

# PROSECUTION AND PENALTIES FOR ILLEGAL DUMPING OF HAZARDOUS WASTE

*Briefing Paper 5*

This paper examines prosecution and penalty patterns in relation to the illegal dumping of hazardous waste in Victoria, New South Wales, Queensland, South Australia and Tasmania

Rob White and Julie-Anne Toohey  
School of Sociology & Social Work  
University of Tasmania

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*Environmental Harm is a Crime*

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## **We welcome feedback**

We welcome feedback on any of the issues raised in this paper – please email [r.d.white@utas.edu.au](mailto:r.d.white@utas.edu.au) with your comments.

Please include the phrase *Prosecutions* in the subject line of your email.

Thank you  
Rob White  
School of Sociology and Social Work  
University of Tasmania

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## Introduction

This paper provides a review of penalties and prosecutions in relation to the illegal dumping of hazardous waste. For the purposes of this exercise we examined trends and patterns for the following States:

- New South Wales
- Victoria
- Queensland
- South Australia, and
- Tasmania

The study is not comprehensive vis-à-vis Australian jurisdictions as it omits Western Australia, Northern Territory, Australian Capital Territory and federal cases. This is because the main focus is on the three key jurisdictions that are at the heart of the current research project (Tasmania, Victoria, Queensland); New South Wales and South Australia were included to enhance comparisons with these core jurisdictions. For a discussion of the overall project see Briefing Paper No. 1.

The primary source of information for this review were the websites for the respective governing authorities in each State, and where the information was not available online, direct contact with the relevant State body. The governing authorities and the information source(s) are detailed in Table 1.

**Table 1: Australian Environmental Legislation Governing Authorities**

State	Governing Authority	Information Source
NSW	Office of Environment & Heritage (OEH)	Website
VIC	Environment Protection Authority (EPA)	Website
QLD	Department of Environment and Resource Management (DERM)	Website & Department Official
SA	SA Environment Protection Authority (SAEPA)	Website
TAS	Environmental Protection Authority (EPA)	Website

While the original intention was to cross-analyse the respective State's data as a whole to find similarities and differences and to produce composite charts, the fragmented data sets (time series and variations in penalties) made this more complex than anticipated.

As a consequence, for present purposes each State's statistical data are presented independently. In each case the available data was entered into a

Microsoft Excel workbook to enable the creation of pivot tables and pivot charts so that the data could be analysed and presented in a meaningful way.

## **Key areas of interest**

The review looks specifically at the following key criteria for each financial year available, which in some instances spanned 2003 to 2010. However, the main focus is on the five financial years FY 2006 to FY 2010.

The criteria:

1. The prosecution process
2. The number of cases heard as well as the number of convictions versus non convictions
3. The spectrum of monetary recompense available and used for offences and associated metrics
  - *types of recompense*
  - *total recompense*
  - *averages*
4. The requirement or not for offenders to publish their offence in the print media
5. The nature and frequency of the various offences committed
  - *Sections within the various State legislation that feature the most*
  - *The number of times those sections were cited*
  - *The changes over the available time series*

Detailed data base summaries are available upon request.

# PENALTIES & PROSECUTIONS VICTORIA

## Data Source and Analysis Methodology

All information used for the analysis of Victoria was sourced from the Annual Reports published by the Environment Protection Authority (EPA) Victoria. Unfortunately, not all financial years were available in the public domain. Accordingly, the data presented is not a complete continuous timeline, comparing only financial years 2005, 2007, 2008 and 2010.

The data identified that some cases had been taken to trial but ended up being dismissed. These were excluded from the data set.

## Relevant Legislation

*Environment Protection Act 1970.*

## Key Areas of Interest Summary

### 1. Prosecution process

In Victoria, the Environment Protection Authority manages complaints and initiates investigations into breaches of the *Environment Protection Act 1970*. When an incident is identified the EPA investigates and assembles report for internal consideration.

If the EPA considers the breach significant all details of the investigation are referred to the EPA's legal department for its consideration and action if appropriate. Summonses are issued with proceedings being heard in the Magistrates Court nearest to where the offence occurred.

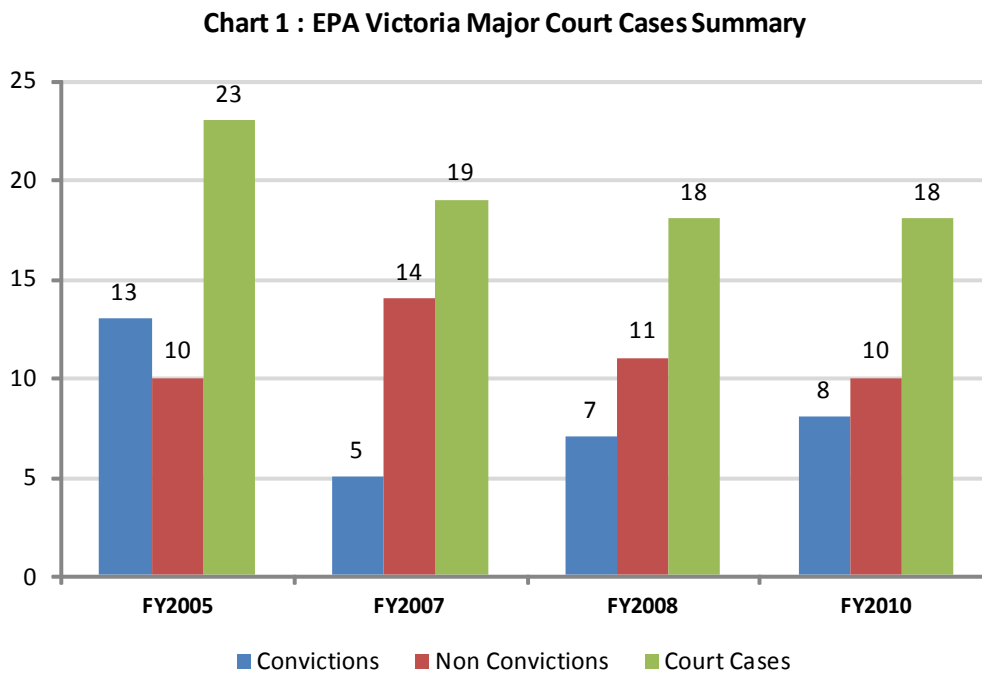
### 2. The number of cases as well as the number of convictions versus non-convictions

Chart 1, EPA Victoria Major Court Cases Summary, shows the number of major prosecutions dealt with in Victoria for the available financial years and compares the number that resulted in convictions with those that did not.

Non-convictions are not to be confused with dismissal of the case. As noted earlier, dismissal situations were excluded from the data set. However, although a conviction may not be recorded, monetary recompense may still be required.

From Chart 1 below, we can see that with the exception of FY2005, non-convictions have been greater than convictions, with this being substantially disproportionate in FY2007.

The number of cases in the four years to 2010 was relatively constant after a 17% drop between FY2005 and FY 007.



### 3. Victoria’s spectrum of monetary recompense for offences

Under the *Environment Protection Act 1970* several types of monetary recompense can be levied on the offender. It is not always the case that all are applied.

The range of assignable levies for Victoria is:

- Punitive damages fines
- Court costs
- Clean-up costs
- Restoration & Enhancements order costs

Chart 2, EPA Victoria – Financial Penalties Imposed, shows graphically the changing relationship (over time) between the types of recompense and the overall value. Average fines appear to be increasing exponentially whereas restoration and enhancement levies appear to have dropped off as the major levy.

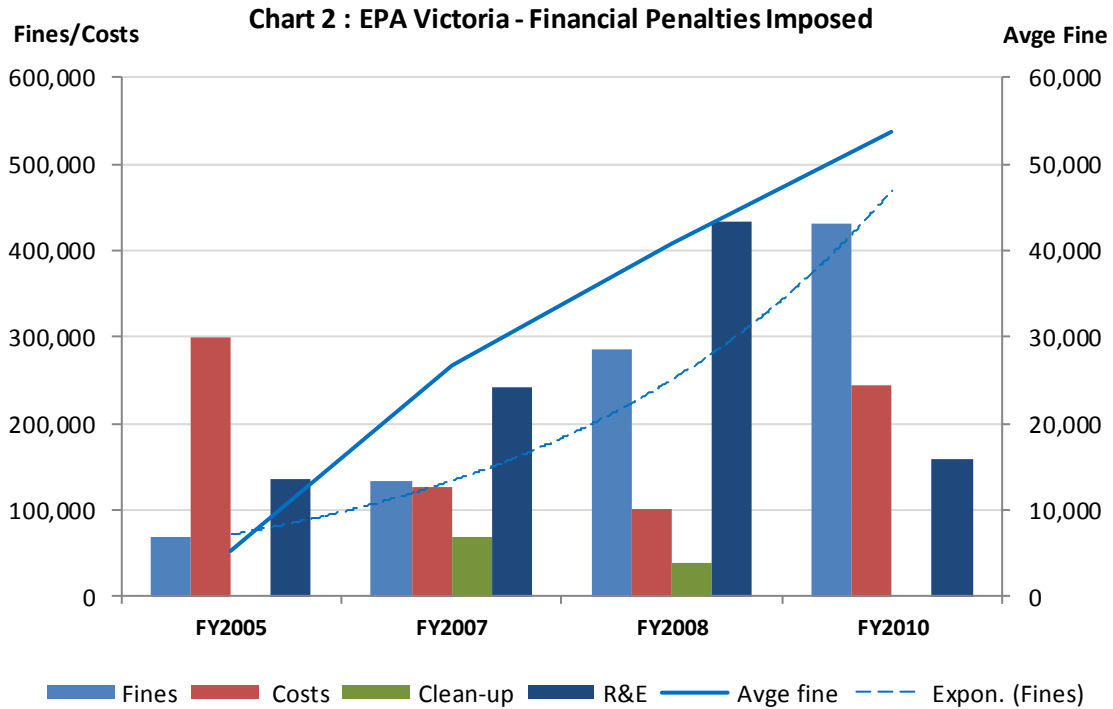


Table 2, EPA Victoria – Financial Penalties Imposed (Data), shows that total monetary recompense for FY2008 and FY2010 is virtually the same despite the mix changing markedly. However, without data for FY2009 it is not possible to draw any real conclusions.

**Table 2: EPA Victoria – Financial Penalties Imposed (Raw Data)**

Financial Year	Fines	Avge fine	Costs	Clean-up	R&E	Total
FY2005	68,000	5,230.77	300,109	0	135,000	503,109
FY2007	133,500	26,700.00	125,961	68,500	240,450	568,410
FY2008	285,250	40,750.00	101,008	38,814	433,050	858,122
FY2010	430,500	53,812.50	244,279	0	157,500	832,279
<b>Grand Total</b>	<b>917,250</b>	<b>27,795.45</b>	<b>771,357</b>	<b>107,313</b>	<b>966,000</b>	<b>2,761,920</b>

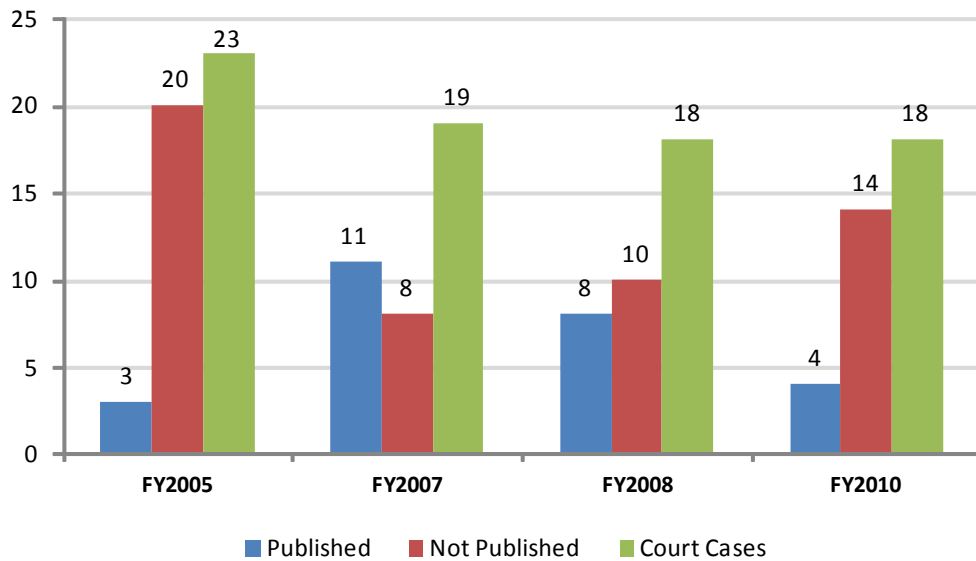
#### 4. The requirement for offenders to publish their offence in the print media

Offenders in Victoria may be required to publish the details associated with the offence in local and major newspapers as well as on the offenders own website where one exists.

Specific time lines are set within the judgment order for the public notice to have been published – 7 days in the case of the daily newspapers and 14 days in the case of the local newspaper.

Chart 3, EPA Victoria Court Cases Publicised, shows that in FY2005 all but three of the 23 cases required offenders to publish the details of their offence. A similar situation occurred in FY2010, however, the trend for the intervening years was more in line with half being required and half not being required to publish the details.

**Chart 3 : EPA Victoria Court Cases Publicised**



## 5. The nature and frequency of the various offences committed

In the annual reports published each year there is a series of tables that detail information in relation to prosecutions for a range of environmental breaches. These breaches are defined under the *Environment Protection Act 1970*. The table below shows which sections of the Act have been cited in convicting a defendant – the two shaded sections being the predominant ones.

**Table 3: EPA VIC – Sections Most Used of the *Environment Protection Act 1970***

Section	Description
s.8(1)	Discharge oily mixture into waters
s.23B(1)	Disposal of garbage from ship into state waters
s.27(1)(a)	Operate a scheduled premises without a licence
s.27(1A)(a)	Store prescribed industrial waste without a licence
s.27(2)	Contravene condition of licence
s.27(A)(a)	Store prescribed industrial waste without a licence



s.27A(1)(c)	Cause an environmental hazard
s.27A(2)(a)	Waste at an unlicensed site
s.31A	Failure to comply with the condition of a Pollution Abatement Notice
s.31A(7)	Contravene requirements of a pollution abatement notice
s.39(1)	Pollute waters
s.39(1)(c)	Pollute waters & make harmful or potentially harmful to animals, birds, wildlife, fish and other aquatic animals
s.39(1)(e)	Pollute waters
s.39(3)	Cause waste to be placed in a position where it could gain access to waters
s.39(4)	Cause waste to be discharged onto dry bed of waterway; if waterway contained water, discharge would pollute it
s.39(5)	Pollute waters
s.41(1)(a)	Pollute atmosphere
s.45(1)(c)	Pollute land and make poisonous to animals, birds and wildlife
s.45(1)(e)	Pollute land; condition of land changed as to make its condition offensive to senses of human beings
s.53A(1)(b)	Business operation which includes transport of prescribed industrial waste (asbestos) on highway without permit
s.59D(a)	Provide incorrect information to the Authority
s.62A(3)	Contravene requirements of a clean-up notice

Chart 4, EP Act VIC - Sections most used by Financial Year, graphically shows the number of times the respective sections of the *Environment Protection Act 1970* have been cited relative to the financial years.

A wider range of sections were utilised In FY2005 (12) and FY2010 (11) than in FY2007 (8) and FY2008 (7), with all financial years citing offences under s.27A(1)(c), s.27A(2)(a) and s.39(1)(c).

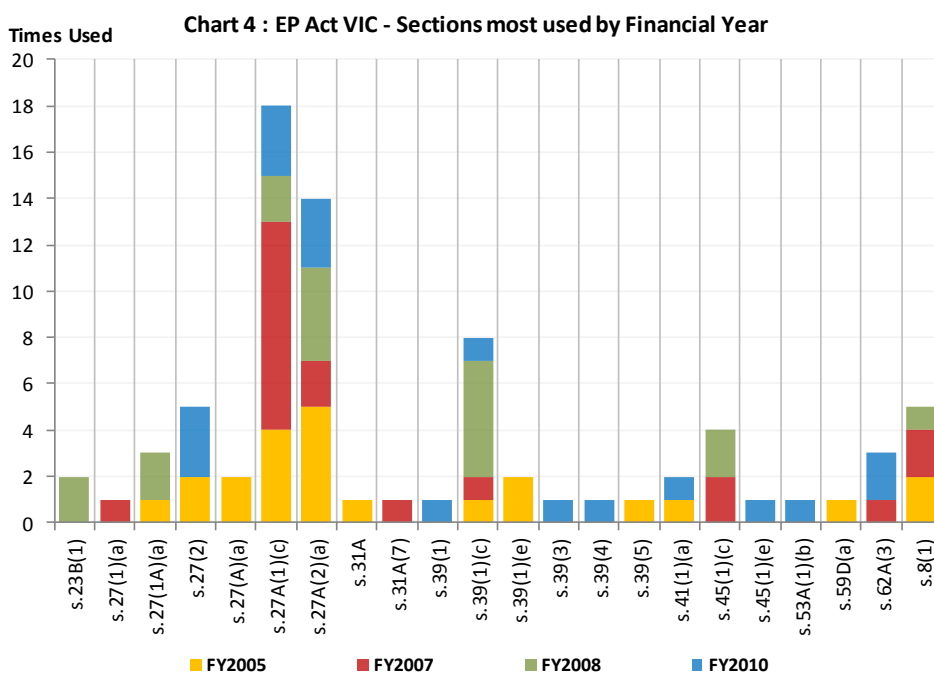


Table 4, EP Act VIC - Sections most used by Financial Year (Data), details the number of times each section of the *Environment Protection Act 1970* have been cited relative to the financial year.

**Table 4: EPA VIC - Sections most used by Financial Year (Raw Data)**

<b>Section of Act</b>	<b>FY2005</b>	<b>FY2007</b>	<b>FY2008</b>	<b>FY2010</b>	<b>Total</b>
s.23B(1)			2		2
s.27(1)(a)		1			1
s.27(1A)(a)	1		2		3
s.27(2)	2			3	5
s.27(A)(a)	2				2
s.27A(1)(c)	4	9	2	3	18
s.27A(2)(a)	5	2	4	3	14
s.31A	1				1
s.31A(7)		1			1
s.39(1)				1	1
s.39(1)(c)	1	1	5	1	8
s.39(1)(e)	2				2
s.39(3)				1	1
s.39(4)				1	1
s.39(5)	1				1
s.41(1)(a)	1			1	2
s.45(1)(c)		2	2		4
s.45(1)(e)				1	1
s.53A(1)(b)				1	1
s.59D(a)	1				1
s.62A(3)		1		2	3
s.8(1)	2	2	1		5
<b>Grand Total</b>	<b>23</b>	<b>19</b>	<b>18</b>	<b>18</b>	<b>78</b>

# PENALTIES & PROSECUTIONS NEW SOUTH WALES

## Data Source and Analysis Methodology

All information used for the analysis of New South Wales was sourced from the Annual Reports published by the NSW Office of Environment & Heritage (OEH), which were produced by the Department of Environment, Climate Change and Water (DECCW)<sup>1</sup> for the financial years 2006 through 2010.

In some instances, detail contained within the published reports was incomplete or misleading. In these situations, the online search tool located at <http://www.environment.nsw.gov.au/prclmapp/searchregister.aspx> was used as a secondary source for validation purposes.

The available data did not contain information in relation to cases where non-conviction was the outcome.

## Relevant Legislation

*The Protection of the Environment Act 1997.*

## Key Areas of Interest Summary

### 1. Prosecution Process

In New South Wales, the Office of Environment & Heritage (OEH) only manages issues related to corporations licensed under *The Protection of the Environment Act 1997*, which have the right through their license to store waste onsite or dispose of it in accordance with the Act.

Incidents caused by the non-licensed individuals or corporations are dealt with through the local council where the offence took place.

In the case of OEH, licensed offenders are prosecuted through the Land and Environment Court and where the offence is perpetrated by a non-licensed party, the local Magistrates court presides of the hearing.

If the OEH considers the breach significant all details of the investigation are referred to the OEH's legal department for its consideration and action if appropriate.

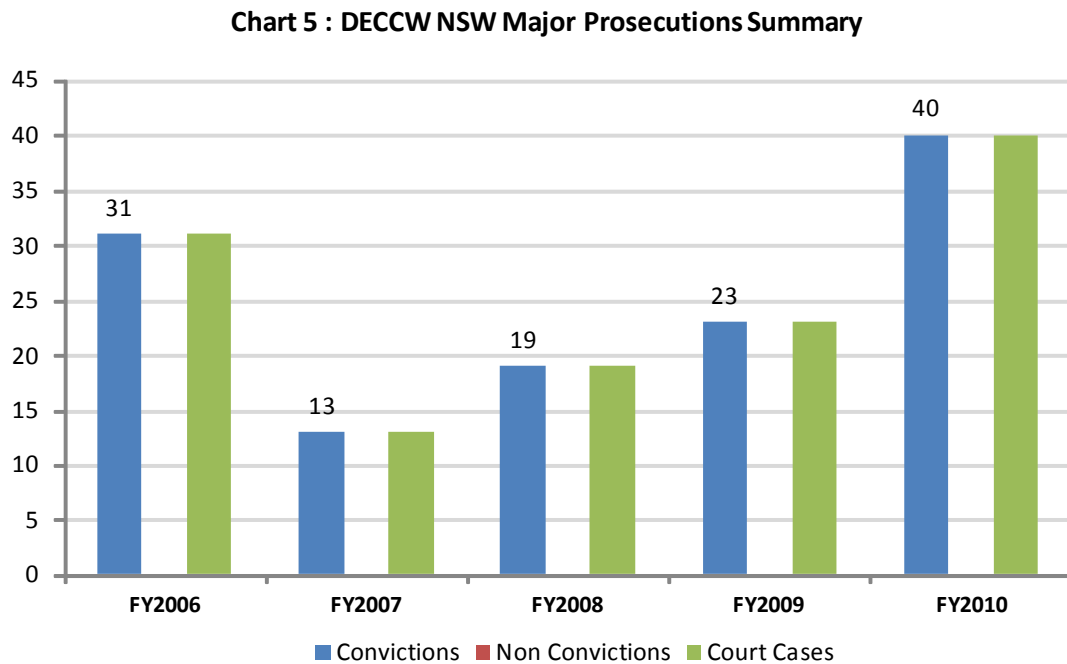
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<sup>1</sup> DECCW was established in July 2009, combining the responsibilities of the former Department of Environment and Climate Change (DECC) with the water-related responsibilities of the former Department of Water and Energy

## 2. The number of cases as well as the number of convictions versus non convictions

Chart 5: DECCW NSW Major Prosecutions Summary shows the number of major cases held in NSW by financial year.

Immediately post FY2006 convictions more than halved. Between FY2007 and FY2009, convictions increased steadily with FY2010 again increasing by 74%.



## 3. NSW spectrum of monetary recompense for offences

Under The Protection of the Environment Act 1997 several types of monetary recompense can be levied on the offender. It is not always the case that all are applied.

The range of assignable levies for New South Wales is:

- Punitive damages fines
- Court costs
- Clean-up costs
- Restoration & Enhancements order costs

Chart 6, DECCW NSW - Financial Penalties Imposed, shows graphically the changing relationship (over time) between the types of recompense and the overall value.

NSW has a complete and continuous timeline of data, which provides a distinct picture of the relational shifts. What is evident from the data is that there are no clear trends.

Average fines vary, albeit they appear to be declining overall with perhaps FY2008 being an aberration. The requirement to pay clean-up cost appears to have come in FY2009 and was significant in that year yet almost insignificant in the following year despite a 74% increase in the number of convictions.

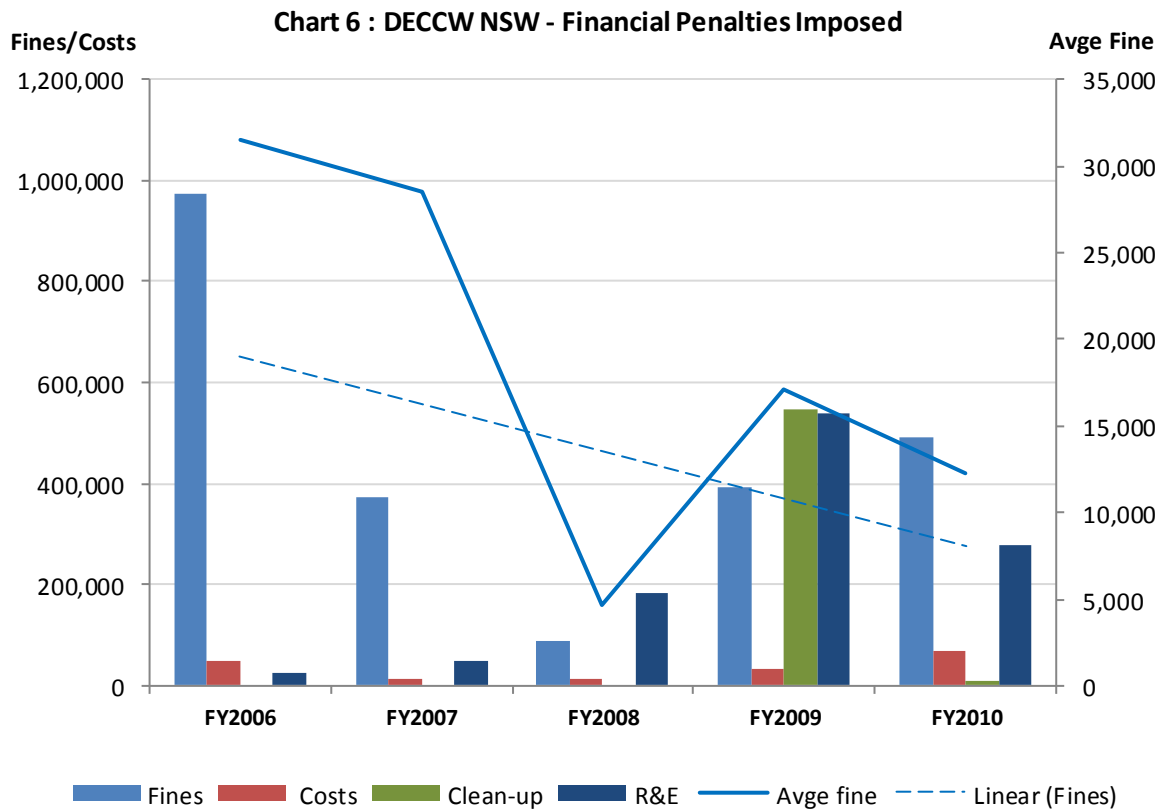


Table 5, DECCW NSW – Financial Penalties Imposed (Data), shows that total monetary recompense for each of the five years is highly independent with no clear trend.

**Table 5: DECCW NSW – Financial Penalties Imposed (Raw Data)**

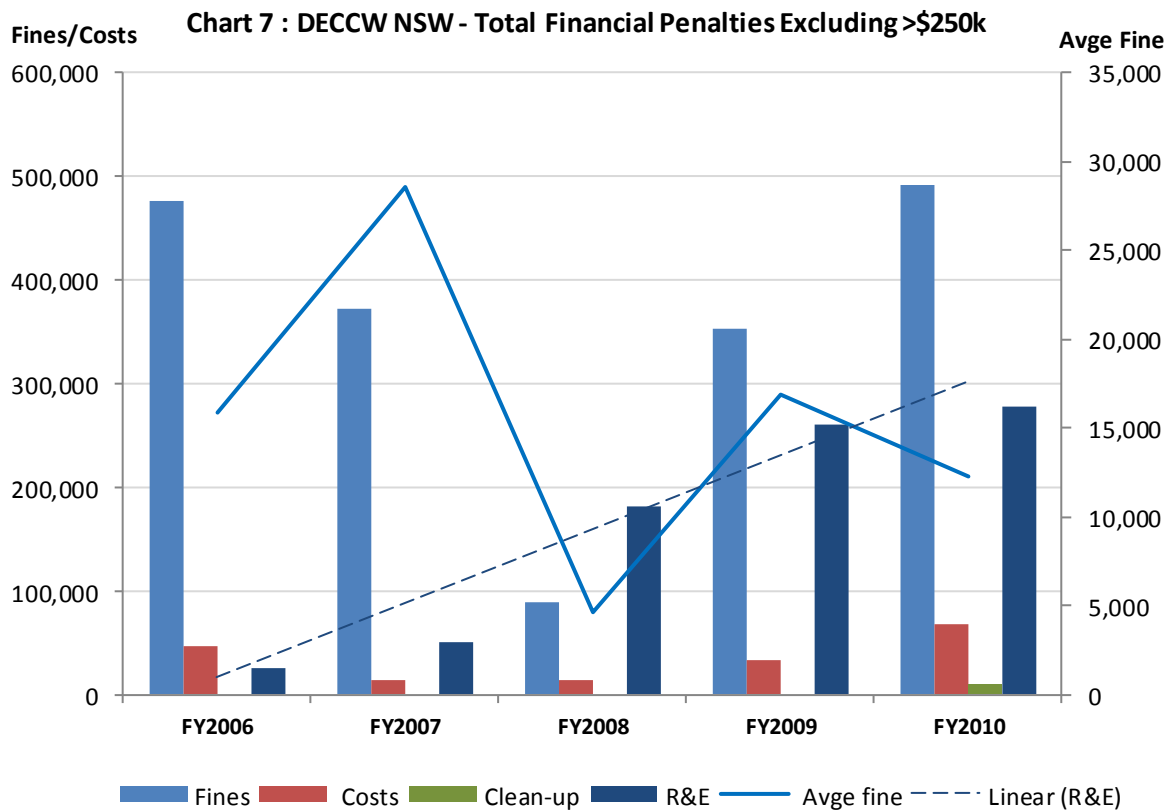
Financial Year	Fines	Avge fine	Costs	Clean-up	R&E	Total
FY2006	975,750	31,475.81	47,221		26,000	1,048,971
FY2007	371,450	28,573.08	14,790		50,000	436,240
FY2008	88,550	4,660.53	14,145		182,000	284,695
FY2009	392,900	17,082.61	33,870	547,736	541,000	1,515,506
FY2010	491,250	12,281.25	67,104	9,273	278,000	845,626
<b>Grand Total</b>	<b>2,319,900</b>	<b>18,411.90</b>	<b>177,130</b>	<b>557,009</b>	<b>1,077,000</b>	<b>4,131,038</b>

Table 6, DECCW NSW – Total Financial Penalties Spread (Data), shows that the lack of correlation is created by the number of individual monetary penalties greater than \$250,000 within each of FY2006 and FY2010.

**Table 6: DECCW NSW – Total Financial Penalties Imposed Spread (Raw Data)**

Financial Year	up to 50k	50-100k	100-250k	250-500k	500-750k	Grand Total
FY2006	28	1	1		1	31
FY2007	10	3				13
FY2008	18		1			19
FY2009	15	4	2	1	1	23
FY2010	36	4				40
<b>Grand Total</b>	<b>107</b>	<b>12</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>126</b>

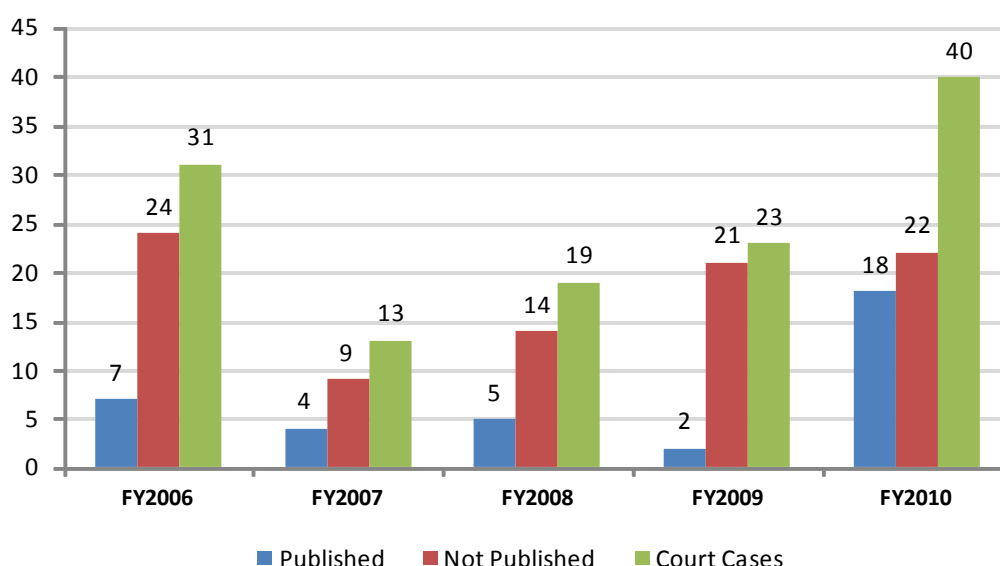
If Chart 6 is re configured to exclude penalties in excess of \$250,000 – Chart 7 below – a different perspective can be drawn with penalties reflecting the growth in convictions. The notable change over the 5 year period is the step increase in the assignment of Restoration and Enhancement penalties.



#### 4. The requirement for offenders to publish their offence in the print media

Offenders in NSW can be required to publish the details associated with the offence in local and major newspapers as well as on the offenders own website where one exists.

**Chart 8 : DECCW NSW Cases Publicised**



#### 5. The nature and frequency of the various offences committed

In the annual reports published each year there is a series of tables that detail information in relation to prosecutions for a range of environmental breaches. These breaches are defined under *The Protection of the Environment Act 1997*. Table 7 below shows which sections of the Act have been cited in convicting a defendant across the timeline. Whereas only two sections predominated in Victoria, NSW has four sections under which most offences were cited. These are shaded.

**Table 7: NSW – Sections Most Used of *The Protection of the Environment Act 1997***

Section	Description
s.10	Preliminary Investigation Order
s.115(1)	Negligently dispose of waste in a manner that harms or is likely to harm the environment
s.120(1)	Pollute waters
s.126(1)	Air pollution caused by a failure to deal with materials in a proper and efficient manner
s.143(1)	Unlawful transport and deposit waste
s.144(1)	Unlawful use of land as a waste facility

s.145(1)	Littering
s.145A	Aggravated Littering
s.152(1)	Failure to notify of pollution incident that caused or threatened material harm to the environment
s.211(1)	Failure to comply with an investigative requirement under Chapter 7
s.64(1)	Breach licence condition
s.66(2)	Provide false information under licence condition

Chart 9, EP Act NSW - Sections most used by Financial Year, graphically shows the number of times the respective sections of *The Protection of the Environment Act 1997* have been cited relative to the financial years.

Each year in progression, a greater number of sections have been cited commencing with five sections in FY2005 followed by 5, 6, 7 and then 10 in FY2010.

The four main sections cited in convictions across all financial years are s.120(1), s.143(1), s.145(1) and s.64(1).

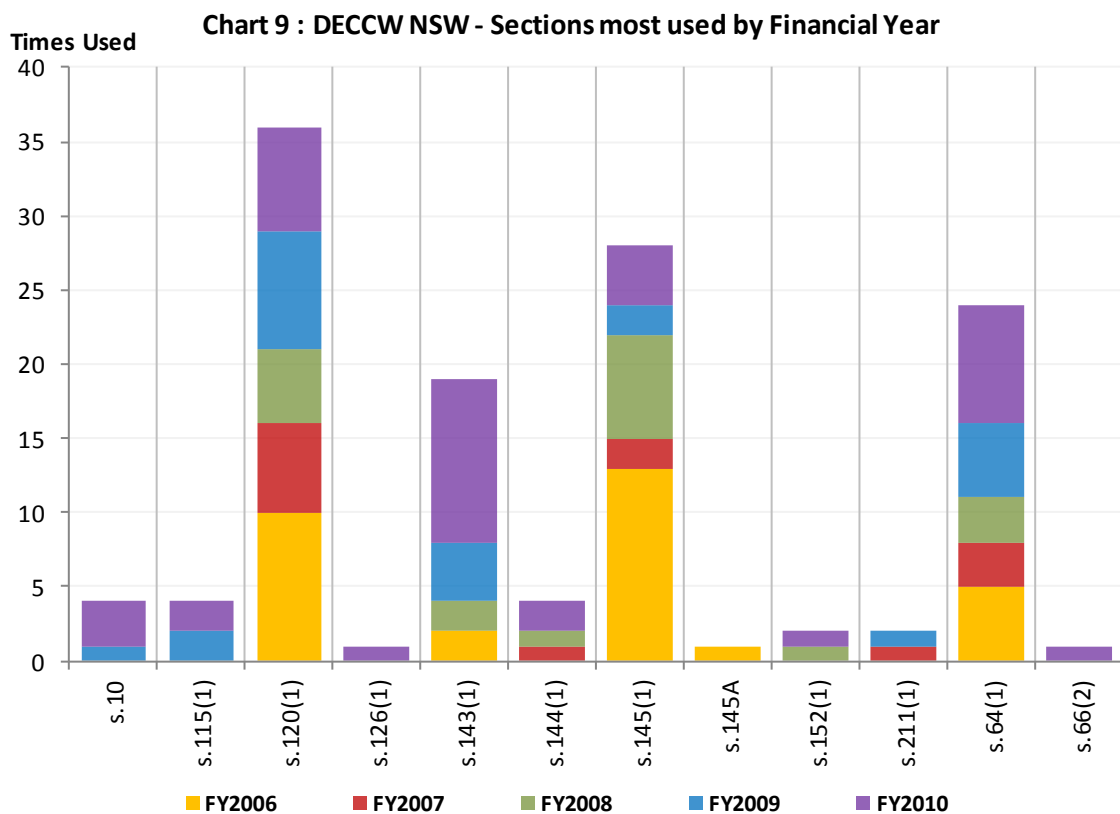




Table 8, EP Act NSW - Sections most used by Financial Year (Data), details the number of times each section of *The Protection of the Environment Act 1997* have been cited relative to the financial year.

**Table 8: EP Act NSW - Sections most used by Financial Year (Raw Data)**

<b>Section of Act</b>	<b>FY2006</b>	<b>FY2007</b>	<b>FY2008</b>	<b>FY2009</b>	<b>FY2010</b>	<b>Grand Total</b>
s.10				1	3	4
s.115(1)				2	2	4
s.120(1)	10	6	5	8	7	36
s.126(1)					1	1
s.143(1)	2		2	4	11	19
s.144(1)		1	1		2	4
s.145(1)	13	2	7	2	4	28
s.145A	1					1
s.152(1)			1		1	2
s.211(1)		1		1		2
s.64(1)	5	3	3	5	8	24
s.66(2)					1	1
<b>Grand Total</b>	<b>31</b>	<b>13</b>	<b>19</b>	<b>23</b>	<b>40</b>	<b>126</b>

# PENALTIES & PROSECUTIONS QUEENSLAND

## Data Source and Analysis Methodology

The information used for the analysis of Queensland's EPA penalties and prosecutions was sourced from reports available on the Department of Environment and Resource Management's website (DERM) as well as being provided (via email) from DERM and covers the broadest sequential range of data supplied by all Authorities – FY2003 to FY2011.

## Relevant Legislation

*Environmental Protection Act 1994*

## Key Areas of Interest Summary

### 1. Prosecution process

In Queensland, the Department of Environment and Resource Management (DERM) manages complaints and initiates investigations into breaches of the *Environment Protection Act 1994*. When an incident is identified DERM investigates and assembles report for internal consideration.

If DERM considers the breach significant all details of the investigation are referred to DERM's legal department for its consideration and action if appropriate. Summonses are issued with proceeding being heard in the Magistrates Court nearest to where the offence occurred.

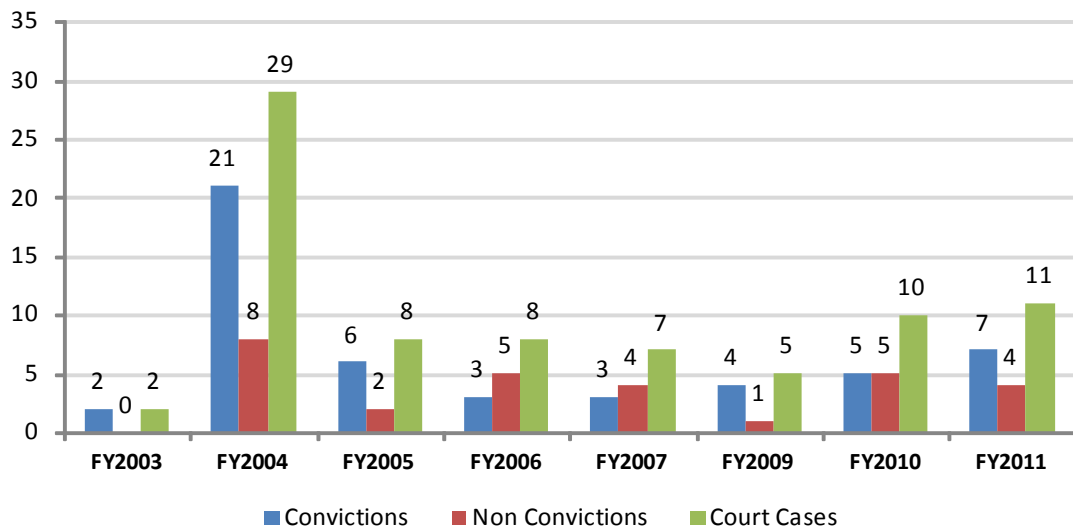
### 2. The number of court cases as well as the number of convictions versus non convictions

The table below shows the number of major court cases held in Queensland by financial year and compares the number that resulted in convictions with those that did not.

Non convictions are not to be confused with dismissal of the case. However, although a conviction may not be recorded, monetary recompense can still be required.

Chart 10 'EPA Act QLD Court Cases Summary' shows that FY2004 was the exception to the trend with 163% more cases heard, with 72% resulting in convictions.

**Chart 10 : EP Act QLD Court Cases Summary**



### 3. Queensland’s spectrum of monetary recompense for offences

Under the *Environmental Protection Act 1994* financial penalties awarded against the offender include:

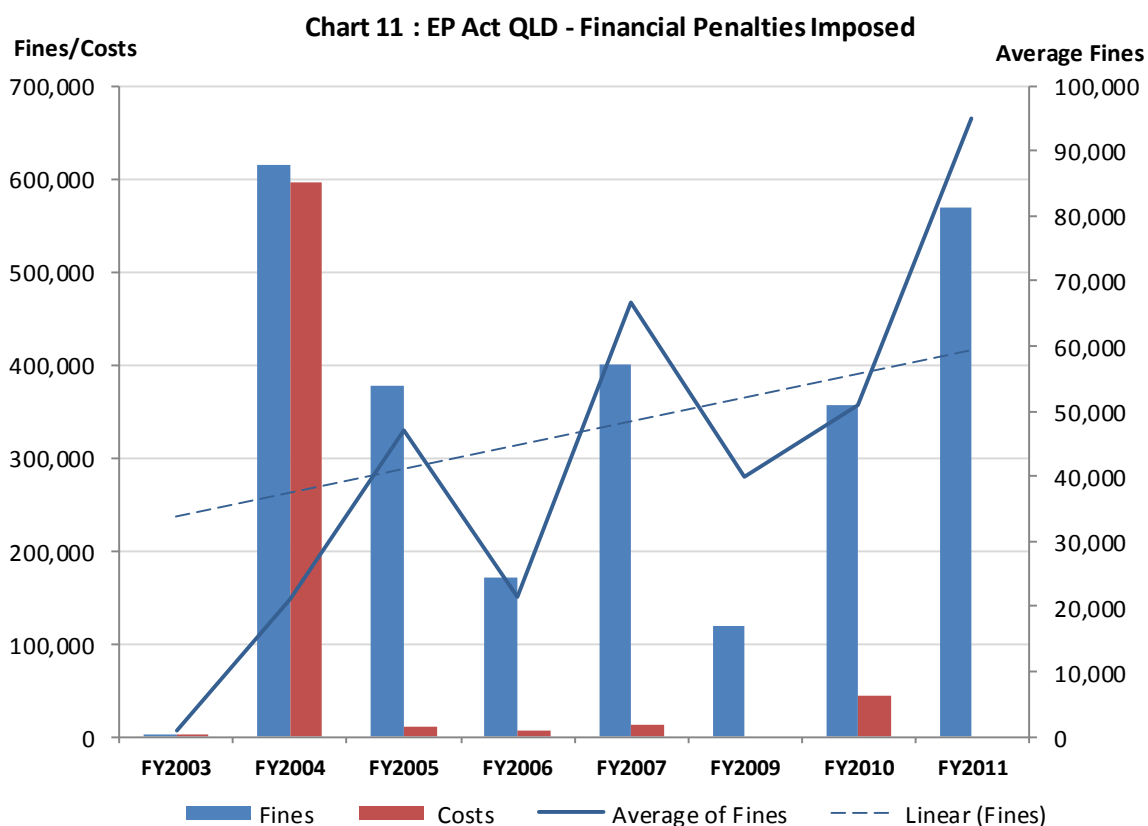
- Punitive damages fines
- Court costs

Chart 11 ‘EPA Act QLD Financial Penalties Imposed’ shows that consistent with the exception status of FY2004, both Fines and Court Costs were closely aligned, however this needs to be considered in context, see Table 9: EP Act QLD – Financial Penalties Imposed (Raw Data) and Table 10: EP Act QLD : Financial Penalties Imposed Spread (Raw Data).

Table 10 shows that in excess of 82% of the total costs issued per conviction were for less than \$50,000, with one in excess of \$750,000, the only one of that size in the data period.

In the subsequent years, where only small numbers of convictions have occurred, cost have dropped to almost insignificant proportions, whilst individual fines have moved up two brackets to ‘100k-250k’.

The data does indicate that there were no court costs in FY 2011, however, this would seem unlikely as this was the year in which the most convictions occurred with the exception of FY2004. While speculative, it is possible that the increase in fines is now also covering court costs.



**Table 9: EP Act QLD – Financial Penalties Imposed (Raw Data)**

Financial Year	Fines	Avge Fines	Costs	Total
FY2003	800	800	596	1,396
FY2004	615,750	21,233	596,457	1,212,207
FY2005	377,000	47,125	10,500	387,500
FY2006	170,900	21,363	6,259	177,159
FY2007	400,375	66,729	12,801	413,176
FY2009	120,000	40,000	0	120,000
FY2010	355,800	50,829	44,687	400,487
FY2011	570,000	95,000	0	570,000
<b>Grand Total</b>	<b>2,610,625</b>	<b>38,392</b>	<b>671,301</b>	<b>671,301</b>

**Table 10: EP Act QLD – Total Financial Penalties Imposed Spread (Raw Data)**

Financial Year	up to 50k	50-100k	100-250k	750k and over	Grand Total
FY2003	1				1
FY2004	24	4		1	29
FY2005	4	3	1		8
FY2006	7		1		8
FY2007	4	1	1		6
FY2009	2		1		3
FY2010	4	1	2		7
FY2011	2		4		6
<b>Grand Total</b>	<b>48</b>	<b>9</b>	<b>10</b>	<b>1</b>	<b>68</b>

**Please note**, in the preceding tables the number of penalties in each year by category is not the same as the number of Court Cases due to the cases being the ‘count’ of infringements not defendants. This is to keep consistency with other State’s data to the degree possible. Some defendants were charged with multiple offences/infringements.

#### 4. The requirement for offenders to publish their offence in the print media

There does not appear to be a requirement for offenders to publish the details of their offences.

#### 5. The nature and frequency of the various offences committed

In the annual reports published each year there is a series of tables that detail information in relation to prosecutions for a range of environmental breaches. These breaches are defined under the *Environmental Protection Act 1994*.

Table 11, QLD – Sections Most Used of the Environmental Protection Act 1994 (below) shows which sections of the Act have been cited in convicting a defendant.

**Table 11: QLD – Sections Most Used of the *Environmental Protection Act 1994***

Section of Act	Charge Description	Relevant Act
s 31	Depositing sediment in roadside gutter.	EP (Water) Policy
s 32	Depositing sediment in roadside gutter.	EP (Water) Policy
s 32(1)(b)(i)	Depositing material into a roadside gutter, stormwater drain or water.	EP (Water) Policy
s 32(1)(b)(ii)		EP (Water) Policy
s 320	Failure to notify the administrating authority	EP Act
s 348(2)	Causing material environmental harm by releasing piggery effluent.	EP Act
s 361	Contravention of an environmental protection order.	EP Act
s 361(1)	Breaches of development approval conditions and wilful breach of environmental protection order.	EP Act
s 361(1)	Wilful breach of an environmental protection order.	EP Act
s 361(2)	Contravention of an environmental protection order.	EP Act
s 361(2)	Failure to ensure that company did not contravene an environmental protection order.	EP Act
s 426	Placing contaminant where environmental harm may be caused, and operating without environmental authority.	EP Act
s 426(1)	Carrying out a level 1 ERA without a licence or authority.	EP Act

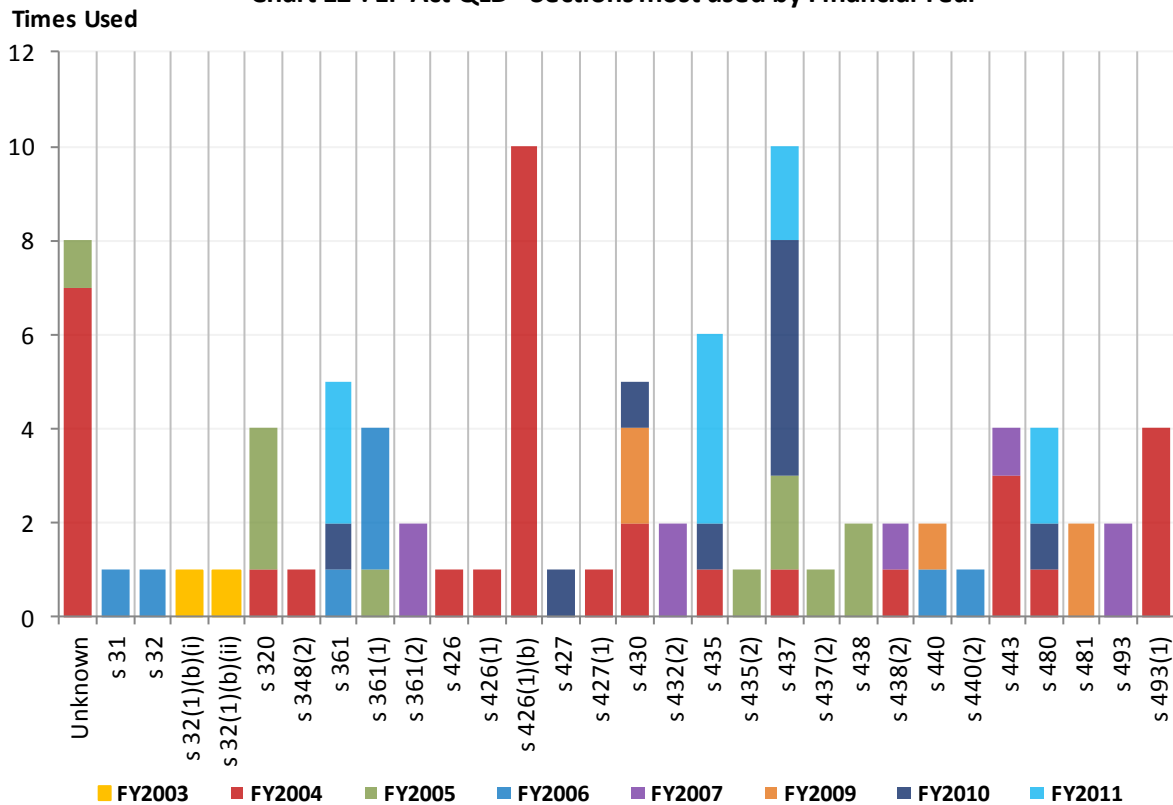
s 426(1)(b)	Carrying out a level 1 ERA without licence or approval.	EP Act
s 426(1)(b)	Carrying out a level 1 ERA without a licence.	EP Act
s 426(1)(b)	Carrying out a level 1 ERA without licence.	EP Act
s 426(1)(b)	Carrying out a level 1 ERA without licence or approval and failure to ensure that company complied with EP Act	EP Act
s 426(1)(b)	Carrying out a level 1 ERA without approval.	EP Act
s 427(1)	Carrying out a level 2 ERA without approval.	EP Act
s 430	Contravention of condition of environmental authority by release of tallow into a waterway.	EP Act
s 430	Contravention of condition of an environmental authority through an effluent spill.	EP Act
s 432(2)	Contravention of an environmental management program.	EP Act
s 432(2)	Failure to ensure that company did not contravene environmental management program.	EP Act
s 435	Breach of licence condition prohibiting ponding of rain water.	EP Act
s 435(2)		EP Act
s 437	Causing serious environmental harm by allowing 2 million litres of crude oil to escape into waterways.	EP Act
s 437	Environmental harm and failure to notify administering authority.	EP Act
s 437(2)	Serious environmental harm.	EP Act
s 438	Unauthorised discharge of water used to control a fire into waterway.	EP Act
s 438(2)	Causing material environmental harm by releasing piggery effluent.	EP Act
s 438(2)	Causing material environmental harm.	EP Act
s 440	Unlawful environmental nuisance by release of odour	EP Act
s 440(2)	Unlawful environmental nuisance by release of sediment into a watercourse.	EP Act
s 443	Placing wastewater in a place where it could reasonably be expected to cause environmental harm.	EP Act
s 443		EP Act
s 443	Placing a contaminant in a position where it may cause serious environmental harm and failing to notify the EPA.	EP Act
s 443	Placing a contaminant where it could reasonably be expected to cause environmental harm.	EP Act
s 480	Giving the administering authority a validation report that Aargus Pty Ltd knew was incomplete in a material particular.	EP Act
s 493	The executive officers must ensure that corporation complies with this Act.	EP Act
s 493(1)	The executive officers of a corporation must ensure that the corporation complies with this Act.	EP Act

Chart 12, EP Act QLD - Sections most used by Financial Year, graphically shows the number of times the respective sections of *Environment Protection Act 1994* have been cited relative to the financial years.

FY2004 used the broadest range of sections (red), over times that of FY2010, which had the second most sections of the Act used.

The two main sections in convictions across all financial years are s.426(1)(b) and s.437. Section s.426(1)(b) gaining this position solely off citations in FY2004. See also Table 12, EP Act QLD - Sections most used by Financial Year (Raw Data), which details the raw numbers.

**Chart 12 : EP Act QLD - Sections most used by Financial Year**



**Table 12: EP Act QLD - Sections most used by Financial Year (Raw Data)**

Section	FY2003	FY2004	FY2005	FY2006	FY2007	FY2009	FY2010	FY2011	Grand Total
Unknown		7	1						8
s 31				1					1
s 32				1					1
s 32(1)(b)(i)	1								1
s 32(1)(b)(ii)	1								1
s 320		1	3						4
s 348(2)		1							1
s 361				1			1	3	5
s 361(1)			1	3					4
s 361(2)					2				2
s 426		1							1
s 426(1)		1							1
s 426(1)(b)		10							10
s 427							1		1

s 427(1)		1							1
s 430		2				2	1		5
s 432(2)					2				2
s 435		1					1	4	6
s 435(2)			1						1
s 437		1	2				5	2	10
s 437(2)			1						1
s 438			2						2
s 438(2)		1			1				2
s 440				1		1			2
s 440(2)				1					1
s 443		3			1				4
s 480		1					1	2	4
s 481						2			2
s 493					2				2
s 493(1)		4							4
<b>Grand Total</b>	<b>2</b>	<b>36</b>	<b>11</b>	<b>8</b>	<b>8</b>	<b>5</b>	<b>10</b>	<b>11</b>	<b>91</b>



# PENALTIES & PROSECUTIONS SOUTH AUSTRALIA

## Data Source and Analysis Methodology

The information used for the analysis of South Australia's EPA penalties and prosecutions was sourced from reports available on SA Environment Protection Authority's website (SAEPA) and covers a sequential range of data from FY2003 to FY2010.

## Relevant Legislation

*Environment Protection Act 1993.*

## Key Areas of Interest Summary

### 1. Prosecution process

In South Australia, the SA Environment Protection Authority (SAEPA) manages complaints and initiates investigations into breaches of the *Environment Protection Act 1993*. When an incident is identified SAEPA investigates and assembles report for internal consideration.

If SAEPA considers the breach significant all details of the investigation are referred to SAEPA's legal department for its consideration and action if appropriate. Summonses are issued with proceeding being heard in the Environment, Resources and Development (ERD) Court, which has been established to deal with a range of planning, heritage, building and environmental matters.

In some instances, the Magistrates Court nearest to where the offence occurred is used to hear the case.

### 2. The number of court cases as well as the number of convictions versus non convictions

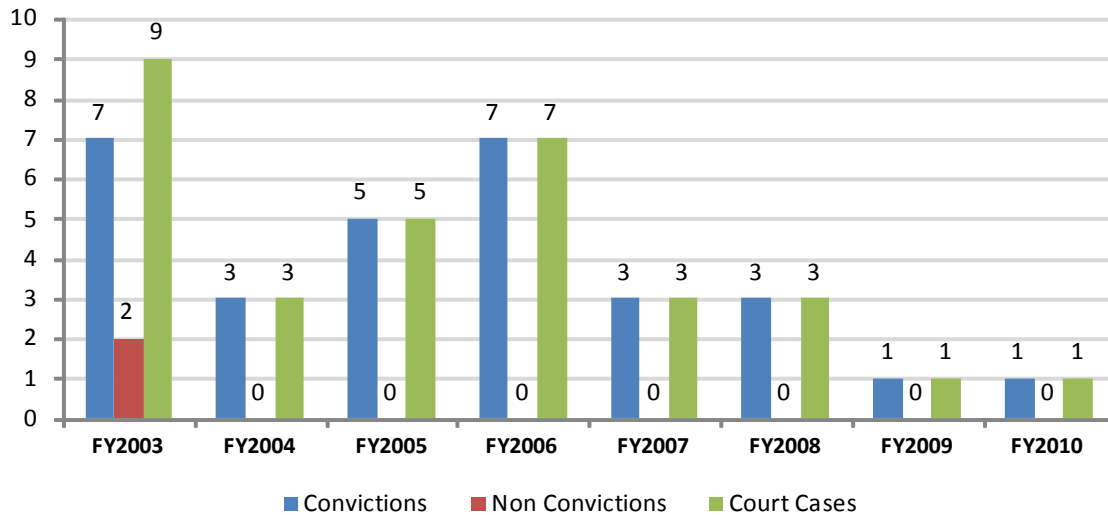
Chart 13, EPA Act SA Court Cases Summary, shows the number of major court cases held in South Australia by financial year and compares the number that resulted in Convictions with those that did not.

Non convictions are not to be confused with dismissal of the case. Although a conviction may not be recorded, a fine, court costs, clean-up costs and/or restoration costs can and is applied in most instances.

It can be seen from Chart 13 that while FY2003 had nine court cases with seven prosecutions, subsequent years have had lesser prosecutions and interestingly no non-convictions.

In addition, the number of cases resulting in convictions has dwindled from seven in FY2006 down to one in FY2010.

**Chart 13 : EP Act SA Court Cases Summary**



### 3. South Australia’s spectrum of monetary recompense for offences

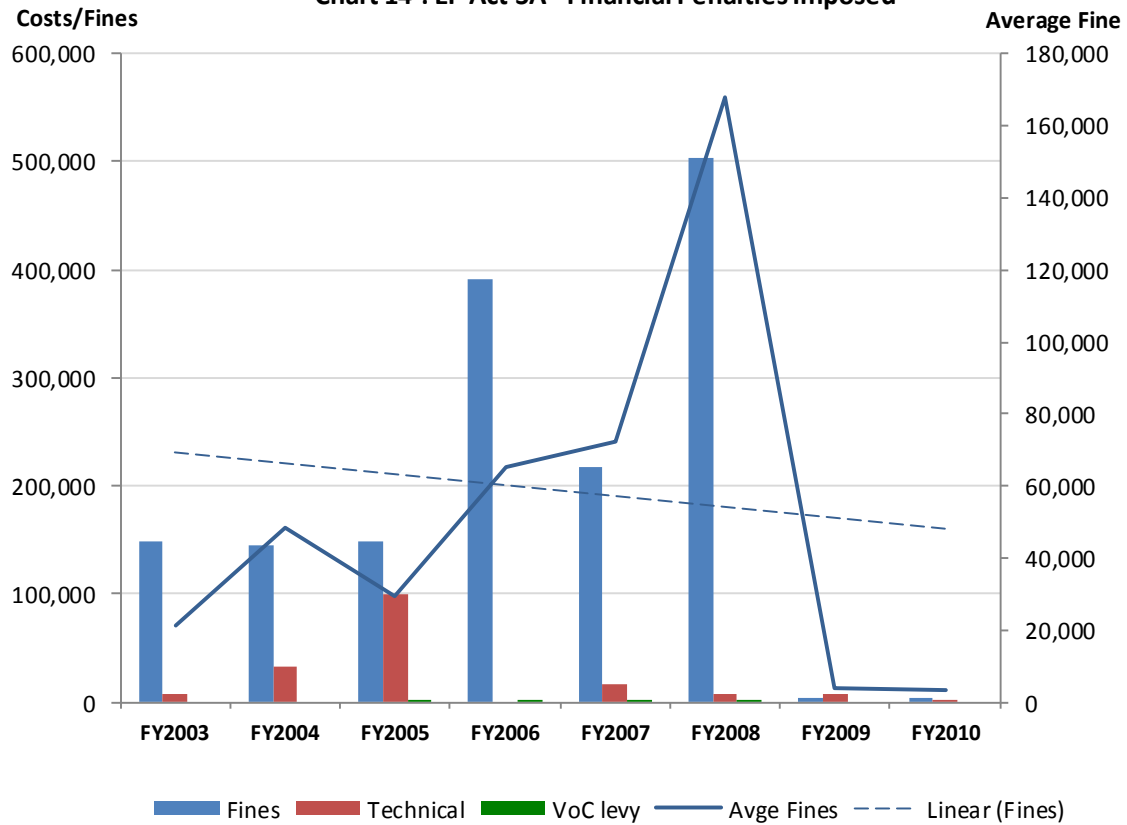
Under the *Environment Protection Act 1993* multiple costs can be awarded against the offender including:

- Punitive damages fines
- Technical costs
- Victims of Crime (VoC) Levy

Chart 14, EPA Act SA – Financial Penalties Imposed, shows that in contrast to the trend of declining court cases/prosecutions, average Fines in particular have been escalating with the exception of FY2009 and FY2010, where there were only single offences in each year attracting very small financial recompenses.

For a better perspective on this see Table 13: EP Act SA – Financial Penalties Imposed (Raw Data) and Table 14: EP Act SA : Financial Penalties Imposed Spread (Raw Data).

**Chart 14 : EP Act SA - Financial Penalties Imposed**



**Table 13: EP Act SA – Financial Penalties imposed (Raw Data)**

Financial Year	Fines	Average of Fines	Technical Costs	VoC levy	Total
FY2003	149,256	21,322	7,757		157,013
FY2004	145,200	48,400	32,100		177,300
FY2005	148,000	29,600	99,290	240	247,530
FY2006	391,960	65,327		140	392,100
FY2007	216,750	72,250	17,000	80	233,830
FY2008	503,919	167,973	6,846	130	510,895
FY2009	3,750	3,750	6,769		10,519
FY2010	3,075	3,075	286	0	3,361
<b>Grand Total</b>	<b>1,561,910</b>	<b>53,859</b>	<b>170,048</b>	<b>590</b>	<b>1,732,548</b>

**Table 14: EP Act SA – Total Financial Penalties Imposed Spread (Raw Data)**

Financial Year	up to 50k	50-100k	100-250k	250-500k	Grand Total
FY2003	8	1			9
FY2004	2		1		3
FY2005	4		1		5
FY2006	6			1	7
FY2007	1	1	1		3
FY2008	3			1	4
FY2009	1				1
FY2010	1				1
<b>Grand Total</b>	<b>26</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>33</b>

#### 4. The requirement for offenders to publish their offence in the print media

There does not appear to be a requirement for offenders to publish the details of their offences.

#### 5. The nature and frequency of the various offences committed

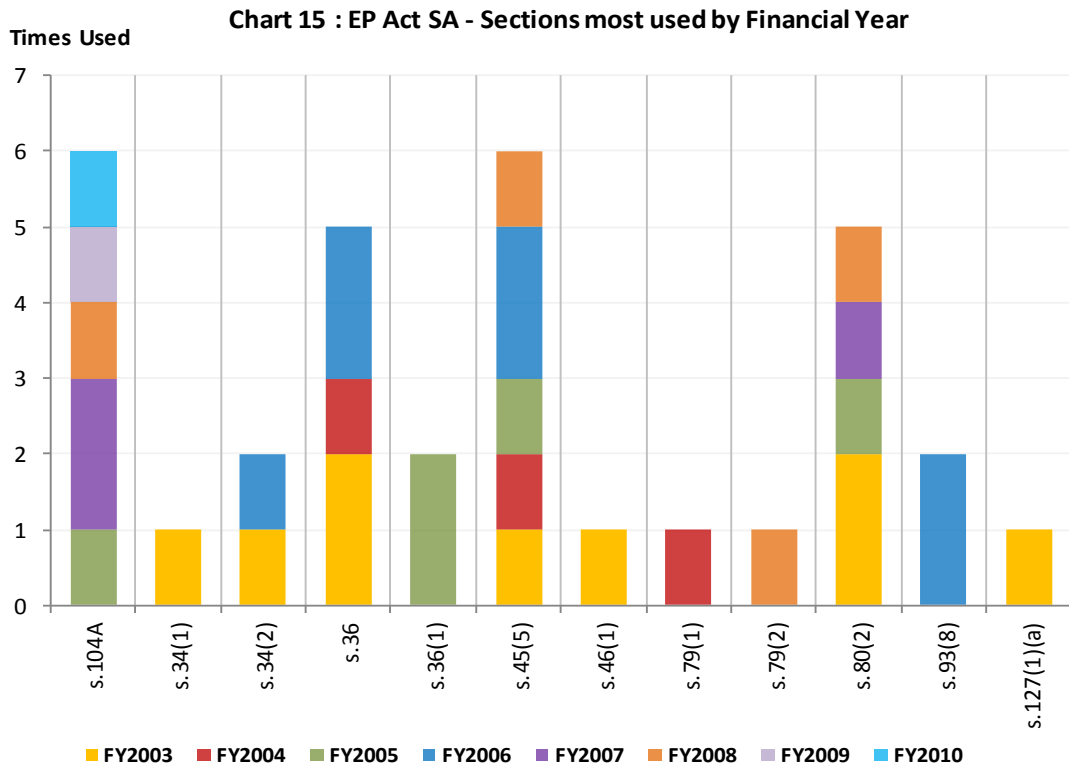
In the annual reports published each year there is a series of tables that detail information in relation to prosecutions for a range of environmental breaches. These breaches are defined under the *Environment Protection Act 1993*. Table 15 below shows which sections of the Act have been most used in convicting a defendant. Two sections appear to stand out and are shaded in the table – s.104A; s.45(5).

Table 15: SA – Sections Most Used of the *Environment Protection Act 1993*

Section of Act	State	Charge Description
s.104A	SA	Discharge of wastewater into stormwater system
s.104A	SA	Breach of licence condition by disposal of waste in onsite batters
s.104A	SA	Fire onsite produced a large black plume of thick smoke
s.104A	SA	Illegal dumping of waste into dry creek bed
s.104A	SA	Depositing contaminated soil in fill for housing development
s.104A	SA	200L beer into Torrens River
s.127(1)(a)	SA	Fail to comply with conditions of EPA authorisation
s.26	SA	Discharge oil from apparatus. 270,000L into ocean
s.34(1)	SA	Breach mandatory policy. Milking shed effluent onto neighbour's land
s.34(2)	SA	demolition waste into excavated hole containing groundwater
s.34(2)	SA	Breach mandatory policy. Milking shed effluent into water course
s.36	SA	Operating waste depot without a licence
s.36	SA	Collecting liquid waste from industrial premises without a licence
s.36	SA	operating a waste depot without a licence
s.36	SA	Conduct prescribed activity without authorisation
s.36(1)	SA	Operation of Ionising Radiation Apparatus without a licence
s.45(5)	SA	Contravene conditions of environmental authorisation (9 counts)
s.45(5)	SA	Poultry processing effluent onto neighbouring land
s.45(5)	SA	breach of licence condition
s.45(5)	SA	Breach of licence condition
s.45(5)	SA	Failing to complete details of waste tracking forms
s.45(5)	SA	Breach of licence conditions
s.45(5)	SA	Breach of licence conditions. Discharge of winery wastewater

		(3 counts0
s.45(5)	SA	Breach of licence condition. Dumping septic tank waste
s.45(5)	SA	Breach of licence condition.
s.45(5)	SA	Breach of licence condition (2 counts)
s.45(5)	SA	Failure to report incident
s.45(5)	SA	Contravene conditions of environmental authorisation
s.46(1)	SA	Failure to register an X-Ray unit. Unlicensed person.
s.79(1)	SA	Cause serious harm recklessly
s.79(2)	SA	Spill of diesel oil from 30,000L storage tank
s.79(2)	SA	Cause serious environmental harm. Polluted water & dead fish
s.80(2)	SA	Polluting the environment causing material environmental harm
s.80(2)	SA	Discharge of sediment from water tanks
s.80(2)	SA	Wastewater discharge from sewer to wetlands
s.80(2)	SA	Cause material harm. Vented tanks containing crude oil.
s.80(2)	SA	Cause material environmental harm
s.80(2)	SA	Cause material environmental harm. 20 KL ZE into ocean
s.80(2)	SA	Cause material environmental harm
s.80(2)	SA	Cause material harm. Discharge contaminated wastewater
s.82	SA	Cause environmental nuisance
s.82(2)	SA	Cause environmental nuisance
s.93(8)	SA	Contravene EPA Order

Chart 15, EP Act SA – Sections most used by Financial Year, graphically shows the number of times the respective sections of *Environment Protection Act 1993* have been cited relative to the financial years, with Table 16 providing the raw data used to create the chart.



**Table 16: EP Act SA - Sections most used by Financial Year (Raw Data)**

Section of Act	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	Total
s.104A			1		2	1	1	1	6
s.34(1)	1								1
s.34(2)	1			1					2
s.36	2	1		2					5
s.36(1)			2						2
s.45(5)	1	1	1	2		1			6
s.46(1)	1								1
s.79(1)		1							1
s.79(2)						1			1
s.80(2)	2		1		1	1			5
s.93(8)				2					2
s.127(1)(a)	1								1
<b>Grand Total</b>	<b>9</b>	<b>3</b>	<b>5</b>	<b>7</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>33</b>

# PENALTIES & PROSECUTIONS TASMANIA

## Data Source and Analysis Methodology

The information used for the analysis of Tasmania's EPA penalties and prosecutions was sourced from reports available on Environment Protection Authority's website (EPA) and covers data from FY2002 through to FY2007, with no data noted for FY2003.

## Relevant Legislation

*Environmental Management and Pollution Control Act 1994.*

## Key Areas of Interest

### 1. Prosecution process

The Compliance and Investigation Section (CIS) of the EPA Division supports the EPA by facilitating and managing the investigation of non-compliance matters under Tasmania's environmental legislation. Officers within the CIS work in accordance with the Australian Government Investigation Standards to ensure appropriate and equitable enforcement, restitution and/or prosecution of such matters. The CIS comprises two units:

- Investigations Unit
- Compliance Management Unit

The Investigation Unit's functions include investigation of alleged offences and the prosecution of referred non-compliance matters under environmental legislation and preparing the necessary documentation for proposed litigation in forums such as the Magistrates Court of Tasmania and the Resource Management and Planning Appeals Tribunal.

The Compliance Management Unit's functions include maintaining an overview of the enforcement system and providing recommendations to the General Manager of the EPA Division in relation to these matters.

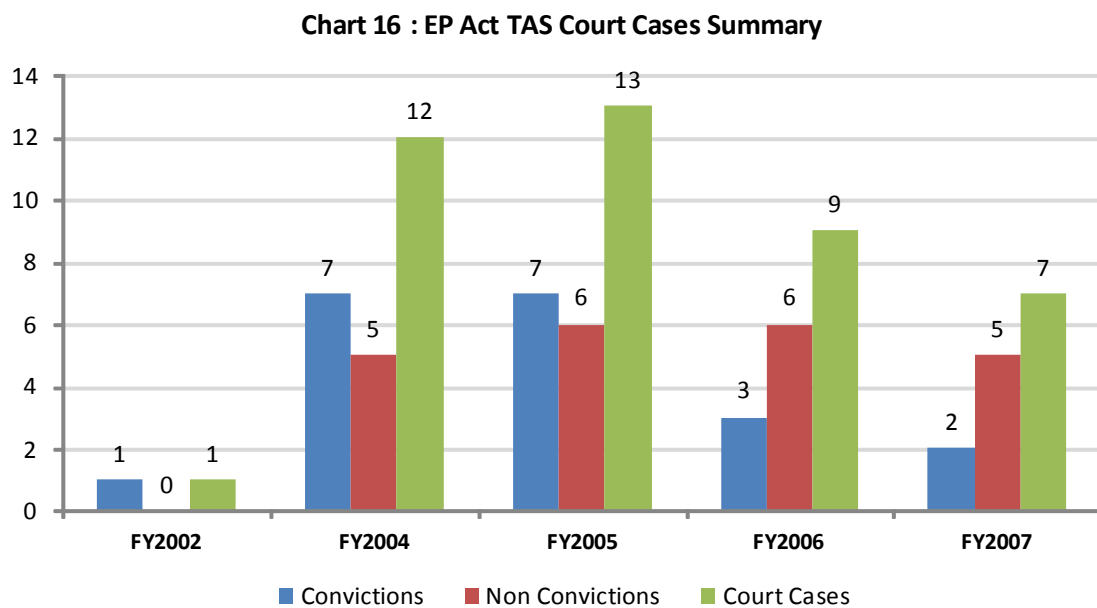
### 2. The number of court cases as well as the number of convictions versus non convictions

Chart 16, EP Act TAS Court Cases Summary, shows the number of major court cases held in Tasmania by financial year and compares the number that resulted in convictions with those that did not.

Non convictions are not to be confused with dismissal of the case. Although a conviction may not be recorded, a fine, court costs, clean-up costs and/or restoration costs can and is applied in most instances.

Convictions in Tasmania over the data period follow the distinctive bell curve that resembles the product adoption lifecycle curve. Very few at the start of the period increasing to the highest level in the middle of the period and tailoring back at the end of the data period.

For FY2004 and FY2005 convictions were greater than non-convictions with a conviction rate of between 70% and 85%, however this reversed for FY2006 and FY2007 with 50% or more of the cases resulting in non-convictions.



### 3. Tasmania’s spectrum of monetary recompense for offences

Under the *Environmental Management and Pollution Control Act 1994* the costs that can be awarded against the offender include:

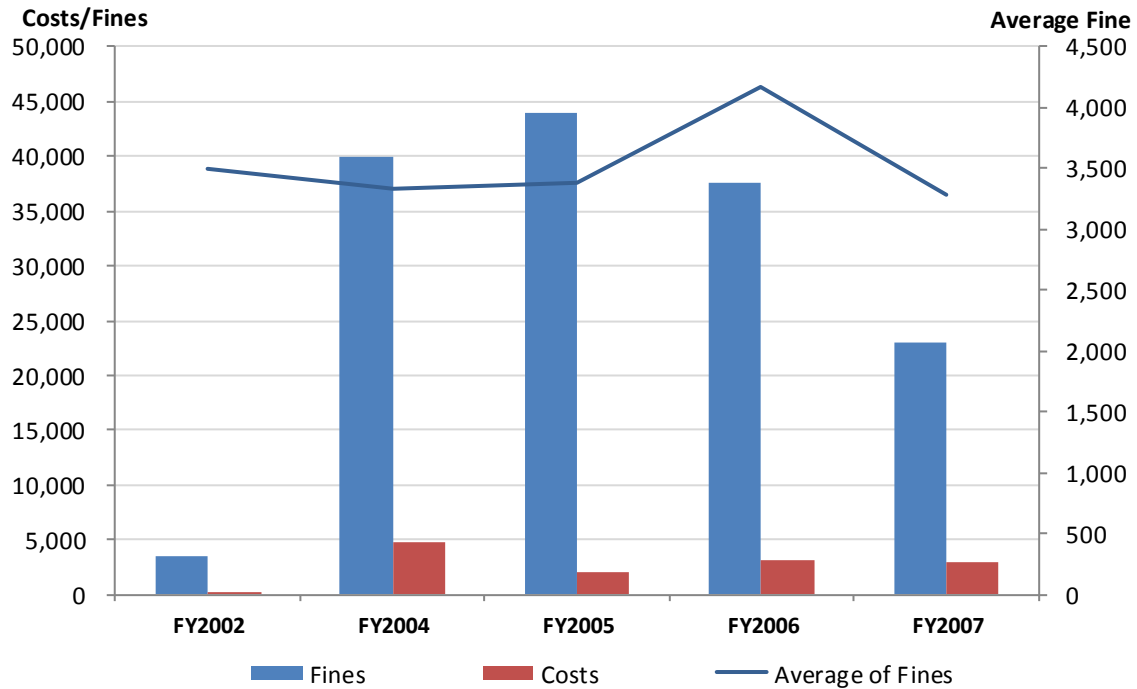
- Punitive damages fine
- Court costs

Chart 16, EPA Act TAS – Financial Penalties Imposed, shows that fines and cost have remained relatively constant.

Of all the States considered, Tasmania has the lowest average fines and cost. For a better perspective on this see Table 17: EP Act SA – Financial Penalties Imposed (Raw Data) and Table 18: EP Act SA: Financial Penalties Imposed Spread (Raw Data).



**Chart 17 : EP Act - Financial Penalties Imposed**



**Table 17: EP Act TAS – Financial Penalties imposed (Raw Data)**

Financial Year	Fines	Avge of Fines	Costs	Total
FY2002	3,500	3,500	38	3,538
FY2004	40,000	3,333	4,752	44,752
FY2005	44,000	3,385	2,071	46,071
FY2006	37,600	4,178	3,114	40,714
FY2007	23,000	3,286	2,963	25,963
<b>Grand Total</b>	<b>148,100</b>	<b>3,526</b>	<b>12,938</b>	<b>161,038</b>

**Table 18: EP Act TAS – Total Financial Penalties Imposed Spread (Raw Data)**

Financial Year	up to 10k	10-20k	20-30k	Grand Total
FY2002	1			1
FY2004	11	1		12
FY2005	11	1	1	13
FY2006	6	3		9
FY2007	6		1	7
<b>Grand Total</b>	<b>35</b>	<b>5</b>	<b>2</b>	<b>42</b>

**4. The requirement for offenders to publish their offence in the print media**

There does not appear to be a requirement for offenders to publish the details of their offences

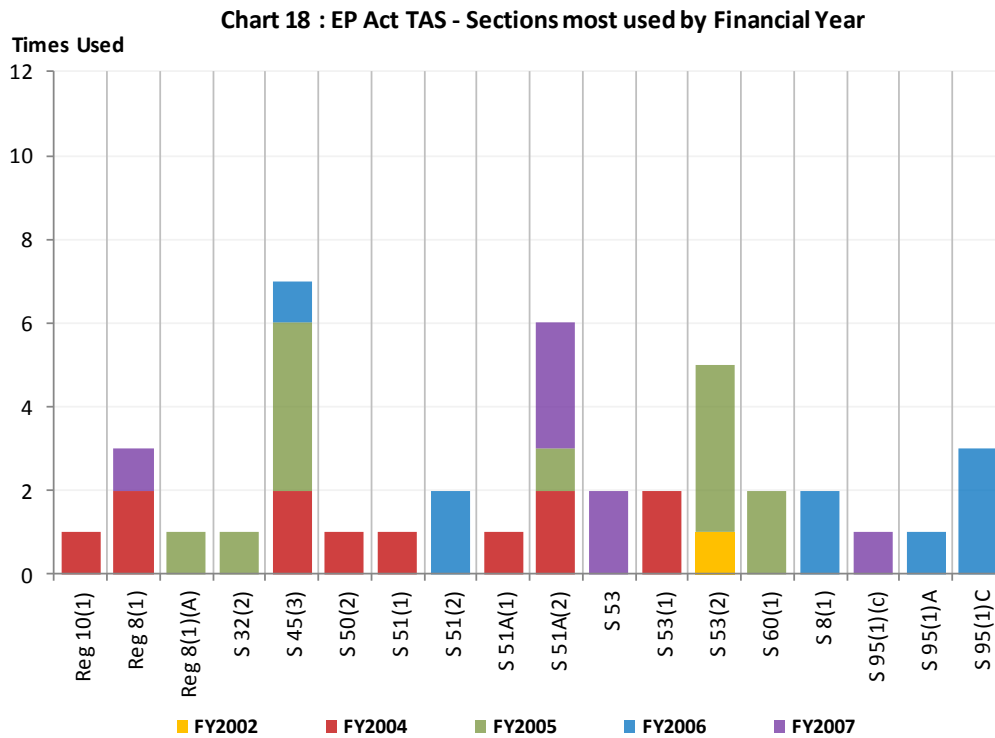
## 5. The nature and frequency of the various offences committed

In the annual reports published each year there is a series of tables that detail information in relation to prosecutions for a range of environmental breaches. These breaches are defined under the *Environmental Management and Pollution Control Act 1994*. Table 19, TAS – Sections Most Used of Environmental Management and Pollution Control Act 1994, shows which sections of the Act have been used in convicting a defendant.

**Table 19: SA – Sections Most Used of *Environmental Management and Pollution Control Act 1994***

Section	Act	Section description
Reg 10(1)	WasteMgt Regs	using or causing land to be used for disposal of general waste
Reg 8(1)	WasteMgt Regs	unlawfully depositing controlled waste
Reg 8(1)(a)	WasteMgt Regs	deposit waste that directly or indirectly causes harm to environment
S 32(2)	EMPCA	failure to notify release of pollutant occurring as result of emergency, accident or malfunction
S 33(1)	EMPCA	repealed
S 45(3)	EMPCA	contravention of existing environment protection notice
S 50(2)	EMPCA	causing serious environmental harm by polluting the environment
S 51(1)	EMPCA	causing material environmental harm by polluting the environment intentionally or recklessly
S 51(2)	EMPCA	causing material environmental harm by polluting the environment
S 51A(1)	EMPCA	deposit a pollutant where serious environmental harm may be caused
S 51A(2)	EMPCA	deposit a pollutant where it could be expected to cause material environmental harm
S 53	EMPCA	causing environmental nuisance
S 53(1)	EMPCA	wilfully and unlawfully causes an environmental nuisance
S 53(2)	EMPCA	unlawfully causing an environmental nuisance
S 60(1)	EMPCA	liability of officers of body corporate
S 8(1)	PWONSA	objectives of the resource Management and Planning System of Tasmania
S 95(1)(c)	EMPCA	refuse or fail to comply with a requirement or direction of an authorised officer
S 95(1)(a)	EMPCA	hinder or obstruct authorised officer or council officer in exercise of powers
S 95(1)(c)	EMPCA	refuse or fail to comply with a requirement or direction of an authorised officer

Chart 18 below pictorially depicts the number of times that the noted sections of the Act have been cited with Table 20 providing the supporting raw data.



**Table 20: EP Act TAS - Sections most used by Financial Year (Raw Data)**

Section of Act	FY2002	FY2004	FY2005	FY2006	FY2007	Grand Total
Reg 10(1)		1				1
Reg 8(1)		2			1	3
Reg 8(1)(A)			1			1
S 32(2)			1			1
S 45(3)		2	4	1		7
S 50(2)		1				1
S 51(1)		1				1
S 51(2)				2		2
S 51A(1)		1				1
S 51A(2)		2	1		3	6
S 53					2	2
S 53(1)		2				2
S 53(2)	1		4			5
S 60(1)			2			2
S 8(1)				2		2
S 95(1)(c)					1	1
S 95(1)A				1		1
S 95(1)C				3		3
<b>Grand Total</b>	<b>1</b>	<b>12</b>	<b>13</b>	<b>9</b>	<b>7</b>	<b>42</b>

## SUMMARY AND CONCLUSION

This Briefing Paper has provided a cursory examination of data relating to prosecutions and penalties across five states: Victoria, New South Wales, Queensland, South Australia and Tasmania. While variations in the data collection process and data sets preclude direct comparisons, nonetheless, several apparent patterns are worthy of note:

- Non-convictions have been greater than convictions at a relatively constant level over time, but there are jurisdictional differences in this;
- There is variation over time within jurisdictions regarding the use and size of fines;
- There is variation over time within jurisdictions regarding the use of restoration and enhancement order costs;
- There is variation over time within jurisdictions regarding which sections of the relevant act are most cited in convictions;
- There are variations between jurisdictions in the use of the requirement for offenders to publish their offence in the print media;
- There are variations between jurisdictions in the types of offences most cited in convictions, and in the number of offences most cited;
- There are variations between jurisdictions in the trend toward or away from increased convictions over time;
- There are variations between jurisdictions in the use of restoration and enhancement orders

These trends and patterns need to be put into their particular organisational and legal contexts. For example, the number of compliance and enforcement officers within any particular jurisdiction will influence the number of charges laid and the prosecution process. Similarly, a change in leadership within agencies – from an emphasis on compliance toward that of enforcement for instance – will affect regulatory practices. So too, the existence of a specialist court, as in New South Wales (with its Land and Environment Court), will engender different results over time in comparison with jurisdictions like Tasmania where overwhelmingly cases are dealt with at the Magistrate Court level and there is relatively little if

any specialist judicial training and/or experience in dealing with environmental offences as such.

Further examination of prosecution and penalty information may be useful in revealing gaps in data collection and analysis. It could, as well, provide a better sense of jurisdictional differences and commonalities which, in turn, can be used to inform and improve current enforcement and compliance policies and practices.