

Section 192 Protection of the Environment Operations Act 1997

Notice to provide information and/or records

«AcctPartyName»
«AcctPartyTradingName»
«AcctPartyABN»
«PostalAddressStreet»
«PostalAddressSuburb» «PostalAddressState» «PostalAddressPostcode»

Attention: <insert contact name>

Notice Number «NoticeNumber»

File Number "FileNumber"

Date «NoticeIssueDate»

Notice to provide information and/or records

Why is the <insert regulatory authority name> writing to you?

The <insert regulatory authority name> requires you to provide it with information and records set out in this notice.

What are you required to do?

Provide the information and/or records set out in this notice to <name of officer> by the date required. If you have any questions, <name of officer> can be contacted on <phone number>.

Definitions

<Insert relevant definitions for key terms if required. For example, "wastewater treatment system means the plant and equipment located and operated on part of Lot 1 DP 12345 and identified at the map attached as Annexure A". No need to include legislative definitions as these will be incorporated as part of the background.>

Background

1. The <insert regulatory authority name> has responsibility for the <In the case of a council: [regulation of non-scheduled activities] or, for authorities declared to be the appropriate regulatory authority under s 6(3) of the Act: [regulation of <state matter to which the declaration applies> in accordance with <insert clause> of the <insert Regulation>, for example, "regulation of non-scheduled activities involving a non-pilotage vessel in navigable waters in accordance with cl 86 of the Protection of the Environment Operations (General) Regulation 2009"]> under the *Protection of the Environment Operations Act 1997* (the POEO Act).
2. The POEO Act gives certain powers to the <insert authority name> as a regulatory authority. One of these powers is under section 192 of the Act which enables the <insert authority name> to require, by notice in writing given to a person, that person to furnish to the <insert authority name> such

information or records (or both) as the <insert authority name> requires by the notice in connection with any matter within the responsibilities and functions of the <insert authority name>.

3. [Insert if applicable: if the regulatory authority is investigating under non-POEO Acts, then use this sentence] Under s 186 <insert subclause> of the Act the powers of the <insert authority name> extend to environment protection legislation, which includes <set out relevant piece of environment protection legislation>.
4. «AcctPartyName» is the occupier of the premises at <address of premises> (Premises) in that it has management or control of the Premises.

OR

«AcctPartyName» is the owner of the premises at <address of premises> (Premises).

OR

5. «AcctPartyName» carries out <description of activities or [whatever the person or entity does that has brought them to the regulatory authority's attention, e.g. "carries out a business of supplying waste tyres to landfills"]>.
6. The <insert authority name> is investigating potential breach<es> of environment protection legislation, including but not limited to:
 - a. <set out section of Act>. Section <X> makes it an offence to <set out description of offence> <example: "section 120 of the Act. Section 120 makes it an offence to pollute waters".>
 - b. <set out section of Act>. Section <X> makes it an offence to <set out description of offence>.
 - c. <complete as appropriate>.
7. On <date> the <insert regulatory authority name> officers saw [or, "the <insert regulatory authority name> understands that..."] <set out all the background facts in a chronological fashion – inspections, samples, correspondence etc.>
8. The <insert regulatory authority name> believes «AcctPartyName» may hold such information and/or records required by the <insert regulatory authority name> in connection with <its investigation into [matter being investigated]/[administration of the Act]>.

Statutory purpose of this notice

9. Section 184 of the Act sets out the purpose for which this notice may be issued. This notice is issued for the purpose of <select all that apply>:
 - a. [determining whether there has been compliance with or a contravention of <name of Act or the name of Regulation>
 - b. [obtaining information and/or records for purposes connected with the administration of this Act]
 - c. [generally, for administering the Act and protecting the environment].

Subject matter to which this notice relates

10. This notice is issued in relation to the following matter:
 - a. [It might seem like repetition, but here is where the relevant facts from the background are set out in the context of the purpose for issuing the notice. For example: "The <insert regulatory authority name> is investigating [factual issue e.g. stockpiling waste, discharge of effluent] at [where] between [dates], in contravention of [section of Act]." Repeat this approach for every purpose. For example, the above example may also be unlawful transport of waste, i.e. a breach of s 143 of the Act.]

Requirement to provide information

The <insert regulatory authority name> requires that «AcctPartyName» provide the following information:

11. <Set out details of the information required>. <Try to keep it as simple as possible.>

Requirement to provide records

The <insert regulatory authority name> requires that «AcctPartyName» provide the following information:

12. <Set out details of the records required>. <Try to keep it as simple as possible.>

13. You do not have to furnish any record specified above unless that record is in your possession or it is in your power to obtain it lawfully.

14. The information and/or records must be provided in writing and in English where relevant, unless otherwise stated.

The information and/or records must be provided to

<Insert Name of <insert authority name> Officer>

<Officer Title>

<Address>

and received no later than **5pm on <date>**.

.....
<NoticeAuthorisingOfficer>
<NoticeAuthorisingOfficerTitle>
<NoticeAuthorisingOfficerSection>
(by Delegation)

Warning and information about this notice

- This notice is issued under section 192 of the Act.
- The Act defines “records” as including plans, specifications, maps, reports, books, and other documents (whether in writing, electronic form or otherwise).
- It is an offence against section 211 of the Act to neglect or fail to comply with this notice without lawful excuse.
- It is also an offence under section 211 to furnish information under this notice knowing that the information is false or misleading in a material respect.

Penalty for not complying with this notice

The maximum penalty that a court may impose for each of these offences is, for a corporation, \$1,000,000 and a further \$120,000 for each day the offence continues. The maximum penalty for an individual is \$250,000 and a further \$60,000 for each day the offence continues

Continuing obligation

Under section 319A of the Act, your obligation to provide the information and/or records specified in this notice continues until the notice is complied with in full, even if the due date has passed.

Expectation to make reasonable inquiries

The <insert regulatory authority name> expects you to make reasonable inquiries to obtain and provide the information and records sought by this notice. This may include contacting former staff, contractors, or agents.

Manner in which information and records must be supplied

The information and records required by this notice must be submitted in a manner that clearly addresses each requirement of this notice. When replying to this notice, please do so by reference to the specific paragraph numbers that are referred to in this notice. For example, when you are providing the information and/or records that are required under paragraph 11.a. please ensure that you make it clear that the information and/or records that you provide are done so pursuant to paragraph 11a. of this notice

You may seek any legal or expert assistance in responding to this notice, but the information and records required must be furnished by the Company to the <insert regulatory authority name>. The response must include the name and position of the person who authorised the response on the behalf of the Company.

Warning

- The fact that **information and/or records** required by this notice might incriminate you or make you liable to a penalty does not excuse you from having to comply with the notice.
- The fact that a **record** provided by you in compliance with this notice might incriminate you does not make that record inadmissible in evidence against you in criminal proceedings.
- However, if you are a natural person (that is, an individual rather than, for example, a company or other incorporated body) you may object to providing **information** which is required by this notice, on the ground that the information might incriminate you. You must still provide the information, but it is not admissible in evidence against you in criminal proceedings if you make this objection, except for an offence under section 211 of the Act, including the offence of knowingly answering a question falsely or in a way that is misleading in a material respect.
- This warning is given for the purposes of section 212 of the Act.

How to apply for an extension of time to comply with this notice

Any application for an extension of time to comply with this notice must be made in writing to the <insert regulatory authority name>. The application should set out clearly why you think your request should be granted.

Variation or revocation of this notice

This notice may only be varied or revoked by written notice issued by an authorised officer of the <insert regulatory authority name>.

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