



Environment Protection Authority

Regulatory Policy



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An aerial photograph of a rocky stream flowing through a lush green forest. The water is dark and clear, reflecting the surrounding vegetation. The rocks are brown and jagged, creating small rapids and pools. The forest is dense with various shades of green, including moss and ferns. The overall scene is serene and natural.

Acknowledgement of Country

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The EPA acknowledges the traditional custodians of the land on which we live and work, and pay our respects to Elders past, present and future.

We recognise the connection to their land, their waters and surrounding communities and acknowledge their history here on this land.

We also acknowledge our Aboriginal and Torres Strait Islander employees who are an integral part of our diverse workforce and recognise the knowledge embedded forever in Aboriginal and Torres Strait Islander custodianship of Country and culture.

We reduce risks to
human health and
prevent degradation
of the environment



Purpose

The Environment Protection Authority (EPA) provides public value by improving outcomes for the environment and human health.

The **Regulatory Strategy** sets out the principles that guide the EPA's regulatory work, our goals, regulatory challenges and commitments, and how we regulate. It provides an overview of our regulatory approach.

This Regulatory Policy sets out:

- the regulatory tools we use and regulatory actions we may take
- what we consider when we make a regulatory decision to identify an appropriate response.

Our regulatory decision-making

This policy informs how we make regulatory decisions, including the decision-making principles that guide us and the factors we consider when responding to an environmental or human health issue, including an individual event or circumstance of non-compliance.

It provides an overview of the diverse regulatory tools we use under each element of our regulatory approach.

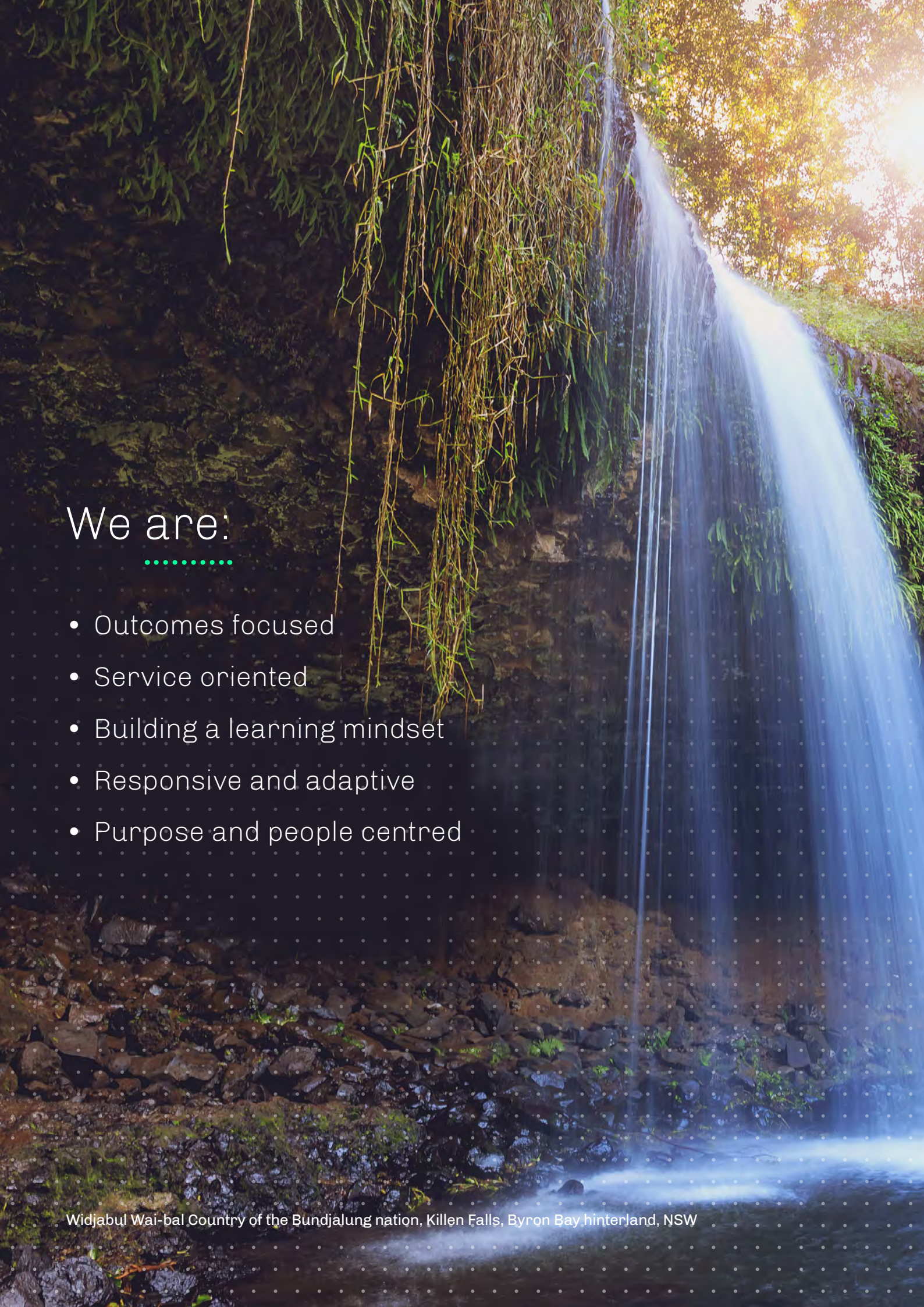
This policy supports us in applying our regulatory approach consistently across all the areas we regulate.

The policy is complemented by the **EPA Prosecution Guidelines**, which set out various matters including the factors the EPA takes into account in deciding whether, how and in what court to prosecute offences under legislation administered by the EPA.

Figure 1. How the Regulatory Policy fits into the big picture



Dharawal Country, Bombo Headland Quarry, Bombo, NSW



We are:



- Outcomes focused
- Service oriented
- Building a learning mindset
- Responsive and adaptive
- Purpose and people centred

About the EPA

The EPA was established under the *Protection of the Environment Administration Act 1991* (POEA Act). It is responsible for regulating a broad range of activities and the environmental or human health risks associated with:

- air emissions
- noise
- waste
- water discharges
- native forestry
- contaminated land
- dangerous goods
- hazardous materials
- chemicals
- radiation
- pesticides
- coal seam gas.

We deliver public value and act in the public interest

We are committed to being a world class regulator. Our objectives at the EPA are to:

- reduce risks to human health and prevent harm to the environment
- protect, restore and enhance the quality of the environment, having regard to ecologically sustainable development.

(Section 6 of the *Protection of the Environment Administration Act 1991*)

We provide public value by delivering outcomes that have collective meaning or value to the people of NSW. These outcomes include improving air, land and water quality, conserving biodiversity, reducing human exposure to harmful substances and improving environmental amenity. We listen to people and educate, partner and collaborate to influence views about what can harm our environment or our health.

When needed, we take action against individuals, businesses and organisations to do what is best for the environment and human health to benefit the people of NSW.

We act in the public interest when exercising all our regulatory functions, this may include deciding whether or not to take prosecution action or as otherwise required by legislation.



Wodi Wodi Country upstream in Dharawal Country, Shoalhaven River, upstream of the Tallowa Dam, Tallong, NSW

About the EPA

Definitions

Compliance – a person, business or organisation meeting their legal requirements and obligations under NSW environment protection legislation.

Cumulative impacts – changes to the environment or human health caused by the combined impact of past and current human activities and extreme weather events resulting in natural disasters including bushfires, floods and heatwaves. This impact may be the result of multiple activities and sources, or one source over time.

Data – units of information, facts or numbers, examined and used in decision-making.

Enforcement – compelling a person, business or organisation to achieve compliance with relevant NSW environment protection legislation.

Intelligence – knowledge drawn from assessed information that helps the EPA to understand risks and harm to the environment and human health and assists the EPA to decide how to act.

Issue – an issue of concern or problem that is impacting, or has the potential to impact, on the environment or human health. An issue often results from more than one source, or sometimes cumulatively from one source over time, and it could be at one place or locality or it could be more widespread across several areas or all of NSW.

Non-compliance – an event or discrete circumstance by an individual person, business or organisation when a legislative requirement has been contravened or disobeyed.

Organisation – a public authority, government agency or department, or other legal entity.

Place – a social and physical concept. It can be a physical setting, point, or area in space that is determined by people and communities. A place is a complex system made up of people, the surrounding environment, and the relationship between the two. A place can be natural or man-made, and the geographic area covered by a place can be at any scale agreed by the people within it.

Regulated community – the people, businesses, industries and organisations that are regulated by the EPA.

Regulation – the functions performed by the EPA to protect, enhance and restore the environment, reduce the risks to human health and prevent degradation of the environment. Regulation includes all the elements of the EPA's regulatory approach.

Risk – potential harm or adverse impact to human health or the environment.





We protect, restore and
enhance the quality of
the environment

Wiradjuri Country, Wambuul (Macquarie) River, Dubbo, NSW

How we regulate

The EPA's balanced regulatory approach is underpinned by eight elements.

We listen, educate, enable, act, influence, require, monitor and enforce in our regulatory approach (see Figure 2 below). We may use one or more of these elements at the same time, in any combination or in any series (depending on the individual circumstances or the type of environmental or human health issue). We use a fit-for-purpose approach. More information can be found in the EPA's [Regulatory Strategy](#).

Figure 2. The EPA's regulatory approach



We **influence** people, businesses, government, research and science to make changes for better environmental and human health outcomes. We encourage change and innovation through partnerships and collaboration. We provide incentives for people and businesses to protect, restore and enhance the environment.

We **require** compliance with obligations – under legislation, regulatory instruments, licences, duties, mandatory training and accreditation.

We **monitor** the state of the environment and monitor compliance against legal obligations. We investigate environmental issues and non-compliance.

We use our powers to compel people and businesses to achieve **compliance** with their legal obligations when needed.

We **listen** and actively engage with people to understand the issues affecting them and their ideas for addressing the issues.

We **educate** community, industry and government about environmental and human health issues. We empower the decision-making of others to take environmental outcomes into account in their businesses and practices. We provide guidance about how people or industry can meet or exceed their legal obligations.

We **enable** the people of NSW – we inform the community about what we do and how we do it. We assist individuals, businesses, co-regulators and we partner with industry and government to protect, restore and enhance the environment.

We **act** to investigate and solve problems by engaging with the community, partnering with research organisations, industry and government, using our investigation powers, developing policy and programs, using science and research and undertaking regulatory reform.

How we regulate

Collaboration and partnerships

We use partnerships to solve complex issues that we cannot solve alone. We collaborate across sectors to ensure we leverage diverse skills and experience to design solutions together. We also use partnerships to test innovative approaches, increase our knowledge, strengthen our insights and expand our reach to achieve better outcomes.

We partner and collaborate to co-regulate, to monitor the state of the environment, to act, to solve problems and do research, to provide education and programs, to enable the community, to undertake enforcement campaigns and to respond to emergencies.

Driving improved environmental performance

We recognise improvements made by industry and the community, as well as actions taken by individuals or individual businesses to drive compliance or further improve environmental performance beyond compliance, such as when individual businesses:

- undertake proactive monitoring or proactive community engagement
- develop environmental management systems
- make and meet voluntary industry standards
- partake in industry research and partnerships with research bodies.



Sun setting over Ngarigo Country,
Lake Jindabyne, Snowy Mountains, NSW

Our decision-making

Choosing a response

The EPA has the discretion in its regulatory decision-making to select the tool(s) or act to get the best environmental or human health outcome in response to either an environmental or human health issue OR an individual event or circumstance of non-compliance.

The discussion of an issue in this policy refers to an issue of concern or problem that is impacting, or has the potential to impact, on the environment or human health. An issue often results from more than one source, or sometimes cumulatively from one source over time, and it could be at one place or locality or it could be more widespread across several areas or all of NSW.

The discussion of non-compliance in this policy refers to an individual event or circumstance of non-compliance with legislative requirements and relates to an individual person, business or other organisation.

In exercising discretion, we consider the decision-making principles set out in Table 1, and the relevant legislative powers, strategies, policies and procedures.

We make decisions and identify the appropriate action to respond to an environmental or human health issue or an individual event or circumstance of non-compliance based on a range of factors. These include the factors set out in Table 2.

We select a response that is fit for purpose and proportionate (Figures 3 and 4).

Our decision-making principles and decision factors support us to regulate in a consistent and transparent way.

Science, intelligence and evidence

The EPA bases its regulatory decisions and actions on the best available information – data, intelligence, insights and evidence. Our decisions are informed by a range of sources: sound science, behavioural science and Aboriginal cultural knowledge, as well as information received from other regulators,

members of the community, industry and interest groups.

Risk-based approach

The EPA takes a risk-based, outcomes focused approach to regulation rather than a prescriptive approach. This allows flexibility to choose the most innovative, cost-effective and efficient way of achieving a given outcome.

In allocating our resources, we prioritise dealing with the greatest risks to the environment and human health, and activities that deliver public value.

We are agile in how we respond to the most important issues, prioritising our policies, practices and programs to address current and emerging risks.

To identify and analyse risk, we:

- use data, intelligence, spatial analysis, insights, evidence and science
- consider relevant decision factors, outlined in Table 2 of this policy, that are related to either or both an individual event or circumstance of non-compliance and/or an issue of concern
- assess the risk, including considering the likelihood and consequence.

Having identified a risk, we act to deal with it and manage it as needed. We also regularly monitor and review risks to identify changes over time and reassess our approach when required. Our approach is consistent with the Australian Standard on Risk Management (AS ISO 31000:2018).

We encourage the people of NSW to consider the risks to the environment or human health from the activities that they undertake.

Place-based approach

The EPA may take a place-based approach on some issues, including complex issues with no clear way forward, and where there are multiple people, groups or organisations with an interest. This is often referred to as 'systems-thinking'.

Our decision-making

We may also use this approach where we are considering the cumulative impacts or sources of potential harm on the environment or human health from activities that are specific to a place. We recognise that small effects from multiple individual activities when combined can have significant environmental or human health impacts.

If we take a place-based approach we will consider the specific circumstances of a place and engage the community, including the Aboriginal community, to understand the local context and to share the decision-making process. We will bring people together in a structured way to achieve change and have a

collective impact. People who are interested in or affected by an issue can engage with the EPA and each other and act to be part of the solution.

When considering how our regulatory approach may apply to a place, we consider ecosystems as a whole, Aboriginal cultural knowledge of a place, and the local communities in that place. Examples of places include an ecosystem or geographic area, such as water catchments, airsheds, ecological communities and climatic regions.

The decision factors outlined in Table 2 relating to an environmental or human health issue may apply when taking a place-based approach.



Gundungurra Country, Southern Highlands, NSW

Our decision-making

We are guided by the decision-making principles in Table 1 when considering a regulatory response to an environmental or human health issue, or to an individual event or circumstance of non-compliance.

We consider and may apply the relevant decision factors in Table 2 to determine the response to an issue or a non-compliance.

Table 1. Decision-making principles

Principles	Description
Responsive	<p>We will respond to environmental or human health issues quickly and effectively to prevent or reduce harm to the environment and human health.</p> <p>We will respond quickly to rapid changes in the environment and risks to human health (e.g. bushfires and floods) and to cumulative impacts.</p>
Prevention-focused	<p>We will use a mix of regulatory tools to prevent or reduce harm to the environment and human health, and to prevent an issue from recurring.</p>
Effective	<p>We will apply the right tools or take the right actions to effectively address the problem at the right time.</p>
Targeted	<p>We will identify problems and focus on the most important issues to achieve the best environmental and human health outcomes.</p> <p>We will develop risk-based regulatory priorities using the best available intelligence and insights.</p>
Informed and evidence-based	<p>We will use an evidence-based approach to our decision-making.</p> <p>Our decisions will be informed by sound science, EPA priorities, an assessment of risk, data, intelligence and insights, Aboriginal knowledge, behavioural insights, and information received from the community, interest groups, industry and other regulators.</p>
Firm but fair	<p>We will use our discretion to take regulatory action that is proportionate, fit for purpose and appropriate to the circumstances.</p> <p>We will take strong regulatory action when needed.</p>
Consistent and coherent	<p>We will apply our regulatory approach consistently, making our decisions based on robust processes.</p> <p>Our decisions will be based on the circumstances of the issues at hand.</p> <p>We will apply and explain our regulatory decisions coherently, and relate these to our objectives under section 6 of the POEA Act.</p>

Our decision-making

Principles	Description
Transparent	<p>We will provide the regulated community with clear information and explanations about environment protection legislation, regulatory instruments, our expectations and our regulatory actions.</p> <p>We will provide clear information to the broader community about the EPA's role and responsibilities and the actions we take to address environmental issues, and provide access to information about industry's environmental performance.</p>
Ethical and accountable	<p>We will conduct ourselves in accordance with the <i>EPA Code of Ethics and Conduct</i>, these guiding principles and relevant policies and guidance.</p> <p>We will document and take responsibility for our regulatory decisions and actions.</p> <p>We will measure and report on our regulatory performance.</p>
Collaborative	<p>We will partner with Aboriginal communities, local communities, industries and businesses, as well as other regulators and government organisations, to enhance mutual understanding and deliver the best environmental and human health outcomes.</p>



Our decision-making

Table 2. Decision factors: Responding to an environmental or human health issue, or an individual event or circumstance of non-compliance

Decision factors are matters that the EPA may consider, where appropriate and relevant.

Decision factors	Considerations include:
Actual or potential harm to the environment or human health	<ul style="list-style-type: none"> • Sensitivity of local environments or communities. • Extent of the actual harm or likely extent of the potential harm.
Seriousness of the non-compliance	<ul style="list-style-type: none"> • The seriousness of any alleged offence – for example, Tier 1 offences are the most serious offences under the POEO Act. • Environmental crime (as described in the EPA Regulatory Strategy). • The extent to which the alleged offender gained financially from the non-compliance.
Seriousness of the environmental or human health issue	<ul style="list-style-type: none"> • Cumulative impacts from more than one source, or from one source over time. • Sensitivity of local environments or communities. • Scientific research about the environmental or human health issue. • Relevant data and analysis from environmental monitoring.
Scale and extent of the environmental or human health issue and how often it occurs	The scale and extent of the environmental or human health issue and how often it occurs, and whether it is widespread or a systemic issue.
Measures needed to ensure compliance	<p>The measures necessary to ensure ongoing compliance, including:</p> <ul style="list-style-type: none"> • the nature of the activity and/or size and scope of the business; for example, the difference in financial capacity between a big corporation and a single operator • the impact of any regulatory action by the EPA on the local community.
Measures needed to ensure best outcome	The measures necessary to bring about the best environmental or human health outcome. This may include consideration of the size of the geographic area affected, the cumulative impact(s), and the scope of the environmental or human health issue or impact on communities.

Our decision-making

Decision factors	Considerations include:
Public value	<p>How to deliver outcomes that have collective meaning or value to the people of NSW. This may include:</p> <ul style="list-style-type: none"> • what actions the EPA should take to prevent or reduce harm • what actions the EPA should take to enhance or restore the environment • what the EPA should do to recognise connection to place and Country – land, waters and culture – of Aboriginal people • what the EPA should do to understand, evaluate and respond to community expectations • acting in the public interest when exercising our regulatory functions, which may include deciding whether or not to prosecute, or as a requirement under legislation • what the EPA should do to understand the impact on communities of any regulatory actions we take, e.g. avoiding disruption to essential services (such as water supply, sewage services, power supply) if possible • consideration of the nature of the activity or activities the regulated community is undertaking • deterring a person, business or entity from non-compliance, or generally deterring other people or businesses from non-compliance – for example, by pursuing a prosecution or issuing penalty notices.
Legislative and policy frameworks	<ul style="list-style-type: none"> • Legal requirements • Scope of the regulatory tool • Statutory timeframes • Legislative procedures • Relevant EPA policies • Potential rights of appeal <p>When considering whether or not to prosecute, we review the matters set out in the EPA's Prosecution Guidelines. When considering whether or not to enter into an enforceable undertaking, we review the matters set out in the EPA's Enforceable Undertaking Guidelines.</p>
Precedent	Any precedent that may be set by taking action or not taking action.
Environmental justice	Environmental justice principles such as whether there will be an impact on disadvantaged communities or vulnerable people because of an environmental or human health issue or a non-compliance.

Our decision-making

The following factors only apply when deciding on a response to a non-compliance by an individual person, business or other organisation

Attitude, behaviour and intent

Whether the person, business or organisation:

- has taken voluntary action to mitigate any harm to the environment and to prevent a recurrence or future issues
- has taken measures or has procedures already in place to address impacts
- has cooperated; complied with EPA requests, directions or notices; and expressed willingness to take appropriate remedial actions
- has failed to notify, or delayed notifying, the EPA of a non-compliance or an incident, if relevant
- is culpable (whether their behaviour was intentional, reckless or negligent), including any mitigating or aggravating circumstances
- has made false or misleading statements about the non-compliance or incident.

Responsible person's details

- Age (whether the person is a child)
- Mental or physical health (e.g. whether they have a special infirmity, intellectual disability or mental illness).

Compliance history

The compliance history of the person, business or organisation including the frequency and nature of non-compliance in general, and whether non-compliance is an ongoing issue for that person, business or organisation.



Stargazing on Wilyakali Country, Broken Hill, NSW

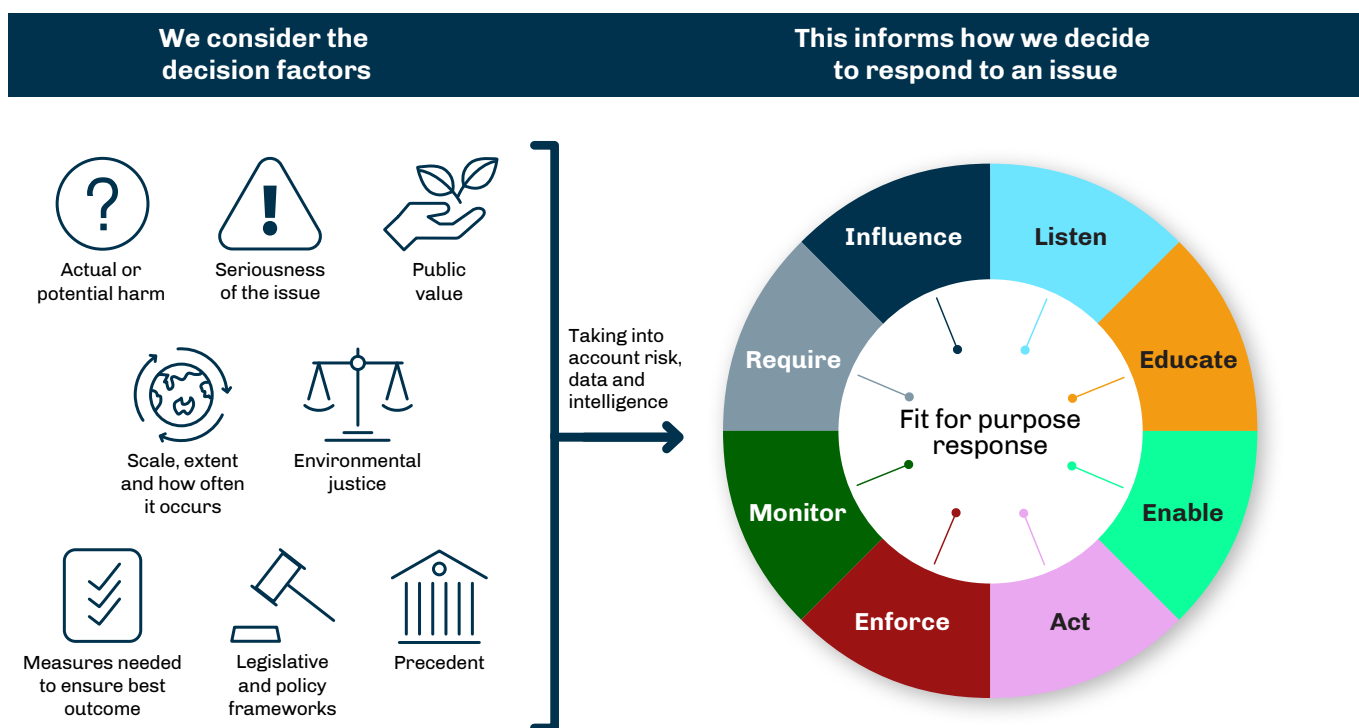
Our decision-making

When deciding on a response to an environmental or human health issue, we:

- are guided by our decision-making principles
- consider the relevant decision factors
- take into account risk, data and intelligence.

These inform the response that we take to the issue (Figure 3). Our regulatory response will be fit for purpose and may result in more than one tool being used or action being taken. For example, our response to an issue may include community consultation, education and raising awareness of legislative requirements with the relevant industry sector; then after that, we may carry out one or more compliance campaigns to check compliance.

Figure 3. The EPA's regulatory response to environmental or human health issues



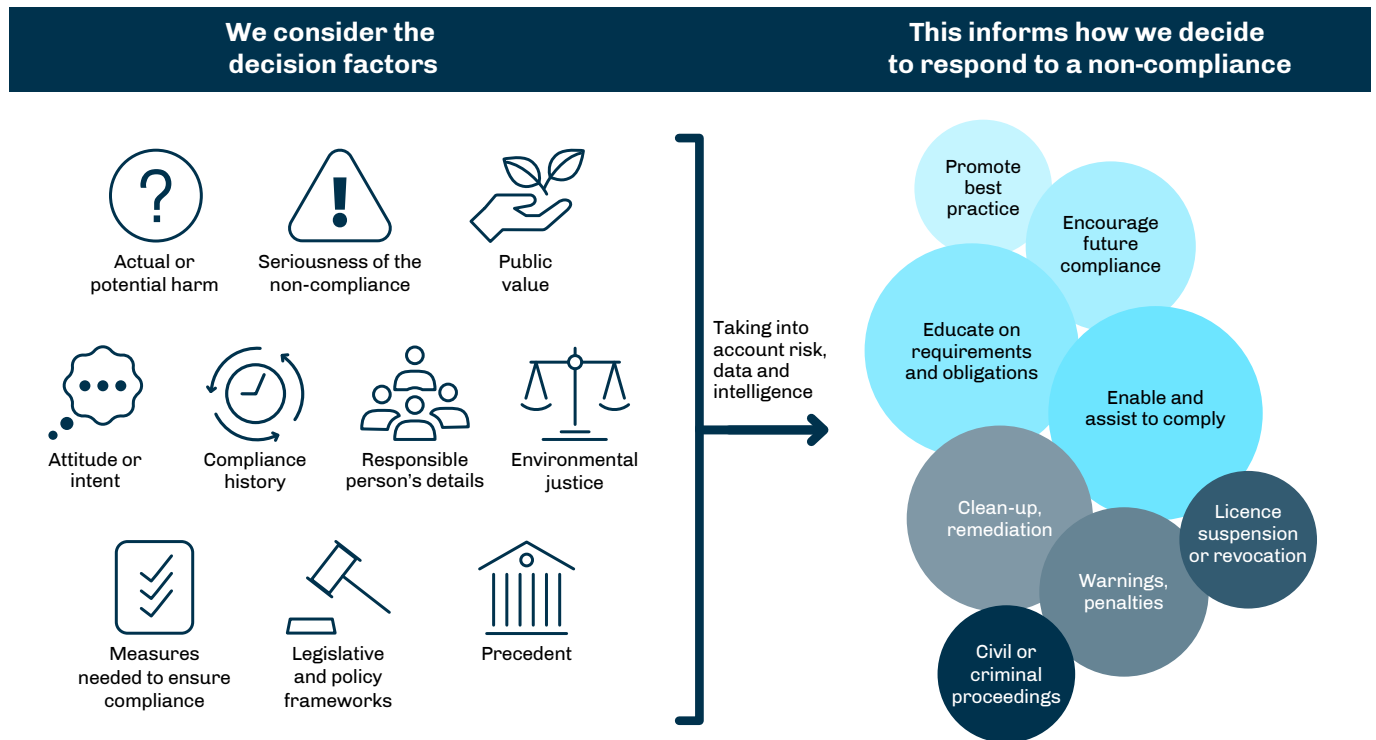
Examples of how we may respond to an issue:

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> • Financial incentives • Influencing land-use planning | <ul style="list-style-type: none"> • Remediate • Industry/place-based Pollution reduction programs | <ul style="list-style-type: none"> • Grants • Assist to comply |
| <ul style="list-style-type: none"> • Acts and Regulations • Training and accreditation | <ul style="list-style-type: none"> • Community Feedback • Roadshows | <ul style="list-style-type: none"> • Science • Regulatory reform |
| <ul style="list-style-type: none"> • Campaigns • Recognise cumulative improvements | <ul style="list-style-type: none"> • Awareness programs • Behaviour change | |

We consider the matters relating to an individual event or circumstance of non-compliance by an individual, business or organisation when deciding on what action to take (Figure 4). We are guided by our decision-making principles, we consider the relevant decision factors, and we take into account risk, data and intelligence, which informs our response. Our response will be fit for purpose depending on those individual circumstances and may result in more than one regulatory action or tool used. For example, our response to a non-compliance may include requiring clean-up action and education on preventing similar events in the future.

Our decision-making

Figure 4. The EPA's regulatory response to an individual person, business or organisation



Regulatory tools and actions

The EPA will encourage and promote good practices to improve outcomes. We enable and assist the regulated community to meet the minimum requirements for compliance.

Sometimes the EPA needs to ensure compliance by using enforcement tools such as issuing a penalty notice. If necessary and fit for purpose, we take strong enforcement action.

Some of the diverse tools we use and actions we take under each element of our approach are described in the following sections of this

policy. Figure 5 provides an overview of these tools and actions. Not every tool available to the EPA is listed in this policy.

We may use more than one tool or action at the same time, in any combination or in any series (depending on the individual circumstances or the nature of environmental or human health issue). Some tools or actions may fit under multiple elements of our regulatory approach; however, they are described in further detail only once in the following sections of this policy.

Figure 5. EPA tools and actions

- Advice, promotion and advocacy
- Monetary benefit orders
- Financial assurances
- Risk-based licensing
- Levies
- Environmental improvement programs

- Legislation
- Legislative obligations
- Licences
- Control orders
- Duty to report
- Mandatory training
- Accreditation schemes
- Approvals
- Codes of practice

- State of the environment
- Environmental monitoring
- Inspections
- Audits
- Investigations
- Interviews
- Campaigns

- Notices, directions, orders
- Pollution reduction programs
- Formal warnings
- Official cautions
- Penalty notices
- Enforceable undertakings
- Stop work orders
- Varying, suspending or revoking a licence
- Prosecutions
- Court orders

- Sound science
- Aboriginal knowledge
- National forums
- Regulatory improvements
- Regulatory reform
- Co-regulate with local government and others
- Partner with research organisations
- Respond to emergencies

- Assist to comply
- Guidance
- Advisory letters
- Support responsible behaviours
- Share data and information
- Feedback from compliance campaigns
- Grants

- Providing information
- Education programs
- Awareness campaigns
- Guidance
- Help the public make informed decisions
- Roadshows
- Community groups
- Aboriginal knowledge
- Stakeholder survey
- 'Have your say' website
- Reports by the community



Require



As NSW's primary environmental regulator, the EPA administers key environment protection legislation. This is the agency's core role, and one that gives the EPA many responsibilities and functions. **Acts the EPA administers** are listed on its website.

We require compliance with certain obligations, including:

- obligations under legislation, regulatory instruments and licences
- duties
- mandatory training
- accreditation.

This Regulatory Policy applies to regulatory tools under all the relevant Acts and their associated regulations.

These tools allow the EPA to require the regulated community to comply with directions to act, environmental standards and limits, operating controls, competency standards, and monitoring and reporting requirements.

They help achieve better environmental and human health outcomes.

Examples of such tools are:

- environment protection licences
- pesticide control orders
- duty to notify of a pollution incident or contamination
- mandatory training and accreditation of individuals (e.g. dangerous goods drivers, pesticide users, radiation equipment users)
- Protocols under the Coastal integrated forestry operation approval (IFOA)
- private native forestry code of practice
- notices to provide information
- contaminated land preliminary investigation orders and management orders
- financial assurances under a contaminated land management order, an environment protection licence or a radiation management licence
- resource recovery orders.



Wilyakali Country, The rocky and red ochre soils of the outback desert plains, Broken Hill, NSW

Listen

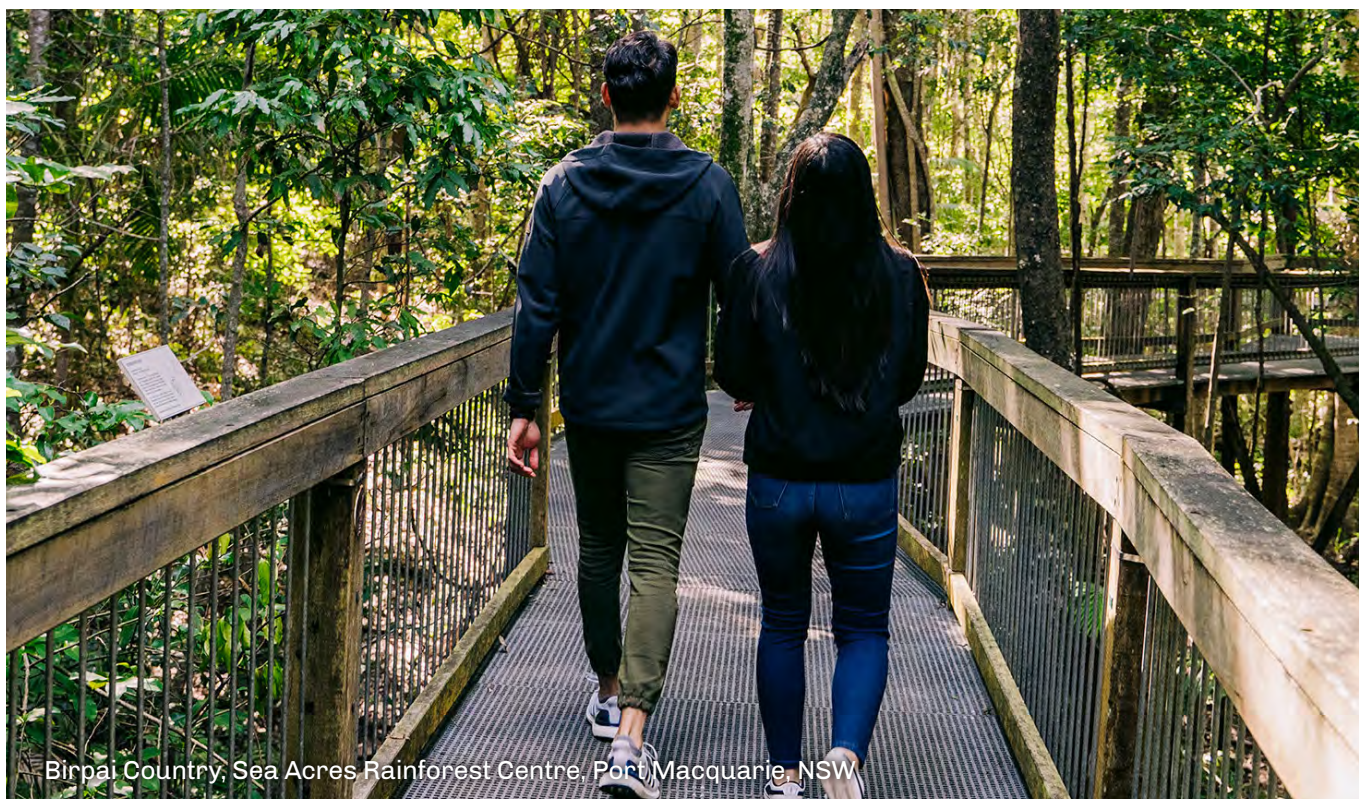


The EPA listens and acts on what it hears. It actively engages with businesses, the community and other government agencies, to understand the issues affecting them and the environment, and their ideas for addressing those issues.

The EPA then works with the affected parties to find and implement solutions. The EPA's **Charter of Engagement** outlines our commitment to everyone we work with and our guiding principles for engagement.

Engaging the community, industry and government

- We engage with community, industry and other government agencies (local, state and federal), including through advisory groups.
- We engage across sectors to help solve issues collectively.
- We listen to the views of local communities about local issues. We help communities engage with their industrial neighbours, key stakeholders and us on these issues through coordinating **community advisory groups**.
- We listen to and partner with Aboriginal communities on environmental and human health issues that matter to them and give them a genuine voice about how we respond to issues. We consider Aboriginal knowledge when seeking solutions to help protect the environment.
- We seek feedback from the community, industry and government including through the **EPA stakeholder survey** and **EPA roadshows**.
- We use a variety of engagement methods to listen to the community, industry and government, including face-to-face and digital. We have a dedicated '**Have Your Say**' website so we can listen to feedback about our specific initiatives.
- We make ourselves available to listen to and respond to the concerns of the community, industry and government.
- We encourage the community, industry and government to report environmental incidents to us.



Birpai Country, Sea Acres Rainforest Centre, Port Macquarie, NSW

Educate



The EPA educates and informs the community, industry and government to help them understand the EPA's role in protecting the environment and their own roles and responsibilities to protect the environment and human health, and empowers them to make decisions to improve their own environment.

Providing information

We communicate with people using channels that meet their needs and make our information accessible, taking into account the diverse nature of the community.

We provide information to:

- inform and empower others to participate in the decision-making process on environmental and human health matters
- be transparent about our regulatory activity and performance.

Awareness and education

We provide education and awareness to:

- increase compliance and understanding of the potential harm to the environment and human health from non-compliance
- encourage improvement in environmental management practices beyond compliance to restore and enhance the environment
- address widespread non-compliance or misunderstanding of requirements through education or awareness programs and promote community involvement in decisions about environmental matters
- provide guidance and other tools to help make meeting requirements easier, and be available to answer questions
- raise awareness and educate the public and public land managers and our co-regulators on environmental and human health issues
- raise awareness of risks to the environment and human health to influence changes in behaviour, social norms and help the public make informed decisions. This includes undertaking education campaigns.





The EPA enables the people of NSW – industry, organisations and the community – to act to protect, enhance and restore the environment. We do this through supporting the public, sharing information, and giving assistance and grants.

Supporting the public to protect the environment

We enable the community to protect the environment by:

- informing them about what we do and how we regulate
- sharing information about risks to the environment and human health
- enable the community to report environmental matters to our dedicated Environment Line
- helping people to make informed decisions and behave responsibly.

Sharing information

We share data and information with the community, co-regulators, government organisations and research bodies to support activities that protect the environment and human health.

We do this via mechanisms such as the EPA website, EPA's public registers and SEED, the whole-of-government environmental data repository. We collaborate with other environmental regulators through HEPA (Heads of EPAs) and AELERT (Australasian Environmental Law Enforcement and Regulators Network).

Helping improve environmental performance

We protect the environment by assisting the regulated community to comply with environmental protection requirements and promoting ways to achieve better environmental and human health outcomes. For example, we:

- consult and engage with the regulated community and industry about changes to legislation or regulatory practice

- deliver assistance programs
- work with industry on changing regulatory requirements – including resources, workshops and industry forums
- share case studies and insights to encourage voluntary compliance and best practices (such as working with champions) and promote practices that lead to good environmental outcomes
- partner with others to test innovative approaches to improve outcomes
- provide feedback from regulatory activities (such as compliance campaigns and audits) to the regulated community to help them understand how to improve their environmental performance
- issue resource recovery orders, which are to minimise harm from the re-use of resources under a resource recovery exemption.

Advisory letters

We use advisory letters to remind or inform a person, business or organisation of their need to meet their legal obligations and to avoid potential breaches.

Grants

We provide grants to a person, business or organisation to fund certain kinds of projects that provide public value. This includes:

- to assist or advance environment protection (POEA Act (s 8)). For instance, we provide grants to community groups to help them protect the environmental or human health – for example, by developing guidelines, standards and policies for environment protection or by monitoring the state of the environment, outside of their legislative obligations
- to enable community groups to obtain technical assistance to help make public submissions or for other environmental protection matters (POEA Act (s 8)). This may allow the community to take part in the decision-making process on environmental protection matters.



To achieve outcomes beyond what direct regulation allows, the EPA uses influence and advocacy. Influence includes providing advice, financial incentives, information sharing and collaboration. As an advocate, the EPA works with communities, industry, co-regulators and other government agencies to ensure their decisions and behaviours take into account the protection of the environment and human health.

The EPA voice in land-use planning

The planning and development assessment process under the *Environmental Planning and Assessment Act 1979* plays a vital role in preventing or reducing environmental impacts. Our role is to advise the government on recognising the importance of environmental protection in the planning and development assessment process and integrating our licensing processes with it (POEA Act (s 7)).

In participating in land-use planning, the EPA:

- promotes ecologically sustainable development
- takes a risk-based approach to ensure our advice and recommendations help decision-makers to require the right safeguards to protect, restore and enhance the environment and to protect human health
- may promote a place-based approach to ensure cumulative impacts or sources of potential harm on the environment or human health from activities that are specific to a place are considered
- will recommend refusal of a development application if we consider the potential environmental and human health impacts cannot be sufficiently mitigated.

More detail on [planning requirements](#) is available on the website of the [Department of Planning, Industry and Environment](#).

Financial incentives

We use market-based instruments and other economic incentives to achieve better outcomes

for the environment and human health.

They harness market forces to influence behaviour and are consistent with the polluter-pays principle. Market-based instruments are particularly useful in managing complex pollution issues, driving incremental improvements over time and managing the cumulative impacts of pollution from multiple sources. Some examples are listed below.

Load-based licensing scheme

This encourages cleaner industrial production through the polluter-pays principle. It requires some of the EPA's licensees to pay additional fees based on the pollutant load they emit: the more they pollute, the more they pay.

The scheme provides an economic incentive for licensees to reduce their emissions and improve their environmental performance beyond what they are required to do to comply with their licence conditions or regulations alone. It is one way we control, reduce and prevent air and water pollution. Fees depend on the amount of assessable pollutants and the types of pollutants that an activity releases into the environment, as well as the conditions in the receiving environment.

Risk-based licensing system

This encourages businesses and organisations with an environment protection licence under the POEO Act to improve their environmental performance and reduce their environmental risk. They receive an appropriate level of regulation based on the level of risk posed by the activities that take place at their premises.

Under this system, licensees who perform well and minimise their environmental risk are rewarded with reduced fees, while poor performers pay greater fees as an incentive to improve performance. We inspect more often and focus our regulatory effort on businesses and organisations with a higher risk level.

Environmental improvement programs

We encourage the use of environmental improvement programs (EIPs) by providing a financial incentive to achieve improved environmental outcomes.

When applied to an environment protection licence, an EIP can improve the licensee's environmental management score under our risk-based licensing system, which can reduce licence administration fees.

A program is only considered an EIP if it will achieve improved environmental outcomes above what is required under the POEO Act or regulations.

A business can seek to proactively improve their environmental performance by completing works under an EIP. EIPs are attached to their licences and can include works to reduce pollution or to implement sustainability or cleaner production techniques. Because EIPs are applied to a licence they are legally enforceable.

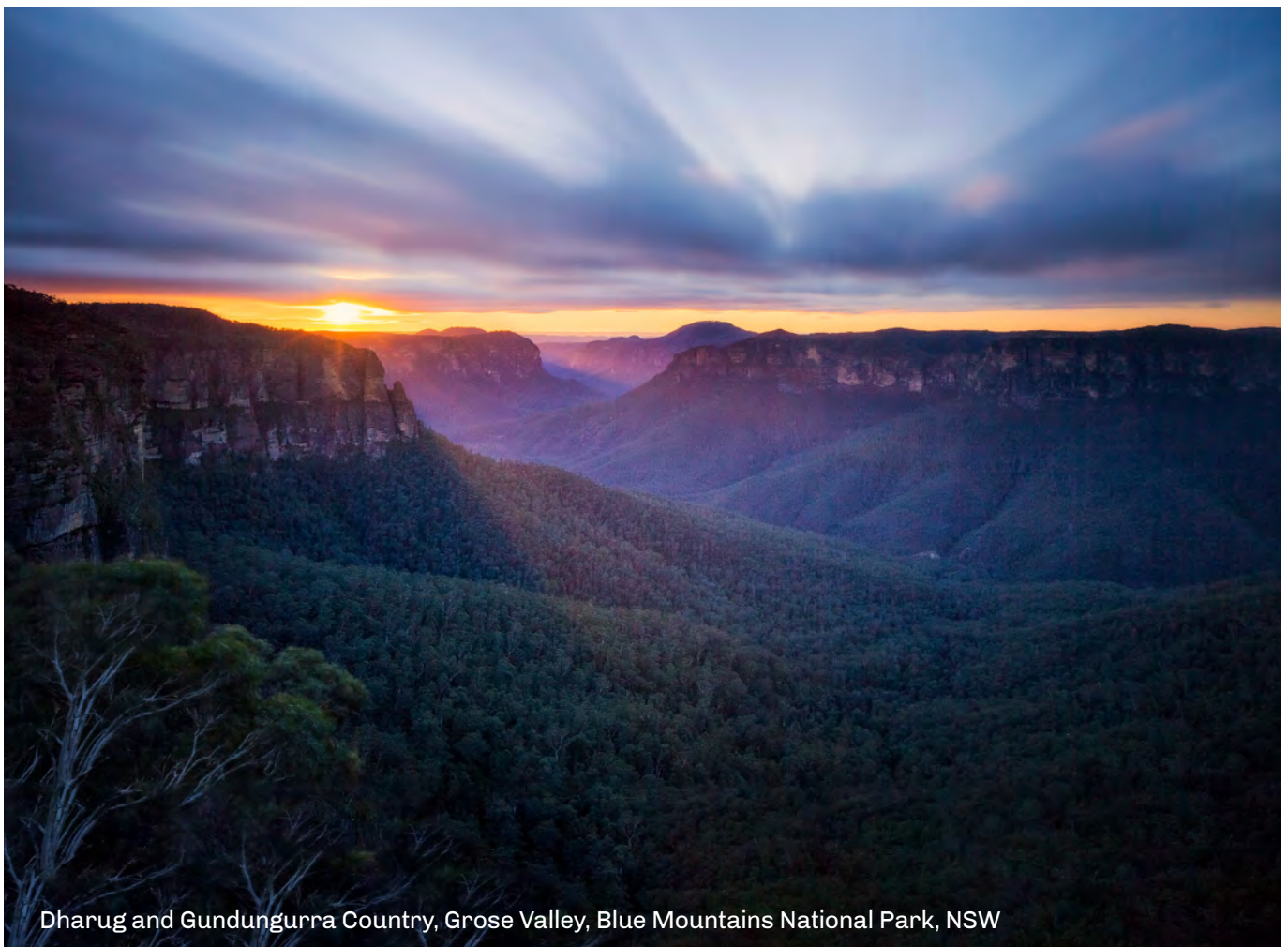
Financial assurances

We may require a financial assurance to safeguard against a future environmental

liability. A financial assurance is a type of security that provides us with access to money to carry out works in cases where the responsible party doesn't complete them. We can require one under a contaminated land management order or an environment protection or radiation management licence. The EPA may choose to require a financial assurance if it is satisfied that the condition is justified having regard to certain matters, including the degree of risk of environmental harm, the remediation work needed and the environmental performance of the regulated person or business.

Sponsorship

We sponsor activities and events to help us share information and knowledge with stakeholders, recognise achievements, support best practice and work constructively with business and the community.



Dharug and Gundungurra Country, Grose Valley, Blue Mountains National Park, NSW



The EPA acts to solve existing problems and prevent possible future problems. It investigates environmental issues, enforces compliance and responds to emergencies. The EPA engages with stakeholders, educates industry and the general community, collaborates with co-regulators, and works to continually improve the regulatory framework.

Regulatory improvements and reform

We lead reviews of regulatory frameworks to improve environmental protection in NSW and influence national forums through our regulatory reform work. We are committed to continually improving our regulatory framework so that we can respond to current and emerging issues, which allows us to protect the community and the environment.

Our regulatory framework consists of legislation, legal instruments, policy approaches and programs:

- legislation – we provide advice for the development of clear and appropriate laws where they are needed to protect the community and the environment
- policy and procedures – we develop policies and procedures that ensure we regulate in a consistent, effective and efficient way
- programs – we develop programs and innovative regulatory approaches.

Working with others to regulate

We work with local government to help us engage with local communities. Where we have a co-regulatory role under legislation, we support local government capability through training, regulatory and scientific advice, and developing and sharing guidance. We conduct shared campaigns for regulatory issues and work on environmental problems together.

We partner with other regulators to reduce regulatory overlap, share information and intelligence, and work together on environmental solutions.

We collaborate with other regulators on leading regulatory practice, through forums such as Heads of EPAs (HEPA) and the Australasian Environmental Law Enforcement and Regulators Network (AELERT).

We participate in national regulatory forums to agree on national objectives that are incorporated into NSW regulatory frameworks, such as those for pesticides, radiation and dangerous goods.

Sound science

We obtain, require, commission, promote and encourage the latest science and research to help solve environmental problems and regulatory challenges, and to ensure we are using evidence as the basis for our decisions and actions.

- We carry out or commission research on new and emerging problems or current issues.
- We capture and analyse data from environmental monitoring, compliance monitoring, Aboriginal cultural knowledge, and industry and community insights, to inform our decisions, regulatory improvements and environmental solutions.
- We partner with external science experts, research organisations, universities and other state, territory and national agencies when the expertise lies with one of those organisations that can inform our regulation, or where we have joint expertise and can learn from each other.
- We apply scientific rigour to proposed new technologies to be used by industry.
- We obtain and consider scientific advice when undertaking regulatory reform.
- We build capabilities in the science and technical fields within the EPA and more widely with co-regulators and industry to improve outcomes.
- We provide opportunities to test new ideas for improving environmental outcomes.

Considering a placed-based approach

We may act to consider cumulative impacts on a place – the impacts to the environment, ecosystems and the community in that place. If we take a place-based approach we will consider the specific circumstances of that place and engage the community, including the Aboriginal community, to understand the local context and to share in the decision-making process.

There can be cumulative impacts or sources of potential harm to a system such as a water catchment or an airshed from numerous and diffuse sources and pathways. We will consider how we can identify risks and address harm or potential harm at a system level using sound science and Aboriginal knowledge.

Responding to incidents and emergencies

We play an active role under the NSW Emergency Management Arrangements to strengthen community and environmental resilience to incidents and major emergencies such as fires, explosions, spills, radiation incidents, extreme weather events and emergency clean-up of hazardous materials. We take a comprehensive approach to emergency management that covers prevention, preparedness, responses and recovery.

Our role is to make sure impacts to the environment and human health are minimised or avoided.

Incident response and preparedness

We protect the community and environment by helping to manage incidents that can cause actual or potential environmental harm. We provide specialist advice to emergency service organisations to minimise impacts to the environment. The EPA operates a 24/7 incident management capability.

Smaller incidents are generally managed by local government. The EPA may be involved where we regulate that industry or where the risks of harm require further expert assistance. Our response level may depend on:

- the type and quantity of the materials exposed to the environment
- the sensitivity of the local environment
- public health and community needs.





The EPA monitors both the state of the environment and regulatory compliance. This allows us to track the development of existing issues and identify both emerging issues and opportunities to prevent harm. We can then frame appropriate policies and courses of action.

Monitoring the state of the environment

To protect the environment, we must be informed about the state of our environment and industry performance. We monitor the environment to understand and inform the community on changes in environmental indicators over time.

We use monitoring to:

- guide our actions and inform our regulatory priorities and strategic programs
- keep the community informed
- identify environmental issues, non-compliance and encourage improved practices
- set emission limits and other outcomes
- support emergency services during incidents.

We require some of the regulated community to undertake environmental monitoring. We partner with other agencies and research bodies to undertake monitoring and also monitor the environment ourselves.

We prepare the **NSW State of the Environment** report every three years to keep the community updated on the health of our environment (climate, air, land, biodiversity, water and marine environments). The report provides credible, robust statewide environmental information that can be used for developing environmental policy, making relevant decisions and managing the state's environmental assets. It provides a snapshot (including status, trends and challenges) of the main environmental issues facing NSW.

Tools to monitor compliance and environmental issues

We monitor compliance with legislation, licences and other requirements using a variety of compliance tools, including inspections, audits and investigations. We conduct research, data analysis and intelligence, and use science and data we access from others such as research bodies, citizen scientist, and other government agencies, to monitor environmental issues.

Reports and notifications

We receive reports of potential non-compliance and environmental issues from the community, industry and other regulators. There are requirements under environment protection legislation for the regulated community to report on pollution incidents and contamination. This informs us about pollution incidents and potential risks, so we can act to protect the environment and human health.

Inspections

We use site inspections to collect information and monitor compliance. Where appropriate we also provide information and guidance to assist with compliance.

During inspections we ask questions and provide information, and may also collect samples, view records and take photographs.

Audits

We use compliance audits to assess whether regulatory requirements are being complied with and to improve environmental performance. Audits can be undertaken on a single premises or audit programs can focus on a specific industry or activity.

An audit is a systematic independent process in line with ISO 19011:2018 *Guidelines for Auditing Management Systems*.

The aim of strategic environmental compliance and performance audit programs is to encourage operators and industry sectors to improve their environmental performance. These programs combine an assessment of compliance with a review of best environmental management practices.

Monitor

We generally make audit findings available in audit reports on our [website](#) and will engage with the relevant industry sectors in audit findings.

Campaigns

We use campaigns to monitor environmental issues that may be widespread or emerging. These campaigns involve inspections, surveys, audits, investigations and education. They give us an opportunity to raise awareness about our requirements and best practices.

We use the information gained from these campaigns to develop effective interventions, such as behaviour-change programs, enforcement actions and the development of improved guidance.

We also undertake joint programs or campaigns with other government agencies and local government.

Investigations

To protect the environment and human health we investigate alleged incidents of actual or potential harm and, where appropriate, take

regulatory action. During an investigation, we gather evidence to establish whether an offence has occurred and, if it has, how serious the offence is and who may be responsible.

This evidence can be in various forms including documents, data, information and records, videos, photographs, samples, statements and records of interview.

Under the environment protection legislation, we can issue various investigative notices and use powers to obtain information during an investigation and in the administration of the legislation.

We may ask a person or business to provide an explanation for an alleged breach and to describe any circumstances that may justify it. We may ask this in an interview during an investigation or in a 'show cause' letter, which we send towards the end of an investigation.

Read more about our investigative tools and powers under the POEO Act in the [Powers and Notices Guideline for Authorised and Enforcement Officers](#).



Kamilaroi Country, EPA Officers conduct inspection in Narrabri Gas Project, Narrabri, NSW



The EPA will take enforcement action to compel people, businesses and organisations to meet their legal obligations when they have not complied with requirements. Enforcement is intended to deter offenders from re-offending and to deter other parties from committing similar offences. It also shows the community that the NSW Government is serious about protecting the environment and human health.

Enforcement may include:

- compelling the person, business or organisation to address the non-compliance
- penalising the person, business or organisation with a fine or other penalty, or commencing action against the person or organisation in court.

Sometimes the EPA needs to take hard action against those who cause, or may cause, significant harm to the environment or human health or those who are not willing to change their behaviour to prevent or reduce harm.

Actions to remedy harm or prevent potential harm

Notices, directions and orders to control or prevent harm

We use notices, directions and orders to address environmental harm or harm to human health, or to prevent potential harm from occurring. These notices, directions and orders include:

- clean-up notices, which specify clean-up action to be taken in relation to a pollution incident. In certain circumstances, such as when there is an immediate risk to the environment or human health from the pollution incident, we may issue a verbal clean-up direction followed by a written notice with the details
- prevention notices, which specify actions that must be taken, or must not be taken, to ensure an activity is carried on in an environmentally satisfactory manner such as installing or repairing equipment

- prohibition notices (under the POEO Act) and stop work orders (for forestry activities), which can direct a person or business to stop doing an activity. The EPA can recommend a prohibition notice to the Minister who makes the decision
- noise control notices and noise abatement directions, including to address industrial noise and noise from vehicles
- compliance cost notices, to recover costs and expenses related to clean-up notices and actions, prevention notices, prohibition notices or noise control notices
- improvement notices (for dangerous goods) and remediation orders (for forestry), which can be used to remedy harm
- contaminated land preliminary investigation orders, voluntary management proposals, management orders and ongoing maintenance orders, which are used to investigate or manage contamination
- directions to public authorities under section 12 of the *Protection of the Environment Administration Act 1991*
- directions to deal with dangerous situations involving radiation.

Pollution studies and pollution reduction programs

We protect the environment by requiring some businesses that have an environment protection licence to complete pollution studies and pollution reduction programs (PRP). These initiatives help us understand and reduce environmental harm which may be caused by the businesses.

We may require a licensee to complete a pollution study about the environmental impact(s) of their activities on the receiving environment (air, water, land, sensitive receivers in the case of noise and the appropriate management of waste).

We may also require a licensee to develop, submit and comply with a PRP. These programs are intended to achieve improved environmental outcomes within a specified time frame.

PRPs aim to prevent, control, abate or mitigate pollution from regulated activities at licensed premises through a program of actions. These include carrying out works or installing plant and equipment.

PRPs may be added to a single licence or added to a number of licences to address a broader issue.

Varying a licence or approval

Licence conditions are in place to protect the environment and human health and relate to the type and scale of activity authorised or controlled by the licence. We may choose to vary a licence or approval under the legislation we administer by making changes to the conditions attached to it. We may also do this to respond to changes in the activity, to legislative changes or to risks to the environment or human health. A variation may be necessary to ensure the licence or approval is more appropriate to recent activities, where new issues or scientific knowledge has emerged, or to achieve the desired outcome where current requirements are no longer fit for purpose.

Mandatory environmental audits

Under section 175 of the POEO Act, the EPA may require a mandatory environmental audit. Such audits are aimed at improving the environmental performance of a licensed operation. The licence holder must engage a qualified environmental auditor to undertake a mandatory environmental audit of their operation.

Civil enforcement proceedings

Under Chapter 8 of the POEO Act, the EPA may take court action to remedy or restrain a breach of the POEO Act or regulations and certain other environment protection legislation. Similar provisions exist under other legislation enforced by the EPA. Under section 253 of the POEO Act, the EPA can also bring proceedings to remedy or restrain a breach (or a threatened or apprehended breach) of any other Act, or statutory rule, if that breach is causing or likely to cause harm to the environment. The aim of civil enforcement is not to punish but to restore compliance with

the law. For example, it may include the court making remediation orders.

Warnings, penalties and prosecutions

Formal warnings

We sometimes issue formal warnings when harm could have been avoided or the opportunity exists for a person, business or organisation to quickly achieve voluntary compliance with legislative requirements.

In these cases, the seriousness of the noncompliance is usually at the lower end of the scale and we consider further enforcement action is not necessary at the time. We can escalate our response if the issue is not addressed.

Penalty notices and official cautions

We may issue an **official caution** if the offence is one for which a penalty notice may be issued. A caution, rather than a penalty notice, is used if we have reasonable grounds to believe that an offence has been committed and that a caution is appropriate in the circumstances, with regard to the factors set out in the Attorney General's Caution Guidelines under section 19A(3) of the *Fines Act 1996*. We may use an official caution in situations where the offence is minor or was not knowingly or deliberately committed.

Penalty notices are fines issued for breaches when the facts are clear and a penalty notice is likely to deter the person, business or organisation from further breaches. There are penalty notice offences prescribed in the environment protection legislation. Issuing a penalty notice allows the person served with the notice to pay a fine rather than have the alleged offence dealt with in court. The person may choose not to pay the fine and instead elect to have the matter dealt with in court. Penalty notices are designed primarily to deal with one-off breaches that can be remedied easily.

Enforceable undertakings

Enforceable undertakings are one of the tools we use to protect the environment and are designed to improve environmental outcomes and prevent future breaches.

They are voluntary and legally binding agreements between us and a person, business or organisation alleged to have breached environmental legislation.

Enforceable undertakings are a:

- more serious regulatory response than a warning letter or penalty notice
- less serious regulatory response than prosecution (where it is possible to incur a criminal conviction).

Our **Guidelines on Enforceable Undertakings** provide further information on proposing, negotiating and monitoring enforceable undertakings to produce the best outcomes.

Suspend or revoke a licence or approval

We may suspend a licence or approval. This means the person or business can no longer lawfully carry out the activities authorised in the licence or approval until the conditions specified in the suspension have been met or we remove the suspension. We may revoke a licence or approval, permanently cancelling the authorisation to carry out activities. Sometimes we impose conditions to prevent ongoing environmental harm after the activity stops – for example, to rehabilitate land polluted by the activity or to manage contamination.

Prosecutions

We may prosecute a person, business or organisation. We will target serious non-compliance and repeat offenders and may, where appropriate, pursue custodial sentences against individuals for environmental crime.

Prosecutions are at the most serious end of how we respond to alleged breaches of environment protection legislation to protect our community and environment. Where a person, business or organisation is prosecuted by the EPA in court, they may:

- be convicted for environmental offences
- need to pay fines, penalties, compensation and costs
- ordered to restore and prevent harm to the environment or publish details of the offence.

When we are deciding whether prosecution is the appropriate response we consider the factors set out in the **EPA Prosecution Guidelines**, this Regulatory Policy and the alternative regulatory actions available to us.

Environment protection legislation provides several sentencing options a court may consider, including imposing fines and custodial sentences for environmental offences. In some cases a court will have the option to impose orders on an offender – for example, to carry out work to prevent or control harm to the environment as a result of the offence, or to make good any environmental damage caused.

Fines, penalties and court orders

Often the courts will decide a penalty is the most appropriate response to a breach. A penalty's severity will depend on the nature of the offence.

There are monetary penalties (fines) for offences under environment protection legislation, and some more serious offences also have potential prison sentences for individuals. Many offences under environmental legislation impose a higher fine on corporations than on individuals. Some offences are 'continuing offences', which means there is a daily penalty that can continue to accumulate for ongoing breaches.

A fine or prison sentence may not always be an adequate punishment or deter the offender. We can also request a court to consider an alternative sentencing option. These types of **court orders** may be in addition to, or instead of, a fine or prison sentence.

Monetary benefits orders

We may apply to the court for a **monetary benefits order** as part of sentencing, to ensure an offender does not profit from an offence.

Using this regulatory tool, an offender can be ordered to pay an amount of money equal to the amount they gained from an offence.

The EPA may choose to apply to the court for a monetary benefit order after considering the nature of the offence, the actual or potential environmental harm, and the environmental performance of the offender and industry.

Procedural fairness

Procedural fairness means acting fairly in our regulatory decision-making; the fairness of the process of how we make a decision.

More information about when the EPA offers procedural fairness is provided in the **EPA's Powers and Notices Guideline for Authorised and Enforcement Officers** under the *Protection of the Environment Operations Act 1997*.



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ISBN 978 1 922447 96 8

EPA 2021P3444

December 2021

Cover: Wiradjuri Country, Lake Lyell, Lithgow, NSW.

The photos in this Regulatory Policy have been provided by John Spencer, iStock and Destination NSW.

The EPA is on a journey to inclusiveness of Aboriginal people and cultures and notes the names of traditional Country may be contestable, should not be regarded as fact and have been used to demonstrate the EPA's commitment.

