-style-type: none"> <li>• the fire is prohibited by an order of the EPA under s 133 or by the Regulations, or</li> <li>• the smoke from the fire is dangerous to anyone's health, or,</li> <li>• the smoke from the fire is likely to cause anyone serious discomfort or inconvenience.</li> </ul>
<p>(2) The authorised officer may, by notice in writing given to:</p> <p>(a) the occupier of the premises or person apparently in charge of the premises, or</p> <p>(b) the person apparently in charge of the fire,</p> <p>direct the occupier or other person to whom the notice is given to extinguish the fire immediately.</p>	<p>Subsection (2) gives an authorised officer the power to serve a written notice on a person to direct them to extinguish the fire immediately. The officer may serve the notice on the occupier of the premises, the person who appears to be in charge of the premises or the person who appears to be in charge of the fire.</p>
<p>(3) The authorised officer may, by that notice, also direct the occupier or other person not to light or maintain a similar fire in or on the premises during such period (not exceeding 48 hours) as is specified in the notice.</p>	<p>The notice referred to in subsection (2) may also direct the person not to light a similar fire or keep a similar fire going on those premises for a period of up to 48 hours.</p>

<p>(4) A notice under this section may be revoked by a further notice under this section.</p>	<p>An authorised officer may serve another written notice that states that the earlier notice referred to in subsection (2) is revoked.</p>
<p><b>135B Smoke abatement notices</b></p> <p>(1) If it appears to an authorised officer of an appropriate regulatory authority that is a local authority that excessive smoke is being, or has at any time within the past 7 days been, emitted from a chimney on or in residential premises, the officer may give the person whom the officer believes to be the occupier of the premises a smoke abatement notice directing the person to ensure that excessive smoke is not emitted from the chimney at any time after 21 days following the giving of the notice.</p> <p>Section 135A provides that:  <b>chimney</b> means a chimney, flue, pipe or other similar means of conveying smoke emitted inside residential premises to the outside.  <b>excessive smoke</b> means the emission of a visible plume of smoke from a chimney for a continuous period of not less than 10 minutes, including a period of not less than 30 seconds when the plume extends at least 10 metres from the point at which the smoke is emitted from the chimney.  <b>residential premises</b> means premises used wholly or partly as a residence.</p>	<p>Subsection (1) gives an authorised officer the power to issue a smoke abatement notice within seven days of observing the excessive smoke from a residential chimney. This means that the officer does not have to issue the notice on the day of the observation.</p> <p>The person who has been issued with the smoke abatement notice has a 21-day grace period to act to prevent excessive smoke emitting from their chimney.</p>
<p>(2) A smoke abatement notice is to be in writing.</p> <p>(3) A smoke abatement notice ceases to have effect 6 months after the day on which it is given or when it is revoked, whichever occurs first.</p> <p>(4) This section does not apply to a chimney that is in or on an incinerator or is used only in relation to smoke originating from outside a residence.</p>	<p>Subsections (2) to (4) identify the requirements and restrictions of smoke abatement notices which are that :</p> <ul style="list-style-type: none"> <li>• they must be in writing</li> <li>• they expire six months from the date they are issued, or earlier if they are revoked</li> <li>• they cannot be issued for chimneys that are part of an incinerator or chimneys emitting smoke originating from outside a residence</li> </ul>
<p><b>135C Contravention of smoke abatement notices</b></p> <p>(1) A person to whom a smoke abatement notice has been given must not, without reasonable excuse, fail to comply with the notice while the notice remains in force.</p> <p>Maximum penalty: 30 penalty units.</p>	<p>Section 135C(1) makes it an offence for a person to fail to comply with a smoke abatement notice without reasonable excuse. The maximum penalty is \$3,300.</p>

<p>(2) A smoke abatement notice does not prevent the emission of smoke that is not excessive smoke.</p>	<p>Section 135C(2) allows smoke that is not excessive smoke to be emitted while a smoke abatement notice is in force.</p>
<p>(3) In any proceedings for an offence under this section, a document signed by the authorised officer of an appropriate regulatory authority who issued a smoke abatement notice certifying that the officer had, at a specified time and place:</p> <p>(a) observed a plume of smoke being emitted from a chimney on or in premises specified in the certificate for a continuous period of not less than 10 minutes, and</p> <p>(b) observed during that period a plume of smoke extending at least 10 metres from the point at which the smoke was emitted from the chimney for a period of not less than 30 seconds,</p> <p>is evidence of the matters so certified, unless the contrary is proved.</p>	<p>Section 135C(3) states that in criminal proceedings against a person for contravening a smoke abatement notice, an authorised officer of the appropriate regulatory authority that issued the notice can sign a document which certifies that the officer had, at a specified time and place:</p> <ul style="list-style-type: none"> <li>• observed a smoke plume being emitted from a chimney on or in a specified residential premises for a continuous period of not less than 10 minutes; and</li> <li>• during that time they observed a smoke plume extending at least 10 metres from the point at which the smoke was emitted from the chimney for a period of not less than 30 seconds.</li> </ul> <p>If an authorised officer signs such a document the matters certified in the document are evidence, unless someone proves to the contrary.</p>
<p><b>135D Revocation of smoke abatement notices</b> A smoke abatement notice may be revoked by the appropriate regulatory authority for which the person who gave the notice is an authorised officer.</p>	<p>Section 135D allows an appropriate regulatory authority to revoke a smoke abatement notice issued by one of their authorised officers.</p>
<p><b>188 Scope of authority</b> (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.</p>	<p>Section 188(1) allows a regulatory authority to limit, restrict or set specific conditions on the powers of any authorised officer it appoints, in addition to the limitations contained in the Act.</p>
<p>(2) If such authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.</p>	<p>Subsection (2) confirms that if an authorised officer has conditions, limitations or restrictions attached to their authorisation, the officer must exercise their powers in accordance with those requirements.</p>



<p>(3) The authorisation of an authorised officer appointed by a regulatory authority other than the EPA is limited to matters concerning the functions of the regulatory authority under this Act.</p>	<p>Subsection (3) specifies that when a person is appointed as an authorised officer by regulatory authorities other than the EPA, they may only exercise their powers in relation to matters for which that authority is responsible. (These are specified in the Glossary.) Section 6(4) allows the responsibilities of a local authority to be exercised beyond their area, provided the powers are exercised 'in or in relation to' the local authority's area.</p>
<p>(4) Despite subsection (3) and any other provision of this Chapter, an authorised officer of a regulatory authority may exercise powers under this Chapter (other than under Part 7.6) for the purpose of determining whether a matter concerns the functions of the regulatory authority.</p>	<p>Subsection (4) allows an authorised officer of a regulatory authority to exercise the powers under Chapter 7 (other than Part 7.6) to determine whether a matter is a matter for which that regulatory authority is responsible.</p>
<p><b>Identification</b> (1) Every authorised officer or enforcement officer is to be provided with an identification card as an authorised officer or enforcement officer by the regulatory or other authority that appointed the officer.</p>	<p>Section 189 (1) requires regulatory authorities to provide an identification card to every authorised officer and enforcement officer they appoint.</p>
<p>(2) In the course of exercising the functions of an authorised officer or enforcement officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce the officer's identification card to the person.</p>	<p>Subsection (2) requires an authorised or enforcement officer to show their identification card when exercising their powers to any person who is affected by the exercise of the powers and who asks to see it.</p>
<p>(3) It is sufficient compliance with subsection (2) if an enforcement officer, acting in the capacity of an enforcement officer, who is also an authorised officer produces his or her identification card as an authorised officer.</p>	<p>Subsection (3) allows an enforcement officer who is also an authorised officer to show their authorised officer identification card if a person asks to see their identification card when they are acting as an enforcement officer.</p>

<p><b>187 Appointment of authorised officers</b></p> <p>(1) The EPA may appoint any person (including a class of persons) as an authorised officer for the purposes of this Act.</p> <p>(2) Any other regulatory authority may appoint any officer or employee of the authority (including a class of such officers or employees) as an authorised officer for the purposes of this Act.</p> <p>(2A) In addition, a regulatory authority that is a local council may appoint any officer or employee of another local council (including a class of such officers or employees) as an authorised officer for the purposes of this Act in respect of the appointing local council's area.</p> <p>(3) In this section:  <b>employee</b> of an authority includes a person whose services are used by the authority and who is, in respect of those services, subject to the direction and control of the authority.</p>	<p>Section 187 allows the EPA and other regulatory authorities, including local councils and certain public authorities, to appoint authorised officers for the purposes of this Act. See s 188 below in relation to the scope of authority of an authorised officer.</p>
<p><b>189A Powers of enforcement officers</b></p> <p>An enforcement officer has, in respect of any of the officer's responsibilities or functions as an enforcement officer under this Act or the regulations, the functions of an authorised officer under this Chapter (other than section 204 (2) and Part 7.6) and this Chapter applies accordingly.</p>	<p>This section provides enforcement officers with all the functions of an authorised officer under Chapter 7 of the POEO Act, other than the power to require a person to state their name and address for the purposes of issuing a noise control notice or noise abatement direction (s 204(2)), and the powers with respect to vehicles, vessels and other articles set out in Part 7.6. Such officers may only exercise the responsibilities and functions of an enforcement officer under the POEO Act and the Protection of the Environment Operations (Penalty Notices) Regulation 2004.</p>
<p><b>193 Requirement to provide information and records (authorised officers)</b></p> <p>(1) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter within the responsibilities and functions of the regulatory authority that appointed the officer.</p>	<p>Section 193(1) enables an authorised officer to serve a notice requiring a person to give the officer information and records. The information and records must relate to the functions and responsibilities of the regulatory authority that appointed the officer. Sections 194 and 195 contain further provisions about notices to supply information or records which officers should refer to when issuing a notice under s 193(1). Make sure you give the required warnings specified in s 212.</p>
<p>(2) In the case of authorised officers appointed by the EPA, this section is not limited to matters in respect of which the EPA is the appropriate regulatory authority.</p>	<p>Subsection (2) gives an authorised officer of the EPA the power to issue a notice under s 193, even if the EPA is not the appropriate regulatory authority for that matter.</p>

<p><b>196 Powers of authorised officers to enter premises</b></p> <p>(1) An authorised officer may enter:</p> <p>(a) any premises at which the authorised officer reasonably suspects that any industrial, agricultural or commercial activities are being carried out –at any time during which those activities are being carried out there, and</p> <p>(b) any premises at or from which the authorised officer reasonably suspects pollution has been, is being or is likely to be caused –at any time, and</p> <p>(c) (c) any other premises – at any reasonable time.</p>	<p>Section 196(1) gives an authorised officer the power to enter certain premises at particular times without the permission of the occupier. Note the exception for residential premises, contained in s 197.</p>
<p>(2) A power to enter premises conferred by this Act authorises entry by foot or by means of a motor vehicle or other vehicle, or by an aircraft, or in any other manner.</p>	<p>Subsection (2) allows an authorised officer to enter the premises by any means, including by foot, by car or by aircraft.</p>
<p>(3) Entry may be effected under this Act by an authorised officer with the aid of such authorised officers or police officers as the authorised officer considers necessary and with the use of reasonable force.</p>	<p>Subsection (3) gives an authorised officer the power to go on land:</p> <ul style="list-style-type: none"> <li>• with the aid of other authorised officers</li> <li>• with the aid of police officers</li> <li>• with the use of reasonable force.</li> </ul>
<p>(4) Entry may be effected to any premises with the authority of a search warrant under section 199.</p>	<p>Subsection (4) notes that an authorised officer may enter any premises if they have a search warrant. (See s 199 regarding how to apply for a search warrant.)</p>
<p><b>197 Entry into residential premises only with permission or warrant</b></p> <p>This Part does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 199.</p>	<p>Under s 197, an authorised officer may enter residential premises only if the occupier gives permission or if the officer has a search warrant.</p>
<p><b>198 Powers of authorised officers to do things at premises</b></p> <p>(1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Chapter, including (but not limited to) the things specified in subsection (2).</p>	<p>Section 198(1) gives an authorised officer who has entered premises the power to investigate at the premises. Details of what the officer may do include the matters set out in subsection (2) below. A regulatory authority also has the power to issue a notice requiring the owner or occupier of the premises to give the authorised officer reasonable help and facilities to carry out their functions (s 200).</p>

<p>(2) An authorised officer may do any or all of the following:</p> <ul style="list-style-type: none"> <li>(a) examine and inspect any works, plant, vehicle, aircraft or other article,</li> <li>(b) take and remove samples,</li> <li>(c) make such examinations, inquiries and tests as the authorised officer considers necessary,</li> <li>(d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,</li> <li>(e) require records to be produced for inspection,</li> <li>(f) examine and inspect any records,</li> <li>(g) copy any records,</li> <li>(h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations;</li> <li>(h1) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier</li> <li>(i) do any other thing the authorised officer is empowered to do under this Chapter.</li> </ul>	<p>Subsection (2) sets out some of the things that an authorised officer may do at premises, including:</p> <ul style="list-style-type: none"> <li>• examining, inspecting and testing things on the premises</li> <li>• taking and removing samples</li> <li>• taking photographs or videos</li> <li>• asking for records to be produced for inspection and inspecting, examining and copying any records</li> <li>• seizing things that they reasonably believe are connected with an offence against the POEO Act or Regulations or an Act or Regulations referred to in s 186.</li> </ul>
<p>(3) The power to seize anything connected with an offence includes a power to seize:</p> <ul style="list-style-type: none"> <li>(a) a thing with respect to which the offence has been committed, and</li> <li>(b) a thing that will afford evidence of the commission of the offence, and</li> <li>(c) a thing that was used for the purpose of committing the offence.</li> </ul> <p>A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.</p>	<p>Subsection (3) gives more details as to what sort of thing an authorised officer may seize. Note that an officer does not need to know conclusively that an offence has been committed; they need only have reasonable grounds for believing that an offence has been committed.</p>

<p><b>198A Power to disable intruder alarms</b></p> <p>(1) An authorised officer may turn off or otherwise disable a building intruder alarm or a motor vehicle intruder alarm that is or has been sounding in breach of this Act or the regulations.</p>	<p>Subsection (1) gives an authorised officer the power to turn off building intruder alarms and motor vehicle intruder alarms that are sounding in breach of the Act or Regulations. It should be noted that a search warrant will still be required to enter residential premises (see ss 197 and 199).</p>
<p>(2) In this section: <b>motor vehicle intruder alarm</b> means a device that:</p> <ol style="list-style-type: none"> <li>(a) incorporates or connects to a sounding device, and</li> <li>(b) on being triggered, causes the sounding device to emit sound,</li> <li>(c) being a device that is attached to or forms part of the motor vehicle for use as an intruder alarm, whether or not the device is also designed to be used for any other purpose.</li> </ol>	<p>Subsection (2) provides the definition of motor vehicle intruder alarm described in s 198A(1).</p>
<p><b>199 Search warrants</b></p> <p><b>(1) Application for search warrant</b> An authorised officer may apply to an authorised officer within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002 for the issue of a search warrant if the authorised officer under this Act believes on reasonable grounds that:</p> <ol style="list-style-type: none"> <li>(a) a provision of this Act or the regulations is being or has been contravened at any premises, or</li> <li>(b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.</li> </ol>	<p>Section 199(1) gives an authorised officer the power to apply to an ‘authorised officer’ within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> for a search warrant. The officer must believe on reasonable grounds that an offence against the POEO Act or Regulations, or an Act or Regulations referred to in s 186, is being committed or has been committed at the premises, or that there is a matter that is connected with an offence against such an Act or Regulation in or on the premises. Section 3(1) of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> defines an ‘authorised officer’ under that Act to mean:</p> <ol style="list-style-type: none"> <li>(a) a Magistrate or a Children’s Magistrate, or</li> <li>(b) a Clerk of a Local Court, or</li> <li>(c) an employee of the Attorney General’s Department authorised by the Attorney General as an authorised officer for the purposes of this Act either personally or as the holder of a specified office.</li> </ol>
<p><b>(2) Issue of search warrant</b> An authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:</p> <ol style="list-style-type: none"> <li>(a) to enter the premises, and</li> <li>(b) to exercise any function of an authorised officer under this Part.</li> </ol>	<p>Subsection (2) sets out what a search warrant may authorise an authorised officer to do, namely:</p> <ul style="list-style-type: none"> <li>• enter the premises</li> <li>• do anything that they have the power to do at the premises (see s 198(1) and (2)).</li> </ul> <p>An authorised officer (within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i>) may issue a search warrant if they are satisfied that there are reasonable grounds for doing so.</p>

<p><b>(3)</b> Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.</p>	<p>Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> includes such things as how to apply for a search warrant, and how the search may be carried out.                  Note: the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> repealed and replaced the <i>Search Warrants Act 2002</i>.</p>
<p><b>(4) Definition</b>                  In this section:  <b><i>matter or a thing</i></b> connected with an offence means:                  (a) matter or a thing with respect to which the offence has been committed, or                  (b) matter or a thing that will afford evidence of the commission of an offence, or                  (c) matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.  <b><i>offence</i></b> includes an offence that there are reasonable grounds for believing has been, or is to be, committed.  <b>Note. <i>premises</i></b> is defined in the POEO Act dictionary.</p>	
<p><b>199A Authorised officers may request assistance</b>                  A person may accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer’s functions under this Part if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.</p>	<p>Section 199A allows any person to accompany an authorised officer and help them exercise their functions under Part 7.4 (powers of search and entry). For any person to accompany and help an authorised officer, the authorised officer must believe that the person can help them exercise their powers of search and entry.</p>

<p><b>200 Assistance to be given to authorised officers</b></p> <p>(1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Part in connection with any premises.</p> <p>(2) The EPA or other regulatory authority that appointed the authorised officer may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.</p> <p>(3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.</p>	<p>Section 200 allows the EPA and other regulatory authorities to give a notice in writing requiring the owner or occupier of premises to provide reasonable assistance and facilities to authorised officers exercising their powers of entry and search under Part 7.4 of the Act (ss 196–202). The notice:</p> <ul style="list-style-type: none"> <li>• must specify the manner and time within which the assistance and facilities are to be provided</li> <li>• may require assistance and facilities of the same kind as, or a different kind from, any prescribed by the Regulations.</li> </ul>
<p><b>201 Care to be taken</b></p> <p>In the exercise of a power of entering or searching premises under this Part, the authorised officer must do as little damage as possible.</p>	<p>Section 201 requires authorised officers to do as little damage as possible when entering or searching premises.</p>
<p><b>202 Compensation</b></p> <p>The EPA or other regulatory authority that appoints an authorised officer must compensate all interested parties for any damage caused by the authorised officer in exercising a power of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.</p>	<p>Section 202 requires regulatory authorities to pay compensation for any damage caused by their authorised officer in exercising a power to enter a premises unless the occupier obstructed or hindered the authorised officer from gaining entry.</p>
<p><b>203 Power of authorised officers to require answers</b></p> <p>(1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.</p>	<p>Section 203(1) gives an authorised officer the power to require a person to answer questions. The officer must suspect on reasonable grounds that the person knows something that is needed for the purposes of an investigation. Make sure you give the required warnings specified in s 212.</p>

<p>(2) The EPA or any other regulatory authority may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.</p>	<p>Subsection (2) gives an appropriate regulatory authority, for example, the EPA or a council, the power to issue a written notice requiring a corporation to nominate a director or officer (for example, the corporation's Secretary, Executive Officer or an employee) to speak on behalf of the corporation.</p>
<p>(3) Answers given by a person nominated under subsection (2) bind the corporation.</p>	<p>Subsection (3) means that any answers given by the person nominated by the corporation will be evidence that binds the corporation.</p>
<p>(4) In the case of authorised officers appointed by the EPA, subsection (1) is not limited to matters in respect of which the EPA is the appropriate regulatory authority.</p>	<p>Subsection (4) gives an authorised officer of the EPA the power to require a person to answer questions relating to a matter for which the EPA is not the appropriate regulatory authority.</p>
<p>(5) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.</p>	<p>Subsection (5) gives an authorised officer the power to require in writing that a person should attend a specified place at a specified time to answer questions, if attendance at that place is reasonably required to properly ask and answer questions.</p>
<p>(6) The place and time at which a person may be required to attend under subsection (5) is to be:</p> <ul style="list-style-type: none"> <li>(a) a place or time nominated by the person, or</li> <li>(b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.</li> </ul>	<p>Subsection (6) identifies that the place and time is to be nominated by the person being interviewed or, if this is not reasonable or is not nominated by the person, by the authorised officer.</p>
<p><b>203A Recording of evidence</b></p> <p>(1) An authorised officer may cause any questions and answers to questions given under this Part to be recorded if the officer has informed the person who is to be questioned that the record is to be made.</p>	<p>Subsection (1) gives an authorised officer the power to record any interviews conducted under s 203 if the authorised officer informs the person that the interview will be recorded. The interview can be recorded even if the person objects.</p>
<p>(2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer</p>	<p>Subsection (2) identifies that the authorised officer will determine the method of recording.</p>
<p>(3) A copy of any such record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.</p>	<p>Subsection (3) states that a copy of the interview must be provided to the interviewee as soon as practicable.</p>



<p>(4) A record may be made under this section despite the provisions of any other law.</p>	<p>Subsection (4) identifies that a record can be obtained regardless of the provisions of any other Act or Regulation.</p>
<p><b>204 Power of authorised officers to demand name and address</b>  <b>(1) Name and address to be given if offence suspected</b>          An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have offended or to be offending against this Act or the regulations to state his or her full name and residential address.</p>	<p>Section 204(1) gives an authorised officer the power to require a person to state their full name and residential address. The officer must suspect on reasonable grounds that the person is committing or has committed an offence against the POEO Act or Regulations or an Act or Regulations referred to in s 186.          Make sure you give the required warnings specified in s 212.</p>
<p><b>(2) Name and address to be given in connection with noise</b>          If an authorised officer forms the opinion on reasonable grounds that a noise control notice or a noise abatement direction may be issued under Part 8.6 against a person, the authorised officer may require the person to state the person's full name and residential address.</p>	<p>Subsection (2) gives an authorised officer the power to require a person to state their full name and residential address when the officer believes on reasonable grounds that a noise control notice (see s 264) or a noise abatement direction (see s 276) could be issued against the person.          Make sure you give the required warnings specified in s 212.</p>
<p><b>(2A) Proof of name and address</b>          An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence under section 211 to fail to comply with any such request.</p>	<p>Subsection (2A) gives an authorised officer the power to request a person to provide proof of his or her full name and address when they have been asked to state them. Note that no offence is committed if proof is not produced.).</p>
<p><b>(3) Power of arrest</b>          A person who, being required to do so under this section:          (a) refuses to state his or her name or residential address, or          (b) states a name or residential address that in the opinion of the authorised officer is false,          may without any other warrant than this Act be apprehended by the authorised officer and taken before a Magistrate or authorised officer within the meaning of the <i>Criminal Procedure Act 1986</i> to be dealt with according to law.</p>	<p>Subsection (3) gives an authorised officer the power to arrest a person when the officer has requested under subsections (1) or (2) that the person give his or her name and address, and the person either:</p> <ul style="list-style-type: none"> <li>• refuses to state their name or address; or</li> <li>• states a name or address that the officer believes is false.</li> </ul> <p>The authorised officer must take the person before a magistrate or authorised officer within the meaning of the <i>Criminal Procedure Act 1986</i> so they can be dealt with.          Section 3(1) of the <i>Criminal Procedure Act 1986</i> defines an 'authorised officer' as:</p> <ol style="list-style-type: none"> <li>(a) a registrar of a court, or</li> <li>(b) an employee of the Attorney General's Department authorised by the Attorney General as an authorised officer for the purposes of this Act.</li> </ol> <p>Note: this power of arrest does not extend to where a person fails to comply with a request of an authorised officer to provide proof of their name and address.</p>

<p><b>(4) Bail</b> A Magistrate or authorised officer before whom a person is taken under subsection (3) may grant the person bail in accordance with the <i>Bail Act 1978</i> as if the person were accused of an offence.</p>	<p>Under subsection (4) a person who is arrested under subsection (3) may be granted bail by a magistrate or authorised officer before whom the person is taken. The <i>Bail Act 1978</i> applies in this situation.</p>
<p><b>(5) Maximum penalty</b> The maximum penalty for an offence under section 211 in connection with a requirement under this section is 100 penalty units despite anything to the contrary in that section.</p>	<p>Subsection (5) imposes a maximum penalty of \$11,000 for the offence under s 211 of failing to comply with a requirement under subsections 204(1) or s 204(2).</p>
<p><b>206 Power to inspect and test</b> (1) An authorised officer may, for the purposes of this Chapter inspect and test any article.</p>	<p>Section 206 gives the following authorised officers the power to inspect and test an article (see s 205):</p> <ul style="list-style-type: none"> <li>• an EPA authorised officer</li> <li>• a police officer,</li> <li>• an authorised officer of the marine authority in the case of vessels</li> <li>• a marine park ranger appointed under s 35A of the <i>Marine Parks Act 1997</i> who has been authorised by the Marine Parks Authority for the purpose of s 206 (in relation to vessels situated within marine parks).</li> </ul> <p>‘Article’ includes any plant, motor or other vehicle, aircraft, vessel or other thing (see s 205 and see the Glossary for the definition of plant, motor vehicle and vessel).</p>
<p>(2) The authorised officer may, for the purposes of any such inspection or testing:</p> <ol style="list-style-type: none"> <li>(a) enter the article, and</li> <li>(b) enter in accordance with this Act the premises where the article is located, and</li> <li>(c) operate the article, and</li> <li>(d) take photographs or video films of the article, and</li> <li>(e) inspect or test any substance being carried by the article or in any container on the article (including in a fuel tank), and</li> <li>(f) take a sample of any such substance for testing.</li> </ol>	<p>Subsection (2) gives the authorised officer the power to act in connection with inspecting or testing an article under subsection (1), by:</p> <ul style="list-style-type: none"> <li>• entering the article, or the premises where the article is located</li> <li>• operating the article</li> <li>• taking photographs or videos of the article</li> <li>• inspecting or testing any substance being carried in the article (for example, fuel in a fuel tank)</li> <li>• taking samples of a substance.</li> </ul>

<p><b>208 Stopping of vehicles and vessels for inspection or testing</b></p> <p>(1) The driver or person in charge of a vehicle or vessel that is being used in any place must, for the purpose of enabling an authorised officer to inspect or test it under this Part, comply with any reasonable direction by an authorised officer:</p> <p>(a) to stop the vehicle or vessel (being a direction given by displaying a sign or by any other reasonable method), or</p> <p>(b) relating to facilitating the inspection or testing of the vehicle or vessel by an authorised officer, or</p> <p>(c) to move the vehicle or vessel to a suitable place for inspection or testing.</p>	<p>Section 208(1) gives an EPA authorised officer, a police officer, an authorised officer of the marine authority in the case of vessels, or a marine park ranger appointed under s 35A of the <i>Marine Parks Act 1997</i> who has been authorised by the Marine Parks Authority for the purpose of s 206 (in relation to vessels situated within marine parks), the power to:</p> <ul style="list-style-type: none"> <li>• direct the driver or person in charge of the vehicle or vessel to stop the vehicle or vessel to test or inspect it</li> <li>• act to facilitate the inspection and testing of the vehicle or vessel</li> <li>• require a vehicle or vessel to be moved to a suitable place for inspection or testing.</li> </ul>
<p>(2) If a vehicle or vessel has been stopped in compliance with such a direction (other than a direction to move the vehicle or vessel to a suitable place for inspection or testing at a later time), inspection and testing of it under this section must be carried out:</p> <p>(a) at or as near as practicable to the place where the direction to stop the vehicle or vessel is given, and</p> <p>(b) as soon as practicable, and in any case within one hour, after the vehicle or vessel is stopped in accordance with the direction.</p>	<p>Under subsection (2), once an EPA authorised officer, police officer, authorised officer of the marine authority or marine parks ranger has stopped a vehicle or vessel, they must inspect it or test:</p> <ul style="list-style-type: none"> <li>• as near to the place where the vehicle or vessel was stopped as is practical</li> <li>• as soon as practicable, but no more than one hour after it has been stopped.</li> </ul> <p>This does not apply where the vehicle has been stopped in compliance with a direction to move the vehicle or vessel to a suitable place for inspection or testing at a later time (see s 208(1)(c)).</p>
<p>(2A) If a direction is given to move a vehicle or vessel to a suitable place for inspection or testing and the inspection or testing is not to take place at the time, the direction must be given by notice in writing specifying the time, date and place for the inspection or testing.</p>	<p>Subsection (2A) states that if a direction is made to move a vehicle or vessel to a suitable place for testing and the inspection or testing will not be done immediately, a written notice must be given specifying the time, date and place of the inspection or testing.</p>
<p>(3) The maximum penalty for an offence under section 211 in connection with a requirement under this section is 30 penalty units despite anything to the contrary in that section.</p>	<p>Subsection (3) imposes a maximum penalty of \$3,300 for the offence under s 211 of failing to comply with a direction given by an authorised officer under subs (1).</p>
<p>(4) In this section, <b>vehicle</b> includes aircraft.</p>	

<p><b>211 Offences</b></p> <p>(1) A person who, without lawful excuse, neglects or fails to comply with a requirement made of the person under this Chapter is guilty of an offence.</p> <p>(2) A person who furnishes any information or does any other thing in purported compliance with a requirement made under this Chapter, knowing that it is false or misleading in a material respect is guilty of an offence.</p> <p>(3) A person who wilfully delays or obstructs an authorised officer in the exercise of the authorised officer's powers under this Chapter is guilty of an offence.</p> <p>(4) A person who impersonates an authorised officer is guilty of an offence.</p> <p>Maximum penalty (subject to sections 204 and 208):</p> <p>(a) in the case of a corporation \$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or</p> <p>(b) in the case of an individual \$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.</p>	<p>Section 211 creates the following offences:</p> <ul style="list-style-type: none"> <li>• neglecting or failing, without lawful excuse, to comply with a requirement made under Chapter 7</li> <li>• knowingly providing information that is false or misleading</li> <li>• doing any other thing in purported compliance with a requirement given under Chapter 7 knowing that it is false or misleading</li> <li>• wilfully delaying or obstructing an authorised officer exercising powers under Chapter 7</li> <li>• impersonating an authorised officer.</li> </ul> <p>The maximum penalty for an offence under s 211, if committed by corporations, is \$1,000,000 (and a further \$120,000 per day for a continuing offence), and, if committed by individuals, is \$250,000 (and a further \$60,000 per day for a continuing offence). See ss 204(5) and 208(3) which limit the maximum penalty for an offence under s 211 where the person has failed to comply with a requirement under s 204 or s 208.</p>
<p><b>212 Provisions relating to requirements to furnish records, information or answer questions</b></p> <p><b>(1) Warning to be given on each occasion</b></p> <p>A person is not guilty of an offence of failing to comply with a requirement under this Chapter to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.</p>	<p>When asking questions under s 203, or issuing notices requiring information or records to be provided under s 193, the authorised officer should warn the person, whether an individual or corporation, that it is an offence to not answer such questions, or provide information or records. If this warning is not given, the individual or corporation cannot be guilty of an offence if they fail to answer the question or provide information or records.</p> <p>The requirements in s 212 also apply when requiring a person to state their name and address (see subs (6)).</p>
<p><b>(2) Self-incrimination not an excuse</b></p> <p>A person is not excused from a requirement under this Chapter to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.</p>	<p>A person cannot refuse to answer questions or provide information or records on the ground that these might incriminate them. However, subs (3) provides that the answers or information provided may not be used in criminal proceedings in certain circumstances.</p>

<p><b>(3) Information or answer not admissible if objection made</b>                  However, any information furnished or answer given by a natural person in compliance with a requirement under this Chapter is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against this Chapter) if:</p> <p>(a) the person objected at the time to doing so on the ground that it might incriminate the person, or</p> <p>(b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.</p>	<p>In the case of an individual, the authorised officer should also warn them that they may object to answering questions or providing information on the grounds that it may incriminate them.</p> <p>If the individual:</p> <ul style="list-style-type: none"> <li>• does object to answering questions or providing information on the ground that it might incriminate them, or</li> <li>• was not warned they could object on the ground that the information to be provided or answer to be given might incriminate them,</li> </ul> <p>the answers or information that they provide at that time may not be used in evidence in criminal proceedings against them, except in proceedings for an offence under Chapter 7 of the POEO Act, for example, under s 211.</p> <p>While the answers or information may not be used in criminal proceedings against the individual, they may be used in proceedings against a corporation or other individuals.</p> <p>Note that a person cannot object to providing <b>records</b> on the grounds that the records might incriminate them.</p>
<p><b>(4) Records admissible</b>                  Any record furnished by a person in compliance with a requirement under this Chapter is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.</p>	<p>Records provided by a person in compliance with a requirement under Chapter 7 can be admissible in criminal proceedings, even if those records might incriminate the person.</p>
<p><b>(5) Further information</b>                  Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Chapter is not inadmissible on the ground:</p> <p>(a) that the record or information had to be furnished or the answer had to be given; or</p> <p>(b) that the record or information furnished or answer given might incriminate the person.</p>	<p>Where further information has been obtained as a result of information or records provided by a person or their answers to questions, the further information is admissible in court even though the person was required to provide the records or information or to answer the question, or the record or information provided or their answers to questions might incriminate them.</p> <p>This means that while the answers or information may not be used against the individual providing them, the answers or information may be used in proceedings against a corporation or other individuals, or used to obtain further information</p>
<p><b>(6) Requirement to state name and address</b>                  This section extends to a requirement under this Chapter to state a person's name and address.</p>	<p>The warnings relating to non-compliance (s 212(1)) and the privilege against self-incrimination (s 212(3)) referred to above also need to be given when an authorised officer requires a person to state their name and address under s 204(1) and (2).</p>
<p><b>224 Service of penalty notices</b>                  (1) An enforcement officer may serve a penalty notice on a person if it appears to the enforcement officer that the person has committed a penalty notice offence.</p>	<p>Section 224(1) gives an enforcement officer, as defined by s 226, the power to serve a penalty notice for a penalty notice offence.</p> <p>The Protection of the Environment (Penalty Notices) Regulation 2004 specifies offences for which a penalty notice may be issued.</p>

<p>(2) A penalty notice may be served personally or by post.</p>	<p>Subsection (2) allows an enforcement officer to serve a penalty notice by handing it to the person or by posting it to them.</p>
<p>(3) The regulations may authorise a penalty notice also to be served by leaving the notice on a vehicle or at other premises in respect of which the offence was committed.</p>	<p>Subsection (3) enables an enforcement officer to serve a penalty notice by leaving it:</p> <ul style="list-style-type: none"> <li>• on the vehicle the offence was committed in; or,</li> <li>• at the premises at which the offence was committed.</li> </ul>
<p><b>226 Enforcement officers</b>                  (1) In this Division, a reference to an enforcement officer, in relation to an offence, is a reference to a person belonging to a class of officers or employees prescribed by the regulations in relation to the offence.</p>	<p>Schedule 1 of the Protection of the Environment (Penalty Notices) Regulation 2004 specifies categories of enforcement officers that may issue penalty notices for certain offences.</p>
<p>(2) A person who is an officer or employee of a public authority cannot be an enforcement officer in relation to an offence alleged to have been committed by the authority.</p>	<p>Subsection (2) states that an enforcement officer of a public authority may not exercise their powers as an enforcement officer in relation to an alleged offence committed by that authority.</p>
<p>(3) Only an officer or employee of the EPA can be an enforcement officer in relation to:</p> <ol style="list-style-type: none"> <li>(a) an offence (other than a littering offence) alleged to have been committed in relation to activities or work authorised or controlled by an environment protection</li> <li>(b) an offence (other than a littering offence) alleged to have been committed in relation to activities carried on by the State or a public authority.</li> </ol>	
<p>(4) In this section, <b>littering offence</b> means an offence arising under Part 5.6A.</p>	
<p><b>228 Withdrawal of penalty notice</b>                  (1) An enforcement officer belonging to the same class of officers as the enforcement officer by whom a penalty notice has been served:</p> <ol style="list-style-type: none"> <li>(a) may withdraw the notice within 28 days after the date on which the notice was served, and</li> <li>(b) must withdraw the notice immediately if directed to do so by the EPA.</li> </ol>	<p>Section 228 (1) states that an enforcement officer from the same class of enforcement officers that issued the penalty notice may cancel a penalty notice within 28 days of it being served. An authorised officer must cancel a penalty notice if directed to do so by the EPA.</p>

<p>(2) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with this section:</p> <p>(a) The amount that was payable under the notice ceases to be payable.</p> <p>(b) Any amount that has been paid under the notice is repayable to the person by whom it was paid.</p> <p>(c) Further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.</p>	<p>Subsection (2) states that if a penalty notice is cancelled, the penalty amount no longer needs to be paid. If the money has already been paid, the full amount must be repaid to the person who paid it. Withdrawal of a penalty notice does not prevent legal proceedings being taken against any person regarding the alleged offence.</p>
<p><b>276 Issue of noise abatement directions</b></p> <p>If it appears to an authorised person that offensive noise is being, or has at any time within the past 7 days been, emitted from any premises, the authorised person may:</p> <p>(a) direct the person whom the authorised person believes to be the occupier of the premises to cause the emission of the offensive noise to cease, or</p> <p>(b) direct any person whom the authorised person believes to be making or contributing to the making of the noise to cease making or contributing to the making of offensive noise, or both.</p>	<p>Section 276 gives an authorised person the power to instruct a person to cease making, or contributing to making, offensive noise, if:</p> <ul style="list-style-type: none"> <li>• it appears to the officer that offensive noise is being emitted from the premises, or has been emitted from the premises within the past 7 days; and</li> <li>• the authorised person believes the person is the occupier of the premises; or</li> <li>• the authorised person believes the person is making or contributing to the making of the noise.</li> </ul> <p>Directions may be issued to one or more people. 'Authorised person' is defined in s 275 to include an authorised officer, a police officer or in relation to vessels in navigable waters, an officer or employee of a marine authority authorised by the Marine Authority for the purposes of Part 8.3, Division 3.</p>
<p><b>279 Revocation of noise abatement directions</b></p> <p>A noise abatement direction may be revoked by the person who gave (or could have given) the direction or by a person of a class prescribed by the regulations.</p>	<p>Section 279 gives an authorised person the power to revoke a noise abatement direction given under s 276.</p>

## Table 2. Powers of authorised officers appointed by the EPA

Note that authorised officers appointed by the EPA also have the powers explained in table 1.

Sections of legislation relevant to authorised officers	Summary
<b><i>Protection of the Environment Operations Act 1997</i></b>	
<p><b>161 Notices</b></p> <p><b>(1) Notice to repair</b> An authorised officer may, by notice in writing given to the owner of a motor vehicle which the officer reasonably suspects emits excessive air impurities, direct the owner to cause it to be serviced or repaired, within a specified period of time, so that it no longer emits excessive air impurities.</p>	<p>Section 161(1) gives an EPA authorised officer the power to serve a written notice requiring the owner of a motor vehicle to have it serviced or repaired within a specified time so it no longer emits excessive exhaust fumes. The officer must reasonably suspect that the vehicle emits 'excessive air impurities' (defined in s 154(2) of the POEO Act).</p>
<p><b>(2) Notice regarding anti-pollution devices</b> An authorised officer may, by notice in writing given to the owner of a motor vehicle, direct the owner:</p> <p>(a) if the vehicle is not fitted with every prescribed anti-pollution device required by the regulations to be fitted to it—to cause it to be fitted with specified prescribed anti-pollution devices, or</p> <p>(b) if any device fitted to the vehicle (being a prescribed anti-pollution device or any other device designed to minimise air pollution) has been removed, disconnected or impaired—to cause the device to be refitted, reconnected or repaired, or</p> <p>(c) if any such device or any part of the vehicle has been so adjusted or modified that, as a result, the vehicle emits excessive air impurities—to cause the device or part to be readjusted or restored, within a specified period of time.</p>	<p>Subsection (2) gives an EPA authorised officer the power to serve a written notice requiring the owner of a vehicle to, within a specified time:</p> <ul style="list-style-type: none"> <li>• fit the vehicle with the prescribed anti-pollution devices; or</li> <li>• refit, reconnect or repair prescribed anti-pollution devices or other devices that minimise air pollution that have been removed, disconnected or impaired; or,</li> <li>• readjust or restore any prescribed anti-pollution devices or other devices that minimise air pollution, that have been adjusted or modified and which result in the vehicle emitting excessive air impurities.</li> </ul>
<p><b>(3) Revoking or varying notice</b> A notice given under this section in respect of a motor vehicle may be revoked or varied by an authorised officer by further notice in writing given to the owner of the vehicle.</p>	<p>Subsection (3) allows an EPA authorised officer to revoke or vary a notice given under s 161 by serving the vehicle's owner with another written notice.</p>



<p><b>(4) Offence</b>  A person who uses a motor vehicle in respect of which a notice has been given under this section, or causes or permits it to be used, is guilty of an offence if at that time:</p> <ul style="list-style-type: none"> <li>(a) the person knows that the notice has been given, and</li> <li>(b) the notice has not been revoked, and</li> <li>(c) the period of time specified in the notice has expired, and</li> <li>(d) the notice has not been complied with.</li> </ul> <p>Maximum penalty: 60 penalty units.</p>	<p>Subsection (4) makes it an offence for a person to use a vehicle, or cause or permit a vehicle to be used, when a notice under s 161 has been issued, if the person knows the notice has been given and the notice has not been complied with within the specified time. The maximum penalty is \$6,600. Note the exceptions set out in subs (6).</p>
<p><b>(5) Affixing label to vehicle</b>  If an authorised officer has given a notice under this section in respect of a motor vehicle, the authorised officer may affix to the windscreen of the vehicle or otherwise conspicuously affix to the vehicle a prescribed label.</p>	<p>Subsection (5) gives an EPA authorised officer the power to affix a prescribed label to the windscreen of a vehicle (or to otherwise conspicuously attach it to the vehicle), if a notice under s 161 has been issued for the vehicle.</p>
<p><b>(6) Driving permitted for limited purposes</b>  A motor vehicle may be driven to a place for the purpose of:</p> <ul style="list-style-type: none"> <li>(a) having the work required by a notice under this section carried out, or</li> <li>(b) having a label affixed under this section removed by (or with the authority of) an authorised officer after the required work has been done or the notice has been revoked, or</li> <li>(c) having the vehicle inspected by an authorised officer or a person authorised by such an officer, or</li> <li>(d) returning from having any such work done or vehicle inspected, without contravening subsection (4).</li> </ul>	<p>Subsection (6) sets out exceptions to the offence created by subs (4). If a s 161 notice has been issued for a vehicle, that vehicle may be driven only to a place:</p> <ul style="list-style-type: none"> <li>• where the work required by the notice will be carried out; or</li> <li>• to have the label attached under subs (5) removed once the work has been done or if the notice is revoked; or</li> <li>• to have the vehicle inspected by an authorised officer or another person that they authorise; or</li> <li>• to return from having the work done or the vehicle inspected.</li> </ul>
<p><b>(7) Removal of label</b>  A person (other than an authorised officer or person acting with the authority of such an officer) who removes a prescribed label affixed to a motor vehicle under this section or obliterates or interferes with any such label is guilty of an offence.  Maximum penalty: 60 penalty units.</p>	<p>Subsection (7) makes it an offence for a person to remove, or obliterate or interfere with a label that was attached to the vehicle under subs (5). It is not an offence if the person who removes it is an authorised officer or a person approved by an authorised officer. The maximum penalty for this offence is \$6,600.</p>

<p><b>207 Power to require articles to be tested</b></p> <p>(1) An authorised officer may, by notice in writing, require the owner or person in possession of an article specified in the notice to have the article tested, within the time so specified, for the purpose of determining whether the article complies with the requirements of this Act or the regulations.</p>	<p>Section 207(1) gives an EPA authorised officer the power to issue a written notice requiring an owner, or person possessing an article, to have it tested to determine if it complies with the POEO Act or Regulations, or the Act or Regulations specified in s 186.</p> <p>See s 205 which limits the definition of an authorised officer to an EPA authorised officer in this section.</p>
<p>(2) Any such notice may require the article:</p> <p>(a) to be tested at a specified place (being a place within 80 kilometres of the owner's or person's residence or place of business), or</p> <p>(b) to be tested by or in the presence of an authorised officer.</p>	<p>Under subs (2), the notice referred to in subs (1) may require that:</p> <ul style="list-style-type: none"> <li>• the article be tested at a specified place not more than 80 km from that person's home or work; or</li> <li>• it be tested by an EPA authorised officer; or</li> <li>• it be tested in the presence of an EPA authorised officer.</li> </ul>
<p>(3) Any such notice may be revoked or varied by a further notice given by an authorised officer.</p>	<p>Subsection (3) gives an EPA authorised officer the power to revoke or vary a notice given under subs (1) by issuing another notice in writing.</p>
<p><b>209 Power to seize articles (other than vehicles or vessels) to test for noise</b></p> <p>(1) An authorised officer may take possession of an article (other than a vehicle or vessel) and take it to a place approved by the EPA for the purpose of measuring its noise level or its noise emission characteristics.</p>	<p>Section 209(1) gives an EPA authorised officer the power to seize an article (not including a vehicle or vessel) and take it to an EPA-approved place to measure its noise level or noise emission characteristics.</p> <p>(See s 205 which limits the definition of an authorised officer to an EPA authorised officer in this section.)</p>
<p>(2) An authorised officer who takes possession of an article under this section must provide the person from whom it is taken with a receipt that:</p> <p>(a) specifies the make, model and serial number of the article, or any other information that will identify the article, and</p> <p>(b) specifies the time and date of issue of the receipt, and</p> <p>(c) specifies a date (being a date not more than 21 days after the date of issue) on or before which the article will be returned, and</p> <p>(d) is signed by the authorised officer issuing it.</p>	<p>Under subsection (2), an EPA authorised officer who seizes an article under subs (1) to test it for noise must give a receipt to the person from whom it was taken. The receipt must include details of the article, the time and date, and when the article will be returned (not more than 21 days after the receipt is issued). The officer must sign the receipt.</p>

<p>(3) The authorised officer must return the article to its owner, or to the person from whose possession it was taken, on or before the date specified in the receipt for its return.</p>	<p>Subsection (3) requires the EPA authorised officer to return the article to its owner, or the person from whom it was taken, by the date written on the receipt.</p>
<p><b>278 Restrictions on noise abatement directions</b>                  (1) A noise abatement direction (other than a direction given by an authorised officer appointed by the EPA) has no force in so far as it is directed to:                  (a) the State or a person acting on behalf of the State, or                  (b) a public authority or a person in the capacity of a member, officer or employee of a public authority, or                  (c) a person or body prescribed by the regulations for the purposes of this paragraph.</p>	<p>Section 278(1) provides that only the EPA can issue a noise abatement direction for:</p> <ul style="list-style-type: none"> <li>• the state or a person acting on behalf of the state, or</li> <li>• a public authority or a person in the capacity of a member, officer or employee of a public authority, or</li> <li>• a person or body prescribed by the Regulations for the purposes of this paragraph.</li> </ul>
<p>(2) A noise abatement direction (other than a direction given by an authorised officer appointed by the EPA) has no force in so far as it would have the result of affecting:                  (a) any activity carried on by or for the State or a public authority, or                  (b) any scheduled activity, or any other activity or work that is the subject of an environment protection licence, or                  (c) any activity of a class or description prescribed by the regulations for the purposes of this paragraph.</p>	<p>Subsection (2) provides that only the EPA can issue a noise abatement direction for:</p> <ul style="list-style-type: none"> <li>• any activity carried on by or for the state or a public authority, or</li> <li>• any scheduled activity, or any other activity or work that is the subject of an environment protection licence, or</li> <li>• any activity of a class or description prescribed by the Regulations for the purposes of s 278(2).</li> </ul>
<p><b><i>Contaminated Land Management Act 1997 (CLM Act)</i></b></p>	
<p><b>73 Appointment of authorised officers</b>                  The EPA may appoint any person (including a class of persons) as an authorised officer for the purposes of this Act.</p>	<p>Section 73 states that only the EPA may appoint authorised officers for the purposes of the CLM Act.</p>
<p><b>74 Scope of authority</b>                  (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.</p>	<p>Section 74(1) allows the EPA to limit, restrict or set specific conditions on the powers of any authorised officer it appoints, in addition to the limitations contained in the CLM Act.</p>

<p>(2) If such authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.</p>	<p>Subsection (2) confirms that if an EPA authorised officer has conditions, limitations or restrictions attached to their authorisation, the officer must exercise their powers in accordance with these requirements.</p>
<p><b>75 Identification</b> (1) Every authorised officer is to be provided with an identification card as an authorised officer.</p>	<p>Section 75(1) requires the EPA to provide identification cards to every authorised officer it appoints.</p>
<p>(2) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce the officer's identification card to the person.</p>	<p>Subsection (2) requires an authorised officer to show their identification card when exercising their powers to any person affected by the exercise of the authorised officer's powers, if the person asks to see it.</p>
<p><b>78 Requirement to provide information and records (authorised officers)</b> An authorised officer may, by notice in writing served on a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter under this Act.</p>	<p>Section 78 gives an EPA authorised officer the power to serve a notice requiring a person to provide them with information and records in connection with any matter under the CLM Act. Sections 79 and 80 contain further provisions about notices to supply information or records. Make sure you also give the required warnings specified in s 90.</p>
<p><b>81 Powers to enter land</b> (1) An authorised officer may enter: (a) any land on which the authorised officer reasonably suspects that any activity that may cause contamination is being carried on—at any time during which the activity is being carried on there, and (b) any land at or from which the authorised officer reasonably suspects contamination has been, is being or is likely to be caused—at any time, and (c) any land that is an investigation area or remediation site—at any time, and (d) any other premises—at any reasonable time.</p>	<p>Section 81 gives an EPA authorised officer the power to go on certain land and enter any premises at particular times without the permission of the occupier. (Note the exception for residential premises in s 82.) The land that may be entered includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>• land that has been or is being contaminated or land where contamination is likely to be caused</li> <li>• an investigation area</li> <li>• a remediation site.</li> </ul>
<p>(2) A power to enter land conferred by this Act authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.</p>	<p>Subsection (2) allows an EPA authorised officer to go on land by any means, including by foot or by car.</p>

<p>(3) Entry may be effected under this Act by an authorised officer with the aid of such authorised officers or police officers as the authorised officer considers necessary and with the use of reasonable force.</p>	<p>Subsection (3) gives an EPA authorised officer the power to go on land and enter premises:</p> <ul style="list-style-type: none"> <li>• with the aid of other authorised officers</li> <li>• with the aid of police officers</li> <li>• with the use of reasonable force.</li> </ul>
<p><b>82 Entry into residential premises only with permission or warrant</b> This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under this Division.</p>	<p>Section 82 is an exception to s 81(1). An EPA authorised officer may enter residential premises only if the occupier gives permission, or if the officer has a search warrant.</p>
<p><b>83 Powers to do things on premises</b> (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).</p>	<p>Section 83(1) gives an EPA authorised officer who has entered premises the power to do anything necessary for the purposes of an investigation. Specific examples of what the officer may do are set out in subs (2) below. The EPA can also issue a notice requiring the owner or occupier of the premises to give the authorised officer reasonable help and facilities to carry out their functions (s 85).</p>
<p>(2) An authorised officer may do any or all of the following:</p> <ol style="list-style-type: none"> <li>(a) examine and inspect any apparatus, equipment, works, vehicle or plant,</li> <li>(b) take and remove samples,</li> <li>(c) make such examinations, inquiries and tests as the authorised officer considers necessary,</li> <li>(d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,</li> <li>(e) require records to be produced for inspection,</li> <li>(f) examine, inspect and copy any records,</li> <li>(g) seize anything connected with an offence against this Act or the regulations,</li> <li>(h) do any other thing the authorised officer is empowered to do under this Part.</li> </ol>	<p>Subsection (2) sets out some of the ways in which an EPA authorised officer may act, including:</p> <ul style="list-style-type: none"> <li>• examining, testing and inspecting things on the premises</li> <li>• taking and removing samples</li> <li>• taking photographs or videos</li> <li>• asking for records to be produced for inspection and inspecting and copying records</li> <li>• seizing anything that is connected with an offence under the Act or Regulations.</li> </ul>

<p><b>84 Search warrants</b></p> <p><b>(1) Application for search warrant</b></p> <p>An authorised officer under this Act may apply to an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> for the issue of a search warrant if the authorised officer under this Act believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened at any premises.</p>	<p>Section 84(1) gives an EPA authorised officer the power to apply to an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> for a search warrant. The officer must believe on reasonable grounds that an offence against the Act or the Regulations has been committed or is being committed.</p> <p>Section 3(1) of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> defines an ‘authorised officer’ under that Act to mean:</p> <ul style="list-style-type: none"> <li>(a) a Magistrate or a Children’s Magistrate, or</li> <li>(b) a Clerk of a Local Court, or</li> <li>(c) an employee of the Attorney General’s Department authorised by the Attorney General as an authorised officer for the purposes of this Act either personally or as the holder of a specified office.</li> </ul>
<p><b>(2) Issue of search warrant</b></p> <p>An authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer under this Act named in the warrant:</p> <ul style="list-style-type: none"> <li>(a) to enter the premises, and</li> <li>(b) to exercise any function of an authorised officer under this Act under this Part.</li> </ul>	<p>Subsection (2) sets out what a search warrant may authorise an EPA authorised officer to do, namely:</p> <ul style="list-style-type: none"> <li>• enter the premises</li> <li>• do anything that the officer would have the power to do at the premises (see s 83).</li> </ul> <p>An authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> may issue a search warrant if they are satisfied that there are reasonable grounds for doing so.</p>
<p><b>(3) Application of Law Enforcement (Powers and Responsibilities) Act 2002</b></p> <p>Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.</p>	<p>Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> includes issues such as how to apply for a warrant, and how the search may be carried out. (Note: the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> repealed and replaced the <i>Search Warrants Act 2002</i>.)</p>

<p><b>85 Assistance</b></p> <p>(1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Division in connection with any premises.</p> <p>(2) The EPA may, by notice in writing served on the occupier of the premises, require the person to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.</p> <p>(3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations for the purposes of this section.</p>	<p>Section 85 allows the EPA to give a notice in writing requiring the occupier of premises to provide reasonable assistance and facilities to authorised officers exercising their powers of entry and search under Division 3 of Part 9 of the Act. The notice:</p> <ul style="list-style-type: none"> <li>• must specify the manner and time within which the assistance and facilities are to be provided</li> <li>• may require assistance and facilities of the same kind as, or a different kind from, any prescribed by the Regulations.</li> </ul>
<p><b>86 Care to be taken</b></p> <p>In the exercise of a power of entering or searching premises under this Division, an authorised officer must do as little damage as possible.</p>	<p>Section 86 requires EPA authorised officers to do as little damage as possible when entering or searching premises.</p>
<p><b>87 Compensation</b></p> <p>The EPA must compensate all interested parties for any damage caused by an authorised officer in exercising a power of entering the premises (but not any damage caused by the exercise of any other power), unless the damage was unavoidable because the occupier of the premises obstructed or hindered the authorised officer in the exercise of the power of entry.</p>	<p>Section 87 requires the EPA to pay compensation for any damage caused by EPA authorised officers in exercising a power of entering a premises, unless the damage was unavoidable because the occupier obstructed or hindered the authorised officers from gaining entry.</p>
<p><b>88 Power of authorised officers to require answers</b></p> <p>(1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Part to answer questions in relation to those matters.</p>	<p>Section 88(1) gives an EPA authorised officer the power to require a person to answer questions, if the officer reasonably suspects that the person has information needed for an investigation. Make sure you give the required warnings specified in s 90.</p>

<p>(2) The EPA may, by notice in writing, require a body corporate to nominate, in writing within the time specified in the notice, a director or officer of the body corporate to be the body corporate's representative for the purpose of answering questions under this section.</p>	<p>Subsection (2) gives the EPA the power to issue a written notice requiring a corporation to nominate a director or officer (for example, the corporation's Secretary, Executive Officer or an employee) to speak on behalf of the corporation.</p>
<p>(3) Answers given by a person nominated under subsection (2) bind the body corporate.</p>	<p>Subsection (3) means that any answers given by the person nominated by the corporation will be evidence that binds the corporation.</p>
<p><b>89 Offences</b></p> <p>(1) A person who, without reasonable excuse, neglects or fails to comply with a requirement made of the person under this Part is guilty of an offence.</p> <p>(2) A person who furnishes any information or does any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material respect is guilty of an offence.</p> <p>(3) A person who wilfully delays or obstructs an authorised officer in the exercise of the authorised officer's powers under this Part is guilty of an offence.</p> <p>(4) A person who impersonates an authorised officer is guilty of an offence.</p> <p>Maximum penalty:</p> <ul style="list-style-type: none"> <li>• in the case of a corporation—1,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues, or</li> <li>• in the case of an individual—600 penalty units and, in the case of a continuing offence, a further penalty of 300 penalty units for each day the offence continues.</li> </ul>	<p>Section 89 creates the following offences:</p> <ul style="list-style-type: none"> <li>• neglecting or failing, without reasonable excuse, to comply with a requirement made under Part 9</li> <li>• knowingly providing information that is false or misleading in purported compliance with a requirement made under Part 9</li> <li>• doing any other thing in purported compliance with a requirement given under Part 9 knowing that it is false or misleading</li> <li>• wilfully delaying or obstructing an authorised officer exercising powers under Part 9</li> <li>• impersonating an authorised officer.</li> </ul> <p>The maximum penalty for an offence under s 89, if committed by corporations, is \$137,500 (and a further \$66,000 per day for a continuing offence), and, if committed by individuals, is \$66,000 (and a further \$33,000 per day for a continuing offence).</p>
<p><b>90 Provisions relating to requirements to furnish information or answer questions</b></p> <p><b>(1) Warning to be given on each occasion</b></p> <p>A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish information or to answer a question unless the person was first warned on that occasion that a failure to comply is an offence.</p>	<p>When asking questions (s 88), or issuing notices requiring information to be provided (s 78), the authorised officer should warn the person, whether an individual or corporation, that not answering such questions or providing information is an offence. If this warning is not given, the individual or corporation cannot be guilty of an offence if they do not answer the question or provide information.</p>



<p><b>(2) Self-incrimination not an excuse</b> A natural person is not excused from a requirement under this Part to furnish information or to answer a question on the ground that the information or answer might incriminate the person or make the person liable to a penalty.</p>	<p>A person cannot refuse to answer questions or provide information on the ground that those answers or information might incriminate them. However, subs (3) provides that the answers or information may not be used in criminal proceedings under certain circumstances.</p>
<p><b>(3) Information not admissible if objection made</b> However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against a person in criminal proceedings (except proceedings for an offence under this Part) if:</p> <p>(a) the person objected at the time of furnishing the information or answering on the ground that the information or answer might incriminate the person, or</p> <p>(b) the person was not warned on that occasion that a failure to furnish the information or answer the question would be an offence and advised that the person might object on the ground that the information or answer might incriminate the person.</p>	<p>In the case of an individual, the authorised officer should also warn them that they may object to answering questions or providing information on the grounds that it might incriminate them. If the individual:</p> <ul style="list-style-type: none"> <li>• does object to answering questions or providing information on the ground that it might incriminate them, or</li> <li>• was not warned that failing to answer the question or provide the information is an offence and that they could object on the ground that the information to be provided or answer to be given might incriminate them,</li> </ul> <p>the answers or information that they provide at that time may not be used in evidence in criminal proceedings against them (except for proceedings for an offence under Part 9).</p>
<p><b>(4) Further information</b> Further information obtained as a result of information furnished or an answer given in compliance with a requirement under this Part is not inadmissible on the ground:</p> <p>(a) that the information had to be furnished or the answer had to be given; or</p> <p>(b) that the information furnished or answer given might incriminate the person.</p>	<p>Where more information has been obtained from information provided by a person or their answers to questions, the further information is admissible in court, even though the person was required to provide the information or answer the question, or the information or their answers might incriminate them.</p> <p>This means that while the answers or information may not be used against the individual, the answers or information may be used in proceedings against a corporation or other individuals, or used to obtain more information.</p>
<p><b><i>Environmentally Hazardous Chemicals Act 1985</i></b></p>	
<p><b>3 Definitions</b> (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires: ...</p> <p><b>authorised officer</b> means a person authorised in writing by the Authority to act as an authorised officer for the purposes of this Act.</p> <p><b>Authority</b> means the Environment Protection Authority.</p>	<p>Section 3 states that only the EPA can appoint authorised officers for the purposes of the Act.</p>

<p><b>45 Powers of authorised officers</b></p> <p>(1) Subject to subsection (2), an authorised officer may enter:</p> <p>(a) any premises used as a factory or any premises in or upon which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on in or upon the premises;</p> <p>(b) any premises in or upon which the authorised officer reasonably suspects that an offence against this Act or the regulations is being or is likely to be committed, at any time; and</p> <p>(c) any other premises, at any reasonable time, with such assistants as the authorised officer considers necessary and if need be by the use of reasonable force, and may therein:</p> <p>(d) examine any equipment or any plant or vehicles,</p> <p>(e) make such examination and inquiry and such tests as the authorised officer considers necessary to ascertain whether the provisions of this Act or the regulations or of any requirement, direction, order or notice made or given under or pursuant to this Act or the conditions in force and attached to any licence or exemption under this Act are being or have been complied with,</p> <p>(f) take such photographs as the authorised officer considers necessary in connection with the administration of this Act,</p>	<p>Section 45(1) gives an EPA authorised officer the power to enter the following premises at various specified times without the permission of the occupier—note the exception in relation to dwellings in s 45(2). These premises include:</p> <ul style="list-style-type: none"> <li>• premises used as a factory or for industrial or trade purposes—when the manufacturing, industrial or trade process is being carried out;</li> <li>• premises in or on which the officer reasonably suspects that an offence under this Act is being committed or is likely to be committed—at any time</li> <li>• any other premises—but the officer may enter only at a reasonable time.</li> </ul> <p>The officer may gain entry with assistants, and may use reasonable force to enter the premises. Once on the premises, the officer may act in accordance with s 45(1)(d)–(l), including:</p> <ul style="list-style-type: none"> <li>• examine any equipment, plant and vehicles</li> <li>• do examinations and tests and make inquiries to find out if the Act or Regulations or a direction, notice, order, licence or exemption issued under this Act or Regulations is being or has been complied with</li> <li>• take photographs</li> <li>• take samples of certain chemical substances</li> <li>• seize certain chemical substances</li> <li>• take samples of soil, water and vegetation</li> <li>• stop and detain a vehicle</li> <li>• where a substance has been seized, direct the occupier of premises or owner of a substance where and how to store the substance.</li> </ul>
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<p>(g) subject to subsection (3), take without payment, for the purpose of examination or testing, samples of any substance that the authorised officer suspects on reasonable grounds to be an environmentally hazardous chemical or a declared chemical waste in respect of which an offence against this Act or the regulations has been or is being committed and, in exercising the power conferred by this paragraph, open any container or cause any container to be opened,</p> <p>(h) subject to subsection (3), seize and remove any substance that the authorised officer suspects on reasonable grounds to be an environmentally hazardous chemical or a declared chemical waste in respect of which an offence against this Act or the regulations has been or is being committed and any container in which the substance is being kept or conveyed,</p> <p>(i) take without payment, for the purpose of examination or testing, samples of any soil, water, vegetation or other thing from the premises, where the authorised officer suspects on reasonable grounds that the premises have become contaminated, within the meaning of Part 5, by being used for or in connection with the carrying on of any prescribed activity in relation to a chemical or a declared chemical waste,</p> <p>(j) stop or detain a vehicle for such time as is reasonably necessary for the authorised officer to exercise any power conferred by this subsection,</p>	
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Powers of Authorised Officers

<p>(k) for the purposes of paragraph (h), direct the occupier of any place where the substance is seized, or the owner of the substance, to retain it in that place, or in a place under the control of the occupier or owner that will, in the opinion of the authorised officer, least endanger the environment, and</p> <p>(l) give directions for or with respect to the detention of any substance or container that has been removed under paragraph (h).</p>	
<p>(2) Subsection (1) does not empower an authorised officer to enter any dwelling or any land used in connection with any dwelling or to do anything within any dwelling or in or on any such land otherwise than under the authority of a search warrant issued under section 46.</p>	<p>Subsection (2) prevents an EPA authorised officer entering residential premises unless the officer has a search warrant.</p>

<p>(2A) An authorised officer who suspects on reasonable grounds that an environmentally hazardous chemical or a declared chemical waste is being conveyed by or is situated in a container being conveyed by a motor vehicle in a public place may:</p> <p>(a) if the vehicle is moving, direct that it be stopped,</p> <p>(b) take without payment, for the purpose of examination or testing, samples of any substance being so conveyed,</p> <p>(c) detain the vehicle for such time as is necessary to take the samples,</p> <p>(d) if the authorised officer suspects on reasonable grounds that the substance and any vehicle or container being used to convey it has been or is being used in connection with an offence against this Act or the regulations, seize and remove the substance and the vehicle or container,</p> <p>(e) for the purposes of paragraph (d), direct the occupier of any place where the substance is seized, or the owner of the substance, to retain it in that place, or in a place under the control of the occupier or owner that will, in the opinion of the officer, least endanger the environment, and</p> <p>(f) give directions for or with respect to the detention of any substance, vehicle or container that has been removed under paragraph (d).</p>	<p>Subsection (2A) gives an EPA authorised officer the power to act in accordance with s 45(2A) regarding a vehicle that the officer reasonably suspects to be carrying certain chemical substances in a public place. The officer may:</p> <ul style="list-style-type: none"> <li>• stop the vehicle</li> <li>• take samples of the chemical</li> <li>• ensure the vehicle is stopped until the samples are taken</li> <li>• seize and remove the substance and the vehicle, or the container carrying the chemical, if the officer reasonably suspects that the substance and any vehicle or container is being or has been used in connection with an offence under this Act or the Regulations</li> <li>• tell the occupier of any place where the substance is seized or the owner of the substance where and how to store it.</li> </ul>
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<p>(3) An authorised officer is not empowered:</p> <p>(a) under subsection (1)(g) or (2A)(b)—to take a sample of any substance, or</p> <p>(b) under subsection (1) (h) or (2A)—to remove any substance or container, that appears to the authorised officer to be in the custody of a person unless the authorised officer makes out and tenders to the person a receipt in or to the effect of the prescribed form.</p>	<p>Subsection (3) requires an EPA authorised officer to give a receipt when the officer takes a sample or removes a substance or container.</p>
<p>(4) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to be offending against this Act or the regulations to state the person’s full name and place of abode.</p>	<p>Subsection (4) gives an EPA authorised officer the power to require a person to state their full name and address, if the officer suspects on reasonable grounds that the person has committed an offence against the Act or Regulations.</p>
<p>(5) Every authorised officer shall be provided with a certificate of appointment and, on applying for admission to any premises which the officer is empowered by this Act to enter, shall, if requested to do so, produce the certificate to the occupier of the premises.</p>	<p>Subsection (5) requires the EPA to provide authorised officers with a certificate of appointment. An EPA authorised officer must, when asking to be allowed onto any premises, show their certificate of appointment to the occupier if asked to.</p>
<p>(6) The Authority may, by notice in writing served on the occupier of any premises, require the occupier to provide such assistance and facilities as are specified in the notice within such time and in such manner as are specified in the notice, for the purpose of enabling an authorised officer to exercise the functions of an authorised officer under this Act.</p>	<p>Subsection (6) gives the EPA the power to issue a written notice requiring an occupier of a premises to give an authorised officer help and facilities to carry out their functions. The notice must specify the time and manner in which the specified assistance and facilities will be provided.</p>

<p>(7) Any person:</p> <p>(a) who wilfully delays or obstructs an authorised officer, or fails to comply with any requirement made under this section by an authorised officer, when exercising the powers of an authorised officer under this Act,</p> <p>(b) who, in purported compliance with a requirement made under subsection (4), states a name that is not his or her name or a place of abode that is not his or her place of abode, or</p> <p>(c) who, being the occupier of any premises:</p> <p>(i) refuses to permit or to assist an authorised officer to perform or carry out the acts, matters or things, or any of the acts, matters or things, which an authorised officer is authorised to perform or carry out, or</p> <p>(ii) refuses to comply with a requirement made under subsection (6),</p> <p>is guilty of an offence against this Act and liable to a penalty not exceeding 50 penalty units.</p>	<p>Subsection (7) creates the following offences:</p> <ul style="list-style-type: none"> <li>• wilfully delaying or obstructing an authorised officer</li> <li>• failing to comply with a requirement of an authorised officer</li> <li>• giving an authorised officer a false name or a false address</li> <li>• an occupier of premises refusing to allow or assist an authorised officer to carry out their functions</li> <li>• an occupier of premises refusing to comply with a notice under subs (6) to assist or provide facilities to an authorised officer.</li> </ul> <p>The maximum penalty for each of these offences is \$5,500.</p>
<p><b>46 Search warrant</b></p> <p>(2) An authorised officer under this Act may apply to an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> for a search warrant if the authorised officer has reasonable grounds for believing that a provision of this Act, the regulations or a chemical control order has been or is being contravened in or on any dwelling or land used in connection with any dwelling.</p>	<p>Subsection (2) gives an EPA authorised officer the power to apply to an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> for a search warrant. The officer must have reasonable grounds for believing that an offence under this Act or the Regulations has been or is being committed or that a chemical control order has been or is being contravened.</p> <p>Section 3(1) of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> defines an 'authorised officer' under that Act to mean:</p> <ul style="list-style-type: none"> <li>(a) a Magistrate or a Children's Magistrate, or</li> <li>(b) a Clerk of a Local Court, or</li> <li>(c) an employee of the Attorney General's Department authorised by the Attorney General as an authorised officer for the purposes of this Act either personally or as the holder of a specified office.</li> </ul>

<p>(3) An authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, when accompanied by a member of the police force:</p> <p>(a) to enter the dwelling or land and therein to exercise the powers specified in section 45 (1); and</p> <p>(b) to search the dwelling and land for evidence of a contravention of this Act, the regulations or a chemical control order.</p>	<p>Subsection (3) sets out what a search warrant may authorise an EPA authorised officer to do, namely to enter a dwelling or go on land, and then:</p> <ul style="list-style-type: none"> <li>• do the things set out in s 45(1); and</li> <li>• search the premises for evidence of a contravention of the Act, the Regulations or a chemical control order.</li> </ul> <p>The authorised officer must be accompanied by a police officer.</p> <p>An authorised officer (within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i>) may issue a search warrant if they are satisfied that there are reasonable grounds for doing so.</p>
<p>(4) Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.</p>	<p>Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> includes issues such as how to apply for a warrant, and how the search may be done.</p> <p>(Note: the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> repealed and replaced the <i>Search Warrants Act 2002</i>.)</p>
<p><b><i>Road and Rail Transport (Dangerous Goods) Act 1997</i></b></p>	
<p><b>14 Appointment of authorised officers</b></p> <p>(1) A Competent Authority may appoint people, or a class of people, to be authorised officers.</p>	<p>Section 14(1) states that only a competent authority may appoint authorised officers for the purposes of the Act. In NSW, only the EPA and the WorkCover Authority have been appointed as competent authorities under the Act.</p> <p>The EPA has responsibility for the regulation of the 'on road/on rail' transport of dangerous goods. The EPA has given police and Department of Transport officers authorised officer powers in relation to the EPA's responsibilities under the Act, subject to those officers completing the appropriate training.</p>
<p>(2) In appointing authorised officers, a Competent Authority may specify that the appointment is subject to conditions or restrictions relating to:</p> <p>(a) the powers that are exercisable by those officers, or</p> <p>(b) when, where and in what circumstances those officers may exercise powers.</p>	<p>Section 14(2) allows the EPA and the WorkCover Authority to restrict or set specific conditions on the powers of any authorised officer they appoint.</p>
<p>(3) A Competent Authority may issue identification cards containing prescribed details to authorised officers.</p>	<p>Subsection (3) allows the EPA and the WorkCover Authority to issue identification cards to their authorised officers containing details prescribed by the Regulations.</p>



<p><b>15 Identification cards</b></p> <p>(1) Each authorised officer who is not a police officer must:</p> <ul style="list-style-type: none"> <li>(a) carry his or her identification card as an authorised officer while carrying out duties under this Act, and</li> <li>(b) if it is practicable, produce it before exercising a power of an authorised officer under this Act.</li> </ul>	<p>Section 15(1) requires authorised officers, except police officers, to carry their identification cards when carrying out their duties, and, where practicable, to produce them before exercising powers under the Act.</p>
<p>(2) A police officer who is exercising or about to exercise a power of an authorised officer under this Act must, if practicable, comply with a request to identify himself or herself by:</p> <ul style="list-style-type: none"> <li>(a) producing the officer's police identification, or authorised officer identification card (if issued), or</li> <li>(b) stating orally or in writing the officer's name, rank and place of duty, or the officer's identification number.</li> </ul>	<p>Subsection (2) requires police officers to identify themselves if requested to do so before or during the exercise of authorised officer powers under this Act. Identification may be provided by producing a police identification or authorised officer identification card, or by stating either orally or in writing the officer's name, rank and place of duty, or their identification number.</p>
<p><b>16 Return of identification cards</b></p> <p>(1) A person who has been issued with an identification card and who stops being an authorised officer must return his or her identification card to the appropriate Competent Authority as soon as practicable.</p> <p>(2) A person must not contravene subsection (1) without reasonable excuse.</p> <p>Maximum penalty: \$100.</p>	<p>Section 16 requires an authorised officer who ceases to be an authorised officer to return as soon as practicable their identification card to the authority that issued it to them. Failure to do so, without reasonable excuse, is an offence with a maximum penalty of \$100.</p>
<p><b>18 General powers of authorised officers</b></p> <p>(1) An authorised officer may, to find out whether this Act has been or is being complied with, enter and search premises if the authorised officer believes on reasonable grounds that he or she will find a thing that has been, is being or is likely to be used in relation to the transport of dangerous goods by road or rail. However, if the premises are unattended or are a residence, the authorised officer may only enter if the occupier consents.</p>	<p>Section 18(1) gives an authorised officer the power to enter and search premises if the officer believes on reasonable grounds that they will find something that has been, is being or is likely to be used in relation to the transport of dangerous goods by road or rail. However, the officer may enter unattended or residential premises only if the occupier gives permission. This power may be used only to determine whether the Act or Regulations are being complied with.</p>

<p>(2) An authorised officer may enter and search premises, whether attended or not and whether or not a residence, if he or she believes on reasonable grounds that a dangerous situation exists as a result of anything occurring at the premises in relation to the transport of dangerous goods by road or rail.</p>	<p>Subsection (2) is an exception to s 18(1). An authorised officer may enter and search any premises, including unattended premises or residential premises, without the occupier's consent, if the officer reasonably believes that a dangerous situation exists as a result of anything occurring at the premises connected with the transport of dangerous goods by road or rail. 'Dangerous situation' is defined in the Glossary.</p>
<p>(3) If an authorised officer believes on reasonable grounds that a vehicle has been, is being or is likely to be used for the transport of dangerous goods by road or rail, the officer may, to find out whether this Act has been or is being complied with:</p> <p>(a) stop or detain the vehicle or cause the vehicle to be stopped or detained, and</p> <p>(b) search the vehicle for dangerous goods or for documents, equipment or other things relating to the transport of dangerous goods.</p>	<p>Subsection (3) gives an authorised officer the power to:</p> <ul style="list-style-type: none"> <li>• stop or detain a vehicle or</li> <li>• search a vehicle for dangerous goods, documents, equipment or other things related to dangerous goods transport,</li> </ul> <p>if the officer believes on reasonable grounds that the vehicle has been, is being or is likely to be used for the transport of dangerous goods by road or rail.</p> <p>This power may be used only to determine whether the Act or Regulations are being complied with.</p>
<p>(4) If an authorised officer believes on reasonable grounds that a vehicle or equipment has been, is being or is likely to be used in relation to the transport of dangerous goods by road or rail, the officer may, to find out whether this Act has been or is being complied with, direct a person in charge or apparently in charge of the vehicle or equipment to move the vehicle or equipment, or to cause it to be moved, to a suitable location for inspection.</p>	<p>Subsection (4) gives an authorised officer the power to direct a person in charge or apparently in charge of a vehicle or equipment to move it, or have it moved, to a suitable location for inspection, if the officer reasonably believes that the vehicle has been, is being or is likely to be used for the transport of dangerous goods by road or rail.</p> <p>This power may be used only to determine whether the Act or Regulations are being complied with.</p>
<p>(5) If the inspection is not to take place immediately, the direction must be given by notice in writing specifying the time, date and location for the inspection.</p>	<p>Subsection (5) requires that an authorised officer must give a written direction under subs (4) if the inspection will not take place immediately. The direction must specify the time, date and location of the inspection.</p>
<p>(6) An authorised officer may carry out an inspection of the kind referred to in subsection (4) without notice if the authorised officer believes on reasonable grounds that a dangerous situation exists.</p>	<p>Subsection (6) gives an authorised officer the power to carry out an inspection under subs (4) without notice, if the officer believes on reasonable grounds that a dangerous situation exists. 'Dangerous situation' is defined in the Glossary.</p>

<p>(7) An authorised officer may, to find out whether this Act has been or is being complied with, take samples, or direct a person in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) or another person capable of doing so to give samples of a substance for examination and testing if the authorised officer believes on reasonable grounds that the substance is dangerous goods, ingredients of dangerous goods or goods that have been transported together with dangerous goods. The authorised officer must give a receipt in a form approved by a Competent Authority.</p>	<p>Subsection (7) gives an authorised officer the power to:</p> <ul style="list-style-type: none"> <li>• take samples, or</li> <li>• direct a person in charge of a premises, a vehicle or equipment referred to in subsection (1), (2), (3) or (4) (or another person capable of being in charge) to give samples of a substance for examination and testing, if the officer reasonably believes the substance is, or is an ingredient of, dangerous goods, or has been transported with dangerous goods. This power may be used only to determine whether the Act or Regulations have been or are being complied with.</li> </ul> <p>The authorised officer must give a receipt for the samples in a form approved by the competent authority.</p>
<p>(8) An authorised officer may, to find out whether this Act has been or is being complied with, direct a person in charge or apparently in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) to produce documents.</p>	<p>Subsection (8) gives an authorised officer the power to direct a person in charge, or apparently in charge, of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) to produce documents.</p> <p>This power may be used only to determine whether the Act or the regulations have been or are being complied with.</p>
<p>(9) The authorised officer may make copies of the documents, or remove them to make copies, but if they are removed, the authorised officer must:</p> <ol style="list-style-type: none"> <li>(a) if it is practicable to do so, allow the person otherwise entitled to possession of the documents reasonable access to them, and</li> <li>(b) give a receipt in a form approved by a Competent Authority.</li> </ol>	<p>Subsection (9) gives an authorised officer the power to:</p> <ul style="list-style-type: none"> <li>• make copies, or</li> <li>• remove and make copies</li> </ul> <p>of documents produced under subs (8). If the documents are removed, the authorised officer must allow the person owning the documents reasonable access to them if practicable, and must give a receipt for the documents in a form approved by the competent authority.</p>
<p>(10) An authorised officer may, to find out whether this Act has been or is being complied with, leave at premises written directions to the occupier requiring the occupier, within a specified time:</p> <ol style="list-style-type: none"> <li>(a) to give samples of a substance the authorised officer believes on reasonable grounds to be dangerous goods, or ingredients of dangerous goods, for examination and testing, or</li> <li>(b) to produce documents that may help the authorised officer.</li> </ol>	<p>Subsection (10) gives an authorised officer the power to leave at premises written directions to the occupier to:</p> <ul style="list-style-type: none"> <li>• give, within a specified time, samples of a substance for examination and testing, that the authorised officer reasonably believes to be dangerous goods, or ingredients of dangerous goods, or</li> <li>• produce documents within a specified timeframe.</li> </ul> <p>This power may be used only to determine whether the Act or Regulations have been or are being complied with.</p>

<p>(11) An authorised officer may, in order to find out whether this Act has been or is being complied with, direct a person to answer questions that may help the authorised officer.</p>	<p>Subsection (11) gives an authorised officer the power to require a person to answer questions that may help the officer to determine if the Act or the Regulations have been or are being complied with.</p>
<p>(12) An authorised officer may make photographic, mechanical or electronic recordings for a purpose incidental to the exercise of a power of the authorised officer under this section.</p>	<p>Subsection (12) gives an authorised officer the power to make photographic, mechanical or electronic recordings for purposes which complement the exercise of a power under s 18 of the Act.</p>
<p><b>19 Authorised officer may require name and address</b></p> <p>(1) An authorised officer may require a person to state the person's name and address if the authorised officer believes on reasonable grounds that the person has been involved in the transport of dangerous goods by road or rail.</p> <p>(2) When making the requirement, the authorised officer must warn the person that it is an offence to fail to state the person's name and address unless the person has a reasonable excuse.</p> <p>(3) The authorised officer may require the person to give evidence of the correctness of the stated name or address if the authorised officer suspects on reasonable grounds that the stated name or address is false.</p> <p>(4) A person must comply with the authorised officer's requirement under subsection (1) or (3) unless the person has a reasonable excuse for not complying with it.</p> <p>Maximum penalty: \$500.</p>	<p>Section 19 gives an authorised officer the power to require a person to state their name and address if the officer reasonably believes that the person has been involved in the transport of dangerous goods by road or rail.</p> <p>The officer must warn the person that it is an offence not to provide their name and address unless they have a reasonable excuse. The maximum penalty for failing to provide a name and address is \$500.</p> <p>If the authorised officer reasonably suspects that the stated name and address is false, they may require evidence to prove that the name and address are correct. It is an offence to fail to give evidence, with a maximum penalty of \$500.</p>

<p><b>20 Powers of authorised officer where offence suspected</b></p> <p>(1) This section applies if an authorised officer believes on reasonable grounds that he or she will find evidence of an offence at premises, including on a vehicle or equipment at the premises.</p> <p>(2) The authorised officer may enter the premises and search for or test the evidence.</p> <p>(3) If the premises are unattended or are a residence, the authorised officer may only enter with the consent of the occupier of the premises or with the authority of a warrant issued under section 24.</p> <p>(4) The authorised officer may direct a person in charge or apparently in charge of the premises, vehicle or equipment or another person capable of doing so to give samples of a substance for examination and testing.</p>	<p>Section 20 gives an authorised officer the power to:</p> <ul style="list-style-type: none"> <li>enter premises and search for or test evidence. In the case of unattended or residential premises, this power may be exercised only if the occupier gives permission or the officer has a search warrant issued under s 24</li> <li>direct a person in or apparently in charge of the premises, vehicle or equipment, or another person capable of being in charge, to give samples of a substance for examination and testing.</li> </ul> <p>These powers may be exercised only where the authorised officer reasonably believes they will find evidence of an offence at the premises, including on a vehicle or equipment on the premises.</p>
<p><b>21 Authorised officer to restore premises, vehicle or equipment to original condition after inspection</b></p> <p>After inspecting premises, a vehicle or equipment under section 18 or 20, the authorised officer must take reasonable steps to return the premises, vehicle or equipment to the condition it was in immediately before the inspection.</p>	<p>Section 21 requires an authorised officer who has inspected premises, a vehicle or equipment under ss 18 or 20 to take reasonable steps to return the premises, vehicle or equipment to the condition it was in before the inspection.</p>
<p><b>22 Offence to fail to comply with a direction</b></p> <p>A person who:</p> <p>(a) without reasonable excuse, fails to comply with a direction made by an authorised officer in accordance with section 18 or 20, or</p> <p>(b) without reasonable excuse, obstructs an authorised officer or a person assisting an authorised officer in the exercise of power of the authorised officer, or</p> <p>(c) gives to an authorised officer who is exercising such a power information that the person knows to be false or misleading in a material particular,</p> <p>is guilty of an offence.</p> <p>Maximum penalty: \$10,000 or imprisonment for 6 months, or both, for an individual or \$50,000 for a body corporate.</p>	<p>Section 22 creates the following offences:</p> <ul style="list-style-type: none"> <li>failing to comply with a direction of an authorised officer under ss 18 or 20, without a reasonable excuse</li> <li>obstructing an authorised officer or a person helping an authorised officer in the exercise of their powers, without a reasonable excuse</li> <li>providing information that the person knows to be false or misleading.</li> </ul> <p>The maximum penalty for an offence under s 22, if committed by a body corporate, is \$50,000, and, if committed by individuals, is \$10,000 or 6 months imprisonment or both.</p>

<p><b>Obtaining a warrant</b></p> <p>(1) If an authorised officer under this Act believes on reasonable grounds that there is, or there will be within the next 72 hours, evidence of an offence at a residence, at unattended premises or at an unattended vehicle or equipment, the authorised officer under this Act may apply to an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> for a warrant authorising him or her to enter the premises, vehicle or equipment and seize the evidence.</p>	<p>Section 24(1) gives an authorised officer the power to apply to an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> for a search warrant to enter a residence, unattended premises or unattended vehicles or equipment and seize evidence. The officer must reasonably believe that evidence of an offence against the Act or Regulations is at, or will be at, the premises within the next 72 hours.</p> <p>Section 3(1) of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> defines an ‘authorised officer’ under that Act to mean:</p> <ul style="list-style-type: none"> <li>(a) a Magistrate or a Children’s Magistrate, or</li> <li>(b) a Clerk of a Local Court, or</li> <li>(c) an employee of the Attorney General’s Department authorised by the Attorney General as an authorised officer for the purposes of this Act either personally or as the holder of a specified office.</li> </ul>
<p>(2) The authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> must not issue a warrant unless he or she is satisfied that there are reasonable grounds for doing so.</p>	<p>Subsection (2) specifies that the authorised officer (within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> ) must be satisfied that there are reasonable grounds for issuing the search warrant.</p>
<p>(3) Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.</p>	<p>Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> includes such things as how to apply for a warrant, and how the search may be carried out. (Note: the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> repealed and replaced the <i>Search Warrants Act 2002</i>.)</p>
<p><b>27 Search and seizure etc of other evidence</b></p> <p>If, in the course of searching under this Act, an authorised officer finds things (other than things specified in a warrant under this Act) that the authorised officer believes on reasonable grounds:</p> <ul style="list-style-type: none"> <li>(a) would constitute evidence of an offence, and</li> <li>(b) would be concealed, lost or destroyed, or used in committing an offence, if the officer did not seize them,</li> </ul> <p>the authorised officer may:</p> <ul style="list-style-type: none"> <li>(a) seize the things, or</li> <li>(b) do whatever is necessary to preserve the evidence, including placing a seal, lock or guard.</li> </ul>	<p>Section 27 gives an authorised officer extended powers to seize things and preserve evidence that are unconnected to the particular search warrant but which are found whilst executing the search warrant.</p> <p>The powers may be exercised when the officer reasonably believes that the extra things would constitute evidence of an offence which would be concealed, lost or destroyed or used in committing an offence if they were not seized.</p>

<p><b>28 Notice to remedy contravention</b></p> <p>(2) If an authorised officer believes on reasonable grounds that a person:</p> <p>(a) is contravening this Act, or</p> <p>(b) has contravened this Act in circumstances that make it likely that the contravention will be repeated,</p> <p>the authorised officer may give the person a notice requiring the person to remedy the matters causing the contravention.</p>	<p>Section 28(1) gives an authorised officer the power to give a notice requiring a person to remedy the matters causing a contravention of the Act or the Regulations.</p> <p>The notice may be given where an authorised officer reasonably believes that a person is contravening the Act or the Regulations, or has contravened the Act or the Regulations in circumstances that make it likely that the contravention will be repeated.</p>
<p>(2) A notice under this section must:</p> <p>(a) be in writing, and</p> <p>(b) state the name of the person to whom it is directed, and</p> <p>(c) state that the authorised officer believes that the person to whom the notice is directed:</p> <p>(i) is contravening a provision of this Act, or</p> <p>(ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated, and</p> <p>(d) state the grounds on which the belief is based, and</p> <p>(e) specify the provision of this Act, and</p> <p>(f) specify a day by which the matters referred to in the notice must be remedied.</p>	<p>Under subsection (2), the notice referred to in subs (1) must be in writing and must include:</p> <ul style="list-style-type: none"> <li>• the name of the person the notice is directed to</li> <li>• a statement that the authorised officer believes the person named in the notice is contravening or has contravened the Act or Regulations in circumstances that make it likely that they will repeat the contravention</li> <li>• the grounds on which the officer's belief is based</li> <li>• the provision of the Act or Regulations that is being or has been contravened</li> <li>• a day by which the contravention must be remedied.</li> </ul>
<p>(3) An authorised officer may include in a notice under this section directions as to the measures to be taken to remedy the contravention, or to avoid further contravention, of this Act.</p>	<p>Subsection (3) specifies that a notice given under s 28 may include directions specifying the measures that must be taken to remedy the contravention or to avoid further contravention of the Act or Regulations.</p>
<p>(4) A notice under this section that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.</p>	<p>Subsection (4) specifies that a notice given under s 28 that relates to a vehicle may be placed securely on the vehicle in a conspicuous position.</p>

<p>(5) A person who:</p> <ul style="list-style-type: none"> <li>(a) contravenes a notice under this section, or</li> <li>(b) removes a notice under this section from a vehicle before the matters causing the contravention have been remedied (unless it is necessary to do so to remedy the matters),</li> </ul> <p>is guilty of an offence.</p> <p>Maximum penalty (subsection (5)): \$10,000 for an individual or \$50,000 for a body corporate.</p>	<p>Subsection (5) makes it an offence for a person to:</p> <ul style="list-style-type: none"> <li>• contravene a notice given under s 28 or</li> <li>• remove a notice given under s 28 from a vehicle before the matters causing the contravention of the Act have been remedied, unless it is necessary to do so to remedy the contravention.</li> </ul> <p>The maximum penalty for an offence under s 28(5), if committed by a body corporate, is \$50,000, and, if committed by an individual, is \$10,000.</p>
<p><b>29 Notice to eliminate or minimise danger</b></p> <p>(1) If an authorised officer believes on reasonable grounds that:</p> <ul style="list-style-type: none"> <li>(a) a dangerous situation exists, and</li> <li>(b) a person is in a position to take measures to avert, eliminate or minimise the danger,</li> </ul> <p>the authorised officer may issue a notice requiring the person to take those measures.</p>	<p>Section 29 (1) gives an authorised officer the power to issue a notice requiring a person to take measures to avert, eliminate or minimise a danger, if the officer reasonably believes that a dangerous situation exists and the person is in a position to take those measures.</p> <p>‘Dangerous situation’ is defined in the Glossary.</p>
<p>(2) A notice under this section must:</p> <ul style="list-style-type: none"> <li>(a) be in writing, and</li> <li>(b) state the name of the person to whom it is directed, and</li> <li>(c) identify the situation that, in the authorised officer’s opinion, is causing the danger, and</li> <li>(d) state the grounds on which the belief is based, and</li> <li>(e) specify the measures to be taken, and</li> <li>(f) specify a day by which the measures are to be taken.</li> </ul>	<p>Under subsection (2), the notice referred to in subs (1) must be in writing and include:</p> <ul style="list-style-type: none"> <li>• the name of the person the notice is directed to</li> <li>• identification of the situation that, in the officer’s opinion, is causing the danger</li> <li>• the grounds on which the officer’s belief is based</li> <li>• the measures that must be taken</li> <li>• a day by which the measures must be taken.</li> </ul>
<p>(3) A notice under this section that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.</p>	<p>Subsection (3) specifies that a notice given under s 29 that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.</p>



<p>(4) A person who:</p> <p>(a) contravenes a notice under this section, or</p> <p>(b) removes a notice under this section from a vehicle before measures have been taken to avert, eliminate or minimise the danger (unless it is necessary to do so to avert, eliminate or minimise the danger),</p> <p>is guilty of an offence.</p> <p>Maximum penalty (subsection (4)): \$10,000 for an individual or \$50,000 for a body corporate.</p>	<p>Subsection (4) makes it an offence for a person to:</p> <ul style="list-style-type: none"> <li>• contravene a notice issued under s 29 or</li> <li>• remove a notice issued under s 29 from a vehicle before the measures required to avert, eliminate or minimise the danger have been taken, unless it is necessary to do so to avert, eliminate or minimise the danger.</li> </ul> <p>The maximum penalty for an offence under s 29(4), if committed by a body corporate, is \$50,000, and if committed by an individual is \$10,000.</p>
<p><b>30 Review of notices</b></p> <p>A person to whom a notice under section 28 or 29 is directed may apply for a review of the decision to issue the notice.</p>	<p>Section 30 specifies that a person given a notice under ss 28 or 29 may apply for a review of the decision to issue the notice to them.</p> <p>Section 5 of the Act specifies that applications for review are to be made to the Administrative Decisions Tribunal.</p>
<p><b>31 Preventing injury and damage—taking direct action</b></p> <p>If:</p> <p>(a) an authorised officer believes on reasonable grounds that a dangerous situation exists, and</p> <p>(b) either:</p> <p>(i) a person to whom a notice under section 28 or 29 has been given has not complied with the notice, or</p> <p>(ii) giving such a notice to a person would not be appropriate to avert, eliminate or minimise the danger,</p> <p>the authorised officer may take or cause to be taken any action he or she believes on reasonable grounds to be necessary to avert, eliminate or minimise the danger.</p>	<p>Section 31 gives an authorised officer the power to take or cause to be taken any action the officer believes on reasonable grounds to be necessary to avert, eliminate or minimise danger. The officer must reasonably believe that a dangerous situation exists, and either the person given a notice under ss 28 or 29 has not complied with the notice, or the giving of such a notice would be inappropriate.</p> <p>‘Dangerous situation’ is defined in the Glossary.</p>
<p><b>38 Penalty notices for certain offences</b></p> <p>(1) An authorised officer may serve a penalty notice on a person if it appears to the authorised officer that the person has committed an offence against this Act, being an offence prescribed by the regulations for the purposes of this section.</p>	<p>Section 38 gives an authorised officer the power to serve a penalty notice for offences under the Act or Regulations.</p> <p>See the Road and Rail Transport (Dangerous Goods)(Road) Regulation 1998 and the Road and Rail Transport (Dangerous Goods)(Rail) Regulation 1999 for information about when a penalty notice may be issued.</p>
<p><b>39 Proceedings for an offence</b></p> <p>(1) A prosecution for an offence may be brought by an authorised officer.</p>	<p>Section 39 gives an authorised officer the power to prosecute an offence under the Act or Regulations.</p>

<p><b>48 Protection from liability</b></p> <p>(1) An authorised officer does not incur civil liability for an act or omission done honestly and in good faith in the course of his or her duties.</p> <p>(2) A liability that would, apart from this section, attach to an authorised officer attaches instead to the authorised officer's employer.</p>	<p>Section 48 specifies that an authorised officer does not incur civil liability for any act or omission done honestly and in good faith while carrying out their duties. Any liability relating to the actions of an authorised officer instead becomes the responsibility of the officer's employer.</p>
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## 7 Further reading

- Department of Environment and Conservation NSW (DEC) 2006a, *Guide to notices*, DEC, Sydney, visit [www.environment.nsw.gov.au/mao/guidetonotices.htm](http://www.environment.nsw.gov.au/mao/guidetonotices.htm) or phone 131 555 for a copy
- Department of Environment and Conservation NSW (DEC) 2006b, *Guide to licensing*, DEC, Sydney, visit [www.environment.nsw.gov.au/mao/licenceguide.htm](http://www.environment.nsw.gov.au/mao/licenceguide.htm) or phone 131 555 for a copy
- Department of Environment and Conservation NSW 2004, *Prosecution guidelines*, 2<sup>nd</sup> edition (revised), DEC, Sydney, phone 131 555 for a copy