

Environment Protection Authority

Draft Regulatory Strategy

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This document is for public consultation



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An aerial photograph of a waterfall cascading over mossy rocks into a pool of water. The water is a deep, dark blue-green color, and the rocks are grey and brown with patches of green moss. The waterfall is on the left side of the image, and the pool is on the right. The text is overlaid on the right side of the image.

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 further state that this land always was and always will be Aboriginal land.





Our objectives

The NSW Environment Protection Authority (EPA)'s objectives are to:

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

Our objectives are found in section 6 of the *Protection of the Environment Administration Act 1991* (POEA Act).

Our commitment



We are committed to becoming a world-class regulator through:

- an **outcomes focus** – this means we focus on the impact of what we, industry and the community do, rather than just on setting and following rules. Focusing on impact is essential to making sure we are delivering public value by improving environmental and human health outcomes
- being **service-orientated** – bringing community, government, industry and other stakeholders together to solve problems, responding in a timely manner to requests, queries and incidents, and communicating clearly and respectfully with meaningful content
- a **learning mindset** – continuously developing and building expertise to improve how we regulate and tackle environmental and human health problems
- being **responsive and adaptive** – listening, identifying and responding to risks and opportunities to reduce or prevent harm using contemporary tools, technology and data
- being **purpose and people centred** – our purpose informs everything we do – healthy environments, economies and communities.

We are committed to continual improvement of our regulatory approach. We will make changes to improve our services and regulatory processes over time.

We will plan, carry out and then measure the success or otherwise of a change to ensure that it results in a better outcome.

Our purpose

Our purpose is to provide public value by improving outcomes for the environment and human health.

We are responsible for regulating using a suite of legislation which establishes a strong basis for environmental regulation that is outcomes focused, proactive and contains appropriate compliance mechanisms.

We continually review the legislation we administer to ensure it is relevant, appropriate and consistent, providing both business and the community with greater certainty regarding its application.

We use innovative and effective tools that combine enforcement and education, business and community partnerships and economic mechanisms, to address challenging environmental issues.

We aim to assess the greatest risks and address the biggest impacts to human health and the environment.

We focus our regulatory activities to achieve the best outcomes.



Scope of this strategy

This Regulatory Strategy sets out:

- our objectives and our commitments
- the principles that guide our work
- our regulatory challenges
- what we do and how we do it
- who we work with.

This Strategy is connected to the corporate EPA Strategic Plan and links to other important EPA policies, strategies and plans.



How the Regulatory Strategy fits into the big picture

Strategic Plan 2017 - 2021

New EPA Strategic Plan to be launched in mid-2021

Regulatory Strategy

Regulatory Policy

Regulatory Policy to be in-force from mid-2021. Will replace current Compliance Policy.

Prosecution Guidelines

New guidelines commenced in 2020.

Figure 1 - Context of the Regulatory Strategy

The Regulatory Policy sits under this Strategy and explains how we identify appropriate regulatory actions and apply an escalating regulatory response to an environmental issue or non-compliance based on relevant factors.

We use a range of approaches from education and influence to enforcement to protect the environment and human health.



We are guided
by the principles
of ecologically
sustainable
development

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Principles



We are guided by the principles of ecologically sustainable development, which applies to our work through provisions in the legislation we administer.

We apply the precautionary principle. Scientific uncertainty is not a reason for the EPA to not act to prevent harm or future harm to the environment or human health.

We act to safeguard inter-generational equity. We aim to ensure the environment is maintained or enhanced for the benefit of future generations.

We act to conserve biodiversity. We aim to protect and restore the quality of the environment for our native plants and animals.

We encourage businesses to include environmental factors in the cost of goods and services. Businesses should understand and properly consider the cost of minimising environmental harm is part of the cost of producing goods and providing services.

We apply the 'polluter pays' principle: those who generate pollution and waste should pay for it.

We apply a risk-based approach to regulation. This helps us make informed decisions and focus our regulatory activities on the biggest risks to the environment and human health.

We use evidence as the basis for our decisions and actions, and to help solve environmental problems and regulatory challenges.

This is informed by sound science – research, environmental monitoring, technical expertise, partnering with other research bodies, the community, government and experts.

We use intelligence-led regulation, based on data and insights from which we draw to inform our regulatory policies, programs and actions.

This helps us focus our efforts on current and emerging risks and opportunities to achieve the best possible outcomes.

Challenges

As the state's primary environmental regulator, we are faced with complex issues that span local, state and national boundaries. We will continually adapt our approach to these regulatory challenges in order to achieve the best possible outcomes for the people of NSW and the generations to come after us.

Protecting human health

The environmental issue

Human health and wellbeing are linked to the state of our environment. The quality of our air, water, and surroundings, as well as what makes up our food and the built environment all have an impact on our physical and emotional health. Many factors can pose a risk to human health, such as exposure to physical, chemical, biological, and radiological contaminants in the environment.

The regulatory challenge

Protecting human health is a role of the EPA that is shared with our partners in the health, safety and planning sectors. The challenge for the EPA and our partners is that many substances that are potentially harmful to human health have legitimate beneficial uses such as in construction, manufacturing, agriculture, health services and in our homes. There are also substances we use now or were used in the past that are harmful to human health if the right precautions aren't taken. New substances are being used or developed every year, and new industry processes are adopted. With this fast pace of innovation, sometimes there is limited scientific understanding or community awareness of the potential health impacts of these substances.

To protect human health the EPA will:

- act early, in accordance with precautionary principle, to changing and emerging scientific knowledge to use our regulatory powers to respond to potential risks
- drive the research agenda – partnering with education and research organisations on priority human health issues

- partner with others to monitor and identify emerging harmful substances.

Degradation of our environment

The environmental issue

Human development is a major cause of environmental degradation. It's depleting and degrading natural resources, harming ecosystems, causing the loss of biodiversity and creating pollution. NSW has the highest population of any state in Australia (estimated at over 8 million as of June 2020) and is projected to increase. The potential environmental impacts of an increasing human population include:

- an increase in water and air pollution that can affect ecosystem services such as our air quality and inland river health and the condition and extent of wetlands
- changes in land use which can cause soil degradation
- demands and impacts on surface and groundwater resources
- loss of biodiversity from changes to natural ecosystems through agriculture, forestry, industry and an increase in the footprint of urban areas and transport routes.

The regulatory challenge

NSW faces the challenge of ensuring the increasing consumption of energy, water and land does not continue to negatively impact on our environment and natural resources. We need to keep pace with the demands for development and use of natural resources and understand the impacts of these demands on the state of the environment.

Protecting the environment is an EPA role shared with our partners in the Department of Planning, Industry and Environment, other government regulators and agencies, as well as local government.

To protect the environment the EPA will:

- act early, in accordance with precautionary principle, to changing and emerging scientific knowledge to use our regulatory powers to

Challenges

respond to potential risks

- drive the research agenda – partnering with government, universities and other research organisations on priority environmental issues
- partner with others to monitor degradation of the environment and identify emerging issues
- create and act on opportunities to restore and enhance the environment.

Ecologically sustainable development

The environmental issue

Ecologically sustainable development is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (*World Commission on Environment and Development*, 1987).

Environmentally sustainable development requires a balance in the way the environment is used for commercial, social, residential and recreational purposes now and into the future. It is a constant challenge to balance the need to build homes, service communities, operate businesses and transport, retain natural spaces and protect the environment and our health. Land-use consent can be for development that has a high environmental impact (for example that is likely to generate air, water or noise pollution or could cause land contamination), located in or near an environmentally sensitive area (for example a wetland), in an area of cultural or heritage significance (for example an Aboriginal place or object) or in an area that may affect threatened species, populations or communities. The environmental impacts of multiple land-use decisions can accumulate and become more significant over time. Competing or differing views on land-use decisions can result in land-use conflict.

The regulatory challenge

The need for ecologically sustainable development requires regulation to carefully balance the protection of the environment with development and land-use needs. Local, state and Commonwealth governments all

play a role in making decisions about land use within the planning and development system. Sometimes the EPA may be able to give advice on how to protect the environment before a land-use decision is made, and sometimes we have a role in regulating an activity after another government body has made a land-use decision.

To play our part in ensuring the environment is maintained or enhanced for the benefit of future generations we will:

- provide environmental expertise to decision-makers before development consent is provided
- promote better practices to protect the environment in planning and development
- advocate for the environment to be properly considered in every land-use decision and that consent authorities, businesses and organisations use best practice to consider and address air and water quality, noise, waste, land contamination and any substances harmful to human health
- contribute to the land-use planning and development system to reduce land-use conflict, increase regulatory certainty for industry and improve the quality of life of the NSW community
- act to protect, restore and enhance the environment when we have a role in regulating an activity after another government body has made a land-use decision.

Reducing waste

The environmental issue

Over-consumption and the increasing generation of waste as the global population and living standards rise is a world-wide issue. Governments and communities at all levels are racing to transition to a truly circular economy where waste is valued as a resource, and materials are reused and recycled. This creates sustainable opportunities for jobs and industry, and reduces the harmful impact of unsustainable resource consumption, waste disposal and littering.

Challenges

The regulatory challenge

Individuals, businesses, and governments of all levels around the world have a role to play in supporting the circular economy to reduce waste and pollution. The challenge for regulation within a circular economy is to ensure that regulatory approaches support industry and innovation in the reuse and proper disposal of waste, while also not compromising on the measures in place to safeguard the environment and human health.

To ensure our regulatory approaches support the reuse and proper disposal of waste we will:

- address the whole system from minimising waste generation through to helping create sustainable markets for recycled materials
- work with all levels of government, industry, the community, research and science sectors to drive future waste management and resource recovery.

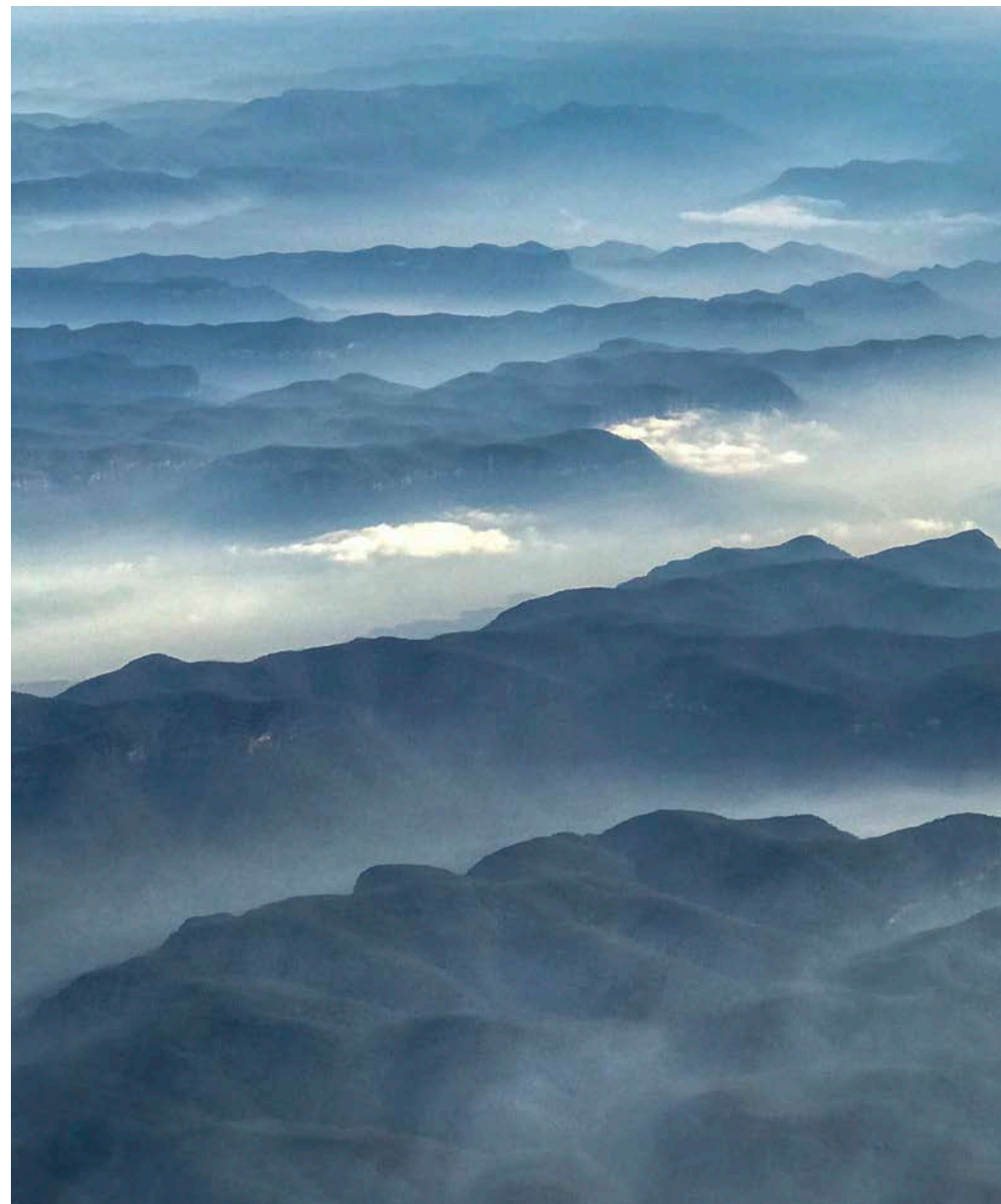
Climate change

The environmental issue

Climate change is a global challenge. It is driving a change in global climate conditions, including weather, temperature and sea levels, caused by an increase in greenhouse gases, mostly from fossil fuel emissions around the world. We see the impacts of climate change in NSW and Australia on a regular basis, such as the devastating bushfires in NSW during the summer of 2019-2020. Globally, we need to reduce greenhouse gas emissions to reduce the negative impact of a changing climate on the environment and communities.

The regulatory challenge

The EPA doesn't regulate all the factors that contribute to climate change. We are working collaboratively to achieve net zero emissions by 2050 and to make NSW more resilient to a changing climate under the NSW Climate Change Policy framework.



Challenges



During crises like the bushfires and floods, the EPA plays an important role in emergency response by assisting in and regulating environmental factors during clean-up actions. There are often higher risks to human health and the environment due to these catastrophic events; for example, the need to clean up asbestos after the devastating bushfires in Tathra in 2018.

To make the most of the important part we play in the solution we will:

- participate in the NSW whole-of-government response to climate change
- partner with other government agencies, peak bodies and research organisations to find and progress solutions
- monitor and enforce measures to reduce emissions that are within our regulatory control
- use the regulatory approaches and tools available to us to promote reduction of carbon emissions.

Environmental crime

The environmental issue

Some individuals and corporate entities wilfully or recklessly do the wrong thing for personal gain, either to make a profit or to avoid paying for pollution for which they are responsible. In some cases, this wrongdoing is so significant it amounts to an environmental crime. This can result in serious harm to the environment, such as land and water contamination from illegal dumping or improper transport and storage of harmful substances.

The regulatory challenge

Despite the significant environmental and human health harm that can result from wilful wrongdoing, detecting environmental crime and identifying who is responsible is immensely difficult.

The full force of the law is needed to target deliberate and criminal non-compliance with strong regulatory responses.

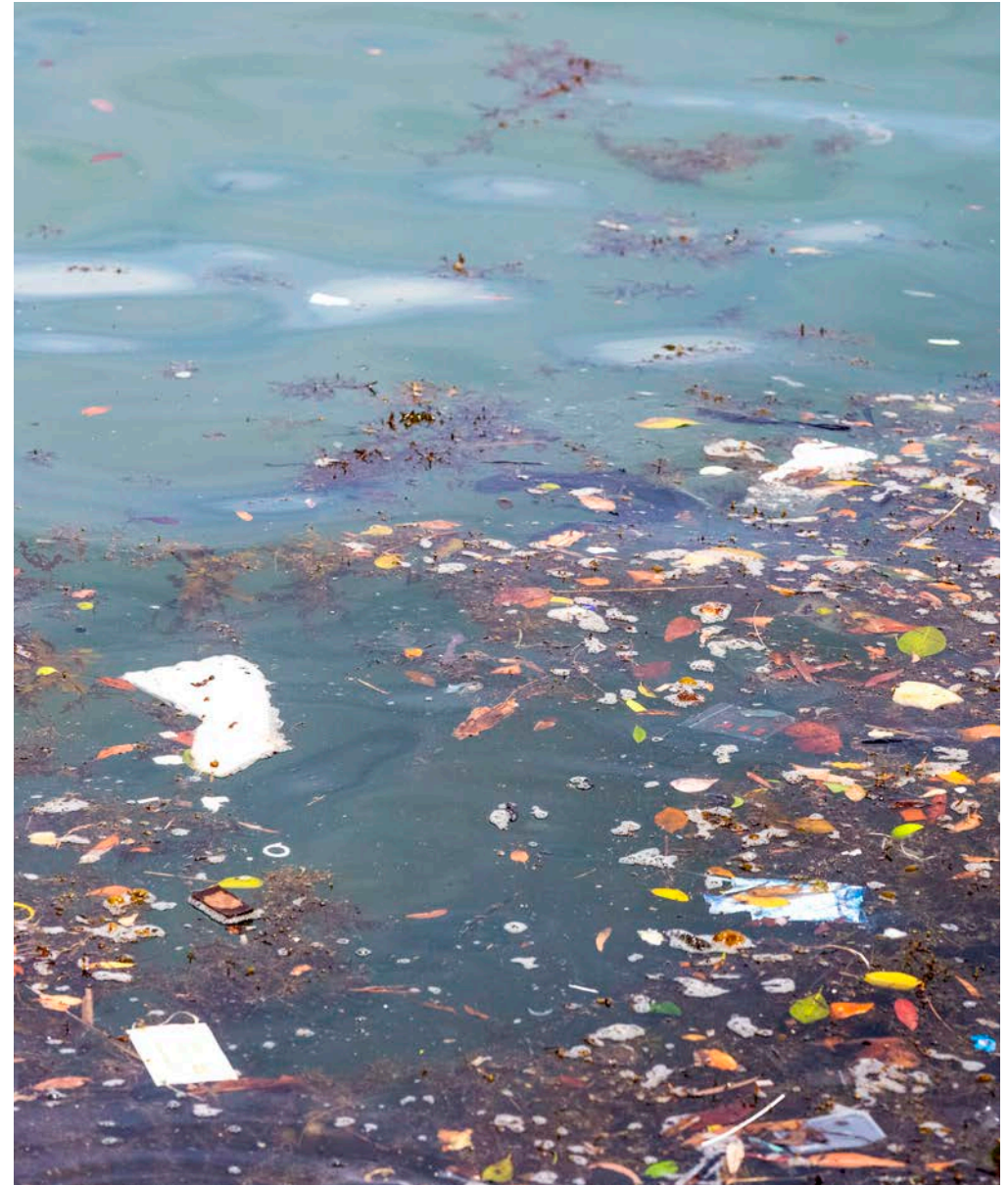
Challenges

To ensure the EPA can move quickly and effectively in cracking down on environmental crime, the EPA will:

- continuously improve our ability to detect crime, including empower the community to be involved, sharing information and cooperating with other regulators, government departments, and law enforcement agencies
- invest in training, technology and operational tools to enhance our intelligence, surveillance and investigation capabilities
- use and test the limits of our regulatory powers, including prosecution.

Other environmental and human health risks that pose a challenge for regulation are:

- diffuse sources of pollution and waste
- the use and transport of hazardous chemicals and dangerous goods
- cumulative impacts from widespread sources
- threats to native flora and fauna from unsustainable forestry practices
- threats to native flora and fauna from natural events (e.g. bushfires)
- legacy contaminated sites





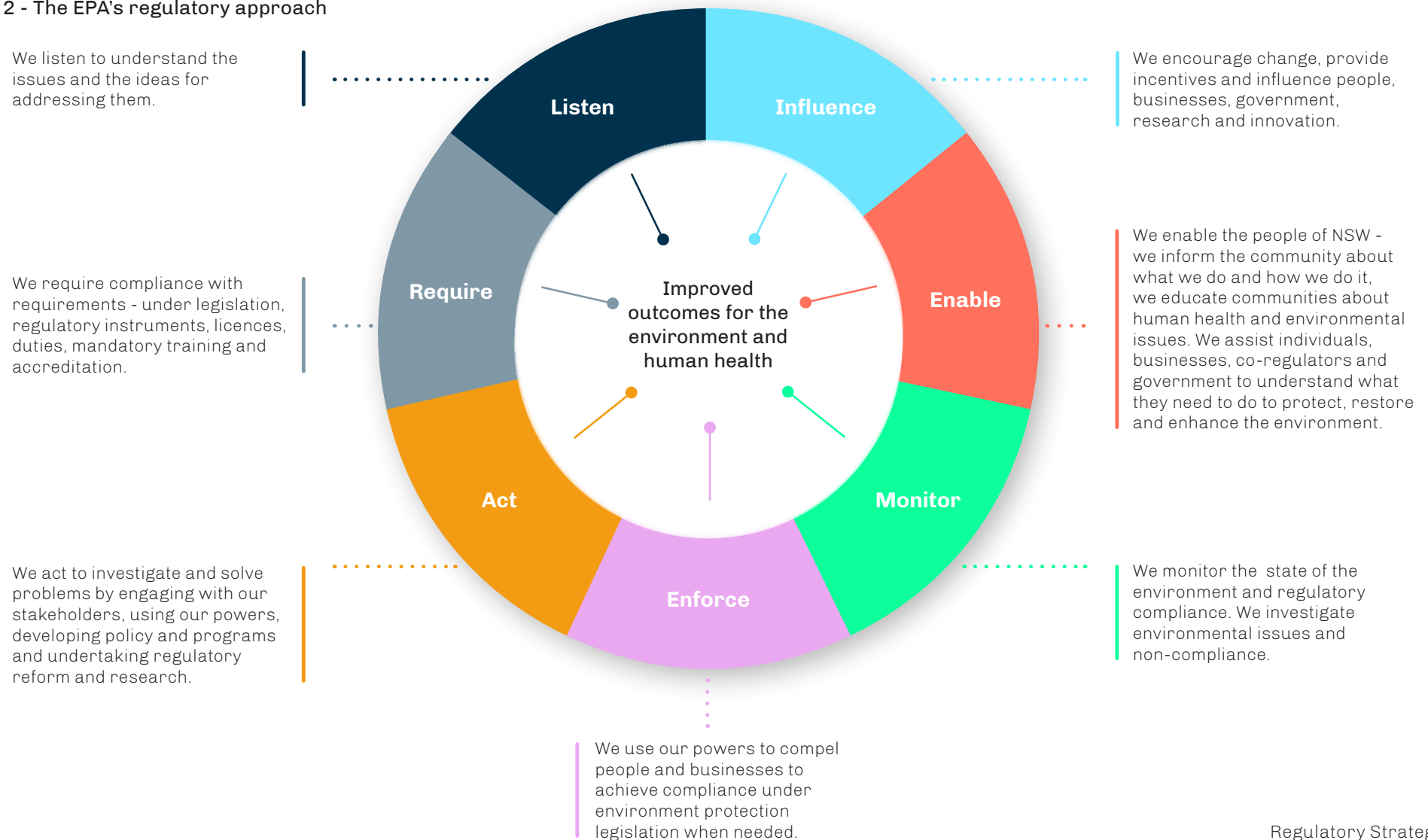
We are an
outcomes-
focused regulator

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What we do and how we do it

The EPA's regulatory approach has seven elements. To find out more about each element of our approach you can look at the Regulatory Policy on our website from mid-2021. 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 issue). In everything we do we aim to assess the greatest risks and address the biggest impacts to human health and the environment. We focus our regulatory activities to achieve the best outcomes.

Figure 2 - The EPA's regulatory approach



What we do and how we do it



We act to address issues and create solutions

Protecting, restoring and enhancing the environment requires more than regulatory compliance. We are committed to working with others to understand and address environmental issues and be part of the solution by

- **using a 'systems' approach** – considering water catchments, airsheds, climatic and geographic regions - and working with our co-regulators (local government and others) and the community in these areas
- **considering regulatory improvements and reform** – ensuring we have the regulatory frameworks, interventions and safeguards to be effective
- **being informed by sound science** – we will obtain, require, commission, promote and encourage the latest science and research to help solve problems
- **leveraging data** as a strategic asset to ensure we have the evidence and insights to anticipate future risk and lead interventions
- **encouraging innovation** by creating opportunities to test new ideas, assess their effectiveness, and improve environmental outcomes.

Influence outcomes

We are an outcomes-focused regulator. Where we don't have direct regulatory control, we will act to influence and advocate for the protection of the environment and human health to be properly considered in decisions made by communities, industry, co-regulators and other government agencies.

For example:

- We work with our regulatory partners (planning, local government, other agencies) to influence their regulatory activities under environment protection legislation so they are informed by EPA expertise.

What we do and how we do it

- We provide financial incentives for businesses that do the right thing and improve their environmental performance.
- We encourage the protection of the environment through grants, education campaigns and engaging our stakeholders.
- We influence significant land use planning decisions to advocate for better environmental outcomes.

What we require

We lead the state in protecting the environment by administering key environment protection legislation in NSW.

The EPA has responsibilities and functions under environment protection legislation. The list of Acts administered by the EPA is available on the [EPA website](#). More information about what we require for each legal framework and subject area will be available on our website from mid-2021.

We use regulatory instruments under each framework, including licensing, control orders, approvals, codes of practice and management plans.

Examples of other specific requirements include:

- Landowners have a duty to report contamination under the *Contaminated Land Management Act 1997* (CLM Act).
- Mandatory training is required for some pesticide users and dangerous goods drivers.
- We have an accreditation scheme for consulting radiation experts. We also work with accredited site auditors who independently review work done by contaminated land consultants.

How we monitor

We protect human health and the environment by monitoring the state of the environment and monitoring compliance with our requirements. This allows us to identify issues and opportunities to prevent harm and enhance the environment.

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

For example:

- The Upper Hunter Air Quality Monitoring Network, which provides air quality data in a region with a high concentration of industrial activities.
- We require sewage treatment plants to monitor water quality to maintain and restore the health of our waterways.
- We monitor compliance with legislation, licences and other requirements using a variety of compliance tools, including inspections, audits and investigations. More information on these tools will be available on our website from mid-2021.

For example:

- We use campaigns to monitor environmental issues that may be widespread or emerging. These campaigns involve inspections, surveys, audits, investigations and education. They provide an opportunity for us to raise awareness about our requirements and best practices.
- We investigate alleged incidents of environmental harm and/or whether an offence has occurred under environment protection legislation.

What we do and how we do it

We enforce the requirements

We take enforcement action to require people, businesses and organisations to meet their legal obligations when requirements are not followed. Enforcement may include addressing the non-compliance, fixing the problem and treating the harm.

For example:

- We enforce the risk-based licensing framework to make sure we identify and target the highest environmental risks.
- We issue prevention notices to prevent harm, clean-up notices to reduce harm and stop work orders to prevent further harm.
- We require some businesses and organisations that have an environment protection licence to complete pollution studies and pollution reduction programs. These help us understand and reduce the environmental impacts of certain activities.
- When necessary, we will use the full force of the law and may prosecute people, businesses and organisations (refer to our [Prosecution Guidelines](#)) - this could include penalties, court orders or civil proceedings.

We listen to the community and our stakeholders

We listen to the needs of the people of NSW and act on what we hear so we can achieve better human health and environmental outcomes.

For example:

- 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 groups.
- We recognise the importance of listening to and working with Aboriginal communities on environmental issues that matter to them and giving them a genuine voice about how we respond to issues.
- We listen to interest groups discussing the environmental issues they are passionate about.

- We regularly seek the views of the community, industry and government through the EPA stakeholder survey and EPA roadshows.
- We partner with others to listen to our youth and promote awareness of environmental protection when they start their employment, trades and businesses.

We enable others to protect the environment and human health

We can better protect the environment by enabling the community through information and education. We assist people to understand what they need to do to help protect the environment and human health and why that is important for the people of NSW, now and in the future.

For example:

- We inform the NSW community, industry and government about what we do and how we regulate.
- We assist individuals, businesses and co-regulators to understand what they need to do to protect, restore and enhance the environment.
- We provide public education and awareness programs about human health and environmental issues to drive change.
- We assist the regulated community to improve compliance rates, particularly with requirements that are new or are not well understood.
- We encourage those who are willing to improve their environmental performance beyond compliance to restore and enhance environmental outcomes.



We listen to
the needs of the
people of NSW
and act on what
we hear

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Who we work with



Local government

We will partner with local government to protect the environment and human health, engage with local communities, fulfil our compliance and regulatory responsibilities and solve problems.



Other regulators

We will partner with other regulators to identify and solve environmental problems, leading regulatory practice and reduce regulatory overlap.



Government and research organisations

We will partner with government, research organisations, universities and peak bodies to identify current and future problems and develop the best environmental solutions for these.



Industry and the regulated community

We work with industry on modern best practice solutions to issues. We work with the regulated community to help deliver better outcomes.



Communities

We work with communities to understand and gain important insights about the environmental issues affecting those communities and what they need from us.



Interest groups and NGOs

We work with interest groups and NGOs to understand and gain important insights about the environmental issues they are concerned about and how it will inform our work.

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