

Elements of offence: s116(1)(a) POEO Act – Leaks, spillages and other escapes

If answer to this question is "no"

ELEMENT NO: 1
SUBSTANCE LEAKS, SPILLS OR OTHERWISE ESCAPES

<p><u>Questions to be answered</u></p> <p>Has the substance:</p> <ul style="list-style-type: none"> leaked? spilt? or otherwise escaped? 	<p><u>Evidence/Avenues of enquiry</u></p> <p>Witness statements, photos, video, observations showing that the substance has leaked, spilt or otherwise escaped (for example, a photo of a split/crack/hole in the container with the substance leaking out)</p>
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If the answer to ANY of these questions is "yes"

The substance has "LEAKED, SPILLED OR OTHERWISE ESCAPED"

If the answer to ALL questions is "no"

The substance has not "LEAKED, SPILLED OR OTHERWISE ESCAPED"

Check whether breach of other pollution offences.

If the substance is waste, check ss 115, 143 and 144 POEO.

If there has been pollution to land or water, check ss 142A, 120(1) POEO.

If the substance has been deposited in a public place or open private place check s 145 POEO.

ELEMENT NO: 2
WAS THE PERSON WILFUL/NEGLIGENT/OWNER?

- Questions to be answered
- Did the person dispose of the substance deliberately in a manner that harmed or was likely to harm the environment?
 - Was the risk of harm foreseeable to a person in the position of the person?
 - Was the person the owner of the substance?

- Evidence/Avenues of enquiry
- Witness statements and observations regarding where the substance has come from:
 - address;
 - name of facility;
 - identity of people involved.
 - Photos of delivery trucks, including logos on sides of trucks and number plate
 - Statement from the defendant regarding their state of mind.
 - Photos, video, surveillance footage and witness statements as evidence of the fact that the disposal of the waste was wilful or negligent

If the answer to ANY of these questions is "yes"

The person is liable
 NOTE: more than one person can be held liable

If the answer to ALL questions is "no"

The person is not liable

ELEMENT NO: 3
HARM

<ul style="list-style-type: none"> Is there harm to the environment? Is there likely harm to the environment? 	<p>Witness statements, photos, video and observations of the harm or likely harm that was caused.</p> <p>Expert opinion and sampling of the substance and the land/water surrounding it</p>
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If the answer to either question is "yes"

The substance has leaked, spilt or escaped in a manner that caused harm or likely harm

Breach of s 116 POEO Act

If the answer to both question is "no"

Check other pollution offences. If the matter has been deposited in a public place or open private place, check s 145 POEO. If the place is an unlawful waste facility, check s 143 and 144 POEO.

GENERAL DEFENCE FOR TIER 1 OFFENCES

<p><u>Questions to be answered</u></p> <ul style="list-style-type: none"> was the cause of the offence one over which the defendant had no control and did the defendant take reasonable precautions of exercise due diligence to prevent the commission of the offence? 	<p><u>Evidence/Avenues of enquiry</u></p> <ul style="list-style-type: none"> Interview defendant to determine whether they exercised due diligence and took reasonable precautions. Observations regarding cause of offence. Expert opinions regarding cause of offence. Witness statements regarding cause of offence.
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If the answer to this question is "yes"

A defence has been established
 no breach of s 116(1) (a)

If the answer to this question is "no"

Breach of s 116(1)(a) POEO