

# Compliance and Enforcement Policy

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ENVIRONMENT PROTECTION AUTHORITY

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The Environment Protection Authority acknowledges and pays respect to Tasmanian Aboriginal people as the traditional and original owners and continuing custodians of this land and acknowledges Elders past and present.

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## Introduction and Purpose

The Environment Protection Authority (EPA) is an independent statutory authority that regulates activities that may impact environmental quality and promotes sustainable environmental management. The EPA's main function is to administer and enforce the *Environmental Management and Pollution Control Act 1994* (EMPCA), and other relevant policies and laws to manage and mitigate the risk of environmental harm.<sup>1</sup>

The EPA investigates and responds to pollution incidents as appropriate that may occur across Tasmania and within State waters.<sup>2</sup> The EPA is committed to regulating activities and monitoring compliance in a fair and consistent way, to achieve our goals of clean air, water and land, and an environment that does not compromise community and human health. The EPA also promotes sustainable development of natural resources for the needs of future generations.

The Compliance & Enforcement Policy sets out the approach and principles applied to compliance and enforcement work undertaken by the EPA. Compliance with the law is not a matter of choice - it is a requirement. The EPA has a range of options available to promote and support compliance, to deter and penalise offenders, and to remediate damage caused to the environment.

Compliance and enforcement work is relevant to all organisational divisions of the EPA. It is a continual process of assessing risks and engaging with industry, stakeholders, and the public to improve environmental outcomes.

### Definitions

**Compliance:** Adhering to legal and regulatory requirements and obligations set out in law. An individual, business or organisation must comply with the law and should regularly assess their performance, activities, or outputs to eliminate the risk of non-compliance.

**Enforcement:** The response to an offence under the law. Enforcement involves acting with authority and within statutory powers to prosecute and apply sanctions to compel an individual, business, or organisation to comply with their legal requirements.

## Principles

As a contemporary and responsive regulator, all EPA compliance and enforcement efforts are guided by the law and the following principles.

### Transparency

The EPA will be as open and transparent as practically and legally possible about the expectations, priorities, decisions, actions and outcomes for our compliance and enforcement efforts.

### Proportionate Responses

Responses to non-compliance will be proportionate to the risk posed to the environment, the culpability of the offender, the achievement of compliance outcomes and priorities, and have due regard to public interest.

### Equity and Fairness

In determining what action to take, the EPA will be impartial and equitable, mindful of the legal principles of procedural fairness.

### Professionalism

EPA staff will conduct themselves ethically and in accordance with the Tasmanian State Service Code of Conduct. Staff will engage respectfully with the regulated and broader community.

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<sup>1</sup> A list of relevant [environmental legislation and policies](#) is available on the EPA website.

<sup>2</sup> For EPA powers in respect of marine pollution see the *Marine-related Incidents (MARPOL Implementation) Act 2020*.

## Compliance and Enforcement Approach

The EPA applies a responsive and risk-based approach to support compliance with legal obligations under environmental legislation and to deter non-compliant behaviour. This approach consists of integrated actions to educate, support, monitor, investigate, and enforce compliance, to continually reduce risk and improve performance and environmental outcomes. See Figure 1.

When compliance concerns are raised, the EPA will engage with the person responsible and assess the risks and potential for environmental harm to determine the appropriate course, which may involve multiple, simultaneous, or staged response actions.

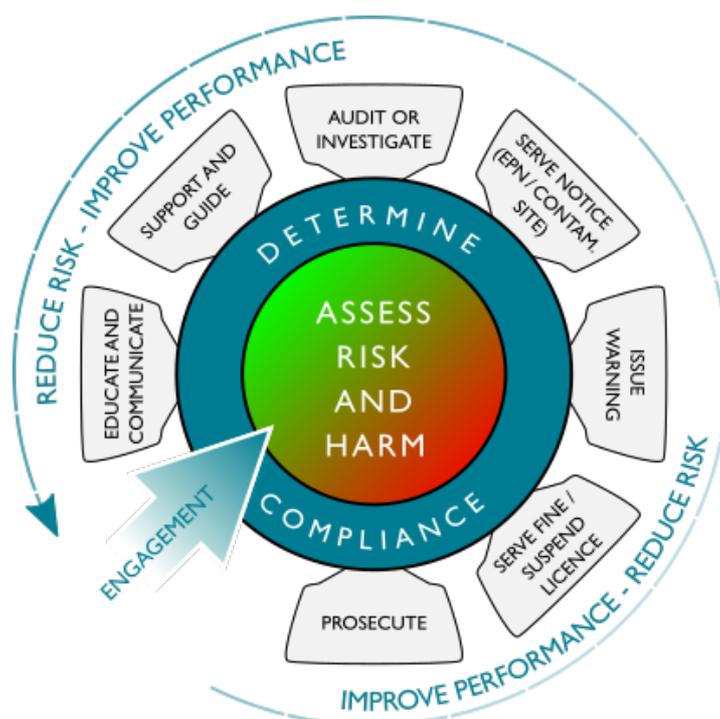


Fig 1: The EPA Compliance and Enforcement Model

### Risk-based Response

The EPA will prioritise its compliance efforts using a risk-based assessment.

Risk is characterised in terms of the likelihood of an event occurring, and the resulting harm to the environment or human health from that event. Harm is assessed in its broadest sense, not just the direct impacts. For example, breaches of administrative requirements may seem like minor matters but if they are ignored the ability of the EPA to properly regulate activities is undermined.

The EPA considers the following factors when assessing risk:

- The sensitivity of the local environment;
- The nature of the pollutants involved;
- The controls in place to prevent or reduce harm to the environment; and
- The compliance history of the person or regulated entity.

## Supporting Compliance

Most of the regulated and broader community seeks to comply with the law and does not intentionally cause environmental harm. The EPA uses the following tools to encourage lawful, environmentally responsible behaviour.

### Education and Communication

The EPA provides advice and guidance documents to support compliance and educate the community and regulated entities about their responsibilities and how to consider environmental outcomes in their business planning and operational procedures. Guidelines and fact sheets are available on the EPA website under the relevant topics.

Staff at the EPA may be able to provide advice when requested on regulatory matters and general guidance on the duty to prevent harm or to refer your enquiry to the appropriate agency. General enquiries can be made by emailing the EPA at [enquiries@epa.tas.gov.au](mailto:enquiries@epa.tas.gov.au) or see the EPA website for [further contact information](#).

### Statutory Instruments

There are mechanisms under EMPCA and other legislation for the EPA to set conditions or restrictions on the conduct of environmentally relevant activities. Some examples of these are environmental conditions included in permits for land use or development, environmental licences (for finfish farming), environment protection notices, and relevant authorities under the *Environmental Management and Pollution Control (Waste Management) Regulations 2020*.

The conditions that the EPA imposes in these instruments take into account relevant state and national standards, guidelines, and policies, as well as best practice environmental management. This allows the EPA to maintain a consistent regulatory approach across similar industries.

A breach of a condition or restriction imposed by the EPA is an offence that may be prosecuted. This will be clearly communicated in writing with or within the instrument imposing the condition. The EPA will explain what the conditions mean and how to comply with them during the initial assessment and throughout its dealings with the person responsible as may be required.

### Management Plans

EPA-regulated entities are often required to prepare an Environmental Management Plan (EMP) under some statutory instruments. These are strategic, forward-looking, or on-going plans for environmental management of a regulated activity. EMPs assist the regulated entity to put in place systems and processes to mitigate the risk of non-compliance and self-monitor compliance within their organisation.

Other specific management plans may also be required for problematic pollutants (such as dust, noise, or effluent) or to manage specific issues (such as fire or wastewater) if identified as a particular risk at that site. Once approved, management plans must be complied with and form part of the conditions of the instrument.

## Monitoring Compliance

Monitoring for compliance provides the EPA with information on the conduct of regulated activities or pollution incidents. This allows the EPA to support the regulated community and to detect non-compliant activities.

### Regular Contact and Reporting

Regulatory staff in the EPA aim to foster positive professional relationships with regulated entities, involving an exchange of information to support and monitor compliance.

Where necessary, some of the conditions of statutory instruments will require the person responsible to regularly report the results of environmental monitoring or other information to the EPA. This allows the EPA to check compliance with any regulatory limits that were set and be alerted to potential risks to the environment and human health.

## Site Inspections

Site inspections are regularly conducted by the EPA to gather information about the activity, monitor compliance and retain a positive relationship and regulatory presence.

## Compliance Audits

A compliance audit is a systematic review of how a regulated entity is meeting their regulatory requirements and an opportunity to identify any non-compliance or areas of environmental performance that could be improved. The frequency of audits varies according to the risk posed by the activity.

## Complaints and Information from the Public

Everyone is encouraged to report offences or pollution incidents as soon as possible, either on the EPA's Pollution Incidents and Complaints Hotline (1800 005 171) or via the [EPA website](#).

The EPA will respond to these reports according to an assessment of the risk to the environment. If requested, the EPA must advise of the action taken, if any, to the person who made the report as soon as practicable.<sup>3</sup> Any person who is dissatisfied with how the EPA has handled a report or complaint is encouraged to discuss their concerns with the EPA or see the [EPA website](#) for further options.

## Investigations

To protect the environment and human health, the EPA may investigate the circumstances of any alleged environmental offence or pollution incident.

An investigation involves the gathering of evidence to establish the facts of the matter. It may include taking photographs and recordings, taking samples for scientific analysis, requiring documents or information to be produced, or taking witness statements and conducting interviews. Authorised officers have powers under EMPCA that can be used to assist investigations.<sup>4</sup>

## Show Cause Notice

If the EPA suspects that an offence has been committed, the person responsible may be sent a show cause notice. This notice invites the person to make a submission to the EPA explaining the circumstances of the incident and any mitigating factors, or to explain why enforcement action should not proceed.

If a submission is made within the time limit stated in the notice it will be considered amongst the other factors of the case before a decision is made regarding enforcement action. The EPA is not obliged to send a show cause notice before it takes enforcement action.

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<sup>3</sup> See section 61 of EMPCA.

<sup>4</sup> See section 20 of EMPCA for appointment of authorised officers. Part 7, Division 1 of EMPCA contains the specific powers of authorised officers. This is not an exhaustive list. There are powers under other environmental legislation that may be relevant to particular investigations.

## Enforcement Action

When an offence has been committed under the relevant environmental legislation the EPA is responsible for enforcing the law.

Before any enforcement action is taken the EPA will investigate the matter. **Any action taken is prefaced on being satisfied that there is reliable evidence capable of proving the offence to the relevant evidentiary standard.**

The EPA will consider the appropriate response to penalise and deter further offending, remove any commercial advantage gained by the offence, and outline steps to remedy any damage caused to the environment. One or a combination of enforcement actions will normally apply. Only in unusual circumstances will the EPA take no action.

## Assessing Which Enforcement Action to Take

The EPA has a number of enforcement tools. In deciding what action to take the EPA will consider:

1. **The nature of the non-compliance and the risk of harm** – including the relative seriousness of the offence, its actual or potential impact on the environment, public concern arising from the incident, how common the offence is and whether a deterrent is required to change behaviour.
2. **The culpability of the offender** – whether the offence was deliberate or accidental, any previous warnings or advice from the EPA or other agencies, and any prior offences or enforcement action.
3. **Any mitigatory factors** – such as whether the offender reported the incident promptly and took action to minimise any adverse impact on the environment.
4. **Public interest** – whether it is an appropriate use of EPA resources and delivers a fair outcome in all the circumstances.
5. **The EPA's strategic priorities** – as may be set from time to time.

Each matter will be considered on a case-by-case basis.

## Enforcement Tools

### Directions

Authorised Officers may give a person any direction reasonably required in connection with the administration and enforcement of EMPCA. A person can be directed to cease an activity or to take any necessary action to prevent environmental harm occurring. It is an offence to fail to comply with a direction.

### Formal Warnings

This is a written warning setting out the identified offence/s, the circumstances of the matter, and advising that the EPA will take no further action, including because corrective action has been taken. For any future incidence of similar offending the EPA will likely invoke stronger sanctions. There is no presumption that a warning will be given in the first instance.

### Remediation

The EPA has access to a number of legislative mechanisms to enforce remedial action where environmental harm has been, or is likely to be, caused. This includes:

- The issue of an environment protection notice, which may be used to require the person to take remedial or preventative action or to stop an activity altogether to prevent further harm or risk to the environment.
- The issue of a contaminated sites notice to investigate, remediate, or manage land that may be contaminated by a pollutant.

- Service of a litter abatement notice, to require the person to clean an area where litter has been deposited.<sup>5</sup>
- A remedial order sought from the court as part of criminal or civil proceedings.

In some circumstances the EPA may take action to protect or remediate the environment and can pursue the costs of that action against the person responsible.<sup>6</sup>

### Variation, Suspension, or Revocation of a Statutory Instrument

EMPCA requires an authority in the form of various statutory instruments to conduct certain activities. Where such an authority exists, there are usually mechanisms under EMPCA to vary, suspend or revoke it. The EPA may also use an environment protection notice to suspend operations temporarily or indefinitely.

Environmental licences (for finfish farming) may be cancelled or suspended if the holder of the licence commits a relevant offence (under section 42ZF of EMPCA). The EPA may also refuse to renew an environmental licence if such an offence has been committed or if the holder is not a fit and proper person to hold a licence.

### Infringement Notice

There are many offences prescribed under environmental legislation that can be proceeded with by way of an infringement notice being served on the offender. An infringement notice imposes a fine and a conviction for the offence will be recorded on the person's criminal record.

Information provided with the infringement notice will explain the nature of the offence/s and the process for payment. A person served with an infringement notice may elect to dispute the notice in court.

### Prosecution

Some environmental offences can only be pursued by laying a complaint before the court. The EPA also has the discretion to prosecute an offence instead of issuing an infringement notice and may do so where the infringement penalty does not adequately reflect the seriousness of the offence.

Environmental offences are prosecuted the same as any criminal complaint, and a person found guilty of an offence may have a conviction recorded and be subject to a fine or even imprisonment for some offences. The court may also make an order for the payment of costs associated with the investigation and prosecution.

Under some environmental legislation there are special penalties that the court must impose in addition to the sentence. A special penalty is expressed as a formula for calculating a punitive fine.<sup>7</sup>

### Civil Proceedings

Civil enforcement proceedings may be brought before the Tasmanian Civil and Administrative Tribunal where a person has engaged in conduct which breaches EMPCA, has refused to comply with a requirement under EMPCA, or has caused environmental harm. Proceedings may be brought to achieve various outcomes, such as an order to refrain from certain actions, to remedy a contravention of the Act, or to require payment of the costs incurred by the EPA to mitigate environmental harm.

## Media Releases

Outcomes of completed prosecutions will be publicly released on the [EPA website](#) and may also be published in the media. This includes identification of the offender (where legally possible), details of the offence, and the sentence handed down.

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<sup>5</sup> See section 35 of the *Litter Act 2007*.

<sup>6</sup> For instance, section 47 of EMPCA, in respect of non-compliance with an environment protection notice.

<sup>7</sup> For instance, regulation 5 of the *Environmental Management and Pollution Control (Environmental Licences) Regulations 2019* which imposes 1000 penalty units per tonne of exceeded limit, or section 54 of EMPCA which imposes a daily penalty for continuing offences.



ENVIRONMENT PROTECTION AUTHORITY