

Fact Sheet

RIVER MURRAY ACT 2003 –

General Duty of Care



IN BRIEF

The *River Murray Act 2003* (the Act) came into operation on 24 November 2003. The Act aims to protect, restore and enhance the River and its natural resources (including water, soil, ecosystems and heritage associated with the River).

It also aims to ensure that the River and natural resources are used and managed in a sustainable way. One way in which the Act helps to protect the River is through imposing a ‘duty of care’. The ‘duty of care’ is a duty to take reasonable precautions to ensure that your actions do not cause harm to the River. The duty applies to everyone.

It is not an offence to breach the duty, but an Order can be made directing you to change the way you undertake an activity so that it does not cause harm to the River, or to cease an activity altogether. It is an offence if you do not comply with the order.



WHAT ELSE DO I NEED TO KNOW ABOUT THE DUTY OF CARE?

What does the duty of care mean?

The duty is to take all reasonable measures to prevent or minimise harm to the River. In determining what measures are ‘reasonable’, certain things will be taken into account.

These include:

- The nature of the harm
- The sensitivity of the environment, and the potential impact of the harm environmentally, socially and economically (for example, what is harmful to one part or aspect of the River Murray may be relatively harmless to another)
- The practicality and financial implications of alternative action, and the current state of technical and scientific knowledge (for example, the costs and feasibility of undertaking the action in a different way)
- Any degrees of risk that may be involved (for example, a risk of irreversible damage to the River, or of damage that might have an ongoing impact, would be likely to demand a higher level of care)
- The significance of the River to the State, and to the environment and economy of the State
- Whether the person holds a licence or other form of authorisation. If so, any assessment of harm to the River that was carried out before issuing the authorisation, and any conditions to protect the River, will be taken into account (however, simply undertaking an activity in accordance with an existing authorisation is not of itself a right to breach the duty).

‘Harm’ to the River includes the risk of harm and future harm. When considering whether the River has been or might be harmed, it is necessary to consider the very broad definition of the River under the Act.

The River includes the main stem and floodplain, and all anabranches, backwaters, wetlands, estuaries, coastal areas (including the Coorong and Lower Lakes), and tributaries (including the tributaries in the Eastern Mount Lofty Ranges). The River also includes the natural resources associated with the River (and floodplain, tributaries, etc, as above), including not only water, soil, minerals, vegetation, air, animals and ecosystems, but also cultural heritage, natural heritage, amenity and geological values.

What happens if the duty of care is breached?

A breach of the duty is not an offence. However, the Minister responsible for the administration of the Act (the Minister) can enforce compliance with the duty by issuing a River Murray Protection Order or a River Murray Reparation Order (where harm has already occurred).

It is an offence to fail to comply with an Order.

Fines range from a maximum of \$2,500 for an Order relating to a domestic activity, to \$120,000 for Orders relating to other (non-domestic) activities. In addition, the Minister may undertake the things required by the Order and recover the costs of doing so from the person to whom the order was issued.



What can an Order require?

A Protection Order may require a person to:

- discontinue or limit the activity
- take certain action
- prepare and implement a plan of action
- pay a bond to offset costs of repairing possible future damage
- comply with a specified code or standard and/or
- undertake specified tests or monitoring.

A Reparation Order may require a person to:

- take specified action to make good the harm to the River
- make a payment to enable action to be taken to address damage
- undertake further or other action to prevent or mitigate further harm and/or
- undertake specified tests or monitoring.

The Minister can also issue a Reparation Authorisation, authorising someone other than the person allegedly causing the harm to take action to repair the harm.

Where the Minister believes that an activity might cause, or is causing, harm to the River, but does not have sufficient information, the Minister may issue an Interim Restraining Order to prevent a person from continuing an activity while the Minister gathers the information required to make such an assessment. A Restraining Order lasts a maximum of 28 days. It is an offence to breach a Restraining Order. The maximum penalty is \$50,000.

Are there any exemptions from the duty?

Persons exercising statutory powers in an emergency (for example, the CFS during a fire) are exempted from the duty.

FOR FURTHER INFORMATION

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