

# Supplementary Prevention Notice

«AcctPartyName»

«AcctPartyTradingName»

«AcctPartyABN»

«PostalAddressStreet»

«PostalAddressSuburb» «PostalAddressState» «PostalAddressPostcode»

Attention: <insert contact name>

By <insert method of service e.g. Registered Post, Email>

Notice Number «NoticeNumber»

File Number "FileNumber"

Date «NoticeIssueDate»

## Supplementary Prevention Notice

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

The <insert regulatory authority name> issued Prevention Notice No. <insert prevention notice number> to <insert corporate recipient of the previous prevention notice> <for carrying on activity in an environmentally unsatisfactory manner <at <insert premises details> (**Premises**) [if at premises]> or <as occupier of <insert premises details>(Premises) at which an activity was carried on in an environmentally unsatisfactory manner [delete as appropriate]>, and that notice has not been complied with. The <insert regulatory authority name> has issued you with this Supplementary Prevention Notice. Further information is set out in the notice below.

### What are you required to do?

Please read this notice carefully and carry out the preventive action specified in this notice by the date required. If you have any queries about this matter, please contact <name of officer> on <phone number>.

Notices should be drafted in the following manner:

- give a general overview sentence about the regulatory authority's role
- introduce the current/former director or related body corporate to whom the notice is issued, the Premises, and the relevant activities
- set out chronologically the regulatory authority's previous regulatory action (i.e. just stating the facts e.g. "on 10 June 2022 the regulatory authority issued Prevention Notice No. XX under section 96 of the POEO Act to...in relation to turbid water being discharged from a pipe and into a creek")
- set out the relevant legislative provisions
- apply the legislative provisions to the facts, i.e. set out why the regulatory authority alleges that the corporation has not complied with the previous prevention notice within the period specified in the notice, and why the recipient of the supplementary prevention notice is a current/former director or manager of the corporation or related body corporate
- give directions as to preventive action.

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## Background

- A. The <insert regulatory authority name> has responsibility for the enforcement of the *Protection of the Environment Operations Act 1997* (POEO Act).
- B. On <insert date> the <insert regulatory authority name> issued Prevention Notice No. <insert notice number> (the **previous prevention notice**) to <insert corporate recipient of the previous prevention notice> (the **corporation**) under section 96 of the POEO Act in relation to <insert description of activity>.
- C. Section 96 of the Act enables the <insert regulatory authority name> to issue a prevention notice where it reasonably suspects an activity has been or is being carried on in an environmentally unsatisfactory manner.
- D. The <insert regulatory authority name> reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner as detailed in the previous prevention notice.
- E. <Set out what has been observed or understood in relation to compliance with the previous prevention notice, i.e. the facts giving rise to the allegation that the corporation has not complied with the previous prevention notice within the period specified in the notice.>
- F. As the corporation has not complied with the previous prevention notice within the period specified in the notice, <insert regulatory authority name> can issue a supplementary prevention notice in accordance with section 96A of the Act, directing one or more of the following to take action to ensure that the activity is carried on in future in an environmentally satisfactory manner:
- i. a current director of the corporation
  - ii. a former director of the corporation
  - iii. a related body corporate.
- G. **Insert if applicable:**  
A director of a corporation extends to a person involved in the management of the affairs of the corporation.
- H. **Insert whichever is applicable:**  
<Insert notice recipient name> is a current director of the corporation for the purposes of s 96A(2)(a) of the Act.  
**OR**  
<Insert notice recipient name> is a former director of the corporation for the purposes of s 96A(2)(b) of the Act.  
**OR**  
<Insert notice recipient name> is a related body corporate of the corporation for the purposes of s 96A(2)(c) of the Act.
- I. <Set out why the regulatory authority alleges that the recipient of this supplementary prevention notice is a current/former director of the corporation or a related body corporate>.
- J. **Insert if the notice relates to an activity that causes/is likely to cause/has caused water pollution:**  
The <insert regulatory authority name> has considered <set out how the regulatory authority has considered the water pollution matters in s 96(3A)>.
- K. **Insert if applicable**  
<If the supplementary prevention notice proposes different directions to the previous prevention notice, you must set out the rationale for requiring different directions. For example, new information may have become available about a better way to address the activity that is being carried out in an environmentally unsatisfactory manner.>
- L. The <insert regulatory authority name> is directing you to take action specified in this notice because you are a <current director of the corporation/former director of the corporation/related body corporate of the corporation [delete as appropriate]>.

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## Direction to take prevention action

The <insert regulatory authority name> directs <the recipient of the notice> to take the following preventive action:

1. By <time> on <date>, <direction>.

Ensure what you are asking meets the definition of preventive action and does not go beyond power. Section 96(3) of Act gives examples of preventive action. Progress reports can also be required as per s 96A(5).

**Section 96(3) Examples** *The action to be taken may (without limitation) include any of the following:*

- (a) installing, repairing, altering, replacing, maintaining or operating control equipment or other plant,*
- (b) modifying, or carrying out any work on, plant,*
- (c) ceasing to use plant or altering the way plant is used,*
- (d) ceasing to carry on or not commencing to carry on an activity,*
- (e) carrying on an activity in a particular manner,*
- (f) carrying on an activity only during particular times,*
- (g) monitoring, sampling or analysing any pollution or otherwise ascertaining the nature and extent of pollution or the risk of pollution,*
- (h) action with respect to the transportation, collection, reception, re-use, recovery, recycling, processing, storage or disposal of any waste or other substance,*
- (i) preparing and carrying out a plan of action to control, prevent or minimise pollution or waste,*
- (j) reviewing the carrying out of an activity.*

## Fee to be paid

You are required by law to pay a fee for the administrative costs of issuing this notice. An invoice for the fee has been attached to this notice.

It is an offence not to pay this fee. However, you can apply for an extension of time to pay the fee or for the fee to be waived. At the end of this notice there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

.....  
«NoticeAuthorisingOfficer»

«NoticeAuthorisingOfficerTitle»

«NoticeAuthorisingOfficerSection»

(by Delegation)

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## Warnings and information about this prevention notice

- This notice is issued under section 96A of the POEO Act.
- It is an offence against the POEO Act not to comply with this notice.  
Details provided in this notice will be available on the Public Register in accordance with section 308 of the POEO Act.

### Penalty for not complying with this notice

The maximum penalty that a court may impose for a corporation is \$2,000,000 and a further \$240,000 for each day the offence continues. The maximum penalty that a court may impose for an individual is \$500,000 and a further \$120,000 for each day the offence continues.

### Appeals against this notice

You can appeal to the Land and Environment Court against this notice. The deadline for lodging your appeal is 21 days after you were served with the notice.

### When this notice begins to operate

This notice operates from the day the notice is given, unless a later date is specified in the notice.

If an appeal is made against the notice, and the Land and Environment Court directs that the notice is stayed, the notice does not operate until the stay ceases to have effect, or the Land and Environment confirms the notice, or the appeal is withdrawn (whichever occurs first).

### Continuing obligation

Under section 319A of the POEO Act, your obligation to comply with the requirements of this notice continues until the notice is complied with in full, even if the due date for compliance has passed.

### Occupier's duty

If you are given this notice as the occupier of the Premises but you are not the person carrying on the activity giving rise to this notice, this notice is taken to require you to take all available steps to cause the action to be taken.

### Deadline for paying the fee

The fee must be paid by **no later than 30 days after the date of this notice unless you appeal** to a court against the notice, unless the <insert regulatory authority name> extends the time to pay the fee or waives the fee. If you do appeal this notice the fee does not have to be paid unless and until the court confirms the notice.

### How to pay the fee

Possible methods of payment are listed on the last page of the attached invoice/statement.

### How to apply for an extension of time to pay/have fee waived

Any application for an extension of time to pay the fee or for the fee to be waived must be made in writing to the <insert regulatory authority name>. The application should set out clearly why you think your application should be granted.

### Other costs

The Act allows the <insert regulatory authority name> to recover from you reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with and associated matters.

If you are required to pay these other costs and expenses you will later be sent a separate notice called a "Notice Requiring Payment of Reasonable Costs and Expenses".

### Variation of this notice

The requirements of this notice may only be varied or revoked by written notice issued by the <insert regulatory authority name>.

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