

# **Report on the administration of the *Environmental Protection Act 1994***

(reporting period 1 July 2020 to 30 June 2021)

## Introduction

The object of the *Environmental Protection Act 1994* (the EP Act) is to protect Queensland's environment while allowing for development that improves the total quality of life, now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development).

Section 546A of the EP Act requires that within four months after the end of each financial year, the chief executive must give to the Minister a report on the administration of this Act for the year.

Section 546A(2) of the EP Act requires the Minister to include a statement in the report about requests received by the Minister to prepare environmental protection policies. The Minister received nil requests for the 2020-21 financial year.

The EP Act is jointly administered by the Department of Environment and Science (DES) as the chief executive, the Department of Agriculture and Fisheries (DAF), the Department of Resources (Resources) and local governments as relevant administering authorities who have either delegated or devolved powers. Table 1 summarises the major EP Act activities and identifies the administering authority and its areas of responsibility.

**Table 1: Administration of activities under the EP Act by relevant administration**

Activities under the EP Act	DES	DAF	Resources	Local governments
Changes to the EP Act and subordinate legislation	✓			
Administration of Environmentally Relevant Activities (ERAs)	✓	✓	✓	✓
Contaminated land management	✓			
Reports about contraventions of the EP Act	✓	✓		✓
Actions taken to enforce the EP Act	✓	✓		✓

Local governments are an important administering authority under the EP Act and their contribution to the administration of the EP Act is appreciated. While this report does not include data from local government, general reference is made to their contribution to the administration of the EP Act.

This report contains information on the following topics for each state administering authority:

1. Administration of ERAs.
2. Contaminated land management.
3. Reports about contraventions of the EP Act.
4. Actions taken to enforce the EP Act.
5. Reporting requirements.

# 1. Administration of ERAs

The EP Act defines three types of ERAs:

- a) Agricultural ERAs include cattle grazing, horticulture and cultivation of another crop (e.g. sugarcane) carried out on a commercial basis on land in the Great Barrier Reef (GBR) catchment.
- b) Resource activities include:
  - geothermal activities
  - mining activities (exploration, extraction, rehabilitation and similar activities) authorised under the *Mineral Resources Act 1989*
  - petroleum and gas activities authorised under the *Petroleum Act 1923*, the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum (Submerged Lands) Act 1982*
  - greenhouse gas storage activities authorised under the *Greenhouse Gas Storage Act 2009*.
- c) Prescribed ERAs are other industrial or commercial activities that may release contaminants with the potential to cause environmental harm (excluding those which are part of a mining, petroleum or gas project).

Both DAF and local governments undertake tasks in relation to the administration and enforcement of those prescribed ERAs delegated or devolved to them. These include:

- assessing, deciding, conditioning, amending, transferring, suspending and cancelling environmental authorities and the issuing of temporary emissions licences (TEs)
- requiring and assessing environmental evaluations to assess environmental compliance
- issuing environmental enforcement notices or directions
- invoicing and collecting annual fees, application fees and outstanding debts.

Resources handles the initial processing of some applications for ERAs that are resource activities.

The number and type of environmental authorities administered by DES and other state administering authorities are summarised in this report.

## 1.1 Agricultural ERAs

On 1 December 2019, new provisions commenced for agricultural ERAs replacing the previous requirements. The new provisions include the ability to apply commodity specific agricultural ERA standards (i.e. minimum practice standards) across the GBR catchment to manage potential water quality impacts. Agricultural ERA standards take effect when prescribed by regulation. Standards have been prescribed for sugarcane cultivation, banana cultivation and beef cattle grazing, and take effect over three years based on water quality priorities for commodities and regions. Standards do not currently apply to the Cape York region as water quality targets are being met in that region.

From 1 June 2021, prescribed ERA 13A (commercial cropping and horticulture activities in the GBR catchment) will be required to meet farm design standards, as the conditions of an environmental authority for new cropped land, and any agricultural ERA standard prescribed by regulation for the crop being cultivated.

## 1.2 Resource activities

All resource activities require an environmental authority (EA) under the EP Act to operate (with the exception of prospecting and certain small-scale mining activities). Some higher risk activities also require an environmental impact statement (EIS) as part of the approval process.

DES administers all resource activities, excluding small-scale mining activities, which are administered by Resources.

Figure 1 gives the number of new and existing EAs for 2020-21 issued by DES. Existing EAs are those current at 30 June 2020 and that are still current at 30 June 2021. New EAs are those that were issued after 30 June 2020 and are still current as at 30 June 2021.

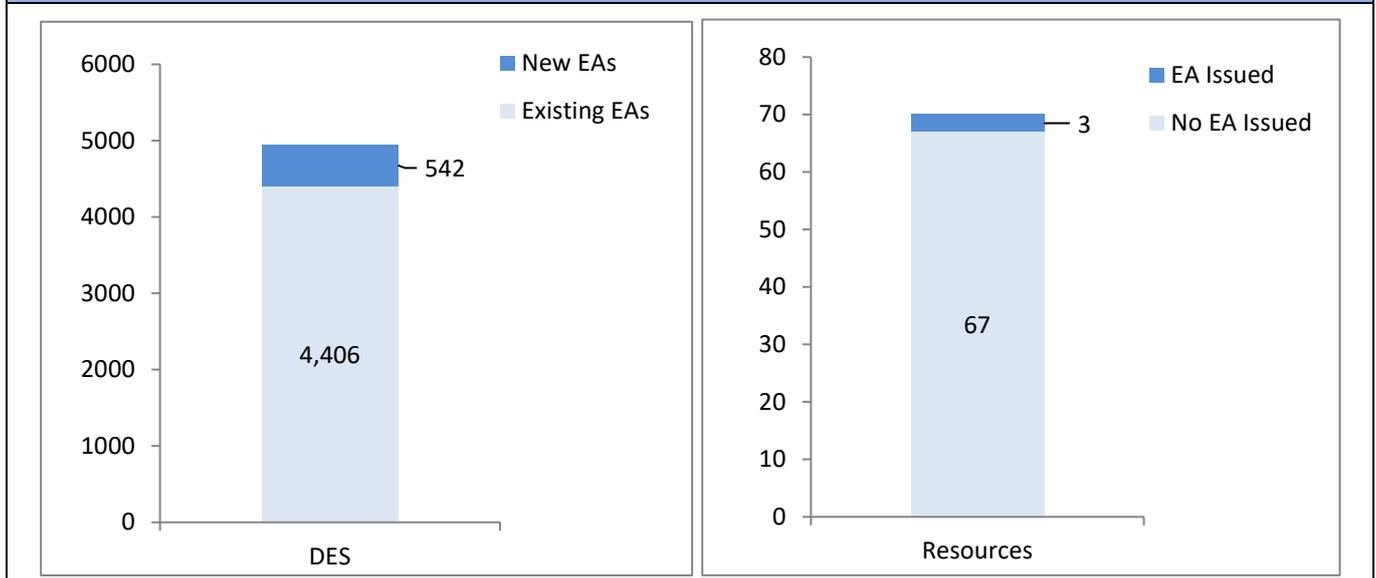
The total number of EAs for resource activities as at 30 June 2021 is 4,948 (542 new and 4,406 existing).

Under powers delegated by the EP Act, Resources has issued three EAs for mining claims during the 2020-21 financial year. Figure 1 also outlines the number of small-scale mining claim tenure approvals that do not require an EA. These small-scale mining claim tenures do not require an EA but must adhere to conditions outlined in the Environmental Protection Regulation 2019.

Of the 542 new EAs for resource activities approved by DES in the 2020-21 financial year, there are 147 EAs that have been granted, but have not yet taken effect. This can occur for any of the following reasons:

- If the EA states an event for it to take effect and the event hasn't taken place yet – EP Act s200 (1)(b)
- If the EA is for a resource activity and the relevant tenure hasn't been granted yet – EP Act s200 (2)(a)

**Figure 1: Environmental authorities for resource activities for 2020–21**



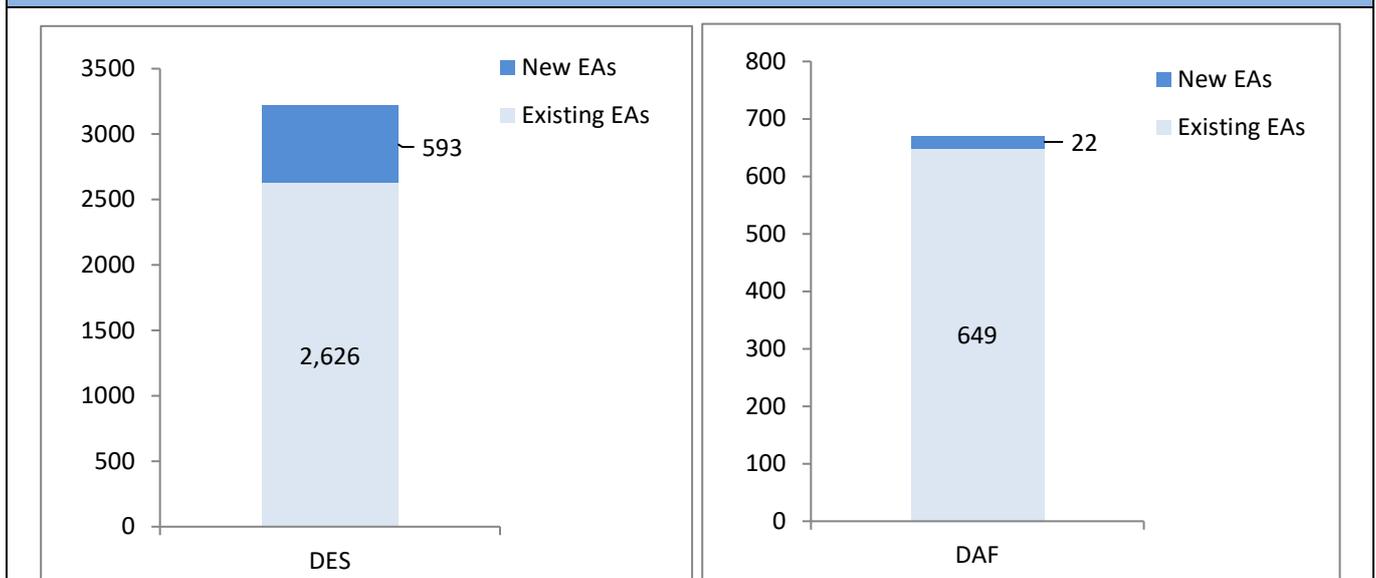
### 1.3 Prescribed environmentally relevant activities

Prescribed ERAs are activities, other than resource or agricultural ERAs that have the potential to cause harm to the environment. They are listed in Schedule 2 of the Environmental Protection Regulation 2019.

To operate an ERA, an EA issued under the EP Act is required. Figure 2 gives the total numbers of new and existing EAs for prescribed ERAs for 2020-21 by all relevant state administering authorities. Existing EAs were those current at 30 June 2020 that are still current at 30 Jun 2022.

The total number of EAs for prescribed ERAs current at 30 June 2020 is 3,219 (593 new and 2,626 existing) for DES and 671 for DAF (22 new and 649 existing).

**Figure 2: Environmental authorities for prescribed ERAs for 2020–21**



## 1.4 Environmental impact statements

The environmental impact statement (EIS) process is set out in Chapter 3 of the EP Act. Assessment through the EIS process may be required by legislation, requested by the administering authority or undertaken voluntarily by the applicant.

The purpose of an EIS process is to identify and assess the potential adverse and beneficial environmental, economic and social impacts of the project; and the effectiveness of the management, monitoring, planning and other measures proposed to avoid and minimise any adverse impacts of the project.

Three EIS assessments under the EP Act were completed in 2020-21. Two EIS applications were considered suitable and recommended to proceed, and one EIS application was considered not suitable and was not recommended to proceed. There were 11 EIS assessments in progress as at 30 June 2021, with further information provided in Table 2.

**Table 2: EIS assessments in progress in 2020–21**

Project name	Type of project	Status as at 30 June 2021
Aurukun Bauxite Project	Open cut bauxite	Proponent preparing EIS
Baralaba South Project	Open cut coal mine	DES currently seeking advice from proponent as to whether it wishes to withdraw
Dawson West Project	Open cut and underground coal mine	Proponent to submit draft Terms of Reference
Ensham Life of Mine Extension Project	Underground coal mine expansion	Public notification completed and proponent to respond to submissions
Galalar Silica Sand Project	Silica mine	Proponent preparing EIS
Galilee Gas Pipeline	Gas pipeline	Proponent to submit draft Terms of Reference
Meadowbrook Project	Underground coal mine	Proponent preparing EIS
North Alpha Coal Project	Open cut coal mine	Proponent to submit draft Terms of Reference
Saraji East Mining Lease Project	Open cut coal mine	Public notification completed and proponent to respond to submissions
Surat Basin Coal	Underground thermal coal mine	Proponent to submit draft Terms of Reference
Walton Coal Project	Open cut coal mine	Proponent preparing EIS

## 1.5 Suitable operator registration

It is a requirement of the EP Act that a person carrying out an ERA be registered as a suitable operator. An EA cannot be approved unless all of the proposed EA holders are registered suitable operators. DES is responsible for approving suitable operators and adding their details to the online register of suitable operators, available here: <https://environment.des.qld.gov.au/licenses-permits/suitable-operators>. Table 3 provides the total number of suitable operators registered as at the 30 June 2021. It also provides the number received during 2020–21 and the various outcomes as at 30 June 2021.

**Table 3: Suitable operator registration 2020–21**

Action	2020-21
<b>Current as at 30 June 2021</b>	<b>11,916</b>
Received	637
Approved	630
Withdrawn	1
Refused	0
Cancelled	0
Expired	0
Under assessment	6

## 2 Contaminated land

DES manages two registers for contaminated land, the Environmental Management Register (EMR) and the Contaminated Land Register (CLR):

- The EMR is a land-use planning and management register which provides information on historic and current land use. It records land parcels where a notifiable activity is (or has been) conducted or land parcels which are contaminated and are being managed under a site management plan.
- The CLR is a register of land parcels with proven contamination of the land that is causing, or may cause, serious environmental harm. Land is recorded on the CLR when scientific investigation shows it is contaminated and action needs to remediate the land to prevent serious environmental harm.

In order to amend the details of a land parcel listed on the EMR or CLR, a contaminated land investigation document must be prepared by a suitably qualified person and then certified by an approved contaminated land auditor. The site investigation report details the extent of any contamination, includes a suitability statement advising the appropriate land uses for the property, and determines whether:

- the contamination is best managed under the conditions of a site management plan to achieve the proposed land use;
- the contamination was either insignificant or remediated successfully and the land can be removed from the EMR or CLR; or
- the contamination will not affect the current or proposed land use and is fit for the stated use.

Searches to find out if a particular land parcel is listed on the EMR or the CLR can be conducted online at <https://products.des.qld.gov.au/shopping/home>. Table 4 provides both a count of land parcels listed on the EMR and CLR registers and describes the type and number of contaminated land management activities for 2020–21.

**Table 4: Contaminated land sites and management activities undertaken for 2020-21**

<b>Contaminated land parcels</b>	<b>2020–21</b>
Number of land parcels on the EMR as at 30 June 2021	28,288
Number of land parcels on the CLR as at 30 June 2021*	13
<b>Contaminated land management activities</b>	<b>2020–21</b>
Land parcels removed from the CLR or EMR	35
Site management plans approved	15
Soil disposal permits issued	170
Searches of the environmental management and contaminated land registers	87,595

\* Cadastral information relating to base parcels (sites) can have linked new parcels because of administrative dealings over the base parcels. When the linked parcels are included, cadastral information indicates 13 lot on plans. This does not mean an increase in the number of land parcels as a new parcel will be part of the original contaminated land parcel.

### 3 Environmental incidents

The responsibility for managing environmental incidents is shared between the Queensland Government and local governments. The Queensland Government responds to reports regarding serious and material environmental harm and the ERAs it administers (including ERAs operated by local governments).

Where a report of an environmental incident is received by DES, it will respond directly or, if necessary, coordinate the response in conjunction with other Queensland Government agencies or local governments. Some incidents of environmental significance (such as oil spills from ships) may be covered by other legislation and be administered by other bodies. DES provides a support role for these incidents.

#### 3.1 Community Reports

The administration and enforcement of the following matters have been devolved to local governments under the Environmental Protection Regulation 2019:

- environmental nuisance
- noise standards
- prescribed water contamination, and
- certain ERAs administered by local government.

DAF responds to reports about the ERAs it administers including dairy farming, livestock holding facilities and intensive animal feeding.

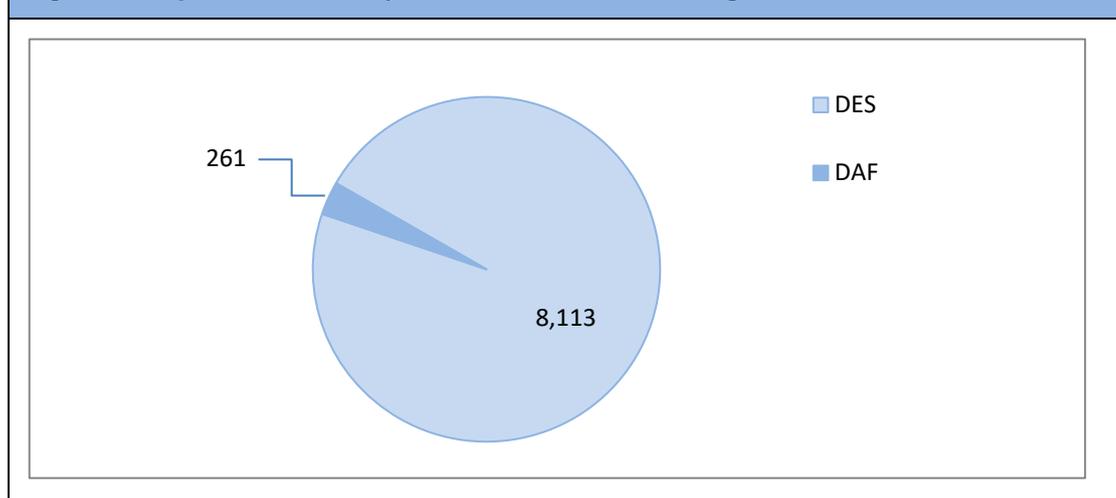
DES responds to reports about the remaining ERAs that are not devolved to local government and reports of serious and material environmental harm that are not associated with an ERA.

Responses to community reports can include issuing orders requiring action to be taken, issuing a penalty infringement notice (PIN) or prosecution. Section 4 has details of enforcement undertaken by the state in 2020–21.

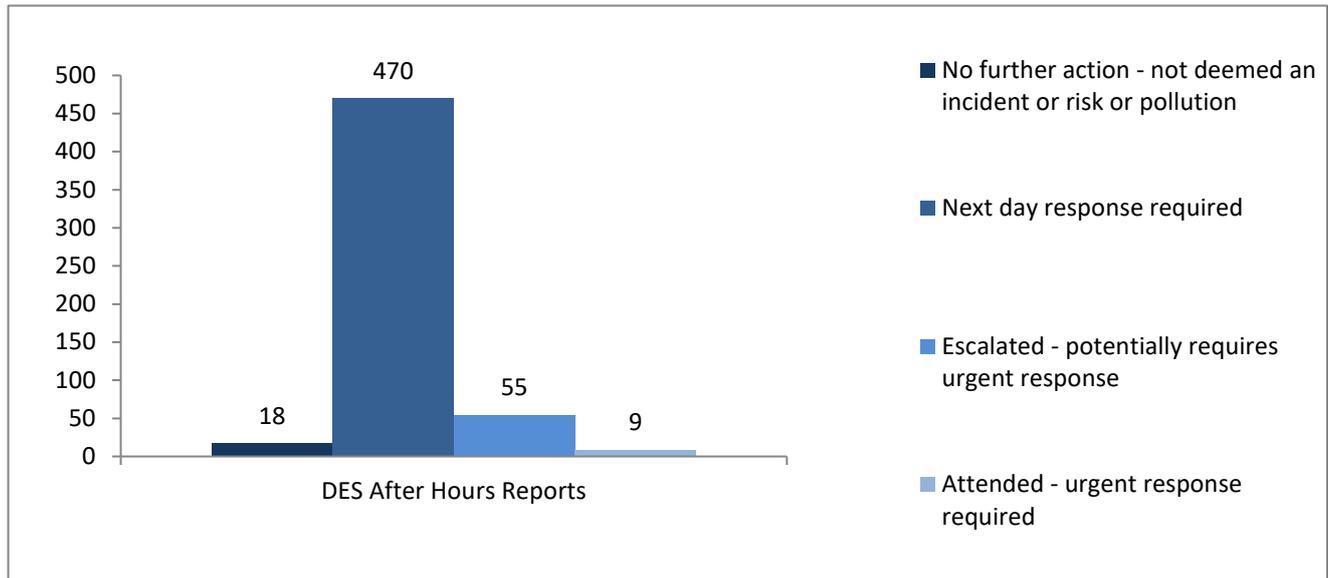
In July 2018, DES established the Odour Abatement Taskforce (OAT) in Swanbank, in response to community concerns about the waste industry and odour issues prevalent in the community. As part of OAT, community members were encouraged to provide reports on odour and other nuisance issues. During 2020-21, the Taskforce received 4,813 individual community reports in relation to waste operations undertaken in Swanbank. This figure is included within the total number of community reports received by DES in Figure 3.

Figure 3 gives the number of community reports received by the relevant state administering authorities. A breakdown by type of report to DES is shown in Figure 4. Figure 4 also includes details of calls to DES' pollution hotline.

**Figure 3: Reports received by the relevant administering authorities in 2020–21**



**Figure 4: After hours incident reports received by DES in 2020–21**



Total calls 541

Note - categories are not exclusive. Some incidents may have two categories, (e.g. next day responses may also be escalated).

### 3.3 Temporary emissions licence

The holder of an EA may apply for a temporary emissions licence (TEL). A TEL is a permit that temporarily (generally no longer than three months) relaxes or modifies specific conditions of an EA. If approved, this allows the release of a contaminant into the environment in response to an emergency such as a cyclone or an unforeseen event or emergent issues such as flood waters or bushfires.

No TELs were issued by DAF in 2020-21.

Table 5 shows the TELs issued by DES for 2020-21.

**Table 5: Temporary emissions licence applications 2020–21**

Temporary emissions licence applications	2020–21
Number of applications received	3
Number of applications approved	1
Number of applications refused	1
Number of applications withdrawn	0
Number of applications invalid	1

## 4. Enforcement

DES and DAF can undertake a range of enforcement actions in order to reduce the risk of environmental harm or to remedy harm done to the environment.

**Clean-up notices** can be issued to a person or organisation it believes to be responsible for a contamination incident. The notice will require various actions to be undertaken to restore or rehabilitate the environment. If the recipient does not comply with the notice, the administering authority can conduct the clean-up and use a cost recovery notice to recover the costs from the responsible person.

**Direction notices** can be issued to a person or organisation if contravention of a prescribed provision has occurred, or is likely to occur, and requires the recipient to remedy the contravention.

An **emergency direction** can be issued:

- where an emergency is considered to exist; and
- either human health or safety is threatened, or serious or material environmental harm has been or is likely to be caused; and
- urgent action is required to remedy the situation.

**Enforceable undertakings** are a voluntary binding agreement between the relevant state administering authority and the person or company that is alleged to have contravened the EP Act. It is a tool capable of being entered into as an alternative to prosecution and specifies the obligations and terms to be undertaken to secure compliance with the EP Act and enhance the protection of the environment.

An **environmental evaluation** of an activity or event is undertaken to determine the source, cause or extent of environmental harm being caused; or the extent of environmental harm likely to be caused by the activity or event; or the need for further enforcement action in relation to the activity or event.

**Environmental protection orders** are issued to ensure a person or organisation complies with the EP Act. The order may require the recipient to stop or start a stated activity for a stated period or duration.

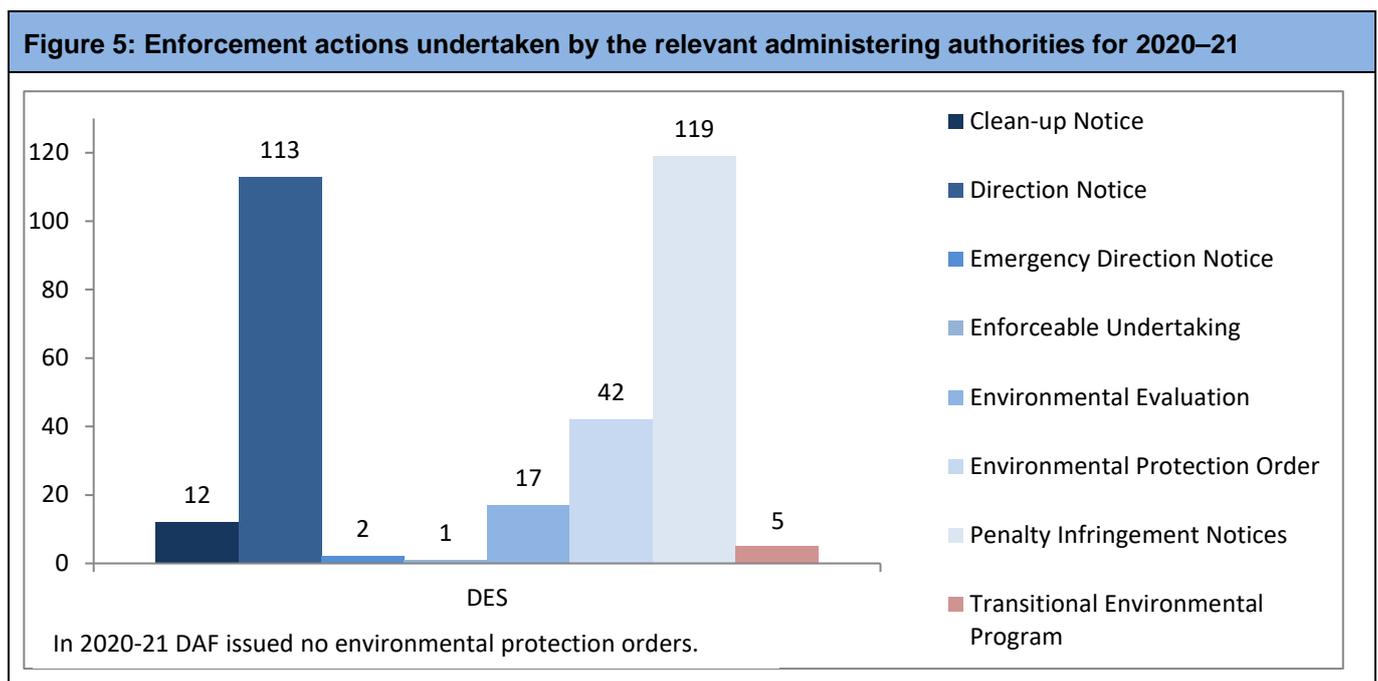
A **transitional environmental program** is a specific program that, when complied with, achieves compliance with the EP Act for the activity to which it relates.

**Penalty infringement notices** can be issued for minor breaches of the EP Act or a condition of an approval, and require the recipient to pay a fine. Table 6 provides a breakdown of the number of PINs issued under the EP Act for 2020–21 by relevant state administering authority based on the type of offence.

Figure 5 summarises compliance actions under the EP Act for 2020–21 by relevant state administering authority.

**Prosecutions** can be undertaken for more serious offences and are summarised in the next section.

Local government can use the same statutory notices (other than the clean-up and cost recovery notices) as well as prosecutions, restraint orders and warrants. Figures for local government are not provided in this report.



**Table 6: Breakdown of the number of infringement notices issued by relevant state administering authority based on the offence type for 2020–21**

No. PINs	Description
<b>DES issued penalty infringement notices under <i>Environmental Protection Act 1994</i></b>	
37	Carry out ERA without an authority for that ERA – Corporation
24	Carry out ERA without an authority for that ERA – Individual
4	Contravention of an environmental protection order – Corporation
36	Contravention of condition of environmental authority – Corporation
4	Failure to comply with a direction notice – Corporation
2	Failure to comply with a direction notice – Individual
1	Failure to provide amended progressive and rehabilitation closure plan (PRCP) schedule in the relevant period to the administering authority
<b>DES issued penalty infringement notices under Environmental Protection Regulation 2019</b>	
No. PINs	Description
2	Failure to give information to administering authority (Generator) – Corporation
1	Failure to give information to a waste transporter (Generator) – Corporation
5	Trackable waste given to unlicensed transporter – Corporation
3	Trackable waste given to unlicensed transporter – Individual
119	<b>Total</b>
<b>DAF issued penalty infringement notices</b>	
0	Penalty infringement notices
0	<b>Total</b>

## 4.1 Prosecutions

Prosecutions may be progressed in the courts where an environmental offence is believed to have been committed and DES considers that such action is warranted and is consistent with its enforcement guidelines.

DES' Litigation unit successfully finalised 16 prosecutions in 2020-21 that involved offences under the *Environmental Protection Act 1994* and subordinate legislation, resulting in fines totalling \$1,213,600.00 and \$53,640.87 in legal and investigation costs. \$46,561 was also awarded as a monetary benefit order. A breakdown of information on the prosecutions is provided in Table 7.

**Table 7: Prosecutions by relevant state administering authority for 2020–21**

Matter Reference	Court date	Brief Description	Penalty	Costs
LIT1888	13-Jul-20	One charge of contravening an environmental protection order, contrary to section 361(2) of the <i>Environmental Protection Act 1994</i> .	\$15,000 fine No conviction recorded	\$2,000 investigation costs
LIT1896	06-Aug-20	One charge of contravening a condition of an environmental authority, contrary to section 430(3) of the <i>Environmental Protection Act 1994</i> .  Four charges of wilfully contravening a condition of an environmental authority, contrary to section 430(2) of the <i>Environmental Protection Act 1994</i> .	\$22,000 fine No conviction recorded	\$5,000 legal costs \$1,809 investigation costs
LIT1887	06-Aug-20	Five charges of failing to ensure that another person acting under the environmental authority complied with the conditions of the environmental authority, contrary to section 431(2) of the <i>Environmental Protection Act 1994</i> .	\$22,000 fine No conviction recorded	As above – combined costs
LIT1876	17-Aug-20	17 charges of illegally dumping waste, contrary to section 104(1) of the <i>Waste Reduction and Recycling Act 2011</i> .  One charge of carrying out an environmentally relevant activity without holding, or acting under, an environmental authority, contrary to section 426(1) of the <i>Environmental Protection Act 1994</i> .	\$30,000 fine No conviction recorded	\$1,500 legal costs \$2,361 investigation costs
LIT1874	18-Sep-20	Two charges of carrying out an environmentally relevant activity without holding, or acting under, an environmental authority, contrary to section 426(1) of the <i>Environmental Protection Act 1994</i> .	\$300,000 fine Conviction recorded	\$2,500 legal costs \$1,984.20 investigation costs
LIT1882	23-Sep-20	One charge of wilfully contravening a condition of an environmental authority, contrary to sections 430(2) of the <i>Environmental Protection Act 1994</i> .	\$22,000 fine No conviction recorded	\$1,500 legal costs \$3,044.13 investigation costs
LIT1857	26-Nov-20	One charge of carrying out an environmentally relevant activity without holding, or acting under, an environmental authority, contrary to section 426(1) of the <i>Environmental Protection Act 1994</i> .	\$50,000 fine \$46,561 Monetary Benefit Order No conviction recorded	\$1,750 legal costs \$6,022.64 investigation costs

Matter Reference	Court date	Brief Description	Penalty	Costs
LIT1699	30-Nov-20	<p>119 charges of transporting trackable waste and failing to give the receiver information about the waste, contrary to section 81J(2) of the <i>Environmental Protection Regulation 2019</i>.</p> <p>15 charges of carrying out an environmental relevant activity without holding, or acting under, an environmental authority, contrary to section 426(1) of the <i>Environmental Protection Act 1994</i>.</p> <p>Five charges of wilfully contravening an environmental protection order, contrary to section 361(1) of the <i>Environmental Protection Act 1994</i>.</p> <p>One charge of contravening an environmental protection order, contrary to section 361(2) of the <i>Environmental Protection Act 1994</i>.</p>	<p>\$87,000 fine</p> <p>Conviction recorded</p>	<p>\$1,500 legal costs</p> <p>\$2,065.25 investigation costs</p>
LIT1812	30-Nov-20	See above.	As above – combined fine	As above – combined costs
LIT1812	30-Nov-20	See above.	As above – combined fine	As above – combined costs
LIT1862	18-Dec-20	<p>One charge of contravening a condition of an environmental authority, contrary to section 430(3) of the <i>Environmental Protection Act 1994</i>.</p> <p>One charge of unlawfully causing serious environmental harm, contrary to section 437(2) of the <i>Environmental Protection Act 1994</i>.</p>	<p>\$500,000 fine (\$100,000 of which was payable as a Public Benefit Order)</p> <p>Conviction recorded</p>	<p>\$1,500 legal costs</p> <p>\$4,488 investigation costs</p>
LIT1881	08-Feb-21	<p>One charge of wilfully contravening a condition of an environmental authority, contrary to section 430(2) of the <i>Environmental Protection Act 1994</i>.</p> <p>One charge of providing a document containing false or misleading information to the administering authority, contrary to 480(1) of the <i>Environmental Protection Act 1994</i>.</p>	<p>\$60,000 fine</p> <p>No conviction recorded</p>	<p>\$2,500 legal costs</p> <p>\$1,952.75 investigation costs</p>
LIT1957	12-Mar-21	One charge of failing to attend a place to answer questions, contrary to section 476(2) of the <i>Environmental Protection Act 1994</i> .	<p>\$600 fine</p> <p>No conviction recorded</p>	\$Nil
LIT1942	27-Apr-21	One charge of carrying out an environmentally relevant activity without holding, or acting under, an environmental authority, contrary to section 426(1) of the <i>Environmental Protection Act 1994</i> .	<p>\$10,000 fine</p> <p>No conviction recorded</p>	<p>\$1,500 legal costs</p> <p>\$1,453 investigation costs</p>

Matter Reference	Court date	Brief Description	Penalty	Costs
LIT1960	29-Apr-21	<p>One charge of wilfully and unlawfully depositing a prescribed water contaminant in waters, contrary to section 440ZG(a)(i) of the <i>Environmental Protection Act 1994</i>.</p> <p>One charge of wilfully and unlawfully causing material environmental harm, contrary to section 438(1) of the <i>Environmental Protection Act 1994</i>.</p> <p>One charge of carrying out assessable development without a permit, contrary to section 163(1) of the <i>Planning Act 2016</i>.</p>	<p>\$42,000 fine</p> <p>No conviction recorded</p>	<p>\$1,500 legal costs</p> <p>\$2,916.77 investigation costs</p>
LIT1984	14-Jun-21	<p>One charge of carrying out an environmentally relevant activity without holding, or acting under, an environmental authority, contrary to section 426(1) of the <i>Environmental Protection Act 1994</i>.</p>	<p>\$53,000 fine</p> <p>No conviction costs</p>	<p>\$1,500 legal costs</p> <p>\$1,294.13 investigation costs</p>
		<b>TOTAL</b>	<b>\$1,213,600</b>	<b>\$53,640.87</b>

## **4.2 Planning and environment court orders**

Where a continuing or potential environmental threat exists, the court may make a restraint order. Restraint orders may be issued for a threatened or anticipated offence.

No restraint orders were made under the EP Act by relevant state administering authorities in 2020–21.

## **4.3 Warrants**

Entry of premises is a sensitive issue that requires a balance between people's rights to privacy and the needs of an investigation. Authorised persons have powers of entry in a range of circumstances. When entry of premises is necessary, but not possible through the authorised person's powers, an authorised person may obtain a warrant from a magistrate to gain entry. A warrant allows an authorised person, with necessary and reasonable help and force, to enter a place and exercise those powers as provided for in the warrant.

One search warrant was executed under the EP Act by relevant state administering authorities in 2020–21.